



Transport
for NSW

Project Alliance Agreement

The Northern Road Upgrade Stage 3 North
Glenmore Parkway to Jamison Road

Contract No. 19.0000303661.1784

Transport for NSW (**TfNSW**)

Lendlease Engineering Pty Ltd (**NOP**)



Project Alliance Agreement

The Northern Road Upgrade Stage 3 North

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Details

Date

Parties

Name **Transport for NSW** (a NSW Government agency constituted under the *Transport Administration Act, 1988 (NSW)*)
ABN 18 804 239 602
Short form name **TfNSW**
Notice details c/- 22-44 Ennis Road, Milsons Point NSW 2060

Name **Lendlease Engineering Pty Ltd**
ABN 40 000 201 516
Short form name **NOP** (Non-Owner Participant)
Notice details

Background

- [REDACTED]
- [REDACTED]
- [REDACTED]

Agreed terms

Part A – Preliminary

1. Defined terms and interpretation

1.1 Defined terms

In this Agreement:

Act of Terrorism means an act, including the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or put the public, or any section of the public in fear.

Active Work Site means, at any given time, that part of a Works Site on which Works are currently being or are to be carried out, and which is therefore under the care and control of the NOP.

Actual Outturn Cost or **AOC** means the sum of all Reimbursable Costs properly incurred in the performance of the Works, less any amounts offset in accordance with this Agreement, plus the Fee.

Agreement means this deed, including the schedules, annexures and any other document or materials incorporated by reference from time to time.

Alliance means the alliance formed between TfNSW and the NOP under this Agreement for the delivery of the Project.

Alliance Principles means the agreed alliance principles and objectives for the Project as set out in Part C of Schedule 5.

ALT means the Alliance Leadership Team, as further described in clause 3.6.

AMT means the Alliance Management Team, as further described in clause 3.7.

Approval means any approval, authorisation, consent, exemption, filing, licence, notarisation, permit or waiver, however described, and any renewal or any variation to any of them by any Authority and includes an authorisation under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Approvals Management Plan means the plan setting out the processes and requirements for obtaining and management of Approvals, forming part of the Works Delivery Documents.

Authority means any government, semi-government, local government, statutory, public, ministerial, administrative or judicial authority, body, Minister or a person (whether autonomous or not) charged with the administration of any applicable law or Approval or any privatised body performing essential services.

Background IP means any Intellectual Property owned or developed by, or provided to TfNSW or the Project by, the NOP, including business systems and processes or methodologies, which:

- (a) was in existence prior to Project Commencement; or
- (b) is subsequently brought into existence independently of this Agreement,

and which is identified as such in **Part C** of Schedule 3 or is otherwise agreed by the ALT from time to time.

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

Bank Bill Rate is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average mid rate on the Reuters Monitor System Page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if no average mid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the NOP and TfNSW for Bank Bills having a tenor as described above.

Business Day means, unless the Parties agree otherwise, any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales; and
- (b) 27, 28, 29, 30 and 31 December.

Chainage has the meaning given in the Scope of Works and Technical Criteria forming part of the Project Brief.

Change means a variation, addition or deletion to the Works Delivery Documents or to the Works as described in the Project Brief, but excluding any minor changes.

Change of Control means, in relation to a corporation, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attaching to shares in the corporation; or
- (c) Control of more than half the issued shares of the corporation (excluding any part which carries no right to participate beyond a specified amount in the distribution of either profit or capital),

but does not include a change that is a consequence of the trade in the securities of the Lendlease Group or a Permitted Reorganisation of the NOP and where there is no material adverse change on the ability of the NOP to perform its obligations under this Agreement.

Claim means a claimed entitlement of the NOP in connection with the Agreement, in tort, in equity, under any statute, or otherwise including a claimed entitlement for breach of contract by TfNSW.

Client's Representative means a representative of TfNSW as referred to in clause 5.2.

Consultant means a consultant engaged by the NOP to design parts of the Works or to provide other professional services, which may include Contracted Labour.

Contracted Labour has the meaning given to that term in Schedule 6.

Control means a power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, whether or not they are enforceable.

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

Cost Risk/Reward Adjustment means the cost-based adjustment to the Fee amount that is payable to the NOP, which is calculated in accordance with the procedures set out in Schedule 6.

Data means the Works Delivery Documents and all other drawings, sketches, specifications, digital records, computer software, data and information relating to the Agreement.

Date of Agreement means the date of this Agreement as stated on the Details page.

Default Rate means simple interest at the rate of 1% above the Bank Bill Rate.

Defect means any fault, error, omission, shrinkage, or inadequacy in the Works or which affects the Works.

Defects Rectification Period means the period stated in clause 21, during which the NOP is required to rectify defects in the Works, as further described in clause 21.

Delegations Management Plan means the delegations management plan produced for the Project (as required under Schedule 3) and approved in writing by TfNSW.

Dispute means an issue in relation to the Project or this Agreement which has been referred to the Executive Committee under clause 41.1(b) and which has not been resolved.

Encumbrance means a mortgage, charge, pledge, lien, hypothecation or title retention arrangement, a right of set off or right to withhold payment of a deposit or other money, a notice under section 255 of the *Income Tax Assessment Act 1936* (Cth), subdivision 260 A in schedule 1 to the *Taxation Administration Act 1953* (Cth) or any similar legislation, or an easement, restrictive covenant, caveat or similar restriction over property, or an agreement to create any of them or to allow any of them to exist.

Excepted Risks means:

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (b) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), Act of Terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority,

but only to the extent that the event or circumstance is not within the control of the affected Party or a related body corporate and is not able to be avoided, remedied or abated by the affected Party by the exercise of reasonable diligence or effort.

Executive Committee means a committee comprised of the persons named in Schedule 10.

Existing Facilities means any assets of TfNSW in the vicinity of, adjacent to or related to the Works Site existing at the Project Commencement Date.

Force Majeure means:

- (a) fire, lightning strike, explosion, earthquake, landslide or other natural disaster;
- (b) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (c) riot, civil commotion, malicious damage, sabotage, war (whether declared or not), Act of Terrorism or revolution; or
- (d) order of a court, tribunal or Authority,

but only to the extent that the event or circumstance is:

- (e) not within the control of the affected Party or a related body corporate; and
- (f) not reasonably able to be avoided, remedied or abated by the affected Party by the exercise of reasonable diligence or effort.

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

Interface Contractor means the contractor engaged to undertake the Interface Contractor's Work, as notified to the NOP by Client.

Interface Contractor's Work means the works carried out/ to be carried out on the Western Sydney Infrastructure Plan – The Northern Road Upgrade – [Stage 5] South Project, which will interface with the Works.

Interface Works means the works carried out by the NOP which interface with the Interface Contractor's Work, being the works from the Southern extent of the Site to Chainage 150.

Item means an item in Schedule 1.

Key Personnel means the NOP's key personnel referred to in clause 7.1.

Landscaping Maintenance means the landscaping maintenance services described in the Project Brief.

Landscaping Maintenance Plan means the plan for maintenance of the landscaping described as the Landscaping Maintenance Plan in the Project Brief.

Landscaping Maintenance Period means the 18 month period commencing on the date of Project Construction Completion.

Laws includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and of the State of New South Wales; and
- (b) certificates, licences, consents, permits, Approvals and requirements of organisations having jurisdiction in connection with the performance of this Agreement.

Maintenance Plan means the project plan referred to as the Maintenance Plan in the Appendix to the Scope of Works and Technical Criteria forming part of the Project Brief.

Margin has the meaning given in Schedule 6.

Materials includes materials, plant, equipment and other goods such as raw and part-fabricated or finished supplies of goods, concrete, reinforcing steel, steel plate, rolled sections, asphalt, bitumen, piping, pre-fabricated items, systems, subsystems and equipment.

Minimum Aboriginal Participation Spend means the amount identified in Item 2, less allowable exclusions, in line with the NSW Government Policy on *Aboriginal Participation in Construction goals*.

Allowable exclusions are costs incurred by the NOP over which it has little or no control, e.g.:

- (a) specialised capital equipment (e.g. tunnel exhaust fans, tunnel boring machines, batch plants);
- (b) imported materials;
- (c) where no suitable Australian supplier exists in the market;
- (d) value of existing and new non-contract/project specific assets apportioned to the contract/project, where they are used in delivery of the contract/project;
- (e) property i.e. acquisitions, indirect leasing costs, extra land, adjustments; and
- (f) non-construction related services,

as agreed between TfNSW and the NOP.

Moral Rights means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed; and
- (c) a right of integrity of authorship.

National Construction Code means the National Construction Code produced and maintained by the Australian Building Codes Board as amended and in force from time to time.

NOP's Insolvency means in respect of a person (as defined in clause 1.2(a)(v)):

- (a) a party suspends payments of its debts generally;
- (b) a party is or states they are or are presumed by law to be insolvent or unable to pay their debts as and when they fall due;
- (c) in respect of a corporation:
 - (i) if the party or any of its directors start developing one or more courses of action that are reasonably likely to lead to a better outcome for the party for the purposes of section 588GA of the Corporations Act;
 - (ii) if the party or any of its directors start to suspect the company may be or become insolvent;
 - (iii) an application is made to a court for the winding up of the party;
 - (iv) a winding up order is made in respect of the party;

- (v) the appointment of a liquidator;
 - (vi) the appointment of a provisional liquidator;
 - (vii) the making of an application to the Court for a winding-up order; or
 - (viii) a meeting of its creditors is convened at which it is proposed that it be wound up voluntarily (other than for a members' voluntary winding-up) or such resolution is passed; or
- (d) in respect of a partnership, where any of the events in (a) or (b) occurs in relation to any corporation or individual who is a member of the partnership.

NOP Statement and Supporting Statement means statements in the form of clause 1 and 2 of Schedule 7.

Parent Company Guarantee means a parent company guarantee in the form of Schedule 14 or such other form approved by TfNSW.

Parent Company Guarantor means the person or persons specified in Item 8, or other such entity as consented to by TfNSW.

Party means a party to this Agreement.

Performance Test or Performance Testing means the examination, inspection, measuring, trial or testing, to be described in the relevant Works Delivery Documents, to demonstrate that the Works meet the requirements of this Agreement.

Permitted Reorganisation means:

- (a) a solvent re-organisation involving the business or assets of, or shares of (or other interests in), any Lendlease Group member where all or substantially all of the business, assets, and shares of (or other interests in) the relevant Lendlease Group member continue to be owned directly or indirectly by the Lendlease Group in the same percentage as prior to such re-organisation, other than the business, assets and shares of (or other interests in) the relevant Lendlease Group member which cease to be owned as a result of a disposal or merger otherwise permitted by TfNSW; or
- (b) any other solvent re-organisation involving one or more Lendlease Group members approved by TfNSW in writing.

Personal Information has the meaning given to that term in the Privacy Acts.

Personal Property Securities Register has the meaning given to that term in the PPS Law.

PPS Law means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations; and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a) above.

PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Privacy Acts means:

- (a) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (b) the *Health Records and Information Privacy Act 2002* (NSW).

Procurement Management Plan means the plan referred to in clause 15.1, forming part of the Works Delivery Documents.

Project means the design and construction of the section of The Northern Road from North Glenmore Parkway to Jamison Road and includes the Landscaping Maintenance.

Project Brief means the Project Brief set out in Annexure A.

Project Commencement has the meaning given in clause 2.1.

[REDACTED]

Project Completion means the stage at which the ALT confirms that the matters in clause 22.1 are satisfied, and the date of Project Completion is the date identified in the Project Completion Certificate.

Project Completion Certificate means the certificate issued in accordance with clause 22.2.

Project Construction Completion means where the Works achieve the requirements in clause 20.2.

Project Construction Completion Certificate means the certificate issued in accordance with clause 20.4.

Project IP means the Intellectual Property in all works (including copyright works, inventions, discoveries, improvements to existing processes and novel designs, including any developments or improvements to methods, processes or techniques, whether or not registrable as designs or patents throughout the world) developed by, or otherwise provided to TfNSW or the Project by, the NOP in the performance of, or directly arising out of, the performance of this Agreement, but excludes Background IP.

Reimbursable Costs means actual direct expenditure and project-specific overheads incurred by the NOP in delivering the Project as further described in Schedule 6 [REDACTED]

Reserved Power has the meaning given in clause 5.3.

Security Interest means any 'security interest' as defined in the PPS Law.

Site Co-operative Use Plan means the plan referred to in clause 14.2(b), forming part of the Works Delivery Documents.

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

Subcontract means any contract or agreement entered into by the NOP with a third party in connection with the delivery of the Works, and includes a contract for the supply of materials, plant or equipment for the Works.

Subcontractor means any person engaged by the NOP under a Subcontract and will generally include Contracted Labour.

Subcontractors and Suppliers Proof of Payment Procedure

means the administrative procedure set out in clauses 15.2(d) and 15.3 by which:

- (a) the monthly process set out in Schedule 11 is implemented;
- (b) the NOP:
 - (i) provides proof to TfNSW that it has paid Subcontractors and Suppliers; and
 - (ii) satisfies TfNSW that subcontractors and suppliers to Subcontractors and Suppliers have been paid; and
- (c) TfNSW obtains an irrevocable payment direction in favour of each unpaid Subcontractor and Supplier if the NOP fails to provide proof of payment,

and where clauses 15.2(e)(i) and 15.2(g) apply, an administrative procedure consistent with the above procedure including the NOP obtaining an irrevocable payment direction in favour of each unpaid subcontractor and supplier if a Subcontractor or Supplier fails to provide proof of payment.

Supplier means an entity engaged by the NOP to supply Materials in connection with the Works.

Target Adjustment Event means:

- (a) a Change (including the exercise by TfNSW of a Reserved Power) that has a material impact on:
 - (i) the extent and nature of the Works as described in the Project Brief or as otherwise required by this Agreement; and
 - (ii) the AOC or the ability to meet a Target Date; or
- (b) an event which:

- (i) the NOP is unable to avoid, remedy or abate; or
 - (ii) TfNSW is unable to or fails to avoid, remedy or abate,
and which has a material impact on the ability to meet a Target Date; or
- (c) any other event which is stated in this Agreement to be a Target Adjustment Event.

Target Adjustment Guidelines means the document set out in Schedule 19 recording the consensus positions reached by the ALT and AMT members during the target adjustment guidelines workshops, during which they discussed their respective interpretations of a series of hypothetical scenarios.

Target Date means a date agreed by the ALT as the date on which Project Completion is due, as that date may be extended in accordance with this Agreement.

Technical Expert means an expert who may be engaged by the ALT in accordance with clause 3.6(e) and clause 3.8 to provide information and recommendations within the area of that expert's expertise in relation to a dispute or failure to agree and must not be:

- (a) an employee or officer of TfNSW or the NOP;
- (b) a person who is or has been connected with the Works, the Project or this Agreement (other than as a Technical Expert); or
- (c) a person who TfNSW and the NOP have already considered for the role of Technical Expert and have not been able to agree on.

TOC means the total estimated value of Reimbursable Costs to deliver the Works under this Agreement, plus the Fee, as agreed by the ALT and set out in Schedule 16, and as may be amended under clause 18.4.

Transition Plan and Roadmap means the plan and roadmap set out in Schedule 18, as amended by the AMT where required, and endorsed by the ALT.

Undertaking means an unconditional undertaking to pay on demand, in the relevant form of Schedule 2 or such other form approved by TfNSW.

WHS Requirements means those work health and safety requirements contained in this Agreement, including the requirements specified in clause 8.

Wilful Default means an intentional or reckless act or omission by a party (including its officers, employees and agents and whether those officers, employees and agents are acting within or outside the scope of their employment or authority) in relation to the Project, without regard to, or being reckless as to whether, the act or omission has harmful and avoidable consequences, but does not include errors of judgement, mistake, act or omission made in good faith.

Works means the physical works to be carried out under this Agreement in order to deliver a completed Project in accordance with the Project Brief and Works Delivery Documents.

Works Delivery Documents means all drawings, specifications, reports, plans, flow charts, procedures and other documents whether in written, printed, electronic or any other form, produced for or in the course of the Project, as amended by any Change, and includes all the documents referred to in Part A of Schedule 3.

Works Program means the program or schedule for the performance of the Works, and which forms part of the Works Delivery Documents.

Works Site means the site for the construction of the Works as set out in the Project Brief.

1.2 Rules for interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a clause, paragraph, part, schedule or annexure is to a clause or paragraph or part of, or schedule or annexure to, this Agreement, and a reference to this

Agreement includes a reference to a clause, paragraph, part, schedule, information table or annexure to this Agreement;

- (ii) a person includes the person's executors, administrators, successors and permitted assigns;
 - (iii) a document or agreement includes that document or agreement as novated, altered, supplemented or replaced except to the extent prohibited by this document;
 - (iv) a thing or period includes the whole and each part of it;
 - (v) 'persons' or words implying natural persons include bodies corporate, joint ventures, partnerships, trusts, associations, unincorporated bodies and governmental agencies;
 - (vi) 'entities' include entities as defined for any purpose under Australian Accounting Standards;
 - (vii) any body (including institute, association or Authority) that ceases to exist or whose powers or functions are transferred refers to the body that replaces it or substantially succeeds to its powers or functions; and
 - (viii) a law or legislation includes all regulations and other instruments under it and amendments or replacements of any of them.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of any thing (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) The words subsidiary, holding company and related body corporate have the same meanings as in the Corporations Act.
 - (h) Unless otherwise indicated, all financial amounts stated in this Agreement are exclusive of GST.

1.3 Business Days

If the day on or by which a person must do something under this Agreement is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 Multiple parties

If a Party to this Agreement is made up of more than one person, or a term is used in this Agreement to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

1.5 Priority of documents

- (a) The documents forming this Agreement are to be taken as mutually explanatory of one another. If an ambiguity or discrepancy is found in the documents, it must be referred in the first instance to the AMT for a decision.

- (b) The order of priority of the documents is:
 - (i) clauses 1 to 42 of this Agreement;
 - (ii) the schedules to this Agreement; and
 - (iii) the annexures to this Agreement.

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]
 - [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Part B– Alliance strategy

3. Alliance Principles

3.1 Alliance Principles

The statement of Alliance Principles set out in Part C of Schedule 5 has been developed and agreed between the Parties and contains the core values, alliance principles and objectives acknowledged by the Parties to be fundamental to the success of the Project.

3.2 Adherence to Alliance Principles

TfNSW and the NOP agree to adhere to the Alliance Principles.

3.3 ALT and AMT

TfNSW and the NOP agree that their respective representatives on the ALT and the AMT will work within the framework of the Alliance Principles and this clause 3.

3.4 Good faith

- (a) Without limiting the generality of the commitment and agreement referred to in clauses 3.1 to 3.3, TfNSW and the NOP agree to conduct all their activities in relation to the Project and this Agreement in good faith.
- (b) For the purposes of this Agreement, good faith means:
 - (i) acting fairly and honestly;
 - (ii) doing all things reasonably to be expected in the context of this Agreement;
 - (iii) not impeding or restricting the other Party's performance of its obligations under this Agreement; and
 - (iv) giving as much weight to:
 - (A) subject to clause 3.4(b)(iv)(B), the interests of the Project as to the Party's own interests; and
 - (B) in respect of TfNSW only, the public interest as to the interests of the Project.

3.5 Management structure

- (a) The management of the Alliance relationship between the Parties is based on a management structure comprising:
 - (i) the Alliance Leadership Team; and
 - (ii) the Alliance Management Team.
- (b) The Parties acknowledge that:
 - (i) each of TfNSW's and the NOP's personnel performing any function contemplated by this Agreement must attempt to resolve any issues or differences at their level of management; and
 - (ii) if those issues or differences cannot be resolved at that level of management the issues or differences must be directed to the next level of management for consideration, in accordance with the processes set out in this clause 3 and clause 41.

3.6 Alliance Leadership Team

- (a) The structure and detailed functions of the ALT are set out in Part A of Schedule 5.
- (b) The ALT must elect one of its members as its chairperson.
- (c) All decisions of the ALT will be by unanimous agreement of the members present at the meeting.
- (d) If the ALT is unable to reach unanimous agreement on an issue within 14 days after first being asked to vote on the issue then, unless the ALT has resolved to extend the period to enable it to consult a Technical Expert in accordance with clause 3.6(e) or to obtain

further information in accordance with clause 3.6(f), the issue will be referred to the Executive Committee in accordance with clause 41.1.

- (e) The ALT may consult a Technical Expert to assist it in resolving any issue. The ALT is not bound to accept the recommendation of the Technical Expert but it must have reasonable grounds for rejecting that recommendation. If, following consultation with the Technical Expert, the ALT is unable to resolve the issue within five Business Days, the issue will be referred to the Executive Committee in accordance with clause 41.1.
- (f) The ALT may extend the period for its decision on an issue to enable it to obtain further information to assist it in making its decision. If the ALT has extended the period for its decision for this reason and either:
 - (i) the information has been obtained but the ALT remains unable to reach agreement on the issue; or
 - (ii) the information has not been obtained,within five Business Days of expiry of this extended period, the issue will be referred to the Executive Committee in accordance with clause 41.1.
- (g) Subject to any limits on delegated authority notified to the ALT from time to time, the members of the ALT must have full delegated authority to make all necessary decisions relating to the Project.

3.7 Alliance Management Team

- (a) The structure and detailed functions of the AMT are set out in Part B of Schedule 5.
- (b) The ALT must appoint one of the members of the AMT to be the chairperson of the AMT.
- (c) All decisions of the AMT will be by unanimous agreement of the members present at the meeting. Where the AMT is unable to reach a unanimous vote on an issue within five Business Days after first being asked to vote on the issue, the issue will be referred to the ALT.
- (d) The AMT must comply with the Delegations Management Plan, including any restrictions placed on the AMT in respect of expenditure for the Project.

3.8 Technical Expert

Where the ALT chooses to consult a Technical Expert under clause 3.6(e), the selection of the Technical Expert must be agreed by the ALT. The Technical Expert will be engaged by the NOP and the cost of that engagement will be a Reimbursable Cost.

3.9 Reporting

- (a) TfNSW and the NOP must each ensure that their appointed representatives attend all AMT meetings as required in accordance with this Agreement and provide to the AMT all information required for those meetings.
- (b) If the NOP has more than one representative on the ALT, each of those representatives must attend no less than 75% of ALT meetings.
- (c) On and from the date of this Agreement, the NOP must provide a report on the progress of the Project to the AMT not later than 10 Business Days after the end of each month. The NOP must provide one copy of the report for each member of the AMT, in a format determined by the AMT and covering as a minimum the items listed in the [Project Brief].
- (d) Not later than two Business Days after receiving the report under clause 3.9(c), the AMT must, after reviewing the report and adding any comments as it sees fit, provide a copy of the report to each member of the ALT.
- (e) The NOP must give the AMT and the ALT any other information concerning the Project that the AMT or ALT requires, by such time as the AMT or ALT requires.

Part C – Primary obligations and scope

4. The NOP

4.1 NOP's obligations

Notwithstanding the Parties' mutual obligation to implement a delivery strategy involving a project alliance as outlined in clause 3, the NOP is primarily contractually responsible for obtaining all necessary Approvals and the design, construction, performance testing and defects rectification of the Works in accordance with this Agreement.

4.2 NOP's acknowledgment

The NOP acknowledges that TfNSW is relying upon the professional advice, skill and judgement of the NOP in the performance of this Agreement.

5. TfNSW obligations

5.1 TfNSW's obligations

Notwithstanding the Parties' mutual obligation to implement a delivery strategy involving a project alliance as outlined in clause 3, TfNSW is primarily contractually responsible for:

- (a) making available access to the Works Sites in accordance with clause 14.1;
- (b) making payments to the NOP in accordance with this Agreement;
- (c) making explicit to the NOP TfNSW's technical requirements; and
- (d) making available to the Alliance appropriate personnel for the AMT and ALT and otherwise as agreed between the Parties.

5.2 Client's Representative

- (a) TfNSW may appoint a Client's Representative to give directions and exercise TfNSW's functions (as agent of TfNSW) under this Agreement.
- (b) The Parties acknowledge and agree that the Client's Representative is independent of the AMT and the ALT and is not required to perform any functions in respect of these teams.
- (c) The Client's Representative as at the Date of Agreement is stated in Item 9. TfNSW may replace the Client's Representative from time to time by notice in writing to the NOP.

5.3 Reserved Powers

- (a) Notwithstanding any other provision of this Agreement including the Parties' mutual obligation to implement a delivery strategy involving a project alliance as outlined in clause 3, the Parties acknowledge and agree that the final decision on the following matters ought to be, and is reserved for, unilateral determination by TfNSW:
 - (i) directing a Change;
 - (ii) suspension of the Works under this Agreement;
 - (iii) urgent protection of the Works, other property, people or the environment;
 - (iv) the amount certified in a payment schedule as payable by TfNSW to the NOP;
 - (v) termination of this Agreement without cause pursuant to clause 32.2;
 - (vi) media communications;
 - (vii) TfNSW's decision to have the Works reinstated, or not to proceed with the Works under clause 24.1(k)(i)
 - (viii) site access arrangements;

- (ix) any exercise by TfNSW of any of its or Roads and Maritime's respective functions and powers pursuant to legislation; and
- (x) any other matter which is expressly permitted to be determined by TfNSW under this Agreement, or which the ALT unanimously agrees should be a TfNSW Reserved Power,

each, a **Reserved Power**, and that in exercising its Reserved Powers TfNSW need not comply with clauses 3.2, 3.3 and 3.4

- (b) TfNSW will (except where more urgent action is required), exercise its rights with respect to Reserved Powers through the ALT (and its approved protocols).

6. Scope of work

6.1 The Project and Alliance activities

The NOP must, in a timely and professional manner and in accordance with this Agreement, carry out all work necessary for the detailed design, documentation, construction, handover and defects rectification of the Project, including:

- (a) investigating and identifying all Approvals required;
- (b) establishing Works Site compounds and project office accommodation;
- (c) liaising with all relevant Authorities and obtaining those Approvals which it is the NOP's responsibility to obtain in accordance with clause 13;
- (d) delivering, implementing and maintaining the plans forming part of the Works Delivery Documents;
- (e) carrying out and completing detailed design and documentation to comply with the Project Brief, including the preparation of the Works Delivery Documents;
- (f) carrying out all necessary environmental investigations and assessments;
- (g) carrying out appropriate surveys and investigations;
- (h) carrying out testing and inspections;
- (i) performing all services and carrying out all work necessary for proper and professional construction and Defects rectification;
- (j) initiating and maintaining appropriate safety precautions and programs, including the WHS Requirements;
- (k) developing the Works Program;
- (l) identifying risks associated with the Project and mitigation strategies for those risks;
- (m) interface with other projects, events and activities (including any works carried out by other contractors);
- (n) stakeholder consultation; and
- (o) carrying out the Landscaping Maintenance.

7. Personnel

7.1 Key Personnel

- (a) The Key Personnel as at Date of Agreement are identified in Schedule 4.
- (b) The NOP must ensure that any obligations under this Agreement which are designated to be undertaken by the Key Personnel are undertaken by the Key Personnel.
- (c) The NOP acknowledges that continuity of personnel is an essential factor in the successful completion of the Project. The NOP must ensure that the Key Personnel remain available for their nominated roles on the Project. No changes may be made to

the Key Personnel without the prior written approval of Roads and Maritime (which will not be unreasonably withheld).

- (d) Where the Key Personnel are unavailable for reasons beyond the control of the NOP, the NOP must notify the ALT immediately and, if so requested by the ALT, provide replacement personnel acceptable to the ALT at the earliest opportunity. The NOP's costs associated with the transition of Key Personnel are set out in Schedule 6.

7.2 Redeployment of personnel to achieve best-for-project outcomes

The ALT may require the immediate removal from the Project of any person who fails properly to observe the provisions of this Agreement or the Alliance Principles. Any such person must not be employed to carry out further work or services in relation to the Project without the permission of the ALT.

8. Government requirements

8.1 Codes of Practice

Terminology

- (a) In addition to the defined terms at clause 1.1, terms used in this clause 8 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (**NSW Guidelines**) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary obligation

- (b) The NOP must comply with and meet any obligations imposed by the NSW Government Code of Practice for Procurement (**NSW Code**) and the NSW Guidelines.
- (c) The NOP must notify the Construction Compliance Unit and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (d) Where the NOP engages a Subcontractor or Consultant, the NOP must ensure that that contract imposes on the Subcontractor or Consultant equivalent obligations to those in clause 8.1(b) (under the heading NSW Code and NSW Guidelines), including that the Subcontractor or Consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (e) The NOP must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

- (f) The NOP must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors, Consultants and related entities.
- (g) The NOP must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the NOP, including any Works Site;
 - (ii) inspect any work, Material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Project;
 - (v) have access to personnel; and
 - (vi) interview any person,

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

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

Sanctions

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

Compliance

- (l) The NOP bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The NOP is not entitled to make a claim for reimbursement or an extension of time from TfNSW or the State of NSW for such costs.
- (m) Compliance with the NSW Code and NSW Guidelines does not relieve the NOP from responsibility to perform the Works and any other obligation under this Agreement, nor from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (n) Where a change in this Agreement or the Works is proposed by the AMT or either of the Parties under clause 18.2, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the AMT or the relevant Party must include the following in the Change proposal submitted in accordance with clause 18.2:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the NOP proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan (State) or Work Health and Safety Management Plan).

Roads and Maritime Statement of Business Ethics

- (o) The Parties must comply with the Roads and Maritime Statement of Business Ethics available from the Roads and Maritime website.
- (p) The Parties must comply with the Roads and Maritime Customer Charter available from the Roads and Maritime website.

8.2 No collusive arrangements

- (a) The NOP warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its proposal for, or entry into, this Agreement.

- (b) Without limiting any other right or remedy, TfNSW may recover from the NOP the value of any payment or other benefit made directly or indirectly to an unsuccessful proponent or a trade or industry association in breach of the warranty in clause 8.2(a).

8.3 Compliance with NSW government requirements

Compliance with NSW government guidelines and policies

- (a) The NOP must implement and maintain the systems, strategies and plans required to comply with the following NSW government guidelines and policies, and as required by Item 1:
 - (i) the Work, Health and Safety Management Systems Guidelines;
 - (ii) the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction;
 - (iii) the Quality Management Systems Guidelines for Construction;
 - (iv) the Environmental Management Systems Guidelines;
 - (v) the NSW Government Procurement Guideline Skills and Training in the Construction Industry; and
 - (vi) the NSW Government Policy on *Aboriginal Participation in Construction* (1 May 2015 or any later update).
- (b) The requirements of relevant NSW government guidelines and policies are additional to any other requirements of this Agreement and Laws.
- (c) The NOP must submit and implement the plans identified in Item 1 by the times stated there. Those plans must comply with all requirements of the relevant NSW government guidelines and policies and this Agreement.
- (d) The NOP must:
 - (i) systematically manage its obligations under this Agreement and applicable Laws according to the systems, plans and procedures required under clauses 8.3(a) and 8.3(c);
 - (ii) review and update its systems, plans and procedures to ensure ongoing compliance with this Agreement;
 - (iii) control non-conformances and undertake corrective and preventive action as and when necessary; and
 - (iv) provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow TfNSW to carry out reviews and audit of the NOP's plans and procedures and confirm compliance with this Agreement.
- (e) The Minimum Aboriginal Participation Spend amount is stated in Item 2.
- (f) If required by Item 2, the NOP must prepare and submit the following:
 - (i) to TfNSW:
 - (A) Aboriginal Participation Plan by the Date of Agreement, showing how the NOP intends to direct the Minimum Aboriginal Participation Spend to the eligible spend categories of:
 - (I) Aboriginal employment;
 - (II) Aboriginal education and training;
 - (III) engagement of Aboriginal owned businesses; and
 - (IV) engagement with Aboriginal organisations or Aboriginal industry bodies; and
 - (ii) to the NSW Government Aboriginal Participation Portal (<https://app.onegov.nsw.gov.au/Account/Login?ReturnUrl=%2F>);

- (A) at the frequency stated in Item 2, its Aboriginal Participation Reporting data in the format required by the Portal, providing details of the implementation of the Policy and achievement of targets; and
- (B) final Aboriginal Participation Report, upon Project Completion. Details included in the final Aboriginal Participation Report must explain:
 - (I) how the Aboriginal Participation Plan has been implemented within the specified period;
 - (II) what actual outcomes have been achieved;
 - (III) whether the Minimum Aboriginal Participation Spend amount in the Aboriginal Participation Plan has been achieved; and
 - (IV) Any unspent amounts from the Minimum Aboriginal Participation Spend that have been allocated to the APIC policy's list of approved organisations:
 - (1) Master Builders Association; or
 - (2) Literacy for Life Foundation.
- (g) The Aboriginal Participation Plan and the Aboriginal Participation Reports (except the reports referred to in clause 8.3(f)(ii)(B) must be prepared in accordance with the NSW Government Policy on Aboriginal Participation in Construction and in the format prescribed by TfNSW.
- (h) If full expenditure of the Minimum Aboriginal Participation Spend amount has not been achieved by Project Completion, then the NOP will be required to distribute the remaining balance of the amount to the APIC Policy's list of approved bodies, being:
 - (i) Master Builders Association; or
 - (ii) Literacy for Life Foundation.

Compliance with the Heavy Vehicle National Law – Chain of Responsibility Provisions

- (i) The NOP must comply with the chain of responsibility provisions of the *Heavy Vehicle National Law (NSW)* (2013).

Financial Assessment

- (j) Without limiting or otherwise restricting any other provision of this Agreement, the NOP acknowledges and agrees that:
 - (i) TfNSW may, during the term of this Agreement, undertake or procure the undertaking of ongoing financial assessments (**Financial Assessment**) of the NOP;
 - (ii) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the Date of Agreement; and
 - (iii) it must, if requested by TfNSW, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by TfNSW in connection with the Financial Assessment.
- (k) If:
 - (i) the NOP fail to comply with clause 8.3(j)(iii); or
 - (ii) TfNSW determines, acting reasonably, that it is not satisfied with the findings of any Financial Assessment,
 TfNSW may, at any time before Project Completion:
 - (iii) notify the NOP that one or more Parent Company Guarantee(s) is or are required and the NOP must, within 14 days of receiving the notice, give TfNSW that or those Parent Company Guarantee(s) duly executed by the Parent Company Guarantor. If required by TfNSW, the NOP must also provide evidence satisfactory to TfNSW of proper execution, which may include a requirement for a legal opinion

in a form acceptable to TfNSW from a foreign law firm acceptable to TfNSW;
and/or

- (iv) require the NOP to implement a Subcontractors and Suppliers Proof of Payment Procedure, in which case the NOP must implement a Subcontractors and Suppliers Proof of Payment Procedure.

Prequalification

- (l) The NOP must:
 - (i) hold and maintain the level of prequalification specified in Item 3 under the National Prequalification System for Civil (Road and Bridge) Construction Contracts;
 - (ii) only use Subcontractors, Consultants and Suppliers who hold the levels of prequalification under the National Prequalification System for Civil (Road and Bridge) Construction Contracts specified in Item 3.
 - (iii) ensure that its Subcontractors, Consultants and Suppliers maintain the levels of prequalification under the National Prequalification System for Civil (Road and Bridge) Construction Contracts specified in Item 3.

8.4 Appointment of principal contractor for WHS Requirements

TfNSW appoints the person stated in Item 4 as principal contractor for all construction work carried out in connection with this Agreement, and the person stated in Item 4 must discharge the responsibilities imposed on a principal contractor by the *Work Health & Safety Regulation 2017* (NSW). TfNSW authorises the person stated in Item 4 to exercise such authority of TfNSW as is necessary to do this.

8.5 Additional requirements

Without limiting this clause 8:

- (a) If the NOP or a Subcontractor, or an employee of the NOP or a Subcontractor, fails to comply with a reasonable direction in relation to safety requirements or unsafe work practices given by TfNSW, a TfNSW workplace health & safety officer or Principal Contractor as referred to in clause 8.4, TfNSW may instruct the AMT to order the cessation of work pending compliance.
- (b) The NOP must incorporate equivalent obligations to this clause 8.5 in each Subcontract.
- (c) The AMT must develop a Safety Plan for the Project and must submit the Safety Plan to the ALT for agreement in accordance with clause 11.

8.6 Authorisation to release and use information

- (a) The NOP authorises TfNSW to:
 - (i) provide information about the NOP, including information provided by the NOP and information related to the NOP's performance, to other Commonwealth, State or local government agencies at any time or for any reason; and
 - (ii) take account of information about the NOP, including reports of unsatisfactory performance, from any Authority or other reputable source, when deciding whether to offer the NOP future opportunities for work.
- (b) The NOP agrees and acknowledges that TfNSW is entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW) in making information available to others as contemplated by clause 8.6(a).
- (c) The NOP releases and indemnifies TfNSW from and against any Claim, action, loss, damage, expense or liability TfNSW may sustain or incur in connection with anything authorised by clause 8.6 or anything done by a recipient of the information.

8.7 Registration and licences

- (a) All vehicles and plant used in carrying out work in connection with this Agreement must be registered as required by Law.

- (b) All drivers who operate vehicles or plant in carrying out work in connection with this Agreement must be licensed to operate those vehicles or plant as required by Law.
- (c) Whenever requested, the NOP must promptly provide documentary evidence of compliance with this clause 8.7.

8.8 Building Code

If Item 10 of Schedule 1- Table of Items specifies that the Building Code applies, the NOP must comply with the requirement of the Building Code and the obligations set out in Schedule 17.

Part D– Works delivery

9. TOC

- (a) The approved TOC as at the Date of Agreement is set out in Schedule 16.
- (b) The TOC can only be varied in accordance with the provisions of this Agreement.

10. Standard of work

10.1 Required standard

The NOP must:

- (a) ensure that the Works are designed and constructed to the standard of a competent engineer and contractor with appropriate experience in the design and construction of works similar to the Works, with due expedition and in accordance with:
 - (i) the Project Brief;
 - (ii) the Works Delivery Documents;
 - (iii) applicable Laws;
 - (iv) the Approvals;
 - (v) the National Construction Code and relevant Australian Standards;
 - (vi) good trade practice and industry standards for the relevant trades; and
 - (vii) this Agreement;
- (b) ensure that all Materials incorporated into or forming part of the Works:
 - (i) are fit for the purpose stated in or inferred from the Project Brief or Works Delivery Documents;
 - (ii) are new, of appropriate quality and not of an inherently dangerous or hazardous nature; and
 - (iii) comply with the requirements referred to in clause 10.1(a);
- (c) ensure that the completed Works are:
 - (i) fit for the purpose stated in or inferred from the Project Brief or Works Delivery Documents; and
 - (ii) in compliance with the requirements referred to in clause 10.1(a);
- (d) perform all work and services required by this Agreement with the professional skill, care and diligence which may be reasonably expected of competent professionals suitably qualified and experienced in the performance of work similar to the work to be carried out by the NOP under this Agreement; and

- (e) do all that is required of the NOP under this Agreement to enable the Project to achieve the Target Date(s).

10.2 Existing Facilities

The NOP must at all times carry out the Works in a manner which does not interfere with TfNSW's ability to maintain the ongoing provision of services to its customers, except to the extent that the NOP obtains the approval of TfNSW to carry out planned interruptions to Existing Facilities.

11. Agreement of Works Delivery Documents

- (a) The NOP must submit the Works Delivery Documents to the AMT for agreement in accordance with a program agreed by the AMT.
- (b) If the AMT cannot agree on the relevant documents, the matter must be referred to the ALT in accordance with clause 3.7(c).
- (c) If any other provision of this Agreement requires any of the Works Delivery Documents to be agreed by the ALT, then once the AMT has agreed the relevant documents the AMT must promptly submit those documents to the ALT for its agreement.
- (d) The agreed Works Delivery Documents must be regularly updated to reflect any Changes.

12. Design development, plans and programs

12.1 Design and documentation

- (a) The NOP must carry out all design, including completion of design provided by TfNSW, necessary in connection with the Works, including design, design development, documentation, workshop detailing and coordination of design and the interaction of the various disciplines.
- (b) The AMT and the NOP's design team will work cooperatively to achieve the progressive incorporation of any AMT requirements into the detailed design and documentation. It is contemplated that the nature of the Works may necessitate, for the efficiency of progress, that the Works Delivery Documents are progressively submitted to the AMT for agreement in accordance with clause 11.
- (c) The requirements of this clause 12.1 are not affected by any Change or Target Adjustment Event.

12.2 Programs and plans

- (a) The NOP must prepare the programs, plans and other documents listed in Part B of Schedule 3 as part of the Works Delivery Documents and submit them to the AMT for agreement in accordance with clause 11.
- (b) The NOP must implement those programs and plans and keep them updated.
- (c) The NOP must submit an updated Works Program to the AMT on a monthly basis or as otherwise requested by the AMT.

13. Approvals and Laws

13.1 Identify Approvals

- (a) By the time required by the [Project Brief] the AMT must identify in the Approvals Management Plan all Approvals which are necessary or appropriate for the Work Package.
- (b) As early as practicable the AMT must provide to TfNSW details of any Approvals which can only be obtained by TfNSW. Those details must be accompanied by all necessary

supporting documentation to enable TfNSW to undertake its statutory obligations in relation to those Approvals.

13.2 Obtain Approvals

The NOP must submit all documentation to all relevant Authorities for approval and apply for all Approvals necessary to undertake the Works, including development consents and construction certificates, other than those notified to TfNSW in accordance with clause 13.1(b) or as otherwise agreed by the AMT.

13.3 Cooperation

Each of the Parties will provide to the other all cooperation and assistance reasonably required to enable the other to obtain the applicable Approvals in accordance with this Agreement.

13.4 Conditions

- (a) If an Authority gives an Approval with conditions attaching to the Approval, the NOP must provide to the AMT a copy of the Approval and conditions together with any documents required to be prepared under those conditions, and must advise the AMT whether the conditions will have a material effect on the design and quality of the Works.
- (b) The NOP must amend the design for the Works as necessary to conform to the requirements agreed with Authorities. Where those requirements are made or published after agreement by the ALT of the TOC, any cost, time or quality implications of those amendments will be dealt with under clause 18.

13.5 Fees for Approvals

Fees payable for obtaining Approvals are a Reimbursable Cost.

13.6 Laws

In complying with its obligations under this Agreement, the NOP is responsible for:

- (a) compliance with all Laws, subject to clause 18.5, except if, because of the nature of the requirement, only TfNSW can comply (in which case the NOP will perform the Works so as not to put TfNSW in breach of any Laws); and
- (b) giving all notices necessary to comply with Laws.

14. Works Sites

14.1 Access

- (a) TfNSW will give the NOP access to each Works Site as necessary for the NOP to carry out the Works in accordance with the applicable Works Program subject to the NOP providing evidence of any insurance it is required to procure under clause 24.2 to the AMT.
- (b) The Alliance is responsible for obtaining any permissions required to access each Works Site as necessary for the NOP to carry out the Works.

14.2 TfNSW access and other contractors

- (a) The NOP acknowledges that it may not be possible for TfNSW to give the NOP sole access to the Works Sites and that other contractors may be performing work on Works Sites at the same time as the NOP. TfNSW and the NOP must liaise with each other through the AMT to coordinate access to and use of the Works Sites in accordance with this Agreement.
- (b) The NOP must develop and implement a Site Co-operative Use Plan, as part of the Works Delivery Documents (where relevant), to proactively manage communications and co-operation between the NOP and TfNSW staff and other contractors or operators. The plan and all updates to the plan must be submitted to the AMT for agreement in accordance with clause 11.

- (c) Notwithstanding clauses 14.2(a) and 14.2(b), the NOP must permit TfNSW, including its authorised employees and agents, to have access to any Works Site and to the premises of the NOP at all reasonable times and must arrange for equivalent access to premises of Subcontractors, Suppliers and Consultants. TfNSW may require access for any reasonable purpose connected with this Agreement, including surveillance, audit, inspection, Performance Testing, certification and recording of information.

15. Subcontracting

15.1 Procurement Management Plan

The AMT must develop a Procurement Management Plan which is to be agreed by the ALT in accordance with clause 11. The Procurement Management Plan must, at a minimum:

- (a) set out the details to be included in any Subcontract, including details of:
 - (i) vesting of ownership in all work and materials supplied for incorporation or incorporated into the Works, which must be consistent with clauses 16 and 36;
 - (ii) communications and security management requirements;
 - (iii) commencement and duration of vendors' warranties;
 - (iv) insurance requirements;
 - (v) terms of payment; and
 - (vi) quantum of securities and retention monies;
- (b) set out the limits of authority for procurement; and
- (c) set out the probity plan for procurement.

15.2 Subcontracting

- (a) The NOP may subcontract the performance of any part of the Works after the Date of Agreement in accordance with the Procurement Management Plan. The NOP is not relieved of any of its obligations under this Agreement as a result of any subcontracting or approval of any Subcontractor and remain responsible for the performance of all Subcontractors.
- (b) The NOP must use only Subcontractors appointed after the Date of Agreement in accordance with the Procurement Management Plan, and the identity of each Subcontractor and the payment terms for each Subcontract must be agreed by the AMT.
- (c) The NOP must demonstrate, to the reasonable satisfaction of the ALT, that the prices obtained from Subcontractors after the Date of Agreement are competitive.
- (d) The NOP agrees that if required by TfNSW it will, at no additional cost and to TfNSW's reasonable satisfaction:
 - (i) implement a Subcontractors and Suppliers Proof of Payment Procedure; and
 - (ii) submit the documents required by the Subcontractors and Suppliers Proof of Payment Procedure and which are identified in Schedule 11.
- (e) In addition, the NOP must include:
 - (i) in each Subcontract entered into after the Date of Agreement and valued at or over the amount stated in Item 5(a):
 - (A) a requirement to implement a Subcontractors and Suppliers Proof of Payment Procedure when instructed by TfNSW; and
 - (B) written provisions giving effect to the requirements set out in Schedule 12; and
 - (ii) in each Subcontract entered into after the Date of Agreement and valued below the amount stated in Item 5(a), a written provision requiring the NOP to pay the

Subcontractor within the number of days stated in Item 5(b) after the Subcontractor has claimed payment in accordance with the Subcontract.

- (f) The NOP must immediately inform TfNSW and provide a copy of the relevant documents if it receives:
 - (i) a NOP Statement and Supporting Statement from a Subcontractor or Supplier with a payment claim that identifies as unpaid any subcontractor or supplier to a Subcontractor or Supplier;
 - (ii) a payment withholding request (within the meaning of and served under the SOP Act); or
 - (iii) any other written advice received by the NOP in relation to non-payment of any subcontractor or supplier to a Subcontractor or Supplier.
- (g) The NOP agrees that if required by TfNSW it will, at no additional cost and to TfNSW's reasonable satisfaction, instruct a Subcontractor or a Supplier (with a Subcontract valued at or over the amount stated in Item 5(a)) to:
 - (i) implement a Subcontractors and Suppliers Proof of Payment Procedure; and
 - (ii) submit the documents required by the Subcontractors and Suppliers Proof of Payment Procedure to the NOP.

15.3 Subcontractors and Suppliers Proof of Payment Procedure

If required to implement the Subcontractors and Suppliers Proof of Payment Procedure, in addition to implementing the process set out in Schedule 11, the NOP acknowledges and agrees:

- (a) to pay, within 3 Business Days of receiving payment in accordance with clause 29.2(g), all outstanding amounts owed to Subcontractors and Suppliers listed in the NOP's statement and supporting statement for each of its progress claims;
- (b) within 5 Business Days of receiving payment in accordance with clause 29.2(g) to:
 - (i) provide proof, to TfNSW's satisfaction, of payment of all outstanding amounts to Subcontractors and Suppliers; and
 - (ii) confirm that no monies remain outstanding to Subcontractors and Suppliers in respect of each progress claim; and
- (c) that if it fails to provide the required proof of payment:
 - (i) it will issue, no later than the 5th Business Day from receipt of payment from TfNSW, an irrevocable payment direction in the form of an irrevocable authority in writing to TfNSW in favour of each unpaid Subcontractor and Supplier identified on the NOP's statement and supporting statement; and
 - (ii) that TfNSW will be entitled to rely on any irrevocable payment directions as a reason for withholding an amount from the NOP in the next month's payment schedule.

15.4 Related entity Subcontractor

Prior to seeking the agreement of the AMT to the identity of a Subcontractor under clause 15.2(b), the NOP must declare to the AMT any potential conflict of interest in relation to that proposed Subcontractor, whether existing by corporate ownership or interest or by the personal interests of the principals of the NOP.

15.5 Form of Subcontracts

- (a) The terms and conditions of each Subcontract entered into after the Date of Agreement must be in accordance with the Procurement Management Plan.
- (b) The NOP must include in every Subcontract entered into after the Date of Agreement:
 - (i) details of the NOP's obligations in connection with the Agreement which are to be carried out by the Subcontractor;

- (ii) the relevant provisions of clauses 8.1 (Codes of Practice), 8.2 (No collusive arrangements), 8.3 (Compliance with NSW government requirements), 35 (Confidentiality) and 36 (Copyright and Intellectual Property);
- (iii) consent for the Subcontract to be novated to TfNSW or its nominee, if required by TfNSW in the event of Wilful Default or NOP's Insolvency, subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth) (as applicable); and
- (iv) a right of termination for convenience.

15.6 Monitoring of Subcontracts

The NOP must keep the AMT informed of the performance of the Subcontractor under any Subcontract, including the status of that Subcontract from time to time.

15.7 Warranties

- (a) For each trade, item or area of work listed in Item 6, the NOP must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to TfNSW in the form of Schedule 13.
- (b) For all other Materials that are not listed in Item 6, the NOP must:
 - (i) obtain warranties for those Materials that are usual to obtain and that are on, as a minimum, industry standard terms;
 - (ii) ensure that all warranties referred to in clause 15.7(b)(i) also name TfNSW as a beneficiary; and
 - (iii) provide a copy of each warranty obtained under clause 15.7(b)(i) to TfNSW prior to Project Completion.
- (c) Clauses 15.7(a) and 15.7(b) do not affect any of the NOP's other obligations under this Agreement.

16. Ownership of Works

16.1 Ownership

Subject to the provisions of clause 36 in respect of Project IP and Background IP:

- (a) ownership of any part of the Works, and all other improvements on the Works Sites, vests at all times in TfNSW from the earlier of:
 - (i) the date upon which they are affixed to the Works Site; and
 - (ii) the date upon which TfNSW pays the NOP for the relevant part of the Works;
- (b) to the extent that ownership has not already passed to TfNSW under clause 16.1(a), the Works, material used in constructing the Works and all other improvements on each Works Site vest in TfNSW at the date of Project Completion; and
- (c) from the date prescribed in this clause 16, all right, title and interest in the Works and other property referred to in this clause, vests absolutely in TfNSW, free of Encumbrances or any claim by any person, including the NOP, and the NOP waives any liens or rights to compensation they may have relating to the construction of the Works except where provided expressly in this Agreement.

16.2 Risk

Notwithstanding the passing of ownership in the Works or Materials forming or intended to form part of the Works, the risk in and responsibility for care of the Works or materials remains with the NOP until the date of Project Completion, in accordance with clause 23.1.

17. Inspection and reporting

17.1 Inspection and audit of records

- (a) The Parties acknowledge that the delivery method chosen for the Project:
 - (i) allows the AMT to monitor all aspects of the quality of the work carried out under this Agreement to ensure compliance with the requirements of this Agreement; and
 - (ii) allows TfNSW (or persons nominated by TfNSW) the right to review and assess the quality of the work carried out under this Agreement, to enable TfNSW to monitor the NOP's compliance with, and allow the AMT and ALT to monitor compliance with, the quality requirements of this Agreement.
- (b) The NOP must keep and maintain:
 - (i) an adequate internal control system (including policies, controls and procedures) for the effective planning, performance and reporting of the Project in accordance with this Agreement;
 - (ii) books of account and ledgers solely related to the Project; and
 - (iii) all other records relating to the Project,at the principal place of business in New South Wales of the person stated at Item 7 of Schedule 1.
- (c) The NOP must ensure that all documents and records relating to the Project and the quality system and the records referred to in clause 17.1(b) are available to TfNSW (or persons nominated by TfNSW) at all reasonable times for examination, audit, inspection, transcription and (in respect of records only) copying. For the avoidance of doubt, this Agreement does not allow TfNSW or any person nominated by TfNSW to audit the NOP's confidential personnel files except to the extent necessary to confirm any aspect of Reimbursable Costs.
- (d) If this Agreement is terminated, the NOP must give TfNSW a copy of any records referred to in clause 17.1(b) that are necessary for the orderly continuance of the Project.
- (e) In the course of an audit under clause 17.1(c), TfNSW (or persons nominated by TfNSW) may:
 - (i) review and assess the reliability, integrity, timeliness and accuracy of financial operating information relating to the Project, and the means and systems used to identify, measure, classify and report such information; and
 - (ii) interview relevant staff of the NOP.
- (f) At the conclusion of an audit under clause 17.1(c), TfNSW must provide a report to the AMT on the results of the audit. The AMT, in consultation with the ALT where the AMT considers appropriate, must determine the actions (if any) required to be taken by the NOP to rectify problems, weaknesses, deficiencies or non-compliance detected during the audit.
- (g) TfNSW must ensure that any person nominated by TfNSW to perform an audit under clause 17.1(c) enters into a confidentiality agreement in terms acceptable to the AMT prior to commencing the audit.
- (h) If the NOP has any concern regarding the identity of a person nominated by TfNSW to perform an audit under clause 17.1(c), the NOP may refer the matter to the AMT. In such a case, before that person performs any audit function the AMT must determine (in consultation with the ALT where the AMT considers appropriate) whether, on the basis of the NOP's concern, TfNSW should nominate a different person to perform the audit. If the AMT (after consultation with the ALT where the AMT considers appropriate) determines that TfNSW should nominate a different person, TfNSW must comply with that determination.

17.2 Inspection of Works

- (a) TfNSW or an authorised representative may:
 - (i) inspect and audit the Works at all reasonable times;
 - (ii) inspect and test the materials used in the construction of the Works, and the costs of the inspection and testing will be treated as Reimbursable Costs if the AMT agrees that the testing is necessary or if the test reveals non-conforming work or materials; and
 - (iii) reject any material or workmanship not conforming with clause 10.1.
- (b) Nothing in this clause 17.2 in any way reduces or affects the duties and obligations of the NOP under this Agreement.

17.3 Reporting of delays

If either Party considers that a delay in the progress of the Works has occurred or is likely to occur, that Party must promptly notify the AMT in writing, which may be by report to a regular AMT meeting, stating the nature and cause of the delay. The relevant Party must advise the AMT of an impending delay in sufficient time to enable avoiding action to be taken, if possible.

18. Changes

18.1 Restriction on Changes

The NOP must not make any Change unless the Change has been agreed under this clause 18.

18.2 Change proposal

- (a) If either of the Parties considers that a Change is necessary or appropriate, that Party may, by written notice to the AMT, propose the Change.
- (b) Written notice for the purpose of this clause 18 may be a report to an AMT meeting, but must be accompanied by sufficient information to enable the AMT to evaluate the Change proposal, including:
 - (i) relevant drawings and specifications;
 - (ii) reasons for the proposed Change;
 - (iii) any time or cost consequences of the proposed Change;
 - (iv) information required under clause 8.1(n) (if any); and
 - (v) where the proposed Change is a Target Adjustment Event, any likely effect of the proposed Change on the functionality or maintenance of the Works, on any obligations relating to Defects rectification or liability for design and on any applicable Target Date, or the TOC.
- (c) The Party proposing the Change must supply any further information requested by the AMT.
- (d) If the AMT considers that a Change is necessary or appropriate, the AMT must procure a change proposal under clause 18.2(b) in respect of the Change and the provisions of clause 18.3(c), 18.3(d) and 18.3(e) will apply.

18.3 AMT evaluation of Change proposal

- (a) If the AMT believes that the Change is a Target Adjustment Event, it must refer the matter to the ALT for agreement, in which case clause 18.4 applies.
- (b) If the AMT agrees the Change it must create a permanent record of the approved changes to the Works Delivery Documents, which may be a minute of an AMT meeting.
- (c) If the AMT and the NOP cannot agree on the proposed Change, the matter must be referred to the ALT.

- (d) If the AMT proposes a Change, the matter must be referred to the ALT (together with the Change proposal required under clause 18.2(d)).
- (e) The NOP is not entitled to any adjustment to the TOC or Target Date as a consequence of a Change which is not a Target Adjustment Event agreed by the ALT in accordance with clause 18.4.

18.4 Target Adjustment Event

- (a) If the AMT, having regard to the Target Adjustment Guidelines, believes that a proposed Change constitutes a Target Adjustment Event, the AMT must evaluate the proposal and if necessary confer with the NOP, so as to enable the AMT to refer to the ALT an agreed Target Adjustment Event proposal. The AMT will refer the agreed proposal to the ALT for agreement.
- (b) If the ALT, having regard to the Target Adjustment Guidelines, agrees the Target Adjustment Event it must create a permanent record of the approved changes to the Works Delivery Documents, and the adjustments (if any) to the Project Brief, TOC or Target Date and any consequential amendment to the Fee. That record may be a minute of a meeting of the ALT.
- (c) If the ALT does not agree the proposed Target Adjustment Event, the ALT and AMT must jointly meet to review the Target Adjustment Event proposal and agree on the amendments necessary to achieve ALT approval.

18.5 Change in Laws

If either Party believes that a change in Laws, made or published after the Date of Agreement, necessitates a Change, then that Party must submit a Change proposal to the AMT in accordance with clause 18.2.

Part E – Testing, Defects rectification and Project Construction Completion

19. Performance Testing

19.1 Responsibility to carry out Performance Testing

- (a) the NOP must Performance Test all parts of the Works in accordance with the Works Delivery Documents, give TfNSW the opportunity to witness the Performance Testing by giving reasonable notice, and make the results available to TfNSW;
- (b) TfNSW may instruct the NOP at any time to carry out any other Performance Test of any part of the Works;
- (c) if the results of any Test instructed under clause 19.1(b) show compliance with the Agreement, the TOC will be adjusted for the amount incurred by the NOP in carrying out the Performance Testing. Otherwise, the TOC will not be adjusted; and
- (d) the NOP must make good any part of the Works where Performance Testing has not shown compliance with this Agreement and must repeat the Performance Testing until the results of the Performance Tests, as reported in writing to TfNSW, confirm that the Works comply with this Agreement.

20. Project Construction Completion and early use

20.1 Early use

- (a) Before the NOP achieves Project Construction Completion, TfNSW, or anyone authorised by TfNSW, may use or occupy any part of the Works which is sufficiently complete and then:
 - (i) the NOP's responsibilities will not be affected, except if they are reduced under clause 25 or if TfNSW, or anyone authorised by TfNSW to use or occupy any part of the Works, causes the NOP's work to be hindered; and
 - (ii) TfNSW becomes responsible for any additional insurance required.
- (b) If TfNSW requires use or occupation of any part of the Works before the NOP achieves Project Construction Completion, TfNSW must give not less than 21 days' notice in writing to the NOP and must specify those parts to be used or occupied.
- (c) The NOP must assist and cooperate with those using or occupying the Works.
- (d) No later than 21 days after receipt of a notice under clause 20.1(b), the NOP must provide to TfNSW all the documents and other things listed in clause 20.2 that are relevant to the parts of the Works to be used or occupied.

20.2 Requirements for Project Construction Completion

The requirements for Project Construction Completion are that:

- (a) construction of the Works has been completed with no Defects (except for Defects not known) in accordance with this Agreement;
- (b) all tests of the Works have been carried out in accordance with the Works Delivery Documents;
- (c) all Works-as-constructed documents as required by the Works Delivery Documents have been produced;
- (d) the NOP has supplied to TfNSW:
 - (i) all warranties required under clause 15.7;
 - (ii) any certificates required for the occupation, use and maintenance of the Works; and
 - (iii) any certificates, authorisations, Approvals or consents from any Authority; and
- (e) any other preconditions for completion of the Works required by the Works Delivery Documents have been satisfied.

20.3 Project Construction Completion

When the AMT is satisfied that the requirements for Project Construction Completion set out in clause 20.2 have been met, the AMT must make a recommendation to the ALT to issue the Project Construction Completion Certificate.

20.4 Project Construction Completion Certificate

- (a) If the ALT accepts the recommendation of the AMT, the ALT must issue the Project Construction Completion Certificate to the NOP. The effective date of the Project Construction Completion Certificate will be determined by the ALT and set out in the Project Construction Completion Certificate.
- (b) If the ALT does not accept the recommendation of the AMT, the Parties will work together to meet the concerns of the ALT to enable the ALT to issue the Project Construction Completion Certificate.

21. Defects Rectification Period

21.1 Commencement and expiry

The Defects Rectification Period will commence on the date of the Project Construction Completion and, subject to clause 21.5, will expire 24 months after the date of Project Construction Completion.

21.2 Rectification

- (a) The NOP must identify and promptly make good all Defects, in coordination with the AMT, so that the Works comply with this Agreement.
- (b) If at any time before Project Construction Completion the NOP becomes aware of any Defect or deficiency which results from work or actions for which they are not responsible, the NOP must:
 - (i) promptly notify the AMT; and
 - (ii) carry out any Change instructed by the AMT to make good the Defect or deficiency.

21.3 Acceptance with Defects not made good

- (a) TfNSW, in its absolute discretion, may agree that specific Defects need not be made good.
- (b) If TfNSW agrees that specific Defects are not required to be made good under clause 21.3(a), the event will be a Target Adjustment Event and dealt with in accordance with clause 18.4.
- (c) The NOP remains liable for all Defects (whether known or not known) other than the specific Defects not required to be made good under clause 21.3(b).

21.4 Defects after Project Construction Completion

- (a) At any time during the Defects Rectification Period:
 - (i) TfNSW may instruct the NOP to make good any Defect within the time specified in a notice of Defects issued by TfNSW;
 - (ii) if the NOP fails to make good the Defect in the time specified in the notice of Defects issued by TfNSW, TfNSW may have the Defect made good by others and then:
 - (A) the cost of doing so is treated as a Reimbursable Cost; and
 - (B) the NOP will be responsible for the work involved in making good the Defect as if the NOP had carried out the work.

Nothing in this clause 21.4(a)(ii) reduces the NOP's warranties and other liabilities and obligations under this Agreement, or affects TfNSW's common law right to damages or any other right or remedy; and

- (iii) TfNSW may instruct a Change in connection with any Defect instead of requiring the Defect to be made good under clause 21.4(a)(i).
- (b) Clause 21.4 does not reduce the NOP's liability, whether arising under this Agreement or otherwise. The NOP's liability continues until any limitation period under statute expires.
- (c) Clause 21.4 does not affect TfNSW's rights under clause 21.3.

21.5 Extended Defects Rectification Period

- (a) Where the AMT determines that a Defect rectified under this clause 21 was a substantial Defect then:
 - (i) where the Defect affected or affects the integrity of the Works, the Defects Rectification Period will recommence from the date of completion of rectification of that Defect and will expire 12 months after the rectification date; or
 - (ii) where the Defect did not or does not affect the integrity of the Works, the AMT may direct that there is a separate Defects Rectification Period in relation to that Defect, which will commence on the date the NOP completes the rectification of

the Defect and will be of a stated duration not exceeding 12 months but in any case not so as to reduce the duration of the original Defects Rectification Period.

- (b) The provisions of clause 21.2 will apply to the extended or separate Defects Rectification Period referred to in clause 21.5(a).

22. Project Completion

22.1 AMT's recommendation

On the occurrence of the later of:

- (a) the end of the Landscaping Maintenance Period;
- (b) the end of the Defects Rectification Period;
- (c) rectification by the NOP of all Defects notified during the Defects Rectification Period; and
- (d) the NOP having provided to TfNSW the warranties required under clause 15.7,

the AMT must make a recommendation to the ALT to issue the Project Completion Certificate.

22.2 Project Completion Certificate

- (a) If the ALT accepts the recommendation of the AMT, the ALT must issue the Project Completion Certificate to the NOP. The effective date of the Project Completion Certificate will be determined by the ALT and set out in the Project Completion Certificate.
- (b) If the ALT does not accept the recommendation of the AMT, the Parties will work together to meet the concerns of the ALT to enable the ALT to issue the Project Completion Certificate.

22.3 Termination of entitlement to reimbursement

Subject to clause 29.3, the NOP's entitlement to reimbursement of Reimbursable Costs terminates on Project Completion, unless otherwise agreed with TfNSW.

22.4 Effect of Project Completion Certificate

The Project Completion Certificate will be conclusive evidence that the Parties have fully discharged their obligations under this Agreement except for:

- (a) Defects that could not reasonably have been discovered prior to the issue of the Project Completion Certificate; or
- (b) matters deliberately or fraudulently concealed by a Party.

Part F– Risks, insurance and liability

23. Risk

23.1 Care of the Works

From Project Commencement to Project Completion, the NOP is responsible for:

- (a) the care of the Works at each Active Work Site;
- (b) any loss of or damage to the Works caused by the NOP or a Subcontractor in the course of any work under clause 21;
- (c) any loss of or damage to any equipment or other property of the NOP or a Subcontractor, used or intended to be used for the purposes of the Works; and

- (d) any loss of or damage to Existing Facilities caused by the NOP or a Subcontractor in the course of carrying out the Works.

23.2 Obligation to make good

- (a) The NOP must, subject to any instructions from the ALT, make good any loss or damage that occurs to any part of the Works, from any cause whatsoever, for which the NOP is responsible under clause 23.1.
- (b) Except as provided in clause 23.3, the cost to the NOP of making good any loss or damage in accordance with this clause 23.2 will be a Reimbursable Cost.

23.3 Excepted Risks

Where the loss or damage referred to in clause 23.2(a) is caused by any of the Excepted Risks, the consequences of the loss or damage will be treated as a Target Adjustment Event.

24. Insurance

24.1 TfNSW arranged insurance

- (a) The following provisions apply in relation to insurance arranged by TfNSW.
- (b) TfNSW has effected an insurance policy or policies to cover TfNSW, the NOP and all Subcontractors employed from time to time for their respective rights, interests and liabilities with respect to:
 - (i) **(contract works - material damage)** in relation to the Works, liability for loss or damage referred to in clause 23.1, including loss or damage to Materials (excluding constructional plant, motor vehicles, appliances and things (including scaffolding, formwork and the like), clothing, tools and sundry equipment) of the NOP or any Subcontractor used in or in relation to the carrying out of the Works or entrusted to the NOP by TfNSW for that purpose, but not forming or intended to form part of the Works; and
 - (ii) **(third party liability)** in relation to the Project, liabilities to third parties of the type set out in clause 23.1 and subject to the maximum limits of liability set out in the policy documents referred to in Schedule 9.
- (c) TfNSW may in its discretion have other insureds named or included in the policy or policies referred to in clauses 24.1(b)(i) and 24.1(b)(ii), including any other government entity with an interest in the Works or a Works Site.
- (d) The policy or policies will be maintained by TfNSW until the issue of the final payment schedule for the Project.
- (e) Before the earlier of:
 - (i) 10 Business Days after the Date of Agreement; or
 - (ii) the NOP commencing to carry out any part of the Project,the NOP must contact TfNSW's insurer and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clauses 24.1(b)(i) and 24.1(b)(ii).
- (f) The NOP acknowledges that extracts of the policy terms have been exhibited to the NOP prior to the Date of Agreement and are attached as Schedule 9. Full copies of the policy terms are available for inspection by arrangement with TfNSW's insurer.
- (g) The NOP acknowledges that the insurance cover under clauses 24.1(b)(i) and 24.1(b)(ii) is subject to exclusions. These are set out in the policy terms referred to in clause 24.1(f) and include the following exclusions:
 - (i) damages for delay in completing or for the failure to complete the Works;
 - (ii) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

- (iii) loss or damage resulting from the risks listed in paragraph (b) of the Excepted Risks; and
- (iv) matters required to be insured under clause 24.2(d).
- (h) The NOP will be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in clauses 24.1(b)(i) and 24.1(b)(ii) in accordance with the policy terms. The amount of any excess paid will be a Reimbursable Cost.
- (i) The NOP acknowledges that:
 - (i) the insurances referred to in clauses 24.1(b)(i) and 24.1(b)(ii) have been obtained at TfNSW's cost; and
 - (ii) the NOP is not entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover they consider necessary in relation to the subject matter of that insurance.
- (j) The obtaining of insurance by TfNSW in accordance with this clause 24.1 shall not reduce, vary, or otherwise affect the NOP's liabilities and obligations pursuant to clause 23, warranties given or otherwise under the Agreement or in connection with the Works or the Project.
- (k) If there is a claim for significant damage or destruction under the policy of insurance referred to in clause 24.1(b)(i) (as determined by TfNSW, acting reasonably):
 - (i) TfNSW may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by TfNSW under the Agreement;
 - (ii) the NOP must reinstate the Works if instructed to by TfNSW and except as otherwise provided in the Agreement the costs for reinstatement of the Works will be a Reimbursable Cost; and
 - (iii) all settlement amounts must be paid by the insurer directly to TfNSW, and these amounts will be applied to the Project to offset or reduce the Reimbursable Costs incurred under clause 24.1(k)(i).
- (l) The provisions of clauses 24.3(a) and 24.3(d) also apply to insurance arranged by TfNSW.

24.2 NOP's Insurance

- (a) The NOP must comply with the following provisions relating to insurance to be effected by the NOP or their Subcontractors, Suppliers or Consultants.
- (b) Before starting any work for or in connection with the Agreement, the NOP must arrange and have in place insurance (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums) for the minimum amounts specified in Schedule 8 and pay all premiums for:
 - (i) workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987*, as specified in Schedule 8, and where possible, extended to indemnify TfNSW against statutory liability to persons employed by the NOP;
 - (ii) professional indemnity insurance, if required by Schedule 8 in the amount (if any) set out in Schedule 8; and
 - (iii) either comprehensive motor vehicle/mobile plant insurance or third party property damage insurance, as specified in Schedule 8, and where possible in the joint names of TfNSW, the NOP and all Subcontractors employed from time to time in relation to the Project for their respective rights and interests to cover their liabilities to third parties in connection with the use of each motor vehicle in relation to the Agreement and;
 - (iv) asbestos liability insurance, covering the risks associated with asbestos decontamination work, if required by Schedule 8 in the amount (if any) set out in Schedule 8.

- (c) The NOP must ensure that every Subcontractor, Supplier and Consultant is insured at all times for workers compensation and related liability in accordance with the requirements of the Workers Compensation Act 1987.
- (d) If any work for or in connection with the Agreement includes the use of waterborne craft of 12 or more metres in length, the NOP must pay all premiums and insure under a marine liability policy and a marine protection and indemnity policy to cover the use of such craft, as specified in Schedule 8.
- (e) The NOP must obtain the written approval of TfNSW for all of its insurers and provide copies of the approved policies to TfNSW or if, for confidentiality reasons, a copy cannot be provided, then the NOP must provide certificates of currency to TfNSW.
- (f) The NOP must ensure that each policy required to be effected and maintained under the Agreement or under Subcontracts is in effect for the relevant period specified in Schedule 8.
- (g) All policies must:
 - (i) require the insurer to notify TfNSW (other than in relation to workers compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and
 - (ii) provide that a notice of claim given to the insurer by TfNSW, the NOP, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured.
- (h) The policy referred to in clause 24.2(d) must be in the names of the NOP with TfNSW as an additional named insured and must cover the NOP, TfNSW and all Subcontractors, Suppliers and Consultants employed from time to time for or in relation to the Agreement and the Works for their respective rights and interests and cover their liabilities to third parties.

The policy must also include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons covered and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons covered as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result).

- (i) The NOP must:
 - (i) ensure that in respect of each insurance required to be effected or taken out as required by this clause 24 by the NOP or any Subcontractor, Supplier or Consultant, it:
 - (A) does not do anything which prejudices any insurance;
 - (B) if necessary, rectifies anything which might prejudice any insurance;
 - (C) reinstates an insurance policy if it lapses;
 - (D) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of TfNSW;
 - (E) immediately notifies TfNSW of any event which may result in an insurance policy lapsing or being cancelled; and
 - (F) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
 - (ii) ensure that any insurance required to provide coverage to Subcontractors acknowledges that the same coverage applies to Suppliers and Consultants;
 - (iii) ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
 - (iv) ensure that a notice to the insurer by one insured will be deemed to be notice by all insured parties.

- (j) Before the NOP starts any work for or in connection with the Agreement and whenever requested in writing by TfNSW, the NOP must supply proof that all insurance policies required under the Agreement are current.
- (k) TfNSW need not make any payment under the Agreement to the NOP unless the NOP has complied with and continues to comply with clause 24.2(j).
- (l) If the NOP fails to comply with clauses 24.2(b), 24.2(d), and 24.2(j), TfNSW may effect and maintain that insurance and pay the necessary premiums. TfNSW may recover from the NOP the cost of the premiums and TfNSW's reasonable costs of effecting and maintaining the insurance, as a debt due by the NOP.

24.3 Insurance notification and liability

- (a) The NOP must, as soon as practicable, inform the AMT in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and must ensure that the AMT is kept fully informed of subsequent action and developments concerning the claim. The NOP must take such steps as are necessary or appropriate to ensure that a Subcontractor, Supplier or Consultant (as applicable) will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor, Supplier or Consultant (as applicable), take in relation to TfNSW similar action to that which the NOP is required to take under this clause 24.3(a).
- (b) The amount of the excesses or deductibles payable under the insurance policies which the parties are required to maintain under this clause 24, and which are current as at Project Commencement, have been notified to each Party and are detailed in Schedule 8. The NOP or TfNSW (as applicable) must immediately notify the ALT of any proposed change in those amounts.
- (c) Subject to the NOPs' compliance with clause 24.3(b), the excesses or deductibles payable in the event of a claim in respect of the Project will be a Reimbursable Cost.
- (d) The requirements for insurance to be effected and maintained do not affect or limit the NOP's liabilities (including indemnities given under clause 25) or other obligations under the Agreement.

25. Liability

25.1 Extent of liability

The NOP's liability to TfNSW under this Agreement for any error, omission, negligence or breach of this Agreement will, notwithstanding any other rights or remedies which TfNSW may have at law or in equity, only be that described in this clause 25.

25.2 Liability for Wilful Default

Where the NOP, or any of their employees, agents or Subcontractors, commits an act of Wilful Default then, in addition to TfNSW's rights under clause 32:

- (a) not used; and
- (b) the NOP indemnifies TfNSW and TfNSW's employees against any liability (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) and losses suffered by TfNSW or its employees, agents or contractors, including real or personal property loss or damage, including to the Works, arising out of, or in conjunction with any claim in relation to, the Wilful Default and this indemnity is reduced to the extent that the liability or loss is caused or contributed to by the wrongful or negligent act or omission of TfNSW or its employees or agents, or any contractors (other than the NOP) engaged by TfNSW.

25.3 Liability for health and safety and third party Intellectual Property

Where the NOP, or any of their employees, agents or Subcontractors, commits any of the following:

- (a) breach of the current workplace health and safety Laws; or
- (b) breach of the warranty given in clause 36,

then, in addition to TfNSW's rights under clause 32:

- (c) not used; and
- (d) the NOP indemnifies TfNSW and TfNSW's employees against any liability (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis) and losses suffered by TfNSW or its employees, agents or contractors, including real or personal property loss or damage, including to the Works, arising out of, or in conjunction with any claim in relation to, the breach and this indemnity is reduced to the extent that the liability or loss is caused or contributed to by the wrongful or negligent act or omission of TfNSW or its employees or agents, or any contractors (other than the NOP) or consultants engaged by TfNSW.

25.4 Liability to third parties - personal injury and death

To the extent that injury, disease, illness or death of third parties arises out of or in connection with any act or omission of the NOP, or any of their employees, agents or Subcontractors, then:

- (a) not used; and
- (b) the NOP indemnifies TfNSW and TfNSW's employees and agents against any liability in respect of personal injury, disease, illness or death (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), arising out of, or in conjunction with any claim in relation to, the act or omission and this indemnity is reduced to the extent that the liability is caused or contributed to by the wrongful or negligent act or omission of TfNSW or its employees or agents, or any contractors (other than the NOP) or consultants engaged by TfNSW.

[REDACTED]

[REDACTED]

25.7 Undertaking

- (a) The NOP must give TfNSW within 10 days of the Date of Agreement three Undertakings as follows:
 - (i) one for [REDACTED]
 - (ii) one for [REDACTED] and
 - (iii) one for [REDACTED]each in the form of Schedule 2 or such other form approved by TfNSW Services, in favour of TfNSW and which are, where required, duly stamped.

- (b) Subject to its rights to have recourse to the Undertakings, TfNSW must:
 - (i) within 28 days after the achievement of Project Construction Completion, release the Undertakings provided by the NOP under clause 25.7(a)(i);
 - (ii) within 28 days after the first anniversary of the date referred to in clause 25.7(b)(i), release the Undertakings provided by the NOP under clause 25.7(a)(a)(ii); and
 - (iii) within 28 days after Project Completion, release the remaining Undertaking provided by the NOP under clause 25.7(a)(a)(iii).

- (c) TfNSW:
 - (i) may have recourse to any Undertaking provided under this clause 25 at any time;
 - (ii) is not obliged to pay NOP interest on:
 - (A) any Undertaking; or
 - (B) the proceeds of any Undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in clause 25.7(c)(ii) on trust for the NOP.

- (d) Any Undertaking provided under this clause 25.7 must be issued by a financial institution approved by TfNSW.

- (e) The NOP must not take any steps to injunct or otherwise restrain:
 - (i) any issuer of any Undertaking provided under this clause 25.7 from paying TfNSW pursuant to the Undertaking;
 - (ii) TfNSW from taking any steps for the purposes of making a demand under any Undertaking provided under this clause 25.7 or receiving payment under any such Undertaking; or
 - (iii) TfNSW using the money received under any Undertaking provided under this clause 25.7.

25A. Interface Works

25A.1 Interface with the Interface Contractor

- (a) The NOP acknowledges that:
 - (i) the Interface Works form part of the Works; and
 - (ii) the Interface Works may interface with the Interface Contractor's Work;
- (b) The NOP must:
 - (i) co-operate and liaise with the Interface Contractor for the co-ordination of the Interface Contractor's Work with the Works, including:
 - (A) allowing the Interface Contractor to enter the Works Site after the Date of Interface Milestone Completion:
 - (I) at the times agreed with the Interface Contractor; or
 - (II) failing agreement, as directed by the ALT,

to carry out the Interface Contractor's Work;

- (B) Providing to the Interface Contractor, on its reasonable request, within a reasonable period of the request, the NOP's design and work methodology information for the purpose of co-ordinating the design of the Interface Works with the Interface Contractor's Work;
 - (C) Avoiding hindering or impeding the execution of the Interface Contractor's Work;
 - (D) Co-ordinating the work staging, construction methods and safety matters in respect of the NOP's Work and the Interface Contractor's Work; and
 - (E) Co-ordinating traffic management;
 - (ii) Not cause any damage to the Interface Contractor's Work;
 - (iii) Fully comply with all directions issued by the ALT regarding co-operation by the NOP with the Interface Contractor and co-ordination of the Works with the Interface Contractor's Work;
 - (iv) Make proper and adequate allowance in its program for the Interface Works and the Interface Contractor's Work, and compliance with this clause;
 - (v) Immediately notify the ALT of any issues with the Interface Works or the Interface Contractor which may impact Project Completion;
 - (vi) Comply with the provisions of any relevant environmental protection licence (if any and applicable) and use its best endeavours to ensure that the Interface Contractor complies with such environmental protection licence while on the Works Site; and
 - (vii) Attend interface co-ordination meetings (if any) as directed by the ALT.
- (c) TfNSW must procure that if the Interface Contractor has access to the Works Site, the Interface Contractor must comply with the reasonable requirements of the NOP in relation to site safety.

[REDACTED]

[REDACTED]

26. Force majeure

26.1 Suspension of obligations

Subject to this clause 25.26.1:

- (a) neither TfNSW nor the NOP are liable to the other for a breach of this Agreement to the extent that the breach arises directly as a result of an event of Force Majeure; and
- (b) the affected Party's obligations are diminished to the extent and for the period that those obligations are genuinely unable to be performed as a result of the event of Force Majeure.

26.2 Notices

If a Party is, or anticipates that it may be, affected by a Force Majeure event, it must as soon as reasonably practicable, having regard to the urgency and scope of the consequences of the event, notify the AMT stating reasonably full particulars of the nature of the event.

26.3 Particular obligations in regard to essential services

- (a) The affected Party must:
 - (i) use its best efforts (including expending sums of money that are reasonable taking into account the implications of the event) to avoid, remedy or abate the occurrence of the event as quickly as possible; and
 - (ii) as soon as possible after the event ceases to affect the affected Party's performance of this Agreement, resume performance of the affected obligations.
- (b) Any sums of money properly expended under clause 26.3(a) will be Reimbursable Costs.

Part G – Payment

27. Reimbursable Costs

The NOP will be reimbursed the Reimbursable Costs incurred by the NOP in the performance of the Works, in accordance with clause 29.



[Redacted text block]

29. Payment

29.1 Schedule

- (a) The details in Schedule 6 form the basis of calculation of the amounts payable under this clause 29.
- (b) If the NOP considers that it is necessary to make a change to the rates in Schedule 6, the NOP may propose the change by written notice to the AMT or by report to an AMT meeting. The AMT will refer the proposal to the ALT for its approval.

29.2 Progress claims

- (a) Within ten Business Days after the end of each calendar month the NOP will submit a consolidated progress claim to TfNSW and the AMT detailing the amount of:
 - (i) Reimbursable Costs claimed for the previous month;
 - (ii) the Fee for the previous month in accordance with clause 28.8(a).
- (b) The progress claim must be accompanied by:
 - (i) a summary report containing the progressive value of Reimbursable Costs to date;
 - (ii) a detailed breakdown of Reimbursable Costs to date;
 - (iii) written confirmation from the NOP's designers that the intent of the design has been achieved in the constructed work which is the subject of the progress claim;
 - (iv) a NOP statement and a supporting statement in the form of Schedule 7; and

- (v) such other evidence as the AMT may require.
- (c) The NOP and TfNSW agree that the date referred to in clause 29.2(a) as the date on which the NOPs may submit a progress claim is, for the purpose of the SOP Act, the reference date (as defined in the SOP Act).
- (d) Within eight Business Days after receipt of the progress claim the AMT must:
 - (i) review the progress claim and, to the extent agreed by the AMT, including any agreed amendments to the claim, approve the progress claim;
 - (ii) forward to TfNSW a copy of the approved progress claim (including any agreed amendments); and
 - (iii) prepare and provide to TfNSW a payment schedule stating the amount of the payment which is to be made by TfNSW to the NOP or by the NOP to TfNSW.
- (e) Within ten Business Days after receipt of the progress claim TfNSW must:
 - (i) if the AMT complies with clause 29.2(d), issue the payment schedule provided to TfNSW (which the Parties agree for the purposes of the SOP Act is a payment schedule as defined in the SOP Act) by the AMT under clause 29.2(d); or
 - (ii) if the AMT fails to comply with clause 29.2(d), issue a payment schedule in respect of the progress claim.
- (f) If the AMT or TfNSW disputes any part of the progress claim it must approve the undisputed part of the progress claim in accordance with clause 29.2(d).
- (g) Payment of monthly progress claims will be made by TfNSW within 15 Business Days of receipt of the progress claim by TfNSW.

29.3 Final payment claim

- (a) The NOP is not entitled to the reimbursement of any costs incurred after Project Completion, unless agreed directly with TfNSW.
- (b) As soon as reasonably practical after Project Completion the NOP must prepare a final payment claim for the Project and submit it for payment in accordance with the provisions of clause 29.2.

29.4 Payment to nominated account

- (a) Within ten Business Days after Project Commencement the NOP must nominate an account for receipt of money due under this Agreement.
- (b) All money to be paid to the NOP under this Agreement will be paid by electronic funds transfer to the NOP's nominated account and each payment into that account is a discharge of the obligation to make the progress payment in relation to that payment made.

29.5 Payment on account

- (a) A progress payment made under clause 29.2 is not evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily, but is a payment on account only.
- (b) The final payment made under clause 29.3(b) will be taken to be in full and final settlement of all the NOP's entitlements to compensation in relation to the Project.

30. Failure to pay

30.1 Failure to pay moneys due

If:

- (a) TfNSW fails to pay any moneys which TfNSW is obliged to pay to the NOP under this Agreement; or

- (b) the NOP fail to pay any moneys which the NOP is obliged to pay to TfNSW under this Agreement,

then the provisions of this clause 30 apply.

30.2 Interest

- (a) The defaulting Party must pay the non-defaulting Party interest on any amount that is the subject of this clause.
- (b) Interest accrues daily at the Default Rate from the date on which the amount became due and payable until the default is cured, and is payable on the date payment of the amount is made.
- (c) Either Party may at its sole discretion, by written notice to the other Party, decline its entitlement to interest.

31. GST

31.1 Definitions

Words in this Agreement have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) unless the context makes it clear that a different meaning is intended.

31.2 Interpretation

If a Party is a member of a GST group, references to GST which the Party must pay and to input tax credits to which the Party is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

31.3 Payment of GST

- (a) TfNSW will issue a tax invoice for each taxable supply it makes to the NOP.
- (b) TfNSW will issue to the NOP a Recipient Created Tax Invoice (RCTI) for each taxable supply (other than an excluded supply) made by the NOP to TfNSW, and will issue an adjustment note for any adjustment event. The Parties may agree in writing from time to time which supplies are excluded supplies.
- (c) The NOP must not issue a tax invoice in respect of any supply it makes to TfNSW, other than an excluded supply. The NOP must give TfNSW a tax invoice for an excluded supply at or before the time the NOP makes a progress claim or otherwise invoices TfNSW for that supply.
- (d) Each Party must be registered for GST and must notify the other Party if it ceases to be registered for GST or to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

31.4 Reimbursements

If this Agreement requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by the other Party, the amount required to be paid, reimbursed or contributed by the first Party must be the sum of:

- (a) the amount of the reimbursable expense net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense; and
- (b) to the extent that the other Party's recovery from the first Party is consideration for a taxable supply to the first Party, any GST payable in respect of that supply.

Part H – Termination

32. Termination by TfNSW

32.1 Termination for cause

- (a) If at any time the NOP commits a Wilful Default, TfNSW may at its discretion terminate this Agreement by written notice to the NOP with effect from the date of the notice or a later date specified in the notice.
- (b) If at any time:
 - (i) the NOP suffers a NOP's Insolvency, subject to any applicable statutory stay on the exercise of rights, including sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth) (as applicable); or
 - (ii) the NOP purports to assign or transfer any of its rights or obligations under this Agreement in breach of clause 38, including the occurrence of a Change of Control of a NOP, without the prior written consent of TfNSW,

TfNSW may at its discretion terminate this Agreement by written notice to the NOP with effect from the date of the notice or a later date specified in the notice.

32.2 No-fault termination

TfNSW may at its discretion any time, in addition to any other rights available under this Agreement, terminate this Agreement by written notice to the NOP with effect from the date of the notice or a later date specified in the notice.

32.3 Payment on termination for cause

- (a) Where this Agreement is terminated under clause 32.1(a):
 - (i) the NOP will be entitled to be reimbursed:
 - (A) all Reimbursable Costs, including associated liabilities, as at the date of termination;
 - (B) minus any payments made on account in respect of the Fee;
 - (ii) where the result of the calculation under clause 32.3(a)(i):
 - (A) is a positive sum, that sum will be due and payable to the NOP; or
 - (B) is a negative sum, that sum will be due and payable to TfNSW as a debt; and
 - (iii) the NOP will not be entitled to payment of any outstanding or future Fee.

32.4 Payment on no-fault termination

Where this Agreement is terminated by TfNSW under clause 32.2, the NOP will be entitled to be reimbursed:

- (a) all Reimbursable Costs, including associated liabilities, as at the date of termination;
- (b) reasonable costs of demobilisation; and
- (c) a portion of the Fee proportional to the value of work completed to the date of termination and adjusted for:
 - (i) not used; and
 - (ii) any Cost Risk/Reward Adjustment that may reasonably be estimated to the date of termination,

as determined by the ALT.

33. Termination by NOP

33.1 Termination

If at any time TfNSW:

- (a) commits a Wilful Default; or
- (b) fails to pay any money due under this Agreement to the NOP within 60 days after the due date for payment, unless the amount in question is the subject of a bona fide dispute,

the NOP may at its discretion terminate this Agreement by written notice to TfNSW with effect from the date of the notice or a later date specified in the notice.

33.2 Payment on termination by NOP

Where this Agreement is terminated by the NOP under clause 33.1, the NOP will be entitled to be reimbursed:

- (a) all Reimbursable Costs, including associated liabilities, as at the date of termination;
- (b) reasonable costs of demobilisation; and
- (c) a portion of the Fees proportional to the value of work completed to the date of termination and adjusted for:
 - (i) not used; and
 - (ii) any Cost Risk/Reward Adjustment that may reasonably be estimated to the date of termination,

as determined by the ALT.

34. Consequences of termination

34.1 Works Delivery Documents

On termination of this Agreement the NOP must hand over to TfNSW, without entitlement to additional compensation, the originals of:

- (a) all Works Delivery Documents; and
- (b) any documents or information which were provided to the NOP by TfNSW;

which are in the possession of the NOP.

34.2 Subcontracts

On termination of this Agreement the NOP must, where requested by TfNSW, cooperate with TfNSW, without entitlement to additional compensation, to achieve the assignment or novation from the NOP to TfNSW of all of its current Subcontracts.

34.3 Acknowledgment of amounts payable

The NOP agrees that the payments referred to in clauses 32.3, 32.4 and 33.2 represent its full entitlement in respect of or as a consequence of termination of this Agreement, and that it is not entitled to payment for loss of opportunity or loss of profit, or any further or other payment, whether by way of reimbursement or compensation, in respect of or as a consequence of termination under clauses 32, 33 or 41.2.

34.4 Other consequences of termination

On termination of this Agreement in addition to the provisions of this clause 34 the provisions of clause 17.1(d) will apply.

Part I – General provisions

35. Confidentiality

35.1 TfNSW's obligations

TfNSW must keep confidential and not allow, make or cause the disclosure of any of the information contained in this Agreement, or any material from which that information was derived, or any other information agreed by the ALT to be commercial-in-confidence information of the NOP, without the prior written consent of the ALT.

35.2 NOP's obligations

Without Limiting clause 35.5, the NOP must keep confidential and not allow, make or cause any public announcement or other disclosure of or in relation to the terms of this Agreement (including any written or oral agreements, negotiations or information in relation to this Agreement) or information relating to the Project, without the prior written consent of the ALT.

35.3 Exceptions

Clauses 35.1 and 35.2 do not apply to disclosures or announcements to the extent that the disclosure or announcement:

- (a) is required by Law;
- (b) is required by the listing rules of Australian Stock Exchange Limited;
- (c) is required for the relevant Party to perform its obligations under this Agreement;
- (d) subject to clause 35.4, is required to inform the relevant Party's financial or legal advisers or any bona fide potential purchaser or financier of the Party or its assets; or
- (e) relates directly to information which is already in the public domain other than through a breach of this Agreement.

35.4 NOP to procure compliance

The NOP must ensure that all Subcontracts contain a provision which acknowledges the obligations created by this clause 35. The NOP must procure that any other person or party referred to in clause 35.3(d) or any other person with whom the NOP has an agreement in relation to the Project, ensures that all contracts relating to the Project to which any one of them is a party contain a provision which acknowledges the obligations created by this clause 35.

35.5 Media releases and enquiries

- (a) The NOP must obtain TfNSW's prior written consent to:
 - (i) any press release or promotional advertisement it wishes to make or place concerning this Agreement, TfNSW, the Project or the Works; and
 - (ii) the release for publication in any media of any information concerning this Agreement, TfNSW, the Project or the Works.
- (b) The NOP must refer any media enquiries concerning this Agreement, TfNSW, the Project or the Works to TfNSW. The NOP must not respond to any media enquiry without TfNSW's prior written consent.
- (c) The NOP must ensure that all Consultants, Subcontractors and Suppliers comply with clause 35.5 and obtain TfNSW's prior written consent (through the NOP) before doing anything which, if done by the NOP, would require TfNSW's prior written consent.
- (d) TfNSW may give or refuse its consent, in its absolute discretion.

35.6 Survival

This clause 35 will survive termination of this Agreement.

36. Copyright and Intellectual Property

- (a) The NOP assigns or otherwise transfers rights in Intellectual Property in all Data and Project IP created specifically for this Agreement, upon its creation, to TfNSW. The NOP, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such Intellectual Property Rights in TfNSW.
- (b) The NOP must include provisions in all Subcontracts and agreements with Consultants entered into after the Date of Agreement to ensure that Intellectual Property Rights in all Data created specifically for this Agreement and Project IP are assigned or otherwise transferred to TfNSW upon their creation.
- (c) The NOP, Subcontractors and Consultants are granted royalty-free licences to use the Data and Project IP for the purposes of this Agreement.
- (d) For Data not created specifically for this Agreement but required to use, operate, maintain, modify and decommission the Works and Background IP, the NOP must obtain irrevocable royalty-free licences to allow TfNSW to use that Data and Background IP for those purposes, including a right to sub-license.
- (e) Licences referred to in clause 36 apply in perpetuity from the Project Commencement Date or (if the Data has not then been created) from the date the Data is created.
- (f) The NOP is responsible for the timely payment of all royalties and fees for Intellectual Property Rights it uses in connection with this Agreement and the Works.
- (g) The NOP indemnifies TfNSW against any claims (including Claims), actions, loss or damage arising out of any failure to make such payments or any infringement or alleged infringement of rights in Intellectual Property created or provided by the NOP in connection with this Agreement, including any related design, materials, documents or methods of working, or otherwise in the course of the NOPs' performance of this Agreement.
- (h) The NOP warrants that the rights in Intellectual Property created or provided by the NOP under this Agreement, including any related design, materials, documents and methods of working, will not infringe any rights in Intellectual Property.
- (i) The NOP must ensure that Data created specifically for this Agreement by or for the NOP or any Project IP is only used for the purposes of this Agreement.
- (j) TfNSW may grant the NOP a royalty-free licence to use innovations.

37. Moral Rights

- (a) The NOP must use its reasonable endeavours to procure from each author express agreement not to enforce any Moral Rights that the author may have, presently or in the future, in the design or documentation relating to the Project, including by executing any Moral Rights consents required by TfNSW. The NOP acknowledges that for authors other than employees of the NOP, the Moral Rights agreements or consents must be given in relation to specific acts or omissions or classes of acts or omissions and in relation to specific works, as contemplated by the Copyright Act 1968 (Cth).
- (b) If the NOP is unable to procure from an author the agreement referred to in clause 37(a) the NOP must:
 - (i) notify the ALT in writing as soon as possible; and
 - (ii) not use that author's work without the ALT's agreement.
- (c) The NOP must ensure that any agreement or consent is genuinely given and not obtained by duress or by the making of any false or misleading statement.
- (d) The NOP must give TfNSW the agreements and consents, promptly on request.

38. Assignment and Change of Control

38.1 No assignment

The NOP must not assign or otherwise deal with any of its rights, interests or obligations under this Agreement without the prior written consent of TfNSW.

38.2 Change of Control

A Change of Control of the NOP without the prior written consent of TfNSW (such consent not to be unreasonably withheld or delayed) will be treated as an assignment of the NOP's rights in breach of clause 38.1.

39. Notices

- (a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant address or sent to the email address:

TfNSW

Attention: [REDACTED]

Mail Address: 20-44 Ennis Road, Milsons Point NSW 2060

Street Address: 20-44 Ennis Road, Milsons Point NSW 2060

NOP

Attention: [REDACTED]

Mail Address: Level 14, Tower Three International Towers
300 Barangaroo Avenue, Barangaroo NSW 2000

Street Address: Level 14, Tower Three International Towers
300 Barangaroo Avenue, Barangaroo NSW 2000

Email: [REDACTED]

AMT

Attention: [REDACTED]

Mail Address: Level 14, Tower Three International Towers
300 Barangaroo Avenue, Barangaroo NSW 2000

Street Address: Level 14, Tower Three International Towers
300 Barangaroo Avenue, Barangaroo NSW 2000

Email: [REDACTED]

ALT

Attention: [REDACTED]

Mail Address: Level 26, 1 Bligh Street Sydney NSW 2000

Street Address: Level 26, 1 Bligh Street Sydney NSW 2000

Email: [REDACTED]

or to a Party's new address or email address which that Party notifies to the other in writing from time to time.

- (b) A notice sent by post is taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) Subject to clauses 39(e), either Party may give any notice contemplated by this Agreement to be given to TfNSW, the NOP, AMT or ALT by email to the relevant email address.

- (d) Any notice contemplated by this Agreement to be given to TfNSW must be delivered to TfNSW in accordance with clause 39(a).
- (e) In relation to any notice, information or documentation under clauses 24.3, 26.2, 32.1, 32.2, 33.1 and 42.10(b):
 - (i) TfNSW and the NOP will only be permitted to give such a notice by email if the notice is concurrently delivered to the other Party's address in accordance with clause 39(a); and
 - (ii) will be taken to have been received at the times set out in clause 39(b).
- (f) Subject to clause 39(e), a notice given by email is taken to have been received on the next Business Day after the day on which the email was issued, provided the sender does not receive notification that the email was not successfully received in the recipient's inbox, in which case the notice is not considered to have been received.

40. PPS Law

The NOP agrees that the terms of this Agreement may constitute one or more Security Interests for the purposes of the PPSA and that:

- (a) to perfect any such Security Interest TfNSW may register one or more financing statement(s) on the Personal Property Securities Register;
- (b) the NOP shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would otherwise have applied by virtue of section 116(2) of the PPSA;
- (d) the NOP waives its right to receive notice of a verification statement under section 157 of the PPSA; and
- (e) the NOP must, promptly on request by TfNSW, provide any such information and execute and deliver any such documents as TfNSW may reasonably require to protect the Security Interests granted to TfNSW by the NOP under or in relation to this Agreement.

41. Resolution of issues and disputes

41.1 Internal resolution of issues

- (a) The Parties have agreed that they will attempt to resolve all issues or differences arising at the Project administration level in accordance with clause 3.
- (b) Any issue which is not resolved under clause 3 will be referred to the Executive Committee for resolution in accordance with the principles referred to in clause 3.
- (c) If the Executive Committee is unable to resolve any issue referred to it under clause 41.1(b) a Party may notify the other Party that the issue is a Dispute.
- (d) A matter is resolved by the Executive Committee where there is unanimous agreement of the Executive Committee.

41.2 Disputes

- (a) The Executive Committee may, in its sole discretion, agree to refer the Dispute to formal or alternative dispute resolution.
- (b) Subject to clause 41.2(c), if a Dispute is:
 - (i) not referred to formal or alternative dispute resolution is not resolved within 28 days (or other such period agreed by the ALT); or
 - (ii) referred to formal or alternative dispute resolution and is not resolved within 28 days of referral (or other such period agreed by the ALT),

either TfNSW or the NOP may terminate this Agreement.

- (c) If this Agreement is terminated under clause 41.2(b) the NOP's entitlement to payment will be as set out in clause 32.4 and the provisions of clause 34 will apply.

41.3 No restriction

Nothing in this clause 41 is intended to restrict the rights of the Parties under this Agreement.

41.4 Law and jurisdiction

This Agreement is governed by the law in force in the State of New South Wales.

42. General

42.1 Cost

All stamp duties and other fees payable in respect of the execution of this Agreement and the performance of the NOP's obligations in respect of this Agreement will be Reimbursable Costs.

42.2 Taxes

Without limiting clauses 13.6 (Laws) and 18.5 (Change in Laws), the NOP must pay all taxes which may be payable in respect of the NOP's work, including any customs duty and primage applicable to imported materials, plant and equipment required for the NOP's work and those costs will be Reimbursable Costs.

42.3 Indemnities to survive

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties, and survives termination, completion or expiration of this Agreement.
- (b) It is not necessary for a Party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

42.4 Variations

- (a) Subject to clause 42.4(b), this Agreement may only be varied by a document signed by or on behalf of both TfNSW and the NOP.
- (b) TfNSW and the NOP may agree, in a meeting of the ALT, to amend any schedule to this Agreement. The ALT must at all times keep a register of all such amendments and must make the register available to the Parties on request.

42.5 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Agreement whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 42.5(a) it is further agreed that the rights, obligations and liabilities of TfNSW and the NOP (including those relating to proportionate liability) are as specified in this Agreement and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (c) The NOP further agrees that:
 - (i) it will include in each Subcontract it enters into for the carrying out of any Works provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise;
 - (ii) where the Subcontract is for design work, it will use its best endeavours to include in each Subcontract it enters into for the carrying out of any Works provisions that,

to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise; and

- (iii) it will require and ensure that each Subcontractor will include in any further contract that they enter into with others for the carrying out of any Works, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

42.6 Right of set-off

- (a) TfNSW may at any time deduct from moneys otherwise due to the NOP:
 - (i) any debt or other moneys due from the NOP to TfNSW; or
 - (ii) any claim to money which TfNSW may have against the NOP whether for damages (including liquidated damages) or otherwise,whether under this Agreement or otherwise.
- (b) This clause 42.6 will survive the termination of this Agreement.

42.7 Entire agreement

This Agreement embodies the entire understanding of the Parties and constitute the entire terms agreed upon between the Parties and supersede any prior agreement (whether in writing or not in writing) between the Parties, in relation to the subject matter of this Agreement.

42.8 Unlimited discretion

- (a) Except as expressly provided in this Agreement (including in clause 42.8(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by law) is intended to be imposed upon the manner in which TfNSW may exercise any discretion, power or entitlement conferred by this Agreement.
- (b) Without limiting clause 42.8(a):
 - (i) except as expressly provided in this Agreement (including in clause 42.8(c)), neither TfNSW will be:
 - (A) constrained in the manner in which it exercises; or
 - (B) under any obligation to exercise,any discretion, power or entitlement conferred by this Agreement because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this Agreement which confers the discretion, power or entitlement; and
 - (ii) any approval or consent referred to in, or required under, this Agreement from TfNSW may be given or withheld, or may be given subject to any conditions, as TfNSW (in its absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.
- (c) Nothing in this clause 42.8 will prevent the implication of a term into this Agreement where the implication of the term is required to ensure that this Agreement (or a part of this Agreement) is not void or voidable due to uncertainty or any other legal principle.

42.9 No partnership, joint venture or other fiduciary relationship

Nothing in this Agreement will be construed or interpreted as constituting the relationship between TfNSW on one hand and the NOP on the other hand as that of partners, joint venturers or any other fiduciary relationship.

42.10 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing or the partial exercise or enforcement of, any right, power or remedy provided by law or under this Agreement by TfNSW 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 Agreement.
- (b) Any waiver or consent given by TfNSW under this Agreement will only be effective and binding on TfNSW if it is given or confirmed in writing by TfNSW.
- (c) No waiver by TfNSW of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

42.11 Provisions limiting or excluding liability

Any provision of this Agreement which seeks to limit or exclude a liability of TfNSW or the NOP, is to be construed as doing so only to the extent permitted by Law.

42.12 Survivorship

- (a) Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination of this Agreement and any rights arising on termination shall survive, including any warranties, guarantees, licences or indemnities given under this Agreement.
- (b) No provision of this Agreement which is expressed to survive the termination of this Agreement will prevent any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.

42.13 Joint and several liability

The obligations of the NOP, if more than one person, under this Agreement, are joint and several and each person constituting the NOP acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Agreement) of the other as if those acts or omissions were its own.

42.14 Severability

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

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

42.15 Privacy

If under this Agreement the NOP is required to disclose Personal Information, the NOP must:

- (a) if the disclosure is not authorised under the Privacy Acts, obtain the consent of the natural person to whom that Personal Information relates in relation to TfNSW's collection and use of that Personal Information for the purposes of this Agreement or the purposes authorised by this Agreement;
- (b) ensure that the Personal Information disclosed is accurate; and
- (c) inform that natural person:
 - (i) that the Personal Information has been collected by or on behalf of TfNSW; and
 - (ii) of any other matters required by the Privacy Acts.

42.16 Language is English

- (a) It is agreed that the language of this Agreement is English and that:
 - (i) any document provided by the NOP to TfNSW under this Agreement, including the Works Delivery Documents, is to be in English; and

- (ii) any spoken communication (including any meeting) is to be in English.
- (b) If any document to be provided by the NOP to TfNSW is initially produced in a language other than English, the NOP must ensure that:
 - (i) the document is translated by a National Accreditation Authority for Translators and Interpreters (NAATI) accredited translator;
 - (ii) the translated document is an accurate representation of the original source document, including ensuring that no information is lost or altered during the translation; and
 - (iii) evidence acceptable to TfNSW's Representative that the requirements under clauses 42.16(b)(i) and 42.16(b)(ii) have been satisfied is provided with the document at the same time that the document is required to be provided.

Schedule 1 – Table of Items

Item	Details	
<p>1. (Plans) Clause 8.3(c)</p>	<p>A - Work Health and Safety Is the NOP required to implement a Corporate WHS Management System? (Yes/No)</p>	<p>Yes</p>
	<p>Is the NOP required to submit a WHS Management Plan? (Yes/No)</p>	<p>Yes</p>
	<p>B - Workplace Relations (WR) Is the NOP required to submit a Workplace Relations Management Plan (NSW)? (Yes/No)</p>	<p>Yes, within 14 days after the Date of Agreement</p>
	<p>C - Quality Management Is the NOP required to implement an accredited Quality Management System? (Yes/No)</p>	<p>Yes</p>
	<p>Is the NOP required to submit a Quality Management Plan? (Yes/No)</p>	<p>Yes before starting design or construction work in connection with this Agreement.</p>
	<p>D - Environmental Management Is the NOP required to implement an Environmental Management System? (Yes/No)</p>	<p>Yes</p>
	<p>E - Skills and Training Is the NOP required to meet and report at three monthly intervals, using reporting template in Schedule 15, on commitments for engaging apprentices and trainees for the Works? (Yes/No)</p>	<p>Yes</p>
<p>2. (Aboriginal Participation) Clause 8.3(e)</p>	<p>The Aboriginal Participation Project Category is:</p>	<p>Category 2</p>
	<p>The Minimum Aboriginal Participation Spend at the Date of Agreement is:</p>	<p>1.5% of the Work Package TOC</p>
	<p>Are the NOPs required to submit an Aboriginal Participation Plan and Participation Reports? (Yes/No)</p>	<p>Yes</p>
	<p>The frequency of Aboriginal Participation Report is:</p>	<p>("Monthly" applies if the estimated AOC (excl GST) at the Date of Agreement exceeds \$10,000,000.) ("Quarterly" applies if the estimated AOC (excl GST) at the Date of Agreement exceeds \$1,000,000.)</p>
<p>3. (Prequalification) Clause 8.3(l)</p>	<p><u>Design</u> BD2 BD3 <u>Construction</u> R5 B4</p>	

Item	Details
	F150+ including any other prequalification identified in a Work Package Definition Statement issued under this Agreement.
4. (Principal Contractor) Clause 8.4	Lendlease Engineering Pty Ltd
5. (Subcontracting) Clause 15.2	(a) [REDACTED] (b) 30 Business Days.
6. (Warranties) Clause 15	Trades or areas of work requiring a Subcontractor's warranty are: Manufacture and Delivery of Road Signs, Clause 10 of RMS Specification 3400
7. (Person whose principal place of business the NOPs must keep and maintain records at) Clause 17.1(b)	Lendlease Engineering Pty Ltd
8. (Parent Company Guarantor(s)) Clause 1.1	[REDACTED]
9. (Client's Representative) Clause 5.2	[REDACTED]
10. Does the Building Code apply (Clause 8.8)	Yes

Schedule 2 – Security

Undertaking

On behalf of the NOP

Name of Financial Institution:

TfNSW: Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW)

The NOP:

ABN

Security Amount: \$

The Contract: The Project Alliance Contract between TfNSW, the NOP and [insert name and ABN of other NOPs who are a party to the Contract]

Contract Name: [insert Contract / Project Name]

Contract Number: [insert Contract Number]

Undertaking

1. At the request of the NOP and the Financial Institution, and in consideration of TfNSW accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by TfNSW to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, if notified in writing by TfNSW (or someone authorised by TfNSW) that it requires all or some of the Security Amount, the Financial Institution will pay TfNSW at once, without reference to the NOP and despite any notice from the NOP not to pay.
3. TfNSW must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
4. This Undertaking continues until one of the following occurs:
 - (a) TfNSW notifies the Financial Institution in writing that the Security Amount is no longer required;
 - (b) this Undertaking is returned to the Financial Institution; or
 - (c) the Financial Institution pays the TfNSW the whole of the Security Amount, or as much as TfNSW may require overall.
5. At any time, without being required to, the Financial Institution may pay TfNSW the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by TfNSW), and the liability of the Financial Institution will then immediately end.

Dated at

Execution by the Financial Institution:

Schedule 3 – Works Delivery Documents

Part A – WORKS DELIVERY DOCUMENTS

The Works Delivery Documents will include the following:

- (a) Project Management Plan;
- (b) Project Technical Specifications;
- (c) Concept Design;
- (d) Design Management Plan;
- (e) Detailed Design Documents;
- (f) Management Plans;
- (g) Works Programs, incorporating scope and change control and progress reporting;
- (h) Works Cost Plan, including cost reporting protocols, scope and change control and forecasting procedures;
- (i) Construction Methodology Plan;
- (j) Site Based Environmental Management Plan;
- (k) Approvals Management Plan;
- (l) Procurement Management Plan;
- (m) Site Co-operative Use Plan (if relevant);
- (n) Works-as-constructed documents;
- (o) Site WHS Management Plan;
- (p) not used;
- (q) Incident Response Plan;
- (r) Document Handling and Communication Management Plan;
- (s) Delegation Management Plan;
- (t) Infrastructure Skills Legacy Program Plan (including Training Sub-Plan and Aboriginal Participation Plan);
- (u) Chain of Responsibility Management Plan;
- (v) Traffic Management and Safety Plan;
- (w) Australian Industry Participation Plan;
- (x) Landscape Maintenance Plan;
- (y) Maintenance Plan;
- (z) Quality Plan;
- (aa) - Community Involvement Plan;
- (bb) - Project Training Management Plan;
- (cc) - Aboriginal Participation Plan;
- (dd) - Workplace Relations Management Plan;
- (ee) - Earthworks Plan; and
- (ff) - Maintenance Plan.

Part B – PLANS AND PROGRAMS

Those Plans identified at Item 1 of Schedule 1 or other plans reasonably required by the AMT from time to time.

[REDACTED]

[REDACTED]

[REDACTED]

Schedule 4 – Key Personnel

Key Personnel

Role	Key Personnel
Alliance Director	[REDACTED]
Interface Manager	[REDACTED]
[REDACTED]	Area Manager
[REDACTED]	Construction Manager
[REDACTED]	Area Manager

Schedule 5 – Project Alliance Principles

Part A – Alliance Leadership Team

1. The ALT comprises:
 - (a) two representatives from TfNSW; and
 - (b) two representatives of the NOP.

The Parties agree that [REDACTED] will hold the position of the independent chairperson of the ALT.

2. As at Date of Agreement, the representatives for the Project are:

Organisation	Representatives
TfNSW	[REDACTED]
	[REDACTED]
NOP	[REDACTED]
	[REDACTED]

3. Should a party wish to replace any of its representatives its proposed replacement representative must:
 - (a) be one of its senior staff who is not directly involved in the day to day management of the Project; and
 - (b) be approved by the ALT.
 4. The quorum of members of the ALT present at a meeting of the ALT necessary for the transaction of business at the meeting is at least one representative of TfNSW and at least one representative of the NOP, or an approved substitute. For the purpose of this paragraph 4, a member of the ALT is treated as present at the meeting by telephone or other instantaneous means of conferring if the member of the ALT is able to hear the entire meeting and be heard by all others attending the meeting.
 5. A member of the ALT may from time to time appoint any person who fulfils the criteria set out in paragraph 3 to be his or her alternate member on the ALT. An alternate member of the ALT is appointed where:
 - (a) the member of the ALT appointing an alternate member gives a notice in writing to TfNSW and the NOP in such form as the ALT may from time to time accept; and
 - (b) the ALT approves the person specified in the notice to be the alternate member of the member of the ALT,
- and clause 3.9(b) will apply to alternates as it does to other members of the ALT.
6. A member of the ALT who appoints an alternate member may at any time revoke that appointment by giving a notice in writing to TfNSW and the NOP to that effect and that appointment is automatically revoked.
 7. The ALT must meet:
 - (a) (unless otherwise agreed) each month within ten Business Days after the provision by the NOP to members of the ALT of the AMT report referred to in clause 3.9(d);
 - (b) within a reasonable time of the AMT requesting that a meeting be held; and
 - (c) otherwise within a reasonable time of any of its members requesting that a meeting be held,

and may invite other persons (as agreed between its members) to attend any of its meetings.

8. The ALT's functions are to:
- (a) provide overall strategic guidance and direction for the Project and set strategies, goals and objectives for the Alliance;
 - (b) promote and foster the core values and Alliance Principles;
 - (c) review the performance by TfNSW and the NOP of their respective obligations under this Agreement;
 - (d) review the parties' performance against the goals stated in the Alliance Principles;
 - (e) make decisions on matters referred to it by the AMT;
 - (f) not used;
 - (g) not used;
 - (h) review and approve all requests or proposals from the NOP, TfNSW or the AMT for Target Adjustment Events, or any other proposal which may have a material adverse effect on the extent and nature of the Works, Target Dates or TOC having regard to the guiding principles in the Target Adjustment Guidelines.
 - (i) review and approve changes to the Project Brief, TOC and Target Dates as a result of Target Adjustment Events;
 - (j) where required by any of the parties, direct the removal of members of the AMT or the removal of a person from a Works Site; and
 - (k) perform any other functions contemplated by this Agreement.
9. The ALT will nominate a person to be responsible for organising the meetings of the ALT.
10. A representative of the NOP on the ALT must:
- (a) take minutes (for the purpose of recording agreed decisions, actions and action items) of all meetings held by the ALT; and
 - (b) within 3 Business Days of each meeting, provide a copy of those minutes to the members of the ALT who must, if they accept them as accurate, notify the NOP's representative who took the minutes as soon as practicable of their acceptance (in which case those minutes will be deemed to be the official record of the relevant meeting).

PART B – Alliance Management Team

1. The AMT comprises members of TfNSW and the NOP.
2. As at the Date of Agreement, the members are:

AMT

Member	Organisation	Role
██████████	TfNSW	Interface Manager
██████████	TfNSW	Design Manager
██████████	LLE	Alliance Director
██████████	LLE	Alliance Manager (Acting)
TBC	TBC	Commercial Manager
TBC	TBC	Community Stakeholder Manager
TBC	TBC	Environment Manager
TBC	TBC	Safety and Training Manager

Member	Organisation	Role
TBC	TBC	Construction Manager

3. The quorum of members of the AMT present at a meeting of the AMT necessary for the transaction of business at the meeting is [at least one representative of TfNSW and at least one representative of the NOP]. For the purpose of this paragraph 3, a member of the AMT is treated as present at the meeting by telephone or other instantaneous means of conferring if the member of the AMT is able to hear the entire meeting and be heard by all others attending the meeting.
4. The AMT must meet:
 - (a) (unless otherwise agreed) each week; and
 - (b) otherwise within a reasonable time of any of its members requesting that a meeting be held,
 and may invite other persons (as agreed between its members) to attend any of its meetings.
5. The AMT's functions are to:
 - (a) manage the delivery of the Works;
 - (b) develop budgets, plans and schedules to ensure the successful management of the Project and to achieve completion of the Works within the Target Dates, TOCs and Project Brief;
 - (c) develop and implement processes for maintaining and improving the health of the Alliance relationship;
 - (d) approve operational plans for implementation by all parties to the Alliance of the strategies, goals and objectives set by the ALT;
 - (e) review any proposed Changes, approve Changes which are not Target Adjustment Events and forward to the ALT proposed Target Adjustment Events, all as contemplated by clause 18;
 - (f) discuss and review the provision of personnel, Subcontractors, plant and equipment proposed by the NOP;
 - (g) approve subcontracting procedures proposed by the NOP in accordance with the Procurement Management Plan;
 - (h) review and agree Works Delivery Documents;
 - (i) review and agree the quality of work and any remedial measures required (including in respect of significant non-conforming work);
 - (j) not used;
 - (k) attempt to resolve any issues or differences as they arise and refer any unresolved issues or differences to the ALT in accordance with clause 3.5(b);
 - (l) review and agree monthly reports submitted by the NOP to the ALT; and
 - (m) perform any other functions contemplated by this Agreement or agreed between the parties.
6. The Chairperson will be responsible for organising the meetings of the AMT.
7. One of the NOP's members of the AMT must:
 - (a) take minutes of all meetings held by the AMT;
 - (b) within 3 Business Days of each meeting, provide a copy of those minutes to the AMT who must, if they accept them as accurate, notify the member who took the minutes as soon as practicable of their acceptance (in which case those minutes will be deemed to be the official record of the relevant meeting); and
 - (c) provide a copy of the accepted minutes to the ALT.

PART C –ALLIANCE PRINCIPLES

TNR3 PROJECT ALLIANCE PRINCIPLES

Alliance principles along with the Project objectives are applied to evaluate and validate each decision taken by the participants in delivering the project and these principles are used to establish the behaviours of every person engaged in the Alliance.

- (a) all Participants win, or all Participants lose, based on achieved project outcomes. Win-lose outcomes are not acceptable;
- (b) Participants have a peer relationship where each Participant has an equal say in decisions for the Project (except in respect of TfNSW's reserved powers as project owner);
- (c) subject to the terms of this Agreement, risks and responsibilities are shared and managed collectively by the Participants, rather than allocated to individual Participants;
- (d) risks and rewards are shared equitably among Participants;
- (e) Participants provide 'best-in-class' resources;
- (f) Participants act consistently according to espoused values;
- (g) Participants are committed to developing a culture that promotes and drives collaboration, innovation and outstanding performance;
- (h) the Participants empowering the ALT and the AMT to make decisions and take actions under this agreement
- (i) all transactions are fully open book;
- (j) Participants are committed to developing a 'communication culture' and being transparent in all of their dealings with each other;
- (k) Participants share all information and do not hold back ideas;
- (l) communication between all Participants is open, straight and honest so as to enable informed decision making;
- (m) each Participant is committed to ensuring that each other Participant understands any documentation prepared in respect of the Project and any information, analysis or methodology contained in that documentation;
- (n) ethical and responsible behaviour at all times;
- (o) learnings of the Participants are identified and shared, and capability is developed; and
- (p) important decisions are made, and processes and systems are adopted, on a Best-for-Project basis.

CULTURAL CHARTER FOR THE TNR3 ALLIANCE

In 2018, The Formula for Success was developed by the TNR3 Team and ratified by the Project senior management team – refer to Appendix A.

It identified three Project Pillars - **Safety, Sustainability and People**:

Safety – First every time.

Safety – 3 Steps to Home - Speak Up, Own your Risk, Look Out for Yourself and Others.

Sustainability - Actively manage construction impacts on road users/community.

Sustainability - Balance our home and work lives.

People - Celebrate and Reward.

People - A commitment to develop and sustain a high-performance team.

People - Invest in our people.

and six Project Values – **Integrity, Collaboration, Excellence, Solutions Focus, Respect and Trust**

Always demonstrate **Integrity** through behaviours.

Collaboration - Best for project decision making.

Collaboration - Learning and sharing with each other and the industry through actual collaboration.

Excellence - New ideas are encouraged to challenge everything we do.

Excellence - Planning - measure twice to cut once!!

Solutions Focus - Long term whole of life approach to quality – Achieve or Better.

Respect - Participate and live the alliance; be respectful, open and honest.

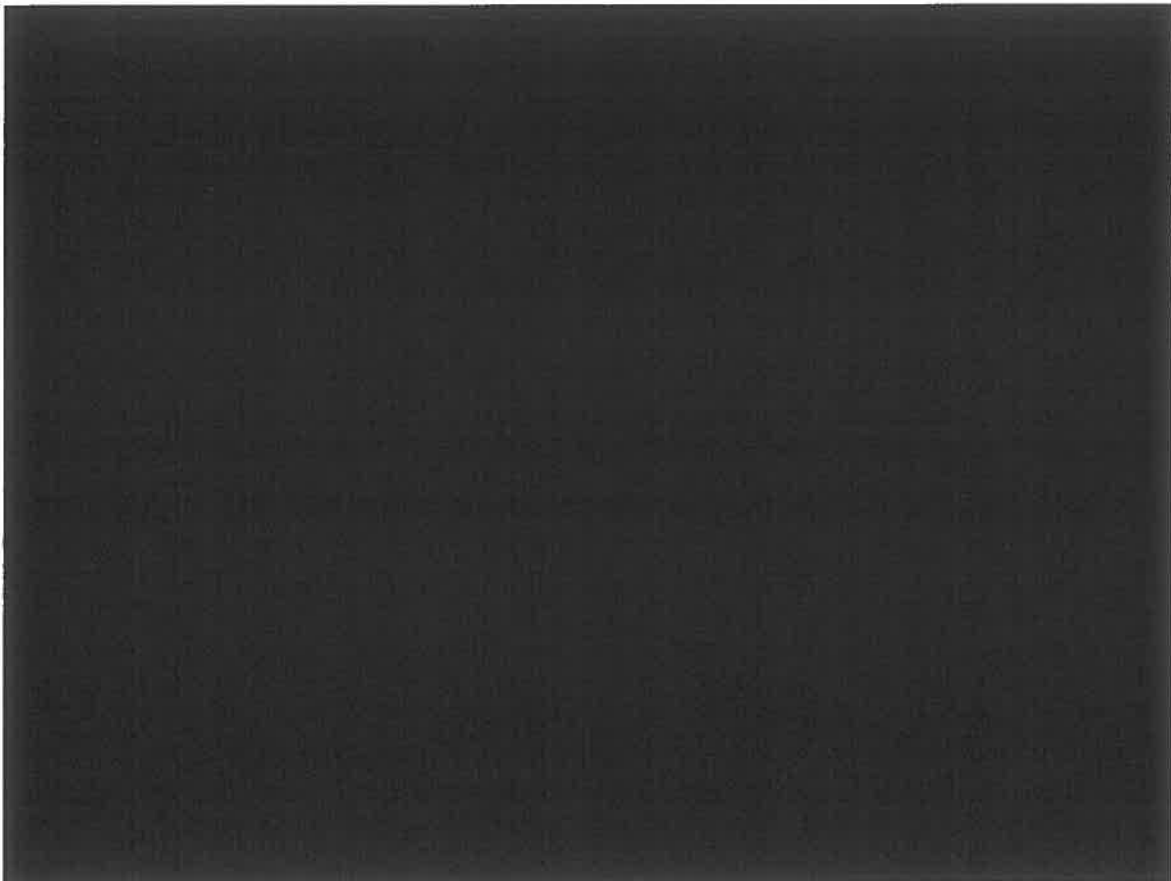
Trust - One team approach.

Trust - Share project risks and opportunities together.

TEAM ENGAGEMENT

As the Project is transitioned the team will ensure that the Formula for Success aligns with the Alliance Principles through a series of workshops.

All site personnel will then be re-familiarised with the Formula for Success with a view that we ensure that all staff are aligned on the Project Goals, Values and to the Behaviours required to deliver the best outcome for TNR3.



Schedule 6 – Compensation Framework

1. DEFINITIONS

Words or expressions defined below will have the meanings assigned to them for interpretation of this Compensation Framework except where the context requires otherwise. Terms in this Compensation Framework that are not defined below will have the meaning given in clause 1 of this Agreement. References to clause numbers or Annexures in this Compensation Framework refer to this Schedule 6 unless noted otherwise.

Alliance Financial Auditor means the Professional Services Contractor appointed by TfNSW to perform the functions set out in clause 2.3.

Alliance Project Manager means the person responsible for the day to day management of the alliance and identified in Schedule 4 of this Agreement.

Contracted Labour means an employee who is an independent contractor, for whom the relevant NOP has no long term employment obligations or obligation to make statutory provisions, and includes personnel sourced from labour hire companies (as distinguished from the fixed term contract employee described under Staff Labour (employee)).

Direct Base Salary is as set out in clause 3.4(e)(ii).

Greater Sydney Area means the Greater Sydney region including the Central Coast, Blue Mountains, Wollongong and Mittagong.

Indirect Salary Costs is as set out in clause 3.4(e)(iv).

Labour Reimbursable Costs is as set out in clause 3.3(b).

Margin means the NOP's allowance of [REDACTED] for corporate overhead and profit to be applied to the Reimbursable Costs incurred as a result of performing Target Adjustment Events.

Net Risk & Opportunity means the net of estimated risks (that are within the scope of the TOC) and estimated opportunities for savings measured against the current practice benchmarks for all of the estimated components of the work within the TOC (that is including design, fabrication, supplies, installation, construction, testing, documentation, project management etc.).

Other Reimbursable Costs has the meaning given in clause 3.3(c).

Plant & Equipment means items of engine-driven mobile mechanical plant (including site vehicles) and items of ancillary equipment used for the preparation, fabrication, erection and installation of works; in the context, costed to the Project as externally sourced Plant & Equipment, but may be internally costed Plant & Equipment subject to confirmation of the rates as market-tested.

Project Expenses means expenses directly incurred by staff engaged on a the Project which are incurred directly in relation to that person's work and are not already included as an Indirect Salary Cost, for example travel and accommodation costs.

Reimbursable Costs means the actual costs incurred by the NOP in the delivery of the Works, as defined in clause 3.

Salary On-Costs is as set out in clause 3.4(e)(iii).

Staff Labour (employee) means, generally, a permanent employee of the NOP for whom the NOP must pay superannuation, workers compensation and other like statutory charges. Personnel on medium to long fixed term contracts (i.e. not short term hire equivalent to labour hire) are considered to be permanent employees for Compensation Framework purposes.

TfNSW Labour has the meaning given in clause 5.3(a).

TfNSW Materials has the meaning given in clause 5.3(a).

Total Salary Costs means the sum of Direct Base Salary, Salary On-Costs and Indirect Base Salary.

2. KEY PRINCIPLES

2.1. Commercial in confidence

- (a) Certain information in this Schedule is commercial-in-confidence to the NOP or TfNSW.
- (b) Commercial-in-confidence information is, generally, information that contains details about:
 - (i) commercially sensitive information, disclosure of which is not in the relevant party's best interest;
 - (ii) commercially sensitive pricing information including profit margins and the underlying price basis;
 - (iii) insurance and liability regimes that are commercially sensitive;
 - (iv) contractual rights and remedies, including warranties, financial guarantees and securities and liquidated damages that are commercially sensitive.
- (c) Without limiting clause 35 of this Agreement, if, in connection with this Agreement, commercial-in-confidence information is provided by any person, the relevant party must ensure that any person (including an employee) receiving or producing the information protects the confidential nature of the information, and is given access to the commercial-in-confidence information only to the extent that the person needs to know that information for the purposes of this Agreement.
- (d) All of the information in Annexure A and Annexure B is commercial-in-confidence.

2.2. Key elements of the Compensation Framework

There are four core elements of the overall payment structure to the NOPs. These are:

- (a) Reimbursable Costs, as described in clause 3;
- (b) Fee, as described in clause 4; and
- (c) Fee calculation and performance adjustment, as described in clause 6.
- (d) not used.

2.3. Alliance Financial Auditor

- (a) The Alliance Financial Auditor is engaged by TfNSW for the general purpose of ensuring the veracity of payments made by TfNSW to the NOP under this Agreement.

- (b) The Alliance Financial Auditor provides, as an indicative minimum, the following services under their professional services agreement:

(Prior to the Date of Agreement)

- (i) Undertaking establishment financial audits of the NOP. This audit is to verify the declarations made by the NOP with respect to their Reimbursable Costs (including base salary costs), and to establish that the declarations are supported by their management information systems. This data informed the drafting of this Schedule.

(At commencement)

- (ii) Undertaking a systems audit to ascertain if the NOP has implemented an effective financial system to meet their financial record keeping obligations specified in this Agreement, including:
- A the processes and procedures proposed to provide the single reporting system;
 - B the reporting facilities and formats to be used to provide consolidated monthly progress claims and an audit trail from the monthly reports to original documentation; and
 - C key controls over the completeness, accuracy and validity of costs charged to the Project by the NOP, including how the NOP's costs are coordinated, controlled and applied to the Project.

(During the delivery of the Project)

- (iii) Undertaking quarterly audits of the NOP's payment claims (including reviewing the preceding monthly progress claims that have not been audited) to verify the accuracy of the claims made on TfNSW including testing that:
- A the claims align with purchase, invoice/payroll or other independent records;
 - B the transaction is a genuine Reimbursable Cost; and
 - C the appropriate internal controls have been operating as prescribed.
- (iv) Undertaking more frequent audits if so requested by TfNSW.

(At completion of the Project)

- (v) Verify the Actual Outturn Cost (AOC) and calculation of the Fee.

2.4. Interpretation

To the extent that there is any conflict between the general requirements of this Schedule and the data in Annexures A and B, the Annexures will prevail.

3. REIMBURSABLE COSTS

3.1. General context for Reimbursable Costs

- (a) Reimbursable Costs means the actual costs directly incurred by the NOP in completing the scope of work required to be delivered for the Project, subject to limitations on cost allocations imposed by the terms of this Agreement.
- (b) Reimbursable Costs include all Materials and services engaged in the physical delivery of the Project and, for the avoidance of doubt:

- (i) any discounts or rebates received in relation to goods or services costed to the Project must be applied to reduce Reimbursable Costs;
 - (ii) any credit on sale of surplus materials must be applied to reduce Reimbursable Costs; and
 - (iii) cash retentions on Subcontractors and other like transactions are to be accounted for, so that the benefits of the cash retained are applied to reduce Reimbursable Costs. Where a retention is not cash but is withheld from a progress claim by a Subcontractor, the amount of the retention cannot be claimed as a Reimbursable Cost.
- (c) Reimbursable Costs also include:
- (i) Project specific office costs (i.e. dedicated office facilities engaged specifically for the Project);
 - (ii) the cost of temporary works;
 - (iii) consumables;
 - (iv) Project specific insurances, where permitted by and in accordance with the terms of this Agreement and approved by the ALT;
 - (v) Alliance health checks and team building undertakings;
 - (vi) statutory fees and charges directly related to the conduct of specific Works; and
 - (vii) other costs directly related to the Works and consumed in the course of completing the Works.
- (d) The NOP cannot recover anything that is not a bona fide specific cost or expense incurred by the NOP in carrying out the Works.
- (e) The NOP can only recover a maximum of 100% of any bona fide specific cost or expense incurred by the NOP in carrying out the Works.
- (f) None of the components of general business overheads (as defined in clause 4) or profit can comprise a Reimbursable Cost. Similarly, neither a 'management reserve' nor a 'contingency' or any like item reserved to the discretion of a NOP may either constitute a Reimbursable Cost or be added to the TOC. For the avoidance of doubt, it is noted that the Net Risk & Opportunity pricing of project level risks (excluding those covered by other mechanisms such as the provisions for Target Adjustment Events) is priced as part of the TOC and as such is an estimate of Reimbursable Costs that may be incurred.
- (g) Reimbursable Costs do not include any amounts incurred by the NOP which clause 25.6 of this Agreement provides are not Reimbursable Costs.

3.2. Accrual

- (a) Accrual cost accounting is to be used for calculating the Reimbursable Costs incurred up to the date of any relevant payment period until final reconciliation. For the purpose of accrual cost accounting, a Reimbursable Cost is taken to have been incurred on the date that a valid Tax Invoice has been received by the NOP for the goods or services. Accruals may not be claimed as Reimbursable Costs where an estimate of the value of an invoice for goods or services is required, or an estimate is required of the timing of receipt of an invoice.
- (b) Exceptions to the requirement for an invoice prior to payment are allowed for cost items for which:

- (i) the cost is a regular recurring expense at a fixed rate;
- (ii) the actual cost to be incurred can be accurately determined at the end of the relevant period from verified timesheets, plant and equipment utilisation logs or similar records; and
- (iii) do not require an estimate of the expected invoiced amount.

Examples include:

- personnel costs for employees and contracted staff of the NOP for work recorded in timesheets to the end of the relevant period; and
 - hired-in plant for which fixed hourly rates are set by contract, and verified plant utilisation logs are recorded to the end of the relevant period.
- (c) For the avoidance of doubt, costs of Subcontractors and Suppliers may only be accrued on receipt of a valid tax invoice for services actually provided.

3.3. Categories of Reimbursable Costs

- (a) Reimbursable Costs are, nominally, either Labour Reimbursable Costs or Other Reimbursable Costs.
- (b) Labour Reimbursable Costs are:
- (i) Staff Labour (employee); and
 - (ii) Contracted Labour. Contracted Labour is a Subcontractor category within the Other Reimbursable Cost classification.
- (c) Other Reimbursable Costs are:
- (i) Materials;
 - (ii) Net Risk & Opportunity;
 - (iii) Plant & Equipment;
 - (iv) Project Expenses;
 - (v) Subcontractors; and
 - (vi) Consultants. The rates for certain key Consultants may be predetermined, in which case:
 - A the relevant provisions are detailed in Annexure A; and
 - B particular nominated personnel rates may be set out in Annexure B.

3.4. Calculation of Labour Reimbursable Costs

- (a) The NOP may only claim as a Reimbursable Cost the wages, non-wages and salary costs of personnel who are identified in the version of the Organisation Chart approved by the ALT current at the time of the claim.
- (b) The general principle is that all costs related directly to the employment of labour is captured in the labour rate. Other costs are to be included in the Fee.

- (c) Labour Reimbursable Costs are to be booked for all time worked on the Project.
- (d) It is noted that some specific determinations have been agreed with the NOP in the development of the Compensation Framework, including the determination of maximum daily rates or maximum weekly rates, generally as set out in Annexure B.
- (e) Labour Reimbursable Costs are to be calculated in the following manner:

- (i) Total Salary Costs are calculated as:

Direct Base Salary + Salary On-Costs + Indirect Salary Costs.

The individual components of the Total Salary Cost are as set out below.

- (ii) **Direct Base Salary** means the direct salary or wages that are paid directly to an employee. The following clarifying notes apply:

A A profit-share or over-award payment that is always paid to the employee, or a discretionary component of a salary that is ordinarily expected to be paid if work targets are achieved, is deemed to form part of Direct Base Salary.

B Derived hourly rates for personnel nominated to the Project at the Date of Agreement are included in Annexure B. Subject to the approval of the ALT, these derived hourly rates may be adjusted annually to reflect changes arising from ordinary company salary reviews conducted by the NOP.

- (iii) **Salary On-Costs** means the costs directly associated with employment of staff and based on the salary paid, such as:

Salary On-Cost	LLE Rates on Base
Superannuation	██████
Annual leave	██████
Long service leave	██████
Payroll tax	██████
Workers compensation insurance	██████
Bonus	██████
Accounts, HR & Payroll, Project Finance and ICT services, software & licencing	██████
Total Salaries On-Cost	██████

- (iv) **Wages On-Costs** means the costs directly associated with employment of wages staff and based on the wages paid, such as:

Wages On-Cost	LLE Rates on Base
Superannuation	██████
Annual Leave	██████
Long Service Leave	██████

Wages On-Cost	LLE Rates on Base
Payroll Tax	[REDACTED]
Workers Compensation	[REDACTED]
Sick Leave	[REDACTED]
Public Holidays	[REDACTED]
Total Wages On-Cost	[REDACTED]
[REDACTED]	

- (v) **Indirect Salary Costs** means the costs indirectly associated with employment of staff and based on the salary paid, all of which must be substantiated by records and audited by the Alliance Financial Auditor, such as:
- A Fringe benefits;
 - B Fixed staff support costs, related to permanent allocations or provision of office space and equipment and staff facilities;
 - C Other non-chargeable time allowances (must be substantiated by records). This does not include non-productive or under-utilisation ('no work') time which is considered to be a variable which strongly influences profit and as such must be accounted for in the Fee.

3.5. Travel and accommodation cost arrangements

- (a) The AMT must prepare an Alliance Travel Policy for the approval of the ALT. All travel must be undertaken and claimed in accordance with the approved policy.
- (b) The Alliance Travel Policy is to be based on the following principles:
 - (i) There is to be no charge for travel by personnel who are not identified in the version of the Organisation Chart approved by the ALT current at the time of the claim.
 - (ii) There is to be no charge for travel time outside ordinary business hours (nominally 7.5 hours per day or 8 hours per day, as applicable to the NOP), except in the case of trades personnel where an enterprise bargaining agreement or other award requires the employee to be paid for travel time in excess of 8 hours per day.
 - (iii) The AMT will agree the reasonable schedule of flights and related travel arrangements for personnel working on the Project but not located in the Greater Sydney Area. Management of all parties are to ensure the highest practicable level of cooperation with the preferred travel arrangements.
 - (iv) For personnel not living in the Greater Sydney Area but allocated to the Project for extended periods, regular travel to/from Sydney for those personnel is to be conducted so that it occurs substantially or wholly outside normal working hours so that a full working day is achieved wherever reasonable and practicable. Alternatively, where regular travel within normal working hours is reasonable, a full working week is to be achieved by scheduling longer hours on other days.
 - (v) All air travel on Project work is to be undertaken using economy or discount economy fares.

- (vi) Accommodation, meals and other travel costs are to be at agreed rates for per diems, or otherwise in accordance with the Alliance Travel Policy.
- (c) Any travel and/or accommodation arrangements not in accordance with the Alliance Travel Policy cannot be claimed as a valid Reimbursable Cost unless expressly approved by the Alliance Project Manager in advance. Any such arrangements must be reported to the ALT.

3.6. Costs arising from changes to personnel

- (a) The allocation of costs of recruiting personnel to the Project depends on the circumstances in which the vacancy arises.
- (b) The costs associated with initial recruitment to the Project are deemed to be included in the Fee, irrespective of whether the personnel are employed only for the purposes of the Project.
- (c) Initial relocation costs for personnel who are appointed to the Project are deemed to be included in the Fee.
- (d) The cost allocations for the range of expected circumstances where a vacancy arises in the course of the Project are as shown in Table 1 and will apply unless the ALT agrees otherwise.

Table 1: Circumstances in which vacancy arises: cost allocations

Item	Circumstance in which vacancy arises	Cost allocation	
		Cost of recruitment	Cost of relocation
1.	NOP choice	Fee	Fee
2.	NOP 'no choice', e.g. leaves for another company, retires	Reimbursable Cost	Reimbursable Cost
3.	New position, agreed by the ALT	Reimbursable Cost	Reimbursable Cost
4.	ALT direction to remove person for non-performance or non-Alliance behaviour	Reimbursable Cost	Reimbursable Cost
5.	TfNSW Direction	Reimbursable Cost	Reimbursable Cost

3.7. Fines and penalties

- (a) The allocation of costs of fines or penalties to the Project depends on the circumstances in which the fine or penalty arises. Principles for the application are set out in this clause 3.7.
- (b) If there is any uncertainty as to the principle to be applied, the matter is to be referred to the ALT for a determination.
- (c) If the fine or penalty is levied against the Project, and is not clearly attributable to the unlawful actions of the NOP, then the fine or penalty is to be treated as a Reimbursable Cost.
- (d) If the fine or penalty is levied against the NOP (including against any of a party's direct employees), and is clearly attributable to the unlawful or wrongful action of that particular party or its relevant direct employee, then the fine or penalty must not be treated as a Reimbursable Cost, but is to the separate account of that party.
- (e) If the fine or penalty is levied against a party (including against any of its direct employees), and that party believes that the fine or penalty is either:

- (i) not attributable to the unlawful or wrongful action of that particular party or its relevant direct employee; or
- (ii) arising from an action endorsed by the Alliance as an appropriate methodology or practice for conducting the work in the Alliance,

then, subject to the prior approval of the ALT, the fine or penalty may be treated as a Reimbursable Cost, and not to the separate account of that party.

3.8. Foreign exchange

- (a) The principle to be applied to any foreign currency transactions is that the NOP will not make any gain or loss on the transaction.
- (b) For any Reimbursable Cost incurred by the NOP in a foreign currency, the NOP will be reimbursed at the AUD equivalent of the foreign currency amount paid by the NOP, calculated using the exchange rate available to the NOP on the date of the relevant payment (or, if converted by the NOP to the relevant foreign currency on a different date to the date of payment, calculated on the conversion date).

4. Fee

4.1. Fee basis

- (a) The Fee is [REDACTED]
- (b) The Fee will be paid progressively in accordance with clause 29 of this Agreement.
- (c) The Fee is fixed and can only be adjusted in accordance with the specific provisions set out in clause 6.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]

●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]
●	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

- (a) The TOC has been developed on a 'business as usual' basis, reflective of the current standard of practice delivered by or required of the NOP.
- (b) The TOC does not include the risk of cost changes that would be classified as Target Adjustment Events. Only project specific risks with a material likelihood of occurrence have been priced in the TOC, and these are included in the Net Risk & Opportunity estimate.
- (c) In estimating the Net Risk & Opportunity quantum, aggregation of risk estimates through a Monte Carlo technique is expected to be used and, in that context, a P₅₀ estimate is to be used in calculating the TOC.
- (d) The Target Adjustment Guidelines will be ratified by the ALT at the first meeting following execution of this Agreement. The meaning of 'material level of risk' will be effectively set by those Target Adjustment Guidelines.

5.2. Risk inside / outside the TOC

- (a) There is to be no 'management reserve' held by the NOP. [REDACTED]
- (b) Target Adjustment Event contingency amounts will be held by TfNSW.

5.3. Not Used

5.4. Not Used

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

● [REDACTED]

7. Not used

8. Target Adjustment Events

(a) The following events are Target Adjustment Events:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

10. ANNEXURE A to SCHEDULE 6

NOT USED

[]

11. ANNEXURE B to SCHEDULE 6

NOT USED

12. NOT USED

Schedule 7 – NOP statement and supporting statement

1. NOP Statement

<h3 style="margin: 0;">Contractor Statement</h3> <p style="margin: 0;">Payment of Workers, Worker's Compensation Premiums & Payroll Tax</p>		Transport Roads & Maritime Services																
<p style="font-size: small; margin: 0;">This Statement must be provided whenever payment is sought for any work carried out for Roads and Maritime Services (RMS) by a Contractor (<i>see Notes 1 & 5 overleaf</i>). RMS is entitled to withhold payment until this Statement is provided (<i>see Note 2</i>).</p>		<p style="font-size: x-small; margin: 0;">Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt</p> <div style="border: 1px solid black; padding: 2px; display: inline-block; text-align: center;"> Attach </div>																
Details																		
Contractor's Legal Name	<input style="width: 100%;" type="text"/>																	
Contractor's Trading / Business Name	<input style="width: 100%;" type="text"/>																	
Contractor's ABN	<input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/> <input style="width: 20px; height: 20px;" type="text"/>	Contractor's ACN																
Contractor's Address	<input style="width: 100%;" type="text"/>																	
Name or description of Contract or Works	<input style="width: 100%; height: 30px;" type="text"/>																	
Period of Work this Statement applies to (<i>see Note 3</i>)	From <input style="width: 100px;" type="text"/>	To <input style="width: 100px;" type="text"/>																
Invoice or Payment Claim Numbers this applies to	<input style="width: 100%;" type="text"/>																	
Invoice or Payment Claim Dates this Statement applies to	<input style="width: 100%;" type="text"/>																	
Statement Validity Period																		
<p style="font-size: x-small; margin: 0;">This Statement applies to all work performed by the Contractor for RMS in respect of the above Contract/ Works for the period stated above (<i>see Notes 3 & 4</i>).</p>																		
Declaration		Tick one in each row																
I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:																		
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">• All workers engaged by the Contractor in respect of the works have been paid (<i>see Note 6</i>);</td> <td style="width: 50px;"></td> </tr> <tr> <td style="padding: 2px;">• All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or</td> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• the Contractor is an exempt employer for workers compensation purposes (<i>see Note 7</i>);</td> <td style="text-align: center; vertical-align: middle;">or <input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees; or</td> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• the Contractor is not required to be registered;</td> <td style="text-align: center; vertical-align: middle;">or <input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• The Contractor has not engaged any subcontractors for the works, or</td> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)</td> <td style="text-align: center; vertical-align: middle;">or <input type="checkbox"/></td> </tr> <tr> <td style="padding: 2px;">• I am authorised to make this declaration and I am in a position to know the truth of its contents</td> <td></td> </tr> </table>			• All workers engaged by the Contractor in respect of the works have been paid (<i>see Note 6</i>);		• All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or	<input type="checkbox"/>	• the Contractor is an exempt employer for workers compensation purposes (<i>see Note 7</i>);	or <input type="checkbox"/>	• The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees; or	<input type="checkbox"/>	• the Contractor is not required to be registered;	or <input type="checkbox"/>	• The Contractor has not engaged any subcontractors for the works, or	<input type="checkbox"/>	• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)	or <input type="checkbox"/>	• I am authorised to make this declaration and I am in a position to know the truth of its contents	
• All workers engaged by the Contractor in respect of the works have been paid (<i>see Note 6</i>);																		
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• the Contractor is an exempt employer for workers compensation purposes (<i>see Note 7</i>);	or <input type="checkbox"/>																	
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• the Contractor is not required to be registered;	or <input type="checkbox"/>																	
• The Contractor has not engaged any subcontractors for the works, or	<input type="checkbox"/>																	
• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors (and believes it to be true)	or <input type="checkbox"/>																	
• I am authorised to make this declaration and I am in a position to know the truth of its contents																		
Signature of Authorised Person	<input style="width: 100%;" type="text"/>																	
Date	<input style="width: 100%;" type="text"/>																	
	Name of Signatory (<i>print</i>)																	
	<input style="width: 100%;" type="text"/>																	
	Position / Job Title of Signatory (<i>print - see Note 4</i>)																	
	<input style="width: 100%;" type="text"/>																	
(<i>see Notes on page 2</i>)																		
Catalogue No. 45062893, Form No. 921 (11/2011) Page 1 of 2																		

1.1 Notes for NOP Statement

- (a) A NOP is any person or company who carries out work under a contract of any kind for any business of TfNSW. References to 'Subcontractor' and 'Principal Contractor' in the legislation mentioned below have been changed in this NOP Statement to 'NOP' and 'TfNSW' respectively to avoid confusion.
- (b) This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996 (IRA)*, section 175B of the *Workers Compensation Act 1987 (WCA)* and Schedule 2 Part 5 of the *Payroll Tax Act 2007 (PTA)*. These provisions allow TfNSW to withhold payment from a NOP without any penalty unless and until the NOP provides to TfNSW a statement declaring that:
 - (i) all workers compensation insurance premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid;
 - (ii) all remuneration payable to relevant employees for work under the contract has been paid; and
 - (iii) all payroll tax payable relating to the work undertaken has been paid.
- (c) Section 127 of the IRA says that the statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
- (d) The person signing this declaration must be a person who is authorised by the NOP either to sign this NOP Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The NOP's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the NOP is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (eg the principal accounting officer).
- (e) A NOP Statement is not required where TfNSW is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Schedule 2 Part 5 (20) of the PTA).
- (f) Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
- (g) As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

1.2 Record Retention

TfNSW will keep a copy of this NOP Statement for 7 years. If the NOP obtains a similar statement from its Subcontractor then the NOP must keep that statement for 7 years.

1.3 Offences for false statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Schedule 2 Part 5 clause 18(8) of the PTA.

1.4 Further Information

These notes are not intended as legal advice and NOPs should obtain their own professional advice if they have any questions about this NOP Statement or these notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rrpt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

2. Supporting Statement

2.1 Notes for Supporting Statement

- (a) This Supporting Statement must accompany any payment claim served on TfNSW by a NOP.
- (b) For the purposes of this Supporting Statement the terms 'principal', 'head contractor', 'subcontractor', and 'construction contract' have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999 (NSW) (SOPA)*.
- (c) The NOP is a 'head contractor' in terms of the SOPA, and makes relevant statements below accordingly.
- (d) This Supporting Statement must be signed by the NOP (or by a person who is authorised, or held out as being authorised, to sign the statement by the NOP).
- (e) Relevant legislation includes *Building and Construction Industry Security of Payment Regulation 2008* cl 4A.

Head contractor: _____

(Business name of the head contractor)

ABN _____

ACN _____

of _____

(Address of head contractor)

has entered into a contract with **Transport for NSW**

Contract description _____

Contract number/identifier _____

Subcontracts

The head contractor has entered into a contract with the subcontractors listed in the attachment to this Supporting Statement.

Period

This Supporting Statement applies for work between: _____ and _____ inclusive,

subject of the payment claim dated: _____

I, _____ (full name) being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: _____

Date: _____

Full Name: _____ Position / Title: _____

2.2 Attachment to the Supporting Statement

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/identifier	Date of works (period)	Payment claim dated (head contractor claim)

2.3 Offences for false statement

In terms of s 13(8) of the SOPA a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

2.4 Further Information

These notes are not intended as legal advice and NOPs should obtain their own professional advice if they have any questions about this Supporting Statement or these notes. Copies of relevant legislation can be found at www.legislation.nsw.gov.au.

Schedule 8 – Insurance details

As at [Project Commencement Date/Date of Agreement] the insurance policy details as referred to in clause 24 are as follows:

Type of Insurance	Details	
Works insurance	Minimum cover is: Insurer: Policy number: Period of cover is: Excess/Deductible:	TfNSW's Principal Arranged Insurance as per Schedule 9 to be issued upon execution of this Agreement until issue of the final payment schedule for the last Work Package. Water Damage \$500,000 Tunnelling Works \$500,000 All other claims \$100,000 Refer to attached policy wording at Schedule 9.
Public liability insurance	Minimum cover is: Insurer: Policy number: Period of cover is: Excess/Deductible:	TfNSW's Principal Arranged Insurance as per Schedule 9 to be issued upon execution of this Agreement until issue of the final payment schedule for the last Work Package. Worker to Worker: \$100,000 each and every claim Products Liability: \$50,000 each and every claim Underground Services: \$50,000 each and every claim Covered Operations (Environmental) Liability: \$50,000 each and every claim Covered Operations (Hazard): \$50,000 each and every claim All other claims: \$10,000 each and every claim
Professional indemnity insurance	Required cover is:	<div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px;"></div>
Workers' compensation insurance	Minimum cover is:	As required by Law
Marine liability insurance	Minimum cover is: Insurer: Policy number: Period of cover is: Excess/Deductible:	Not required
Asbestos Liability Insurance	Minimum cover is: Insurer: Policy number: Period of cover is: Excess/Deductible:	\$20 million for any one occurrence in respect of public liability and in the aggregate during the period of insurance in respect of products liability. Asbestos removalist liability sub-limited to \$20 million for any one claim and in the aggregate during the period of insurance (claims made)

Type of Insurance	Details	
		Insurer and policy number to be advised to TfNSW. Period of cover: Until the end of Defects Rectification Period.
Motor Vehicle Fleet/ Mobile Plant Insurance	Minimum cover (Third Party Property Damage) Insurer: Policy number: Period of cover is: Excess/Deductible:	\$20,000,000 until issue of the final payment schedule for the last Work Package. As per NOPs own policies

Schedule 9 – Insurance policy terms

Refer to attached policies.

Issued through:

Self Insurance Corporation of NSW
through Insurance and Care NSW (icare)
ABN 16 759 382 489

Level 15, 321 Kent Street
SYDNEY NSW 2000

Telephone: 61 2 9216 3852

Email: cpai@icare.nsw.gov.au

Schedule 10 – Dispute resolution

The Executive Committee is comprised of representatives of TfNSW and the NOP, as set out in this schedule or as notified from time to time. Those representatives have a sufficiently senior role within the organisations which they represent that they are able to:

- (a) participate in the internal resolution of issues in accordance with clause 3 and clause 41.1 as a member of the Executive Committee; and
- (b) participate in the resolution of Disputes in accordance with clause 41.2.

As at Date of Agreement, the members of the Executive Committee are:

Member	Organisation	Role
[REDACTED]	TfNSW	[REDACTED]
[REDACTED]	Lendlease Engineering Pty Limited	[REDACTED]

Schedule 11 – Subcontractors and Suppliers Proof of Payment Procedure

Business Day each month	Action	Documents required
1 st Business Day	NOP issues progress claim	NOP Statement and Supporting Statement (refer to Schedule 7)
10 th Business Day	TfNSW issues payment schedule	
15 th Business Day	TfNSW pays NOP the Scheduled Amount	
18 th Business Day	NOP must issue Subcontractors and Suppliers Payments List, Accounts Payable Retention Summary and Accounts Payable Statement reconciled to the Scheduled Amount	<ul style="list-style-type: none"> • Subcontractors and Suppliers Payments List (refer to Schedule 11 section 1) • Accounts Payable Retention Summary (refer to Schedule 11 section 2) • Accounts Payable Statement for total value of completed work due for payment (refer to Schedule 11 section 3)
20 th Business Day	NOP must issue Payment Details and Banker's Statement no later than 5 Business Days after payment of Scheduled Amount reconciled to Subcontractors and Suppliers Payments List	<ul style="list-style-type: none"> • Payment Details (refer to Schedule 11 section 4) • Banker's Statement evidencing payment of each item on the Accounts Payable Statement (refer to Schedule 11 section 3)

For the purpose of this Schedule 11, Scheduled Amount means the amount stated in a payment schedule issued in accordance with clause 29.2(e).

This Subcontractors and Suppliers Proof of Payment Procedure is indicative of a work flow predicated on progress claims being issued on the 1st day of each month. TfNSW and the NOPs must align the Subcontractors and Suppliers Proof of Payment Procedure with the agreed date for making progress claims as set out in clause 29.2.

1. Subcontractors and Suppliers Payments List

Project: »

NOP: » NOP's Bank: »
 ABN » A/C Name: »

Date: »

Payment Claim: » Period: »

The NOP will pay monies to Subcontractors and Suppliers in accordance with this Payment List.

Subcontract Retentions (Refer Accounts Payable Retention Summary)

	<i>Amount (incl GST)</i>
Total Retentions for current period	\$ »
Less Total Retentions for previous period	\$ »
Payment to NOP for held retentions	\$ »

Payments by NOP to Subcontractors and Suppliers

	<i>Scheduled Amount (incl GST)</i>
Payments to Subcontractors and Suppliers (Refer Accounts Payable Statement)	\$ »
Payment to NOP for held retentions	\$ »
Payment to NOP	\$ »
PAYMENT OF CERTIFIED CLAIM AMOUNT	\$ »

Signed by:

NOP

Name: »

Signature:

Date: »

2. Accounts Payable Retention Summary (GST inclusive)

NOP Name:

ABN:

Payment Claim:

Date:

Month	Trans	Invoice Date	AP Ref	Description	Total Retention	Held Retention	Released Retention	Retention Paid
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Total for Project:					»	»	»	»
»					»	»	»	»
Total for NOP:					»	»	»	»
»					»	»	»	»
Grand Totals:					»	»	»	»

3. Accounts Payable Statement

AP Ref	Subcontractor/Supplier Name	Total Amount Owning
--------	-----------------------------	---------------------

▶	▶	▶
▶	▶	▶
▶	▶	▶
▶	▶	▶
▶	▶	▶
▶	▶	▶
▶	▶	▶
▶	▶	▶
▶	▶	▶
▶	▶	▶

Grand Total:

4. Payment Details

Month:

»

Project:

»

Contract:

»

Payment Method*

Payment Method*

Payment Method*

Payment Method*

Date:

»

»

»

»

Subcontractors and Suppliers listed on the
NOP's Statement and Supporting
Statement

Payment Claim No
»

Payment Claim No
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Payment Claim No
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Payment Claim No
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Payment Batch Totals

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***Note:**

State in each case whether payment was by EFT, credit card, cheque or other method.

Schedule 12 – Subcontract requirements

General requirements for specified Subcontracts

In addition to its obligations under clause 15, for all Subcontracts valued at or over the amount stated in Item 5(a), the NOP must include requirements consistent with the provisions of the following clauses and schedules of this Agreement:

1. clause 8.1 – Codes of Practice;
2. clause 8.2 – No collusive arrangements;
3. clause 8.3(a)(i) – Work Health and Safety management, except that the submission and implementation of the Safe Work Method Statements is subject to the decision of the relevant NOP as principal contractor for Work, Health and Safety matters;
4. clause 8.3(a)(vi) – Aboriginal Participation in Construction;
5. clause 15 – Subcontractor relationships;
6. clauses 23 and 25 – Risk and liability;
7. clauses 24.2(c), 24.2(i)(i)(A), 24.2(i)(i)(B), 24.2(i)(i)(E) and 24.2(i)(i)(F) – Insurances;
8. clause 29 – Payment Claims;
9. clause 35 – Confidentiality and media releases and enquiries;
10. clause 36 – Intellectual Property;
11. clause 41.4 – Law and jurisdiction;
12. Schedule 12 (Subcontract requirements); and
13. Schedule 13 (Subcontractor's warranty) together with an obligation to execute and deliver the warranty to TfNSW (only if the Subcontractor is required by clause 15.7 to provide the warranty).

Schedule 13 – Subcontractor's warranty

Deed dated [insert]

Parties

Name **Transport for NSW** a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW)
ABN 18 804 239 602
Short form name **TfNSW**
Notice details [insert]

Name [insert]
ABN [insert]
Short form name **Subcontractor**
Notice details [insert]

Background

- A. The NOP has entered into the Agreement with TfNSW for the carrying out of the Works.
- B. The Subcontractor has entered into an agreement with the NOP for the Subcontract Work or Products, which are to be used by the NOP in performing the Agreement.
- C. In return for TfNSW allowing the Subcontract Work or Products to be used in the Works, the Subcontractor agrees to give the warranties, indemnities and other promises in this deed. The obligations created by this deed are in addition to the obligations of the Subcontractor to the NOP and do not affect any other rights or remedies available to TfNSW against the NOP or the Subcontractor.
- D. Refer to clause 15.7 of the Agreement.

1. Definitions and interpretation

1.1 Definitions

In this deed:

Subcontract Works or Products means [insert description of Works or Products to be delivered under the Subcontract.].

Warranty Period means [insert] years from the date of Work Package Completion.

All other capitalised expressions have the same meaning as given to them in the Agreement.

1.2 Interpretation

In this deed, the term Subcontractor includes Supplier. The terms Subcontractor, NOP and TfNSW include their successors and permitted assignees.

2. Terms of deed

2.1 Warranty

- (a) The Subcontractor warrants that all work performed and all Materials supplied by the Subcontractor as part of the Subcontract will:
 - (i) comply in all respects with the requirements of the Agreement;
 - (ii) to the extent that the quality of Materials or standard of workmanship is not specified in the Agreement, comply with the applicable industry standards, including (without limitation) the Building Code of Australia and any applicable Australian Standards; and
 - (iii) be fit for the purposes for which they are required.
- (b) The Subcontractor warrants that it will use reasonable skill and care in performing all work associated with the Subcontract.

2.2 Replacement or making good

- (a) The Subcontractor promises to replace or make good, to the reasonable satisfaction of TfNSW, any of the Subcontract Work or Products which are found, within the Warranty Period, to:
 - (i) be of a lower standard or quality than referred to in clause 2.1 of this deed; or
 - (ii) have deteriorated to such an extent that they are no longer fit for the purposes for which they were required.
- (b) The liability of the Subcontractor is reduced to the extent that deterioration is caused by:
 - (i) mishandling, damage before installation, or incorrect installation, in each case caused by others;
 - (ii) normal wear and tear;
 - (iii) incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
 - (iv) any other cause beyond the control of the Subcontractor.
- (c) Nothing in this deed affects the Subcontractor's liability with respect to the Subcontract Work or Products.

2.3 Costs

The Subcontractor promises to undertake, and meet the reasonable cost of, any work necessary to:

- (a) carry out any part of the Works to enable the requirements of clause 2.2 of this deed to be met; or
 - (b) restore or make good the Works after meeting those requirements,
- whichever TfNSW requires.

2.4 Indemnity

The Subcontractor indemnifies TfNSW against claims (including Claims, actions and loss or damage) arising out of breach by the Subcontractor of clauses 2.1 or 2.2 of this deed.

2.5 Notice of Defects

TfNSW may notify the Subcontractor in writing if it considers there has been any breach of the warranty in clause 2.1 of this deed or if TfNSW requires the Subcontractor to replace or make good any of the Subcontract Work or Products under clause 2.2 of this deed.

2.6 Time to remedy

The Subcontractor must do everything to remedy any breach notified to it, or to carry out any replacement or making good required under clause 2.5 of this Deed, within a reasonable time after receiving TfNSW's notice.

2.7 Failure to remedy

- (a) If the Subcontractor fails to complete the work specified in TfNSW's notice under clause 2.5 of this deed within a period determined by TfNSW to be reasonable in the circumstances, TfNSW may give written notice to the Subcontractor that TfNSW intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
- (b) If the Subcontractor fails to complete the work by the date specified in clause 2.7(a) of this deed, or another date agreed by the parties, TfNSW may have the work carried out by others, and the Subcontractor indemnifies TfNSW for the reasonable costs and expenses of doing so.

2.8 Urgent action by TfNSW

- (a) TfNSW may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 2.1 of this deed.
- (b) The Subcontractor agrees that TfNSW taking such action does not affect the warranty or any other obligation of the Subcontractor under this deed.
- (c) The Subcontractor indemnifies TfNSW for the reasonable costs and expenses paid or payable in taking that action.

2.9 Assignment

TfNSW may assign its rights and benefits under this deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.

2.10 Operation of deed

This deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by TfNSW.

Signing page

EXECUTED as a deed.

Signed for Transport for NSW, by its authorised delegate, in the presence of:

Signature of witness

Signature of officer

Name of witness (print)

Name of officer (print)

Signed, sealed and delivered by [insert name of Subcontractor] in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Schedule 15 – Apprenticeship and Traineeship Quarterly Report

Contract Number & Description	
--	--

Reporting Period (reports are due end of Mar, Jun, Sep, Dec)	<i>Eg April-June 2017</i>
---	---------------------------

Subcontractors used during reporting period (See Note 1)

Legal Name of Subcontractor	Project Site – Name and Address

Apprentices	Current quarterly hours	Current quarterly FTE *
<i>Eg Certificate III in Civil Construction Plant Operations</i>		
Trainees	Current quarterly hours	Current quarterly FTE*
<i>Eg Certificate IV in Civil Construction Supervision</i>		

- * To calculate the current quarterly “Full Time Equivalent” (FTE):
1. NOP reports hours worked by apprentices/trainees in the reporting period.
 2. Divide these hours by the number of working days for the reporting period, and divide by 7. This gives the FTE number of apprentices/trainees delivered by the project in that Quarter.

$$\frac{\text{Reported Apprentice/Trainee Hours}}{\text{Working Days in reporting Quarter} \times 7 \text{ hours}} = \text{FTE number of apprentices}$$

Note 1:
Only list the Subcontractors if they employ apprentices and/or trainees and the number of the Subcontractors’ apprentices and/or trainees is included in your quarterly report.

Schedule 16 –TOC

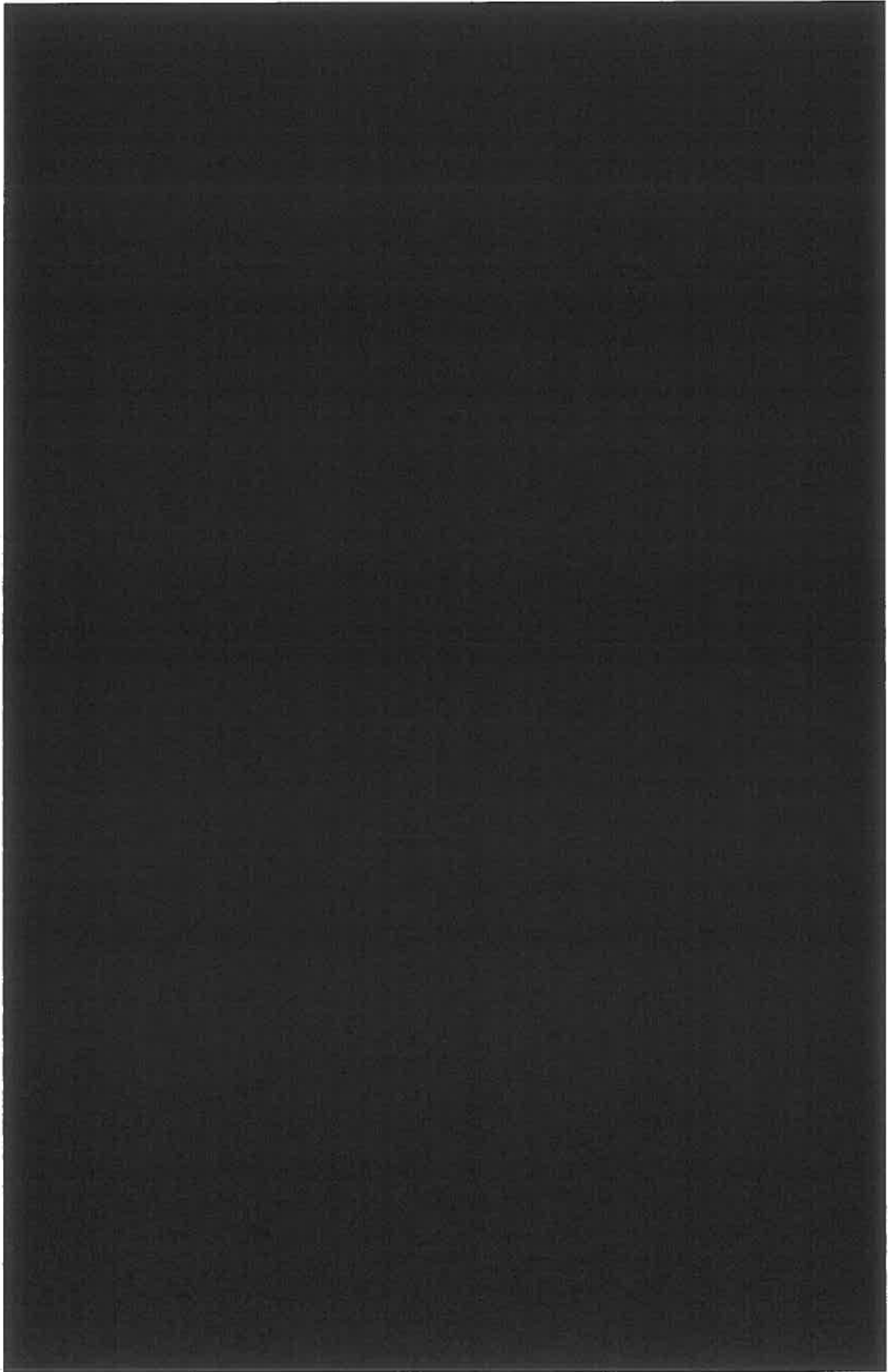
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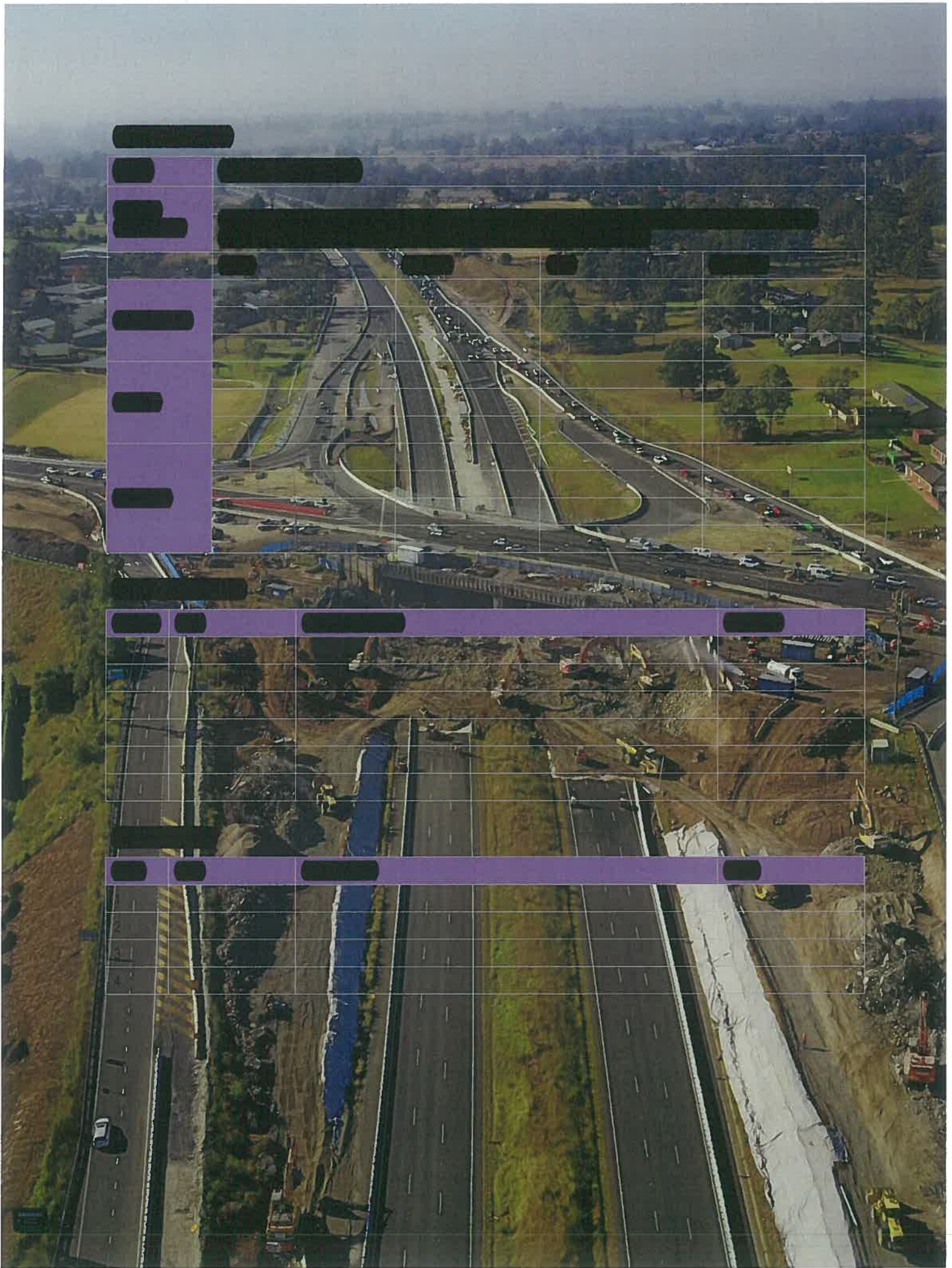


Schedule 17 – Building Code

1. The NOP must comply, and ensure that each other *Building Code Entity* complies, in the performance of the Agreement, with the requirements of the *Building Code* and the *BCIIP Act*, including by ensuring that no Subcontractor:
 - (a) where Item 10 of Schedule 1 specifies that the *Building Code* applies because *Commonwealth* funding (above the minimum thresholds specified in Schedule 1 of the *Building Code*) has been obtained for the project which the Works form part of:
 - (i) is, at the date of their engagement subject to an 'enterprise agreement' (as that term is defined in the *Fair Work Act 2009* (Cth)) that does not meet the requirements of section 11 of the *Building Code*;
 - (ii) is, at the date of their engagement subject to an 'exclusion sanction' (as that term is defined in section 3(3) of the *Building Code*) or is excluded from undertaking work funded by a state or territory government, unless approval to engage that *Building Code Entity* has been obtained from the ABC Commissioner; and
 - (iii) without limiting any other obligation on the NO under the Agreement, uses any Materials in the performance of the Works that do not, at a minimum, comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690); or .2 at the date of their engagement, has failed to fully comply with any adverse decision, direction or order made by a court or tribunal for a breach of the *BCIIP Act*, a Designated Building Law, a work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW)) or competition and consumer and consumer law (including, but not limited to, the *Competition and Consumer Act 2010* (Cth)).
2. Compliance with the *Building Code* will not relieve the NOP from its responsibility to perform the Agreement, or from liability for any Defect in the Works arising from compliance with the *Building Code*.
3. Where Item 10 of Schedule 1 states that a Workplace Relations Management Plan (Commonwealth) is required, the NOP must comply, and must ensure that each of its Subcontractors complies, with the version of the Workplace Relations Management Plan (Commonwealth) provided by the NOP that TfNSW notifies the NOP has been approved by the ABCC.
4. The NOP must maintain adequate records of the compliance with the *Building Code* by each *Building Code Entity*.
5. The NOP must notify the ABCC of any breach or suspected breach of the *Building Code* as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
6. The NOP acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *BCIIP Act* and the *Building Code* and will ensure that each *Building Code Entity* complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the *BCIIP Act*, requests to interview any person under section 74 of the *BCIIP Act*, requests to produce records or documents under sections 74 and 77 of the *BCIIP Act* and requests for information concerning matters relating to the *Building Code* under section 7(c) of the *Building Code*.

7. If the NOP does not comply with the requirements of the Building Code or the BCIIIP Act in the performance of the Agreement such that a sanction is applied by the ABC Commissioner, the ABCC or the Minister for Employment, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the *Commonwealth* or its agencies.
8. The NOP agrees that it and each other Building Code Entity will agree to a request from TfNSW, the Commonwealth (or any person authorised by the Commonwealth) or any person contemplated by the BCIIIP Act or the Building Code as having a right to obtain information from a Building Code Entity, to provide such information as is relevant to confirming whether a Building Code Entity has complied with the Building Code within a specified period, in person, by fax, by post or other means.
9. Where Item 10 of Schedule 1 specifies that Commonwealth funding (above the minimum thresholds specified in Schedule 1 of the Building Code) has been obtained for the project which the Works form part of, the NOP must, prior to engaging any Subcontractor, obtain and retain from each proposed Subcontractor a copy of a 'Declaration of Compliance', substantially in the form set out in the document titled 'Code for the Tendering and Performance of Building Work 2016 – Model Clauses Type B: Model Clauses for Tender and Contract Documentation for Contractors and Subcontractors'.
10. Without limiting any other obligation on a Building Code Entity under the Building Code, the NOP must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the requirements of this Schedule 17.





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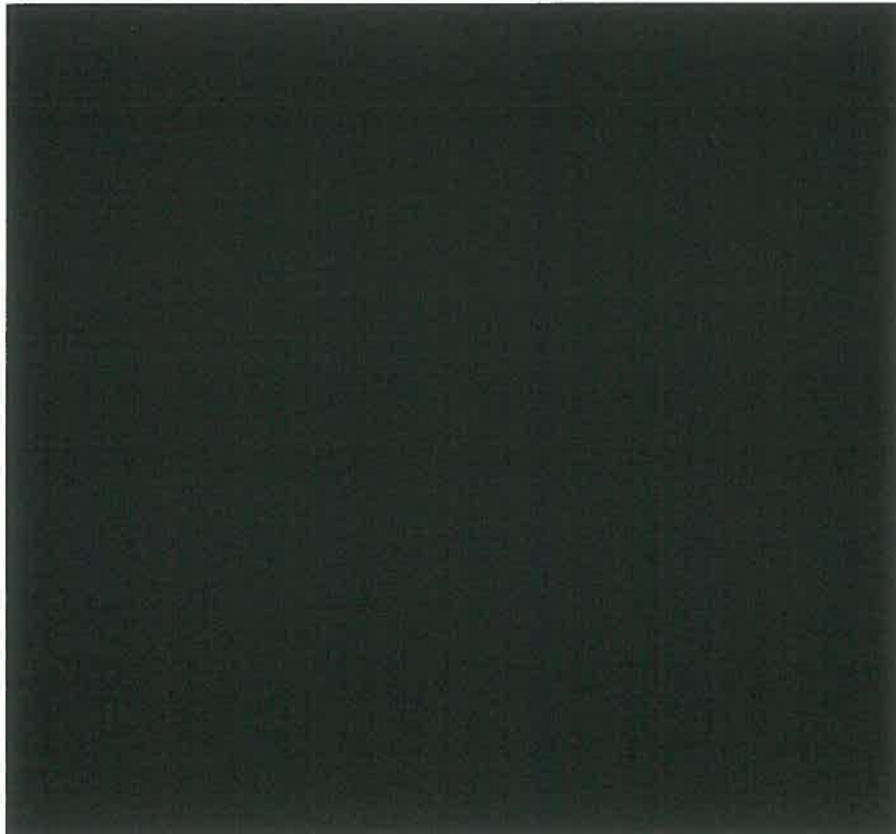
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Annexure A – Project Brief



Project Brief for Project Alliance Agreement for

**The Northern Road Upgrade Stage 3 North Project
Glenmore Parkway to Jamieson Road**

Penrith, New South Wales

Contract Number: 19.0000303661.1784

September 2019

Document Author: Transport for NSW

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About this document

Project data

Project name:	Western Sydney Infrastructure Plan, The Northern Road Upgrade - Stage 3 North
Contract type:	Project Alliance Agreement
Contract number:	19.0000303661.1784
Location:	Penrith, New South Wales
Road name:	The Northern Road and M4 Motorway
Local government area(s):	Penrith City Council

Data for this document

Document name:	The Northern Road Upgrade - Stage 3 North Project - Project Brief
Version and date:	Draft 1
Prepared by:	Transport for NSW
Objective document ID and Version No.	TBC

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- Appendix 3 Design Packages verified under the D&C Deed
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- Appendix 6 Variations, Minor Variations and Minor Concessions directed under the D&C Deed

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1 Introduction

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2 Definitions and Interpretation

2.1 Interpretation

In this Project Brief, the following interpretation should be applied unless otherwise agreed by the ALT, or unless the context clearly indicates otherwise:

- (a) The term 'Contractor' should be read to mean 'NOP' as defined in the Details of the PAA.
- (b) The term 'TfNSW Representative' should be read to mean 'TfNSW'.
- (c) The term 'Project Verifier' should be read to mean 'the Parties' as provided in the Details of the PAA.
- (d) The term 'deed', 'Deed' or 'Project Deed' should be read to mean 'PAA'.
- (e) The term 'this deed', 'this Deed', or 'this Project Deed' should be read to mean 'the PAA'.
- (f) A reference to a clause in the D&C Deed should be read as a reference to an equivalent clause in the PAA to the extent that an equivalent clause exists in the PAA.

If an ambiguity or discrepancy is found in the Project Brief it should be addressed in accordance with Clause 1.5 of the PAA.

2.2 Definitions

In this Project Brief, unless agreed by the ALT, or unless the context otherwise indicates:

Contractor's Work means all things and tasks which the Contractor is, or may be, required to carry out or do under the deed to comply with its obligations under the deed to design and construct the Project Works and Temporary Works and to perform the Landscaping Maintenance, whether that work is undertaken at the Site or at any other location.

D&C Deed means the "Design and Construct Project Deed, The Northern Road Upgrade Stage 3 North Glenmore Parkway to Jamison Road", dated 6 December 2016

Environmental Documents means the REF Determination and Appendix 4 to the Scope of Works and Technical Criteria.

Interface Works means the work to be carried out by the Contractor which will interface with the Interface Contractor's Work, being the Works from the southern extent of the Site to Chainage 150.

Interface Contractor means the contractor engaged to undertake the Interface Contractor's Work, as notified to the Contractor by TfNSW.

Interface Contractor's Work means the works to be carried out on the Western Sydney Infrastructure Plan - The Northern Road Upgrade - Stage 3 South Project, which will interface with the Contractor's Work.

Local Roads means all local roads, service roads, state highways, regional roads and main roads, including their associated road reserves, which:

- a) cross;
- b) are adjacent to;
- c) intersect;
- d) connect to;
- e) are made redundant by;
- f) become service roads as part of the road networks as a consequence of; or
- g) are in any way affected by,

the Works, Property Works, Service Works or Temporary Works.

Local Road Corridors means those areas indicated in the Scope of Works and Technical Criteria, which include the Local Road Works Areas.

Local Road Works means the construction, modification, reinstatement and improvement of Local Roads which the Contractor must design and construct and hand over to TfNSW or the relevant Authority in accordance with the deed and as specified in the Scope of Works and Technical Criteria.

Local Road Works Areas means those areas indicated in the Scope of Works and Technical Criteria, which are to be provided for Local Road Works.

Maintenance Plan means the Project Plan referred to as the Maintenance Plan in the Scope of Works and Technical Criteria.

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

Project Works means the physical works which the Contractor must design, construct, complete and hand over under the deed including the Works, Interface Works, Service Works, Property Works and Local Road Works, but excluding Temporary Works and Landscaping Maintenance.

Proof Engineer means the person or persons appointed to perform the role of Proof Engineer.

Property Works means:

- a) those works described or specified in Sections 2.3.2 and 6.1 of the Scope of Works and Technical Criteria; and
- b) all other works necessary to ensure that:
 - i. the amenity of;
 - ii. access to and egress from; or
 - iii. the functionality of,

any property (including any structure thereon) including such property located outside of the Site, the Local Road Works Areas and the Temporary Works Areas which is affected by the Contractor's Work, is maintained to at least the standard that it was in immediately prior to the Early Works Date or, if none, the date of the D&C Deed including:

- iv. fencing work to separate the property located outside the Site from the property located within the Site, the Local Road Works Areas and the Temporary Works Areas;
- v. construction of access;
- vi. construction of drainage; and

vii. reinstatement and landscaping.

Quality Manager means the person appointed to that position to fulfil the role of Quality Manager for the Project Works.

REF means the review of environmental factors specified in Appendix 4 of the Project Brief.

REF Determination means:

- a) the determination of the REF and, if applicable, the determination of any other review of environmental factors in connection with the Contractor's Work;
- b) all conditions to the determination referred to in paragraph (a) above and the REF and includes all documents incorporated by reference, as those determinations and conditions may be modified from time to time; and
- c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Road Occupancy Authority means the body responsible for issuing a Road Occupancy Licence for any lane or shoulder of the Existing Highway or the Works or as otherwise directed by TfNSW Representative.

Service means any service or item of infrastructure, including water, electricity, gas, fuel, telephone, existing drainage, sewerage, railway, airport, industrial waste disposal and electronic communications service.

Service Works means the construction, modification, or relocation of Services all of which are to be designed and constructed by the Contractor and handed over to TfNSW, an Authority or any other person in accordance with the deed.

Site means the land and airspace more particularly described as the Site in the Scope of Works and Technical Criteria.

Site Access Schedule means document provided in Appendix 2 of the Project Brief.

Temporary Works means any temporary physical structure, appliance or thing used in the carrying out of the Contractor's Work but which does not form part of the Project Works.

Temporary Works Areas means those areas indicated in the Scope of Works and Technical Criteria.

Works means the physical works, Services, materials and equipment within the Site which the Contractor must design, construct, complete and hand over to RMS in accordance with the deed excluding:

- a) the Local Road Works;
- b) the Property Works; and
- c) the Service Works.

3 Scope of Work and Technical Criteria

The Scope of Works and Technical Criteria is provided in Appendix 1 and is titled:

- Exhibit A – Scope of Works and Technical Criteria for Design and Construction of Western Sydney Infrastructure Plan - The Northern Road Upgrade - Stage 3 North Project (dated November 2016)

This Scope of Work and Technical Criteria was Exhibit A of the D&C Deed.

A reference to “RMS” and/or “Roads and Maritime” in the Scope of Works and Technical Criteria provided in Appendix 1 is to be read as a reference to TfNSW or Transport for NSW as appropriate.

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4 Additional Technical Requirements

The following Additional Technical Requirements have been adopted from the D&C Deed. These requirements should be read consistent with Section 2.1 Interpretation.

4.1 Proof Engineer

(Taken from D&C Deed Clause 2.5)

- (a) Any Proof Engineer is to be engaged by the Contractor, ~~at the Contractor's cost.~~
- (b) The Contractor:
 - (i) must obtain RMS TfNSW approval to the identity of any Proof Engineer and any replacement Proof Engineer, each of whom must have the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause ~~2.5~~ and this deed; and
 - (ii) warrants to RMS TfNSW that each Proof Engineer:
 - A. has at least the qualifications, experience and expertise described in Schedule 47; and
 - B. has the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause ~~2.5~~ and this deed.
- (c) Where the Contractor requests RMS TfNSW's approval to the identity of any Proof Engineer and any replacement Proof Engineer ~~pursuant to clause 2.5(b)(i)~~, RMS TfNSW Representative must provide a response to the Contractor within 20 Business Days from the date the Contractor's request and any other information required by RMS TfNSW Representative is submitted to RMS TfNSW Representative.
- (d) A Proof Engineer's role is to:
 - (i) attend relevant Project Design Group meetings;
 - (ii) in respect of the relevant elements ~~identified in Item 14 of Schedule 1~~ of each of the Project Works and the Temporary Works:
 - A. undertake a full and independent assessment, without exchange of calculations or similar information, of all factors influencing the final integrity of those elements of the Project Works and associated Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;
 - B. provide to the Contractor, with copies to the RMS TfNSW Representative and the Project Verifier, a comprehensive report on the assessment ~~required under clause 2.5(d)(ii)A~~ with conclusions and in accordance with the requirements of the ~~section of the~~ Scope of Works and Technical Criteria ~~identified in Item 29(a) of Schedule 1~~; and

- C. independently certify that those Project Works and any associated Temporary Works:
- 1) are adequate and suitable for their intended purpose; and
 - 2) comply with the Scope of Works and Technical Criteria, and issue the certification document ~~referred to in clause 12.2(h)(iv)~~; and
- (iii) make determinations on matters this deed expressly requires be determined by the Proof Engineer.
- (e) The parties acknowledge and agree that:
- (i) the Proof Engineer is obliged to act independently of the Contractor, RMS TfNSW and any of their Subcontractors;
 - (ii) the Proof Engineer must not be an employee of the Contractor, RMS TfNSW, the Project Verifier or any of their Subcontractors; and
 - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer to the Contractor must be in writing and must be made available to RMS TfNSW Representative, upon request.
- (f) The Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
- (i) to attend design meetings; and
 - (ii) access to the Construction Site (to the extent possible ~~having regard to clause 9.1A(a)~~) and all places at which the Contractor's activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor,
- all as may be:
- (iii) necessary or reasonably required by the Proof Engineer or RMS TfNSW Representative, to allow the Proof Engineer to perform its obligations under this deed; and
 - (iv) requested by the Proof Engineer or directed by RMS TfNSW Representative.
- (g) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against RMS TfNSW.

(Taken from D&C Deed Schedule 1, Item 14)

<p>Elements of the Project Works and the Temporary Works to be assessed and verified by Proof Engineer (Clause 2.5(d)(ii))</p>	<p>Those elements of the Project Works and Temporary Works including:</p> <ul style="list-style-type: none"> (a) bridge spans exceeding 35 metres; (b) retaining walls with effective retained heights greater than 6 metres; (c) post-tensioned concrete structures; (d) bridge decks with skew exceeding 35 degrees; (e) precast arch structures; (f) bridges with a superstructure consisting of precast prestressed concrete girders and cast in-situ deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure; (g) cable stayed or suspension bridges; and (h) steel orthotropic decks.
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Schedule 47 (Taken from D&C Deed Schedule 47)

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

- (a) Demonstrated experience in the design of complex bridges and structures, which shall mean for the purposes of this Schedule, bridges or structures with any of the following features:
 - (i) bridge spans exceeding 35m;
 - (ii) retaining walls with effective retained height greater than 6m;
 - (iii) cable stayed or suspension bridges;
 - (iv) steel orthotropic decks;
 - (v) bascule span bridges;
 - (vi) post tensioned concrete structures;
 - (vii) bridge decks with skew exceeding 35 degrees;
 - (viii) railway bridges over roads and road bridges over railways;
 - (ix) structures under railways;
 - (x) precast arch structures; and
 - (xi) bridges with a superstructure consisting of precast prestressed concrete girders and cast in-situ deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure.
- (b) Proven ability in structural analysis and design of complex bridges and structures.
- (c) Quality Management System 3rd party certified to AS/NZS ISO 9001.
- (d) Range of suitable structural analysis, bridge design and CAD software.
- (e) Qualifications admitting to MIEAust and National Professional Engineers Register.
- (f) At least 5 years experience in complex structural analysis and design of complex bridges and structures.
- (g) Knowledge of Australian Standard AS 5100, RMS Bridge Technical Directions, RMS Standard Drawings.
- (h) Knowledge of RMS specifications for bridgeworks.

- (i) Knowledge of scientific investigation and testing and specialist knowledge of materials and products used in bridge construction.
- (j) At least 5 years' experience in undertaking the checking of structural design of complex bridges and structures as a proof engineer in the past 10 years.

4.2 Environmental Manager

(Taken from D&C Deed Clause 2.7)

- (a) ~~In accordance with clause 2.2(b)~~, the Contractor must ensure that there is an Environmental Manager who performs the role referred to in Schedule 19.
- (b) The Contractor must provide to RMS TfNSW Representative a certificate executed by the Environmental Manager in the form of Schedule 29 every 3 months from the Early Works Date or, if none, from the date of this deed until the Date of Project Construction Completion.

Schedule 19 *(Taken from D&C Deed Schedule 19)*

- (a) The Environmental Manager must:
 - (i) possess a recognised tertiary qualification which includes Environmental Science, Environmental Engineering, Planning or Natural Resources and have recent relevant experience in an environmental management position on similar projects;
 - (ii) have a minimum 8 years environmental management experience, with extensive experience in the preparation and implementation of environmental management plans and environmental systems;
 - (iii) experience in regulatory liaison and consultation;
 - (iv) facilitate an induction and training programme for all persons involved in construction activities;
 - (v) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the environmental requirements of this deed is identified; and
 - (vi) be engaged full time on or around the Construction Site during the execution of the Contractor's Work until the Date of Project Construction Completion with responsibility to develop and implement the Environmental Management Plans.

Schedule 29 *(Taken from D&C Deed Schedule 29)*

Schedule 29

Environmental Manager's Certificate

(clause 2.7(b))

Western Sydney Infrastructure Plan - The Northern Road Upgrade - Stage 3 North Project
("Project")

To: RMS Representative
From: *[Insert Environmental Manager's name]*
(ABN *[Insert Environmental Manager's ABN]*)
("Environmental Manager")

In accordance with the terms of clause 2.7(b) of the deed between Roads and Maritime Services and Lendlease Engineering Pty Ltd (ABN 40 000 201 516) ("Contractor") dated in or about December 2016 with respect to the Project, I hereby certify that between the following dates *[Insert dates of preceding 3 month period]*

- (a) the Contractor's Environmental Management System under section 2.5.1 of the Scope of Works and Technical Criteria was in accordance with AS/NZS ISO 14001;
- (b) Subcontractors' Environmental Management Systems which form a part of the Contractor's Environmental Management System were in accordance with AS/NZS ISO 14001;
- (c) the Contractor complied with and satisfied the requirements of RMS D&C G36;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Project Verifier and RMS Representative in accordance with the deed

Signed by
[Insert Environmental Manager's name]

4.3 Project Plans

(Taken from D&C Deed Clause 3.8)

- (a) The Contractor must prepare the Project Plans specified in the Appendix to the Scope of Works and Technical Criteria identified in Item 29(b) of Schedule 1.

4.4 Maintenance Plan

(Taken from D&C Deed Clause 3.9)

- (a) As a condition precedent to Project Construction Completion, the Contractor must develop a Maintenance Plan, in accordance with the requirements of this deed.
- (b) ~~Without limiting clause 3.8,~~ the Maintenance Plan must contain the contents required by the Scope of Works and Technical Criteria.

4.5 Community relations

(Taken from D&C Deed Clause 3.11)

The Contractor:

- (a) acknowledges that the areas where the Contractor's Work is being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
 - (i) required by the Scope of Works and Technical Criteria;
 - (ii) contained in the Community Involvement Plan; and

- (iii) reasonably required by RMS from time to time.

4.6 Complaints and notifications

(Taken from D&C Deed Clause 3.15)

- (a) The Contractor must immediately notify ~~RMS TfNSW~~ in writing if any:
 - (i) Complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,by anyone (including any Authority or any landowner, lessee or licensee near the Construction Site) against the Contractor or any of its Subcontractors or their respective employees in respect of or associated with any aspect of the carrying out of the Contractor's Work ~~including:~~

4.7 Interface with the Interface Contractor

(Taken from D&C Deed Clause 3.18)

- (a) The Contractor acknowledges that:
 - (i) the Interface Works form part of the Project Works;
 - (ii) the Interface Works may interface with the Interface Contractor's Work; and
 - ~~(iii) it is not entitled to make any Claim arising out of or in connection with any:~~
 - ~~A. issues with the Interface Contractor that result in either the Contractor incurring additional cost or suffering delay; or~~
 - ~~B. direction or determination made by RMS Representative as contemplated by this clause 3.18, except a direction under clause 3.18(b)(i)A.2).~~
- (b) The Contractor must:
 - (i) cooperate and liaise with the Interface Contractor for the co-ordination of the Interface Contractor's Work with the Contractor's Work, including:
 - A. allowing the Interface Contractor to enter the Site after the Date of Interface Milestone Completion:
 - 1) at the times agreed with the Interface Contractor; or
 - 2) failing agreement, as agreed by the ALT ~~directed by RMS Representative,~~to carry out the Interface Contractor's Work;
 - B. providing to the Interface Contractor, on its reasonable request, within a reasonable period of the request, the Contractor's design and work methodology information for the purpose of co-ordinating the design of the Interface Works with the Interface Contractor's Work;
 - C. avoiding hindering or impeding the execution of the Interface Contractor's Work;

- D. co-ordinating the work staging, construction methods and safety matters in respect of the Contractor's Work and the Interface Contractor's Work; and
 - E. co-ordinating traffic management;
- (ii) not cause any damage to the Interface Contractor's Work;
 - (iii) fully comply with all directions issued by the ALT ~~RMS Representative~~ regarding cooperation by the Contractor with the Interface Contractor and co-ordination of the Contractor's Work with the Interface Contractor's Work;
 - (iv) make proper and adequate allowance in its program for the Interface Works and the Interface Contractor's Work, and compliance with this clause;
 - (v) immediately notify the ALT ~~RMS Representative~~ of any issues with the Interface Works or the Interface Contractor which may impact Project Construction Completion or ~~the Date for Construction~~ Project Completion;
 - (vi) comply with the provisions of any relevant environmental protection licence (if any and applicable) and use its best endeavours to ensure that the Interface Contractor complies with such environmental protection licence while on Site; and
 - (vii) attend interface co-ordination meetings (if any) as directed by the ALTRMS Representative.

4.8 Environmental requirements

(Taken from D&C Deed Clause 5.2)

- (a) The Contractor must carry out the Contractor's Work:
 - (i) in an environmentally responsible manner so as to protect the Environment; and
 - (ii) ~~subject to clause 5.1(b)(ii) and clause 5.2(b)~~, in accordance with the Environmental Documents, the Environmental Management Plans and all relevant Law.

4.9 Road occupancy

(Taken from D&C Deed Clause 5.14)

- (a) Where any Contractor's Work will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Existing Highway or the Works, the Contractor must lodge with the Road Occupancy Authority:
 - (i) an application ~~in the form set out in Schedule 42~~ for a Road Occupancy Licence, providing all relevant details of the proposed Contractor's Work; and
 - (ii) a traffic control plan as required by ~~the section of the Scope of Works and Technical Criteria identified in Item 29(1) of Schedule 1.~~
- (b) An application and traffic control plan ~~under clause 5.14(a)~~ must be lodged as early as possible prior to the date when the Contractor intends to undertake the Contractor's Work (and in any event no less than 10 days prior to that date), so as to allow the Road Occupancy Authority to review the application and traffic

- control plan, determine whether or not to approve the application and any conditions that are to apply and, where appropriate, make arrangements for implementation of the Road Occupancy Licence.
- (c) In considering whether to issue a Road Occupancy Licence, the Road Occupancy Authority may consider the following factors:
- (i) the expected traffic flow at the time of the proposed Contractor's Work;
 - (ii) the relative importance and urgency of the proposed Contractor's Work; and
 - (iii) any other factor which the Road Occupancy Authority believes to be relevant.
- (d) A Road Occupancy Licence will not be issued where the Road Occupancy Authority considers that traffic volumes are likely to exceed the capacity of the subject road. This will occur during holiday periods, and may also occur during a special event or during other periods of, or other circumstances which give rise to, increased traffic volumes, reduced traffic speeds or lowered capacity of the road. For this purpose a special event is a local or regional event which generates increased traffic volumes, reduces traffic speed or lowers the capacity of the existing road. The Contractor must comply with the Road Occupancy Licence conditions as required by ~~the section of the Scope of Works and Technical Criteria identified in Item 29(m) of Schedule 1.~~
- (e) Not used.
- (f) A Road Occupancy Licence may contain such terms and conditions as the Road Occupancy Authority sees fit, including:
- (i) a limitation on the hours during which the proposed Contractor's Work may be carried out; and
 - (ii) specific traffic control measures that must be taken.
- (g) The Contractor must liaise with RMS personnel to facilitate processing of applications for a Road Occupancy Licence as efficiently as possible.
- (h) The Contractor must not undertake any Contractor's Work, which has the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Existing Highway, the Works or a Local Road:
- (i) without a Road Occupancy Licence;
 - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
 - (iii) otherwise than in accordance with the terms and conditions of a Road Occupancy Licence.

4.10 Australian Industry Participation Plan (AIP Plan)

(Taken from D&C Deed Clause 5.17)

~~If required by Item 20A of Schedule 1,~~ the Contractor must comply with and implement the Certified AIP Plan.

4.11 Quality management and verification

(Taken from D&C Deed Clause 11.2)

- (b) The Contractor must ensure a Quality Manager is engaged who must:

- (i) independently certify the effectiveness and integrity of the Contractor's quality system in achieving conformity with the requirements of this deed;
 - (ii) report to ~~RMS Representative, relevant RMS Assistant Representatives, the relevant RMS Surveillance Officers and the Project Verifier~~ on quality issues in accordance with the requirements of this deed; and
 - (iii) have the requisite experience and ability described for the Quality Manager in Schedule 19.
- (c) The Contractor must provide to RMS TfNSW Representative a certificate executed by the Quality Manager in the form of:
- (i) Schedule 9:
 - A. every 3 months from the Early Works Date or, if none, from the date of this deed up to the end of the Landscaping Maintenance Period; and
 - B. ~~at the end of the Landscaping Maintenance Period as a condition precedent to RMS Representative issuing a notice to the Contractor under clause 14.5(b)(i);~~
 - (ii) Schedule 10 as a condition precedent to Project Construction Completion and as a condition precedent to ~~Final~~ Project Completion;
 - (iii) ~~Schedule 10A as a condition precedent to Interface Milestone Completion; and~~
 - (iv) Schedule 11 upon the expiry of the last Defects Correction Period and as a condition precedent to ~~Final~~ Project Completion.

Schedule 19 (Taken from D&C Deed Schedule 19)

- (a) The Quality Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Work and verified relevant experience in quality management systems within the construction industry;
 - (ii) be full time on or around the Construction Site during the construction phase of the Contractor's Work with responsibilities limited to quality management of the Contractor's Work;
 - (iii) have experience on projects similar to the Project Works and Temporary Works;
 - (iv) be available as RMS TfNSW primary contact with the Contractor on matters of quality;
 - (v) give RMS TfNSW Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels; and
 - (vi) be given authority by the Contractor to act freely and independently and to stop the progress of the relevant part of the Contractor's Work when any non-conformity with the quality requirements of this deed is identified and at specified Hold Points.

Schedule 9 (Taken from D&C Deed Schedule 9)

Schedule 9

**Quality Manager's Certificate –
Progressive and at end of
Landscaping Maintenance
Period**

(clause 11.2(c)(i), clause 14 5(d)(i) (when applicable) and clause 23.2 (definition of "Final Completion"))

Western Sydney Infrastructure Plan - The Northern Road
Upgrade - Stage 3 North Project ("Project")

To: RMS Representative
From: [Insert Quality Manager's name]
("Quality Manager")

In accordance with the terms of clause 11.2(c)(i) [and clause 14 5(d)(i)] of the deed between Roads and Maritime Services and Lendlease Engineering Pty Ltd (ABN 40 000 201 516) ("Contractor") dated in or about December 2016 with respect to the Project, I hereby certify that between the following dates [Insert dates of preceding 3 month period]:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with RMS D&C Q6 and AS/NZS ISO 9001:2008 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor complied with and satisfied the requirements of RMS D&C Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system were in accordance with AS/NZS ISO 9001:2008;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to RMS Representative and the Project Verifier in accordance with the deed.

.....
Signed by
[Insert Quality Manager's name]

Schedule 10 (Taken from D&C Deed Schedule 10)

Schedule 10

**Quality Manager's Certificate -
Construction Completion / Final
Completion**

(clauses 11.2(c)(ii) and 23.2 (definition of "Construction Completion" and "Final Completion"))

Western Sydney Infrastructure Plan – The Northern Road
Upgrade – Stage 3 North Project ("Project")

To: RMS Representative
From: [Insert Quality Manager's name]
("Quality Manager")

In accordance with the terms of clauses 11.2(c)(ii) and 23.2 (definitions of "Construction Completion" and "Final Completion") of the deed between Roads and Maritime Services and Lendlease Engineering Pty Ltd (ABN 40 000 201 516) ("Contractor") dated in or about December 2016 with respect to the Project, I hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of RMS D&C Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 12.2 of the deed;
- (c) the release of all Hold Points has been undertaken in accordance with the deed, and
- (d) all documentation has been recorded and submitted to the Project Verifier and RMS Representative in accordance with the deed.

Signed by
[Insert Quality Manager's name]

Schedule 11 (Taken from D&C Deed Schedule 11)

Schedule 11

**Quality Manager's Certificate –
Final Completion / Last Defects
Correction Period**

(clauses 11.2(c)(iv) and 23.2 (definition of "Final Completion"))

Western Sydney Infrastructure Plan – The Northern Road
Upgrade – Stage 3 North Project ("Project")

To: RMS Representative
From: [Insert Quality Manager's name]
("Quality Manager")

In accordance with the terms of clauses 11.2(c)(iv) and 23.2 (definition of "Final Completion") of the deed between Roads and Maritime Services and Lendlease Engineering Pty Ltd (ABN 40 000 201 516) ("Contractor") dated in or about December 2016 with respect to the Project, I hereby certify that as at the date of expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) all design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with this deed; and
- (c) all documentation has been recorded and submitted to RMS Representative in accordance with the deed.

Signed by
[Insert Quality Manager's name]

4.12 Hold Points and Witness Points

(Taken from D&C Deed Clause 11.3)

The Contractor must comply with the Hold Point and Witness Point:

- (a) procedures set out in the Scope of Works and Technical Criteria and the Quality Plan.

4.13 Project quality and non-conformity

(Taken from D&C Deed Clause 11.4)

- (a) The Contractor must comply with the procedure for non-conformities set out in the Scope of Works and Technical Criteria and the Quality Plan.

4.14 Property Works

(Taken from D&C Deed Clause 13.2)

- (a) Where any Property Works are required to be carried out on a Parcel, the Contractor must give a written notice to the owner or owners of the property (with a copy to RMS TfNSW Representative) which:
 - (i) describes the Property Works to be carried out;
 - (ii) requests access for the purpose of carrying out the Property Works; and
 - (iii) specifies the intended date for commencement of the Property Works, not less than 10 days prior to the day which the Contractor intends to commence the Property Works.
- (b) If the owner or owners of a property do not provide the Contractor with sufficient access to carry out the Property Works from either:
 - (i) the date notified in the notice under ~~clause 13.2(a)~~; or
 - (ii) such other date as may be agreed between the Contractor and the owner or owners,
the Contractor must:
 - (iii) give RMS TfNSW Representative a notice stating this; and
 - (iv) at RMS TfNSW's election, either:
 - A. not carry out the Property Works until RMS TfNSW Representative gives the Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event ~~clause 13.2(a)~~ will reapply and ~~RMS Representative must either, in his or her absolute discretion:~~
 - ~~1) waive the requirement for the relevant Property Works to be completed for Interface Milestone Completion and/or Construction Completion to be achieved, in which case those Property Works must otherwise be completed in accordance with this deed and within a reasonable time, and in any event, prior to the expiry of the relevant Defects Correction Period; or~~
 - ~~2) use RMS Representative's discretion under clause 17.5(f) to extend the Date for Interface Milestone Completion and/or Date~~

~~for Construction Completion to address any delay to Interface Milestone Completion and/or Construction Completion caused by the owner or owners of a property failing to provide the Contractor with sufficient access; or~~

- B. if the Contractor demonstrates to the satisfaction of RMS TfNSW Representative that:
- 1) the Contractor has used its best endeavours to obtain sufficient access to carry out the Property Works; and
 - 2) the Contractor will be delayed in achieving ~~Interface Milestone Completion and/or Project Construction Completion~~ by the owner or owners of a property failing to provide access,
- ~~not carry out the relevant Property Works at all, in which case RMS Representative must give a notice to the Contractor directing a Variation under clause 15.2(a) deleting the relevant Property Works, following which relevant adjustments must be made under clause 15.4.~~
- (c) Upon being given access to any property 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 Parcel.
- (d) The Contractor must:
- (i) carry out the Property Works with respect to each Parcel:
 - A. in accordance with the Scope of Works and Technical Criteria;
 - B. so that they are fit for their purpose; and
 - C. in accordance with local government planning policies; and
 - (ii) in carrying out the Property Works, use reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or upon which, Property Works are being undertaken.
- (e) The Contractor must:
- (i) rehabilitate any part of a Parcel to the state it was in immediately prior to the Contractor obtaining access to the Parcel; and
 - (ii) otherwise repair any damage or degradation to any part of a Parcel arising out of or in any way in connection with the performance of its obligations under this clause ~~13.2~~,
- including using all reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or upon which, the Property Works were undertaken.
- (f) The completion of all Property Works under this clause ~~13.2~~ including all work under ~~clause 13.2(e)~~ is a condition precedent to Project Construction Completion.
- (g) The Contractor must, after completion of the Property Works with respect to a Parcel, including the work described in ~~clause 13.2(e)~~, and as a condition precedent to Project Construction Completion, provide to RMS TfNSW Representative:
- (i) a deed in the form of Schedule 35, duly executed by the owner or owners of any part of the Parcel; or

- (ii) if the Contractor demonstrates to the satisfaction of RMS TfNSW Representative, acting reasonably, that the Contractor is unable to obtain a deed under ~~clause 13.2(g)(i)~~ despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner or owners have failed or refused to execute a deed in the form of Schedule 35 within 21 days of it being provided by the Contractor to the owner or owners following the proper completion of the Property Works including the work described in ~~clause 13.2(e)~~.
- (h) The acceptance of a deed or statement provided by the Contractor under ~~clause 13.2(g)~~ by RMS TfNSW Representative is not approval by RMS TfNSW or RMS TfNSW Representative of the Contractor's performance of its obligations under this ~~clause 13.2~~.
- ~~(i) The Contractor must indemnify RMS against any liability to or claim by the owner or owners of any part of a Parcel where:~~
 - ~~(i) such owner or owners have not duly signed a deed in the form of Schedule 35; and~~
 - ~~(ii) the liability or claim arises out of or in connection with the Property Works, — but the Contractor's liability shall be reduced proportionally to the extent that the liability to, or claim by, the owner or owners of any part of a Parcel arises out of an act or omission of RMS, RMS Representative or another agent, contractor or consultant engaged by RMS (but excluding the Project Verifier).~~
- (j) ~~The section 2.3.2 of the Scope of Works and Technical Criteria identified in Item 29(r) of Schedule 1:~~
 - (i) is indicative only of the scope of those Property Works of the kind referred to in paragraph (b) of the definition of "Property Works" ~~in clause 23.2~~; and
 - (ii) does not limit or otherwise affect the Contractor's obligations under this deed in relation to the Property Works.

Schedule 35 (Taken from D&C Deed Schedule 35)

Schedule 35

Owner's Deed Poll

(clauses 13.2(g) and 13.2(i))

This deed poll is in favour of Roads and Maritime Services.

Property Address: [Insert Property Address]

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:
[Insert Description of Property Works]
2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release Roads and Maritime Services from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

SIGNED as a deed poll.

Signed sealed and delivered by

in the presence of:

Signature

Signature of Witness

Name of Witness in full

4.15 Notice of accidents and incidents

(Taken from D&C Deed Clause 13.3)

Where the Contractor becomes aware of:

- (a) any accidents involving damage to persons or property occurring upon or in the vicinity of the Construction Site or in the supply chain where the Chain of Responsibility Provisions apply; or
- (b) any incidents affecting the Environment,

the Contractor must:

- (c) promptly give RMS TfNSW Representative a detailed written report of the accident or incident; and
- (d) otherwise comply with Law, the Project WHS Management Plan, the Chain of Responsibility Management Plan, the Environmental Management Plans and the Community Involvement Plan.

4.16 Cleaning up

(Taken from D&C Deed Clause 13.4)

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

- (a) keep the Construction Site and any other areas affected by the Contractor's Work clean and tidy and free of refuse;

- (b) regularly remove rubbish, litter, graffiti and surplus material from the Construction Site and any other areas affected by the Contractor's Work; and
- (c) as a condition precedent to Project Construction Completion, remove all rubbish, surplus materials, plant, equipment and Temporary Works from the Construction Site and any other areas affected by the Contractor's Work except where the retention of any of these are required for the correction of Defects during the Defects Correction Periods and this is approved in writing by ~~RMS~~ TfNSW Representative.

4.17 Temporary Works Areas

(Taken from D&C Deed Clause 13.6)

As a condition precedent to Project Construction Completion, the Contractor must reinstate all Temporary Works Areas and the Contractor must as a minimum:

- (a) rehabilitate all Temporary Works Areas to the state they were in immediately prior to the Contractor obtaining access to them; and
- (b) otherwise repair any damage or degradation to any part of a Temporary Works Areas arising out of or in any way in connection with the performance of its obligations under this deed.

4.18 Landscaping Maintenance

(Taken from D&C Deed Clause 14.1)

~~Without limiting the Contractor's obligations under clause 16,~~ the Contractor must during the Landscaping Maintenance Period perform the Landscaping Maintenance so that:

- (a) the Works are at all times during the Landscaping Maintenance Period open to the public for the safe, continuous and efficient passage of vehicles;
- (b) the Works remain fit for their intended purposes; and
- (c) the requirements of the Environmental Documents are met.

5 Site Access Schedule

RMS TfNSW will give the NOP access to each Works Site in accordance with the Site Access Schedule provided in Appendix 2 and titled:

- Exhibit B – Site Access Schedule for Design and Construction of Western Sydney Infrastructure Plan – The Northern Road Upgrade – Stage 3 North Project (dated November 2016).

The Site Access Schedule identifies each Work Site as Site, Local Road Works Areas and Temporary Works Areas.

This Site Access Schedule was Exhibit B of the D&C Deed.

CONFIDENTIAL DRAFT

6 Design Packages verified under the D&C Deed

The IFC Design Documentation identified in Appendix 3 was accepted for use in the construction of the Works under the D&C Deed. This IFC Design Documentation was:

- (a) Submitted by the Contractor to the ~~RMS~~ TfNSW Representative, the Project Verifier, the Proof Engineer (where relevant) and all relevant authorities; and
- (b) Verified by the Project Verifier by providing a signed document in the form of a Schedule 15 Project Verifier's Certificate - Design Documentation, without any comments or conditions in respect of the IFC Design Documentation.

The elements of the Works covered by the IFC Design Documentation in Appendix 3 shall be constructed in accordance with this IFC Design Documentation.

Notwithstanding the verification of this IFC Design Documentation under the D&C Deed, the NOP must ensure that this IFC Design Documentation fully complies with the PAA unless otherwise agreed by the ALT.

CONFIDENTIAL DRAFT

7 REF Approvals

The REF and Addendum REFs that apply to the Project are provided in Appendix 4. The REF is titled:

- The Northern Road Upgrade Glenmore Parkway, Glenmore Park to Jamison Road, South Penrith, Review of Environmental Factors (dated October 2016)

CONFIDENTIAL DRAFT

8 RFI Responses closed under the D&C Deed

The Requests for Information (RFIs) closed under the D&C Deed are identified in Appendix 5.

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9 Variations, Minor Variations and Minor Concessions directed under the D&C Deed

The Variations, Minor Variations and Minor Concessions directed under the D&C Deed are identified in Appendix 6.

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Appendix 1 Scope of Works and Technical Criteria

Document Title	Document Name	Dated	Aconex Ref.
Exhibit A- Scope of Works and Technical Criteria	Main Body	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 1 - Locality Map	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 2 - Site, Local Road Works Areas and Temporary Works Areas	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 3 - Property Adjustments	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 4 - Additional Environmental Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 6 - RMS General Specifications	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 7 - RMS Technical Specifications	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 8 - Reference Documents	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 9 - Geometric Performance and Design Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 10 - Drainage Performance and Design Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 11 - Geotechnical Performance and Design Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 12 - Pavement Performance Design Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 13 - Structural Performance and Design Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 15 - Urban Design Performance and Design Requirements	November 2016	

Document Title	Document Name	Dated	Aconex Ref.
Exhibit A- Scope of Works and Technical Criteria	Appendix 16 - Delineation and Signposting Performance and Design Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 18 - Intelligent Transport Systems	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 19 - Provisional Sum Work	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 20 - Traffic Control Signals	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 21 - Project Plan Requirements	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 22 - RMS Site Facilities	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 24 - Contractor Documentation Schedule	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 25 - Maintenance Standards During Construction	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 26 - Information Signs	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 27 - Road Occupancy	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 28 - Certified AIP Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 29 - Asset Items and Sub-Items -Specified Design Lives	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 30 - Concept Design	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 31 - Contractor's Urban and Landscape Design	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 32 - Contractor's Specifications	November 2016	
Exhibit A- Scope of Works	Appendix 35 - Initial Project	November	

Document Title	Document Name	Dated	Aconex Ref.
and Technical Criteria	Management	2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 36 - Initial Environmental Management Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 37 - Initial Design Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 38 - Initial Construction Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 39 - Initial Chain of Responsibility Management Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 40 - Initial Community Involvement Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 41 - Initial Work Health & Safety Management Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 42 - Initial Earthworks Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 43 - Initial Traffic Management and Safety Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 44 - Enterprise Training Management Plan	November 2016	
Exhibit A- Scope of Works and Technical Criteria	Appendix 45 - Initial Workplace Relations Management Plan	November 2016	

Appendix 2 Site Access Schedule

Document Reference	Dated	Aconex Ref.
Exhibit B - Site Access Schedule	November 2016	

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Appendix 3 Design Packages verified under the D&C Deed

No.	Design Package Title	Discipline Code	Schedule 15 Dated	Aconex Ref.
1	PW01 - Property Adjustments - 100% FDD (C002 only - not full set)	PW	17/05/2017	
2	RD02 Road Geometry (Excl Cross Road) - FDD	RD	4/11/2017	
3	RD01 Road Geometry Cross Road only - FDD	RD	30/07/2017	
4	SM01 Drainage - Cross Road only - FDD	SM	11/10/2017	
5	SB01 Bridge over M4 Motorway - Piling Only - For approval IFC	SB	30/08/2017	
6	SM03 Drainage - Transverse Excl Cross Road - FDD	SM	13/10/2017	
7	ST02 Noise Walls - FDD	ST	29/08/2018	
8	SB02 Bridge over M4 Motorway incl RSW - updates for approval IFC	SB	12/12/2017	
9	SM02 Drainage incl Ramp Variation - for Approval (16/11/2017, 21/11/2017)	SM	22/12/2017	
10	SW02 REW - FDD (RW-2A)	SW	1/02/2018	
11	PV01 Pavement - Cross Road - for comments close out	PV	8/02/2018	
12	IT01 ITS/VMS, Electrical & Comms - Updated FDD	IT	14/12/2017	
13	LS02- Landscape Design - C6 Revision (schedules 20 & 26)	LS	12/12/2017	
14	PV02 Pavement & Subsoil Drainage (Excl. Cross Road) FDD	PV	8/02/2018	
15	ST01 Retaining Walls (North and South) - FDD updates	ST	6/02/2018	
16	RF01 Road Furniture, Fencing, Signs & Linemarking - (UPDATED) FDD for Approval	RF	13/02/2018	
17	SW01 REW - FDD (RW-03A, RW-03B)	SW	28/02/2018	

No.	Design Package Title	Discipline Code	Schedule 15 Dated	Aconex Ref.
18	TS01 Traffic Signals - Final Design Documentation (M4 on hold) signed	TS	3/05/2018	
19	ST03 Sign Gantries, Sign & VMS/ITS Footings	ST	13/06/2018	
20	PW02 Property Adjustments Design FDD (Schedules 20 and 26)	PW	8/06/2018	
21	UT03 - P1048675 - OPTUS - OPTIC FIBRE - NSW (SYD) - FIBRE NETWORK	UT	12/07/2018	
22	TS01 Traffic Signals - M4 Interchange TCS 2306	TS	29/09/2018	
23	UT02 - Section 6, Western Side - Smith To Jamison (ARP3458)	UT	20/08/2018	
24	UT02 - Section 2, Western Side- Maxwell To Smith (ARP3457)	UT	20/08/2018	
25	UT02 - WESTERN SIDE - GLENMORE PARKWAY TO TUKARA RD (CH000 TO CH1815) ARP3195 (Section 7)	UT	18/09/2018	
26	UT02 - POWER - SECTION 3 - EASTERN SIDE - M4 TO JAMISON ROAD KINGSWOOD (CH1100-CH3900) - ARP3456	UT	10/09/2018	
27	UT02 - ARP3556- TNR3/ Homestead Rd To M4, Section 4.2	UT	18/04/2018	
28	UT02 - ARP3460- TNR3/Glenmore Parkway Section 4.1	UT	29/06/2018	
29	UT02 - ARP3459 - Western Side - Tudara To Maxwell (CH1750 TO CH485), Section 5	UT	16/04/2018	
30	UT02 - ARP3591- TNR3/Glenmore Parkway Section 4.1.1	UT	18/04/2018	
31	UT02 - Section 1, Cross Road (PLT0936)	UT	12/07/2018	
32	UT05-163400WW - Waste Water Deviation	UT	18/04/2018	

Appendix 4 REF Approvals

No.	REF Description	REF Reference	Date Approved	Aconex Ref.
1	REF-TNR3 Approved REF		21/09/2016	
2	REF Addendum - ACM encapsulation		11/12/2017	
3	REF Addendum - Crushing and Grinding		30/01/2018	
4	REF Addendum - Homestead Road Closure		20/04/2018	
5	REF Addendum - Additional haulage routes		25/06/2018	
6	REF Addendum - Utility Relocation		4/07/2018	
7	REF Addendum - Additional haulage routes		19/07/2018	
8	REF Addendum - ACM Encapsulation Super Bowl		18/07/2018	
9	REF Addendum - Telecom Cable Haul		23/10/2018	
10	REF Addendum - Additional Utilities Installation		5/03/2019	
11	REF Addendum - KFC Sign Relocation Work		24/05/2019	

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No	Date	Description	Status	Priority	Action	Owner
1	15/01/2024	Review project brief	Completed	High	Finalize project brief	Project Manager
2	20/01/2024	Review project brief	Completed	High	Finalize project brief	Project Manager
3	25/01/2024	Review project brief	Completed	High	Finalize project brief	Project Manager
4	30/01/2024	Review project brief	Completed	High	Finalize project brief	Project Manager

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No.	Name	Title	Company	Address	City	Postcode
			[REDACTED]			
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ID	Description	Start Date	End Date	Status	Priority	Owner
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No	ID	Description	Start Date	End Date	Status	Remarks
1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No	Date	Description	Status	Priority	Action	Owner
1	20/01/2024	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	20/01/2024	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	20/01/2024	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

No	Description	Quantity	Unit	Rate	Amount	Total
		[REDACTED]				

CONFIDENTIAL