



Western Harbour Tunnel

Package 2: WHT Tunnels and Mechanical and Electrical
Fitout

Incentivised Target Cost Contract

Contract No: 22.0000139213.2067

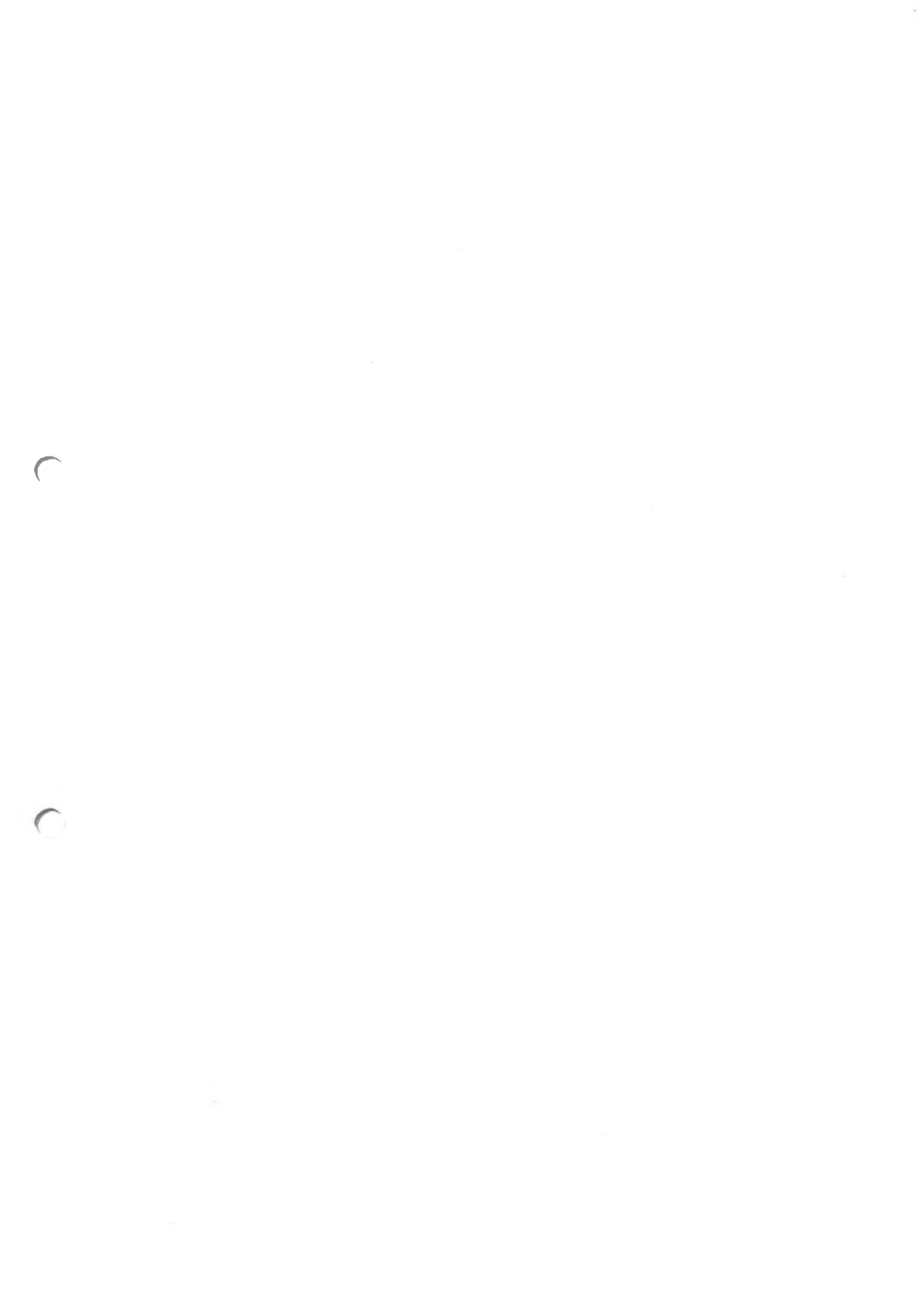
Transport for NSW

(ABN 18 804 239 602)

and

ACCIONA Construction Australia Pty Ltd

(ABN 66 618 030 872)



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THIS DEED is made on 30 November 2022

BETWEEN:

- (1) **Transport for NSW (ABN 18 804 239 602)** a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) of 231 Elizabeth Street, Sydney NSW 2000 (the **Principal**); and
- (2) **ACCIONA Construction Australia Pty Ltd (ABN 66 618 030 872)** whose registered office is at 174 Turner Street, Port Melbourne Victoria 3207 (the **Contractor**).

RECITALS:

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

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

In this deed, unless the context otherwise indicates:

Abandon means [REDACTED]

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

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

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

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

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

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

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

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

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

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

AM Activities means the operation, maintenance and repair of the Motorway on and from the Date of Opening Completion.

AM Completion Obligations means the activities which must be performed by the AM Contractor to enable Opening Completion or Completion to be achieved.

AM Contractor means a person or persons engaged by the Principal to operate or maintain the Motorway (or any part of it), or to provide services or advice in relation to any AM Activities, as notified to the Contractor by or on behalf of the Principal from time to time.

Amended Third Party Agreement has the meaning given to that term in clause 3.7(a)(v)(C).

Anti-slavery Commissioner means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

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

Appointed Principal Contractor means ACCIONA Construction Australia Pty Ltd.

Approval means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority

or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as applicable):

- (a) to carry out the Contractor's Activities;
- (b) to deal with, transport or dispose of Contamination or Waste;
- (c) in connection with the Motorway, the Construction Site and any Extra Land or the Project Works;
- (d) for the use, occupation and operation of the Project Works after Opening Completion and Completion; or
- (e) otherwise to comply with Law,

and includes:

- (f) the Planning Approval; and
- (g) any EPL issued in relation to the Contractor's Activities,

but does not include:

- (h) any direction given by the Principal or the Principal's Representative pursuant to this deed; or
- (i) the exercise by the Principal of its rights under this deed.

Approved Insurer means:

- (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia with a rating specified in paragraph (e) of this definition;
- (b) Lloyds Underwriters;
- (c) a NSW Self Insurance corporation managed statutory insurance scheme or a Treasury Managed Fund insurance scheme with the NSW Government;
- (d) the Comcover insurance scheme for the Australian Federal Government; or
- (e) an insurer with a rating of not less than A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc or such other rating approved by the Principal (where such approval must not be unreasonably withheld or delayed).

Approved Subcontract means:

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

Artefact has the meaning given to that term in clause 7.17(a).

Asset has the meaning given to that term in the main body of the SWTC.

Asset Management Information means the information required to be delivered by the Contractor in relation to asset management as set out in the main body, Appendix C.2 and

Appendix G.2 of the SWTC and includes the O&M Manuals (as defined in the SWTC) and as built drawings.

Asset Manager Interface Deed means the deed entered into by the Contractor, the Asset Manager and the Principal in accordance with clause 3.4.

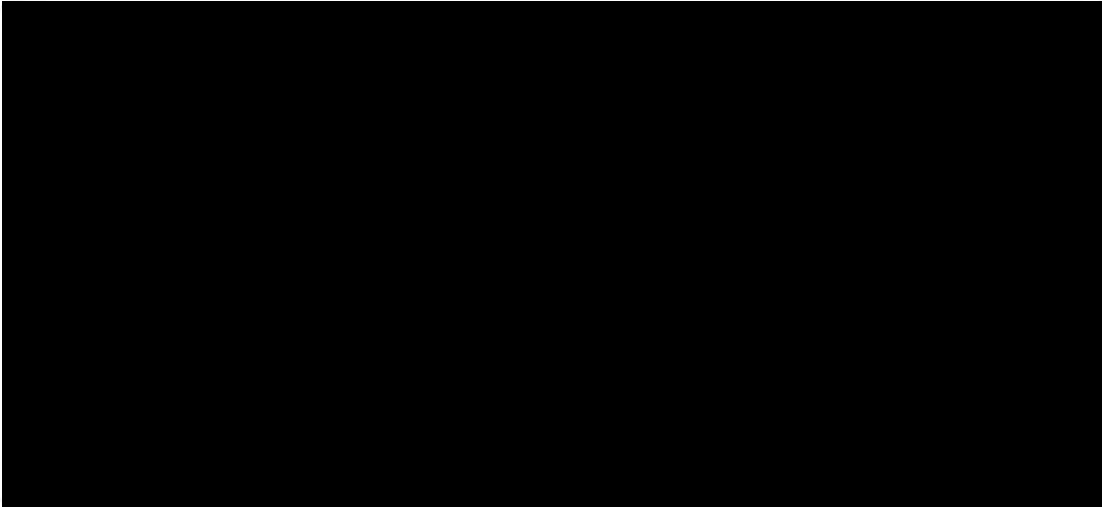
Associates means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excluding:
 - (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the Acoustics Advisor;
 - (iv) the Contractor, each entity that comprises the Contractor and its Subcontractors (of any tier);
 - (v) any Interface Contractors and their respective subcontractors;
 - (vi) the Tolling Equipment Works Subcontractor; and
 - (vii) employees, agents, consultants and officers of the persons listed in paragraphs (a)(i) to (a)(vi) above; and
- (b) in respect of the Contractor, its Subcontractors (of any tier), each entity that comprises the Contractor, the Parent Company Guarantors and any of the respective employees, agents, contractors or officers of the Contractor, its Subcontractors or the Parent Company Guarantors, but excludes:
 - (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the Acoustics Advisor; and
 - (iv) employees, agents, consultants and officers of the persons listed in paragraphs (b)(i) to (b)(iii) above.
- (c) in respect of an entity (other than the Principal and the Contractor), its Related Bodies Corporate, its contractors of any tier and the employees, agents and officers of that entity, its Related Bodies Corporate and those contractors.

Authority includes:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, Utility Services, the Utility Service Works, the Local Areas or the Local Area Works.

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



Baseline Non-Contestable Utilities Works Costs means, in relation to an item of Non-Contestable Utility Works, the amount specified in Schedule A1 (*Contract Particulars*) for that item being the assumed costs payable by the Contractor to the owner, operator or controller of the relevant Utility Service for the relevant Non-Contestable Utilities Works.

Beaches Link has the meaning given to that term in section 1.8 of the SWTC.

BL means Beaches Link.

BL/P2 Interface Deed means the Interface Deed to be entered into between the Principal, the BL Contractor and the Contractor in accordance with clause 3.4(a) and substantially in the form of Part B of Schedule A12 (*Interface Deeds*).

BL Contractor means the Interface Contractor or Interface Contractors carrying out any works related to Beaches Link.

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

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

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

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

Certificate of Completion (RIC Handover Works) means a certificate issued by the relevant RI Independent Certifier certifying that the WHT Southern Tunnel Works or RI Interface Works have achieved "Completion (WHT Southern Tunnel Works)" or "Opening Completion" (as applicable) under the RI Contract.

Certificate of Completion (WFU Handover Works) means a certificate issued by the independent certifier for the WFU Contract certifying that the WFU Handover Works have achieved "Completion" of the relevant "Portion" under the WFU Contract.

Chain of Responsibility Guideline means the document contained in Attachment C.1-2 of Appendix C.1 of the SWTC.

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

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

Change in Codes and Standards means a change in the Codes and Standards (or any new Codes and Standards) taking effect after the date that is 20 Business Days prior to the date of this deed, excluding a change in the Codes and Standards which, as at the date that is 20 Business Days prior to the date of this deed:

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

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

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

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

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

- (e) in respect of Tax;
- (f) in respect of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (or related regulations and legislative instruments) or other Laws relating to the Australian Building and Construction Commission or the Building Code;
- (g) which was caused or contributed to by any act or omission of the Contractor or its Associates; or
- (h) which, as at the date of this deed:
 - (i) was published or of which public notice had been given, including:
 - (A) as a possible amendment, repeal or change in an existing Law or a possible new Law or judgment; or
 - (B) where such Law does not come into force until after the date of this deed; or

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

Change in Planning Approval means a change in a Planning Approval, or the introduction of a Planning Approval, which has been obtained by the Principal which:

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

CJM means Customer Journey Management.

CJP means Customer Journey Planning.

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

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

Codes and Standards means:

- (a) the codes, standards and specifications specified in the SWTC;
- (b) AP Policy, NSW Guidelines, NSW Government Environmental Management Guidelines (fourth edition) (December 2019), NSW Government Supplier Code of Conduct (February 2020), WHS Guidelines, Training Management Guidelines (October 2021), Quality Management System Guidelines for Construction (December 2019), GREP; and
- (c) any other codes, standards, NSW Government policies, guidelines and requirements applicable to the Contractor's Activities or specified or required by this deed,

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

Collateral Warranty Deed Poll means the deed poll titled "Collateral Warranty Deed Poll" to be executed by the Contractor in substantially the same form as Schedule A20 (*Collateral Warranty Deed Poll*).

Commencement Date means the date on which the last of the Conditions Precedent have been satisfied or waived in accordance with clause 2A.

Commercially Sensitive Information means:

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

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

Commonwealth means the Commonwealth of Australia.

Commonwealth Funded Building Work means Building Work in items 1-8 of Schedule 1 of the Building Code, other than Building Work to which item 10 of that Schedule applies.

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

Completion means the stage in the execution of the Contractor's Activities when the Contractor has satisfied all the conditions precedent to Completion set out in Part C of Schedule C3 (*Conditions Precedent to Completion Stages*).

Completion Steering Committee means the group referred to in clause 13.26.

Completion Working Group means the group referred to in clause 13.27.

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

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

Condition Precedent means a condition precedent set out in Schedule A1 (*Contract Particulars*).

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

Consequential Loss means any:

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

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

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

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

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

Construction Site means:

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

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

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

Contamination means:

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

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

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

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

Contractor Developed IP has the meaning given to that term in clause 9.12(b).

Contractor Documentation Schedule means Appendix C.2 of the SWTC.

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

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

- (a) the Reimbursable Work, the Provisional Sum Work and the Post Completion Activities;
- (b) the activities covered by the Management Fee, Design Fee and Preliminaries Fee; and

- (c) without limiting paragraphs (a) or (b):
 - (i) the correction of Defects;
 - (ii) the provision of Construction Plant and Material;
 - (iii) the design, construction, supply, delivery, installation, integration, fabrication, transportation, testing, commissioning and hand-over of the Project Works;
 - (iv) the provision of Temporary Works; and
 - (v) anything incidental or ancillary to the obligations in paragraphs (a) or (b).

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

Contractor's Program means:

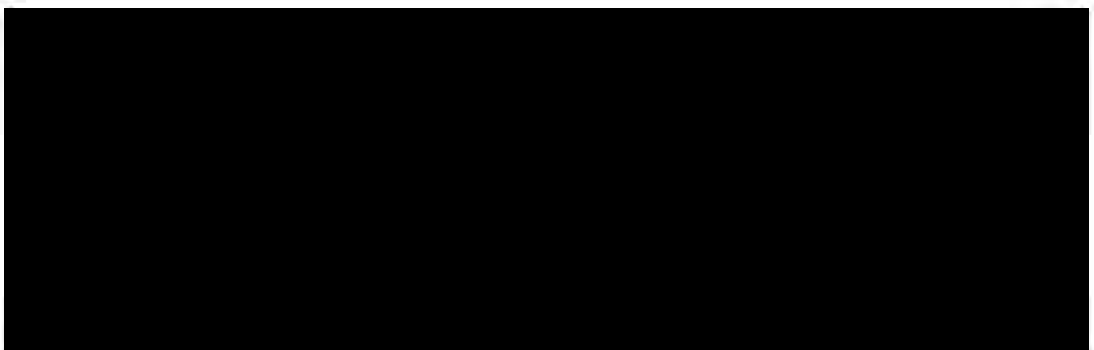
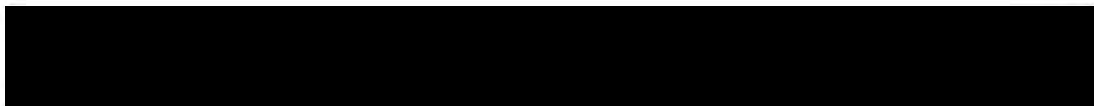
- (a) until such time that paragraph (b) below applies, the program set out in Schedule E7 (*Contractor's Program*); and
- (b) the latest version of the program prepared and provided by the Contractor on an Open Book Basis in accordance with clause 14.2, and which has not been rejected by the Principal's Representative in accordance with clause 13.13(h)(iii)(C).

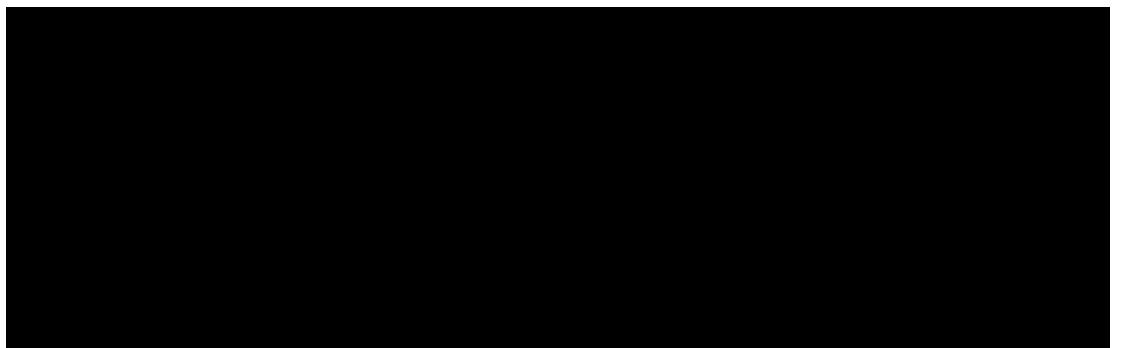
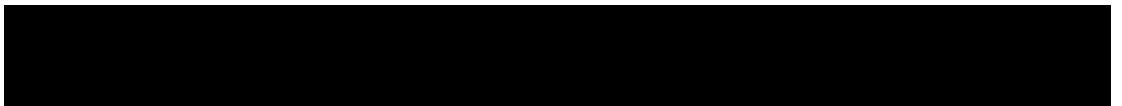
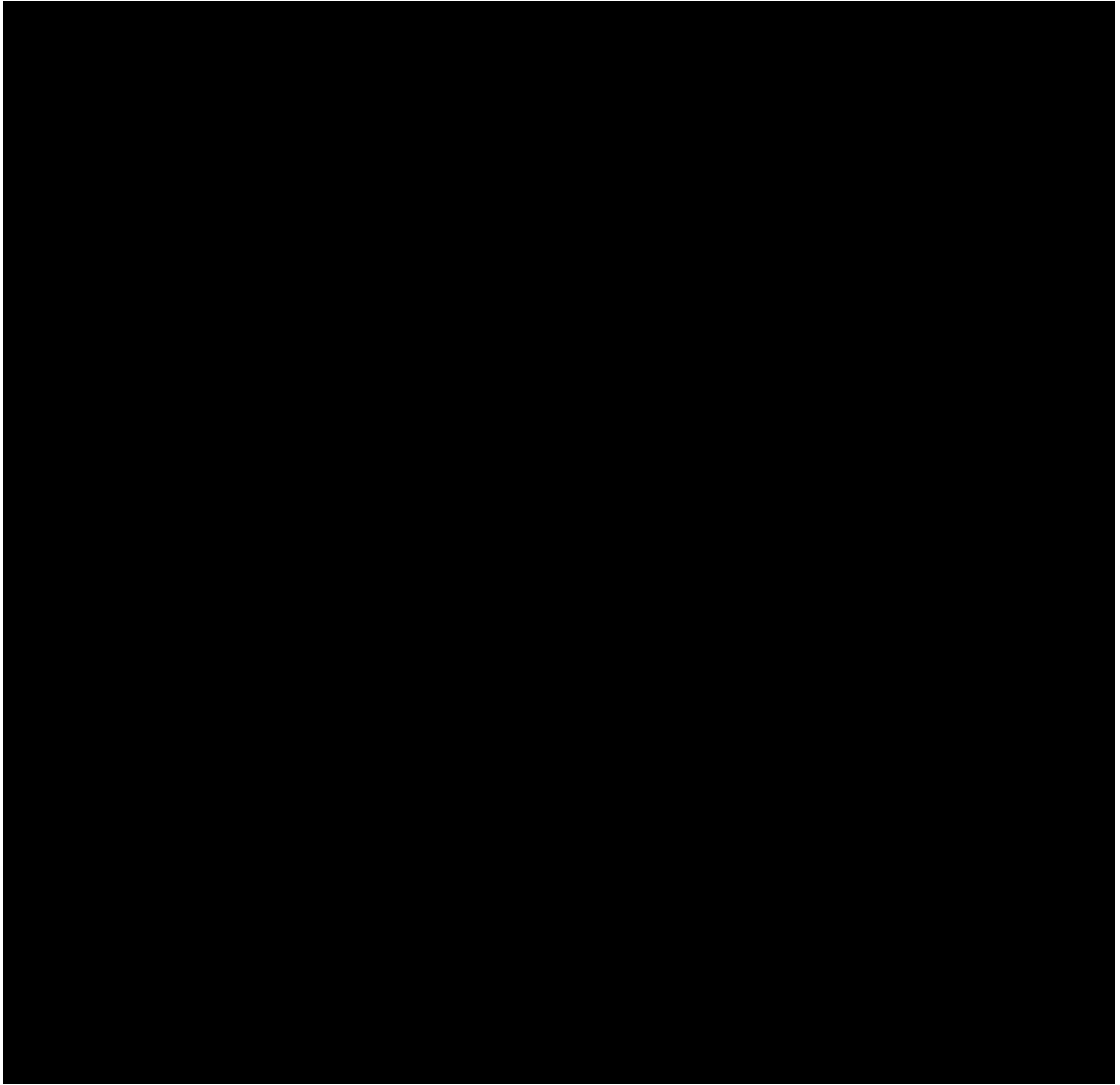
Contractor's Representative means:

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

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

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





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

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

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

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

DAB means the Dispute Avoidance Board.

DAB Agreement means the agreement in connection with the Contractor's Activities substantially in the form of Schedule B9 (*DAB Agreement*).

Date for Completion means the date set out as the Date for Completion in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*), or such later date determined in accordance with the terms of this deed.

Date for Handover Completion means, in respect of a Handover Portion, the date set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in respect of that Handover Portion, or such later date determined in accordance with the terms of this deed.

Date for Opening Completion means the date set out as the Date for Opening Completion in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*), or such later date determined in accordance with the terms of this deed.

Date of Completion means the date notified in a Notice of Completion as the date that Completion was achieved.

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

Date of Opening Completion means the date notified in a Notice of Opening Completion as the date Opening Completion was achieved.

Day 1 Clauses means clauses 1, 2, 2A, 3.15, 3.18, 3.24, 5, 6.1, 6.2, 6.5, 7.19, 8.8, 10, 14.2, 15.14, 17.3 to 17.7B, 17.9 to 17.11, 17.13, 19, 20.1, 20.2, 20.3, 21, 23 and 24 and any other clauses or schedules required to have commenced in order to give effect to those clauses.

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

Defect means any:

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

(b) any:

- (i) cracking, shrinkage, movement or subsidence in the Project Works or Temporary Works; or
- (ii) other aspect of the Project Works, Temporary Works or Contractor's Activities,

which is not in accordance with the requirements of this deed, but does not include any damage following Opening Completion (or, in respect of a Handover Portion, after the relevant Date of Handover Completion) that was not caused or contributed to by the Contractor or its Associates.

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

Deliverable means the Project Works, the Temporary Works, the Delivery Phase Maintenance, the Landscaping Maintenance and any other deliverable required to be delivered or goods and services required to be provided by or on behalf of the Contractor under the Project Documents (or any part of them).

Delivery Phase Maintenance means the maintenance to be carried out by the Contractor in accordance with clause 3.17.

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

Design Fee means the lump sum amount set out in Schedule F1 (*Payment*) in respect of the Design Work, which is on account of those items listed in Part B - clause 5 of Schedule F1 (*Payment*), as adjusted:

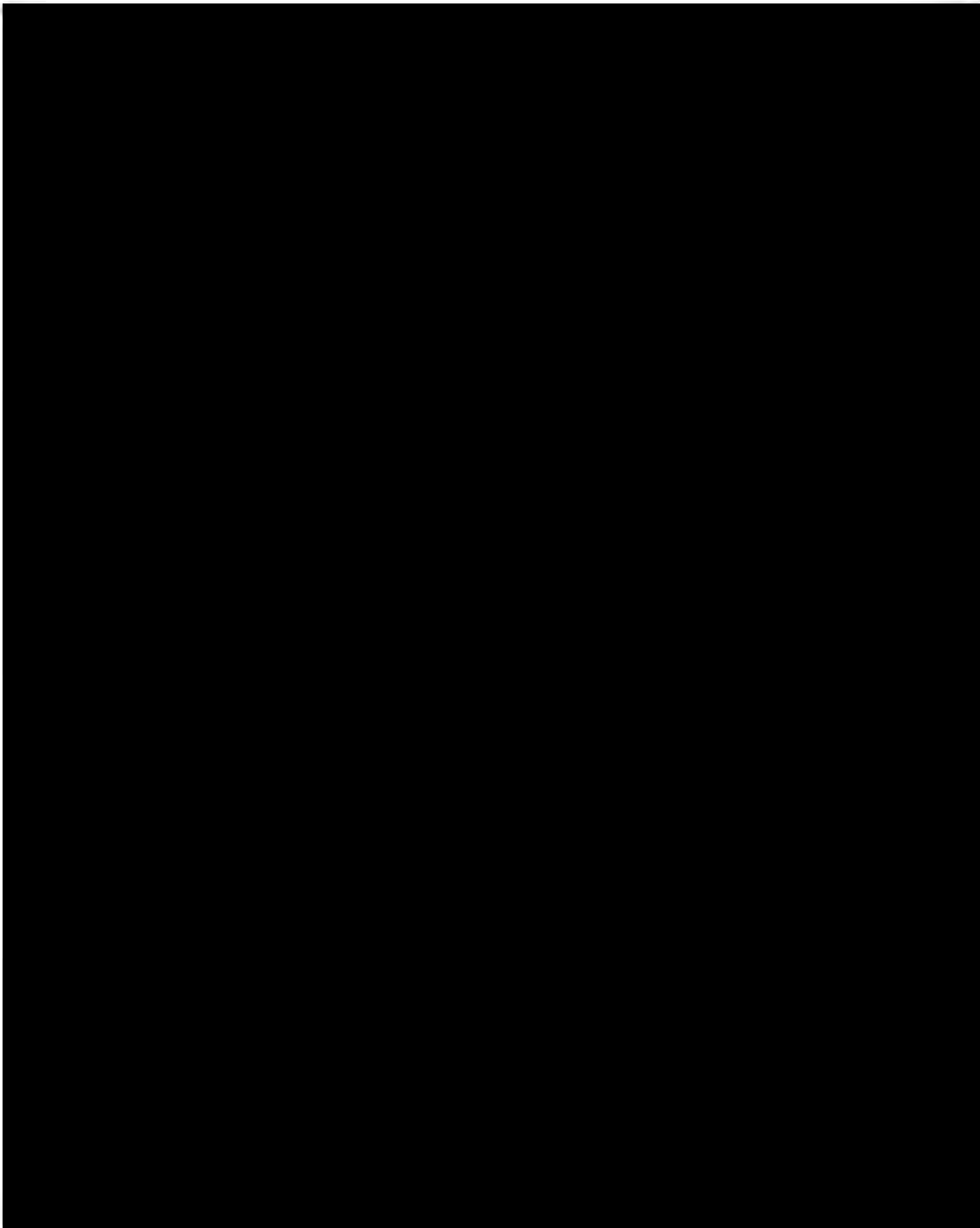
- (a) by any Design Fee Adjustment for any Design Fee Adjustment Events in accordance with clause 4.3A;
- (b) pursuant to Schedule A3 (*Pre-Agreed Variations*) for any Pre-Agreed Variation directed in accordance with clause 10.10; and

[REDACTED]

Design Fee Adjustment means an adjustment to the Design Fee in respect of a Design Fee Adjustment Event, as determined in accordance with clause 4.3A, which may be a positive or negative amount.

Design Fee Adjustment Event [REDACTED]

[REDACTED]



Design Life has the meaning given to that term in the main body of the SWTC.

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

Design JV means [REDACTED]

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

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

Designated Significant Subcontractor means:

- (a) a Subcontractor engaged by the Contractor to supply a TBM;
- (b) the Design JV; and
- (c) any other Subcontractor that the parties agree in writing to classify as a Designated Significant Subcontractor from time to time.

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

Determined Value means, in relation to a Dispute determined by an Expert in accordance with clause 19.6, the aggregate of:

- (a) the value of any adjustments to any elements of the Target Cost pursuant to clause 4; and
- (b) the amounts payable by one party to the other in relation to the relevant Dispute as determined by the Expert.

Direct Base Salary has the meaning given to that term in clause 3 of Part A of Schedule F2 (*Labour Costs*).

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

Dispute Avoidance Board means the board consisting of the members nominated in accordance with clause 19.2(c) or his or her replacements referred to in clauses 19.2(g) to 19.2(j) and constituted pursuant to the DAB Agreement.

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

DPE Modification Requirements means the "State Significant Infrastructure Guidelines – Preparing a Modification Report" (being Appendix F to the "State Significant Infrastructure Guidelines") November 2021.

Draft Third Party Agreement has the meaning given to that term in clause 3.7(a)(iii)(A).

Draft Tolling Equipment Works Subcontract means the draft form of the Tolling Equipment Works Subcontract contained in Schedule A22 (*Draft Tolling Equipment Works Subcontract*).

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

Early Utilities Works means the work specified in Schedule C5 (*Early Utilities Works*), which includes the relocation, removal, or making redundant of existing Utility Services and the temporary restoration of the relevant affected area.

Early Utilities Works Delay means, in respect of an area of the Construction Site identified in the Site Access Schedule, the Early Utilities Works located within that part of the

Construction Site has not been completed by the relevant Site Access Date for that part of the Construction Site.

Early Warning Amount means, in relation to a Reimbursable Cost Element Adjustment Event, Design Fee Adjustment Event or Preliminaries Fee Adjustment Event (as applicable), any costs which have been or will be incurred or payable by the Contractor only because the Contractor did not give early warning of the relevant risk as contemplated by clause 13.22.

Early Warning Delay means, in relation to an Extension Event, any delay which has arisen or may arise only because the Contractor did not give early warning of the relevant risk as contemplated by clause 13.22.

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

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

Environment means components of the earth, including:

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

Environmental Representative means the person identified in Schedule A1 (*Contract Particulars*) appointed or procured by the Principal in accordance with the Independent Certifier Deed or any person appointed by the Principal as a replacement from time to time, as notified to the Contractor.

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

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

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

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

Escrow Agent means an escrow agent nominated by the Contractor, and approved by the Principal in writing, for the relevant Escrow Material.

Escrow Agreement means the escrow agreement to be entered into in accordance with clause 9.18 in relation to the Escrow Material.

Escrow Materials means the Source Code for the Software listed in Schedule A1 (*Contract Particulars*) and all passwords, keys, tools, documentation and other material necessary to enable a reasonably skilled software engineer to maintain such Software without reference to the Contractor, its Associates or any other third party with an interest in the Software.

Escrow Term means the period commencing on the execution of the relevant Escrow Agreement and ending on the earlier of:

- (a) the date specified in Schedule A1 (*Contract Particulars*); and
- (b) the date on which the Software ceases to be used as part of the Motorway.

Excepted Risk means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage;
- (b) an act of terrorism; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

in each case occurring:

- (d) within Australia; or
- (e) in respect of an act of terrorism or war (declared or undeclared) only, in Australia, or a Key Plant and Equipment Country to the extent it impacts on the relevant item of Key Plant and Equipment,

and only to the extent not caused or contributed to by the Contractor or its Associates.

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

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

Existing Asset means an asset or item of infrastructure within:

- (a) the Construction Site existing at the date of this deed; or
- (b) any Extra Land existing at the date access commences for such Extra Land,

that will overlay, cross, intersect, connect, tie in or be adjacent to the Works, [REDACTED]

Existing Asset Fault means any part of an Existing Asset within the Construction Site that:

- (a) does not comply with Law or Codes and Standards; or
- (b) differs materially in condition from what could have been reasonably anticipated or foreseen at the date of this deed by a prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 7.11(d) that it has done.

Existing Operations means:

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

on or in the vicinity of the Construction Site.

Existing Operator means:

- (a) Ausgrid, the statutory state owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW);
- (b) Sydney Water Corporation (ABN 49 776 225 038);
- (c) Telstra Corporation Limited (ABN 33 051 775 556);
- (d) Jemena Limited (ABN 95 052 167 405);
- (e) Cammeray Golf Club Ltd (ABN 80 000 966 870);
- (f) LCT-MRE Pty Limited (ACN 143 401 870);
- (g) Sydney Trains (ABN 38 284 779 682);
- (h) Kapsch Trafficcom Australia Pty Ltd (ABN 84 081 653 429);
- (i) public and private bus operators;
- (j) local councils;
- (k) operator of any public or private business or activity in Sydney Harbour;
- (l) the operator of Sydney Harbour Tunnel;
- (m) the operator of Sydney Harbour Bridge; and
- (n) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and the Utility Services) or undertakes any business or operation on or in the vicinity of the Construction Site,

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

Expert means, in relation to a Dispute, the person:

- (a) appointed by the Principal and the Contractor; or
- (b) nominated by ACICA,

in accordance clause 19.6 to determine a Dispute referred to expert determination in accordance with clause 19.4(d)(ii).

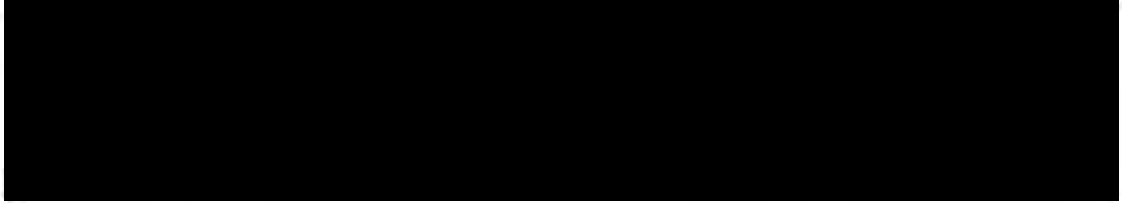
Extension Event means the occurrence of any of the following:

- (a) an Act of Prevention;
- (b) not used;
- (c) a:

[REDACTED]

[REDACTED]

- (d) a legal challenge, proceeding or action in relation to the assessment, determination or modification of a Planning Approval in the circumstances described in clause 6.6(b);
- (e) the Revised Allocation or the terms of a final version of any Draft Third Party Agreement, any Additional Third Party Agreement or any Amended Third Party Agreement imposes greater or different obligations on the Contractor as described in clause 3.7(c);



- (h) subject to clause 7A.3(i), the RI Contractor or the WFU Contractor (as applicable) rectifying an Interface Defect in the circumstances described in clause 7A.3(e)(i);
- (i) a failure by the Principal to provide access to the Construction Site in accordance with clause 7.1(b);
- (j) an act or omission of an Other Contractor (excluding an Interface Contractor), except in relation to any act or omission of an Other Contractor to the extent it arises as a result of a breach or an act or omission of the Contractor or any of its Associates;

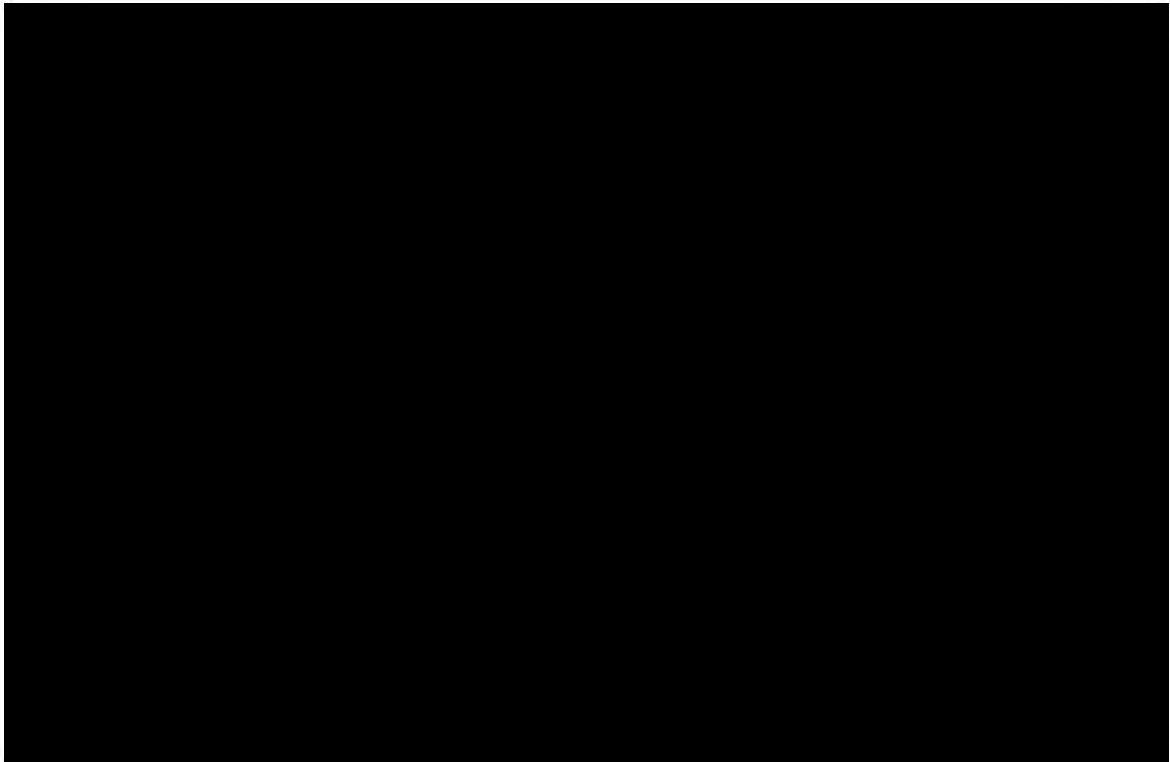


- (l) any Variation directed or approved under clause 10;
- (m) suspension of all or part of the Contractor's Activities directed by the Principal in the circumstances described in clause 14.14(b)(ii);
- (n) any testing directed in accordance with clause 16.1(a), except to the extent provided for in clause 16.1(j);
- (o) a Force Majeure Event;
- (p) a Native Title Claim;



- (r) compliance with a Make Accessible Direction in the circumstances set out in clause 14.17(d);
- (s) the direction of a new Handover Portion by the Principal under clause 16.4(a), but only in the circumstances described in clause 16.4(b)(i);
- (t) the exercise by the Principal of the Step-in Rights in relation to a Step-in Event referred to in paragraphs (a), (b) or (c) of the definition of "Step-in Event", except in relation to any Step-In Event to the extent it arises as a result of a breach, a wrongful act or omission of the Contractor or any of its Associates or a cause which is otherwise in the control of the Contractor;
- (u) compliance with a direction given by the Principal's Representative under clause 14.1(e) where the Contractor is entitled to claim relief under clause 14.1(h);





Extra Land means the land referred to in clause 7.10(a)(i).

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

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

Final Spares List has the meaning given to that term in clause 3.19(d).

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

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

Financial Assessment has the meaning given to that term in clause 22.2(a).

Financial Capacity Event means any fact, matter or thing which, in the opinion of the Principal (acting reasonably), has a material adverse effect upon the financial standing of the Contractor (or any entity that comprises the Contractor), any Parent Company Guarantor or any Designated Significant Subcontractor.

Financial Mitigation Plan means a plan which satisfies the requirements of clause 22.5 for the mitigation of a Financial Capacity Event.

Financial Reporting Event means any of the following events, as applicable to the Contractor (or any entity that comprises the Contractor), any Parent Company Guarantor or a Designated Significant Subcontractor:

- (a) a substantial downgrade in any applicable credit rating;
- (b) a significant loss suffered or incurred;
- (c) a material statutory fine or statutory financial penalty;
- (d) a profit warning to a stock exchange or the making of any public announcement regarding a material deterioration in financial position or prospects;

- (e) a public investigation into improper financial accounting and reporting or suspected fraud;
 - (f) a material refinancing (other than a material refinancing in the ordinary course of business);
 - (g) a failure to pay a Significant Subcontractor (other than for reason of a bona fide dispute);
 - (h) any financial indebtedness becoming due as a result of an event of default; or
 - (i) its external auditor expressing a qualified opinion in relation to its audited accounts,
- provided that, in the case of a Listed Entity, the relevant event has been Publicly Notified or is Reportable Information.

Force Majeure Event means any of the following:

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

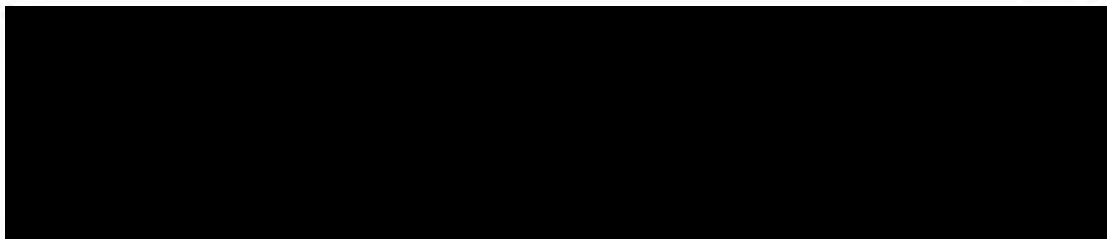
which:

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

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

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

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





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

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

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

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

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

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

Handover Area means the area of the Construction Site where the Works required for Handover Portion 1 are to be carried out.

Handover Completion means, in respect of a Handover Portion, the stage in the execution of the Contractor's Activities when the Contractor has satisfied all of the conditions precedent to Handover Completion set out in Part A of Schedule C3 (*Conditions Precedent to Completion Stages*).

Handover Portion means a portion of the Project Works identified as a "Handover Portion" in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) or as directed under clause 16.4.

Harbour Access Approval means an Approval from any relevant Authority (including the Harbour Master) granting harbour access to the Contractor.

Harbour Master means the Port Authority Harbour Master appointed in accordance with the *Marine Safety Act 1998* (NSW) to direct and control the time and manner in which any vessel may enter or leave the port.

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

Heavy Vehicle National Law means:

- (a) the Heavy Vehicle National Law set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as it applies through being adopted in other States and Territories, including through the *Heavy Vehicle National Law* (NSW) within the

meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW), as amended, reproduced or updated from time to time; and

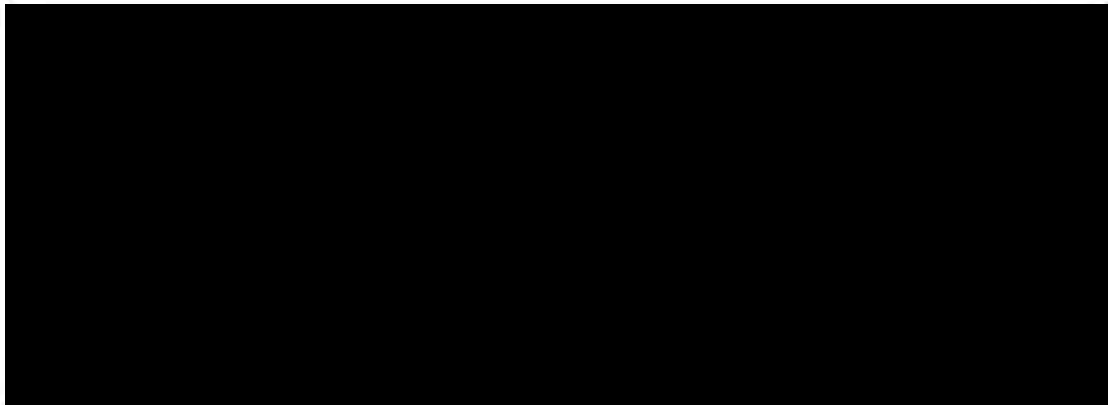
- (b) regulations in force under the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as they apply through being adopted in other States and Territories, including through the *Heavy Vehicle National Law* (NSW), as amended, reproduced or updated from time to time.

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

Hold Point means a point beyond which a work process must not proceed without the authorisation or release of the relevant Nominated Authority.

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

Impact Date has the meaning in clause 6.7(k)(i).



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

- (a) any work health and safety or environmental or security incident, including:
 - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW or other work health and safety regulator;
 - (ii) an occurrence or set of circumstances as a consequence of which Pollution (air, water, noise or land) or an adverse environmental impact has occurred or is likely to occur;
 - (iii) any fire or dangerous event on the Construction Site or Extra Land;
 - (iv) a security breach;
 - (v) any unauthorised removal of trees;
 - (vi) any incident involving the community;
 - (vii) any accidents involving damage to persons or property occurring upon or in the vicinity of the Construction Site or any Extra Land or in the supply chain where the Chain of Responsibility Provisions apply;
 - (viii) a non-compliance with an Approval;

- (ix) any public complaint;
- (x) any "traffic incident" as contemplated by the SWTC; or
- (b) any unplanned or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property or existing infrastructure, interruption to operations or environmental impairment,

and includes:

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

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

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

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

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

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

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

Information Documents means:

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

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

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

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

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

Initial Spares List has the meaning given to that term in clause 3.19(a)(ii).

Insolvency Event means when:

- (a) one person informs the other person in writing, or its creditors generally, that the person is insolvent or is unable to proceed with its obligations under this deed for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- (c) execution is levied against a person or any asset of a person by a creditor, debenture holders or trustees or under a floating charge;
- (d) in relation to a person any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 15 Business Days;
 - (vi) a sequestration order or winding up order is made in respect of the corporation;
 - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
 - (viii) a mortgagee of any property of the corporation takes possession of that property; or
 - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets; or
- (e) any act which is done or event which is analogous or similar effect to any of the events in paragraphs (a) to (d).

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

Institution means:

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

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

- (a) recovers that Liability under a Principal Insurance Policy; or
- (b) is entitled to be indemnified for that Liability under a Contractor Insurance Policy, or would have recovered or would have been entitled to be indemnified (as applicable) for that Liability but for:
 - (c) the operation of any policy retention, deductible or excess that the Contractor is required to bear under the terms of this deed; or
 - (d) any act or omission of the Contractor or its Associates including any failure by the Contractor to:
 - (i) diligently pursue a claim under the relevant policy of insurance;
 - (ii) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
 - (iii) comply with its insurance obligations under this deed.

Intellectual Property Rights means all present and future rights conferred by law in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant breeder's rights, business and domain names, inventions and know how, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable, and any rights of the same or similar effect or nature as any of the foregoing which subsist anywhere in the world, including:

- (a) all rights in all applications to register these rights and any registrations resulting from such applications;
- (b) all renewals and extensions of these rights;
- (c) the goodwill attaching to any of the foregoing (if applicable);
- (d) all rights to take action, bring, make, oppose, defend, appeal proceedings or claim and sue for, and recover, damages and other relief in relation to any infringement of any of the aforementioned rights, whether occurring before, on or after the date of this deed; and
- (e) all rights in the nature of these rights, excluding Moral Rights.

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

Interface Deed means each deed to be entered into between the Principal, the Contractor and an Interface Contractor in accordance with clause 3.4(a) and substantially in the form of Part A to Part D of Schedule A12 (*Interface Deeds*) (as applicable).

Interface Defect means any material failure of any part, element or aspect of the RIC Handover Works or WFU Handover Works to comply with the requirements of the applicable Interface Specifications, which:

- (a) to the extent the RIC Handover Works or WFU Handover Works consist of physical assets and systems in existence at the date of this deed, was not known, or substantially known, to the Contractor at the date of this deed;
- (b) was not shown, or substantially shown, in any Interface Reference Document provided to the Contractor on or before the date of this deed;
- (c) could not have been Reasonably Anticipated; and
- (d) if not rectified, will have a material adverse effect on the Contractor's ability to comply with its obligations under this deed, the time required to achieve Handover Completion, Opening Completion or Completion or the cost of performing its obligations under this deed,

except:

- (e) to the extent that the failure is due to:
 - (i) fair wear and tear in the relevant RIC Handover Works or the WFU Handover Works;
 - (ii) deviations from design documentation in accordance with construction tolerances that would be reasonable for a contractor acting in accordance with Good Industry Practice to make;
 - (iii) an act or omission of the Contractor or its Associates; or
 - (iv) a failure to maintain the RIC Handover Works or the WFU Handover Works in accordance with the operations and maintenance manuals prepared for the RIC Handover Works or the WFU Handover Works; and

Interface Reference Documents means:

- (a) the Information Documents listed in Part A of Schedule C9 (*Interface Documentation*); and
- (b) any further design documentation, as built drawings and related reports or materials relevant to the RIC Handover Works or the WFU Handover Works,

as updated in accordance with clauses 7A.1(c) and 7A.1(i).

Interface Specifications means the specifications for the:

- (a) RIC Handover Works listed in Part B1 and B2 of Schedule C9 (*Interface Documentation*); and
- (b) WFU Handover Works listed in Part C of Schedule C9 (*Interface Documentation*),

in each case, as updated in accordance with clause 7A and amended to incorporate any Interface Works Changes.

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

Interface Works Change means any change or variation to the scope of the RIC Handover Works or WFU Handover Works after the date of this deed, including any addition, reduction, increase, decrease, omission, deletion, or removal to or from them, or any change or variation to the dimensions of the RIC Handover Works or WFU Handover Works.

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

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

Key Plant and Equipment means those items identified in Schedule C6 (*Key Plant and Equipment*).

Key Plant and Equipment Country means, in relation to an item of Key Plant and Equipment, the country specified in the notice issued by the Contractor pursuant to clause 11.7(c)(vi) for that item of Key Plant and Equipment.

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

Landscaping Maintenance means the Post Completion Activities set out in Part A of Schedule C4 (*Post Completion Activities*).

Landscaping Maintenance Period means, the period commencing on:

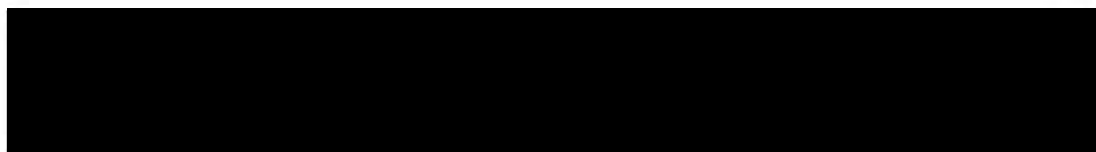
- (a) subject to paragraph (b), the Date of Opening Completion; and
- (b) in relation to any Third Party Works involving landscaping, the commencement of the Defects Correction Period for those works,

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

Lane Occupancy Fees means lane occupancy fees payable by the Contractor to the Principal as calculated in accordance with Schedule E8 (*Lane Occupancy Fees*).

Law means:

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



LDs Step-up Date means the date specified in respect of each Handover Portion, Opening Completion and Completion in the columns headed "LDs Step-up Date" in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*), which will not be adjusted for any reason.

LDs Step-up Date 1 means the LDs Step-up Date specified as "LDs Step-up Date 1" in respect of Opening Completion in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*), which will not be adjusted for any reason.

LDs Step-up Date 2 means the LDs Step-up Date specified as "LDs Step-up Date 2" in respect of Opening Completion in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*), which will not be adjusted for any reason.

Legal Opinion means a legal opinion:

- (a) addressed to the Principal;
- (b) given by a qualified legal practitioner acceptable to the Principal that is authorised to practice in the place of incorporation of the relevant signatory or Australia (as applicable);
- (c) on which the Principal is entitled to rely; and
- (d) which is in a form acceptable to the Principal.

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

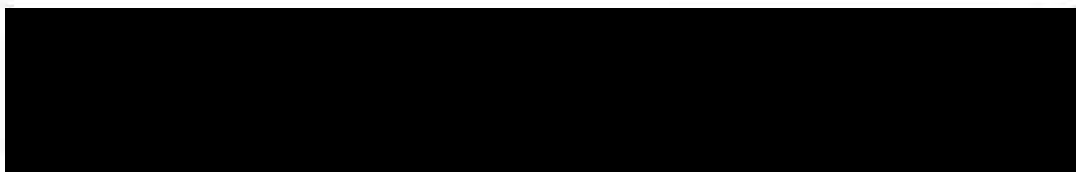
- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective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

Licensed Maintenance Area means the area described in clause 2 of Schedule A13 (*Motorway Stratum*).

Liquidated Damages Cap means [REDACTED] per cent of the Target Cost (as adjusted in accordance with this deed).

Listed Entity means a company or other body which is included in the official list of ASX Limited ACN 008 624 691 or is listed on the Madrid Stock Exchange (*Bolsa de Madrid*).

Live Access Systems means each of the following systems used by the Contractor in connection with the Contractor's Activities:





Live Access Users means:

- (a) the employees, consultants or contractors of the Principal within:
 - (i) the delivery team for the Western Harbour Tunnel; or
 - (ii) the legal, commercial or finance teams of the Principal; and
- (b) any other individuals or teams nominated by the Principal's Representative in writing from time to time.

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

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

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

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



Loss means:

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

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

M4 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M4 Motorway'.

M4-M5 Link Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M4-M5 Link Motorway', including the Rozelle Interchange.

M5 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M5 Motorway', including the tollway known as the 'M5 East Motorway' and the tollway known as the 'M5 West Motorway'.

M8 Motorway means the roads and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the tollway known as the 'M8 Motorway' (previously referred to as the 'New M5 Motorway'), and includes the relevant tunnel stubs.

Main Motorway Works means the Motorway Works excluding any Works forming part of any Handover Portion.

Maintenance Contractor means any contractor engaged by the Principal to carry out maintenance work of the:

- (a) Shared Access Road; and
- (b) other roads within the Construction Site specified in Appendix C.6 of the SWTC,

immediately prior to the commencement of this deed.

Maintenance Site means all areas affected by the AM Activities, or on which the AM Activities are carried out, including:

- (a) the WHT Motorway Stratum;
- (b) the Licensed Maintenance Areas; and
- (c) for a period of 12 months commencing on the date on which the Defects Correction Period begins for the Local Area Works, the landscaped areas of the Local Area Works.

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

Management Fee means the lump sum amount set out in Schedule F1 (*Payment*), which is on account of those items listed in Schedule F1 (*Payment*), as adjusted:

- (a) by any Management Fee Adjustment for any Management Fee Adjustment Events in accordance with clause 4.4;
- (b) pursuant to Schedule A3 (*Pre-Agreed Variations*) for any Pre-Agreed Variation directed in accordance with clause 10.10; and

[REDACTED]

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

Management Fee Adjustment Event [REDACTED]

[REDACTED]

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

Management Review Group means the group comprising the persons specified in clause 13.23 who must perform the functions specified in clause 13.24.

Mandatory Defect means a Defect which has been notified by the Principal's Representative or the Independent Certifier:

- (a) at any time before the date that is 20 Business Days prior to the Date of Opening Completion or the Date of Handover Completion of any relevant Handover Portion (as applicable); or
- (b) after the date that is 20 Business Days prior to the Date of Opening Completion or the Date of Handover Completion of any relevant Handover Portion (as applicable) unless the Independent Certifier has determined that the Defect can be rectified after Handover Completion or Opening Completion (as applicable) on the basis that the relevant Defect:
 - (i) is not required to be rectified for the Project Works to be capable of being used for their intended purpose;
 - (ii) can be rectified after Handover Completion or Opening Completion (as applicable) without prejudicing the convenient or intended use of the Project Works; and
 - (iii) the Contractor has reasonable grounds for not promptly rectifying.

Master Access Deed means the Third Party Agreement titled "Master Access Deed" between the Principal (formerly Roads and Maritime Services) and Transport Asset Holding Entity of New South Wales (formerly Rail Corporation New South Wales) dated 5 March 2012.

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

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

- (a) at least 1.5 per cent of the value of the Target Cost as at the date of this deed is subcontracted to Aboriginal businesses;
- (b) at least 1.5 per cent of the Contractor's Australian based workforce (full time equivalent) directly contribute to the Contractor's Activities are Aboriginal employees; or
- (c) at least 1.5 per cent of the value of the Target Cost as at the date of this deed is applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the contract.

Minister for the purposes of clause 8.8 has the meaning given in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Minor Amendment means an amendment to the Interface Specifications for the WHT Southern Tunnel Works:

- (a) requiring a setting out change to a tunnel element of the WHT Southern Tunnelling Works that results in the tunnel element moving 10 metres or less when compared to the latest Interface Reference Documents, but only where such change is made on or before the actual date of commencement of excavation by the RI Contractor of the area directly impacted by the setting out change;
- (b) requiring a setting out change to a tunnel element of the WHT Southern Tunnelling Works that:
 - (i) results in the tunnel element moving 10 metres or more; and
 - (ii) does not require a change in the proposed ground support type, when compared to the latest Interface Reference Documents, but only where such change is made on or before the actual date of commencement of excavation by the RI Contractor of the area directly impacted by the setting out change;
- (c) requiring a setting out change to the WHT Southern Tunnelling Works that results in the excavation dimensions:
 - (i) increasing by a span less than or equal to 600mm over a linear length of tunnel of 5 metres or less;
 - (ii) increasing by a span less than or equal to 300mm over a linear length of tunnel of greater than 5 metres and less than 15 metres;
 - (iii) increasing by a span less than or equal to 100mm over a linear length of tunnel of 15 metres or greater;
 - (iv) in relation to the height or depth of the excavation dimensions, increasing by:
 - (A) less than or equal to 300mm over a linear length of tunnel of 5 metres or less;
 - (B) less than or equal to 200mm over a linear length of tunnel of greater than 5 metres and less than 15 metres; or
 - (C) less than or equal to 100mm over a linear length of tunnel of 15 metres or greater; or
 - (v) relation to the length of the excavation dimensions increasing by a length of tunnel less than 0.5 metres, when compared to the latest Interface Reference Documents, but only where such change is made on or before the actual date of commencement of excavation by the RI Contractor of the area directly impacted by the setting out change; or
- (d) only in the period on or before 30 August 2023, related to the RI Contractor's installation of the following WHT Southern Tunnel Works items:
 - (i) drainage pits and associated connections;
 - (ii) flame traps and associated connections;

- (iii) subsurface drainage details beneath CRCP installation; and
- (iv) conduits to be installed beneath CRCP installation.

Modern Slavery has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

Modern Slavery Laws means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

Modern Slavery Offence has the same meaning as in the *Modern Slavery Act 2018* (NSW), and includes an offence listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

Modern Slavery Practice includes any one or more of the following:

- (a) using any form of forced or child labour or deceptive recruitment practices;
- (b) requiring personnel to work excessive hours in the performance of, or in connection with, this deed;
- (c) save for short periods where legally required to do so for the purposes of administering employment, retaining the passports and/or identity documents of personnel or any potential personnel;
- (d) denying personnel the right to terminate their employment or join or form, or discouraging personnel from joining or forming, a trade union if they so desire;
- (e) save where required by law, paying wages to any individual other than personnel; and
- (f) if any personnel are migrant workers, providing migrant workers with any lesser entitlements than given to local employees.

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

Moral Rights means any rights of integrity of authorship or performership, rights of attribution of authorship or performership, rights not to have authorship or performership falsely attributed and rights of a similar nature conferred by statute that exist, or may come to exist, anywhere in the world including any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any law (including the *Copyright Act 1968* (Cth) or any law outside Australia).

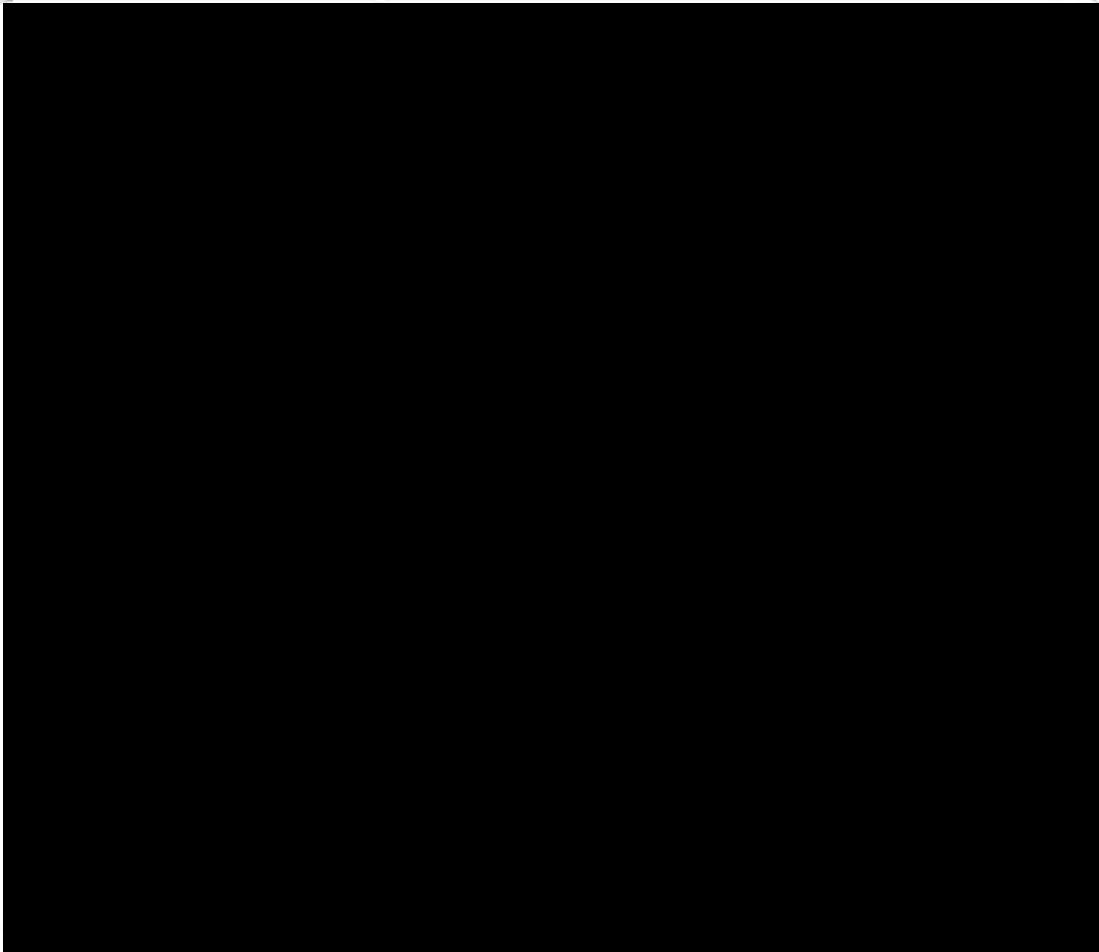
Moral Rights Consent means a consent by the owner of Moral Rights substantially in the form set out in Schedule A19 (*Moral Rights Consent*).

Motorway means, on and from the Date of Opening Completion, the roads, tunnels and other physical works, facilities, systems and Utility Services, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, Spare Parts and other improvements, on or in the WHT Motorway Stratum.

Motorway Works means the roads, tunnels and other physical works, facilities, systems and Utility Services described in section 2.3.1 of the SWTC, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, Spare Parts and other improvements provided by the Contractor as part of the Project Works (including the Tolling Equipment Works, the OMCS Works and any works carried out as part of a Handover Portion).

MS Information means information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals (as applicable).

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



New Release means, in respect of any Software referred to in paragraph (a) of the definition of "Software", software produced primarily to extend, alter or improve that software by providing additional functionality or performance enhancement (whether or not defects in the software are also corrected) while still retaining the original designated purpose of that software.

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

Nominated Authority means, in respect of a Hold Point or Witness Point:

- (a) the entity specified in the SWTC as the entity entitled to release the Hold Point or witness the Witness Point (as applicable);
- (b) where paragraph (a) does not apply, the person or role nominated by the Contractor and acceptable to the Principal's Representative and Independent Certifier, as being suitably experienced and competent to release a Hold Point or witness a Witness Point (as applicable); or

- (c) where paragraphs (a) and (b) do not apply, the Independent Certifier where it has been nominated by the Contractor and accepted by the Principal's Representative to release the Hold Points or witness the Witness Points (as applicable).

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

Non-Contestable Utilities Works Costs Increase means any additional costs paid or payable by the Contractor to the owner, operator or controller of the relevant Utility Service for the Non-Contestable Utilities Works required in relation to that Utility Service in excess of the Baseline Non-Contestable Utilities Works Costs for that Utility Service, except to the extent the Contractor fails to take all reasonable steps to avoid or minimise such increase in costs, which steps will include:

- (a) completing relevant design, contacting the owner, operator or controller of the relevant Utility Service and scheduling times for the work sufficiently in advance;
- (b) providing required information (including any Approvals) to the owner, operator or controller of the relevant Utility Service sufficiently in advance;
- (c) complying with the provisions of any agreement entered into with the owner, operator or controller of the relevant Utility Service;
- (d) proactively monitoring, managing, liaising and coordinating with the owner, operator or controller of the relevant Utility Service (or its relevant contractor); and
- (e) to the extent reasonably practicable, scheduling and (where relevant) rescheduling the Contractor's Activities so as to minimise the risk that such failure to take such steps will increase the costs of the Non-Contestable Utilities Works.

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

- (a) with respect to Critical Non-Contestable Utilities Works only, by the date for completion of that work set out in Schedule A1 (*Contract Particulars*), [REDACTED] (or such later date as may be approved in writing by the Principal); or
- (b) within timeframes that could have been Reasonably Anticipated; and
- (c) the time required to avoid any delay to Handover Completion, Opening Completion or Completion (or all, as applicable),

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

- (d) completing relevant design, contacting the owner, operator or controller of the relevant Utility Service and scheduling times for the work sufficiently in advance;
- (e) providing required information (including any Approvals) to the owner, operator or controller of the relevant Utility Service sufficiently in advance;
- (f) complying with the provisions of any agreement entered into with the owner, operator or controller of the relevant Utility Service;
- (g) proactively monitoring, managing, liaising and coordinating with the owner, operator or controller of the relevant Utility Service (or its relevant contractor); and

- (h) to the extent reasonably practicable, scheduling and (where relevant) rescheduling the Contractor's Activities so as to minimise the risk that such failure will delay Handover Completion, Opening Completion or Completion (or all, as applicable).

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

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

Notice of Completion means:

- (a) in respect of a Handover Portion, a notice in the form of Part A of Schedule B5 (*Notices*);
- (b) in respect of Opening Completion, a notice in the form of Part D of Schedule B5 (*Notices*);
- (c) in respect of Completion, a notice in the form of Part C of Schedule B5 (*Notices*),

issued by the Independent Certifier pursuant to clause 16.2(f)(i).

Notice of Dispute means a notice given under clause 19.3.

Notice of Dissatisfaction means a notice given under clause 19.6(e).

Notice of Opening Completion means a notice in the form of Part C of Schedule B5 (*Notices*) issued by the Independent Certifier pursuant to clause 16.2(f)(i).

NSC Agreement means the Draft Third Party Agreement titled "North Sydney Council Interface Agreement" between the Principal and North Sydney Council dated 28 November 2022 included in Schedule E6 (*Third Party Agreements*) or, if an amended or finalised version is provided pursuant to clause 3.7, the amended or finalised version of that agreement.

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

OMCS means Operations Management and Control System.

OMCS Works means the works to be undertaken by the Contractor in respect of the OMCS as set out in the SWTC.

Open Book Basis means the provision of:

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

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

Opening Completion means the stage in the execution of the Contractor's Activities when the Contractor has satisfied all the conditions precedent to Opening Completion set out in Part B of Schedule C3 (*Conditions Precedent to Completion Stages*).

Operational Acceptance Tests means the requirements in relation to operational acceptance testing set out in Attachment B.10-1 of Appendix B.10 of the SWTC.

Operational Readiness Evaluation has the meaning given to that term in the main body of the SWTC.

Operations Management and Control System means the operations and management control system for the WHT Motorway described in the SWTC.

Optional Post Completion Activities means those Post Completion Activities described in Part B of Schedule C4 (*Post Completion Activities*), which generally comprise maintenance of any Handover Portion after the relevant Date of Handover Completion, and which may be instructed by the Principal pursuant to clause 16A.2.

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

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

Out of Hours Coordination Group means the group referred to in clause 13.31.

Outturn Cost means the sum of:

- (a) the Management Fee;
- (b) the Preliminaries Fee;
- (c) the Design Fee; and
- (d) the aggregate of all Reimbursable Costs.

Outturn Cost Cure Plan has the meaning given to that term in clause 15.12(c).

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

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

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

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

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

Peak Period means, on any day, the period from 5.00am to 9.00pm.

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

- (a) will not cost, or result in an increase to the cost of the Subcontract works of, more than [REDACTED] (excluding GST) on its own or when combined with all related variations;
- (b) will not cost, or result in an increase to the cost of the Subcontract works of, more than [REDACTED] (excluding GST) (**Threshold Sum**) when aggregated with the costs of all variations to the Subcontract or Subcontract works made up to that time, provided that the Principal's Representative may (in its absolute discretion) from time to time by written notice to the Contractor direct that for the purposes of this paragraph and in respect of particular Subcontracts, the Threshold Sum be increased to an amount nominated in the notice;
- (c) will not extend the date for practical completion (or equivalent) under the Subcontract by more than five Business Days for any single variation or more than 20 Business Days when aggregated with all variations made up to that time; and
- (d) will not delay the Contractor in achieving:
 - (i) Handover Completion of a Handover Portion by the relevant Date for Handover Completion;
 - (ii) Opening Completion by the Date for Opening Completion;
 - (iii) Completion by the Date for Completion,

but which is not a variation to the Subcontract works:

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

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

Planned Lane Closure has the meaning given to that term in Schedule E8 (*Lane Occupancy Fees*).

Planning Approval means:

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

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

Ports and Maritime Administration Permit means:

- (a) any approval granted by the Port Authority of New South Wales under clause 110 of the *Ports and Maritime Administration Regulation 2021*; and
- (b) all conditions to each such approval and documents incorporated by reference, as modified from time to time.

Ports Licence means the Draft Third Party Agreement titled "Deed of Licence between TfNSW and Newcastle Port Corporation trading as Port Authority of New South Wales – White Bay and Glebe Island" dated 17 November 2022 included in Schedule E6 (*Third Party Agreements*) or, if an amended or finalised version is provided pursuant to clause 3.7, the amended or finalised version of that licence.

Post Completion Activities means those Contractor's Activities to be performed by the Contractor after the Date of Completion as described in Schedule C4 (*Post Completion Activities*), and includes the Landscaping Maintenance and the Optional Post Completion Activities.

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

PPS Law means:

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

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



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

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

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

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

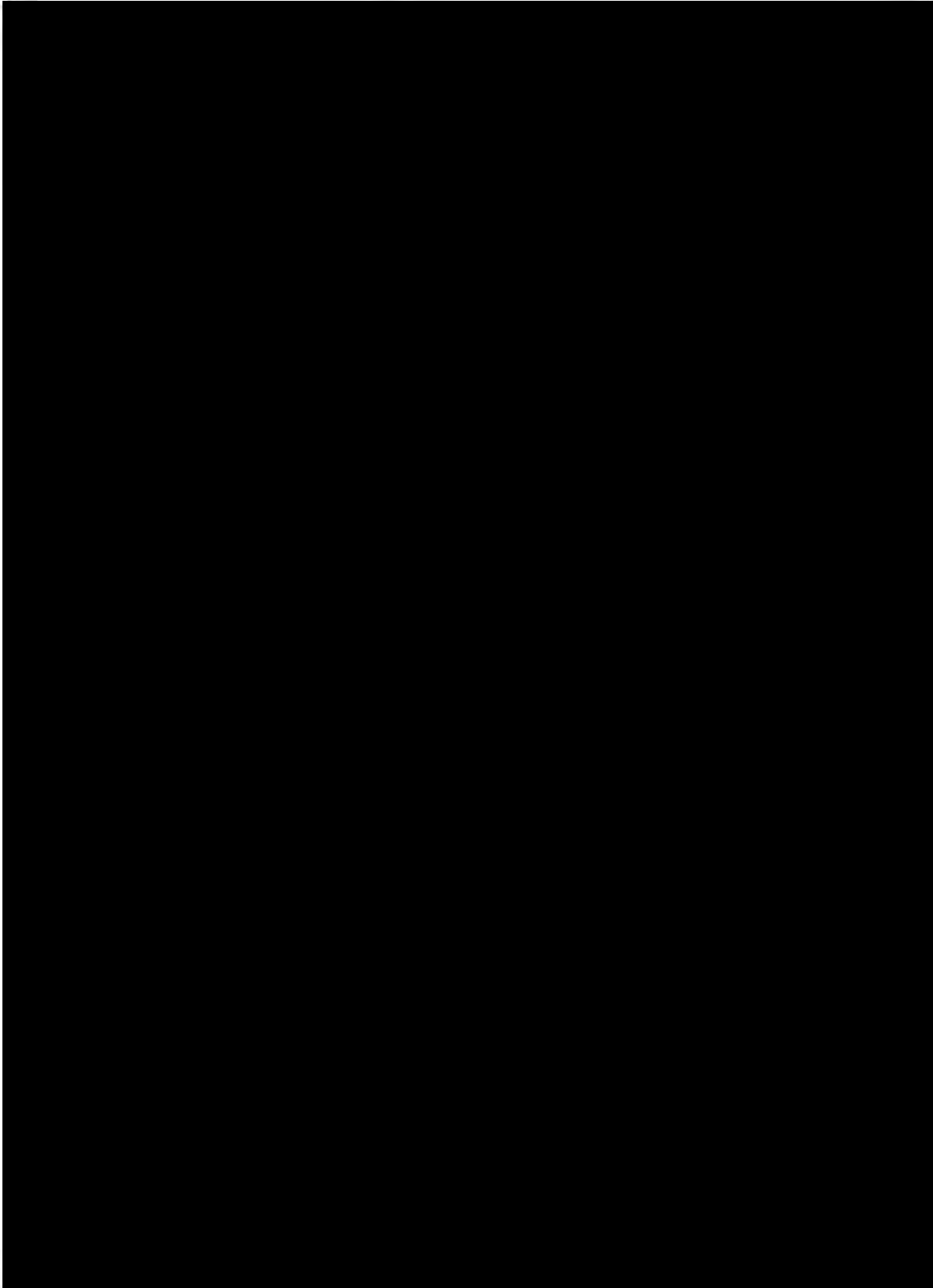
Preliminaries Fee means the lump sum amount set out in Schedule F1 (*Payment*) in respect of the Preliminaries, which is on account of those items listed in Schedule F1 (*Payment*), as adjusted:

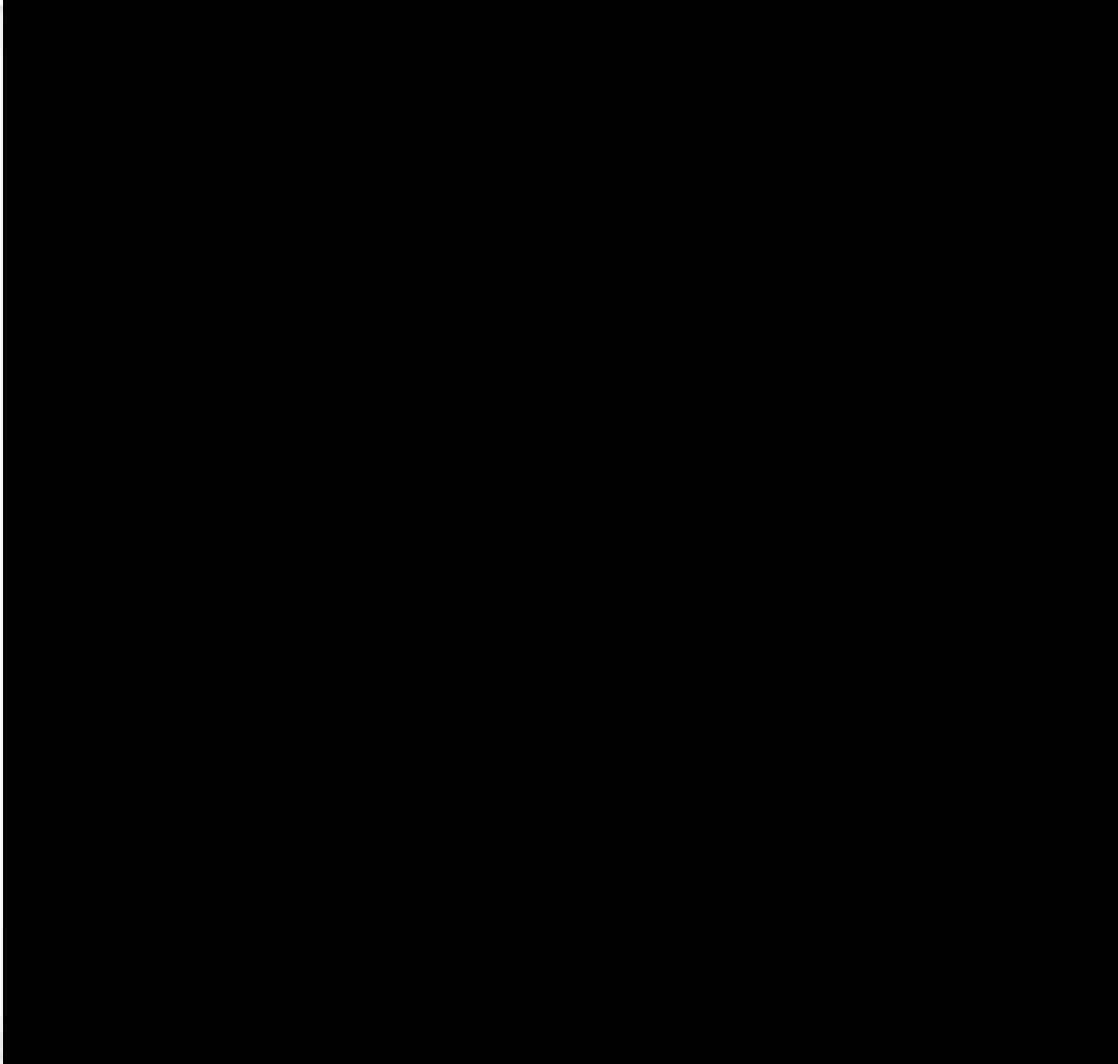
- (a) by any Preliminaries Fee Adjustment for any Preliminaries Fee Adjustment Events in accordance with clause 4.3B;
- (b) pursuant to Schedule A3 (*Pre-Agreed Variations*) for any Pre-Agreed Variation directed in accordance with clause 10.10; and



Preliminaries Fee Adjustment means an adjustment to the Preliminaries Fee in respect of a Preliminaries Fee Adjustment Event, as determined in accordance with clause 4.3B, which may be a positive or negative amount.

Preliminaries Fee Adjustment Event [REDACTED]





Principal Geotechnical Data means the raw factual data which is:

- (a) within the categories specified in Schedule C7 (*Principal Geotechnical Data*) as raw factual data for the purposes of this paragraph; and
- (b) contained in Information Documents that are specified in Schedule C7 (*Principal Geotechnical Data*) as geotechnical reports for the purposes of this paragraph,

but does not include:

- (c) any interpretation, extrapolation, conclusion, assumption, projection or analysis of the Principal Geotechnical Data, whether it is contained or stated in the Information Documents or made, drawn or undertaken by the Contractor; and
- (d) the 2017 CPT data specified in Table 2 of Schedule C7 (*Principal Geotechnical Data*).

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

Principal's Approvals means those Approvals specified in clause 1.1 and clause 1.2 of Part A of Schedule E4 (*Principal's Approvals*) that either:

- (a) were obtained by the Principal prior to the date of this deed; or

- (b) will be obtained by the Principal after the date of this deed where required.

Principal's Data means all data, information, text, drawings or other materials embodied in any electronic or tangible medium and which:

- (a) are supplied by the Principal or the Contractor to the Tolling Equipment Works Subcontractor under the Tolling Equipment Works Subcontract;
- (b) may be accessed by the Tolling Equipment Works Subcontractor in the course of performing the Tolling Services; or
- (c) without limiting the foregoing, is collected, stored, processed, retrieved or produced by the Tolling System.

Principal's Representative means:

- (a) the person nominated in Schedule A1 (*Contract Particulars*); or
- (b) any other person appointed from time to time by the Principal under clause 13.2, and includes any appointee under clause 13.3.

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

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

- (a) the matters specified in Schedule A1 (*Contract Particulars*) and Appendix C.1 of the SWTC; and
- (b) any other matters required by the Principal's Representative (acting reasonably).

Prohibited Subcontractor means:

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

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

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

Project Design Group means the group referred to in clause 13.29(a).

Project Documents means:

- (a) this deed;

- (b) the Independent Certifier Deed;
- (c) the Interface Deeds;
- (d) the Deeds of Disclaimer;
- (e) the Parent Company Guarantee;
- (f) the Escrow Agreements;
- (g) the DAB Agreement;
- (h) from the date of its execution, the Collateral Warranty Deed Poll; and
- (i) any other document the parties agree is a Project Document.

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

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

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

- (a) the Motorway Works; and
- (b) the Third Party Works,

but excluding Temporary Works.

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

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

Provisional Sum Item (OMCS) means the item of Provisional Sum Work identified as "Item PS1" in Schedule C2 (*Provisional Sum Work*).

Provisional Sum Work means the work described in Schedule C2 (*Provisional Sum Work*), excluding the Provisional Sum Item (OMCS) where clause 11.16(f) applies.

Public Road Area means any part of the Construction Site that is a road or footpath that motorists, cyclists or pedestrians are normally permitted to enter at times when that area is not subject to an ROL.

Publicly Notified means information which is publicly available or accessible due to the notification or lodgement of such information by the Contractor (or any entity that comprises the Contractor) or any Parent Company Guarantor to an Authority or to the public by the following means:

- (a) pursuant to the listing rules of a recognised stock exchange;

- (b) pursuant to any applicable laws, including laws relating to corporations, security of payment or industrial relations; or
- (c) via the public website of the Contractor or Parent Company Guarantor.

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

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

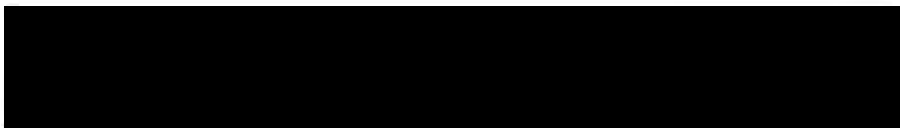
Quality Management Plan means the Project Plan of that name which is required to be provided, implemented and updated by the Contractor pursuant to, and in accordance with, the SWTC.

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

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

Reasonably Anticipated means reasonably anticipated or foreseen at the date of this deed by a prudent, experienced and competent contractor in the position of the Contractor, who had done those things that the Contractor is relevantly required to warrant or do under this deed.

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



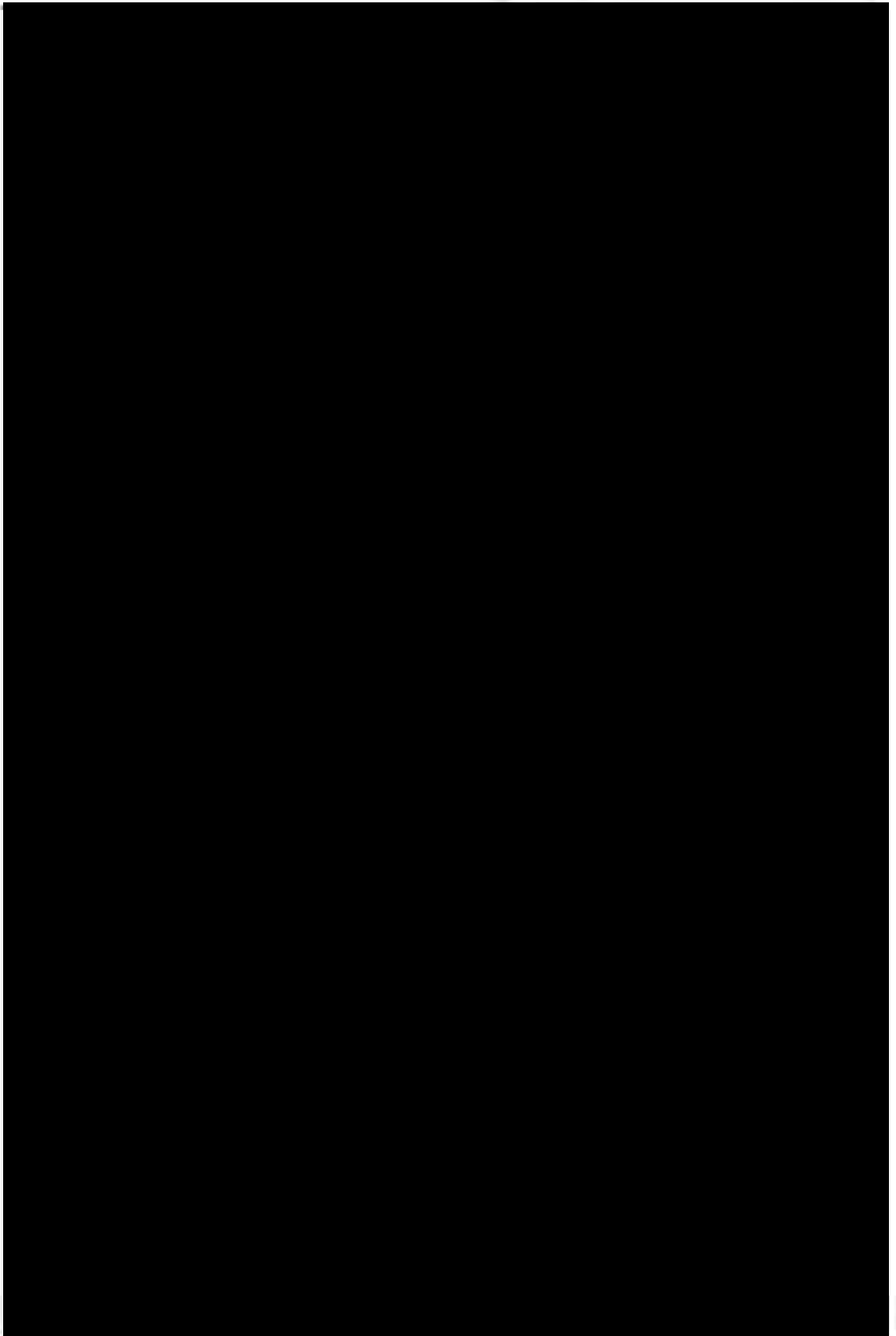
Reimbursable Cost Element means the estimate of Reimbursable Costs set out in Schedule F1 (*Payment*) and included in the Target Cost as adjusted:

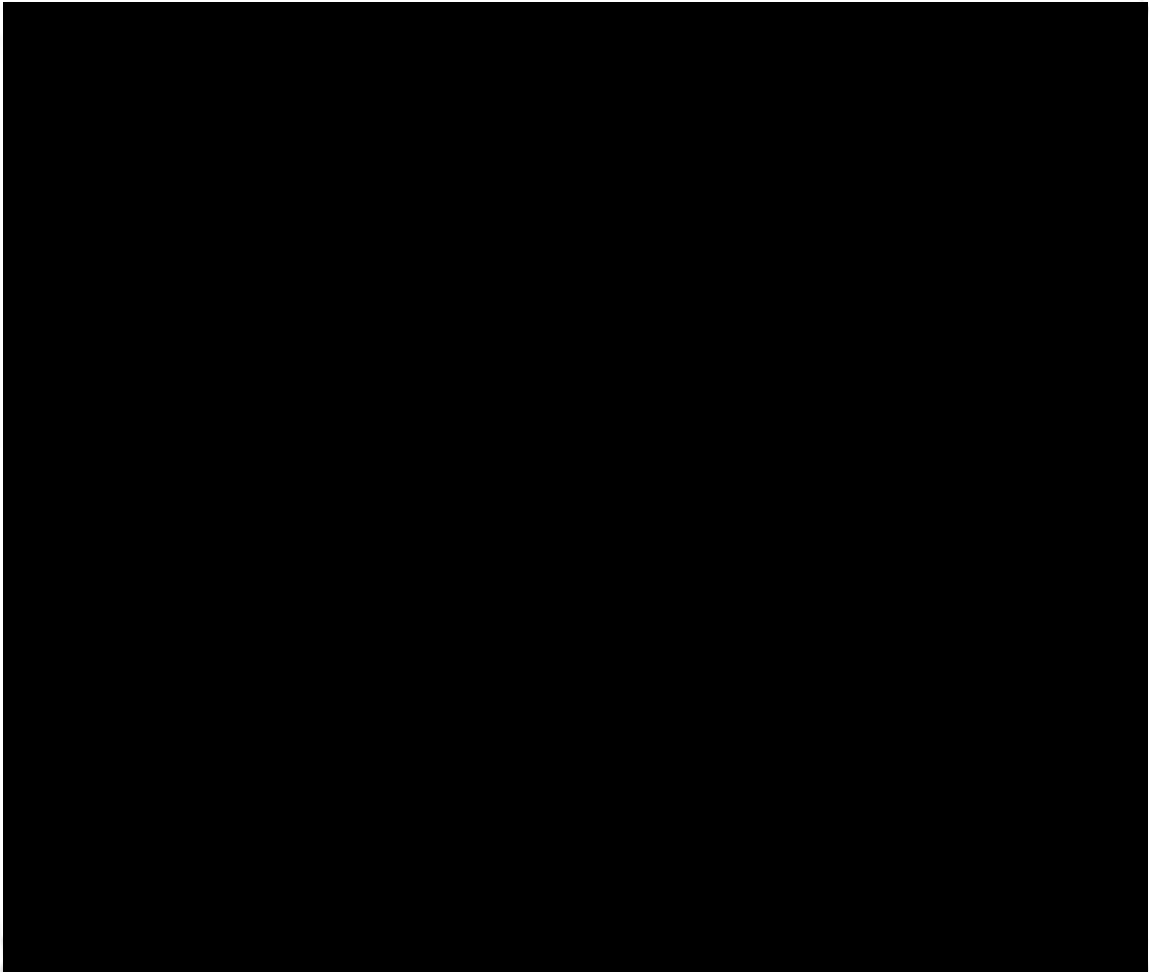
- (a) for any Reimbursable Cost Element Adjustment Event in accordance with clause 4.3;
- (b) pursuant to Schedule A3 (*Pre-Agreed Variations*) for any Pre-Agreed Variation directed in accordance with clause 10.10;



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

Reimbursable Cost Element Adjustment Event





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

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

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

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

Relevant Matters has the meaning given to that term in clause 13.21(a).

Remaining Assets means those items provided by the RI Contractor or WFU Contractor as specified in the following sections of the Interface Specification:

- (a) section 2.13 of the document titled "Rozelle - DC Deed Exhibits (Execution Version) (consolidated - 18.01.22) Exhibit I SWTC WHT STW Technical Requirements Extract" in Part B of Schedule C9; and
- (b) section 7.2.2(c) of the document titled "B30 WFU Appendix B.30 Enabling Works for WHT and BL - SWTC" in Part C of Schedule C9.

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

Remediation Action Plan means a plan for the Remediation of Contamination which satisfies the requirements of clause 7.15(b).

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

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

Reportable Information means information or documents which are not Publicly Notified but the provision of which by the Contractor to the Principal pursuant to this deed does not trigger any reportable event pursuant to any applicable laws or the listing rules of any recognised stock exchange and is not market sensitive information in the opinion of the Contractor or Parent Company Guarantor (acting reasonably).

Residual Value has the meaning given to that term in clause 15.2(w).

Resolution Institute means the Resolution Institute, Australia.

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

- (a) results in any Parent Company Guarantor or the Contractor (or any entity that comprises the Contractor) having a materially diminished financial capacity; and
- (b) adversely affects the ability of any Parent Company Guarantor or the Contractor (or any entity that comprises the Contractor) to meet its obligations under the relevant Parent Company Guarantee or this deed (as relevant).

RI means Rozelle Interchange.

RI Contractor means the Interface Contractor carrying out the RIC Handover Works.

RI/P2 Interface Deed means the Interface Deed to be entered into between the RI Contractor and the Contractor in accordance with clause 3.4(a) and substantially in the form of Part D of Schedule A12 (*Interface Deeds*).

RI Contract means the deed titled "Rozelle Interchange and Western Harbour Tunnel Enabling Works Design and Construction Deed" between the RI Contractor and the Principal dated 14 December 2018 as amended from time to time.

RIC Handover Works means the WHT Southern Tunnel Works and the RI Interface Works.

RI Independent Certifier means each of the person(s) appointed by the Principal and the RI Contractor from time to time to perform the role ascribed to the independent certifier in relation to the RIC Handover Works under the RI Contract.

RI Interface Works means the works to be undertaken by the RI Contractor as described by the Interface Specification in Part B2 of Schedule C9 (*Interface Documentation*) and which will integrate with the Project Works pursuant to SWTC Appendix B33.3.

Risk Register means a register of the risks to the Contractor's Activities and the Works, and associated mitigation measures, which the Contractor is required to prepare and update in accordance with clause 13.22(c).

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

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

Road Transport Agency means the Principal and each of its divisions, including the Customer Journey Planning and Customer Journey Management.

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

ROL means a Road Occupancy Licence.

ROL Application means a written application to the CJM by the Contractor for a ROL required for the Contractor's Activities.

Rozelle Interchange means the roads, tunnels, infrastructure and other physical works, facilities, systems and utility systems, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the motorway interchange known as the 'Rozelle Interchange'.

Security Interest means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind and includes:

- (a) a "security interest" as defined in section 12 of the PPS Act;
- (b) anything which gives a creditor priority to other creditors with respect to any asset; and
- (c) retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Self-Performed Reimbursable Work means the part of the Reimbursable Work to be performed by the Contractor itself or by its Related Bodies Corporates as described in Schedule F8 (*Self-Performed Reimbursable Work*) or otherwise approved by the Principal under clause 11.14, but excluding any work or activities undertaken by the Contractor's Employees that are covered by the Preliminaries Fee or Design Fee.

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

Share of Cost Overrun Cap means an amount equal to [REDACTED], as increased pursuant to:

[REDACTED]

- (b) an Outturn Cost Cure Plan submitted pursuant to clause 15.12 for which the Principal's Representative has notified the Contractor that it has no (or has no further) comments in accordance with clause 13.13(h)(iii)(E) or clause 13.13(j)(ii)(B).

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

Share of Savings Cap means an amount equal to [REDACTED].

Shared Access Road has the meaning given to that term in the SWTC.

Shared Construction Site Area means:

- (a) the Shared Access Road; and
- (b) the Public Road Areas.

Significant Lump Sum Subcontract means:

- (a) a Subcontract in respect of the activities covered by the Design Fee or Preliminaries Fee, which has a contract value of greater than [REDACTED];
- (b) without limiting paragraph (a), any Subcontract in respect of the core design services for the Works, including any Subcontract with the Design JV.

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

Site Access Schedule means Schedule E2 (*Site Access Schedule*).

Site Condition Report has the meaning given to that term in the Ports Licence.

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

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

Site Establishment Management Plan means the plan referred to in condition A17 of the Planning Approval.

Software means:

- (a) all software which:
 - (i) forms, or is provided as, part of the Project Works;
 - (ii) is required or necessary in order for the Principal, its Associates or the Independent Certifier to construe and deal with documentation provided by the Contractor pursuant to or in relation to this deed; and
 - (iii) is required or necessary in order for the Principal to integrate the Works with other transport infrastructure or otherwise use, operate or maintain the Works; and
- (b) all Updates and New Releases to the software referred to in paragraph (a).

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

Spare Parts means the spare parts listed in the Initial Spares List and the spare parts listed in the Final Spares List.

Spares Allowance has the meaning given to that term in clause 3.19(a)(iii).

Spares Finalisation Date means the date that is six months before the Date for Opening Completion.

Special Unknown Contamination means any Contamination that both:

- (a) falls entirely within the categories specified in the columns titled "Category" and "Category description" in the table in Schedule C10 (*Special Unknown Contamination*); and
- (b) exceeds the volumes specified in the column titled "Classification Baseline (tonnes)" in the table in Schedule C10 (*Special Unknown Contamination*) for the relevant category of Contamination,

notwithstanding that those Contamination conditions or characteristics may have been known by the Contractor prior to the date of this deed or were capable of being Reasonably Anticipated by the Contractor.

Specified Claim means any Claim:

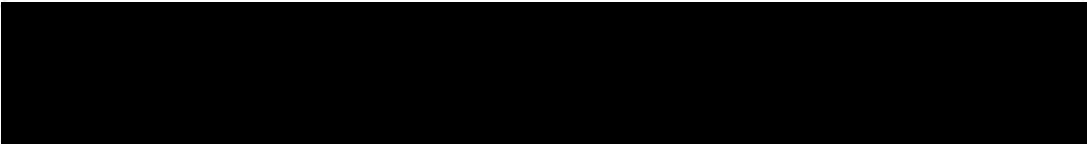
- (a) for a Variation directed in accordance with clause 10 or a direction by the Principal's Representative to which clause 23.1 applies; and
- (b) for an extension of time under clause 14.8.

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

Step-in Event means the occurrence of any of the following:

- (a) an event or circumstance arises that requires the Principal to exercise a function as a Roads Authority;

- (b) an event or circumstance arises out of or in connection with the Contractor's Activities that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the health or safety of persons;
 - (ii) the environment;
 - (iii) any property; or
 - (iv) the safe and secure performance of the Contractor's Activities;
- (c) an event or circumstance arises out of or in connection with the Contractor's Activities that creates or poses a security threat;
- (d) an event listed in clause 18.1(b) or an event listed in clause 18.4; or
- (e) the Contractor otherwise fails to perform any obligation under this deed.



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

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

Subcontract Tender Documentation means, in relation to a Subcontract Proposal or any other proposed Subcontract for Reimbursable Work to which clause 11.2(b) does not apply:

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

Subcontractor means:

- (a) any person (including a supplier of the Contractor) engaged by the Contractor to perform any part of the Works not being performed by the Contractor as Self-Performed Reimbursable Work; and
- (b) where a reference to the term 'Subcontractor' states "of any tier" or similar, any person who enters into a contract in connection with the Contractor's Activities in a chain of contracts where the ultimate contract is with the Contractor,

and excludes any Related Body Corporate of the Contractor.

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

Sunset Date means the date that is [REDACTED] after the Date for Opening Completion (as extended in accordance with this deed).

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

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

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

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

Sydney Harbour means the waterways extending west from the waterway entrance known as "Sydney Heads" to the estuaries of the Lane Cove and Parramatta rivers.

Sydney Metro City and Southwest Interface Deed means the document titled "Sydney Metro City & Southwest – Western Harbour Tunnel Interface Deed" dated 25 September 2020 between Sydney Metro and TfNSW and the documents titled "E6 - Sydney Metro City & Southwest - Western Harbour Tunnel Interface Deed - Schedule 1" and "E6 - Sydney Metro CSW- Western Harbour Tunnel Interface Deed - Schedule 13" included in Schedule E6 (*Third Party Agreements*), as amended by replacing the map in Schedule 12 (*Interface Zone*) with the map included in the file titled "E6 - Sydney Metro CSW Interface Deed - Schedule 12 Interface Zone – Map" in Schedule E6 (*Third Party Agreements*).

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

- (a) for Management Fee Adjustments;
- (b) for Design Fee Adjustments;
- (c) for Preliminaries Fee Adjustments; and
- (d) for Reimbursable Cost Element Adjustments;
- (e) for a Pre-Agreed Variation directed pursuant to clause 10.10;

[REDACTED]

[REDACTED]

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

Target Satisfaction Date means the date set out in Schedule A1 (*Contract Particulars*).

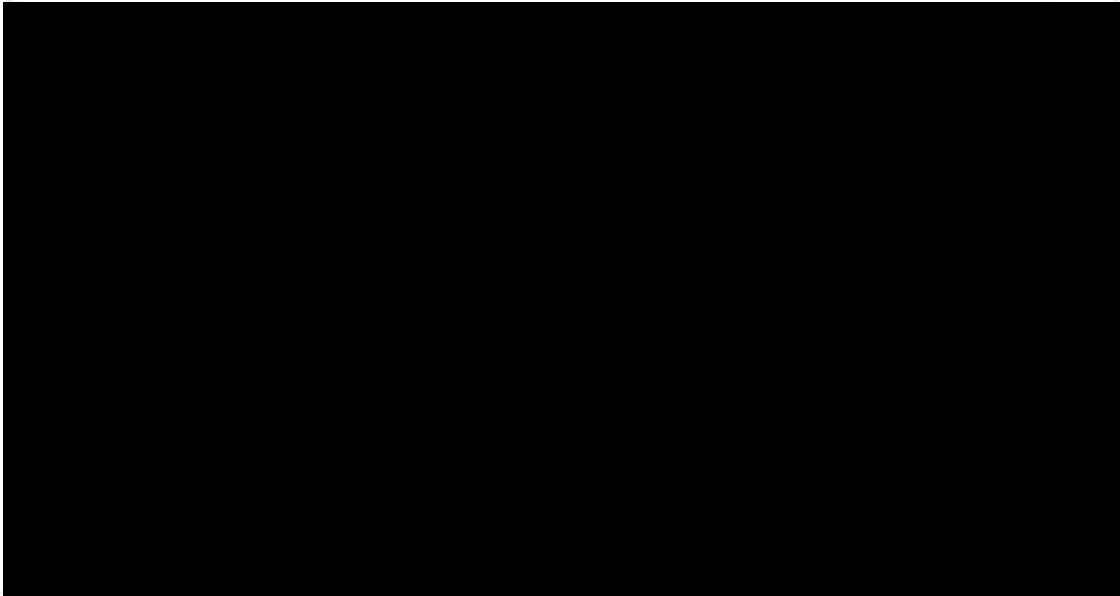
Taxes means income, stamp, indirect or other taxes, levies, imposts, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof but does not include GST.

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

TBM Modification Application means the application under section 5.25 of the EP&A Act to modify the Planning Approval referred to in paragraph (a) of the definition of "Planning Approval", so as to:

- (a) enable the carrying out of the Works using a tunnel boring methodology instead of immersed tubes;
- (b) allow off-site pre-casting of segments and culverts; and
- (c) include Falcon Street as a tunnelling site.

TBM Planning Approval means the Planning Approval referred to in paragraph (a) of the definition of "Planning Approval" as modified by the Minister for Planning under section 5.25 of the EP&A Act in relation to the TBM Modification Application.



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

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

Tender Cost Contribution Deed means the deed titled "Tender Cost Contribution Deed" entered into between the Principal and the Contractor dated 25 May 2022.

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

TfNSW means Transport for NSW, a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988 (NSW)*.

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

Third Party Agreement means:

- (a) an agreement which appears in Schedule E6 (*Third Party Agreements*); and

- (b) any Draft Third Party Agreement, Additional Third Party Agreement or Amended Third Party Agreement with which the Contractor must comply pursuant to clause 3.7.

Third Party Software means all Software the copyright in which is owned by a person other than the Contractor.

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

Toll Road has the meaning given to that term in Schedule E8 (*Lane Occupancy Fees*).

Toll Road Concessionaire means each of the WHT Concessionaire and WestConnex Concessionaire.

Tolling Back Office Works means the tolling back office works to be carried out by the Principal as contemplated in Appendix B10 of the SWTC.

Tolling Deliverable means each item (including Software) required to be produced by the Tolling Equipment Works Subcontractor or provided to the Contractor under the Tolling Equipment Works Subcontract.

Tolling Design Documents means each of the design documents described in the Appendix B.10-1 of the SWTC which are prepared by the Tolling Equipment Works Subcontractor and approved in accordance with clause 9.

Tolling Equipment IP means the parts of the Contract Documentation and Deliverables which the Tolling Equipment Works Subcontractor or its Associates prepares, obtains, uses or provides to the Contractor in the performance of the Tolling Equipment Works.

Tolling Equipment Works means the works to be undertaken by the Contractor in respect of the tolling equipment as set out in Attachment B.10-1 of Appendix B.10 of the SWTC.

Tolling Equipment Works Maintenance Subcontract means the agreement to be entered into between the Principal (or its nominee) and the Tolling Equipment Works Maintenance Subcontractor.

Tolling Equipment Works Maintenance Subcontractor means the entity to be engaged by the Principal (or its nominee) to carry out the operation and maintenance of the Tolling Equipment Works.

Tolling Equipment Works Subcontract means the contract the Tolling Equipment Works Subcontractor is engaged under to perform the Tolling Equipment Works entered into between the Principal and the Tolling Equipment Works Subcontractor and novated from the Principal to the Contractor pursuant to the Tolling Equipment Works Subcontract Deed of Novation.

Tolling Equipment Works Subcontract Deed of Novation means a deed of novation and amendment between the Principal, the Contractor and the Tolling Equipment Works Subcontractor novating the Tolling Equipment Works Subcontract from the Principal to the Contractor substantially in the form contained in Schedule A21 (*Tolling Equipment Works Subcontract Deed of Novation*).

Tolling Equipment Works Subcontractor means the entity engaged under the Tolling Equipment Works Subcontract to carry out the Tolling Equipment Works.

Tolling Services means all things and tasks which the Tolling Equipment Works Subcontractor is, or may be, required to carry out or do under the Tolling Equipment Works Subcontract to comply with its obligations, whether or not the performance of such things or tasks is subcontracted by the Tolling Equipment Works Subcontractor to another person,

including the Tolling Deliverables, Tolling System design, supply and installation and any ancillary or related works, services, functions or responsibilities which are required for the proper performance of the Tolling Equipment Works Subcontract.

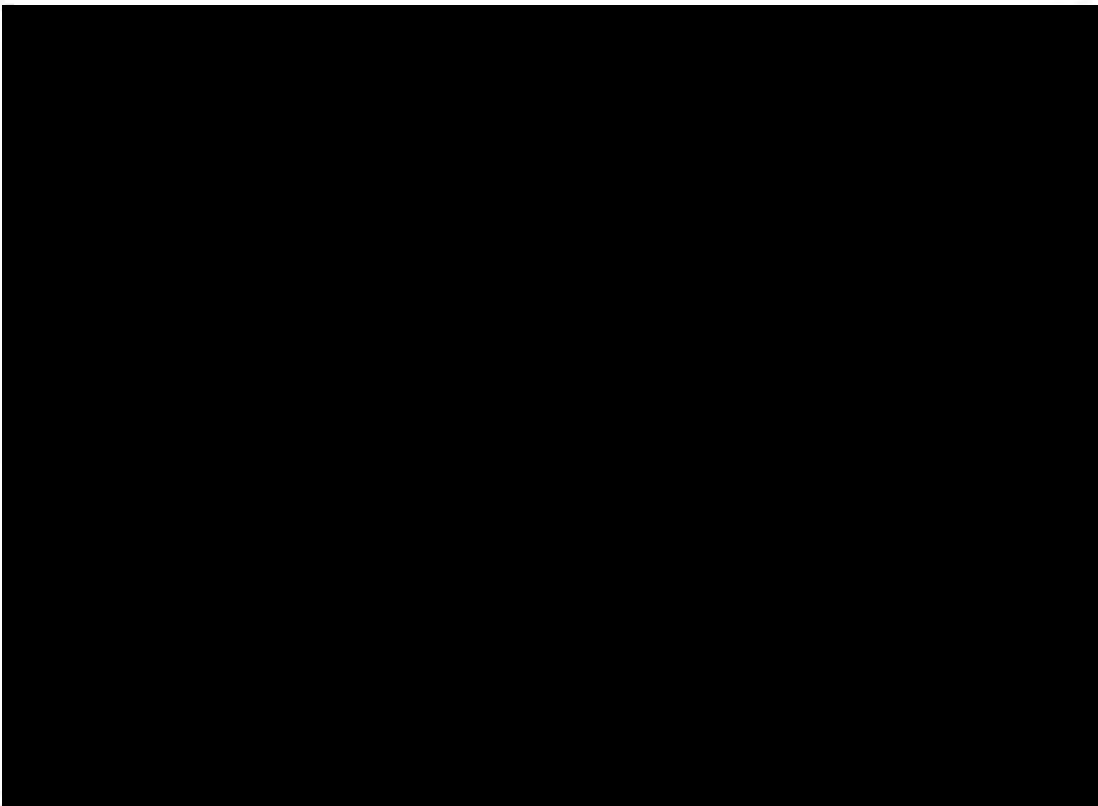
Tolling System means the system consisting of the roadside equipment for the Western Harbour Tunnel that the Tolling Equipment Works Subcontractor is to design, supply and install under the Tolling Equipment Works Subcontract as described in the SWTC and the Tolling Design Documents.

Traffic Control Group means the group referred to in clause 13.28.

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

Traffic or Tolling Impact has the meaning given to that term in Schedule E8 (*Lane Occupancy Fees*).

Training Management Guidelines means the NSW Government Training Management Guidelines: Skills, training and diversity in construction, October 2021.



Unknown Artefact means an Artefact within or adjacent to the Construction Site that is discovered after the date of this deed, that differs materially in nature, location, extent or scope from what could have been Reasonably Anticipated by the Contractor.

Unknown Contamination means Contractor Contamination that:

- (a) in the case of Contractor Contamination in existence within the Construction Site at the date of this deed, such Contamination:
 - (i) was not known, or substantially known, to the Contractor at the date of this deed; and

- (ii) differs materially in nature, location, extent or scope from what could have been Reasonably Anticipated; or
- (b) in the case of Contractor Contamination in existence outside the Construction Site at the date of this deed which migrates onto the Construction Site after the date of this deed, it could not have been Reasonably Anticipated that such Contractor Contamination would migrate onto the Construction Site as a result of the Contractor's Activities and such migration is not caused by or contributed to by the Contractor or its Associates,

excluding any:

- (c) Contaminated groundwater that is able to be remediated or treated to the standard required by this deed using treatment facilities already in existence or otherwise required by this deed; and
- (d) Special Unknown Contamination.

Unknown Inaccurate Principal Geotechnical Data means a material inaccuracy in the Principal Geotechnical Data to the extent that the inaccuracy:

- (a) was not known, or substantially known, to the Contractor at the date of this deed; and
- (b) could not have been Reasonably Anticipated.

Unknown Site Condition Notice has the meaning given to that term in clause 7.12(b).

Unknown Site Conditions means:

- (a) Unknown Inaccurate Principal Geotechnical Data;
- (b) an Unknown Artefact;
- (c) Unknown Contamination;
- (d) an Unknown Utility Service; and
- (e) Special Unknown Contamination.

Unknown Utility Service means a Utility Service to the extent that:

- (a) the Utility Service is in existence within the Construction Site; and
- (b) such Utility Service, or the work required in connection with the Utility Service, differs materially in nature, location, extent, type or scope from what could have been reasonably anticipated or foreseen at the date of this deed by an experienced, prudent and competent contractor in the position of the Contractor, who had done those things that the Contractor warrants under clause 7.11(d) that it has done,

excluding any Utility Service:

- (c) connecting a property to a common utility service;
- (d) that does not require treatment in accordance with the requirements of the relevant Authority;
- (e) that is not:

- (i) a medium or high pressure gas mains;
- (ii) a DN200 or greater potable watermain;
- (iii) a rising sewer main;
- (iv) an 11kv or greater electrical cables;
- (v) a fibre optic telecommunication cables.

Unplanned Lane Closure has the meaning given to that term in Schedule E8 (*Lane Occupancy Fees*).

Update means, in respect of any Software referred to in paragraph (a) of the definition of "Software", software which has been produced primarily to overcome defects in, or to improve the operation of, such Software.

Urgent Defect means a Defect, which:

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

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

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

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

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

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

- (a) any addition, reduction, increase to, decrease, omission or deletion from the Works or the Contractor's Activities;
- (b) any change to the character or quality of any Material or work;
- (c) any change to the levels, lines, positions or dimensions of any part of the Works;
- (d) changes to the boundaries of the Construction Site or the Site Access Schedule; and

(e) changes to any sequence, method or timing of construction other than any changes necessary for the Contractor to comply with its obligations under this deed,

but excludes:

(f) any Provisional Sum Work;

(g) the changes to the Contractor's Activities or the Works that are required as a result of the Principal's Representative instructing a Pre-Agreed Variation directed under clause 10.10;

(i) any direction under clause 9.2(b).

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

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

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

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

WestConnex Access Deed means the draft access deed between TfNSW and the WestConnex Concessionaire included in Schedule E6 (*Third Party Agreements*) or, if an amended or finalised version is provided pursuant to clause 3.7, the amended or finalised version of that access deed.

WestConnex Concessionaire means a concessionaire of a WestConnex Motorway.

WestConnex Motorways means:

(a) the M4 Motorway;

(b) the M5 Motorway;

(c) the M4-M5 Link Motorway; or

(d) the M8 Motorway,

or any combination of them if the context so requires.

WestConnex O&M Contractor means an entity engaged by a WestConnex Concessionaire or the Principal to operate or maintain a WestConnex Motorway or, to the extent a WestConnex Concessionaire operates or maintains a WestConnex Motorway, the WestConnex Concessionaire.

Western Harbour Tunnel and Beaches Link Program means the collective program of works encompassing the Warringah Freeway Upgrade, the Western Harbour Tunnel and Beaches Link as further described in the main body of the SWTC.

WFU Contract means the deed titled "Western Harbour Tunnel and Beaches link – Warringah Freeway Upgrade Incentivised Target Cost Contract" dated 10 September 2021 between the WFU Contractor and the Principal.

WFU Contractor means the Interface Contractor carrying out the WFU Work and other works under the WFU Contract.

WFU Handover Works means the part of the works to be undertaken by the WFU Contractor described by the Interface Specification in Part C of Schedule C9 (*Interface Documentation*).

WHS means work health and safety.

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

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Project Works.

WHT Concessionaire means a concessionaire of the Motorway.

WHT Motorway Stratum means the stratum of real property on which the Motorway will be located, as agreed by the parties or determined by the Principal under clause 7.28.

WHT Planning Approval means the planning approval described in paragraph (a) of the definition of Planning Approval.

WHT Southern Tunnel Works means the works to be undertaken by the RI Contractor as described by the Interface Specification in Part B1 of Schedule C9 (*Interface Documentation*) and which will integrate with the Project Works pursuant to SWTC Appendix B33.1.

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

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

- (a) the relevant provisions of this deed; or
- (b) the risk of causing the Loss claimed by the relevant party in respect of the breach,

but does not include errors in judgement, mistakes, errors or acts or omissions made in good faith.

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

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

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

Workforce Development and Social Procurement Management Plan means the Project Plan of that name which is required to be provided and implemented by the Contractor pursuant to clause 13.19(d).

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

Works means the Project Works and the Temporary Works.

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

1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

- (b) **(Person)**: person includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) **(Party)**: a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) **(Includes)**: includes in any form is not a word of limitation;
- (e) **(Authorities)**: a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;

- (f) **(Documents)**: a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or Code and Standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) **(Statutes)**: a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) **(Deed)**: a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) **(Schedules)**: a reference to:
 - (i) this deed includes all schedules, exhibits (subject to clause 7.19), attachments and annexures to it, including the SWTC; and
 - (ii) a reference to the SWTC includes all appendices to the SWTC;
- (ia) **(Clause)**: in the main body and schedules of this deed:
 - (i) a reference to a clause refers to the relevant clause of the main body of this deed (unless otherwise specified); and
 - (ii) a reference to a paragraph refers to the relevant paragraph of a definition in clause 1.1 of this deed (unless otherwise specified);
- (j) **(Number and gender)**: a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) **(Other forms of word)**: if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) **(Public holidays)**: for the purposes of clauses 14.10 and 14.12:
 - (i) any extension of time stated in days; or
 - (ii) any reference to day,

will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Contractor's Program submitted under clause 14.2 as working days;
- (m) **(Day)**: for all purposes other than as set out in clause 1.2(l) or where otherwise designated as a Business Day, day means calendar day;
- (n) **(Court or tribunal)**: a reference to a court or tribunal is to an Australian court or tribunal;
- (o) **(Group)**: a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;

- (p) **(Month)**: a reference to a month is a reference to a calendar month;
- (q) **(Dollars)**: a reference to \$ or dollar is to Australian currency;
- (r) **(Intended purpose or use)**: any reference to:
- (i) the Works;
 - (ii) the Project Works;
 - (iii) the Temporary Works;
 - (iv) the Asset Management Information;
 - (v) the SWTC;
 - (vi) the Design Documentation; or
 - (vii) any other document or thing,
- or any part of any of them:
- (viii) being fit for its purpose or for its intended purpose; or
 - (ix) as having an intended use,
- (or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:
- (x) the Principal's intention that the Project Works will be used as an integral part of the WHTBL Program and which may:
 - (A) be required to accommodate high levels of traffic;
 - (B) be subject to continuous operation;
 - (C) be operated by either the State of New South Wales or by private operator(s) on its behalf;
 - (D) [REDACTED] be connected to or integrated with other transport infrastructure to the extent referred to in this deed; and
 - (xi) any purpose, intended purpose or intended use stated in or reasonably ascertainable on or prior to the Date of Completion from:
 - (A) this deed, including:
 - (aa) [REDACTED] the objectives referred to in clause 2.1 and clause 2.2; and
 - (bb) the requirement that the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; and
 - (B) to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Variation, any document provided by the Principal to the Contractor specifically in connection with the Variation (excluding any Information Documents);

- (s) **(Fit for purpose)**: any reference to the Project Works or any part of any of them being capable of remaining at all relevant times fit for their purpose or for their intended purpose will be read as being subject to the AM Contractor, the Principal and its Associates (as applicable) operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information;
- (t) **(Information)**: any reference to information will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (u) **(Obligations)**: any obligation of the Contractor under this deed with respect to:
 - (i) Project Plans, will be read as an obligation with respect to the Initial Project Plans, or where a version has been submitted to the Principal's Representative, the version of the relevant Project Plan last submitted by the Contractor to the Principal's Representative and in respect of which the Principal's Representative has notified the Contractor that it has no comments, in accordance with clause 13.13(h)(iii)(E); or
 - (ii) the Asset Management Information will be read as an obligation with respect to the version of the relevant Asset Management Information last submitted by the Contractor to the Principal's Representative under clause 8.12(a) which has not been rejected by the Principal's Representative in accordance with clause 8.12(c)(i);
- (v) **(GST Law)**: words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (w) **(Liability to pay GST)**: on the basis that the Principal is notionally liable to pay GST under the GST Law, a reference in this deed to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement;
- (x) **(Member of GST group)**: if a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled;
- (y) **(Business Day)**: if the day on or by which any thing is to be done under this deed is not a Business Day, that thing must be done:
 - (i) if it involves a payment other than a payment which is due on demand, on the preceding Business Day; and
 - (ii) in all other cases, no later than the next Business Day;
- (z) **(Direction)**: a reference to direction in the definition of Claim in clause 1.1 or in any of clauses 3.1(a)(vii), 13.1, 13.13(o) and 23, will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document;
- (aa) **(Party drafting deed)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this deed or any part;

- (bb) (**Subcontractor**): the word subcontractor will include subcontractors, suppliers, Designers and Subcontractors, and the word subcontract will include a contract with a subcontractor (including an Approved Subcontract);
- (cc) (**Claims and Liability**): where, in this deed, it is stated that:
- (i) the Contractor is not entitled to make any Claim against the Principal; or
 - (ii) the Principal is not liable to the Contractor,
- or words to that effect, then:
- (iii) subject to clause 1.2(cc)(iv), the Contractor releases the Principal absolutely from any Claim whatsoever and however arising (including in negligence) which the Contractor had or, but for this deed, might have had in connection with the subject matter for which this deed states that the Contractor has no entitlement to make a Claim; and
 - (iv) for the purposes of the clauses specified in Schedule A1 (*Contract Particulars*), the Contractor is not prevented from making a Claim for payment under and in accordance with clause 15 for Reimbursable Costs, the Management Fee, the Design Fee, the Preliminaries Fee, amounts in respect of Provisional Sum Work or amounts in respect of Post-Completion Activities;
- (dd) (**Relationship**): nothing in, or contemplated by, this deed will be construed or interpreted as:
- (i) constituting a relationship between the Principal or the NSW Government and the Contractor and any of its related companies or partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
 - (ii) imposing any general duty of good faith on the Principal to the Contractor, other than to comply with the obligations (if any) expressly stated to be assumed by the Principal under this deed on a good faith basis;
- (ee) (**Exercising right or remedy**): when the Principal may exercise a right or remedy, the Principal has an absolute discretion whether or not to do so (unless expressly stated otherwise), and is not required to exercise the discretion in good faith or having regard to, or for the benefit of, the Contractor;
- (ff) (**Best or reasonable endeavours**): if the Principal is required to exercise best or reasonable endeavours, the Contractor acknowledges that:
- (i) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
 - (ii) the Principal cannot guarantee the relevant outcome; and
 - (iii) the Principal, by undertaking to exercise best or reasonable endeavours, is not required to:
 - (A) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (B) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of this deed if the Principal regards that exercise as not in the public interest;

- (C) develop policy or legislate by reference only or predominantly to the interests of this deed;
- (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this deed; or
- (E) act in any other way that the Principal regards as not in the public interest; and

(gg) **(Handover Portions and Project Works)**: the interpretations of:

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

and clauses 7, 12, 14, 16, and 17.1, the Site Access Schedule and the SWTC will apply separately to each Handover Portion (including any Handover Portion determined under clause 16.4) and the balance of the Project Works (as applicable) and references therein to any of the terms in clauses 1.2(gg)(i) to 1.2(gg)(viii) (inclusive) will mean so much of the Contractor's Activities, Works, Project Works, Temporary Works, Third Party Works, Temporary Areas, Construction Site, and Defects Correction Period as is comprised in, or associated with, the relevant Handover Portion and the balance of the Project Works (as applicable).

1.3 **Ambiguous terms**

- (a) **(Error)**: If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing pursuant to clause 1.3(b) that it considers, that there is an Error within this deed (including in any schedule), the Principal's Representative must, direct the interpretation of this deed which the Contractor must follow.
- (b) **(Notification)**: The Contractor must promptly notify the Principal's Representative if it considers there is an Error within this deed (including in any schedule).
- (c) **(No requirement for determination)**: The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this deed.
- (d) **(Direction by Principal's Representative)**: To the extent that a direction by the Principal's Representative under clause 1.3(a) is not consistent with the order of

precedence in clause 1.4(c) and clause 1.4(d), the Principal must direct a Variation under clause 10.8(a).

- (e) **(No Claim)**: The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal in connection with a direction by the Principal's Representative under clause 1.3(a) other than as set out in clause 1.3(d).

1.4 **Order of Precedence**

- (a) **(Concept Design)**: The Concept Design is subject to the provisions of clause 9.2.
- (b) **(Other documents)**: The documents, other than the Concept Design, which comprise this deed (including the SWTC) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
- (c) **(Order of Precedence)**: If (notwithstanding clause 1.4(b)) there is any Error in or between the various documents that comprise this deed then:
 - (i) if the Error is between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (A) this deed (excluding the schedules);
 - (B) the main body of the SWTC (excluding the Appendices);
 - (C) the Contractor Documentation Schedule;
 - (D) the other Appendices of the SWTC (excluding the Concept Design) in accordance with the order of precedence set out in section 1.7 of the main body of the SWTC;
 - (E) Schedule A1 (*Contract Particulars*);
 - (F) the remainder of the Schedules; then
 - (G) without limiting clause 9.2(c), the Concept Design; and
 - (ii) to the extent clause 1.4(c)(i) does not apply to or resolve the Error, the document, term or requirement which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless the Principal's Representative directs otherwise).
- (d) **(Project Plans)**: To the extent that the Contractor is required pursuant to the deed to comply with a Project Plan:
 - (i) the terms of this deed including the Schedules will have precedence over the Project Plan to the extent of any inconsistency, ambiguity or discrepancy; and
 - (ii) a Project Plan cannot impose an obligation on the Principal to do something different to, or earlier than, required by this deed.

1.5 **Authorities**

- (a) **(Unfettered discretion)**: This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal or any other Road Transport Agency to exercise any of their respective functions and powers pursuant to any Law.

- (b) **(No act or omission)**: Without limiting clause 1.5(a), anything the Principal or any other Road Transport Agency does, or fails to do or purports to do, pursuant to their respective functions and powers under any Law, will be deemed not to be an act or omission by the Principal under this deed and will not entitle the Contractor to make any Claim against the Principal arising out of the subject matter of this deed and the other Project Documents to which the Principal is a party.

1.6 **Electronic Files**

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

2. **OBJECTIVES**

2.1 **Objectives for the WHTBL Program**

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

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

2.2 **Objectives for the project**

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

- (a) **(Motorway)**: deliver a fully commissioned twin three lane motorway tunnels from Rozelle to Cammeray;
- (b) **(Integrate)**: integrate the Western Harbour Tunnel into the Sydney arterial road network;
- (c) **(Construction impacts)**: minimise construction impacts on the local community; and
- (d) **(Journeys)**: enable faster, more reliable journeys on Sydney Harbour Bridge and other harbour motorway crossings.

2A **CONDITIONS PRECEDENT**

2A.1 **Commencement of obligations**

The rights and obligations of the parties under this deed will commence on the Commencement Date (other than Day 1 Clauses which commence on the date of this deed).

2A.2 **Satisfaction of conditions precedent**

- (a) **(Contractor to satisfy)**: To the extent this deed does not expressly impose a more onerous requirement, the Contractor must use all reasonable endeavours to satisfy the Conditions Precedent by the Target Satisfaction Date.
- (b) **(Principal may waive)**: The Principal may waive in writing any of the Conditions Precedent.
- (c) **(Notice of satisfaction)**: The Principal must give the Contractor notice when the Principal has reasonably formed the view that a Condition Precedent has been satisfied, and the Contractor must give notice to the Principal of whether or not it agrees with such notice.
- (d) **(Notice of Commencement Date)**: The Principal will notify the Contractor promptly of the date on which the Principal is satisfied that all Conditions Precedent have been satisfied or unconditionally waived and that the Commencement Date has occurred.

2A.3 **Target Satisfaction Date**

- (a) **(Option to terminate)**: If any of the Conditions Precedent is not satisfied (or waived under clause 2A.2(b)) by 11:59pm on the Target Satisfaction Date, then the Principal may terminate this deed by written notice to the Contractor and this deed will terminate 1 Business Day after 11.59 pm on the date of the notice if the Conditions Precedent have not been satisfied (or waived under clause 2A.2(b)) within that period.
- (b) **(Effects of termination)**: If this deed is terminated pursuant to this clause 2A.3:
 - (i) the Principal must return all unconditional undertakings provided by the Contractor within 10 Business Days after the date of termination of this deed;
 - (ii) the Contractor must immediately handover to the Principal's Representative all copies of:
 - (A) any documents provided by the Principal to the Contractor;
 - (B) all Contract Documentation and Deliverables prepared by the Contractor to the date on which the Principal exercises its rights under clause 2A.3(a); and
 - (C) any other documents or information in existence that are to be provided to the Principal under the terms of this deed; and
 - (iii) no party will have any Claim against any other party under or in respect of this deed or in respect of the reimbursement of costs or expenses or otherwise in connection with this deed or the Contractor's Activities, except for any Claim in relation to breaches of any Day 1 Clause.

3. **CONTRACTOR'S OBLIGATIONS**

3.1 **General**

- (a) **(General obligations):** The Contractor:
- (i) must execute the Contractor's Activities, including the design, construction, supply, delivery, installation, integration, testing, commissioning and hand-over of the Project Works and each Handover Portion, in accordance with this deed;
 - (ii) warrants that it will use its best endeavours to ensure that it achieves Completion of the Project Works in accordance with the Cost Plan and so that the Outturn Cost does not exceed the Target Cost;
 - (iii) warrants that it will ensure the Contractor's Activities are performed:
 - (A) in a proper and workmanlike manner; and
 - (B) in compliance with clause 8.1;
 - (iv) warrants that the Temporary Works will at all relevant times be fit for their intended purposes;
 - (v) warrants that the Project Works will:
 - (A) upon Opening Completion (or in the case of the Handover Portions, upon Handover Completion of the relevant Handover Portion), be fit for their intended purposes; and
 - (B) thereafter be capable of remaining at all relevant times fit for their intended purposes;
 - (vi) warrants that it will exercise a duty of the utmost good faith to the Principal in performing the following obligations under this deed:
 - (A) the preparation of documentation and proposals in relation to Self-Performed Reimbursable Work;
 - (B) the preparation of the Subcontract Tender Documentation for the Reimbursable Work and in all post-tender communications (verbal or otherwise) with tenderers prior to the entry of an Approved Subcontract (where applicable);
 - (C) the administration of all Subcontracts including all negotiations concerning Variations and extensions of time; and
 - (D) in making Payment Claims under clause 15.2;
 - (vii) must commence and progress the Contractor's Activities expeditiously and in accordance with any directions of the Principal and achieve:
 - (A) Handover Completion of each Handover Portion by the relevant Date for Handover Completion;
 - (B) Opening Completion by the Date for Opening Completion; or
 - (C) Completion by the Date for Completion;

- (viii) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Contractor's Activities;
 - (ix) must liaise, cooperate and confer with others as directed by the Principal;
 - (x) warrants that upon Opening Completion (or in the case of the Handover Portions, upon Handover Completion of the relevant Handover Portion), the Design Life of each Asset will be equal to or exceed the required period for that Asset specified in the SWTC, including Appendix B.13 to the SWTC;
 - (xi) warrants the Post-Completion Activities will be completed in accordance with, and satisfy the requirements of, this deed;
 - (xii) must carry out the Contractor's Activities in accordance with the Project Documents and Good Industry Practice;
 - (xiii) must, unless otherwise expressly permitted by this deed, perform the Contractor's Activities so that all traffic lanes of the Motorway are kept open to the public for the safe, efficient and continuous passage of vehicles at all times when undertaking Contractor's Activities after the Date of Opening Completion; and
 - (xiv) must provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this deed, including any such devices reasonably required by the Principal's Representative.
- (b) **(Responsibility for Loss):** Without limiting the generality of the Contractor's obligations but subject to its entitlement to payment of the Reimbursable Costs, the Management Fee, the Design Fee, the Preliminaries Fee, amounts for Post Completion Activities and amounts for Provisional Sum Work under clause 15 and any express entitlements set out in this deed, the Contractor will be responsible for and accepts the risk of any Loss, delays or disruptions which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed, including:
- (i) controlling, coordinating, administering and directing all activities necessary for the planning, design, commencement, construction, supply, delivery, installation, integration, testing, commissioning, completion and handover of the Project Works;
 - (ii) the performance of the Design Work, Construction Work, Provisional Sum Work, Preliminaries and Delivery Phase Maintenance;
 - (iii) the engagement, supervision, control, coordination, performance and direction of all Subcontractors;
 - (iv) obtaining access to all areas other than the Construction Site under clause 7.10;
 - (v) Site Conditions;
 - (vi) all information provided or not provided by the Principal about the Project Works, the Temporary Works, the WHTBL Program and the Construction Site;
 - (vii) traffic conditions on or around the Construction Site and Extra Land, and any other difficulties with obtaining access to and from the Construction Site or Extra Land;

- (viii) Contamination;
- (ix) complying with Schedule E6 (*Third Party Agreements*) and clause 3.7;
- (x) complying with all Laws, Approvals and requirements of Authorities;
- (xi) the existence, location, condition and availability of Utility Services in respect of the Contractor's Activities;
- (xii) industrial relations issues;
- (xiii) foreign exchange movements in any currencies adverse to the Contractor;
- (xiv) increases in the costs of Materials, Construction Plant, Utility Services and labour required for the performance of the Contractor's Activities;
- (xv) damage to the Contractor's Activities, Project Works, Temporary Works, Construction Site or any Extra Land under clause 17.1; and
- (xvi) third party claims under clause 17.2.



3.2 **Cooperation and coordination with Interface Contractors**

- (a) **(Acknowledgement):** Without limiting the Contractor's obligations under each Interface Deed the Contractor acknowledges that:
 - (i) the Contractor's Activities interface with the Interface Works;
 - (ii) Interface Contractors may be executing Interface Works on or adjacent to parts of the Construction Site or Extra Land at the same time as the Contractor is performing the Contractor's Activities;
 - (iii) a Handover Portion (including the Handover Areas) may be handed over to the Principal or an Interface Contractor (as applicable);
 - (iv) it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Works with the Interface Works;
 - (v) Interface Contractors may require the Contractor to provide design and work methodology information to them to coordinate the design or conduct of the Interface Works with the Project Works, and this must be provided in a timely manner by the Contractor; and
 - (vi) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or cooperating and coordinating with any Interface

Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages.

(b) **(Cooperation and coordination):** The Contractor must:

- (i) permit Interface Contractors to execute the Interface Works on the applicable parts of the Construction Site, or on any adjacent property to the Construction Site:
 - (A) at the same time as the Contractor is performing the Contractor's Activities; and
 - (B) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose where the Appointed Principal Contractor is principal contractor of the Construction Site ensure they have safe, clean and clear access to those parts of the Construction Site required by them for the purpose of carrying out their work;

- (ii) protect the Works and other improvements on the Construction Site or Extra Land from accidental damage by Interface Contractors;
- (iii) not damage the Interface Works or the Interface Contractors' plant and equipment;
- (iv) cooperate with Interface Contractors, and do everything reasonably necessary to facilitate the execution of Interface Works, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;
- (v) carefully coordinate and interface the Contractor's Activities with the Interface Works and for this purpose:
 - (A) make proper allowance in all programs for the Interface Works;
 - (B) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Works with the Contractor's Activities;
 - (C) monitor the progress or conduct of the Interface Works;
 - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress, Handover Completion of any Handover Portion, Opening Completion or Completion; and
 - (E) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their Interface Works with the Contractor's Activities;
- (vi) cooperate, meet with, liaise and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- (vii) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to, or otherwise adversely affect, the Interface Works;

- (viii) coordinate the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the Project Works or Temporary Works which are adjacent to or interface with any Interface Works, at least 15 Business Days prior to commencing the work described in the work method statement;
- (ix) work directly with Interface Contractors where required to complete the design of the Works and provide all necessary information to Interface Contractors in respect of the Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this deed, including the SWTC;
- (x) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others monthly, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (xi) when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 Business Days (except in special circumstances) or any longer period of notice required under the SWTC to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
- (xii) ensure that any written notice given under clause 3.2(b)(xi) provides the Interface Contractor with the longest possible time for the provision of the information;
- (xiii) when any information is reasonably requested by the Principal or the Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Works with the Project Works or the Contractor's Activities:
 - (A) provide the information to the Principal's Representative or the Interface Contractor, with a copy to the Principal's Representative (as applicable), within the time requested by the Principal or the Interface Contractor, provided that this time is reasonable;
 - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;
- (xiv) achieve a high level of cooperation, coordination and collaboration with the Interface Contractors to ensure that:
 - (A) the Works are fully integrated with the Interface Works; and
 - (B) any delay, or potential delay, to the Contractor's Activities or the Interface Works is mitigated;
- (xv) closely cooperate with the Interface Contractors with respect to community and stakeholder liaison issues; and
- (xvi) use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options,

iterations, and work methodologies, to achieve the best solution to such problems, related to:

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

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

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

- (i) acknowledges and agrees that:
 - (A) no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of deed or Variation directed by the Principal's Representative);
 - (B) subject to clauses 3.2(f), 7A.3 and 14.17, and the Contractor's right to claim an extension of time in connection with an Early Utilities Works Delay, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with:
 - (aa) the Interface Contractors carrying out their work; or
 - (bb) any act or omission of an Interface Contractor;
 - (C) the Interface Contractors may require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal; and
 - (D) the Contractor's Program will accommodate requirements for design iterations as part of the Interface Works and incorporate the requirements of the Interface Deeds; and
- (ii) warrants that, as at the date of this deed, each element of the Target Cost and the Contractor's Program contains sufficient allowances for the assumption by the Contractor of the obligations and risks under this clause 3.2, including the cost of all the design iterations required to accommodate Interface Works.

3.3 Co-operation with Other Contractors

- (a) **(Co-operate):** Without limiting or being limited by clause 3.2, the Contractor must:
 - (i) permit Other Contractors and other persons required to carry out work on or about the Construction Site to carry out their work;
 - (ii) allow Other Contractors and other persons required to carry out work on or about the Construction Site to access the Construction Site to carry out their work;
 - (iii) fully co-operate with Other Contractors and other persons required to carry out work on or about the Construction Site;
 - (iv) carefully coordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors;
 - (v) carry out the Contractor's Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors; and
 - (vi) if requested by the Principal where relevant to the Contractor's Activities or the works to be carried out on or about the Construction Site, attend meetings and inspections with an Other Contractor and such other relevant parties.

- (b) **(Claim):** The Contractor:
- (i) where an act or omission of an Other Contractor (excluding an Interface Contractor) occurs, will be entitled to Claim:
 - (A) an extension of time; and
 - (B) [REDACTED] but only to the extent that the Contractor has been granted an extension of time under clause 14.10 in respect of such act or omission of the Other Contractor (excluding an Interface Contractor); and
 - (ii) is not otherwise entitled to make, and the Principal will not be liable for, any Claim arising out of or in connection with any act or omission of an Other Contractor or other persons carrying out work on or about the Construction Site.

3.4 **Interface Deeds**

- (a) **(Contractor must provide):** The Contractor must:
- (i) within five Business Days of receipt of a request from the Principal, provide to the Principal an Interface Deed with any Interface Contractor nominated by the Principal duly executed by the Contractor in the number of counterparts required by the Principal; and
 - (ii) at all relevant times comply with the terms of each executed Interface Deed.
- (b) **(No warranty):** If the Principal issues a request pursuant to clause 3.4(a)(i), the Principal will also request that each applicable Interface Contractor executes the relevant Interface Deed but:
- (i) does not represent or warrant that the relevant Interface Contractor will execute; and
 - (ii) will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with any Interface Contractor not executing an Interface Deed.
- (c) **(Compliance):** The Contractor must:
- (i) at all times comply with the terms of the Interface Deeds; and
 - (ii) not terminate the Interface Deeds without the prior written consent of the Principal.
- (d) **(Allowance):** The Contractor acknowledges that it has made allowance in the Target Cost for all costs in respect of its obligations under each Interface Deed and the Contractor will not be entitled to any Claim, extension of time or other form of relief for any delay incurred with respect to the Contractor's Activities as a result of performing its obligations under each Interface Deed.

3.5 **Not used**

3.6 **Incident Management Reporting**

- (a) **(Guidelines and procedure):** The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities

and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the SWTC.

- (b) **(Reporting of Incident)**: Should an Incident occur which is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the SWTC.
- (c) **(Contamination and Pollution)**: In relation to any environmental or safety Incident involving Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities, the Contractor must, subject to clauses 3.6(d) and 7.13(c):
 - (i) promptly take all appropriate action to manage and dispose of all Contamination, Pollution or other waste arising from the Incident;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
 - (iii) manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) **(Contamination or Pollution caused by Contractor)**: Without limiting clause 7.13(c), to the extent any Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities is caused by the Contractor (or its Associates):
 - (i) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal; and
 - (ii) the costs incurred in remediating such Contamination will not be Reimbursable Costs.
- (e) **(Failure to notify)**: If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, clause 18.1 will apply.
- (f) **(Inadequate measures to manage Incident)**: Without prejudice to the Principal's other rights under this deed, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident.
- (g) **(Costs and expenses)**: If the Principal takes any action under clause 3.6(f) it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due and payable from the Contractor to the Principal.
- (h) **(Suspension)**: Without prejudice to the Principal's other rights under this deed, the Principal's Representative may issue a direction under clause 14.14 requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event of:
 - (i) any Incident involving:
 - (A) a significant spill of Contamination;

- (B) any accident or release of Contamination which it believes may pose a danger to health, life or property; or
- (C) any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
- (ii) any safety Incident which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW or other work health and safety regulator) or damage to property.
- (i) **(No Claim)**: Other than as specified in clause 14.14(b)(ii), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in connection with:
 - (i) any suspension due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in clause 3.6(h); and
 - (ii) complying with a direction issued under clauses 3.6(j) or 3.6(k), including complying with the steps which the Principal's Representative directs that the Contractor must take before the Principal's Representative will issue a direction to recommence the Contractor's Activities,

and any costs incurred in connection with such directions are not Reimbursable Costs.

- (j) **(Timing for recommencing activities)**: If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.6(h), the Contractor may not recommence the Contractor's Activities in respect of the part of the Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (k) **(Steps for re-commencing activities)**: If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.6(h) the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 14.14 permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (l) **(Permitting commencement of activities)**: If clause 3.6(k) applies, the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under clause 3.6(k) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (m) **(Principal's entitlement to costs)**: If the Contractor is not entitled to relief under clause 14.14(b)(ii), the Principal may recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 3.6(h), as a debt due and payable from the Contractor to the Principal.

3.7 Third Party Agreements

- (a) **(Acknowledgements)**: The parties acknowledge and agree that:
 - (i) the Principal has entered or may enter into the Third Party Agreements;

- (ii) the Contractor must comply with, carry out and fulfil its obligations in Schedule E5 (*Requirements of Third Party Agreements*);
 - (iii) as at the date of this deed:
 - (A) the terms of the Third Party Agreements identified in Schedule A1 (*Contract Particulars*) as "Draft" have not been finalised between the Principal and the relevant Third Party (each a **Draft Third Party Agreement**); and
 - (B) there may be Additional Third Party Agreements which the Principal may, in its absolute discretion, enter into;
 - (iv) the Contractor has reviewed the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements and has included in the Target Cost all of its costs (including the cost of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 3.7(a)(ii) in respect of the Principal's obligations under the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements other than those obligations identified in Schedule E5 (*Requirements of Third Party Agreements*) for the Principal to perform; and
 - (v) following:
 - (A) finalisation of any Draft Third Party Agreement;
 - (B) the execution of any Additional Third Party Agreement; or
 - (C) the amendment of an existing Third Party Agreement (**Amended Third Party Agreement**),
 after the Commencement Date, the Principal must promptly give the Contractor a copy of the:
 - (D) final (and, where applicable, executed) version of the Draft Third Party Agreement, Additional Third Party Agreement or Amended Third Party Agreement (as applicable); and
 - (E) amendments (if any) to Schedule E5 (*Requirements of Third Party Agreements*) arising out of the execution of the Draft Third Party Agreement, or any Additional Third Party Agreement or Amended Third Party Agreement (as applicable), including any amendments to clause 3A in Schedule E5 (*Requirements of Third Party Agreements*) (**Revised Allocation**).
- (b) (**Obligations and costs**): The Contractor must carry out its obligations under this deed:
- (i) on the basis of:
 - (A) the latest version of the Draft Third Party Agreement, Additional Third Party Agreement or Amended Third Party Agreement (as applicable) provided by the Principal; and
 - (B) the Revised Allocation; and
 - (ii) subject to clause 3.7(c), without any adjustment to the Target Cost or any entitlement to make any other Claim.

(c) **(Discrepancy in obligations)**: To the extent the terms of:

- (i) the final version of any Draft Third Party Agreement;
- (ii) any Additional Third Party Agreement;
- (iii) any Amended Third Party Agreement; or
- (iv) the Revised Allocation,

impose greater or different obligations on the Contractor than it would otherwise have had in complying with the terms of this deed, it will be [REDACTED]

[REDACTED] an Extension Event.

(d) **(Claims from Third Parties)**: The Contractor:

(i) must indemnify the Principal from and against:

- (A) any claim by a Third Party against the Principal; or
- (B) any Liability of the Principal to a Third Party,

arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement, an Additional Third Party Agreement or an Amended Third Party Agreement), to the extent that the claim or Liability is caused by, arises out of or in any way in connection with the Contractor's Activities provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or Liability; and

(ii) subject to 3.7(c), will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

- (A) complying with its obligations under this clause 3.7; or
- (B) any acts or omissions of Third Parties or their respective employees, agents, contractors or officers.

3.8 Commissioning

The Contractor acknowledges that:

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

3.9 Existing Operations

- (a) **(Construction Site):** The Contractor acknowledges that:
- (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the Contractor's Activities;
 - (ii) the access ways to the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the Contractor; and
 - (iii) in using these access ways the Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) **(Coordination of access):** The Contractor must coordinate its access to the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site.
- (c) **(Contractor's obligations):** Without limiting any other obligations of the Contractor, the Contractor must:
- (i) to the extent reasonably possible in performing the Contractor's Activities and subject to clause 7.2, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations or block or impair access to any premises, carpark, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;
 - (ii) comply with the Principal's reasonable directions in connection with:
 - (A) the Existing Operations (including access to and use of the Construction Site); and
 - (B) workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any WHS Legislation;
 - (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety or the Environment);
 - (iv) comply with, and not do anything which may place the Principal in breach of, any Law applying to the Existing Operations on the Construction Site;
 - (v) ensure that in carrying out and completing the Contractor's Activities, the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed; and
 - (vi) immediately:
 - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the Contractor's Activities; and
 - (B) when directed by the Principal's Representative, take such action as is required to comply with its obligations in this clause.

- (d) **(Minimise disruption)**: Except to the extent expressly permitted by this deed, the Contractor must:
 - (i) not disrupt, interrupt or interfere in any way with the Existing Operations;
 - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with this deed; and
 - (iii) program and coordinate the Contractor's Activities under this deed using Good Industry Practice and so as to minimise the effect that the carrying out of the Contractor's Activities under this deed has on the Existing Operations.
- (e) **(Subcontractors)**: The Contractor must ensure that its Subcontractors and any of the respective employees, agents, contractors or officers of the Contractor and its Subcontractors at all times comply with this clause 3.9.

3.10 Project Plans

The Contractor must:

- (a) **(Development)**: develop the Project Plans as required by the SWTC, including to the extent required in the SWTC, submit the Project Plans to the Principal and, where requested by the Principal, to the Independent Certifier for review;
- (b) **(Consistency)**: ensure that the relevant Project Plans are consistent with the Initial Project Plans;
- (c) **(Updates)**: update the Project Plans:
 - (i) if there is a Variation, Change in Law, [REDACTED], Change in Planning Approval, [REDACTED] or Pre-Agreed Variation that affects the content of the Project Plans; and
 - (ii) otherwise as required by the SWTC or as directed by the Principal's Representative; and
- (d) **(Compliance)**: comply with:
 - (i) the Project Plans; and
 - (ii) to the extent the Project Plans are not finalised, the Initial Project Plans as if they were the Project Plans.

3.11 Cleaning Up

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

- (a) **(Clean and tidy)**: keep the Construction Site, Extra Land and the Project Works clean and tidy and free of refuse;
- (b) **(Remove rubbish)**: regularly remove rubbish, litter, graffiti and surplus material from the Construction Site and Extra Land;
- (c) **(Remove prior to vacating)**: prior to vacating any area of the Construction Site and Extra Land, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the relevant parts of the Construction Site and Extra Land; and

- (d) **(Condition precedent)**: as a condition precedent to Opening Completion (or in the case of the Handover Portions, upon Handover Completion of the relevant Handover Portion), remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Construction Site and Extra Land or the relevant part of the Construction Site or Extra Land, except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

3.12 **Construction Plant and Materials Removal**

Except for the purpose of achieving Opening Completion or Handover Completion (as applicable) as contemplated by clause 3.11(d) or when no longer required for the performance of the Works, the Contractor must not remove from the Construction Site or the Contractor's Activities any:

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

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

3.13 **Heavy Vehicle National Law**

- (a) **(Compliance)**: The Contractor must, at all times during the term of this deed and without limiting any other provisions of this deed, including Schedule D1 (*Heavy Vehicle National Law Requirements*):
 - (i) comply with, and ensure that each Subcontractor (of any tier) complies with, the provisions of the Heavy Vehicle National Law (including requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility Provisions) and the Road Transport Legislation;
 - (ii) ensure so far as is reasonably practicable the safety of the Contractor's and any Subcontractors' (of any tier) transport activities relating to the use of any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities;
 - (iii) ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), the Road Transport Legislation and including the provisions of any Chain of Responsibility Management Plan which has been submitted to the Principal under this clause 3.13; and
 - (iv) invite and permit the Principal or its nominee to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.
- (b) **(Subcontractors' role)**: The Contractor acknowledges that for the purposes of the Chain of Responsibility Provisions of the Heavy Vehicle National Law, its Subcontractors (of any tier) may hold a number of roles including as consignor, loader, unloader, loading manager, prime contractor, operator, scheduler and packer (as those terms are defined in the Heavy Vehicle National Law).

- (c) **(Development of Chain of Responsibility Management Plan):** Before the Contractor undertakes any Contractor's Activities which involve the Contractor or any Subcontractor (of any tier) using any Construction Plant regulated by the Heavy Vehicle National Law on a road in the course of the Contractor's Activities, the Contractor must develop a Chain of Responsibility Management Plan.
- (d) **(Requirements for Chain of Responsibility Management Plan):** Without limiting the requirements set out in Schedule D1 (*Heavy Vehicle National Law Requirements*) or Appendix C.1 of the SWTC, the Chain of Responsibility Management Plan must (at a minimum):
- (i) identify and assess the aspects of the Contractor's Activities and any activities performed by a Subcontractor (of any tier) that may lead to a contravention of the Heavy Vehicle National Law and undertake this identification and assessment at least annually and, in any event, after any event which reasonably indicates that the way that the Contractor has identified and assessed any such risks has led or may lead to a breach of the Heavy Vehicle National Law, whether by act or omission;
 - (ii) for any such risks identified under clause 3.13(d)(i), set out the measures that the Contractor or any Subcontractor (of any tier) may take to eliminate any such risk, or if it is not reasonably practicable to eliminate any such risk, to minimise it;
 - (iii) identify how the Contractor will ensure so far as is reasonably practicable, that the condition of all Construction Plant used in performing the Contractor's Activities meets, and will continue to meet, the requirements of the Heavy Vehicle National Law;
 - (iv) identify the systems to be developed by the Contractor to ensure that the Contractor and any Subcontractor (of any tier) meets their duties in respect of speed, fatigue, mass, dimension, maintenance and loading requirements under the Heavy Vehicle National Law (including the Chain of Responsibility Provisions);
 - (v) set out a process for notifying the Principal of any suspected, alleged or actual breaches of the Heavy Vehicle National Law by the Contractor or a Subcontractor (of any tier);
 - (vi) identify how the Contractor will address and remedy any suspected or actual incident of non-compliance with the Heavy Vehicle National Law; and
 - (vii) address each of the matters and meet or exceed each of the compliance measures set out in the Chain of Responsibility Guideline.
- (e) **(Submission of Chain of Responsibility Management Plan):** The Chain of Responsibility Management Plan must be submitted to the Principal for its review at least 25 Business Days prior to the commencement of any of the Contractor's Activities using any Construction Plant governed by the Heavy Vehicle National Law on a road.
- (f) **(Compliance with plan):** The Contractor must comply with and ensure that any Subcontractor (of any tier) complies with the Chain of Responsibility Management Plan which has been submitted to the Principal under this clause 3.13.
- (g) **(Liabilities not affected):** The Contractor agrees that:
- (i) any review of, comments upon or any other act or omission of the Principal about a Chain of Responsibility Management Plan; and

- (ii) compliance with the Chain of Responsibility Management Plan by the Contractor,

will not in any way lessen or affect:

- (iii) the Liabilities or responsibilities of the Contractor under the Project Documents or otherwise according to Law; or
 - (iv) the Principal's rights against the Contractor, whether under the Project Documents or otherwise according to Law.
- (h) **(Contractor to provide training)**: The Contractor must ensure that its personnel, and its Subcontractors (of any tier) and their personnel, are provided with adequate information, training, instruction and supervision in relation to any of their obligations and compliance with the Heavy Vehicle National Law, including:
- (i) induction training prior to the relevant personnel's commencement of their involvement in the Contractor's Activities; and
 - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
- (i) **(Breach, warning or notice)**: Where the Contractor becomes aware of any suspected, alleged or actual breach by the Contractor or any Subcontractor (of any tier), or its employees or becomes aware of any regulatory or administrative warning or caution, any notice requiring information or production of documents, inspections, infringement notices, notices or legal proceedings issued in respect of any Construction Plant used in performing the Contractor's Activities, the Contractor must:
- (i) promptly give the Principal a detailed written report of the matter and any steps taken or intended to be taken to respond to any such suspected, alleged or actual breach or to prevent any other similar suspected, alleged or actual breach from occurring; and
 - (ii) otherwise comply with Law and the relevant Project Plans (including the Work Health and Safety Management Plan, the Chain of Responsibility Management Plan and the Communications Strategy).
- (j) **(Show cause notice)**: The Principal may, if it reasonably believes that the Contractor is not in compliance with, or the Contractor has not procured a Subcontractor's (of any tier) compliance with, its obligations under this clause 3.13 or Schedule D1 (*Heavy Vehicle National Law Requirements*), by written notice direct the Contractor to show cause why the Contractor should not be directed to suspend any or all of the Contractor's Activities (including any activities carried out by any non-compliant Subcontractor) until such time as the Principal can be reasonably satisfied that any non-compliance has been remedied. Without limiting any other provision of this deed, the Principal may also, in its sole and absolute discretion:
- (i) require that the persons responsible for any breach of the Heavy Vehicle National Law are not used or engaged to provide any further goods or services in respect of the Contractor's Activities; and
 - (ii) report any suspected or alleged breach to any State or Territory road safety Authority or authorised officer under the Heavy Vehicle National Law.
- (k) **(No Claim)**: The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of an order by a court or direction by the Principal that the Contractor cease to perform its obligations under the Project Documents as

a result of a suspected, alleged or actual breach of this clause 3.13, Schedule D1 (*Heavy Vehicle National Law Requirements*) or the Heavy Vehicle National Law, and any costs incurred in connection with such order or direction will not be Reimbursable Costs.

- (l) **(Injury or damage):** The Contractor is responsible for preventing personal injury or death, or Loss or damage to the Project Works, the Temporary Works, the Construction Site and Extra Land and any other areas affected by the Contractor's Activities, including personal injury or death or Loss or damage in connection with the Contractor's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site, Extra Land or any other areas affected by the Contractor's Activities of items that require transport services or the movement on any road of any Construction Plant, whether loaded or not.
- (m) **(Records and audit):** The Contractor must:
 - (i) keep and must ensure that any Subcontractor (of any tier) keeps records of any steps taken in compliance with this clause 3.13, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan for at least three years after taking any such steps; and
 - (ii) have its compliance independently audited, and provide the Principal with an independent audit report in relation to the Contractor's compliance with this clause 3.13, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan by no later than 30 June each year.

3.14 **Media events**

- (a) **(Contractor to permit):** The Contractor must:
 - (i) permit the Principal and the NSW Government to hold media events on the Construction Site:
 - (A) on or about the Date of Opening Completion and Date of Completion; and
 - (B) at such other times as may be reasonably requested by the Principal, provided that the attendees comply with the Contractor's reasonable site access requirements; and
 - (ii) co-operate with the Principal and provide all reasonable assistance that the Principal may request in connection with any such media event.
- (b) **(Principal to liaise):** The Principal must liaise with the Contractor in relation to any such media events, including the planned date and time for any such media events.
- (c) **(Responsibility for costs):** If the Principal holds a media event:
 - (i) pursuant to clause 3.14(a)(i)(A), the Contractor is not entitled to make, and the Principal will not be liable for, any Claim arising out of or in connection with such media event; or
 - (ii) pursuant to clause 3.14(a)(i)(B), it will be a [REDACTED] but the Contractor is not otherwise entitled to make, and the Principal will not otherwise be liable for, any Claim arising out of or in connection with the media event.

3.15 **Media releases and enquiries**

- (a) **(Principal's consent required)**: The Contractor must obtain the Principal's prior written consent to:
 - (i) any press release or promotional advertisement it wishes to make or place concerning this deed, the Principal or the Works; and
 - (ii) the release for publication in any media of any information concerning this deed, the Principal or the Works.
- (b) **(Refer enquiries)**: The Contractor must:
 - (i) refer any media enquiries concerning this deed, the Principal or the Works to the Principal; and
 - (ii) not respond to any such media enquiry without the Principal's prior written consent.
- (c) **(Compliance)**: The Contractor must ensure that all Subcontractors comply with this clause 3.15 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.
- (d) **(Principal discretion)**: The Principal may give or refuse its consent pursuant to this clause 3.15, in its absolute discretion.

3.16 **Communication, stakeholder and community engagement**

The Contractor must:

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

3.17 **Delivery Phase Maintenance**

- (a) **(Maintenance work by Contractor)**: The Contractor must carry out all maintenance work:
 - (i) specified in Appendix C.6 and Appendix F.3 of the SWTC (including all related documentation, asset condition assessments and reporting) on:
 - (A) the Shared Access Road as if the Shared Access Road was a State Road or Local Road (each as defined in the SWTC and identified in Table C.6-1 in Appendix C.6 of the SWTC), commencing from the date of completion of the last "Portion" of the works under the WFU Contract

to achieve completion as notified by the Principal until the Date of Opening Completion; and

- (B) such other roads within the Construction Site as specified in Table C.6-1 in Appendix C.6 of the SWTC, commencing on the date that is the first date that the Contractor is granted access to the relevant part of the Construction Site in accordance with clauses 7.1 or 7.5 until the Date of Opening Completion; and
 - (ii) specified in Appendix F.3 of the SWTC (including all related communication, asset condition assessments and reporting) and without limiting clause 16A, on all relevant completed parts of the Project Works, commencing from the date that the Contractor is first granted access to the relevant part of the Construction Site in accordance with clauses 7.1 or 7.5 until the Date of Opening Completion (or, in relation to the Handover Portions, the Date of Handover Completion of the relevant Handover Portion).
- (b) **(Access):** The Contractor acknowledges and agrees that:
- (i) despite clause 7.1, the Contractor is responsible for procuring access to the areas identified in clause 3.17(a) for the purposes of the Delivery Phase Maintenance, in accordance with clause 7.2; and
 - (ii) it must comply with the "Access and Communications Protocol" specified in Attachment C.6-4 of the SWTC while carrying out the Delivery Phase Maintenance.
- (c) **(Maintenance and activities by other contractors):** The Contractor acknowledges and agrees that:
- (i) the relevant Maintenance Contractor has maintained and will maintain the existing roads within the Construction Site up to the date on which the Contractor's maintenance obligations commence under clause 3.17(a);
 - (ii) other entities (including the Maintenance Contractors) will continue to maintain roads adjacent to the Construction Site and the Contractor must cooperate and coordinate with such entities and must allow them to perform such work; and
 - (iii) Other Contractors may be using the Shared Access Road during the period referred to in clause 3.17(a) and the Contractor's maintenance obligations include the activities and repairs required as a consequence of such use.
- (d) **(Maintenance activities):** In addition to the maintenance activities specified in the SWTC, the Contractor must undertake all other maintenance activities:
- (i) reasonably required to provide for safe and uninterrupted passage of road users within the Construction Site; and
 - (ii) required due to the Project Works and as a consequence of the Contractor's Activities.
- (e) **(Maintenance management procedures):** The Contractor must provide its maintenance management procedures to the Principal within 40 Business Days of the date that it is given access to any road within the Construction Site pursuant to clauses 7.1 or 7.5.
- (f) **(Maintenance records):** The Contractor must keep detailed and accurate records of all maintenance work and activities it carries out as part of the Contractor's

Activities and provide them to the Principal as a condition precedent to Opening Completion.

- (g) **(Outside Construction Site)**: The Contractor must carry out any maintenance work that is required on roads and paths outside the Construction Site which is required as a result of the Project Works, the Temporary Works or the Contractor's Activities.

3.18 **No restrictions on the Principal or NSW Government**

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

- (a) **(Roads and tunnels)**: develop, construct, operate or maintain directly, by subcontractors or otherwise, other tollways, tunnels, freeways and other roads in New South Wales;
- (b) **(Traffic or transport system)**: maintain, manage, develop, change or extend the Sydney road and transport network or any traffic or transport system;
- (c) **(Existing roads and tunnels)**: extend, alter, close or upgrade existing tollways, tunnels, freeways and other roads;
- (d) **(Existing public transport routes or services)**: extend, alter or upgrade existing public transport routes or services;
- (e) **(New public transport routes or services)**: construct new public transport routes or establish new transport services;
- (f) **(Public transport routes or services generally)**: develop the transport and public transport network generally;
- (g) **(Policies)**: implement NSW government policies; or
- (h) **(Persons and Law)**: contract with any person for any of these things or to otherwise do anything which they are empowered to do by Law.

3.19 **Spare Parts**

- (a) **(Spare Parts List)**: The parties acknowledge and agree that:
 - (i) the Contractor must supply (as a minimum) the Spare Parts to the Principal by the Date of Opening Completion as part of the Project Works;
 - (ii) the Spare Parts listed in Schedule C8 (*Spares List*) is the initial list of Spare Parts and quantities as at the date of this deed, together with a unit price for each Spare Part (**Initial Spares List**); and
 - (iii) the Target Cost includes an allowance for the purchase of the Spare Parts in the Reimbursable Cost Element, based on the Initial Spares List (**Spares Allowance**).
- (b) **(Review)**: The Principal and the Contractor must review the Initial Spares List to determine if any changes are warranted:
 - (i) when the Contractor's Design Documentation has reached the stage where it can be used for construction purposes in accordance with clause 9.10; and
 - (ii) following the completion of the reliability, availability, maintainability, and safety analysis required by the SWTC,

and as part of this review:

- (iii) the Contractor must recommend any changes to the Initial Spares List that it considers appropriate as a result of the design development and the reliability, availability, maintainability, and safety analysis; and
- (iv) the Principal must advise the Contractor of any changes that it requires to the Initial Spares List,

in each case, within 20 Business Days of the events referred to in clause 3.19(b)(i) and clause 3.19(b)(ii).

- (c) **(Further Changes)**: Without limiting clause 3.19(b), the Principal may, by notice to the Contractor, require further changes to the Initial Spares List (including a change to increase or decrease the quantity of a Spare Part) at any time up until the Spares Finalisation Date.
- (d) **(Finalisation)**: On the Spares Finalisation Date, the Contractor must submit to the Principal a revised version of the Initial Spares List incorporating the changes identified by the Contractor pursuant to clause 3.19(b) and required by the Principal under clauses 3.19(b) and 3.19(c) **(Final Spares List)**.
- (e) **(Late changes)**: After the Spares Finalisation Date, the Principal may request further changes to the Final Spares List, but the Contractor will only be required to accept that request if, acting reasonably, it considers that it has sufficient time to procure the Spare Parts before Opening Completion.
- (f) **(Recalculating Spares Allowance)**: When the Final Spares List is provided under clause 3.19(d) (and also if it is subsequently changed under clause 3.19(e)), if the total cost of the Spare Parts listed in the Final Spares List calculated:
 - (i) using the unit prices in Schedule C8 (*Spares List*); and
 - (ii) to the extent there is no unit price in Schedule C8 (*Spares List*) for the Spare Parts, as determined by the Principal,

is different to the Spares Allowance, it will be a [REDACTED] in relation to such difference.

- (g) **(Delivery)**: The Contractor must:
 - (i) deliver the quantity of Spare Parts in the Final Spares List (as updated under clause 3.19(e)) to the Principal as a condition precedent to Opening Completion;
 - (ii) deliver the Spare Parts to a location in Sydney nominated by the Principal;
 - (iii) be responsible for storing and maintaining the Spare Parts until the Principal advises that it is ready to accept delivery, or the Date of Opening Completion (if earlier); and
 - (iv) provide the Principal with the details of the suppliers of the Spare Parts (including terms and conditions of supply and warranty terms), to assist the Principal to purchase additional quantities of the Spare Parts following Opening Completion, and must use reasonable endeavours to ensure that the suppliers offer the Principal, its Associates and the AM Contractor equivalent pricing and terms as offered to the Contractor.
- (h) **(Replacing)**: The Contractor must replace any Spare Parts used prior to Opening Completion and ensure, as a condition precedent to Opening Completion, there is a full set of the Spare Parts in the Final Spares List (as updated under this clause 3.19(e)).

- (i) **(Payment claim):** The Contractor can only give the Principal's Representative a Claim for payment of the cost of Spare Parts in accordance with clause 15 if:
- (i) the Spare Parts have been delivered in accordance with clause 3.19(g);
 - (ii) the Contractor has provided the Principal with evidence (satisfactory to the Principal) that title to the Spare Parts will vest in the Principal upon payment; and
 - (iii) the Spare Parts are located at the Motorway (or are otherwise in the Principal's possession) and the Date of Opening Completion has occurred,
- or as unfixed Materials in accordance with clause 15.6.

3.20 **Site induction**

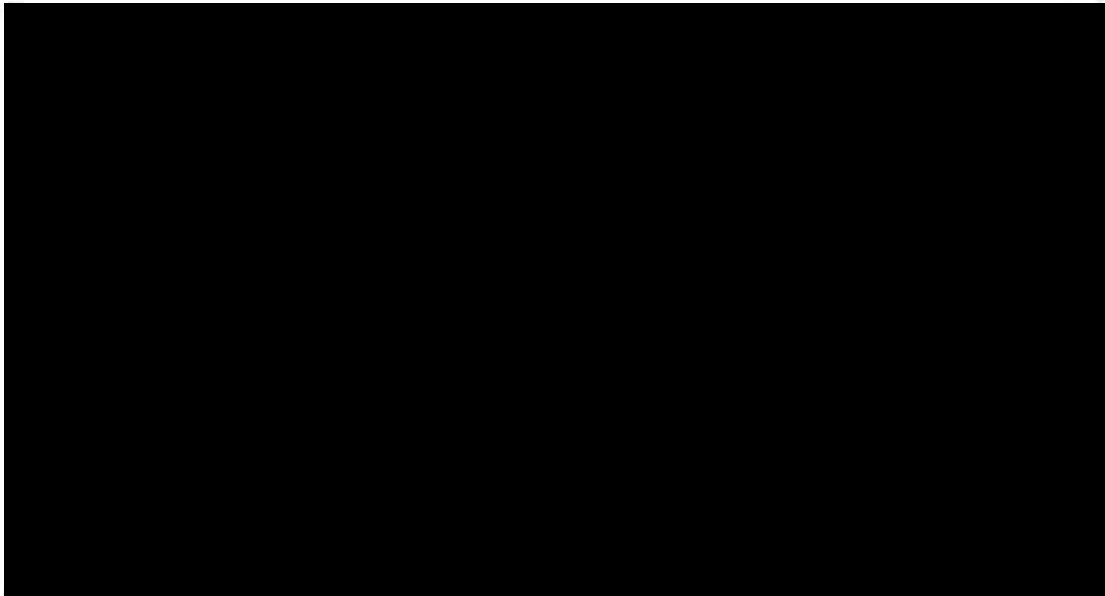
- (a) **(Contractor to provide):** Without limiting the Contractor's obligations under clause 6.2 to comply with the conditions and requirements of all Approvals, the Contractor must:
- (i) provide safety and environmental site induction for persons nominated by the Principal on the Construction Site and for all personnel directly or indirectly engaged by the Contractor and requiring access to the Construction Site, any Extra Land and any other land upon which the Contractor's Activities are being carried out; and
 - (ii) ensure such persons satisfactorily complete such site induction before such persons are given such access or commence such work.
- (b) **(Induction requirements):** The induction must:
- (i) comply with all applicable Laws, Project Plans and the Principal's procedures, policies and rules; and
 - (ii) otherwise be in accordance with the requirements of this deed.
- (c) **(Induction records):** The Contractor must keep and maintain comprehensive and detailed induction records and provide the Principal or its nominee, upon request, with access to such records.

3.21 **Tolling works**

- (a) **(TfNSW to procure subcontractor):** The Contractor acknowledges and agrees that:
- (i) the Principal will commence and manage a procurement process to engage a Tolling Equipment Works Subcontractor;
 - (ii) the Tolling Equipment Works form part of the Contractor's Activities; and
 - (iii) notwithstanding the terms of the Tolling Equipment Works Subcontract Deed of Novation, the Contractor:
 - (A) will bear the risk of and responsibility for the Tolling Equipment Works as if it had been party to the Tolling Equipment Works Subcontract from the date of its execution;
 - (B) assumes the obligations and liabilities of the "principal" under the terms of the Tolling Equipment Works Subcontract in all respects as if

the Contractor had originally been named in the Tolling Equipment Works Subcontract instead of the Principal; and

- (C) is liable for the acts and omissions of the Tolling Equipment Works Subcontractor in accordance with clause 11.12 whether or not such acts or omissions occurred prior to or after the date the parties enter into the Tolling Equipment Works Subcontract Deed of Novation.
- (b) **(Novation of Tolling Equipment Works Subcontract):** Within 10 Business Days after a direction from the Principal or the Principal's Representative to enter into the Tolling Equipment Works Subcontract Deed of Novation, the Contractor must provide four duly executed copies of the Tolling Equipment Works Subcontract Deed of Novation to the Principal, following which the Principal will execute, and will procure that the Tolling Equipment Works Subcontractor executes the Tolling Equipment Works Subcontract Deed of Novation in the same form that is executed by the Contractor.



- (e) **(Tolling Equipment Works Maintenance Subcontractor):** The Contractor acknowledges and agrees that:
 - (i) the Tolling Equipment Works Subcontractor and the Tolling Equipment Works Maintenance Subcontractor are expected to be the same entity;
 - (ii) under the Draft Tolling Equipment Works Subcontract, the Tolling Equipment Works Subcontractor:
 - (A) accepts sole responsibility for and assumes the risk of all interface and co-ordination issues arising out of or in connection with the interface and co-ordination of the performance of the Tolling Equipment Works Subcontractor's activities under the Tolling Equipment Works Subcontract with the performance of the services by the Tolling Equipment Works Maintenance Subcontractor under the Tolling Equipment Works Maintenance Subcontract;
 - (B) is responsible for ensuring the Tolling Equipment Works Maintenance Subcontractor is provided with all documents and information required to enable the Tolling Equipment Works Maintenance Subcontractor to begin performing its obligations under the Tolling Equipment Works

Maintenance Subcontract as required pursuant to the terms of the Tolling Equipment Works Maintenance Subcontract; and

- (C) is not entitled to any relief from its obligations or liabilities under the Tolling Equipment Works Subcontract and is not entitled to make any Claim against the Contractor under the Tolling Equipment Works Subcontract which arise out of or in connection with, and to the extent caused or contributed to by, any act or omission of the Tolling Equipment Works Maintenance Subcontractor or any of the Tolling Equipment Works Maintenance Subcontractor's employees, agents, consultants, representatives, subcontractors and each such subcontractor's employees, agents, representatives and subcontractors; and
- (iii) to the extent that the Tolling Equipment Works Subcontract reflects clauses 3.21(e)(ii)(A), 3.21(e)(ii)(B) and 3.21(e)(ii)(C), it will not be entitled to any relief that it would have otherwise been entitled to under this deed to the extent that the relief relates to an impact on the Tolling Equipment Works Subcontract for which the Tolling Equipment Works Subcontractor is not entitled to make a Claim against the Contractor under the Tolling Equipment Works Subcontract by reason of the operation of the Tolling Equipment Works Subcontract Contract (including in respect of the matters described in this clause 3.21(e)(iii)).
- (f) **(Allowance)**: The Contractor acknowledges and agrees that it has made sufficient allowance in the Target Cost for all costs associated with or in relation to the carrying out of the Tolling Equipment Works (except those costs which are payable pursuant to clause 11.16(f)(ii)), including the costs associated with:
 - (i) coordinating and supervising the Tolling Equipment Works Subcontractor; and
 - (ii) the impact of the activities of the Tolling Equipment Works Subcontractor on the Contractor's Activities.
- (g) **(No Claim)**: Other than as set out in clause 3.21(c) and clause 3.21(d), the procurement of the Tolling Equipment Works by the Principal, the novation of the Tolling Equipment Works Subcontract to the Contractor and compliance with this clause 3.21 will not in any way:
 - (i) relieve the Contractor from its obligations or liabilities under this deed, including the completion of the Tolling Equipment Works and the Contractor's obligations under clause 11.12;
 - (ii) limit or otherwise affect any warranty provided by the Contractor under this deed, including the quality and fitness for purpose of the Tolling Equipment Works;
 - (iii) limit or otherwise affect the Principal's rights against the Contractor (including those arising out of any warranties given under this deed) in relation to the Tolling Equipment Works; or
 - (iv) entitle the Contractor to any Claim, whether under this deed or according to Law.
- (h) **(No termination)**: The Contractor must not terminate the Tolling Equipment Works Subcontract or engage any other person to perform Tolling Equipment Works without the prior written consent of the Principal.

3.22 **Coordination with the Tolling Back Office Work**

- (a) **(Acknowledgement)**: Without limiting the Contractor's obligations under this deed, the Contractor acknowledges that:
 - (i) the Contractor's Activities interface with the Tolling Back Office Works; and
 - (ii) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or cooperating and coordinating with the Principal, may adversely impact upon, delay or disrupt the Principal or the Contractor's Activities in a way which may lead to the Principal or the Principal suffering or incurring additional Losses.
- (b) **(Cooperation and coordination)**: The Contractor must:
 - (i) fully co-operate, coordinate and collaborate with the Principal to ensure that the Works are fully integrated with the Tolling Back Office Works;
 - (ii) carefully coordinate and interface the Contractor's Activities with the Tolling Back Office Works; and
 - (iii) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to, or otherwise adversely affect, the Tolling Back Office Works.
- (c) **(No Claim)**: In relation to the Tolling Back Office Works, the Contractor:
 - (i) may be entitled to Claim an Extension Event, [REDACTED] to the extent that an act or omission by the Principal is an Act of Prevention; and
 - (ii) notwithstanding that the Principal is carrying out the Tolling Back Office Works, is not otherwise entitled to make, and the Principal will not be liable for, any Claim arising out of or in connection with any act or omission of the Principal.

3.23 **Continuous improvement**

- (a) The parties will actively co-operate to identify opportunities for new or improved Tolling Services for the purposes of improving performance of the Tolling Services, including the implementation of new or enhanced technologies, for the benefit of the Principal.
- (b) The Contractor must regularly monitor and report to the Principal every six months on any new or enhanced technologies, emerging trends and changing industry best practices in relation to the Tolling Services, including the effect (if any) that such technology, emerging trend or changing industry best practice may have on the Principal's current technology strategy.
- (c) Where requested by the Principal, the Contractor must demonstrate how it would implement the results of such monitoring and reporting as part of its supply of the Tolling Services.

3.24 **Principal's Data**

- (a) **(Acknowledgment)**: Without limiting clause 9.12, the Contractor agrees and acknowledges that all underlying rights in and to the Principal's Data are owned by the Principal.

- (b) **(Obligations):** The Contractor must at all times when performing the Tolling Services:
 - (i) use appropriate procedures and all due care to avoid misuse, interference, unauthorised or unlawful access, destruction, loss, corruption or alteration of the Principal's Data;
 - (ii) store the Principal's Data in accordance with any reasonable directions issued by the Principal; and
 - (iii) immediately notify the Principal of any loss or compromise of the Principal's Data.
- (c) **(Warranty):** The Contractor undertakes and warrants that:
 - (i) it will not:
 - (A) use the Principal's Data for any purpose other than directly in relation to Tolling Services;
 - (B) purport to sell, let for hire, or assign any rights in the Principal's Data;
 - (C) notwithstanding clause 21.11(a), make the Principal's Data available to external parties without the prior approval of the Principal and, where consent is provided, the Contractor must only make the Principal's Data available on a need-to-know and confidential basis; or
 - (D) commercially exploit the Principal's Data; and
 - (ii) it will:
 - (A) ensure that, at all times, only authorised personnel of the Contractor with a legitimate role in performing the Tolling Services have access to the Principal's Data;
 - (B) upon the Principal's request, produce to the Principal evidence of the Supplier's compliance with clause 3.24(c)(ii)(A); and
 - (C) at the Principal's request, securely destroy or return all the Principal's Data in the Contractor's possession and control, including without limitation permanently formatting or returning all devices in its possession or control used to store the Principal's Data.

3.25 Collateral Warranty Deed Poll

- (a) **(Request or direction):** Subject to clause 3.25(b), the Contractor must:
 - (i) within 5 Business Days after receipt of a request from the Principal or the Principal's Representative; or
 - (ii) if directed by the Principal, as a condition precedent to Opening Completion, provide to the Principal's Representative the Collateral Warranty Deed Poll duly executed by the Contractor in the number of counterparts required by the Principal in favour of the party notified by the Principal.
- (b) **(Not permitted to make request):** The Principal and the Principal's Representative are not permitted to make a request pursuant to clause 3.25(a)(i) prior to the Date of Opening Completion.

3.26 **Cross passage Pre-Agreed Variation**

- (a) **(Acknowledgment)**: The Contractor acknowledges that the Principal will require approval from Fire and Rescue NSW in order to instruct the Pre-Agreed Variation labelled "PAV 1" in Schedule A3 (*Pre-Agreed Variations*).
- (b) **(Provide assistance)**: Without limiting clause 6.2(c), the Contractor must provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to obtain any Approvals or satisfy other requirements of Fire and Rescue NSW in relation to the Variation contemplated by the Pre-Agreed Variation labelled "PAV 1" in Schedule A3 (*Pre-Agreed Variations*), including:
 - (i) liaising, cooperating and conferring with Fire and Rescue NSW where requested by the Principal;
 - (ii) providing all information and documents requested by the Principal;
 - (iii) preparing and submitting Design Documentation if required; and
 - (iv) attending meetings as requested by the Principal.

4. **CHANGES TO TARGET COST**

4.1 **Adjustments**

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

- (a) **(Reimbursable Cost Element)**: Reimbursable Cost Element Adjustments;
- (b) **(Design Fee)**: Design Fee Adjustments;
- (c) **(Preliminaries Fee)**: Preliminaries Fee Adjustments;
- (d) **(Management Fee)**: Management Fee Adjustments;
- (e) **(Pre-Agreed Variation)**: a Pre-Agreed Variation directed pursuant to clause 10.10;
[REDACTED]
- (g) **(Other)**: other adjustments to the Reimbursable Cost Element contemplated in the definitions of that term in clause 1.1,

and only pursuant to the process set out in this clause 4, [REDACTED] clause 10.8(d), clause 10.8A(b), clause 10.10, clause 10.11(g) [REDACTED] [REDACTED] (as applicable).

4.2 **Claims for adjustments**

- (a) **(Contractor may Claim)**: Subject to clause 4.2(c), if a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event, a Design Fee Adjustment Event or a Preliminaries Fee Adjustment Event (as applicable) has occurred and the Contractor wishes to make a Claim for a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event, a Design Fee Adjustment Event or a Preliminaries Fee Adjustment Event (as applicable), the Contractor must:
 - (i) submit the notices and Claims required by clause 23.2 and clause 23.3 to the Principal; and

- (ii) with the Contractor's Claim submitted pursuant to clause 23.3(c), provide the Contractor's proposed Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment or Preliminaries Fee Adjustment (as applicable), including sufficient evidence as required by the Principal to support the proposed adjustments on an Open Book Basis.
- (b) **(Principal may notify)**: Without limiting clause 4.2(a), if the Principal considers that a Reimbursable Cost Element Adjustment Event, a Management Fee Adjustment Event, a Design Fee Adjustment Event or a Preliminaries Fee Adjustment Event (as applicable) has occurred it may notify the Contractor and clauses 4.3 to 4.6 will apply.
- (c) **(Variations)**: The parties acknowledge and agree that the balance of this clause 4.2 does not apply where the relevant Reimbursable Cost Element Adjustment Event, Management Fee Adjustment Event, Design Fee Adjustment Event or Preliminaries Fee Adjustment Event (as applicable) is a Variation directed or approved under clause 10, in which case clause 10 applies.

4.3 Reimbursable Cost Element Adjustments

Subject to clauses 4.5(a), 4.6(a)(ii), 7.12(f) and 11.16(f), in respect of each Reimbursable Cost Element Adjustment Event for which the Contractor has made a valid Claim pursuant to clause 4.2(a) or the Principal has issued a notice pursuant to clause 4.2(b), the Reimbursable Cost Element Adjustment will be:

- (a) **(Agreed amount)**: the amount agreed by the parties; or
 - (b) **(Determination by Principal)**: failing agreement between the parties, the amount determined by the Principal as follows:
 - (i) in respect of costs for Reimbursable Work carried out under Approved Subcontracts, the increase or decrease in any amounts payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontracts resulting from the Reimbursable Cost Element Adjustment Event, having regard to the rates or prices under any relevant Approved Subcontract, to the extent that the Principal's Representative determines that those rates or prices are applicable;
 - (ii) in respect of costs for Self-Performed Reimbursable Work, a reasonable amount to reflect the increase or decrease in such work resulting from the Reimbursable Cost Element Adjustment Event having regard to:
 - (A) the applicable formulas or rates in Schedule F2 (*Labour Costs*); or
 - (B) where there is no applicable formula or rate in Schedule F2 (*Labour Costs*) or otherwise agreed between the parties in writing, a reasonable rate (which will exclude any margin for overheads or profit) as determined by the Principal's Representative;
 - (iii) subject to clause 4.3(b)(iv), in respect of any other Reimbursable Costs, a reasonable amount to reflect the actual increase or decrease in the Contractor's costs; or
 - (iv) in respect of paragraph (z) of the definition of Reimbursable Cost Element Adjustment Event, the Non-Contestable Utilities Works Costs Increase,
- in each case (except in respect of clause 4.3(b)(iv)):

(v) including a reasonable contingency amount on account of any material risks which may arise in connection with the work or activities involved in connection with the Reimbursable Cost Element Adjustment Event (if any); and

(vi) on the basis that the increase or decrease is directly related to the Reimbursable Cost Element Adjustment Event,

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

4.3A Design Fee Adjustment

Subject to clause 11.16(f), in respect of each Design Fee Adjustment Event for which the Contractor has made a valid Claim pursuant to clause 4.2(a) or the Principal has issued a notice pursuant to clause 4.2(b), the Design Fee Adjustment will be:

(a) **(Agreed amount)**: the amount agreed by the parties; or

(b) **(Determination by Principal)**: failing agreement between the parties, the amount determined by the Principal as a reasonable amount to reflect the increase or decrease in Design Work resulting from the Design Fee Adjustment Event having regard to:

(i) the applicable formulas in Schedule F2 (*Labour Costs*) if applicable; and

(ii) the rates or prices under any relevant Subcontract,

to the extent the Principal's Representative determines that those formulas, rates or prices are applicable.

4.3B Preliminaries Fee Adjustment

Subject to clause 11.16(f), in respect of each Preliminaries Fee Adjustment Event for which the Contractor has made a valid Claim pursuant to clause 4.2(a) or the Principal has issued a notice pursuant to clause 4.2(b), the Preliminaries Fee Element Adjustment will be:

(a) **(Agreed amount)**: the amount agreed by the parties; and

(b) **(Determination by Principal)**: failing agreement between the parties, the amount determined by the Principal as a reasonable amount to reflect the increase or decrease in Preliminaries resulting from the Preliminaries Fee Adjustment Event having regard to:

(i) the applicable formulas in Schedule F2 (*Labour Costs*) and the rates or prices under any relevant Subcontract, to the extent the Principal's Representative determines that those formulas, rates or prices are applicable; or

(ii) the resources required to perform the Preliminaries resulting from the Preliminaries Fee Adjustment Event which a prudent, competent and experienced contractor could not have anticipated as at the date of this deed.

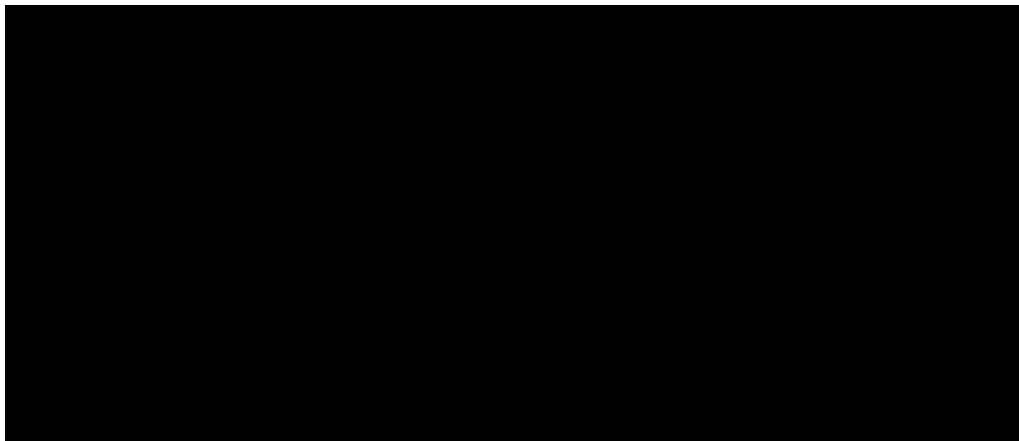
4.4 Management Fee Adjustment

(a) **(Determination by Principal)**: Subject to clause 11.16(f), in respect of each Management Fee Adjustment Event for which the Contractor has made a valid Claim

pursuant to clause 4.2(a) or the Principal has issued a notice pursuant to clause 4.2(b), the Principal:

- (i) subject to clause 4.4(a)(ii), will determine the Management Fee Adjustment by multiplying:
 - (A) where the aggregate of the corresponding Reimbursable Cost Element Adjustment, Design Fee Adjustment and the Preliminaries Fee Adjustment is a positive amount, the Management Fee Percentage; or
 - (B) where the aggregate of the corresponding Reimbursable Cost Element Adjustment, Design Fee Adjustment and the Preliminaries Fee Adjustment is a negative amount, ■ per cent of the Management Fee Percentage,

by the aggregate of the Reimbursable Cost Element Adjustment, the Design Fee Adjustment and the Preliminaries Fee Adjustment determined for the corresponding adjustment events; and



- (b) **(No admission):** The Contractor acknowledges and agrees that the maximum daily aggregate amounts set out in clause 4.4(a)(ii) are not an admission by the Principal of the value of the Contractor's corporate off-site overheads or any Loss associated with its corporate off-site overheads.

4.5 **Contractor's Mitigation Obligations**

- (a) **(Mitigation):** For the purposes of clauses 4.3, 4.3A and 4.3B:
 - (i) the Contractor must take all reasonable steps to mitigate the adverse consequences of a Reimbursable Cost Element Adjustment Event, the Design Fee Adjustment Event and the Preliminaries Fee Adjustment Event on the performance of the Contractor's Activities; and
 - (ii) in determining the Reimbursable Cost Element Adjustment, the Design Fee Adjustment or the Preliminaries Fee Adjustment:
 - (A) the amount will be reduced to the extent the Contractor or its Associates:
 - (aa) can mitigate, lessen or avoid (or could have mitigated, lessened or avoided) the increase in any amounts payable by the Contractor to Subcontractors, the increase in the costs incurred by the Contractor or the increase in the amount of Reimbursable Work, Design Work or the Preliminaries required in connection

with the Reimbursable Cost Element Adjustment Event, the Design Fee Adjustment Event or the Preliminaries Fee Adjustment Event; or

(bb) caused or contributed to the Reimbursable Cost Element Adjustment Event, the Design Fee Adjustment Event or the Preliminaries Fee Adjustment Event or the effects of such events, including as a result of a failure of the Contractor or its Associates to comply with their obligations under a Project Document; and

(B) will not include any Early Warning Amount for the relevant.

(b) **(Value for Money)**: If requested by the Principal, the Contractor must provide such information and documentation as may be reasonably required by the Principal in order to show that the amount specified by the Contractor under clause 4.2(a)(ii) offers Value for Money.

(c) **(Cost savings)**: Despite anything to the contrary in this deed, the parties acknowledge and agree that in respect of any Variation that:

(i) results in net cost savings; and

(ii) does not involve:

(A) deleting or omitting; or

(B) reducing the quality or standard of, any part of the Contractor's Activities or Works,

the Reimbursable Cost Element Adjustment, the Design Fee Adjustment or the Preliminaries Fee Adjustment will be nil.

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

4.6 **Management Review Group and Principal's determinations**

(a) **(Management Review Group may consider)**: Subject to clause 4.6(b), the parties agree that:

(i) the Management Review Group is entitled to consider and resolve Claims by the Contractor under clause 4.2(a); and

(ii) if the Management Review Group resolves any such Claim in accordance with clause 13.24(d), the Principal's Representative must determine that Claim in accordance with the Management Review Group's determination.

(b) **(Principal's determination)**: Despite clause 4.6(a), the Principal's Representative:

(i) may determine a Claim by the Contractor under clause 4.2(a) prior to Management Review Group first considering such Claim, but only if the Principal's Representative determination is that the Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment or Preliminaries Fee Adjustment (as applicable) will be equal to, or not materially different from, the amount claimed by the Contractor, in which case

the Management Review Group is not entitled to consider that Claim under clause 4.6(a); and

(ii) in any event, must determine a Claim by the Contractor under clause 4.2(a) by no later than:

(A) 15 Business Days after the date of the meeting of the Management Review Group at which the Contractor's Claim was determined by the Management Review Group in accordance with clause 4.6(a) (if applicable); and

(B) 45 Business Days after the date of the Contractor's Claim, regardless of whether the Claim has been considered or resolved by the Management Review Group,

whichever is later.

(c) **(Adjustment)**: The amount of each Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment and Preliminaries Fee Adjustment determined by the Principal under clauses 4.3, 4.3A, 4.3B and 4.4 will be added to or deducted from the Target Cost (as applicable).

5. SECURITY

5.1 Unconditional Undertakings

(a) **(Contractor to provide)**: The Contractor must provide to the Principal:

(i) prior to the Commencement Date:

(A) one or more unconditional undertakings totalling ■ per cent of the Target Cost as at the date of this deed;

(B) one or more unconditional undertakings totalling ■ per cent of the Target Cost as at the date of this deed; and

(C) one or more unconditional undertakings totalling ■ per cent of the Target Cost as at the date of this deed; and

(ii) each time the Target Cost increases by an amount equivalent to ■ per cent of the Target Cost as at the date of this deed (**Target Cost Increase**), an unconditional undertaking for ■ per cent of the relevant Target Cost Increase within 10 Business Days of a written request by the Principal.

(b) **(Due and proper performance)**: Without limiting clauses 5.3 and 5.7, the unconditional undertakings to be provided under this clause 5 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this deed and to provide for the bearing of risk of financial burden during the time of any unresolved Dispute or difference to be borne by the Contractor.

5.2 Requirements for unconditional undertakings

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

(a) **(Form)**: in the form of Schedule F3 (*Form of Unconditional Undertaking*) (or such other form approved by the Principal);

(b) **(Principal)**: in favour of the Principal;

- (c) **(Institution)**: issued by an Institution approved by the Principal that:
 - (i) maintains the Required Rating; and
 - (ii) has a branch or office in Sydney;
- (d) **(Payable)**: payable at an office located in Sydney;
- (e) **(Stamping)**: where required by Law, duly stamped;
- (f) **(Bank guarantees)**: in the case of at least ■■■ of the total required value of the unconditional undertakings, issued by a bank that meets the requirements specified in paragraph (a) of the definition of Institution; and
- (g) **(Insurance bonds)**: in the case of the remaining value of the unconditional undertakings, issued by an institution that meets the requirements specified in paragraph (b) of the definition of Institution.

5.3 **Recourse to unconditional undertakings**

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

5.4 **Release of unconditional undertakings**

- (a) **(Times for release)**: Subject to clause 5.4(b) and to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal must:
 - (i) within 25 Business Days after the Date of Opening Completion, release so much of the unconditional undertakings provided by the Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of ■■■ per cent of the Target Cost as at the date of this deed;
 - (ii) within 25 Business Days after the Date of Completion, release so much of the unconditional undertakings provided by the Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of ■■■ per cent of the Target Cost as at the date of this deed;
 - (iii) on or before the later of:
 - (A) 25 Business Days after the expiry of the initial Defects Correction Period in respect of the Main Motorway Works pursuant to clause 12.6(a);
 - (B) 25 Business Days after the Contractor has satisfied the requirements of clause 15.2(v) to the Principal's satisfaction; and
 - (C) if the Contractor is required to provide a replacement unconditional undertaking under clause 5.5, 25 Business Days after receipt by the Principal of the replacement unconditional undertaking,

release so much of the unconditional undertakings provided by the Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of the higher of:

 - (D) ■■■ per cent of the Target Cost as at the date of this deed; and

- (E) the amount referred to in clause 5.5(c)(ii); and
- (iv) within 25 Business Days after the later of:
 - (A) the date on which the last Defect or Defects the subject of a direction by the Principal under clause 12.2 have been rectified in accordance with this deed;
 - (B) the date on which the last of the Disputes in respect of a Defect or Defects the subject of a direction by the Principal under clause 12.2 are resolved by agreement between the parties or determined in accordance with the dispute resolution procedure; and
 - (C) the date on which all Defects Correction Periods (including further Defects Correction Periods under clause 12) have expired,

release the balance of the unconditional undertakings provided by the Contractor under clause 5.1 or clause 5.5 as may be then held by the Principal.

- (b) **(Principal may retain)**: Despite any other provision of this deed to the contrary, where this deed may otherwise require the Principal to release an unconditional undertaking or this deed is terminated by the Principal either pursuant to clause 18, [REDACTED] or by reason of the Contractor repudiating this deed (or otherwise at Law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this deed to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this deed or the Contractor's Activities whether for damages or otherwise.

5.5 Replacement on expiry of initial Defects Correction Period

If, upon expiry of the initial Defects Correction Period in respect of the Main Motorway Works, there are:

- (a) **(Defects remaining)**: Defects remaining in the Project Works of which the Contractor has been notified under clause 12 but which it has not rectified; or
- (b) **(Extended Defects Correction Period)**: rectified Defects which are the subject of an extended Defects Correction Period under clause 12 which has not expired,

with an aggregate value greater than the undrawn amount of the unconditional undertakings then held by the Principal, the Contractor must procure a replacement unconditional undertaking in the Principal's favour which:

- (c) **(Amount)**: is for an amount equal to the higher of:
 - (i) [REDACTED] per cent of the Target Cost as at the date of this deed; and
 - (ii) [REDACTED] per cent of the aggregate estimated cost to rectify such Defects, as reasonably determined by the Principal or the Independent Certifier at the Principal's request (including the cost of rectification where such Defects have been rectified and are the subject of an extended Defects Correction Period under clause 12); and
- (d) **(Other requirements)**: otherwise satisfies the requirements of clause 5.2.

5.6 No injunction

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

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

5.7 Replacement of unconditional undertakings

- (a) **(Required Rating)**: If the issuer of any unconditional undertaking provided under this deed ceases to have the Required Rating then the Contractor must:
 - (i) promptly notify the Principal of that circumstance; and
 - (ii) within 15 Business Days of being requested to do so by the Principal, procure the issue to the Principal of a replacement unconditional undertaking which must:
 - (A) be from an Institution acceptable to the Principal which has the Required Rating;
 - (B) have a face value equal to that of the unconditional undertaking being replaced; and
 - (C) comply in all respects with the requirements of this deed, including the requirements related to the Institution issuing the relevant unconditional undertaking.
- (b) **(Expiry)**: Not less than 60 Business Days before the expiry of any unconditional undertaking provided under this deed, the Contractor must procure the issue to the Principal of a replacement unconditional undertaking for the undrawn amount of the unconditional undertaking that it is to replace which satisfies the requirements of clause 5.1 which are applicable to the relevant unconditional undertaking.
- (c) **(Return)**: Where the Contractor provides a replacement unconditional undertaking in accordance with this clause 5.7, following receipt of such replacement unconditional undertaking, the Principal must promptly surrender (or procure the surrender of) the unconditional undertaking that has been replaced.
- (d) **(Failure to replace)**: If the Contractor fails to replace an unconditional undertaking in accordance with this deed, the Principal may have recourse to the relevant unconditional undertaking and hold the proceeds as cash security until the relevant unconditional undertaking is replaced in accordance with this deed.

5.8 No interest

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

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

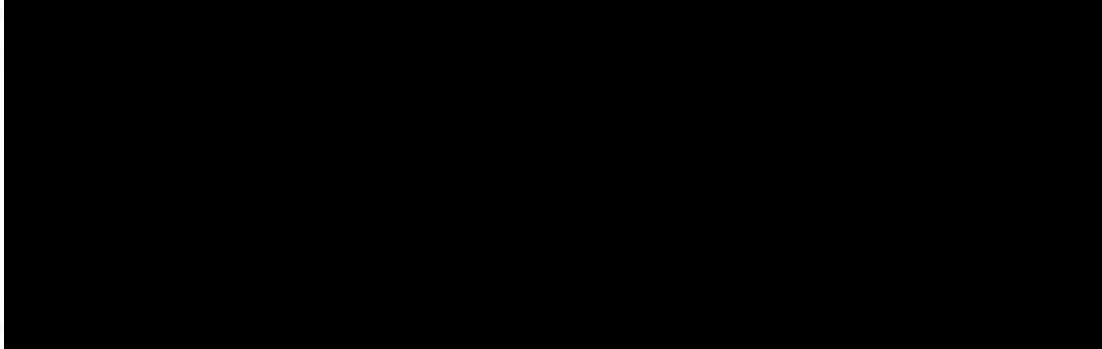
5.9 **No trust**

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

5.10 **Parent Company Guarantee**

(a) **(Provision by Contractor)**: The Contractor must prior to the Commencement Date:

- (i) give the Principal a guarantee or guarantees duly executed by the person or persons identified as the Parent Company Guarantor(s) in Schedule A1 (*Contract Particulars*) in favour of the Principal in the form of Schedule F4 (*Parent Company Guarantee*);
- (ii) ensure that all stampings, registrations and filings required by Law (or by the law of any foreign jurisdiction) or the Principal's Representative in relation to each Parent Company Guarantee have been completed in form and substance satisfactory to the Principal; and
- (iii) if any Parent Company Guarantor is incorporated outside of Australia give the Principal:
 - (A) a Legal Opinion stating that the Parent Company Guarantee provided under clause 5.10 is valid under the laws of the Parent Company Guarantor's place of incorporation and that the Parent Company Guarantee is binding upon and enforceable against the Parent Company Guarantor in accordance with its terms;
 - (B) a Legal Opinion stating that the Parent Company Guarantee provided under clause 5.10 is valid under the laws of Australia and that the Parent Company Guarantee is binding upon and enforceable against the Parent Company Guarantor in accordance with its terms; and
 - (C) any other assistance reasonably required by the Principal to enforce the Parent Company Guarantee in the jurisdiction in which the Parent Company Guarantor is domiciled.



- (b) **(Change in Law)**: If, after the Commencement Date, the Principal (in its absolute discretion) considers that, due to a Change in Law or change in law of any jurisdiction, it has become necessary or desirable to make any stamping, registration or filing with any Authority to support the enforceability of any Parent Company Guarantee or the performance of any obligations under any Parent Company Guarantee (including expatriation of amounts payable under any Parent Company Guarantee), the Contractor must take such action as is requested by the Principal (in its absolute discretion) to make that stamping, registration or filing.

6. **LAW AND APPROVALS**

6.1 **Compliance with Law**

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

- (a) **(Law)**: ensure that:
 - (i) it complies with;
 - (ii) the Temporary Works comply with; and
 - (iii) at the Date of Opening Completion (or in the case of the Handover Portions, at the Date of Handover Completion of the relevant Handover Portion), the Project Works comply with and are capable of continuing to comply with, all applicable Law;
- (b) **(Notices and fees)**: give all notices and pay all fees, bonds and other amounts which it is required to pay in respect of the performance of its obligations under this deed and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
- (c) **(Provide to Principal's Representative)**: give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it;
- (d) **(Codes and Standards)**: at all times conform and comply with, and ensure that the Works conform and comply with, all Codes and Standards; and
- (e) **(Fraud)**: not engage in any fraud, bribery or corruption.

6.2 **Approvals**

The Contractor must:

- (a) **(Obtain Approvals)**: obtain all Approvals required for the execution of the Contractor's Activities and occupation, use and operation of the completed Project Works (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for the Principal's Approvals;
- (b) **(Compliance with Approvals)**: comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor, the Principal), including those conditions and requirements that the Principal is required to comply with, satisfy, carry out and fulfil, except for the conditions and requirements of Approvals which are to be satisfied or fulfilled by the Principal as set out in Part A of Schedule E4 (*Principal's Approvals*) [REDACTED];
- (c) **(Assist with obtaining Approval)**: in respect of any:
 - (i) Approvals which are to be obtained by the Principal after the date of this deed as set out in Part A of Schedule E4 (*Principal's Approvals*); or
 - (ii) conditions and requirements of Approvals which are to be satisfied or fulfilled by the Principal as set out in Part A of Schedule E4 (*Principal's Approvals*) [REDACTED]

- (ii) direct a Variation under clause 10.8(a) in respect of the Change in Codes and Standards.
- (c) **(No Claim):** If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards, the Contractor must comply with the change and will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in any way in connection with the change.

6.4 Change in Law

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

6.5 Changes to Planning Approval

- (a) **(Notice of change):** If a Change in Planning Approval occurs which:
 - (i) necessitates a Variation; or
 - (ii) requires more onerous or restrictive requirements (including a reduction in the permitted working hours, truck movements or truck haulage routes, or noise and vibration limits) under the Planning Approval,

the Contractor must within 10 Business Days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Planning Approval taking effect, notify the Principal's Representative in writing, setting out:

 - (iii) detailed particulars of the reason why the Change in Planning Approval has the effect described in clause 6.5(a)(i) or clause 6.5(a)(ii); and
 - (iv) the information required by clause 10.4(c) as if this notice was a Variation Proposal.
- (b) **(Variation):** If the Contractor gives a notice under clause 6.5(a) and the Principal agrees or it is determined under clause 19 that the Change in Planning Approval has the effect described in clause 6.5(a)(i) or clause 6.5(a)(ii), the Principal will direct a Variation under clause 10.8(a) in respect of the Change in Planning Approval.

- (c) **(No Claim)**: Other than as set out in clause 6.5(b) [REDACTED], the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
- (i) any Change in Planning Approval;
 - (ii) a change in a Planning Approval after the date of this deed; or
 - (iii) any:
 - (A) assumptions the Contractor makes; or
 - (B) failure by the Contractor to adequately satisfy itself,as to what work methodologies and Temporary Works might be permissible under the Planning Approval.

6.6 Legal Challenge to Planning Approval

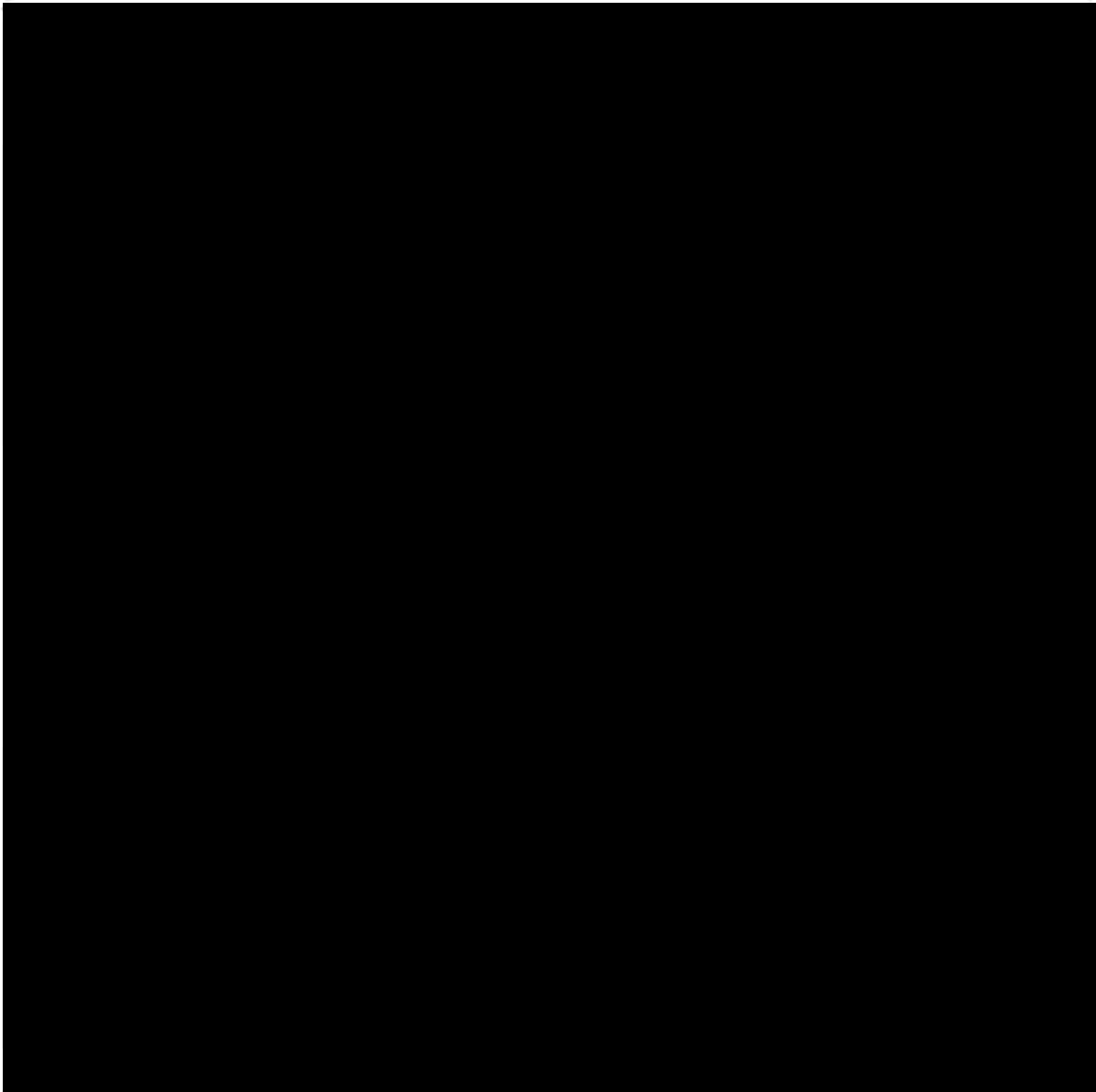
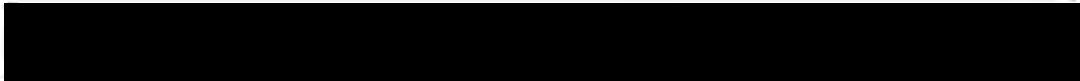
- (a) **(Continue to perform obligations)**: If there is a legal challenge, proceeding or action in relation to the assessment or determination of an application for a Planning Approval or a modification of a Planning Approval under:
- (i) the *Environmental Planning and Assessment Act 1979* (NSW);
 - (ii) the *Protection of the Environment Operations Act 1997* (NSW);
 - (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
 - (iv) any other Law,
- the Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, proceedings or action, it is otherwise:
- (v) ordered or directed by an Authority;
 - (vi) ordered by a court or tribunal; or
 - (vii) directed by the Principal or the Principal's Representative.
- (b) **(Claim)**: Subject to clause 6.6(c), if there is:
- (i) an Authority order referred to in clause 6.6(a)(v);
 - (ii) a court or tribunal order referred to in clause 6.6(a)(vi); or
 - (iii) a direction by the Principal or the Principal's Representative referred to in clause 6.6(a)(vii),
- which delays the Contractor in achieving Handover Completion of a Handover Portion, Opening Completion or Completion, it will be a [REDACTED] [REDACTED] an Extension Event.
- (c) **(Exceptions)**: Clause 6.6(b) does not apply to the extent that a legal challenge, proceeding or action of the kind referred to in clause 6.6(a) is brought or upheld due to the Contractor's non-compliance with its obligations under this deed or any Planning Approval.

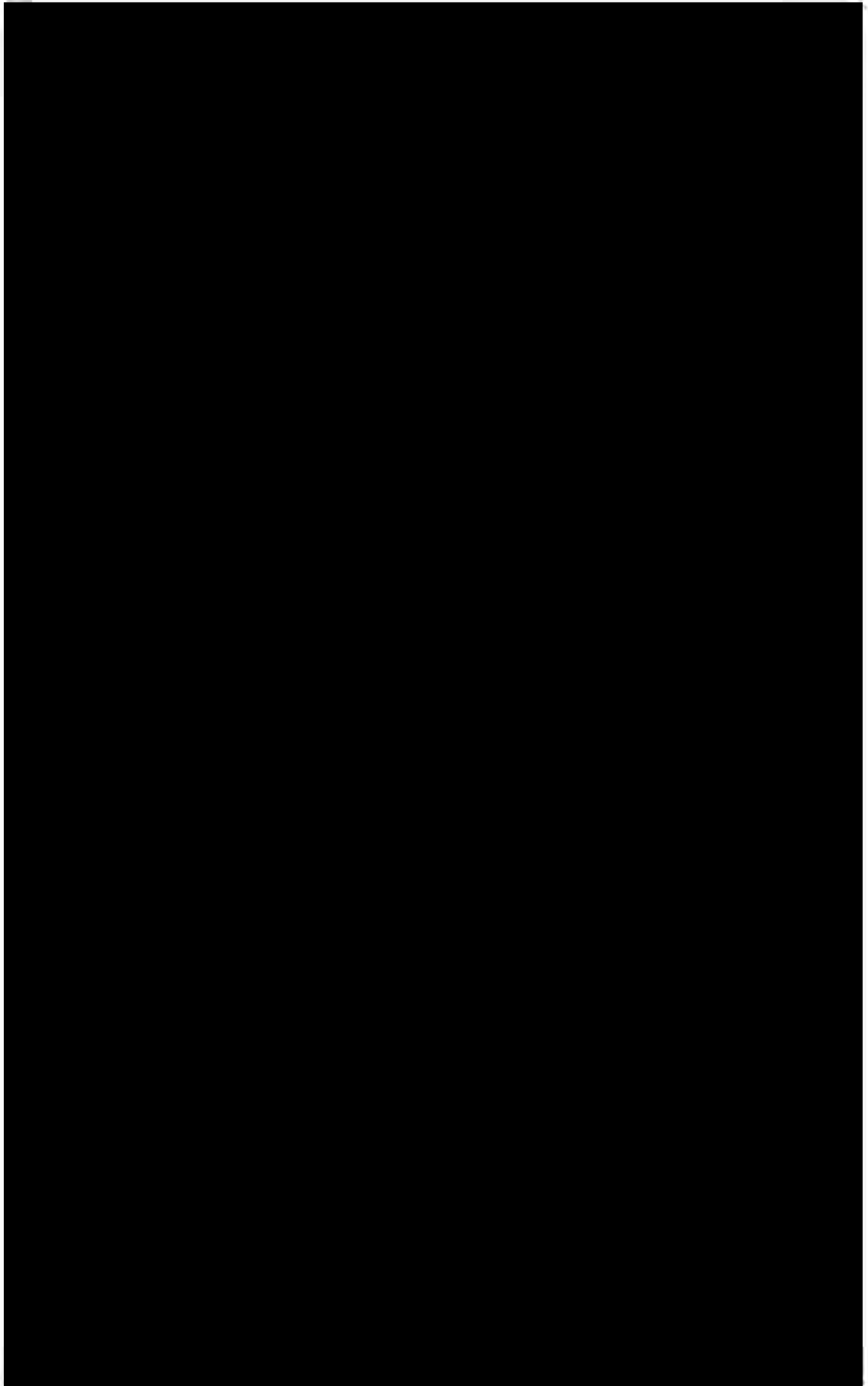
- (d) **(No Claim):** Other than as set out in this clause 6.6, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the matters set out in clause 6.6(a).

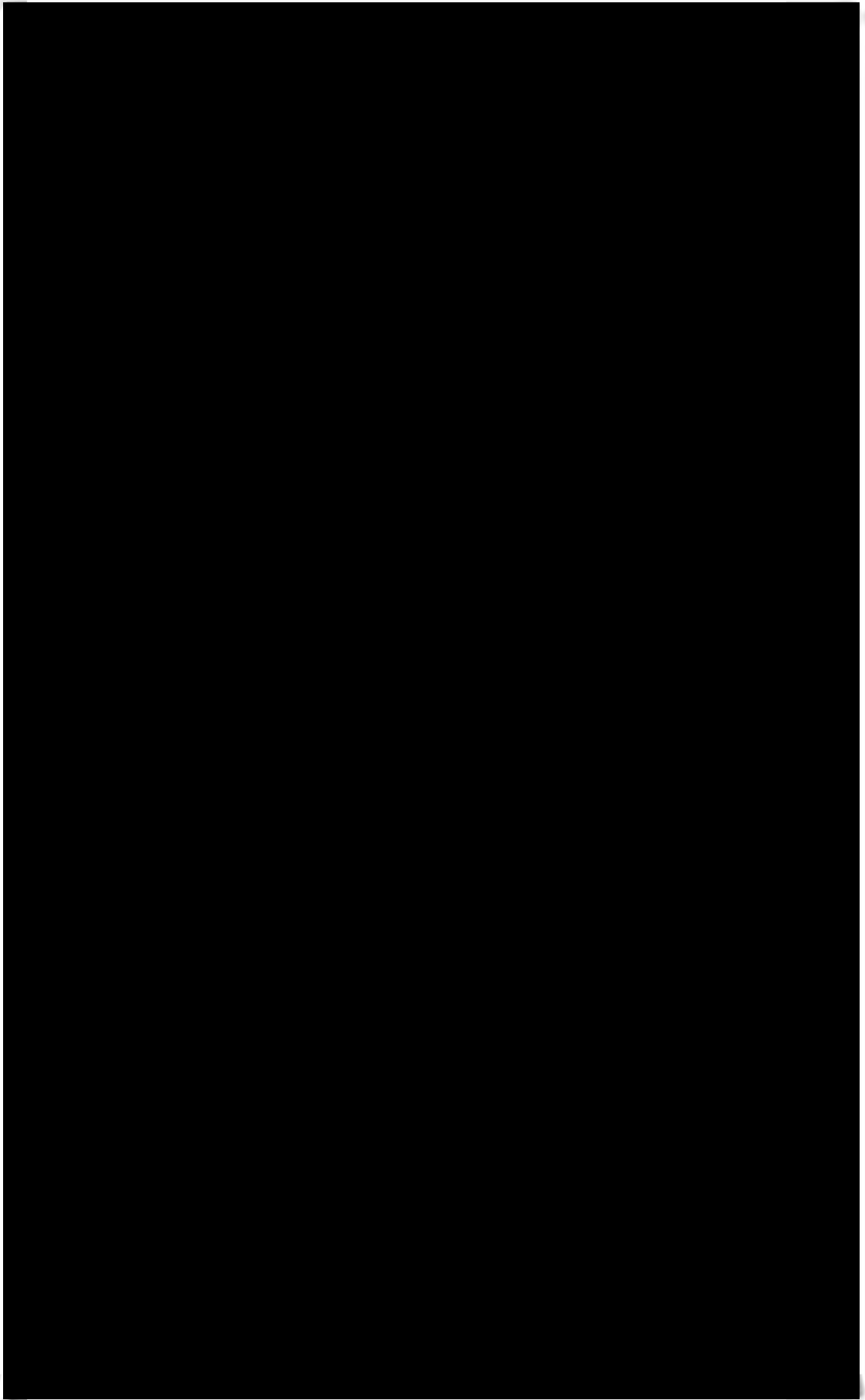
6.6A TBM Planning Approval

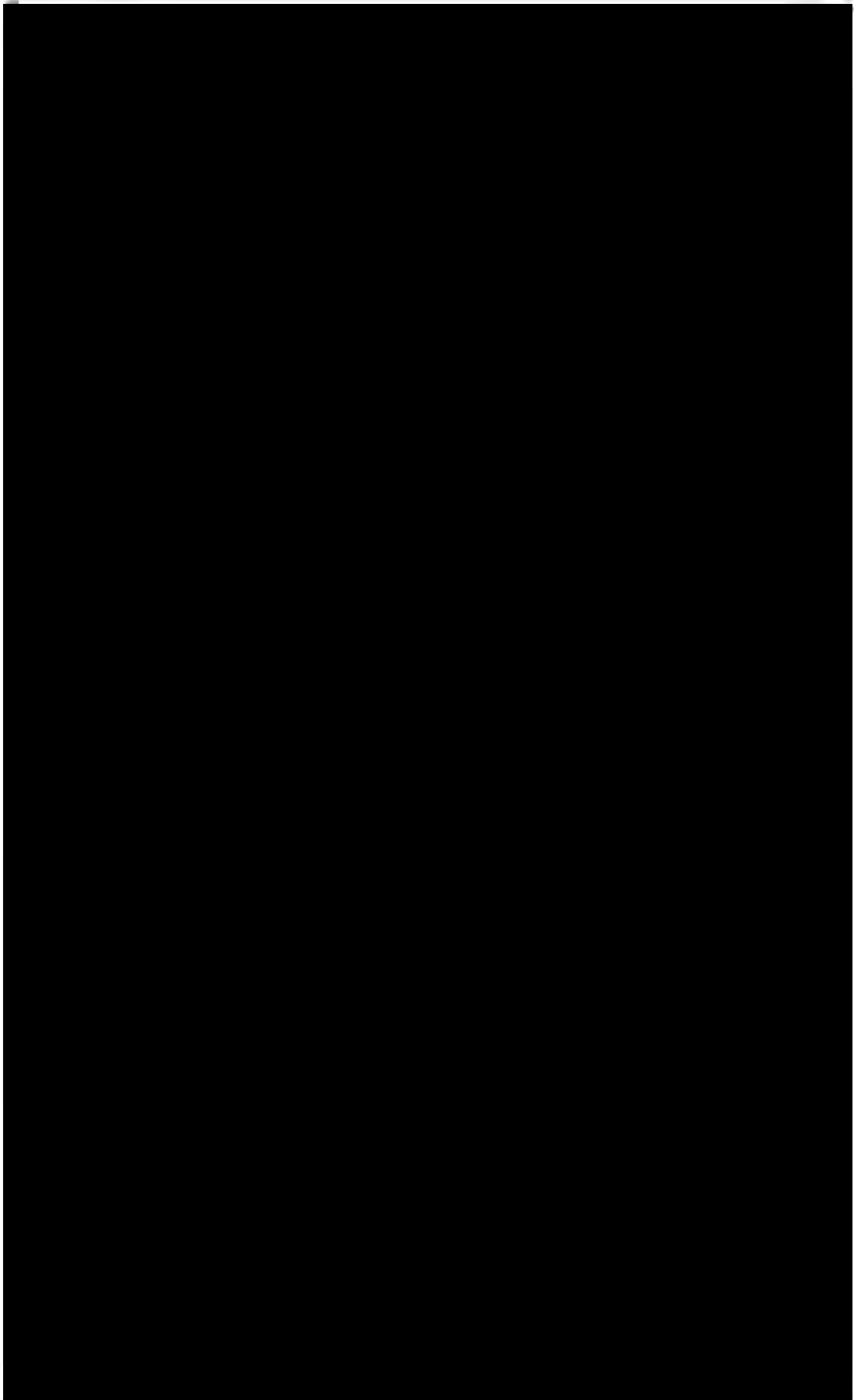
The parties acknowledge and agree that:

- (a) **(Existing Planning Approval):** prior to the date of this deed, the Principal obtained a Planning Approval in respect of the Works on the basis that the Western Harbour Tunnel would be constructed using immersed tubes and it is now contemplated that instead a tunnel boring methodology will be used;
- (b) **(Compliance):** the Contractor must comply with clause 6.2(b) in respect of the Planning Approval from the date of this deed notwithstanding the parties' intent that a TBM Planning Approval will be obtained; and









6.8 **Crown Building Work**

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

6.9 **Long Service Leave Levy**

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

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

6.10 **Not used**

6.11 **Not used**

7. **THE SITE AND LOCATION OF THE PROJECT WORKS**

7.1 **Access**

- (a) **(Progressive provision of access)**: The Contractor acknowledges and agrees that access to the Construction Site will be provided progressively to the Contractor as set out in the Site Access Schedule and such access is subject to the terms of this clause 7, the requirements set out in clause 3 of the Site Access Schedule and any other provision of this deed affecting access.
- (b) **(Access)**: Subject to this clause 7, the requirements set out in clause 3 of the Site Access Schedule and any other provision of this deed affecting access, the Principal must:
 - (i) give, or ensure the Contractor has, access to the areas specified in paragraph (a) of the definition of Construction Site for the purpose of performing the Contractor's Activities:
 - (A) by the relevant Site Access Dates set out in the Site Access Schedule [REDACTED] (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and

- (B) in accordance with this deed including as set out in the Site Access Schedule; and
 - (ii) once access to a part of the Construction Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed access to that part of the Construction Site in accordance with this deed, and the Site Access Schedule (if applicable).
- (c) **(Non-exclusive licence):** Subject to this clause 7.1, the Principal grants the Contractor a non-exclusive licence to use and occupy, and permit its Subcontractors (of any tier) to use and occupy, the Construction Site for the purposes of performing the Contractor's Activities in accordance with this deed which, in respect of each area of the Construction Site set out in the Site Access Schedule:
 - (i) commences on the date on which the Principal first gives the Contractor access in respect of that part of the Construction Site in accordance with clauses 7.1(b) or 7.5; and
 - (ii) subject to clause 16.7, terminates on the earlier of:
 - (A) in respect of a Handover Area, the Date of Handover Completion of the Handover Portion that corresponds to that Handover Area as specified in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*);
 - (B) in respect of areas of the Construction Site other than the Handover Areas, the Date of Opening Completion; and
 - (C) termination of this deed.
- (d) **(No entitlement):** The licence granted under clause 7.1(c) is personal in nature and does not create any entitlement or interest in the Construction Site.
- (e) **(General conditions of access):** The Contractor acknowledges that its access to the Construction Site is subject to:
 - (i) any conditions to access set out in the Site Access Schedule;
 - (ii) the remainder of this clause 7, including:
 - (A) obtaining any ROLs required pursuant to clause 7.2; and
 - (B) obtaining any Harbour Access Approvals; and
 - (iii) any other provision of this deed relating to access.
- (f) **(Specific conditions of access):** Without prejudice to the generality of clause 7.1(e), the Contractor acknowledges and agrees that the Contractor's access to the Construction Site is also subject to:
 - (i) each Interface Deed;
 - (ii) the terms of the Third Party Agreements;
 - (iii) any relevant provisions of the Planning Approvals; and
 - (iv) the appointment and obligations of the Appointed Principal Contractor and any other principal contractors under clause 8.6.

- (g) **(Acknowledgements):** The Contractor acknowledges and agrees that:
- (i) access to the Construction Site or any part thereof will only confer on the Contractor a right to such management and control of the Construction Site as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
 - (ii) the Principal is not obliged to give the Contractor access to a part of the Construction Site until the Contractor has:
 - (A) complied with clauses 5.1(a)(i) and 5.10;
 - (B) submitted the Work Health and Safety Management Plan, the Construction Environmental Management Plan and the Construction Management Plan, as required by the SWTC, to the Principal's Representative under clause 13.13 and the Principal's Representative has not rejected such plans within 15 Business Days after such submission in accordance with clause 13.13(h)(iii)(C);
 - (C) effected the insurance policies required under clauses 17.5, 17.6, 17.7 and 17.7A; and
 - (D) complied with any preconditions set out in the Site Access Schedule relevant to that part of the Construction Site;
 - (iii) consistent with clauses 7.1(b), 7.1(c) and 7.1(f) the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to or possession of any part of the Construction Site;
 - (iv) without limiting clause 7.1(g)(iii), the Contractor:
 - (A) in respect of the Shared Access Road, must permit Other Contractors to access such areas for the purposes of performing their works and accessing their site; and
 - (B) in respect of the Public Road Areas, must permit motorists, cyclists and pedestrians to access such areas when they are not subject to a Road Occupancy or otherwise fenced off to the extent required by the SWTC;
 - (v) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to any part of the Construction Site or carry out the Contractor's Activities;
 - (vi) the Principal, without limiting its obligations under clause 3.2, has engaged or may engage Other Contractors to work or operate upon or in the vicinity of the Construction Site and Extra Land at the same time as the Contractor; and
 - (vii) it will cooperate with the Other Contractors and coordinate the Contractor's Activities with the work or operations of any Other Contractors in accordance with clauses 3.2 and 3.3.
- (h) **(Failure to grant access):** Failure by the Principal to provide access to the Construction Site as required by clause 7.1(b) will not be a breach of this deed but will be a [REDACTED] or an Extension Event.

- (i) **(No Claim)**: Other than as set out in clause 7.1(h), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's failure to provide access to the Construction Site as required by clause 7.1(b)(i).
- (j) **(Use of Construction Site)**: The Contractor must:
 - (i) not use the Construction Site for any purpose other than the Permitted Use without the prior written consent of the Principal's Representative; and
 - (ii) comply with the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Construction Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW); and
 - (iii) without limiting clause 7.1(e), comply with any conditions of access set out in this clause 7, the requirements set out in clause 3 of the Site Access Schedule and any other provision of this deed affecting access at all times in which the Contractor uses the Construction Site.
- (k) **(Handover control)**: To the extent that part of the Construction Site is no longer reasonably required to perform the Contractor's Activities, the Contractor must, if requested by the Principal, handover control of that part of the Construction Site to the Principal.
- (l) **(Reasonable steps)**: If requested by the Principal, the Contractor must take reasonable steps to perform the Contractor's Activities so that the part of the Construction Site required by the Principal is no longer required to perform the Contractor's Activities.

7.2 Traffic Management and Road Occupancy Licences

- (a) **(Contractor responsible for approvals)**: Prior to commencing any aspects of the Contractor's Activities which would have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any road, the Contractor must:
 - (i) obtain all relevant Approvals (including Approvals required from any local council);
 - (ii) prepare a Construction Traffic Management Plan in accordance with the requirements of this deed and Good Industry Practice for each stage of the Project Works and submit such plans to the CJP, the CJM and the Principal in a timely manner, and in any event at least 25 Business Days prior to the commencement of physical works for that stage, so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the Construction Traffic Management Plan prior to the commencement of physical works for that stage;
 - (iii) with respect to Construction Traffic Management Plans:
 - (A) keep the Principal's Representative fully and promptly informed of the progress of obtaining approval of Construction Traffic Management Plans, including any problems or issues which affect or are likely to affect its ability to obtain an approval of a Construction Traffic Management Plan;
 - (B) proactively liaise and coordinate with the CJP and the CJM in respect of each Construction Traffic Management Plan; and

- (C) implement the reasonable requirements of the CJP and the CJM prior to submission of a Construction Traffic Management Plan for approval;
- (iv) prepare all required ROL Applications:
 - (A) in accordance with the requirements of Appendices B.18, C.4 and C.5 of the SWTC; and
 - (B) in accordance with Good Industry Practice,

and without limiting the SWTC, submit such ROL Applications to the CJP and the CJM (with a copy to the Principal) in a timely manner, and in any event at least 10 Business Days prior to any Road Occupancy that requires a ROL , so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the relevant ROL prior to any Road Occupancy that requires a ROL the subject of such ROL Application;
- (v) in accordance with Good Industry Practice, use all reasonable endeavours to agree and obtain approved Construction Traffic Management Plans and ROLs;
- (vi) comply with Road Occupancy requirements, including all Construction Traffic Management Plans and ROLs;
- (vii) liaise with, accept and implement the reasonable requirements of the entities who have input into the approval of the Construction Traffic Management Plans and ROLs, including any operator of the relevant road;
- (viii) where applicable, use best endeavours to apply for and obtain ROLs at times when the relevant road is planned to be closed for maintenance; and
- (ix) undertake all other matters necessary to carry out such Contractor's Activities.
- (b) **(Compliance with Road Occupancy Licences):** Without limiting clause 7.2(a), in respect of any ROL:
 - (i) the Contractor must not undertake Contractor's Activities on the relevant road, shoulder or lane (or part thereof):
 - (A) outside of the permitted times stated in the relevant ROL;
 - (B) otherwise than in accordance with the terms and conditions of the relevant ROL; or
 - (C) in a manner that is inconsistent with the requirements of the Planning Approval;
 - (ii) a breach of a term or condition of the ROL will constitute a breach of this deed; and
 - (iii) the Contractor acknowledges and agrees that if it breaches a term or condition of any ROL or Construction Traffic Management Plan in connection with the performance of the Contractor's Activities, if requested by the CJM, the Contractor must provide the CJM with an explanation of the reason for such breach and details of the measures that the Contractor will put in place to ensure such a breach does not re-occur, in each case to the satisfaction of the CJM.

- (c) **(Contractor responsible for traffic management)**: Without limiting section 2.8.1 of Appendix C.5 of the SWTC, the Contractor is responsible for the control, direction and protection of all road, cyclist and pedestrian traffic in any way affected by the carrying out of the Contractor's Activities and must, despite the conditions of approved ROLs:
- (i) manage all such traffic to ensure:
 - (A) its continuous, safe and efficient movement;
 - (B) the traffic carrying capacity of Local Areas is maintained; and
 - (C) that any delays and disruptions to such traffic and the movement of such traffic are kept to the minimum required for the purposes of the Contractor's Activities;
 - (ii) coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of Authorities;
 - (iii) comply with the requirements of the Planning Approval, the SWTC and any Third Party Agreement in respect of road traffic management and safety; and
 - (iv) comply with the directions of any relevant Authority (including the CJP, the CJM and the Principal in its capacity as an Authority) and the Principal with respect to such management and safety.
- (d) **(Notice and minimise disruption)**: The Contractor must:
- (i) give the public sufficient notice of the arrangements under clause 7.2(a); and
 - (ii) in designing and implementing the Traffic Management and Safety Plan and Construction Traffic Management Plan for the Project Works and all aspects of the Contractor's Activities, seek to minimise delays and disruption to traffic to the extent consistent with the performance of the Contractor's Activities in accordance with this deed.
- (e) **(TfNSW may re-open)**: Despite any ROL issued in respect of any road, lane or shoulder closure:
- (i) the Contractor must comply with any direction of the Principal to temporarily suspend any Contractor's Activities and to re-open the road, lane or shoulder; and
 - (ii) the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal in respect of such direction, including in respect of special events whether notified under section 2.3(e) or section 2.3(f) of Appendix C.5 to the SWTC.
- (f) **(Actions of CJM and CJP)**: The Contractor acknowledges and agrees that:
- (i) the CJP and the CJM each exercise their own discretion in the exercise of delegated statutory functions and powers of the Principal; and
 - (ii) nothing that the CJP or the CJM do, fail to do or purport to do pursuant to such delegation (including a decision not to grant a ROL) will:
 - (A) be considered as an act or omission of the Principal;

- (B) constitute an Act of Prevention; or
 - (C) entitle the Contractor to make any Claim.
- (g) **(Lane Occupancy Fees):** The Contractor acknowledges and agrees that it may be liable to pay Lane Occupancy Fees in accordance with Schedule E8 (*Lane Occupancy Fees*).

7.3 Vessel management and harbour access

- (a) **(Contractor responsible for approvals):** Without limiting clause 6.2 or the requirements in Appendix C9 and Appendix B34 of the SWTC, prior to commencing any aspects of the Contractor's Activities in Sydney Harbour, the Contractor must:
- (i) obtain and comply with all relevant Approvals, including Harbour Access Approvals that are required for such Contractor's Activities;
 - (ii) keep the Principal's Representative fully and promptly informed of the progress of obtaining any relevant Approvals; and
 - (iii) liaise with, and accept and implement the requirements of, the Port Authority of New South Wales, the Harbour Master and any other authorised officer.
- (b) **(Actions of the Port Authority of NSW and Harbour Master):** The Contractor acknowledges and agrees that:
- (i) the Port Authority of New South Wales, the Harbour Master and any other authorised officer exercise their own discretion in the exercise of statutory functions (including any delegation of their statutory functions) under any relevant legislation, including *the State Owned Corporations Act 1989 (NSW)*, *Ports and Maritime Administration Act 1995 (NSW)*, *Marine Safety Act 1998 (NSW)* and the Port Safety Operating Licence issued under section 12(2) of the *Ports and Maritime Administration Act 1995 (NSW)*; and
 - (ii) nothing that the Port Authority of New South Wales, the Harbour Master or any other authorised officer does, fails to do or purports to do pursuant to these functions (including any decision to restrict or prevent the Contractor's access to any relevant areas in Sydney Harbour) will:
 - (A) be considered as an act or omission of the Principal;
 - (B) constitute an Act of Prevention; or
 - (C) entitle the Contractor to make any Claim.
- (c) **(Marine Law):** The parties acknowledge and agree that:
- (i) nothing in or arising out of this deed in any way:
 - (A) limits the Principal's rights, powers, defences, immunities, indemnities or limitations of liability under Law; or
 - (B) precludes the Principal from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities or limitations of liability under Law,
- in relation to any matter concerning this clause 7.3 or the Contractor's Activities in Sydney Harbour;

- (ii) if there is any inconsistency between anything in this deed and any Law in relation to any matter concerning this clause 7.3 or the Contractor's Activities in Sydney Harbour, then the Law always prevails and overrides the terms of this deed; and
 - (iii) except as expressly provided in this clause 7.3, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the matters described in this clause 7.3(c).
- (d) **(Berthing rights):** The Contractor must procure for itself any berthing rights or rights of occupation or use in Sydney Harbour which are necessary or which it may require for the purposes of carrying out the Contractor's Activities.
- (e) **(Request for Harbour permit):** If the Contractor requires a Ports and Maritime Administration Permit for the performance of the Contractor's Activities then:
- (i) the Contractor may notify the Principal and the Principal may, in its absolute discretion, allow the Contractor the benefit of any such permit granted in favour of the Principal, in which case the Contractor must carry out all the Contractor's Activities in accordance with such permit; and
 - (ii) if the Principal elects not to give the Contractor the benefit of a permit described in clause 7.3(e) above, the Contractor must obtain any such permit it requires.
- (f) **(Definition):** In this clause 7.3 the term "authorised officer" has the meaning assigned to that term under the *Marine Safety Act 1998* (NSW).

7.4 Request for Early Access

If:

- (a) **(Request):** the Contractor requests; and
- (b) **(Agreement):** the Principal agrees to give,

access to any part of the Construction Site earlier than the relevant dates set out in the Site Access Schedule, then:

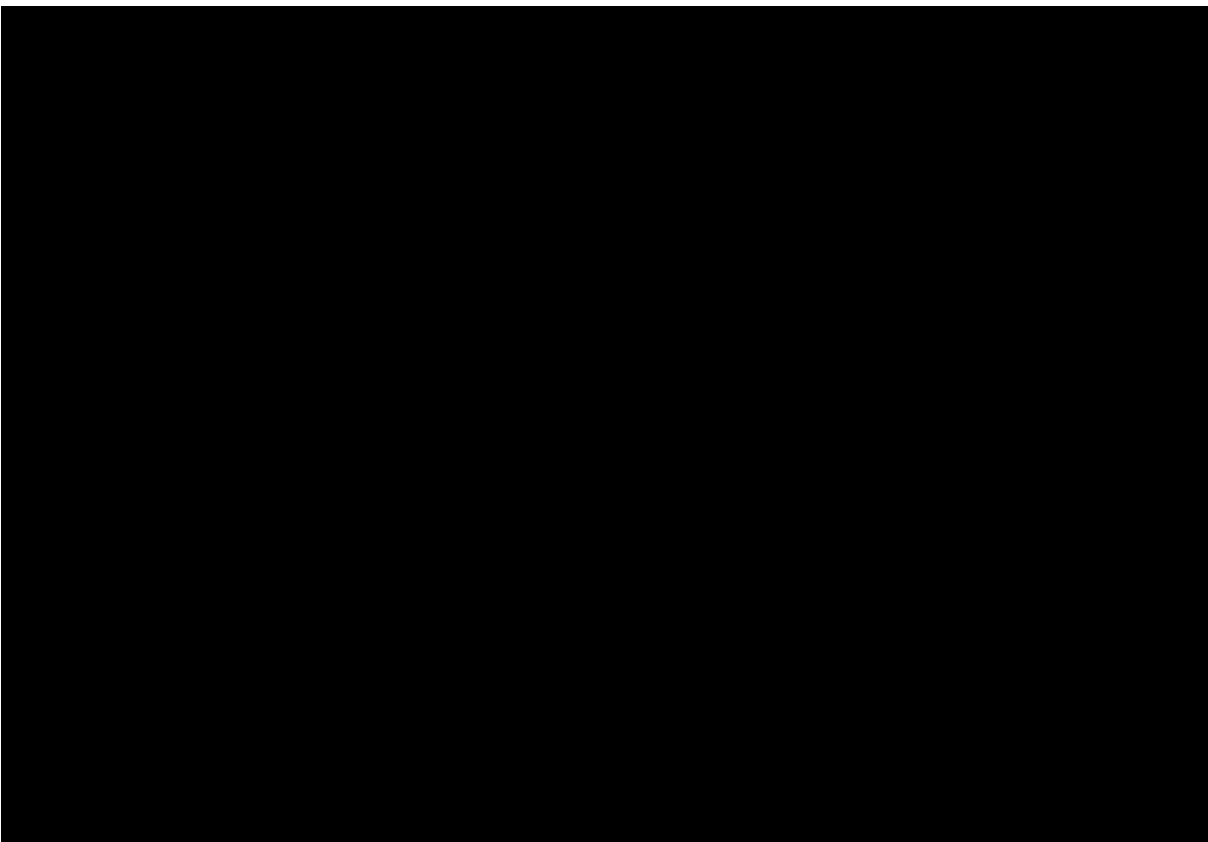
- (c) **(Sole risk):** the Contractor accepts the sole risk of such earlier access; and
- (d) **(No Claim):** the Contractor will not be entitled to make, and the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - (i) obtaining such earlier access (including a failure of the Principal to grant such earlier access); or
 - (ii) any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors (of any tier) to obtain such earlier access to the Construction Site.

7.5 Early Access to Construction Site

- (a) **(Principal may offer early access):** The Principal may, but is not obliged to, offer the Contractor access to the whole or a part of the Construction Site prior to the relevant Site Access Date.

- (b) **(Purpose of early access):** The purpose of offering early access to the Construction Site under clause 7.5(a) is to allow the Contractor to commence the Contractor's Activities early so as to mitigate any delays the Contractor may incur in reaching Handover Completion, Opening Completion and Completion and, subject to clause 7.5(g), the Contractor must use that access to the Construction Site to commence the Contractor's Activities and optimise the additional time.
- (c) **(Notice):** At any time before the relevant Site Access Date for a part of the Construction Site, the Principal may give the Contractor notice of the date or dates on which that part of the Construction Site will be available prior to the Site Access Date (**Site Availability Date**).
- (d) **(Early Site Access Date):** If a Site Availability Date for a part of the Construction Site is:
- (i) on or after the Early Site Access Date for the relevant part of the Construction Site, the Contractor must:
 - (A) accept the relevant part of the Construction Site from the Site Availability Date and the licence under clause 7.1(b) will commence with respect to the relevant part of the Construction Site from the Site Availability Date; or
 - (B) issue a notice to the Principal stating that it will not accept the relevant part of the Construction Site, in which case the Contractor will be liable to the Principal for the costs to the Principal of the relevant Interface Contractor carrying out the activities contemplated in clause 7.6; or
 - (ii) prior to the Early Site Access Date for the relevant part of the Construction Site, the Contractor must either:
 - (A) accept the offer of early access by written notice, in which case the licence under clause 7.1(b) will commence with respect to the relevant part of the Construction Site from the Site Availability Date or such other date as may be agreed by the parties; or
 - (B) decline the offer of early access by written notice, in which case the Contractor must either:
 - (aa) accept the relevant part of the Construction Site from the Early Site Access Date (if applicable) and the licence under clause 7.1(b) will commence with respect to the relevant part of the Construction Site from the Early Site Access Date; or
 - (bb) include in the notice to the Principal that it will not accept the relevant part of the Construction Site on the Early Site Access Date, in which case the Contractor will be liable to the Principal for the costs of the relevant Interface Contractor carrying out the activities contemplated in clause 7.6,
- and if the Contractor fails to respond to the notice, the Contractor is deemed to have declined the offer of early access and clause 7.5(d)(ii)(B)(bb) applies.
- (e) **(Effect of early access):** [REDACTED] early access granted to the Contractor under this clause 7.5 will not, except to the extent set out in clause 14.11(a)(iii), affect any Date for Handover Completion, the Date for Opening Completion or the Date for Completion.

- (f) **(No Claim):** If the Principal agrees to give access to any part of the Construction Site earlier than the relevant Site Access Date, then:
- (i) the Contractor accepts the sole risk of such earlier access; and
 - (ii) the Principal will not be liable upon any Claim (insofar as permitted by Law) by the Contractor arising out of or in any way in connection with:
 - (A) obtaining such earlier access (including a failure of the Principal to grant such earlier access); or
 - (B) any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors (of any tier) to obtain such earlier access to the Construction Site.
- (g) **(No Early Site Access Date):** The parties acknowledge and agree that this clause 7.5 does not apply where the Site Access Schedule does not specify an Early Site Access Date for a particular part of the Construction Site [REDACTED] and the:
- (i) Principal is only required to provide access to; and
 - (ii) Contractor is only required to accept,
- such areas of the Construction Site on and from the relevant Site Access Date.
- (h) **(No reliance):** In relation to any areas of the Construction Site that do not have an Early Site Access Date, the Contractor warrants that the Contractor has not relied on obtaining, and the Target Cost and program do not assume, access to such areas prior to the relevant Site Access Date.





7.6 Transitional handover services

- (a) **(Failure to occupy):** If:
 - (i) the Contractor fails to occupy a part of the Construction Site from the date the Contractor has been granted access to that part of the Construction Site pursuant to clauses 7.1 and 7.5(d) **(Relevant Date)**; and
 - (ii) the Principal incurs a Liability in relation to the post completion activities carried out by an Interface Contractor on that part of the Construction Site on or after the Relevant Date to maintain and secure the relevant part of the Construction Site,

an amount equivalent to the costs payable by the Principal to the Interface Contractor carrying out such activities will be a debt due and payable by the Contractor to the Principal.
- (b) **(Survival of clause):** This clause 7.6 will survive the termination of this deed.

7.7 Temporary Works

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

7.8 Property Works

- (a) **(Obligations):** The Contractor must:
 - (i) carry out the Property Works:
 - (A) in accordance with the SWTC; and
 - (B) so that they are fit for their intended purpose upon Opening Completion;

- (ii) after completion of the Property Works with respect to a Non-TfNSW Parcel, including the work described in clauses 7.8(d) and 7.8(e), provide to the Principal's Representative:
 - (A) a properly executed certificate in the form of Schedule B2 (*Property Owner's Certificate*) or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Non-TfNSW Parcel, unless the Principal's Representative confirms such a certificate is not required; or
 - (B) if the Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the Contractor to the effect that such owner or occupier, or other person having an interest in the Non-TfNSW Parcel, has failed or refused to execute such a release within 15 Business Days after it being provided by the Contractor to the owner, occupier or other person following completion of the work on the Non-TfNSW Parcel, including the work described in clause 7.8(d); and
- (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or owners of any part of a Non-TfNSW Parcel in circumstances where:
 - (A) such owner or owners have not duly signed a certificate in the form of Schedule B2 (*Property Owner's Certificate*); and
 - (B) the claim or Loss arises out of or in any way in connection with the Contractor's Activities.
- (b) **(Approval)**: The acceptance of a certificate or statement provided by the Contractor under clause 7.8(a)(ii) by the Principal's Representative does not constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this clause 7.8.
- (c) **(Minimise disruption)**: Upon being given access to any Non-TfNSW Parcel for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Non-TfNSW Parcel.
- (d) **(Rehabilitation)**: The Contractor must:
 - (i) rehabilitate any part of a Non-TfNSW Parcel to the state agreed with the owner of such Non-TfNSW Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 7.8.
- (e) **(Conditions precedent)**: The following are conditions precedent to Opening Completion:
 - (i) completion of all Property Works under this clause 7.8 that form part of the Project Works, including all relevant work under clause 7.8(c); and

- (ii) provision of all certificates or statements (as applicable) to the Principal's Representative as required under clause 7.8(a)(ii) in respect of Property Works that form part of the Project Works.

7.9 **Management and Control of the Construction Site**

- (a) **(Management and control):** Subject to:

- (i) the terms of the relevant approved ROLs; and
- (ii) clauses 7.9(b), 8.6(c), 8.6(d), 8.6(f), 8.6(j)(vii) and 8.6(k),

but without limiting any right of the Principal or the Principal's Representative under this deed, the Contractor will be responsible for the management and control of the Construction Site at all times after being given access to the Construction Site or a part of the Construction Site under clauses 7.1 or 7.5 until:

- (iii) in respect of a Handover Area, the Date of Handover Completion of the Handover Portion that corresponds to that Handover Area as specified in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*);
- (iv) in respect of areas of the Construction Site other than the Handover Areas, the Date of Opening Completion.

- (b) **(Shared Construction Site Areas):** In respect of the Shared Construction Site Areas, the Contractor will be responsible for the management and control of a Shared Construction Site Area only:

- (i) during such periods as the Appointed Principal Contractor is principal contractor for the relevant Works being carried out on such Shared Construction Site Area in accordance with clauses 8.6(d) and 8.6(f)(ii); and
- (ii) for those parts of the Shared Construction Site Area where such Works are being carried out.

- (c) **(Access and maintenance):** The Contractor must:

- (i) subject to clause 7.1(g)(iv), control access to and the security of the Construction Site; and
- (ii) without limiting clause 3.17, maintain the Construction Site or that part of the Construction Site,

except where the Principal's Representative advises otherwise.

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

- (i) ensure public safety on and adjacent to the Construction Site or that part of the Construction Site;
- (ii) provide for the continuous safe passage of the public, road and waterway users on existing roads, footpaths access ways and cycleways and waterways affected by the Contractor's Activities in accordance with this deed;
- (iii) subject to clauses 3.2(b)(i), 7.1 and 7.20 and the SWTC, and any relevant Law, limit access to the Construction Site to its Associates, and those with a legitimate interest in being on the Construction Site as part of the Contractor's Activities; and

- (iv) not impede access or Utility Services to private property without the consent of the Principal's Representative and the relevant owner or occupier of that property.

7.10 **Extra Land and Temporary Areas**

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

(i) procure for itself the occupation or use of, or relevant rights over, any land or buildings in addition to the Construction Site which is necessary or which it may require for the purposes of carrying out the Contractor's Activities (**Extra Land**);

(ii) carry out all activities and procure all Utility Services necessary to make the Extra Land suitable for use by the Contractor;

(iii) as a condition precedent to Opening Completion:

(A) rehabilitate any Extra Land which is no longer required in accordance with the requirements of all relevant Authorities and other relevant persons with an interest in such Extra Land; and

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

(aa) a properly executed certificate in the form of Schedule B2 (*Property Owner's Certificate*) or a release on terms otherwise satisfactory to the Principal's Representative from all Claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; or

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

(iv) as a condition precedent to Completion:

(A) rehabilitate any remaining Extra Land not rehabilitated prior to Opening Completion with the requirements of all relevant Authorities and other relevant persons with an interest in such Extra Land; and

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

(aa) a properly executed certificate in the form of Schedule B2 (*Property Owner's Certificate*) or a release on terms otherwise satisfactory to the Principal's Representative from all Claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; or

(bb) if the Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the Contractor to the effect that such owner or occupier, or other person having

an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days after it being provided by the Contractor to the owner, occupier or other person following completion of the work on the Extra Land.

- (b) **(Indemnity)**: The Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal arising out of or in any way in connection with a claim arising out of or in connection with the Contractor's Activities by the owner or occupier of, or any other person having any interest in any Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or Loss.
- (c) **(Reinstating Temporary Areas)**: The Contractor must, as a condition precedent to Opening Completion, reinstate the Temporary Areas to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Areas:
 - (i) that are required by this deed (including the SWTC) to contain any Project Works; or
 - (ii) which this deed (including the SWTC) specifies need not be reinstated.

7.11 Condition of the Construction Site

- (a) **(Acceptance of condition)**: Subject to clause 4, clauses 7.12 to 7.18 (inclusive) and clause 14.10, the Contractor:
 - (i) accepts:
 - (A) the Construction Site and any Extra Land; and
 - (B) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site and any Extra Land;in their present condition subject to all defects and Site Conditions;
 - (ii) acknowledges that:
 - (A) prior to the handover to the Contractor of the various parts of the Construction Site pursuant to clauses 7.1 or 7.5, some or all of the Early Utilities Work has been carried out on the Construction Site; and
 - (B) after the handover to the Contractor of the various parts of the Construction Site pursuant to clauses 7.1 or 7.5, some of the Early Utilities Work may continue to be carried out on the Construction Site; and
 - (iii) agrees that it not entitled to make, and the Principal will not be liable upon, any Claim in relation to:
 - (A) any Loss, delay or disruption it suffers or incurs; and
 - (B) any adverse effect on the Project Works or the Temporary Works,arising out of, or in any way in connection with the Site Conditions or any other condition of the Construction Site or Extra Land encountered in performing the Contractor's Activities.

- (b) **(No representation or warranty):** Despite any other provision of this deed, the Principal makes no representation and gives no warranty to the Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
 - (A) the Construction Site, Extra Land or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land; or
 - (ii) the existence, location, condition or availability of any Utility Service on, under, above, adjacent to or related to the Construction Site or Extra Land.
- (c) **(Obligations under deed):** The Contractor must investigate, design and construct the Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:
- (i) the Site Conditions encountered in performing the Contractor's Activities;
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - (A) the Construction Site or any Extra Land, the Environment or their surroundings; or
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site or any Extra Land, the Environment or their surroundings; and
 - (iii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 7.11(c)(ii), in particular given that prior to the handover to the Contractor of the various parts of the Construction Site pursuant to clauses 7.1 or 7.5, various Interface Works will be carried out or will continue to be carried out on the Construction Site.
- (d) **(Warranties):** Subject to clause 7.11(a) and without limiting clause 7.19(c), the Contractor warrants that, and for all purposes it will be deemed to be the case that, prior to the date of this deed, the Contractor:
- (i) examined, and relied solely upon its own assessment, skill, expertise and inquiries:
 - (A) in respect of all information relevant to the risks, contingencies and other circumstances having an effect on the Target Cost or other amounts in this deed; and
 - (B) carefully checked and acquired actual knowledge of the contents of the documents which constitute this deed,

made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor for the purpose of submitting a proposal for the Contractor's Activities or entering this deed;
 - (ii) satisfied itself that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things

necessary for the due and proper performance and completion of the Contractor's Activities and the Works;

- (iii) informed itself of:
 - (A) the risks and contingencies and other circumstances which might have an effect on the execution of the Contractor's Activities and the Works or the cost of executing the Contractor's Activities;
 - (B) all matters relevant to the employment of labour at the Construction Site; and
 - (C) all industrial matters relevant to the Construction Site;
 - (iv) was given the opportunity to itself undertake, and to request others to undertake, desktop and visual enquiries and investigations:
 - (A) relating to the subject matter of Information Documents; and
 - (B) for design purposes and otherwise;
 - (v) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, each Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances which might have an effect on the performance of its obligations and its potential Liabilities under this deed; and
 - (vi) undertook desktop and visual enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and Liabilities which it imposes on the Contractor.
- (e) **(No limitation):** Nothing in clause 7.11 limits the operation of clauses 7.12 to 7.18 (inclusive), clause 4 or clause 14.10.

7.12 **Unknown Site Conditions**

- (a) **(Written notice):** If during the execution of the Contractor's Activities, the Contractor becomes aware of an Unknown Site Condition, the Contractor must:
 - (i) promptly; and
 - (ii) where possible before the physical conditions are disturbed,give written notice of such Unknown Site Condition to the Principal's Representative.
- (b) **(Notice requirements):** The Contractor must provide in any notice issued pursuant to clause 7.12(a) a statement specifying:
 - (i) the location, type and nature of the conditions encountered and detailed particulars on why the Contractor considers they constitute an Unknown Site Condition;
 - (ii) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Unknown Site Condition;

- (iii) the information required by clause 10.4(c) as if such notice was a Variation Proposal; and
- (iv) other details reasonably required by the Principal's Representative,

(Unknown Site Condition Notice).

(c) **(Principal to respond):** Within 10 Business Days after receiving:

- (i) the Unknown Site Condition Notice; and
- (ii) any additional information requested by the Principal pursuant to clause 7.12(b)(iv),

whichever is later, the Principal must notify the Contractor whether it believes that the Unknown Site Condition Notice identifies an Unknown Site Condition.

(d) **(Variation):** Subject to clause 7.12(f), if the Contractor gives an Unknown Site Condition Notice and the Principal agrees or it is determined under clause 19 that there is an Unknown Site Condition, the Principal must either:

- (i) direct a Variation under clause 10.8(a) in respect of the Unknown Site Condition; or
- (ii) take such other action as is necessary to deal with the Unknown Site Conditions.

(e) **(Determination of cost adjustment):** In making a determination under clause 4 in respect of a Variation directed in accordance with clause 7.12(d), regard will not be had to any Contractor's Activities or additional costs incurred more than 10 Business Days before the date on which the Contractor gives the written notice required by clause 7.12(a).

(f) **(Exclusion for specific conditions):** Despite any other provision of this deed:

(i) if the Contractor becomes aware of any Unknown Inaccurate Principal Geotechnical Data, any Variation directed by the Principal or any other such action taken by the Principal to address the Unknown Inaccurate Principal Geotechnical Data in accordance with clause 7.12(d) will not constitute an Extension Event;

(ii) if the Contractor discovers an Unknown Utility Service, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim for a [REDACTED];

(iii) without limiting clause 7.12(h), if the Contractor discovers any Unknown Contamination, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal for:

(A) any extension of time to any Date for Handover Completion, Date for Opening Completion or the Date for Completion to the extent the Unknown Contamination delays the Contractor; or

(B) [REDACTED]

(iv) if the Contractor discovers any Special Unknown Contamination:

- (A) subject to clause 7.12(h), the Contractor will be entitled to Claim a [REDACTED]; but the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim for [REDACTED]; or an extension of time;
 - (B) once the aggregate [REDACTED] in respect of all Special Unknown Contamination encountered in the carrying out of the Contractor's Activities is equal to [REDACTED], the [REDACTED] will be limited to [REDACTED] per cent of the [REDACTED] amount determined pursuant to clause 4.3 for all further adjustments; and
 - (C) without limiting clause 4.5, the Contractor's entitlement to a [REDACTED] will be reduced to the extent that the Contractor has not complied with clause 7.14(c).
- (g) **(Known Contamination):** The Contractor acknowledges and agrees that any Contamination:
- (i) that falls within the category of General Solid Waste set out in the table in Schedule C10 (*Special Unknown Contamination*); and
 - (ii) is equal to or less than the volume specified in the column titled "Classification Baseline (tonnes)" in the table in Schedule C10 (*Special Unknown Contamination*) for this category of Contamination,
- will be deemed to be known by the Contractor for the purposes of the definition of Unknown Contamination.
- (h) **(Reimbursable Cost Element Adjustment):** If the Contractor discovers any Unknown Contamination or any Special Unknown Contamination, the [REDACTED] will be limited to the actual [REDACTED] incurred by the Contractor for testing, haulage, loading, stockpiling, treatment, handling, WHS controls and disposal of the relevant Contamination pursuant to the relevant Approved Subcontracts.
- (i) **(No Claim):** Other than as set out in this clause 7.12, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any Unknown Site Condition.

7.13 Contamination

- (a) **(Contractor Contamination):** The Contractor must remediate all Contamination:
- (i) on, in, over, under or about the Construction Site or any Extra Land which is disturbed by or interfered with in the carrying out of the Contractor's Activities;
 - (ii) which migrates:
 - (A) on to the Construction Site or any Extra Land as a result of the Contractor's Activities; or
 - (B) from the Construction Site or any Extra Land as a result of the Contractor's Activities;
 - (iii) which must be remediated for the Project Works to comply with this deed;

- (iv) which is brought onto the Construction Site or any Extra Land by the Contractor or any of its Associates;
 - (v) which is ground water ingressing at the face of the Project Works or within an area of excavation (and not to the extent such ground water remains beyond the face of the Project Works and outside the area of excavation); or
 - (vi) which otherwise arises out of or in connection with the Contractor's Activities, **(Contractor Contamination)**, provided that:
 - (vii) in respect of clause 7.13(a)(i), the Contractor's risk and obligation to remediate is limited to that part of such Contamination which is actually disturbed by or interfered with in the carrying out of the Contractor's Activities (and not to remediate the entire mass of such Contamination or trace to the source of the Contamination, where that wider mass or source has not been disturbed or interfered with in the carrying out of the Contractor's Activities); and
 - (viii) in respect of clause 7.13(a)(ii)(A), the Contractor is not required to trace to the source of such Contamination.
- (b) **(Standard of Remediation)**: The Contractor must undertake Remediation of any Contractor Contamination in accordance with Law, all guidelines made or approved by the EPA and any applicable Remediation Action Plan submitted under clause 7.15 which has not been the subject of a notice under clause 7.15(c)(ii) so that:
- (i) the Construction Site and any Extra Land is suitable for the performance of the Contractor's Activities and the further construction, operation and maintenance of the WHTBL Program; and
 - (ii) whole of life costs associated with the further construction, operation and maintenance of the WHTBL Program at the relevant parts of the Construction Site where the Remediation is undertaken are minimised.
- (c) **(Contamination caused by Contractor)**: Despite anything to the contrary in this deed, to the extent any Contractor Contamination on, in, over, under or about the Construction Site is caused by the Contractor (or its Associates):
- (i) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal in connection with such Contractor Contamination; and
 - (ii) the costs incurred in remediating such Contamination will not be Reimbursable Costs.
- (d) **(Indemnity)**: Except to the extent prohibited by Law, the Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this deed in connection with Contamination.

7.14 Disposal of Contamination and Waste

- (a) **(Disposal)**: Unless onsite remediation of Contamination is expressly permitted by the SWTC, the Contractor must:
 - (i) remove from the Construction Site and any Extra Land; and

- (ii) dispose of,

any Contamination or Waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.

- (b) **(Approvals)**: The Contractor must:

- (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or Waste from the Construction Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
- (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.

- (c) **(Sorting Contamination)**: The Contractor must:

- (i) sort all Contamination and Waste (including separating Unknown Contamination and Special Unknown Contamination from clean material and any other type of Contamination or Waste);
- (ii) not contaminate clean material by intermixing any Contamination or Waste; and
- (iii) not intermix Unknown Contamination or Special Unknown Contamination with clean material or any other type of Contamination or Waste.

- (d) **(Training)**: The Contractor must ensure, and must ensure that its Associates ensure, that their respective employees, agents and contractors, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws and Approvals.

- (e) **(Records)**: The Contractor must:

- (i) keep complete, accurate and up to date records of all materials that are disposed of or otherwise removed from the Construction Site or any Extra Land (including all Contamination and other wastes) including classification certificates and tip docket for all loads; and
- (ii) if requested, provide a copy of any such records to the Principal's Representative.

- (f) **(Classification of Contamination)**: If the Contractor encounters Contamination or Waste that it considers to be Unknown Contamination or Special Unknown Contamination and for which it intends to make a Claim, the Contractor must:

- (i) issue a notice to the Independent Certifier (copying the Principal):
 - (A) stating that it is a notice under this clause 7.14(f); and
 - (B) setting out details of the relevant Contamination or Waste; and
- (ii) do all things reasonably necessary to enable the Independent Certifier to determine the classification of such Contamination or Waste pursuant to clause 7.14(g), including providing the Independent Certifier with access to:
 - (A) the Construction Site and other areas where the relevant Contamination or Waste is located; and

- (B) all information relevant to the classification of Contamination or Waste, including copies of any test results and reports.
- (g) **(Rates for Contamination):** Despite anything else in this deed, the parties acknowledge and agree that for the purposes of valuing [REDACTED] with respect to Unknown Contamination and Special Unknown Contamination, the Independent Certifier will determine the classification of all Contamination and Waste for the purposes of determining the relevant type of Contamination and whether something is Special Unknown Contamination.
- (h) **(Benefit of exemptions):** Without limiting clause 6.1, clause 7.13 or the balance of this clause 7.14, the Contractor must take all reasonable steps to:
- (i) utilise resource recovery exemptions, including by complying with the corresponding conditions under the resource recovery exemptions;
 - (ii) promptly upon request from the Principal's Representative, apply for new resource recovery exemptions; and
 - (iii) comply with resource recovery orders,
- in dealing with any Contamination pursuant to this deed, as contemplated in Part 9 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW).
- (i) **(Pre-testing of Contamination):** When any testing of the Construction Site carried out by the Contractor identifies any Contamination, the Contractor must undertake additional reasonable tests to identify the scope of Contamination and minimise the area and volume of spoil that needs to be remediated or disposed of as contaminated material.
- (j) **(Disposal facilities):** The Contractor:
- (i) is responsible for identifying suitable disposal facilities for Contamination, including any Special Unknown Contamination; and
 - (ii) except in respect of relief for a Change in Codes and Standards pursuant to clause 6.3, is not entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with a disposal facility not being suitable or available.

7.15 Remediation Action Plans

- (a) **(Remediation of Contamination):** Without limiting the requirements of the Planning Approval or the SWTC, prior to commencing Remediation of any Contamination, the Contractor must prepare and submit to the Principal's Representative a Remediation Action Plan for the relevant area.
- (b) **(Preparation of plan):** Each Remediation Action Plan must:
- (i) describe the manner in which the Contractor will remediate the relevant area in accordance with the requirements of this deed (including the SWTC); and
 - (ii) be prepared:
 - (A) using Good Industry Practice; and
 - (B) in accordance with the requirements of Law, all guidelines made or approved by the EPA and any other requirements of this deed.

- (c) **(Review of plan):** The Principal's Representative may:
 - (i) review any Remediation Action Plan submitted under clause 7.15(a); and
 - (ii) if the Remediation Action Plan submitted does not comply with this deed, notify the Contractor within 15 Business Days of the initial submission of the Remediation Action Plan providing reasons for the non-compliance.
- (d) **(Non-compliance):** If the Contractor receives a notice under clause 7.15(c)(ii), the Contractor must promptly submit an amended Remediation Action Plan, or relevant part or component of it, to Principal's Representative and the process in this clause 7.15 will reapply.
- (e) **(Precondition to Remediation of Contamination):** The Contractor may not commence Remediation of Contamination in any area of the Construction Site unless and until the Remediation Action Plan for the relevant area has been submitted to the Principal's Representative and have not been the subject of a notice under clause 7.15(c)(ii).
- (f) **(No duty):** The Principal's Representative owes no duty to the Contractor to review any Remediation Action Plan submitted by the Contractor for Errors, omissions or compliance with this deed.
- (g) **(Rights and Liability unaffected):** No review of, comments upon, notice in respect of any Remediation Action Plan or any other act or omission of the Principal's Representative (including a notice under clause 7.15(c)) in relation to any Remediation Action Plan will lessen or otherwise affect:
 - (i) the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

7.16 Existing Assets

- (a) **(Required Existing Asset Works):** The parties acknowledge and agree that:
 - (i) the Works involve impacting on various Existing Assets;
 - (ii) the Contractor must carry out any work or activities in respect of Existing Assets which:
 - (A) expressly form part of the Contractor's scope of works under the SWTC or are necessary in order to carry out the Works in accordance with the SWTC;
 - (B) are required to comply with the Planning Approval conditions (to the extent such conditions are allocated to the Contractor under Part A of Schedule E4 (*Principal's Approval*)); or
 - (C) are required in order to put an Existing Asset in equivalent or better condition than it was in immediately prior to the commencement of the physical Works affecting that Existing Asset, but only to the extent the Works:
 - (aa) change the loading on the Existing Asset;

(bb) negatively impact the condition, durability, performance, function, safety or maintainability of the Existing Asset, including by exacerbating an existing defect or by damaging the Existing Asset; or

(cc) structurally rely on the Existing Asset,

which may include modifying such Existing Asset, or upgrading the condition, performance or standard of such Existing Asset (**Required Existing Asset Works**); and

(iii) the Contractor is not required to carry out any work in respect of Existing Assets other than the Required Existing Asset Works (including rectifying any Existing Asset Fault), unless the Principal issues a Variation Order pursuant to clause 10, or as contemplated by clause 7.16(e)(i).

(b) (**Written notice**): If during the execution of the Contractor's Activities (including during the execution of any Required Existing Asset Work):

(i) the Contractor first becomes aware of an Existing Asset Fault; and

(ii) the work required to rectify or overcome the Existing Asset Fault does not expressly form part of the Works under the SWTC and is not expressly required pursuant to the Planning Approval,

the Contractor must provide a written notice to the Principal's Representative within 10 Business Days (or such longer period as is agreed by the Principal, acting reasonably) of the Contractor first becoming aware (or when it ought reasonably to have first become aware) of the Existing Asset Fault.

(c) (**Notice requirements**): The Contractor must provide in a notice issued pursuant to clause 7.16(b) a statement specifying:

(i) the details of the relevant Existing Asset Fault;

(ii) an explanation of why the work required to rectify or deal with such Existing Asset Fault does not expressly form part of the Works under the SWTC and is not expressly required pursuant to the Planning Approval;

(iii) the additional work and additional resources which the Contractor estimates to be necessary to rectify or deal with the Existing Asset Fault;

(iv) the effect (if any) which the proposed Existing Asset Fault will have (if not rectified or otherwise dealt with) on the Contractor's ability to satisfy its obligations under this deed (including the Contractor's fitness for purpose obligations in this deed and any warranties given by the Contractor under this deed);

(v) the other information required by clause 10.4(c) as if such notice was a Variation Proposal; and

(vi) other details reasonably required by the Principal's Representative.

(d) (**Principal to respond**): Within 10 Business Days after receipt of:

(i) the Contractor's notice under clause 7.16(b); and

(ii) any additional information requested by the Principal pursuant to clause 7.16(c)(vi),

whichever is later, the Principal must notify the Contractor whether it believes that the Existing Asset Fault requires work that is not part of the Required Existing Asset Works.

- (e) **(Principal's direction)**: If the Contractor provides a notice under clause 7.16(b) and the Principal agrees or it is determined under clause 19 that there is an Existing Asset Fault that requires work that does not expressly form part of the Works under the SWTC and is not expressly required pursuant to the Planning Approval, the Principal must either:
- (i) issue a Variation Order under clause 10 in respect of the work required to rectify or deal with the Existing Asset Fault; or
 - (ii) notify the Contractor that it is not required to rectify or otherwise deal with the Existing Asset Fault, in which case the Contractor will be relieved of its obligations under this deed to the extent reasonably determined by the Principal (having regard to the Contractor's notice under clause 7.16(b)), or as otherwise determined under clause 19.
- (f) **(Fitness for purpose)**: The parties acknowledge and agree that:
- (i) subject to clauses 7.16(f)(ii) and 7.16(f)(iii), the Contractor is not required to and does not warrant the fitness for purpose of any Existing Asset;
 - (ii) without limiting clause 3.1(a)(v), the Contractor warrants that the Required Existing Asset Works and any work required to correct Existing Asset Faults (if directed by the Principal under clause 7.16(e)(i)) will:
 - (A) upon Handover Completion of the relevant Handover Portion or Opening Completion (as applicable), be fit for their intended purposes; and
 - (B) thereafter be capable of remaining at all relevant times fit for their intended purposes, including meeting any minimum specified Design Life criteria and durability requirements set out in the SWTC; and
 - (iii) the Contractor warrants that in relation to an Existing Asset or part of an Existing Asset on which the Contractor is not required to perform either:
 - (A) any Required Existing Asset Works; or
 - (B) any work required to correct Existing Asset Faults,pursuant to this deed, the Works will not:
 - (A) change the loading on such Existing Asset;
 - (B) negatively impact the condition, durability, performance, function, safety or maintainability of such Existing Asset, including by exacerbating an existing defect or damaging the Existing Asset; or
 - (C) structurally rely on such Existing Asset.
- (g) **(No Claim)**: Other than as set out in this clause 7.16, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any Existing Asset Fault, the Required Existing Asset Works or the condition of any Existing Asset.

7.17 **Artefacts**

- (a) **(Property of the Principal):** As between the Contractor and the Principal, all valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Construction Site (all **Artefacts**) are, and will remain, the property of the Principal.
- (b) **(Obligations):** The Contractor must:
 - (i) without limiting clause 7.12(a), immediately notify the Principal's Representative if it discovers an Artefact;
 - (ii) ensure the Artefact is protected and not lost, removed, disturbed or damaged;
 - (iii) comply with all requirements of Authorities and Law in relation to the Artefact (noting compliance with Law is a contractual requirement and does not constitute a direction of the Principal); and
 - (iv) comply with any directions of the Principal's Representative in relation to the Artefact.
- (c) **(Not a direction):** The Contractor acknowledges and agrees that compliance with clause 7.17(b)(iii) does not constitute a direction of the Principal's Representative for the purposes of clause 7.17(d).
- (d) **(Determination of adjustment):** Without limiting this clause 7.17(d), clause 7.12(e) will apply to any Unknown Artefact, and the costs incurred by the Contractor in complying with:
 - (i) requirements of Authorities or Law in accordance with clause 7.17(b)(iii); or
 - (ii) the Principal's Representative's directions under clause 7.17(b)(iv),in respect of an Unknown Artefact will form part of the determination of any
[REDACTED]
[REDACTED].

7.18 **Utility Services**

- (a) **(Obligations):** The Contractor must:
 - (i) investigate, relocate, remove, modify, support, protect, reinstate and provide all Utility Services necessary for the Contractor to comply with its obligations under this deed;
 - (ii) except to the extent expressly required by this deed, ensure that no Utility Services are:
 - (A) damaged or destroyed; or
 - (B) disconnected, disrupted, interfered with or interrupted during normal operating hours,by reason of the performance of the Contractor's Activities;
 - (iii) cooperate and coordinate with the owners of all Utility Services, and implement their requirements as part of the Contractor's Activities; and

- (iv) indemnify the Principal from and against any claim against the Principal, or Loss suffered or incurred by the Principal arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Utility Service arising out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or Loss.
- (b) **(Early Utilities Works):** The Contractor's obligations under this clause 7.18 are not limited or otherwise affected by:
 - (i) the fact that the Early Utilities Works have been, or will be, carried out; or
 - (ii) the information provided by the Principal in Schedule C5 (*Early Utilities Works*).

7.19 Information Documents

- (a) **(Not part of this deed):** Whether or not any Information Documents or any part thereof form any schedule to this deed, the Contractor acknowledges that:
 - (i) the Information Documents or part thereof do not form part of this deed and that clause 7.19(c) applies to the Information Documents or part thereof; and
 - (ii) where Information Documents or any part thereof form a schedule to this deed, they do so only for the purposes of identification of that document or part thereof.
- (b) **(Acknowledgements):** Without limiting clause 7.19(c):
 - (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents, and the Information Documents do not form part of this deed; and
 - (ii) subject to clause 7.19(f), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) **(Warranties):** The Contractor:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document (including the Information Documents) made by, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or

(B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

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

(ii) warrants that it:

(A) has carefully reviewed the Information Documents provided to the Contractor by the Principal as at the date of this deed;

(B) enters into this deed based on its own investigations, interpretations, deductions, information and determinations;

(C) has examined and will continue to examine all other relevant information available on reasonable enquiry;

(D) has obtained and considered all necessary information relevant to the risks, contingencies and other circumstances having an effect on the Contractor's Activities;

(E) has satisfied itself as to the correctness and sufficiency of this deed having regard to the risks referred to in clause 7.19(c)(ii)(D); and

(F) has taken such professional advice as is appropriate for projects of the type contemplated by this deed;

(iii) agrees that it will carefully review any Information Documents provided to the Contractor by the Principal after the date of this deed, and will, on request by the Principal, provide written confirmation of such review; and

(iv) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties, acknowledgements and agreements in clauses 7.19(c)(i), 7.19(c)(ii) and 7.19(c)(iii).

(d) **(Release and indemnity):** Subject to clause 7.19(e), the Contractor irrevocably releases and indemnifies the Principal (and any of its officers, employees, consultants and agents) from and against:

(i) any Claim against them by, or Liability of them to, any person; or

(ii) (without being limited by clause 7.19(d)(i)) Losses suffered or incurred by them,

arising out of or in any way in connection with:

(iii) the provision of, or the purported reliance upon, or use of the Information Documents, as referred to in clauses 7.19(b) and 7.19(c)(i), to or by the Contractor or any other person to whom the Information Documents are disclosed by the Contractors or its Associates or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this deed);

(iv) any breach by the Contractor of this clause 7.19; or

(v) the Information Documents being relied upon or otherwise used by the Contractor or its Associates or any other person to whom the Information

Documents are disclosed by the Contractor or its Associates in the preparation of any information or document.

- (e) **(Benefit of release and indemnity)**: The releases and indemnities under clause 7.19(d) benefit the Principal and their respective officers, employees, consultants and agents, and the Principal may enforce each release and indemnity in its own right and on behalf of its officers, employees, consultants and agents.
- (f) **(Contractor's rights unaffected)**: The acknowledgements, warranties, releases and indemnities referred to in clauses 7.19(a) to 7.19(d) do not affect the Contractor's rights under clauses 7.12 to 7.18 (inclusive) or in relation to updates to Interface Specifications and Interface Defects.

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

The Contractor must:

- (a) **(Minimise disruption)**: without limiting clauses 7.9 and 7.10, minimise disruption or inconvenience to:
 - (i) the Principal, occupiers, tenants and potential tenants of the Construction Site, Extra Land or any other land or buildings above or adjacent to the Construction Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Construction Site or Extra Land, including any occupation or use of the Project Works, a Handover Portion or a part thereof under clause 16.4;
 - (ii) others having a right of access to the Construction Site, Extra Land or any other land or buildings on or adjacent to the Construction Site or any Extra Land; and
 - (iii) the occupants of any other land adjoining the Construction Site or located in the vicinity of the Construction Site.
- (b) **(Access)**: at all times:
 - (i) give the Principal's Representative, the Principal, the Other Contractors, the Independent Certifier, the Acoustics Advisor, the Environmental Representative, the Principal's Surveillance Officers, financiers or equity investors (including potential financiers or equity investors) in relation to the Motorway and any person authorised by the Principal's Representative, the Principal, safe, prompt and unimpeded access to:
 - (A) the Works;
 - (B) the Design Documentation and any other documentation created for the purposes of the Contractor's Activities;
 - (C) the Construction Site and Extra Land, including where required, reasonable vehicular access through the Construction Site or Extra Land; and
 - (D) any other areas where the Contractor's Activities are being carried out, for the purposes of:
 - (E) observing progress in and inspecting the Contractor's Activities and monitoring compliance by the Contractor of its obligations under this deed;

- (F) seeking comments from others in respect of the Contractor's Activities;
- (G) exercising any right or performing any obligation the relevant party has under any this deed or any other Project Document; and
- (H) performing any work or activities authorised by the Principal,

and for this purpose allow such persons to attend site inductions prior to the relevant Site Access Date or Early Site Access Date (as applicable) for an area of the Construction Site; and

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

7.21 **Condition Surveys**

The Contractor must:

- (a) **(Condition survey)**: identify and prepare a condition survey of all property or assets that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval and in accordance with the SWTC;
- (b) **(Prior to commence any work)**: prepare this condition survey a minimum of two weeks prior to commencing any work on the Construction Site, or on any Extra Land, where that work could damage property or assets on or off the Construction Site;
- (c) **(Experienced personnel)**: in preparing this condition survey, use suitably skilled, qualified, and experienced personnel or Subcontractors (of any tier); and
- (d) **(Rectification of damage)**: without limiting clauses 7.7, 7.8 and 7.10(c), prior to Opening Completion, rectify any damage to property or assets relating to the Contractor's Activities caused by the Contractor's Activities.

7.22 **Setting Out**

- (a) **(Carrying out surveys)**: The Contractor must:
 - (i) set out the Project Works in accordance with the requirements of this deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;
 - (ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
 - (iii) for this purpose keep all survey marks in their true positions.
- (b) **(Notification of error)**: If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must rectify the error.

7.23 Construction of Motorway Works

Unless otherwise expressly provided in the SWTC or where otherwise approved in writing by the Principal, the Contractor must ensure that the Motorway Works are constructed within the relevant boundaries of the Construction Site, excluding the Temporary Areas.

7.24 Survey

- (a) **(Completion)**: The Contractor must, as a condition precedent to Opening Completion (or, in respect of the Works forming part of a Handover Portion, as a condition precedent to Handover Completion), and as otherwise required by the Principal's Representative, submit to the Principal's Representative:
- (i) for its review under clause 13.13 a Survey Plan that:
 - (A) has regard to the setback requirements in the Building Code of Australia;
 - (B) has regard to any stratum lots whether above or below ground;
 - (C) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
 - (D) shows all internal title boundaries;
 - (E) shows all easements; and
 - (F) shows the location of the Project Works and all Utility Services that the Contractor relocates, modifies, supports, protects or reinstates; and
 - (ii) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
 - (A) the relevant part of the Project Works have been constructed within the relevant boundaries of the Construction Site stipulated in this deed, except only for parts of the Project Works specifically required by this deed to be outside those boundaries;
 - (B) the elements of the Project Works are in the positions and within the tolerances required by Law and this deed;
 - (C) the survey information complies with the requirements of this deed; and
 - (D) any other matter identified by the Principal's Representative, complies with the requirements of this deed.

7.25 Principal not in Control

The Contractor and Principal acknowledge that nothing in this deed, including the right to inspect pursuant to clause 7.20 or any audit by the Principal or the Principal's Representative, at any time will be construed to mean or imply that:

- (a) **(Control)**: the Principal has any management or control over the Contractor's Activities or the Construction Site or Extra Land; or
- (b) **(Responsibility for act or omission)**: the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors (of any tier) or agents

including compliance or non-compliance with any relevant Laws, Approvals or this deed.

7.26 **Not used**

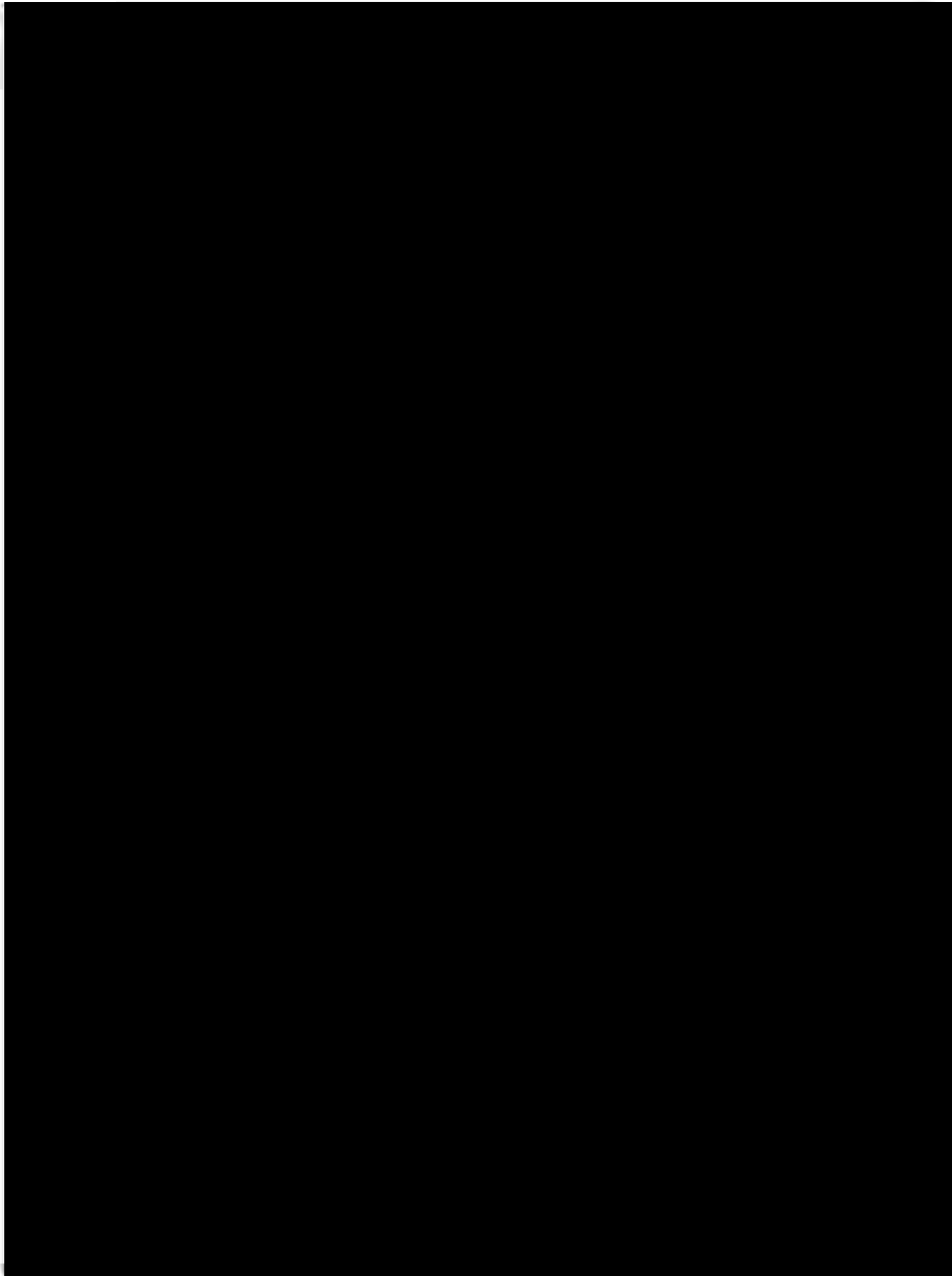
7.27 **Access to Construction Site by RI Contractor**

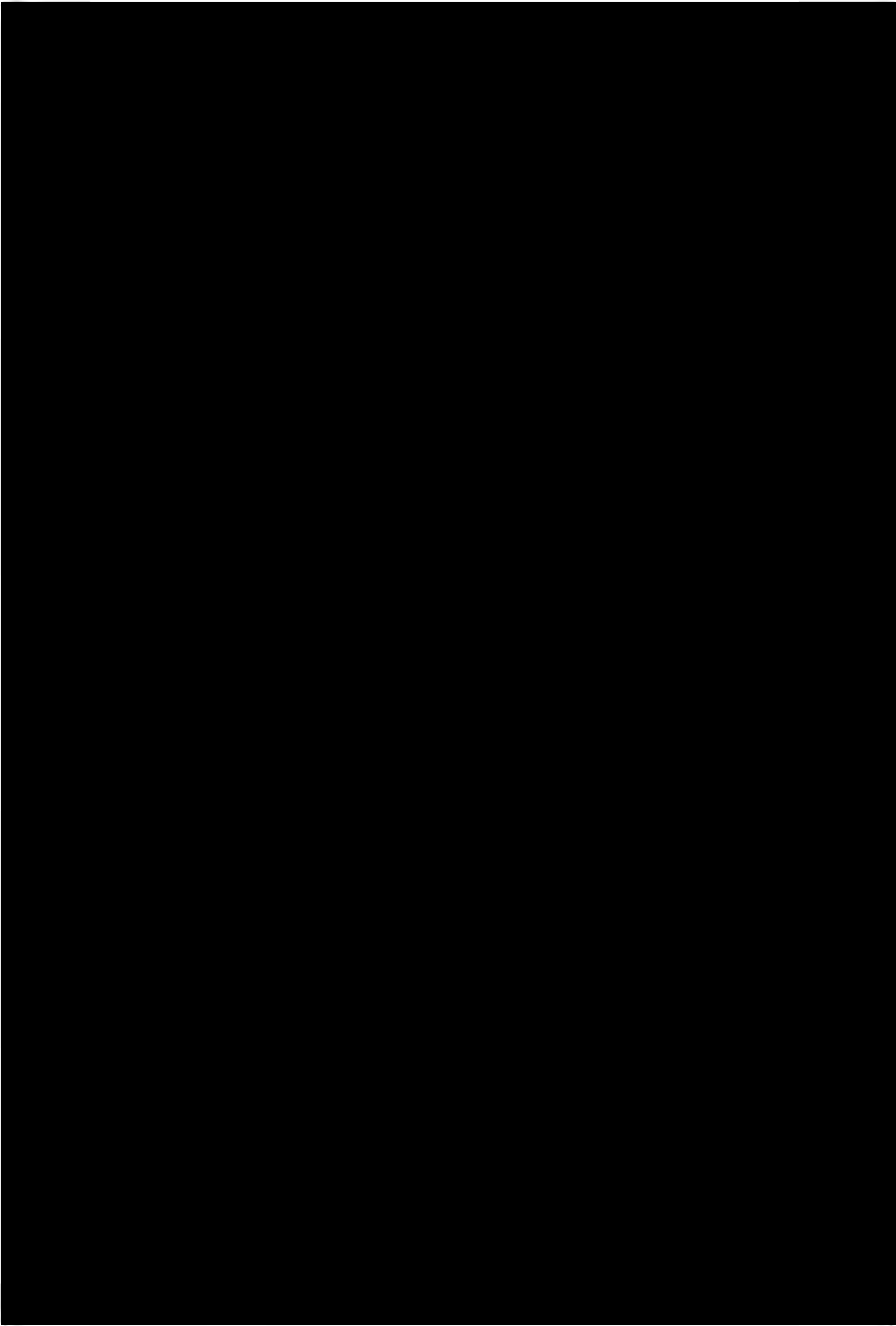
If the RI Contractor needs to access an area of the Construction Site (or any part of it) in connection with the RI Contractor's activities under the RI Contract:

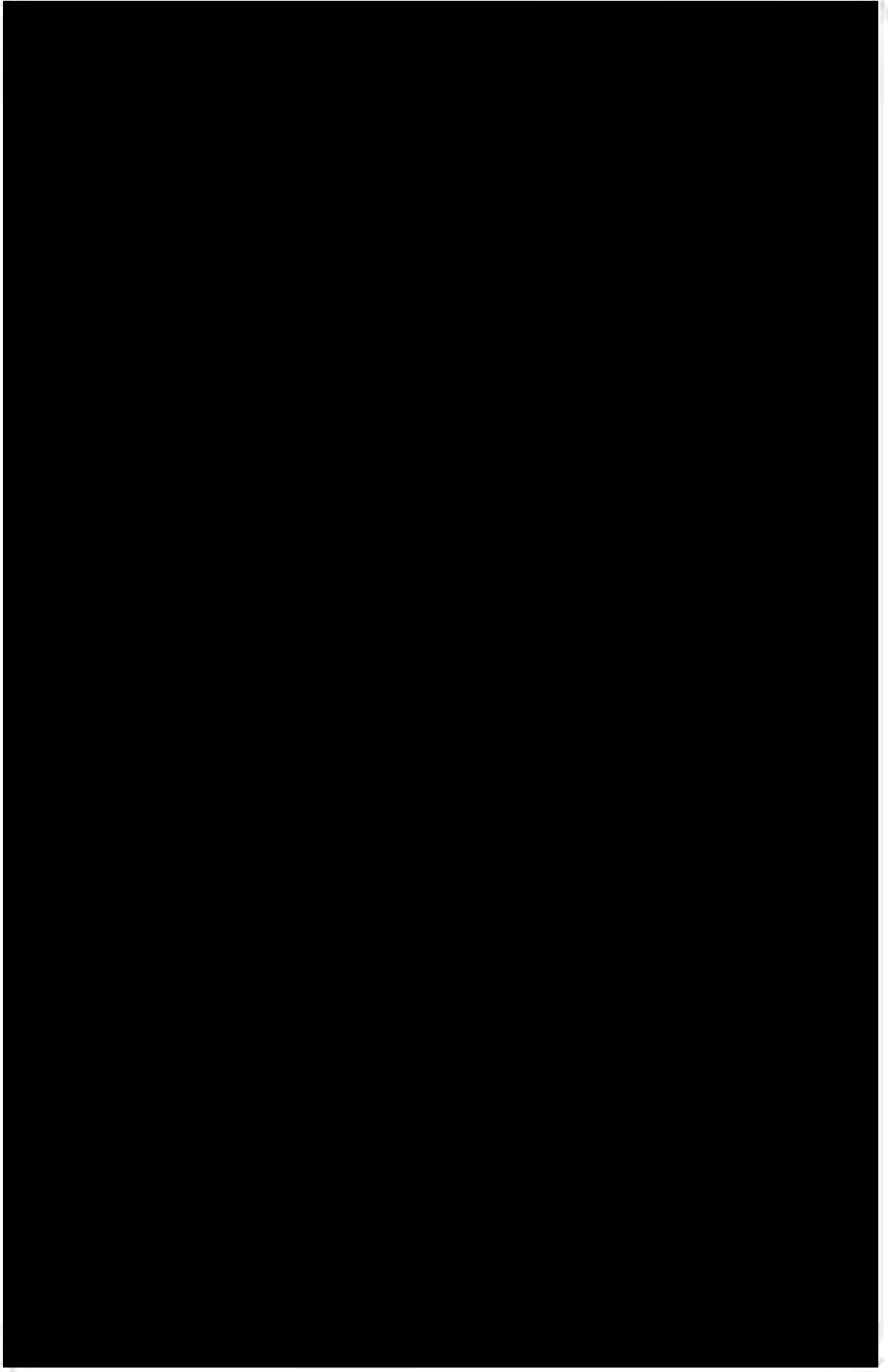
- (a) **(Request by Principal)**: the Principal must provide a request to the Contractor detailing:
 - (i) the type of access required;
 - (ii) the nature of the works that the RI Contractor intends to carry out;
 - (iii) the anticipated duration of the access and the works; and
 - (iv) the RI Contractor's preferred time and date for access, which must be at least 10 Business Days after the date of the Principal's request, unless otherwise agreed by the Contractor (acting reasonably); and
- (b) **(Provide access)**: without limiting any other provision of this deed, the Contractor must provide the access requested by the Principal in accordance with this clause 7.27 subject to the RI Contractor complying with the Contractor's reasonable site access and work, health and safety procedures.

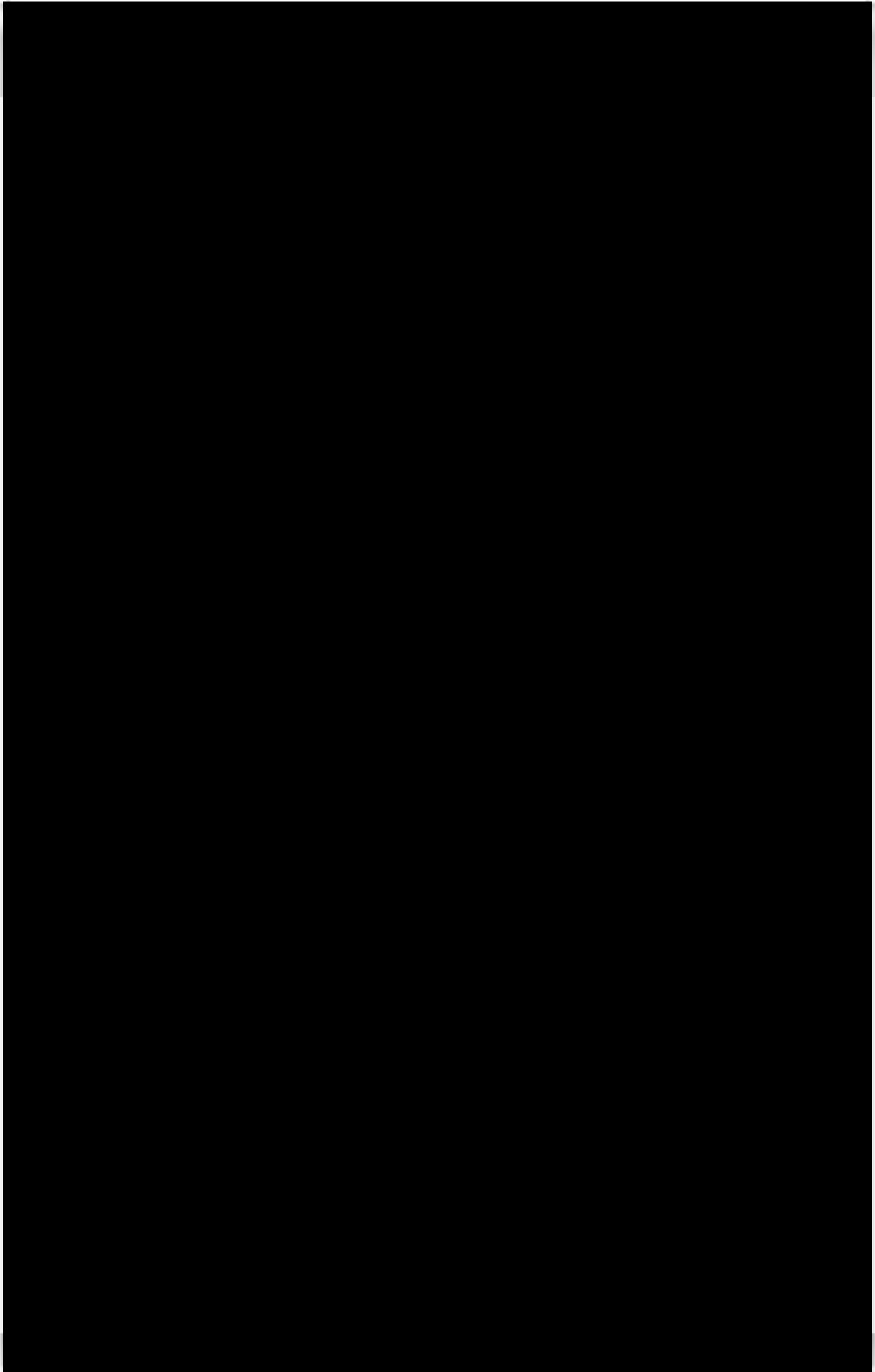
7.28 **WHT Motorway Stratum**

- (a) **(Indicative description)**: The parties acknowledge and agree that:
 - (i) land which is expected to comprise the WHT Motorway Stratum and other areas that the AM Contractor will be maintaining are generally described in Schedule A13 (*Motorway Stratum*); and
 - (ii) these areas will require refinement and adjustment based on the final design and as-built location of the Motorway Works.
- (b) **(Consultation)**: During the performance of the Contractor's Activities, the parties must consult with each other regarding, and endeavour to agree, any refinements and adjustments to the WHT Motorway Stratum and other areas that the AM Contractor will be maintaining based on the principles set out in Schedule A13 (*Motorway Stratum*).
- (c) **(Determination)**: To the extent that the parties are unable to agree any refinements and adjustments to the Motorway Stratum and other areas that the AM Contractor will be maintaining under clause 7.28(b), the Principal must determine such areas based on the principles set out in Schedule A13 (*Motorway Stratum*) and notify the Contractor in writing.
- (d) **(Tunnel substratum)**: Any refinements and adjustments to the tunnel substratum which forms part of the Motorway Stratum will be determined in accordance with clauses 5.2 and 5.3 of the Site Access Schedule, and not clause 7.28(b) and clause 7.28(c).









7A **RIC Handover Works and WFU Handover Works**

7A.1 **RIC Handover Works and WFU Handover Works are fit for the Contractor's purposes**

(a) **(Interface Specifications):** The Contractor warrants that:

- (i) it has reviewed and carefully considered the Interface Specifications;
- (ii) if:
 - (A) the RIC Handover Works comply with the requirements of the Interface Specification for the RIC Handover Works; and
 - (B) a Certificate of Completion (RIC Handover Works) has been issued under the RI Contract,

the RIC Handover Works will be fit for the purposes of enabling the Contractor to comply with its obligations under this deed; and

- (iii) if:
 - (A) the WFU Handover Works comply with the requirements of the Interface Specification for the WFU Handover Works; and
 - (B) a Certificate of Completion (WFU Handover Works) has been issued under the WFU Contract,

the WFU Handover Works will be fit for the purposes of enabling the Contractor to comply with its obligations under this deed.

(b) **(Interface Reference Documents):** The Contractor acknowledges and agrees that:

- (i) it has been provided with the Interface Reference Documents as Information Documents prior to the date of this deed;
- (ii) it has reviewed the Interface Reference Documents as at the date of this deed and is satisfied that they are suitable for the purposes of the performance of its obligations under this deed;
- (iii) the design and construction of the RIC Handover Works and WFU Handover Works may not be complete at the date of this deed; and
- (iv) the Interface Reference Documents may be updated from time to time, including due to further design development.

(c) **(Updated documents):** The Principal will provide the Contractor with new or updated Interface Reference Documents after the date of this deed within 3 Business Days after the final version of those documents are provided to the Principal.

(d) **(Notice of inconsistency):** On provision of any new or updated Interface Reference Documents pursuant to clause 7A.1(c), the Contractor must review the new or updated Interface Reference Documents and, to the extent that the Contractor considers that the new or updated Interface Reference Documents are inconsistent

with the Interface Specifications such that if the RIC Handover Works or WFU Handover Works (as applicable) were constructed in accordance with the new or updated Interface Reference Documents it would result in an Interface Defect, the Contractor must give the Principal, the Independent Certifier and the RI Independent Certifier written notice setting out reasonable details of the inconsistency within 10 Business Days of receipt of the new or updated Interface Reference Documents.

- (e) **(Response to Notice)**: Within 10 Business Days of receipt of the Contractor's notice under clause 7A.1(d), the Principal must notify the Contractor that:
 - (i) the Principal agrees that the new or updated Interface Reference Documents are inconsistent with the Interface Specifications and clause 7A.1(f) will apply;
 - (ii) the Principal does not agree that the new or updated Interface Reference Documents are inconsistent with the Interface Specifications, in which case clause 7A.1(g) will apply; or
 - (iii) the Principal agrees there is an inconsistency and will have the Interface Reference Documents amended, in which case clause 7A.1(h) will apply.

- (f) **(Principal agrees there is an inconsistency)**: If the Principal gives notice under clause 7A.1(e)(i) or clause 7A.1(g)(iii)(A), or clause 7A.1(h)(i) applies and the Principal does not issue a Notice of Dispute within the timeframe contemplated under clause 7A.1(h)(i):
 - (i) the Interface Specifications will be deemed to be updated by the relevant new or updated Interface Reference Documents to the extent of the inconsistency; and
 - (ii) the Principal must issue a Variation Proposal in accordance with clause 10.4 for the relevant Variation required to the Works as a consequence of the updates to the Interface Specifications.

- (g) **(Principal disagrees there is an inconsistency)**: If the Principal gives notice under clause 7A.1(e)(ii):
 - (i) the Contractor may, if it disagrees with the Principal's determination, within 8 Business Days after the receipt of the notice under clause 7A.1(e)(ii) issue a notice to the Independent Certifier and the Principal's Representative setting out the reasons for disagreeing with the Principal's determination, including a copy of the Principal's notice;
 - (ii) if the Contractor does not issue a notice to the Independent Certifier within the timeframe contemplated under clause 7A.1(g)(i) or a Notice of Dispute within the timeframe contemplated under clause 7A.1(h)(ii) (as applicable), or it is determined pursuant to the dispute resolution procedures in clause 19 that the new or updated Interface Reference Documents are consistent with the Interface Specifications or would not result in an Interface Defect, the Interface Reference Documents are deemed to be consistent with the Interface Specifications; and
 - (iii) if it is determined pursuant to the dispute resolution procedures in clause 19 that the new or updated Interface Reference Documents are inconsistent with the Interface Specifications such that they require or would result in an Interface Defect, the Principal must notify the Contractor that:
 - (A) the Principal will proceed with the new or updated Interface Reference Documents, in which case clause 7A.1(f) will apply; or

- (B) the Principal will have the Interface Reference Documents amended, in which case clause 7A.1(h) will apply.
- (h) **(Independent Certifier determination):** The Independent Certifier must, within 10 Business Days after receipt of the notice under clause 7A.1(g)(i), notify the Contractor and the Principal that either:
 - (i) the Independent Certifier agrees that the new or updated Interface Reference Documents are inconsistent with the Interface Specifications, in which case clause 7A.1(f) will apply, unless the Principal issues a Notice of Dispute under clause 19.3 within 5 Business Days of the Independent Certifier's notice; or
 - (ii) the Independent Certifier does not agree that the new or updated Interface Reference Documents are inconsistent with the Interface Specifications, in which case clause 7A.1(g)(ii) will apply unless the Contractor issues a Notice of Dispute under clause 19.3 within 5 Business Days of the Independent Certifier's notice.
- (i) **(Principal amends documents):** If the Principal gives notice under clause 7A.1(e)(iii) or 7A.1(g)(iii)(B), the Principal must:
 - (i) arrange for the Interface Reference Documents to be amended so that they are consistent with the Interface Specification; and
 - (ii) provide the amended Interface Reference Documents to the Contractor,in which case clause 7A.1(c) will re-apply.
- (j) **(Review standard):** The Contractor must review any Interface Reference Documents provided by the Principal pursuant to this clause 7A.1 in accordance with Good Industry Practice.

7A.2 **No Claim**

Except as expressly set out in this clause 7A, the Contractor will have no Claim against the Principal arising out of or in any way in connection with:

- (a) the condition of the RIC Handover Works or the WFU Handover Works, including in relation to the RIC Handover Works or the WFU Handover Works not being fit for the purposes of enabling the Contractor to comply with its obligations or exercise its rights under this deed if the RIC Handover Works or the WFU Handover Works (as applicable) comply with the relevant Interface Specification; or
- (b) any Interface Defect or a breach of clause 7A.3(a).

7A.3 **Interface Defects**

- (a) The Principal acknowledges and agrees that:
 - (i) the Interface Works are intended to comply with the requirements of the applicable Interface Specification on the date that the Contractor is granted access in accordance with clause 7.1 to the relevant area of the Construction Site on which those Interface Works are located; and
 - (ii) if an aspect of the Interface Works do not comply with the requirements of the applicable Interface Specification on the date that the Contractor is granted access in accordance with clause 7.1 to the relevant area of the Construction Site on which those Interface Works are located, the Contractor may issue a notice under clause 7A.3(d).

- (b) **(Reviews and inspections):** For the purposes of identifying any Interface Defects:
- (i) the Principal will, if requested by the Contractor, provide the Contractor with any testing and commissioning results, surveys, samples and any other information or documentation that the Principal has in respect of the RIC Handover Works and the WFU Handover Works, and the Contractor must promptly review the information or documentation provided;
 - (ii) the Contractor must:
 - (A) regularly and diligently review and inspect progress of the RIC Handover Works and the WFU Handover Works; and
 - (B) coordinate access with the RI Contractor and WFU Contractor pursuant to the Interface Deeds for the purposes of such inspections; and
 - (iii) without limiting the Contractor's obligations under the balance of this clause 7A, the Contractor must regularly and diligently review design documentation relevant to the RIC Handover Works and the WFU Handover Works provided to the Contractor by or on behalf of the Principal.
- (c) **(Form of inspection):** The Contractor acknowledges and agrees that:
- (i) for any inspection required prior to the Contractor being granted access to the Construction Site in accordance with clause 7.1 or 7.5, such inspections may be restricted to visual inspection of the Interface Works only, with invasive testing or inspection not permitted; and
 - (ii) following the Principal granting the Contractor access to the Construction Site in accordance with clause 7.1, the Contractor may carry out any form of non-destructive testing or inspection for the purposes of identifying any Interface Defects.
- (d) **(Notice of defect):** If the Contractor discovers or believes that there is an Interface Defect, the Contractor must:
- (i) promptly (and in any event, within 5 Business Days) after the Contractor first became aware of the Interface Defect, give notice to the Principal and the Independent Certifier of the Interface Defect, including details of the alleged Interface Defect;
 - (ii) promptly (and in any event, within 10 Business Days), give a notice to the Principal and the Independent Certifier of the Interface Defect containing details of:
 - (A) the estimated time required to rectify the Interface Defect if the Contractor were directed by the Principal to do so; and
 - (B) the impact of the Interface Defect on the Contractor's ability to comply with its obligations under this deed, including on the Contractor's ability to achieve Opening Completion by the Date for Opening Completion or Completion by the Date for Completion; and
 - (iii) use all reasonable endeavours to mitigate the effects of such Interface Defect.

- (e) **(Response to notice)**: If the Contractor gives a notice to the Principal in accordance with clause 7A.3(d), then the Principal must either:
- (i) procure that the RI Contractor or the WFU Contractor (as applicable) rectifies the Interface Defect;
 - (ii) direct a Variation in accordance with clause 10.6 requiring the Contractor to either rectify the Interface Defect or to modify the Project Works or the Contractor's Activities to accommodate the Interface Defect;
 - (iii) advise the Contractor that it disagrees that the alleged defect is an Interface Defect; or
 - (iv) notify the Contractor that it is not otherwise entitled to any Claim in respect of the Interface Defect pursuant to the terms of this deed.
- (f) **(Access)**: Where the Principal procures the RI Contractor or the WFU Contractor (as applicable) to rectify the Interface Defect pursuant to clause 7A.3(e)(i), to the extent the Interface Defect is located on the Construction Site, the Contractor must give the RI Contractor or the WFU Contractor (as applicable) safe and convenient access to the relevant part of the Construction Site for the purpose of rectifying the Interface Defect, including in accordance with clauses 3.2 and 7.20.
- (g) **(Disagreement on defect)**: Where the Principal advises the Contractor that it disagrees that the alleged defect is an Interface Defect pursuant to clause 7A.3(e)(iii):
- (i) the Principal and the Contractor must use reasonable endeavours to resolve the matter the subject of the disagreement and if the matter is not resolved within 5 Business Days after the date of the Principal's notice to the Contractor under clause 7A.3(e)(iii), either the Principal or the Contractor may refer the matter to the Independent Certifier for determination pursuant to clause 7.3A(gg);
 - (ii) the Contractor must continue to perform its obligations under this deed; and
 - (iii) where it is determined pursuant to clause 19 that an Interface Defect exists, the Principal must (at the Principal's discretion) procure rectification pursuant to clause 7A.3(e)(i), direct a Variation pursuant to clause 7A.3(e)(ii) or give notice under clause 7A.3(d)(iv).
- (gg) **(Independent Certifier determination)**: The Independent Certifier must, within 10 Business Days after receipt of the notice under clause 7A.3(g)(i), notify the Contractor and the Principal that either:
- (i) the Independent Certifier agrees that the alleged defect is an Interface Defect, in which case the Principal must either:
 - (A) procure that the RI Contractor or the WFU Contractor (as applicable) rectifies the Interface Defect;
 - (B) direct a Variation in accordance with clause 10.6 requiring the Contractor to either rectify the Interface Defect or to modify the Project Works or the Contractor's Activities to accommodate the Interface Defect; or
 - (C) issue a Notice of Dispute under clause 19.3 within 5 Business Days of the Independent Certifier's notice; or

- (ii) the Independent Certifier does not agree that the alleged defect is an Interface Defect, in which case the Contractor may issue a Notice of Dispute under clause 19.3 within 5 Business Days of the Independent Certifier's notice.
- (h) **(Claim):** Subject to clause 7A.3(i), where:
 - (i) the RI Contractor or the WFU Contractor (as applicable) rectifies an Interface Defect in accordance with clause 7A.3(e)(i); or
 - (ii) the Principal directs a Variation in accordance with clause 7A.3(e)(ii),
it will be a [REDACTED]
[REDACTED]
[REDACTED] and an Extension Event.
- (i) **(Claim reduced):** To the extent that the Interface Defect was apparent or should reasonably have been apparent to a prudent, experienced and competent contractor:
 - (i) carrying out inspections at the time of an inspection carried out by the relevant contractor of the RIC Handover Works or the WFU Handover Works (having regard to the information available to the Contractor); or
 - (ii) reviewing the Interface Specification or Interface Reference Documents provided by the Principal or the relevant Interface Contractor in accordance with clause 7A.1 that depicted the design of the relevant part, element or aspect of the RIC Handover Works or WFU Handover Works (as applicable),
 then where:
 - (iii) the RI Contractor or the WFU Contractor (as applicable) rectifies the Interface Defect in accordance with clause 7A.3(e)(i); or
 - (iv) the Principal directs a Variation in accordance with clause 7A.3(e)(ii) in relation to such Interface Defect,
 the Contractor will only be entitled to Claim a [REDACTED]
[REDACTED] and will not be entitled to Claim an extension of time, [REDACTED]
[REDACTED].
- (j) **(Right to direct a Variation):** Nothing in this clause 7A.3 prevents the Principal from directing a Variation in accordance with clause 10.4 requiring the Contractor to rectify an Interface Defect whether or not the Principal has issued a notice pursuant to clause 7A.3(e) and the Contractor's entitlements and any extension of time will be adjusted to reflect any subsequent determination (and for the avoidance of doubt, the Contractor will have no Claim in relation to such Variation if this deed provides that it will not have a Claim in respect of any Interface Defect).
- (k) **(Responsibility for Defects):** For the avoidance of doubt, the Contractor will be responsible for any Defects in the works that it carries out to the RIC Handover Works or the WFU Handover Works to rectify an Interface Defect.

7A.4 **Interface Works Change**

- (a) **(Interface Works Change):** The parties acknowledge and agree that:
 - (i) the Principal may at any time issue to the Contractor notice of a proposed Interface Works Change;

(ii) if the Contractor (acting reasonably) considers that the proposed Interface Works Change, if implemented:

(A) would prevent the Contractor from complying with its obligations or exercising its rights under this deed, would increase the Contractor's costs of performing the Works in accordance with this deed or would otherwise require a Variation to be implemented under this deed, the Contractor must issue to the Principal:

(aa) a Variation Proposal in accordance with clause 10.4(c) for the Variation that the Contractor considers would be required:

(a) to enable the Contractor to comply with its affected obligations or exercise its affected rights or to relieve the Contractor from its affected obligations; or

(b) otherwise as a consequence of the proposed Interface Works Change,

if the proposed Interface Works Change was implemented; and

(bb) a written notice detailing any modification to the proposed Interface Works Change that the Contractor considers would be required to:

(a) enable the Contractor to comply with its obligations and exercise its rights under this deed;

(b) minimise or avoid any increase in the Contractor's costs of performing the Works in accordance with this deed; or

(c) otherwise avoid the need to implement a Variation; or

(B) would not prevent the Contractor from complying with its obligations or exercising its rights under this deed, or would not increase the Contractor's costs of performing the Works in accordance with this deed and would not otherwise require a Variation to be implemented under this deed, the Contractor must provide the Principal with written confirmation of this,

within 20 Business Days after receipt of the written notice referred to in clause 7A.4(a)(i);

(iii) if the Contractor does not give the Principal:

(A) a Variation Proposal and notice in accordance with clause 7A.4(a)(ii)(A); or

(B) confirmation in accordance with clause 7A.4(a)(ii)(B),

within 20 Business Days after receipt of the written notice referred to in clause 7A.4(a)(i), the Contractor will be deemed to have given the Principal confirmation that the Interface Works Change will not prevent the Contractor from complying with its obligations or exercising its rights under this deed, will not increase the Contractor's costs of performing the Works in accordance with this deed and will not otherwise require a Variation to be implemented under this deed, in accordance with clause 7A.4(a)(ii)(B) and clause 7A.4(a)(v) will apply;

- (iv) if the Contractor gives the Principal a Variation Proposal and written notice pursuant to clause 7A.4(a)(ii)(A), the Principal may:
 - (A) if the Principal disagrees that the proposed Interface Works Change would prevent the Contractor from complying with its obligations or exercising its rights under this deed or would increase the Contractor's costs of performing the Works in accordance with this deed or would otherwise require a Variation to be implemented under this deed, refer the matter to dispute resolution in accordance with clause 19 to determine the impacts of the proposed Interface Works Change; or
 - (B) if the Principal agrees, or it is determined under clause 19, that the proposed Interface Works Change would prevent the Contractor from complying with its obligations or exercising its rights under this deed or would increase the Contractor's costs of performing the Works in accordance with this deed or would otherwise require a Variation to be implemented under this deed:
 - (aa) modify the proposed Interface Works Change, in which case this clause 7A.4(a) will reapply; or
 - (bb) make an election with respect to the Variation Proposal issued by the Contractor under clause 7A.4(a)(ii)(A)(aa) pursuant to clause 10.6 and, where the Principal elects to proceed with the Variation, the Interface Specification will be deemed to be updated by the relevant Interface Works Change;
- (v) if the Contractor gives the Principal a written confirmation under clause 7A.4(a)(ii)(B) or it is deemed under clause 7A.4(a)(iii) or determined under clause 19 that a proposed Interface Works Change would not prevent the Contractor from complying with its obligations or exercising its rights under this deed, would not increase the Contractor's costs of performing the Works in accordance with this deed and would not otherwise require a Variation to be implemented under this deed, then, if the Principal proceeds with the Interface Works Change:
 - (A) the Principal must notify the Contractor that it is proceeding with the Interface Works Changes and the Interface Specification will be deemed to be updated; and
 - (B) the Contractor will be deemed to have confirmed that the RIC Handover Works or the WFU Handover Works (as applicable) will remain fit for the purpose of enabling the Contractor to comply with its obligations and exercise its rights under this deed and will not increase the Contractor's costs of performing the Works in accordance with this deed (notwithstanding the implementation of the Interface Works Change);
- (vi) the costs reasonably incurred by the Contractor in assessing each proposed Interface Works Change pursuant to this clause 7A.4(a) (to the extent that those costs would not have been incurred by the Contractor had the Principal not proposed the relevant Interface Works Change) will be Reimbursable Costs;
- (vii) the Contractor's entitlement to reimbursement of the costs it incurs in assessing an Interface Works Change proposed by the Principal pursuant to this clause 7A.4(a) will be capped at the amount specified in Schedule A1 (*Contract Particulars*) (or such higher amount as is approved beforehand by

the Principal taking into account the scale and complexity of the proposed Interface Works Change), subject to the Contractor providing evidence of the amounts claimed on Open Book Basis; and

- (viii) the Contractor is not entitled to make, and the Principal will not be liable for, any Claim for a [REDACTED] in relation to this clause 7A.4.

(b) (Contractor initiated Interface Works Change):

- (i) If the Contractor wishes to request the Principal procure an Interface Works Change, it must give the Principal written notice with full details of:

- (A) the proposed Interface Works Change;
- (B) the reason for the proposed Interface Works Change; and
- (C) any aspect of the proposed Interface Works Change that the Contractor considers constitutes a Minor Amendment.

- (ii) On receipt of a notice under clause 7A.4(b)(i), the Principal may at its absolute discretion:

- (A) procure an Interface Works Change, provided that the Contractor agrees:

- (aa) to pay all costs incurred by the Principal in connection with that Interface Works Change and its assessment, which costs will be a debt due and payable by the Contractor to the Principal, unless otherwise agreed by the Principal; and

- (bb) that if:

- (a) the Principal gives the RI Contractor or the WFU Contractor (as applicable) a variation request under the RI Deed or WFU Deed (as applicable) with respect to that Interface Works Change; and

- (b) that Interface Works Change does not proceed,

the Contractor must reimburse the Principal for any amount that is payable by the Principal to the RI Contractor or the WFU Contractor (as applicable) in connection with the proposed Interface Works Change and such costs will be a debt due and payable by the Contractor to the Principal;

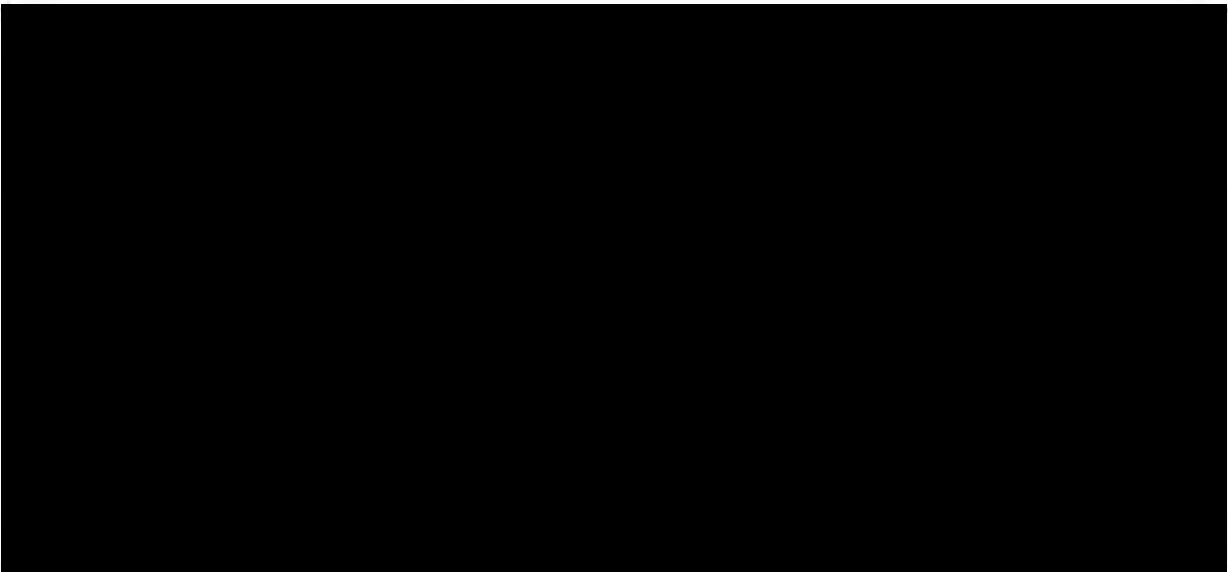
- (B) refuse to procure an Interface Works Change, including if the Principal considers that the implementation of that Interface Works Change:

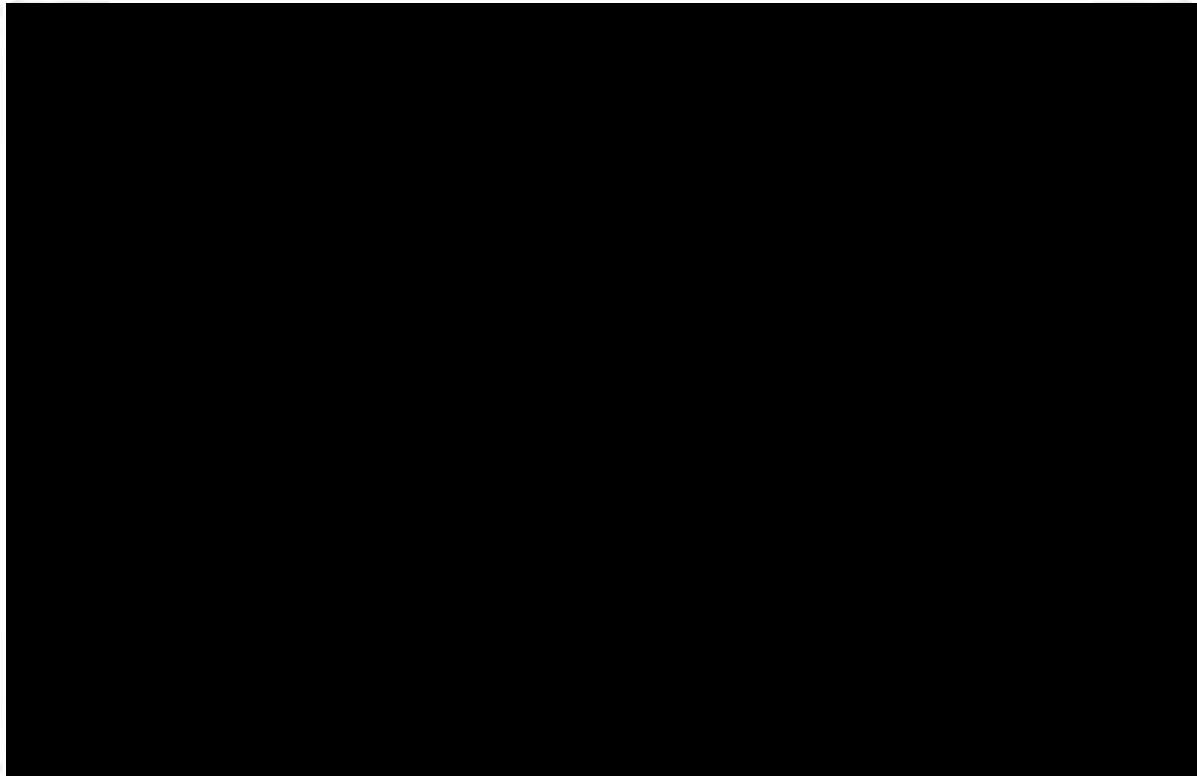
- (aa) would result in a delay to the achievement of Handover Completion, Opening Completion or Completion;

- (bb) would materially impact the whole of life costs or performance of the RIC Handover Works or the WFU Handover Works (as applicable); or

- (cc) would not reflect Value for Money for the Principal or would materially delay the RIC Handover Works or the WFU Handover Works (as applicable); or

- (C) request further information from the Contractor in respect of the proposed Interface Works Change.
- (iii) If required by the Principal, the Contractor must attend any meetings with the RI Contractor or the WFU Contractor (as applicable) regarding the Interface Works Change proposed by the Contractor and provide such further information regarding the Interface Works Change as may be required by the Principal.
- (iv) The Contractor must pay any costs referred to in clause 7A.4(b)(ii)(A) within 20 Business Days after being requested to do so by the Principal.
- (v) Except as expressly provided in clause 7A.2, the Contractor:
 - (A) will not be entitled to make any Claim against the Principal arising out of or in connection with a refusal by the Principal under this clause 7A.4(b) to procure any Interface Works Change; and
 - (B) agrees that the refusal by the Principal to procure an Interface Works Change requested by the Contractor will not affect the operation of clause 7A.1(a).
- (vi) The Contractor acknowledges that the Contractor's identification of Minor Amendments in a notice under clause 7A.4(b)(i) will be relevant to the Principal's assessment of any proposed Interface Works Change concerning a Minor Amendment.
- (c) **(Fitness for purpose):** Without limiting clause 7A.1(a), if an Interface Works Change is implemented, the Contractor warrants that the RIC Handover Works or the WFU Handover Works (as applicable) will, if designed and constructed in accordance with the Interface Specifications (amended to incorporate the Interface Works Change), be fit for the purposes of enabling the Contractor to comply with its obligations under the Project Documents.
- (d) **(Survival of clause):** Clauses 7A.4(b)(v) and 7A.4(c) will survive the termination of this deed.
- (e) **(Meetings):** If requested by the Principal, the Contractor must attend meetings with the relevant Interface Contractors and other related parties to discuss potential Interface Works Changes.





7B LIABILITY FOR IMPACTS ON MOTORWAY AND ROZELLE INTERCHANGE

7B.1 Purpose

This clause 7B specifies the compensation payable by the Contractor for adverse Traffic or Tolling Impacts on the Toll Roads caused by the Contractor's Activities.

7B.2 Contractor's liability for adverse traffic impacts

(a) (Lane Occupancy Fees): If:

- (i) any Traffic or Tolling Impact is caused or required on a Toll Road; or
- (ii) the Principal or a Toll Road Concessionaire (or their subcontractor or nominee, as applicable) incurs additional expenditure (including increased operation costs) to mitigate the potential Lane Occupancy Fees that would be payable by the Contractor as a result of any such Traffic or Tolling Impact,

then the Contractor must pay the Principal on demand the following amounts:

- (iii) the Lane Occupancy Fees calculated in accordance with Schedule E8 (*Lane Occupancy Fees*); and
- (iv) the additional reasonable costs incurred by the Principal or a Toll Road Concessionaire (or their subcontractor or nominee, as applicable) in connection with taking steps to mitigate the potential Lane Occupancy Fees that would otherwise be payable by the Contractor as a result of any such Traffic or Tolling Impact.

(b) (Aggregate): The aggregate amounts for which the Contractor is liable under clauses 7B.2(a)(iii) and 7B.2(a)(iv) are capped at [REDACTED]

[REDACTED]

7C **BEACHES LINK**

The Contractor acknowledges and agrees that the Contractor's Activities will need to interface with the works undertaken by the BL Contractor and that:

- (a) **(Completion)**: achieving:
 - (i) Handover Completion of each Handover Portion by the relevant Date for Handover Completion;
 - (ii) Opening Completion by the Date for Opening Completion;
 - (iii) Completion by the Date for Completion; and
- (b) **(Delivery)**: delivering the Project Works in accordance with this deed,

are expected to be critical to ensuring that the BL Contractor can meet its program for completion of the works under the BL Contract.

7D **REMAINING ASSETS**

7D.1 **Remaining Assets**

- (a) **(Access)**: The Principal must ensure that, on the date that the Contractor is entitled to access in accordance with clause 7.1(b) to the relevant part of the Construction Site where a Remaining Asset is located as set out in the Interface Specification, the relevant Remaining Asset will remain on the Construction Site and will be made available for use by the Contractor.
- (b) **(Interface Defect)**: The parties acknowledge and agree that any Remaining Assets not made available to the Contractor in accordance with clause 7D.1(a) will be treated as an Interface Defect and clause 7A.3 will apply.

7D.2 **No representation or warranty**

- (a) **(Condition)**: The Contractor agrees that the Remaining Assets will be made available for its use in the condition that they are in on the date that it is entitled to access the Construction Site.
- (b) **(No representation or warranty)**: Without limiting any other provision of this deed (including clauses 7.11 and 7.19):
 - (i) the Principal does not warrant, guarantee or assume any duty of care or other responsibility or make any representation about the condition, adequacy, suitability, fitness for purposes or reliability of the Remaining Assets; and
 - (ii) the Contractor unconditionally and irrevocably releases, discharges and indemnifies the Principal from and against, any Claim by the Contractor in respect of the condition, adequacy, suitability, fitness for purposes or reliability of the Remaining Assets.

8. COMPLIANCE

8.1 Quality of Work

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

8.2 Compliance with SWTC

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

8.3 Environmental Management

The Contractor must:

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

8.4 Health and Safety Management

The Contractor must:

- (a) **(Health and safety management system)**: hold and maintain a health and safety management system for so long as any Contractor's Activities are carried out that complies with the WHS Guidelines and the SWTC;
- (b) **(WHS Guidelines and SWTC)**: as part of the Project Plans, develop, document and implement a contract specific Work Health and Safety Management Plan (including safe work method statements) in accordance with the WHS Guidelines and the SWTC;
- (c) **(Contractor's Activities)**: carry out the Contractor's Activities in accordance with the Work Health and Safety Management Plan and safe work method statements;

- (d) **(Safety and access)**: create a safe working environment for ensuring the safety of all authorised personnel on the Construction Site and Extra Land and that no unauthorised individual gains access to the Construction Site; and
- (e) **(Subcontractor's Activities)**: supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Approvals and the SWTC in relation to the WHS management on the Construction Site and Extra Land.

8.5 Safety

- (a) **(Safety and property)**: The Contractor must ensure that the Contractor's Activities are carried out:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (b) **(Principal's Representative may direct)**: If the Principal's Representative or the Principal's Surveillance Officers reasonably consider there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities:
 - (i) the Principal's Representative or the Principal's Surveillance Officers may direct the Contractor to change its manner of working or to cease working; and
 - (ii) the Contractor must comply with any direction by the Principal's Representative or the Principal's Surveillance Officers under clause 8.5(b)(i).
- (c) **(Legislative requirements)**: The Contractor must:
 - (i) ensure that in carrying out the Contractor's Activities:
 - (A) it complies with all Law, including the WHS Legislation, Heavy Vehicle National Law and other requirements of this deed for work health, safety and rehabilitation management (including, but not limited to, those requirements set out in the WHS Guidelines);
 - (B) the Contractor, all Subcontractors, contractors or consultants engaged by the Contractor comply with the requirements referred to in this clause 8.5 and their respective obligations under the WHS Legislation; and
 - (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to the same matter;
 - (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety, chain of responsibility and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities, unless otherwise directed by the Principal;
 - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 8.5(c)(iii) , together with written assurance(s) from the

- Contractor about the Contractor's ongoing compliance with the WHS Legislation;
 - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 13.7, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 8.5), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
 - (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Project Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 8.5.
- (d) **(Risk mitigation):** Without limiting clause 21.12, the Principal may take any action necessary to protect or to prevent or minimise risks to, the Project Works, the Environment, other property or the health or safety of people.
- (e) **(Failure to take action):** If the action taken by the Principal under clause 8.5(d) is action which the Contractor was required to take under this deed but did not take, the amount of any Loss that the Principal suffers or incurs arising out of or in any way in connection with:
- (i) taking the action contemplated in this clause 8.5(d); or
 - (ii) the Contractor's failure to take that action,
- will, except to the extent prohibited by Law, be a debt due and payable from the Contractor to the Principal.
- (f) **(Compliance with WHS obligations):** Without limiting the Contractor's obligations under any other clause of this deed, insofar as the Contractor, in carrying out the Contractor's Activities, is a person conducting a business or undertaking that:
- (i) designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (ii) manufactures plant, substances or structures to whom section 23 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (iii) imports plant, substances or structures to whom section 24 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (iv) supplies plant, substances or structures to whom section 25 of the *Work Health and Safety Act 2011* (NSW) applies; or
 - (v) installs, constructs or commissions plant or structures to whom section 26 of the *Work Health and Safety Act 2011* (NSW) applies,

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

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

8.6 **Principal Contractor**

- (a) **(Meaning of terms):** In this clause 8.6 the terms construction project, construction work, notifiable incident, place of work, person conducting a business or undertaking (PCBU), principal contractor and workplace have the same meanings assigned to those terms under the WHS Legislation.
- (b) **(Same construction project):** Subject to clause 8.6(d), for the purpose of the WHS Legislation and this deed, the construction work involved in the Contractor's Activities and any Other Contractor Work is taken to be part of the same construction project, other than in circumstances where the Other Contractor Works are carried out on:
 - (i) the Shared Access Road; or
 - (ii) any Public Road Area where the relevant area is not the subject of an ROL obtained by the Contractor.
- (c) **(Appointment):** Subject to clause 8.6(d), the Principal:
 - (i) engages the Appointed Principal Contractor as the principal contractor in respect of the construction work involved in the Contractor's Activities and any Other Contractor Work, other than the construction works involved in Other Contractor Works where such works are carried out on:

- (A) the Shared Access Road; or
 - (B) any Public Road Area where the relevant area is not the subject of an ROL obtained by the Contractor; and
- (ii) authorises the Appointed Principal Contractor to have management and control over the Construction Site (other than on any Shared Construction Site Area), including each workplace at which the Contractor's Activities are to be carried out, and to discharge the duties of a principal contractor under the WHS Legislation.
- (d) **(Shared Construction Site Area):** With respect to the Shared Construction Site Areas, the Principal:
- (i) engages the Appointed Principal Contractor as the principal contractor in respect of the construction work:
 - (A) involved in the Contractor's Activities carried out on that Shared Construction Site Area; and
 - (B) involved in any Other Contractor Work carried out on a Public Road Area when the relevant area is the subject of an ROL obtained by the Contractor; and
 - (ii) authorises the Appointed Principal Contractor to have such management and control over that Shared Construction Site Area as required to discharge the duties of a principal contractor under the WHS Legislation.
- (e) **(Acceptance of appointment):** The Appointed Principal Contractor:
- (i) accepts the engagement as principal contractor referred to in clauses 8.6(c) and 8.6(d) and agrees to discharge all the duties imposed on a principal contractor by the WHS Legislation and this deed;
 - (ii) must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - (A) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
 - (B) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Construction Site.
- (f) **(Term of engagement):** The parties acknowledge and agree that the Appointed Principal Contractor's engagement and authorisation as principal contractor:
- (i) subject to clauses 8.6(f)(ii) and 8.6(f)(iii), commences from the date on which the Contractor is given access to a part of the Construction Site in accordance with clauses 7.1 or 7.5 and continues until the earlier of:
 - (A) the termination of this deed;
 - (B) the Date of Opening Completion; and
 - (C) in respect of the Handover Portions, the Date of Handover Completion for the relevant Handover Portion;
 - (ii) in respect of any construction work:

- (A) involved in the Contractor's Activities carried out on any part of a Shared Construction Site Area, applies during the period any such construction work is carried out; and
 - (B) involved in any Other Contractor Works carried out on any Public Road Area when the relevant area is the subject of an ROL obtained by the Contractor, applies during the period any such construction work is carried out; and
- (iii) in respect of any construction work which is:
- (A) the subject of clauses 17.1(c)(i) or 17.1(e);
 - (B) rectification work carried out by the Contractor under clause 12.2; or
 - (C) Post Completion Activities,
- and is carried out after the Date of Opening Completion (or in the case of Handover Portions, after the Date of Handover Completion of the relevant Handover Portion), applies during the period any such construction work is carried out, unless an Interface Contractor has possession of the part of the Construction Site where such construction work is carried out at the time the construction work is carried out, in which case:
- (D) the Principal Contractor's engagement and authorisation as principal contractor under clause 8.6(c) or the performance of its obligations under clause 8.6(c) will end immediately before any construction work is commenced; and
 - (E) the relevant Interface Contractor will be the principal contractor for any construction project that the construction work comprises,

in each case, unless sooner revoked by the Principal.

- (g) **(Indemnity)**: To the extent not prohibited by Law, the Contractor must indemnify the Principal from and against all claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure of:
- (i) the Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of a principal contractor under the WHS Legislation that the Appointed Principal Contractor is required to discharge in accordance with this clause 8.6; or
 - (ii) the Contractor to otherwise comply with the WHS Legislation, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 8.4, 8.5 and this clause 8.6.
- (h) **(Discharging of responsibilities)**: Where the Principal is not otherwise able to validly engage the Appointed Principal Contractor as principal contractor pursuant to clauses 8.6(c) and 8.6(d), the Appointed Principal Contractor must exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged as the principal contractor under the WHS Legislation so as to ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged, and for this purpose the Principal authorises the Appointed Principal Contractor to exercise such authority of the Principal as is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor under the WHS Legislation.

- (i) **(Extra Land):** Without limiting anything else in this clause 8.6, the Contractor must, in respect of any construction work carried out on all or part of the Extra Land, ensure that the Appointed Principal Contractor discharges the duties of a principal contractor under the WHS Legislation in respect of such construction work.

- (j) **(Other obligations):** Without limiting any other provision of this deed, the Contractor:
 - (i) must discharge all applicable obligations under the WHS Legislation and under any plan or any other Laws relating to WHS;
 - (ii) accepts that it is a PCBU:
 - (A) carrying out the construction work; and
 - (B) in respect of the Works,for the purposes of the WHS Legislation;
 - (iii) is not entitled to make, and the Principal will not be liable upon, any Claim in connection with the performance of the role of principal contractor;
 - (iv) must comply with any direction on safety issued by a relevant Authority;
 - (v) must immediately notify the Principal of any notifiable incident in connection with the Works or the Construction Site;
 - (vi) must provide to the Principal all notices and correspondence concerning WHS issued in connection with the Works within five Business Days after the dispatch or receipt of any such notice or correspondence;
 - (vii) acknowledges that the Appointed Principal Contractor has control and management of the Construction Site for the purposes of the WHS Legislation to the extent specified in clause 8.6;
 - (viii) must itself comply, and ensure that all subcontractors engaged by the Contractor in connection with the Works, comply with their respective obligations under the WHS Legislation;
 - (ix) must ensure that it carries out the Works in a manner which ensures that the Principal satisfies its obligations under the WHS Legislation;
 - (x) must display signs that are clearly visible from outside the place of work identifying the Appointed Principal Contractor as the principal contractor and stating the contact telephone numbers of the Appointed Principal Contractor and the Contractor (including an after-hours emergency telephone number of the Appointed Principal Contractor) and the location of the Contractor's main site administration facilities for the construction project; and
 - (xi) must comply with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter.

- (k) **(Notification of termination):** The Principal may notify the Contractor that it has terminated the Appointed Principal Contractor's engagement as principal contractor and advise the Contractor of the new principal contractor for the Works.

- (l) **(Termination):** If the Appointed Principal Contractor's appointment and engagement as principal contractor is terminated under clause 8.6(k), then the Contractor must (and must ensure that its Associates also):
- (i) comply with all requirements of the new principal contractor in executing the Project Works and its other obligations under this deed so as to enable the new principal contractor to meet its obligations under the WHS Legislation; and
 - (ii) refrain from doing anything that may impede upon the new principal contractor from complying with its obligations under the WHS Legislation.
- (m) **(AM Contractor as Principal Contractor):** The Contractor acknowledges that:
- (i) an AM Contractor has been engaged by the Principal as principal contractor for the purposes of the WHS Legislation for any construction works carried out on the Maintenance Site after Opening Completion or Handover Completion for any Handover Portion that is handed over to the AM Contractor and is authorised by the Principal to have management and control of the Maintenance Site for the purpose of discharging the duties imposed on a principal contractor to the extent that the AM Contractor's work includes construction works;
 - (ii) an AM Contractor may exclude the Contractor and any of its Associates from the Maintenance Site while it is principal contractor for work health and safety reasons;
 - (iii) an AM Contractor may direct the Contractor and any of its Associates to perform or not perform certain acts in the Maintenance Site for work health and safety reasons; and
 - (iv) except as expressly stated in this deed, the Contractor is not entitled to make any Claim against the Principal in respect of any such direction.
- (n) **(AM Contractor's Requirements):** The Contractor must, and must ensure its Associates, while they are carrying out any Contractor's Activities on the Maintenance Site while the AM Contractor is principal contractor as contemplated in clause 8.6(f):
- (i) subject to clause 8.6(n)(iii), comply with any site safety regulations, rules and all directions of the AM Contractor (as applicable) with respect to work health and safety, including those described in clause 8.6(m);
 - (ii) comply in a timely manner with directions of the AM Contractor so that the AM Contractor can discharge their obligations as principal contractors;
 - (iii) consult, cooperate and coordinate activities with the AM Contractor and all other persons who have a work health and safety duty in relation to the same matter, including by entering into and complying with a safety interface;
 - (iv) subject to clause 8.6(n)(iii), comply with the work health and safety plan(s) prepared by the relevant AM Contractor while carrying out any Contractor's Activities on the Maintenance Site while the AM Contractor is principal contractor; and
 - (v) subject to clause 8.6(n)(iii), where high risk construction work is to be carried out in the performance of the Contractor's Activities on the Maintenance Site while the AM Contractor is principal contractor:

- (A) prepare or procure its Subcontractors to prepare a safe work method statement that complies with all requirements of the WHS Legislation;
- (B) provide a copy of the safe work method statement to the relevant AM Contractor prior to the commencement of high risk construction work;
- (C) revise or procure its Subcontractors to revise the safe work method statement in accordance with WHS Legislation;
- (D) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
- (E) where so directed by the AM Contractor or a WestConnex O&M Contractor, suspend the performance of any high risk construction work.

8.7 **No Relief from obligations**

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

- (a) **(Quality Management System or plan)**: the implementation and maintenance of, and compliance with, any Quality Management System or Quality Management Plan by the Contractor;
- (b) **(Project Plans)**: compliance with the Project Plans by the Contractor;
- (c) **(Hold points)**: any release, authorisation, approval or agreement by the Principal's Representative, the Nominated Authority or any other person acting on behalf of the Principal or the Principal's Representative (including the Principal's Surveillance Officers), particularly those concerning or relating to the Contractor proceeding past any Hold Point or Witness Point identified in the SWTC or otherwise directed by the Principal's Representative or a Principal's Surveillance Officer;
- (d) **(Failure to detect Defect)**: any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any Hold Point or Witness Point procedure, including where such a failure is the result of a negligent act or omission;
- (e) **(Inspections)**: any Inspections arranged by the Principal's Representative or a Principal's Surveillance Officer under this deed or any related discussions between the Contractor's Representative, the Principal's Representative and a Principal's Surveillance Officer; or
- (f) **(Monitoring or audit)**: any monitoring or audit arranged by the Principal, or any discussions between the Quality Manager and the Principal as contemplated under Appendix C.7 of the SWTC.

8.8 **Australian Government Requirements**

- (a) **(Compliance with the Building Code)**: The Contractor, if it is a code covered entity within the meaning of the Building Code:
 - (i) declares as at the date of this deed; and
 - (ii) must ensure during the term of this deed,

that, in relation to the Project Works, it, its Subcontractors and consultants which could be required to comply with the Building Code:

- (iii) complies with, and acts consistently with, the Building Code;
 - (iv) is not subject to an Exclusion Sanction; and
 - (v) to the extent required by the Building Code, only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.
- (b) **(Subcontracting)**: Without limiting clause 11, the Contractor must:
- (i) only enter into a Subcontract for any aspect of the Project Works that involves Commonwealth Funded Building Work where the Subcontractor:
 - (A) is not subject to an Exclusion Sanction or excluded from performing Building Work funded by a State or Territory Government, unless approval to do so is provided by the Minister responsible for administering the Building Code; and
 - (B) has submitted any information required to be submitted by the Building Code; and
 - (ii) provide the Principal with confirmation of the matters the subject of clause 8.8(b)(i), on request.
- (c) **(No relief)**: The Contractor acknowledges and agrees that compliance with the Building Code does not relieve the Contractor from any responsibility or obligation under this deed, or from liability for any Defect in the Project Works arising from compliance with the Building Code.

8.9 **NSW Guidelines**

- (a) **(NSW Guidelines)**: In addition to terms defined in this deed, terms used in this clause 8.9 have the same meaning as is attributed to them in the NSW Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) (as published by the NSW Treasury in July 2013, and updated in September 2017). The NSW Guidelines are available at <https://www.industrialrelations.nsw.gov.au/assets/Uploads/files/New-South-Wales-Industrial-Relations-Guidelines-Building-and-Construction-Procurement.pdf>.
- (b) **(Primary Obligation)**: The Contractor must:
- (i) at all times comply with, and meet any obligations imposed by, the NSW Guidelines;
 - (ii) notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance;
 - (iii) where the Contractor engages a Subcontractor, ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 8.9, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines; and
 - (iv) not appoint or engage another party in relation to the Project Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

- (c) **(Access and information):** The Contractor must:
- (i) maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities;
 - (ii) allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (A) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Construction Site;
 - (B) inspect any work, material, machinery, appliance, article or facility;
 - (C) access information and documents;
 - (D) inspect and copy any record relevant to the Project Works;
 - (E) have access to personnel; and
 - (F) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines, by the Contractor, its Subcontractors and related entities; and
 - (iii) comply with a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means, and ensure its related entities do the same.
- (d) **(Sanctions):** The Contractor:
- (i) warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply;
 - (ii) acknowledges that: if the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines; and
 - (iii) acknowledges and agrees that where a sanction is imposed:
 - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (B) the State of NSW (through its agencies, Ministers and the CCU) may:
 - (aa) record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
 - (bb) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

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

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

8.10 TfNSW's Statement of Business Ethics

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

8.11 Independent Advisers

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

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

8.12 **Asset Management Information**

- (a) **(Asset Management Information)**: The Contractor must prepare and submit Asset Management Information in accordance with the requirements of the SWTC, including in Appendix C.8 and Appendix G.2 of the SWTC.
- (b) **(Compliance with deed)**: All Asset Management Information must comply with the requirements of this deed, including the SWTC.
- (c) **(Review by Principal's Representative)**: The Principal's Representative may, within 15 Business Days of the submission of the Asset Management Information, either:
 - (i) reject the Asset Management Information for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Asset Management Information is required (together with reasons) and a time within which this must occur; or
 - (ii) advise in writing that the Asset Management Information is not rejected.
- (d) **(Update and resubmit)**: If the Asset Management Information is rejected by the Principal's Representative, the Contractor must update and resubmit the Asset Management Information and clause 8.12(c) will re-apply.
- (e) **(Comments from others)**: The Principal's Representative may:
 - (i) provide copies of any Asset Management Information to; and
 - (ii) seek comments in respect of any Asset Management Information, from, the Independent Certifier and any Interface Contractor to which the Asset Management Information relates.
- (f) **(No duty)**: The Principal's Representative owes no duty to the Contractor to review any Asset Management Information submitted by the Contractor for errors, omissions or compliance with this deed.
- (g) **(Liabilities and rights unaffected)**: No review of, comments upon, non-rejection or rejection of any Asset Management Information by the Principal's Representative,

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

- (i) the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (h) **(Fit for intended purpose):** The Contractor warrants that on the Date of Opening Completion (or in the case of the Handover Portions, the Date of Handover Completion of the relevant Handover Portion), the Asset Management Information will be fit for its intended purposes.
- (i) **(RIC Handover Works and WFU Handover Works):** If requested by the Principal, the Contractor must review and provide written comments on any draft operations and maintenance manuals for the RIC Handover Works and WFU Handover Works within 10 Business Days of receipt of the request.
- (j) **(Comments):** The Contractor acknowledges that:
- (i) the Contractor's review of the draft operations and maintenance manuals for the RIC Handover Works and WFU Handover Works:
 - (A) should be limited to comments in relation to the interface of the RIC Handover Works and WFU Handover Works with the Project Works and any impacts of the manuals on the Contractor's Activities; and
 - (B) is solely for the purpose of informing the Principal's review of the draft manuals prepared by the RI Contractor and WFU Contractor under the RI Contract and WFU Contract (as applicable);
 - (ii) the written comments referred to in clause 8.12(i) may be provided by the Principal to the RI Contractor and WFU Contractor (as applicable); and
 - (iii) the Principal does not assume or owe any duty to the Contractor to review its comments for errors, omissions or compliance with the requirements of this deed, or to consult with the Contractor, or take any other action regarding any comments from the Contractor.

8.13 Modern slavery

- (a) **(Warranty):** The Contractor warrants that:
- (i) it is not aware (including through the making of reasonable inquiries), of any Modern Slavery occurring within its operations or supply chain (or in those of any entity it owns or controls); and
 - (ii) at the Commencement Date:
 - (A) it (and any entity it owns or controls or Subcontractor of the Contractor) has not been convicted of any Modern Slavery Offence; and
 - (B) it is not aware of any circumstance within its operations (or in those of any entity it owns or controls) that could give rise to an official investigation or prosecution of a Modern Slavery Offence.

- (b) **(Modern Slavery Laws):** The Contractor agrees that it must:
- (i) at all times:
 - (A) comply, and take reasonable steps to ensure any entity it owns or controls complies, with the Modern Slavery Laws (to the extent applicable); and
 - (B) take reasonable steps (including developing strategies, due diligence processes and training) to ensure that:
 - (aa) Modern Slavery is not occurring (whether directly or indirectly) in the operations and supply chains of the Contractor and any entity it owns or controls; and
 - (bb) it (and any entity it owns or controls) does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery;
 - (ii) provide to the Principal any MS Information and other assistance, as reasonably requested by the Principal (and within the time required by the Principal), to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal's/Audit Office's auditors to interview the Contractor's personnel and disclosing the source, place and country of origin of goods, plant, equipment or other materials and work or services being procured or supplied under or in connection with this deed; and
 - (iii) comply with any policies, procedures, investigations or additional conditions relating to Modern Slavery notified by the Principal to the Contractor from time to time during the term of this deed.
- (c) **(Modern Slavery Practice):** The Contractor must not (and must ensure any entity it owns or controls does not) at any time engage in any Modern Slavery Practice.
- (d) **(Reporting entity):** If the Contractor is a 'reporting entity' for the purposes of any Modern Slavery Law, it must provide to the Principal a copy of any report or statement (unredacted) it has prepared under the Modern Slavery Law promptly upon the Principal's request.
- (e) **(Actual or suspected occurrence):** If the Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Contractor must take reasonable steps to respond to and remedy the occurrence, including in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board. The Contractor must immediately notify the Principal in writing of the actual or suspected occurrence of Modern Slavery and the steps it is taking to respond to and remedy the occurrence, which must be satisfactory to the Principal.
- (f) **(Subcontracts):** The Contractor must take reasonable steps to ensure all subcontracts of the whole or part of this deed contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 8.13, having regard to the nature and origin of the procurement.

- (g) **(Terminate)**: In addition to any other right or remedy of the Principal under this deed or at law, the Principal may, in its sole discretion, terminate this deed, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than for work performed and unpaid up until the date of termination), if the Contractor breaches this clause 8.13 or any Modern Slavery Law or if the Contractor or any entity that it owns or controls commits a Modern Slavery Offence.
- (h) **(Sharing information)**: The Contractor consents to the Principal sharing MS Information obtained from the Contractor in respect of Modern Slavery pursuant to this clause 8.13 with any other NSW Government agency or entity and, without limiting any other provision of this clause 8.13, the Contractor:
 - (i) agrees that the communication of MS Information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (ii) releases and indemnifies the Principal and the State of New South Wales from and against any claim (of any kind or nature) in respect of any matter arising out of such communications, including the use of the MS Information by the recipient.

9. DESIGN, DESIGN DOCUMENTATION AND COST PLANNING

9.1 Design obligations

- (a) **(General)**: The Contractor must develop the design of the Works so that if the Works are constructed in accordance with the IFC Design Documentation, the Works will comply with:
 - (i) the SWTC;
 - (ii) any Variation directed pursuant to a Variation Order, any Variation agreed or determined following a Claim under clause 23.1, any Pre-Agreed Variation instructed under clause 10.10(a) [REDACTED];
 - (iii) the Contractor's fitness for purpose obligations in this deed; and
 - (iv) the other requirements of this deed.
- (b) **(Design-only scope)**: The Contractor acknowledges and agrees that:
 - (i) pursuant to the SWTC, part of the Contractor's Activities includes developing Design Documentation for certain works that will not be constructed by the Contractor, including the Design Documentation specified in Appendix B30.2 of the SWTC; and
 - (ii) aspects of such Design Documentation will be used for the Works and other aspects may:
 - (A) not be used for the Project or WHTBL Program at all;
 - (B) be used for the Works if the Principal directs the relevant Pre-agreed Variation or otherwise directs a relevant Variation; or
 - (C) without limiting the rights of the Principal contemplated by clause 9.12 to use the Design Documentation, be used for the procurement and design and development of other parts of the WHTBL Program.

9.2 Changes to the Concept Design

- (a) **(Compliance with deed)**: The Contractor:
- (i) warrants that the Concept Design complies with this deed and is fit for purpose;
 - (ii) acknowledges that the Principal has not approved the Concept Design and no review, comments or approval of the Principal or Principal's Representative in relation to the Concept Design (whether made before or after entry into this deed) will impact the Contractor's obligations under this deed; and
 - (iii) must ensure that the Works will satisfy the requirements of this deed despite the Concept Design.
- (b) **(No Claim)**: The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in relation to or arising out of the Concept Design, including to the extent that a direction by the Principal's Representative results in a change to the Concept Design which is required as a result of the Concept Design not being fit for purpose.
- (c) **(Changes)**: Without limiting the Contractor's obligation to develop the Design Documentation in accordance with clause 9.4, the Contractor may make changes to the Concept Design but only to the extent that:
- (i) the changes will comply with the Contractor's fitness for purpose obligations in this deed and the changes will not adversely impact the:
 - (A) durability;
 - (B) whole of life performance;
 - (C) environment and sustainability performance;
 - (D) functional performance and ease of operation;
 - (E) safety; or
 - (F) whole of life costs associated with any part of the Project Works including the costs of operation and maintenance,of all or any part of the Works depicted in or achieved by the Concept Design;
 - (ii) the Contractor has notified the Principal's Representative of the proposed change setting out in the notice the reason for the change and a detailed analysis of the impact on the matters referred to in this clause 9.2(c);
 - (iii) the Contractor has obtained the consent in writing of the Principal's Representative to the proposed change; and
 - (iv) the changes do not remove or alter key features or elements of the Concept Design.

9.3 Design and SWTC Liability

- (a) **(SWTC fit for purpose)**: The Contractor warrants that:
- (i) it has carefully reviewed the SWTC; and

- (ii) the SWTC is proper, adequate and fit for its intended purpose.
- (b) **(No Claim)**: The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in relation to:
 - (i) the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC to carry out the Contractor's Activities; and
 - (ii) any omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and the Approvals.
- (c) **(Fit for purpose)**: The Contractor must ensure that the Design Documentation:
 - (i) satisfies the requirements of the SWTC and the other requirements of this deed; and
 - (ii) is and will remain at all relevant times fit for its intended purpose.
- (d) **(Obligations and warranties unaffected)**: Subject to clause 10.8(c), the Contractor's obligations under and the warranties given in this deed will remain unaffected and it continues to be responsible for the construction, commissioning, testing and completion of the Works notwithstanding any Variation directed by the Principal's Representative.

9.4 **Preparation and submission of Design Documentation**

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

9.5 **Third Party Agreements**

The Contractor acknowledges and agrees that:

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

9.6 **Certification of Design Documentation**

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

9.7 **Explanation of Design Documentation**

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

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

9.8 **Review of Design Documentation**

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

9.9 **Interface Contractors**

The Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may:

- (a) **(Copies)**: provide copies of such Design Documentation to; and
- (b) **(Comments)**: seek comments from and take into account the views of,
any:
 - (c) Interface Contractors;
 - (d) Other Contractors to the extent the activities of the relevant Other Contractor interface with or are otherwise connected to the Works or the Contractor's Activities;
 - (e) tenderers for any Interface Works or any operation and maintenance services;
 - (f) Authority; or
 - (g) Third Party.

9.10 **Design Documentation for construction**

- (a) **(Use for construction purposes)**: Unless otherwise agreed in writing by the Principal, the Contractor must only use for construction purposes parts of the Design Documentation which:
 - (i) have been submitted to the Principal and the Independent Certifier in accordance with the Contractor Documentation Schedule; and
 - (ii) the Contractor Documentation Schedule permits the Contractor to use for the purposes of construction.
- (b) **(No claim)**: The Contractor acknowledges and agrees that it will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any additional work or Contractor's Activities required as a consequence of the Contractor proceeding to construction in circumstances where the Contractor Documentation Schedule does not permit the use of any Design Documentation for the purposes of construction but the Principal or the Principal's Representative has otherwise agreed in writing to allow the Contractor to proceed with construction.

9.11 **No duty to review**

The Principal and the Contractor acknowledge and agree that:

- (a) **(No duty to review)**: neither the Principal nor the Principal's Representative assume a duty or owe any duty to the Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation; and

- (b) **(Warranties and rights not affected)**: none of:
- (i) any review or rejection of, or consultation or comments by the Principal, the Principal's Representative or the Independent Certifier, nor any failure by the Principal, the Principal's Representative or the Independent Certifier regarding, any Design Documentation or any other direction by the Principal's Representative in respect of any Design Documentation;
 - (ii) the non-rejection of any Design Documentation by the Principal's Representative or the Independent Certifier; or
 - (iii) the certification of any Design Documentation by the Independent Certifier, will lessen or otherwise affect:
 - (iv) any of the Contractor's Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (v) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

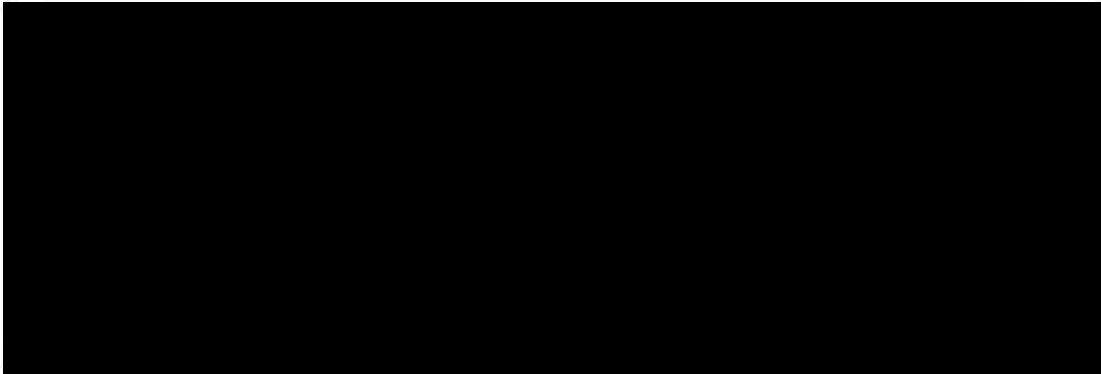
9.12 **Ownership of documentation**

- (a) **(Principal's property)**: Documents (including Design Documentation) supplied by or on behalf of the Contractor will be the Principal's property.
- (b) **(Transfer to Principal)**: The Contractor (irrevocably for all time and despite any expiry or termination of this deed for any reason):
- (i) to the fullest extent permitted by Law, assigns to the Principal absolutely all of the Contractor's present and future rights, title and interest in and to the Intellectual Property Rights in or relating to:
 - (A) the Works;
 - (B) the Design Documentation; and
 - (C) the Project Plans, Software, Deliverables, Principal's Data and all other information, documents, reports, images, photographs, inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data any other work, materials, or media in any form whatsoever,(collectively called the **Contract Documentation and Deliverables**) prepared or created (whether before or after the date of the deed) by or on behalf of the Contractor or its Associates for or in connection with this deed, the Contractor's Activities or Works (excluding the Escrow Material and the Tolling Equipment IP relating to Software) (**Contractor Developed IP**), which assignment is effective immediately upon creation; and
 - (ii) subject to clause 9.12(bc), in respect of any other Intellectual Property Rights in or relating to the Contract Documentation and Deliverables that are not assigned pursuant to clause 9.12(b)(i) above, grants to the Principal, and the Principal accepts, an irrevocable, worldwide, non-exclusive, royalty free, perpetual and fully assignable licence to use (and to sublicense to any third

parties, including the Principal's Associates and the Independent Certifier, to use) the same for:

- (A) the purposes of completing the design, construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, repairing, upgrading, improving, altering or otherwise dealing with the whole or any part of the Contractor's Activities or the Works;
- (B) any purpose associated with further development of the Construction Site or any Extra Land; and
- (C) any other purpose connected with transport projects in New South Wales,

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



(bc) **(Live Access Systems):** The Contractor:

- (i) agrees to procure access to all Live Access Systems by Live Access Users for the purposes described in clause 13.36, from the date required under clause 13.36(b) until expiry of the final Defects Correction Period; and
- (ii) warrants that the use of Live Access Systems by the Principal and the Live Access Users as contemplated by clause 13.36 does not require a sublicense for the Live Access Systems and such use will not breach any Intellectual Property Rights or moral rights.

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

- (i) warrants that the Principal's and the Principal's Associates and sublicensees' use of the Contract Documentation and Deliverables will not infringe the Moral Rights of any person; and
- (ii) must indemnify the Principal and its Associates and sublicensees from and against any Claims against the Principal and its Associates and sublicensees or Loss suffered or incurred by the Principal and its Associates and sublicensees, arising out of, or in any way in connection with, any actual or alleged infringement of the Moral Rights of any person in connection with the Works, the Contractor's Activities or the Contract Documentation and Deliverables.

(d) **(Right to reproduce):** For the purposes of clause 9.12(c), the Principal's Associates' and sublicensees' right to use the Contract Documentation and Deliverables includes the right to reproduce, publish, copy, adapt, communicate to the public, materially

distort, destroy, mutilate or in any way change whole or any part of the Contract Documentation and Deliverables, the Works or the Contractor Activities:

- (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.
- (e) **(Third parties)**: The Contractor agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal or its licensees, assignees or successors and their licensees, or any other person authorised by it) as reasonably requested by the Principal to give full effect to the provisions of this deed and to:
- (i) allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as applicable) or any adaptation of it, or any part of the assigned or licensed Intellectual Property Rights (as applicable) or of any such adaptation; or
 - (ii) prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (f) **(Appointment as attorney)**: The Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 9.12 if the Contractor fails to execute the document or do the relevant act or thing within five Business Days of a written request by the Principal's Representative.
- (g) **(Licence back to Contractor)**: The Principal grants to the Contractor a royalty free licence to use the Intellectual Property Rights assigned to the Principal under clause 9.12(b)(i) solely to the extent necessary to enable the Contractor to perform the Contractor's Activities.
- (h) **(Warranties)**: The Contractor warrants that:
- (i) the:
 - (A) transfer or assignment to the Principal and any use of the Intellectual Property Rights assigned under this clause 9.12; and
 - (B) use of the Intellectual Property Rights licensed under this clause 9.12 pursuant to the terms of this deed,does not and will not infringe the Intellectual Property Rights of any party;
 - (ii) no Intellectual Property Rights of any person in or relating to any of the Contract Documentation and Deliverables is being, has been or will be infringed and no one has threatened or is threatening such an infringement;
 - (iii) were it not for the assignments effected by this deed, the Contractor would be the absolute and unencumbered legal and beneficial owner of the Contractor Developed IP; and

- (iv) the Contractor is either:
 - (A) the absolute and unencumbered legal and beneficial owner of the Contractor Developed IP and is able to vest and assign the Intellectual Property Rights in the Contractor Developed IP to the Principal; or
 - (B) able to grant the licence granted in clause 9.12(b)(ii);
 - (v) it has or will obtain on and from the date of creation of any Contract Documentation and Deliverables an assignment in favour of the Contractor from any party performing any Design Work in relation to the Works or involved in the creation of any of the Contract Documentation and Deliverables;
 - (vi) the Intellectual Property Rights in the Contract Documentation and Deliverables are (or will be on grant) valid, subsisting and enforceable;
 - (vii) the Contractor has not done, failed to do, permitted or assisted and will not do, fail to do, permit or assist anything that may invalidate any of the Intellectual Property Rights in the Contract Documentation and Deliverables, or that may put the Principal's rights, title or interest in those Intellectual Property Rights into dispute or subject to challenge;
 - (viii) no consent or licence from, or payment to any other person is required for the Principal's ownership or use of any Intellectual Property Rights in accordance with the terms of this deed; and
 - (ix) there have been no previous assignments, licences, options or other dealings with any of the Intellectual Property Rights in or relating to any of the Contract Documentation and Deliverables that would conflict with the rights of the Principal under this deed.
- (i) **(Remedial action):** Without limiting clause 9.12(h), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by it, of the Contract Documentation and Deliverables, the Contractor's Activities or the Works or any part of them, being disrupted, impaired or adversely affected, the Contractor must at its own expense and at the Principal's option:
- (i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by it the right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 9.12, in accordance with this deed; or
 - (ii) modify or replace the Contract Documentation and Deliverables, the Contractor's Activities or the Works or the relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.12, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Deliverables, the Contractor's Activities or the Works or the relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.12 will:
 - (A) comply with the requirements of this deed; and
 - (B) not limit or otherwise affect the Principal's rights, or the Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.

- (j) **(Contractor to indemnify)**: The Contractor indemnifies the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
 - (i) a breach by the Contractor of any warranty set out in this clause 9.12; or
 - (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Deliverables, the Contractor's Activities or the Works or any part of them.
- (k) **(Interface Contractors)**: The Contractor:
 - (i) acknowledges that the Principal may provide any Interface Contractor with copies of any documents (including Design Documentation) provided to the Principal or the Independent Certifier by or on behalf of the Contractor in any way in connection with this deed, the Works or the Contractor's Activities; and
 - (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation and Deliverables that any Interface Contractor may reasonably require.
- (l) **(Escrow Material)**: Without limiting any of the Principal's rights under the Escrow Agreement, the Principal acknowledges and agrees that the licence granted by the Contractor to the Principal under clause 9.12(b)(ii) includes a licence to the Escrow Material only to the extent such licence is necessary for the Principal to enjoy the benefit of the licence of the other Contract Documentation and Deliverables under clause 9.12(b)(ii).
- (m) **(Licence Fees included)**: The Contractor acknowledges and agrees that the Target Cost is inclusive of all applicable licence fees for Software licensed under clause 9.12(b)(ii) and the Contractor must ensure that all licence fees for the use of Third Party Software are paid to the relevant third party supplier.
- (n) **(System performance)**: The Contractor warrants and represents, on a continuing basis up to the Date of Completion, that:
 - (i) the Software is either owned by the Contractor or has been procured by the Contractor under valid licenses from the Software owner and the Contractor is not and will not at any time up to the Date of Completion be in default under any such licences; and
 - (ii) any additions or modifications to the Works provided by or approved by the Contractor will comply with the warranties set out in this 9.12 and will operate with any Updates and New Releases of the Software so as to meet the requirements of this deed, provided that third party additions comply with the relevant manufacturer's and vendor's applicable specifications.

9.12A Moral Rights

- (a) **(Contractor not to sue)**: The Contractor to the extent permitted by Law, must not, and must take reasonable steps to ensure that its Associates do not, sue, enforce any Claim, bring any action or exercise any cure in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the date of this deed) in respect of any Contract Documentation and Deliverables against the Principal, the Principal's Associates, the Independent Certifier or any person nominated or

authorised by the Principal (including sub-licensees of the Contract Documentation and Deliverables permitted by the licences granted under clause 9.12(b)(ii)).

- (b) **(Contractor to obtain consents)**: The Contractor must (unless otherwise agreed by the Principal) take reasonable steps to procure (without coercion) that all individuals who are, or are to be, or may be, authors in respect of any Contract Documentation and Deliverables, sign, date and return to the Contractor a Moral Rights Consent prior to those individuals commencing work on the creation of any Intellectual Property Rights, or as soon as practicable thereafter.
- (c) **(Contractor to provide consents)**: The Contractor must within 3 Business Days after a request by the Principal, provide to the Principal any Moral Rights Consent which is obtained pursuant to clause 9.12A(b) as requested by the Principal.
- (d) **(Record of authors)**: The Contractor must:
 - (i) maintain an up-to-date record of the names and contact details of each person who is an author of any Contract Documentation and Deliverables and the Contract Documentation and Deliverables of which such person is an author; and
 - (ii) provide a copy of any updated records to the Principal upon request.

In complying with this clause 9.12A(d), the Contractor is only required to take reasonable steps to identify the authors of Third Party Software to the extent that Third Party Software is not created by or on behalf of the Contractor or its Associates in carrying out the Contractor's Activities.

9.12B Availability of Updates and New Releases

- (a) **(Offer of Updates and New Releases)**: The Contractor must offer the Principal all Updates and New Releases of the Software (with details regarding the Updates and New Releases, including the estimated costs associated with the Update or New Release to be provided with such offer) immediately after the Contractor has confirmed the Updates and New Releases (as applicable) do not impair the functionality of, and are not incompatible with, the Works or other Software in the Works at any time prior to any Date of Handover Completion, the Date of Opening Completion and the Date of Completion (respectively).
- (b) **(Acceptance)**: At any time following receipt of the Contractor's offer made pursuant to clause 9.12B(a), the Principal may in its discretion, by written notice, accept the relevant Update or New Release the subject of the Contractor's offer.
- (c) **(Implementation)**: Where the Principal has accepted an Update or New Release of the Software under clause 9.12B(b), the Contractor must ensure that the relevant Updates and New Releases of the Software are implemented in a timely manner such that:
 - (i) the Software will conform with the SWTC at all times; and
 - (ii) the Software integrates with and operates securely in the Principal's systems and the Works.
- (d) **(Demonstration)**: If requested to do so by the Principal, the Contractor must demonstrate to the Principal and such persons nominated by the Principal the features of the Updates and New Releases and the effect of the Updates and New Releases on the performance of the Project Works.

- (e) **(Effect of implementation):** Where an Update or New Release is implemented by the Contractor pursuant to clause 9.12B(c):
 - (i) the Target Cost will not be increased;
 - (ii) no extension of time to any Date for Handover Completion, the Date for Opening Completion or the Date for Completion will be granted;
 - (iii) the Contractor will be barred from issuing a notice or submitting a Claim under clause 23.1;
 - (iv) this deed will continue to apply in all respects to the Update or New Release; and
 - (v) the Updates or New Release will be deemed to form part of the Project Works.

9.13 **Delivery up of Design Documentation**

If this deed is terminated, whether pursuant to clause 18, [REDACTED] or by reason of the Contractor repudiating this deed (or otherwise at Law):

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

9.14 **Design Life**

- (a) **(Waiver of rights):** The Contractor:
 - (i) waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the EP&A Act and must not plead those sections by way of defence; and
 - (ii) otherwise agrees that sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the EP&A Act do not apply and are expressly excluded so far as it is lawful to do so,

for a period of [REDACTED] from the Date of Completion in respect of any cause of action arising out of or in connection with the Design Life of any Asset required by the SWTC where the Design Life is for a period longer than any of the limitation periods provided for in either of those Acts.

- (b) **(Indemnity):** If the waiver or agreement referred to in clause 9.14(a) is held to be without effect or otherwise unenforceable, or if it is severed from this deed, the Contractor must indemnify and keep the Principal indemnified at all times from and against all Loss that the Principal may suffer or incur arising out of or in connection with the Contractor seeking to rely on the limitation periods provided for in either of

those Acts or the Principal not receiving the benefit of the waiver or agreement in clause 9.14(a).

- (c) **(Term of indemnity)**: The indemnity in clause 9.14(b) continues and remains in full force and effect until the expiration of a period of [REDACTED] from the Date of Completion and no cause of action may be commenced under that indemnity after the expiry of such period.
- (d) **(Action on indemnity)**: The parties agree that any action by the Principal on the indemnity in clause 9.14(b) is not a civil action for the purposes of sections 6.19 and 6.20 of the EP&A Act.
- (e) **(Other indemnity unaffected)**: Nothing in this clause 9.14 limits the operation of any other indemnity in this deed.

9.15 Value Engineering

- (a) **(Value engineering process)**: If required by the Principal, the relevant personnel of the Contractor (including as a minimum the Contractor's design manager, construction manager and a project engineer) and the Designers must participate in a value engineering process, including participation in a series of workshops, to identify and eliminate any unnecessary costs and optimise whole of life costs of the Project Works, while ensuring that all other requirements for the Project Works are satisfied.
- (b) **(Invitations)**: The Contractor must invite and permit the Principal or its nominees to attend and participate in any value engineering workshops referred to in clause 9.15(a).

9.16 Cost Planning

The Contractor must:

- (a) **(Estimates of costings)**: plan the Works and Contractor's Activities in consultation with the Principal's Representative and provide estimates of and costings for the construction and commissioning phase of the Project Works;
- (b) **(Cost breakdown structure)**: within 10 Business Days of the Commencement Date (or any longer period agreed by the Principal's Representative in writing), prepare for the approval of the Principal's Representative a cost breakdown structure, which must, at a minimum, include all of the items from the cost breakdown structure in the Initial Cost Plan (unless otherwise approved by the Principal's Representative);
- (c) **(Approval of cost plan)**: within 30 Business Days of the Commencement Date (or any longer period agreed by the Principal's Representative in writing), prepare for the approval of the Principal's Representative a cost plan which meets the requirements of Part 1 of Schedule F7 (*Cost Plan*) and is not inconsistent with the Initial Cost Plan set out in Part 2 of Schedule F7 (*Cost Plan*) (and once this cost plan is approved by the Principal's Representative it will be referred to as the **Cost Plan**);
- (d) **(No change to cost breakdown structure)**: not make any changes to the cost breakdown structure or cost codes without the Principal's prior written approval; and
- (e) **(Provision of information)**: if requested at any time by the Principal's Representative, the Contractor must provide to the Principal's Representative (or any person authorised by the Principal's Representative):
 - (i) all information necessary to corroborate the Cost Plan on an Open Book Basis and must co-operate in respect of any audit of the information concerning the

Cost Plan undertaken by the Principal or an external auditor appointed by the Principal; and

- (ii) read only access to all components of the Contractor's cost system that relate to the Contractor's Activities and/or the Project Works including:
 - (A) links to all underlying documents in sufficient detail to allow the Principal to evaluate any of the Contractor's cost planning obligations; and
 - (B) if multiple reports are required to be provided, the Contractor must ensure such reports utilise consistent information.

9.17 Cost Control

The Contractor must:

- (a) **(Outturn Cost)**: use its best endeavours to ensure that it achieves Completion so that the Outturn Cost does not exceed the Target Cost;
- (b) **(Review of Cost Plan)**: without limiting clause 9.17(a), review the Cost Plan with the Principal's Representative as the preparation of the Design Documentation proceeds:
 - (i) against the cost of construction of the design; and
 - (ii) to advise the Principal's Representative how the design should or can be modified so that the cost of the construction of the Works in accordance with the design is in accordance with the Cost Plan;
- (c) **(Forecast cost to complete)**: provide:
 - (i) monthly reports to the Principal setting out the cost to date, forecast cost to complete by month, forecast cost at completion and any amounts received by the Contractor from the sale of surplus materials or material salvaged from the Construction Site in performing the Contractor's Activities, each on an Open Book Basis; and
 - (ii) quarterly reports to the Principal setting out the forecast total Outturn Cost;
- (d) **(Alternative steps)**: without limiting clause 9.17(a), institute a system of cost control and, together with the Principal's Representative, review and, where approved by the Principal's Representative, amend the Cost Plan to take account of any item affecting or likely to affect any component of the Cost Plan, and advise the Principal's Representative as to the alternative steps available where:
 - (i) the tenders for any part of the Reimbursable Work exceed the amount included for that work in the Cost Plan;
 - (ii) no tenders are received for any part of the Reimbursable Work;
 - (iii) the Reimbursable Costs incurred under any Approved Subcontract exceed (or appear likely to exceed) the amount allowed for that particular Approved Subcontract in the Cost Plan; or
 - (iv) the Reimbursable Costs incurred in respect of Self-Performed Reimbursable Work exceed (or appear likely to exceed) the amount allowed for that particular Self-Performed Reimbursable Work in the Cost Plan; and

- (e) **(Cost Change Report):** provide to the Principal's Representative a monthly cost change report, as part of its monthly submission of the Cost Plan as required in Part 1 of Schedule F7 (*Cost Plan*), which identifies:
 - (i) all changes that have been made to the Cost Plan since submitting the Cost Plan in the previous month; and
 - (ii) any transfers of scope or costs between cost codes in the Cost Plan since the previous month and the reasons for the changes, including any budget transfers between cost codes which have been identified in the "budget movement report" required by Appendix C.2 of the SWTC.

9.18 **Escrow Agreement**

Where the Contractor engages a Subcontractor who will be providing Escrow Materials, the Contractor must:

- (a) **(Entry):** subject to 9.18(b), enter into, and procure that the relevant Subcontractor providing the Escrow Materials enters into an escrow agreement substantially in the form set out in Schedule A18 (*Escrow Agreement*) with the Principal, the Contractor and an Escrow Agent for the Escrow Materials at the time the Contractor enters into the relevant Subcontract with the Subcontractor (and in any event, as a condition precedent to achieving Opening Completion);
- (b) **(Tolling Equipment Works Subcontract):** in respect of any Escrow Materials that may be provided under the Tolling Equipment Works Subcontract, enter into an escrow agreement in the form required by the Tolling Equipment Works Subcontract with the Principal, the Tolling Equipment Works Subcontractor and an Escrow Agent for the Escrow Materials at the time the Contractor enters into the Tolling Equipment Works Subcontract Deed of Novation (and in any event, as a condition precedent to achieving Opening Completion);
- (c) **(Satisfaction of conditions precedent):** satisfy all conditions precedent to the Escrow Agreement with the relevant Subcontractor; and
- (d) **(Legal Opinion):** where requested by the Principal, provide a Legal Opinion confirming that the execution of the Escrow Agreement with the relevant Subcontractor by each of the Contractor and the relevant Subcontractor is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms.

10. **VARIATIONS**

10.1 **Purpose**

Each party acknowledges and agrees that:

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

10.2 **Not used**

10.3 **Not used**

10.4 **Principal Proposed Variations**

- (a) **(Variation Proposal Request):** The Principal may at any time prior to the expiry of the final Defects Correction Period issue a Variation Proposal Request to the Contractor setting out details of a proposed Variation that the Principal is considering.
- (b) **(Actions under Subcontract):** The Contractor must promptly take all action required under any relevant Subcontract in order to allow the Contractor to respond to a Variation Proposal Request.
- (c) **(Variation Proposal):** As soon as practicable, and in any event within 15 Business Days of the receipt of a Variation Proposal Request or otherwise as required under clause 7A.4(a)(ii)(A) (or such longer period as is agreed by the Principal, acting reasonably and having regard to the size and complexity of the proposed Variation and any consultation required with Interface Contractors in accordance with clause 10.13), the Contractor must provide the Principal's Representative with a Variation Proposal setting out:
 - (i) any proposed Reimbursable Cost Element Adjustment, Design Fee Adjustment, Preliminaries Fee Adjustment or Management Fee Adjustment to carry out the proposed Variation, including sufficient evidence to support the proposal on an Open Book Basis;
 - (ii) the effect (if any) that the proposed Variation will have on the Contractor's Program (including any extension of time required to a Date for Handover Completion, the Date for Opening Completion and the Date for Completion and the measures the Contractor proposes to take to avoid, mitigate or minimise the effect of the proposed Variation on the Contractor's Program), including sufficient evidence on an Open Book Basis;
 - (iii) any Approvals required to implement the proposed Variation, and the effect of the proposed Variation on any existing Approvals or the Contractor's ability to comply with those Approvals;
 - (iv) the effect (if any) which the proposed Variation will have on the Contractor's ability to satisfy its obligations under this deed (including the Contractor's fitness for purpose obligations in this deed and any warranties given by the Contractor under this deed) or exercise its rights under this deed; and
 - (v) any other information requested by the Principal in the Variation Proposal Request.
- (d) **(Validity):** The Variation Proposal must remain valid for acceptance by the Principal for the period stated in the Variation Proposal which must be not less than 35 Business Days after the date of the Variation Proposal (**Validity Period**).
- (e) **(No obligation):** The Principal will not be obliged to proceed with any proposed Variation that is the subject of a Variation Proposal Request.

10.5 **Cost of preparing Variation Proposals**

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

- (b) **(Minimise Costs):** The Contractor must use reasonable endeavours to minimise costs incurred by the Contractor in preparing Variation Proposals.
- (c) **(Cap on reimbursement):** The Contractor's entitlement to reimbursement of the costs it incurs in preparing a Variation Proposal will be capped at the amount specified in Schedule A1 (*Contract Particulars*) (or such higher amount as is approved beforehand by the Principal taking into account the scale and complexity of the Variation Proposal), subject to the Contractor providing evidence of the amounts claimed on Open Book Basis.
- (d) **(Adjustment where Variation is directed):** If the Principal issues a Variation Order in respect of a Variation Proposal, the costs under clause 10.5(a) for the relevant Variation Proposal will be included in the cost of the relevant Reimbursable Cost Element Adjustment Event.

10.6 Election by the Principal

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

- (a) **(Request further information):** advise the Contractor that the Principal:
 - (i) requires further information or clarification with respect to the Variation Proposal; or
 - (ii) has altered the scope of the Variation Proposal Request,
 in which case the Contractor must provide the Principal with an updated Variation Proposal addressing the issues raised by the Principal within 10 Business Days of receiving the Principal's notice and this clause 10.6 will reapply to the updated Variation Proposal and the Validity Period will recommence;
- (b) **(Accept):** issue a notice titled "Variation Order" which accepts the Variation Proposal and directs the Contractor to carry out the Variation as specified in the Variation Proposal;
- (c) **(Reject or negotiate):** notify the Contractor that it rejects, or wishes to negotiate, the Variation Proposal, in which case clause 10.7 will apply; or
- (d) **(Withdraw)** withdraw the proposed Variation, in which case the Contractor must not carry out the Variation.

10.7 Rejection or negotiation of the Variation Proposal

- (a) **(Negotiation or resubmission):** If the Principal rejects or wishes to negotiate the Variation Proposal in accordance with clause 10.6(c), if requested by the Principal:
 - (i) the parties must, within five Business Days after the date of the Principal's notice under clause 10.6(c), commence consultation in good faith, and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Variation Proposal which are in dispute; or
 - (ii) if the Variation Proposal does not accurately set out the Contractor's entitlements in accordance with the requirements of this deed or comply with the requirements of the Variation Proposal Request, the Contractor must amend and resubmit the Variation Proposal.
- (b) **(Variation Order where agreed):** If the parties reach agreement on the disputed matters in the Variation Proposal, the Principal may issue a notice titled "Variation

Order" which directs the Contractor to carry out the Variation as specified in the Variation Proposal, as varied by the parties' agreement.

- (c) **(Dispute resolution):** If the parties are unable to reach agreement under clause 10.7(a) within 15 Business Days after Principal's notice of rejection or negotiation under clause 10.6(c) (or such longer period as the parties agree), the Principal may refer the matter for dispute resolution, and in resolving the dispute the parties must, and must direct the Management Review Group, the Expert or any arbitrator to determine (or in the case of the Dispute Avoidance Board, consider), as applicable, all matters required to enable the relevant Variation to be implemented in accordance with this deed.
- (d) **(Principal election):** Following resolution of the dispute referred for dispute resolution under clause 10.7(c), the Principal may (unless it has already exercised its right under clause 10.8(a)) elect to do either of the following:
 - (i) require the Contractor to proceed to implement the Variation by issuing a notice titled "Variation Order" which directs the Contractor to carry out the Variation as specified in the Variation Proposal as varied by the resolution; or
 - (ii) withdraw the proposed Variation.

10.8 **Variation Orders**

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

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

- (b) **(Contractor notice):** Unless the Contractor has already provided a Variation Proposal in respect of the Variation the subject of a Variation Order under clause 10.8(a), if requested by the Principal in the Variation Order, the Contractor must provide a notice to the Principal setting out the information specified in clause 10.4(c) in respect of the Variation within:
 - (i) 10 Business Days after receipt of the Variation Order; or
 - (ii) such longer period as is agreed by the Principal (acting reasonably, taking into account the size and complexity of the Variation and the information to be included in a Variation Proposal),

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

- (c) **(Determination by Principal):** If the Principal issues a Variation Order under clause 10.8(a):
 - (i) the Reimbursable Cost Element Adjustment, the Management Fee Adjustment, the Design Fee Adjustment and the Preliminaries Fee Adjustment (if any);

- (ii) any extension to any Date for Handover Completion, the Date for Opening Completion and the Date for Completion (or all, as applicable);
- (iii) the extent to which the Contractor will be relieved of any of its obligations under this deed; and
- (iv) the other matters set out in clause 10.4(c),

will, until the Principal and the Contractor otherwise agree or a determination is made under clause 19, be reasonably determined by the Principal in accordance with clause 10.8(d).

- (d) **(Requirements for Principal's determination):** In making its determination under clause 10.8(c), the Principal must:
 - (i) determine the Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment and Preliminaries Fee Adjustment (if any) in accordance with clause 4 and subject to any express provisions in this deed regarding the Contractor's entitlement to a Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment and Preliminaries Fee Adjustment;
 - (ii) determine the extension of time to any Date for Handover Completion, the Date for Opening Completion and the Date for Completion (or all, as applicable) in accordance with clause 14.10; and
 - (iii) determine all other matters required to enable the relevant Variation to be implemented, and issue a written notice of such determination,
 in each case either:
 - (iv) as part of, and included within, the relevant Variation Order; or
 - (v) otherwise, within:
 - (A) 20 Business Days of issue of the relevant Variation Order referred to in clause 10.8(a); or
 - (B) where clause 10.8(b) applies, 20 Business Days of receiving the Contractor's notice under that clause.
- (e) **(Dispute resolution):** If the Contractor disagrees with a matter determined by the Principal under clause 10.8(c):
 - (i) the Contractor may notify the Principal in writing that it wishes to negotiate the relevant matter (including reasons for the disagreement, and supporting evidence), and the parties must meet within 5 Business Days after such notice and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Principal's determination which are in dispute;
 - (ii) if the parties are unable to reach agreement under clause 10.8(e)(i) within 15 Business Days after the Contractor's notice under clause 10.8(e)(i), either party may refer the matter for resolution in accordance with clause 19; and
 - (iii) any necessary adjustments will be made following the resolution of the matters in dispute.

10.8A Implementation of Variations

- (a) **(Acknowledgements):** The Contractor acknowledges and agrees that:
- (i) there is no limitation on the power of the Principal's Representative to issue a Variation Order, and no Variation or Variation Order will invalidate this deed; and
 - (ii) a Variation may include the creation of a new Handover Portion in which case clause 16.4(d) will apply
- (b) **(Contractor to implement):** If the Principal directs the Contractor to implement a Variation by issuing a Variation Order under this clause 10:
- (i) the Contractor must promptly implement the Variation on the basis of the Variation Order irrespective of:
 - (A) the nature, extent or value of the work the subject of the Variation;
 - (B) the location or timing (including the impact on any Date for Handover Completion, the Date for Opening Completion and the Date for Completion) of the work involved in the Variation; or
 - (C) any Dispute related to the Variation;
 - (ii) the Date for Handover Completion of the relevant Handover Portion, Date for Opening Completion and Date for Completion (as applicable) will be extended as specified in the Variation Order (or as subsequently agreed or determined under clause 19);
 - (iii) any Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment and Preliminaries Fee Adjustment will be as specified in the Variation Order (or as subsequently agreed or determined under clause 19); and
 - (iv) the Contractor will be relieved of its obligations under this deed to the extent specified in the Variation Order (or as subsequently agreed or determined under clause 19).
- (c) **(Multiple Variations to implement single physical change):** Nothing in this clause 10 prevents the Principal from issuing several Variation Proposals or Variation Orders (or both) in order to implement a single physical change to the Works in stages.

10.9 Omissions

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

- (a) **(Principal may perform work):** the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) **(No Claim):** the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities; and
- (c) **(Value of omission):** the adjustment to the Target Cost arising from the work that has been omitted or deleted will be valued in accordance with clause 4.

10.10 Pre-Agreed Variations

- (a) **(Written notice):** The Principal's Representative may, in its absolute discretion and without being under any obligation to do so, instruct any Pre-Agreed Variation by giving written notice to the Contractor at any time prior to the relevant Election Date.
- (b) **(Deemed amendment):** Upon the issue of a notice by the Principal's Representative under clause 10.10(a), this deed will be deemed to be amended as set out in Schedule A3 (*Pre-Agreed Variations*) for the relevant Pre-Agreed Variation.
- (c) **(No relief):** If the Principal's Representative instructs a Pre-Agreed Variation under this clause 10.10, such exercise will not (other than as set out in Schedule A3 (*Pre-Agreed Variations*)):
 - (i) relieve the Contractor from its Liabilities or obligations (including those arising out of any warranties given under this deed);
 - (ii) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this deed); or
 - (iii) entitle the Contractor to an extension of time,
whether under this deed or otherwise according to any Law.
- (d) **(No Claim):** The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in relation to or arising out of a Pre-Agreed Variation instructed by the Principal's Representative other than the Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment and Preliminaries Fee Adjustment (if any) provided for in Schedule A3 (*Pre-Agreed Variations*) for the relevant Pre-Agreed Variation.
- (e) **(No limitation):** Nothing in this clause prevents the Principal's Representative from:
 - (i) issuing a Variation Proposal Request as referred to in clause 10.4(a); or
 - (ii) directing a Variation by issue of a Variation Order under clauses 10.6 or 10.8,
that involves the same (or similar) changes to the Project Works as a Pre-Agreed Variation after the relevant Election Date.

10.11 Contractor may propose Variation

- (a) **(Purpose of delivery method):** The Principal and the Contractor acknowledge that the project delivery method chosen is intended, among other things, to allow the Contractor to identify:
 - (i) Variations which may enhance the quality of the Contractor's Activities; and
 - (ii) Variations which may permit project cost savings while maintaining or enhancing the quality of the Contractor's Activities.
- (b) **(Notice from Contractor):** The Contractor may propose a Variation by giving written notice to the Principal setting out:
 - (i) details of:
 - (A) the proposed Variation;

- (B) the reason for the proposed Variation;
 - (C) the time within, and the manner in which, the Contractor proposes to implement the proposed Variation;
 - (D) the effect (if any) of the proposed Variation on the Contractor's Activities, including the Contractor's Program and any Date for Handover Completion, the Date for Opening Completion and the Date for Completion (or all, as applicable);
 - (E) the cost effect of assessing and carrying out the proposed Variation, including:
 - (aa) any proposed Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment and Preliminaries Fee Adjustment to carry out the proposed Variation; and
 - (bb) the effect the proposed Variation will have on operating and maintenance costs;
 - (F) the effect (if any) that the proposed Variation will have on any Interface Works, including whether a variation to the work under any Interface Works Contract is likely to, be required to enable the proposed Variation to be implemented, or as a consequence of the proposed Variation; and
 - (G) the Value for Money for the Principal arising from the Variation, including any cost savings that the Contractor expects to arise from the Variation;
- (ii) a written statement stating that the proposed Variation:
- (A) will not adversely affect:
 - (aa) the functional integrity of any of the elements of the Contractor's Activities; or
 - (bb) the satisfaction of:
 - (a) any performance standards required by this deed; or
 - (b) the Contractor's fitness for purpose obligations in this deed; and
 - (B) is consistent with and complies with the conditions and requirements of the Planning Approval.
- (c) **(Request for information):** On receiving a notice under clause 10.11(b), the Principal may give written notice to the Contractor requesting any other information and supporting documentation the Principal reasonably requires, and the Contractor must provide the requested information or documentation within 10 Business Days of receiving the request.

- (d) **(Principal's Representative's discretion):** The Principal's Representative:
- (i) (in its absolute discretion) may either:
 - (A) approve (with or without conditions) the proposed Variation by issuing a notice titled "Variation Order" to the Contractor which directs the Contractor to carry out the Variation as specified in the Contractor's notice under clause 10.11(b), or as otherwise approved by the Principal; or
 - (B) reject the proposed Variation; and
 - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the Contractor.
- (e) **(Negotiation of cost adjustment):** Prior to issuing a Variation Order under clause 10.11(d)(i)(A), the Principal may seek to negotiate with the Contractor in relation to the proposed Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment or Preliminaries Fee Adjustment to carry out the proposed Variation or any conditions that may be attached to the Variation Order.
- (f) **(Implementation):** If the Principal issues a Variation Order under clause 10.11(d)(i)(A):
- (i) without conditions, the Contractor must perform its obligations under this deed in accordance with the approved Variation; and
 - (ii) with conditions, the Contractor may either:
 - (A) proceed to implement the Variation on the basis set out in the Variation Order; or
 - (B) withdraw the proposed Variation if the Contractor, acting reasonably, does not accept any of the conditions attached to the approval of the proposed Variation.
- (g) **(Target Cost adjustment):** If the Principal's Representative approves a proposed Variation by issuing a Variation Order under clause 10.11(d)(i)(A) and the Contractor has not withdrawn the proposed Variation under clause 10.11(f)(ii)(B), the Principal will notify the Contractor that the Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment or Preliminaries Fee Adjustment (if any) will be:
- (i) as set out in the Contractor's notice under clause 10.11(b); or
 - (ii) as agreed under clause 10.11(e); or
 - (iii) as determined under clause 4.
- (h) **(Costs of proposing Variation):** The Contractor will bear its own costs incurred in proposing a Variation under this clause 10.11.
- (i) **(No Claim):** Except as provided for in clause 10.11(g), the Contractor, is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of, or in any way in connection with, a Variation proposed by the Contractor.
- (j) **(Assessment costs for Variation):** The Principal will bear its own costs incurred in assessing a Variation proposed by the Contractor.

- (k) **(Interface Contractors)**: The Principal and the Contractor acknowledge that it is intended that each Interface Contractor will bear their own costs in assessing the proposed Variation.

10.12 Contractor's entitlements

The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, any Variation, except where:

- (a) **(Direction)**: the Contractor is directed to implement a Variation by a Variation Order;
- (b) **(Notice from Principal)**: the Principal issues a notice under clause 10.10(a) instructing a Pre-Agreed Variation; or
- (c) **(Notice of Variation)**: clause 23.1 applies.

10.13 Consultation with Interface Contractors

- (a) **(Impact on Interface Contractor)**: Without limiting clause 3.2, if the Contractor becomes aware that a proposed Variation will, or is likely to, impact on any Interface Works, and in any case prior to:

- (i) submitting a Variation Proposal in accordance with clause 10.4(c); or
- (ii) proposing a Variation in accordance with clause 10.11(b),

the Contractor must:

- (iii) notify the relevant Interface Contractor(s) of the proposed Variation; and
- (iv) work closely and iteratively with the relevant Interface Contractor(s) in good faith regarding the scope and design of the proposed Variation (and, where applicable, the corresponding variation under the Interface Works Contract) in order to remove or reduce the impact that the proposed Variation will or may have on the relevant Interface Works.

- (b) **(Contractor to assist)**: Where a variation is proposed under an Interface Works Contract, the Contractor agrees to work closely and iteratively with the relevant Interface Contractor in relation to the scope and design of the proposed variation under the Interface Works Contract in order to remove or reduce the impact that the proposed variation will or may have on the Works.

- (c) **(Interface Contractors)**: The Contractor acknowledges and agrees that the Principal may:

- (i) **(Copies)**: provide copies of documents concerning proposed Variations to; and

- (ii) **(Comments)**: seek comments from and take into account the views of,

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

11. **SUBCONTRACTING FOR REIMBURSABLE WORK, PROVISIONAL SUM WORK AND OTHER WORK**

11.1 **Restrictions on Reimbursable Work**

- (a) **(Performance of Reimbursable Work)**: Unless otherwise agreed by the Principal's Representative in writing, Reimbursable Work must be either:
- (i) performed by Subcontractors under Approved Subcontracts entered in accordance with the procedure in clauses 11.2 to 11.8 (inclusive); or
 - (ii) performed by the Contractor in accordance with clause 11.14.
- (b) **(Value for money)**: The Contractor must ensure that all Subcontract Tender Documentation is prepared and all tender processes for Reimbursable Work are conducted:
- (i) on terms which maximise Value for Money for the Principal; and
 - (ii) with the highest standards of probity, fairness and equal opportunity and in accordance with the Procurement Management Plan.
- (c) **(Pre-Approved Subcontractors and Tolling Equipment Works Subcontractor)**: The parties acknowledge and agree that clauses 11.2 to 11.6, 11.7(a), 11.7(b), 11.8 and clause 11.15 do not apply to Pre-Approved Subcontractors and the Tolling Equipment Works Subcontractor.

11.2 **Subcontract Proposal**

- (a) **(Packages)**: The Contractor must:
- (i) to the extent not addressed in the Tendering Management Plan, prior to inviting any tenders for Subcontractors, obtain the Principal's prior written approval with respect to how the Reimbursable Work will be divided into packages for the purposes of calling of tenders for Subcontractors; and
 - (ii) each time the Contractor proposes to change how the Reimbursable Work is divided into packages for the purposes calling of tenders for Subcontractors, obtain the Principal's prior written approval for the change prior to calling any further tenders for Subcontractors,

in each case, such approval not be unreasonably withheld or delayed, having regard to the time of receipt of the Contractor's request for approval, the nature and scope of approval, the volume of approvals sought at any one time and the date the Contractor reasonably requests a response.

- (b) **(Subcontract Proposal)**: Subject to clause 11.2(c), prior to inviting tenders for the performance of any Reimbursable Work:
- (i) for which the forecast final value of the relevant Subcontract (in the reasonable opinion of the Contractor) will be equal to or above:
 - (A) [REDACTED] in relation to the supply of Materials or Construction Plant by a Subcontractor;
 - (B) [REDACTED] in relation to all other Reimbursable Work by a Subcontractor; or

- (ii) in relation to the supply of the items listed in Schedule A1 (*Contract Particulars*),

the Contractor must issue a document titled "Subcontract Proposal" to the Principal's Representative for approval which satisfies the requirements of clause 11.2(e) (**Subcontract Proposal**), unless the Principal agrees that a Subcontract Proposal is not required.

- (c) (**Application**): The Contractor is not required to comply with clause 11.2(b) for a Subcontract for Reimbursable Work if:
 - (i) the Contractor complies with the Tendering Management Plan in relation to the procurement of that Subcontract, provided the Principal's Representative has notified the Contractor that it has no comments on the Tendering Management Plan in accordance with clause 13.13(h)(iii)(E); and
 - (ii) the Subcontract:
 - (A) is not in relation to the supply of the items listed in Schedule A1 (*Contract Particulars*); or
 - (B) is for Provisional Sum Work item number PS2 regarding Sydney Water assets.
- (d) (**Multiple Subcontracts for the same Reimbursable Work**): For the purposes of the thresholds specified in clause 11.2(b)(i), if the Contractor splits the same type of Reimbursable Work across multiple Subcontracts with the same Subcontractor, the aggregate value of such Subcontracts must be used to determine whether a Subcontract Proposal is required.
- (e) (**Particulars**): The Subcontract Proposal must include:
 - (i) the part of the Reimbursable Work to be the subject of the tender;
 - (ii) the amount included for this work in the Cost Plan;
 - (iii) how the Contractor will ascertain the tender list for the part of the Reimbursable Work to be the subject of the tender;
 - (iv) how the Contractor will select the preferred tenderer including details of the evaluation criteria (with weightings) for the assessment of tenders;
 - (v) the method of delivery for the work;
 - (vi) the proposed terms and conditions of Subcontract which the Contractor proposes to use to enter into the Subcontract, including details about the pricing structure (which may include details regarding payment terms, a detailed breakdown of the price, and any schedule of rates items) and pricing notes (such as working hours and shift durations and waiting times allowances and price escalation);
 - (vii) the proposed date for calling of tenders and for tender responses; and
 - (viii) a statement as to whether or not the Subcontract would fall within the requirement under clause 11.7(c)(iv)(B) to procure that the Subcontractor executes a deed in the form of Schedule A7 (*Form of Subcontractor Deed*), and if so whether the Contractor is seeking the Principal's approval to not comply with this requirement (including reasons).

- (f) **(EOI)**: For the purposes of clause 11.2(e)(iii), if the tender list is to be ascertained by an expression of interest process, the Contractor must:
 - (i) include in its Subcontract Proposal details of the criteria, including weightings for the assessment of each expression of interest;
 - (ii) do all things necessary to carry out the expression of interest process;
 - (iii) prepare and arrange advertising and briefing documents, subject to obtaining the prior written consent of the Principal's Representative in relation to advertising and briefing documents;
 - (iv) evaluate responses from prospective tenderers; and
 - (v) make a recommendation to the Principal's Representative for the purposes of clause 11.4.
- (g) **(Rate of submission)**: The Contractor must submit the Subcontract Proposals to the Principal in a manner and at a rate which, having regard to the quantity of the Subcontract Proposals submitted, will give the Principal a reasonable opportunity to review the submitted Subcontract Proposals in accordance with this deed.
- (h) **(Principal to review)**: Subject to the Contractor complying with clause 11.2(g), the Principal's Representative must review each Subcontract Proposal and within 15 Business Days of receipt of the Subcontract Proposal must either:
 - (i) approve the Subcontract Proposal; or
 - (ii) provide comments in relation to the Subcontract Proposal.
- (i) **(Amendments)**: The Contractor must amend the Subcontract Proposal as required to reflect any comments from the Principal's Representative under clause 11.2(h)(ii).

11.3 Subcontract Tender Documentation

- (a) In relation to any tenders for Reimbursable Work to which clause 11.2(b) applies, after the Principal's Representative has approved a Subcontract Proposal:
 - (i) **(Prepare and submit)**: the Contractor must prepare the Subcontract Tender Documentation and submit a copy to the Principal's Representative for approval at least 15 Business Days before tenders are to be invited;
 - (ii) **(Rate of submission)**: the Contractor must submit the Subcontract Tender Documentation for the relevant tenders to the Principal in a manner and at a rate which, having regard to the quantity of the Subcontract Tender Documentation submitted, will give the Principal a reasonable opportunity to review the submitted Subcontract Tender Documentation in accordance with this deed;
 - (iii) **(Principal to review)**: the Principal's Representative must review the Subcontract Tender Documentation and within 12 Business Days of receipt of the Subcontract Tender Documentation must either:
 - (A) approve the Subcontract Tender Documentation; or
 - (B) provide comments in relation to the Subcontract Tender Documentation; and

- (iv) **(Amendments)**: the Contractor must amend the Subcontract Tender Documentation as required to reflect any comments from the Principal's Representative under clause 11.3(a)(iii)(B).
- (b) In relation to any proposed Subcontracts for Reimbursable Work for which the Contractor is not required to comply with clause 11.2(b) pursuant to clause 11.2(c), the Contractor must submit the Subcontract Tender Documentation to the Principal's Representative:
 - (i) within 5 Business Days after the Subcontract Tender Documentation is finalised; and
 - (ii) prior to the Subcontract Tender Documentation being released to the market.

11.4 Tendering

- (a) In relation to all Reimbursable Work to be performed by a Subcontractor (except those Subcontracts described in clause 11.2(c)(i) and clause 11.2(c)(ii)), whether or not a Subcontract Proposal is required under clause 11.2, the Contractor must:
 - (i) **(Recommendation of candidates)**: subject to clause 11.4(a)(iii)(B), recommend to the Principal's Representative at least three persons which in the Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
 - (ii) **(Finalise tender list)**: subject to clause 11.4(a)(iii)(B), subsequently finalise the tender list in consultation with the Principal's Representative who may (in the Principal's Representative's absolute discretion, without the necessity to give reasons) remove or add any person from or to the tender list;
 - (iii) **(Tender process)**: call tenders from:
 - (A) subject to clause 11.4(a)(iii)(B), the persons in the tender list finalised with the Principal's Representative; or
 - (B) for the persons, activities or items listed as trade packages in Schedule A14 (*Nominated Subcontract Packages*), the relevant persons, service providers or suppliers listed in Schedule A14 (*Nominated Subcontract Packages*) only,

in sufficient time to avoid delays or disruption to the progress of the Project Works; and
 - (iv) **(Provide copies)**: if so requested by the Principal's Representative, promptly provide a copy of each tender to the Principal's Representative.
- (b) In relation to any proposed Subcontracts for Reimbursable Work for which the Contractor is not required to comply with clause 11.2(b) pursuant to clause 11.2(c), the Contractor must:
 - (i) submit a tender list:
 - (A) within 5 Business Days after the tender list is finalised; and
 - (B) prior to calling tenders from the persons in the tender list; and
 - (ii) if requested by the Principal's Representative, a copy of each tender within 5 Business Days of receiving the relevant tender.

11.5 Consideration of Proposed Subcontracts

In relation to any proposed Subcontracts for Reimbursable Work (whether or not clause 11.2(b) applies to such proposed Subcontracts), the Contractor must:

- (a) **(Consideration of tenders)**: examine and analyse all tenders received for Reimbursable Work;
- (b) **(Recommendation)**: recommend to the Principal's Representative which tenderer, if any, should be accepted by the Contractor which recommendation:
 - (i) will be deemed to include a warranty by the Contractor that the recommended tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted, that the Contractor knows of no reason why that tenderer's tender should not be accepted and that the tenderer's tender will provide Value for Money for the Principal;
 - (ii) must be based on the outcome of the processes in clause 11.2, 11.3 and 11.4 (inclusive) or be made in accordance with the Tendering Management Plan (as applicable); and
 - (iii) must be made in accordance with the Procurement Management Plan.
- (c) **(Details to include)**: submit together with any such recommendation:
 - (i) an evaluation report detailing the Contractor's assessment of tenders against the evaluation criteria;
 - (ii) a description of:
 - (A) the work to be undertaken under the proposed Subcontract; and
 - (B) in relation to a recommendation for work to be undertaken in relation to OMCS, details regarding the Escrow Material relevant to such work;
 - (iii) the time for commencement and completion of that work and confirmation that these times are in accordance with the Contractor's Program;
 - (iv) the proposed Subcontract price and pricing structure details (which may include details regarding payment terms, a detailed breakdown of the price, and any schedule of rates items) compared to the amount included in the Cost Plan for the relevant Reimbursable Work (including any amounts the Contractor has allowed for contingency) and the amounts tendered by other tenderers;
 - (v) any proposed amendments to the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 or the form of subcontract attached to the Tendering Management Plan (as applicable), including pricing notes and qualifications, special conditions and any proposed amendments to the payment terms, entitlements to delay related costs and/or extensions of time and any risk related provisions;
 - (vi) the recommended tenderer's contact details;
 - (vii) if any Law in the State or Territory in which the Project Works are situated requires that a person be registered or licensed to carry out that part of the work, evidence to the satisfaction of the Principal's Representative that the recommended tenderer is so registered or licensed; and

- (viii) any other details which may be required by the Principal's Representative, including the draft subcontract.

11.6 Post Tender Negotiations

- (a) **(Principal's Representative's presence):** If required by the Principal's Representative, the Contractor must conduct post-tender negotiations with the tenderers, which must, if the Principal's Representative so requires, be held in the presence of the Principal's Representative.
- (b) **(Notify):** The Principal's Representative must notify the Contractor of any post-tender negotiations within a reasonable time, having regard to any reasonable timing requirements notified by the Contractor, the time of receipt of the Contractor's recommendation, the nature and scope of the proposed Subcontract and the volume of recommendations made at any one time.

11.7 Subcontracts

- (a) **(Principal's Representative's discretion):** Following receipt of the Contractor's recommendation pursuant to clause 11.5(b), the Principal's Representative will consider the recommended tenderer and must, within 10 Business Days (in its absolute discretion) approve or disapprove the Contractor's recommendation and, if it disapproves the Contractor's recommendation, provide written reasons for its disapproval.
- (b) **(Enter into agreement):** If the Principal's Representative approves the Contractor's recommended tenderer, the Contractor must promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 or the form of subcontract attached to the Tendering Management Plan (where applicable) with only such amendments as the Principal's Representative may have approved in writing; and
 - (ii) the subcontract price approved by the Principal's Representative.
- (c) **(Obligations of Contractor):** The Contractor must:
 - (i) include in all Subcontracts:
 - (A) the provisions required by Schedule A16 (*Subcontractor Requirements*); and
 - (B) any provisions required by the SWTC to be included in Subcontracts to the extent applicable to the relevant Subcontract;
 - (ii) if required by the Principal's Representative, provide the Principal's Representative with a copy of any executed Subcontract, together with all documentation (including Design Documentation) relevant to that agreement within 5 Business Days of such request;
 - (iii) ensure that each Subcontractor executes a Confidentiality Undertaking in the form of Schedule B3 (*Form of Confidentiality Undertaking*) and provides this to the Principal's Representative within five Business Days of the engagement of that Subcontractor;

- (iv) procure that each Subcontractor:
 - (A) in respect of any element of Design Work or other professional services (regardless of subcontract price); or
 - (B) under a Subcontract that has an initial subcontract price equal to or greater than [REDACTED] (unless otherwise approved by the Principal),
 executes a deed in the form of Schedule A7 (*Form of Subcontractor Deed*) and provides this to the Principal's Representative within five Business Days of being engaged by the Contractor;
- (v) ensure that each Subcontract which contemplates both Reimbursable Work and activities covered by the Design Fee or Preliminaries Fee includes:
 - (A) a payment schedule and payment structure that clearly separates entitlements for payment for amounts payable in respect of each of the Reimbursable Work and Design Fee and Preliminaries Fee; and
 - (B) an obligation on the Subcontractor to structure all payment claims so as to clearly separate amounts payable in respect of each of the Reimbursable Work and Design Fee and Preliminaries Fee; and
- (vi) within 10 Business Days of a Subcontractor being engaged by the Contractor for the supply of Key Plant and Equipment, provide written notice to the Principal identifying the country listed as the "Relevant country" for that item of Key Plant and Equipment in the list set out in Schedule C6 (*Key Plant and Equipment*) to be the Key Plant and Equipment Country.
- (d) (**Compliance with Law**): The Contractor must in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW).
- (e) (**Novation**): Without limiting clause 11.7(b)(i), the Contractor must ensure that each Subcontract contains provisions which bind the Subcontractor to participate in any novation required by the Principal or the Principal's nominee under clause 18.5(a)(iv)(A) at no cost to the Principal.
- (f) (**Restriction**): The Contractor must not cause, instruct, permit, request or consent to:
 - (i) a variation or amendment to the Subcontract or the work under the Subcontract other than a Permitted Subcontract Variation;
 - (ii) any increase in the amount payable to the Subcontractor under, or for the performance of, the Subcontract works other than the cost of Permitted Subcontract Variations; or
 - (iii) the termination of any Subcontract,
 without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.
- (g) (**Prohibited Subcontractors**): The Contractor must not enter into any Subcontract with a Prohibited Subcontractor.
- (h) (**Approved products**): Without limiting clause 11.7(a), the Contractor acknowledges that the Principal may, in exercising its discretion under clause

11.7(a), consider whether or not the proposed Subcontracts involve the use of approved products required pursuant to the Codes and Standards.

- (i) **(Permitted Subcontract Variations):** Without limiting clause 11.7(f), the Contractor must notify the Principal of any Permitted Subcontract Variation within 5 Business Days of instructing such variation.

11.8 Procedure on Disapproval

- (a) **(Contractor's notice):** If the Principal's Representative disapproves the Contractor's recommended tenderer pursuant to clause 11.7(a), and the Principal's Representative directs the Contractor to accept the tender of another tenderer:

- (i) the Contractor may, within 5 Business Days after the direction of the Principal's Representative, provide notice to the Principal's Representative that the Contractor objects to the selection of the relevant tenderer, provided that the objection may only be on one or more of the following grounds:

- (A) the time for performance of the works the subject of the relevant tender and any impact this may have on the performance of the Contractor's Activities in accordance with this deed;
- (B) the cost proposed by the relevant tenderer and whether this provides Value for Money when considered in connection with the other terms of the relevant tender and the Contractor's recommended tenderer;
- (C) the assessed quality of the relevant tenderer's works and proposal for the works;
- (D) the technical, financial or legal capability and capacity of the relevant tenderer to perform the work the subject of the relevant tender, including the resourcing capability and capacity of the relevant tenderer; and
- (E) the terms of engagement proposed by the relevant tenderer and the risk position required to be accepted by the Contractor in respect of the relevant tender;

- (ii) if the Contractor issues a notice in accordance with clause 11.8(a)(i), the Contractor and the Principal must meet within 5 Business Days of receipt by the Principal of that notice to discuss the Contractor's objections to the relevant tenderer (on the grounds described at clause 11.8(a)(i)(A) to clause 11.8(a)(i)(E), which objections the Principal must reasonably consider) and endeavour in good faith to agree on the tenderer to be selected as the approved tenderer; and

- (iii) within 10 Business Days (or such longer time as agreed between the parties) after the Principal receives the notice from the Contractor under clause 11.8(a)(i), and having reasonable regard to the Contractor's objections, the Principal's Representative must direct the Contractor in writing as to which tender must be accepted.

- (b) **(Approved Tenderer):** Following:

- (i) where the Contractor issues a notice under clause 11.8(a)(i), the direction of the Principal's Representative under clause 11.8(a)(iii); or
- (ii) if the Contractor does not issue a notice under clause 11.8(a)(i), the direction of the Principal's Representative under clause 11.8(a),

the Contractor must:

- (iii) promptly enter into an agreement with the approved tenderer on the basis of:
 - (A) the subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 or the form of subcontract attached to the Tendering Management Plan (as applicable) with only such amendments as the Principal's Representative may have approved in writing; and
 - (B) the subcontract price approved by the Principal's Representative; and
- (iv) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed Subcontract including the Design Documentation relevant to that agreement within 5 Business Days of such request.

11.8A Significant Lump Sum Subcontracts

- (a) **(Principal's Representative's consent):** Subject to clause 11.8A(b), the Contractor must not:
 - (i) enter into;
 - (ii) terminate, surrender, rescind or accept the repudiation of;
 - (iii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
 - (iv) where it may impact the rights or increase the liabilities or obligations of the Principal:
 - (A) enter into any agreement or arrangement which affects the operation or interpretation of; or
 - (B) make or permit any amendment to, or replacement of or waiver of a provision of,

a Significant Lump Sum Subcontract without obtaining the Principal's Representative's prior written consent (which consent must not be unreasonably withheld or delayed), including consent in relation to the form of subcontract

[REDACTED]

proposed to be entered into by the Contractor.

- (b) **(Pre-Approved Subcontractor):** Where a Significant Lump Sum Subcontract is proposed with a Pre-Approved Subcontractor, then clause 11.17 is deemed to apply to those Significant Lump Sum Subcontracts as if they were Subcontracts for Reimbursable Work.

11.9 Subcontractor and Other Warranties

- (a) **(Condition precedent):** As a condition precedent to Opening Completion, the Contractor must procure and provide to the Principal (or, if directed by the Principal,

to the Principal and the AM Contractor) the warranties relevant to each Asset and each Spare Part and as otherwise described elsewhere in this deed:

- (i) from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty;
 - (ii) in favour of, and directly enforceable by, the Principal, the AM Contractor, and any other entity nominated by the Principal's Representative from time to time against the relevant Subcontractor; and
 - (iii) in the form set out in Schedule A5 (*Form of Subcontractor Warranty*) or in another form approved by the Principal and for a warranty period approved by the Principal, having regard to the warranty period that is normally provided in the market in relation to the relevant item.
- (b) (**Warranty**): No warranty from a Subcontractor will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor whether under this deed or otherwise.
- (c) (**Failure to provide warranty**): If the Contractor is unable to or fails for any reason to provide any warranty from a Subcontractor required by this deed:
- (i) the Contractor is deemed to have provided the Subcontractor warranty itself on like terms and is deemed to have satisfied the condition precedent for Opening Completion set out in clause 11.9(a);
 - (ii) the Principal will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights the subject of the warranty against the Subcontractor in relation to the Contractor's Activities; and
 - (iii) for the purpose of clause 11.9(c)(ii), the Contractor irrevocably appoints the Principal as its lawful attorney to execute any instrument necessary to give effect to the assignment.
- (d) (**Assignment**): No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor whether under this deed or otherwise.

11.10 Coordination of Subcontractors

The Contractor must:

- (a) (**Supervision**): administer, supervise, inspect, coordinate and control the work of all Subcontractors engaged by it;
- (b) (**Provision of personnel**): provide and direct all necessary personnel to administer, supervise, inspect, coordinate and control the Subcontracts and all Subcontractors engaged by it;
- (c) (**Contractor's Representative**): appoint a duly qualified person to exercise the functions of the Contractor's Representative under the Subcontracts and otherwise ensure the Subcontracts are administered in accordance with:
 - (i) the terms of the Subcontracts; and
 - (ii) the directions of the Principal's Representative; and

- (d) **(Coordination of activities)**: at all times coordinate the Contractor's Activities and ensure execution and completion of the Subcontracts in a proper and workmanlike manner according to:
 - (i) the Design Documentation which the Contractor is entitled to use for construction purposes under clause 9.10; and
 - (ii) the obligations of the respective Subcontractors.

11.11 Disputes with Subcontractors

If the Contractor has a dispute with a Subcontractor in respect of any aspect of the Contractor's Activities and either the Contractor or the Subcontractor pursues any court action, arbitration, or adjudication application under the SOP Act, then the Contractor will be responsible for carriage of the dispute, provided it must:

- (a) **(Fully informed)**: keep the Principal's Representative fully informed of all aspects of the dispute; and
- (b) **(In accordance with instructions)**: act in accordance with the reasonable instructions of the Principal's Representative (including in respect of lodging any appeals against any decisions made in respect of the dispute).

11.12 Responsibility for Subcontractors

- (a) **(Liability)**: The Contractor will:
 - (i) not be relieved from any of its Liabilities or obligations under this deed; and
 - (ii) remain responsible for all Subcontractors (of any tier) and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any Subcontractors (of any tier) default or otherwise fail to observe or comply with the requirements of the relevant Subcontract, despite:
 - (iii) subcontracting any part of the Contractor's Activities;
 - (iv) any comments upon, consent to or review, approval or disapproval of:
 - (A) a Subcontract Proposal under clause 11.2;
 - (B) Subcontract Tender Documentation under clause 11.3; or
 - (C) a tenderer recommended by the Contractor under clause 11.5(b); or
 - (D) a Significant Lump Sum Subcontract under clause 11.8A, by the Principal or the Principal's Representative;
 - (v) the Principal listing the persons from whom tenders are to be obtained under clause 11.4(a)(iii)(B) for the trade packages listed in Schedule A14 (*Nominated Subcontract Packages*);
 - (vi) any direction by the Principal's Representative under clause 11.8 to accept the tender of a tenderer other than that recommended by the Contractor; or
 - (vii) any other act or omission of the Principal or the Principal's Representative in connection with the subcontracting of any part of the Contractor's Activities.

- (b) **(Termination of agreement):** Subject to clause 11.13 but otherwise without limitation, if a Subcontract is terminated by the Contractor or a Subcontractor, the Contractor must:
 - (i) complete the work the subject of the terminated Approved Subcontract by entering into another Subcontract; and
 - (ii) bear the extra costs incurred by the Contractor in completing this work when compared to the contract price under the terminated Subcontract (including the costs incurred by the Contractor in engaging another person as Subcontractor under clause 11.12(b)(i)), and such extra costs will not form part of the Reimbursable Costs except to the extent the Principal's Representative determines that such costs should be Reimbursable Costs.

11.13 Subcontractor Insolvency

- (a) **(Insolvency Event):** Where an Insolvency Event occurs in relation to a Subcontractor, the Contractor must:
 - (i) promptly notify the Principal's Representative of this fact; and
 - (ii) if the Contractor terminates a Subcontract:
 - (A) promptly notify the Principal's Representative of this; and
 - (B) engage another person as Subcontractor in accordance with this clause 11 to complete the work the subject of the terminated Approved Subcontract.
- (b) **(Costs):** The extra costs incurred by the Contractor in completing this work when compared to the contract price under a terminated Subcontract (including the costs incurred by the Contractor in engaging another person as Subcontractor under clause 11.13(a)(ii)(B)) will not form part of the Reimbursable Costs, except to the extent the Principal's Representative determines that such costs should be Reimbursable Costs.

11.14 Reimbursable Work by Contractor or Related Body Corporate

- (a) **(Written approval):** Other than in respect of the Self-Performed Reimbursable Work set out in Schedule F8 (*Self-Performed Reimbursable Work*), the Contractor must not itself, and must ensure that its Related Body Corporates do not, carry out any part of the Contractor's Activities unless written approval is received from the Principal's Representative that the relevant Contractor's Activities may be carried out as Self-Performed Reimbursable Work.
- (b) **(Particulars):** In order to request written approval from the Principal's Representative pursuant to clause 11.14(a), the Contractor must provide to the Principal's Representative the following particulars in writing and on an Open Book Basis:
 - (i) a detailed scope of the proposed work to be undertaken as Self-Performed Reimbursable Work;
 - (ii) a detailed methodology addressing the following:
 - (A) a description of the resource methodology that will be used to undertake the proposed works;

- (B) details of how the Contractor will ensure that the quality of the proposed works complies with this deed;
 - (C) a statement as to how the Contractor will ensure the proposed works are carried out in an efficient manner; and
 - (D) a description of the information and particulars the Contractor will provide to the Principal's Representative supporting any Payment Claim made by the Contractor for carrying out the proposed works;
- (iii) the fixed price or (where rates are agreed to apply to the work) estimate (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Cost Plan, including details of the applicable formula from Schedule F2 (*Labour Costs*) or if there is no applicable formula, explaining why the formula in Schedule F2 (*Labour Costs*) does not apply and providing details of its proposed rate (which must be exclusive of any margin for overheads or profit) and formula;
 - (iv) the cash flow for the proposed works;
 - (v) the Value for Money for the Principal if the proposed works are undertaken as Self-Performed Reimbursable Work;
 - (vi) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current Contractor's Program;
 - (vii) the proposed project team to undertake the proposed works, including all construction workers, managerial and technical personnel;
 - (viii) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;
 - (ix) the cost of any Materials and equipment the Contractor intends to purchase as part of the Self-Performed Reimbursable Work for use in the proposed works and the proposed rate proposed to be charged for use of such equipment for the purposes of demonstrating that the purchase represents Value for Money; and
 - (x) the type and number of Construction Plant and the anticipated total hours/days the Construction Plant will be used to carry out the proposed works.
- (c) (**Further particulars**): If required by the Principal's Representative the Contractor must provide further particulars prior to the Principal's Representative giving approval for the proposed works to commence.
 - (d) (**Obligations**): In carrying out the Self-Performed Reimbursable Work, the Contractor must:
 - (i) carry out the Self-Performed Reimbursable Work in an efficient manner;
 - (ii) carry out the Self-Performed Reimbursable Work so as to avoid interfering with, disrupting or delaying the work of Subcontractors (of any tier) and Other Contractors;
 - (iii) not vary the work which is the subject of the Self-Performed Reimbursable Work unless the Principal's Representative has directed a Variation under

clause 10 and that Variation relates directly to the work the subject of the Self-Performed Reimbursable Work; and

(iv) with each Payment Claim, provide the Principal's Representative with details of all resources, labour and construction plant, used by the Contractor in the execution of the Self-Performed Reimbursable Work since the previous Payment Claim, which identifies as a minimum:

(A) the part of the Self-Performed Reimbursable Work being performed by the Contractor;

(B) the name of each person performing the work for each part of the Self-Performed Reimbursable Work with details of their labour category, the time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and

(C) details of the type of plant being used for each part of the Self-Performed Reimbursable Work and the number of hours being claimed.

(e) (**Direction**): The Principal's Representative may direct the manner in which the matters described in clause 11.14(d)(iv) are to be recorded.

(f) (**Relevant licences**): The Contractor represents and warrants to the Principal that it holds and will continue to hold all relevant licences to legally execute the Self-Performed Reimbursable Work.

(g) (**Open Book Basis**): The Reimbursable Work (including Self-Performed Reimbursable Work) is to be undertaken on an Open Book Basis and may be subject to an independent third party audit as required by the Principal's Representative.

(h) (**Audits**): The Contractor must cooperate in facilitating any audit under clause 11.14(g), including by making available all necessary records and documents to the Principal's Representative and the auditor to enable an audit to be conducted of the amount properly incurred and payable pursuant to this clause 11.14.

(i) (**Principal will not object**): The Principal's Representative will not object to the Contractor itself or the Related Body Corporate of the Contractor performing the Reimbursable Work provided that:

(i) in the Principal's Representative's opinion doing so represents Value for Money to the Principal, and for the purposes of forming such opinion the Principal's Representative may take into account whether:

(A) the Contractor has followed the procurement process in clauses 11.2(b), 11.2(e) and 11.2(f) for supply of Materials and Construction Plant or other Reimbursable Work over the applicable thresholds specified in clause 11.2(b) (if applicable); and

(B) where a fixed price applies, the Contractor's price is consistent with market rates as reasonably determined by the Principal's Representative; and

(ii) the Principal is satisfied that the Self-Performed Reimbursable Work is to be undertaken on an Open Book Basis in accordance with clause 11.14(g).

(j) (**Subcontracting**): Despite the Self-Performed Reimbursable Work set out in Schedule F8 (*Self-Performed Reimbursable Work*), the Contractor may choose to

subcontract any of the work set out in Schedule F8 (Self-Performed Reimbursable Work), in which case clauses 11.1 to 11.13 will apply.

- (k) **(Pre-approved Self-Performed Reimbursable Work):** The Contractor acknowledges and agrees that:
- (i) the approved Self-Performed Reimbursable Work listed in the table in Schedule F8 (*Self-Performed Reimbursable Work*) does not include:
 - (A) the supply of any Construction Plant and Equipment owned by the Contractor or any Related Body Corporates as at the date of this deed; or
 - (B) any work undertaken by any Related Body Corporate; and
 - (ii) clauses 15.2(s) to 15.2(w) (inclusive) shall apply in relation to any Construction Plant purchased by the Contractor or its Related Body Corporates for the performance of the Contractor's Activities.

11.15 Procurement Management

- (a) **(Procurement Management Plan):** The Contractor must:
- (i) prepare the Procurement Management Plan in accordance with clause 13.13;
 - (ii) carry out the tender processes for Reimbursable Work to be subcontracted:
 - (A) so as to ensure the probity and competitiveness of the tender process; and
 - (B) in accordance with the Procurement Management Plan and Tendering Management Plan; and
 - (iii) comply with any direction by the Principal's Representative concerning the probity and competitiveness of the tender processes for Reimbursable Work.
- (b) **(No relief):** The Contractor will not be relieved from compliance with any of its obligations or from any of its Liabilities whether under this deed or otherwise according to Law as a result of any direction of the Principal's Representative or the Principal's probity auditor concerning the probity and competitiveness of the tender process for Reimbursable Work.

11.16 Provisional Sum Work

- (a) **(Carry out work):** The Contractor must perform or procure the performance of Provisional Sum Work where such work is necessary in order to comply with its obligations under this deed.
- (b) **(Estimate):** For each item of Provisional Sum Work (except for item "P23 – Tolling Equipment Works" in Schedule C2 (*Provisional Sum Work*)), the Principal's Representative may at any time during the performance of the Provisional Sum Work request the Contractor to provide a reasonable estimate of the amount payable for the Provisional Sum Work, including sufficient information to support such estimate on an Open Book Basis.
- (c) **(Compliance with Subcontracting requirements):** With respect to Provisional Sum Work, the Contractor must comply with clauses 11.2 to 11.8 (inclusive) and

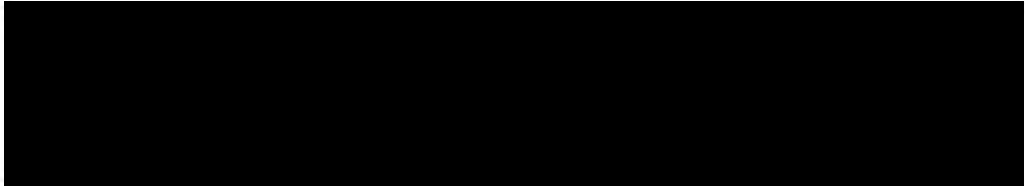
clause 11.12 to clause 11.15 (inclusive) as if each reference in those clauses to Reimbursable Work was a reference to Provisional Sum Work.

- (d) **(Request for lump sum - OMCS):** At any time prior to the completion of the Provisional Sum Work associated with Provisional Sum Item (OMCS), the Principal's Representative may request that the Contractor provide a Lump Sum Price Proposal (as defined below) in respect of Provisional Sum Item (OMCS).
- (e) **(Lump Sum Price Proposal):** Within 15 Business Days of the Principal's Representative's request under clause 11.16(d), provided that the Principal's Representative has given the Contractor such information regarding the OMCS Works as is reasonably required in order to provide a lump sum price for Provisional Sum Item (OMCS), the Contractor must submit to the Principal's Representative a lump sum price proposal for all components of Provisional Sum Item (OMCS) that have not yet been completed, which includes:
 - (i) a reasonable and detailed cost breakdown for the lump sum price, which:
 - (A) must be calculated by applying the rates or prices under any relevant Subcontract (as applicable); and
 - (B) specify the Contractor's proposed [REDACTED]
[REDACTED]
[REDACTED]; and
 - (ii) sufficient information to support such lump sum proposal on an Open Book Basis.

(Lump Sum Price Proposal).

- (f) **(Adjustment):** Within 20 Business Days of the Contractor's submission of a Lump Sum Price Proposal, the Principal's Representative may, by notice in writing to the Contractor, elect to proceed with the Lump Sum Price Proposal for the Provisional Sum Item (OMCS), in which case:
 - (i) the OMCS Works will no longer constitute Provisional Sum Work and will constitute Reimbursable Work; and
 - (ii) it will be a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] will be calculated as either:
 - (A) an amount agreed between the Contractor and the Principal's Representative; or
 - (B) if the parties fail to agree, an amount valued by the Principal's Representative having regard to the Lump Sum Price Proposal, the relevant formulas and rates referred to in clause 11.16(e)(i) for the Provisional Sum Item (OMCS), any other relevant market rates and prices and the valuation mechanics in clause 4.

- (g) **(Payment):** The Contractor will be entitled to be paid:
- (i) in relation to Provisional Sum Items other than item "PS3 – Tolling Equipment Works" in Schedule C2 (*Provisional Sum Work*):
 - (A) the actual costs incurred by the Contractor in carrying out the Provisional Sum Work (as if such costs were Reimbursable Costs); and
 - (B) an amount calculated by multiplying the amount payable under clause 11.16(e)(i) by the Management Fee Percentage; and



11.17 **Pre-Approved Subcontracts**

- (a) **(Submit):** Unless the form of Subcontract has been approved by the Principal prior to the date of this deed in the form the Contractor proposes be executed, the Contractor must submit a copy of the terms on which it proposes to engage any Pre-Approved Subcontractor for Reimbursable Work to the Principal's Representative for approval within 60 Business Days prior to the intended execution of the relevant Pre-Approved Subcontract.
- (b) **(Review):** The Principal must review and provide comments on the terms provided by the Contractor under clause 11.17(a) within 20 Business Days of receipt.
- (c) **(Amend):** The Contractor must subsequently amend the proposed terms as reasonably required by the Principal's Representative.
- (d) **(Enter Pre-Approved Subcontract):** The Contractor must promptly enter into an agreement with a Pre-Approved Subcontractor on the basis of the terms approved by the Principal's Representative.

12. **DEFECTS, INSPECTION AND REPAIR**

12.1 **Defects**

- (a) **(Written notice):** The Contractor must:
 - (i) keep accurate records; and
 - (ii) on request by the Principal's Representative or the Independent Certifier, provide a written report,

in respect of:
 - (iii) any Defect it detects or which are otherwise notified to the Contractor (including as notified by the Principal or the Independent Certifier); and
 - (iv) all action proposed to correct that Defect, including the estimated time required.

- (b) **(Contractor to correct):** Subject to clause 12.1(d) but without limiting any other obligation of the Contractor to correct Defects, the Contractor must:
 - (i) in respect of each Handover Portion, correct all Mandatory Defects as a pre-condition to Handover Completion;
 - (ii) in respect of the Project Works, correct all Mandatory Defects as a pre-condition to Opening Completion; and
 - (iii) in respect of Completion, correct all Defects as a pre-condition to Completion, including correcting any Defects in the Project Works or a Defect in a Handover Portion which existed at the time of issue of the Notice of Handover Completion or Notice of Opening Completion was issued.
- (c) **(Defects Correction Period):** Subject to clause 12.2(a), the Contractor must correct all Defects arising prior to the expiry of the relevant Defects Correction Period whether or not the Principal's Representative or the Independent Certifier notifies the Contractor of them, including correcting any Defects in a Handover Portion or the Project Works which existed at the time of issue of the Notice of Handover Completion, Notice of Opening Completion or Notice of Completion.
- (d) **(Principal direction):** Where a Defect is identified which prevents the Contractor from achieving Handover Completion or Opening Completion, the Principal may (in its absolute discretion) issue a direction permitting the Defect to be rectified after Opening Completion.

12.1A Defect Process

- (a) **(Defect Report):** On the first Business Day of each month, commencing in the first month during which a Defect or alleged Defect is notified in accordance with clause 12.1 until the expiry of the final Defects Correction Period, the Contractor must submit a report to the Independent Certifier and the Principal's Representative including the details required to be set out in the Defects register referred to in Appendix C.7 to the SWTC in relation to all matters which:
 - (i) the Contractor has detected as being Defects; or
 - (ii) the Principal or the Independent Certified have notified the Contractor constitute Defects;
 up to five Business Days prior to the end of the relevant month (**Defect Report**).
- (b) **(Disagreement with notified Defects):** For each matter notified in the Defect Report, the Contractor must identify in the Defect Report whether it:
 - (i) agrees the matter is a Defect; or
 - (ii) disagrees that the matter is a Defect and provide any evidence and reasons for its disagreement.
- (c) **(Principal's consideration):** Within 5 Business Days of receiving the Defects Report issued under clause 12.1A(a), the Principal's Representative must notify the Contractor whether, in respect of each matter identified in accordance with clause 12.1A(ii), the Principal's Representative considers that the relevant matter:
 - (i) is not a Defect; or
 - (ii) is a Defect and provide any evidence and reasons for this conclusion.

- (d) **(Contractor response)**: Within 5 Business Days of receiving the notice issued under clause 12.1A(c)(ii), the Contractor must notify the Principal's Representative that either:
 - (i) it agrees that the relevant matter is a Defect; or
 - (ii) it disagrees the relevant matter is a Defect and refer the question as to the existence, nature and extent of the Defect to dispute pursuant to clause 19.
- (e) **(Deemed acceptance)**: The Contractor acknowledges and agrees that where the Contractor fails to provide a notice required under either clause 12.1A(b)(ii) or clause 12.1A(d)(ii), the Contractor shall be deemed to have issued a notice under clause 12.1A(b)(i) or clause 12.1A(d)(i) (as applicable) and that the relevant matters that are deemed to be Defects.
- (f) **(Failure to report)**: If the Contractor fails to include a matter in the Defects Report that has been notified by the Principal or the Independent Certifier in accordance with clause 12.1A(a)(ii), any such matter is deemed to be a Defect.

12.2 **Principal's Representative's direction**

- (a) **(Correction or acceptance)**: If prior to or during the relevant Defects Correction Period, the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 12.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give the Contractor a direction specifying the Defect and doing one or more of the following:
 - (i) requiring the Contractor to correct the Defect or a part of it and specifying the time within which this must occur;
 - (ii) requiring the Contractor to carry out a Variation to overcome the Defect or a part of it and specifying the time within which this must be carried out;
 - (iii) advising the Contractor that the Principal will accept the work or a part of it despite the Defect;
 - (iv) in respect of any Defect:
 - (A) to which clause 12.3(g) applies; or
 - (B) subject to clause 12.2(c), discovered during a Defects Correction Period,
advising the Contractor that:
 - (C) an Other Contractor will correct (or has corrected) the Defect, or any part of it; or
 - (D) the Principal will procure that an Interface Contractor is directed to carry out a change or variation under its contract with the Principal to overcome the Defect or a part of the Defect; or
 - (v) where the AM Contractor is required to carry out a repair or temporary fix in accordance with the Asset Manager Interface Deed:
 - (A) advising the Contractor that the AM Contractor has carried or will carry out the repair or temporary fix; and

- (B) if relevant, requiring the Contractor to complete the correction of the Defect (or part of it) and specifying a reasonable time within which this must occur.
- (aa) (**Operational impact review**): Before the Principal issues a direction under clause 12.2(a):
- (i) the Principal may (in its absolute discretion) notify the Contractor that it requires an operational impact review be undertaken by the AM Contractor in relation to a Defect that the Principal considers should be reviewed by the AM Contractor to assess the impact of the Defect on the operations of the Motorway and inform the Principal's election under clause 12.2(a); and
 - (ii) if the Principal issues a notice under clause 12.2(aa)(i), the Contractor must:
 - (A) notify the AM Contractor that the Principal has identified a Defect as contemplated in clause 12.2(aa)(i) and requires an operational impact review be undertaken by the AM Contractor pursuant to (as at the date of this deed) clause 6.1(d) of the scope of services in the AM Contractor's deed with the Principal; and
 - (B) co-operate with and provide all reasonable assistance to the AM Contractor and the Principal (including by doing such things as giving access to the Site, plant and equipment, producing and giving access to documents and answering any relevant questions).
- (b) (**Timing of correction**): In determining the times at which the Contractor is required to correct a Defect or carry out a Variation for the purposes of this clause, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities which any Other Contractor or Existing Operator may be carrying out in discharge of its obligations under its contract with the Principal.
- (c) (**Direction**): Except where the Principal's Representative considers that a Defect is an Urgent Defect or the Contractor is in breach of clause 8.5 or clause 8.6, the Principal's Representative may not direct:
- (i) an Other Contractor to rectify a Defect, or any part of a Defect pursuant to clause 12.2(a)(iv)(C); or
 - (ii) an Interface Contractor to carry out a change or variation under its contract with the Principal (as applicable) to overcome the Defect or a part of the Defect pursuant to clause 12.2(a)(iv)(D),
- unless the Principal's Representative has first given the Contractor a direction under clause 12.2(a)(i) and the Contractor has:
- (iii) failed to comply with such direction; or
 - (iv) otherwise failed to comply with its obligations under clause 12.3(a) in relation to such Defect.
- (d) (**Urgent Defect**): Where the Principal's Representative considers that a Defect is an Urgent Defect or the Contractor is in breach of clause 8.5 or clause 8.6, the Principal's Representative may give the Contractor a direction under clause 12.2(a)(iv) whether or not a direction has first been given under clause 12.2(a)(i).

12.3 Correction of Defect or Variation

- (a) **(Contractor to correct Defect):** If a direction is given under clause 12.2(a)(i) or 12.2(a)(ii) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, the Contractor must correct the Defect (or the part of it) or carry out the Variation (as applicable):
- (i) promptly and in any event within the time specified in the Principal's Representative's direction;
 - (ii) at times notified by the Principal's Representative;
 - (iii) in accordance with the requirements of any relevant Authority;
 - (iv) so as to minimise the impact on the use of the relevant part of the Project Works;
 - (v) in a manner which causes as little inconvenience as possible to the activities:
 - (A) which any Interface Contractor may be carrying out in discharge of its obligations under its contract with the Principal; and
 - (B) of users of the Project Works or any access and the adjacent community;
 - (vi) subject to clause 16.7, at the Contractor's risk in respect of any restrictions on access;
 - (vii) if an Other Contractor has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing any Interface Works or operating and maintaining any part the Project Works, in accordance with the requirements of the relevant Other Contractor in relation to access and site safety;
 - (viii) in accordance with its obligations under any relevant Interface Deed; and
 - (ix) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect.
- (b) **(Notice when corrected):** The Contractor must give written notice to the Principal and the Independent Certifier promptly after it considers that a Defect has been corrected.
- (c) **(Joint Inspection):** The Independent Certifier, the Principal's Representative and the Contractor's Representative must, within 5 Business Days after receipt of a notice given under clause 12.3(b), inspect the relevant Defect at a mutually convenient time.
- (d) **(Determination by Independent Certifier):** The Independent Certifier must, within 10 Business Days after receipt of a notice under clause 12.3(b) or clause 12.3(e), either:
- (i) provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form set out in Part P of Schedule B7 (*Form of Certificates*) certifying that the Defect has been corrected; or

- (ii) issue a notice to the Contractor and the Principal in which it states the items which remain to be completed before the Defect is corrected.
- (e) (**Resubmission**): If the Independent Certifier issues a notice under clause 12.3(d)(ii), the Contractor must continue with the correction of the Defect and when it considers that it has corrected the Defect, clauses 12.3(b), 12.3(c), 12.3(d) and this clause 12.3(e) will reapply.
- (f) (**Obligations unaffected**): A certificate issued by the Independent Certifier under clause 12.3(d)(i) will not:
 - (i) relieve the Contractor of any of its obligations under this deed; or
 - (ii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.
- (g) (**Non-compliance**): If the Contractor does not comply with clause 12.3(a), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this deed or otherwise at Law, give the Contractor a direction under clause 12.2(a)(iv) and have the correction or variation work carried out at the Contractor's expense, and the cost of the correction or Variation work incurred by the Principal will be a debt due and payable from the Contractor to the Principal.
- (h) (**Attendees and comments**): The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 12.3 (including any relevant Interface Contractors); and
 - (ii) the Principal's Representative may provide comments to the Independent Certifier (with a copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with this deed, including comments made by any Interface Contractor.

12.4 **Acceptance of work or rectification by others**

- (a) (**Rectification and recovery**): If a direction is given under clause 12.2(a)(iii) or clause 12.2(a)(iv)(C) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the Contractor is responsible for the Defect (or the part of it), the amount which represents:
 - (i) the diminution in value of the Project Works arising from the Defect (in respect of clause 12.2(a)(iii)); or
 - (ii) the reasonable cost of correcting the Defect (or the part of it) (in respect of clause 12.2(a)(iv)(C)),
 as stated by the Principal's Representative will become a debt due and payable by the Contractor to the Principal.
- (b) (**Temporary fix**): If the AM Contractor carries out a repair or temporary fix in accordance with the Asset Manager Interface Deed, the costs incurred by the Principal in having the AM Contractor do so will be a debt due and payable from the Contractor to the Principal. The Principal must take reasonable steps to mitigate such costs.

12.5 Variations under other contracts to overcome Defects

If a direction is given by the Principal's Representative under clause 12.2(a)(iv)(D):

- (a) **(Indemnity)**: the Contractor must indemnify the Principal from and against any Costs incurred by the Principal arising out of or in connection with the change or variation directed by the Principal under the relevant Interface Works Contract or other contract (as applicable) to the extent necessary to overcome the Defect (or the part of it); and
- (b) **(Exclusion)**: clause 12.4 will not apply with respect to the Defect the subject of that direction.

12.6 Main Motorway Works

The Main Motorway Works have:

- (a) **(Defects Correction Period)**: a Defects Correction Period of 24 months, which commences on the Date of Opening Completion; and
- (b) **(Further Defects Correction Period)**: in respect of any work the subject of a direction under clauses 12.2(a)(i), 12.2(a)(ii) or 12.2(a)(iv) during the 12 month period prior to the expiry of the original Defects Correction Period, a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Variation and continues for 12 months,

provided that no Defects Correction Period for the Main Motorway Works will extend beyond the date that is 36 months after the Date of Opening Completion.

12.7 Local Area Works

- (a) **(Defects Correction Period)**: Each discrete part of the Local Area Works has:
 - (i) a Defects Correction Period of 12 months, which begins when the relevant Works are complete (being the date notified under clause 12.7(d)(i)); and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i), clause 12.2(a)(ii), or clause 12.1(a)(iv) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Variation,

provided that no Defects Correction Period for any discrete part of the Local Area Works will extend beyond the date that is 24 months after the date notified under clause 12.7(d)(i) as the date on which the relevant part of the Local Area Works were completed.

- (b) **(Area by area basis)**: The completion of the Local Area Works will be assessed on an area by area basis in accordance with clauses 12.7(c) and 12.7(d).
- (c) **(Joint inspection)**: When the Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative and the Independent Certifier in writing and the Principal's Representative, the Independent Certifier, the Contractor's Representative and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.
- (d) **(Independent Certifier's determination)**: Following the joint inspection under clause 12.7(c) and subject to clause 12.7(e), the Principal and the Contractor

acknowledge that the Independent Certifier will determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the requirements of any relevant Third Party Agreement (if applicable) and will notify the Contractor and the Principal in writing and within five Business Days after the date of the inspection (or such longer period permitted under any relevant Third Party Agreement):

- (i) if the discrete part is complete, of the date on which the Contractor has completed the discrete part of the Local Area Works in accordance with this deed, which subject to clause 12.7(f)(i), will be the relevant date for the purposes of clause 12.7(a)(i); or
 - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 12.7(c) and this clause 12.7(d) will reapply).
- (e) **(Certificate)**: Each discrete part of the Local Area Works will not be regarded as complete unless the Independent Certifier has executed and provided to the Principal's Representative a certificate in the form of Schedule B6 (*Independent Certifier's Certificate – Completion of Local Area Works*) with respect to the discrete part of the Local Area Works.
- (f) **(Condition precedent)**: It is a condition precedent to:
- (i) the commencement of the Defects Correction Period for a discrete part of the Local Area Works that the Contractor provide the Principal's Representative with:
 - (A) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; or
 - (B) if the Contractor is unable to obtain a notice required under clause 12.7(f)(i)(A) despite having used its best endeavours to do so, a statement from the Contractor to the effect that:
 - (aa) the discrete part of the Local Area Works is complete and the Contractor has notified the relevant Authority of this matter; and
 - (bb) the relevant Authority has failed or refused to provide the written notice required under clause 12.7(f)(i)(A) despite being given 15 Business Days to provide the notice requested by the Contractor; and
 - (ii) Opening Completion that the written notices or statements required under clause 12.7(f)(i) have been provided to the Principal's Representative for all discrete parts of the Local Area Works.

12.8 Utility Service Works

- (a) **(Defects Correction Period)**: Each discrete part of the Utility Service Works not handed over to the Principal has:
- (i) a Defects Correction Period of 12 months, which begins when:
 - (A) the relevant Utility Service Authority which has jurisdiction in respect of the Utility Service gives written notice that the work is complete; or

(B) if the Contractor is unable to obtain a notice required under clause 12.8(a)(i)(A) despite having used its best endeavours to do so, a written statement from the Contractor to the effect that:

(aa) the discrete part of the Utility Service Works is complete and the Contractor has notified the relevant Utility Service Authority of this matter; and

(bb) the relevant Utility Service Authority has failed or refused to provide the written notice required under clause 12.8(a)(i)(A) despite being given 15 Business Days to provide the notice requested by the Contractor,

and the Principal's Representative has been provided with a copy of the notice or statement; and

(ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i), clause 12.2(a)(ii) or clause 12.2(a)(iv) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins:

(A) when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected or the Variation completed and the Principal's Representative has been provided with a copy of the notice; or

(B) if the relevant Utility Service Authority fails or refuses to give the notice required under clause 12.8(a)(ii)(A), when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Variation completed,

provided that no Defects Correction Period for any discrete part of the Utility Service Works will extend beyond the date that is 24 months after the date of the applicable notice or statement given under clause 12.8(a)(i).

(b) **(Condition precedent to Opening Completion):** It is a condition precedent to Opening Completion, that:

(i) a written notice of the kind referred to in clause 12.8(a)(i) has been given for each discrete part of the Utility Service Works and the Principal's Representative has been provided with a copy of each such notice; or

(ii) the Contractor has:

(A) used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 12.8(a)(i)(A); and

(B) provided the Principal's Representative with a written statement of the kind referred to in clause 12.8(a)(i)(B).

12.9 Property Works

Each discrete part of the Property Works has:

(a) **(Defects Correction Period):** a Defects Correction Period of 12 months, which begins upon:

(i) the completion of the Property Works; or

- (ii) submission by the Contractor of a certificate or signed statement (as applicable) to the Principal's Representative under clause 7.8(a)(ii),

whichever is the later; and

- (b) **(Further Defects Correction Period):** a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i), clause 12.2(a)(ii) or clause 12.1(a)(iv) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Variation (as applicable),

provided that no Defects Correction Period for any discrete part of the Property Works will extend beyond the date that is 24 months after the date of the applicable certificate or signed statement given under clause 7.8(a)(ii).

12.10 Delivery Phase Maintenance

Any Works carried out as part of the Delivery Phase Maintenance have:

- (a) **(Defects Correction Period):** a Defects Correction Period which begins when the relevant Works are completed and which expires 12 months after the Date of Opening Completion; and
- (b) **(Further Defects Correction Period):** a further Defects Correction Period of the period specified of 12 months in respect of any work the subject of a direction under clauses 12.2(a), 12.2(a)(ii) and 12.2(a)(iv) (relating to the discrete part of works carried out pursuant to the Delivery Phase Maintenance) during the Defects Correction Period, which begins on the date of correction of the Defect (or part of it),

provided that the Defects Correction Period under this clause 12.10 will not extend beyond the date that is 24 months after the Date of Opening Completion.

12.10A Handover Portions

The Handover Portions have:

- (a) **(Defects Correction Period):** a Defects Correction Period of 24 months, which commences on the Date of Handover Completion for the relevant Handover Portion; and
- (b) **(Further Defects Correction Period):** in respect of any work the subject of a direction under clauses 12.2(a)(i), 12.2(a)(ii) or 12.2(a)(iv) during the 12 month period prior to the expiry of the original Defects Correction Period, a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Variation and continues for 12 months,

provided that no Defects Correction Period for the Handover Portions will extend beyond the date that is 36 months after the Date of Handover Completion for the relevant Handover Portion.

12.11 Failure by the Contractor to comply with direction

- (a) **(Non-compliance):** If the Contractor does not comply with a direction referred to in clause 12.2(a)(i), clause 12.2(a)(ii) or clause 12.1(a)(iv), the Principal may employ others to carry out that direction.
- (b) **(Debt):** Without limiting clauses 12.4 and 12.5, the Loss suffered or incurred by the Principal arising out of or in connection with taking the action contemplated in clause

12.11(a) or as a result of the Contractor's failure to comply with clause 12.3(a) will be a debt due and payable from the Contractor to the Principal.

12.12 **Rights not affected**

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

- (a) **(Rights)**: the rights conferred upon the Principal or the Principal's Representative by this clause 12 or any other provision of this deed;
- (b) **(Exercise)**: the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights;
- (c) **(Direction)**: any direction of the Principal's Representative under clause 12.2;
- (d) **(Correction of Defect)**: the correction of a Defect by an Other Contractor as directed by the Principal's Representative under clause 12.2(a)(iv); or
- (e) **(Acceptance of Defect)**: the Principal accepting the work or part of it despite the Defect pursuant to clause 12.2(a)(iii).

12.13 **Use of defective facilities**

The Contractor must not allow the use of any part of the Project Works or Temporary Works which the Contractor knows is defective or unsafe and which threatens the health or safety of people.

12.14 **Final inspections of Project Works**

- (a) **(Final inspection)**: The Contractor, the Principal's Representative and any person nominated by the Principal's Representative, will carry out a final inspection of the relevant part of the Project Works (other than the Third Party Works) one month before the end of the original Defects Correction Period in respect of the relevant part of the Project Works (**Final Inspection**).
- (b) **(Written notice)**: Within 10 Business Days after a Final Inspection, the Principal's Representative may give the Contractor written notice of any Defects which the Principal's Representative observed during the Final Inspection or of which they are otherwise aware.
- (c) **(Direction)**: The Principal may give a notice under clause 12.2 in respect of any such Defect notified under clause 12.14(b).

12.15 **Final inspections of the Third Party Works**

- (a) **(Final inspection)**: The Contractor, the Principal's Representative and applicable Authorities, will carry out a final inspection of each discrete part of the Third Party Works three months before the end of the original Defects Correction Period for the relevant discrete part of the Third Party Works (or at such other time specified by the relevant Third Party Agreement) (**Final Third Party Works Inspection**).
- (b) **(Direction)**: If the Principal's Representative or applicable Authority identifies any Defects during the Final Third Party Works Inspection, the Principal may give a notice under clause 12.2 in respect of such Defect.

13. **ADMINISTRATION**

13.1 **Principal's Representative**

- (a) **(Principal's Representative)**: The Principal must ensure that at all times until the date of expiry of the final Defects Correction Period in relation to the Project Works there is a Principal's Representative.
- (b) **(Agent of Principal)**: The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.
- (c) **(Discretion of Principal's Representative)**: A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this deed if it is exercised or made by the Principal's Representative (or if the Principal's Representative elects not to exercise the discretion, power or make the decision):
 - (i) independently;
 - (ii) after consultation with the Principal and its advisers; or
 - (iii) as directed by the Principal.
- (d) **(Proper exercise of power - no Claim)**: Any control or influence exercised by the Principal over the Principal's Representative does not:
 - (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
 - (ii) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.
- (e) **(Contractor must comply)**: The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this deed.
- (f) **(Oral direction)**: Except where this deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (g) **(Directions)**: Subject to clauses 13.4(c)(iii) and 13.4(c)(iv), but despite any other provision of this deed, a direction under this deed can only be given by the Principal's Representative, and if a person other than the Principal's Representative purports to do so:
 - (i) the Principal is not bound by the purported direction; and
 - (ii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any such purported direction.
- (h) **(Principal's direction - no Claim)**: Subject to clause 13.1(i) and its express rights under this deed, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in connection with any such direction by the Principal's Representative in circumstances where it is incorrect,

subsequently overturned pursuant to clause 19 or is unreasonable (other than in accordance with the corrected determination).

- (i) **(Notice of dispute)**: The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a Notice of Dispute in accordance with clause 19.3.

13.2 Replacement of the Principal's Representative

- (a) **(Appointment of replacement)**: The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.
- (b) **(Replacement Principal's Representative bound)**: Any substitute Principal's Representative appointed under this clause 13.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

13.3 Delegation of Functions

- (a) **(Delegation by Principal's Representative)**: The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed;
 - (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) revoke any appointment under clause 13.3(a)(i) by notice in writing to the Contractor.
- (b) **(Principal's Representative retains functions)**: The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 13.3(a)(i).
- (c) **(Appointed persons)**: All references in this deed to the Principal's Representative include a reference to an appointee appointed under clause 13.3(a)(i).

13.4 Appointment of Principal's Surveillance Officer

- (a) **(Appointment)**: The Principal's Representative may:
 - (i) by written notice to the Contractor appoint one or more officers to perform the surveillance functions identified in clause 13.4(b) (each a **Principal's Surveillance Officer**);
 - (ii) revoke or vary any appointment under clause 13.4(a)(i) by notice in writing to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing a Principal's Surveillance Officer to exercise the function under clause 13.4(b)(i).

- (b) **(Functions of Principal's Surveillance Officer):** The functions of a Principal's Surveillance Officer may be all or any of the following:
- (i) monitoring the Contractor's Activities, Project Works and Temporary Works including:
 - (A) product quality;
 - (B) quality management and verification;
 - (C) environmental management;
 - (D) work health and safety;
 - (E) Chain of Responsibility Provisions compliance;
 - (F) control of traffic;
 - (G) community relations;
 - (H) defects and defect rectification;
 - (I) compliance with Third Party Agreements; and
 - (J) commissioning and testing;
 - (ii) monitoring the Contractor's compliance with the Project Documents;
 - (iii) monitoring the Independent Certifier's surveillance of the Contractor's Activities;
 - (iv) reporting the findings of its monitoring activities under clauses 13.4(b)(i), 13.4(b)(ii) and 13.4(b)(iii) from time to time to the Principal.
- (c) **(Agent of Principal):** The parties acknowledge and agree that:
- (i) the Principal's Surveillance Officers act at all times as the servant or agent of the Principal and are subject to the directions of the Principal and will act solely in the interests of the Principal;
 - (ii) subject to clause 13.4(c)(iii), a Principal's Surveillance Officer is not entitled to issue a direction to the Contractor, and if a Principal's Surveillance Officer purports to do so:
 - (A) the Principal is not bound by the purported direction; and
 - (B) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any such purported direction;
 - (iii) a Principal's Surveillance Officer is entitled to issue a direction to the Contractor under clause 8.5(b) and the Contractor must comply with any direction by a Principal's Surveillance Officer given or purported to be given under clause 8.5(b); and
 - (iv) a Principal's Surveillance Officer is entitled to issue a direction to the Contractor under this deed on behalf of the Principal in relation to a Defect or failure to comply with a requirement of this deed relating to quality, health and safety or the Environment.

13.5 Contractor's Personnel

- (a) **(Representative required):** The Contractor must ensure there is a Contractor's Representative for the purposes of this deed who will act as a representative of and be authorised to act on behalf of the Contractor in discharging the Contractor's functions under this deed.
- (b) **(Contractor must notify):** The Contractor's Representative at the date of this deed is the relevant person listed in Schedule A1 (*Contract Particulars*), and the Contractor must notify the Principal in writing of any changes to the Contractor's Representative.
- (c) **(Engagement of Contractor's personnel):** The Contractor must:
 - (i) employ or otherwise engage the individuals nominated by the Contractor and listed in Schedule A6 (*Contractor's Personnel*) in the positions specified in Schedule A6 (*Contractor's Personnel*) or equivalent positions;
 - (ii) subject to clause 13.5(c)(iii), not replace the individuals referred to in clause 13.5(c)(i) without the Principal's Representative's prior written approval, which will not be unreasonably withheld;
 - (iii) if any of the individuals referred to in clause 13.5(c)(i):
 - (A) dies;
 - (B) becomes unable to continue in their positions due to illness;
 - (C) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any Related Body Corporate of the Contractor); or
 - (D) becomes the subject of a direction under clause 13.5(d),replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and
 - (iv) without limiting clauses 13.5(c)(i), 13.5(c)(ii) or 13.5(c)(iii), ensure that the:
 - (A) positions specified in Schedule A6 (*Contractor's Personnel*) as full-time, dedicated positions are full-time, dedicated positions; and
 - (B) individuals who occupy the full-time, dedicated positions specified in Schedule A6 (*Contractor's Personnel*) apply themselves fully to the position to the exclusion of all other work,until the Date of Completion or such earlier time as may be approved by the Principal's Representative.
- (d) **(Direction to remove):** The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 13.5(a) or clause 13.5(c)) from the Construction Site and the Contractor's Activities.
- (e) **(Removal of personnel):** If the Principal's Representative issues a notice in accordance with clause 13.5(d), the Contractor must:
 - (i) then cease to engage that person in the Contractor's Activities and must appoint a replacement; and

- (ii) ensure that any person the subject of a direction under clause 13.5(d) is not again employed in the Contractor's Activities or on the Construction Site.
- (f) (**Directions**): Any direction or notification given under this deed will be deemed to have been given to the Contractor if given to the Contractor's Representative.
- (g) (**Knowledge of the Contractor**): Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.
- (h) (**Minimum limits of delegation**): The Contract must ensure that at all times:
 - (i) the Contractor's Commercial Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii) has the authority to participate in negotiations and discussions in relation to Claims of up to [REDACTED] without requiring further internal approvals;
 - (ii) the Contractor's Representative has the authority to make decisions that bind the Contractor in relation to Claims of up to [REDACTED] without requiring further internal approvals; and
 - (iii) its representatives on the Management Review Group have the authority to make decisions that bind the Contractor in relation to Claims of up to [REDACTED] without requiring further internal approvals, and the authority specified in clause 13.23(d).

13.6 Design development meetings

- (a) (**Design meetings**): The Contractor must hold weekly meetings of its design team including the Designers (unless otherwise agreed with the Principal).
- (b) (**Reasonable notice**): The Contractor must give reasonable notice to the Principal's Representative of the design meetings referred to in clause 13.6(a), and of any other meetings at which design issues are to be discussed to enable the Principal's Representative, its delegate and any representatives of any Other Contractor to attend, and the Principal may request the Contractor to ensure the presence at the meeting of any relevant persons from any of the Contractor's Subcontractors involved in the design of any part of the Project Works.
- (c) (**Meeting formalities**): The Contractor must give the Principal's Representative:
 - (i) an agenda prepared in consultation with or as directed by the Principal's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
 - (ii) minutes of each design meeting within 48 hours after each meeting.
- (d) (**No reliance**): Neither party may rely on such agenda or minutes of meeting as a document constituting or evidencing the giving or receipt of a notice or a direction required to be given under or in accordance with this deed.

13.7 Site Meetings

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

- (a) (**Weekly**): prior to the Date of Opening Completion, weekly or at such longer intervals as may be directed in writing by the Principal's Representative; and

- (b) (**Monthly**): after the Date of Opening Completion, at monthly intervals until all Defects Correction Periods (including any extension), have expired or at such other intervals as may otherwise be agreed between the parties;

13.8 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) (**Appointment**): the Independent Certifier has appointed the Environmental Representative as required by the Planning Approval;
- (b) (**Role**): the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) will oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) will advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) will have the authority and independence to:
 - (A) direct the Contractor; or
 - (B) advise the Principal's Representative to direct the Contractor,the reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts so as to comply with the Planning Approval;
- (c) (**Contractor must comply**): it must comply with the lawful directions of the Environmental Representative or the Principal's Representative as contemplated by clause 13.8(b)(iv);
- (d) (**No Claim**): it is not entitled to make, and none of the Principal, the Principal's Representative, Independent Certifier, or the Environmental Representative will be liable upon, any Claim arising out or in any way in connection with such directions; and
- (e) (**Information and Access**): it must provide the Environmental Representative with all information and documents and allow the Environmental Representative:
 - (i) to attend meetings; and
 - (ii) to access such premises,as may be:
 - (iii) necessary or reasonably required by the Environmental Representative or the Principal to allow the Environmental Representative to perform its obligations under the Independent Certifier Deed; or
 - (iv) lawfully requested by the Environmental Representative or directed by the Principal; and

- (f) **(Acts or omissions)**: no act or omission of the Environmental Representative, including any certification by the Environmental Representative, will:
 - (i) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the Project Documents; or
 - (ii) entitle the Contractor to make any Claim against the Principal.

13.9 **Acoustics Advisor**

The Contractor acknowledges and agrees that:

- (a) **(Appointment)**: The Principal has appointed or procured the appointment of the Acoustics Advisor as required by the Planning Approval;
- (b) **(Role)**: the Acoustics Advisor:
 - (i) is independent of the parties;
 - (ii) will oversee the implementation of all noise and vibration management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) will advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) will have the authority and independence to:
 - (A) direct the Contractor as to; or
 - (B) advise the Principal's Representative to direct the Contractor as to, reasonable steps the Contractor must take to avoid or minimise unintended or adverse noise and vibration impacts so as to comply with the Planning Approval;
- (c) **(Contractor must comply)**: it must comply with the directions of the Acoustics Advisor or the Principal's Representative as contemplated by clause 13.9(b)(iv);
- (d) **(No Claim)**: it is not entitled to make, and none of the Principal, the Principal's Representative or the Acoustics Advisor will be liable upon, any Claim arising out or in any way in connection with such directions referred to in clause 13.9(c);
- (e) **(Information and access)**: it must provide the Acoustics Adviser with all information and documents and allow the Acoustics Adviser:
 - (i) to attend meetings; and
 - (ii) to access such premises, as may be:
 - (iii) necessary or reasonably required by the Acoustics Adviser or the Principal to allow the Acoustics Adviser to perform its obligations under their deed of appointment; or
 - (iv) lawfully requested by the Acoustics Adviser or directed by the Principal; and

- (f) **(Acts or omissions)**: no act or omission of the Acoustics Adviser, including any certification by the Acoustics Advisor, will:
 - (i) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the Project Documents; or
 - (ii) entitle the Contractor to make any Claim against the Principal.

13.9A **Proof Engineer**

- (a) **(Appointment)**: The Contractor must engage one or more Proof Engineers for the design of certain aspects of the Temporary Works and for the design of structures that contain complex structure elements in the Project Works in accordance with section 4.8 of the SWTC.
- (b) **(No Claim under this deed)**: No act or omission of a Proof Engineer, including any certification by the Proof Engineer, will:
 - (i) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the Project Documents; or
 - (ii) entitle the Contractor to make any Claim against the Principal.

13.9B **Independent Checking Engineer**

- (a) **(Appointment)**: The Contractor must engage one or more Independent Checking Engineers in accordance with section 4.8 of the SWTC.
- (b) **(No Claim under this deed)**: No act or omission of an Independent Checking Engineer, including any certification by the Independent Checking Engineer, will:
 - (i) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the Project Documents; or
 - (ii) entitle the Contractor to make any Claim against the Principal.

13.10 **Independent Certifier**

- (a) **(Engagement)**: The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) **(Independent Certifier Deed)**: The Contractor acknowledges and agrees that:
 - (i) the Independent Certifier Deed may be executed after the commencement of this deed;
 - (ii) the Contractor must execute the Independent Certifier Deed within 5 Business Days of receipt from the Principal; and
 - (iii) the Principal will carry out the functions of the Independent Certifier under this deed until the Independent Certifier Deed is executed.
- (c) **(Obligation to be independent)**: The Independent Certifier is obliged to act independently of the Principal, the Contractor and the Subcontractors (of any tier).
- (d) **(Information and access)**: Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier to:
 - (i) attend meetings;

- (ii) access all premises where the Contractor's Activities are being carried out including for the purposes of site surveillance;
- (iii) insert Hold Points or Witness Points in the Project Plans; and
- (iv) release the Hold Points or witness the Witness Points where the Independent Certifier is the Nominated Authority for the relevant Hold Point or Witness Point,

as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.

- (e) **(Notice between parties)**: All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (f) **(Comments by Principal's Representative)**: The Principal's Representative may provide comments to the Independent Certifier in respect of the Contractor's Activities.
- (g) **(Determinations final and binding)**: Any determination or decision by the Independent Certifier in respect of a matter required by this deed to be determined by the Independent Certifier will, as between the Contractor and the Principal, be final and binding upon the Principal and the Contractor, except:
 - (i) in the case of manifest error on the face of the Independent Certifier's determination; and
 - (ii) in relation to decisions contemplated by clause 7A.1(h) or clause 7A.3(gg).
- (h) **(No approval or admission)**: A certification or determination by the Independent Certifier (including one that is final and binding) will not:
 - (i) constitute an approval by the Principal of the Contractor's performance of the Contractor's obligations under this deed;
 - (ii) be taken as an admission or evidence that the Works or any other matters certified or determined by the Independent Certifier comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects.
- (i) **(No Claim under this deed)**: No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier, whether or not such certification or determination:
 - (i) is final and binding;
 - (ii) contains a manifest error; or
 - (iii) is overturned in subsequent dispute resolution proceedings,

will:

- (iv) be deemed to be an act or omission by the Principal (including a breach of contract) under or in connection with the Project Documents; or
 - (v) entitle the Contractor to make any Claim against the Principal.
- (j) **(No impact on rights and obligations):** Without limiting clause 13.10(i), an act or omission (including negligence) of the Independent Certifier will not:
- (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under the Project Documents or otherwise according to Law; or
 - (ii) prejudice or limit a party's rights against the other party whether under the Project Documents or otherwise according to Law.
- (k) **(Replacement of the Independent Certifier):** If the Independent Certifier Deed is terminated before its scheduled expiry, or if any incumbent Independent Certifier ceases to act as Independent Certifier:
- (i) the Principal and the Contractor must, unless otherwise agreed by the Principal and the Contractor, prior to termination or cessation, and in any case within 10 Business Days after the termination of the Independent Certifier Deed or cessation, whichever is applicable, appoint another person to act as Independent Certifier;
 - (ii) in the circumstances described in clause 13.10(k)(i), a replacement Independent Certifier to be appointed must meet any requirements set out in this deed; and
 - (iii) if the Principal and the Contractor cannot agree upon such appointment under this deed, the Principal and the Contractor will request that the President of Engineers Australia (or its replacement or equivalent) nominate an Independent Certifier who has equivalent qualifications, experience and expertise to the incumbent Independent Certifier and is independent and such Independent Certifier will be appointed by the Principal and the Contractor as soon as practicable on substantially the same terms as the previous Independent Certifier Deed.

13.11 Quality Management

- (a) **(Quality Management System):** The Contractor must implement and maintain a Quality Management System for the management of all aspects of the Contractor's obligations under this deed in accordance with the applicable requirements of the SWTC, including Appendix C.7 of the SWTC and the Quality Management Plan.
- (b) **(Quality Management Plan):** The Contractor must develop and implement a Quality Management Plan in accordance with this deed, including the SWTC.
- (c) **(Acknowledgments):** The Contractor:
 - (i) assumes responsibility for all aspects of quality for the Contractor's Activities and for the durability of the Project Works and the Temporary Works;
 - (ii) must permit the Independent Certifier to observe, monitor, audit and test all aspects of quality in the Contractor's Activities and the durability of the Works to certify compliance with the requirements of this deed;

- (iii) must permit the Independent Certifier to review and assess quality in the Contractor's Activities and the durability of the Project Works, as required to enable the Independent Certifier to certify the Contractor's compliance with the requirements of this deed; and
- (iv) must allow the Principal to arrange monitoring and audits to monitor compliance of the Contractor's Activities with the requirements of this deed (including the Quality Management Plan, the Work Health and Safety Management Plan, the Chain of Responsibility Management Plan and the other Project Plans), and for the purposes of doing so:
 - (A) make arrangements to ensure that the Principal's Representative, the Independent Certifier and the Principal's Surveillance Officers have access to all facilities, documentation, records and personnel (including those of Subcontractors) at any time that they are required for the carrying out of the monitoring and audits referred to in this clause 13.11; and
 - (B) ensure that the Quality Manager, the Environmental Manager, the Contractor's work health and safety representatives and the Contractor's personnel responsible for compliance with the Chain of Responsibility Provisions or any Plans referred to in clause 13.11(c)(iv) are available, as necessary, to discuss details of quality matters with the Principal during the above monitoring and audits.
- (d) **(Certificates):** The Contractor must provide to the Principal certificates executed by:
 - (i) the Quality Manager:
 - (A) in the form of Part A of Schedule B7 (*Form of Certificates*), within 60 Business Days after the Commencement Date;
 - (B) in the form of Part B of Schedule B7 (*Form of Certificates*), every 60 Business Days from the Commencement Date until the Date of Opening Completion;
 - (C) in the form of Part C of Schedule B7 (*Form of Certificates*) as a condition precedent to Opening Completion; and
 - (D) in the form of Part D of Schedule B7 (*Form of Certificates*), upon the expiry of the last Defects Correction Period;
 - (ii) the Independent Certifier:
 - (A) in the form of Part E of Schedule B7 (*Form of Certificates*) within 60 Business Days after the Commencement Date;
 - (B) in the form of Part F of Schedule B7 (*Form of Certificates*), every 60 Business Days from the Commencement Date until the Date of Opening Completion; and
 - (C) in the form of Part G of Schedule B7 (*Form of Certificates*) upon the expiry of the last Defects Correction Period;
 - (iii) the Contractor's Environmental Manager in the form of Part H of Schedule B7 (*Form of Certificates*) every 85 Business Days from the Commencement Date until the Date of Opening Completion;

- (iv) the Contractor in the form of Part I of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;
 - (v) the relevant Subcontractor in the form of Part J of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;
 - (vi) the Independent Certifier in the form of Part K of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;
 - (vii) the Proof Engineer in the form of Part L of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule;
 - (viii) the Independent Checking Engineer in the form of Part M of Schedule B7 (*Form of Certificates*), in accordance with section 3.3 of the Contractor Documentation Schedule; and
 - (ix) the Contractor in the form of Part N of Schedule B7 (*Form of Certificates*) within ten (10) Business Days before the expiry of the Landscaping Maintenance Period.
- (e) **(Hold Points):** The Contractor:
- (i) acknowledges and agrees that a work process with a Hold Point must not proceed past the Hold Point without the prior authorisation and release by the Nominated Authority in accordance with the requirements of this deed and any applicable Project Plan;
 - (ii) must comply with any procedures required by this deed in relation to each Hold Point, including as set out in the SWTC; and
 - (iii) must provide the Principal, the Independent Certifier and the Nominated Authority (as applicable) reasonable prior notice of each Hold Point in accordance with Appendix C.7 of the SWTC to allow the Principal, the Independent Certifier and/or the Nominated Authority (as applicable) to attend, witness and authorise and release (where applicable) the relevant part of the work process.
- (f) **(Witness Points):** The Contractor:
- (i) acknowledges and agrees that a work process with a Witness Point must not proceed past the Witness Point without the prior notification to the Principal's Representative, the Independent Certifier and/or the Nominated Authority (as applicable) in accordance with the requirements of this deed and any applicable Project Plan;
 - (ii) must comply with any procedures required by this deed in relation to each Witness Point, including as set out in the SWTC; and
 - (iii) must provide the Principal, the Independent Certifier and the Nominated Authority (as applicable) with reasonable prior notice of each Witness Point in accordance with Appendix C.7 of the SWTC to allow the Principal, the Independent Certifier and/or the Nominated Authority (as applicable) to attend and witness the relevant part of the work process.

13.12 Industrial Relations

- (a) **(Industrial relations requirements):** The Contractor must in carrying out the Contractor's Activities:
- (i) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
 - (ii) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
 - (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
 - (iv) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;
 - (v) prepare, document and implement the Workplace Relations Management Plan which must be based on the draft Workplace Relations Management Plan (if any) forming part of this deed;
 - (vi) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Project Plans, in accordance with the SWTC and clause 13.13;
 - (vii) not commence any work on the Construction Site or Extra Land until the Workplace Relations Management Plan have been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 13.13;
 - (viii) submit to the Principal's Representative, before beginning work on the Construction Site or Extra Land, a statement detailing:
 - (A) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (B) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and
 - (C) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
 - (ix) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
 - (x) before beginning work on the Construction Site or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding 12 months, with all employment and legal obligations, including:
 - (A) payment of remuneration to employees;
 - (B) annual leave provisions;

- (C) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (D) workers' compensation insurance, including self-insurance arrangements;
 - (E) superannuation fund membership and contributions; and
 - (F) over-award payments such as redundancy fund contributions; and
- (xi) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.
- (b) **(Compliance)**: The industrial relations requirements contained in this deed and the NSW Guidelines:
- (i) are in addition to, but are not in substitution for, any requirements of Law; and
 - (ii) do not limit the powers of the Principal or the Liabilities and responsibilities of the Contractor.

13.13 Document review by the Principal's Representative or Independent Certifier

- (a) **(Application)**: This clause 13.13 applies to all Documents except Design Documentation, Asset Management Information, and Documents in relation to subcontracting to the extent they are addressed in clause 9, the Contractor Documentation Schedule, clause 8.12, or clause 11 (other than the Procurement Management Plan) (as applicable).
- (b) **(Use of PDCS)**: From the commencement date for use of the PDCS referred to in clause 21.1(b) and other than where clause 21.1(d) applies, the Contractor must manage and transmit all Documents through the PDCS, in accordance with the processes, procedures and systems in the SWTC, including section 3.12 of the SWTC, or as otherwise required by the Principal's Representative.
- (c) **(Principal's documents)**: Documents supplied to the Contractor:
- (i) will remain the property of the Principal;
 - (ii) must be returned by the Contractor to the Principal on demand in writing; and
 - (iii) must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Contractor's Activities.
- (d) **(No Claim)**: The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 13.13.
- (e) **(No virus or malicious code)**: The Contractor must ensure that any Document that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
- (i) permit access to or use of a computer system by a third person not authorised by the Principal; or

- (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.
- (f) **(No submission)**: A Document will be deemed not to have been submitted unless and until:
- (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 13.13, in addition to any other requirement of this deed relating to the submission of that Document.
- (g) **(Reviewer)**: For the purposes of this clause 13.13, the Reviewer is:
- (i) the Principal's Representative; and
 - (ii) with respect to the Project Plans only, the Independent Certifier (if directed by the Principal's Representative).
- (h) **(Review and resubmission)**: After the submission of a Document which satisfies the requirements of clause 13.13(f):
- (i) the Principal's Representative may (or in the case of the Project Plans, the Independent Certifier must if directed by the Principal's Representative), review the Document, or any resubmitted Document;
 - (ii) where the Independent Certifier has been directed by the Principal's Representative to review the Project Plans, the Independent Certifier will within 10 Business Days provide its review comments to the Principal's Representative; and
 - (iii) the Principal's Representative may, within:
 - (A) 15 Business Days; or
 - (B) in the case of the Contractor's Program only, 5 Business Days,
 of submission by the Contractor of such Document or resubmitted Document:
 - (C) reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this deed, stating the nature of the non-compliance;
 - (D) make comments on the Document; or
 - (E) notify the Contractor that it has no (or has no further) comments to make on the Document.
- (i) **(Amendment and resubmission)**: If any Document is:
- (i) rejected or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days of the date of such rejection or deemed rejection and this clause 13.13 will re-apply; or
 - (ii) not rejected and the Principal's Representative responds to the submission with comments, the Contractor must respond to the comments within 10

Business Days or such other period as may be directed by the Principal's Representative.

- (j) **(Comments):** If clause 13.13(h)(iii)(D) applies in relation to a Document and the Contractor:
- (i) fails to respond to the Principal's Representative's comments within the relevant period set out in clause 13.13(i), the Document will be deemed to be rejected and this clause 13.13 will re-apply; or
 - (ii) responds to the Principal's Representative's comments within the relevant period set out in clause 13.13(i) and responds in a manner:
 - (A) unsatisfactory to the Principal's Representative, the Principal's Representative must within 10 Business Days notify the Contractor that the Document is rejected and this clause 13.13 will re-apply; or
 - (B) satisfactory to the Principal's Representative, the Principal's Representative must notify the Contractor that it has no further comments to make on the Document.
- (k) **(No action until review):** The Contractor must not commence construction of any part of the Project Works to which any Document (other than the Contractor's Program) submitted to the Principal's Representative applies unless the Principal's Representative has had the period referred to in clause 13.13(h)(ii) to review the Document and has not provided a notice under clause 13.13(h)(iii) (except in the case where the Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 13.13(i)), in which case the relevant Document will be deemed not to be rejected by the Principal's Representative.
- (l) **(No amendment):** The Contractor must not amend for construction purposes any Document that has:
- (i) been submitted to the Principal's Representative; and
 - (ii) not been rejected or not had comments made about it under clause 13.13(h)(iii),
- unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 13.13 will re-apply.
- (m) **(No duty of care):** The Reviewer does not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this deed.
- (n) **(No Claim):** The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Reviewer not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this deed in any Document submitted.
- (o) **(No relief):** No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the Contractor, or any other direction by the Reviewer in connection with the Document, will:
- (i) constitute a direction to carry out a Variation pursuant to clause 10.6, unless it is in a notice titled "Variation Order" and describes the nature of the Variation in accordance with clause 10.8(a);

- (ii) relieve the Contractor from or alter its Liabilities or obligations, whether under this deed or otherwise according to any Law; or
 - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this deed or otherwise according to any Law.
- (p) (**Consultation**): In considering any Document, the Reviewer may consult with and take into account any views or requirements of relevant persons, including any Authority.

13.14 **Work Method**

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

- (a) (**No Claim**): not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) (**No frustration**): not cause this deed to be frustrated.

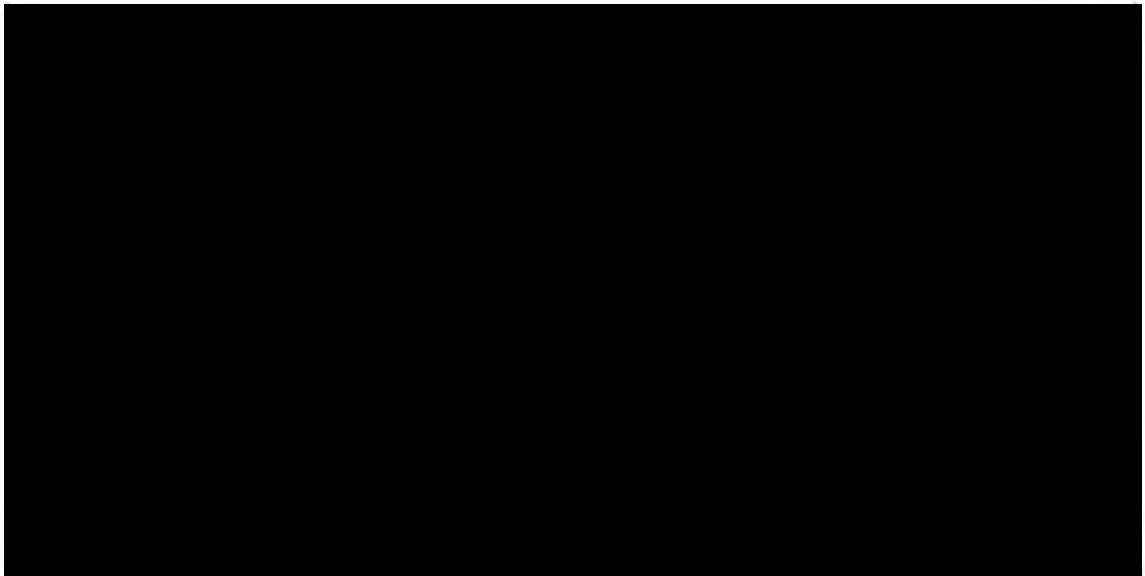
13.15 **Exchange of Information between Government Agencies**

- (a) (**Availability of information**): The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 13.13 and any MS Information obtained from the Contractor pursuant to clause 8.13(h)) available to NSW Government departments or agencies, including any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this deed.
- (b) (**Contractor acknowledgment**): The Contractor acknowledges that any information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW Government departments and agencies in considering whether to offer the Contractor future opportunities for NSW Government work.
- (c) (**Contractor's performance assessment**): The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this deed and that it will participate in the Principal's contractor performance reporting process.

13.16 **Aboriginal participation in construction**

- (a) (**Aboriginal Participation Plan**): The Contractor acknowledges and agrees that, prior to the date of this deed, it prepared, submitted to the Principal and obtained the Principal's approval, an Aboriginal Participation Plan which shows how the Contractor intends to meet the Minimum Aboriginal Participation Requirements and is based on the template set out in Schedule D2 (*Aboriginal Participation Plan Template*).
- (b) (**Compliance**): The Contractor must comply with the Aboriginal Participation Plan approved by the Principal.

- (c) **(Aboriginal Participation Reports):** The Contractor must prepare and submit to the Principal:
- (i) each quarter, an Aboriginal Participation Report which provides details of the implementation of the AP Policy and achievement of targets; and
 - (ii) as a condition precedent to Opening Completion, the final Aboriginal Participation Report describing and explaining:
 - (A) how the Aboriginal Participation Plan has been implemented within the specified period;
 - (B) what actual outcomes have been achieved; and
 - (C) whether the Minimum Aboriginal Participation Requirements have been met.
- (d) **(Non-Compliance):** If the Minimum Aboriginal Participation Requirements have not been met by the Contractor prior to the Contractor's final Payment Claim, the Principal may direct the Contractor to transfer the remaining balance of the required spend to the "Aboriginal Participation Fund" account held by Training Services NSW at the Contractor's cost.



13.17 **AIP Plan**

- (a) **(Compliance):** The Contractor must:
- (i) take reasonable steps directed towards allowing Australian entities to have full, fair and reasonable opportunities to bid for the supply of key goods and services required for the Contractor's Activities; and
 - (ii) without limiting clause 6.1, comply with, and cooperate with the Principal in relation to compliance with, the requirements of the AIP Plan.
- (b) **(Publication):** Without limiting clause 13.17(a), the Contractor must:
- (i) within 20 Business Days of this deed, establish a publicly accessible page on its website of all available opportunities for Australian entities to supply key goods or services for the Project Works, Temporary Works or the Contractor's

Activities as they arise (including details of the standards for such goods or services);

- (ii) update the list of goods and services on this webpage on a regular basis to ensure Australian entities are provided up-to-date information on all opportunities to participate in the Contractor's Activities; and
- (iii) provide promptly upon request evidence to the reasonable satisfaction of the Principal that the Contractor is complying with its obligation under this clause 13.17(b).

13.18 **Waste Reduction and Purchasing Policy**

The Contractor must:

- (a) **(Contractor to comply with GREP)**: use its best endeavours to reduce wastage and increase the use of recycled Materials in accordance with the GREP;
- (b) **(Demonstrate compliance)**: address as part of the Construction Environmental Management Plan the measures to be taken to reduce wastage and increase the use of recycled Materials in the areas of paper products, office consumables, vegetation and landscaping Materials, and construction and demolition Materials; and
- (c) **(Reporting)**: provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative for the use by the Principal in complying with its GREP obligations to report performance.

13.19 **Skills, training and diversity**

- (a) **(Compliance)**: Subject to the express provisions of this deed, the Contractor must:
 - (i) comply with the Training Management Guidelines; and
 - (ii) ensure the ISLP Targets are achieved with respect to the Contractor's Activities.
- (b) **(Local region)**: The parties acknowledge and agree that for the purpose of the ISLP Targets, the relevant "local region" is the Sydney region.
- (c) **(Requirements and obligations)**: Training management requirements specified in this deed and the Training Management Guidelines may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Law.
- (d) **(Plan)**: At least 10 Business Days before starting work on the Construction Site, the Contractor must prepare and submit a Workforce Development and Social Procurement Management Plan which sets out in adequate detail how the Contractor will implement and comply with the Training Management Guidelines and achieve the ISLP Targets.
- (e) **(Manage)**: The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in this deed.
- (f) **(Reporting)**: The Contractor must provide quarterly reports to the Principal demonstrating the Contractor's performance against the ISLP Targets, in accordance with the Training Management Guidelines and using the template report provided on

the Training Services NSW website:
https://www.training.nsw.gov.au/programs_services/funded_other/islp/index.html.

- (g) (**Subcontractors**): The Contractor must actively consider the capacity of Subcontractor to contribute to achievement of the ISLP Targets and collect sufficient information from Subcontractors in order to allow the Contractor to provide the report required by clause 13.19(f).
- (h) (**Demonstrate compliance**): The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 13.19.

13.20 Signage

- (a) (**Advertising signage**): Subject to clause 13.20(b), the Contractor must not erect, install, paint or display any advertising, promotional or similar signage or material on, in or near any part of the Project Works, the Temporary Works, the Construction Site (or permit any third party to do so) at any time.
- (b) (**Permitted signage**): Subject to clause 13.20(c), the Contractor may only (with the prior written approval of the Principal) erect the following signage on or near the Construction Site or Local Areas (as applicable):
 - (i) temporary directional signage to assist businesses in the vicinity of the Construction Site, access to which has been, or is likely to be, adversely affected by the Contractor's Activities;
 - (ii) signage required by Law or reasonably required for the safety and security of the Works;
 - (iii) project identification signage and branding approved by the Principal;
 - (iv) such directional signage as is reasonably required for the purposes of informing persons undertaking any part of the Contractor's Activities; and
 - (v) directional and other signage necessary to inform, and direct the movement of, motorists, cyclists and pedestrians in the vicinity of the Construction Site.
- (c) (**Required signage**): The Contractor must, as requested by the Principal, erect signage on or near the Construction Site or Local Areas provided the erection of such signage complies with Law.

13.21 National Greenhouse and Energy Reporting Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) (**Contractor to comply with NGER**): if any of the Contractor's Activities, or the activities of any of the Contractor's personnel, in connection with the Contractor's Activities (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) (**Contractor to assume liability**): if, despite the operation of clause 13.21(a), the Principal incurs, or (but for this clause) would incur, a Liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the

Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the Liability is transferred to the Contractor;

- (c) **(Greenhouse Data)**: if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time;
- (d) **(Other information)**: the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) **(Collecting and recording data)**: the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 13.21, and keep that Greenhouse Data for at least seven years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) **(Disclosure by the Principal)**: the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 13.21 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) **(No statutory obligation)**: nothing in this clause 13.21 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

13.22 **Early warning procedure and risk reporting**

- (a) **(Contractor must notify)**: The Contractor must give early warning of a risk by notifying the Principal's Representative as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:
 - (i) an adverse effect on the performance of the Contractor's Activities or the Project Works including any Claim by the Contractor; or
 - (ii) a party being in breach of any term of this deed.

- (aa) **(Principal may notify):** The Contractor acknowledges and agrees that the Principal may, at any time, give early warning of a risk by notifying the Contractor's Representative of any fact, matter or thing which may give rise to a risk of:
- (i) an adverse effect on the performance of the Contractor's Activities or the Project Works; or
 - (ii) a party being in breach of any term of this deed,
- and such notification may be in writing or verbally in a meeting or on site.
- (b) **(Not a precondition):** Without limiting clause 14.11(b), the notice under clause 13.22(a) is separate from, and not a precondition to, the notices required under clause 14.8.
- (c) **(Risk Register):** The Contractor must:
- (i) prepare a Risk Register within 20 Business Days of the Commencement Date;
 - (ii) update the Risk Register at least monthly, and otherwise whenever necessary to ensure it reflects current risks to the Contractor's Activities and the Works, including the risks notified under clause 13.22(a), clause 13.22(aa) and section 3.15(f) of the SWTC; and
 - (iii) provide the Principal's Representative with real time access to the Risk Register.
- (d) **(Risk management meetings):** The Contractor must attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's Representative to:
- (i) review the current Risk Register;
 - (ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register, including what assistance the Principal may be able to provide to the Contractor, including informing the Principal's Representative if it considers any such proposal or solution would give rise to a Variation or otherwise give rise to a Claim by the Contractor;
 - (iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and
 - (iv) remove from the Risk Register those risks which have been avoided or passed.
- (e) **(Contractor's Liability):** Except as expressly provided in clause 4.5(a) and clause 14.11, a notification, record or action under this clause 13.22 will not relieve the Contractor from or alter its Liabilities or obligations under this deed, including any and all notification obligations under this deed.
- (f) **(Early Warning Amount and Early Warning Delay):** The Contractor acknowledges that:
- (i) the Contractor's early warning of a risk provides the parties with an opportunity to mitigate:
 - (A) the likelihood of the relevant risk actually arising; and
 - (B) if the risk arises, the effects of the risk;

- (ii) the Contractor's failure to provide early warning of a risk may give rise to an Early Warning Amount or Early Warning Delay, which could have been avoided if the Contractor gave appropriate early warning of the risk; and
- (iii) the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor for any Early Warning Amount or Early Warning Delay.

13.23 Management Review Group

- (a) **(Management Review Group)**: The Management Review Group comprises no more than two representatives from each of the Principal and the Contractor.
- (b) **(Representatives)**: The representatives at the date of this deed are those persons identified in Schedule A1 (*Contract Particulars*) as being part of the Management Review Group.
- (c) **(Attendance)**: The parties acknowledge and agree that:
 - (i) subject to clause 13.23(c)(ii), the Principal's Representative and Contractor's Representative must be invited to every meeting of the Management Review Group;
 - (ii) the representatives may, by joint agreement, elect for the Principal's Representative and Contractor's Representative to not attend specific agenda items during Management Review Group meetings; and
 - (iii) the Principal's Representative may direct the attendance at Management Review Group meetings of:
 - (A) representatives of any of the Contractor's Subcontractors which the Principal's Representative reasonably requires; and
 - (B) any other person the Principal's Representative reasonably requires from time to time.
- (d) **(Binding authority)**: Each party acknowledges and agrees that its representatives on the Management Review Group have the authority to make decisions that bind that party where clause 13.24(d) applies.
- (e) **(Appointment of replacement)**: If a representative of the Management Review Group is unable to act in that role, the relevant party must:
 - (i) appoint another representative for the Management Review Group that is of equivalent or higher seniority within the party's organisation to the representative being replaced to be part of the Management Review Group; and
 - (ii) notify the other party of that appointment within 10 Business Days after the date that the former representative is unable to act.
- (f) **(Replacement representative bound)**: Any replacement representative appointed under clause 13.23(e) will be bound by anything done by the former representative to the same extent as the former representative would have been bound.
- (g) **(Delegate)**: Any delegate of a Management Review Group representative must be of equal or higher seniority to the representative it appears on behalf of within the party's organisation.

13.24 Management Review Group functions

- (a) **(Role):** The role of the Management Review Group is to provide leadership, governance and oversight.
- (b) **(Functions):** The functions of the Management Review Group include:
 - (i) reviewing and considering:
 - (A) the progress of the Contractor's Activities in relation to the Contractor's Program and the performance of the Contractor prior to the expiry of the final Defects Correction Period;
 - (B) issues arising out of community relations and community concerns;
 - (C) issues arising out of the quality of the Contractor's Activities;
 - (D) matters arising from the Design Documentation, including any proposed design changes;
 - (E) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
 - (F) the potential impact of design and construction outcomes on operation and maintenance requirements;
 - (G) environmental issues;
 - (H) safety issues;
 - (I) any significant issues referred by the Completion Steering Committee for resolution pursuant to clause 13.26(c)(iv); and
 - (J) any other matters the Principal's Representative:
 - (aa) refers to the Management Review Group; or
 - (bb) agrees that the Management Review Group can consider;
 - (ii) determining or resolving:
 - (A) any issues referred by the Project Leadership Group for resolution pursuant to clause 13.30(c)(i);
 - (B) with respect to all notices issued by the Contractor under clause 23.1(a), whether or not a direction by the Principal's Representative constitutes or involves a Variation (but excluding any time or cost consequences of such direction);
 - (C) Claims by the Contractor pursuant to clause 4.6(a); and
 - (D) whether the legal, expert or other consultants costs incurred by the Contractor arising out of or in connection with any Subcontract (including disputes under Subcontracts) should be Reimbursable Costs for the purpose of the definition of "Excluded Costs" in Part B of Schedule F1 (*Payment*); and
 - (iii) considering Disputes that are the subject of a Notice of Dispute pursuant to clause 19.3 and carrying out Negotiations pursuant to clause 19.7.

- (c) **(Principal's Representative not limited)**: Subject to clause 4.6(a)(ii), the functions of the Management Review Group specified in clause 13.24(d) do not limit or otherwise affect any express right of the Principal's Representative to make a determination or give a direction under this deed.
- (d) **(Effective determination)**: To be effective, a determination of the Management Review Group must be:
 - (i) a unanimous decision of all representatives;
 - (ii) in writing; and
 - (iii) signed by each member of the Management Review Group.

13.25 Management Review Group meetings

- (a) **(Meeting requirements)**: The Management Review Group must meet:
 - (i) monthly until the expiry of the final Defects Correction Period or such other regular period as the Principal and the Contractor agree in writing;
 - (ii) in accordance with this clause 13.25; and
 - (iii) at other times which the Principal's Representative or the Contractor requires.
- (b) **(Quorum required)**: The quorum required for each Management Review Group meetings is:
 - (i) all Management Review Group representatives or their delegates; and
 - (ii) subject to clause 13.23(c)(ii), the Principal's Representative and the Contractor's Representative.
- (c) **(Principal's Representative will provide agenda)**: The Principal's Representative will (in consultation with the Contractor's Representative) prepare an agenda for each meeting of the Management Review Group no less than 48 hours prior to each meeting.
- (d) **(Agenda requirements)**: The agenda will include:
 - (i) the minutes of the most recent risk management meeting, together with the current Risk Register;
 - (ii) any issues referred to the Management Review Group by the Completion Steering Committee; and
 - (iii) any other matters relevant to the functions of the Management Review Group referred to in clause 13.24(b).
- (e) **(Chairperson)**: The chairperson for meetings of the Management Review Group will be the Principal's senior Management Review Group representative.
- (f) **(Meeting minutes)**: The chairperson nominated by the Principal under clause 13.25(e) must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting.

13.26 **Completion Steering Committee**

- (a) **(Establishment)**: Within three months of the Commencement Date, the parties must establish a Completion Steering Committee.
- (b) **(Members)**: The Completion Steering Committee will consist of:
 - (i) the Principal's Representative;
 - (ii) the Contractor's Representative;
 - (iii) the Independent Certifier's Representative; and
 - (iv) such other persons as the Principal's Representative requires from time to time.
- (c) **(Role)**: The role of the Completion Steering Committee is to:
 - (i) provide leadership on matters relating to Handover Completion, Opening Completion, Completion and handover of the Project Works;
 - (ii) approve processes and procedures prepared by the Completion Working Group;
 - (iii) consider issues referred to it by the Completion Working Group;
 - (iv) refer any significant issues to the Management Review Group for resolution; and
 - (v) such other roles and functions as may be agreed by the parties.
- (d) **(Meeting requirements)**: The Completion Steering Committee must meet:
 - (i) monthly; or
 - (ii) at such other times as the parties may agree,until the Date of Completion.

13.27 **Completion Working Group**

- (a) **(Establishment)**: Within three months of the Commencement Date, the parties must establish a Completion Working Group.
- (b) **(Members)**: The Completion Working Group will consist of:
 - (i) the nominees set out in section 3.14.1.4 of the main body of the SWTC; and
 - (ii) such other persons as the Principal's Representative requires from time to time.
- (c) **(Role)**: The role of the Completion Working Group is to:
 - (i) provide a collaborative forum through which the parties can:
 - (A) plan and agree procedures for completion and handover of the Project Works;

- (B) plan and agree the process for the progressive submission of records and documentation required for Handover Completion, Opening Completion and Completion;
 - (C) monitor the status of activities and tasks that must be completed in order to achieve Handover Completion, Opening Completion and Completion;
 - (D) identify issues which may adversely impact upon the achievement of:
 - (aa) Handover Completion by the Date for Handover Completion of the relevant Handover Portion;
 - (bb) Opening Completion by the Date for Opening Completion; and
 - (cc) Completion by the Date for Completion; and
 - (E) consider the Recovery Plans submitted by the Contractor to the Principal's Representative in accordance with clause 14.5(b)(ii) and provide feedback;
- (ii) report to the Completion Steering Committee on matters relating to completion and handover of the Project Works; and
 - (iii) such other roles and functions as may be agreed by the parties.
- (d) **(Meeting requirements):** The Completion Working Group must meet:
- (i) subject to clause 13.27(d)(ii), monthly until the Date of Completion;
 - (ii) weekly in the two months prior to the Date for Completion; and otherwise the anticipated Date of Completion; and
 - (iii) at such other times as the parties may agree,
- until the Date of Completion.

13.28 **Traffic Control Group**

- (a) **(Establishment):** Within three months of the Commencement Date, the parties must establish a Traffic Control Group.
- (b) **(Members):** The Traffic Control Group will consist of:
 - (i) the Principal's Representative;
 - (ii) the Contractor's Representative;
 - (iii) the Principal's traffic manager (or equivalent);
 - (iv) the Contractor's traffic manager (or equivalent);
 - (v) a representative from CJM or CJP (or both), as nominated by the Principal's Representative; and
 - (vi) such other persons as the Principal's Representative requires from time to time.

- (c) **(Role):** The role of the Traffic Control Group is to provide a collaborative forum through which the parties can:
 - (i) monitor the progress of ROL Applications;
 - (ii) review and consider the a six month "look ahead" for ROLs;
 - (iii) identify priority outstanding ROL Applications;
 - (iv) review and consider the status of traffic management plans; and
 - (v) carry out such other roles and functions that are set out in Appendix C.5 of the SWTC or that may be agreed by the parties.
- (d) **(Meeting requirements):** The Traffic Control Group must meet:
 - (i) at least once each week; or
 - (ii) at such other times as the parties may agree,
 until the Date of Completion.

13.29 **Project Design Group**

- (a) **(Establishment):** Within three months of the Commencement Date, the parties must establish a Project Design Group.
- (b) **(Members):** The Project Design Group will consist of:
 - (i) a representative or representatives of the Principal nominated by the Principal from time to time;
 - (ii) the Independent Certifier;
 - (iii) the Contractor's Lead Design Consultant Design Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii);
 - (iv) the Contractor's Technical Director (as specified in Schedule A6 (*Contractor's Personnel*)) or a senior construction representative of the Contractor, as agreed by the Principal's Representative; and
 - (v) such other persons as the Principal's Representative requires from time to time, which may include:
 - (A) the Proof Engineer;
 - (B) the Independent Checking Engineer; and
 - (C) representatives of the Contractor's design consultants.
- (c) **(Role):** The role of the Project Design Group is to review and consider:
 - (i) the status of the Design Documentation;
 - (ii) the quality of the Design Documentation and the Works the subject of the Design Documentation;
 - (iii) issues arising out of or in connection with or identified in the Design Documentation; and

- (iv) any other matters required by the Principal's Representative.
- (d) **(Meeting requirements):** The Project Design Group must meet:
 - (i) at least weekly; or
 - (ii) at such other times as the parties may agree,until the Date of Completion.
- (e) **(Contractor to provide agenda):** The Contractor must provide an agenda prepared in consultation with the Principal's Representative for each Project Design Group meeting no less than 2 Business Days prior to the Project Design Group meeting.
- (f) **(Chairperson):** The chairperson for the Project Design Group meeting is the Contractor's Technical Director (as specified in Schedule A6 (*Contractor's Personnel*)).
- (g) **(Minutes):** The chairperson must provide the Principal's Representative and all other persons who attended the Project Design Group meeting (and any other person nominated by the Principal's Representative) minutes of the Project Design Group meeting in accordance with the requirements in section 3.14.2.4 of the main body of the SWTC.

13.30 **Project Leadership Group**

- (a) **(Establishment):** Within two months of the Commencement Date, the parties must establish a Project Leadership Group.
- (b) **(Members):** The Project Leadership Group will consist of:
 - (i) the Principal's Representative;
 - (ii) the Contractor's Representative;
 - (iii) the Independent Certifier; and
 - (iv) such other persons as the Principal's Representative requires from time to time.
- (c) **(Role):** The role of the Project Leadership Group is to:
 - (i) consider and discuss any issue prior to such issue being referred to the Management Review Group for resolution;
 - (ii) review and monitor the Contractor's progress against the Contractor's Program; and
 - (iii) discuss issues raised in the Contractor's monthly report required by Appendix C.2 of the SWTC.
- (d) **(Meeting requirements):** The Project Leadership Group must meet:
 - (i) at least monthly; or
 - (ii) at such other times as the parties may agree,until the Date of Completion.

13.31 Out of Hours Coordination Group

- (a) (**Establishment**): At least one month prior to the commencement of Works taking place outside the construction hours (as defined in the Planning Approval), the parties must establish an Out of Hours Coordination Group.
- (b) (**Members**): The Out of Hours Coordination Group will consist of:
 - (i) a representative or representatives nominated by the Principal;
 - (ii) the Contractor's out of hours works coordination manager;
 - (iii) such other persons the as Principal's Representative requires from time to time, which may include:
 - (A) the Contractor's Environmental Manager (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii) (or delegate); and
 - (B) the Contractor's Communications and Stakeholder Director (as specified in Schedule A6 (*Contractor's Personnel*)) or any replacement notified under clause 13.5(c)(iii) (or delegate).
- (c) (**Role**): The role of the Out of Hours Coordination Group is to:
 - (i) review the Contractor's six month, and detailed one month, look ahead for scheduled works outside of standard construction hours;
 - (ii) provide a collaborative forum through which the parties can coordinate out of hours works planned for the delivery of the Works; and
 - (iii) minimise cumulative noise and vibration impacts and maximise respite for affected sensitive receivers as required by the Planning Approval.
- (d) (**Meeting requirements**): The Out of Hours Coordination Group must meet:
 - (i) at least weekly; or
 - (ii) at such other times as the parties may agree,until the completion of Works taking place outside construction hours.

13.32 Legal effect of meetings

- (a) (**No legal effect**): Subject to clause 13.32(b), the Management Review Group, the Completion Steering Committee, the Traffic Control Group, the Project Design Group, the Project Leadership Group, the Out of Hours Coordination Group and the Completion Working Group are consultative and advisory only and nothing which occurs during or as part of the process of a meeting, no resolution or communication at any meeting, nor minutes recording any resolution or communication of any such group will:
 - (i) limit or otherwise affect the rights or obligations of either party under this deed, any Subcontract or otherwise according to Law;
 - (ii) entitle a party to make any Claim against the other;
 - (iii) relieve a party from, or alter or affect, a party's Liabilities or responsibilities whether under this deed or otherwise according to Law;

- (iv) prejudice a party's rights against the other whether under this deed or otherwise according to Law; or
 - (v) be construed as or amount to a direction by the Principal or the Principal's Representative unless and until a separate direction is given to the Contractor in writing by the Principal's Representative.
- (b) **(Determinations binding)**: Subject to clause 19.7, a determination of the Management Review Group made in accordance with clause 13.24(d) will be binding on the parties.

13.33 Quarterly whole of WHTBL Program reviews

- (a) **(Contractor attendance and participation)**: In each quarter in a calendar year at any time prior to the expiry of the final Defects Correction Period, the Principal may require that the Contractor attend and participate in one or more meetings with the Principal and its Other Contractors for the WHTBL Program.
- (b) **(Purpose)**: The purpose of the meetings under clause 13.33(a) is for the Principal, the Contractor and the Principal's Other Contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:
 - (i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of the WHTBL Program or any part of the WHTBL Program (including the Works);
 - (ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of the WHTBL Program or any part of the WHTBL Program (including the Works);
 - (iii) improvements that can be implemented to save time, reduce cost or improve the quality of the WHTBL Program or any part of the WHTBL Program (including the Works);
 - (iv) the manner in which any such solutions and improvements can be implemented; and
 - (v) any other matters that the Principal may require.
- (c) **(Notice)**: If the Principal requires the Contractor to attend and participate in any meeting contemplated by clause 13.33(a), the Principal's Representative must provide the Contractor with at least 10 Business Days prior written notice of any such meeting.
- (d) **(Contractor's personnel to attend)**: If the Principal's Representative provides the Contractor with a notice under clause 13.33(b), the Contractor must ensure that the following personnel attend and participate in the meeting:
 - (i) the Contractor's Representative;
 - (ii) representatives of any of the Contractor's Subcontractors which the Principal's Representative reasonably requires; and
 - (iii) any other person the Principal's Representative reasonably requires.

13.34 **Independent Property Impact Assessment Panel**

- (a) **(Acknowledgment):** The Contractor acknowledges that:
 - (i) the Principal has established an Independent Property Impact Assessment Panel for the WHTBL Program in accordance with the requirements of the Planning Approval; and
 - (ii) it is of paramount importance that, promptly following receipt of a notice under clause 13.34(b)(ii), the Contractor permits the Independent Property Impact Assessment Panel to access the Construction Site and carry out inspections pursuant to clause 13.34(b)(ii).
- (b) **(Contractor's obligations):** The Contractor must:
 - (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
 - (ii) permit the Independent Property Impact Assessment Panel to access the Construction Site and inspect the Contractor's Activities provided that the Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the Contractor's reasonable work health and safety procedures;
 - (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that the Contractor is given reasonable prior written notice of any such meeting;
 - (iv) cooperate and provide reasonable assistance to the Principal in respect of any unresolved disputes arising from potential or actual property impacts which are referred to the Independent Property Impact Assessment Panel for resolution; and
 - (v) comply with the findings and recommendations of the Independent Property Impact Assessment Panel.
- (c) **(Principal to pay):** The parties acknowledge that any fees payable for the services provided by the Independent Property Impact Assessment Panel will be paid by the Principal.

13.35 **Security of Critical Infrastructure**

The Contractor:

- (a) **(Acknowledgment):** acknowledges that the Principal has, or may come to have at any time, obligations under the *Security of Critical Infrastructure Act 2018* (Cth) in relation to the Project Works or the Motorway; and
- (b) **(Compliance):** agrees that it must:
 - (i) retain and provide to the Principal such records and reports as may be required; and
 - (ii) comply with such directions given,

by the Principal for the purposes of compliance with the *Security of Critical Infrastructure Act 2018* (Cth) and any rules or regulations enacted in connection with that Act; and

- (c) **(No Claim)**: notwithstanding any other provision in this deed, is not entitled to make, and the Principal will not be liable upon, any claim (including Claims), arising out of or in any way in connection with compliance with this clause 13.35.

13.36 **Systems**

- (a) **(Electronic format)**: The Contractor must ensure that documentation provided in electronic format in relation to the Contractor's Activities is provided in the format reasonably required by the Principal.

- (b) **(Live Access Systems)**: The Contractor must:

(i) within 10 Business Days after the later of:

(A) the Commencement Date; or

(B) the date a relevant Live Access System is activated by the Contractor in connection with the Contractor's Activities,

provide the Live Access Users with all log in details for each of the Live Access Systems;

(ii) within 5 Business Days after the Principal's Representative notifies the Contractor of a new Live Access User, provide the relevant Live Access Users with log in details for each of the Live Access Systems; and

(iii) provide access to the Live Access Systems to the Live Access Users to enable and allow the Live Access Users to view, interrogate, export and facilitate the exchange of information from the Live Access Systems from the date required under clause 13.36(b)(i) until the expiry of the final Defects Correction Period.

- (c) **(Training)**: Following written request from the Principal, the Contractor must provide the Live Access Users with training to enable and facilitate their use of the Live Access Systems.

- (d) **(Data downloads)**: The Contractor must provide the Principal with a download of:

(i) all exportable data from each of the Live Access Systems at the end of each calendar quarter (or such other period as may be directed by the Principal); and

(ii) all exportable data from each of the Live Access Systems as a condition precedent to Completion and an update of such data on the date that the final Defects Correction Period expires,

in each case in an electronic format through a file transfer platform or hard drive (as required by the Principal) with a visual front end that allows, so far as is reasonably practicable, navigation and use of the data in a similar manner as to the relevant Live Access System.

- (e) **(Lump sum information):** Despite anything else in this clause 13.36, the Contractor:
 - (i) is not required to provide the Live Access Users with access to the cost centre or other data relating to Subcontracts where the activities are completely covered by the Design Fee or Preliminaries Fee; but
 - (ii) must ensure that the access provided to the cost centre or for any other data includes all information relating to any Reimbursable Work within Subcontracts that also include activities covered by the Design Fee or Preliminaries Fee, provided that the Contractor is not required to provide access to the data relating to the activities covered by the Design Fee or Preliminaries Fee to the extent such data is able to be separated from the data relating to the Reimbursable Work.
- (f) **(Access for Self-Performed Reimbursable Work):** For the purposes of assessing amounts payable for Self-Performed Reimbursable Work, and without limiting any other requirement in this deed:
 - (i) the Contractor must ensure to the extent it is reasonably practicable that:
 - (A) the relevant Live Access Systems record the shift patterns and wage classifications for the Contractor's Employees undertaking Self-Performed Reimbursable Work; and
 - (B) the Live Access Users have full access to such information in accordance with this clause 13.36; or
 - (ii) to the extent it is not reasonably practicable to do the things contemplated by clause 13.36(f)(i), the Contractor must provide written evidence of shift patterns and wage classifications for the Contractor's Employees undertaking Self-Performed Reimbursable Work with each monthly Payment Claim and otherwise whenever requested by the Principal.

14. TIME AND PROGRESS

14.1 Rate of Progress

- (a) **(Commence):** The Contractor must:
 - (i) start to perform its obligations under this deed from the Commencement Date (other than under the Day 1 Clauses which commence on the date of this deed); and
 - (ii) regularly and diligently progress the Contractor's Activities in accordance with this deed to ensure that:
 - (A) Handover Completion is achieved by the Date for Handover Completion of the relevant Handover Portion;
 - (B) Opening Completion is achieved by the Date for Opening Completion; and
 - (C) Completion is achieved by the Date for Completion.
- (b) **(Suspension of works):** Without limiting its rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of the Contractor's Activities except where directed by a court, Authority or by the Principal's Representative under clauses 6.6(a) or 14.14.

- (c) **(Advance notice):** Without limiting clause 14.1(d), the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this deed.
- (d) **(No obligation):** The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative (as applicable) should reasonably have anticipated at the date of this deed.
- (e) **(Order and time):** The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 14.1(e), direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed.
- (f) **(Direction in writing):** No direction by the Principal's Representative will constitute a direction under clause 14.1(e) unless the direction is in writing and expressly states that it is a direction under clause 14.1(e).
- (g) **(Condition precedent to Claim):** If the Contractor considers that compliance with a written direction expressly stated to be pursuant to clause 14.1(e) will or is likely to require the Contractor to undertake more or less work than otherwise would have been the case, the Contractor must, as a condition precedent of any entitlement to make a Claim under clause 14.1(h) promptly, and in any event within five Business Days after first receipt of such direction and before following the written direction, notify the Principal's Representative of such.
- (h) **(Relief):** If the Contractor has complied with the conditions in clause 14.1(g), the Contractor may claim the direction as a [REDACTED] and an Extension Event except to the extent the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this deed.
- (i) **(No Claim):** Other than as set out in clause 14.1(h), the Contractor is not entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 14.1.

14.2 Contractor's Programming Obligations

- (a) **(Provide and update):** The Contractor must:
 - (i) update and provide on an Open Book Basis the Contractor's Program so that it complies with and includes the details required by this deed (including Appendix C.2 of the SWTC) and any requirements of the Principal's Representative;
 - (ii) submit the Contractor's Program to the Principal's Representative for its review in accordance with clause 14.2(a)(i) at the times required by the SWTC;
 - (iii) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within five Business Days of receipt of such a direction;

- (iv) update, revise and submit to the Principal's Representative an updated Contractor's Program on an Open Book Basis:
 - (A) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion or the Date for Opening Completion, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding Claims for extensions of time to the Date for Completion, the Date for Opening Completion or any Date for Handover Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative;
 - (B) to take account of any Recovery Plan submitted by the Contractor;
 - (C) on a monthly basis or whenever directed to do so by the Principal's Representative; and
 - (D) at any other times required by the SWTC; and
 - (v) if requested by the Principal's Representative, prepare and provide for the Principal's Representative's information only, versions of all Contractor's Programs prepared in accordance with clause 14.2(a)(iv) that also allow for those Claims for an extension of time to any Date for Completion or the Date for Opening Completion that have been made by the Contractor in accordance with clause 14.8 but to which the Principal's Representative has not yet responded in accordance with clause 14.10.
- (b) **(Regular meeting):** The Contractor must:
- (i) within three months of the Commencement Date, convene a regular fortnightly meeting until the Date of Opening Completion to discuss any and all programming and sequencing issues in relation to the Contractor's Activities and the Contractor's Program;
 - (ii) provide not less than five Business Days advance written notice of each meeting convened under clause 14.2(b)(i) (including with such notice all information relevant to the meeting) to the Principal's Representative and all invitees who must include the Contractor's key Subcontractors; and
 - (iii) ensure attendance by relevant representatives of the Contractor and its key Subcontractors at each meeting convened under clause 14.2(b)(i).
- (c) **(Principal's requirements):** The Contractor must comply with the requirements of the Principal's Representative and its other obligations under this deed in preparing and using programs, including the requirements in clause 13.13.
- (d) **(Not depart):** The Contractor must not depart from the Contractor's Program, except to the extent agreed by the Principal's Representative.

14.3 **Contractor not Relieved**

Without limiting clause 13.13 or clause 14.2, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Contractor's Program) prepared by the Contractor, by the Principal's Representative in connection with the program, will:

- (a) **(No relief):** relieve the Contractor from or alter its Liabilities or obligations under this deed, including the obligation under clause 14.1;

- (b) **(Extension of time)**: evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Completion or the Date for Opening Completion or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) **(Timing of obligations unaffected)**: affect the time for the performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable the Contractor to achieve:
 - (i) Handover Completion by the Date for Handover Completion of the relevant Handover Portion;
 - (ii) Opening Completion by the Date for Opening Completion; or
 - (iii) Completion by the Date for Completion.

14.4 **Importance of Completion on Time**

The Contractor acknowledges:

- (a) **(Significance of compliance)**: the importance of complying with its obligations under clause 14.1 to enable Interface Contractors, or any other party elected by the Principal, to carry out the work required under its contract with the Principal; and
- (b) **(Extension of time)**: that the Date for Handover Completion of the relevant Handover Portion, Date for Opening Completion and the Date for Completion will only be extended in accordance with clause 14.10, clause 14.13 or clause 10, or when so determined under clause 19.

14.5 **Risk and Notice of Delay**

- (a) **(Contractor to bear risk)**: Except as expressly provided for in clause 14.10, clause 10 and [REDACTED], and subject to its right to payment of the Reimbursable Costs, Management Fee, Design Fee, Preliminaries Fee and amounts for Post-Completion Activities and Provisional Sum Work under clause 15, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this deed both before and after any Date for Completion and the Date for Opening Completion (as applicable).
- (b) **(Written notice – Contractor)**: The Contractor must:
 - (i) within 5 Business Days after the Contractor first becoming aware (or when it ought reasonably to have first become aware) of the commencement of any delay which is not caused by an Extension Event, give the Principal's Representative written notice of:
 - (A) any delay to the carrying out of the Contractor's Activities; and
 - (B) details of the cause;
 - (C) how any Date of Handover Completion, the Date of Opening Completion or the Date of Completion (as applicable) is likely to be affected (if at all); and
 - (ii) as soon as reasonably practicable, give the Principal's Representative the Recovery Plan for recovery of the delay in accordance with clause 14.6.

- (c) **(Written notice – Principal):** If the Principal reasonably believes that the Contractor will be, or has been, delayed in achieving Handover Completion by the relevant Date for Handover Completion, Opening Completion by the Date for Opening Completion or Completion by the Date for Completion (as applicable) by an event which is not an Extension Event then the Principal may give notice to that effect to the Contractor, and the Contractor must as soon as reasonably practicable give the Principal the Recovery Plan for recovery of the delay in accordance with clause 14.6.

14.6 Recovery Plan

- (a) **(Details):** Each Recovery Plan which the Contractor must provide pursuant to clause 14.5 must:
- (i) describe the actions and measures which the Contractor will diligently pursue to remedy or mitigate delay and to ensure the Contractor achieves:
 - (A) Handover Completion by the Date for Handover Completion of the relevant Handover Portion;
 - (B) Opening Completion by the Date for Opening Completion; or
 - (C) Completion by the Date for Completion(as applicable), or if the Date for Handover Completion of the relevant Handover Portion, Date for Opening Completion or Date for Completion (as applicable) has passed or it is not reasonably possible to meet that date, to ensure Handover Completion of the relevant Handover Portion, Opening Completion or Completion (as applicable) is achieved as soon as possible; and
 - (ii) contain a proposed updated Contractor's Program.
- (b) **(Review of plan):** Each Recovery Plan will be reviewed by:
- (i) the Principal's Representative under clause 13.13; and
 - (ii) the Completion Working Group under clause 13.27.
- (c) **(Compliance):** The Contractor must implement and comply with a Recovery Plan for which the Principal's Representative has notified the Contractor that it has no (or has no further) comments in accordance with clause 13.13(h)(iii)(E) or clause 13.13(j)(ii)(B).
- (d) **(No relief):** The Contractor will not be relieved of any Liability or responsibility under this deed or otherwise at Law arising out of or in connection with:
- (i) any comments given by the Completion Working Group or the Principal's Representative on review of the Recovery Plan; or
 - (ii) the implementation of any Recovery Plan in respect of which the Completion Working Group or the Principal's Representative has or has not given comments.
- (e) **(No Claim):** The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with any

comments by the Completion Working Group or the Principal's Representative on the Recovery Plan or preparing, or complying with, a Recovery Plan.

14.7 Entitlement to Claim Extension of Time

If the Contractor is, or will be, delayed in achieving Handover Completion, Opening Completion or Completion by reason of an Extension Event, the Contractor may claim:

- (a) **(Handover Completion)**: if Handover Completion has not occurred, an extension of time to the relevant Date for Handover Completion, Date for Opening Completion and Date for Completion of an equivalent number of days;
- (b) **(Opening Completion has not occurred)**: if Opening Completion has not occurred, an extension of time to both the Date for Opening Completion and the Date for Completion of an equivalent number of days;
- (c) **(Opening Completion has occurred)**: if Opening Completion has occurred, an extension of time to the Date for Completion only,

in accordance with the requirements of clause 14.8.

14.8 Claim for Extension of Time

- (a) **(Written notice)**: To claim an extension of time to any Date for Handover Completion, the Date for Opening Completion or the Date for Completion (or all, as applicable), the Contractor must:
 - (i) within 10 Business Days after first becoming aware (or when it ought reasonably to have first become aware) of the commencement the delay, submit a written notice of its intention to claim for an extension to the Date for Handover Completion of the relevant Handover Portion, the Date for Opening Completion or the Date for Completion (or all, as applicable), which:
 - (A) gives details of the delay and the Extension Event causing the delay; and
 - (B) states the number of days for which the extension of time is to be claimed;
 - (ii) within 10 Business Days after the Contractor's notice issued under clause 14.8(a)(i), submit a written Claim to the Principal's Representative for an extension to the Date for Handover Completion of the relevant Handover Portion, the Date for Opening Completion or the Date for Completion (or all, as applicable), which:
 - (A) gives detailed particulars of the delay and the Extension Event causing the delay;
 - (B) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that:
 - (aa) the delay involves an activity which is critical to the maintenance of progress in the execution of the Contractor's Activities and which will delay it in achieving Handover Completion, Opening Completion or Completion (or all, as applicable) in the manner described in clause 14.9(a)(iii); and

- (bb) the conditions precedent to an extension of time in clause 14.9 have been met; and
- (C) if early access to the Construction Site was given, or deemed to be given under clause 7.5(f), to the extent that:
 - (aa) such early access is relevant to the cause of delay the subject of the Contractor's claim; and
 - (bb) the Contractor has failed to comply with clause 7.5(b),
detailed particulars of how the Contractor has used the available parts of the Construction Site to mitigate the delay; and
- (D) gives detailed particulars of any early warning of the relevant risk notified by the Contractor pursuant to clause 13.22; and
- (iii) if the effects of the delay continue after the date of the Claim under clause 14.8(a)(ii) and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written Claim to the Principal's Representative:
 - (A) every 10 Business Days after the first written Claim made under clause 14.8(a)(ii) (or such other period as notified by the Principal's Representative in writing), until five Business Days after the end of the effects of the delay; and
 - (B) containing the information required by clause 14.8(a)(ii) (except to the extent otherwise directed by the Principal's Representative).
- (b) **(Additional information):** The Principal's Representative may, within 10 Business Days after receiving the Contractor's Claim or further Claim for an extension of time for Handover Completion, Opening Completion or Completion (or all, as applicable) pursuant to clause 14.8(a), request additional information in relation to the Claim or further Claim by written notice to the Contractor.
- (c) **(Contractor to provide):** The Contractor must, within 10 Business Days after receiving a notice under clause 14.8(b), provide the Principal's Representative with the information requested.
- (d) **(Variations):** Despite any other provision of this deed, the parties agree that:
 - (i) the Contractor is not required to submit a Claim under this clause 14.8 in respect of a Variation; and
 - (ii) the Contractor's entitlement to any extension of time arising out of a Variation will be agreed or determined in accordance with clause 10.

14.9 **Conditions Precedent to Extension of Time**

- (a) **(Conditions precedent):** Subject to clause 14.15(i), it is a condition precedent to the Contractor's entitlement to an extension of time that:
 - (i) the Contractor gives the notices and Claims required by clause 14.8;
 - (ii) the cause of the delay is beyond the reasonable control of the Contractor; and

- (iii) the Contractor is actually, or will be, delayed in achieving Handover Completion, Opening Completion or Completion (or all, as applicable) by the relevant Extension Event.
- (b) **(Failure to meet conditions)**: If the Contractor fails to meet the conditions precedent in clause 14.9(a), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

14.10 Extension of Time

- (a) **(Extension)**: Subject to clause 14.15, if the conditions precedent in clause 14.9(a) have been satisfied, the Principal's Representative must extend the Date for Handover Completion of the relevant Handover Portion, the Date for Opening Completion or the Date for Completion (or all, as applicable) by a reasonable period, taking into account clauses 14.11, 14.12 and 14.14, such period to be stated by the Principal's Representative and notified to the Principal and the Contractor within 15 Business Days after:
 - (i) the latest of the:
 - (A) Contractor's written Claim under clause 14.8(a)(ii) or the final notice under clause 14.8(a)(iii) (if relevant), whichever is the later; and
 - (B) provision by the Contractor of any additional information regarding the Claims, as required by clause 14.8(c); or
 - (ii) where the Principal's Representative has given the Contractor a Compression Request, or a Variation Order issued pursuant to clause 14.15(c) and subsequently issues a notice under clause 14.15(g) withdrawing the relevant Compression Request or Variation Order, the date of issue of the withdrawal notice.
- (b) **(Dates not set at large)**: A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Handover Completion, the Date for Opening Completion or the Date for Completion (or all, as applicable) or to grant an extension of time to any Date for Handover Completion, the Date for Opening Completion or the Date for Completion (or all, as applicable) within the relevant 15 Business Day period will not cause an affected Date for Handover Completion, Date for Opening Completion or the Date for Completion (as applicable) to be set at large, but nothing in this clause 14.10 will prejudice any right of the Contractor to damages.

14.11 Reduction in Extension of Time

In respect of each Claim for an extension of time under clause 14.8(a), the Contractor's entitlement to an extension of time will be reduced:

- (a) to the extent the Contractor:
 - (i) **(Avoidance of delay)**: could have lessened or avoided the delay if it had taken all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay, including the expenditure of reasonable sums of money and taking reasonable steps to accommodate, re-sequence or re-schedule within the Contractor's Program the cause of delay and the Contractor's Activities affected by the delay;
 - (ii) **(Contractor's contribution)**: caused or contributed to the delay or the event causing the delay; or

- (iii) **(Early access)**: by performing the Contractor's Activities on the Construction Site after early access was given under clause 7.5(a) or deemed to be given under clause 7.5(f), where relevant to the cause of delay the subject of the Contractor's claim; and

(b) by any Early Warning Delay for the relevant Extension Event.

14.12 **Concurrent delay**

Where there are several causes of delay to Handover Completion, Opening Completion or Completion (as applicable) and at least one of those causes is not an Extension Event, then, to the extent the delays resulting from those causes are concurrent, the Contractor will not be entitled to an extension of the Date for Handover Completion of the relevant Handover Portion, the Date for Opening Completion or the Date for Completion (as applicable) under clause 14.10.

14.13 **Unilateral Extensions**

- (a) **(Principal's Representative's may extend)**: The Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor, unilaterally extend any Date for Handover Completion, the Date for Opening Completion or the Date for Completion (or all, as applicable) by any period specified in a notice to the Contractor.
- (b) **(Principal's Representative's discretion)**: The power to extend any Date for Handover Completion, the Date for Opening Completion or the Date for Completion (as applicable) under clauses 14.13(a) or 14.10 (as applicable):
 - (i) may be exercised whether or not the Contractor has made, or is entitled to make, a Claim for an extension of time to any relevant Date for Handover Completion, the Date for Opening Completion or the Date for Completion (as applicable), or has been, or is entitled to be, granted an extension of time to any relevant Date for Handover Completion, the Date for Opening Completion or the Date for Completion (as applicable) under clause 14.8;
 - (ii) subject to clause 14.13(b)(iii), may only be exercised by the Principal's Representative, and the Principal's Representative is not required to exercise its discretion under this clause 14.13(b) for the benefit of the Contractor;
 - (iii) without limiting clause 14.13(a), may be exercised or not exercised by the Principal's Representative in accordance with the directions of the Principal; and
 - (iv) is not a direction which can be the subject of a Dispute pursuant to clause 19 or in any other way opened up or reviewed by any other person (including any expert, any arbitrator or court).

14.14 **Suspension**

- (a) **(Principal's Representative may direct)**: The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to recommence, the carrying out of all or a part of the Contractor's Activities.
- (b) **(Reason for suspension)**: If the suspension under this clause 14.14 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with this deed, including where any process, procedure, test method, calculation,

analysis or report required by this deed has resulted in or will result in a non-conformance:

- (A) the Reimbursable Costs will not include the costs incurred as a result of the suspension;
 - (B) there will be [REDACTED]
[REDACTED]
[REDACTED] as a result of the suspension; and
 - (C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim arising out of, or in any way in connection with, the suspension; or
- (ii) a cause other than the Contractor's failure to perform its obligations in accordance with this deed:
- (A) the Reimbursable Costs will include the costs incurred as a result of the suspension;
 - (B) a direction to suspend under this clause 14.14 will be [REDACTED]
[REDACTED]
[REDACTED] and an Extension Event; and
 - (C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 14.14(b)(ii).

14.15 Compression

- (a) **(Principal may issue Variation Proposal Request):** If the Contractor makes a Claim under clause 14.8, the Principal's Representative may issue a Variation Proposal Request under clause 10.4(a) which proposes a Variation to compress the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Handover Completion by the Date for Handover Completion of the relevant Handover Portion, Opening Completion by the Date for Opening Completion or Completion by the Date for Completion **(Compression Request)**.
- (b) **(Variation Proposal requirements):** In response to a Compression Request, in addition to the other details the Contractor is required to include in a Variation Proposal in accordance with clause 10.4(c), the Contractor must ensure that the relevant Variation Proposal:
 - (i) sets out:
 - (A) the Contractor's opinion (acting reasonably) of whether the compression is reasonably achievable in the circumstances; and
 - (B) if, in the Contractor's reasonable opinion, the compression is not reasonably achievable, an alternative compression proposal setting out the Contractor's assessment (acting reasonably) of the maximum compression that it considers is reasonably achievable; and

- (ii) includes a revised Contractor's Program which sets out in sufficient detail the method by which the Contractor proposes to achieve the required compression.
- (c) **(Principal may issue Variation Order):** Whether or not:
- (i) the Principal's Representative has issued a Compression Request under clause 14.15(a); or
 - (ii) the Contractor has issued a Variation Proposal in accordance with clause 14.15(b),
the Principal's Representative:
- (iii) may issue to the Contractor a Variation Order under clause 10.8(a) directing the compression that is reasonably achievable; and
 - (iv) must not direct any compression that is not reasonably achievable.
- (d) **(Implementation):** If the Principal's Representative gives the Contractor a Variation Order to compress the Contractor's Activities, clause 10.8(d) will apply.
- (e) **(Compression at other times):** In addition to the Principal's Representative's rights under clause 14.15(a), the Principal's Representative will have the right to issue a Compression Request (including to bring forward the Date for Handover Completion of the relevant Handover Portion, Date for Opening Completion or Date for Completion (as applicable)), including by means of overtime, additional crews, additional shifts, resequencing of the Contractor's Activities, or otherwise, whether or not the Contractor has made a Claim under clause 14.8 or the Contractor's Activities are progressing without delay or in accordance with the Contractor's Program, in which case clauses 14.15(b) to 14.15(d) will apply.
- (f) **(Principal's Representative's discretion):** Despite clause 14.15(a), the Principal's Representative may issue a Compression Request whether or not the cause of delay for which the Contractor has made its Claim under clause 14.8 entitles the Contractor to an extension of time to any relevant Date for Handover Completion, the Date for Opening Completion or the Date for Completion (as applicable).
- (g) **(Withdrawal):** The Principal's Representative may at any time by notice in writing withdraw any Compression Request, or a Variation Order issued pursuant to clause 14.15(c), after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the Contractor made a Claim under clause 14.8.
- (h) **(Effect of compression):** If the Principal's Representative withdraws a Variation Order as contemplated by clause 14.15(g), any extension of time in accordance with clause 14.15(g) will be determined having regard to the effect which the compression of the Contractor's Activities taken by the Contractor prior to the withdrawal of the Variation Order has had on mitigating the delay which is the subject of the Claim for an extension of time made by the Contractor under clause 14.8.
- (i) **(Reduction of entitlement):** If the Principal's Representative gives the Contractor a Variation Order pursuant to clause 14.15(c) and it only applies to part of a delay, the Contractor's entitlement to any extension of time to any relevant Date for Handover Completion, the Date for Opening Completion or the Date for Completion (as applicable), which it otherwise would have had, will only be reduced to the extent to which the Variation Order requires the Contractor to compress to overcome the delay.

- (j) **(No Claim)**: Except as provided for under this clause 14.15, the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of any Variation Order to compress of the Contractor's Activities.

14.16 **Compression by Contractor**

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

- (a) **(No obligation)**: neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve:
 - (i) Handover Completion before the Date for Handover Completion;
 - (ii) Opening Completion before the Date for Opening Completion; or
 - (iii) Completion before the Date for Completion;
- (b) **(Timing not affected)**: the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) **(No Claim)**: the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of such compression or acceleration.

14.17 **Directions to Make Accessible**

- (a) **(Direction)**: The Principal's Representative may, by notice in writing expressly referring to this clause 14.17, direct the Contractor to promptly make the Construction Site or a part of the Construction Site Accessible to an Interface Contractor to perform work even if Completion or Opening Completion for that work space has not been reached (**Make Accessible Direction**).
- (b) **(Compliance)**: The Contractor must comply with a Make Accessible Direction.
- (c) **(Extension of time)**: Except to the extent set out in clause 14.17(e) and clause 14.17(d), this clause 14.17 does not affect the Contractor's entitlement under this deed to an extension of time.
- (d) **(Claim)**: A Make Accessible Direction will be a [REDACTED] and an Extension Event to the extent that:
 - (i) the need for the Make Accessible Direction is not related to, or a consequence of, any breach of the deed by the Contractor; and
 - (ii) the Make Accessible Direction was not, in effect:
 - (A) a direction to the Contractor to perform the Contractor's Activities in accordance with this deed (other than this clause), or consistently with this deed; or
 - (B) related to rectification of a Defect.
- (e) **(No Claim)**: The Contractor is not entitled to make, and the Principal will not be liable upon, any Claim as a consequence of any Make Accessible Direction except for the circumstances in clause 14.17(d).

15. **PAYMENT**

15.1 **Principal's payment obligation for design and construction**

- (a) **(Principal to pay):** Subject to the terms of this deed and to any other right to set-off that the Principal may have, the Principal will pay the Contractor the following amounts:
- (i) the Reimbursable Costs;
 - (ii) the Management Fee, Preliminaries Fee and Design Fee;
 - (iii) amounts relating to Provisional Sum Work in accordance with clause 11.16(c);
 - (iv) amounts relating to Post Completion Activities in accordance with clause 16A.1(h) or 16A.2(d) (as applicable); and
 - (v) the Share of Savings (if any).
- (b) **(Limitations and conditions precedent):** Schedule F1 (Payment) and Schedule F2 (*Labour Costs*) set out (among other things):
- (i) those parts of the Contractor's Activities which must be completed before the Contractor may claim a progressive payment with respect to that part;
 - (ii) the payment the Contractor may claim for each progressive payment;
 - (iii) any limitations or other constraints on the Contractor's ability to make Claims for payment;
 - (iv) the restrictions (if any) on the timing and sequencing of the Contractor's Activities with which the Contractor must comply; and
 - (v) formulas that apply for payment of certain elements of the Contractor's Activities.
- (c) **(Further constraints):** Clauses 15.2(c), 15.2(m) and 15.11 set out further payment constraints that are to apply.
- (d) **(Excluded Costs):** The Contractor acknowledges and agrees that it will not be entitled to make, and the Principal will not be liable upon, a Claim in respect of any Excluded Costs incurred or payable by the Contractor arising out of or in connection with the Contractor's Activities or this deed.

15.2 **Payment Claims**

- (a) **(Contractor must submit):** The Contractor must give the Principal's Representative a Claim for payment on account of all amounts then payable by the Principal to the Contractor under this deed (**Payment Claim**) on the following dates:
- (i) on the 25th day of each month after the Commencement Date (or if this day is not a Business Day, the next Business Day after this day) until the Date of Completion;
 - (ii) thirty Business Days after each of:
 - (A) the issue of a Notice of Completion; and
 - (B) the expiry of the final Defects Correction Period; and

- (iii) in respect of the Post-Completion Activities, on the 25th day of each month during which the Post-Completion Activities are carried out (or if this day is not a Business Day, the next Business Day after this day).
- (b) **(Requirements for Payment Claims):** For each Payment Claim made under clause 15.2(a) the Contractor must:
- (i) give the Principal's Representative a Claim in a format required by the Principal's Representative (including electronic format) showing the amount the Contractor claims on account of:
 - (A) the Reimbursable Costs in respect of Reimbursable Work carried out in the previous month payable to:
 - (aa) Subcontractors; and
 - (bb) the Contractor;
 - (B) the Management Fee, Design Fee and Preliminaries Fee in the monthly instalments calculated in accordance with Schedule F1 (*Payment*);
 - (C) the amount payable for Provisional Sum Work (if any) in respect of Provisional Sum Work carried out in the previous month;
 - (D) the amounts payable for the Post Completion Activities (if any) in respect of Post Completion Activities carried out in the previous month;
 - (E) subject to clause 15.11, the Share of Savings (if any) payable that month; and
 - (F) other amounts payable under this deed by the Principal to the Contractor as of the date of the Payment Claim;
 - (ii) where the Principal has given notice under clause 15.14(f)(iv), provide a valid tax invoice for any taxable supplies to which the payment relates;
 - (iii) provide the most recent monthly statement from the Project Bank Account; and
 - (iv) in the case of the Payment Claims issued after:
 - (A) the issue of a Notice of Completion; and
 - (B) the expiration of the final Defects Correction Period,comply with clause 15.2(o).
- (c) **(Reimbursable Costs):** For the purposes of claiming Reimbursable Costs, the following provisions apply:
- (i) where costs could be claimed as a Reimbursable Cost or another type of cost, the Contractor must claim such costs as Reimbursable Costs;
 - (ii) all discounts or rebates received by the Contractor in relation to goods or services procured for the purposes of the Contractor's Activities must be applied to reduce the Reimbursable Costs;
 - (iii) the amount paid by the Principal to the Contractor under this deed in respect of any:

- (A) materials purchased by the Contractor that are in excess of the quantities required to complete the Contractor's Activities or the Works;
 - (B) salvaged material or excavated material in connection with the Contractor's Activities,
- must be applied to reduce Reimbursable Costs;
- (iv) where a Contractor's Employee's salary package includes a motor vehicle, the costs of that motor vehicle must be covered by the relevant multiplier in Part B of Schedule F2 (*Labour Costs*), and cannot be separately claimed as Reimbursable Costs;
 - (v) the Contractor can only recover a maximum of 100 per cent of any bona fide Reimbursable Costs incurred by the Contractor in carrying out the Contractor's Activities;
 - (vi) Reimbursable Costs in respect of Approved Subcontracts are taken to have been incurred on the date that a valid tax invoice has been received by the Contractor for the relevant goods or services; and
 - (vii) for the purposes of clause 15.2(c)(vi):
 - (A) the Contractor may only claim such Reimbursable Costs if it has received a final tax invoice from the relevant Approved Subcontractor, and may not claim Reimbursable Costs on account of the estimated amount of a tax invoice;
 - (B) the Contractor must provide proof of all amounts actually paid to Approved Subcontractors (once paid);
 - (C) where a tax invoice from an Approved Subcontractor is for an amount that is not in Australian currency, the Reimbursable Costs payable by the Principal to the Contractor will be the amount in Australian currency actually paid by the Contractor in relation to the invoice from the Approved Subcontractor; and
 - (D) the Principal may deduct from any subsequent payment the amount by which the original amount claimed by the Contractor under this deed exceeds the actual amount paid by the Contractor to the Approved Subcontractor.
- (d) **(Sufficient details):** Each Payment Claim must set out or attach (to a standard directed by the Principal from time to time) sufficient details, calculations, supporting documentation and any other information required by the Principal in respect of all amounts claimed by the Contractor on an Open Book Basis, including:
- (i) with respect to Reimbursable Work carried out under Approved Subcontracts, the relevant payment schedule from the Contractor to the Subcontractor specifying the amount due to the Subcontractor for the relevant period of the Payment Claim;
 - (ii) with respect to Self-Performed Reimbursable Work comprising labour by the Contractor's Employees:
 - (A) timesheets for the relevant period of the Payment Claim;

- (B) where the amount of any Direct Base Salary for any Contractor's personnel is different from the Direct Base Salary previously claimed for that personnel, the relevant salary information; and
 - (C) the information required by clause 13.36 for the relevant period of the Payment Claim;
- (iii) with respect to Self-Performed Reimbursable Work comprising Construction Plant and Equipment, utilisation logs for the relevant period of the Payment Claim;
 - (iv) a "cost statement" code level report for the amounts claimed in the previous month's Payment Claim that details the Contractor's expenditure as at the date of that Payment Claim in comparison with the forecast costs across relevant points of reference as required by the Principal;
 - (v) a "cost to date report" extract from the Live Access System described as [REDACTED] that summarises all transactions relevant to Payment Claims up to the date of the relevant Payment Claim, allows for the Principal's interrogation of each month's expenditure and allows for the relevant transactions to be traced; and
 - (vi) without limiting clauses 15.2(d)(i) to 15.2(d)(iii), such other information as may be:
 - (A) required to enable the Principal's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under this deed and by the Contractor to the Principal; or
 - (B) otherwise required by the Principal from time to time, whether in relation to a specific payment or not.
- (e) **(Payment Schedule):** The Principal's Representative must, on behalf of the Principal, within 10 Business Days of receipt of the Contractor's Payment Claim, issue to the Contractor a Payment Schedule stating:
- (i) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor under this deed and which the Principal proposes to pay to the Contractor; or
 - (ii) the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal,
- including details of the calculation of the progress amount, and if the amount stated as payable by the Principal to the Contractor is less than the amount claimed by the Contractor, the Principal's Representative must state why the amount is less and the reason(s) why the Principal proposes to withhold payment.
- (f) **(Withhold and set-off):** In issuing a Payment Schedule, the Principal's Representative may deduct from the amount which would otherwise be payable to the Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed or otherwise at Law, including any amount which the Principal is entitled to set-off or withhold under clauses 15.5, 15.6, 15.8, 15.12 or 15.15(d).
- (g) **(Principal may issue Payment Schedule):** If the Contractor does not give the Principal's Representative a Payment Claim at a time required by clause 15.2(a), the

Principal's Representative may nevertheless (but is not obliged to) issue a Payment Schedule as if a Payment Claim was made at the time required.

- (h) **(Requirements for Payment Schedules):** A Payment Schedule issued under clause 15.2(e) or clause 15.2(g) will separately identify the sum of the amounts due on account of the:
 - (i) the Reimbursable Costs payable to:
 - (A) Subcontractors; and
 - (B) the Contractor;
 - (ii) the Management Fee, Design Fee and Preliminaries Fee;
 - (iii) the amount payable in respect of Provisional Sum Work (if any);
 - (iv) the amount payable in respect of Post-Completion Activities (if any);
 - (v) the Share of Savings (if any); and
 - (vi) other amounts payable under this deed by the Principal to the Contractor.
- (i) **(Discrepancy):** Where the Principal has given notice under clause 15.14(f)(iv), if the amount set out in a Payment Schedule issued under clause 15.2(e) is different to the amount in the Contractor's Payment Claim or if the Principal's Representative issues a Payment Schedule under clause 15.2(g), the Contractor must, within two Business Days of receiving the Payment Schedule, issue a revised tax invoice or adjustment note (as applicable) to the Principal to reflect the amount in the Payment Schedule.
- (j) **(Payment):** Within 15 Business Days of the date of the Contractor's Payment Claim in accordance with clause 15.2(a):
 - (i) where the Payment Schedule provides that an amount is payable by the Principal to the Contractor, the Principal must pay the Contractor the progress payment due to the Contractor as certified in the Payment Schedule; and
 - (ii) where the Payment Schedule provides that an amount is payable by the Contractor to the Principal, the Contractor must pay the Principal the amount due to the Principal as certified in the Payment Schedule.
- (k) **(Early lodgement of claim):** If the Contractor lodges a Payment Claim earlier than at the times specified under clause 15.2(a), the Principal's Representative will not be obliged to issue the Payment Schedule in respect of that Payment Claim earlier than it would have been obliged had the Contractor submitted the Payment Claim in accordance with this deed.
- (l) **(Exclusions and deductions):** Despite any other provisions of this deed to the contrary, the amount of any Payment Claim to which the Contractor is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any Payment Schedule issued under clause 15.2(e) as the amount payable to the Contractor arising out of or in any way in connection with this deed will:
 - (i) not include the following amounts:
 - (A) any Excluded Costs;

- (B) any amount which this deed provides cannot be claimed or is not payable because of the failure by the Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);
 - (C) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
 - (D) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Schedule F1 (*Payment*));
 - (E) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
 - (F) any amount in respect of which the Contractor has failed to provide supporting information as required by this deed; or
 - (G) any amount for work which is not in accordance with this deed;
- (ii) deduct the following amounts:
- (A) any amounts which have become due from the Contractor to the Principal under this deed; and
 - (B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the Payment Claim, including under clauses 15.5, 15.6, 15.8, 15.12 or 15.15(c) to 15.15(d);
- (iii) in determining amounts to be excluded or deducted under clauses 15.2(l)(i) and 15.2(l)(ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and
- (iv) be determined having regard to the amounts payable or calculated in accordance with Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*), Schedule F1 (*Payment*) and Schedule F2 (*Labour Costs*).
- (m) **(Principal's Representative not prejudiced)**: Failure by the Principal's Representative to set out in a Payment Schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.
- (n) **(Inclusion of all Claims)**: The Contractor must include in the Payment Claim lodged by it after:
- (i) the issue of a Notice of Completion; and
 - (ii) the expiration of the final Defects Correction Period,

all Claims (excluding third party claims for death, injury or property damage of which the Contractor is not aware, and ought not reasonably to have been aware) that the Contractor wishes to make against the Principal in respect of any fact, matter or

thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this deed which occurred:

- (iii) in the case of the Payment Claim referred to in clause 15.2(a)(ii)(A), prior to the date of that Payment Claim; and
 - (iv) in the case of the Payment Claim referred to in clause 15.2(a)(ii)(B), in the period between the date of the Payment Claim referred to in clause 15.2(a)(ii)(A) and the date of the Payment Claim.
- (o) **(Release from previous Claims):** The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Project Works or this deed that occurred prior to the date of submission of the relevant Payment Claim referred to in clauses 15.2(a)(ii)(A) or 15.2(a)(ii)(B), except for any Claim which:
- (i) has been included in the relevant Payment Claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 15.2(a); or
 - (ii) is a third party Claim for death, injury or property damage of which the Contractor is not aware, and ought not reasonably to have been aware to which clause 15.2(n) applies,

and has not been barred under another provision of this deed.

- (p) **(Subcontractor work):** Where any part of a payment to be made by the Principal to the Contractor is in respect of work carried out by a Subcontractor, the Principal will pay that part of the payment into the Project Bank Account.
- (q) **(Withdrawal of payment):** The Contractor may only make withdrawals from the Project Bank Account to pay the relevant Subcontractor for work carried out by that Subcontractor that forms part of the relevant Payment Claim.
- (r) **(Interest):** Interest on amounts standing to the credit of the Project Bank Account will accrue for the benefit of the Principal.
- (s) **(Construction Plant reporting):** The Contractor must, within 10 Business Days of the end of each calendar month, submit to the Principal's Representative a report detailing all Construction Plant:
- (i) that was purchased for the performance of the Contractor's Activities by the Contractor or its Related Body Corporates;
 - (ii) for which the Contractor has claimed the purchase cost as Reimbursable Costs in the relevant calendar month; and
 - (iii) where the amount claimed by the Contractor is equal to or greater than [REDACTED],
- (being **Relevant Construction Plant**), such report to include details of the Construction Plant, the date of purchase and the amount paid by the Contractor for such Construction Plant.
- (t) **(Relevant Construction Plant):** The Contractor acknowledges that the Relevant Construction Plant:

- (i) may include the Key Plant and Equipment, construction vehicles, wacker packers, pumps, steel tubing and form work to the extent they are purchased for the Project; and
 - (ii) will not include any Construction Plant owned by the Contractor or any Related Body Corporates prior to the date of this deed and the use of such Construction Plant will constitute Self-Performed Reimbursable Work if the use of such Construction Plant is approved pursuant to clause 11.14.
- (u) **(Maintaining Relevant Construction Plant):** The Contractor must obtain the Principal's written consent prior to undertaking any refurbishment or other maintenance of the Relevant Construction Plant that is not reasonably required by Good Industry Practice in order for the Relevant Construction Plan to be sufficient to perform the Contractor's Activities.
- (v) **(Process for Residual Value):** Within a reasonable period following the date on which an item of Relevant Construction Plant is no longer required for the performance of the Contractor's Activities, and in any event before the expiry of the Defects Correction Period referred to in clause 12.6(a), the Contractor must dispose of the Relevant Construction Plant:
- (i) in accordance with a guaranteed buy-back regime to the extent contemplated by the relevant Approved Subcontract (if any);
 - (ii) by private sale for reasonable market value; or
 - (iii) at auction by a reputable and appropriate public auction house.
- (w) **(Residual Value):** Following the processes contemplated in clause 15.2(v):
- (i) if clause 15.2(v)(i) applies, the amount for which the item of Relevant Construction Plant is bought back under the relevant guaranteed buy-back regime;
 - (ii) if clause 15.2(v)(ii) applies, the greater of:
 - (A) the amount for which the item of Relevant Construction Plant is sold by private sale; and
 - (B) reasonable market value as at the time of the sale as determined by a valuer selected by the Principal; or
 - (iii) if clause 15.2(v)(iii) applies, the amount for which the item of Relevant Construction Plant is sold at public auction,
- (in each case, the **Residual Value**) will be a debt due and payable by the Contractor to the Principal and the Reimbursable Cost component of the Outturn Cost will be reduced by the relevant Residual Value amount.
- (x) **(Survival of clause):** Clause 15.2(v) and clause 15.2(w) will survive the termination of this deed.

15.3 Effect of Payment Schedules and payments

- (a) **(No approval or Liability):** Neither the issue of a Payment Schedule under clauses 15.2(e) or 15.2(g), nor the making of any payment pursuant to any such Payment Schedule, will:
- (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
 - (ii) constitute evidence of the value of any work or an admission of Liability or evidence that work has been executed or completed in accordance with this deed; or
 - (iii) prejudice the right of either party to dispute under clause 19 whether any amount certified as payable in a Payment Schedule is the amount properly due and payable (and on determination, whether under clause 19 or as otherwise agreed, of the amount properly due and payable, the Principal or the Contractor, as applicable, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),
- and any payments made pursuant to a Payment Schedule are payments on account only.
- (b) **(Right to amend retained):** The Principal's Representative may at any time correct, modify or amend any Payment Schedule.

15.4 Provision of documentation and other requirements

- (a) **(Documentation):** The value of the construction work carried out, or related goods and services provided, by the Contractor and the amount to which the Contractor is entitled will be no more than ■■■ per cent of the amount that the Principal's Representative would otherwise have set out in any Payment Schedule unless and until the Contractor has:
- (i) provided the Principal with the unconditional undertakings and the Parent Company Guarantee required under clause 5;
 - (ii) provided the Principal's Representative with:
 - (A) a statutory declaration by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule B1 (*Form of Statutory Declaration*), made out not earlier than the date of the Payment Claim;
 - (B) where clause 15.7(o) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause; and
 - (C) if applicable, the Asset Management Information and evidence of compliance with the reporting requirements and the sustainability reporting requirements in the SWTC;
 - (iii) where the Principal has given notice under clause 15.14(f)(iv), provided the Principal's Representative with a tax invoice, revised tax invoice or adjustment note (as applicable) as required under clause 15.2(b)(ii) and clause 15.2(i);
 - (iv) where the Principal's Representative has requested information relating to the Cost Plan or the Contractor's cost system in accordance with clause 9.16(e), provided such information to the Principal as required under clause 9.16(e);

- (v) demonstrated to the Principal's Representative that it has effected and is maintaining, or has procured to be effected the insurances required to be effected by the Contractor under clause 17 and (if requested) provided supporting evidence of this to the Principal's Representative;
 - (vi) subject to clauses 15.4(c) and 15.4(d), in relation to each tenderer approved by the Principal's Representative pursuant to clause 11.7(a), evidence to the satisfaction of the Principal's Representative of the Contractor's compliance with clause 11.7 (including the provision of each of the agreements referred to in clause 11.7(c) having been duly stamped (if required by Law));
 - (vii) provided the documents required by clause 6.9(b) evidencing payment of the long service leave levy;
 - (viii) where clause 9.18 applies, complied with the requirements under clause 9.18 and satisfied the corresponding conditions precedent to the Escrow Agreement; and
 - (ix) done everything else that it is required to do under this deed before being entitled to make a Payment Claim or receive payment.
- (b) (**Updated Contractor's Program**): The value of the construction work carried out by the Contractor and the amount to which the Contractor is entitled will be no more than ■■■ per cent of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the Contractor has provided the Contractor's Program (and any updates) required by clause 14.2.
- (c) (**First Payment Claim**): In relation to the Contractor's first Payment Claim after the Claim for the Initial Payment, to satisfy the evidentiary requirements of clause 15.4(a)(vi), the Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of this deed and the date of the first Payment Claim.
- (d) (**Subsequent Payment Claims**): In relation to each subsequent Payment Claim, to satisfy the evidentiary requirements of clause 15.4(a)(vi), the Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of previous Payment Claim referred to in clause 15.4(c) and the date of that Payment Claim.

15.5 Payment of Subcontractors, workers compensation and payroll tax

- (a) (**Principal may pay**): If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid will be a debt due and payable from the Contractor to the Principal.
- (b) (**Administration or winding up**): If the Principal receives notices of:
- (i) the Contractor being placed under administration; or

(ii) the making of a winding up order in respect of the Contractor,

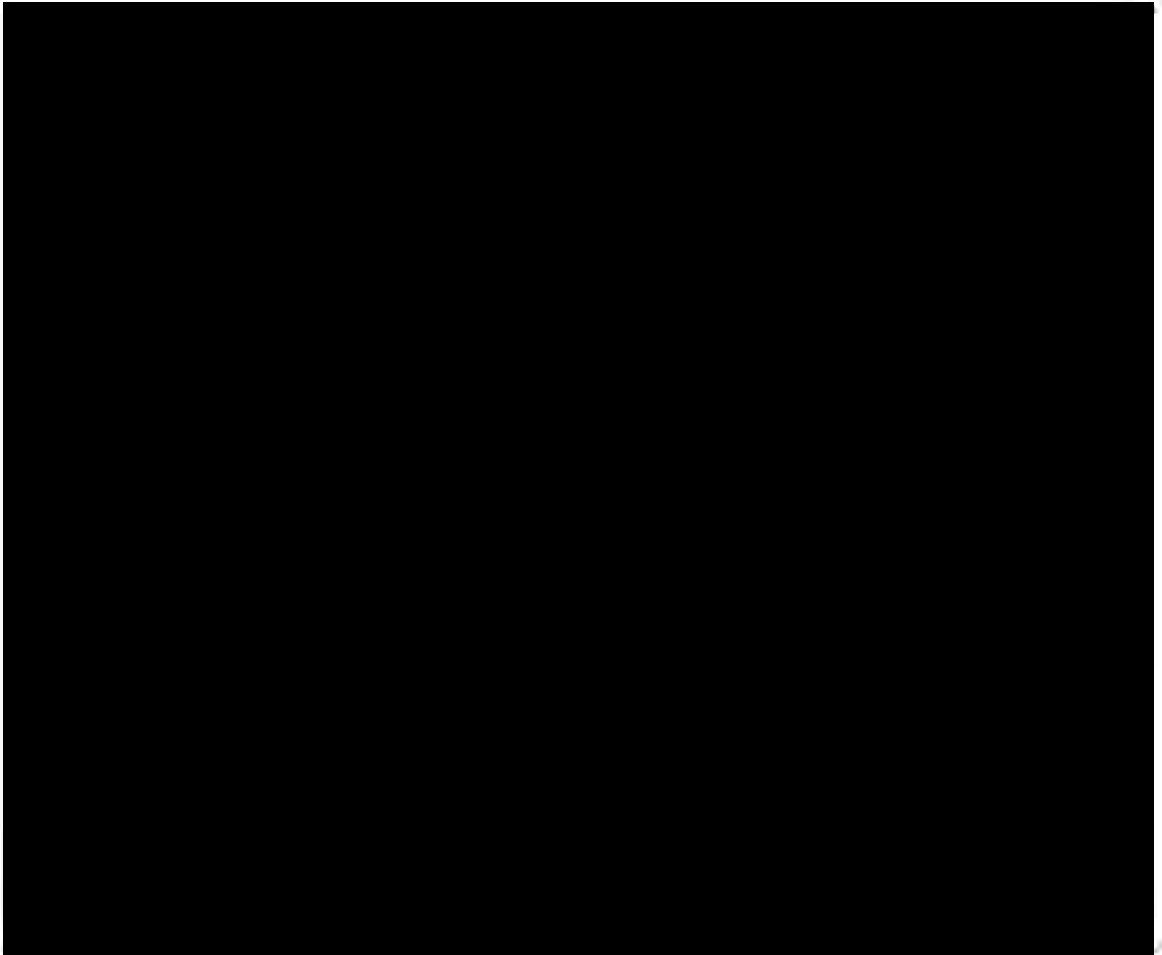
the Principal will not make any payment to a worker or Subcontractor pursuant to clause 15.5(a) without the concurrence of the administrator, provisional liquidator or liquidator, as applicable.

- (c) (**Withholding moneys**): If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 15.4(a)(ii)(A), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (d) (**Principal's rights unaffected**): Nothing in this clause 15.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

15.6 Unfixed Materials

- (a) (**Exclusion to Payment Claim**): Subject to clauses 15.6(b), 15.6(g) and 15.6A, the cost of unfixed or off-site Materials must not be included in a Payment Claim.
- (b) (**Requirements for payment**): The Contractor is only entitled to make a Claim for payment for Materials intended for incorporation in the Project Works but not yet incorporated, and the Principal is only obliged to make payment for such Materials if:
- (i) the Contractor provides evidence of:
 - (A) unencumbered ownership of Materials;
 - (B) identification and labelling of the Materials as the property of the Principal; and
 - (C) adequate and secure storage and protection;
 - (ii) the Contractor has provided to the Principal an unconditional undertaking that meets the requirements of clause 5.2 for an amount equal to the payment claimed for the unfixed Materials;
 - (iii) the insurance held and the storage arrangements for the unfixed Materials are acceptable to the Principal's Representative;
 - (iv) the condition of the unfixed Materials has been confirmed in an inspection by the Principal's Representative;
 - (v) if the PPS Law applies, the Contractor has registered a Security Interest in the unfixed Materials in favour of the Principal in accordance with clause 21.17;
 - (vi) the Materials are provided under an Approved Subcontract; and
 - (vii) the Contractor has complied with the Procurement Management Plan and Tendering Management Plan in respect of the procurement of the relevant Materials.
- (c) (**Principal's property**): The only unfixed Materials to be allowed for inclusion in a Payment Schedule are those that have become or (on payment) will become the property of the Principal.

- (d) **(Title):** Upon a payment against a Payment Schedule that includes amounts for unfixed Materials, title to the unfixed Materials included will vest in the Principal.
- (e) **(Delivery):** Following payment against a Payment Schedule that includes amounts for unfixed Materials pursuant to this clause 15.6 [REDACTED] the Contractor must arrange for [REDACTED] delivery to the Site, or such other locations directed by the Principal, within the time frames specified in the relevant Approved Subcontract and in any event as soon as reasonably practicable.
- (f) **(Release):** The security provided in accordance with clause 15.6(b)(ii) will be released once the applicable unfixed Materials are incorporated into the Project Works.



- (h) **(Inconsistency):** To the extent of any inconsistency between this clause and the Tendering Management Plan or the Procurement Management Plan, the parties agrees that this clause will prevail.

15.6A **Payment for Key Plant and Equipment**

- (a) **(Advance payment):** The Contractor is not entitled to claim payment for any Key Plant and Equipment in advance of such Key Plant and Equipment being delivered to the Construction Site except as permitted under this clause 15.6A.
- (b) **(Conditions precedent to payment):** The Contractor is entitled to claim payment for Key Plant and Equipment only once the following conditions precedent have been satisfied:
 - (i) the Contractor has delivered to the Principal an unconditional undertaking in the form of Schedule F3 (*Form of Unconditional Undertaking*) from an Institution referred to in paragraph (a) of the definition of "Institution" that complies with the requirements of clause 5.2 for an amount equal to 100% of amount claimed by the Contractor (**Key P&E Bonding**);
 - (ii) the Contractor has provided evidence to the reasonable satisfaction of the Principal's Representative that the relevant advance payment:
 - (A) will be applied exclusively towards the purchase of the relevant item of Key Plant and Equipment; and
 - (B) relates only to orders for new Key Plant and Equipment obtained for the performance of the Contractor's Activities that is not already owned or in the possession of the Contractor;
 - (iii) the Contractor has granted a separate first ranking Security Interest over each relevant item of Key Plant and Equipment in favour of the Principal on such terms and conditions as are reasonably required by the Principal;
 - (iv) the Contractor has either paid or is legally obliged to pay the value claimed by the Contractor in its Payment Claim for the Key Plant and Equipment and such amount is demonstrated through invoices received from the relevant Subcontractor or supplier;
 - (v) the Key Plant and Equipment are provided under an Approved Subcontract; and
 - (vi) the Contractor has complied with the Procurement Management Plan and Tendering Management Plan in respect of the procurement of the relevant Materials; and
 - (vii) the Contractor has done all other things required under clause 15.6A(d).
- (c) **(Acknowledgement):** The Contractor acknowledges and agrees that each Security Interest to be provided under clause 15.6A(b)(iii) will secure the obligations of the Contractor under this deed.
- (d) **(Principal's Security Interests):** The Contractor must do all things the Principal considers reasonably necessary to ensure that the Principal's Security Interests in the Key Plant and Equipment are enforceable, perfected, effective and take priority over all other Security Interests, including executing and procuring any relevant secured parties execute a deed of priority to give the Principal's Security Interest first ranking priority over the Key Plant and Equipment.
- (e) **(Contractor warranty):** The Contractor warrants that:

- (i) there are no encumbrances over the Key Plant and Equipment (other than the Security Interests in favour of the Principal that are created by the terms of this deed); and
- (ii) it will not create, purport to or attempt to create, or permit to exist any encumbrance over the Key Plant and Equipment,

and repeats these warranties at the time that the Key Plant and Equipment is delivered to the Construction Site and each day thereafter until the Security Interests are released in accordance with clause 15.6A(f).

- (f) **(Delivery)**: Following payment against a Payment Schedule that includes amounts pursuant to clause 15.6A for an item of Key Plant and Equipment where that item Key Plant and Equipment is not located in Australia, the Contractor must arrange for transportation of such item of Key Plant & Equipment to Australia and delivery to the Site, or such other locations directed by the Principal, within the time frames specified in the relevant Approved Subcontract and in any event as soon as reasonably practicable.
- (g) **(Release of Key P&E Bonding)**: Promptly after:
 - (i) in relation to Key Plant and Equipment identified without an asterisk in Schedule C6 (*Key Plant and Equipment*):
 - (A) the Contractor notifies the Principal in writing that the item of Key Plant and Equipment has been delivered to the Construction Site; and
 - (B) the Principal's Representative is satisfied that the item of Key Plant and Equipment has been delivered to the Construction Site; and
 - (ii) in relation to Key Plant and Equipment identified with an asterisk in Schedule C6 (*Key Plant and Equipment*):
 - (A) the Contractor has demonstrated to the satisfaction of the Principal (acting reasonably) that the relevant item of Key Plant and Equipment has been assembled and commissioned; and
 - (B) the Principal's Representative is satisfied that the relevant item of Key Plant and Equipment has been assembled and commissioned,

the Principal must release the Key P&E Bonding to the Contractor.
- (h) **(Release of charge)**: As part of the disposal of Key Plant and Equipment in accordance with clause 15.2(v), the Principal must:
 - (i) release the relevant Security Interest in relation to that item of Key Plant and Equipment; and
 - (ii) take all steps reasonably required in order to remove, from the PPS Register, any registration(s) by the Principal of the Security Interests) provided for by this clause 15.6A in respect of that item of Key Plant and Equipment.
- (i) **(Protection and insurance)**: The Contractor must ensure that each item of Key Plant and Equipment is properly stored (or in the case of Key Plant and Equipment being transported to Australia, adequately packaged) and adequately protected and insured.

15.7 **SOP Act**

- (a) (**Interpretation**): Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) (**Provision of information to Principal**): The Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a Payment Claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) (**Agency**): In responding to the Contractor under the SOP Act, the Principal's Representative acts as the agent of the Principal and the Principal authorises the Principal's Representative to issue Payment Schedules on its behalf (without affecting the Principal's right to issue a Payment Schedule itself).
- (d) (**Issue of Payment Schedule**): If, within the time allowed by the SOP Act for the service of a Payment Schedule by the Principal, the Principal does not:
 - (i) serve the Payment Schedule itself; or
 - (ii) notify the Contractor that the Principal's Representative does not have authority from the Principal to issue the Payment Schedule on its behalf,

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

- (e) (**Other amounts**): For the purposes of this deed, the amount of the progress payment to which the Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a Payment Schedule under clause 15.2(e) less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (f) (**No additional rights**): Nothing in this deed will be construed to:
 - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or
 - (ii) subject to clause 15.7(g), give to the Contractor rights under this deed which extend or are in addition to rights given to the Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (g) (**Suspension**): If the Contractor suspends the whole or part of the Contractor's Activities pursuant to the SOP Act, except to the extent (if any) expressly provided under the SOP Act and clause 15.7(f), the Principal will not be liable for and the Contractor is not entitled to Claim any Loss suffered or incurred by the Contractor as a result of the suspension.
- (h) (**Indemnity**): The Contractor must indemnify the Principal from and against all Claims against the Principal, and all Loss suffered or incurred by the Principal arising out of:
 - (i) a suspension by a Subcontractor of work which forms part of the Contractor's Activities pursuant to the SOP Act (except to the extent that the suspension is due to non-payment by the Principal of an amount that is due and payable under this deed); or

- (ii) a failure by the Contractor to comply with its obligations under clause 15.7(b).
- (i) **(Nominating authority):** The Contractor agrees that for the purposes of section 17(3) of the SOP Act:
 - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the Contractor's Activities is to be made; and
 - (ii) the Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (j) **(Adjudication amount):** If an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a Payment Schedule under clause 15.2(e);
 - (ii) if it is subsequently determined pursuant to this deed that the Contractor was not entitled under this deed to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (k) **(Withholding amounts):** Without limiting clause 15.8, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (l) **(Effect of withholding amounts):** If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Contractor must be made.
- (m) **(No proceedings):** The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.

- (n) **(Debt due):** Any amount paid by the Principal pursuant to section 26C of the SOP Act will, to the extent not already withheld, deducted or set-off under clause 15.8, be a debt due and payable from the Contractor to the Principal.
- (o) **(Statutory declaration):** If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within five Business Days of the occurrence of the event in clause 15.7(o)(i) or clause 15.7(o)(ii)(as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as applicable).

15.8 Right of set-off

- (a) **(Withhold or set-off):** The Principal's Representative may (on behalf of the Principal) in any Payment Schedule issued under clauses 15.2(e) or 15.2(g) withhold, set-off or deduct from the money which would otherwise be certified as payable to the Contractor or which would otherwise be due to the Contractor under this deed:
 - (i) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the SOP Act or any amount due from the Contractor to the Principal as determined under clause 19);
 - (ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act;
 - (iii) any amount received by the Contractor from the sale of surplus material or material salvaged from the Construction Site in performing the Contractor's Activities;
 - (iv) any amount that the Principal is not required to pay due to the application of clause 15.2(c) or clause 15.4;
 - (v) any amount that the Principal is entitled to withhold under clause 15.12(h);
 - (vi) any bona fide Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise;
 - (vii) any amount that the Principal may be entitled to in accordance with the terms of the Tender Cost Contribution Deed (except that any such amount cannot be set off against the Initial Payment); or
 - (viii) any other amount the Principal is entitled to withhold, set-off or deduct under this deed,

under or arising out of or in connection with this deed or the Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not

such amounts were included in a Payment Schedule issued by the Principal's Representative.

- (b) **(Survival of clause)**: This clause 15.8 will survive the termination of this deed.
- (c) **(No right of set off)**: The Contractor acknowledges and agrees that it has no right to set off under or in relation to this deed.

15.9 Interest

- (a) **(Principal to pay)**: The Principal will pay simple interest at the rate of █ per cent above the Base Interest Rate on any:
 - (i) amount which has been set out as payable by the Principal's Representative in a Payment Schedule under clause 15.2(e), but which is not paid by the Principal within the time required by this deed;
 - (ii) damages; and
 - (iii) amount which is found after the resolution of a Dispute to be payable to the Contractor, and which has not been paid by the Principal,from the date such amount was first due and payable until the date such amount is paid.
- (b) **(Contractor to pay)**: The Contractor will pay simple interest at the rate of █ per cent above the Base Interest Rate on any amount which this deed provides may become due and payable by the Contractor to the Principal and such simple interest will be payable from the date such amount was first due and payable until the date such amount is paid.
- (c) **(Sole entitlement)**: Clauses 15.9(a) and 15.9(b) will be the Contractor's or the Principal's (as applicable) sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

15.10 Title and risk

- (a) **(Title)**: Title in all Materials forming part of the Project Works, the Temporary Works, the works carried out pursuant to the Delivery Phase Maintenance and the Post Completion Activities will pass progressively to the Principal on the earlier of:
 - (i) installation of the relevant Project Works, the Temporary Works, the works carried out pursuant to the Delivery Phase Maintenance and the Post Completion Activities on the Construction Site; or
 - (ii) payment for or delivery of such Materials to the Construction Site, regardless of whether the relevant Materials are unfixed,provided that title to Temporary Works will only pass to the Principal if the Temporary Works ultimately form part of the Project Works.
- (b) **(Risk)**: Risk in all such items remains with the Contractor in accordance with clause 17.1.

15.11 Timing for claims for Share of Savings

The Contractor will be entitled to claim the Share of Savings (if any) █

15.11A **Share of Savings Cap**

The Share of Savings is limited to the Share of Savings Cap.

15.12 **Outturn Cost exceeds Target Cost**

- (a) **(Share of Cost Overrun)**: If the Outturn Cost is greater than the Target Cost, the Share of Cost Overrun will be a debt due and payable by the Contractor to the Principal.
- (b) **(Limit on payment)**: The Contractor's total aggregate Liability under clause 15.12(a) is limited to an amount equal to the Share of Cost Overrun Cap.
- (c) **(Outturn Cost Cure Plan)**: If at any time the Outturn Cost is equal to or exceeds [REDACTED] of the Target Cost, the Contractor must, within 15 Business Days after the date that this occurs prepare and submit to the Principal a cure plan which must:
 - (i) describe:
 - (A) the manner in which the Contractor will achieve Completion of the Contractor's Activities; and
 - (B) the anticipated final Outturn Cost (which must not have the effect of the Share of Cost Overrun Cap being exceeded other than as approved by the Principal); and
 - (ii) be prepared using Good Industry Practice,**(Outturn Cost Cure Plan).**
- (d) **(Refresh)**: As part of the Outturn Cost Cure Plan, the Contractor may, but is not obliged to, propose an adjustment or refresh of the Share of Cost Overrun Cap.
- (e) **(Review of plan)**: Any review by the Principal's Representative of the Outturn Cost Cure Plan will be pursuant to clause 13.13.
- (f) **(Principal's rights)**: Without limiting clause 13.13, the Contractor acknowledges and agrees that:
 - (i) the Principal does not assume or owe any duty to the Contractor to review the Outturn Cost Cure Plan; and
 - (ii) any review of the Outturn Cost Cure Plan by the Principal's Representative will not limit or otherwise affect the Principal's rights (including the right to terminate this deed), or the Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.
- (g) **(Contractor to diligently comply with Outturn Cost Cure Plan)**: If the Principal's Representative has notified the Contractor that it has no (or has no further) comments in relation to an Outturn Cost Cure Plan in accordance with clause 13.13(h)(iii)(E) or clause 13.13(j)(ii)(B), the Contractor must diligently comply with the Outturn Cost Cure Plan and must provide monthly updates to the Principal in respect of its progress in implementing the Outturn Cost Cure Plan and at any other time the Principal reasonably requires.
- (h) **(Withholding payment – look forward)**: If, at any time after the date that is [REDACTED], the Principal reasonably determines that the Outturn Cost will exceed [REDACTED] the Target Cost, the Principal may, in respect of each subsequent Payment Claim submitted by the Contractor, withhold payment of

all or part of the Management Fee to meet the Principal's determination of the Contractor's liability under clause 15.12(a).

- (i) **(Deduction – actual cost overrun):** If the Outturn Cost has actually exceeded the Target Cost, the Principal's Representative may, in respect of each subsequent Payment Claim submitted by the Contractor, deduct [REDACTED] of the amount which would otherwise be payable to the Contractor as set off for the debt due pursuant to clause 15.12(a), provided that the Principal's Representative may not deduct any amount pursuant to this clause 15.12(i) to the extent the debt due pursuant to clause 15.12(a) has been paid using the amounts withheld pursuant to clause 15.12(h) (if any).
- (j) **(Liquidated damages):** Nothing in this clause 15.12 in any way limits the Contractor's Liability for liquidated damages under clause 16.5.

15.13 **No Claim by Contractor**

The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any act, omission or breach of contract by the Principal or the Principal's Representative, to the extent that this may have contributed to preventing the Contractor from maximising the amount it otherwise would have been entitled to under clause 15.11.

15.14 **GST**

- (a) **(GST exclusive):** Unless otherwise stated, all amounts set out in this deed are GST exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 15.4.
- (b) **(Entitlement to increase amount):** Subject to clauses 15.14(d) and 15.14(e), where any supply occurs under or in connection with this deed or the Project Works which is subject to GST, the party making the supply (Supplier) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (c) **(Input tax credits):** Where an amount is payable to the Supplier for a supply under or in connection with this deed or the Project Works which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under clause 15.14(b).
- (d) **(Condition precedent):** As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (e) **(Variation):** If the GST payable in relation to a supply made under or in connection with this deed or the Project Works varies from the amount of GST paid by the recipient under clause 15.14(b), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the recipient. Any payment, credit or refund under this clause 15.14(e) is deemed to be a payment, credit or refund of the amount of GST payable under clause 15.14(b). Where there is an adjustment event, the Supplier must issue an adjustment note to the recipient as soon as the Supplier becomes aware of the adjustment event.

- (f) **(Requirements):** The parties agree that unless and until otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this deed:
- (i) the Principal will issue to the Contractor a recipient created tax invoice (**RCTI**) for each taxable supply made by the Contractor to the Principal under this deed;
 - (ii) the Principal will issue to the Contractor a recipient created adjustment note for any adjustment event;
 - (iii) the Contractor will not issue a tax invoice or adjustment note in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI or recipient created adjustment note for each taxable supply made by the Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs and recipient created adjustment notes in respect of such supplies and the Contractor will be required to issue tax invoices and adjustment notes to the Principal in respect of any such taxable supply.
- (g) **(Registration status):** Each party acknowledges and warrants that at the time of entering into this deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (h) **(Interpretation):** In this clause 15.14:
- (i) **GST** means the tax payable on taxable supplies under the GST Legislation;
 - (ii) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
 - (iii) terms defined in GST Legislation have the meaning given to those terms in GST Legislation; and
 - (iv) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.14

15.15 **Initial payment**

- (a) **(Entitlement):** The Contractor is entitled to be paid the Initial Payment, subject to the satisfaction of the following conditions:
- (i) the Contractor has given the Principal written details of the portions of the Initial Payment which have become payable to its Subcontractors and the due dates for payment; and
 - (ii) the Contractor has established to the Principal's reasonable satisfaction that the Initial Payment will be used for the purposes of performing the Contractor's Activities.
- (b) **(Payment claim):** Subject to clause 15.15(a), the Contractor may submit to the Principal a Payment Claim for the Initial Payment on the Commencement Date.

- (c) **(Principal to pay):** The Principal will pay to the Contractor the Initial Payment:
- (i) if the Contractor submits a Payment Claim in accordance with clause 15.15(b) on or before 2 December 2022, within 15 Business Days of the date of the Contractor's Payment Claim under that clause; or
 - (ii) if the Contractor submits a Payment Claim in accordance with clause 15.15(b) after 2 December 2022, no later than the later of:
 - (A) 25 Business Days after the date of the Payment Claim under that clause; and
 - (B) 13 January 2023.
- (d) **(Payment Claim Deductions):** The Contractor acknowledges and agrees that:
- (i) from the [REDACTED] Payment Claim issued after the Payment Claim for the Initial Payment, the Principal will be entitled to deduct from the amount which would otherwise be payable to the Contractor, an amount equal to [REDACTED] per cent of the Initial Payment until the Principal has recovered an amount equal to the Initial Payment; and
 - (ii) if this deed is terminated by the Principal pursuant to clause 18, [REDACTED] or by reason of the Contractor repudiating this deed (or otherwise at Law) prior to the date that the Principal has recovered an amount equal to the Initial Payment under clause 15.15(d)(i), the Principal will be entitled to recover such unrecovered amount as a debt due and payable.

16. COMPLETION

16.1 Progressive Testing

- (a) **(Direction for testing):** At any time prior to Completion, the Principal's Representative may direct that any Materials or work forming part of the Contractor's Activities be tested.
- (b) **(Contractor to provide assistance):** The Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the Contractor's Activities or Project Works as may be required to facilitate any test directed by the Principal's Representative under clause 16.1(a).
- (c) **(Make good):** On completion of any test the Contractor must make good the Contractor's Activities or Project Works so that they fully comply with this deed.
- (d) **(Direction not to cover):** The Principal's Representative may direct that any part of the Contractor's Activities or the Project Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.
- (e) **(Conduct of tests):** The tests prescribed in this deed must be conducted by the Contractor as and when provided for in this deed, or may be conducted by the Principal's Representative or a person (that may include the Contractor or the Independent Certifier) nominated by the Principal's Representative.
- (f) **(Testing by independent authority):** Any testing required to be done by an independent authority must be carried out by an authority recognised by Joint Accreditation System of Australia and New Zealand (JAS-ANZ) ABN 49 614 982 550 (or their successors or assigns).

- (g) **(Written notice)**: Unless otherwise stated in this deed, before conducting a test under this deed the Principal's Representative or the Contractor must give not less than two Business Days' notice in writing to the other of the time, date and place of the test (provided that if the other party does not then attend, the test may nevertheless proceed).
- (h) **(Parties may conduct test)**: Without prejudice to any other rights or remedies under this deed, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.
- (i) **(Availability of results)**: Each party must promptly make the results of tests available to the other and to the Principal's Representative and the Independent Certifier.
- (j) **(Costs and impact of testing)**: Where the Principal's Representative directs that Materials or work be tested, the costs of and incidental to testing will be a [REDACTED] and an Extension Event unless:
 - (i) the test is in respect of a part of the Contractor's Activities or the Project Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required;
 - (ii) the test is consequent upon a failure of the Contractor to comply with a requirement of this deed; or
 - (iii) the test otherwise identifies a Defect.
- (k) **(Extra costs)**: Where the cost of testing are not Reimbursable Costs in accordance with clause 16.1(j), any additional costs incurred by the Principal will be a debt due and payable from the Contractor to the Principal and payable by the Contractor to the Principal on demand.

16.2 Handover Completion, Opening Completion and Completion

- (a) **(Written notice)**: The Contractor must give the Principal's Representative:
 - (i) six months;
 - (ii) three months;
 - (iii) one month; and
 - (iv) eight Business Days,written notice of the estimated Date of Handover Completion of the relevant Handover Portion, Date of Opening Completion and Date of Completion, and the Contractor must give a copy of each notice in relation to Opening Completion and Completion to the AM Contractor at the same time.
- (b) **(Joint inspection)**: Subject to clause 16.2(h), the Principal's Representative, the Contractor's Representative and the Independent Certifier must, within four Business Days after receipt of each notice given under clause 16.2(a) jointly inspect the Contractor's Activities at a mutually convenient time.

- (c) **(Notice from Independent Certifier):** Within three Business Days after the joint inspection referred to in clause 16.2(b), the Independent Certifier must give the Principal and the Contractor a notice either:
- (i) containing a list of items which it believes must be completed before Handover Completion, Opening Completion or Completion (as the case may be) is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Handover Completion, Opening Completion or Completion (as the case may be) that it is not practicable to issue a list as contemplated in clause 16.2(c)(i).

The Independent Certifier will give a copy of the notice to the AM Contractor at the same time.

- (d) **(Incomplete list of Defects):** The parties acknowledge and agree that the Defects identified in any notice under clause 16.2(c)(i) are representative of the Defects that may be present at that period in time only and does not represent a complete list of all Defects that may prevent the Contractor from achieving Handover Completion, Opening Completion or Completion (as the case may be).
- (e) **(Joint inspection - Completion):** When the Contractor considers that it has achieved Handover Completion, Opening Completion or Completion (as the case may be):
- (i) the Contractor must notify the Principal's Representative and the Independent Certifier in writing (also confirming that any items listed in the Independent Certifier's notice of clause 16.2(c)(i) have been addressed) and provide them with an executed certificate in the form of Schedule B4 (*Contractor's Certificate*); and
 - (ii) thereafter, and subject to clause 16.2(h), the Principal's Representative, the Contractor's Representative and the Independent Certifier must jointly inspect the Contractor's Activities at a mutually convenient time.

The Contractor must give a copy of the notice under clause 16.2(e)(i) to the AM Contractor at the same time.

- (f) **(Determination by Independent Certifier):** The Independent Certifier must, within five Business Days after receipt of a notice under clause 16.2(e)(i) or a notice under clause 16.2(g):
- (i) if Handover Completion, Opening Completion or Completion has been achieved, provide the Principal's Representative and the Contractor with a document signed by the Independent Certifier in the form in Schedule B5 (*Notices*); or
 - (ii) if Handover Completion, Opening Completion or Completion (as the case may be) has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Handover Completion, Opening Completion or Completion (as the case may be); or
 - (B) that the Contractor is so far from achieving Handover Completion, Opening Completion or Completion (as the case may be) that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 16.2(f)(ii)(A).

The Independent Certifier will give a copy of the certificate or notice to the AM Contractor at the same time.

- (g) **(Resubmission):** If the Independent Certifier issues a notice under clause 16.2(f)(ii), the Contractor must proceed with the Contractor's Activities and thereafter, when it considers that it has achieved Handover Completion, Opening Completion or Completion (as the case may be), clauses 16.2(e) and 16.2(f) will reapply.
- (h) **(Attendees and comments):** The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 16.2 (including any relevant Interface Contractors); and
 - (ii) the Principal's Representative may provide comments to the Independent Certifier (with a copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with this deed, including comments made by any Interface Contractor.

16.3 **Unilateral Issue of Notice of Handover Completion, Notice of Opening Completion and Notice of Completion**

If at any time a notice required to be given by the Contractor to the Independent Certifier under either of clauses 16.2(e) or 16.2(g) is not given by the Contractor yet the Principal's Representative is of the opinion that Handover Completion, Opening Completion or Completion has been achieved, the Principal's Representative may direct the Independent Certifier to:

- (a) issue a Notice of Handover Completion, Notice of Opening Completion or Notice of Completion under clause 16.2(f); or
- (b) carry out an inspection as if a notice had been received pursuant to clause 16.2(e)(i) and clauses 16.2(f) and 16.2(g) will apply.

16.4 **Part of the Project Works or a Handover Portion**

- (a) **(New Handover Portions):** The Principal's Representative may (in its absolute discretion), at any time (including where part of a Handover Portion or the Project Works has reached a stage equivalent to Handover Completion, Opening Completion or Completion (as applicable), but another part of the Handover Portion or the Project Works has not reached a stage equivalent to Handover Completion, Opening Completion or Completion (as applicable)) by written notice to the Contractor direct additional or alternative Handover Portions under this clause 16.4 (including by dividing any existing Handover Portions into multiple Handover Portions or by splitting off some of the Project Works to form a new Handover Portion).
- (b) **(Timing of direction):** In respect of any additional or alternative Handover Portion directed under this clause 16.4, if the notice under clause 16.4(a) is given by the Principal's Representative:
 - (i) before the Date for Handover Completion of the relevant existing Handover Portion, Date for Opening Completion or Date for Completion (as applicable) and before the relevant part of the Works to be separated has reached a stage equivalent to Handover Completion, Opening Completion or Completion (as applicable), it will be [REDACTED] and an Extension Event; or

(ii) after:

- (A) the Date for Handover Completion of the relevant existing Handover Portion, Date for Opening Completion or Date for Completion (as applicable) but before the relevant part of the Works to be separated has reached a stage equivalent to Handover Completion, Opening Completion or Completion (as applicable); or
- (B) the date the relevant part of the Works to be separated has reached a stage equivalent to Handover Completion, Opening Completion or Completion (as applicable),

the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of the direction of the additional or alternative Handover Portion.

(c) **(Notice requirements):** Subject to clause 16.4(d), any notice given by the Principal's Representative under clause 16.4(a) must, for each new Handover Portion, include details of:

- (i) the Works which will become the new Handover Portion;
- (ii) the Date for Handover Completion for any new Handover Portion; and
- (iii) whether Handover Completion of the new Handover Portion must be achieved prior to Opening Completion;
- (iv) respective daily rates of liquidated damages for the new Handover Portions (provided that the aggregate of the daily rates of liquidated damages applicable to the new Handover Portions must not exceed the daily rate of liquidated damages applicable to the relevant existing Handover Portion or Opening Completion or Completion (as applicable) prior to the creation of the new Handover Portions); and
- (v) the conditions precedent to Handover Completion set out in Part A of Schedule C3 (*Conditions Precedent to Completion Stages*) that do not apply to the new Handover Portion,

all as determined by the Principal's Representative (acting reasonably).

(d) **(Handover Portion divided):** If the Principal's Representative directs a new Handover Portion in circumstances where parts of a Handover Portion or the Project Works have reached a stage equivalent to Handover Completion, Opening Completion or Completion (as applicable), but other parts of the relevant Handover Portion or the Project Works (as applicable) have not, the Contractor acknowledges and agrees that:

- (i) in relation to a new Handover Portion that relates to the incomplete part of the Works, the new Handover Portions for those Works will have:
 - (A) a Date for Handover Completion equivalent to the relevant date that applied to such Works prior to the creation of the new Handover Portions, unless otherwise agreed by the Principal in writing (in its absolute discretion); and

- (B) liquidated damages payable at the rate:
- (aa) applicable to the existing Handover Portion as set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*); or
 - (bb) where the relevant Works or activities form part of the Project Works or the Contractor's Activities required to achieve Opening Completion prior to the direction, equal to a portion of the liquidated damages payable for Opening Completion determined by the Principal having regard to the nature, extent and scope of Works and the risk to the Principal associated with the delay to such Works; or
 - (cc) where the relevant Works or activities form part of the Project Works or the Contractor's Activities required to achieve Completion prior to the direction, equal to a portion of the liquidated damages payable for Completion determined by the Principal having regard to the nature, extent and scope of Works and the risk to the Principal associated with the delay to such Works,
- unless otherwise agreed by the Principal in writing (in its absolute discretion); and
- (ii) in relation to a new Handover Portion that relates to the part of the Works that have reached a stage equivalent to Handover Completion, Opening Completion or Completion (as applicable), the Principal's Representative may determine the Date for Handover Completion for the new Handover Portions having regard to the stage of completion of such Works and the time required to complete the relevant process in clause 16.
- (e) **(Written notice for occupation)**: Without limiting clauses 16.4(a) to 16.4(d), the Principal may (or may allow its nominee to), upon written notice to the Contractor, occupy or use any part of a Handover Portion or the Project Works although the whole of the relevant Handover Portion or Project Works has not reached Handover Completion, Opening Completion or Completion (as applicable).
- (f) **(Access)**: If the Principal's Representative gives a notice under clause 16.4(e):
- (i) the Principal must allow the Contractor reasonable access to the part of the Handover Portion or Project Works referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the relevant Handover Portion or Project Works of which the area being occupied or used forms part to Handover Completion, Opening Completion or Completion; and
 - (ii) this will not otherwise limit or affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve Handover Completion, Opening Completion or Completion (as applicable) of the relevant Handover Portion or Project Works of which the area being occupied or used forms part, by the relevant Date for Handover Completion, Date for Opening Completion or Date for Completion (as applicable).
- (g) **(No Claim)**: Other than as specified in clause 16.4(b)(i), the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in connection with a direction under this clause 16.

16.5 Liquidated Damages

- (a) **(Acknowledgement)**: The Principal and the Contractor acknowledge and agree that the Principal is pursuing a policy of delivering the WHTBL Program and the Project Works for purposes that include achieving the objectives set out in clause 2.
- (b) **(Project impacts)**: The Contractor and the Principal acknowledge and agree that the Contractor's Activities represent a most important element of the building of the WHTBL Program, which will help service the needs of Sydney, including the needs of its workforce and its economy, and improve the efficiency of the road network in Sydney.
- (c) **(Difficulty with calculating loss)**: The Contractor acknowledges and agrees that if the Contractor fails to achieve:
 - (i) Handover Completion of a Handover Portion by the Date for Handover Completion of the relevant Handover Portion;
 - (ii) Opening Completion by the Date for Opening Completion; or
 - (iii) Completion by the Date for Completion,

these events will not only result in direct Losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued and the Loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

- (d) **(Liquidated damages for delay in achieving Handover Completion, Opening Completion or Completion)**: Subject to clause 16.5(e), the Contractor agrees that if it does not achieve Handover Completion by the Date for Handover Completion of the relevant Handover Portion, Opening Completion by the Date for Opening Completion or Completion by the Date for Completion, it must pay the Principal the following amounts:
 - (i) with respect to Handover Completion:
 - (A) for every day after the Date for Handover Completion up to and including:
 - (aa) the Date of Handover Completion;
 - (bb) the day before the applicable LDs Step-up Date; or
 - (cc) the date that this deed is validly terminated,(whichever first occurs), the applicable amount set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in the column titled "Liquidated Damages (pre-LDs Step up Date)"; and
 - (B) for every day on and from the LDs Step-up Date for the Handover Portion up to and including:
 - (aa) the Date of Handover Completion; or
 - (bb) the date that this deed is validly terminated,(whichever first occurs), the applicable amount set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in the

column titled "Liquidated Damages (on and after LDs Step up Date)";
and

(ii) with respect to Opening Completion:

(A) for every day after the Date for Opening Completion up to and including:

(aa) the day before LDs Step-up Date 1;

(bb) the Date of Opening Completion; or

(cc) the date that this deed is validly terminated,

(whichever first occurs), the applicable amount set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in the column titled "Liquidated Damages (pre-LDs Step up Date)";

(B) for every day on and from LDs Step-up Date 1 for Opening Completion up to and including:

(aa) the day before LDs Step-up Date 2;

(bb) the Date of Opening Completion; or

(cc) the date that this deed is validly terminated,

(whichever first occurs), the applicable amount set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in the column titled "Liquidated Damages (on and after LDs Step up Date)";
and

(C) for every day on and from LDs Step-up Date 2 for Opening Completion up to and including:

(aa) the Date of Opening Completion; or

(bb) the date that this deed is validly terminated,

(whichever first occurs), the applicable amount set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in the column titled "Liquidated Damages (on and after LDs Step up Date)";
and

(iii) with respect to Completion:

(A) for every day after the Date for Completion up to and including:

(aa) the day before the applicable LDs Step-up Date; or

(bb) the date that this deed is validly terminated,

(whichever first occurs), the applicable amount set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in the column titled "Liquidated Damages (pre-LDs Step up Date)"; and

- (B) for every day on and from the LDs Step-up Date for Completion up to and including:
- (aa) the Date of Completion; or
 - (bb) the date that this deed is validly terminated,
- (whichever first occurs), the applicable amount set out in Schedule A2 (*Handover Portions, Completion Dates and Liquidated Damages*) in the column titled "Liquidated Damages (on and after LDs Step up Date)".
- (e) **(Aggregate daily cap for liquidated damages)**: For any day on which the Contractor is liable to pay liquidated damages pursuant to one or more of clause 16.5(d)(i), 16.5(d)(ii) or 16.5(d)(iii), the Contractor's liability to pay liquidated damages on any such day will be limited to the amount set out in Schedule A1 (*Contract Particulars*).
- (f) **(No penalty)**: The parties agree that the liquidated damages:
- (i) provided for in clause 16.5(d) represent proper, fair and reasonable amounts recoverable by the Principal arising from:
 - (A) failure of the Contractor to achieve Handover Completion by the Date for Handover Completion of the relevant Handover Portion, Opening Completion by the Date for Opening Completion or Completion by the Date for Completion (as applicable); or
 - (B) loss of toll revenue on a Toll Road due to a delay in achieving Handover Completion, Opening Completion or Completion,

(as applicable), and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the Contractor; and
 - (ii) will be recoverable by the Principal from the Contractor as a debt due and payable.
- (g) **(Arms' length dealings)**: The Principal and the Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (h) **(No unconscionable conduct)**: The Contractor agrees that the liquidated damages under clause 16.5(d) have been agreed without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (i) **(Contractor intention)**: The Contractor entered into the obligation to pay the amounts specified in clause 16.5(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms.
- (j) **(Interaction with Laws)**: The Contractor agrees:
- (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and

- (ii) that if this clause 16.5 (or any part of this clause 16.5) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages in accordance with this clause, the Contractor indemnifies the Principal from and against:
- (A) any Liability to or Claim by any other person; and
 - (B) Loss suffered or incurred by the Principal (including loss of revenue and loss of profits from the loss of use of the Project Works),
- arising out of or in connection with the Contractor failing to achieve:
- (C) Handover Completion by the Date for Handover Completion of the relevant Handover Portion;
 - (D) Opening Completion by the Date for Opening Completion; or
 - (E) Completion by the Date for Completion,
- (as applicable), but the Contractor's liability in this instance (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (k) **(Provisional assessment)**: The Principal's Representative, when issuing a Payment Schedule pursuant to clauses 15.2(e) and 15.2(g) after the Date for Completion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 16.5(d) to the date of the Payment Schedule (despite Completion not having occurred).
- (l) **(Liability)**: Subject to clause 16.5(m), the Principal and the Contractor agree that the aggregate of the amount payable under clauses 16.5(d) and 16.5(j)(ii), is limited as set out in clause 20.1(b) and is a limitation on the Contractor's liability to the Principal for a failure to achieve:
- (i) Handover Completion by the Date for Handover Completion of the relevant Handover Portion;
 - (ii) Opening Completion by the Date for Opening Completion; or
 - (iii) Completion by the Date for Completion,
- (as applicable), and the Principal will not be entitled to make, nor will the Contractor be liable upon, any Claim for these circumstances other than for the amount for which the Contractor is liable under this clause 16.5 (including where applicable common law damages under clauses 16.5(j)(ii)).
- (m) **(No limitation)**: Nothing in clause 16.5(l) in any way limits:
- (i) the Contractor's Liability where this deed is terminated by the Principal under clause 18.4 or otherwise at Law;
 - (ii) the Contractor's obligations under this deed to achieve:
 - (A) Handover Completion by the Date for Handover Completion of the relevant Handover Portion;
 - (B) Opening Completion by the Date for Opening Completion; or
 - (C) Completion by the Date for Completion;

- (iii) the Principal's rights or the Contractor's Liability in connection with an event giving rise to a delay or the consequences of that event (other than for a failure to achieve Handover Completion by the Date for Handover Completion of the relevant Handover Portion, failure to achieve Opening Completion by the Date for Opening Completion or failure to achieve Completion by the Date for Completion);
- (iv) the Principal's rights or the Contractor's Liability in connection with a Defect in Handover Portion 1; or
- (v) the Contractor's Liability for the Share of Cost Overruns under clause 15.12(a).

16.6 Effect of Notice of Handover Completion, Notice of Opening Completion and Notice of Completion

- (a) **(No approval)**: A Notice of Handover Completion, Notice of Opening Completion or a Notice of Completion will not:
 - (i) constitute approval by the Principal, the Independent Certifier or the Principal's Representative of the Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the Project Works complies with the requirements of this deed; or
 - (iii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.
- (b) **(Final and binding)**: Without limiting clause 16.6(a) or clause 13.10(g), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in the relevant Notice of Handover Completion, Notice of Opening Completion or Notice of Completion is final and binding on the parties.

16.7 Access following Opening Completion

- (a) **(Principal to procure access)**: Where Opening Completion has been achieved but the Contractor still requires access to the Construction Site in order to rectify Defects, or carry out the Post Completion Activities, the Principal must procure that the Contractor is provided with reasonable access to the Construction Site to enable the Contractor to continue the Contractor's Activities, subject to the Contractor:
 - (i) complying with AM Contractor's reasonable safety, protection and security measures;
 - (ii) complying with its obligations under clause 7.2; and
 - (iii) paying the relevant Lane Occupancy Fees in accordance with Schedule E8 (*Lane Occupancy Fees*).
- (b) **(Use and occupation)**: The occupation and use of the Construction Site by the Principal (or its nominees) will not limit or affect the responsibilities, obligations or Liabilities of the Contractor including the obligation of the Contractor to achieve Completion by the relevant Date for Completion.

16.8 **AM Completion Obligations**

- (a) **(Dependency on the AM Contractor)**: The parties acknowledge and agree that, subject to clause 16.8(f), the AM Completion Obligations will need to be performed by the AM Contractor to enable Opening Completion and Completion to be achieved.
- (b) **(Primary responsibility)**: Despite clause 16.8(a), the Contractor has primary responsibility for achieving Opening Completion and Completion, including the satisfaction of the Operational Readiness Evaluation, and must use all reasonable endeavours to ensure the AM Contractor performs the AM Completion Obligations in accordance with the Contractor's Program.
- (c) **(Notice of non-performance)**: If the AM Contractor fails to perform its AM Completion Obligations by the time required by the Contractor's Program despite the Contractor using all reasonable endeavours to ensure the AM Contractor does so, the Contractor may give notice to the Principal requesting that the AM Contractor carry out such AM Completion Obligations within a reasonable period of time set out in the notice.
- (d) **(Take over at Principal's direction)**: The Principal may, by written notice to the Contractor, require the Contractor to take over performance of an AM Completion Obligation if:
 - (i) the Principal reasonably believes that the AM Contractor will not, or the AM Contractor does not, perform the AM Completion Obligation by the time required by the Contractor's Program; and
 - (ii) it is reasonably practicable for the Contractor to take over performance of the AM Completion Obligation.
- (e) **(Take over at Contractor's request)**: If the AM Contractor fails to perform an AM Completion Obligation by the time set out in a notice given by the Contractor under clause 16.8(c), the Contractor may, by written notice to the Principal, take over performance of the relevant AM Completion Obligation.
- (f) **(Contractor to take over)**: If the Principal gives notice under clause 16.8(d) or the Contractor gives notice under clause 16.8(e):
 - (i) the Contractor must take over performance of the relevant AM Completion Obligation as part of the Contractor's Activities; and
 - (ii) it will be a [REDACTED]
- (g) **(Changes to program)**: The Contractor must not amend the details in the Contractor's Program relating to the AM Completion Obligations (including dates, durations and sequencing) without the prior written consent of the Principal.
- (h) **(Principal's consent)**: If the Contractor requests the Principal's consent pursuant to clause 16.8(g), the Principal must promptly give its consent if:
 - (i) the proposed amendment:
 - (A) will not have a material adverse impact on the AM Contractor's ability to perform its AM Completion Obligations; and
 - (B) is not a material change to the timing of the AM Completion Obligations in the Contractor's Program; and

- (ii) the Contractor agrees to pay the reasonable additional direct costs incurred by the AM Contractor as a result of the proposed amendment.
- (i) **(AM Contractor's costs)**: Where the Contractor agrees to pay the costs described in clause 16.8(h)(ii), the costs will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal progressively as they are incurred by the AM Contractor.

16A **POST COMPLETION ACTIVITIES**

16A.1 **Landscaping Maintenance**

- (a) **(Performance of maintenance)**: The Contractor must perform the Landscaping Maintenance during the Landscaping Maintenance Period in respect of any part of the Project Works that includes landscaping.
- (b) **(Replacement of plants and trees)**: If, in the performance of the Landscaping Maintenance, the Contractor is required to replace any dead, diseased or damaged plants or trees, the replacements must be of at least the quality required by this deed and fit for their intended purposes.
- (c) **(Final joint inspection)**: As soon as reasonably practicable after the end of the Landscaping Maintenance Period, the Principal, the Contractor, the Independent Certifier and any other person responsible for the maintenance of the relevant Project Works must jointly inspect the Landscaping Maintenance at a mutually convenient time.
- (d) **(Independent Certifier certificate)**: Within five Business Days of the joint inspection referred to in clause 16A.1(c), the Independent Certifier must give the Contractor and the Principal a certificate signed by the Independent Certifier in the form set out in Part O of Schedule B7 (*Form of Certificates*) containing a list of all Defects in the Landscaping Maintenance.
- (e) **(Rectification of Defects)**: Clause 12.1 will apply to the Defects listed in the Independent Certifier's certificate under clause 16A.1(d), and the Principal may give a direction under clause 12.2 in relation to those Defects.
- (f) **(Removal of temporary protection)**: After the Landscaping Maintenance Period has ended, except to the extent directed by the Principal, the Contractor must promptly remove all Temporary Works installed in connection with the Landscaping Maintenance.
- (g) **(Effect of inspection and notice)**: Neither the inspection under clause 16A.1(c) nor the Independent Certifier's certificate under clause 16A.1(d) will:
 - (i) constitute approval of the Contractor's performance of its obligations under this deed in relation to the Landscaping Maintenance;
 - (ii) be taken as an admission or evidence that the Landscaping Maintenance comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal.
- (h) **(Payment)**: With respect to Landscaping Maintenance, the Contractor will be entitled to be paid the amount specified in Schedule F1 (*Payment*) (**Landscaping**

Lump Sum) as progress payments as the Landscaping Maintenance is carried out, provided that:

- (i) the total amount claimed by the Contractor with respect to Landscaping Maintenance must not exceed the Landscaping Lump Sum; and
- (ii) following the expiry of the Landscaping Maintenance Period, the Contractor may claim any unclaimed portion of the Landscaping Lump Sum.

16A.2 **Optional Post Completion Activities**

- (a) (**Optional Post Completion Activities**): The Principal may give written notice to the Contractor at any time before any Date of Handover Completion, the Date of Opening Completion or the Date of Completion (as applicable) that any of the Optional Post Completion Activities must be carried out in respect of the relevant completed Works or area.
- (b) (**No instruction**): If the Principal's Representative does not instruct the Contractor to carry out Optional Post Completion Activities under clause 16A.2(a):
 - (i) the Contractor must not carry out the Optional Post Completion Activities; and
 - (ii) these services do not form part of the Contractor's Activities.
- (c) (**Cessation of services**): At any time, the Principal may give five Business Days' written notice to the Contractor that the Contractor is to cease performance of any Optional Post Completion Activities instructed under clause 16A.2(a).
- (d) (**Payment**): With respect to the Optional Post Completion Activities, the Contractor will be entitled to be paid for each day on which the Optional Post-Completion Activities are carried out at the applicable daily rate specified in Schedule F1 (*Payment*).
- (e) (**Completion**): The parties acknowledge and agree that the Optional Post Completion Activities following Completion are only required to be carried out by the Contractor following written notice under clause 16A.2 for a maximum of 3 months following the Date of Completion.

16A.3 **Requirements for Post Completion Activities**

- (a) (**Compliance**): The Contractor must perform the Post Completion Activities:
 - (i) in accordance with:
 - (A) the SWTC;
 - (B) any applicable Laws and Approvals; and
 - (C) Good Industry Practice; and
 - (ii) in an efficient and cooperative manner.
- (b) (**Allocation of resources**): The Contractor must allocate such resources and staff as are necessary to enable the due and proper performance of the Post Completion Activities.
- (c) (**Handover**): Following the completion of any Post-Completion Activities in respect of a part of the Works, the Contractor must handover that part of the Works to the Principal (or its nominee) in the same condition that the Works were in at the Date

of Handover Completion of the relevant Handover Portion, Date of Opening Completion or Date of Completion (as applicable), subject to the rectification of any Defects.

- (d) **(Removal of temporary protection)**: After the completion of any Post-Completion Activities on a part of the Construction Site, except to the extent directed by the Principal, the Contractor must promptly remove all Temporary Works installed in connection with the Post Completion Activities.
- (e) **(Defect rectification)**: Despite this clause 16A, the Contractor acknowledges and agrees that:
 - (i) the costs of rectifying Defects are Excluded Costs;
 - (ii) Defects rectified by the Contractor during the performance of the Post Completion Activities may be subject to an extended Defects Correction Period in accordance with clause 12; and
 - (iii) the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in connection with rectifying Defects during the period in which the Contractor is carrying out the Post Completion Activities.

17. CARE OF THE PROJECT WORKS, RISKS AND INSURANCE

17.1 Responsibility for care of the Project Works

- (a) **(Prior to Opening Completion)**: Subject to clause 17.1(d) and 17.1(e), the Contractor is responsible for the care of, and bears the risk of destruction, loss or damage to:
 - (i) the Contractor's Activities, the Works (other than the Works forming part of the Handover Portions) and any Extra Land, from the Commencement Date up to and including the Date of Opening Completion;
 - (ii) each part of the Handover Portions from the Commencement Date until the Date of Handover Completion for the relevant Handover Portion;
 - (iii) the relevant parts of the Construction Site (including the RIC Handover Works and WFU Handover Works but excluding the Shared Construction Site Areas), from the date on which access to that part of Construction Site is granted under clauses 7.1(b) or 7.5 up to and including the Date of Opening Completion (or the Date of Handover Completion in relation to the Handover Areas); and
 - (iv) the Shared Construction Site Areas, during the periods that the Contractor has management and control of the relevant part of the Shared Construction Site Areas under clause 7.9(b).
- (b) **(After Opening Completion)**: Subject to clause 17.1(d), after the time at which the Contractor ceases to be responsible under clause 17.1(a) for the care of a part of the Project Works or any other thing referred to in clause 17.1(a), the Contractor will bear the risk of any destruction, loss of or damage to that part of the Project Works or other thing, arising from:
 - (i) any act or omission of the Contractor during the Defects Correction Periods (including any extended Defects Correction Period);

- (ii) any other Contractor's Activities, including the Contractor's Activities required to achieve Completion, the Post Completion Activities or the Delivery Phase Maintenance; or
 - (iii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Project Works or other thing under clause 17.1(a) in connection with the Contractor's Activities.
- (c) **(Make good and indemnify):** The Contractor must:
- (i) subject to clause 17.1(d) and clause 7A.3, promptly make good in accordance with clause 17.14 any destruction, loss or damage to anything caused during the period the Contractor is responsible for its care pursuant to clause 17.1(a) or clause 17.1(b); and
 - (ii) indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal arising out of or any way in connection with such destruction, loss or damage, but only to the extent the relevant destruction, loss or damage was caused or contributed to by the Contractor's Activities.
- (d) **(Excepted risks):** Subject to clause 17.1(e), clauses 17.1(a), 17.1(b) and 17.1(c)(i) do not apply:
- (i) to the extent that any destruction, Loss or damage for which the Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause arises from an Excepted Risk; and
- [REDACTED]**
- (e) **(Direction to make good):** To the extent any destruction, loss or damage arises from an Excepted Risk, the Contractor must where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage in which event such making good or repair will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 10 applies.

17.2 Indemnity by the Contractor

- (a) **(General indemnity):** The Contractor must indemnify the Principal and its Associates (**Indemnified Parties**) from and against:
- (i) each of the following:
 - (A) loss of or any destruction or damage to, any of the Indemnified Parties' real or personal property (other than property referred to in clause 17.1 while the Contractor is responsible for its care);
 - (B) any claim against an Indemnified Party or Liability an Indemnified Party may have to third parties in respect of or arising out of or in connection with:
 - (aa) any illness, personal injury to, or death of, any person; or
 - (bb) the loss of, or destruction or damage to any real or personal property; and

(C) without limiting clause 17.2(a)(i)(A) or clause 17.2(a)(i)(B)(bb), loss of use or access to any real or personal property (whether total or partial), [REDACTED],

to the extent caused by, arising out of, or in any way in connection with:

(D) the Contractor's Activities, including the Works and Temporary Works;

(E) the use or occupation of the Construction Site, any Extra Land, the Works, the Temporary Works or an adjacent motorway by the Contractor or its Associates; or

(F) any failure by the Contractor to comply with its obligations under this deed; and

(ii) any:

(A) Liability to or claim by any other person; or

(B) Loss suffered or incurred by an Indemnified Party,

arising out of, or in any way in connection with, the Contractor's breach of a term of any Project Document.

(b) **(Reduction of liability):** Where the Contractor indemnifies the Principal under this deed from and against any Liability, claim or Loss, the Contractor's liability to indemnify the Principal will be reduced to the extent that:

(i) an act or omission of the Principal or its Associates or an Other Contractor (excluding the Interface Contractors) contributed to the Liability, claim or Loss; or

(ii) the Principal failed to take reasonable steps to mitigate that Liability, claim or Loss (provided the cost of taking any reasonable steps will be recoverable from the Contractor including if they increase the Contractor's liability to indemnify the Principal).

(c) **(Other obligations unaffected):** Clause 17.2(a) does not limit or otherwise affect the Contractor's other obligations under this deed or otherwise according to Law.

(d) **(No relief):** The Contractor is not relieved of any obligation to indemnify the Principal under this clause 17.2 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal pursuant to clause 17.3.

17.3 Principal's insurance

(a) **(Effect and maintain):** The Principal must procure that:

(i) project specific professional indemnity insurance is effected or maintained as a condition precedent to the Commencement Date; and

(ii) the material damage insurance and public liability insurance is effected or maintained on or before the date that is 60 Business Days after the date of this deed,

in each case on:

(iii) the terms of the relevant draft policies set out in Schedule F5 (*Insurance Policies*); or

- (iv) where the Principal is not able to effect or maintain the insurances on the terms of the draft policies set out in Schedule F5 (*Insurance Policies*) despite its reasonable endeavours, terms that are not materially different in substance from the terms of the draft policies set out in Schedule F5 (*Insurance Policies*).
- (b) **(Exclusions)**: Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the Contractor:
 - (i) must satisfy itself of the nature and extent of the cover provided by these insurance policies; and
 - (ii) acknowledges that the Principal's insurances do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect insurance for any risk or Liability which is not covered by the Principal's insurances.
- (c) **(Replacement)**: The Contractor acknowledges that the Principal may change or replace an insurance policy effected pursuant to clause 17.3(a), provided the terms of the replacement policy are not materially different from the terms of the existing policy.
- (d) **(Subcontractors)**: The Contractor must ensure that each of its Subcontractors performing professional services, including Design Work, effects and maintains professional indemnity insurance to the extent they are not covered by the professional indemnity insurance effected or caused to be effected by the Principal.
- (e) **(Principal must provide)**: The Principal must, in respect of the insurances which it is required to effect or procure to be effected pursuant to this clause 17.3, provide the Contractor's Representative within five (5) Business Days of a request with:
 - (i) certificates of currency of the insurances for each insurance; and
 - (ii) a copy of any insurance policy that notes the interests of the Contractor whenever requested by the Contractor's Representative.

17.4 **Contractor's insurance obligations**

The Contractor must effect and maintain the following insurance:

- (a) **(Workers compensation)**: workers compensation insurance referred to in clause 17.5;
- (b) **(Construction Plant)**: Construction Plant insurance referred to in clause 17.6;
- (c) **(Motor vehicle)**: motor vehicle insurance referred to in clause 17.7;
- (d) **(Marine cargo insurance)**: marine cargo insurance referred to in clause 17.7A; and
- (e) **(Marine liability insurance)**: marine liability insurance referred to in clause 17.7B.
- (f) **(Other)**: any other insurance as required by Law.

17.5 **Workers compensation insurance**

- (a) **(Effect and maintain):** The Contractor must effect and maintain workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the maximum amount required by Law; and
 - (ii) in the name of the Contractor and (if legally possible) extended to indemnify the Principal for its statutory liability to persons employed by the Contractor.
- (b) **(Subcontractors):** The Contractor must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the maximum amount required by Law; and
 - (ii) in the name of the Subcontractor and (if legally possible) extended to indemnify the Principal and the Contractor for their statutory liability to persons employed by the Subcontractor.

17.6 **Construction Plant insurance**

The Contractor must effect and maintain insurance in respect of any Construction Plant (whether owned, hired or leased by the Contractor), but excluding any Construction Plant which is expressly covered by an insurance policy effected by the Principal in accordance with clause 17.3, which provides cover against all physical loss or damage to any such Construction Plant for an amount not less than the market value of such Construction Plant.

17.7 **Motor vehicle insurance**

The Contractor must effect and maintain:

- (a) **(Compulsory third party insurance):** compulsory third party insurance as required by Law in respect of all registered motor vehicles used in connection with the Contractor's Activities; and
- (b) **(Motor vehicle cover):** motor vehicle insurance which covers:
 - (i) physical loss or damage to the Contractor's vehicles whether owned, hired, or leased, which are used in connection with the Contractor's Activities for an amount not less than the market value of those vehicles; and
 - (ii) third party property loss or damage in respect of all vehicles, used in connection with the Contractor's Activities with a limit of indemnity of at least [REDACTED] for any one occurrence.

17.7A **Marine cargo insurance**

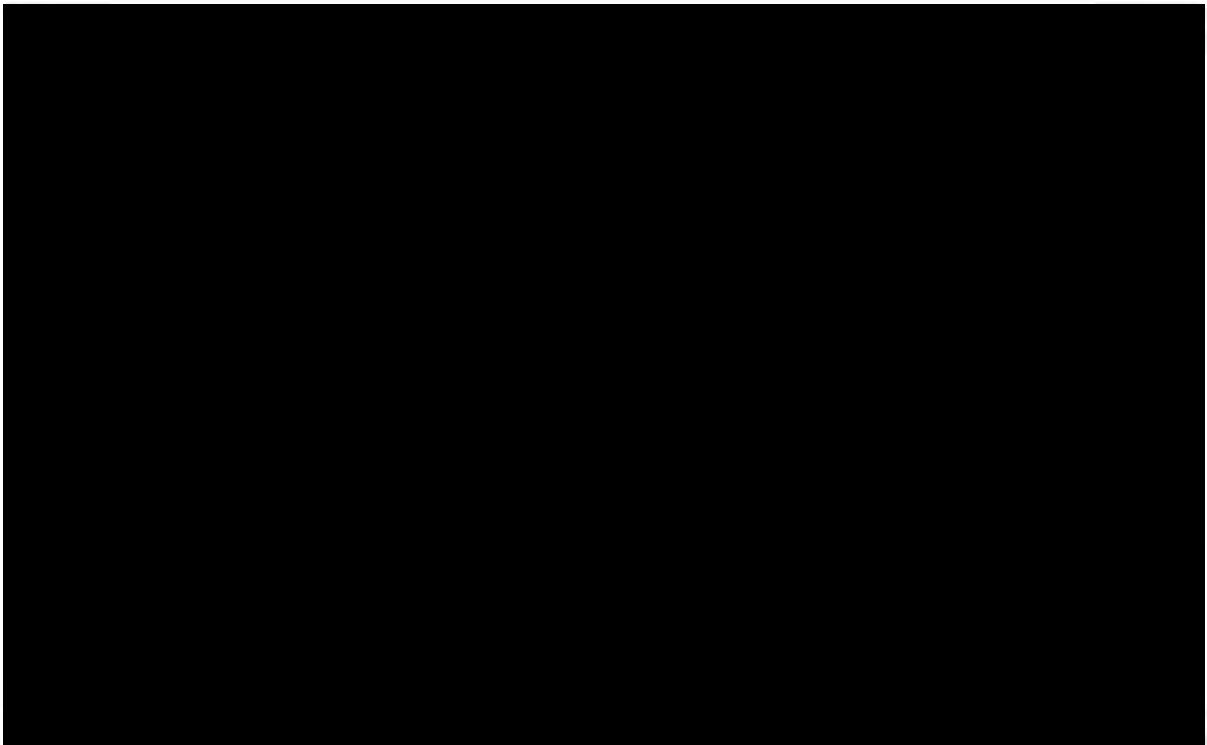
Before the Contractor commences the Contractor's Activities to which this insurance relates, the Contractor must effect and maintain, or cause to be effected and maintained, insurance covering all Construction Plant and Materials against the risk of loss, damage or destruction caused by all commercially insurable risks for an amount not less than their full replacement value plus freight and insurance on an indemnity basis during transits of such property by land, sea or air and during loading or unloading and storage during transit to and from the Construction Site or any Extra Land.

17.7B **Marine liability insurance**

Before the Contractor commences the Contractor's Activities to which this insurance relates and if any vessels are used in connection with the Contractor's Activities, the Contractor must effect and maintain or cause to be effected and maintained marine liability insurance (or protection and indemnity) insurance written on an occurrence basis with a limit of indemnity of not less than [REDACTED] each and every occurrence which covers liability of the Contractor in respect of:

- (a) **(Real or personal property)**: loss of, damage to, or loss of use of, any real or personal property; and
- (b) **(Injury or death)**: the bodily injury of, disease or illness (including mental illness) to, or death of, any person,

arising out of, or in connection with, the use, operation or ownership of any vessel by the Contractor or its Subcontractors (of any tier) in connection with the Contractor's Activities.



17.8 **Periods of insurance**

The Contractor must ensure that the insurances it is required to take out pursuant to this deed:

- (a) **(Commencement)**: are in force before the Contractor commences the Contractor's Activities; and
- (b) **(Maintenance of insurance)**: are maintained until:
 - (i) in relation to the insurance referred to in clause 17.7A, the transit of the relevant Construction Plant and Materials is complete and the relevant Construction Plant or Materials have arrived to the Construction Site or Extra Land;

- (ii) in relation to the insurance referred to in clause 17.7B, the use of the relevant vessel by the Contractor or its Subcontractors (of any tier) in connection with the Contractor's Activities is completed; and
- (iii) in relation to all other insurances, the end of all Defects Correction Periods.

17.9 Evidence of policies

- (a) **(Contract must provide):** The Contractor must, in respect of the insurances which it is required to effect or procure to be effected pursuant to this clause 17, provide the Principal's Representative within five Business Days of a request with:
 - (i) certificates of currency of the insurances before the relevant commencement date referred to in clause 17.8 for each insurance in a form acceptable to the Principal's Representative;
 - (ii) a copy of any insurance policy that notes the interests of the Principal, the Contractor and Subcontractors whenever requested by the Principal's Representative; and
 - (iii) other evidence of the insurances, which the Principal's Representative reasonably requires.
- (b) **(Costs and expenses incurred):** Without limiting clause 17.12, if the Contractor does not comply with clause 17.9(a) or otherwise fails to effect and maintain insurance which the Contractor is required to effect and maintain under this clause 17, the Principal may effect and maintain the relevant insurances and any costs and expenses incurred by the Principal in doing so will be a debt due and payable from the Contractor to the Principal.

17.10 Provisions in policies

The Contractor must ensure that:

- (a) **(Notification):** the insurances required to be effected by the Contractor under this clause 17 (other than clause 17.5) that are project specific and not covered under the Contractor's global policies contain a provision approved by the Principal that requires the insurer to notify the Principal (in writing) whenever:
 - (i) it receives a notice under or in connection with the insurance policy, including any claim arising from or related to this deed or the Project; and
 - (ii) it gives any insured a notice under or in connection with the policy, which in the case of a notice of cancellation must be given to the Principal 20 Business Days prior to the cancellation of the policy; and
 - (iii) it renews an insurance policy, including providing updated evidence of the insurance policies in accordance with the requirements of clause 17.9(a).
- (b) **(Noted Interests):** the insurances required to be effected by the Contractor under this clause 17 (other than clause 17.5) note the interests of the Principal, the Contractor and Subcontractors and provide that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) operate as if there was a separate policy of insurance covering the Principal, the Contractor and Subcontractors;
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;

- (iii) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy;
- (iv) a notice to the insurer by one insured will be deemed to be notice by all insured parties; and
- (v) the insurer:
 - (A) waives all rights, remedies or relief to which it might become entitled by way of subrogation against the Principal, the Contractor and [REDACTED] Subcontractors; and
 - (B) agrees to provide the Principal with a copy of all cover notes, policies, certificates of currency, renewal certificates and endorsement slips whenever it issues them.

17.11 General Obligations

The Contractor must ensure that each insurance required to be effected by the Contractor under this clause 17:

- (a) **(Insurers)**: is effected with Approved Insurers;
- (b) **(Terms)**: is on terms approved by the Principal, acting reasonably having regard to terms of insurance commonly found in insurance policies used on projects of a similar nature and of a similar value to the Works;
- (c) **(Exclusions)**: without limiting clause 17.11(b), does not contain any exclusion, endorsement or alteration to the extent that any such exclusion, endorsement or alteration would render the insurance policy non-compliant with the requirements of this deed, unless it is first approved in writing by the Principal which approval by the Principal must not be unreasonably withheld;
- (d) **(GST)**: must cover any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the insured who suffers the Loss that is claimed; and
- (e) **(Coverage)**: other than in relation to the workers compensation policy, provides coverage to Subcontractors and acknowledges that the same coverage applies to suppliers of goods and materials to the Contractor, unless the relevant Subcontractor effects and maintains insurances that comply with the requirements of this deed.

17.12 Premiums

- (a) **(Payment)**: The Contractor must punctually pay all premiums in respect of all insurances required to be effected by it under this clause 17 and give the Principal's Representative copies of receipts for payment of premiums if and when requested by the Principal's Representative (or if receipts are not provided by insurers, notice in writing from the insurer that the relevant premium has been paid).
- (b) **(Costs incurred by Principal)**: If the Contractor fails to comply with clause 17.12(a), the Principal may effect such insurance or pay such premium or other amount and any costs incurred by the Principal will be a debt due and payable from the Contractor to the Principal.

17.13 Undertaking to inform

The Contractor must ensure that in respect of each insurance required to be effected under this clause 17, it:

- (a) **(No prejudice)**: does not do anything which prejudices any insurance;
- (b) **(Rectification)**: if necessary, rectifies anything which may prejudice any insurance;
- (c) **(Reinstatement)**: except where the insurance is required to be effected by the Principal, reinstates any insurance policy if it lapses;
- (d) **(Cancellation or variation)**: except where the insurance is required to be effected by the Principal, does not cancel, vary or allow any insurance policy to lapse without the prior written consent of the Principal's Representative;
- (e) **(Notification)**: immediately notifies the Principal's Representative if:
 - (i) an insurance policy is cancelled;
 - (ii) if any event occurs which may result in an insurance policy being cancelled;
 - (iii) if it is notified by an insurer that a policy may be cancelled; or
 - (iv) it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 17 which could materially reduce the available limit of indemnity;
 - (v) it gives or receives a notice under or in connection with the insurance policy, including any claim arising from or related to this deed or the Project;
 - (vi) it gives or received a notice under or in connection with the policy, which in the case of a notice of cancellation must be given to the Principal 20 Business Days prior to the cancellation of the policy; and
 - (vii) it renews an insurance policy, including providing updated evidence of the insurance policies in accordance with the requirements of clause 17.9(a); and
- (f) **(Disclosure)**: gives full, true and particular information to the insurer of all matters and things the non-disclosure of which may in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

17.14 Reinstatement

If, prior to the time the Contractor ceases to be responsible under clause 17.1(a) for the care of a part of the Project Works or the Temporary Works or any other thing referred to in clause 17.1(a), any destruction, damage or loss occurs to the Project Works or the Temporary Works or any other thing referred to in clause 17.1(a), the Contractor must:

- (a) **(Make secure)**: make secure the Works and the parts of the Construction Site which are still under the control of the Contractor in accordance with clause 7.9;
- (b) **(Notify and comply)**: notify:
 - (i) appropriate Authorities, Emergency Services and the like; and
 - (ii) the insurers for assessment,and comply with their instructions; and

- (c) **(Consult with Principal and make good)**: promptly consult with the Principal and carry out such steps as are necessary to ensure:
 - (i) the prompt repair or replacement of the destruction, loss or damage so that:
 - (A) the relevant thing referred to in clause 17.1(a) is returned to the condition it was in before the destruction, loss or damage and so that it otherwise complies with the SWTC; and
 - (B) there is minimal disruption to the Works; and
 - (ii) that, to the greatest extent possible, the Contractor continues to comply with its obligations under this deed;
- (d) **(Minimise impact)**: subject to clause 17.1(e), manage all repair and replacement activities so as to minimise the impact on the Works; and
- (e) **(Inform on progress)**: keep the Principal's Representative fully informed of the progress of the repair and replacement activities.

17.15 Application of insurance proceeds

Where Works are damaged or destroyed, all insurance proceeds in respect of that damage or destruction that are payable under any insurances maintained (or caused to be maintained) by the Principal in accordance with clause 17.3 will:

- (a) **(Payment)**: be paid to the Principal; and
- (b) **(Progress payments)**: despite anything to the contrary in this deed, be paid by the Principal to the Contractor by progress payments under clause 15.2 as and when the Contractor reinstates the Works (but such costs will not form part of the Reimbursable Costs).

17.16 Damage to property

- (a) **(Obligation to repair)**: Subject to clause 17.16(c), where any loss of or destruction or damage to real or personal property (including the property of TfNSW, including assets on the Rozelle Interchange or WestConnex Motorways) or the Environment (including any Utility Services but excluding the Project Works or the Temporary Works or any other thing referred to in clause 17.1(a)) occurs arising out of, or in any way in connection with, the carrying out by the Contractor of the Contractor's Activities or a failure by the Contractor to comply with its obligations under this deed, the Contractor must, promptly repair and make good any such loss, destruction or damage.
- (b) **(Debt due and payable)**: If the Contractor fails to carry out any repair and make good work under clause 17.16(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal.
- (c) **(Exclusion)**: This clause 17.16 does not apply where the owner of the real or personal property does not agree to the Contractor carrying out the work under clause 17.16(a).
- (d) **(No limit)**: Nothing in this clause 17.16 limits the operation of the indemnity in clause 17.2(a).

17.17 **Risk of deductibles or excesses**

- (a) Subject to clause 17.17(b), to the extent that the Contractor:
 - (i) is required to:
 - (A) make good destruction, loss or damage under clause 17.1(c)(i) or clause 17.1(e); or
 - (B) indemnify the Principal under clause 17.1(c)(ii) or clause 17.2, and makes a claim under any of the insurance policies required by this clause 17 in respect of the destruction, loss or damage or the event giving rise to the indemnity; or
 - (ii) otherwise makes a claim under or in respect of any of the insurance policies required by this clause 17,
- the Contractor must pay any excesses or deductibles in the insurance policies in Schedule F5 (*Insurance Policies*) or any insurance taken out by the Contractor under clause 17.4, that may apply in those circumstances.
- (b) The costs incurred by the Contractor under clause 17.17(a) will be Reimbursable Costs, except to the extent the relevant event or claim was caused or contributed to by the Contractor's Activities.

18. **DEFAULT OR INSOLVENCY**

18.1 **Contractor's Default**

- (a) **(Written notice)**: If any of the events referred to in clause 18.1(b) occur, the Principal may give the Contractor a written notice in accordance with clause 18.2.
- (b) **(Events of default)**: The events to which this clause applies are:
 - (i) the Contractor not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this deed, in breach of clause 14.1 or the Contractor displays an intention to Abandon;
 - (ii) the Contractor suspending work in breach of clause 14.1;
 - (iii) the Contractor failing to implement, comply with or otherwise diligently pursue a Recovery Plan for which the Principal's Representative has notified the Contractor that it has no (or has no further) comments in accordance with clause 13.13(h)(iii)(E) or clause 13.13(j)(ii)(B) in accordance with clause 14.6(c);
 - (iv) the Contractor failing to provide and maintain:
 - (A) the unconditional undertakings in accordance with clauses 5.1, 5.2 and 5.7; or
 - (B) the Parent Company Guarantees in accordance with clause 5.10;
 - (v) the Contractor failing to insure or provide evidence of insurance in breach of clause 17;

- (vi) the Contractor failing to use the Materials or standards of workmanship required by this deed in breach of clause 8.1 and failing to rectify that failure in accordance with clause 12.1;
- (vii) the Contractor not complying with any direction of the Principal's Representative made in accordance with this deed in breach of clause 13.1(e);
- (viii) the Contractor not complying with the requirements of this deed regarding the Project Plans in a material respect;
- (ix) the Contractor not complying with its obligations under the SWTC with regard to the Project Plans;
- (x) the Contractor not complying with its environmental obligations under this deed;
- (xi) the Contractor not complying with its obligations under this deed regarding work health and safety;
- (xii) the Contractor not complying with its obligations under this deed relating to Road Occupancy Licences;
- (xiii) the Contractor failing to comply with all applicable Laws, including the failure to comply with, carry out and fulfil the conditions and requirements of all Approvals in breach of clause 6.2;
- (xiv) the Contractor breaching the subcontracting obligations set out in clauses 11.3, 11.7 or 11.8;
- (xv) where the Contractor has failed to achieve:
 - (A) Handover Completion by the Date for Handover Completion of the relevant Handover Portion;
 - (B) Opening Completion by the Date for Opening Completion; or
 - (C) Completion by the Date for Completion,
 and the Contractor fails to provide a Recovery Plan in relation to the relevant delay for which the Principal has notified the Contractor that it has no (or has no further) comments in accordance with clause 13.13(h)(iii)(E) or clause 13.13(j)(ii)(B) within 60 Business Days after the date on which the relevant failure occurs;
- (xvi) fraud of the Contractor or an adverse Independent Commission Against Corruption (**ICAC**) finding is made against the Contractor;
- (xvii) the Contractor breaches in a material respect a representation or warranty given by it under this deed, or any other undertaking given by the Contractor in this deed;
- (xviii) the Contractor closes or permits or causes the closure of one or more traffic lanes of the Motorway after the Date of Opening Completion or an adjacent motorway, except to the extent it has been authorised to close the Motorway, adjacent motorway or a traffic lane of the Motorway or adjacent motorway under a ROL, or the Principal otherwise consents in writing (an **Unauthorised Closure Default**);

- (xix) the Contractor fails to pay a sum of money due and owing to the Principal in accordance with the Project Documents and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment;
- (xx) the Contractor defaults in a material respect in the due observance and performance of any of its other obligations under this deed;
- (xxi) the Contractor causing or contributing to the occurrence of an Incident and failing to ensure that the Principal is promptly notified as set out in clause 3.6(b);

[REDACTED]

- (xxiii) the Contractor failing to comply with clause 5.10(aa).

18.2 Contents of Notice

A written notice under clause 18.1 must:

- (a) **(Notice)**: state that it is a notice under clause 18.1;
- (b) **(Alleged breach)**: specify the alleged breach;
- (c) **(Remedy breach)**: require the Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) **(Time and date)**: specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 15 Business Days after the notice is given).

18.3 Rights of the Principal Following Notice

If:

- (a) **(Failure)**: by the time specified in a notice under clause 18.1, the Contractor fails to remedy the breach (or other event or issue the subject of the notice) or make arrangements satisfactory to the Principal; or
- (b) **(Immediate termination or take out)**: clause 18.4 applies, the Principal may, by notice in writing to the Contractor, immediately:
 - (c) **(Take out)**: take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
 - (d) **(Termination)**: terminate this deed.

18.4 Immediate Termination or Take-Out

- (a) If:
 - (i) **(Insolvency Event)**: an Insolvency Event occurs:
 - (A) to the Contractor;
 - (B) where the Contractor comprises more than one person, any one of those persons; or
 - (C) to a Parent Company Guarantor,

and the Contractor or the Parent Company Guarantor (as applicable) are not able to satisfy the Principal (in its absolute discretion) within 5 Business Days (or any longer period agreed to by the Principal in its absolute discretion) of the Insolvency Event occurring that this deed should not be terminated, including by:

- (D) demonstrating (and continuing to demonstrate) that where the Contractor comprises more than one person, the solvent entity or entities have continued to perform and are able to continue to perform the obligations of the Contractor under this deed;
 - (E) a replacement entity of appropriate creditworthiness assuming the obligations and liabilities of the insolvent entity to the Principal on terms satisfactory to the Principal; and
 - (F) the Contractor providing additional unconditional undertakings for amounts and in a form satisfactory to the Principal;
- (ii) Not used;
- (iii) **(General liability Cap):** the aggregate Liability of the Contractor to the Principal under or in connection with this deed is equal to or exceeds [redacted] per cent of the Target Cost (as adjusted in accordance with this deed);
- (iv) **(Liquidated damages Cap):** [redacted]
[redacted]
[redacted]
[redacted]
- [redacted] [redacted]
[redacted]
[redacted]
- [redacted] [redacted]
[redacted]
[redacted]
- (v) **(Share of Cost Overrun Cap):** [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
- (vi) **(Assignment and Change in Control):** the Contractor is in breach of its obligations under clause 21.4 and the Contractor fails to remedy the breach within 10 Business Days;
- (vii) **(Failure to achieve Opening Completion):** the Contractor fails to achieve Opening Completion of the Project Works by the Sunset Date;
- (viii) **(Abandonment):** the Contractor Abandoning;
- (ix) **(Parent Company Guarantee - void):** the Parent Company Guarantee is or becomes void, voidable or unenforceable (in part or in full) or otherwise

ceases to be in full force and effect, and the Parent Company Guarantee is not replaced with a Parent Company Guarantee that:

- (A) is not void, voidable or unenforceable and is otherwise in full force and effect;
- (B) is duly executed by the same Parent Company Guarantor and complies with the requirements of clause 5.10; and
- (C) is in the form of Schedule F4 (*Parent Company Guarantee*) subject only to such amendments as the Principal's Representative (acting reasonably) agrees are necessary in order to overcome the matter that rendered the relevant Parent Company Guarantee void or voidable or unenforceable,

within 5 Business Days of the earlier of:

- (D) the date on which the Contractor first became aware, or ought reasonably to have become aware, that the Parent Company Guarantee was or had become void, voidable or unenforceable (in part or in full) or had otherwise ceased to be in full force and effect; and
 - (E) the date on which the Principal notifies the Contractor of the need for a replacement Parent Company Guarantee;
- (x) **(Parent Company Guarantee – Change in law)**: the Contractor fails to procure any action required by the Principal under clause 5.10(b) and that failure is not rectified within 30 Business Days of notice from the Principal requiring the Contractor do so;
 - (xi) **(Unconditional undertaking – void)**: an unconditional undertaking is or becomes void, voidable or unenforceable (in part or in full) and is not replaced with an unconditional undertaking that is not void, voidable or unenforceable and that meets the requirements of clause 5.7(a) within 5 Business Days of the Principal notifying the Contractor of the need for a replacement unconditional undertaking;
 - (xii) **(Restructure Event)**: subject to clause 18.4(b), a Restructure Event occurs and the Contractor has failed to demonstrate to the reasonable satisfaction of the Principal that the remaining or replacement entities comprising the Contractor or the Parent Company Guarantor (as relevant) are of sufficient commercial and financial standing to meet their obligations under this deed or the relevant Parent Company Guarantee (as relevant); or
 - (xiii) **(Modern Slavery breach)**: the Contractor breaches any of its obligations in relation to Modern Slavery as set out in clause 8.13, or any Modern Slavery Law or if the Contractor or any entity that it owns or controls commits a Modern Slavery Offence,

then, the Principal may, whether or not the Contractor is then in breach of this deed, and without giving a notice under clause 18.1, exercise a right under clause 18.3(c) or clause 18.3(d).

- (b) The Principal may not terminate this deed pursuant to clause 18.4 in respect of events provided for in clauses 18.4(a)(xii) or 21.4(ba)(iv) where the Contractor demonstrates (and continues to demonstrate) to the satisfaction of the Principal (acting reasonably), that the remaining or replacement entities comprising the Contractor, or Parent Company Guarantors (as relevant) are of sufficient commercial

and financial standing to meet its obligations under this deed or the Parent Company Guarantee (as relevant).

18.5 Principal's Rights After Take-Out or Termination

(a) **(Principal's rights):** If:

- (i) the Principal:
 - (A) exercises its rights under clause 18.3(c); or
 - (B) terminates this deed under clauses 18.3(d), 18.4, 18.10 or [REDACTED];
- (ii) the Contractor repudiates this deed and the Principal subsequently terminates this deed; or

(iii) this deed is frustrated under Law,

then:

- (iv) the Contractor:
 - (A) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its Subcontractors that the Principal directs by executing a deed of novation substantially in the form of Schedule A9 (*Deed of Novation*);
 - (B) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:
 - (aa) execute, sign, seal and deliver all notices, deeds and documents; and
 - (bb) undertake actions in the name of the Contractor, for the purposes referred to in clause 18.5(a)(iv)(A);
 - (C) must immediately handover to the Principal's Representative all copies of:
 - (aa) any documents provided by the Principal to the Contractor;
 - (bb) all Contract Documentation and Deliverables prepared by the Contractor to the date on which the Principal exercises its rights under clauses 18.3(c), 18.3(d), 18.4, 18.10 or [REDACTED] (whether complete or not);
 - (cc) any other documents or information in existence that is to be provided to the Principal under the terms of this deed; and
 - (dd) the complete Significant Lump Sum Subcontracts [REDACTED]; and
 - (D) must within 15 Business Days of termination, or such other longer period agreed by the Principal acting reasonably having regard to the

relevant delivery date under the relevant Approved Subcontract, deliver all unfixed Materials that:

(aa) are not located on the Site on the date of termination; and

(bb) have been paid for by the Principal in accordance with clause 15.6,

to the Site, or such other locations directed by the Principal; and

(v) the Principal:

(A) will be entitled to require the Contractor to remove from the Construction Site or any area affected by the Project Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Project Works;

(B) may complete the work referred to in clause 18.5(a)(v)(A);

(C) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Construction Site or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work; and

(D) must, if it takes possession of the items referred to in clause 18.5(a)(v)(C):

(aa) in respect of Construction Plant, Temporary Works or other things that have been hired by the Contractor, for the period during which it retains possession of Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 19;

(bb) in respect of all other Construction Plant, Temporary Works or other things, maintain the Construction Plant, Temporary Works or other things and, subject to clause 18.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 18.5(a)(v)(C) which are surplus.

(b) **(Survival of clause):** This clause 18.5 will survive the termination or frustration of this deed.

18.6 **Principal's Entitlements after Take-Out**

(a) **(Right to payment):** If the Principal exercises the right under clause 18.3(c), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor.

(b) **(Costs incurred for completion):** When all of the work taken out of the hands of the Contractor under clause 18.3(c) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work (**Principal Cost to Complete**) and will issue a certificate to the Contractor certifying the amount.

- (c) **(Liability for costs)**: Despite any other provisions of this deed, if the Principal Cost to Complete is:
- (i) greater than the amount that would have been paid to the Contractor if the Contractor had completed the work (as reasonably determined by the Principal) **(Contractor Cost to Complete)**:
 - (A) the Target Cost will be reduced by Contractor Cost to Complete; and
 - (B) the difference between the Contractor Cost to Complete and the Principal Cost to Complete will be a debt due and payable from the Contractor to the Principal; or
 - (ii) less than the Contractor Cost to Complete, the Target Cost will be reduced by the Contractor Cost to Complete.
- (d) **(Recovery of Loss)**: Without limiting clause 18.6(c), and without limiting the Principal's rights at Law, if the Principal exercises the right under clause 18.3(c), the Principal will be entitled to recover from the Contractor any Loss incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right as a debt due and payable from the Contractor to the Principal.
- (e) **(Contractor to grant lien)**: If the Contractor is indebted to the Principal:
- (i) the Contractor grants to the Principal a lien over any Construction Plant, Temporary Works or other things as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work which were taken by the Principal under clause 18.5 such that the Principal may retain that property until the debt is met;
 - (ii) if after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale; and
 - (iii) any excess will be paid to the Contractor.
- (f) **(Reduction of liability)**: The Contractor's liability under this clause 18.6 will be reduced to the extent that the Principal failed to take reasonable steps to mitigate:
- (i) the Principal Cost to Complete; or
 - (ii) its Loss in relation to the exercise of the right under clause 18.3(c),
- provided the cost of taking any reasonable steps will be recoverable from the Contractor under this clause 18.6.

18.7 **Principal's further rights after Termination**

- (a) **(Principal's rights)**: Without limiting clause 18.11, if the Principal terminates this deed under clauses 18.3(d) or 18.4, or if the Contractor repudiates this deed and the Principal subsequently terminates this deed the Principal will:
- (i) not be obliged to make any further payments to the Contractor, excluding any money that is the subject of an existing Payment Claim under clause 15.2(a) or an existing Payment Schedule under clause 15.2(e);

- (ii) be absolutely entitled to call upon, convert and have recourse to and retain without limiting clause 5 the proceeds of any unconditional undertaking held under clause 5, clause 15.6 or clause 15.6A; and
 - (iii) subject to clause 18.7(b)(i) and clause 18.7(f), be entitled to recover from the Contractor, and the Contractor is liable for, any Loss incurred or suffered by the Principal as a result of, or arising out of, or in any way in connection with, such termination or relevant event of default as a debt due and payable from the Contractor to the Principal.
- (b) **(Loss and Ownership of unfixed Materials):** The parties agree that:
- (i) for the purposes of calculating the Loss under clause 18.7(a)(iii), if there is any:
 - (A) unfixed Materials that have:
 - (aa) been paid for by the Principal in accordance with clause 15.6; and
 - (bb) not been delivered in accordance with clause 18.5(a)(iv)(D),

the Loss incurred or suffered by the Principal shall be deemed to be an amount equal to the cost of the relevant unfixed Materials paid by the Principal to the Contractor; or
 - (B) Key Plant and Equipment that has been paid for by the Principal in accordance with clause 15.6A, the Loss incurred or suffered by the Principal shall be deemed to be an amount equal to the amounts paid by the Principal to the Contractor in respect of the Key Plant and Equipment;
 - (ii) once the Principal has fully recovered any Loss referred to in clause 18.7(b)(i)(A) from the Contractor, any such unfixed Materials will become the property of the Contractor and title to those unfixed Materials will vest in the Contractor; and
 - (iii) nothing in this clause 18.7 in any way limits the operation of the, or the Principal's rights under, clause 18.7(a)(ii) or clause 5.3.
- (c) **(Survival of clause):** This clause 18.7 survives the termination of this deed.
- (d) **(Excess):** If the Principal calls upon, converts, has recourse to or retains the proceeds of any unconditional undertaking held under clause 5, clause 15.6 or clause 15.6A, pursuant to clause 18.7(a)(ii) (**Withheld Amount**), and the Withheld Amount is greater than the amount of Loss incurred or suffered by the Principal as a result of, or arising out of, or in any way in connection with, the termination of this deed or relevant event of default in the circumstances contemplated by clause 18.7(a), the Principal must repay to the Contractor the difference between the Withheld Amount and the amount of such Loss.
- (e) **(No interest):** The Principal is not obliged to pay the Contractor interest on any Withheld Amount.
- (f) **(Reduction of liability):** The Contractor's liability under clause 18.7(a)(iii) will be reduced to the extent that the Principal failed to take reasonable steps to mitigate the Loss incurred or suffered by the Principal as a result of, or arising out of, or in any way in connection with, such termination or relevant event of default, provided

the cost of taking any reasonable steps will be recoverable from the Contractor under clause 18.7(a)(iii).

18.8 **Contractor's Rights after Repudiation or Wrongful Termination**

- (a) **(Principal's rights):** If the Principal:
- (i) repudiates this deed and the Contractor terminates this deed; or
 - (ii) wrongfully:
 - (A) exercises or attempts to exercise any right or power conferred on it by clauses 18.3 or 18.4; or
 - (B) terminates or purports to terminate this deed at common law,
- then the:
- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 18.9 and the Contractor's sole rights in such circumstances will be those set out in clause 18.10; and
 - (iv) Contractor:
 - (A) will not be entitled to the payment of damages;
 - (B) will not be entitled to any payment on a quantum meruit basis; and
 - (C) waives all other rights it has to make a Claim in such circumstances.
- (b) **(Survival of clause):** This clause 18.8 will survive the termination of this deed.

18.9 **Termination for Convenience**

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

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

18.10 **Payment for Termination for Convenience**

- (a) **(Contractor's entitlement to payment):** If the Principal terminates this deed under clause 18.9 (or is deemed to have done so in accordance with clause 18.8(a)(iii)), the Contractor:
 - (i) will be entitled to payment of the following amounts as determined by the Principal's Representative (excluding all Excluded Costs):
 - (A) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the Contractor submitted a Payment Claim under clause 15.2 for work carried out to the date of termination;

- (B) the cost of Construction Plant and Materials reasonably ordered by the Contractor for the Project Works and for which it is legally bound to pay provided that:
 - (aa) the value of the Construction Plant and Materials have not been previously paid or included in the amount payable under clause 18.10(a)(i)(A); and
 - (bb) title in the Construction Plant and Materials vests in the Principal upon payment;
 - (C) the proven and reasonable cost of removing from the Construction Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Project Works and of making the Construction Site safe;
 - (D) the reasonable cost of terminating Approved Subcontracts; and
 - (E) the amount calculated by applying the percentage specified in Schedule A1 (*Contract Particulars*) to the total of the amounts payable pursuant to clause 18.10(a)(i)(B) and clause 18.10(a)(i)(C), for all overheads and profit associated with, and to the extent not included in, the work and costs determined under clauses 18.10(a)(i)(B) and 18.10(a)(i)(C); and
- (ii) must take all steps possible to mitigate the costs referred to in clauses 18.10(a)(i)(B), 18.10(a)(i)(C), 18.10(a)(i)(D) and 18.10(a)(i)(E).
- (b) (**Return of security**): To the extent the Principal has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 5 when the Contractor has complied with all its obligations under this clause.
 - (c) (**Limitation of Principal's liability**): The amount to which the Contractor is entitled under this clause 18.10 will be a limitation upon the Principal's Liability to the Contractor arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under this clause 18.10.
 - (d) (**Survival of clause**): This clause 18.10 will survive the termination of this deed by the Principal under clause 18.9.

18.11 Preservation of Rights

Subject to clause 18.8, nothing in this clause 18 or that the Principal does or fails to do pursuant to this clause 18 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 15.8) which it may have where the Contractor breaches (including repudiates) this deed.

18.12 Termination by Frustration

- (a) (**Principal's obligations**): If under Law this deed is frustrated, the Principal will:
 - (i) pay the Contractor the following amounts as determined by the Principal's Representative:
 - (A) an amount calculated in accordance with clause 18.10(a)(i)(A) for work carried out prior to the date of frustration;

- (B) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 18.10(a)(i)(B); and
 - (C) the costs calculated in accordance with the terms of clause 18.10(a)(i)(C); and
- (ii) to the extent the Principal has not had recourse to them, return all unconditional undertakings then held by it under clause 5 when the Contractor has complied with its obligations under this clause.
- (b) **(Limitation of Principal's liability)**: The amount to which the Contractor is entitled under this clause 18.12 will be a limitation upon the Principal's Liability to the Contractor arising out of, or in any way in connection with, the frustration of this deed and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed other than for the amount payable under this clause 18.12.
- (c) **(Survival of clause)**: Without limiting any other provision of this deed, this clause 18.12 will survive the frustration of this deed.

18.13 **Codification of Contractor's Entitlements**

_____ this clause 18 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) **(No exceptions)**: cannot otherwise terminate, rescind or treat this deed as repudiated; and
- (b) **(Waiver)**: waives all rights at Law to terminate, rescind or treat this deed as repudiated,

otherwise than in accordance with this clause 18.

19. **DISPUTE RESOLUTION**

19.1 **Disputes generally**

Any Dispute must be resolved in accordance with this clause 19.

19.2 **Dispute Avoidance Board formation, termination and replacement**

- (a) **(Formation)**: The Dispute Avoidance Board will be constituted under the DAB Agreement.
- (b) **(Attendance and Assistance)**: Each party must:
 - (i) following execution of the DAB Agreement, at all times comply with the terms of the DAB Agreement;
 - (ii) attend meetings with the Dispute Avoidance Board as required pursuant to the DAB Agreement or this deed; and
 - (iii) provide all reasonable assistance to the Dispute Avoidance Board in fulfilling its function(s) in respect of the Contractor's Activities including providing all information that the Dispute Avoidance Board reasonably requests.
- (c) **(Initial DAB)**: To the extent the DAB Agreement has not been entered into on the date of this deed, the Principal will decide which people nominated in the Contractor's

Tender as candidates for appointment as Dispute Avoidance Board members will be appointed to the Dispute Avoidance Board.

- (d) **(Functions)**: The role of the Dispute Avoidance Board will be to perform the functions and activities identified in the DAB Agreement (including Attachment 1 and Attachment 4).
- (e) **(Honest and impartial)**: The parties acknowledge and agree that the Dispute Avoidance Board must act honestly, impartially, without bias and independently of the Contractor and the Principal.
- (f) **(No Claim)**: Nothing that the Dispute Avoidance Board does or fails to do pursuant to the purported exercise of its functions and activities under the DAB Agreement will entitle the Contractor to make any Claim against the Principal.
- (g) **(Nominating a replacement)**: If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:
 - (i) the Principal will nominate:
 - (A) a replacement member from the list of pre-approved Dispute Avoidance Board members set out in Part A of Schedule B10 (*Pre-approved Dispute Avoidance Board replacements and pre-approved Experts*); or
 - (B) an alternative replacement member;
 - (ii) if clause 19.2(g)(i)(B) applies, the Contractor must (acting reasonably) notify the Principal that either:
 - (A) it agrees to the replacement member nominated by the Principal; or
 - (B) it does not agree to the replacement member nominated by the Principal; and
 - (iii) if the Contractor does not provide the notice required by clause 19.2(g)(ii) within 5 Business Days after the Principal notifies the Contractor of its nomination under clause 19.2(g)(i)(B), the Contractor is deemed to have agreed to the alternative replacement member nominated by the Principal.
- (h) **(Selecting a replacement)**: If:
 - (i) clause 19.2(g)(i)(A), clause 19.2(g)(ii)(A) or clause 19.2(g)(iii) applies and the person nominated by the Principal is:
 - (A) able to act, then such person shall be appointed as the replacement member of the Dispute Avoidance Board; or
 - (B) not able to act, then clause 19.2(g) and this clause 19.2(h) shall re-apply unless the Principal elects for clause 19.2(i) to apply by notice to the Contractor; or
 - (ii) clause 19.2(g)(ii)(B) applies, then clause 19.2(g)(i) and this clause 19.2(h) shall re-apply unless the Principal elects for clause 19.2(i) to apply by notice to the Contractor.
- (i) **(No replacement selected)**: If, within 30 Business Days after a member declines the first appointment to act or is unable to act on the Dispute Avoidance Board as

contemplated by clause 19.2(g), a member has not been replaced by a person selected in accordance with clause 19.2(g) and clause 19.2(h), the remaining members of the Dispute Avoidance Board will select a replacement member that holds qualifications and has experience similar to that of the Dispute Avoidance Board member being replaced and this selection will be final and conclusive.

- (j) **(Criteria for a replacement):** Any selection made under clause 19.2(g), clause 19.2(h) or clause 19.2(i) must be made in accordance with the criteria set out in Attachment 3 to Schedule B9 (*DAB Agreement*) and the Dispute Avoidance Board must be re-formed by the continuing and replacement members of the Dispute Avoidance Board, the Principal and the Contractor signing a replacement DAB Agreement in accordance with clause 14.3 (*Replacement*) of the DAB Agreement.
- (k) **(Termination by agreement):** The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of the Principal and the Contractor, but not by the Principal or the Contractor acting alone.
- (l) **(Final completion):** Subject to clause 19.2(m), unless otherwise agreed by both parties, the appointment of the Dispute Avoidance Board will terminate 1 month after the final payment is made under clause 15.2(j)(i).
- (m) **(Termination of P2 Contract):** If this deed is terminated, the appointment of the Dispute Avoidance Board will terminate on the same date.
- (n) **(Expiry of Dispute Avoidance Board's Appointment):** If a dispute arises and there is no Dispute Avoidance Board in place, whether by reason of the expiry of the Dispute Avoidance Board's appointment or otherwise:
 - (i) clause 19.3 will still apply, but the dispute will not be referred to the Dispute Avoidance Board;
 - (ii) clause 19.5 will not apply; and
 - (iii) the dispute may be referred directly to the Management Review Group under clause 19.7.

19.3 Notice of Dispute

- (a) **(Notice of Dispute):** Where a Dispute arises either party may serve a notice in writing on the other party specifying:
 - (i) that it is a notice of Dispute under this clause 19.3;
 - (ii) the Dispute and the particulars of the Dispute, including:
 - (A) detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and law or the Claim; and
 - (B) attaching all documents that are relied on in support of the Dispute or Claim; and
 - (iii) the position which the party believes is correct in relation to the Dispute, in relation to both liability and quantum,**(Notice of Dispute).**
- (b) **(Parties must attempt to resolve):** Without limiting or affecting clause 19.3(a), the parties agree that the Principal's Representative and the Contractor's

Representative will attempt to resolve Disputes between themselves prior to issuing a Notice of Dispute.

19.4 Management Review Group

- (a) **(Negotiation)**: If a Notice of Dispute is served, the Management Review Group must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute **(Negotiation)**.
- (b) **(Without prejudice)**: Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under this clause 19 or in any other legal proceeding.
- (c) **(In writing and signed)**: Any agreement reached at the Negotiation must be unanimous, in writing, and signed by both parties.
- (d) **(Referral for next step)**: If the Dispute is not fully resolved by the Management Review Group within 20 Business Days (or such longer period as the parties agree) after a Notice of Dispute is given under clause 19.3(a), the Management Review Group may:
 - (i) request a non-binding opinion from the Dispute Avoidance Board in accordance with clause 19.5;
 - (ii) refer the Dispute to expert determination in accordance with clause 19.6; or
 - (iii) refer the Dispute to be determined in accordance with clause 19.8.
- (e) **(No referral)**: If the Management Review Group has not made a request or referral as contemplated by clause 19.4(d) and the party that issued the Notice of Dispute has not notified the other party that it does not wish to pursue the Dispute, each within 5 Business Days after the expiry of the time period for referral required by clause 19.4(d), the Principal may elect to:
 - (i) request a non-binding opinion from the Dispute Avoidance Board in accordance with clause 19.5;
 - (ii) refer the Dispute to expert determination in accordance with clause 19.6; or
 - (iii) refer the Dispute to be determined in accordance with clause 19.8.
- (f) **(No election)**: If the Principal does not make an election under clause 19.4(e) within 10 Business Days of the expiry of the period in clause 19.4(e), then the Dispute will be referred to expert determination in accordance with clause 19.6.

19.5 Reference to Dispute Avoidance Board

- (a) **(Submissions)**: If the Management Review Group requests a non-binding opinion from the Dispute Avoidance Board in accordance with clause 19.4(d)(i) or the Principal elects to request a non-binding opinion from the Dispute Avoidance Board in accordance with clause 19.4(e)(i):
 - (i) the party that issued the Notice of Dispute under clause 19.3 **(Referring Party)** must make its submissions in writing to the Dispute Avoidance Board, copied to the other party **(Responding Party)**, in relation to the Dispute within 10 Business Days of the date of the request (or such longer period as

the parties agree in writing or otherwise approved by the Dispute Avoidance Board), which submissions must:

- (A) include a copy of the relevant Notice of Dispute;
 - (B) include detailed particulars of the party's position on the issues in Dispute, including the relevant matters of fact and law or the Claim;
 - (C) attach all documents that are relied on in support of the Dispute or Claim; and
 - (D) include any updates additional to the information included in the Notice of Dispute in relation to the Dispute; and
- (ii) within 10 Business Days after the Responding Party received the Referring Party's submissions under clause 19.5(a)(i) (or such longer period as the parties agree in writing or otherwise approved by the Dispute Avoidance Board), the Responding Party must provide its response submissions in writing to the Dispute Avoidance Board, copied to the Referring Party, which response submissions must include:
- (A) detailed particulars of the Responding Party's position on the issues in Dispute, including the relevant matters of fact and law or the Claim; and
 - (B) attaching all documents that are relied on in support of the Dispute or Claim.
- (b) **(Joint Submission)**: Without limiting clause 19.5(a), the request for an opinion may include a joint submission by the parties which must:
- (i) be issued to the Dispute Avoidance Board within 10 Business Days after the Responding Party receives the Referring Party's submissions under clause 19.5(a)(i); and
 - (ii) set out:
 - (A) the relevant documents;
 - (B) a joint summary of facts;
 - (C) any matters that are agreed;
 - (D) the main areas of disagreement; and
 - (E) a summary of each party's response to the other party's submission.
- (c) **(Submissions may not contain)**: The submissions under this clause 19.5 may not contain any issue not the subject of the Notice of Dispute.
- (d) **(Functions)**: In performing its functions, the Dispute Avoidance Board:
- (i) will be deemed to be not acting as arbitrators; and
 - (ii) notwithstanding anything else, to the extent permitted by Law, will have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

- (e) **(Rules)**: Any opinion in respect of a Dispute by the Dispute Avoidance Board requested pursuant to clause 19.5 must be given in accordance with the rules in Attachment 4 of Schedule B9 (*DAB Agreement*) or, in relation to a particular Dispute under this deed, such other rules that may otherwise be agreed in writing between the parties.
- (f) **(Request for information)**: Following a request for opinion from the Management Review Group to the Dispute Avoidance Board, both parties must promptly make available to the Dispute Avoidance Board:
 - (i) relevant correspondence, reports, minutes of meetings, programs and other materials; and
 - (ii) subject to clause 1(b) of Attachment 1 to the DAB Agreement, all such additional information, access to the Site, and appropriate facilities, as the Dispute Avoidance Board may require for the purposes of providing an opinion in respect of the Dispute.
- (g) **(Opinion)**: No later than the date that is the later of 15 Business Days after receiving the submission from the Responding Party pursuant to clause 19.5(a)(i) or the joint submission pursuant to clause 19.5(b)(i) (or otherwise within such other period as may be proposed by the Dispute Avoidance Board acting reasonably), the Dispute Avoidance Board must give its opinion in writing, together with its reasons, and must state that it is given under this clause 19.5(g).
- (h) **(Without prejudice)**: Unless otherwise agreed in writing, the opinion of the Dispute Avoidance Board and all submissions and communications provided to the Dispute Avoidance Board or related to the opinion of the Dispute Avoidance Board are without prejudice and are inadmissible in any process under clause 19.6, clause 19.9 or in any legal proceeding.

19.6 Expert determination

- (a) **(Rules)**: Where the Management Review Group has referred a Dispute to expert determination in accordance with clause 19.4(d)(ii) or clause 19.4(e) applies, the dispute will be determined in accordance with this clause 19.6 and the Resolution Institute Expert Determination Rules (2016 Edition), as modified by Schedule B11 (*Modification of The Resolution Institute Expert Determination Rules*).
- (b) **(Nomination of Expert)**: If a Dispute is referred to expert determination, then:
 - (i) within 10 Business Days after the Dispute is referred to expert determination in accordance with clause 19.4, the Principal must, by written notice to the Contractor:
 - (A) subject to 19.6(i), nominate two people from the list of pre-approved Dispute Avoidance Board members or experts set out in Schedule B10 (*Pre-approved Dispute Avoidance Board replacements and pre-approved Experts*) to act as the Expert for the relevant Dispute; or
 - (B) nominate an alternative person to act as the Expert for the relevant Dispute,

provided that the Principal must not select or nominate any person who is a current or past member of the Dispute Avoidance Board;

- (ii) within 5 Business Days after the Principal issues a notice contemplated by:
 - (A) clause 19.6(b)(i)(A), the Contractor must notify the Principal of the Expert it has selected from the shortlist nominated by the Principal; or
 - (B) clause 19.6(b)(i)(B), the Contractor must (acting reasonably) notify the Principal that either:
 - (aa) it agrees to the expert nominated by the Principal, or
 - (bb) it does not agree to the expert nominated by the Principal, including reasons and nominating up to two alternative people for consideration by the Principal (at its absolute discretion), being one from Schedule B10 (*Pre-approved Dispute Avoidance Board replacements and pre-approved Experts*) and up to one alternative; and
- (iii) if the Contractor does not provide the notice required by clause 19.6(b)(ii) in circumstances where:
 - (A) clause 19.6(b)(i)(A) applies, the Principal will select the Expert from the shortlist nominated by it under that clause; or
 - (B) clause 19.6(b)(i)(B) applies, the Contractor is deemed to have agreed to the alternative person to act as the Expert nominated by the Principal.
- (c) **(Selection of Expert):** If:
 - (i) the Contractor issues a notice pursuant to clause 19.6(b)(ii)(A) or clause 19.6(b)(ii)(B)(aa), or otherwise clause 19.6(b)(iii) applies and the person nominated to act as the Expert is:
 - (A) able to act, then such person shall be appointed as the Expert for the purposes of the relevant Dispute; or
 - (B) not able to act, then clause 19.6(b) and this clause 19.6(c) shall re-apply;
 - (ii) clause 19.6(b)(ii)(B)(bb) applies, then clause 19.6(b) and this clause 19.6(c) shall re-apply, unless the Principal elects for clause 19.6(c)(iii) to apply by notice to the Contractor; or
 - (iii) either:
 - (A) the Principal elects under clause 19.6(c)(ii) for this clause 19.6(c)(iii) to apply; or
 - (B) no person has been appointed as the Expert within 30 Business Days after referral to expert determination in accordance with clause 19.6,

the Expert will be nominated by ACICA on the application of the Referring Party, which will be copied to the Responding Party.
- (d) **(Expert's determination):** The parties must give effect to a determination of the Expert unless and until it is revised pursuant to clause 19.7(c) or in an arbitral award made in an arbitration following a referral to arbitration or by determination of a court following a referral to court (as applicable) as contemplated by clause 19.8.

- (e) **(Dissatisfaction)**: Subject to clause 19.6(h), if either party is dissatisfied with the Expert's determination, then either party may, within 10 Business Days after receiving the Expert's determination, serve a notice of its dissatisfaction (**Notice of Dissatisfaction**).
- (f) **(Notice contents)**: A Notice of Dissatisfaction must:
 - (i) state that it is given under clause 19.6(e);
 - (ii) provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and law;
 - (iii) set out the position which the party believes is correct both in relation to liability and quantum; and
 - (iv) provide detailed particulars of the quantum of the matters in Dispute.
- (g) **(Nature of determination)**: If the Expert has given its determination as to a Dispute and a Notice of Dissatisfaction has not been given in accordance with clause 19.6(f) and within the time required by clause 19.6(e), then the determination will become final and binding upon both parties.
- (h) **(Final and binding)**: The parties acknowledge and agree that any determination by the Expert pursuant to this clause 19.6 will, as between the Contractor and the Principal, be final and binding upon the Principal and the Contractor unless:
 - (i) the Dispute is about a matter of principle only and no sum of money is reasonably capable of being claimed in respect of the Dispute by either party; or
 - (ii) the Determined Value for the relevant Dispute is equal to or greater than [REDACTED]

in which case the parties may give a Notice of Dissatisfaction in relation to such determinations.
- (i) **(Pre-approved Experts)**: If, at the time of referral of a Dispute to expert determination in accordance with clause 19.4(d)(ii) or clause 19.4(e), a person specified in the list of pre-approved Dispute Avoidance Board members or experts set out in Schedule B10 (*Pre-approved Dispute Avoidance Board replacements and pre-approved Experts*) is engaged by either party in any capacity (except where such engagement is in the capacity as a member of the Dispute Avoidance Board, an Expert in accordance with this deed, an expert in accordance with the RI/P2 Interface Deed or an independent arbitrator, expert determiner or mediator in relation to another project or matter), the other party may nominate a replacement person to be included on this list for the purposes of nominating an expert for that Dispute.
- (j) **(No engagement)**: Once an Expert has been selected in accordance with clause 19.6(c) for the purposes of a Dispute, the parties must not engage that person in any other capacity (other than as an independent arbitrator, expert determiner or mediator (including as an expert in accordance with the RI/P2 Interface Deed)) until that Dispute has been resolved or determined.

19.7 **Management Review Group's Further Negotiation**

- (a) **(Further Negotiation)**: If:
 - (i) the Dispute Avoidance Board provides an opinion pursuant to clause 19.5; or

- (ii) a Notice of Dissatisfaction is served pursuant to clause 19.6,
the Management Review Group must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute (**Further Negotiation**).
- (b) (**Without prejudice**): Unless otherwise agreed in writing, all communications at or related to the Further Negotiation are without prejudice and are inadmissible in any process under this clause 19 or in any other legal proceeding.
- (c) (**In writing and signed**): Any agreement reached at the Further Negotiation must be unanimous, in writing, and signed by both parties.
- (d) (**Refer to litigation or arbitration**): If the Dispute is not fully resolved by the Management Review Group within 20 Business Days (or such longer period as the parties agree in writing) after:
 - (i) the Dispute Avoidance Board's opinion is given under clause 19.6(c); or
 - (ii) a Notice of Dissatisfaction is given under clause 19.6(d),
 as applicable, either party may, within 10 Business Days after the relevant period has expired, give a notice to the other party of its dissatisfaction (**Notice of Disagreement**).
- (e) (**Requirements**): A Notice of Disagreement issued under clause 19.7(d) must:
 - (i) state that it is given under this clause 19.7; and
 - (ii) set out the matter in Dispute and the reason(s) for disagreement.
- (f) (**Notice required to progress**): Neither party will be entitled to commence court proceedings or arbitration in respect of any Dispute unless a Notice of Disagreement has been given in accordance with this clause 19.7.

19.8 **Litigation or arbitration**

- (a) (**Litigation**): The Principal (in its absolute discretion), may within 10 Business Days after:
 - (i) a referral pursuant to clause 19.4(d)(iii) or clause 19.4(e)(iii); or
 - (ii) issuing or receiving a Notice of Disagreement,
 issue a notice to the Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings.
- (b) (**Arbitration**): If the Principal does not issue a notice under clause 19.8(a) within the 10 Business Day period, the Dispute will be referred to arbitration.
- (c) (**Commencement**): If:
 - (i) a determination has been given by an Expert in accordance with clause 19.6 in respect of the relevant Dispute; and
 - (ii) arbitration or litigation (as applicable) is not commenced by the party that issued the relevant Notice of Disagreement within 60 Business Days of expiry of the period in clause 19.8(a) (or such longer period as agreed between the parties),

then the determination of the Expert in relation to the relevant Dispute will be final and binding on the parties except in the case of manifest error on the face of the Expert's determination.

19.9 **Arbitration**

- (a) **(ACICA rules to apply)**: Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) **(Location)**: The seat of the arbitration will be Sydney, Australia.
- (c) **(Language)**: The language of the arbitration will be English.
- (d) **(Number of arbitrators)**: The number of arbitrators will be one.
- (e) **(General principles of procedure)**: The parties agree:
 - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out in clauses 19.9(e)(i) and 19.9(e)(ii), particularly in deciding issues such as:
 - (A) the procedural timetable;
 - (B) the number of written submissions that will be permitted;
 - (C) where appropriate, the length and scope of written submissions;
 - (D) the extent of document discovery permitted, if any;
 - (E) subject to clause 19.16:
 - (aa) the consolidation of proceedings, when requested;
 - (bb) the joinder of parties, when requested;
 - (F) the length of any hearing, if any; and
 - (G) the number of experts, if any, each party is permitted to appoint.
- (f) **(Tribunal powers)**: The parties agree that:
 - (i) subject to clause 19.10, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (g) **(Third party)**: The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party and each party hereby consents to such joinder.

- (h) **(Single or separate awards)**: In the event of joinder of parties in the arbitration pursuant to clause 19.9(g), the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (i) **(Binding award)**: To the extent not inconsistent with Law, any award of the arbitral tribunal will be final and binding upon the parties.
- (j) **(NSW law applies)**: This arbitration agreement will be governed by and must be construed according to the Laws applying in New South Wales.

19.10 **Exclusion from determination or award**

- (a) **(No conferral of court power)**: The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002 (NSW)* are not conferred on an arbitral tribunal appointed in accordance with this clause 19.
- (b) **(No application of the CLA)**: The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a Claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

19.11 **Payments**

Where an amount or part of an amount claimed by the Contractor is the subject of a Dispute between the parties, the Principal may withhold payment of that amount or the relevant part of that amount (as applicable) which is the subject of the Dispute.

19.12 **Contractor to continue performing obligations**

Despite the existence of any Dispute, or the referral of any Dispute for resolution under this clause 19, the Contractor must continue to perform:

- (a) the Contractor's Activities; and
- (b) its other obligations under this deed.

19.13 **Urgent relief**

Nothing in this clause 19 will prejudice:

- (a) the right of a party to seek urgent injunctive or declaratory relief from a court; or
- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the *Corporations Act 2001 (Cth)* or equivalent provision under any Law.

19.14 **Dispute under related contracts**

The parties acknowledge and agree that:

- (a) **(No application to Independent Certifier)**: the provisions of this clause 19 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;

- (b) **(Parties bound)**: the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed; and
- (c) **(Common Dispute)**: where the Dispute is a Common Dispute, as that term is defined in Schedule E5 (*Requirements of Third Party Agreements*), then this clause 19 will apply subject to the provisions of Schedule E5 (*Requirements of Third Party Agreements*).

19.15 **Not used**

19.16 **Determination under interface deed**

The Contractor acknowledges and agrees that:

- (a) **(Election regarding joint dispute)**: pursuant to clause 6 of the RI/P2 Interface Deed and the BL/P2 Interface Deed, the Principal may, in its absolute discretion and at any time, require a Dispute under this P2 Contract be dealt with as a "Joint Dispute" (as defined in the RI/P2 Interface Deed or BL/P2 Interface Deed (as applicable)) under the RI/P2 Interface Deed or BL/P2 Interface Deed (as applicable);
- (b) **(Clause does not apply)**: if the Principal elects to have a Dispute dealt with as "Joint Dispute" as contemplated in clause 19.16(a), the dispute resolution process in this clause 19 will not apply to such Disputes; and
- (c) **(Outcome)**: where a Dispute is referred by the Principal for resolution under the RI/P2 Interface Deed or BL/P2 Interface Deed, the outcome of the dispute resolution process in the RI/P2 Interface Deed or BL/P2 Interface Deed (as applicable) will be binding on the parties under this deed in relation to such Dispute.

19.17 **Limitation periods**

If a limitation period applicable to a cause of action relating to a Dispute expires during any of the processes set out in this clause 19 for that Dispute, each party agrees that:

- (a) **(Extension)**: the limitation period will be deemed to be extended by a period equal to the number of days between the date the relevant Notice of Dispute was served and the earlier of:
 - (i) the date that the Dispute is resolved or otherwise comes to an end in accordance with this clause 19; and
 - (ii) the date that litigation or arbitration (as applicable) is commenced for that Dispute in accordance with clause 19.8 (if applicable); and
- (b) **(No reliance)**: it will not rely, in any proceeding, on the expiry of a limitation period other than as calculated in accordance with this clause 19.17.

19.18 **Joinder of Parent Company Guarantor**

If required by the Principal, the Contractor unconditionally and irrevocably consents to the Parent Company Guarantor being joined to any litigation or arbitration (as applicable) as contemplated by clause 19.8.

19.19 **Survive termination**

This clause 19 will survive termination of this deed.

20. **LIABILITY**

20.1 **Limitation of Liability**

(a) **(General cap)**: Subject to clauses 20.1(c)(ii), 20.1(f) and [REDACTED], the Contractor's total aggregate Liability to the Principal under or in connection with:

(i) this deed;

[REDACTED]

howsoever caused or arising, whether in contract, tort (including by negligence), equity, statute, by way of indemnity, contribution, unjust enrichment, warranty or guarantee or otherwise at Law is limited to an amount equal to [REDACTED] per cent of the Target Cost as adjusted in accordance with this deed.

(b) **(Liquidated Damages Cap)**: The Contractor's total aggregate Liability to the Principal under clauses 16.5(d) and 16.5(j)(ii), is:

(i) limited to an amount equal to the Liquidated Damages Cap; and

(ii) included in the cap on Liability in clause 20.1(a).

(c) **(Share of Cost Overrun Cap)**: The Contractor's total aggregate Liability under clause 15.12(a) is:

(i) limited to an amount equal to the Share of Cost Overrun Cap; and

(ii) excluded from the cap on Liability in clause 20.1(a).


(d) **(Lane Occupancy Fees)**: The Contractor's total aggregate Liability under Schedule E8 (*Lane Occupancy Fees*) (excluding Lane Occupancy Fees for Planned Lane Closures), is:

(i) limited to an amount equal to [REDACTED] per cent of the Target Cost as adjusted in accordance with this deed; and

(ii) included in the cap on Liability in clause 20.1(a).

(e) **(Contractor's liability for Consequential Loss)**: The Contractor:

(i) subject to clauses 20.1(e)(ii), 20.1(f) and 20.1(g), will not be liable to the Principal (in contract for breach of this deed, under an indemnity, for debt, in tort including negligence, by way of strict or vicarious Liability, under statute or otherwise according to Law or in equity) for any Consequential Loss (including any Consequential Loss for which the Principal is liable to third parties) arising out of or in any way in connection with this deed, the Project Works, the Temporary Works or the Contractor's or any Subcontractor's conduct (including breach of this deed and any other acts or omissions, whether before, on or after the date of this deed); and



(f) **(Contractor's liability not limited)**: Clauses 20.1(a) and 20.1(e)(i) do not limit or exclude the Contractor's Liability:

(i) in respect of Liability which:

(A) cannot be limited at Law;

(B) arises under clauses 7.10(b), 7.19(d), 8.6(g), 9.12(c)(ii), 9.12(j), 17.2(a)(i) or 20.3(b);

(C) is due to the Contractor's Wilful Misconduct or Reckless Misconduct, fraud or criminal conduct; or

(D) arises in connection with the Contractor Abandoning;

(ii) to the extent that (ignoring the application of clause 20.1(a) and clause 20.1(e)), the Liability is an Insured Liability;

(iii) to the extent that (ignoring the application of clause 20.1(a) and clause 20.1(e)), the Contractor:

(A) has recovered that Liability from a third party (excluding any Subcontractor or insurer); or

(B) would have been entitled to recover that Liability from a third party (excluding any Subcontractor or insurer) had it diligently pursued a claim against the third party, provided that the Contractor is not required to pursue such a claim where it has provided the Principal with evidence acceptable to the Principal (acting reasonably) that, even if the relevant claim is successfully pursued, the resulting Liability has no reasonable prospect of being recovered,

and those Liabilities will not be included in any calculation of the Contractor's total aggregate Liability under clause 20.1(a).

(g) **(Liquidated damages and Lane Occupancy Fees)**: Clause 20.1(e) does not limit the Contractor's Liability:

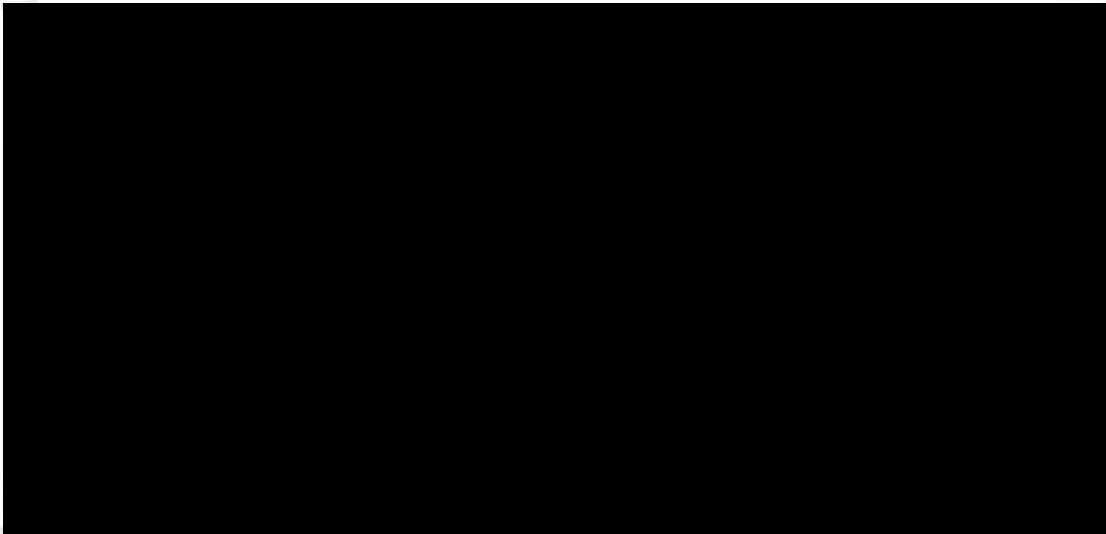
(i) under clauses 7B, 16.5(d) or 16.5(j)(ii); or

(ii) for Lane Occupancy Fees (or under clause 6(d) of Schedule E8 (*Lane Occupancy Fees*)).

(h) **(Pure Economic Loss)**: The Contractor is not liable to the Principal or its Associates, nor will the Principal or its Associates be entitled to make any Claim against the Contractor, in respect of any Liability of the Principal or its Associates to any third party for Pure Economic Loss arising directly as a result of:

(i) the decision by the Principal to proceed with the WHTBL Program; or

- (ii) the existence or location of the Project Works.
- (i) **(Applicability of clause)**: This clause 20 applies:
 - (i) notwithstanding and survives any termination of this deed (including a termination as result of a default or an Insolvency Event in relation to the Contractor);
 - (ii) notwithstanding any other provision of this deed; and
 - (iii) to the maximum extent permitted by Law (present or future) and subject to clause 20.7.
- (j) **(Insurer's obligation unaffected)**: The parties acknowledge and agree that nothing in this clause 20.1 is intended to, and does not, operate to release the Contractor from any Liability to the Principal to the extent that the insurer of any policy of insurance required under this deed seeks to rely on this clause 20.1 (or any other provision of this deed with respect to Insured Liability) to deny, limit or reduce its liability to indemnify an insured under the relevant policy of insurance for a Liability, claim or Loss.



- (l) **(Principal's liability for Consequential Loss)**: Subject to clause 20.1(m), and despite any other clause to the contrary, the Principal has no liability to the Contractor, nor will the Contractor be entitled to make any Claim, in respect of any Consequential Loss incurred or sustained by the Contractor:
 - (i) as a result of any act or omission of the Principal (whether negligent or otherwise);
 - (ii) under any indemnity; or
 - (iii) as a result of a breach by the Principal of a Project Document.
- (m) **(Principal's liability not limited)**: Clause 20.1(l) does not operate to exclude or limit any liability incurred or Claim made by the Contractor or its Associates to the extent that any Loss suffered by the Contractor as a result of such liability or Claim is:
 - (i) a Loss arising from death or personal injury;

- (ii) a Loss arising from any criminal acts, fraud or Wilful Misconduct or Reckless Misconduct on the part of the Principal or its Associates;
- (iii) a Liability which, by Law, the parties cannot limit or contract out of;
- (iv) a Loss in respect of an amount payable under clauses 10 or 18.10; or
- (v) a Loss in respect of any sum payable in respect of any Change, Change in Law or Change in Codes and Standards.

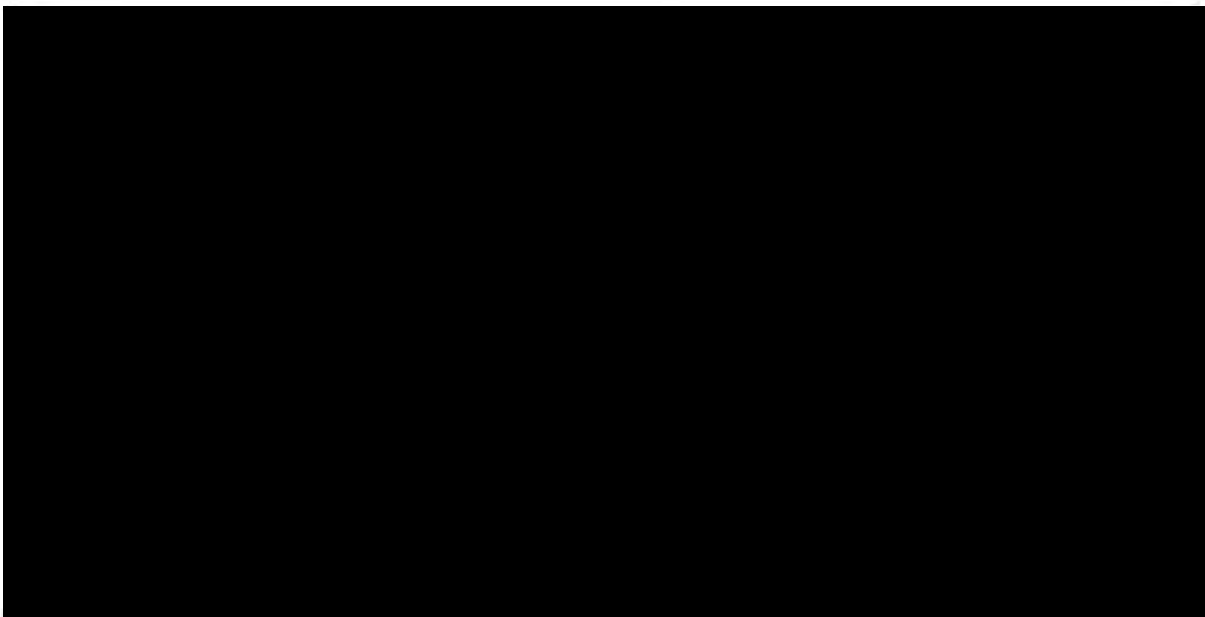
20.2 Exclusion of proportionate liability scheme

- (a) **(Exclusion of CLA):** To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or Liabilities of either party under this deed whether such rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise.
- (b) **(Proportionate liability):** Without limiting clause 20.2(a), the rights, obligations and Liabilities of the Principal and the Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

20.3 Contractor not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) **(Claims):** the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
- (b) **(Indemnity):** if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).





20.5 **Subcontracts**

The Contractor must:

- (a) **(Subcontract exclusions)**: in each Subcontract into which it enters for the carrying out of the Contractor's Activities include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) **(Further Subcontracts)**: require each Subcontractor to include, in any further contract that it enters into with a third party for the carrying out of the Contractor's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise.

20.6 **Insurance requirements**

The Contractor must ensure that all policies of insurance covering third party liability which it is required by this deed to effect or maintain (including the policy set out in clause 17.7):

- (a) **(Liability excluded)**: cover the Contractor for potential Liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
- (b) **(Liability not excluded)**: do not exclude any potential Liability the Contractor may have to the Principal under or by reason of this deed.

20.7 **Provisions Limiting or Excluding Liability**

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

21. **GENERAL**

21.1 **Notices generally**

- (a) **(Notice)**: Wherever referred to in this clause:
 - (i) **Notice** means a notice, document, consent, approval, request, agreement and demand that is required, permitted, given or contemplated pursuant to

the terms of this deed (including a notice of any Claim, a Notice of Dispute, Notice of Completion and Notice of Dissatisfaction); and

- (ii) **Other Communication** means all communications under or in connection with this deed other than a Notice.
- (b) **(PDCS notice):** When the PDCS is ready for use by the parties after the date of this deed, the Principal's Representative will notify the Contractor that the PDCS is ready for use, which notice will set out:
- (i) the commencement date for use of the PDCS for the giving of Notices and Other Communication under or in connection with this deed;
 - (ii) any password, login details or similar information required for the Contractor to use the PDCS;
 - (iii) any requirements for specific notices (e.g. notices of Claims);
 - (iv) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and
 - (v) any other information reasonably necessary for the use and service of Notices and Other Communication via the PDCS.
- (c) **(Changes to PDCS):** At any time and from time to time, the Principal's Representative may notify the Contractor in writing that a different PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
- (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the Contractor to use the PDCS;
 - (iv) any requirements for specific notices (eg notices of Claims);
 - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and
 - (vi) any other information reasonably necessary for the use and service of Notices and Other Communication via the PDCS.
- (d) **(Notices not for PDCS):** At any time and from time to time, the Principal's Representative may notify the Contractor that a PDCS will not be used for giving certain Notices and Other Communication under or in connection with this deed and such notice will state that such Notices and Other Communication will be given in accordance with clause 21.1(e)(i) or 21.1(f)(i).
- (e) **(Requirements for Notices):** Each Notice must:
- (i) before the date referred to in clause 21.1(b) or where clause 21.1(d) applies:
 - (A) be in writing;
 - (B) be addressed:

- (aa) in the case of a Notice from the Contractor, to the Principal's Representative and any additional person notified by the Principal in writing; or
- (bb) in the case of a Notice from the Principal, to the Contractor's Representative;
- (C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
- (D) be signed by:
 - (aa) in the case of a Notice from the Contractor, the Contractor's Representative; or
 - (bb) in the case of a Notice from the Principal, the Principal's Representative; or
 - (cc) the solicitor for, or any attorney, director, secretary or authorised agent of, that party (on that party's behalf); and
- (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient in writing):

Principal

Name: TfNSW, a New South Wales Government agency

Address: 231 Elizabeth Street, Sydney NSW 2000

Email: [REDACTED]

For the attention of: the Principal's Representative and any additional person notified by the Principal in writing

Contractor

Name: ACCIONA Construction Australia Pty Ltd

Address: 174 Turner St, Port Melbourne VIC 3207 Australia

Email: [REDACTED]

For the attention of: The Contractor's Representative

- (ii) from the commencement date for use of the PDCS referred to in clause 21.1(b) and other than where clause 21.1(d) applies:
 - (A) be sent through the PDCS in accordance with the requirements set out in clause 21.1(h) and the processes, procedures and systems in the SWTC, including section 3.12 of the SWTC; and
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 21.1(e)(i).

- (f) **(Requirements for Other Communication):** Each Other Communication must:
- (i) before the date referred to in clause 21.1(b) or where clause 21.1(d) applies:
 - (A) be in writing;
 - (B) comply with any requirements for specific communication specified by the Principal in writing; and
 - (C) be delivered or posted to the relevant address or sent to the email address for the party shown above in clause 21.1(e)(i)(E) (or to any new address or email address notified by the intended recipient in writing); and
 - (ii) from the commencement date for use of the PDCS referred to in clause 21.1(b)(i) and other than where clause 21.1(d) applies:
 - (A) be sent through the PDCS in accordance with processes, procedures and systems in the SWTC, including section 3.12 of the SWTC, or
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 21.1(f)(i).
- (fa) **(Contractor as process agent):** For the purposes of service to the Contractor as the process agent pursuant to clause 12.1(d) of the Parent Company Guarantee, the relevant details for service are as follows:

Name: ACCIONA Construction Australia Pty Ltd
Address: Level 2, 55 Harrington Street, The Rocks NSW 2000
Email: [REDACTED]

For the attention of: The Contractor's Representative

- (g) **(Delivery):** A communication is conclusively regarded as having been received by the addressee on the earlier to occur of:
- (i) the date and time when actual receipt can be demonstrated; and
 - (ii) the date and time:
 - (A) (in the case of a Notice and Other Communication sent through the PDCS) recorded on the PDCS as being the time at which the Notice and Other Communication was sent;
 - (B) (in the case of prepaid post sent to an address in the same country) three Business Days after the date of posting;
 - (C) (in the case of international post) seven (7) Business Days after the date of posting;
 - (D) (in the case of delivery by hand) when it is left at the addressee's address; and
 - (E) (in the case of email) when the sender receives confirmation on its server that the message has been transmitted,

unless the result is that the communication would be taken to be received on a day which is not a Business Day or after 5.00 pm (Sydney time) on a Business Day, in which case it is deemed to be received at 9.00 am (Sydney time) on the next Business Day.

- (h) **(PDCS):** With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by:
 - (A) in the case of a Notice from the Contractor, the Contractor's Representative; or
 - (B) in the case of a Notice from the Principal, the Principal's Representative;
 - (ii) all Notices must be addressed to:
 - (A) in the case of a Notice from the Contractor, the Principal's Representative and any additional person notified in accordance with clause 21.1(b)(iv) or clause 21.1(c)(v); or
 - (B) in the case of a Notice from the Principal, be addressed to the Contractor's Representative;
 - (iii) all Notices from the Contractor must comply with any requirements notified in accordance with clause 21.1(b)(iii) or clause 21.1(c)(iv);
 - (iv) only the text in any Notice, or subject to clause 21.1(h)(v), any attachments to such Notice which are referred to in the Notice, will form part of the Notice and any text in the subject line of the PDCS will not form part of the Notice; and
 - (v) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) .pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (i) **(Requirements):** The Contractor must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training in the use of the PDCS required by the Principal's Representative;
 - (iv) advise the Principal's Representative of which personnel require access to the PDCS;
 - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices or Other Communication) using the PDCS;

- (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 21.1(e)(ii)(B) to the Principal's Representative through the PDCS;
 - (vii) align its document management and quality processes to complement and utilise the functions and features of the PDCS, which functions and features may be amended by the Principal from time to time; and
 - (viii) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (j) **(No claim)**: The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Contractor's access to or use of the PDCS or any failure of the PDCS.

21.2 Governing Law

- (a) **(New South Wales)**: This deed is governed by and will be construed according to the Laws of New South Wales.
- (b) **(Submits and waives)**: Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 21.2(b)(i).

21.3 No Waiver

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

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

21.4 **Assignment and Change in Control**

- (a) **(Change in Control of an entity that comprises the Contractor):** The Contractor acknowledges and agrees that:
- (i) subject to the terms of this clause 21.4(a), the Contractor must ensure that there is no Change in Control of any entity that comprises the Contractor without the prior written consent of the Principal (which must not be unreasonably withheld);
 - (ii) the Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the Contractor, and provide:
 - (A) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (B) all other information necessary for the Principal to determine whether to exercise its rights under clause 21.4(a)(iv), in relation to the Change in Control of the relevant entity that comprises the Contractor;
 - (iii) the Principal's approval is not required for a Change in Control arising from:
 - (A) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange where the transfer does not result in a change in majority ownership; or
 - (B) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior written notice of the transfer;
 - (iv) the Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the Contractor where the Principal is of the reasonable opinion that:
 - (A) the person or entity which will exercise Control of the Contractor or the relevant entity that comprises the Contractor:
 - (aa) is not solvent and reputable;
 - (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to the WHTBL Program; or
 - (B) as a result of the Change in Control, the Contractor will no longer:
 - (aa) have sufficient expertise and ability; or
 - (bb) be of sufficiently high financial and commercial standing,to properly carry out the obligations of the Contractor under this deed;
 - (v) if a Change in Control of any entity that comprises the Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 21.4(a)(iii)), the Contractor acknowledges that the Principal may terminate this deed by notice in writing to the Contractor; and

- (vi) the Principal's approval of a Change in Control of any entity that comprises the Contractor will not relieve the Contractor of any of its obligations under this deed.
- (b) **(Change in Control of a Parent Company Guarantor):** The Contractor acknowledges and agrees that:
- (i) subject to the terms of this clause 21.4(b), the Contractor must ensure that there is no Change in Control of a Parent Company Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld);
 - (ii) the Contractor must notify the Principal in writing of any Change in Control of a Parent Company Guarantor, and provide:
 - (A) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (B) all other information necessary for the Principal to determine whether to exercise its rights under clause 21.4(b)(iv), in relation to the Change in Control of that Parent Company Guarantor;
 - (iii) the Principal's approval is not required for a Change in Control arising from:
 - (A) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (B) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior written notice of the transfer;
 - (iv) the Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a Parent Company Guarantor where the Principal is of the reasonable opinion that:
 - (A) the person or entity which will exercise Control of the relevant Parent Company Guarantor:
 - (aa) is not solvent and reputable;
 - (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to the WHTBL Program; or
 - (B) as a result of the Change in Control, the relevant Parent Company Guarantor will no longer:
 - (aa) have sufficient expertise and ability; or
 - (bb) be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the Parent Company Guarantor under the relevant Parent Company Guarantee;
 - (v) if a Change in Control of a Parent Company Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under

clause 21.4(b)(iii)), the Contractor acknowledges that the Principal may terminate this deed by notice in writing to the Contractor; and

- (vi) the Principal's approval of a Change in Control of a Parent Company Guarantor will not relieve the Contractor of any of its obligations under this deed.
- (ba) **(Restructure Event)**: In respect of any Restructure Event:
 - (i) the parties acknowledge and agree that the Contractor is not obligated to comply with any requirements of this clause 21.4(ba) that would otherwise put the Contractor (or any entity comprising the Contractor) or any Parent Company Guarantor, in breach of any applicable laws or the listing rules of any recognised stock exchange;
 - (ii) subject to the terms of this clause 21.4(ba), the Contractor must use its best endeavours to:
 - (A) provide prior written notice to the Principal in accordance with this clause 21.4(ba); and
 - (B) consult with the Principal in respect of the Restructure Event before the Restructure Event occurs;
 - (iii) the Contractor must use its best endeavours to notify the Principal in writing of any Restructure Event as soon as reasonably practicable (and in any event, 10 Business Days) prior to the Restructure Event occurring, and use its best endeavours to provide:
 - (A) full details of the Restructure Event in the Contractor's notice under clause 21.4(ba)(iii), including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Restructure Event; and
 - (B) all other information reasonably necessary for the Principal to determine whether to exercise its rights under clause 21.4(ba)(iv), in relation to the Restructure Event;
 - (iv) if a Restructure Event occurs, the Contractor acknowledges that the Principal may terminate this deed in accordance with clause 18.4(a)(xii); and
 - (v) the Contractor's notification of a Restructure Event will not relieve the Contractor of any of its obligations under this deed.
- (c) **(Assignment by the Contractor)**: The Contractor cannot assign, transfer or novate any of its rights or Liabilities under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.
- (d) **(Assignment and Novation by the Principal)**: The Contractor acknowledges and agrees that:
 - (i) without limiting clause 21.22, the Principal may assign, novate or otherwise transfer:
 - (A) this deed, its interest in the subject matter of this deed or any right under this deed; or
 - (B) any of its interests, rights and obligations under or in connection with the Project Documents, the unconditional undertakings provided under clause 5.1 or the Project Works,

in circumstances where:

- (C) the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity, including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State, without the Contractor's consent; or
 - (D) where clause 21.4(d)(i)(C) does not apply, with the consent of the Contractor (not to be unreasonably withheld or delayed);
- (ii) in the case of a novation by the Principal under this clause:
- (A) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the Contractor against one another under this deed will cease;
 - (B) the novated agreement will be on the same terms as this deed, such that the incoming party and the Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 21.4(d)(ii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and
 - (C) the Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation;
- (iii) the Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions; and
- (iv) nothing in this deed limits the rights of the Principal to grant a lease in respect of the Project Works or the Site after Opening Completion.
- (e) **(Benefits to novate or assignee):** In the case of novation or assignment, the Contractor must do all things necessary to ensure that the novate or assignee has the benefit of:
- (i) the policy or policies of insurance which the Contractor is obliged to obtain or cause to be obtained under this deed;
 - (ii) the unconditional undertakings referred to in clause 5.1;
 - (iii) the Parent Company Guarantees; and
 - (iv) the assignment of Intellectual Property Rights at clause 9.12(b)(i) and licence of Intellectual Property Rights at clause 9.12(b)(ii).

21.5 Entire Agreement

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

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

21.6 Joint and Several Liability

- (a) **(Contractor's obligations)**: The obligations of the Contractor, if more than one person, under this deed, are joint and several.
- (b) **(Contractor's rights)**: The rights of the Contractor, if more than one person, under this deed, are joint.
- (c) **(Contractor's responsibility)**: Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them
- (d) **(Payment by Principal)**: Any payment by the Principal under this deed to any account nominated in writing by the Contractor, or failing such nomination, to any one or more persons constituting the Contractor, will be deemed to be payment to all persons constituting the Contractor.

21.7 Severability

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, then:

- (a) **(Legality not affected)**: that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) **(Construction of provision)**: the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to clause 21.7(b)(i), preserves to the maximum possible extent:
 - (A) the enforceability of the provision and the provisions of this deed; and
 - (B) the original effect and intent of this deed.

21.8 Indemnities

- (a) **(Continuing obligation)**: Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) **(Survival)**: Nothing in this clause 21.8 prevents any other provision of this deed, as a matter of interpretation also surviving the termination of this deed.
- (c) **(Costs)**: It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.
- (d) **(Pay on demand)**: Each indemnity in this deed is an obligation on the indemnifying party to pay on demand the amount of the relevant claim or Loss suffered or incurred by the indemnified party.
- (e) **(No Claim)**: Subject to clause 19.17 and clause 21.8(f), but despite any other provision to the contrary in this deed or any other Project Document, neither the

Principal nor any other person who has the benefit of an indemnity or other promise given by the Contractor under the Project Documents, is entitled to bring any Claim whatsoever under, arising out of, or in connection with this deed or any other Project Document, against the Contractor on or after the date occurring:

- (i) subject to clause 21.8(e)(ii), [REDACTED] after the Date of Completion; or
- (ii) for a Claim arising out of or in connection with any Defect notified under clause 12.2 during the applicable Defects Correction Period, [REDACTED] after the expiry of the applicable Defects Correction Period for that Defect,

and the Principal (including as trustee for those other parties) irrevocably releases the Contractor from any such Claims.

- (f) **(No application)**: Clause 21.8(e) does not apply to any Claim under clause 9.14 or in relation to the Design Lives of the Asset components referred to in Appendix B.13 of the SWTC.

21.8A **Indemnities held on trust**

The Principal holds on trust for each of the Principal's Associates each right and indemnity in any Project Document to the extent that such right or indemnity is expressly stated to be for the benefit of the Principal's Associates.

21.9 **Stamp Duty and Other Fees**

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

21.10 **Taxes**

Without limiting clause 6 but subject to clause 15.14, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported Construction Plant and Materials required for the Contractor's Activities.

21.11 **Confidentiality**

- (a) **(Contractor's confidentiality obligation)**: Subject to clause 21.11(b), the Contractor must:
 - (i) keep confidential this deed, the Project Documents, all Information Documents and any information relating to the Contractor's Activities (including the Principal's Data) and any discussions concerning this deed or any Information Documents;
 - (ii) not use the information referred to in clause 21.11(a)(i) except as necessary for the performance of the Contractor's Activities; and
 - (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of clauses 21.11(a)(i) and 21.11(a)(ii).
- (b) **(No confidentiality obligation)**: The Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Contractor; or

- (ii) the disclosure of which is:
 - (A) required by Law;
 - (B) consented to in writing by the Principal; or
 - (C) given to a court in the course of proceedings to which the Contractor is a party.
- (c) **(Requirements):** The Contractor must:
 - (i) execute and submit to the Principal prior to the Commencement Date a Confidentiality Undertaking in the form of Schedule B3 (*Form of Confidentiality Undertaking*);
 - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) **(Higher Sensitivity Deed Poll):** If the Principal's Representative at any time directs the Contractor to execute a Higher Sensitivity Deed Poll with respect to specific information to be provided to the Contractor by the Principal, the Contractor must, no later than 5 Business Days after the date of the direction, provide to the Principal's Representative a Higher Sensitivity Deed Poll duly and properly executed by the Contractor.
- (e) **(Principal's disclosure):** Subject to clause 21.11(f) the Contractor acknowledges that the Principal may disclose this deed (and information concerning the terms of this deed) under or in accordance with any one or more of the following:
 - (i) the GIPA Act;
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
 - (iii) any other Law.
- (f) **(Consultation):** The parties acknowledge that:
 - (i) the Principal will notify the Contractor of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
 - (ii) following notification by the Principal in accordance with clause 21.11(f)(i) the Principal will take reasonable steps to consult with the Contractor before the Principal discloses the information referred to in clause 21.11(f)(i) including under the GIPA Act; and
 - (iii) if, following:
 - (A) notification by the Principal in accordance with clause 21.11(f)(i); or
 - (B) consultation between the Principal and the Contractor in accordance with clause 21.11(f)(ii)

the Contractor objects to disclosure of some or all of the information referred to in clause 21.11(f)(i) on the basis that it is Commercially Sensitive Information, the Contractor must provide details of any such objection within 3 Business Days of the date the Contractor received notification from the Principal or the date on which the consultation process concluded (as relevant).

- (g) **(Objections):** The Principal may take into account such objection received from the Contractor pursuant to clause 21.11(f)(iii) in determining whether the information identified by the Contractor as Commercially Sensitive Information should be disclosed.
- (h) **(Contractor to provide information):** Without limiting clause 21.11(f), the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 21.11(d).
- (i) **(GIPA Act compliance):** Nothing in this clause 21.11 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

21.12 **Principal May Act**

- (a) **(Step-In Rights):** While a Step-In Event is subsisting, in order to either:
 - (i) remedy the Step-In Event or overcome the relevant risk or mitigate any consequences resulting from the Step-In Event; or
 - (ii) carry out any power or ability under the Roads Act,
the Principal may, either itself or by a third party, exercise all or any of the following powers:
 - (iii) assume total or partial management and control of the whole or any part of the Contractor's Activities, including exercising all or any of the Contractor's rights, and performing all or any of the Contractor's obligations:
 - (A) in connection with the performance of the Contractor's Activities;
 - (B) under or in relation to a Project Document;
 - (C) under or in relation to any Approval held by the Contractor,
as if it were the Contractor;
 - (iv) access those parts of the Construction Site to which the Contractor has access; and
 - (v) take such other steps as are reasonably necessary for the Principal to carry out the Contractor's Activities and remedy or minimise the effects of the relevant Step-In Event,
- (Step-In Rights).**
- (b) **(Cooperation):** If the Principal elects to exercise its Step-In Rights, the Contractor must cooperate with the Principal to enable the Principal to exercise its Step-In Rights effectively and expeditiously, including by giving:
 - (i) the Principal or its nominees access to the Construction Site and Extra Land;
and

- (ii) binding directions to the Subcontractors (of any tier) to enable the Principal to exercise its Step-In Rights.
- (c) **(Exercise):** Upon the Principal exercising its Step-In Rights:
- (i) the Contractor's rights under this deed are suspended to the extent and for such period necessary to permit the Principal to exercise those Step-In Rights;
 - (ii) the Contractor must continue to undertake the Contractor's Activities in accordance with this deed to the extent that those Contractor's Activities are not being addressed by the Principal in exercising its Step-In Rights; and
 - (iii) any uncertainty as to the interface between the obligations that are the responsibility of the Contractor and those that are the responsibility of the Principal will be resolved by the Principal acting reasonably and in good faith.
- (d) **(Subcontracts):** The Contractor must ensure that any contract entered into with a Subcontractor (of any tier) contains provisions which allows the Principal to exercise its rights under this clause 21.12.
- (e) **(Obligations):** In exercising the Step-In Rights, the Principal must use reasonable endeavours to:
- (i) perform the relevant Contractor's Activities in relation to which it has exercised its Step-in Rights in accordance with this deed;
 - (ii) cooperate with the Contractor in relation to the Contractor's compliance with obligations under the Approvals or at Law relating to the Contractor's Activities;
 - (iii) not put the Contractor in breach of its obligations under the Approvals or at Law relating to the Contractor's Activities;
 - (iv) comply with all reasonable requirements of the Contractor in relation to compliance with any agreement the details of which the Contractor has given prior notice to the Principal, the Approvals or any other obligation at Law relating to the Contractor's Activities; and
 - (v) not do anything (or fail to do anything) which jeopardises the status of any Approval of the Contractor.
- (f) **(Cease step-in):** If the Principal exercises its Step-In Rights, the Principal may cease to exercise those rights at any time and, in any event, will cease to exercise those rights upon the earlier of:
- (i) the relevant Step-In Event being remedied (or the risk or consequences resulting from the Step-In Event being overcome) to the satisfaction of the Principal; and
 - (ii) the Principal notifying the Contractor in writing that the Principal will no longer exercise the Step-In Rights.
- (g) **(Notice):** The Principal must give written notice to the Contractor of the date on which the Principal will cease to exercise the Step-In Rights a reasonable period of time prior to the date on which the Principal proposes to cease to exercise its Step-In Rights.
- (h) **(Consult):** The Principal and the Contractor must consult with each other for the purpose of ensuring that the transition from the Principal ceasing to exercise its Step-

In Rights to the Contractor resuming the performance of the relevant Contractor's Activities is effected without interruption to the Contractor's Activities to the extent reasonably possible.

- (i) **(Recommendation)**: On the Principal ceasing to exercise any Step-In Rights:
 - (i) the Contractor must immediately recommence performance of its obligations under this deed which were suspended in accordance with clause 21.12(c); and
 - (ii) the Principal agrees to provide reasonable assistance to the Contractor to ensure the process of the Principal ceasing to exercise its Step-In Rights and the Contractor recommencing to perform its obligations, is effected as smoothly as possible.
- (j) **(No obligation)**: The Contractor acknowledges and agrees that the Principal is not obliged to remedy any Step-In Event, or to overcome or mitigate any consequences resulting from any Step-In Event.
- (k) **(Principal may recover Loss)**: Where the Principal exercises Step-in Rights in order to perform an obligation under this deed that the Contractor was obliged to perform but which it failed to perform, the Loss suffered or incurred by the Principal in so performing such an obligation will be a debt due and payable from the Contractor to the Principal.

21.13 **Process Agent**

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

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

21.14 **Variations**

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

21.15 **Prior Work**

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

21.16 **Counterparts**

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

21.17 **Personal Property Securities Act**

- (a) **(Perfect and enforceable):** By signing this deed, the Contractor acknowledges and agrees that if this deed and the transactions contemplated by it, operate as, or give rise to, a Security Interest for the purposes of the PPS Law, the Contractor must do anything (including amending this deed or any other document, executing any new terms or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this deed.
- (b) **(Excluded provisions from PPS Act):** If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) **(Collateral, undertaking and waiver):** The Contractor:
- (i) acknowledges that the Security Interests created under or pursuant to this deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement (as defined under the PPS Act) without the prior written consent of the Principal.
- (d) **(No disclosure):** The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) **(Waiver):** The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

21.18 **Vienna Convention**

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

21.19 **No Merger**

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

21.20 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law or reasonably requested by the other party or parties to give effect to this deed.

21.21 Moratorium legislation

Unless application is mandatory by Law, any present or future Law will not apply to this deed so as to abrogate or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to the Principal.

21.22 Transfer of Functions or Road Transport Agency Assets

- (a) **(Authorities):** The parties acknowledge that:
- (i) a Road Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, Liabilities or responsibilities of a Road Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Road Transport Agency is reconstituted, renamed, dissolved, replaced or restructured, or some or all of that Road Transport Agency's powers, functions, rights or responsibilities are transferred to another entity, then other than as notified by the Road Transport Agency, references in this deed to that Road Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Road Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Road Transport Agency may, or may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets.
- (b) **(Acknowledgment of variations):** The Contractor acknowledges and agrees that it must, to the extent required by a Road Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Road Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) **(Contractor's consent):** The Contractor will be taken for all purposes to have consented to, and will not have, and no Road Transport Agency will be liable for, any Claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 21.22.
- (d) **(Entity type):** For the purposes of this clause 21.22 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

21.23 Access to information

- (a) **(Provision of information):** Without limiting any other provision of this deed:
- (i) the Principal may at any time notify the Contractor that it requires access to any information held by the Contractor which relates to the Contractor's Activities;

- (ii) upon receipt of a notice under clause 21.23(a)(i), the Contractor must immediately provide the Principal (and any person authorised by the Principal) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
 - (iii) the Principal (and any person authorised by the Principal) may review, copy, retain or otherwise deal with such information.
- (b) **(Acknowledgment):** The Contractor acknowledges that the Principal may require information pursuant to this clause 21.23 to facilitate the procurement of other contracts as part of the Project or other projects, or to provide to an existing or prospective financier or equity investor in the Project or other projects.

21.24 **Survival of certain provisions**

- (a) **(Survival of provisions):** The following provisions will survive termination, rescission or expiration of this deed:
- (i) clauses 1, 5.6, 5.8, 5.9, 7.6, 7A.4(b)(v), 7A.4(c), 7.19, 9.12(b), 15.2(v), 15.2(w), 15.8, 15.9, 15.14, 18.5, 18.7, 18.8, 18.10, 18.12, 19, 20, 21, 23, [REDACTED], clause 4 of Schedule E5 (*Requirements of Third Party Agreements*), and Part B of Schedule F1 (*Payment*); and
 - (ii) any other provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed, including caps on or exclusions of liability, warranties, representations, guarantees, licences and indemnities, and rights and obligations arising on termination.
- (b) **(No impact on other provisions):** No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

22. **FINANCIAL REPORTING AND NOTIFICATIONS**

22.1 **Financial reporting**

- (a) **(Legal obligations):** The Contractor is not obligated to comply with any requirements of this clause 22 that would otherwise put the Contractor (or any entity comprising the Contractor) or any Parent Company Guarantor in breach of any applicable laws or the listing rules of any recognised stock exchange.
- (b) **(Exception):** The Contractor is not obligated to comply with any requirements of this clause 22 to the extent that:
- (i) the Contractor (or any entity comprising the Contractor), or any Parent Company Guarantor, has provided the relevant documents or information to the Principal on a separate project or pursuant to a separate contract; or
 - (ii) the relevant documents or information have been Publicly Notified and can be accessed by the Principal.
- (c) **(Audited financial statements):** The Contractor must give the Principal its most recent audited financial statements (as applicable) for the Contractor (or any entity comprising the Contractor) and any Parent Company Guarantor:
- (i) if the Contractor (or any entity comprising the Contractor), or any Parent Company Guarantor is not a Listed Entity, annually and half-yearly once prepared; and

- (ii) if the Contractor (or any entity comprising the Contractor) or any Parent Company Guarantor is a Listed Entity, when Publicly Notified on an annual and half-yearly basis,

but where audited financial statements are not available for the relevant period, then management accounts including profit and loss, balance sheets and cash flow statements.

- (d) **(Accounting principles)**: The Contractor must prepare (or procure the preparation of) the accounts and financial statements required under clause 22.1(c) in compliance with all applicable laws and, without limitation, in accordance with the accounting principles generally accepted in Australia or the place of incorporation of the relevant entity and consistently applied.
- (e) **(Financial Reporting Form)**: Without limiting its obligations under clause 22.1(c), the Contractor must also provide the information set out in Schedule F9 (*Financial Reporting Form*) at the times the information is required by that Schedule.
- (f) **(Not used)**;
- (g) **(Frequency of documents)**: The Contractor must provide the documents and information required under clauses 22.1(c) and 22.1(e):
 - (i) from the date of this deed to the achievement of Opening Completion at the required frequencies; and
 - (ii) thereafter until Completion, at any time following the Principal's request, provided that the Principal may not request the relevant information at greater frequencies than those required by clause 22.1(c) or clause 22.1(e), as relevant.
- (h) **(No obligation after Completion)**: The Contractor is not required to provide any documents or information under this clause 22.1 once Completion has been reached.
- (i) **(Financial Capacity Event in Contractor or Parent Company Guarantor)**: If the Principal becomes aware of a Financial Capacity Event, Financial Reporting Event or Restructure Event in relation to the Contractor (or any entity that comprises the Contractor) or any Parent Company Guarantor, the Principal may request the Contractor to provide information which is reasonably required by the Principal in order to determine the extent and potential impact of the Financial Capacity Event, Financial Reporting Event or Restructure Event, provided that, in the case of a Listed Entity, the relevant information is Publicly Notified or is Reportable Information.
- (j) **(Certificate)**: The Contractor warrants that each of the documents and information required to be provided to the Principal in accordance with this clause 22.1 will be accurate, complete and correct in all respects.

22.2 Financial Assessment

The Contractor acknowledges and agrees that:

- (a) **(Principal may assess)**: the Principal may, in its absolute discretion, either itself, or through the engagement of private sector service providers, undertake financial

assessments (**Financial Assessment**) of the Contractor (or any entity that comprises the Contractor) and any Parent Company Guarantor;

- (b) (**Frequency of assessment**): the Financial Assessment may be undertaken at half-yearly or yearly intervals from the date of this deed;
- (c) (**Request information**): if requested by the Principal's Representative, it must, within 10 Business Days of receiving such request (or such longer period as the Principal's Representative may reasonably agree), provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment (but in the case of any Listed Entity, only where such documents information and/or evidence is Publicly Notified or is Reportable Information). The Principal's Representative may request such documents, information and evidence in addition to any other documents, information and evidence otherwise required to be provided by the Contractor under this clause 22; and
- (d) (**Written feedback**): the Principal will provide the Contractor with written feedback upon completion of the Financial Assessment.

22.3 Financial Reporting Events

- (a) (**Notification**): Notwithstanding any other clause of this deed, but subject to clause 22.1(a), the Contractor must notify the Principal as soon as the Contractor becomes aware that any Financial Reporting Event has occurred.
- (b) (**Designated Significant Subcontractor**): In respect of a Designated Significant Subcontractor, the Contractor must notify the Principal as soon as the Contractor becomes aware that any Financial Reporting Event has occurred in respect of a Designated Significant Subcontractor in circumstances where it is legally able to do so.

22.4 Confidentiality

Subject to clause 21.11(e), the Principal must keep confidential any information provided or communicated by the Contractor pursuant to this clause 22, except for any information:

- (a) which is in the public domain through no default of the Principal;
- (b) which is disclosed to NSW Treasury or the Principal's advisors or consultants who are subject to a duty of confidentiality to the Principal; or
- (c) the disclosure of which is:
 - (i) required by Law or to obtain legal advice in relation to this deed;
 - (ii) made following the written consent of the Contractor;
 - (iii) given to a court in the course of proceedings to which the Principal is a party;
or
 - (iv) for the purposes of performing the Principal's obligations under this deed.

22.5 Financial Mitigation Plan

- (a) (**Determination**): Subject to the requirements of all applicable laws, the Principal may notify the Contractor if a Financial Capacity Event has occurred. In determining if a Financial Capacity Event has occurred, the Principal may have regard to the documents, information, evidence and notifications provided by the Contractor under

this clause 22 and any other information it considers relevant in its absolute discretion.

- (b) **(Meeting)**: Following the occurrence of a Financial Capacity Event, the Contractor must meet with the Principal within 5 Business Days of the date of the notice provided pursuant to clause 22.5(a) (or such longer period as the Principal's Representative may agree) to discuss the nature of the Financial Capacity Event and its implications in respect of the obligations and liabilities of the Contractor under the Project Documents. The Contractor must also procure the attendance at such meeting of any Parent Company Guarantor and Designated Significant Subcontractor specified by the Principal.
- (c) **(Purpose of meeting)**: The meeting is for the purpose of:
 - (i) discussing any effect of the Financial Capacity Event on the ability of:
 - (A) the Contractor to continue to perform its obligations and meet its liabilities under this deed, including the timely performance and delivery of the Contractor's Activities and how any adverse effect will be mitigated;
 - (B) any Parent Company Guarantor to meet its liabilities under the relevant Parent Company Guarantee; or
 - (C) any Designated Significant Subcontractor to meet its liabilities under the relevant Designated Significant Subcontract, including the timely performance and delivery of the works under the relevant Designated Significant Subcontract and how any adverse effect will be mitigated;
 - (ii) identifying the information relating to the Contractor (or any entity that comprises the Contractor), any Parent Company Guarantor and any Designated Significant Subcontractor that the Principal reasonably requires and the timing for the provision of that information to the extent such information:
 - (A) may be disclosed to the Principal without breaching any confidentiality obligations; and
 - (B) in the case of any Listed Entity, where such information has been Publicly Notified or is Reportable Information; and
 - (iii) subject to clause 22.5(d), specifying the form, duration and content of any Financial Mitigation Plan the Principal reasonably requires to be prepared by the Contractor in response to the Financial Capacity Event, which must include details of the measures the Contractor proposes to take to avoid, mitigate or minimise any adverse effect of the Financial Capacity Event on the matters described in clause 22.5(c)(i).
- (d) **(Financial measures)**: The parties agree that the measures set out in the Financial Mitigation Plan must be consistent with those reasonable measures that the governing body of the Contractor and the Parent Company Guarantor (as applicable) determines are in the best interest of the Contractor or the Parent Company Guarantor (as applicable) in accordance with their duties and obligations under applicable laws.
- (e) **(Prepare plan)**: If a Financial Mitigation Plan is required by the Principal, the Contractor must prepare and submit the Financial Mitigation Plan to the Principal's Representative within 15 Business Days of the meeting held pursuant to clause 22.5(b).

- (f) **(Review plan)**: The Principal's Representative may:
- (i) review any Financial Mitigation Plan submitted under clause 22.5(e); and
 - (ii) if the Financial Mitigation Plan submitted does not, in the opinion of the Principal (acting reasonably), satisfy the requirements of clause 22.5 for the avoidance, mitigation or minimisation of any adverse effect of a Financial Capacity Event, notify the Contractor of its opinion within 10 Business Days of the date of submission of the Financial Mitigation Plan, providing written reasons.
- (g) **(Plan not agreed)**: Subject to clause 22.5(h), if the Contractor receives a notice under clause 22.5(f)(ii), the Contractor will, within 10 Business Days (or such longer period as the Principal's Representative may agree) submit an amended Financial Mitigation Plan, or relevant part of it, to the Principal's Representative to the extent required to satisfy the requirements of clause 22.5. If requested by either party, the Principal and the Contractor must meet within 5 Business Days to discuss the Financial Mitigation Plan. The Contractor must also procure the attendance at such meeting of any Parent Company Guarantor and Designated Significant Subcontractor specified by the Principal.
- (h) **(Breach of directors duties)**: The Contractor is not required to agree to any amendments to a Financial Mitigation Plan required by the Principal's Representative to the extent that to do so would result in a breach of directors duties pursuant to any applicable laws, as notified by the Contractor to the Principal (in writing), including reasons.
- (i) **(Contractor must implement)**: The Contractor must diligently implement a Financial Mitigation Plan submitted under clause 22.5(e) incorporating any amendments required by clause 22.5(g).
- (j) **(Updates to plan)**: The Contractor:
- (i) must promptly update the Financial Mitigation Plan to take into account any events or circumstances, including any additional Financial Capacity Event or Financial Reporting Event, which occurs or comes into existence and which has any effect on the matters described in clause 22.5(c)(i); and
 - (ii) must promptly submit each update of the Financial Mitigation Plan to the Principal's Representative in which case clauses 22.5(f) and 22.5(g) shall again apply and the Contractor must comply with the then current Financial Mitigation Plan until the 10 Business Days period under clause 22.5(f) has elapsed.
- (k) **(Event mitigated)**: The Contractor may notify the Principal's Representative at any time if the Contractor reasonably believes that a Financial Capacity Event that is the subject of the Financial Mitigation Plan has been adequately mitigated in accordance with the Financial Mitigation Plan and/or no longer subsists.
- (l) **(Contractor relieved)**: If the Contractor gives a notice under clause 22.5(k) and the Principal's Representative agrees (acting reasonably) that the Financial Capacity Event has been adequately mitigated and/or no longer subsists:
- (i) the Principal's Representative must promptly provide written notice to the Contractor confirming this; and
 - (ii) the Contractor will be relieved of its obligation to comply with the relevant Financial Mitigation Plan under this deed from the date of such notice.

- (m) **(No limitation)**: This clause 22 is without prejudice to and will not lessen or otherwise affect:
 - (i) the Contractor's obligations or liabilities under this deed or otherwise according to Law; or
 - (ii) any of the Principal's rights against the Contractor, whether under this deed or otherwise according to Law, which arise as a result of or in connection with any of the matters dealt with in this clause 22, including any rights arising under clause 18.
- (n) **(No liability)**: The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the performance of any of its obligations under this clause 22.
- (o) **(Designated Significant Subcontract terms)**: The Contractor must (unless otherwise approved in writing by the Principal's Representative) ensure that each Designated Significant Subcontract that it enters into in connection with the Contractor's Activities includes provisions that will enable the Contractor to comply with this clause 22.

23. NOTIFICATION OF CLAIMS

23.1 Notice of Variation

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

- (a) **(Notice requirements)**: within 10 Business Days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, as required under clause 23.3(a) that it considers the direction constitutes or involves a Variation;
- (b) **(Written Claim)**: within 10 Business Days of the notice pursuant to clause 23.1(a), submit a written Claim to the Principal's Representative, which includes the details required by clause 23.3(b); and
- (c) **(Contractor's Activities to continue)**: continue to carry out the Contractor's Activities in accordance with this deed and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 23.1.

23.2 Notice of Other Claims

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

- (a) **(Express entitlement)**: it is otherwise given an express entitlement under this deed; or
- (b) **(Costs)**: this deed expressly provides that there will be a Reimbursable Cost Element Adjustment, Management Fee Adjustment, Design Fee Adjustment or Preliminaries Fee Adjustment,

the Contractor must give the Principal's Representative:

- (c) **(Notice)**: the notice required by clause 23.3(a); and
- (d) **(Claim)**: a Claim in accordance with clause 23.3(c).

23.3 Prescribed Notices

- (a) **(Notice)**: Any written notice required by in clauses 23.1(a) and 23.2(c) must:
 - (i) be provided not later than 10 Business Days after the Contractor:
 - (A) receives the direction (in respect of a notice under clause 23.1(a)); or
 - (B) first becoming aware (or when it ought reasonably to have first become aware) of the alleged entitlement arising as a result of an event, circumstance, act, omission, fact, matter or thing (in respect of a notice under clause 23.2(c)); and
 - (ii) expressly specify:
 - (A) that the Contractor proposes to make a Claim; and
 - (B) the direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) **(Variation Claim requirements)**: Any written Claim referred to in clause 23.1(b) must include:
 - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this deed or other legal basis upon which the Claim is based;
 - (iii) details of the amount claimed and how it has been calculated; and
 - (iv) all other details required for a Variation Proposal pursuant to clause 10.4(c).
- (c) **(Other Claim requirements)**: Any written Claim referred to in clause 23.2(d) must:
 - (i) be provided not later than 10 Business Days of giving the written notice under clause 23.3(a); and
 - (ii) include:
 - (A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (B) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification;
 - (D) detailed particulars of any early warning of the relevant risk notified by the Contractor pursuant to clause 13.22; and

(E) details of the amount claimed and how it has been calculated.

23.4 Register of potential claims

- (a) **(Register)**: The Contractor must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Contractor under clauses 23.1(a) and 23.3(a) and provide a copy of this register to the Principal's Representative at least three Business Days in advance of each meeting of the Management Review Group.
- (b) **(Form of register)**: This register must be in a form acceptable to the Principal and must include, for each potential Claim, the claim number, a brief description, the date of the potential Claim, any agreed next steps and the status of such next steps.

23.5 Assessment of Claims

- (a) **(Submitted Claim)**: Claims submitted by the Contractor under clauses 23.1(b) and 23.2(d) will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.
- (b) **(Rejected Claim)**: If within 20 Business Days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that twentieth Business Day.

23.6 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 23.3(b) or clause 23.3(c) every 20 Business Days after the written Claim under clause 23.1(b) or clause 23.2(d) (as applicable) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

23.7 Bar

If the Contractor fails to comply with clauses 4.2, 6.3, 6.4, 6.5, 6.7, 14.8, 23.2, 23.3 or 23.6:

- (a) **(No liability)**: the Principal will not be liable upon any Claim by the Contractor; and
- (b) **(Bar on Claim)**: the Contractor will be absolutely barred from making any Claim against the Principal,

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

23.8 Other Provisions Unaffected

Nothing in clauses 23.1 to 23.7 will limit the operation or effect of any other provision of this deed that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

24. REPRESENTATIONS AND WARRANTIES

24.1 Principal representations and warranties

The Principal represents and warrants for the benefit of the Contractor that:

- (a) **(Statutory body)**: it is a statutory body validly constituted and existing under the Transport Administration Act 1988 (NSW);
- (b) **(Authorisations)**: it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed (or will have them in full force and effect at the time the obligation is to be performed);
- (c) **(Valid and binding)**: this deed constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) **(No violation)**: the execution, delivery and performance of this deed does not violate any Law, or any document or agreement to which it is a party or which is binding on it or its assets.

24.2 Contractor Representations and Warranties

The Contractor represents and warrants for the benefit of the Principal that:

- (a) **(Registered body)**: is duly registered and remains in existence;
- (b) **(No violation)**: the execution, delivery and performance of this deed does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) **(Authorisations)**: it has taken all action required to enter into this deed and to authorise the execution and delivery of this deed and the satisfaction of its obligations under it;
- (d) **(Valid and binding)**: this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) **(Constitution)**: it subsists and is properly constituted;
- (f) **(No trust)**: it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) **(No immunity)**: it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (h) **(No material change)**: there has been no material change in the financial condition of the Contractor (since the date of its last audited accounts) which would prejudice the ability of the Contractor to perform its obligations under this deed;
- (i) **(Financial condition)**: the most recently published financial statements of the Contractor has been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Contractor;
- (j) **(Full disclosure)**: the Contractor is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially

adversely affect the decision of a prudent person considering whether or not to enter into this deed with the Contractor; and

- (k) **(No proceedings)**: no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this deed.

24.3 **Repetition of representation and warranties**

The representations and warranties contained in clauses 24.2(h), 24.2(i), 24.2(j) and 24.2(k) are made on the date of this deed and each other representation and warranty contained in this clause 24:

- (a) **(Timing)**: is made on the date of this deed; and
- (b) **(Repeated)**: will be deemed to be repeated on each anniversary of the date of this deed,

with reference to the facts and circumstances then subsisting.

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

Principal

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



Contractor

EXECUTED by **ACCIONA CONSTRUCTION AUSTRALIA PTY LTD**
ABN 66 618 030 872:

