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**MANAGING CONTRACTOR CONTRACT**

**Contract Number: ISD-15-4742-8**

**TRANSPORT ACCESS PROGRAM -  
EASY ACCESS STATION UPGRADES  
KINGSWOOD**

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Between

**Transport for NSW**

**[PRINCIPAL]**

ABN 18 804 239 602

and

**Downer EDI Works Pty Ltd**

**[CONTRACTOR]**

ABN 66 008 709 608

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Level 5, Tower A  
821 Pacific Highway  
CHATSWOOD NSW 2067

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## Parties

1. **Transport for NSW** (ABN 18 804 239 602), a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067 (**Principal**).
2. **Downer EDI Works Pty Ltd** (ACN 008 709 608) of Trinita Business Campus, 39 Delhi Road, North Ryde NSW 2113 (the **Contractor**).

## Recitals

- A Transport for NSW is a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), and is responsible for developing certain major railway systems and other major projects.
- B Transport for NSW is responsible for developing the Transport Access Program which includes developing easy access stations.
- C The Works comprise the design, construction, commissioning, integration and handover of easy access stations.
- D Pursuant to the agreement titled "Framework Agreement" dated 6 July 2016 between the Principal and the Contractor ("**Framework Agreement**"), the principal has engaged, and the Contractor has agreed, to undertake the Contractor's Activities for the Principal in accordance with this Contract.

## It is agreed as follows

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Contract, capitalised terms not defined in this Contract have the meanings given to them in the Framework Agreement and, unless the context otherwise indicates:

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

**"Approved Subcontract Agreement"** means 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 7.7(a)(i).

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



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

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

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

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

**"Asset Standards Authority" or "ASA"** means the unit within Transport for NSW which functions include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle. Information about the ASA and the network and asset standards can be found on [www.asa.transport.nsw.gov.au](http://www.asa.transport.nsw.gov.au)

**"Authorised Engineering Organisation" or "AEO"** means a legal entity to whom the ASA has issued an ASA Authorisation.

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

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

- (a) carry out the Contractor's Activities including for the avoidance of doubt all things required for conducting work within the Rail Corridor or affecting rail operations and all things required for dealing with, transporting and disposing of Contamination, Hazardous Material or waste; or
- (b) occupy and use for its intended purpose the completed Works or a completed Portion,

and for the avoidance of doubt includes:

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

**"Building Code"** means the Building Code 2013 issued under subsection 27(1) of the *Fair Work (Building Industry) Act 2012* (Cth).

**"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.

**"Change in Authority Approval"** means a change:

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

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

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

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

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

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

compliance with which:

- (c) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Contractor's Activities, or a delay to the Contractor achieving Completion of the Works or a Portion by the relevant Date for Completion in accordance with clause 10.7(a),

but excludes:

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

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

- (a) under, arising out of, or in any way in connection with, this Contract, including any direction of the Principal's Representative;

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

**"Codes and Standards"** means:

- (a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract (including the Disability (Access to Premises – Buildings) Standards 2010), including any specified or required by this Contract;
- (b) the Code of Practice for Procurement (January 2005), NSW Government Policy on Aboriginal Participation in Construction (May 2015), NSW Code, NSW Guidelines, Environmental Management Systems Guidelines (3<sup>rd</sup> edition) (January 2014), Work Health and Safety Management Systems and Auditing Guidelines (5<sup>th</sup> edition) (2014), Training Management Guidelines (February 2009), Quality Management System Guidelines for Construction (August 2013), GREP and any other NSW Government guidelines and requirements specified or required by this Contract; and
- (c) if (and to the extent) the codes and standards referred to in paragraphs (a) or (b) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Contract.

**"Commissioning"** has the meaning given to that term in the TfNSW Standard Requirements.

**"Commonwealth"** means the Commonwealth of Australia.

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

- (a) the Works are, or a Portion is, complete in accordance with this Contract except for minor Defects:
  - (i) that do not prevent the Works or the Portion from being reasonably capable of being used for the intended purpose of the Works or the Portion;
  - (ii) that can be rectified without prejudicing the convenient and intended use of the Works or the Portion; and
  - (iii) in respect of which the Contractor has reasonable grounds for not promptly rectifying;
- (b) the Contractor has:

- (i) carried out and passed all tests that:
    - A. are required under this Contract to be carried out and passed before the Works or a Portion reaches Completion; or
    - B. must necessarily be carried out and passed to verify that the Works or a Portion is in the condition this Contract requires the Works or Portion (as the case may be) to be in at Completion;
  - (ii) without limiting clause 2.2(c)(iv), obtained all Authority Approvals that it is required under this Contract to obtain before Completion of the Works or a Portion and provided such Authority Approvals to the Principal's Representative;
  - (iii) given to the Principal's Representative all other documents and information:
    - A. required (including in accordance with the TfNSW Standard Requirements and the Works Brief) for the use, operation, maintenance and repair of the Works or a Portion; and
    - B. that are to be handed over to the Principal's Representative before Completion of the Works or a Portion;
  - (iv) complied with all performance requirements that this Contract requires to be verified before Completion of the Works or a Portion; and
  - (v) provided the Principal's Representative with the Contractor's Certificate of Completion in the form of Schedule 21 for the Works or a Portion; and
- (c) the Contractor has done everything else that it is required to do under this Contract before Completion of the Works or a Portion including those things referred to in Schedule 1.

**"Configuration Change Acceptance Notice"** means a notice of that name issued by the Configuration Control Board in respect of Design Documentation.

**"Configuration Control Board"** means the board established by TfNSW to manage configuration changes for TfNSW's programs and projects in accordance with the Configuration Management Framework.

**"Configuration Management Framework"** means the framework established by the ASA from time to time for configuration management.

**"Construction Environmental Management Plan"** means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements.

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

**"Consultant"** means a person referred to in Schedule 1 who is to be engaged by the Contractor to perform the Design Work.

**"Contamination"** means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment.

**"Contemporaneous Work"** means work carried out:

- (a) by Other Contractors on or after the date of this Contract;
- (b) on or adjacent to the Site; and
- (c) upon or by which the proper execution of the Contractor's Activities is dependent or may be appreciably affected by it being unsuitable, unsatisfactory or detrimental in any way.

**"Contract"** means the contract between the Principal and the Contractor in respect of the Works constituted by the documents referred to in Schedule 1.

**"Contract Control Group"** means the group described in clause 6 of the Framework Agreement.

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

- (a) the Works Brief (including any Preliminary Design) and all Design Documentation; and
- (b) all plans, manuals, programs and other documents.

**"Contract Management Plan"** means the documents required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements as developed, amended or updated from time to time in accordance with the Contract.

**"Contract Price"** means, subject to this Contract, the sum of:

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

**"Contractor"** means the person named as the Contractor in Schedule 1.

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

- (a) the Design Work, the Preliminaries, the Reimbursable Work and the correction of Defects; and
- (b) without limiting paragraph (a):
  - (i) the design, construction, commissioning and hand-over of the Works;
  - (ii) the provision of Temporary Works and Construction Plant;
  - (iii) Commissioning and Operational Readiness; and
  - (iv) anything incidental or ancillary to the obligations in paragraphs (i) to (iii).

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

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

**"Crown Building Work"** has the meaning given to that term in section 109R of the *Environmental Planning and Assessment Act 1979* (NSW).

**"Date for Completion"** means in respect of the Works or a Portion the date, or the last day of the period of time, specified in Schedule 1 for the Works or that Portion, as adjusted under this Contract by an extension of time determined by the Principal's Representative or pursuant to any determination by an expert or any arbitration pursuant to clause 15.

**"Date of Completion"** means:

- (a) the date of Completion of the Works or a Portion, set out in a Notice of Completion; or
- (b) where another date is determined in any determination by an expert or any arbitration pursuant to clause 15 as the date upon which Completion was achieved, that date.

**"Date of Final Completion"** means;

- (a) the date determined in accordance with clause 12.8(e)(i) as the date Final Completion was achieved; or
- (b) where another date is determined in any determination by an expert or any arbitration pursuant to clause 15 as the date upon which Final Completion was achieved, that date.

**"Defect"** means any:



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

**"Defects Rectification Period"** means the period stated in Schedule 1, as extended by clause 8.6.

**"Design Development Phase"** means the "Design Development Phase" as defined in the Framework Agreement in respect of the Works.

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

**"Design Fee"** means the lump sum payable to the Contractor for performing the Design Work set out, and described as such in Schedule 2, as adjusted by any Fee Adjustment in respect of the Design Fee.

**"Design Work"** means the design work to be carried out by the Contractor in designing the Works, including the completion of any of the Initial Design Documents and (if applicable) the development of the Preliminary Design.

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

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

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

**"Environment"** means components of the earth, including:

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



**"Environmental Representative"** means the person identified in Schedule 1 as the environmental manager appointed by the Principal, or any replacement notified to the Contractor by the Principal's Representative.

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

**"Excepted Risk"** means any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, act of terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or its subcontractors or either's employees or agents; or
- (c) any other event so described in Schedule 1.

**"Excluded Claim"** means any claim:

- (a) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 16.1 applies;
- (b) for an extension of time to any Date for Completion under clause 10.8; or
- (c) for payment under clause 11, including claims under clauses 11.9 and 11.11.

**"Executive Negotiators"** means the persons described in Schedule 1.

**"Extra Land"** means the land referred to in clause 3.4(a).

**"Fee Adjustment"** means any increases or decreases to the Design Fee and the Management Fee in accordance with clauses 3.5(c) (if Alternative 2 in clause 3.5 applies), 6.3 or 6.4.

**"Final Authorisation"** means a final authorisation issued by the ASA to a legal entity which authorises that entity to carry out the class of Asset Lifecycle work specified in the final authorisation, subject to any conditions of the authorisation.

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

- (a) all Defects Rectification Periods (including any extension under clause 8.6) have expired and the Contractor has rectified all Defects in accordance with the Contract;
- (b) the Contractor has:
  - (i) carried out and passed all tests which:
    - A. are required under this Contract to be carried out and passed before the Works reach Final Completion; or

- B. must necessarily be carried out and passed to verify that the Works are in the condition this Contract requires them to be in at Final Completion;
- (ii) obtained all Authority Approvals that it is required under this Contract to obtain which:
  - A. were not obtained before Completion of the Works or the last Portion to reach Completion; or
  - B. are to be obtained prior to Final Completion,
 and provided such Authority Approvals to the Principal's Representative;
- (iii) given to the Principal's Representative all other documents or information referred to in this Contract:
  - A. which are required for the use, operation, maintenance and repair of the Works but which were not obtained before Completion of the Works or the last Portion to reach Completion; or
  - B. which are required to be handed over to the Principal's Representative before Final Completion; and
- (iv) complied with all performance requirements under this Contract that must be verified before Final Completion; and
- (c) the Contractor has done everything else which it is required to do under this Contract before Final Completion.

**"Force Majeure Event"** means earthquake, flood, bushfire, act of terrorism, act of a public enemy, war (declared or undeclared) or revolution.

**"Framework Agreement"** has the meaning given in the Recitals.

**"Gainshare"** has the meaning given in clause 11.17(b).

**"General Conditions"** means clauses 1 to 17 of this Contract.

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

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

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

**"GREP"** means the NSW Government Resource Efficiency Policy.

**"Hazardous Material"** means any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance) which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

**"Incident"** means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Contractor's Activities including:
  - (i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
  - (ii) loss of containment, escape of or migration of Contamination off-Site and into the Environment;
  - (iii) any fire or dangerous event on the Site or Extra Land;
  - (iv) a security breach;
  - (v) any unauthorised removal of trees;
  - (vi) a non-compliance with an Authority Approval; or
  - (vii) any public complaint; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

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

**"Information Documents and Materials"** means:

- (a) the items specified in Schedule 8;
- (b) the Reports; and
- (c) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Contract,

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

**"Initial Design Documents"** means the documents set out in Exhibit I.

**"Insolvency Event"** means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Contract for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
  - (ii) the corporation enters a deed of company arrangement or composition with creditors;
  - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
  - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
  - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
  - (vi) a sequestration order or winding up order is made in respect of the corporation;
  - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
  - (viii) a mortgagee of any property of the corporation takes possession of that property; or
  - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

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

**"Institution"** means any:

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

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

**"Interface Agreement"** means the Third Party Agreement of that name set out in Exhibit H.

**"Interface Contractor"** means an Other Contractor listed in Schedule 1 or otherwise identified by the Principal's Representative as an Interface Contractor that is carrying out, or that will carry out, Interface Work.

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

**"Latent Conditions"** has the meaning given in clause 3.5.

**"Law"** means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Authority Approvals (including any condition or requirement under them).

**"Management Fee"** means the lump sum amount set out in Schedule 2, as adjusted by any Fee Adjustment in respect of the Management Fee.

**"Maximum Monthly P&C Payment"** means, for each month in the P&C Payment Period, the amount calculated as follows:

- (a) the Total Potential P&C Payments; divided by
- (b) the number of months in the P&C Payment Period (rounding up to a whole number of months).

**"Mitigation Measure"** means a measure, action, standard or precaution to mitigate the impact of the Works.

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

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

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

**"NSW Code"** has the meaning given in clause 9.17(b).

**"NSW Guidelines"** has the meaning given in clause 9.17(a).

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

**"Off-Site Overheads"** means off-site overheads, including those costs identified in Note (d) of Schedule 4 to the Framework Agreement.

**"Operational Readiness"** has the meaning given to that term in the Works Brief.

**"Option"** means an option referred to in Schedule 14.

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

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

**"P&C Payment"** has the meaning given in clause 11.18(a).

**"P&C Payment Period"** means the following period, as determined as at the date of this Contract:

- (a) if the Date for Completion is specified in Schedule 1 to be a period from the date of this Contract, that period; or
- (b) if the Date for Completion is specified in Schedule 1 to be a date, the period between the date of this Contract and the Date for Completion.

**"Painshare"** has the meaning given in clause 11.17(b).

**"Parent Company Guarantee"** means the Deed which appears in Schedule 16.

**"Payment Claim Date"** means the latter of:

- (a) the date when the Contractor has complied with the requirements in clause 11.6; and
- (b) the following dates:
  - (i) prior to the time for submission of the Final Payment Claim, upon the 6th Business Day of each month;
  - (ii) for the Completion Payment Claim within the time required by clause 11.9; and

- (iii) for the Final Payment Claim within the time required by clause 11.11.

**"Planning Approval"** means:

- (a) the Authority Approval described in Exhibit D as it may be modified from time to time, and any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning (acting in their capacity as determining authority) under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Works; and
- (b) any Mitigation Measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraph (a).

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

**"Portion"** means a part of the Contractor's Activities or Works, as described in Schedule 1 or as determined under clause 12.6(a) or directed under clause 12.6(d).

**"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).

**"Preliminaries"** means that part of the Contractor's Activities other than the Design Work or the Reimbursable Work, including those tasks or matters specified in Schedule 17.

**"Preliminaries Fee"** means the lump sum payable to the Contractor for performance of the Preliminaries, set out and described as such in Schedule 2, as adjusted in accordance with clause 2.11(b)(vi)C.1), 3.5(c) (if Alternative 2 in clause 3.5 applies), 6.3, 6.4, 10.13 or 10.14(b)(iii).

**"Preliminary Design"** means the preliminary design of the Works (if any) included in the Works Brief.

**"Principal"** means TfNSW.

**"Principal Supplied Items"** means the items listed in Schedule 27.

**"Principal's Representative"** means:

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

and includes any appointee under clause 9.3.

**"Prohibited Subcontractor"** means:



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

**"Project Limited Authorisation"** means an authorisation that may in limited circumstances be issued by the ASA to a legal entity that does not have ASA Authorisation, confirming that the proposed approach to engineering assurance made by that legal entity has satisfied the ASA that the legal entity can carry out particular Asset Lifecycle Services.

**"Project Work Health and Safety Management Plan"** means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements 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 work health and safety perspective; and
- (b) describe how the Contractor proposes to ensure the Works and Contractor's Activities are performed consistently with Law in relation to work health and safety.

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

**"Rail Corridor"** means the area containing the Rail Tracks, rail junctions, level crossings, station buildings, platforms, signal boxes, tunnels, bridges and other associated structures. This area is often defined by railway boundary fencing and in the absence of such fencing, is defined by a physical boundary (i.e. tunnel, building or retaining walls) or everywhere within 15 metres of the outermost rails.

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

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

**"Rail Track"** or **"Track"** means the rails fastened on sleepers or transoms and founded on ballast or bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).

**"Rail Transport Agency"** means Transport for NSW (and each of its divisions), RailCorp, Sydney Trains and NSW Trains.

**"Reimbursable Cost Adjustment"** means:

- (a) any amounts payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontract Agreements in respect of:
    - (i) any of the following where this Contract provides that there will be a Reimbursable Cost Adjustment:
      - A. in the circumstances contemplated in clause 2.11(b)(vii) and (viii), which will be valued as the amount determined in accordance with clause 2.11(b)(viii);
      - B. (if Alternative 2 in clause 3.5 applies) any Latent Condition, which will be valued in accordance with clause 3.5(c);
      - C. delay or disruption, which will be valued in accordance with clause 10.13;
      - D. suspension under clause 10.14, which will be valued in accordance with clause 10.14; and
      - E. the exercise of any Option, which will be valued in accordance with Schedule 14; and
    - (ii) any Variation, which will be valued in accordance with clause 6.4; and
  - (b) any amounts determined in accordance with clause 8.5,
- and for the avoidance of doubt can be a positive or negative amount.

**"Reimbursable Costs"** means the aggregate of:

- (a) in respect of:
  - (i) Reimbursable Work other than Self-Performed Reimbursable Work, all amounts properly and actually incurred and payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontract Agreements; and
  - (ii) Self-Performed Reimbursable Work (if any):
    - A. to the extent that the Contractor and the Principal's Representative have agreed that the Self-Performed Reimbursable Work will be subject to a fixed price (which must exclude any margin for Off-site Overheads or profit), that agreed amount; and
    - B. otherwise, the sum ascertained by multiplying the number of hours the labour resource or Construction Plant is employed in the execution of the Self-Performed

Reimbursable Work for any given period under the Contract by:

- 1) the applicable rate agreed between the parties in writing prior to execution of the Reimbursable Work; or
- 2) where there is no applicable agreed rate in writing, a reasonable rate (which must exclude any margin for Off-Site overheads or profit) as determined by the Principal's Representative,

excluding:

- (iii) any amounts in respect of any Latent Condition, delay or disruption, suspension, Option, Variation or the circumstances contemplated in clause 2.11(b)(vii) and 2.11(b)(viii);
  - (iv) amounts incurred in correcting Defects, including amounts paid or payable by the Contractor to any Subcontractors for correcting Defects;
  - (v) amounts (including damages) paid or payable by the Contractor to any Subcontractors by reason of any breach of contract or other wrongful act or omission by the Contractor including a breach by the Contractor of the Contract, except to the extent that such breach or wrongful act or omission was directly caused by any breach of contract or other wrongful act or omission of the Principal;
  - (vi) amounts incurred in carrying out any replacement, making good or repair under clause 13.3 (including any excesses and deductibles under any insurances and any amounts paid or payable by the Contractor to any Subcontractors);
  - (vii) any legal, expert or other consultants costs incurred by the Contractor arising out of or in connection with any Approved Subcontractor Agreement other than as provided in clause 7.11;
  - (viii) other amounts not properly incurred in respect of the execution of the Reimbursable Work or which the Contract provides are to be borne by the Contractor or to be a debt due from the Contractor to the Principal or which are payable by the Contractor to the Principal under any indemnity; and
  - (ix) other amounts stated in any other provision of this Contract to not be "Reimbursable Costs";
- (b) any Reimbursable Cost Adjustments;
  - (c) any amount agreed under clause 7.14(a); and
  - (d) any other amount stated in this Contract to be "Reimbursable Costs",

less, in respect of any Defect which is the subject of an instruction under clause 8.2(b), the amount determined by the Principal's Representative pursuant to clauses 8.5(a) or 8.5(b)(i).

**"Reimbursable Work"** means the entirety of the Contractor's Activities other than the Design Work and the Preliminaries.

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

**"Report"** means each report referred to in Schedule 1.

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

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

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

**"Security Interest"** has the meaning given to that term in clause 17.26(a).

**"Self-Performed Reimbursable Work"** means the part of the Reimbursable Work to be performed by the Contractor itself or a Related Body Corporate of the Contractor as described in Schedule 9.

**"Service"** includes any service facility or item of public or private infrastructure, including railway systems, pedestrian and vehicular corridors, water, electricity, gas, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service.

**"Site"** means:

- (a) the lands and other places described in Schedule 1; and
- (b) any other lands and places made available to the Contractor by the Principal for the purpose of this Contract.

**"Site Conditions"** means any physical conditions above, upon, under or over the surface, or in the vicinity, of the Site or Extra Land and includes:

- (a) surface water, ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions, above, upon and below the Site or Extra Land, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;
- (c) topography of the Site or Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site or Extra Land;
- (d) climatic and weather conditions including rain, surface water runoff and drainage, floods, water seepage, windblown dust and sand, seasons and

physical conditions that are a consequence of climatic and weather conditions;

- (e) all existing systems and Services, above or below ground level and all facilities with which such systems and Services are connected;
- (f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (g) any Contamination, Hazardous Materials or other spoil or waste; and
- (h) underground strata forming part of the Site or Extra Land.

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

**"Statement of Business Ethics"** means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at: [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).

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

**"Subcontract Proposal"** means a document issued by the Contractor under clause 7.2.

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

- (a) the Design Documentation, which the Contractor is entitled to use for tendering purposes under clause 9.8(e), relevant to the part of the Reimbursable Work to be subcontracted;
- (b) the conditions of the subcontract agreement which must, unless otherwise expressly directed in writing by the Principal's Representative, be on the terms approved by the Principal's Representative;
- (c) if the Principal's Representative so directs, a request for tender; and
- (d) any other documentation necessary for that part of the Reimbursable Work to be subcontracted.

**"Subcontractor"** means any person (including a supplier) engaged by the Contractor to perform any part of the Reimbursable Work.

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

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

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

**"Target Budget"** means the amount so described as set out in Schedule 1, which amount will only be adjusted for:

- (a) any increase in the Preliminaries Fee in accordance with clause 2.11(b)(vi)C.1), 3.5(c) (if Alternative 2 in clause 3.5 applies), 6.3, 6.4, 10.13 or 10.14(b)(iii);
- (b) Fee Adjustments; and
- (c) Reimbursable Cost Adjustments.

**"Target Budget Estimate"** means the document set out in Exhibit J, as amended from time to time in accordance with this Contract.

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

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

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

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

**"Tendering Probity Plan"** means the tendering probity plan prepared by the Contractor and finalised under clause 9.8, 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 1; and
- (b) any other matters required by the Principal's Representative.

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

**"TfNSW Standard Requirements"** or **"TSRs"** means the documents which appear as Exhibit A to this Contract.

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

**"Third Party Agreement"** means an agreement which appears in Exhibit H.

**"Total Potential P&C Payments"** means the amount which is 2% of the Target Budget as at the date of this Contract.

**"Track Possession"** means a period during which the Contractor has access to Rail Track for the purpose of carrying out the Contractor's Activities including for the purpose of rectifying Defects.

**"Training Target"** has the meaning given in clause 9.14(f).



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

**"Variation"** means any change to the Works or the Temporary Works including:

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

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

**"WHS"** means work health and safety.

**"WHS Accreditation Scheme"** means the Australian Government Building and Construction OH&S Accreditation Scheme established by *the Fair Work (Building Industry) Act 2012* (Cth).

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

**"WHS Legislation"** means:

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

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

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

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

**"Works Brief"** means the Principal's written requirements for the Works described in:

- (a) Exhibit B, and
- (b) where the Contract includes a Preliminary Design, the Preliminary Design.

## 1.2 Interpretation

In this Contract unless the context otherwise requires:



- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Contract includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Contract or to any other deed, agreement, document or instrument is deemed to include a reference to this Contract or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
  - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Contract;
- (i) a reference to:
  - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Contract; and
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) subject to clause 3.6, a reference to this Contract includes all Schedules and Exhibits;

- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) where under this Contract:
- (i) a direction is required to be given or must be complied with;
  - (ii) payment of money must be made;
  - (iii) an unconditional undertaking must be released; or
  - (iv) a default must be remedied,
- within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;
- (m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
- (i) any extension of time to any Date for Completion stated in days; or
  - (ii) any reference to "day",
- will include only those days indicated in Schedule 1, or otherwise approved by the Principal's Representative, as working days;
- (n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where otherwise designated as a Business Day), "day" means calendar day;
- (o) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;
- (p) a reference to "\$" is to Australian currency;
- (q) a reference to "direction" in the definition of "Claim" in clause 1.1 or in any of clauses 2.1(a)(vii), 7.16(a)(i)B, 9.1, 9.8(i), 15 and 16 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document;
- (r) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Contract or any part;
- (s) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) the interpretations of the terms Date for Completion, Date of Completion and Completion, and clauses 8, 10, 12 and 13, will apply separately to each Portion and references therein to the Works and to the Contractor's Activities will mean so much of the Works and the Contractor's Activities as is comprised in the relevant Portion;

- (u) any reference to "Principal's Design" shall be read as if it is a reference to "Preliminary Design";
- (v) the word "subcontractor" will include subcontractors, suppliers, Consultants and Subcontractors, and the word "subcontract" will include a contract with a subcontractor (including an Approved Subcontract Agreement); and
- (w) any reference to "intended purpose" in:
  - (i) the definition of "Completion" in clause 1.1; or
  - (ii) clauses 1.4, 2.1, 2.2(c), 3.2, 4.1, 5.1, 5.2, 7.16 or 11.7,
 will be read as referring to the intended use or intended purpose having regard to any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Contract including the requirement that the Works, when completed will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation.

### 1.3 Ambiguous terms

- (a) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in the Contract (including in any Exhibit), the Principal's Representative must, subject to clause 1.4, direct the interpretation of this Contract which the Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Contract.

### 1.4 Order of Precedence

- (a) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Contract then:
  - (i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the Works Brief, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
  - (ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule 1 applies.
- (b) The Works Brief, any Preliminary Design and the Planning Approval are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Contract and are fit for their intended purposes.

### 1.5 Deed Poll by Contractor

If required by Schedule 1 the Contractor must:

- (a) within 10 days of the date of this Contract and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under

clause 11.4, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 15 in favour of the persons named in Schedule 1;

- (b) where the Interface Agreement is identified in Schedule 1 as a "Draft" Third Party Agreement, promptly following execution of the Interface Agreement, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount which becomes due under clause 11.4 following execution of the Interface Agreement, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 24 in favour of the persons named in Schedule 1; and
- (c) where the Interface Agreement has been executed as at the date of this Contract, on or before the date of this Contract and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 24 in favour of the persons named in Schedule 1.

## 1.6 Authorities

- (a) This Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
  - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
  - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under this Contract.

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## 2. Contractor's obligations

### 2.1 General

- (a) The Contractor:
  - (i) must execute the Contractor's Activities, including design, construct, commission and hand-over the Works and each Portion, in accordance with this Contract;
  - (ii) warrants that it will use its best endeavours to ensure that it achieves Completion of the Works in accordance with the Target Budget Estimate and so that the Contract Price does not exceed the Target Budget;
  - (iii) warrants that it will ensure that the Reimbursable Work is performed:
    - A. in a proper and workmanlike manner;

- B. so that it is fit for its intended purpose; and
- C. in compliance with clause 4.1;
- (iv) warrants that the Temporary Works will at all reasonable times be fit for their intended purposes;
- (v) warrants that the Works and each Portion will upon Completion be, and remain, 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 the Contract:
  - A. 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 Agreement (where applicable);
  - B. the administration of Approved Subcontract Agreements including all negotiations concerning Variations and extensions of time; and
  - C. in making payment claims under clause 11.2;
- (vii) must commence and progress the Contractor's Activities expeditiously and in accordance with any directions of the Principal and achieve 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; and
- (ix) must liaise, cooperate and confer with others as directed by the Principal.
- (b) Without limiting the generality of the Contractor's obligations, the Contractor will be responsible for (and will control, co-ordinate, administer and direct) all activities necessary for the planning, design, commencement, construction, commissioning, completion and handover of the Works including:
  - (i) the performance of the Design Work and the Preliminaries; and
  - (ii) the engagement, supervision, control, co-ordination and direction of all subcontractors and the execution of the Reimbursable Work.

## 2.2 Compliance with Law

- (a) Subject to clause 2.2(c)(i), the Contractor must in carrying out the Contractor's Activities:
  - (i) comply with, and ensure that the Works and the Temporary Works comply with, all applicable Law;
  - (ii) give all notices and pay all fees, bonds and other amounts which it is required to pay in respect of the performance of its obligations

- under this Contract and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
- (iii) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;
  - (iv) at all times conform and comply with, and ensure that the Works and the Temporary Works conform and comply with, all Codes and Standards; and
  - (v) not engage in any fraud, bribery or corruption.
- (b) Where there is a Change in Codes and Standards:
- (i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:
    - A. details of the Change in Codes and Standards; and
    - B. an estimate of the Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and
  - (ii) if a notice is given by the Contractor which complies with clause 2.2(b)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
    - A. direct the Contractor to disregard the Change in Codes and Standards; or
    - B. direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which clause 6.4 will apply.
- If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards the Contractor must comply with the change and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the change.
- (c) The Contractor must:
- (i) obtain all Authority Approvals required for the execution of the Contractor's Activities and the occupation and use of the completed Portions (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for those Authority Approvals specified in Schedule 6 that either:
    - A. were obtained by the Principal prior to the date of this Contract; or



- B. will be obtained by the Principal after the date of this Contract where required;
- (ii) unless otherwise expressly specified in Schedule 4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil;
- (iii) in respect of any:
- A. Authority Approvals which are to be obtained by the Principal after the date of this Contract; or
- B. conditions and requirements of Authority Approvals which pursuant to Schedule 4 are to be satisfied or fulfilled by the Principal,
- provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;
- (iv) for the purpose of obtaining all Authority Approvals as required by clause 2.2(c)(i), prepare all associated studies and reports required because of the design of the Works or Temporary Works proposed by the Contractor; and
- (v) as a condition precedent to Completion of the Works or a Portion, ensure that it has:
- A. obtained all Authority Approvals it is required to obtain under this Contract;
- B. complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
- C. without limiting clauses 2.2(c)(v)A and 2.2(c)(v)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and
- D. unless it is included in Schedule 6 as an Authority Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Works or the Portion, as designed and built, comply with the requirements of the Building Code of Australia to the extent applicable,
- including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or



fulfilled to enable the Principal and any Rail Transport Agency to occupy and use the Works or Portion for its intended purpose.

- (d) Where there is a Change in Law:
- (i) if either party considers that the Change in Law necessitates a Variation, then that party must, within 14 days of the Change in Law, give a written notice to the other and the Principal's Representative with detailed particulars of the reason why the Change in Law necessitates a Variation;
  - (ii) if such a notice is given and the Change in Law does necessitate a Variation the Principal's Representative will direct a Variation under clause 6.2(a); and
  - (iii) the Contractor must comply with the Change in Law.
- (e) If a Change in Authority Approval occurs which necessitates a Variation, the Contractor must:
- (i) if the relevant Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
  - (ii) otherwise within 14 days of the Change in Authority Approval taking effect,
- notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation. If the Contractor gives such a notice and the Change in Authority Approval does necessitate a Variation the Principal's Representative will direct a Variation under clause 6.2(a).
- (f) Other than as set out in clause 2.2(e), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
- (i) any Change in Authority Approval;
  - (ii) subject to Part A of Schedule 4, an Authority Approval obtained or issued or which otherwise takes effect after the date of this Contract;
  - (iii) a change in an Authority Approval after the date of this Contract; or
  - (iv) any:
    - A. assumptions the Contractor makes; or
    - B. failure by the Contractor to adequately satisfy itself,
 as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.

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

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

- (h) Without limiting the Contractor's obligations under any other clause of this Contract, the Contractor must:
- (i) ensure that, if any Law, including in the State or Territory in which the Works are situated or the Works are carried out (as the case may be), require that:
    - A. a person:
      - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
      - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
    - B. a workplace, plant or substance (or 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 subparagraph (i) are

met (including any requirement to be authorised, licensed, qualified or supervised); and

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

- (i) The parties acknowledge and agree that the Authority Approvals which are in existence as at the date of this Contract include those specified in Exhibit K.

## 2.3 Legal Challenge to Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Authority Approval or a modification of an Authority Approval, performance of the Contractor's Activities or the Works, or compliance with any Authority 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 Contract unless, as a result of that legal challenge, proceedings or action, it is otherwise:

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

- (b) Subject to clause 2.3(c), the Principal must pay the Contractor the costs reasonably incurred by the Contractor as a direct result of:

- (i) an Authority order referred to in clause 2.3(a)(v);
- (ii) a court order referred to in clause 2.3(a)(vi); or
- (iii) a direction by the Principal referred to in clause 2.3(a)(vii),

to the extent that such Authority order, court order, or direction prevents the Contractor from achieving Completion of the Works or a Portion by the relevant Date for Completion. The Contractor will not be entitled to any Fee Adjustment or increase to the Preliminaries Fee on account of any such additional costs.

- (c) Clause 2.3(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 2.3(a) is brought or

upheld due to the Contractor's non-compliance with its obligations under this Contract or any Authority Approval.

## 2.4 Services

The Contractor must:

- (a) obtain and pay for any Service it needs to perform its obligations under this Contract;
- (b) relocate, remove, modify, support, protect, reinstate and provide all Services necessary for the Contractor to comply with its obligations under this Contract;
- (c) subject to clause 3.5, assume the risk of the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities;
- (d) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this Contract, including any such devices reasonably required by the Principal's Representative;
- (e) despite any other provision in the Contract to the contrary, ensure that no Services are:
  - (i) damaged or destroyed; or
  - (ii) disconnected, disrupted, interfered with or interrupted during normal operating hours,
 by reason of the performance of the Contractor's Activities;
- (f) cooperate and coordinate with the owners of all Services, notify their requirements to the Principal's Representative and, unless otherwise directed by the Principal's Representative, implement their requirements as part of the Contractor's Activities; and
- (g) indemnify the Principal against any claim, damages, expense, costs, loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Service arising out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.

Subject to clause 3.5, the Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.

## 2.5 Crown Building Work

- (a) The Contractor must, in relation to any part of the Works that is a Crown Building Work, certify (on behalf of the Principal) as required by section 109R of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) Any certification under clause 2.5(a) will not lessen or otherwise affect:
  - (i) the Contractor's other liabilities or responsibilities under this Contract or otherwise according to law; or
  - (ii) the Principal's rights against the Contractor, whether under this Contract or otherwise according to law.

## 2.6 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 2.6(d), the unconditional undertakings to be provided under this clause 2.6 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Contract.
- (b) The Contractor must give the Principal within 10 days of the date of this Contract, two unconditional undertakings:
  - (i) each for 2.5% of the Target Budget as at the date of this Contract;
  - (ii) each in the form of Schedule 7;
  - (iii) each in favour of the Principal;
  - (iv) each issued by an Institution approved by the Principal that maintains the Required Rating; and
  - (v) where required by Law, duly stamped.
- (c) Subject to its rights to have recourse to the unconditional undertakings and subject to clauses 2.6(g), 14.10 and 14.12, the Principal must:
  - (i) within 28 days after the Date of Completion of the Works or the last Portion to reach Completion, release so much of the unconditional undertakings provided by the Contractor under clause 2.6(b) as may be then held by the Principal, so that it then holds unconditional undertakings for 2.5% of the Target Budget as at the date of this Contract; and
  - (ii) within 28 days after the expiration of all the Defects Rectification Periods (excluding any extensions under clause 8.6), release so much of the unconditional undertakings provided by the Contractor under clause 2.6(b) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the remaining Defects Rectification Periods (including any extensions under clause 8.6) apply; and
  - (iii) within 28 days after the Date of Final Completion, release the balance of the unconditional undertakings provided by the Contractor under clause 2.6(b) as may be then held by the Principal.

- (d) The Principal:
- (i) may have recourse to any unconditional undertaking provided under this clause 2.6 or clause 11.7(b) at any time;
  - (ii) is not obliged to pay the Contractor interest on:
    - A. any unconditional undertaking; or
    - B. the proceeds of any unconditional undertaking if it is converted into cash; and
  - (iii) does not hold the proceeds referred to in clause 2.6(d)(ii)B on trust for the Contractor.
- (e) The Contractor must not take any steps to injunct or otherwise restrain:
- (i) any issuer of any unconditional undertaking provided under this clause 2.6 or clause 11.7(b) from paying the Principal pursuant to the unconditional undertaking;
  - (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.6 or clause 11.7(b) or receiving payment under any such unconditional undertaking; or
  - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.6 or clause 11.7(b).
- (f) The Contractor must within 10 days of the date of this Contract give the Principal a guarantee duly executed by the person referred to in Schedule 1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped.
- (g) Despite any other provision of this Contract to the contrary, where this Contract may otherwise require the Principal to release an unconditional undertaking or this Contract is terminated by the Principal either pursuant to clause 14 or by reason of the Contractor repudiating this Contract (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Contract to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Contract or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.

## 2.7 Long Service Leave Levy

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

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and



- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.7(a).

## 2.8 Co-operation with Interface Contractors

- (a) The Contractor:

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

- (ii) must at all times:

- A. permit Interface Contractors to execute the Interface Work on the applicable parts of the Site or Extra Land, or on any adjacent property to the Site or Extra Land:
  - 1) at the same time as the Contractor is performing the Contractor's Activities; and
  - 2) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose ensure they have safe, clean and clear access to those parts of the Site or Extra Land, or property adjacent to the Site or Extra Land, required by them for the purpose of carrying out their work;



- B. protect the Works, Temporary Works and other improvements on the Site or Extra Land from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;
- C. co-operate with Interface Contractors, and do everything reasonably necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;
- D. carefully coordinate and interface the Contractor's Activities with the Interface Work and for this purpose:
  - 1) make proper allowance in all programs for the Interface Work;
  - 2) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;
  - 3) monitor the progress of the Interface Work;
  - 4) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the Works or any Portion; and
  - 5) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their Interface Work with the Contractor's Activities;
- E. it must cooperate, meet with, liaise and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- F. perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- G. be responsible for coordinating 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 working method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to

- commencing the work described in the work method statement;
- H. provide for the purposes of clause 2.8(a)(ii)G (unless otherwise directed by the Principal's Representative), the number and form of copies of the work method statements specified in Schedule 1;
- I. work directly with Interface Contractors where required to complete the design of the Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the Works Brief and the Preliminary Design;
- J. work in accordance with:
- 1) the Contract Management Plan that has been submitted for review under clause 9.8, and, in respect of which:
    - a) the Contractor has received the notice referred to in clause 9.8(c)(ii)C; or
    - b) the relevant period of time in clause 9.8(c)(ii) has expired and the Principal's Representative has not rejected the Contractor Management Plan or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.8(d)); and
  - 2) the TfNSW Standard Requirements;
- K. attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others every 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- L. when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 days (except in special circumstances) or any longer period of notice required

- under the Works Brief 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;
- M. ensure that any written notice given under clause 2.8(a)(ii)L provides the Interface Contractor with the longest possible time for the provision of the information;
- N. when any information is requested by 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 Work with the Works or the Contractor's Activities:
- 1) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time is reasonable;
  - 2) ensure that such information is provided to Interface Contractors by the requested dates; and
  - 3) ensure and warrant that the information provided is accurate; and
- O. 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:
- 1) the provision of information;
  - 2) the obtaining of information;
  - 3) the adequacy of information provided to, or received from, Interface Contractors;
  - 4) the compatibility of the Works and Temporary Works with the Interface Work;
  - 5) coordination in accordance with this clause 2.8(a); and
  - 6) technical issues with the information provided to, or received from, Interface Contractors;
- (iii) must, in the event that despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:

- A. give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and
  - B. attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;
- (iv) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Contract or otherwise have an adverse effect upon the Contractor's Activities; and
- (v) acknowledges that conditions similar to those in this clause 2.8(a) applying to the Contractor will apply to all Interface Contractors engaged by the Principal, whether working on the Site or on any other site.
- (b) Where the Contractor has complied with all its obligations in clause 2.8(a), the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor.
- (c) Upon receipt of the Contractor's notice under clause 2.8(b), the Principal's Representative must:
- (i) within 5 Business Days convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by Principal's Representative); and
  - (ii) work in good faith with the Contractor and the Interface Contractor to resolve the issues or dispute.
- (d) The Contractor:
- (i) acknowledges and agrees:
    - A. no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); or
    - B. that except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with clause 2.8(a), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
      - 1) the Interface Contractors carrying out their work; or

- 2) any act or omission of an Interface Contractor;  
and
- (ii) warrants that each element of the Contract Price, the Target Budget and the Contractor's Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clause 2.8(a) and this clause 2.8(d), including the cost of all the design iterations required to accommodate Interface Work.

## 2.9 Incident Management Reporting

- (a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the TfNSW Standard Requirements.
- (b) Should an Incident occur which:
- (i) 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 TfNSW Standard Requirements; and
- (ii) relates to rail safety, the Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Hazardous Material, Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities, the Contractor must:
- (i) at its own cost promptly take all appropriate action to manage and dispose of all Hazardous Material, Contamination, Pollution or other waste arising from the Incident;
- (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
- (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the Contractor.
- (e) Without prejudice to the Principal's other rights under this Contract, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and

expenses from the Contractor as a debt due from the Contractor to the Principal.

- (f) Without prejudice to the Principal's other rights under this Contract, the Principal's Representative may issue a direction under clause 10.14 requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event:
- (i) of any Incident involving:
    - A. a significant spill of Contamination;
    - B. any accident or release of Contamination which it believes may pose a danger to health, life or property; or
    - C. any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
  - (ii) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to New South Wales WorkCover Authority) or damage to property.

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

- (iii) any suspension due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in this clause 2.9(f); and
  - (iv) complying with a direction issued under clause 2.9(g), including complying with the steps which Principal's Representative directs that the Contractor must take before the Principal's Representative will issue a direction to recommence the Contractor's Activities.
- (g) If the Principal's Representative issues a notice to suspend in the circumstances set out in:
- (i) clause 2.9(f)(i), 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; or
  - (ii) clause 2.9(f)(ii) the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.14 permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend. In these circumstances the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has



complied with the requirements of the direction issued under this clause 2.9(g) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.

- (h) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 2.9(f), as a debt due and payable from the Contractor to the Principal.

## 2.10 Principal Contractor

- (a) In this clause 2.10 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.

For the purpose of the WHS Legislation and the Contract, the Works and any Other Contractor Work is taken to be part of the same construction project.

- (b) If the Contractor is specified in Schedule 1 as being the principal contractor:
- (i) the Principal engages the Contractor as the principal contractor in respect of the Contractor's Activities and all Other Contractor Work carried out on the Site;
  - (ii) the Principal authorises the Contractor to have management and control over the Site and of each workplace at which the Contractor's Activities and the Other Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
  - (iii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (c) To the extent not prohibited by law, the Contractor must indemnify the Principal against any damage, expense, loss (including reasonable legal fees) or liability suffered or incurred by the Principal arising out of or in connection with the Contractor's failure to discharge the duties imposed on a principal contractor by the WHS Legislation that the Contractor is required to discharge in accordance with this clause 2.10.
- (d) Where the Contractor is not specified in Schedule 1 to be the principal contractor, the Contractor:
- (i) acknowledges that the person who is specified in Schedule 1 is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that Site during the period which that person is specified as being the principal contractor in Schedule 1; and
  - (ii) must comply with any exercise by the person referred to in subparagraph (i) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.



- (e) Without limiting anything else in this clause 2.10, the Contractor must, in respect of any construction work carried out on all or part of the Extra Land, discharge the duties of a principal contractor under the WHS Legislation in respect of such construction work.

## 2.11 Third Party Agreements

- (a) The Contractor:
- (i) acknowledges that the Principal has entered or will enter into the Third Party Agreements;
  - (ii) must:
    - A. unless otherwise expressly specified in Schedule 4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that the Principal is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
    - B. comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 4 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.11(a)(ii)A;
  - (iii) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in Schedule 4;
  - (iv) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
  - (v) must, where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;
  - (vi) must, in carrying out the Contractor's Activities:
    - A. ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and
    - B. otherwise act consistently with the terms of the Third Party Agreement;

- (vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in Schedule 4 and the other terms of this Contract, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by the Principal under a Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this Contract; and
- (viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Contract.
- (b) The parties acknowledge that:
- (i) as at the date of this Contract:
- A. the terms and conditions of the Third Party Agreements identified in Schedule 1 as "Draft" have not been finalised between the Principal and the relevant Third Party (each a "**Draft Third Party Agreement**"); and
- B. certain Third Party Agreements may need to be replaced with new agreements on different terms (each a "**Replacement Third Party Agreement**");
- (ii) the Contractor has reviewed the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements and has included in the Target Budget an amount for all of its costs (including the cost of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 2.11(a) and the Principal's obligations under the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements other than those identified in Schedule 4 for the Principal to perform;
- (iii) following:
- A. finalisation of any Draft Third Party Agreement; or
- B. the execution of any Replacement Third Party Agreement,
- after the date of this Contract, the Principal must promptly give the Contractor a copy of the:

- C. executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable), together with (in the case of a Replacement Third Party Agreement) details of the Third Party Agreement that is replaced; and
  - D. amendments (if any) to Schedule 4 arising out of the execution of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable) ("**Revised Allocation**");
- (iv) within 28 days of receipt of an executed copy of a Draft Third Party Agreement or a Replacement Third Party Agreement (as applicable), and the associated Revised Allocation, the Contractor must notify the Principal's Representative in writing if any terms and conditions of:
- A. the executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); or
  - B. the associated Revised Allocation,
- are substantially more onerous than those contained in:
- C. the relevant Draft Third Party Agreement or the Third Party Agreement which has been replaced with the Replacement Third Party Agreement (as applicable); and
  - D. Schedule 4,
- ("Difference in Conditions") and
- E. where the Difference in Conditions or Revised Allocation will result in additional administration, details of such additional administration costs to be incurred by the Contractor;
  - F. where the Difference in Conditions or Revised Allocation will result in additional physical works:
    - 1) not forming part of the Contractor's Activities; and
    - 2) which is otherwise in addition to any physical works contemplated by the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements,

details of such additional physical works and the cost of carrying out such additional physical works; and
  - G. where the Difference in Conditions or Revised Allocation alters the Contractor's risk profile under this Contract and creates a contingent liability which the Contractor

did not previously bear and which may convert to an actual liability on the happening of another event ("**Trigger Event**"), details of the altered risk profile, contingent liability and Trigger Event and a notice of intention to claim;

- (v) if the Principal does not receive a notice from the Contractor under clause 2.11(b)(iv) within the 28 day period:
- A. Schedule 4 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:
- 1) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
  - 2) Revised Allocation,
- under clause 2.11(b)(iii); and
- B. the Contractor must carry out its obligations under this Contract on the basis of:
- 1) the executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and
  - 2) the Revised Allocation,
- without any adjustment to any element of the Contract Price or any entitlement to make any other Claim;
- (vi) if the Principal's Representative receives a notice from the Contractor under clause 2.11(b)(iv) within the 28 day period, then:
- A. Schedule 4 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:
- 1) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
  - 2) Revised Allocation,
- under clause 2.11(b)(iii);
- B. the Contractor must carry out its obligations under this Contract on the basis of:
- 1) the executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and

- 2) the Revised Allocation;
- C. the Principal's Representative must:
- 1) where the Contractor has provided the details referred to in clause 2.11(b)(iv)E, give the Contractor a notice setting out the Principal's Representative's determination of the reasonable, additional administration costs incurred or to be incurred by the Contractor in complying with the executed version of the Draft Third Party Agreement, the Replacement Third Party Agreement or Revised Allocation and the Preliminaries Fee will be increased by that amount; and
  - 2) where the Contractor has provided the details referred to in clause 2.11(b)(iv)F, if the terms of any executed version of a Draft Third Party Agreement, the relevant Replacement Third Party Agreement or Revised Allocation require the Contractor to carry out any physical work which:
    - a) does not form part of the Contractor's Activities; and
    - b) is additional to any physical works contemplated by the Third Party Agreements executed at the date of this Contract and the Draft Third Party Agreements,

direct the Contractor to carry out such physical work as a Variation under clause 6.2 and clause 6.4 will apply; and
- D. where the Contractor has provided the details referred to in clause 2.11(b)(iv)G, the Principal's Representative's obligation to make a determination in relation to the altered risk profile or contingent liability referred to in clause 2.11(b)(iv)G is deferred until the Trigger Event occurs;
- (vii) if:
- A. the Contractor issues a notice under clause 2.11(b)(iv) and provides the details referred to in clause 2.11(b)(iv)G; and
  - B. a Trigger Event occurs during the implementation of:
    - 1) the executed Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and

2) the Revised Allocation,

the Contractor may issue a notice to the Principal's Representative providing details of the reasonable costs incurred or which may be incurred in satisfying the actual liability which has arisen;

- (viii) if the Principal's Representative receives a notice under clause 2.11(b)(vii), the Principal's Representative must give the Contractor a notice setting out the Principal's Representative's determination of the reasonable, additional costs incurred or which may be incurred by the Contractor in satisfying the actual liability which has arisen and those additional costs will be a Reimbursable Cost Adjustment Event; and
- (ix) notwithstanding the provisions of this clause 2.11(b), the amount of any additional costs which are incurred or may be incurred by the Contractor as a result of the circumstances referred to in clause 2.11(b) will not adjust the Preliminaries Fee, the Management Fee or be treated as a Reimbursable Cost Adjustment Event unless the Contractor has taken all proper and reasonable measures to:
  - A. avoid the Trigger Event; and
  - B. avoid or minimise the extra costs resulting from such circumstances.

(c) 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 or a Replacement Third Party Agreement executed after the date of this Contract) to the extent that the claim or liability arises out of or in any way in connection with the Contractor's Activities, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or liability; and
- (ii) agrees that it:
  - A. bears the full risk of:
    - 1) complying with the obligations under this clause 2.11; and
    - 2) any acts or omissions of Third Parties; and
  - B. will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in

connection with the risks referred to in clause 2.11(c)(ii)A.

## 2.12 Commissioning and Operational Readiness

The Contractor acknowledges that:

- (a) Commissioning and Operational Readiness are part of the Contractor's Activities; and
- (b) Commissioning and Operational Readiness must be completed as a condition precedent to Completion.

## 2.13 Contemporaneous Work

The Contractor must:

- (a) inspect all Contemporaneous Work within the periods set out in Schedule 1 after the Principal's Representative gives written notice to the Contractor to do so;
- (b) if it discovers any defects, omissions or other matters in or connected with any Contemporaneous Work that in its opinion will render or are likely to render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Works or carrying out of the Contractor's Activities, within 10 Business Days of the Inspection notify the Principal's Representative in writing providing:
  - (i) full particulars of the defects, omissions or other matters identified; and
  - (ii) the reasons for the opinion formed by it in respect to the defects, omissions or matters identified;
- (c) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work that is the subject of the notice referred to in clause 2.13(b), until the Principal's Representative issues a Variation Order under clause 2.13(e) or issues a direction under clause 2.13(f); and
- (d) commence or continue with all other parts of the Contractor's Activities and mitigate any additional costs and delays resulting from the matters notified.

On receipt of the Contractor's notice under clause 2.13(b), the Principal's Representative will investigate the Contemporaneous Work that is the subject of the Contractor's notice, and within 10 Business Days of the receipt of the notice:

- (e) if the Principal's Representative agrees that the defect, omission or other matter in relation to the Contemporaneous Work necessitates a Variation in order for the proper execution of the Works and carrying out of the Contractor's Activities, issue a Variation Order to the Contractor pursuant to clause 6.2 directing it to carry out a Variation; or
- (f) if the Principal's Representative disagrees with the Contractor, issue a direction to the Contractor to commence or continue with the Contractor's



Activities, whereupon the Contractor must nevertheless take such steps as may be necessary to ensure that the part of the Works or Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work complies with the requirements of this Contract.

If the Contractor fails to:

- (g) inspect any Contemporaneous Work as required by this clause 2.13; or
- (h) notify the Principal's Representative of any defects, omissions or other matters that should have been detected at the time of such Inspection by a competent and experienced contractor and that may render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Works or for carrying out the Contractor's Activities,

and the Contemporaneous Work subsequently proves to be unsuitable, unsatisfactory or detrimental for the proper execution of the Works or the carrying out of the Contractor's Activities, then:

- (i) any work that is required to be executed in order to render the Contemporaneous Work suitable, satisfactory and non-detrimental for the proper execution of the Works or the carrying out of the Contractor's Activities must be performed by the Contractor at its own cost and expense and will not form part of the Reimbursable Costs; and
- (j) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any work carried out or to be carried out by the Contractor under clause 2.13(i).

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### **3. The Site and location of the Works**

#### **3.1 Access**

- (a) The Contractor acknowledges and agrees that access to the Site will be provided progressively to the Contractor as set out in Schedule 1.
- (b) Subject to clause 3.1(c) and any other provision of this Contract affecting access, the Principal must:
  - (i) give, or ensure the Contractor has, access to the Site by the dates set out in Schedule 1 (and if a period is specified in relation to access to a part of the Site, then by the last day of that period); and
  - (ii) once access to a part of the Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to that part of the Site.
- (c) The Contractor acknowledges and agrees that:
  - (i) access to the Site or any part thereof will only confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this Contract and to discharge its

- responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
- (ii) the Principal is not obliged to give the Contractor access to any part of the Site until the Contractor has:
    - A. complied with clause 2.6(b) of this Contract;
    - B. submitted the Project Work Health and Safety Management Plan, the Construction Environmental Management Plan and the Construction and Site Management Plan, as required by the TfNSW Standard Requirements, to the Principal's Representative under clause 9.8 and the Principal's Representative has not rejected the proposed Construction Environmental Management Plan, Construction and Site Management Plan or Project Work Health and Safety Management Plan within 15 Business Days after such submission in accordance with clause 9.8(c);
    - C. effected the insurance policies required under clauses 13.4, 13.5 and 13.6;
    - D. complied with clauses 13.4, 13.5 and 13.6 with respect to each insurance policy; and
    - E. complied with the matters set out in Schedule 1;
  - (iii) the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to the Site;
  - (iv) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to the Site or carry out the Contractor's Activities; and
  - (v) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site and Extra Land at the same time as the Contractor.
- (d) The Principal's obligations under clause 3.1(a) and 3.1(b) in respect of each part of the Site will cease upon the issue of a Notice of Completion in respect of the last Portion occupying that part of the Site, except to the extent required to allow the Contractor to comply with its obligations during the Defects Rectification Periods.

### 3.2 Temporary Works

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

### 3.3 Management and Control of the Site

- (a) At all times after being given access to the Site or a part of the Site under clause 3.1 and before the Date of Completion of the Works or the last Portion to reach Completion, the Contractor:

- (i) without limiting any right of the Principal or the Principal's Representative under this Contract, and subject to clause 2.10, will be responsible for the management and control of the Site;
- (ii) must control access to, and the security and maintenance of, the Site or that part, except where the Principal's Representative advises otherwise;
- (iii) must ensure public safety on and adjacent to the Site or that part;
- (iv) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways, cycleways and Rail Tracks affected by the Contractor's Activities in accordance with this Contract;
- (v) must, subject to clauses 3.1 and 3.8 and the TfNSW Standard Requirements, and any relevant Law, limit access to the Site to its employees, subcontractors and their employees and subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;
- (vi) must not impede access or Services to private property without the consent of the Principal's Representative and the relevant owner or occupier; and
- (vii) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.

### **3.4 Land in Addition to the Site**

The Contractor must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the Contractor's Activities;
- (b) at its own cost carry out all activities and procure all Services necessary to make the Extra Land suitable for use by the Contractor;
- (c) as a condition precedent to Completion of the Works or any Portion:
  - (i) rehabilitate any Extra Land of the kind referred to in paragraph (a) in accordance with the requirements of all relevant Authorities and other relevant persons; and
  - (ii) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule 12 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; and

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

### 3.5 Site Conditions - Alternative 1

This alternative applies if so stated in Schedule 1.

- (a) Without limiting or otherwise affecting clause 3.6(c), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Contract the Contractor:
- (i) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this Contract and which was obtainable by the making of reasonable enquiries;
  - (ii) was given the opportunity prior to the date of this Contract to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - A. relating to the subject matter of Information Documents and Materials and the Site Conditions; and
    - B. for design purposes and otherwise;
  - (iii) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this Contract, the Information Documents and Materials or the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this Contract; and
  - (iv) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the Contractor.
- (b) Without limiting or otherwise affecting clause 3.6, the Principal makes no representation and gives no warranty to the Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
    - A. the Site, Extra Land or their surroundings; or

- B. any structure or other thing on, under, above or adjacent to the Site or Extra Land;
- (ii) the existence, location, condition or availability of any Service on, under, above, adjacent to or related to the Site or Extra Land; or
- (iii) the feasibility or fitness for purpose of the Preliminary Design including, in respect of the constructability of the Preliminary Design, having regard to the physical conditions and characteristics of the Site or Extra Land.
- (c) The Contractor accepts:
- (i) the Site and Extra Land; and
- (ii) any structures or other thing on, under or adjacent to the Site and Extra Land, and any Site Conditions,
- in their existing condition subject to all sub-surface conditions and defects, and:
- (iii) agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with; and
- (iv) must investigate, design and construct the Works and Temporary Works in accordance with this Contract, and will not be relieved of its obligations under this Contract irrespective of,
- any of the following:
- (v) the Site Conditions encountered in performing the Contractor's Activities;
- (vi) whatever may be the condition or characteristics (including all sub-surface conditions) of:
- A. the Site or any Extra Land, the Environment or their surroundings; or
- B. any structure or other thing on, above or adjacent to, or under the surface of, the Site or any Extra Land, the Environment or their surroundings; and
- (vii) 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 sub-paragraph (vi),
- including:
- (viii) the existence of any Contamination or any decontamination;

- (ix) the suitability or otherwise of any material or condition upon, under, over or in any way associated with the Site or Extra Land for use in the Contractor's Activities;
- (x) water, atmospheric, sub-surface and other conditions or characteristics or aspects; and
- (xi) all existing systems and Services, above or below ground level and the location of all facilities with which such systems and Services are connected.

### 3.5 Site Conditions - Alternative 2

This alternative applies if so stated in Schedule 1.

- (a) Subject to the last paragraph of this clause 3.5(a), Latent Conditions are:
    - (i) physical conditions on the Site or its surroundings (including artificial things, Contamination and Hazardous Materials) which differ materially from the physical conditions which should reasonably have been anticipated by a competent and experienced contractor at the time of the Contractor's Tender if such a contractor had:
      - A. examined all information made available in writing by the Principal to the Contractor for the purpose of tendering (including the Reports);
      - B. examined all information (including the Reports) relevant to the risks, contingencies and other circumstances having an effect on the Tender and obtainable by the making of reasonable enquiries; and
      - C. inspected the Site and its surroundings;
    - (ii) any Services on the Site which are:
      - A. not identified in the Reports;
      - B. not capable of otherwise having been anticipated by the Contractor at the time of the Contractor's Tender if it had done the things referred to in clause 3.5(a)(i)A, B and C; and
      - C. discovered only after the Contractor has undertaken potholing of the Services identified in the Works Brief, including drawings and specifications, or Reports to confirm their exact location.
- Latent Conditions exclude weather conditions or physical conditions which are a consequence of weather conditions at the Site.
- (b) If during the execution of the Contractor's Activities, the Contractor becomes aware of a Latent Condition the Contractor must:
    - (i) promptly; and



- (ii) where possible before the physical conditions are disturbed, give written notice thereof to the Principal's Representative.

The Contractor must provide in that notice to the Principal's Representative a statement specifying:

- (iii) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
- (iv) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
- (v) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Completion (if any) as a result of dealing with the Latent Condition;
- (vi) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition and any applicable Reimbursable Cost Adjustment, Fee Adjustment or increase to the Preliminaries Fee, calculated in accordance with clause 6.4; and
- (vii) other details reasonably required by the Principal's Representative.

- (c) If a Latent Condition:

- (i) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (ii) directly results in an increase in the Contractor's costs of carrying out the Contractor's Activities,

which a competent and experienced contractor could not have avoided or mitigated, and could not reasonably have anticipated at the date of this Contract:

- (iii) the Principal's Representative will determine the Reimbursable Cost Adjustment, Fee Adjustment and increase to the Preliminaries Fee as a result of the Latent Condition in accordance with clause 6.4, as if the increased costs were the result of a Variation directed by the Principal; and
- (iv) a Reimbursable Cost Adjustment and Fee Adjustment will apply for, and the Preliminaries Fee will be increased by, the applicable amounts determined.

- (d) In making a valuation pursuant to clause 3.5(c) or determining an extension of time under clause 10, regard will not be had to any Contractor's Activities, additional costs or delays suffered or incurred more than 14 days before the date on which the Contractor gives the written notice required by clause 3.5(b).

### **3.6 Information Documents and Materials**

- (a) Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Contract, the Contractor acknowledges that:



- (i) the Information Documents and Materials or part thereof do not form part of this Contract and that clause 3.6(c) applies to the Information Documents and Materials or part thereof; and
  - (ii) where Information Documents and Materials or any part thereof form an Exhibit to this Contract, they do so only for the purposes of identification of that document or part thereof.
- (b) Without limiting clause 3.6(c):
- (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Contract;
  - (ii) subject to clause 3.5(c) (if alternative 2 applies), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
    - A. the provision of, or the purported reliance upon, or use of the Information Documents and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or
    - B. a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) The Contractor:
- (i) warrants that it did not in any way rely upon:
    - A. any information, data, representation, statement or document made, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
    - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

for the purposes of entering into this Contract except to the extent that any such information, statement or document forms part of this Contract;
  - (ii) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon the warranties, acknowledgements and agreements in clauses 3.6(c)(i) and 3.6(c)(ii).

- (d) Subject to clause 3.5(c) (if alternative 2 applies), the Contractor releases and indemnifies the Principal from and against:
- (i) any claim against them by, or liability of them to, any person; or
  - (ii) (without being limited by clause 3.6(d)(i)) any costs, expenses, losses or damages suffered or incurred by them,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of the Information Documents and Materials, as referred to in clauses 3.6(b) and 3.6(c)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this Contract);
  - (iv) any breach by the Contractor of this clause 3.6; or
  - (v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.

### 3.7 Things of Value Found

All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Site (all "**Valuable Finds**") are, and will as between the Contractor and the Principal be and remain, the property of the Principal.

The Contractor must:

- (a) immediately notify the Principal's Representative if it discovers a Valuable Find;
- (b) ensure the Valuable Find is protected and not lost, removed, disturbed or damaged; and
- (c) comply with any directions of the Principal's Representative in relation to the Valuable Find.

The Contractor will not be entitled to make any Claim against the Principal for any costs, expenses, losses, damages, delay or disruption suffered or incurred by the Contractor arising out of or in any way in connection with:

- (d) any Valuable Find; or
- (e) the Contractor's compliance with any direction of the Principal's Representative under clause 3.7,

### 3.8 Principal's Right to Access and Inspect

Subject to clause 3.12, the Contractor must:

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

including unobstructed vehicular access through the Site; and
  - (ii) provide the Principal and the Principal's Representative with every reasonable facility necessary for the Inspection of the Contractor's Activities, including the Contractor's compliance with the Authority Approvals.

### 3.9 Works to be constructed within Site

The Contractor must ensure that the Works are constructed within the relevant boundaries of the Site stipulated in Schedule 1.

### 3.10 Condition Surveys

The Principal has undertaken a condition survey of the properties listed in Schedule 1. The Contractor may undertake further condition surveys of these properties.

The Contractor must:

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

the Contractor's Activities or undertaking the Works, where that work could damage property on or off the Site; and

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

### **3.11 Waste Disposal**

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

### **3.12 Principal not in Control**

The Contractor and Principal acknowledge that nothing in this Contract including the right to inspect pursuant to clause 3.8 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

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

## **4. Compliance**

### **4.1 Quality of Work**

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

### **4.2 TfNSW Standard Requirements**

The Contractor must comply with the requirements of the TfNSW Standard Requirements.

### **4.3 Environmental Management**

The Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of TfNSW Standard Requirements for so long as any Contractor's Activities are carried out;
- (b) as part of the Contract Management Plan, document, implement and maintain a contract specific Construction Environmental Management Plan for the management of environmental matters in accordance with the TfNSW Standard Requirements;
- (c) carry out the Contractor's Activities in accordance with the Construction Environmental Management Plan;
- (d) supervise subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and TfNSW Standard Requirements in relation to environmental management on the Site and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any TfNSW sustainability initiatives) in the design and construction of the Works, Temporary Works and all other Contractor's Activities.

### **4.4 WHS Management**

The Contractor must:

- (a) hold and maintain an WHS management system for so long as any Contractor's Activities are carried out that complies with the WHS Guidelines and the TfNSW Standard Requirements;
- (b) as part of the Contract Management Plan, develop, document and implement a contract specific Project Work Health and Safety Management Plan in accordance with the WHS Guidelines and TfNSW Standard Requirements;
- (c) carry out the Contractor's Activities in accordance with the Project Work Health and Safety Management Plan;

- (d) create a safe working environment for ensuring the safety of all authorised personnel on the Site and Extra Land and that no unauthorised individual gains access to the Site; and
- (e) supervise any subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the TfNSW Standard Requirements in relation to the WHS management on the Site and Extra Land.

#### **4.5 No Relief from Obligations**

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

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

#### **4.6 Engineering Authorisation**

- (a) The Contractor represents and warrants that:
  - (i) if it or any of its subcontractors will carry out Asset Lifecycle Services that they are either:
    - A. an AEO and have obtained ASA Authorisation to carry out the Asset Lifecycle Services; or
    - B. have been granted Project Limited Authorisation for the Contractor's Activities; and
  - (ii) any Project Limited Authorisation granted by the ASA was granted based on true and accurate information provided by the Contractor and its subcontractors, including the procedures of, and undertakings given by, the Contractor and its subcontractors as set out in the Contractor's Tender.



- (b) If Project Limited Authorisation has been granted, the Contractor acknowledges and agrees that:
- (i) it is limited to the Contractor's Activities; and
  - (ii) the Contractor must make an application to the ASA to become an AEO within 45 Business Days (or a longer period agreed by the parties) of the date of this Contract, unless otherwise directed in writing by the Principal to the Contractor.

#### **4.7 ASA Compliance**

- (a) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if a Project Limited Authorisation has been granted, the Contractor must:
- (i) ensure that the Project Limited Authorisation is held and maintained for so long as the Contractor's Activities are carried out;
  - (ii) provide to the ASA any document, information or other things reasonably required by the ASA under, out of or in connection with the Project Limited Authorisation within any time period required by the ASA (acting reasonably); and
  - (iii) comply (and must ensure that its subcontractors and all personnel for which the Contractor is responsible comply) with the conditions of the applicable Project Limited Authorisation.
- (b) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if the Contractor or its subcontractors have ASA Authorisation to carry out the Asset Lifecycle Services or obtain that ASA Authorisation prior to Completion, the Contractor must:
- (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the Contractor's Activities are carried out; and
  - (ii) on and from the date that ASA Authorisation was granted, comply (and must ensure that its subcontractors and all personnel for which the Contractor is responsible comply) with the conditions of the applicable ASA Authorisation.
- (c) The Contract must (and must ensure that its subcontractors and all personnel for which the Contractor is responsible):
- (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
  - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 4.6 and 4.7;
  - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
  - (iv) provide access to premises and resources as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;



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

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## **5. Design and Design Documentation**

### **5.1 Contractor's Design**

The Contractor:

- (a) must prepare and complete the design of the Works and the Temporary Works (including the Design Documentation), so that it is fit for its intended purpose and otherwise complies with the requirements of this Contract;
- (b) is responsible for co-ordinating the work of its Consultants, including by providing and directing all necessary personnel to administer, supervise, inspect, coordinate and control these Consultants in a manner and at a rate of progress so that the Contractor complies with its obligations under the Contract; and
- (c) warrants that:
  - (i) it has fully and carefully reviewed the Works Brief including any Preliminary Design;
  - (ii) the completed design of the Works and the Temporary Works as represented in the Design Documentation will:
    - A. satisfy the requirements of the Works Brief, (including any Preliminary Design) and the other requirements of this Contract; and
    - B. be fit for their intended purposes; and
  - (iii) construction in accordance with the completed design of the Works and the Temporary Works will satisfy the requirements of

the Works Brief (including any Preliminary Design) and the other requirements of this Contract.

## 5.2 Prior Design Work

- (a) This clause 5.2 applies only when a Preliminary Design is included in the Contract.
- (b) When directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a Deed of Novation in the form of Schedule 25, such deed being between the Principal, the Contractor and each Consultant referred to in Schedule 1 as a Consultant that is stated to be a "Novated Consultant".

For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Principal's Representative to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly.

- (c) Without limiting clause 5.1, the Contractor:
  - (i) acknowledges and agrees that, prior to the date of this Contract, the Preliminary Design was created by the Principal and the Principal's agents and consultants and that it is aware that the Preliminary Design is incomplete and may contain ambiguities, errors, inconsistencies, discrepancies or omissions;
  - (ii) warrants that, prior to the date of this Contract, it checked and carefully reviewed and considered the Preliminary Design to ensure that it complied with the requirements of the Contract, including that it was fit for the intended purpose of the Works; and
  - (iii) acknowledges and agrees that:
    - A. the Contractor's design obligations under clause 5 and the Contractor's warranties (including under clause 5.1), obligations and liabilities under the Contract and at law, remain unaffected; and
    - B. the Contractor's obligations to carry out the Contractor's Activities and complete the Works in accordance with this Contract remain unaffected by, and it will bear and continue to bear full liability and responsibility for the carrying out of the Contractor's Activities and the completion of the Works in accordance with this Contract,

notwithstanding any one or more of the following:

- C. that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Preliminary Design;
- D. that the Contractor has entered into a novation of any prior contract between the Principal and a Consultant referred to in Schedule 1 as a Consultant that is stated

to be a "Novated Consultant" under clause 5.2(b) and thereafter has retained that consultant in connection with the Contractor's Activities;

- E. that any ambiguities, errors, inconsistencies, discrepancies or omissions exist in the Preliminary Design; or
- F. that prior to the date of this Contract any part of the Preliminary Design is described or represented by the Principal as having been completed to any particular design stage (including "Approved for Construction", "Preliminary Design Review", "System Concept Review", "Critical Design Review" or otherwise) (the "**Relevant Design Stage**"), and despite any such description or representation:
  - 1) an ambiguity, error, inconsistency, discrepancy or omission exists in the Preliminary Design which is inconsistent with the Preliminary Design having achieved the Relevant Design Stage; or
  - 2) the Contractor is otherwise required to perform work which is required to be undertaken in order for the Preliminary Design to satisfy the requirements of the Relevant Design Stage, whether or not that work has been undertaken prior to the date of this Contract.

### 5.3 Design Documentation

- (a) The Contractor must submit all Design Documentation:
  - (i) progressively to the Principal's Representative in accordance with the Contract Management Plan and the requirements of clause 9.8; and
  - (ii) at the times set out in:
    - A. the Works Brief;
    - B. the TfNSW Standard Requirements; and
    - C. the Contractor's Program.
- (b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for review (including at the completion of the design of each design package) ensure that the Design Documentation is accompanied by the following documents:
  - (i) the Contractor's Certificate of Design Compliance in the form of Schedule 18;

- (ii) a corresponding certificate from each Consultant in the form of the Consultant's Certificate of Design Compliance in the form of Schedule 20;
- (iii) a register of records of design verification and reviews applicable to the design package and other compliance records required by this Contract (all records being satisfactorily completed and signed);
- (iv) a register of any outstanding design non-conformities and unresolved issues;
- (v) a register of deficiency notices and evidence of their close out; and
- (vi) a register of concessions (if any) granted for non-conforming Design Documentation.

#### **5.4 Review of Design Documentation**

- (a) The Design Documentation must be submitted to the Principal's Representative.
- (b) Clause 9.8 applies to all Design Documentation.
- (c) Where any Design Documentation comprises a design package which the Contract requires the Principal to submit to the Configuration Control Board, after this Design Documentation has been submitted for the review of the Principal's Representative under clause 9.8, and:
  - (i) the Principal's Representative gives the Contractor the notice referred to in clause 9.8(c)(ii)C in respect of that Design Documentation; or
  - (ii) the relevant period of time in clause 9.8(c)(ii) has expired and the Principal's Representative has not rejected the Design Documentation or made any comments on the Design Documentation (except, in the case of comments, where the Contractor has responded to the comments within the required time period required by clause 9.8(d)(ii) in a manner satisfactory to the Principal's Representative),

the Principal will use reasonable endeavours to obtain a Configuration Change Acceptance Notice (where relevant) for the relevant design package from the Configuration Control Board.
- (d) Where:
  - (i) the Design Documentation for the relevant Contractor's design package to which clause 5.4(c) applies, complies with the requirements of this Contract;
  - (ii) the Configuration Change Acceptance Notice (where relevant) for that design package is not issued within 10 Business Days after the commencement of the Principal's obligation under clause

5.4(c) to use reasonable endeavours to obtain the Configuration Change Notice; and

- (iii) as a result, the Contractor is actually or will be delayed in achieving Completion,

the Contractor will be entitled to make a claim for an extension of time under clause 10.7. The Contractor will not however be entitled to make any claim under clause 10.13 for delay damages if it is granted an extension of time.

- (e) The Principal's obligations under clause 5.4(c) do not:
  - (i) create any liability for the Principal in respect of the content of the Design Documentation; or
  - (ii) relieve the Contractor of its obligations in this Contract in respect of the Design Documentation.

## 5.5 Copies of Design Documentation

- (a) The Contractor must, in accordance with clause 5.3, progressively submit to the Principal's Representative the number of copies specified in Schedule 1 of all Design Documentation, whether complete or work in progress, which it intends to use for design or construction purposes.
- (b) The Contractor must give the Principal's Representative the number of copies specified in Schedule 1 of:
  - (i) all survey information used in the design of the Works and the Temporary Works; and
  - (ii) all final Design Documentation.

## 5.6 Availability of Design Documentation

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

- (a) on the Site, at least one complete set of all Design Documentation that the Contractor is entitled to use for construction purposes pursuant to clauses 5.4 and 9.8, and any construction related documents provided by the Principal; and
- (b) at any area on or off the Site where the Contractor's Activities are being carried out, one copy of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area.

## 5.7 Ownership of Contract Documentation and Methods of Working

- (a) Subject to clause 5.7(c)(vii):
  - (i) title to and Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor will vest upon its creation for the purposes of this Contract in the Principal;

- (ii) to the fullest extent permitted by Law, the Contractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property in or in relation to the Contract Documentation prepared by the Contractor, whenever created; and
  - (iii) upon request by the Principal, the Contractor must do all things necessary to vest that title or that Intellectual Property in the Principal.
- (b) The Principal grants to the Contractor a licence to use and reproduce the Contract Documentation for the Contractor's Activities.
- (c) The Contractor:
- (i) warrants and must ensure that the Contract Documentation and any methods of working do not and will not infringe any Intellectual Property;
  - (ii) must indemnify the Principal against any claims against, and costs, expenses, losses and damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property in connection with the Works, the Temporary Works, the Contractor's Activities or the Contract Documentation, except to the extent that such actual or alleged infringement arises as a direct result of:
    - A. the Principal having provided the Contractor with material which this Contract permits the Contractor to use for the purpose of the Works, the Contractor's Activities or the Contract Documentation; and
    - B. the provision of that material to the Contractor being an infringement of a third party's Intellectual Property rights;
  - (iii) must ensure that all subcontracts between the Contractor and all subcontractors for design and documentation contain provisions to the same effect as clause 5.7(a);
  - (iv) must obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such subcontractors for design and documentation;
  - (v) must, where requested by the Principal's Representative, obtain such an acknowledgement from other subcontractors;
  - (vi) must obtain an assignment to the Principal from any third party who owns any Intellectual Property right in the Contract Documentation;
  - (vii) must if it is unable to obtain the assignment referred to in clause 5.7(c)(vi), grant or have granted to the Principal an irrevocable licence:
    - A. to use the Contract Documentation for the completion of the Works;



- B. which arises immediately upon the creation of the Contract Documentation;
  - C. which extends to any subsequent repairs to, maintenance or servicing of, or additions or alterations to the Works; and
  - D. which will survive the termination of this Contract on any basis; and
- (viii) must ensure that the Intellectual Property created for the purposes of this Contract is not used, adapted or reproduced other than for the purposes of this Contract without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).

## 5.8 Delivery Up of Contract Documentation

If this Contract is frustrated or terminated the Contractor must:

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

## 5.9 Moral Rights

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



(iii) in any context and in any way it sees fit.

## 5.10 Cost Control

The Contractor must:

- (a) use its best endeavours to ensure that it achieves Completion of the Works so that the Contract Price does not exceed the Target Budget;
- (b) without limiting clause 5.10(a), periodically review the Target Budget Estimate with the Principal's Representative as the Contractor's Activities proceed, to:
  - (i) ensure that the cost of construction of the design is in accordance with the Target Budget Estimate; and
  - (ii) advise the Principal's Representative how the design should or can be modified to ensure that the cost of the design is in accordance with the Target Budget Estimate; and
- (c) without limiting clause 5.10(a):
  - (i) institute a system of cost control;
  - (ii) periodically reconcile the actual Reimbursable Costs against the Target Budget Estimate;
  - (iii) together with the Principal's Representative, periodically review and, where approved by the Principal's Representative, amend the Target Budget Estimate:
    - A. to take account of any item affecting or likely to affect any component of the Target Budget Estimate; and
    - B. without limiting clause 5.10(c)(iii)A, to include additional detail in cost breakdown structures as the preparation of the Design Documentation proceeds;
  - (iv) advise the Principal's Representative as to the alternative steps available where:
    - A. the tenders for any part of the Reimbursable Work exceed the amount included for that work in the Target Budget Estimate; or
    - B. the Reimbursable Costs incurred under any Approved Subcontract Agreement exceed (or appear likely to exceed) the amount allowed for that particular Approved Subcontract Agreement in the Target Budget Estimate;
  - (v) periodically:
    - A. review the actual Reimbursable Costs which have been made and the Reimbursable Costs which are forecast to be payable in order to achieve Completion against the Target Budget Estimate; and
    - B. forecast the anticipated Gainshare or Painshare; and

- (vi) where requested by the Principal in writing, provide to the Principal's Representative details of any reconciliation, review or forecasting referred to in this clause 5.10.

## **6. Variations**

### **6.1 Proposed Variations**

At any time prior to the Date of Completion of the Works or the last Portion to reach Completion (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.

The Contractor must immediately take all action required under the relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Variation.

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

- (a) any proposed Reimbursable Cost Adjustments, Fee Adjustments or increase to the Preliminaries Fee carry out the Proposed Variation; and
- (b) the effect (if any) that the carrying out of the proposed Variation will have on the Contractor's Program, including the achievement of each Date for Completion.

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

### **6.2 Variation Orders**

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to the Date of Completion of the Works or the last Portion to reach Completion (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a written document titled "Variation Order", in which the Principal's Representative will state one of the following:
  - (i) the proposed Reimbursable Cost Adjustments, Fee Adjustments or increase to the Preliminaries Fee as set out in the Contractor's notice under clause 6.1 (if any) are agreed and will be made; or
  - (ii) any Reimbursable Cost Adjustments, Fee Adjustments or increase to the Preliminaries Fee will be determined under clause 6.4(a)(ii).
- (b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Contract.
- (c) The Contractor must comply with a "Variation Order" irrespective of :

- (i) the nature, extent or value of the work the subject of the Variation;
  - (ii) the location or timing (including the impact on any Date for Completion) of the work involved in the Variation; or
  - (iii) any Dispute related to the Variation.
- (d) The Contractor's entitlement (if any) to an extension of time and delay costs arising out of or in connection with a Variation will be dealt with under clause 10 and not this clause 6. The valuation of Variations under clause 6.4 will exclude any amount for costs incurred by the Contractor as a result of any delay or disruption caused by the Variation.

### 6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 14, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Contract on the basis that there will be a Fee Adjustment, Reimbursable Cost Adjustment and increase to the Preliminaries Fee in accordance with and to the extent set out in Schedule 14 for the relevant Option.

For the avoidance of doubt:

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

any Option.

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

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

- (c) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (d) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or
- (e) entitle the Contractor to an extension of time,

whether under this Contract or otherwise according to any Law.

### 6.4 Valuation

Subject to clauses 15 and 16, the amounts payable to the Contractor under the Contract will be adjusted for all Variations that have been directed by the Principal's Representative as follows:

- (a) where the Variation requires more or less Reimbursable Work, the Reimbursable Cost Adjustment will be valued as follows:
- (i) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;
  - (ii) to the extent that clause 6.2(a)(ii) applies:
    - A. in accordance with the rates or prices included in any schedule of rates or schedule of prices under any relevant Approved Subcontract Agreement, if and insofar as the Principal's Representative determines that those rate or prices are applicable to the Variation; or
    - B. to the extent sub-paragraph (A) does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Principal's Representative;
- (b) where the Variation requires more or less Design Work, the Fee Adjustments in respect of the Design Fee will be valued as follows:
- (i) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;
  - (ii) to the extent that clause 6.2(a)(ii) applies:
    - A. in accordance with the rates or prices included in Part E of Schedule 2, if and insofar as the Principal's Representative determines that those rate or prices are applicable; or
    - B. to the extent sub-paragraph (A) does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Principal's Representative;
- (c) the Fee Adjustment in respect of the Management Fee will be valued as an amount determined by multiplying the Management Fee percentage stated in Schedule 1 by the relevant Reimbursable Cost Adjustment; and
- (d) where the Variation results in a material increase or decrease in:
- (i) the scope of the Preliminaries; and
  - (ii) the resources required for, and the costs of, performing the Preliminaries,

which a prudent, competent and experienced contractor would not have anticipated as at the date of this Contract, the Preliminaries Fee will be increased or decreased (as applicable) by the following amount:

- (i) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;

- (ii) to the extent that clause 6.2(a)(ii) applies:
- A. in accordance with the rates or prices included in Part C or Part D of Schedule 2, if and insofar as the Principal's Representative determines that those rate or prices are applicable; or
  - B. to the extent sub-paragraph (A) does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Principal's Representative.

Where the Contractor is granted an extension of time in respect of the Variation, the valuation under this clause 6.4 will not include any costs recovered by the Contractor pursuant to clause 10.13.

## 6.5 Omissions

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

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

## 6.6 Contractor's Entitlements

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

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## 7. Reimbursable Work

### 7.1 Restrictions on Reimbursable Work

- (a) Subject to clause 7.14, Reimbursable Work must, unless otherwise agreed by the Principal's Representative in writing, be performed by Subcontractors under Approved Subcontract Agreements which will be made between the Contractor and Subcontractors in accordance with the procedure in this clause 7.

- (b) The Contractor must not include any of the work which forms part of the Design Work or the Preliminaries in the scope of any part of the Reimbursable Work or in any Subcontract Proposal.
- (c) The Contractor must not enter into any Subcontract with a Prohibited Subcontractor.
- (d) 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 Tendering Probity Plan.

## 7.2 Subcontract Proposal

The Contractor must:

- (a) advise the Principal and the Principal's Representative on (and obtain the consent of the Principal's Representative to) how the Reimbursable Work should be divided into packages for the purposes of facilitating the calling of tenders for Subcontractors, which must be in accordance with the Procurement Plan included in the Contractor's MCC Offer accepted by the Principal under the Framework Agreement in respect of the Works;
- (b) before inviting tenders for the performance of Reimbursable Work by Subcontractors, issue a document titled "Subcontract Proposal" to the Principal's Representative for approval which will set out particulars of:
  - (i) the part of the Reimbursable Work to be the subject of the tender;
  - (ii) the amount included for this work in the Target Budget Estimate;
  - (iii) how the Contractor will ascertain the tender list for the part of the Reimbursable Work to be the subject of the tender, including:
    - A. if an expression of interest process is to be used - details of the criteria (with weightings) for the assessment of each expression of interest; or
    - B. if an expression of interest process is not to be used - details of, and justification for the manner in which the tender list will be established;
  - (iv) how the Contractor will select the preferred tenderer including details of the criteria (with weightings) for the assessment of tenders;
  - (v) the method of delivery for the work;
  - (vi) details of the proposed conditions of subcontract which the Contractor proposes to use to enter into the subcontract; and
  - (vii) the proposed date for calling of tenders and for tender responses;

- (c) subject to paragraph (d), for the purposes of paragraph (b)(iii), if the tender list is to be ascertained by an expression of interest process, do all things necessary to carry out the expression of interest process including:
  - (i) preparing and arranging advertising;
  - (ii) preparing and distributing briefing documents;
  - (iii) evaluating responses from prospective tenderers; and
  - (iv) making a recommendation to the Principal's Representative for the purposes of clause 7.4;
- (d) obtain the prior written approval of the Principal's Representative to all advertisements and briefing documents prior to requesting expressions of interest or invitations to tender; and
- (e) pay for all advertising (local, State, Territory and national) in respect of all expressions of interest and invitations to tender. The Contractor will not be entitled to payment or reimbursement of any such costs by the Principal (whether as Reimbursable Costs or otherwise).

### 7.3 Subcontract Tender Documentation

After the Principal's Representative has approved the Subcontract Proposal, the Contractor must:

- (a) prepare the Subcontract Tender Documentation and submit a copy of it to the Principal's Representative for approval at least 21 days before tenders are to be invited; and
- (b) subsequently amend the Subcontract Tender Documentation as required by the Principal's Representative.

### 7.4 Tendering

The Contractor must:

- (a) subject to clause 7.4(c)(ii), recommend to the Principal's Representative those persons which in the Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
- (b) subject to clause 7.4(c)(ii), 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 subject to the Contractor not making a reasonable objection to any person which the Principal's Representative may remove from or add to the tender list;
- (c) call tenders from:
  - (i) subject to clause 7.4(c)(ii), the persons in the tender list finalised with the Principal's Representative; or
  - (ii) for the trade packages listed in Schedule 1 - the persons listed in Schedule 1,



in sufficient time to avoid delays or disruption to the progress of the Works; and

- (d) if so requested by the Principal's Representative, promptly provide a copy of each tender to the Principal's Representative.

## 7.5 Consideration of Tenders

The Contractor must:

- (a) examine and analyse all tenders received;
- (b) recommend to the Principal's Representative which tenderer, if any, should be accepted by the Contractor (which recommendation will be deemed to include a warranty by the Contractor that the 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); and
- (c) submit together with any such recommendation:
- (i) an evaluation report detailing the Contractor's assessment of tenders against the evaluation criteria;
  - (ii) the work to be covered and executed under the proposed subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3;
  - (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 (including any amount allowed for contingency) and the amounts tendered by other tenderers;
  - (v) any proposed amendments to the subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3;
  - (vi) the proposed tenderer's contact details;
  - (vii) if any Law in the State or Territory in which the 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 proposed tenderer is so registered or licensed; and
  - (viii) any other details which may be required by the Principal's Representative.

## 7.6 Post Tender Negotiations

If required by the Principal's Representative, the Contractor must conduct post-tender negotiations with the tenderers, which must, if the Principal's Representative so requires, be held in the presence of the Principal's Representative.

## 7.7 Subcontracts

- (a) The Principal's Representative will consider the recommended tenderer and (in its absolute discretion) approve or disapprove the Contractor's recommendation. If the Principal's Representative approves the Contractor's recommended tenderer, the Contractor must:
- (i) promptly enter into an agreement with the approved tenderer on the basis of:
    - A. the subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3 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;
  - (ii) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed subcontract agreement including the Works Brief or Design Documentation relevant to that agreement;
  - (iii) ensure that each Subcontractor executes a Confidentiality Undertaking in the form of Schedule 3 and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor;
  - (iv) where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, procure that Subcontractor to execute a Deed in the form of Schedule 5 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor; and
  - (v) procure that each Subcontractor:
    - A. engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule 1; or
    - B. in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),  
  
executes a deed in the form of Schedule 13 and provides this to the Principal's Representative within 7 days of being engaged by the Contractor.
- (b) 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)*.

- (c) Without limiting clause 7.7(a)(i)A, the Contractor must ensure that each subcontract contains provisions which bind the Subcontractor to participate in any novation required by the Principal under clause 14.5(d)(i).

## 7.8 Procedure on Disapproval

If the Principal's Representative disapproves the Contractor's recommended tenderer and the Principal's Representative directs the Contractor to accept the tender of another tenderer, the Contractor must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:
- (i) the subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3 with only such amendments as the Principal's Representative may have approved in writing; and
  - (ii) the subcontract price approved by the Principal's Representative; and
- (b) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed subcontract agreement including the Design Documentation relevant to that agreement.

## 7.9 Subcontractor Warranties

As a condition precedent to Completion of the Works or a Portion, the Contractor must procure and provide the Principal with the warranties described in Schedule 1 or elsewhere in this Contract:

- (a) from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty;
- (b) in favour of, and directly enforceable by, the Principal and any other entity nominated by the Principal's Representative from time to time against the relevant subcontractor; and
- (c) in the form set out in Schedule 10.

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 the Contract or otherwise.

If the Contractor is unable to or fails for any reason to provide any warranty from a subcontractor required by this Contract:

- (d) the Contractor is deemed to have provided the subcontractor warranty itself on like terms;
- (e) the Principal will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and

- (f) for the purpose of paragraph (e), the Contractor irrevocably appoints the Principal as its lawful attorney to execute any instrument necessary to give effect to the assignment.

No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of against the Contractor whether under the Contract or otherwise.

## **7.10 Co-ordination of subcontractors**

The Contractor must:

- (a) administer, supervise, inspect, co-ordinate and control the work of all subcontractors engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the Approved Subcontract Agreements and all subcontractors engaged by it;
- (c) appoint a duly qualified person to exercise the functions of the Contractor's Representative under the Approved Subcontract Agreements and otherwise ensure the Approved Subcontract Agreements are administered in accordance with:
- (i) the terms of the Approved Subcontract Agreements; and
  - (ii) the directions of the Principal's Representative; and
- (d) at all times co-ordinate the Contractor's Activities and ensure execution and completion of the Approved Subcontract Agreements in a proper and workmanlike manner according to:
- (i) the Design Documentation which the Contractor is entitled to use for construction purposes under clause 9.8(e); and
  - (ii) the obligations of the respective subcontractors.

## **7.11 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:

- (a) the Contractor will be responsible for carriage of the dispute, provided it must:
- (i) keep the Principal's Representative fully informed of all aspects of the dispute; and
  - (ii) 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);
- (b) subject to:

- (i) the Principal's Representative prior written approval (which may be given or withheld at the Principal's Representative's absolute discretion); and
- (ii) the Contractor complying with all reasonable directions of the Principal's Representative in relation to the dispute, then  
any external legal, expert or consultants costs incurred by the Contractor arising out of the defence of any court action, arbitration or adjudication will form part of the Reimbursable Costs; and
- (c) the Contractor's own internal costs of administering the court action, arbitration or adjudication application will not form part of the Reimbursable Costs.

## 7.12 Responsibility for subcontractors

- (a) The Contractor will:
  - (i) not be relieved from any of its liabilities or obligations under the Contract; and
  - (ii) remain responsible for all subcontractors and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any subcontractors default or otherwise fail to observe or comply with the requirements of the relevant subcontract,  
despite:
    - (iii) subcontracting any part of the Design Work, the Preliminaries or the Reimbursable Work;
    - (iv) any comments upon, consent to or review, approval or disapproval of:
      - A. a Subcontract Proposal under clause 7.2; or
      - B. a tenderer recommended by the Contractor under clause 7.5(b),  
by the Principal or the Principal's Representative;
  - (v) the Principal listing the persons from whom tenders are to be obtained under clause 7.4(c)(ii) for the trade packages listed in Schedule 1;
  - (vi) any direction by the Principal's Representative under clause 7.7 to accept the tender of a tenderer other than that recommended by the Contractor;
  - (vii) being required to accept a novation of the agreements between the Principal and the subcontractor stated in Schedule 1 under clause 14.5(d)(i); or

- (viii) any other act or omission of the Principal or the Principal's Representative in connection with the subcontracting of any part of the Design Work, the Preliminaries or the Reimbursable Work.
- (b) Subject to clause 7.13 but otherwise without limitation, if the Contractor terminates an Approved Subcontract Agreement:
  - (i) the Contractor must complete the work the subject of the terminated Approved Subcontract Agreement; and
  - (ii) bear the extra costs incurred by the Contractor in completing this work, and such costs will not form part of the Reimbursable Costs.

### **7.13 Subcontractor Insolvency**

Where an Insolvency Event occurs in relation to a subcontractor, the Contractor must:

- (a) promptly notify the Principal's Representative of this fact; and
- (b) if the Contractor terminates the Approved Subcontract Agreement:
  - (i) promptly notify the Principal's Representative of this; and
  - (ii) engage another person as Subcontractor in accordance with this clause 7 to complete the work the subject of the terminated Approved Subcontract Agreement.

### **7.14 Reimbursable Work by Contractor or Related Body Corporate**

- (a) The Contractor or a Related Body Corporate of the Contractor must not itself carry out any part of the Reimbursable Work other than the Self-Performed Reimbursable Work unless:
  - (i) the prior written approval of the Principal's Representative is obtained; and
  - (ii) the Contractor and the Principal's Representative agree upon a fixed price or rates, or a combination of a fixed price and rates, for the work prior to the Contractor or the Related Body Corporate of the Contractor commencing the work (which prices and rates must exclude any margin for Off-Site overheads or profit).
- (b) The Principal's Representative will not object to the Contractor performing the Self-Performed Reimbursable Work.
- (c) The Contractor must not commence any part of the Self-Performed Reimbursable Work until written approval is received from the Principal's Representative.
- (d) Prior to receiving approval from the Principal's Representative pursuant to clause 7.14(c) the Contractor must provide to the Principal's Representative the following particulars in writing:
  - (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 the Contract and ensure compliance with ASA Requirements;
  - 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 progress claim made by the Contractor for carrying out the proposed works;
- (iii) the target budget (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Target Budget Estimate including details of the applicable rate or rates from the schedule of rates that will apply to the work, or if there are no applicable rate or rates, explaining why the rates in the schedule of rates do not apply and providing details of its proposed rate (which must be exclusive of any margin for Off-Site overheads or profit);
- (iv) the cash flow for the proposed works;
- (v) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current program;
- (vi) the proposed project team to undertake the proposed works including all construction workers, managerial and technical personnel;
- (vii) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;
- (viii) 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
- (ix) 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.
- (e) 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.
- (f) In carrying out the Self-Performed Reimbursable Work the Contractor must:
- (i) carry out the Self-Performed Reimbursable Work in an efficient manner;



- (ii) carry out the Self-Performed Reimbursable Work so as to avoid interfering with, disrupting or delaying the work of subcontractors and Other Contractors;
- (iii) not vary the work which is the subject of the Self-Performed Reimbursable Work unless the Principal's Representative has directed a Variation under clause 6 and that Variation relates directly to the work the subject of the Self-Performed Reimbursable Work; and
- (iv) each day 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 which identifies as a minimum:
  - A. the part of the Self-Performed Reimbursable Work being performed by the Contractor as described in Schedule 9;
  - 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.
- (g) The Principal's Representative may direct the manner in which the matters described in clause 7.14(f)(iv) are to be recorded.
- (h) 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.
- (i) The Self-Performed Reimbursable Work is to be undertaken on an "open book" basis and will be subject to an independent third party audit as required by the Principal's Representative which audit will include ensuring that the amount payable for Self-Performed Reimbursable Work excludes any margin for Off-Site Overhead or profit. The Contractor must cooperate in facilitating any such audit 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 7.14.

## 7.15 Tendering Probity

The Contractor must:

- (a) prepare the Tendering Probity Plan in accordance with clause 9.8;
- (b) carry out the tender processes for Reimbursable Work:

- (i) so as to ensure the probity and competitiveness of the tender process; and
- (ii) in accordance with the Tendering Probity Plan; and
- (c) comply with any direction by the Principal's Representative concerning the probity and competitiveness of the tender processes for Reimbursable Work.

The Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract 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.

## **7.16 Construction**

- (a) The Contractor must construct and handover to the Principal the Works and construct the Temporary Works:
  - (i) in accordance with:
    - A. subject to clause 7.16(b), the Works Brief (including any Preliminary Design) and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of the Contract and not rejected by the Principal's Representative under clause 9.8;
    - B. any direction of the Principal's Representative given or purported to be given under a provision of this Contract; and
    - C. the other requirements of this Contract; and
  - (ii) so that they are fit for their intended purposes.
- (b) If there is any ambiguity, discrepancy or inconsistency between this Contract (including the Works Brief and any Preliminary Design) and any Design Documentation which has been prepared by the Contractor and not rejected by the Principal's Representative under clause 9.8, then, unless otherwise directed by the Principal's Representative, the requirements of this Contract will prevail.
- (c) At monthly intervals during the construction work and at the Completion of the Works or each Portion, the Contractor must submit to the Principal's Representative a Contractor's Certificate of Construction Compliance in the form of Schedule 19.

## **7.17 Co-operation with Other Contractors**

Without limiting or being limited by clause 2.8, the Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;

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

The Principal shall procure that each of its Other Contractors that undertakes work on part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site executes a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule 23 and provide the Contractor with an executed copy of each such deed poll.

### **7.18 Setting Out**

The Contractor must:

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

If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must at its cost rectify the error and shall not be entitled to include any costs incurred as a result in the Reimbursable Costs.

### **7.19 Survey**

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

- (a) for its review under clause 9.8 a Survey Plan for the Works or the relevant Portion that:
  - (i) has regard to the setback requirements in the Building Code of Australia;
  - (ii) has regard to any stratum lots whether above or below ground;
  - (iii) has regard to the survey control requirements of any relevant Rail Transport Agency;
  - (iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
  - (v) shows all internal title boundaries;

- (vi) shows all easements; and
- (vii) shows the location of the Works and all Services; and
- (b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
  - (i) the whole of the Works or the Portion has been constructed within the relevant boundaries of the Site stipulated in Schedule 1;
  - (ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law and this Contract;
  - (iii) the survey information included in the configuration materials provided pursuant to the TfNSW Standard Requirements complies with the requirements of this Contract; and
  - (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Contract.

The Contractor must ensure that none of the work required under clauses 7.19(a) and 7.19(b) is performed as Reimbursable Work under Approved Subcontract Agreements and agrees that it has included an allowance in the Design Fee or Preliminaries Fee for such work.

## 7.20 Cleaning Up

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

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

## 7.21 Safety

- (a) 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.

If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.

- (b) The Contractor must:
  - (i) ensure that in carrying out the Contractor's Activities:

- A. it complies with all Law, including the WHS Law, and other requirements of this Contract for work health, safety and rehabilitation management;
  - B. all subcontractors comply with the requirements referred to in this clause 7.21 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 work health and safety duty in relation to the same matter;
- (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the 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 subparagraph (iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
  - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.21), 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 Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
  - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
  - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 7.21.
- (c) Without limiting clause 17.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.

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

- (i) taking the action contemplated in this clause 7.21(c); or
- (ii) the Contractor's failure to take that action,

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

- (d) Where clause 17.28 applies, the Contractor:
  - (i) warrants that it is accredited under the WHS Accreditation Scheme; and
  - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while "building work" (as defined in section 5 of the *Fair Work (Building Industry) Act 2012* (Cth)) is carried out.

## **7.22 Construction Plant and Materials Removal**

Except for the purpose of achieving Completion as contemplated by clause 7.20(c), the Contractor must not remove from the Site or the Contractor's Activities any:

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

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

## **7.23 Principal Supplied Items**

- (a) The Principal must:
  - (i) make available the Principal Supplied Items to the Contractor:
    - A. at its own cost;
    - B. at the respective places referred to in Schedule 27; and
    - C. by the respective date referred to in Schedule 27; and
  - (ii) use its best endeavours to procure that the Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.
- (b) The Contractor:
  - (i) agrees that, in respect of Principal Supplied Items, the:

- A. Contractor:
- 1) warrants that it has reviewed the Works Brief and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Contract;
  - 2) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 10 if a Principal Supplied Item is not made available by the relevant date set out in Schedule 27; and
  - 3) is not relieved from and remains liable for complying with, all of its obligations under this Contract, despite the Principal making available the Principal Supplied Items; and
- B. *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under clause 7.23(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and
- (ii) must:
- A. at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 27 to the Site or Extra Land (as applicable); and
  - B. as part of the Contractor's Activities, incorporate each Principal Supplied Item into the Works.

## 7.24 Rail Safety

- (a) In carrying out any part of the Contractor's Activities which require Accreditation as a Rail Infrastructure Manager, the Contractor:
- (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
  - (ii) must not do anything that may cause the Principal to breach its obligations under the Rail Safety National Law; and
  - (iii) must ensure that the Contractor's subcontractors engaged in or in connection with the Contractor's Activities, comply with clauses 7.24(a)(i) and 7.24(a)(ii).



- (b) In carrying out any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator, the Contractor must:
- (i) ensure that the Contractor, or one of the Contractor's subcontractors, holds the necessary Accreditation for that part of the Contractor's Activities; and
  - (ii) comply with the conditions of that Accreditation.
- (c) Without limiting or otherwise affecting any other provision under this Contract, the Contractor must, and must ensure that the Contractor's subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator.
- (d) To the extent not prohibited by Law, the Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the Contractor's failure to comply with this clause 7.24.

## **8. Defects**

### **8.1 Defects Liability**

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

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

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

### **8.2 Defect Notification**

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

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

### 8.3 Rectification of Defect

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

- (a) the Contractor must rectify the Defect (or the part of it notified):
  - (i) within the times specified in the Principal's Representative's direction, which will generally be limited to the periods during which the rectification work will cause minimal or no inconvenience to the operators, including any Rail Transport Agency (where relevant), and occupants of the Works; and
  - (ii) if after Completion of the Works or relevant Portion:
    - A. at other times otherwise agreed with the Principal's Representative;
    - B. in accordance with the requirements of the operators of the Works, including any Rail Transport Agency (where relevant), and any other relevant Authority;
    - C. so as to minimise the impact on the use of the Works or the Portion; and
    - D. in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Service or any access to the Works or the Portion; and
- (b) if the Contractor does not comply with clause 8.3(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 Contract or otherwise at Law, give the Contractor a direction under clause 8.2(c) and have the rectification work carried out at the Contractor's expense, and the cost of the rectification work incurred by the Principal will be a debt due from the Contractor to the Principal.

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

### 8.4 No Claim for Correction of Defect

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

### 8.5 Acceptance of Work

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

- (a) where the value to the Principal of the Works is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified) a negative Reimbursable Cost Adjustment will apply, the value of which will

be determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Works; or

- (b) where the value to the Principal of the Works increases because of the acceptance of the Defect (or the part notified):
  - (i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works; and
  - (ii) there will be:
    - A. a negative Reimbursable Cost Adjustment determined by the Principal's Representative, where the amount determined under clause 8.5(b)(i) is negative; and
    - B. no Reimbursable Cost Adjustment where the amount determined under clause 8.5(b)(i) is positive.

## **8.6 Extension of Defects Rectification Period**

If:

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

the relevant Defects Rectification Period for the work required by the notice will be extended by the period set out in Schedule 1, commencing upon completion of the rectification of the Defect (or the part notified).

## **8.7 Defect Rectification by Other Contractor**

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

- (a) without limiting or otherwise affecting clauses 2.8 or 7.17, the Contractor must not impede the Other Contractor from having sufficient access to the Site or Extra Land to rectify the Defect or carrying out the Variation; and
- (b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Variation, will be a debt due from the Contractor to the Principal.

## **8.8 Rights Not Affected**

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

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this Contract;

- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any notice or direction of the Principal's Representative under clause 8.2.

## **9. Administration**

### **9.1 Principal's Representative**

- (a) The Principal must ensure that at all times until Final Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Contract if exercised or made (or if it is not exercised or made) by the Principal's Representative:

- (i) independently;
- (ii) after consultation with the Principal and its advisers; or
- (iii) as directed by the Principal.

Any control or influence exercised by the Principal over the Principal's Representative does not:

- (iv) 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
- (v) 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.

The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.

Except where this Contract otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.

- (b) The parties acknowledge that any direction by the Principal's Representative under one of the clauses referred to in Schedule 1 is an interim position only and that, without limiting the rights of the Principal's Representative under clause 11.3, either party may seek to have any such direction opened up, reviewed, decided and substituted pursuant to clause 15 by giving a notice of dispute to the other party and the Principal's Representative in accordance with clause 15.1.

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

## 9.2 Replacement of the Principal's Representative

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

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

## 9.3 Delegation of Functions

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

## 9.4 Contractor's Personnel

- (a) The Contractor must notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Contract is the relevant person listed in Schedule 1) and of any subsequent changes.
- (b) The Contractor must:
  - (i) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions;
  - (ii) subject to clause 9.4(b)(iii), not replace the individuals referred to in clause 9.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and
  - (iii) if any of the individuals referred to in clause 9.4(b)(i):

- A. dies;
  - B. becomes unable to continue in their positions due to illness;
  - C. resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)); or
  - D. becomes the subject of a direction under clause 9.4(c),  
replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative.
- (c) The Principal's Representative may, at its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.4(a) or clause 9.4(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.
- (d) The Contractor must ensure that any person the subject of a direction under clause 9.4(c) is not again employed in the Contractor's Activities or on the Site.
- (e) Any direction under clause 9.1(a) will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

## 9.5 Site Meetings

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

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

## 9.6 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
  - (i) is independent of the parties;



- (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
- (iii) shall advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
- (iv) shall have the authority and independence to:
  - A. direct the Contractor as to; or
  - B. advise the Principal's Representative to direct the Contractor as to,
    - reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts;
- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

## 9.7 Industrial Relations

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

- (a) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
- (b) ensure all subcontractors manage all aspects of the industrial relations with their employees appropriately;
- (c) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
- (d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;
- (e) without limiting clauses 2.2 and 9.17, comply with all the requirements of the NSW Code and the NSW Guidelines;
- (f) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Contract Management Plan, in accordance with the TfNSW Standard Requirements and clause 9.8;



- (g) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft outline Industrial Relations Management Plan (if any) submitted with the Contractor's Tender;
- (h) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 9.8;
- (i) submit to the Principal's Representative, before beginning work on the Site or Extra Land, a statement detailing:
  - (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
  - (ii) the names of each award or enterprise agreement that is likely to cover the Contractor and subcontractors involved in the Contractor's Activities; and
  - (iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
- (j) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
- (k) before beginning work on the Site or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
  - (i) payment of remuneration to employees;
  - (ii) annual leave provisions;
  - (iii) Long Service Leave Payment Scheme registration;
  - (iv) obligations to register workers under the Building and Construction Industry Long Service Payments Act 1986 (NSW);
  - (v) workers' compensation insurance, including self-insurance arrangements;
  - (vi) superannuation fund membership and contributions; and
  - (vii) over-award payments such as redundancy fund contributions; and
- (l) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

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

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

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

## **9.8 Submission for Review by the Principal's Representative**

- (a) The Contractor must submit each Document:
  - (i) in accordance with the times stated in this Contract or otherwise progressively and in timely manner to ensure that the Contractor's Activities are commenced, progressed and completed by the times required under this Contract, and by the times or within the periods:
    - A. identified in the Contractor's Program which is not rejected by the Principal's Representative; or
    - B. in the absence of a time or period in the Contractor's Program, required by the Principal's Representative; and
  - (ii) under cover of a written notice entitled "Submit for Review", which identifies:
    - A. the Document; and
    - B. the provision of this Contract under which the Document is submitted.
- (b) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
  - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
  - (ii) the Contractor has otherwise complied with this clause 9.8, in addition to any other requirement of this Contract relating to the submission of that Document.
- (c) The Principal's Representative may, after the submission of a Document which satisfies the requirements of clause 9.8(b):
  - (i) review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and
  - (ii) where submitted or resubmitted in accordance with a program which has not been rejected by the Principal's Representative, within 15 Business Days of submission by the Contractor of such Document or resubmitted Document:

- A. reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this Contract, stating the nature of the non-compliance;
  - B. make comments on the Document; or
  - C. notify the Contractor that it has no (or has no further) comments to make.
- (d) If any Document 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 9.8 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.

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

- (e) The Contractor must not:
- (i) issue any Subcontract Tender Documentation to tenderers for; or
  - (ii) commence construction of,  
any part of the 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 9.8(c)(ii) to review the Document and has not rejected the Document or made any comments on the Document (except in the case where the Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.8(d)).
- (f) The Contractor must not amend for construction purposes any Document that has:
- (i) been submitted to the Principal's Representative; and
  - (ii) not been rejected or not had comments made about it under clause 9.8(c)(ii),  
unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 9.8 will re-apply.
- (g) The Principal's Representative does not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, a Document submitted by the Contractor, including for errors, omissions or non-compliance with this Contract.

- (h) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Contract in any Document submitted.
- (i) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the Contractor, or any other direction by the Principal's Representative in connection with the Document, will:
  - (i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a written document titled "Variation Order" and describes the nature of the Variation in accordance with clause 6.2(a);
  - (ii) relieve the Contractor from or alter its liabilities or obligations, whether under this Contract or otherwise according to any Law; or
  - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Contract or otherwise according to any Law.
- (j) In considering any Document, the Principal's Representative may consult with and take into account any views or requirements of any relevant Authority.
- (k) Unless otherwise advised by the Principal's Representative, the Contractor must submit the number of copies of a Document stated in this Contract, or if no number is stated then:
  - (i) an electronic version on CD (in both pdf and native formats), which must be virus free;
  - (ii) 1 printed original; and
  - (iii) 3 printed copies (2 bound and 1 unbound).

## 9.9 Work Method

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

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

## 9.10 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under

clause 9.11) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Contract.

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

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

### 9.11 Financial Assessment

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

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

### 9.12 Employment of Aboriginal People

The Contractor must:

- (a) comply with the requirements of the NSW Government Policy on Aboriginal Participation in Construction (May 2015) Category 2;
- (b) within 60 days of the execution of this Contract, provide to the Principal an Aboriginal Participation Plan in accordance with the NSW Government Policy on Aboriginal Participation in Construction (May 2015) Category 2; and
- (c) provide, to the Principal, an Aboriginal Participation Report every 3 months in accordance with the format detailed in the NSW Government Policy on Aboriginal Participation in Construction (May 2015).

### 9.13 Waste Reduction and Purchasing Policy

The Contractor must:

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

#### 9.14 Training of apprentices and trainees

- (a) Subject to the express provisions of the Contract, the Contractor must comply with the NSW Procurement Board direction PBD-2016-02 Construction Apprenticeships (**PBD-2016-02**).
- (b) Training management requirements specified in the Contract and compliance with PBD-2016-02 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 Federal or NSW law.
- (c) Where applicable, as indicated in Schedule 1, at least 14 days before starting work on the Site the Contractor must document and submit a Project Training Management Plan which complies with PBD-2016-02.
- (d) The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (e) The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 9.14.
- (f) The Contractor:
  - (i) acknowledges that the target for the engagement of apprentices and trainees engaged by the Contractor to perform the Contractor's Activities is as specified in Schedule 1 (**Training Target**);
  - (ii) must make reasonable endeavours to achieve the Training Target;
  - (iii) provide written reports to the Principal quarterly, in a format set out in Schedule 29, and at such other times as may be requested by the Principal, detailing the number of apprentices and trainees engaged by the Contractor in the Contractor's Activities against the Training Target; and
  - (iv) provide the Principal with all other assistance and information it requires in relation to the Contractor's performance against the Training Target in order for the Principal to comply with its reporting obligations at Law, including promptly making all



relevant records available to the Principal after any written request by the Principal.

## 9.15 National Greenhouse and Energy Reporting Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) if any of the Contractor's Activities, or the activities of any of the Contractor's personnel, in connection with the Contractor's Activities (the "**Relevant Matters**") constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 9.15(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the 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) 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) 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) the Contractor must:
  - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.15, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
  - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);

- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.15 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 9.15 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

### 9.16 TfNSW's Statement of Business Ethics

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

### 9.17 NSW Code of Practice

- (a) In addition to terms defined in this document, terms used in this clause 9.17 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement : Building and Construction ("**NSW Guidelines**") (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- (b) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement ("**NSW Code**") and NSW Guidelines.
- (c) The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (d) Where the Contractor engages a subcontractor, the Contractor must ensure that the contract imposes on the subcontractor equivalent obligations to those in this clause 9.17, including that the subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (e) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- (f) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors and related entities.
- (g) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;

- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the Works;
- (v) have access to personnel; and
- (vi) interview any person,

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

- (h) The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (i) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (j) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (k) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - A. record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.
- (l) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (m) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.

- (n) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project 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.

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## 10. Time and Progress

### 10.1 Rate of Progress

The Contractor must:

- (a) immediately commence, and thereafter regularly and diligently progress the Contractor's Activities;
- (b) proceed with the Contractor's Activities with due expedition and without delay; and
- (c) achieve Completion of the Works and each Portion by the relevant Date for Completion.

Without limiting the Contractor's rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where directed by the Principal's Representative under clause 10.14.

Without limiting the next paragraphs of this clause 10.1 or clause 10.4, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this Contract.

The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Contract.

The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.

If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Variation except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this Contract.

Such costs shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1.

## 10.2 The Contractor's Programming Obligations

The Contractor must:

- (a) prepare and provide a Contractor's Program that complies with and includes the details required by this Contract and any requirements of the Principal's Representative;
- (b) submit the Contractor's Program to the Principal's Representative for its review in accordance with clause 9.8 within the earlier of:
  - (i) 20 Business Days of the date of this Contract; or
  - (ii) any time required by the TfNSW Standard Requirements;
- (c) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction;
- (d) update, revise and submit to the Principal's Representative an updated Contractor's Program:
  - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding claims for extensions of time to any Date for Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative; and
  - (ii) on a monthly basis or whenever directed to do so by the Principal's Representative;
- (e) prepare and provide for the Principal's Representative's information only versions of all Contractor's Programs prepared in accordance with clause 10.2(d) that also allow for those claims for an extension of time to any Date for Completion that have been made by the Contractor in accordance with clause 10.8 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;
- (f) comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirements in clause 9.8; and

- (g) not depart from the current version of the Contractor's Program that has been submitted to the Principal's Representative for review under clause 9.8 and not been rejected by the Principal's Representative within 15 Business Days.

### 10.3 Contractor not Relieved

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

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

### 10.4 Compression by Contractor

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

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

### 10.5 Importance of Completion on Time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 10.1; and
- (b) that a Date for Completion will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

### 10.6 Risk and Notice of Delay

- (a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this Contract both before and after any Date for Completion.
- (b) The Contractor must within 5 days of the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of any delay or likely delay to the carrying out



of the Contractor's Activities, details of the cause and how any Date of Completion is likely to be affected (if at all).

## 10.7 Entitlement to Claim Extension of Time

- (a) If the Contractor is, or will be, delayed on or prior to the Date for Completion of the Works or a Portion, by reason of:
- (i) an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); or
  - (ii) a cause set out in Schedule 1,
- in a manner that will prevent it from achieving Completion of the Works or the Portion by the relevant Date for Completion, the Contractor may claim an extension of time to the relevant Date for Completion.
- (b) If the Contractor is, or will be, delayed after the Date for Completion of the Works or a Portion, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative) in a manner which will delay it in achieving Completion of the Works or a Portion, the Contractor may claim an extension of time to the relevant Date for Completion.

## 10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Completion, which:
- (i) gives detailed particulars of the:
    - A. delay and the occurrence causing the delay; and
    - B. activities that are critical to the maintenance of progress in the execution of the Contractor's Activities; and
  - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:
    - A. conditions precedent to an extension of time in clause 10.9 have been met; and
    - B. occurrence will delay it in achieving Completion in the manner described in clause 10.7; and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:

- (i) every 14 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and
- (ii) containing the information required by clause 10.8(a).

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

## 10.9 Conditions Precedent to Extension of Time

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

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

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

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

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

## 10.10 Extension of Time

Subject to clause 10.11, if the conditions precedent in clause 10.9 have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Contractor within 28 days after the latest of the:

- (a) Contractor's written claim under clause 10.8; and

- (b) provision by the Contractor of any additional information regarding the claim required under clause 10.8.

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

### **10.11 Reduction in Extension of Time**

The Principal's Representative will reduce any extension of time to the relevant Date for Completion it would otherwise have determined under clause 10.10 to the extent that the Contractor:

- (a) contributed to the delay; or
- (b) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

### **10.12 Unilateral Extensions**

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Completion, under clause 10.10, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any Date for Completion by any period specified in a notice to the Contractor and the Principal.

The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.12 may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, arbitration or litigation proceedings).

### **10.13 Delay Damages**

For each day by which the Date for Completion of the Works or a Portion is extended due to:

- (a) a breach of this Contract by the Principal;
- (b) the cancellation of a Track Possession or power isolation specified in the Contract as available for use by the Contractor:
  - (i) less than 8 weeks prior to the time at which it was planned to commence; and
  - (ii) without the provision of an alternative Track Possession or power isolation at a time the Contractor is reasonably able to utilise in

substitution for the cancelled Track Possession or power isolation,  
or

- (c) a Variation the subject of a direction by the Principal's Representative under clause 6.2, except where that Variation is directed in the circumstances described in clause 8.2(c),

then:

- (d) a Reimbursable Cost Adjustment will apply and be valued as the costs reasonably and necessarily incurred by the Contractor as a direct result of the delay the subject of the extension of time, as determined by the Principal's Representative who must, where they are applicable, use the rates and prices in Schedule 1; and
- (e) the Principal's Representative will determine up to and including the maximum daily amount set out in Schedule 1 the reasonable and necessary additional costs incurred or to be incurred by the Contractor in respect of the Preliminaries as a direct result of the delay the subject of the extension of time and the Preliminaries Fee will be increased by that determined amount.

The valuation of entitlements to money under clauses 3.5(c) (if Alternative 2 of clause 3.5 applies), 10.1 and 13.3 is not a Variation for the purposes of clause 10.13(c).

The amounts payable pursuant to this clause 10.13 will be a limitation upon the Principal's liability to the Contractor for any delay or disruption that:

- (f) the Contractor encounters in carrying out the Contractor's Activities; and
- (g) arises out of, or in any way in connection with, the breach of this Contract by the Principal,

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

## 10.14 Suspension

The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities. Nothing in this clause limits the Principal's rights under clause 2.9.

If the suspension under this clause 10.14 arises in the circumstance set out in clause 2.9(f) then clauses 2.9(f) and 2.9(g) will apply, otherwise where it arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with this Contract (including under clause 4.6 or clause 4.7 or where the Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Contract or where any process, procedure, test method, calculation, analysis or report required by this Contract has resulted in or will result in a non-conformance):
- (i) the Reimbursable Costs will not include the costs incurred as a result of the suspension;

- (ii) there will be no Reimbursable Cost Adjustment, Fee Adjustment or adjustment to the Preliminaries Fee as a result of the suspension; and
  - (iii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to perform its obligations in accordance with this Contract:
- (i) a direction to suspend under this clause 10.14 will entitle the Contractor to an extension of time to any relevant Date for Completion where it is otherwise so entitled under clause 10;
  - (ii) the Principal's Representative will determine any extra costs reasonably incurred by the Contractor as a direct result of the suspension and a Reimbursable Cost Adjustment will apply for the amount determined;
  - (iii) the Preliminaries Fee will be increased by the amount of any extra on-Site overhead costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Principal's Representative;
  - (iv) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
  - (v) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(b).

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## 11. Payment

### 11.1 Progressive Payments

Subject to clause 17.12 and to any other right to set-off that the Principal may have, the Principal will pay the Contractor in progressive payments as follows:

- (a) the Reimbursable Costs in monthly instalments based on the Contract value of the Reimbursable Work which has been carried out and any applicable Reimbursable Cost Adjustments in the relevant month; and
- (b) the:
  - (i) Design Fee will be paid in monthly instalments in accordance with the provisions of Schedule 2;
  - (ii) Preliminaries Fee will be paid in monthly instalments in accordance with the provisions of Schedule 2; and
  - (iii) Management Fee will be paid in monthly instalments in accordance with the provisions of Schedule 2.

The Framework Agreement sets out the mechanism by which the Gainshare or Painshare is paid by the Principal to the Contractor or the Contractor to the Principal (as the case may be) and any P&C Payment is paid by the Principal to the Contractor.

## 11.2 Payment Claims

The Contractor may give the Principal's Representative a claim for payment on account of all amounts then payable by the Principal to the Contractor under the Contract on each Payment Claim Date.

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

Each claim for payment must:

- (a) be in such form as the Principal's Representative reasonably requires;
- (b) show separately the amounts (if any) claimed on account of:
  - (i) the Reimbursable Costs payable to:
    - A. Subcontractors; and
    - B. the Contractor,

including any Reimbursable Cost Adjustment which must be identified separately;

- (ii) the Design Fee;
- (iii) the Preliminaries Fee;
- (iv) the Management Fee; and
- (v) other amounts payable under the Contract; and
- (c) set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
  - (i) 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 the Contract; and
  - (ii) including any such documentation or information which the Principal's Representative may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment.

The Contractor may not include in any payment claim under this clause 11 any amount in respect of a Claim which is barred by clause 16.6 or any other provision of this Contract.

## 11.3 Payment Statements

The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.9 or a Final Payment Claim



under clause 11.11, issue to the Contractor and the Principal a payment statement which, identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

- (a) the Contractor's total value of entitlement under the Contract;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Contract;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of all amounts payable in accordance with the Contract and which the Principal proposes to pay to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and
- (e) if the amount in paragraph (d) is less than the amount claimed in the Progress Claim, Completion Payment Claim or Final Payment Claim:
  - (i) the reason why the amount in paragraph (d) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
  - (ii) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

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

Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.

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

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

## 11.4 Payment

- (a) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.6, 11.8, 14.3, 14.7(a) and 17.12, the Principal must, within 15 Business Days of receipt of the payment claim to which the payment statement relates pay the Contractor the amount set out in the payment statement referred to in clause 11.3.
- (b) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 11.3, pay the Principal the amount set out in the payment statement referred to in clause 11.3.

## 11.5 Payment on Account

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

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

but is only to be taken as payment on account.

## 11.6 Payment Claim Requirements

Prior to submitting a payment claim, the Contractor must have:

- (a) complied with clause 1.5;
- (b) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 2.6;
- (c) provided the Principal's Representative with:
  - (i) a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 11, made out not earlier than the date of the payment claim;
  - (ii) a Contractor's Certificate of Design Compliance and a Contractor's Certificate of Construction Compliance, in the forms of Schedule 18 and Schedule 19;
  - (iii) each Consultant Certificate of Design Compliance in the form of Schedule 20; and
  - (iv) where clause 11.15(g) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause; and

- (d) effected or procured to be effected the insurances required to be effected by the Contractor by clauses 13.4, 13.5 and 13.6 and (if requested) provided evidence of this to the Principal's Representative.

Unless the Contractor has complied with the conditions set out above the Contractor will have no entitlement to submit a payment claim under clause 11.2.

## 11.7 Unfixed Plant and Materials

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

- (a) the Contractor provides evidence of:
- (i) ownership of the plant or materials;
  - (ii) identification and labelling of the plant and materials as the property of the Principal; and
  - (iii) adequate and secure storage and protection;
- (b) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 7 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the Contractor to the Principal;
- (c) the plant and materials are on the Site or are available for immediate delivery to the Site;
- (d) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
- (e) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal's Representative; and
- (f) if the PPS Law applies, the Contractor has registered a Security Interest in the unfixed plant and materials in favour of the Principal in accordance with clause 17.26.

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

The security provided in accordance with clause 11.7(b) will be released once the applicable unfixed plant and materials are incorporated into the Works and are fit for their intended purpose.

## 11.8 Payment of Employees and Subcontractors

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(c)(i).

- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.6(c)(i), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (c) If an employee or a subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the Contractor the Principal will not make any payment to an employee or subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
- (e) Nothing in this clause 11.8 limits or otherwise affects the Principal's right under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

## 11.9 Completion Payment Claim

No later than 28 days after the issue of the Notice of Completion for the Works or the last Portion to reach Completion, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating all amounts which the Contractor claims from the Principal on account of all amounts payable under the Contract.

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

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

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

## 11.10 Release after Completion Payment Claim

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

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

### 11.11 Final Payment Claim

No later than 28 days after the expiration of the last Defects Rectification Period, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating all amounts which the Contractor claims from the Principal on account of all amounts payable under the Contract (including, the Gainshare or Painshare, if any).

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

With the Final Payment Claim the Contractor must lodge with the Principal's Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Final Payment Claim. The Final Payment Claim and Second Statement of Outstanding Claims must not identify any Claims from which the Contractor releases the Principal in accordance with clause 11.10.

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

### 11.12 Release after Final Payment Claim

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

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

### 11.13 Interest

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

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

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

#### 11.14 Correction of Payment Statements

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

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

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

#### 11.15 Security of Payment Act

- (a) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to the Contractor:
  - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 11.3;
  - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
  - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
  - (iv) the Principal's Representative:
    - A. is not bound by the adjudication determination;
    - B. may reassess the value of the work that was valued by the adjudicator; and
    - C. may, if it disagrees with the adjudication determination, express its own valuation in any payment statement; and
  - (v) the payment statement referred to in clause 11.15(a)(iv)C will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 15.



- (b) For the purposes of section 17(3) of the SOP Act the Contractor irrevocably chooses the Resolution Institute, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Contract.
- (c) Without limiting clauses 11.8 or 17.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (d) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
- (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and
  - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
    - A. 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.
- (e) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (f) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.
- (g) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within 5 days of the occurrence of the event in sub-paragraph (i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

## 11.16 Title

Title in all items forming part of the Works will pass progressively to the Principal on the earlier of payment for or delivery of such items to the Site. Risk in all such items remains with the Contractor until Completion.

## 11.17 Gainshare / Painshare

- (a) The Principal's Representative must, within 30 days after the Date of Final Completion, notify the Contractor in writing of the Gainshare or Painshare for this Contract, as determined by the Principal's Representative in accordance with clause 11.17(b).
- (b) If the Contract Price is:
  - (i) less than the Target Budget, then the **Gainshare** will be the amount determined by applying the percentage stated in Schedule 1 to the amount (if any) by which the Contract Price is less than the Target Budget; or
  - (ii) greater than the Target Budget, then the **Painshare** will be the amount determined by applying the percentage stated in Schedule 1 to the amount (if any) by which the Contract Price exceeds the Target Budget.
- (c) 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 this clause 11.17.

## 11.18 Performance and Compliance (P&C) Payments

- (a) The Principal's Representative must, within 10 Business Days after the end of each month during the P&C Payment Period, notify the Contractor in writing of the performance and compliance payment for this Contract for that month ("**P&C Payment**"), as determined by the Principal's Representative, in its absolute discretion, having regard to:
  - (i) the performance in that month of the Contractor's Activities;
  - (ii) the requirements tabulated in Part B of Schedule 2; and
  - (iii) any other factors the Principal's Representative deems (in its absolute discretion) to be relevant to the performance categories and indicators mentioned in that table.
- (b) Each monthly P&C Payment will be determined as either 0, 50, or 100 percent of the Maximum Monthly P&C Payment.
- (c) Without limiting the Principal's Representative's discretion under clause 11.18(a), where the Principal's Representative determines a P&C Payment which is less than 100 percent of the Maximum Monthly P&C Payment, the Principal must include in its notice under clause 11.18(a) a summary of the reasons for its determination.

- (d) The parties acknowledge and agree that there will be no P&C Payment determined for any months after the end of the P&C Payment Period.

### 11.19 General Provisions Relating to GST

- (a) Unless otherwise stated, all amounts set out in this Contract are GST exclusive.
- (b) Subject to paragraphs (c) and (d), where any supply occurs under or in connection with the Contract or the Works for which GST is not otherwise provided, 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) Reimbursable Costs payable by the Contractor to Subcontractors will not be reduced for any input tax credits and will be paid in full to the Contractor. In consideration of this, the Contractor is not entitled to any additional amount in respect of GST on those Reimbursable Costs.
- (d) Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Works (other than on account of Reimbursable Costs payable by the Contractor to Subcontractors) 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 paragraph (b).
- (e) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (f) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
- (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
  - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (g) The parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Contract:
- (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 Contract;
  - (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
  - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and

- (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 11.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect of any such taxable supply.
- (h) Each party acknowledges and warrants that at the time of entering into this Contract it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (i) In this clause, clause 11.3 and Schedule 2:
  - (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; and
  - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation.

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## 12. Completion

### 12.1 Progressive Inspection and Testing

At any time prior to Completion of the Works or a Portion, the Principal's Representative may direct that any materials or work forming part of the Contractor's Activities in respect of the Works or that Portion be tested. The Contractor must provide such assistance, documentation, records, personnel (including subcontractors) and samples and make accessible such parts of the Contractor's Activities or Works as may be required. On completion of any test the Contractor must make good the Contractor's Activities or Works so that they fully comply with this Contract.

The Principal's Representative may direct that any part of the Contractor's Activities or the Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.

The tests prescribed in this Contract must be conducted by the Contractor as and when provided for in this Contract, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.

Unless otherwise stated in this Contract before conducting a test under this Contract the Principal's Representative or the Contractor must give not less than two Business

Days notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

Without prejudice to any other rights or remedies under this Contract, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:

- (a) this Contract provides that the Contractor must bear the costs of the test if it is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;
- (b) the test shows that the material or work is not in accordance with this Contract;
- (c) the test is in respect of a part of the Contractor's Activities or the Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Contract.

Where the extra costs are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

## **12.2 Contractor to Notify**

- (a) The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Works or a Portion.
- (b) Following the issue by the Contractor of a notice under clause 12.2(a) the Contractor must:
  - (i) prepare a detailed procedure for the progressive inspection by the Principal's Representative of the Works or that Portion; and
  - (ii) unless otherwise required under the TfNSW Standard Requirements, provide a draft defects management plan (without identifying any defects in respect of the Works or that Portion).
- (c) The procedure and draft defects management plan referred to in clause 12.2(b) must be submitted to the Principal's Representative and, prior to the inspection under clause 12.3(a) must, if required by the Principal's Representative, be amended to ensure that the:
  - (i) procedure provides the Principal's Representative with sufficient time to properly carry out this progressive inspection and the final inspection which the Principal's Representative is required to

undertake under clause 12.3 to determine whether Completion of the Works or a Portion (as the case may be) has occurred; and

- (ii) draft defects management plan fully addresses the matters the Principal's Representative directs.

### **12.3 Inspection before Completion**

- (a) The Principal's Representative and the Contractor's Representative must, within 7 days of receipt by the Principal's Representative of the notice referred to in clause 12.2(a), jointly inspect the Works or the Portion at a mutually convenient time.
- (b) Following the joint inspection under clause 12.3(a), the Principal's Representative must issue a notice to the Principal and the Contractor either:
  - (i) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
  - (ii) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).
- (c) When the Principal's Representative issues a notice under either clause 12.3(b)(i) or clause 12.3(b)(ii), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when the Contractor considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Completion in the form of Schedule 21.

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

- (d) Following the joint inspection under clause 12.3(c), the Principal's Representative must within 21 days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:
  - (i) if satisfied that Completion of the Works or the Portion has been achieved:
    - A. stating the date on which the Principal's Representative determines Completion of the Works or the Portion was achieved; and
    - B. containing a list of any minor Defects, of the type described in paragraph (a) of the definition of "Completion" in clause 1.1, that are apparent; or
  - (ii) if not satisfied that Completion of the Works or the Portion has been achieved:



- A. containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
  - B. stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)A.
- (e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)A or clause 12.3(d)(ii)B, the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when it considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative by notice in writing, after which the second paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.
- (f) Where there are Portions, for the purposes of this Contract and without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:
- (i) no separate Date for Completion of the Works is specified in this Contract;
  - (ii) Completion of the Works is achieved by achieving Completion of all Portions;
  - (iii) Completion of the Works will be taken to have occurred once Completion of all Portions has occurred; and
  - (iv) the Date of Completion of the Works will be taken to be the Date of Completion of the last Portion to reach Completion.

## 12.4 Unilateral Issue of Notice of Completion

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

## 12.5 Hand Over upon Completion

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

## 12.6 Part of the Works or a Portion

- (a) If part of the Works or a Portion has reached a stage equivalent to Completion but another part of the Works or the Portion has not reached Completion and the parties cannot agree upon the creation of new Portions,

the Principal's Representative may determine that the respective parts will be Portions.

- (b) Without limiting clause 12.6(a), the Principal may, after the Contractor is given written notice by the Principal's Representative, occupy or use any part of the Works or a Portion although the whole of the Works or the Portion has not reached Completion.
- (c) If the Principal's Representative gives a notice under clause 12.6(b):
  - (i) the Principal must allow the Contractor reasonable access to the part of the Works or the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Works or the relevant Portion of which the area being occupied or used forms part to Completion; and
  - (ii) this will not otherwise limit or affect the obligations of the parties under this Contract, including the obligation of the Contractor to achieve Completion of the Works or the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.
- (d) Without limiting clause 12.6(a), further Portions may be created by the Principal's Representative by issuing a written direction to the Contractor which clearly identifies for each, the:
  - (i) portion of the Works;
  - (ii) Date for Completion; and
  - (iii) respective amounts for security, delay damages and liquidated damages (each of which will be a reasonable amount as determined by the Principal's Representative having regard to any previously existing amounts for security, delay damages and liquidated damages relevant to the part of the Works or the part of a Portion out of which any new Portion is created and the contract value of any new Portion).

## 12.7 Consequences of delay

The Principal will not be entitled to make a Claim against the Contractor for damages for any failure by the Contractor to comply with clause 10.1(c).

## 12.8 Final Completion

- (a) The Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.
- (b) The Principal's Representative and the Contractor's Representative must, within 28 days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Defects Rectification Period, jointly inspect the Works at a mutually convenient time.

- (c) Following the joint inspection under clause 12.8(b), the Principal's Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.
- (d) If the Principal's Representative issues a notice under clause 12.8(c), the Contractor must continue to bring the Works to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule 22. Thereafter, the Principal's Representative and the Contractor's Representative must jointly inspect the Works at a mutually convenient time.
- (e) Following the joint inspection under clause 12.8(d), the Principal's Representative must within 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:
  - (i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or
  - (ii) if not satisfied that Final Completion has been achieved:
    - A. containing a list of the items which it believes must be completed before Final Completion is achieved; or
    - B. stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)A.
- (f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)A or clause 12.8(e)(ii)B, the Contractor must continue to proceed to bring the Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Works the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.

## **12.9 Effect of Notice of Completion or Final Completion**

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

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

## **13. Care of the Works, Risks and Insurance**

### **13.1 Care of the Works**

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

- (a) from and including the earlier of the date of commencement of work and the date on which the Contractor is given access to the Site, or a part of the Site, until 4:00pm on the Date of Completion of the Works or the last Portion to reach Completion will:
  - (i) be responsible for the care of and will bear the risk of, and indemnify the Principal against any loss of, or damage to:
    - A. the Contractor's Activities ;
    - B. the Works;
    - C. Temporary Works;
    - D. Construction Plant;
    - E. unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 11.3; and
    - F. things entrusted to the Contractor by the Principal or brought onto the Site by a subcontractor for the purpose of carrying out the Contractor's Activities; and
  - (ii) provide the storage and protection necessary to preserve these things; and
- (b) after the time after which the Contractor ceases to be responsible under paragraph (a) for the care of a part of the Works or any other thing referred to in subparagraph (a)(i), will bear the risk of, and indemnify the Principal against, any loss of or damage to that part of the Works or other thing, arising from:
  - (i) any act or omission of the Contractor during the Defects Rectification Period (including any extension under clause 8.6) or any other Contractor's Activities; or
  - (ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Works or other thing under paragraph (a) in connection with the Contractor's Activities.

### **13.2 Indemnity**

The Contractor must indemnify the Principal against:

- (a) any loss of or damage to property of the Principal;
- (b) any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons; and

- (c) without limiting or otherwise affecting paragraph (a), any loss or damage to existing property in or upon which the Contractor's Activities are being carried out,

caused by, or arising out of, or in any way in connection with, the Contractor's Activities, but the Contractor's responsibility to indemnify the Principal will be reduced proportionally to the extent that an act or omission by the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor contributed to the loss, damage, injury or death provided that the Contractor has complied with its obligations under clause 2.8(a)(ii)B.

The indemnity in this clause 13.2 will not:

- (d) exclude any other right of the Principal to be indemnified by the Contractor; or
- (e) apply to the extent to which the Contractor must indemnify the Principal under clause 13.1.

### 13.3 Reinstatement

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

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

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

### 13.4 Works Insurance - Alternative 1

This alternative applies if so stated in Schedule 1.

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

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

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;

- (b) acknowledges that the policies of insurance summarised in Exhibit C do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance summarised in Exhibit C; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies summarised in Exhibit C or any insurance taken out under this clause 13.4 and any such amounts will not form part of the Reimbursable Costs.

### 13.4 Works Insurance - Alternative 2

This alternative applies if so stated in Schedule 1.

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

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

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

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

- (g) Target Budget;
- (h) provision in Schedule 1 to provide for costs of demolition and removal of debris;
- (i) provision in Schedule 1 for consultants' fees and Principal's consultants' fees;
- (j) value in Schedule 1 of any materials or things to be supplied by the Principal for the purposes of the Contractor's Activities; and



- (k) additional amount or percentage in Schedule 1 of the total of the items referred to in sub-paragraphs (g) to (j) of this paragraph.

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

### **13.5 Public Liability Insurance – Alternative 1**

This alternative applies if so stated in Schedule 1.

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

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

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

### **13.5 Public Liability Insurance – Alternative 2**

This alternative applies if so stated in Schedule 1.

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

The policy must:

- (a) be in the joint names of the parties;
- (b) cover the:
  - (i) respective rights and interests; and
  - (ii) liabilities to third parties,

of the parties, the Principal's Representative and subcontractors from time to time, whenever engaged in the Contractor's Activities;

- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 13.4 Alternative 2) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any Construction Plant not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Schedule 1; and
- (f) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals must not be unreasonably withheld).

### **13.6 Contractor's Other Insurance Obligations**

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

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

- (a) effect and have in place the following insurance with insurers of the Required Rating and on terms satisfactory to the Principal's Representative:
  - (i) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;
  - (ii) an insurance policy covering loss or damage to the Construction Plant;
  - (iii) if the Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;
  - (iv) professional indemnity insurance;
  - (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:
    - A. insurance against personal injury or death, as required under all applicable Laws; and

- B. in addition to the public liability insurance required under this Contract, insurance for third party property damage and personal injury or death;
- (vi) where specified in Schedule 1 as being required, if the things the care of which the Contractor is responsible for under clause 13.1 are in transit (including storage and transshipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Site, unpacked, inspected and confirmed as in sound condition;
  - (vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law; and
  - (viii) where specified in Schedule 1 as being required, appropriate insurance (for replacement value) in respect of all materials being or to be fabricated overseas for the Works and any other insurance that the Principal may reasonably require the Contractor to obtain,
- for amounts not less than the amounts (if any) referred to in Schedule 1;
- (b) ensure the Construction Plant insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the law), asbestos liability insurance, marine transit insurance (if required) and any insurance required by sub-paragraph (a)(vii):
- (i) are policies in the joint names of the Principal and the Contractor, and cover the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its subcontractors, for their respective rights and interests, and their liabilities to third parties and liability to each other;
  - (ii) cover loss or damage to property (other than property described in clause 13.1 and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Contractor's Activities;
  - (iii) includes a cross-liability clause in accordance with clause 13.10; and
  - (iv) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1;
- (c) ensure the asbestos liability insurance is in place before any work involving asbestos or asbestos decontamination work commences;
- (d) ensure that any insurance policy required by sub-paragraph (a)(vii) is in place before the Contractor's Activities covered by such policies commence;
- (e) ensure the professional indemnity insurance:

- (i) covers claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its subcontractors in carrying out the Contractor's Activities;
- (ii) covers the Contractor for liability to the Principal arising from errors or omissions in:
  - A. design or documentation of the Works or the Temporary Works; or
  - B. other professional services,  
carried out by the Contractor or any of its subcontractors; and
- (iii) provides:
  - A. cover for any amount in respect of any one claim of not less than;
  - B. cover for an amount in the aggregate of not less than; and
  - C. for an excess not greater than,  
the amount stated in Schedule 1;
- (f) ensure that each subcontractor that performs any professional services (including Design Work) forming part of the Contractor's Activities:
  - (i) maintains professional indemnity insurance which:
    - A. covers the subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the subcontractor or its subcontractors in carrying out the work under the relevant subcontract;
    - B. covers the subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in Schedule 1;
    - C. unless the subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
    - D. remains in place at least until the expiration of a 7 year period from completion of the relevant Subcontract works or professional services; and
  - (ii) is obliged under the relevant Subcontract to comply with clause 13.7(c) of this Contract in relation to the insurance referred to in sub-paragraph (i);
- (g) in relation to the workers compensation insurance or similar insurance:

- (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
  - (ii) ensure that each of its subcontractors has such workers compensation insurance or similar insurance covering the subcontractor's employees; and
  - (iii) ensure it insures against liability for death of or injury to persons employed by the Contractor or its subcontractors as required by any Law for an amount not less than the amount stated in Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law;
- (h) in relation to marine transit insurance (if required), ensure that the policy:
- (i) is in the joint names of the Principal and Contractor, and covers the Principal, the Principal's Representative, the Contractor and all its subcontractors as separate insureds, for their respective rights and interests;
  - (ii) includes a cross-liability clause in accordance with clause 13.10; and
  - (iii) includes a delayed unpacking clause and a 50:50 clause.

### 13.7 General Insurance Requirements

The Contractor must:

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

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

If the Contractor fails to:

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

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

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

### **13.8 Period of Insurance**

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



- (a) in the case of the works and public liability insurance policy required by clauses 13.4 and 13.5 so as to provide cover until the latest to occur of:
  - (i) Contractor ceases to be responsible under clause 13.1 for the care of anything; and
  - (ii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;
- (b) in the case of the Construction Plant insurance:
  - (i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 13.1; and
  - (ii) at any time it is being used in connection with the Contractor's Activities;
- (c) in the case of the workers compensation insurance and motor vehicle insurances, until the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion was achieved;
- (d) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 13.6(e) until at least the period specified in Schedule 1 after the Date of Final Completion;
- (e) in the case of asbestos liability insurance, marine transit insurance (if required) and insurance required under clause 13.6(a)(viii) (if required), for so long as there is a risk that an event covered by the insurance may occur in relation to the Works or the Contractor's Activities; and
- (f) in the case of insurance required under clause 13.6(a)(vii), during the period required by any Law.

### **13.9 Notice of Potential Claim**

The Contractor must:

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

### **13.10 Cross Liability**

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

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will

operate in the same manner as if there were a separate policy of insurance covering each named insured;

- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

### **13.11 Risk of Deductibles**

The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 13 and any such amounts will not form part of the Reimbursable Costs.

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## **14. Default or Insolvency**

### **14.1 Contractor's Default**

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

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

- (a) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Contract, in breach of clause 10.1;
- (b) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;
- (c) failing to provide the security, in breach of clause 2.6;
- (d) failing to provide evidence of insurance, in breach of clause 13;
- (e) failing to use the materials or standards of workmanship required by this Contract, in breach of clause 4.1;
- (f) not complying with any direction of the Principal's Representative made in accordance with this Contract, in breach of clause 9.1(a);
- (g) not complying with the requirements of this Contract regarding the Contract Management Plan in a material respect;
- (h) not complying with its obligations under:
  - (i) the TfNSW Standard Requirements with regard to the Contract Management Plan; or

- (ii) the TfNSW Standard Requirements TSR T - Technical Management;
- (i) not complying with its environmental obligations under this Contract;
- (j) not complying with its obligations under this Contract regarding work health and safety;
- (k) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.2; or
- (l) any other failure to comply with a material obligation under the Contract.

## 14.2 Contents of Notice

A written notice under clause 14.1 must:

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

## 14.3 Rights of the Principal Following Notice

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

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

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

## 14.4 Immediate Termination on Take-Out

If:

- (a) an Insolvency Event occurs:
  - (i) to the Contractor;
  - (ii) where the Contractor comprises more than one person, any one of those persons; or

- (iii) to a person specified in Schedule 1; or
- (b) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.9(d),

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

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

If:

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

then:

- (d) the Contractor:
  - (i) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its subcontractors that the Principal directs;
  - (ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:
    - A. execute, sign, seal and deliver all notices, deeds and documents; and
    - B. undertake actions in the name of the Contractor, for the purposes referred to in clause 14.5(d)(i); and
  - (iii) must immediately hand over to the Principal's Representative all copies of:
    - A. any documents provided by the Principal to the Contractor;
    - B. all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clauses 14.3(a), 14.3(b), 14.4 or 14.9 (whether complete or not); and
    - C. any other documents or information in existence that is to be provided to the Principal under the terms of this Contract; and

- (e) the Principal:
- (i) will be entitled to require the Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
  - (ii) may complete that work;
  - (iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work; and
  - (iv) must, if it takes possession of the items referred to in clause 14.5(e)(iii):
    - A. for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 15; and
    - B. maintain the Construction Plant, Temporary Works or other things and, subject to clause 14.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 14.5(e)(iii) which are surplus.

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

## **14.6 Principal's Entitlements after Take-Out**

- (a) If the Principal exercises the right under clause 14.3(a), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under this clause 14.6.
- (b) When work taken out of the hands of the Contractor under clause 14.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.
- (c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.
- (d) Without limiting clause 14.6(c), if the Principal exercises the right under clause 14.3(a), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.

- (e) If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 14.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

#### **14.7 Principal's Rights after Termination**

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

- (a) not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;
- (b) be absolutely entitled to call upon, convert and have recourse to and retain the proceeds of any unconditional undertaking held under clause 2.6; and
- (c) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.

This clause 14.7 survives the termination of this Contract.

#### **14.8 Contractor's Rights after Repudiation or Wrongful Termination**

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

then the:

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



- C. waives all other rights it has to make a Claim in such circumstances.
- (b) This clause 14.8 will survive the termination of this Contract.

## 14.9 Termination for Convenience

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

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

## 14.10 Payment for Termination for Convenience

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

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
  - (i) for work carried out prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;
  - (ii) the cost of plant and materials reasonably ordered by the Contractor for the Works and for which it is legally bound to pay provided that:
    - A. the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (a)(i); and
    - B. title in the plant and materials vests in the Principal upon payment;
  - (iii) the reasonable cost of removing from the Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Works; and
  - (iv) the amount specified in Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (a)(ii),(a)(iii) and (a)(iv); and
- (b) must take all steps possible to mitigate the costs referred to in sub-paragraphs (a)(ii),(a)(iii) and (a)(iv).

To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 2.6 when the Contractor has complied with all its obligations under this clause.

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

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

#### **14.11 Preservation of Rights**

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

#### **14.12 Termination by Frustration**

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

- (a) pay the Contractor the following amounts as determined by the Principal's Representative:
  - (i) an amount calculated in accordance with clause 14.10(a)(i) for work carried out prior to the date of frustration;
  - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.10(a)(ii); and
  - (iii) the costs calculated in accordance with the terms of clause 14.10(a)(iii); and
- (b) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.6 when the Contractor has complied with its obligations under this clause.

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

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

#### **14.13 Codification of Contractor's Entitlements**

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

- (a) cannot otherwise terminate, rescind or treat this Contract as repudiated; and

- (b) waives all rights at Law to terminate, rescind or treat this Contract as repudiated,

otherwise than in accordance with this clause 14.

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## 15. Disputes

### 15.1 Notice of Dispute

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

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

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied;
- (c) set out the position which the party believes is correct; and
- (d) in the case of a Dispute in respect of a direction of the Principal's Representative under one of the clauses referred to in Schedule 1 (a "**Schedule 1 Dispute**"), be given in accordance with clause 15.2.

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

### 15.2 Time for Submitting Notice Concerning Principal's Representative's Direction

- (a) No party may issue a Notice of Dispute in respect of an unresolved matter unless that matter has:
  - (i) been referred to, and considered by, the Contract Control Group; and
  - (ii) not been resolved after the first meeting of the Contract Control Group after its referral.
- (b) If the Contractor wishes to have a direction by the Principal's Representative under one of the clauses referred to in Schedule 1 opened up, reviewed, decided and substituted the Contractor must give a Notice of Dispute in respect of the Dispute to the Principal and the Principal's Representative within 7 days of the first meeting of the Contract Control Group after the direction, after which the Principal's Representative may review the Dispute and make a determination in accordance with clause 15.3.

- (c) If the Contractor fails to give such a Notice of Dispute to the Principal and the Principal's Representative within the time period required by clause 15.2(b):
  - (i) the direction will be final and binding and will not be capable of being challenged, opened up or reviewed in any forum; and
  - (ii) where the direction relates to the rejection or deemed rejection of a Claim pursuant to clause 16.4, the Claim will be barred in accordance with clause 16.6.

### **15.3 Determination of Schedule 1 Disputes by the Principal's Representative**

Upon receipt of a Notice of Dispute in respect of a Schedule 1 Dispute which is given in accordance with clause 15.2, the Principal's Representative may review and make a determination in respect of the Dispute.

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

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

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

### **15.4 Response to Notice of Dispute**

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

- (a) if the Notice of Dispute does not relate to a Schedule 1 Dispute, within 21 days of the date of:
  - (i) receipt of the Notice of Dispute; or
  - (ii) if any further particulars have been requested under clause 15.1, receipt of those particulars; or
- (b) if the Notice of Dispute does relate to a Schedule 1 Dispute and if the direction is confirmed, or deemed to have been confirmed, by the Principal's Representative under clause 15.3, within 42 days of the receipt of the Notice of Dispute,

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

## 15.5 Executive Negotiation

- (a) If the Dispute is not resolved within 14 days of:
- (i) the date of receipt of the response to the Notice of Dispute pursuant to clause 15.4; or
  - (ii) if no response is received, the date specified for the provision of a response pursuant to clause 15.4,
- (the "**Referral Date**") either party may by notice in writing refer the Dispute to the persons described in Schedule 1 ("**Executive Negotiators**") who must:
- (iii) meet and undertake genuine and good faith negotiations with a view to:
    - A. clarifying and narrowing the issues in dispute in the event that arbitration is commenced in respect of the Dispute; and
    - B. resolving the Dispute; and
  - (iv) if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.
- (b) If appropriate in the circumstances, at or prior to the meeting referred to in clause 15.5(a) the parties will exchange documents critical to the resolution of the Dispute.

## 15.6 Expert Determination

If a dispute relating to a Schedule 1 Dispute is referred for resolution under clause 15.5 and it is not resolved within 21 days after the Referral Date, the dispute must be submitted to an expert determination.

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

## 15.7 The Expert

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

- (a) an independent industry expert agreed by the Principal and the Contractor; or
- (b) where the parties are unable to agree upon an independent industry expert within 42 days after the Referral Date, or where an independent industry expert appointed under this clause 15.7:
  - (i) is unavailable;
  - (ii) declines to act;

- (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
- (iv) does not make a determination within the time required by clause 15.8(e),

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

## 15.8 Rules of Expert Determination

- (a) An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (b) The expert determination must be made in accordance with the rules for the expert determination process included in the agreement which appears in Schedule 26 or such other rules as the parties and the expert may agree.
- (c) The expert must:
  - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
  - (ii) not communicate with one party to the determination without the knowledge of the other.
- (d) Each party will:
  - (i) bear its own costs in respect of any expert determination; and
  - (ii) pay one-half of the expert's costs.
- (e) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within the period set out in the agreement between the parties and the expert.

## 15.9 Agreement with Expert

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

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 26 or such other terms as the parties and the expert may agree.

## 15.10 Determination of Expert

The determination of the expert:

- (a) must be given to the parties in writing;
- (b) will be:
  - (i) substituted for the relevant direction of the Principal's Representative; and
  - (ii) final and binding,



unless a party gives a notice of appeal to the other party within 21 days of receipt of the determination; and

- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

### 15.11 Arbitration Agreement

Any Dispute which is referred to arbitration will be conducted before a person to be:

- (a) agreed between the parties; or
- (b) failing agreement within 21 days after the Dispute has been referred to arbitration, appointed by the Chair of Resolution Institute.

To the extent that they are not inconsistent with this Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.

The seat of the arbitration will be Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and, to open up, review and substitute any decision of the expert under clause 15.10 that is not final and binding on the parties pursuant to clause 15.10.

Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

### 15.12 Survive Termination

This clause 15 will survive the termination of this Contract.

### 15.13 Continuation of Work

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

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

### 15.14 Urgent Relief

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

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## 16. Notification of Claims

### 16.1 Notice of Variation

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

- (a) within the time specified in Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;
- (b) within the time specified in Schedule 1 of giving the notice under clause 16.1(a) submit a written Claim to the Principal's Representative, which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with this Contract and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 16.1.

## 16.2 Notice of Other Claims

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

- (a) it is otherwise given an express entitlement under this Contract; or
- (b) this Contract expressly provides that:
  - (i) specified costs are to be added to any component of the Contract Price; or
  - (ii) any component of the Contract Price will be otherwise increased or adjusted,

as determined by the Principal's Representative,

the Contractor must give the Principal's Representative the notice required by clause 16.3(a) and a Claim in accordance with clause 16.3(c).

## 16.3 Prescribed Notices

- (a) Any written notice referred to in clauses 16.1(a) and 16.2 must:
  - (i) be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
  - (ii) expressly specify:
    - A. that the Contractor proposes to make a Claim; and
    - B. the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 16.1(b) must include:

- (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
  - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
  - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 16.2 must:
- (i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 16.3(a); and
  - (ii) include:
    - A. detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
    - B. the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
    - C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
    - D. details of the amount claimed and how it has been calculated.

#### **16.4 Submission of Claims**

Claims submitted by the Contractor under clauses 16.1(b) and 16.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

If within 28 days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 28th day.

#### **16.5 Continuing Events**

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 16.3(b) or 16.3(c) every 28 days after the written Claim under clause 16.1(b) or 16.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

#### **16.6 Bar**

If the Contractor fails to comply with clauses 2.2(d), 15.2, 16.1, 16.2, or 16.5:

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

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

## 16.7 Other Provisions Unaffected

Nothing in clauses 16.1 to 16.6 will limit the operation or effect of any other provision of this Contract that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

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## 17. General

### 17.1 Notices

- (a) At any time and from time to time the Principal's Representative may notify the Contractor of an electronic portal or document management system to be used for the purposes of this Contract. The Principal's Representative's notice will set out:
- (i) the relevant electronic portal or document management system;
  - (ii) the commencement date for the use of the electronic portal or document management system;
  - (iii) any password, login details or similar information required for the Contractor to use the electronic portal or document management system;
  - (iv) address details for the Principal, the Principal's Representative and the Contractor; and
  - (v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.
- (b) Any notices contemplated by this Contract must be in writing and must:
- (i) before the date referred to in clause 17.1(a)(ii), be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and
  - (ii) on and from the date referred to in clause 17.1(a)(ii):
    - A. in the case of notices by the Contractor:
      - 1) without limiting clause 17.1(b)(ii)A.2), be sent to the Electronic Portal address of the Principal or the Principal's Representative (as applicable); and
      - 2) under clauses 10, 11, 12, 14, 15 or 16 or concerning a claim for payment, in addition to the copy of the notice sent pursuant to clause 17.1(b)(ii)A.1), also be delivered or posted to

the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); and

- (iii) in the case of notices by the Principal or the Principal's Representative:
  - A. be delivered or posted to the relevant address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number notified by the intended recipient); or
  - B. except in relation to notices by the Principal under clauses 14.3, 14.4, 14.9 or 15.1, be sent to the Electronic Portal address of the intended recipient.
- (c) For the avoidance of doubt, no notice referred to in clause 17.1(b)(ii)A.2 shall be effective unless delivered in accordance with both clauses 17.1(b)(ii)A.1 and 17.1(b)(ii)A.2).
- (d) Subject to clause 17.1(g), a notice sent by the Electronic Portal will be taken to have been received on the date recorded on the notice on which it was registered on the Electronic Portal.
- (e) Subject to clause 17.1(g), a notice sent by post will be taken to have been received:
  - (i) in the case of international post, 7 Business Days after the date of posting; and
  - (ii) in the case of posting within Australia, 2 Business Days after the date of posting.
- (f) Subject to clause 17.1(g), a notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 17.1(b)(i), 17.1(b)(ii)A.1 or 17.1(b)(ii)A.2) (as applicable), which is a Business Day.
- (g) Where clause 17.1(b)(ii)A.2) applies, the relevant notice will be taken to have been received on the later of:
  - (i) the date determined in accordance with clause 17.1(d); and
  - (ii) the date determined in accordance with clause 17.1(e) or 17.1(f) (as the case may be).

## 17.2 Governing Law

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

## 17.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by

Law or under this Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Contract.

- (b) Any waiver or consent given by the Principal under this Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
  - (i) a breach of any term of this Contract; or
  - (ii) any other failure by the Contractor to comply with a requirement of this Contract, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

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

#### **17.4 Assignment**

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

#### **17.5 Entire Agreement**

Subject to the Framework Agreement, this Contract constitutes the entire agreement and understanding between the parties in relation to the subject matter of this Contract and will take effect according to its tenor despite, and supersede:

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

#### **17.6 Joint and Several Liability**

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

#### **17.7 Severability**

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



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

## 17.8 Indemnities to Survive

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

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

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

## 17.9 Stamp Duty and Other Fees

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

## 17.10 Taxes

Without limiting clause 2.2 but subject to clause 11.19, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Contractor's Activities.

## 17.11 Confidentiality

- (a) Subject to clause 17.11(b), the Contractor must:
  - (i) keep confidential this Contract and any information relating to the Contractor's Activities and any discussions concerning this Contract;
  - (ii) not use the information referred to in sub paragraph (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 sub-paragraphs (a)(i) and (a)(ii).
- (b) The Contractor is not obliged to keep confidential any information:
  - (i) which is in the public domain through no default of the Contractor; or
  - (ii) the disclosure of which is:
    - A. required by Law;
    - B. consented to in writing by the Principal; or

- C. given to a court in the course of proceedings to which the Contractor is a party.
- (c) The Contractor must:
- (i) execute and submit to the Principal within 14 days of this Contract a Confidentiality Undertaking in the form in Schedule 3;
  - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
  - (iii) ensure that each subcontractor, including suppliers and Consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
- (i) the *Government Information (Public Access) Act 2009* (NSW);
  - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
  - (iii) any other Law.
- (e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 17.11(d).

## 17.12 Right of Set-Off

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

- (a) any 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);
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or
- (c) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under:

- (d) this Contract or the Framework Agreement;
- (e) any other contract which the Principal and the Contractor enter into pursuant to the Framework Agreement; or
- (f) otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.6.

### **17.13 Entire Contract**

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

### **17.14 Principal May Act**

(a) The Principal may, either itself or by a third party, perform an obligation under this Contract that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.

(b) Where the Principal or the Principal's Representative is entitled under this Contract to exercise any right or power to:

- (i) direct or instruct the Contractor to; or
- (ii) itself step in to,

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

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

### **17.15 Process Agent**

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

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

### **17.16 Indemnity**

The Contractor must indemnify the Principal against:

- (a) any liability to or claim by any other person; and
- (b) all costs, expenses, losses, damages, fines and penalties suffered or incurred by the Principal,

arising out of, or in any way in connection with:

- (c) the Contractor's breach of a term of this Contract; and
- (d) any Defect or the consequence of any Defect,

provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the liability claim, costs, losses, damages, fines or penalties.

### **17.17 Variations**

Subject to clause 6.3, this Contract may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

### **17.18 Provisions Limiting or Excluding Liability**

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

### **17.19 Limit of Contractor's Liability**

Subject to clause 17.21, the liability of the Contractor to the Principal, whether arising under or in connection with this Contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in Law or equity, is limited to the amount that is equal to the Target Budget.

### **17.20 Economic or Consequential Loss**

Subject to clause 17.21, the Contractor will have no liability whatsoever to the Principal for loss of use, production, profit, revenue, business, data, contract or anticipated saving or for any financing costs or increase in operating costs.

### **17.21 Qualification on Limitation of Liability**

Clauses 17.19 and 17.20 do not apply to limit or restrict in any way:

- (a) any liability to the extent to which the Contractor is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;
- (b) any liability for which, but for a failure by the Contractor to comply with its obligations under this Contract or under an insurance policy, the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with this Contract;
- (c) the Contractor's liability to indemnify the Principal under clauses 2.10(c), 3.4(d), 3.6(d), 3.11, 5.7(c)(ii), 5.9(a)(ii) or 13.2;
- (d) the Contractor's liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the Contractor or its subcontractors or its agents;
- (e) liability which is otherwise limited by another provision of this Contract;
- (f) the Contractor's liability to indemnify a Rail Transport Agency under the deed poll executed in the form of Schedule 15;
- (g) the Contractor's liability where it abandons the performance of its obligations under this Contract;

- (h) liability out of which by Law the Contractor cannot contract; or
- (i) any liability of the Contractor under the Framework Agreement or any other MC Contract executed under the Framework Agreement.

## 17.22 Proportionate Liability

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

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

- (b) To the extent permitted by Law:
  - (i) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).
- (c) The Contractor must:
  - (i) in each subcontract into which it enters for the carrying out of the work under this Contract or for the supply of materials or services, include a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
  - (ii) require each subcontractor to include, in any further contract that it enters into with a third party for the carrying out of the work under this Contract, a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

- (d) The Contractor must ensure that all policies of insurance covering third party liability it is required by this Contract to effect or maintain (including the professional indemnity policy referred to in clause 13.6(e)):
- (i) cover the Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
  - (ii) do not exclude any potential liability the Contractor may have to the Principal under or by reason of this Contract.
- (e) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an expert or any arbitrator appointed in accordance with the provisions of this Contract.

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

### 17.23 Prior Work

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

### 17.24 Design Life

- (a) The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 109ZK of the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the design lives of the asset elements referred to in section 2.2 in Appendix D of the Works Brief where those design lives are for periods longer than those provided for in those Acts.
- (b) If the waiver referred to in clause 17.24(a) is held to be without effect or otherwise unenforceable, or if it is severed from this Contract, the Contractor shall indemnify and keep the Principal indemnified at all times from and against all costs that the Principal may suffer or incur out of the Principal's loss of the benefit of the waiver.
- (c) The indemnity in clause 17.24(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in section 2.2 in Appendix D of the Works Brief.
- (d) The parties agree that any action by the Principal on the indemnity in clause 17.24(b) is not a "building action" for the purposes of section 109ZI of the *Environmental Planning and Assessment Act 1979* (NSW).



## 17.25 Counterparts

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

## 17.26 Personal Property Securities Act

- (a) By signing this Contract, the Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law ("**Security Interest**"), the Contractor shall do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
  - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
  - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- (b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) The Contractor:
- (i) acknowledges that the Security Interests created under or pursuant to this Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
  - (ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
  - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

## 17.27 Vienna Convention

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

## 17.28 Australian Government Requirements

- (a) This clause 17.28 applies if so stated in Schedule 1.

The Building Code is applicable to the Works.

The Contractor must comply, and ensure that its subcontractors comply, in the performance of this Contract, with the requirements of the Building Code.

Copies of the Building Code are available at

[www.deewr.gov.au/BuildingCode](http://www.deewr.gov.au/BuildingCode).

- (b) Compliance with the Building Code will not relieve the Contractor from its responsibility to perform this Contract, or from liability for any Defect in the Works arising from compliance with the Building Code.
- (c) Where a change in this Contract is proposed and that change would affect compliance with the Building Code, the Contractor must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Building Code will be affected.
- (d) The Contractor must maintain adequate records of the compliance with the Building Code by:
- (i) the Contractor;
  - (ii) its subcontractors; and
  - (iii) the Contractor's related entities (as defined in section 3(2) of the Building Code).
- (e) If the Contractor does not comply with the requirements of the Building Code in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the Commonwealth or its agencies.
- (f) While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, the Contractor may give preference to subcontractors that have a demonstrated commitment to:
- (i) adding and/or retaining trainees and apprentices;

- (ii) increasing the participation of women in all aspects of the industry; or
  - (iii) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- (g) The Contractor must not appoint a subcontractor in relation to the Works where:
- (i) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or
  - (ii) the subcontractor has had an adverse court or tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the subcontractor has not fully complied, or is not fully complying with the order.
- (h) The Contractor must provide, and must ensure its subcontractors and related entities (as defined in section 3(2) of the Building Code) provide, the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, with access to:
- (i) inspect any work, material, machinery, appliance, article or facility;
  - (ii) inspect and copy any record relevant to the Works and the Contractor's Activities; and
  - (iii) interview any person,
- as is necessary to demonstrate compliance with the Building Code.
- (i) The Contractor agrees that it and its related entities (as defined in section 3(2) of the Building Code) will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Fair Work Building Industry Inspectorate, to produce a specified document within a specified period, in person, by fax or by post.
- (j) The Contractor must ensure that all subcontracts impose obligations on subcontractors equivalent to the requirements of this clause 17.28.

## Schedule 1 - Contract Particulars

<b>Conditions Precedent to Completion:</b> (Clause 1.1)	Nil in addition to those expressed elsewhere in this Contract	
<b>Contract Documents:</b> (Clause 1.1)	General Conditions of Contract Schedules 1 to 7 and Schedules 9 to 29 Exhibits A to E and Exhibits G to K	
<b>Contractor:</b> (Clause 1.1)	Downer EDI Works Pty Ltd (ABN 66 008 709 608) Triniti Business Campus, 39 Delhi Road, North Ryde NSW 2113	
<b>Consultant:</b> (Clause 1.1)	<b>Consultant</b>	<b>Discipline</b>
	Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289)	Design & Consultancy
	Beca Consultants Pty Ltd (ABN 45 431 089)	Engineering
<b>Date for Completion:</b> (Clause 1.1)	20 December 2019	
<b>Defects Rectification Period:</b> (Clause 1.1)	The Defects Rectification Period for each Portion is the period commencing on the Date of Completion of the Portion and expiring 12 months after the Date of Completion of the last Portion to achieve Completion.	
<b>Environmental Representative:</b> (Clause 1.1)	Glenn Spark	
<b>Other Excepted Risk:</b> (Clause 1.1)	A negligent act or omission of the Principal, the Principal's Representative, other agents of the Principal or an Other Contractor (other than an Interface Contractor).	

<b>Interface Contractors:</b> (Clause 1.1)	<ul style="list-style-type: none"> <li>• Sydney Trains</li> <li>• Liftronics</li> <li>• As detailed in the Works Brief</li> </ul>
<b>Portions:</b> (Clause 1.1)	Not applicable
<b>Principal's Representative:</b> (Clause 1.1)	Nadine Bourezg – A/Project Director, Infrastructure and Place
<b>Reports:</b> (Clause 1.1)	Refer to Exhibit F
<b>Target Budget:</b> (Clause 1.1)	\$13,616,433 (Excl. GST)
<b>Tendering Probity Plan:</b> (Clause 1.1)	<p>The appointment of a Contractor's probity auditor.</p> <p>Procedures to ensure that:</p> <ul style="list-style-type: none"> <li>(a) none of the tenderers for any of the Reimbursable Work has any arrangement or arrives at any understanding with any of the other tenderers or with any employee of an association of which any of the tenderers is a member about the work the subject of tender; and</li> <li>(b) without limitation, no tenderer for any of the Reimbursable Work engages in: <ul style="list-style-type: none"> <li>(i) any discussion or correspondence with any such persons concerning the sum of money it is going to tender as its tender sum; or</li> <li>(ii) any collusive tendering with any of the other tenderers or any conduct or any arrangement or arrives at any understanding with any of the other tenderers which in any way could have the effect of reducing the competitiveness of the tender process for the work and increasing</li> </ul> </li> </ul>

the price.

<b>The Site:</b> (Clause 1.1)	As described in Exhibit E
<b>Third Party Agreements:</b> (Clauses 1.1 and 2.11(b))	The Draft Third Party Agreements which appear in Exhibit H of this Contract.
<b>Working days:</b> (Clause 1.2(m))	Monday to Saturday excluding public holidays in Sydney and rostered days off, plus any day included in a Track Possession.
<b>Order of Precedence:</b> (Clause 1.4)	<p>The Contract excluding the Schedules and the Exhibits; then</p> <ul style="list-style-type: none"> <li>(a) the Schedules; then</li> <li>(b) the TfNSW Standard Requirements; then</li> <li>(c) the Works Brief (excluding any Preliminary Design); then</li> <li>(d) any Preliminary Design; then</li> <li>(e) Exhibit E; then</li> <li>(f) Exhibit G; then</li> <li>(g) Exhibit H; then</li> <li>(h) Exhibit D; then</li> <li>(i) Exhibit C; then</li> <li>(j) Exhibit I; then</li> <li>(k) Exhibit J; then</li> <li>(l) Exhibit K.</li> </ul>
<b>Are Deed Polls in Schedule 15 required</b> (Clause 1.5)	Yes
<b>Names of persons in whose favour the Deed Poll in Schedule 15 are required</b> (Clause 1.5)	<p>Rail Corporation New South Wales ABN 59 325 778 353</p> <p>Sydney Trains ABN 38 284 779 682</p>



<b>Are Deed Polls in Schedule 23 required</b> (Clause 7.17)	Yes	
<b>Names of persons in whose favour the Deed Poll in Schedule 23 are required</b> (Clause 7.17)	Sydney Trains ABN 38 284 779 682	
<b>Minimum amount of professional indemnity insurance required:</b> (Clause 13.6(f))	All subcontractors carrying out civil and structural design	\$10,000,000 per claim and \$20,000,000 in the aggregate
	All other subcontractors carrying out design	\$10,000,000 per claim and \$20,000,000 in the aggregate
<b>Parent Company Guarantor:</b> (Clause 2.6(f))	Downer EDI Limited ABN 97 003 872 848)	
<b>The party responsible for payment of the Long Service Leave Levy is</b> (Clause 2.7)	Contractor	
<b>Number and form of copies of the work method statements:</b> (Clause 2.8(a)(ii)H)	1 hard copy and 1 electronic copy in pdf format	
<b>The principal contractor under the WHS legislation is:</b> (Clause 2.10)	<b>Person</b>  Contractor	<b>Period of Appointment</b>  Date of the Contract until Date of Completion
<b>Period after notice for inspection of Contemporaneous Work:</b> (Clause 2.13(a))	10 days	

**Site access dates:**

(Clause 3.1(b)(i))

Refer to Exhibit E

**Site access preconditions:**

(Clause 3.1(c)(ii)E)

Refer to Exhibit E

**Site Conditions:**

(Clause 3.5)

Alternative 2

Alternative applying

**Condition Surveys exist for the following properties:**

(Clause 3.10)

Nil

**Consultants to be novated:**

(Clause 5.2(b))

Not applicable

**Number of copies of Design Documentation and survey information:**

(Clause 5.5)

4 (3 bound and 1 unbound) plus one copy in electronic format

**Management Fee as percentage of Reimbursable Costs:**

(Clause 6.4(c))

5.4%

**Trade packages and Subcontractors:**

(Clauses 7.4(c)(ii) and 7.12)

Refer to Schedule 28

**Subcontractors required to execute deed in form of Schedule 13:**

(Clause 7.7(a)(v)A)

Subcontractors with an initial price of \$500,000 or greater

(Clause 7.7(a)(v)B)

All subcontracts (including Consultant engagements) that include an element of design

<b>Parts of the Site within which the Works must be located:</b> (Clauses 3.9 and 7.19(b)(i))	Refer to Exhibit E
<b>Warranties required from subcontractors:</b> (Clause 7.9)	Refer to Exhibit G
<b>New Defects Rectification Period:</b> (Clause 8.6)	12 months
<b>Contractor's Personnel</b> (Clauses 9.4(a) and 9.4(b)(i))	Contractor's Representative – Kevin Brady Program Director – Kevin Brady Design Manager – Nicolai Clausen Construction Manager – Andrew Bedwani Project Manager – Vlad Stanculescu Rail Safety Manager – Gavin Peebles Senior Commercial Manager – Tom Watson Safety Assurance Manager – Ian McDonald
<b>Is the Contractor required to submit a Project Training Management Plan:</b> (Clause 9.14(c))	Yes
<b>Training Target:</b> (Clause 9.14(f)(i))	20%
<b>Causes of delay entitling Contractor to extension of time:</b> (Clause 10.7(a))	<ul style="list-style-type: none"> <li>• a Force Majeure Event;</li> <li>• a Change in Law to which clause 2.2(d) applies;</li> <li>• a Change in Codes and Standards in respect of which a Variation is directed under clause 2.2(b)(ii)B;</li> <li>• a Change in an Authority Approval (other than a Third Party Agreement), but only where the change has a direct effect on the Contractor carrying out the</li> </ul>

Contractor's Activities;

- a strike that is industry-wide and not specific to the Contractor, the Site, or the Contractor's Activities;
- any:
  - (a) Authority order or direction referred to in clause 2.3(a)(v);
  - (b) order by a court or tribunal referred to in clause 2.3(a)(vi); or
  - (c) direction by the Principal or Principal's Representative referred to in clause 2.3(a)(vii),

given to the Contractor to cease performing its obligations under this Contract, except to the extent that such Authority order or direction, court or tribunal order, or direction arises out of the Contractor's non-compliance with its obligations under this Contract;

- (if Alternative 2 in clause 3.5 applies) a Latent Condition which satisfies the description in clause 3.5(c);
- the cancellation of a Track Possession or power isolation listed in Exhibit E:
  - (a) with less than 8 weeks prior to the time at which it was planned to commence; and
  - (b) without the provision of an alternative Track Possession or power isolation at a time the Contractor is reasonably able to utilise in substitution for the cancelled Track Possession or power isolation.

**Rates and prices for Reimbursable Cost Adjustment:** (Clause 10.13(d)) Not applicable.

**Maximum daily Preliminaries Fee adjustment:** (Clause 10.13(e)) \$12,266.50

**Gainshare - percentage to be applied:** 25% of the difference between Contract Price and Target Budget

(Clause 11.17(b)(i))

**Painshare - percentage to be applied:**  
(Clause 11.17(b)(ii))

25% of the difference between Contract Price and Target Budget

**Insurance of the Works**  
(Clause 13.4)

Alternative applying

Alternative 1

**Public liability insurance**  
(Clause 13.5)

Alternative applying

Alternative 1

**Amount of Contractor's insurance:**  
(Clauses 13.6(a) and 13.6(g)(iii))

- **Workers compensation insurance** or similar insurance as required under clause 13.6(g) for an amount as required by Law
- **Construction Plant Insurance**  
Current market value of the Construction Plant
- **Professional Indemnity Insurance**  
\$20,000,000 for any one occurrence and in the annual aggregate with an excess not greater than \$1,000,000
- **Motor Vehicle Insurance**  
\$20,000,000 third party property damage
- **Asbestos Liability Insurance**  
\$20,000,000 for any one occurrence and in the aggregate
- **Marine transit insurance** - is not required
- **Insurance required by Law or Change in Law**  
As required by Law
- **Insurance of materials fabricated overseas** - is not required

**Period for Professional Indemnity Insurance:**  
(Clause 13.8(d))

7 years

**Person in Insolvency Event:**

Downer EDI Limited ABN 97 003 872 848  
Trinity Business Campus, 39 Delhi Road, North Ryde

(Clause 14.4(a)(iii))	NSW 2113
<b>Amount for termination for convenience:</b> (Clause 14.10(a)(iv))	3% of the cost determined under clauses 14.10(a)(ii), 14.10(a)(iii) and 14.10(a)(iv).
<b>Clauses in respect of which disputes concerning directions of a Principal's Representative must be submitted within 14 days of date of direction:</b> (Clauses 9.1(b) and 15.2)	2.2(b)(ii), 2.2(d)(ii), 2.2(e), 2.6(c)(ii), 2.11(b)(vi)C, 2.11(b)(viii), 2.13(e), 2.13(f), 3.5(c)(iii) (if Alternative 2 in clause 3.5 applies) 6.4, 8.5, 8.6, 9.8(c)(ii), 10.10, 10.11, 10.13, 10.14(b), 11.3, 11.17, 11.18, 12.3(b), 12.3(d), 12.6(d)(iii), 12.8(c), 12.8(e), 14.6(b), 14.10(a) and 14.12(a).
<b>Executive Negotiators:</b> (Clause 15.5)	Principal: Murray McArdle, Director Commercial, Infrastructure and Place  Contractor: Kevin Brady, Project Director
<b>Addresses:</b> (Clause 17.1(b))	<b>Principal:</b> Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067.  <b>Principal's Representative:</b> Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067.  <b>Contractor:</b> Trinita Business Campus, 39 Delhi Road, North Ryde NSW 2113.
<b>Applicability of Building Code:</b> (Clause 17.28(a))	Clause 17.28 does not apply.
<b>Time for giving notices:</b> (Clauses 16.1(a) and 16.3(a))	14 days
<b>Time for written Claims:</b> (Clauses 16.1(b), 16.3(b) and 16.3(c))	28 days



## Schedule 2 - Payment Schedule

(Clauses 1.1, 6.4 and 11)

### PART A - MAXIMUM INSTALMENTS FOR DESIGN FEE, PRELIMINARIES FEE AND MANAGEMENT FEE

The following table sets out the maximum portion of the Design Fee, Preliminaries Fee and Management Fee for which the Contractor is entitled to claim payment each month:

MONTH	DESIGN FEE (\$)	PRELIMINARIES FEE (\$)	MANAGEMENT FEE (\$)	MONTHLY TOTAL (\$)	TOTAL CUMULATIVE (\$)
MONTH 1	\$479,781.45	\$516,230.97	\$32,147.29	\$1,028,159.71	\$1,028,159.71
MONTH 2	\$287,868.88	\$206,492.39	\$32,147.29	\$526,508.56	\$1,554,668.27
MONTH 3	\$287,868.88	\$206,492.39	\$32,147.29	\$526,508.56	\$2,081,176.83
MONTH 4	\$191,912.59	\$206,492.39	\$32,147.29	\$430,552.27	\$2,511,729.10
MONTH 5	\$47,978.15	\$206,492.39	\$32,147.29	\$286,617.83	\$2,798,346.93
MONTH 6	\$47,978.15	\$206,492.39	\$32,147.29	\$286,617.83	\$3,084,964.76
MONTH 7	\$47,978.15	\$206,492.39	\$32,147.29	\$286,617.83	\$3,371,582.59
MONTH 8	\$47,978.15	\$206,492.39	\$32,147.29	\$286,617.83	\$3,658,200.42
MONTH 9	\$47,978.15	\$206,492.39	\$32,147.29	\$286,617.83	\$3,944,818.25
MONTH 10	\$47,978.15	\$206,492.39	\$32,147.29	\$286,617.83	\$4,231,436.08
MONTH 11	\$38,382.52	\$206,492.39	\$32,147.29	\$277,022.20	\$4,508,458.28
MONTH 12	\$28,786.89	\$206,492.39	\$32,147.29	\$267,426.57	\$4,775,884.85
MONTH 13	\$19,191.26	\$206,492.39	\$32,147.29	\$257,830.94	\$5,033,715.79
MONTH 14	\$9,595.63	\$206,492.35	\$32,147.23	\$248,235.21	<b>\$5,281,951.00</b>

**PART B - P&C PAYMENT**

<b>P&amp;C Payment Value</b>	<b>Performance and Incentive Goal Achievement</b>
100%	Achieve all Category A and all Category B Incentive Goals identified in this Part B of Schedule 2
50%	Achieve all Category A and at least one Category B Incentive Goal identified in this Part B of Schedule 2
0%	Does not satisfy the Incentive Goals identified in this Part B of Schedule 2 for either 100% or 50% P&C Payment as described above.

The following table describes each Performance Category and its respective Incentive Goals.

<b>Performance Category</b>		<b>WHS and Rail Safety</b>
<b>Period</b>		
<b>Incentive Goals</b>		
<b>Performance Indicator</b>	<b>Description</b>	<b>Achieved?</b>
<b>Category A</b>		
Contract obligations	Complies with all WHS and rail safety obligations in accordance with this Contract, including TfNSW Standard Requirements (TSR).	[Yes/No]
Site incidents and/or injuries	No lost time injuries (LTIs).	[Yes/No]
	No major safety investigations (refer note 1).	[Yes/No]
Infringement notices, fines and prosecutions	No infringement notices, PINs or fines issued (refer note 2).	[Yes/No]
Damage to existing infrastructure	No damage to Sydney Trains, NSW Trains or ARTC assets, rail systems assets, rail infrastructure or services (refer note 3).	[Yes/No]
Reliability incidents	No actual incidents (An actual incident is when a train (either Sydney Trains, NSW Trains or ARTC) delay is incurred) (refer notes 4, 5, 6).	[Yes/No]

<b>Performance Category</b>		<b>WHS and Rail Safety</b>
<b>Category B</b>		
Worksite Protection	All of the Works and Contractor's Activities on the Site are protected in accordance with the requirements of the Contract including the TfNSW Standard Requirements.	[Yes/No]
Close out of rail reliability issues identified	Reliability issues identified during reliability inspections by the Principal are closed prior to the agreed due date.	[Yes/No]
Collaborative safety inspections	Close out of actions arising from collaborative safety inspections within stipulated timescales.	[Yes/No]
<b>Notes:</b> <ol style="list-style-type: none"> <li>1. No major safety investigations mean any incident related to the provision of the Contractor's Activities which results in an investigation or inquiry under the Rail Safety National Law, the Transport Safety Investigation Act 2003 (Cth) or the Passenger Transport Act 1990 (NSW), where the Contractor is found fully or partially liable in relation to the incident.</li> <li>2. Any incident related to the Contractor's Activities leading to the Contractor being issued with: <ul style="list-style-type: none"> <li>• a prohibition notice or penalty notice under the Work Health and Safety Act 2011 (NSW); or</li> <li>• a prohibition notice or an infringement notice under the Rail Safety National Law, except where the notice is successfully contested and is withdrawn by the relevant issuing agency or regulator or otherwise annulled.</li> </ul> </li> <li>3. Damage to Sydney Trains, NSW Trains or ARTC assets, rail systems assets, rail infrastructure or services means damage that results in an incident as set out in 2.12.8.1 and resulting in an investigation under 4.5 of TSR which forms part of Exhibit A of this Contract.</li> <li>4. A delay to a Sydney Trains train means any delay that results in the Contractor incurring a liability under clause 3 of Schedule 15 of this Contract (Form of Contractor Deed Poll).</li> <li>5. A delay to a NSW Trains train means any delay that results in the Contractor incurring a liability under clause 3 of Schedule 15 of this Contract (Form of Contractor Deed Poll).</li> <li>6. A delay to an ARTC train means any delay that results in the Contractor incurring a liability under clause 3 of Schedule 15 of this Contract (Form of Contractor Deed Poll).</li> </ol>		

<b>Performance Category</b>		<b>Quality &amp; Safety Assurance</b>
<b>Period</b>		
<b>Incentive Goals</b>		
<b>Performance Indicator</b>	<b>Description</b>	<b>Achieved?</b>
<b>Category A</b>		
Contract obligations	Complies with all quality and safety assurance obligations in accordance with this Contract, including TfNSW Standard Requirements.	[Yes/No]
Design Certification	Submission of Consultant's Certificates of Design Compliance in accordance with this Contract.	[Yes/No]
Verification & Records	Verification, certification and maintenance of all appropriate records.	[Yes/No]
Safety Assurance Documentation	Safety Assurance Plans, Statements and Reports are provided at the times, and to the necessary quality, as required by this Contract.	[Yes/No]
<b>Category B</b>		
Configuration Documentation	Configuration documentation is provided to meet Configuration Control Board requirements and to required quality for approval at Configuration Control Board.	[Yes/No]
Management Plans	Management Plans are provided to the Principal on or before the specified date and updated as required under this Contract.	[Yes/No]
Defects	Defects are identified and rectified in accordance with this Contract.	[Yes/No]
Audit Findings	Audit findings are promptly addressed and closed out in the audit report.	[Yes/No]
Handover Documentation	Work As Executed drawings, Operational and Maintenance Manuals, DSS and all other handover documents are provided to the Principal on or before the time specified in this Contract.	[Yes/No]

Performance Category		<i>Environmental Management</i>
Period		
<i>Incentive Goals</i>		
Performance Indicator	Description	Achieved?
<b>Category A</b>		
Compliance with Contract Requirements	<p>Complies with all the environmental management requirements in accordance with this Contract, including <b>but not limited to</b> the following:</p> <ul style="list-style-type: none"> <li>- TfNSW Standard Requirements (TSR)</li> <li>- Planning approvals, and</li> <li>- Heritage approvals.</li> </ul> <p><u>Note:</u> the contractor is deemed to comply with this performance indicator so long as any non-compliance is reported immediately in accordance with the TSR requirements and corrective actions are closed out within the timeframes agreed with TfNSW.</p>	[Yes/No]
No Infringement notices, fines and prosecutions	No EPA notifiable incidents, infringement notices, fines, prosecutions notified or commenced (refer notes 1 & 2).	[Yes/No]
Heritage Management	Works are managed in accordance with the heritage approvals.	[Yes/No]
Design Modifications	<p>All design modifications are assessed by the contractor to identify any inconsistencies with the relevant planning and heritage approvals.</p> <p>Any design change that requires further planning and or heritage approval (in accordance with this Contract) is communicated to TfNSW and the necessary approvals are obtained prior to the commencement of construction for the relevant design change.</p> <p>Design modifications potentially resulting in new impacts to heritage fabric are reviewed by the projects nominated heritage architect and options to reduce or eliminate impacts have been examined and documented. Recommendations from the heritage architect have been communicated to TfNSW and</p>	

<b>Performance Category</b>		<b><i>Environmental Management</i></b>
	additional approvals are obtained where necessary prior to finalising the design modification.	
<b>Category B</b>		
Environmental Training	Training on key environmental aspects and impacts relevant to the project are being undertaken on a monthly basis. Training requirements are regularly reviewed, taking into consideration any changes to EMS documents, changes to responsibilities, any Regulatory updates or TfNSW environmental alerts.	[Yes/No]
Reoccurring Environmental Representative inspection items	No reoccurring issues raised in the Environmental Representative's inspections for action (refer note 3).	[Yes/No]
Reporting Obligations	Complies with all environmental reporting obligations in accordance with contract and planning approvals.	[Yes/No]
Environmental Protection	The work site is managed in accordance with the controls and mitigation measures identified in the CEMP and ECM which is prominently displayed in all work locations.	
<b>Notes:</b> <ol style="list-style-type: none"> <li>1. Issue of a penalty notice or similar notice to the Contractor in relation to the Contractor's Activities by an environmental regulator, except where the penalty notice or similar notice is successfully contested and is withdrawn by the relevant issuing agency or regulator or annulled by the State Debt Recovery Office.</li> <li>2. Prosecution of the Contractor in relation to the Contractor's Activities by an environmental regulator by means other than a penalty notice or similar notice where the Contractor is found liable.</li> <li>3. A reoccurring item is an item which was raised by the Environmental Representative in a prior inspection, closed out in accordance with requirements and again identified for action.</li> </ol>		

<b>Performance Category</b>		<b>Communications</b>
<b>Period</b>		
<b>Incentive Goals</b>		
<b>Performance Indicator</b>	<b>Description</b>	<b>Achieved?</b>
<b>Category A</b>		
Contract obligations	Complies with all communications obligations in accordance with this Contract, including TfNSW Standard Requirements.	[Yes/No]
Community and key stakeholders	No unplanned or unauthorised construction activities impacting community or key stakeholders outside of approved construction hours as identified in Section 5 of Exhibit E – Contract Specific Requirements. This also includes any additional hours approved under an OOHW permit.	[Yes/No]
<b>Category B</b>		
Notification to Community	All notices to the community in respect of the Contractor's Activities are accurate, submitted within the stipulated timescales for review by the Principal's Director - Communications and published or delivered within the times specified in the Planning Approval.	[Yes/No]
Community Liaison Groups	Contractor's appropriate personnel attend meetings with the community and other stakeholders meetings as required by the Principal's Representative.	[Yes/No]
Complaints	All complaints by members of the public in relation to the Contractor's Activities are appropriately responded to within the times specified in the TSR.	[Yes/No]
Notes:		
Nil		



<b>Performance Category</b>		<i>Time</i>
<b>Period</b>		
<b>Incentive Goals</b>		
<b>Performance Indicator</b>	<b>Description</b>	<b>Achieved?</b>
<b>Category A</b>		
Contract obligations	Contractor provides notice of upcoming Hold and Witness Points in accordance with 2.10(c) of the TSR to the Principal's Representative.	[Yes/No]
Contract obligations	Monthly Report provided to the Principal (date to be agreed with the Principal's Representative).	[Yes/No]
Contract obligations	Non-rejection of the Contractor's Program provided in accordance with clause 2.7 and Annexure A3 of the TSR.	[Yes/No]
<b>Category B</b>		
Design Schedule	Submit all Design Documentation at the times set out in the proceeding months' non rejected Contractor's Program.	[Yes/No]
Design Schedule	Organise and attend all design progress and review meetings at the times set out in the proceeding months' non rejected Contractor's Program.	[Yes/No]
Possession and Critical Resources	Contractor to provide the necessary notices and attend the required meetings in relation to the planning and utilisation of "Sydney Trains/ARTC Critical Resources" and Track Possessions as set out in this Contract.	[Yes/No]
Notes:		
Nil		

**PART C - SCHEDULE OF RATES FOR PRELIMINARIES FEE (LABOUR)**

No.	Description	Per Hour (ex. GST)	Per Day (ex. GST)
1	Contract Control Group Members	\$270	\$2,045
2	Program Director	\$270	\$2,045
3	Project Manager(s)	\$200	\$1,515
4	Design Manager	\$235	\$1,770
5	Construction Manager	\$235	\$1,770
6	Engineering Assurance Manager	\$200	\$1,515
7	Engineering Safety Manager	\$200	\$1,515
8	Commercial Manager	\$235	\$1,770
9	Contracts Administrator	\$115	\$865

**PART D - SCHEDULE OF RATES FOR PRELIMINARIES FEE (OTHER RESOURCES)**

No.	Description	\$ (ex. GST)	Unit
<b>Preliminaries and General Requirements</b>			
1	Supervision and Staff	\$5,590	Per day
2	Indirect Labour	\$928	Man per day
3	Plant and Equipment	\$1,138	Per day
4	Computer and IT	\$318	Per day
5	Fees and insurances	\$840	Per day
6	Site buildings and offices	\$559	Per day
7	Communications, associated management plans and community consultation	\$1,345	Per day
8	Environmental Management (including Environmental Management Plans)	\$971	Per day
9	Compliance, audit and quality assurance	\$971	Per day
10	Occupational health and safety assurance	\$971	Per day
11	Temporary hoardings and fencing	\$750	Per m
12	Traffic Management (including Traffic Management Plan)	\$1,689	Per day
13	Preparation submission and ongoing updating of Management Plans	\$1,548	Per day
14	Site investigation (geotechnical, utility services) and Cadastral / Topographic survey	\$17,727	Per event
15	Not used	-	-
16	Dilapidation survey	\$11,880	Per event
17	Final dilapidation survey	\$11,880	Per event
18	As-Built drawings and asset management	\$32,500	Per package

No.	Description	\$ (ex. GST)	Unit
	documentation		
19	Mobilisation / Demobilisation	\$17,600	Per event
20	Inductions and Training	\$2,600	Per day
21	Security During Construction	\$843	Per shift

**PART E - SCHEDULE OF RATES FOR DESIGN FEE**

No.	Description	Per hour (ex. GST)
1	Director	\$520
2	Associate/Discipline Manager	\$465
3	Principal Engineer	\$390
4	Senior Engineer	\$320
5	Engineer	\$225
6	Drafting Manager	\$320
7	Leading Draftsperson / Checker	\$225
8	Draftsperson	\$195
9	Clerical	\$140
10	Black & White A4, A3 photocopying each	\$1.50
11	A4 Adhesive each	\$5.00

### Schedule 3 - Form of Confidentiality Undertaking

(Clauses 1.1 and 17.11(c)(i))

To: [ ]

We \_\_\_\_\_ the engaged Consultant/Supplier/Contractor/Subcontractor body, undertake to treat as confidential all information received/generated from Transport for NSW (ABN 18 804 239 602) (Principal) in respect of work performed by the Principal.

The Consultant/Supplier/Contractor/Subcontractor hereby undertakes:

- (a) To disclose information to its employees only on a need-to-know basis;
- (b) Not to disclose information to any other person without first obtaining the written consent of the Principal;
- (c) To ensure that its employees to whom information is disclosed will comply with (a) and (b) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant/Supplier/Contractor/Subcontractor, its employees or agents) or which was already known to the Consultant/Supplier/Contractor/Subcontractor.

Any breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor and at the direction of the Principal the Consultant/Supplier/Contractor/Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant/Supplier/Contractor/Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant/Supplier/Contractor/Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.



This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated: .....

**SIGNED** for and on behalf of:

.....  
(Print Company Name)

By: .....  
(Print Name)

.....  
(Signature)

in the presence of:

.....  
(Print Name)

.....  
(Signature)



## Schedule 4 - Action in Complying with Planning Approval and Third Party Agreements

(Clauses 2.2(c) and 2.11(a))

### Part A Planning Approval

Subject to the paragraphs under the heading "Conditions of Approval" below, the Contractor must fulfil all the conditions and requirements of the Planning Approval, except to the extent that the following tables allocate responsibilities to the Principal. Nothing specified in this table as being a responsibility of the Principal will relieve the Contractor from complying with any obligation set out elsewhere in the Contract. The Contractor may apply to have any part of any of the Approvals listed below modified. The Contractor acknowledges and agrees that it is solely responsible for any such modification.

#### Conditions of Approval

The Planning Approval for the Kingswood Station Upgrade will be issued after the date of this Contract. The table set out in Part A of Schedule 4 ("**Draft Allocation**") is a draft based on the draft of the Planning Approval attached in Exhibit D ("**Draft Planning Approval**").

Promptly after issue of the Planning Approval, the Principal must give to the Contractor a notice ("**Planning Approval Notification**") including:

- (a) a copy of the issued Planning Approval; and
- (b) a list of amendments (if any) to the Draft Allocation arising out of the issued Planning Approval ("**Allocation Changes**").

If the Principal issues a Planning Approval Notification:

- (c) this Part A of Schedule 4 is amended in accordance with the Allocation Changes as and from the date of receipt by the Contractor of the Allocation Changes; and
- (d) the Contractor must carry out its obligations under this Contract on the basis of the Allocation Changes.

If:

- (e) any terms or conditions of the issued Planning Approval or the Allocation Changes, are materially more onerous than those contained in the Draft Planning Approval or the Draft Allocation (as applicable) ("**Difference in Planning Approval Conditions**");
- (f) the Difference in Planning Approval Conditions requires the Contractor to carry out any physical work which:
  - (i) does not form part of the Contractor's Activities; and
  - (ii) is additional to any physical works which the Contractor would have had to carry out pursuant to the draft Planning Approval and the Draft Allocation, ("**Additional Works**"); and
- (g) within 14 days after receipt of the Planning Approval Notification, the Contractor notifies the Principal's Representative in writing of the Additional Works and the cost of carrying out such Additional Works, together with detailed particulars,

then to the extent that the Difference in Planning Approval Conditions does necessitate the Additional Works, the Principal's Representative will direct the Contractor to carry out such Additional Works as a Variation under clause 6.2 and clause 6.4 will apply.

Planning Approval Condition Number	Extent of Principal's responsibility for the Planning Approval condition specified
9	The Principal is responsible for fulfilling the requirements of Planning Approval Condition 9 relating to the website.  The Contractor must provide all information and documentation as required by the Principal's Representative to enable it to fulfil this condition.
10	The Principal is responsible for setting up the 24 hour construction response line number. The Contractor is responsible for fulfilling all other requirements of Planning Approval Condition 10 relating to complaints management.

13	The Principal is responsible for fulfilling the requirements of Planning Approval Condition 13 relating to the engagement of the Environmental Management Representative.
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### Part B Additional Environmental Requirements

Note, Hazelbrook Station Upgrade will be subject to approval by the Heritage Council under section 60 of the *Heritage Act 1977* (NSW). The Contractor must in addition to fulfilling the requirements of the Planning Approval, carry out the following in relation to the Planning Approval:

Planning Approval Condition Number	Further obligations of Contractor
Section 60 Heritage Act approval and associated conditions	Not applicable for Kingswood Station

### Part C Third Party Agreements

Agreement and Clause No	Extent of Principal's responsibility for clause specified
Clause 4.5	The Principal will fulfil the requirements of this clause.
Clause 5(c)	The Principal will organise, schedule and minute the Interface Coordination meetings.
Clause 7	The clause applies only to the parties to the agreement.
Clause 8	The clause applies only to the parties to the agreement.

## Schedule 5 - Consultant Deed of Covenant

(Clause 7.7(a)(iv))

This deed poll is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**To:** **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**")

**By:** [ \_\_\_\_\_ ] ("**Consultant**")

### Recitals

- A. The Principal has engaged [ \_\_\_\_\_ ] ("**Contractor**") to carry out certain works for the Principal by a contract dated [ \_\_\_\_\_ ] ("**Contract**").
- B. The Contractor has engaged the Consultant by agreement dated [ \_\_\_\_\_ ] ("**Subcontract**") to carry out the professional services to be performed under the Subcontract ("**Professional Services**") for the purposes of the performance of the Contractor's obligations under the Contract as they relate those design services.
- C. Under the Contract, the Contractor is required to procure the Consultant to execute this deed poll in favour of the Principal.

### Operative

#### 1. Duty of Care

- (a) The Consultant:
- (i) warrants to the Principal that:
- A. in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a consultant experienced in and expert in the provision of the type of professional services required by the Principal;
- B. the Professional Services will be fit for the intended purposes disclosed in or reasonably able to be inferred from the Works Brief, which is an annexure to the Contract; and
- C. the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;
- (ii) acknowledges that:
- A. in performing the Professional Services it will owe a duty of care to the Principal; and
- B. it is aware that the Principal will be relying upon the skill and judgment of the Consultant in performing the Professional Services and the warranties given by the Consultant in this deed poll; and
- (iii) must act in good faith and in the best interests of the Principal and promptly advise the Principal about any matter in which the Consultant has been instructed by the Contractor to provide the Professional Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including without limitation:

- A. where the Contractor's instructions in relation to design are not consistent with the Contract or may result in the Works not being fit for their intended purpose; or
  - B. where the Contractor's instructions require the Consultant to issue a certificate where the conditions for the issue of that certificate under the Contract have not been satisfied.
- (b) The Consultant must:
- (i) fully cooperate with each other consultant, contractor, artist, tradesperson or other person engaged by the Principal to do work other than the Contractor and its subcontractors ("**Other Contractor**");
  - (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
  - (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
  - (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the services and work being provided by each Other Contractor;
  - (v) ensure title to and intellectual property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Contract in the Principal;
  - (vi) obtain an assignment to the Principal from any third party who owns any intellectual property right in the Professional Services;
  - (vii) if any intellectual property rights in or in relation to documents, designs and computer programs created for the purposes of the Contract is not capable of being vested in the Principal because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to the Principal an irrevocable licence to use that Intellectual Property, by sub-licence from the Consultant or direct licence from a third party; and
  - (viii) ensure that the intellectual property created for the purposes of the Contract is not used, adapted or reproduced other than for the purposes of the Contract without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (c) The Consultant must indemnify the Principal from and against:
- (i) any liability to or claim by any other person; and
  - (ii) all claims against, and costs, expenses, losses and damages, suffered or incurred by the Principal arising out of, or in any way in connection with:
  - (iii) the Consultant's breach of a term of, or warranty under, this deed poll provided that the Consultant's liability to indemnify the Principal under this clause 1(c)(iii) will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the liability, claim costs, losses, damages, fines or penalties; or

- (iv) any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right.
- (d) Subject to clause 1(e) of this deed poll, the liability of the Consultant to the Principal, whether arising under or in connection with this Contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability) or on any basis in law or equity, is limited to the amount that is equal to the greater of:
  - (i) ***\$[insert total amount paid or payable by the Principal to the Consultant in respect of the Professional Services under the Subcontract]***; and
  - (ii) \$20 million.
- (e) Clause 1(d) of this deed poll does not apply to limit or restrict in any way:
  - (i) any liability to the extent to which the Consultant is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;
  - (ii) any liability for which, but for a failure by the Consultant to:
    - A. effect and maintain any insurance policy required under the Contract; or
    - B. comply with its obligations under the Subcontract or under an insurance policy,

the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract or the Subcontract (as the case may be);
  - (iii) the Consultant's liability to indemnify the Principal under clause 1(c)(iv) of this deed poll;
  - (iv) the Consultant's liability for:
    - A. any loss of or damage to property of the Principal;
    - B. any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons; or
    - C. without limiting or otherwise affecting paragraph (A), any loss or damage to existing property in or upon which the Professional Services are being carried out;
  - (v) the Consultant's liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the Consultant or its subcontractors or agents;
  - (vi) the Consultant's liability where it abandons the performance of its obligations under the Subcontract;
  - (vii) liability out of which by law the Consultant cannot contract; or
  - (viii) liability of the Consultant under any other agreement with the Principal.

---

## 2. Notices

- (f) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or

sent to the facsimile number shown below (or to a party's new address or facsimile number which that party notifies to the others):

- (i) to the Principal: c/o Level 5, Tower A  
Zenith Centre  
821 Pacific Highway  
CHATSWOOD NSW 2067  
Fax: (02) 9200 0290
- (ii) to the Consultant: ***[Insert details]***
- (g) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (h) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission slip showing the facsimile number of the party to whom it is addressed in accordance with clause 2.1, which is not a Saturday, Sunday or public holiday in New South Wales.
- (i) If the Consultant is a foreign company (as defined in the *Corporations Act*), the Consultant must within 14 days of the date of this deed poll:
  - (i) 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 poll; and
  - (ii) obtain the process agent's consent to the appointment.

The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

---

### 3. Miscellaneous

- (j) This deed poll will be construed in accordance with the law of the State of New South Wales and the Consultant irrevocably submits to the jurisdiction of the Courts of that State.
- (k) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.





**Schedule**

[INSERT DESCRIPTION OF PROFESSIONAL SERVICES] as more particularly described in the Subcontract.

**Executed** as a deed poll.

**Signed Sealed and Delivered** )  
by the Consultant ) .....  
[ ] by or in the presence of: ) (Signature)

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

## **Schedule 6 - Authority Approvals to be obtained by the Principal**

(Clause 2.2(c)(i))

- The Planning Approval.

## Schedule 7 - Form of Unconditional Undertaking

(Clause 2.6)

This deed poll ("Undertaking") made the                      day of                      20

In favour of:                      **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 ("**Principal**")

Given by:                      [                      ] ("**Institution**")

### Recitals:

- A.                      By a contract dated [                      ] ("**Contract**") between [                      ] ("**Contractor**") and the Principal the Contractor agreed to carry out the Contractor's Activities (as defined in the Contract).
- B.                      Under the provisions of the Contract, the Contractor is required to provide this Undertaking to the Principal.

### Operative:

1.                      The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$                      ).
2.                      The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
3.                      The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Contract or the Contractor's Activities or acts or things to be executed, performed and done under the Contract or by reason of any breach or breaches of the Contract by the Contractor or the Principal.
4.                      The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
5.                      This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.



**Executed** as a deed poll.

**Signed Sealed and Delivered** )  
 by [ ] being signed ) .....  
 sealed and delivered by its duly constituted ) (Signature)  
 Attorney [ ] under )  
 Power of Attorney No. in the )  
 presence of: )

.....  
(Signature of Witness)

.....  
(Name of Witness in Full)

## Schedule 8 - Information Documents and Materials

(Clauses 1.1 and 3.6)

### List of Information Documents and Materials (in the memory stick)

Doc No.	Description	Date	Drawing or Document Number	Filename	File Format
1	Kingswood Concept Plans Final Report	12/12/2013	6181696	Kingswood Concept Plans Final Report	PDF

## **Schedule 9 - Self-Performed Reimbursable Work**

(Clauses 1.1 and 7.14)

NIL

## Schedule 10 - Form of Warranty

(Clause 7.9)

This Deed Poll is made the                                  day of                                  20

**To:**     **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 ("**Principal**")

**[Add other beneficiaries as nominated by TfNSW] ("**Beneficiary**").**

**By:**     That person described in Item 1 of the Schedule ("**Warrantor**") which expression will include its successors and assigns)

### Recitals

- A.     The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in **Item 3** of the Schedule ("**Contractor**") or the person described in Item 4 of the Schedule, a subcontractor of the Contractor ("**Subcontractor**"), for the works ("**Works**") being carried out by the Contractor under the contract described in Item 5 of the Schedule ("**Contract**") with the Principal.
- B.     It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

### Operative

---

## 1.     Quality

The Warrantor:

- (a)     warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b)     gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

---

## 2.     Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 7 of the Schedule:

- (a)     is found to be of a lower quality or standard than that referred to in clause 1; or
- (b)     shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.



---

**3. Warrantor to bear cost**

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

---

**4. Principal not liable**

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

---

**5. This deed poll may not be revoked**

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

---

**6. Governing Law**

This deed poll is governed by the laws of the State of New South Wales.

---

**7. Jurisdiction**

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

---

**8. Enforcement of this deed poll**

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

## Schedule

- Item 1: Name and Address of Warrantor
- Item 2: Equipment  
(Recital A)
- Item 3: Contractor  
(Recital A)
- Item 4: Subcontractor  
(Recital A)
- Item 5: Contract  
(Recital A)
- Item 6: Detailed Warranty of Warrantor  
(Clause 1(b))
- Item 7: Period of Years  
(Clause 2)

**[insert period]** years from the expiry of the last "Defects Rectification Period" as defined in the General Conditions (including any extension under clause 8.6 of the General Conditions).

**Executed** as a deed poll.

**Executed** by **[insert name of Warrantor]**  
**(ABN [insert ABN])** by or in the presence of:

---

Signature of  
Director

---

Name of  
Director in full

---

Signature  
of  
Secretary  
/other  
Director

---

Name of  
Secretary  
/other  
Director  
in full



### Schedule 11 - Form of Statutory Declaration

(Clause 11.6(c)(i))

#### Statutory Declaration

Oaths Act (NSW) Ninth Schedule

I,  
.....  
.....

of .....  
do solemnly and sincerely declare that:

1. I am the representative of:  
.....  
.....  
**("the Contractor")**  
in the Office Bearer capacity of:  
.....  
.....

2. The Contractor has a contract with the [ ..... ]:  
.....  
**("the Contract")**

3. I personally know the facts which I have set out in this declaration.

4. All employees who have at any time been engaged by the Contractor for work done under the Contract:  
a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and  
b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,  
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:

Employee:	Amount unpaid or not accrued:
.....	.....
.....	.....
.....	.....

5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).

5A Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:  
.....  
.....

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor



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or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

- (a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and
(b) that all their employees and subcontractors, as at the date of the making of such a declaration:

- i) have been paid all remuneration and benefits due and payable to them by; or
ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and

- (c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Table with 2 columns: Subcontractor, Due amount unpaid. Includes dotted lines for data entry.

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Table with 2 columns: Employee, subcontractor or supplier; Amount unpaid or not accrued. Includes dotted lines for data entry.

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Pay-Roll Tax Act 1971 and Industrial Relations Act 1996) which is a written statement:

- (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;
(b) under section 18(6) of schedule 2 of part 5 of the Pay-Roll Tax Act 2007 in the form and providing the detail required by that legislation; and
(c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:

- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Pay-Roll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
(b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.

14. I am not aware of anything which would contradict the statements made in the statutory declarations



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<p>or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.</p> <p><i>I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.</i></p> <p>Declared at ..... on .....</p> <p style="text-align: center;">(place)                      (day)                      (month)                      (year)</p> <p>..... (Signature of Declarant)</p> <p>Before me:</p> <p>..... (Signature of person before whom the declaration is made)</p> <p>..... (Name of the person before whom the declaration is made)</p> <p>..... (Title* of the person before whom the declaration is made)</p>	
<p>And as a witness, I certify the following matters concerning the person who made this declaration (<b>declarant</b>):</p> <p>[*strike out the text that does not apply]</p> <p>1.            *I saw the face of the declarant.               OR               *I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.</p> <p>2.            *I have known the declarant for at least 12 months.               OR               *I confirmed the declarant's identity using the following identification document:</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Identification document relied on (may be original or certified copy)</p> <p>_____</p> <p>Signature of person before whom the declaration is made</p> <p>Before me:</p> <p>..... (Signature of person before whom the declaration is made)</p> <p>..... (Name of the person before whom the declaration is made)</p> <p>..... (Title* of the person before whom the declaration is made)</p> <p>* The declaration must be made before one of the following persons:</p> <ul style="list-style-type: none"> <li>- where the declaration is sworn within the State of New South Wales:             <ul style="list-style-type: none"> <li>(i) a justice of the peace of the State of New South Wales;</li> <li>(ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or</li> <li>(iii) a notary public.</li> </ul> </li> <li>- where the declaration is sworn in a place outside the State of New South Wales:             <ul style="list-style-type: none"> <li>(i) a notary public; or</li> <li>(ii) any person having authority to administer an oath in that place.</li> </ul> </li> </ul>	



**Annexure A**

**Supporting statement by head contractor regarding payment to subcontractors**

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: [*business name of head contractor*]

ABN: [*ABN*]

\* 1. has entered into a contract with: [*business name of subcontractor*]

ABN: [*ABN*]

Contract number/identifier: [*contract number/identifier*]

OR

\* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

\* [*Delete whichever of the above does not apply*]

This statement applies for work between [*start date*] and [*end date*] inclusive (the construction work concerned), subject of the payment claim dated [*date*].

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

Signature: ..... Date: .....

Full name: ..... Position/Title: .....



**Attachment**

<b>Schedule of subcontractors paid all amounts due and payable</b>				
<b>Subcontractor</b>	<b>ABN</b>	<b>Contract number / identifier</b>	<b>Date of works (period)</b>	<b>Date of payment claim (head contractor claim)</b>

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





**Annexure B**

**SUBCONTRACTOR'S STATEMENT**

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION  
(Note 1 - see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

***SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.***

Subcontractor: ..... ABN:  
.....

*(Business name)*

of .....

*(Address of subcontractor)*

has entered into a contract with .....

ABN:.....

*(Business name of principal contractor)*

(Not

e 2)

Contract number/identifier ..... (Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, (Note 4)

subject of the payment claim dated: ...../...../..... (Note 5)

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../.....(Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its



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subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature ..... Full  
name.....

(g) Position/Title ..... Date  
...../...../.....

*NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

### Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor. A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.  
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'  
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information, visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).



**Schedule 12 - Property Owner's Certificate**

(Clause 3.4(c)(ii))

**This deed poll** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**To:** **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 ("**Principal**")

**By:** [ \_\_\_\_\_ ].

**Property Address:** .....

1. I/We confirm that the following works has been carried out and completed on my/our property to my/our satisfaction:

**[Insert description of works on property and property]**

- 2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
- 3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.
- 4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

**Executed** as a deed poll.

**Signed sealed and delivered**  
by \_\_\_\_\_ in the presence  
of: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

## Schedule 13 - Form of Subcontractor Deed

(Clause 7.7(a)(v))

**THIS DEED POLL** is made on ....., 20..... by

..... ACN..... of

..... (the "**Subcontractor**").

### RECITALS:

- A. **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**") has entered into a contract with [ ] ("**Contractor**") for the construction of [ ] ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Contractor for the execution and completion of the [ ] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

**THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES** with and for the benefit of the persons named in the Schedule as follows:

1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
  - (a) must if required by a written notice by the Principal to sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
  - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
4. This Deed Poll is governed by the laws of the State of New South Wales.
5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.



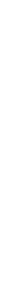
**PERSONS NAMED IN THE SCHEDULE TO THE DEED POLL**

Transport for NSW (ABN 18 804 239 602)

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

**EXECUTED AS A DEED POLL.**

**Executed by [insert name] (ABN [insert ABN])** by or in the presence of:



\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

### Attachment 1 (to Schedule 13)

**THIS DEED OF NOVATION** is made on [ ] 20[ ] between the following parties:

1. [ ] ("**Substitute Contractor**")
2. [ ] ("**Original Contractor**")
3. [ ] ("**Subcontractor**").

#### RECITALS:

- A. By deed dated [ ] (the "**Deed**") between:
- (i) **Transport for NSW (ABN 18 804 239 602)** of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (the "**Principal**"); and
  - (ii) Original Contractor,
- the Principal engaged the Original Contractor to undertake the Works (as defined in the Deed).
- B. The Original Contractor has entered into an agreement ("**Subcontract**") with the Subcontractor for the execution and completion of the [ ] ("**Subcontract Works**") as part of the Works.
- C. The Principal has terminated the Deed and has engaged Substitute Contractor to complete the Works.
- D. The Principal and Substitute Contractor wish to effect a novation of the Subcontract.

**THIS DEED WITNESSES** that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed at the date of this deed. Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Contractor.
2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if Substitute Contractor was originally named in the Subcontract in place of Original Contractor.
3. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

**EXECUTED** by the parties as a deed:

***[Insert appropriate execution clauses]***



## **Schedule 14 - Options**

(Clause 6.3)

NIL

## Schedule 15 - Form of Contractor Deed Poll

(Clause 1.5)

This deed poll ("**Deed Poll**") made the                    day of                    20

**By:**                    **[insert name of Contractor] (ABN [insert Contractor's ABN])** of [insert Contractor's address] ("**Contractor**"),

**in favour of:**    **[insert name of Beneficiary of Deed Poll] (ABN [insert Beneficiary's ABN])** of [insert Beneficiary's address] ("**Owner**").

### RECITALS

- A. Transport for NSW ("**TfNSW**") of Level 5, Tower A Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067, is responsible for developing [Insert] ("**Program**").
- B. As part of the Program TfNSW is responsible for procuring the execution and completion of certain works for the [insert details of project] (the "**Works**") on behalf of the Owner and the New South Wales Government, and has entered into a contract ("**Main Contract**") with the Contractor to achieve this.
- C. The Owner is relying on TfNSW to procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- D. The Owner will suffer loss if TfNSW does not procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- E. It is a condition of the Main Contract that the Contractor executes this Deed Poll.

### **THIS DEED POLL WITNESSES THAT THE CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES** with and for the benefit of the Owner as follows:

1. It will comply with its obligations under the Main Contract, including with respect to achieving Completion of each Portion and the Works by the relevant Date for Completion.
2. Upon Completion of the Works, the Works will satisfy the requirements of the Main Contract.
3. This clause 3 only applies where the Owner is Sydney Trains or NSW Trains. In consideration of the Owner making available to the Contractor Track Possessions the Contractor agrees that it must indemnify the Owner against all costs, expenses, losses or damages suffered or incurred by the Owner in respect of any delay to rail services or late return of Track Possessions arising out of or in connection with the Contractor's Activities.

The maximum liability which the Contractor will have to the Owner pursuant to this clause for each event resulting in delay to rail services or for late return of a Track Possession will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession calculated by applying the following rates:

<b>Period in which delay occurs</b>	<b>Rate per hour or part thereof</b>
During peak hours	\$30,000
During all other hours	\$15,000

4. The aggregate of the Contractor's liability to the Owner under this Deed Poll and the Contractor's liability to TfNSW under the Main Contract:
- (a) will not exceed the liability which the Contractor would have had under the Main Contract if the Main Contract had named, as Principal, the Owner and TfNSW jointly and severally; and
- (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Contract.
5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
6. The Owner may assign or charge the benefits and rights accrued under this Deed Poll.
7. This Deed Poll is governed by the laws of the State of New South Wales.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Owner.
9. Where terms used in this Deed Poll are defined in the Main Contract, those terms have the meaning given to them in the Main Contract.

**Executed** as a deed poll.

**Executed by [insert Contractor's name]**  
**ABN [insert Contractor's ABN]** by or in the  
presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

## Schedule 16 - Deed of Guarantee and Indemnity

(Clause 2.6)

**Deed of Guarantee and Indemnity** made at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_

**Transport for NSW** (ABN 18 804 239 602), a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 (**Principal**)

[ \_\_\_\_\_ ] ABN [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ]  
 ( **Guarantor** )

### RECITALS

- A. The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

### THIS DEED PROVIDES

#### 1. Definitions

##### 1.1 Definitions and Interpretation

In this Deed:

**Contract** means the *[Insert details]* Contract dated on or about the date of this Deed between the Principal and the Contractor.

**Contractor** means *[insert details]*.

**Event of Default** means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

**Guaranteed Money** means all money the payment or repayment of which from time to time forms part of the Obligations.

**Insolvency Provision** means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Obligations** means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Contractor and the Principal comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

**Security** means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

**Specified Rate** means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

## 1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Contract.

## 1.3 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
  - (1) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (2) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
  - (1) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (2) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) a reference to:
  - (1) a party or clause is a reference to a party or clause of or to this Deed; and
  - (2) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;

- (m) 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; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

## **2. Guarantee**

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### **2.1 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

### **2.2 Payment by Guarantor**

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

### **2.3 Perform Obligations**

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.

## **3. Indemnity**

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As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations duly and punctually; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

## **4. Liability**

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### **4.1 Liability as Guarantor and Indemnifier**

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

### **4.2 Limitation on Guarantor's liability**

The liability of the Guarantor under this Deed will not exceed the liability which the Guarantor would have had to the Principal arising out of or in connection with the



Contract, the Works or the Obligations, if the Guarantor had been named in the Contract as being jointly and severally liable with the Contractor to the Principal.

## **5. Nature and preservation of liability**

### **5.1 Absolute liability**

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
  - (1) any person, whether named as a party or not, does not execute this Deed;
  - (2) the execution of this Deed by any person is invalid, forged or irregular in any way; or
  - (3) this Deed is or becomes unenforceable, void or voidable against any other person.

### **5.2 Unconditional liability**

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;

- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor;
- (p) (where the Guarantor is an individual) the death or mental incapacity of the Guarantor; or
- (q) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
  - (1) the enforcement of this Deed against any Guarantor; or
  - (2) any claim for contribution against any Guarantor.

### 5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

### 5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Contractor, or any particulars concerning any Obligation.

## 5.5 Appropriation

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

## 5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
  - (1) the Guarantor from its obligations under this Deed; or
  - (2) any assets of the Guarantor from a Security,
 in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or
- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
  - (1) the Guarantor from its obligations under this Deed; or
  - (2) any assets of the Guarantor from a Security;

and

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

### **5.7 No set-off, counterclaim**

The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

### **5.8 Claim on the Guarantor**

The Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

### **5.9 No representation by Principal etc.**

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Contractor or any other person.

## **6. Representations and Warranties**

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### **6.1 General representations and warranties**

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Principal:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

### **6.2 Corporate representations and warranties**

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Securities Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and

- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate.

### **6.3 Representations and warranties repeated**

Each representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

## **7. Payments**

### **7.1 On demand**

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

### **7.2 Payment in gross**

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

### **7.3 Interest**

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3 provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

### **7.4 Merger**

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

### **7.5 No set-off or deduction**

All payments by the Guarantor to the Principal under this Deed must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

## **7.6 Currency indemnity**

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (Payment Currency) other than the currency (Agreed Currency) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

## **8. Expenses and stamp duties**

### **8.1 Expenses**

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

### **8.2 Stamp duties**

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery,



performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and

- (b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

### 8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (GST Liability) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

## 9. Assignment

---

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

## 10. Governing law, jurisdiction and arbitration

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### 10.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

### 10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

### 10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).



- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

#### 10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

#### 10.5 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

#### 10.6 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

#### 10.7 Award final and binding

Any award will be final and binding upon the parties.

### 11. Miscellaneous

#### 11.1 Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others).

(1) to the Principal: Level 5, Tower A  
Zenith Centre  
821 Pacific Highway  
CHATSWOOD NSW 2067  
Fax: (02) 9200 0290

(2) to the Guarantor: **[to be completed]**

- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

#### 11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed

as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

### **11.3 Further assurance**

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

### **11.4 Form of demand**

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

### **11.5 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) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or
- (b) 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.

### **11.6 Joint and several liability**

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor 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. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

### **11.7 Severance**

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

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

### **11.8 Remedies cumulative**

Each Power is cumulative and in addition to each other Power available to the Principal.

## 11.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this 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) 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) No waiver by the Principal of:
  - (1) a breach of any term of this Deed; or
  - (2) any other failure by the Guarantor to comply with a requirement of this Deed,

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.

## 11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

## 11.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

## 11.12 Set-off

- (a) The Principal may (without prior notice at any time) set off any obligation then due and payable by the Guarantor under this Deed against any obligation (whether or not due and payable) by the Principal to the Guarantor, regardless of the place or currency of payment of either obligation or the office or branch through which either obligation is booked. If the obligations are in different currencies, the Principal may convert either obligation into the currency of the other obligation at a market rate of exchange determined by it for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Principal may effect the set off in an amount estimated by it in good faith to be the amount of that obligation.
- (b) The Principal is not obliged to exercise any right of set off pursuant to clause 11.12(a), which is in addition to its other rights of combination of account, set-off or lien (by contract or operation of law).
- (c) On its exercise of any set off pursuant to clause 11.12(a) against the Guarantor, the Principal will promptly notify the Guarantor of details of that set-off.

**11.13 Variations**

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

**11.14 Provisions limiting or excluding liability**

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

**11.15 Counterparts**

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

**Executed as a deed.**

**Executed by**  
in the presence of:



\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

## Schedule 17 - Preliminaries

(Clauses 1.1 and 2.1(b)(i))

Preliminaries that may be associated with the Contractor's Activities include the matters and activities are identified below. For the avoidance of any doubt, the examples below do not constitute an exhaustive list of Preliminaries that may be required.

### 1. Contractor's team

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- (a) Provide the Contractor's project team comprising the Key Personnel and other site-based staff as required for planning, supervision, administration and management of the Works, as required for the Contractor to discharge its obligations under this Contract and the TfNSW Standard Requirements. This excludes any people engaged in Reimbursable Work or the Design Work.

### 2. Procurement and Cost Planning

---

- (a) Develop, maintain, and implement procurement and cost planning in accordance with the Procurement Management Plan, using methodology that identifies long lead items and optimises value for money
- (b) Perform pre-procurement and post-procurement cost planning services in accordance with the Contract, including the assessment and benchmarking of tenders, cost(s), cost risk and time risk at various stages of the Contract.

### 3. Design Co-ordination and Management

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- (a) Coordinate and manage the design process, including all documentation associated with
- (b) Formulate and agree construction methods with design consultants and advise on 'buildability'

### 4. Miscellaneous management activities to be performed by the Contractor

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- (a) Develop, maintain, and implement various management plans required under the Contract, including but not limited to, the following;
  - (1) Contract Management Plan
  - (2) Design Management Plan
  - (3) Procurement Management Plan
  - (4) Cost Plans
  - (5) Construction Management Plan
  - (6) Construction Environmental Management Plan
  - (7) Work Health and Safety Management Plan
  - (8) Workplace Relations Management Plan
  - (9) Quality Assurance Plan
- (b) Provide and maintain a comprehensive program planning system to enable integrated scheduling, monitoring and reporting
- (c) Carry out progressive work inspections and tests

- (d) Obtain or procure certificates, licences, consents, permits, Approvals and the like
- (e) Attend, and where required chair, formal and informal meetings
- (f) Prepare and implement effective communications, relationship management and issues resolution processes
- (g) Implement systems and processes for audit, monitor, record, reporting purposes
- (h) Create and maintain all necessary documentation (including Contract Documentation) associated with management and performance of the Contractor's consultants, suppliers and subcontractors.
- (i) Manage the quality, accuracy and suitability of all project documentation, including design documentation, tender documentation and construction contract documentation.
- (j) Ensure that all consultancy agreements, supply contracts, subcontracts and the like are managed in accordance with the project delivery method and are administered in accordance with their terms and conditions

## **5. Site-based accommodation and amenities**

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- (a) Obtain agreement from the Principal on the location and layout of site accommodation and amenities
- (b) Mobilise, provide, furnish, maintain and operate site based accommodation, and amenities including facilities for use by the Principal (clause 3.5 of the Contract Specific Requirements), demobilise upon completion of the Works, and make good area
- (c) Provide and maintain administrative, information technology, communications systems and the like

## **6. Site Management**

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- (a) Ensure Site survey marks are established
- (b) Provide Site security and traffic management services.
- (c) Ensure the Site is run in a clean and efficient manner, having due regard to any adjoining premises
- (d) Maintain records of weather at Site locations
- (e) Maintain records of Site conditions
- (f) Site supervision

## **7. Costs, fees and expenses**

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- (a) Fees, levies, Taxes, licences, permits, notices, fines, charges and the like (e.g. long service levies);
- (b) Financial instruments, bank guarantees, insurances, and the like
- (c) Costs of any Extra Land, and any other procurement of any goods or services which form part of the Preliminaries.

## **8. Configuration control**

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- (a) Compliance with any specific requirements listed in the Works Brief (including Annexure A), and/or ASA Requirements.

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**9. Workplace health and safety and Rail safety**


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- (a) Develop, maintain, and implement workplace health and safety in accordance with the Work Health and Safety Management Plan
- (b) Principal Contractor role under WHS Legislation in respect of construction work forming part of the Contractor's Activities.
- (c) WHS functions and tasks, for which the Contractor is responsible under the Contract, in relation to Interface Agreement(s)

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**10. Environmental management**


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- (a) Develop, maintain, and implement environmental management in accordance with the Construction Environmental Management Plan, and with applicable Law in connection with the Environment.

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**11. Financial management**


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- (a) Planned v actual cost reporting, planned v actual cashflow reporting
- (b) Management of financial progress claims and variations
- (c) Prompt reporting to the Principal and management of possible increases or decreases to the Target Budget Estimate
- (d) Administration and payment of progress claims received by the Contractor
- (e) Management of contract securities (eg bank guarantees) to be provided to, or supplied by, the Contractor
- (f) Management of cash retentions held by the Contractor in accordance with the Contractor's subcontracts (including consultancy agreements and supply contracts).

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**12. Quality Assurance**


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- (a) Manage quality assurance issues in accordance with the quality assurance plan

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**13. Industrial relations management**


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- (a) Develop and maintain the Workplace Relations Management Plan
- (b) Manage all industrial relations matters relating to the Contractor's Activities

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**14. Approvals**


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- (a) Preparing and obtaining Approvals required to be obtained by the Contractor, as detailed in the Contract

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**15. Dispute Management**


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- (a) If reasonably possible, provide early warning and/or mitigation measures to avoid disputes
- (b) Manage any disputes and/or dispute notices or legal proceedings issued against, or received from, the Contractor's subcontractors.
- (c) Manage any disputes and/or dispute notices or legal proceedings issued to or received by the Contractor, in relation to any other party not noted in (a) above.



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**16. Stakeholder and Interface Management**

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- (a) Managing stakeholder and interface contractor meetings, questions, comments requests and complaints
- (b) Liaise with public and statutory authorities and service providers

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**17. Completion, Defects Liability Period and Final Completion**

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- (a) Ensure timely Completion and Final Completion handover and certification
- (b) Promptly create, procure, obtain, compile, check and deliver to the Principal all handover and asset management documentation (eg. as-built drawings and documentation as required under Appendix B of the Works Brief) necessary to achieve Completion and Final Completion of each Portion or the Works in accordance with the Contract.
- (c) Ensure appropriately certified agents are engaged, if required, to undertake post Completion and Final Completion inspections and approvals
- (d) Conduct the training of the Principal's staff, and/or any company nominated by the Principal to operate and maintain the Works



**Schedule 18 - Contractor's Certificate of Design Compliance**

(Clauses 5.3(b)(i) and 11.6(c)(ii))

<b>CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE</b>	
<b>CONTRACTOR:</b>	
<u>DESIGN PACKAGE</u>	DESCRIPTION
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the design for the packages or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and complies with the requirements of the Contract, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the design packages.</p> <p>SIGNATURE: _____ SIGNATURE: _____                      (Contractor's Representative) (Contractor's Subcontractor/Designer)</p> <p>DATE: _____ DATE: _____</p>	



**Schedule 19 - Contractor's Certificate of Construction Compliance**

(Clauses 7.16(c) and 11.6(c)(ii))

<b>CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE</b>	
<b>CONTRACTOR:</b>	
<u>WORK PACKAGE</u>	<u>DESCRIPTION</u>
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / /  <i>(Contractor's Representative)</i></p>	
<p><b>THIS SECTION MUST BE COMPLETED BY THE RELEVANT CONTRACTOR'S SUBCONTRACTOR/DESIGNER</b></p> <p>I certify that the procurement/construction of the work packages (one certificate per work package) or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>SIGNATURE: _____  <i>(Contractor's Subcontractor/Designer)</i></p> <p>DATE: _____</p>	

## Schedule 20 - Consultant Certificate of Design Compliance

(Clauses 5.3(b)(ii) and 11.6(c)(iii))

<b>CONSULTANT'S CERTIFICATE OF DESIGN COMPLIANCE</b>	
<b>CONSULTANT:</b>	
<b>CONSULTANCY AGREEMENT:</b>	
<p>I certify that all design carried out by the Consultant has been completed in accordance with the requirements of the Consultancy Agreement, and complies with the requirements of the Consultancy Agreement.</p> <p>I further certify that, the construction of the works under the [insert name of contract] dated [insert] between the Transport for NSW (ABN 18 804 239 602) and [insert name of Contractor] have been completed in accordance with the design carried out by the Consultant, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p>	
SIGNATURE: _____ <i>(Consultant's Representative)</i>	SIGNATURE: _____ <i>(Consultant's Subcontractor/Designer)</i>
DATE: _____	DATE: _____



**Schedule 21 - Contractor's Certificate of Completion**

(Definition of "Completion" in Clause 1.1 and Clause 12.3(c))

<b>CONTRACTOR'S CERTIFICATE OF COMPLETION</b>	
<b>CONTRACTOR:</b>	
Description of Portion or Works: _____ _____ _____	
<p>I certify that the Completion of the above Portion/the Works has/have been achieved in accordance with the requirements of the Contract between the Principal and _____, complies with the requirements of the Contract, subject to the register of unresolved issues attached.</p> <p>I further certify that:</p> <ul style="list-style-type: none"> <li>(a) All Variation Orders (including concessions) are listed in the attached compliance register.</li> <li>(b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out.</li> <li>(c) All required documentation has been submitted.</li> <li>(d) All notices regarding system deficiencies have been satisfactorily closed out.</li> </ul> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion/the Works.</p>	
SIGNATURE: _____ <i>(Contractor's Representative)</i>	SIGNATURE: _____ <i>(Contractor's Subcontractor/Designer)</i>
DATE: _____	DATE: _____

## Schedule 22 - Contractor's Certificate of Final Completion

(Clause 12.8(d))

<b>CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION</b>	
<b>CONTRACTOR:</b>	
<p>I hereby certify that Final Completion has been achieved by[ the Contractor] in accordance with the requirements of the Deed (including all Variation orders detailed in (a) below) between the Principal and the Contractor.</p> <p>I further certify that:</p> <ul style="list-style-type: none"> <li>(a) All Variation Orders (including concessions) are listed in the attached compliance register.</li> <li>(b) All identified Defects (including any non-conformities have been satisfactorily rectified and their documentation closed out.</li> <li>(c) All required documentation has been submitted.</li> <li>(d) All notices regarding system deficiencies have been satisfactorily closed out.</li> </ul> <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Portion/the Works.</p>	
SIGNATURE: _____ <i>(Contractor's Representative)</i>	DATE: / /





- all other persons who have a work health and safety duty in relation to the same matter;
- (d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Contractor while on Site;
  - (e) the Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;
  - (f) the Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
  - (g) where high risk construction work is to be carried out in the performance of the Other Contractor Works, the Other Contractor must:
    - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
    - (ii) provide a copy of the safe work method statement to the Principal and the Contractor prior to the commencement of high risk construction work;
    - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
    - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
    - (v) where so directed by the Contractor, suspend the performance of any high risk construction work;
  - (h) the Other Contractor shall in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
  - (i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this Deed Poll.
2. The Other Contractor indemnifies the Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Contractor as a result of:
- (a) any failure by the Other Contractor to comply with any direction given by the Contractor in accordance with this Deed Poll; or
  - (b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:
    - (i) their respective contractual or legislative work health and safety obligations; or
    - (ii) the provisions of this Deed Poll.
3. This Deed Poll will be governed by and construed in accordance with the law for the time being of New South Wales.



**Executed** as a Deed Poll.

**Executed** by *[Other Contractor]* by or in the presence of:



\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

## Schedule 24 - Form of Interface Agreement Deed Poll in favour of Rail Transport Agency and Transport for NSW

(Clause 1.5(b) and (c))

This deed poll ("**Deed Poll**") made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

By: **[Contractor]** (ABN.....) of  
..... ("**Contractor**"),

in favour of: **[Insert details of relevant Rail Transport Agency]** ("**Rail Transport Agency**") and

**Transport for NSW (ABN 18 804 239 602)** a corporation constituted by section 3C of the *Transport Administration Act* 1988 (NSW), of Level 5, Tower A Zenith Centre, 821 Pacific Highway, CHATSWOOD NSW 2067 ("**TfNSW**")

### Recitals

- A. Rail Transport Agency operates the commuter rail system in Sydney, including **[Insert details]** and surrounds where the Works (the "**Project**") is to be undertaken by the Contractor and others.
- B. TfNSW is responsible for developing certain major railway systems and other major transport projects.
- C. TfNSW is responsible for procuring the execution and completion of the Project, and has entered into a safety interface agreement dated **[insert date]** for **[Insert details of Project/Program]** ("**Interface Agreement**") with Rail Transport Agency to cover the Project.
- D. Rail Transport Agency is relying on TfNSW to procure the Contractor (with others) to execute and complete the Project in accordance with the Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if TfNSW does not procure the Contractor to execute and complete the Works in accordance with the Contract and the Interface Agreement.

**This deed witnesses that the Contractor hereby covenants, warrants and agrees** with and for the benefit of Rail Transport Agency and TfNSW as follows:

1. It will comply with its obligations under the Interface Agreement.
2. During and upon Completion of the Project, the Contractor's Activities will satisfy the requirements of the Interface Agreement.
3. Rail Transport Agency and TfNSW may assign or charge the benefits and rights accrued under this Deed Poll.
4. This Deed Poll is governed by the laws of the State of New South Wales.



- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency and TfNSW.
- 6. Where terms used in this Deed Poll are defined in the Contract or the Interface Agreement, those terms have the meaning given to them in the Contract or the Interface Agreement.

**Executed** as a deed poll.

**Executed by [Contractor]**  
**(ABN.....)** by or in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

## Schedule 25 - Deed of Novation (Principal, Contractor and Consultant)

(Clause 5.2(b))

### Deed of Novation

[  
ABN [ ] ]

[  
ABN [ ] ]

[  
ABN [ ] ]

Deed of Novation made at \_\_\_\_\_ on \_\_\_\_\_

**Parties**                    *[insert name]* ABN *[insert ]* of *[insert]* (Retiring Party)  
                                   *[Insert name]* ABN *[insert ]* of *[insert]* (Continuing Party)  
                                   *[Insert name]* ABN *[insert]* of *[insert]* (Substitute Party)

## Recitals

- A        The Retiring Party and the Continuing Party are parties to the Contract.  
 B        The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.  
 C        The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

## 1. Definitions and interpretation

### 1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"**Claim**" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"**Contract**" means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

"**Effective Date**" means *[insert date]*.

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

"**Liability**" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

"**Related Entity**" has the meaning ascribed to that term in section 9 of *the Corporations Act 2001* (Cth).

### 1.2 Interpretation

In this deed:

- (a)        headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b)        an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) 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, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation; and
- (k) a reference to **\$** or **dollar** is to Australian currency.

## 2. Condition Precedent to Novation

Clause 3 of this deed will have no force and effect until the Effective Date.

## 3. Novation

### 3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party will be read as a reference to the Substitute Party.

### 3.2 Assumptions of rights and obligations

- (a) The Substitute Party:
  - (i) will be bound by and must comply with the terms of the Contract and will enjoy the rights and benefits conferred on the Retiring Party under the Contract; and
  - (ii) will assume the obligations and Liability of the Retiring Party under the Contract,



in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.

- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

### **3.3 Release by Continuing Party**

- (a) The Continuing Party releases the Retiring Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Contract.

### **3.4 Insurance**

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party will take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under of the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

## **4. Ongoing Rights of Retiring Party**

### **4.1 Direct Enquiries**

In addition to any other rights which the Retiring Party may have, the Continuing Party and the Substitute Party each agree that the Retiring Party may make enquiries directly of the Continuing Party for the purpose of establishing whether the Continuing Party is complying with its obligations under the Contract.

### **4.2 Retiring Party to have benefit of Promises**

- (a) The Continuing Party warrants in favour of the Retiring Party that in performing the Services it will comply with its obligations under the Contract and that the Retiring Party will continue to have the benefit of all promises, undertakings, covenants and warranties made or given by the Continuing Party under the Contract as if the Retiring Party remained a party to the Contract.
- (b) Without limiting the above, the Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence in performing the Services including in issuing any certificates it is required to issue under the Contract and further acknowledges that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in issuing those certificates and acknowledges that:

- (i) in performing the Services it will owe a duty of care to the Retiring Party; and
- (ii) it is aware that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in performing the Services and the warranties given by the Continuing Party in this deed.

#### **4.3 Report by Continuing Party**

The Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence to ensure that the design intent of the Works as contained in the Design Documentation in existence at the date of execution of this deed, is reflected in the completion of the Design Documentation and in the execution of the Works.

Without limiting the above, the Continuing Party must conduct such inspections of the Works at such times and in such detail as may reasonably be expected of a consultant engaged in a project of the size and complexity of the Works.

The Continuing Party must act in good faith and in the best interests of the Retiring Party and promptly advise the Retiring Party about any matter in which the Continuing Party has been instructed by the Substitute Party to provide the Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including:

- (a) any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract including where the Substitute Party's instructions:
  - (i) in relation to design are not consistent with the Contract or may result in the Works to be constructed not being fit for their intended purpose; or
  - (ii) require the Continuing Party to issue a certificate under the Contract where the conditions for the issue of that certificate under the Contract have not been satisfied; and
- (b) any non-conformity of any Design Documentation produced pursuant to the Contract, or to the Design Documentation in existence at the date of this deed, upon becoming aware of the non-conformity.

#### **5. Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

#### **6. Representations and warranties**

##### **6.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

## 6.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

## 6.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

## 7. Duties, costs and expenses

### 7.1 Stamp duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

### 7.2 Costs

Each Party must pay its own legal costs and expenses in negotiating, preparing and executing this deed.

### 7.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

## 8. General

### 8.1 Governing law

This deed is governed by and must be construed according to the laws of the State or Territory stated in Schedule 1.

### 8.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State or Territory stated in Schedule 1, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

### **8.3 Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

### **8.4 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the 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) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

### **8.5 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **8.6 Severance**

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

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

### **8.7 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

### **8.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.



**Schedule 1**

**Contract**  
(Clause 1.1)

.....  
.....

**Governing Law and Jurisdiction**  
(Clause 1.1 and 8.1)

.....  
.....



**Executed as a deed.**

**Executed by [Retiring Party and ABN] by or**  
in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**Executed by [Continuing Party and ABN]**  
by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full



**Executed by [Substitute Party and ABN] by**  
or in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full



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## Schedule 26 - Expert Determination Agreement

(Clauses 15.8(b) and 15.9)

**Expert Determination Agreement made at \_\_\_\_\_ on \_\_\_\_\_**

**Parties** [ \_\_\_\_\_ ] (Principal)

*[Insert name and address of Contractor] (Contractor)*

*[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause [to be inserted] of the Contract] (Expert)*

### Background

- A. The Principal and the Contractor (together "**the Parties**" and each "**a Party**") are parties to a contract (**Contract**) for *[to be inserted]*.
- B. By written notice dated *[to be inserted]*, the *[insert the Principal or Contractor as applicable]* has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 15.7 of the Contract (**Matter**).
- C. Pursuant to clause 15.7 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

### Operative part

#### 1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
- (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence and natural justice do not apply to the determination; and
  - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

## 2. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

## 3. Costs and Fees

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) The Parties agree as between themselves that:
  - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

## 4. Exclusion of Liability and Indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

## 5. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

## 6. Governing Law

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of New South Wales.

## 7. Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the New South Wales courts to which the appeals from those courts may be made.

- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

## **Schedule 1 - The Matter**

*[To be inserted when it comes time for expert determination]*

## Schedule 2 - Rules for Expert Determination Process

### 1. Commencement

- 1.1 Except as provided in clause 4.3 of these Rules, the expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

### 2. Written Submissions

- 2.1 Within 7 days after the date this process begins, Party A (i.e. the Party who gave notice under clause 15.1 of the Contract) must, in addition to any particulars provided by Party A under clause 15.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
- 2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.
- 2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

### 3. Conference

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney.
- 3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- 3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- 3.4 The Parties:
- (a) may be accompanied at a conference by legal or other advisers; and
  - (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.
- ### 4. General
- 4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.

- 4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:
- (a) with the prior consent of the Parties;
  - (b) as may be required by law; or
  - (c) as may be required in order to enforce the determination of the Expert.
- 4.3 The Expert must:
- (a) inform the Parties of:
    - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
    - (ii) any interest the Expert has in the matters in dispute; and
    - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,
    - (iv) immediately upon becoming aware of any such circumstances; and
  - (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise terminate the proceedings.

## 5. The Determination

- 5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:
- (a) determine the Matter between the Parties; and
  - (b) notify the Parties of that determination.
- 5.2 The determination of the Expert must:
- (a) be in writing stating the Expert's determination and giving reasons;
  - (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
  - (c) meet the requirements of the Contract.
- 5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a notice of appeal is given in accordance with clause 15.10 of the Contract.
- 5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

## 6. Costs



6.1 Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

**7. Modification**

7.1 These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

**APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS****Code of Conduct for an Expert**

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

### **Schedule 3 - The Expert's Fees and Disbursements**

*[To be inserted when it comes time for expert determination]*

**Signed** as an agreement.

**Signed** for and on behalf of the Principal by **[insert name]** in the presence of:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name of witness]

\_\_\_\_\_  
[Signature of witness]

**Signed** for and on behalf of the Contractor by **[insert name]** in the presence of:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name of witness]

\_\_\_\_\_  
[Signature of witness]

**Signed** by the Expert **[insert name]** in the presence of:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name of witness]

\_\_\_\_\_  
[Signature of witness]

## **Schedule 27 - Principal Supplied Items**

(Clause 7.23)

NIL

## Schedule 28 - Trade packages and Subcontractors

(Clauses 7.4(c)(ii) and 7.12)

<b>TRADES</b>	<b>SUBCONTRACTOR</b>
Safeworking	1. MCR 2. SWETHA 3. Infracworks
Traffic Management	1. Workforce 2. Altus 3. Evolution
Survey	1. Degotardi, Smith & Partners 2. Monteath Powys 3. Cardno
Non-Destructive Digging	1. Sure Search 2. Australian Location Services 3. Veris
Service Locating	1. Sure Search 2. Australian Location Services 3. Veris
Temporary Fencing	1. ATF 2. Coates Hire 3. 1300 Temp Fence
Waste Management	1. JJ Richards 2. Cleanaway
Scaffolding and Propping	1. Pacific Hoarding 2. Safe Smart Access 3. ANSCAFF
Temporary Barriers	1. Pacific Hoarding 2. Coates Hire 3. Orange Hire
Crane	1. Borger Cranes 2. Melrose Cranes 3. Gillespies
Plant & Equipment	1. Coates Hire 2. Botany Access 3. Access Hire
Aggregates	1. Boral 2. Holcim 3. Hanson
Concrete	1. Boral 2. Holcim 3. Hanson
Hi-Rail Plant	1. DPW 2. Infracworks 3. ANRIC Rail
REO	1. One Steel 2. ARC 3. MeshBar
Hygienist	1. A.D.E 2. SESA
Skilled Labour	1. Nass Demolition 2. Lasercon 3. Perfect Contracting

	4. MRG
Site Facilities	1. ATCO 2. Coates 3. Onsite
Staton Building Works (Incl Demolition)	1. Rapid Constrution 2. Grand Egle 3. Built 4. Dalski 5. Matrix Group Co.
Piling and Soil Nailing	1. MGI 2. Mann Group 3. Wagstaff Piling
Platform Regrading	1. ALS 2. D&M Asphalt 3. Independent Asphalt Services
Hydraulics	1. Gary Gibson Plumbing 2. Craig Simon Plumbing 3. Nitro Plumbing
Mechanical	1. Dallas Air 2. Infinity HVAC Services 3. Coral Air
Anti-Graffiti	1. NTS Coatings 2. Stywell Painting
Structural Steet, Canopy and Metalworks & Anti-Throw Screens	1. Alfabs 2. Premier Steel Fabrication 3. Bellingham Engineering 4. Figcogi
Louvres	1. CVS Louvres 2. PC Balustrades 3. JWI Louvres 4. James & Co
Form Reo Pour	1. Fern Form Constructions 2. DAMCON 3. Biscon 4. Boss Civil 5. Wide Form 6. Timbermass 7. SEADAR
Precast	1. Waeger 2. Daracon 3. SCI Precast
CSR & Drainage	1. Mann Group 2. MRG 3. Brefni 4. Diona 5. Talis
Pipes and Pits	1. Rocla 2. Auspits 3. ACO
Paving	1. Sam the Paving Man 2. North Shore Paving 3. Sydney Harbour Paving



Hard Landscaping (street furniture, tactiles, wayfinding)	<ol style="list-style-type: none"> <li>1. Austact</li> <li>2. Street Furniture Australia</li> <li>3. Sign Crafy</li> </ol>
Electrical LV & Comms	<ol style="list-style-type: none"> <li>1. Elecdata</li> <li>2. New Era</li> <li>3. PJ O'Connor</li> </ol>
Electrical HV	<ol style="list-style-type: none"> <li>1. Scotts Electrical</li> <li>2. Mackex Services</li> <li>3. ARA Electrical</li> </ol>
Line Marking	<ol style="list-style-type: none"> <li>1. Work Zone</li> <li>2. Sydney Line Marking</li> </ol>
Permanent Fencing	<ol style="list-style-type: none"> <li>1. Coleman</li> <li>2. P&amp;C Fencing</li> <li>3. Olympic Fencing</li> <li>4. Playsafe Fencing</li> </ol>

## Schedule 29 - Report on training of apprentices and trainees

(Clause 9.14(f)(iii))

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentice hours as a percentage of hours worked by qualified trades	20 % of hours worked	[insert]%
Trainee hours as a percentage of hours worked by occupations with recognised traineeships:	20% of hours worked	[insert]%

**Contract Execution Page**

DATED 21<sup>st</sup> day of January 2019

Executed and delivered as a Deed in Sydney

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

  
\_\_\_\_\_  
Signature of Witness

JESSICA LONGHORST  
\_\_\_\_\_  
Print Name

(block letters)

Executive Assistant  
\_\_\_\_\_  
Position held

  
\_\_\_\_\_  
Signature of Authorised Delegate

PETER JAMES CHURCH  
\_\_\_\_\_  
Print Name


(block letters)

EXECUTIVE DIRECTOR  
\_\_\_\_\_  
Position held

Signed, sealed and delivered for and on behalf of **Downer EDI Works Pty Ltd** ABN 66 008 709 608 by its attorney under a power of attorney dated 18 January 2019 in the presence of:

  
\_\_\_\_\_  
Signature of witness

TOM WATSON  
\_\_\_\_\_  
Full name of witness

  
\_\_\_\_\_  
Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

KARL MCCARTHY  
\_\_\_\_\_  
Full name of attorney

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## EXHIBIT A – TfNSW STANDARD REQUIREMENTS

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The TfNSW Standard Requirements comprises the following documents:

- a) TfNSW Standard Requirements, document reference # 6184900 (TfNSW Desksite)
- b) TfNSW Standard Requirements ANNEXURE A – Additional Project Requirements, document reference # 6184900 (TfNSW Desksite)

## EXHIBIT B – WORKS BRIEF

The Works Brief comprises the following documents:

<b>Description</b>	<b>Document Reference</b>
Works Brief	6185253
Appendix A - Station Specific Requirements	6185253
Appendix B - Document Delivery	6185253
Appendix C - Life Cycle Cost Model	6185253
Appendix D - Technical Specification	6185253
Appendix E - Interface Schedule	6185253
Appendix F - Finishes Schedule	6185253
Appendix G - Safety Assurance Plan	6185253
Appendix H - AFILS	6185253
Appendix I - Wayfinding Requirements	6185253
Appendix J - Lift Specification	6185253
Appendix K - Standard Cabling and Containment Works Instructions for Sydney Trains	6185253
Appendix L - Minimum Security Requirements and Design	6185253

Description	Document Reference
Criteria for Stations	
Appendix M – Electronic Ticketing Systems Technical Requirements	6185253
Appendix N – Digital Public Address Specification	6185253
Appendix O – TfNSW Standard Risk Matrix	6185253
Appendix P – NSW Sustainable Design Guidelines and Checklist	6185253

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EXHIBIT C – PRINCIPAL'S INSURANCE POLICIES

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- a) General and Products Liability Policy.
- b) Material Damage Insurance Policy.



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EXHIBIT D – PLANNING APPROVAL

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The Planning Approval is an Authority Approval to be issued in relation to the Works, a draft of which is Draft Conditions of Approval, document reference # 6183068.

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## EXHIBIT E – CONTRACT SPECIFIC REQUIREMENTS

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The Contract Specific Requirements comprises the following document:

- a) Contract Specific Requirements, document reference # 6184951

EXHIBIT F – REPORTS

Item	Description	Date	Drawing or Document Number	File Name	Format	Author/Source
<b>Kingswood</b>						
KW-1	DSS Kingswood Station - Sheet 1 of 6	Jan-11	CV0504534_B0c	CV0504534_B0c	TIF	Vekta/Sydney Trains
KW-2	DSS Kingswood Station - Sheet 2 of 6	Jan-11	CV0504535_B0c	CV0504535_B0c	TIF	Vekta/Sydney Trains
KW-3	DSS Kingswood Station - Sheet 3 of 6	Jan-11	CV0504536_B0c	CV0504536_B0c	TIF	Vekta/Sydney Trains
KW-4	DSS Kingswood Station - Sheet 4 of 6	Jan-11	CV0504537_C0c	CV0504537_C0c	PDF	Vekta/Sydney Trains
KW-5	DSS Kingswood Station - Sheet 5 of 6	Jan-11	CV0504538_C0c	CV0504538_C0c	PDF	Vekta/Sydney Trains
KW-6	DSS Kingswood Station - Sheet 6 of 6	Jan-11	CV0504539_C0c	CV0504539_C0c	PDF	Vekta/Sydney Trains
KW-7	DSS Kingswood to Penrith - Sheet 1 of 11	Apr-11	CV0504774_A0c	CV0504774_A0c	TIF	Vekta/Sydney Trains
KW-8	DSS Kingswood to Penrith - Sheet 2 of 11	Apr-11	CV0504775_A0c	CV0504775_A0c	TIF	Vekta/Sydney Trains
KW-9	DSS Kingswood to Penrith - Sheet 3 of 11	Apr-11	CV0504776_A0c	CV0504776_A0c	TIF	Vekta/Sydney Trains

KW-10	DSS Kingswood to Penrith - Sheet 4 of 11	Apr-11	CV0504777_B0c	CV0504777_B0c	PDF	Vekta/Sydney Trains
KW-11	DSS Werrington to Kingswood - Sheet 1 of 23	May-11	CV0504798_Coc	CV0504798_Coc	TIF	Vekta/Sydney Trains
KW-12	DSS Werrington to Kingswood - Sheet 2 of 23	May-11	CV0504799_Boc	CV0504799_Boc	TIF	Vekta/Sydney Trains
KW-13	DSS Werrington to Kingswood - Sheet 3 of 23	May-11	CV0504800_Boc	CV0504800_Boc	TIF	Vekta/Sydney Trains
KW-14	DSS Werrington to Kingswood - Sheet 21 of 23	May-11	CV0504815_Boc	CV0504815_Boc	TIF	Vekta/Sydney Trains
KW-15	DSS Werrington to Kingswood - Sheet 22 of 23	May-11	CV0504816_Boc	CV0504816_Boc	TIF	Vekta/Sydney Trains
KW-16	DSS Werrington to Kingswood - Sheet 23 of 23	May-11	CV0504817_Boc	CV0504817_Boc	TIF	Vekta/Sydney Trains
KW-17	Hsm_Hazardous_Material_Detail (13)Kingswood Station	Apr-13	Hsm_Hazardous_Material_Detail (13)Kingswood Station	Hsm_Hazardous_Material_Detail (13)Kingswood Station	PDF	Parsons Binckerhoff Pty Ltd
KW-18	Kingswood Station Padmount - June 2018	Jun-18	Kingswood Station Padmount - June 2018	Kingswood Station Padmount - June 2018	PDF	

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**EXHIBIT G – LIST OF WARRANTIES REQUIRED FROM SUBCONTRACTORS**

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EXHIBIT H – THIRD PARTY AGREEMENTS

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Global Safety Interface Agreement



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**EXHIBIT I – INITIAL DESIGN DOCUMENTS**


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<b>Item</b>	<b>Title</b>	<b>Rev</b>	<b>Reference</b>
	<b>EXHIBIT I - INITIAL DESIGN DOCUMENTS</b>		
	<b>KINGSWOOD STATION EAU</b>		
	<b>LV ELECTRICAL</b>		
1	COVER PAGE AND SCHEDULE OF DRAWINGS	3	TAP-150075-KW-EL-0100
2	SPECIFICATIONS, LEGENDS AND ABBREVIATIONS	3	TAP-150075-KW-EL-0101
3	SITE PLAN	3	TAP-150075-KW-EL-0102
4	PLATFORM LEVEL - LIGHTING, POWER, CCTV AND PA SYSTEM LAYOUT SHEET 1 OF 3	3	TAP-150075-KW-EL-0103
5	CONCOURSE LEVEL - LIGHTING, DRY FIRE AND PA SYSTEM LAYOUT	3	TAP-150075-KW-EL-0106
6	CONCOURSE LEVEL - POWER AND CCTV SYSTEM LAYOUT	3	TAP-150075-KW-EL-0107
7	POWER SINGLE LINE DIAGRAM	3	TAP-150075-KW-EL-0301
8	CCTV, ETS AND PA SYSTEM CABLE CONNECTION DIAGRAM	3	TAP-150075-KW-EL-0302
9	FDAS AND PA SYSTEM CABLE CONNECTION DIAGRAM	3	TAP-150075-KW-EL-0303
10	COMMUNICATIONS & STATION SYSTEMS LIFTS MONITORING SYSTEM	1	TAP-150075-KW-EL-0307
11	LV ELECTRICAL DISTRIBUTION BOARD 2	1	TAP-150075-KW-EL-0309
	<b>FIRE ENGINEERING</b>		

12	COVER PAGE AND SCHEDULE OF DRAWINGS	4	TAP-150075-KW-FE-0100
13	EXISTING AND PROPOSED FIRE PROTECTION LAYOUTS	4	TAP-150075-KW-FE-0110
	<b>HYDRAULIC</b>		
14	COVER PAGE AND SCHEDULE OF DRAWINGS	4	TAP-150075-KW-HY-0100
15	LEGEND, ABBREVIATIONS, SPECIFICATION AND GENERAL NOTES	4	TAP-150075-KW-HY-0101
16	SITE PLAN	4	TAP-150075-KW-HY-0110
17	PLATFORM LEVEL - STORMWATER PROPOSED LAYOUT - SHEET 1 OF 2	4	TAP-150075-KW-HY-0111
18	PLATFORM LEVEL - STORMWATER PROPOSED LAYOUT - SHEET 2 OF 2	4	TAP-150075-KW-HY-0112
19	CONCOURSE LEVEL - DEMOLITION LAYOUT	4	TAP-150075-KW-HY-0113
20	CONCOURSE LEVEL - SEWER AND STORMWATER PROPOSED LAYOUT	4	TAP-150075-KW-HY-0114
21	CONCOURSE LEVEL - WATER SUPPLY PROPOSED LAYOUT	4	TAP-150075-KW-HY-0115
22	ROOF LEVEL - STORMWATER PROPOSED LAYOUT	4	TAP-150075-KW-HY-0116
23	DETAIL SHEET 01	3	TAP-150075-KW-HY-0200
	<b>MECHANICAL</b>		
24	COVER PAGE AND SCHEDULE F DRAWINGS	4	TAP-150075-KW-ME-0100
25	LEGENDS, ABBREVIATIONS, SPECIFICATIONS, GENERAL NOTES, DETAILS AND SCHEDULES	4	TAP-150075-KW-ME-0101
26	CONCOURSE LEVEL - DEMOLITION LAYOUT	4	TAP-150075-KW-ME-0110
27	CONCOURSE LEVEL - PROPOSED HVAC LAYOUT	4	TAP-150075-KW-ME-0111
	<b>ARCHITECTURAL</b>		
28	EXISTING & DEMOLITION PLAN	6	TAP-150075-KW-AR-1130
29	PROPOSED BUILDING LAYOUT	5	TAP-150075-KW-AR-1500

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EXHIBIT J – TARGET BUDGET ESTIMATE

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EXHIBIT K – NOT USED

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