



Transport
for NSW

**Collaborative Design and
Construct Deed
M1 Pacific Motorway Extension to
Raymond Terrace – Black Hill to
Tomago**


EXECUTION VERSION

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M1 Pacific Motorway Extension to Raymond Terrace – Black Hill to Tomago

Deed made at _____ on _____

Parties **Transport for NSW (ABN 18 804 239 602)** a New South Wales Government agency constituted by section 3C of the Transport Administration Act 1988 (NSW) of 20-44 Ennis Road, Milsons Point, NSW 2061 (**Principal**);

and

John Holland Pty Ltd (ABN 11 004 282 268) of Level 9, 180 Flinders Street, Melbourne VIC 3000 (**John Holland**);

and

Gamuda Berhad (ARBN 632 738 768) a company incorporated in Malaysia on 6 October 1976 under the Companies Act 1965, and bearing Company Registration number 197601003632 (29579-T) of Menara Gamuda, PJ Trade Centre, No. 8, Jalan PJU 8/8A, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor, Malaysia trading as Gamuda (Australia) Branch (ABN 27 632 738 768) (**Gamuda Berhad**)

(John Holland and Gamuda Berhad, together, an unincorporated joint venture that is the **Contractor**)

This deed provides

1. General obligations

1.1 General obligations (Principal and Contractor)

- (a) The Contractor:
 - (i) must investigate, design and construct the Project Works and Temporary Works in accordance with this deed;
 - (ii) warrants that the investigation, design and construction of the Project Works and Temporary Works will be fit for their stated purposes;
 - (iii) must perform the Landscaping Maintenance in accordance with this deed; and
 - (iv) subject to the express provisions of this deed, accepts responsibility for and the risk of all costs, damages, expenses, losses, liabilities or delays which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed.
- (b) The Principal must pay the Contractor the Actual Project Contract Sum in accordance with this deed.

1.2 Start and progress

The Contractor must:

- (a) start to perform its obligations under this deed from the date of this deed; and
- (b) regularly and diligently progress the Contractor's Activities in accordance with this deed and ensure that:
 - (i) Opening Completion is achieved by the Date for Opening Completion; and
 - (ii) Completion is achieved by the Date for Completion.

1.3 Co-operation

- (a) Each party must, without limiting any other obligations under this deed:

- (i) do all it reasonably can to co-operate with the other party in all matters relating to this deed;
- (ii) when requested, do all reasonable things necessary to avoid hindering the other party in the performance of that other party's obligations under this deed; and
- (iii) promptly inform the other party of any fact, information or circumstance which comes to its attention and is reasonably likely to adversely affect:
 - A. the Date of Opening Completion or the Date of Completion;
 - B. the cost of executing the Project Works, Landscaping Maintenance or Temporary Works; or
 - C. the quality of the Project Works, the Landscaping Maintenance, the Temporary Works or any other works or services required to be performed under this deed.
- (b) Nothing in clause 1.3(a) changes or in any way affects the rights or obligations of either party under this deed, unless the parties agree in writing to change them.

1.4 Conditions Precedent

- (a) This deed will not commence until the Conditions Precedent have been satisfied (or waived by the Principal (in its sole and absolute discretion)), other than the Day 1 Clauses which commence on the date of this deed.
- (b) The Conditions Precedent are:
 - (i) the Contractor has provided the Principal with the unconditional undertakings required under clause 8.1;
 - (ii) the Contractor has provided the Principal with the guarantee required under clause 8.2(a);
 - (iii) the Contractor has provided the Principal with the Legal Opinion required under clause 8.2(c) (if applicable); and
 - (iv) the DAB Agreement has been duly executed by all parties.

2. Roles and relationships

2.1 Role of Principal's Representative and Principal's Surveillance Officers

- (a) The Principal:
 - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
 - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
 - (iii) must give written notice to the Contractor of all appointments under clauses 2.1(a)(i) and 2.1(a)(ii).
- (b) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed (each a **Principal's Assistant Representative**) and the notice must specify:
 - A. the functions which the Principal's Assistant Representative may perform; and
 - B. whether the Principal's Assistant Representative can give any Direction to the Contractor pursuant to this deed;
 - (ii) revoke or vary any appointment under clause 2.1(b)(i) by written notice to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing one or more Principal's Assistant Representatives to exercise the function under clause 2.1(b)(i), provided that only one person may exercise the same function in relation to the same issue at any one time.
- (c) The Principal's Representative may:

- (i) by written notice to the Contractor appoint one or a number of officers to perform the functions identified in clause 2.1(d) (each a **Principal's Surveillance Officer**);
 - (ii) revoke or vary any appointment under clause 2.1(c)(i) by written notice to the Contractor; and
 - (iii) continue to exercise a function under this deed despite appointing a Principal's Surveillance Officer to exercise the function under clause 2.1(c)(i).
- (d) The functions of a Principal's Surveillance Officer may be all or any of the following:
- (i) monitoring the Contractor's Activities, including:
 - A. product quality;
 - B. quality management and verification;
 - C. environmental management;
 - D. work health and safety;
 - E. Chain of Responsibility Provisions compliance;
 - F. control of traffic; and
 - G. community relations;
 - (ii) monitoring the Independent Certifier's surveillance of the Contractor's Activities; and
 - (iii) reporting the findings of its monitoring activities under clauses 2.1(d)(i) and 2.1(d)(ii) from time to time to the Principal's Representative.
- (e) The Principal and the Contractor acknowledge and agree that:
- (i) the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers act at all times as the agents of the Principal (and not as an independent certifier, assessor or valuer) and will act solely in the interests of the Principal;
 - (ii) subject to clause 2.1(e)(iii), a Principal's Surveillance Officer is not entitled to issue a Direction to the Contractor, and if a Principal's Surveillance Officer purports to do so:
 - A. the Contractor must not comply with, and the Principal is not bound by, the purported Direction; and
 - B. the Principal will not be liable for any Claim arising out of or in connection with any such purported Direction; and
 - (iii) a Principal's Surveillance Officer is entitled to issue a Direction to the Contractor under clause 5.8(h) and the Contractor must comply with any Direction by a Principal's Surveillance Officer given or purported to be given under clause 5.8(h).
- (f) The Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of this deed. Only the Principal's Representative and, subject to the terms of any notice under clause 2.1(b)(i), the Principal's Assistant Representatives are authorised to give any Direction to the Contractor pursuant to this deed. The Contractor must not comply with, and the Principal is not bound by, any Direction purporting to be made or given by any person on behalf of the Principal, other than the Principal's Representative or a Principal's Assistant Representative with relevant authority, or a Principal's Surveillance Officer in the circumstances described in clause 2.1(e)(iii).

2.2 The Contractor's personnel

- (a) The Contractor must:
 - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
 - (ii) ensure that its personnel (including those referred to in clause 2.2(b)) carry out the Contractor's Activities in a manner that is courteous and co-operative and recognises the interests and needs of all stakeholders, including the local community.

- (b) The Contractor must:
 - (i) ensure the personnel specified in Schedule 19 (Contractor's Personnel) (including any replacements):
 - A. perform the roles specified in Schedule 19 (Contractor's Personnel); and
 - B. are available for consultation with the Principal's Representative when reasonably required by the Principal's Representative;
 - (ii) subject to clause 2.2(b)(iii), not replace the personnel referred to in clause 2.2(b)(i) (or where the personnel are employees of a Subcontractor, ensure they are not replaced) without the Principal's Representative's prior written approval; and
 - (iii) if any of the personnel referred to in clause 2.2(b)(i):
 - A. die;
 - B. become seriously ill;
 - C. resign 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)); or
 - D. become the subject of a direction under clause 2.2(c), replace them (or where they are personnel of a Subcontractor, ensure they are replaced) with personnel of at least equivalent experience, ability and expertise (including the experience, ability and expertise required by Schedule 19 (Contractor's Personnel)) approved by the Principal's Representative.
- (c) The Principal's Representative may, if he or she considers it reasonable to do so, by notice in writing direct the Contractor to remove any person from the Construction Site and any other areas where the Contractor's Activities are performed.
- (d) The Contractor must ensure that any person the subject of a direction under clause 2.2(c) is not again employed in the Contractor's Activities.
- (e) The Contractor must ensure that the Independent Certifier, the Quality Manager, the Environmental Representative and each of the Contractor's Subcontractors:
 - (i) do all they reasonably can to co-operate with and avoid hindering, the Principal's Assistant Representatives and the Principal's Surveillance Officers; and
 - (ii) provide, on request, such information as the Principal's Representative, the Principal's Assistant Representative or a Principal's Surveillance Officer reasonably requires.
- (f) Where the Contractor requests the Principal's Representative's approval of a replacement pursuant to clause 2.2(b)(iii) the Principal's Representative must respond to the Contractor within 10 Business Days from the later of the date of the Contractor's request and the date any other information required by the Principal's Representative is submitted to the Principal's Representative.

2.3 Authorities

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) The Contractor acknowledges and agrees that, without limiting clause 2.3(a), anything that the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle the Contractor to make any Claim against the Principal.
- (c) The Contractor acknowledges and agrees that:
 - (i) there are many Authorities (other than the Principal) with jurisdiction over aspects of the Contractor's Activities, parts of the Construction Site and areas affected by the Contractor's Activities;
 - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities; and

- (iii) it bears the full risk of all occurrences of the kind referred to in clause 2.3(c)(ii) and will have no Claim against the Principal arising out of or in any way in connection with such occurrences (including in circumstances where the Principal may have become involved in matters relating to the Contractor's Activities with a relevant Authority).

(d) [REDACTED]
[REDACTED]
[REDACTED]

2.4 Independent Certifier

- (a) The Independent Certifier will be engaged jointly by the Principal and the Contractor, on the terms of the Deed of Appointment of Independent Certifier.
- (b) The Principal must use its best endeavours to finalise the Deed of Appointment of Independent Certifier as soon as practicable after the date of this deed and provide the final Deed of Appointment of Independent Certifier to the Contractor.

(c) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (d) Upon receiving the Deed of Appointment of Independent Certifier in accordance with clause 2.4(b) [REDACTED], the Contractor must execute the Deed of Appointment of Independent Certifier as soon as practicable and within 5 Business Days of receipt (or such longer period as is agreed by the parties).
- (e) The Principal will carry out the functions of the Independent Certifier under this deed (in a manner that is consistent with the obligations of the Independent Certifier under the Deed of Appointment of Independent Certifier) until the Deed of Appointment of Independent Certifier is executed.
- (f) The Independent Certifier's role is to:
 - (i) independently verify in accordance with the Deed of Appointment of Independent Certifier that:
 - A. the Project Works; and
 - B. the Temporary Works,comply with the requirements of this deed;
 - (ii) make determinations on matters that this deed expressly requires be determined by the Independent Certifier; and
 - (iii) otherwise perform the functions and activities identified as such in this deed and the Deed of Appointment of Independent Certifier.
- (g) Without limiting the effect that the determinations of the Independent Certifier will have upon the rights and obligations of the parties under this deed, the Independent Certifier does not have any power to give any Directions to the Contractor.
- (h) The parties acknowledge and agree that the Independent Certifier is obliged to act independently of the Contractor, the Principal and any of their Subcontractors.
- (i) The Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
 - (i) to attend design meetings, including the Project Design Group meetings;
 - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Independent Certifier must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor; and
 - (iii) to insert Hold Points or Witness Points in the Project Plans and release these and any other Hold Points (unless it has been designated to another Nominated

Authority under Schedule 46 (Hold Points) in accordance with the SWTC and Schedule 46 (Hold Points)),

all as may be:

- (iv) necessary or reasonably required by the Independent Certifier or the Principal's Representative, to allow the Independent Certifier to perform its obligations under this deed and the Deed of Appointment of Independent Certifier; or
 - (v) requested by the Independent Certifier or directed by the Principal's Representative.
- (j) The Contractor must provide to the Principal's Representative a certificate or certificates (as the case may be) executed by the Independent Certifier in the form of:
- (i) Schedule 13 (Independent Certifier's Certificate – Payment Claim) with each progress claim made under clause 18.2(a);
 - (ii) Schedule 14 (Independent Certifier's Certificate – Quality) every 3 months from the date of this deed up to the end of the last Defects Correction Period;
 - (iii) Schedule 14A (Independent Certifier's Certificate – Progressive and at end of Landscaping Maintenance Period):
 - A. every 3 months from the date of this deed up to the end of the Landscaping Maintenance Period; and
 - B. at the end of the Landscaping Maintenance Period as a condition precedent to the Principal's Representative issuing a notice to the Contractor under clause 13A.5(b)(i);
 - (iv) Schedule 15 (Independent Certifier's Certificate – Design Documentation) at the completion of the Substantial Detailed Design Stage and the Final Design Documentation Stage;
 - (v) Schedule 16 (Independent Certifier's Certificate - Opening Completion and Completion) as a condition precedent to Opening Completion and Completion;
 - (vi) Schedule 17 (Independent Certifier's Certificate - Nominated Defects) on request in connection with the rectification of particular Defects nominated by the Principal's Representative;
 - (vii) Schedule 17A (Independent Certifier's Certificate - As-Built documentation); and
 - (viii) Schedule 18 (Independent Certifier's Certificate – Final Completion) on the expiry of the last Defects Correction Period as a condition precedent to Final Completion.
- (k) Nothing that the Independent Certifier does or fails to do pursuant to the purported exercise of its functions and activities under this deed or the Deed of Appointment of Independent Certifier will entitle the Contractor to make any Claim against the Principal.
- (l) The Independent Certifier's certifications and determinations are, in the absence of any manifest error, final and binding, except:
- (i) for determinations under clauses 16.1A(f) and 16.2(e); and
- ██
██
██
- (m) Without limiting clauses 2.4(n) and 2.4(o), an act or omission (including negligence) of the Independent Certifier will not:
- (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to Law; or
 - (ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to Law.
- (n) A certification or determination by the Independent Certifier will not:
- (i) constitute an approval by the Principal of the Contractor's performance of its obligations under this deed;

- (ii) be taken as an admission or evidence that the Project Works, Temporary Works, the Landscaping Maintenance or any other matters certified or determined by the Independent Certifier comply with this deed; or
- (iii) prejudice any rights or powers of the Principal or the Contractor under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects or to give Directions under clause 16.1A.
- (o) No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier, whether or not such certification or determination:
 - (i) is final and binding;
 - (ii) contains a manifest error; or
 - (iii) is overturned in subsequent dispute resolution proceedings, will:
 - (iv) be deemed to be an act or omission by the Principal or the Contractor (including a breach of contract) under or in connection with this deed; or
 - (v) entitle the Contractor to make any Claim against the Principal.

(p) [REDACTED]

(q) [REDACTED]

(r) [REDACTED]

[REDACTED]

2.5 Proof Engineer

- (a) The Contractor must engage one or more Proof Engineers at the Contractor's cost.
- (b) The Contractor:
 - (i) must obtain the Principal's approval to the identity of any Proof Engineer (including any replacement), each of whom must have the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed; and
 - (ii) warrants to the Principal that each Proof Engineer has:
 - A. at least the qualifications, experience and expertise described in Schedule 45 (Proof Engineer Requirements); and
 - B. the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed.
- (c) Where the Contractor requests the Principal's approval to the identity of any Proof Engineer (including any replacement), the Principal's Representative must provide a response to the Contractor within 20 Business Days from the later of the date of the Contractor's request and the date any other information required by the Principal's Representative is submitted to the Principal's Representative.
- (d) A Proof Engineer's role is to:
 - (i) attend relevant Project Design Group meetings;
 - (ii) in respect of the relevant elements identified in Item 14 of Schedule 1 (Contract Information) of each of the Project Works and the Temporary Works:
 - A. undertake a full and independent assessment, without exchange of calculations or similar information, of all factors influencing the final integrity of those elements of the Project Works and associated Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology, and performing an independent dimensional check;
 - B. provide to the Contractor, with copies to the Principal's Representative and the Independent Certifier, a comprehensive report on the assessment required under clause 2.5(d)(ii)A with conclusions and in accordance with the requirements set out in clause 2.5(d)(ii)A; and
 - C. independently certify that those Project Works and any associated Temporary Works:
 - 1) are adequate and suitable for their stated purpose; and
 - 2) comply with the SWTC,and issue the certification document referred to in clause 12.2(e)(iv); and
 - (iii) make determinations on matters this deed expressly requires be determined by the Proof Engineer.
- (e) The parties acknowledge and agree that:

- (i) the Proof Engineer is obliged to act independently of the Contractor, the Principal and any of their Subcontractors;
 - (ii) the Proof Engineer must not be an employee of the Contractor, the Principal, the Independent Certifier or any of their Subcontractors; and
 - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer must be in writing and must be provided to the Contractor and the Principal's Representative.
- (f) The Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
- (i) to attend design meetings, including the Project Design Group meetings; and
 - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor,
- all as may be:
- (iii) necessary or reasonably required by the Proof Engineer or the Principal's Representative, to allow the Proof Engineer to perform its obligations under this deed; and
 - (iv) requested by the Proof Engineer or directed by the Principal's Representative.
- (g) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against the Principal.

2.6 Environmental Representative

- (a) The Environmental Representative will be engaged jointly by the Principal and the Contractor, on the terms of the Deed of Appointment of ER.
- (b) The Principal must use its best endeavours to finalise the Deed of Appointment of ER as soon as practicable after the date of this deed and provide the final Deed of Appointment of ER to the Contractor.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (d) Upon receiving the Deed of Appointment of ER in accordance with clause 2.6(b) [REDACTED] [REDACTED] the Contractor must execute the Deed of Appointment of ER as soon as practicable and within 5 Business Days of receipt (or such longer period as is agreed by the parties).
- (e) The Principal will carry out the functions of the ER under this deed (in a manner that is consistent with the obligations of the Environmental Representative under the Deed of Appointment of ER) until the Deed of Appointment of ER is executed.
- (f) The Environmental Representative's role is to perform and fulfil the function of the "Environmental Representative" or "ER" as contemplated by the Planning Approval under section 5.19 of the *Environmental Planning and Assessment Act 1979* (NSW) and in accordance with the Deed of Appointment of ER.
- (g) The parties acknowledge and agree that the Environmental Representative is obliged to act independently of the Contractor, the Principal and any of their Subcontractors.
- (h) The Contractor must provide the Environmental Representative with all information and documents and allow the Environmental Representative:
 - (i) to attend meetings; and
 - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Environmental Representative must

comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor,

all as may be:

- (iii) necessary or reasonably required by the Environmental Representative or the Principal's Representative, to allow the Environmental Representative to perform its obligations under the Deed of Appointment of ER; or
- (iv) requested by the Environmental Representative or directed by the Principal's Representative.
- (i) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions under the Deed of Appointment of ER will entitle the Contractor to make any Claim against the Principal.

2.7 Environmental Manager

- (a) In accordance with clause 2.2(b), the Contractor must ensure that there is an Environmental Manager who performs the role referred to in Schedule 19 (Contractor's Personnel).
- (b) The Contractor must provide to the Principal's Representative a certificate executed by the Environmental Manager in the form of Schedule 29 (Environmental Manager's Certificate) every 3 months from the date of this deed until the Date of Completion.

2.9 Subcontracts

- (a) Subject to clause 2.9(b), the Contractor may enter into Subcontracts for the performance of its obligations under this deed.
- (b) The Contractor must not enter into any Subcontract in respect of the categories of work set out in Schedule 23 (Principal's Subcontractor Pre-Qualification) (regardless of contract value), unless the Subcontractor is pre-qualified or registered to the appropriate level under the Principal's pre-qualification and registration procedures set out in Schedule 23 (Principal's Subcontractor Pre-Qualification) or clause 2.9(c) applies.
- (c) Unless the Principal's Representative otherwise approves in writing (which must not be unreasonably withheld or delayed), the Contractor must enter into Subcontracts with:
 - (i) the Subcontractors specified in Item 15 of Schedule 1 (Contract Information) in respect of the relevant parts of the Contractor's Activities specified in Item 15 of Schedule 1 (Contract Information); and
 - (ii) the Proof Engineer (or Proof Engineers) specified in Item 9 of Schedule 1 (Contract Information) in respect of the role of Proof Engineer under clause 2.5 of this deed.
- (d) The Contractor's obligations under this deed are not lessened or otherwise affected by entering into Subcontracts or by any approval by the Principal or the Principal's Representative, and the Contractor is liable to the Principal for the acts and omissions of Subcontractors as if they were acts and omissions of the Contractor.
- (e) The Contractor must give the Principal's Representative details of each Subcontract, including the name of the Subcontractor and the goods or services being provided under the Subcontract. The Contractor must satisfy itself and warrant to the Principal that the proposed Subcontractor (whether a specified Subcontractor under Item 15 of Schedule 1 (Contract Information) or otherwise) has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the work to be subcontracted.
- (f) Without limiting clause 22.7(c), but subject to clause 2.9(g)(ii):
 - (i) the Contractor must include in every Subcontract:
 - A. which has a contract value of \$ [REDACTED] or more:
 - 1) the provisions set out in Schedule 24 (Terms to be included in Subcontracts); and

- 2) a requirement to implement a Subcontractors Proof of Payment Procedure if instructed by the Principal; and
 - B. regardless of the Subcontract value:
 - 1) provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions; and
 - 2) confidentiality obligations no less onerous than the Confidentiality Obligations; and
- (ii) if required by the Principal's Representative, the Contractor must, at no additional cost and to the reasonable satisfaction of the Principal, instruct a Subcontractor to:
 - A. implement a Subcontractors Proof of Payment Procedure; and
 - B. submit the documents required by the Subcontractors Proof of Payment Procedure,
 as set out in Schedule 5A (Subcontractors Proof of Payment Process).
- (g) Where a Subcontractor is to carry out design work:
 - (i) the Contractor must, within 5 Business Days after the engagement of the Subcontractor provide the Principal with a deed of covenant (duly stamped) executed by the Subcontractor in the form of Schedule 33 (Designer's Deed of Covenant); and
 - (ii) the Subcontract is not required to contain parts A and B of Schedule 24 (Terms to be included in Subcontracts) if no security is to be provided by the Subcontractor.
- (h) The Contractor agrees that if required by the Principal it will, at no additional cost and to the reasonable satisfaction of the Principal:
 - (i) implement a Subcontractors Proof of Payment Procedure; and
 - (ii) submit the documents required by the Subcontractors Proof of Payment Procedure,
 as set out in Schedule 5A (Subcontractors Proof of Payment Process).
- (i) If required to implement a Subcontractors Proof of Payment Procedure, in addition to implementing the process set out in Schedule 5A (Subcontractors Proof of Payment Process), the Contractor acknowledges and agrees:
 - (i) to pay, within 3 Business Days after receiving payment of a Progress Payment, all outstanding amounts due and payable to Subcontractors listed in the Contractor Statement and Supporting Statement for each of its payment claims;
 - (ii) within 5 Business Days after receiving payment of a Progress Payment to:
 - A. provide proof, to the satisfaction of the Principal, of payment of all outstanding amounts due and payable to Subcontractors; and
 - B. confirm that no monies due and payable remain outstanding to Subcontractors in respect of each payment claim;
 - (iii) that if it fails to provide the required proof of payment:
 - A. it will issue, no later than the 5th Business Day from receipt of payment from the Principal, an irrevocable payment direction in the form of an irrevocable authority in writing to the Principal in favour of each unpaid Subcontractor identified in the Contractor Statement and Supporting Statement; and
 - B. the Principal will be entitled to rely on any irrevocable payment directions as a reason for withholding an amount from the Contractor in the next month's Progress Payment; and
 - (iv) that if it fails to either provide the required proof of payment or issue an irrevocable payment direction as required by this clause 2.9(i) the Principal may have recourse to the unconditional undertakings provided under clause 8.
- (j) The Contractor must immediately inform the Principal and provide a copy of the relevant documents, if it receives:

- (i) a Contractor Statement and Supporting Statement from a Subcontractor with a payment claim that identifies as unpaid any subcontractor, supplier or consultant to a Subcontractor;
- (ii) a payment withholding request (as defined in and served under the SOP Act); or
- (iii) any other written advice received by the Contractor in relation to the non-payment of any subcontractor, supplier or consultant to a Subcontractor.

2.10 Separable Portions

- (a) The interpretations of:
 - (i) Contractor's Activities;
 - (ii) Project Works;
 - (iii) Temporary Works;
 - (iv) Works;
 - (v) Local Area Works;
 - (vi) Property Works;
 - (vii) Service Works;
 - (viii) Landscaping Maintenance;
 - (ix) Tie-In Works;
 - (x) Local Area Works Areas;
 - (xi) Construction Site;
 - (xii) Temporary Works Areas;
 - (xiii) Tie-In Works Area;
 - (xiv) Opening Completion;
 - (xv) Date for Opening Completion;
 - (xvi) Date of Opening Completion;
 - (xvii) Completion;
 - (xviii) Date for Completion;
 - (xix) Date of Completion; and
 - (xx) Defects Correction Period,

and clauses 3.1, 5, 6.1, 7.4, 7.5, 9.1 to 9.4, 10, 13.1 to 13.4, 15.1, 16, 17, Schedule 2 (D&C Payment Schedule) and the SWTC (including its appendices), will apply separately to each Separable Portion (including any Separable Portion determined under clause 2.10(b)) and references therein to any of the terms in clauses 2.10(a)(i) to 2.10(a)(xx) above will mean so much of the Contractor's Activities, Project Works, Temporary Works, Works, Local Area Works, Property Works, Service Works, Landscaping Maintenance, Tie-In Works, Local Area Works Areas, Construction Site, Temporary Works Areas, Tie-In Works Areas, Opening Completion, Date for Opening Completion, Date of Opening Completion, Completion, Date for Completion, Date of Completion and Defects Correction Period, as is comprised in, or associated with, the relevant Separable Portion.
- (b) The Principal's Representative may at any time (including where a part of the Project Works or a Separable Portion has reached a stage equivalent to Completion but the whole of the Project Works or another part of that Separable Portion (as applicable) has not reached Completion) by written notice to the Contractor direct additional Separable Portions.
- (c) A notice given by the Principal's Representative under clause 2.10(b) must, for each Separable Portion, include details of:
 - (i) the parts of the Project Works, Temporary Works and Landscaping Maintenance forming part of that Separable Portion;
 - (ii) the Date for Opening Completion;
 - (iii) the Date for Completion; and
 - (iv) respective amounts of liquidated damages,

all as determined by the Principal's Representative (acting reasonably).

3. Management and administration

3.1 Groups, start-up workshops and meetings

- (a) The parties agree to establish groups and meetings (including start up workshops, Site meetings, Evaluation Meetings, the Project Control Group, the Project Design Group and the Management Review Group), attend meetings and do all associated things, in accordance with Schedule 40 (Workshops and Meetings).
- (b) Without limiting any other provision of this deed, the Contractor must co-operate with and attend meetings with third parties nominated by the Principal's Representative at such times as may be reasonably required by the Principal's Representative.

3.2 The Contractor's reporting obligations

The Contractor must provide reports to the Principal and the Principal's Representative as required by the Contractor Documentation Schedule.

3.3 Project Plans

- (a) The Contractor must prepare the Project Plans specified in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).
- (b) Each Project Plan must:
 - (i) where an initial plan exists and is contained in the Appendices to the SWTC identified in Item 37 of Schedule 1 (Contract Information), be based upon that initial plan; and
 - (ii) whether or not an initial plan exists, be prepared and further developed in accordance with this clause 3.3 and clause 3.4 in respect of the Maintenance Plan and the Appendices to the SWTC identified in Item 37 of Schedule 1 (Contract Information).
- (c) Each Project Plan (other than the Maintenance Plan in which case clause 3.4(b) applies) must be initially submitted to the Independent Certifier and the Principal's Representative within the time period specified in and containing the contents specified in the Appendices to the SWTC identified in Item 37 of Schedule 1 (Contract Information), for the initial submission.
- (d) The Principal's Representative or Independent Certifier may:
 - (i) review any Project Plan submitted under this clause 3.3; and
 - (ii) subject to clause 3.3(dd), if he or she considers, acting reasonably, that the Project Plan submitted does not comply with this deed, notify the Contractor of that within 15 Business Days after the submission of the Project Plan giving reasons as to why the Project Plan submitted does not comply with this deed.
- (dd) The Independent Certifier may, in its absolute discretion, require amendments are made to a Testing Management Plan submitted under this clause 3.3, and notify the Contractor of those amendments within 15 Business Days after the submission of the Testing Management Plan.
- (e) If the Contractor receives a notice under clause 3.3(d)(ii) or 3.3(dd), the Contractor must promptly submit an amended Project Plan to the Independent Certifier and the Principal's Representative for further review in accordance with clause 3.3(d).
- (f) The Principal's Representative and the Independent Certifier owe no duty to the Contractor to review any Project Plan or any draft submitted by the Contractor for errors, omissions or compliance with this deed.
- (g) No review of, comments on, rejection of or failure to reject any Project Plan or any draft of it or any other Direction by the Principal's Representative (including a direction under clause 3.3(j)) or certification by the Independent Certifier in respect of the Project Plans or any draft of it will lessen or otherwise affect:
 - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

- (h) The Contractor acknowledges and agrees that:
 - (i) a stated purpose of each Project Plan is for the Contractor to provide a detailed description of how the Contractor intends to carry out the Contractor's Activities in accordance with the requirements of this deed (and in relation to the Maintenance Plan and notwithstanding clause 3.4, how the Works should be maintained following Opening Completion) with respect to the subject matter of each Project Plan; and
 - (ii) it must undertake ongoing development, amendment and updating of the Project Plans throughout the duration of the Contractor's Activities and at least annually to take into account:
 - A. Variations;
 - B. changes in Law;
 - C. the commencement of new phases or stages of design and construction;
 - D. those events or circumstances expressly identified in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information), for each Project Plan;
 - E. any other events or circumstances which may have any effect on the manner in which the Contractor carries out the Contractor's Activities;
 - F. any breach or potential breach of the warranty in clause 3.3(i);
 - G. requirements specified in the SWTC, including the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information); and
 - H. the impact of COVID-19 and all COVID-19 Directives,
 and promptly submit each further Project Plan to the Independent Certifier and the Principal's Representative as it is further developed, amended or updated.
- (i) The Contractor warrants that each Project Plan will be fit for its stated purpose.
- (j) Without limiting clause 16, if the Principal's Representative or Independent Certifier (as applicable) believes, acting reasonably, that any Project Plan does not comply with this deed, the Principal's Representative or Independent Certifier (as applicable) may by written notice direct the Contractor to further develop, update or amend the Project Plan specifying:
 - (i) the reasons why such amendment is required; and
 - (ii) the time within which a compliant Project Plan must be re-submitted,
 and the Contractor must:
 - (iii) further amend the Project Plan as directed by the Principal's Representative or Independent Certifier (as applicable); and
 - (iv) submit the further amended Project Plan to the Independent Certifier and the Principal's Representative within the time specified under clause 3.3(j)(ii).
- (k) The Contractor must comply with each Project Plan (other than the Maintenance Plan) in respect of which no notice has been given under clauses 3.3(d)(ii), 3.3(dd) or 3.3(j), but compliance will not in any way lessen or affect its liabilities or responsibilities or the Principal's rights whether under this deed or otherwise according to Law.
- (l) The Contractor must comply with the restrictions upon the carrying out of the Contractor's Activities specified in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).
- (m) To the extent they are relevant to maintenance of the Works after Opening Completion, all Project Plans must be incorporated into the Maintenance Plan.

3.4 Maintenance Plan

- (a) As a condition precedent to Opening Completion, the Contractor must develop a Maintenance Plan, in accordance with the requirements of this deed (including the SWTC).
- (b) The Contractor must submit to the Independent Certifier and the Principal's Representative an initial draft of the Maintenance Plan containing the contents specified in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information)

and to a standard and detail no different in substance from the final draft (excluding the incorporation of the Project Plans required by clause 3.3(m)) but for minor details:

- (i) no less than 120 Business Days prior to the Date for Opening Completion; or
 - (ii) if either:
 - A. the Principal's Representative reasonably anticipates that the Date of Opening Completion will be prior to the Date for Opening Completion, no less than 120 Business Days prior to the Principal's Representative's reasonably anticipated Date of Opening Completion provided that the Principal's Representative gives the Contractor 25 Business Days' notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Opening Completion will be earlier than the Date for Opening Completion, no less than 120 Business Days prior to the reasonably anticipated Date of Opening Completion.
- (c) The Contractor must submit to the Independent Certifier and the Principal's Representative a final draft of the Maintenance Plan (including incorporation of the Project Plans required by clause 3.3(m)):
- (i) no less than 60 Business Days prior to the Date for Opening Completion; or
 - (ii) if either:
 - A. the Principal's Representative reasonably anticipates that the Date of Opening Completion will be prior to the Date for Opening Completion, no less than 60 Business Days prior to the Principal's Representative's reasonably anticipated Date of Opening Completion provided that the Principal's Representative gives the Contractor 25 Business Days' notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Opening Completion will be earlier than the Date for Opening Completion, no less than 60 Business Days prior to the reasonably anticipated Date of Opening Completion.
- (d) The Contractor must submit to the Independent Certifier and the Principal's Representative the final Maintenance Plan (including incorporation of the Project Plans required by clause 3.3(m)):
- (i) no less than 20 Business Days prior to the Date for Opening Completion; or
 - (ii) if either:
 - A. the Principal's Representative reasonably anticipates that the Date of Opening Completion will be prior to the Date for Opening Completion, no less than 20 Business Days prior to the Principal's Representative's reasonably anticipated Date of Opening Completion provided that the Principal's Representative gives the Contractor no less than 25 Business Days' notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Opening Completion will be earlier than the Date for Opening Completion, no less than 20 Business Days prior to the reasonably anticipated Date of Opening Completion.
- (e) The Principal's Representative may:
- (i) review the Maintenance Plan or any draft of it submitted under this clause 3.4; and
 - (ii) within 15 Business Days after the submission, acting reasonably, reject the Maintenance Plan or the draft specifying the reasons for rejection.
- (f) If the Maintenance Plan or any draft is rejected, the Contractor must promptly submit an amended Maintenance Plan to the Independent Certifier and the Principal's Representative that addresses the reasons for rejection.
- (g) The Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Maintenance Plan under clause 3.3(m), the purposes of

the Maintenance Plan include for the Contractor to provide a detailed description of how the Works should be maintained after the Date of Opening Completion.

3.5 Control of traffic

The Contractor:

- (a) is responsible for the control, direction and protection of all traffic in any way affected by the carrying out of the Contractor's Activities;
- (b) must manage that traffic to ensure:
 - (i) its continuous, safe and efficient movement;
 - (ii) the traffic carrying capacity of Local Roads is maintained; and
 - (iii) that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum; and
- (c) must comply with the directions of any relevant Authority and directions given by the Principal's Representative (acting reasonably), with respect to traffic management.

3.6 Community relations

The Contractor:

- (a) acknowledges that the areas where the Contractor's Activities are being carried out are of great importance to many people, including local residents and businesses;
- (b) in carrying out the Contractor's Activities, must minimise the disturbance, disruption, nuisance, delay and inconvenience to the affected public, road users, adjacent businesses, stakeholders and the community; and
- (c) must manage and participate in all community relations and involvement programs and activities as:
 - (i) required by the SWTC;
 - (ii) contained in the Communication Management Plan;
 - (iii) required to ensure compliance with the requirements of the Planning Approval; and
 - (iv) reasonably required by the Principal's Representative from time to time.

3.7 Aboriginal participation in construction

- (a) The Contractor must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan in accordance with the Aboriginal Procurement Policy.
- (b) The Minimum Aboriginal Participation Spend amount is stated in Item 16 of Schedule 1 (Contract Information).
- (c) The Contractor must prepare and submit in the method required by the Aboriginal Procurement Policy or the Principal (as applicable) and in accordance with clause 3.7(ca):
 - (i) at the frequency stated in Item 16 of Schedule 1 (Contract Information), its Aboriginal participation report in the format required by the Aboriginal Procurement Policy, providing details of the implementation of the Aboriginal Procurement Policy and achievement of targets; and
 - (ii) the final Aboriginal participation report, as a condition precedent to Completion, describing and explaining:
 - A. how the Aboriginal Participation Plan has been implemented within the specified period;
 - B. what actual outcomes have been achieved; and
 - C. whether the Minimum Aboriginal Participation Requirements have been met.
- (ca) The Contractor may not count any costs, expenses or other amounts of any kind that it incurs in connection with the Contractor's employment of Aboriginal employees towards whether the Minimum Aboriginal Participation Spend at paragraph (a) of the definition of Minimum Aboriginal Participation Requirements has been met.

- (d) Templates are, at the date of this deed, available at:
https://info.buy.nsw.gov.au/__data/assets/word_doc/0012/948783/app_participation_plan_template.docx.
- (e) If the Minimum Aboriginal Participation Requirements have not been met by the Contractor prior to the Contractor's final Payment Claim, the Principal may direct any unspent amounts of the Minimum Aboriginal Participation Spend (**Unspent Amounts**) to Training Services NSW programs that focus on training for Aboriginal people or capacity building for Aboriginal-owned businesses.
- (f) Where the Contractor fails to comply with a direction given by the Principal pursuant to clause 3.7(e), then the Unspent Amounts may be recovered by the Principal as a debt due and payable from the Contractor to the Principal on demand.
- (g) The Contractor must provide any information or assistance, as reasonably requested by the Principal from time to time, to enable the Principal to meet its obligations under the Aboriginal Procurement Policy.
- (h) The Principal may take into consideration any non-compliance by the Contractor with its Aboriginal Participation Plan when evaluating other tenders submitted by the Contractor to the Principal in the future and may report such non-compliance to other government agencies or relevant Authorities (including to NSW Procurement).

3.8 Complaints and notifications

- (a) The Contractor must immediately notify the Principal's Representative in writing if any:
 - (i) Complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,
 by anyone (including any Authority or any landowner, lessee or licensee near the Construction Site) against the Contractor or any of its Subcontractors or their respective employees in respect of or associated with any aspect of the carrying out of the Contractor's Activities including:
 - (iv) Contamination arising out of, or in any way in connection with, the Contractor's Activities;
 - (v) the Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder) or any Law regarding the Environment;
 - (vi) the Contractor's use or occupation of the Construction Site or the Works;
 - (vii) the supply chain for the Contractor's Activities, including the bringing to and removal from the Construction Site items that require transport activities; or
 - (viii) loss or damage of the kind referred to in clauses 6.3(a)(ii) to 6.3(a)(iv).
- (b) The Contractor must (at its own cost):
 - (i) deal proactively with any Complaint, proceedings, letter of demand, order or direction referred to in clause 3.8(a);
 - (ii) take all measures to resolve those matters as soon as possible (including defending any proceedings); and
 - (iii) keep a register of all Complaints, proceedings, letters of demand, orders and directions referred to in clause 3.8(a), which:
 - A. contains full details of:
 - 1) each Complaint, proceedings, letter of demand, order and direction; and
 - 2) the action taken by the Contractor with respect to each Complaint, proceedings, letter of demand, order and direction;
 - B. is promptly updated to take into account any developments with respect to any Complaint, proceedings, letter of demand, order or direction; and
 - C. may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.
- (c) The Contractor must notify anyone who may be adversely affected by the Contractor's Activities before the relevant work is carried out including notification of:
 - (i) the likely duration of that work; and

- (ii) the name and contact details of the Community and Stakeholder Engagement Manager in case any person wishes to make a Complaint.

3.9 Media publications

- (a) The Contractor must obtain the Principal's prior written consent to:
 - (i) any press release or advertisement it wishes to make or place concerning this deed, the Principal or the Contractor's Activities; and
 - (ii) the release for publication in any media of any information, publication, document or article concerning this deed, the Principal, the Project Works, the Temporary Works, the Project or the Contractor's Activities.
- (b) The Contractor must promptly refer any media enquiries concerning this deed, the Principal or the Contractor's Activities to the Principal, for the Principal's prior written consent to any proposed response, which consent may be given or withheld in the Principal's absolute discretion.
- (c) The Contractor must ensure that all of its Subcontractors comply with the requirements of this clause 3.9 and obtain the Principal's prior written consent (through the Contractor) before making or placing any press release or advertisement, responding to any media enquiries or publishing anything of the type referred to in this clause 3.9.

3.10 Notices

- (a) Any notices contemplated by this deed must be in writing and:
 - (i) be sent through the PDCS and:
 - A. in the case of a notice from the Contractor, be addressed to the Principal's Representative; or
 - B. in the case of a notice from the Principal, be addressed to the Project Director;
 - (ii) in the case of notices issued pursuant to clause 20 or 21 or Schedule 38 (Dispute Resolution Procedure), a copy of the notice sent through the PDCS must be printed and delivered or posted by prepaid express post to the relevant address as set out in Items 17 to 19 of Schedule 1 (Contract Information) (as applicable) (in which case the deemed time of receipt for the notice will be the deemed time of receipt of the delivered or posted notice and not the time of receipt through the PDCS); and
 - (iii) in the case of notices issued pursuant to clause 16.1A(c), a copy of the notice sent through the PDCS must be printed and delivered or posted by prepaid express post to the relevant address as set out in Item 19A of Schedule 1 (Contract Information) (in which case the deemed time of receipt for the notice will be time of receipt through the PDCS and not the time of receipt of the delivered or posted notice).
- (b) A notice issued pursuant to clause 3.10(a)(ii) must be a printed copy of the notice sent through the PDCS and in the event that a notice under clause 3.10(a)(ii) is not a printed copy, neither notice will constitute a valid notice.
- (c) A notice is taken to have been received in the case of:
 - (i) delivery by hand, on the day of delivery;
 - (ii) prepaid express post, on the second Business Day after the date of posting; or
 - (iii) delivery by a PDCS, when the sender receives the sent confirmation report generated by the PDCS,provided that if the notice would be taken to have been received on a day which is not a Business Day or after 5pm on a Business Day, it is taken to be received at 9am on the next Business Day.
- (d) With respect to notices sent through the PDCS, an attachment to a notice will only form part of a notice if it is uploaded to the PDCS in:
 - (i) pdf format;
 - (ii) a format compatible with Microsoft Office; or
 - (iii) such other format as may be agreed between the parties in writing from time to time.

4. This deed

4.1 Law of this deed

This deed is governed by and will be construed according to the laws of New South Wales.

4.2 Order of precedence

- (a) The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this deed:
 - (i) the deed excluding the schedules and exhibits;
 - (ii) the schedules; and
 - (iii) the exhibits.
- (b) The SWTC and the Environmental Documents 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 both.
- (c) If there is an ambiguity, discrepancy or inconsistency within or between any documents comprising this deed or the Environmental Documents, the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless the Principal directs otherwise).

4.3 Ambiguous terms

- (a) If the Principal's Representative considers, or the Contractor notifies the Principal's Representative in writing that the Contractor considers, that there is an ambiguity, discrepancy or inconsistency in this deed (including in any schedules or exhibits), the Principal's Representative must, subject to clause 4.2, direct the interpretation of this deed which the Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 4.3(a), is not required to state whether or not there is an ambiguity, inconsistency or discrepancy in respect of the terms of this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 4.3(a):
 - (i) does not in any way lessen or otherwise affect:
 - A. the Contractor's obligations under this deed or otherwise according to Law; and
 - B. the Principal's rights against the Contractor, whether under this deed or otherwise according to Law;
 - (ii) will not give rise to any entitlement of the Contractor to make, nor will the Principal be liable upon, any Claim arising out of or in connection with the Contractor's compliance with the Principal's Representative's Direction; and
 - (iii) must, in respect of a notice given by the Contractor under clause 4.3(a), be given within 20 Business Days after receipt of that notice.

4.4 No assignment

The Contractor must not assign or otherwise deal with any of its rights, interests or obligations under this deed without the prior written consent of the Principal.

4.5 Change in Control of the Contractor

- (a) Subject to the terms of this clause 4.5, the Contractor must ensure that there is no Change in Control of the Contractor or any entity that comprises the Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Contractor must notify the Principal in writing of any proposed or impending Change in Control of the Contractor or any entity that comprises the Contractor, and provide:
 - (i) full details of the proposed or impending Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and

- (ii) all other information required by the Principal to determine whether to grant its consent under clause 4.5(a), in relation to the Change in Control of the Contractor or the relevant entity that comprises the Contractor.

(c) [REDACTED]

- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the Contractor or an entity that comprises the Contractor where the Principal is of the reasonable opinion that:

- (i) the person or entity that will exercise Control of the Contractor or the relevant entity that comprises the Contractor:
 - A. is not solvent;
 - B. is not reputable;
 - C. has an interest or duty that conflicts in a material way with the interests of the Principal; or
 - D. is involved in a business or activity that is incompatible, or inappropriate, in relation to the Contractor's Activities; or

- (ii) as a result of the Change in Control, the Contractor will no longer:
 - A. have sufficient expertise and ability; or
 - B. be of sufficiently high financial and commercial standing,to properly carry out the obligations of the Contractor under this deed.

- (e) The Principal's approval of a Change in Control of the Contractor or any entity that comprises the Contractor will not relieve the Contractor of any of its obligations under this deed.

4.6 Change in Control of the Parent Company Guarantor

- (a) Subject to the terms of this clause 4.6, the Contractor must ensure that there is no Change in Control of the Parent Company Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Contractor must notify the Principal in writing of any proposed or impending Change in Control of the Parent Company Guarantor, and provide:
 - (i) full details of the proposed or impending Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (ii) all other information required by the Principal to determine whether to grant its consent under clause 4.6(a), in relation to the Change in Control of the Parent Company Guarantor.

(c) [REDACTED]

- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of the Parent Company Guarantor where the Principal is of the reasonable opinion that:

- (i) the person or entity that will exercise Control of the Parent Company Guarantor:
 - A. is not solvent;
 - B. is not reputable;
 - C. has an interest or duty that conflicts in a material way with the interests of the Principal; or
 - D. is involved in a business or activity that is incompatible, or inappropriate, in relation to the Contractor's Activities; or
- (ii) as a result of the Change in Control, the Parent Company Guarantor will no longer:
 - A. have sufficient expertise and ability; or
 - B. be of sufficiently high financial and commercial standing, to properly carry out the obligations of the Parent Company Guarantor under the guarantee provided under clause 8.2.
- (e) The Principal's approval of a Change in Control of the Parent Company Guarantor will not relieve the Contractor of any of its obligations under this deed or the Parent Company Guarantor under the guarantee provided under clause 8.2.

4.7 Restructure Event

- (a) The Contractor is not obliged to comply with any requirements of this clause 4.7 that would otherwise put the Contractor (or any entity comprising the Contractor) or any Parent Company Guarantor, in breach of any applicable Law or the listing rules of any recognised stock exchange.
- (b) Subject to the terms of this clause 4.7, in respect of a Restructure Event, the Contractor must use its best endeavours to:
 - (i) provide prior written notice to the Principal in accordance with this clause 4.7; and
 - (ii) consult with the Principal in respect of the Restructure Event before the Restructure Event occurs.
- (c) The Contractor must use its best endeavours to notify the Principal in writing of any Restructure Event as soon as reasonably practicable (and in any event, 10 Business Days) prior to the Restructure Event occurring, and use its best endeavours to provide:
 - (i) full details of the Restructure Event in the Contractor's notice under clause 4.7(b), including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Restructure Event; and
 - (ii) all other information reasonably necessary for the Principal to determine whether to exercise its rights under clause 4.7(d), in relation to the Restructure Event.
- (d) If a Restructure Event occurs, the Contractor acknowledges that the Principal may terminate this deed or exercise a Step-In Right in accordance with clause 21.3(m).
- (e) The Contractor's notification of a Restructure Event will not relieve the Contractor of any of its obligations under this deed.

5. Legal and other requirements

5.1 Compliance with Law and other requirements

- (a) Subject to clause 5.1(b)(ii), the Contractor must in carrying out the Contractor's Activities:
 - (i) comply with, carry out and fulfil all conditions and requirements of all applicable Law;
 - (ii) comply with, and provide the Principal's Representative with copies of, any requirement, notice, order or direction received from or given by any Authority, including any infringement notice, fine or penalty;
 - (iii) give all notices and pay all fees and other amounts which are required to be paid for or in respect of the performance of its obligations;
 - (iv) give the Principal's Representative copies of all notices, reports and submissions it gives to Authorities at the time it submits such notices, reports and submissions and responses from, and details of any consultations with, Authorities; and

- (v) give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it as soon as possible.
- (b) The Contractor must:
- (i) obtain all Approvals except for those specified in paragraph 1 of Schedule 28 (Environmental Documents);
 - (ii) unless otherwise expressly specified in Schedule 28 (Environmental Documents), comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Approvals specified in Schedule 28 (Environmental Documents) to comply with, carry out and fulfil; and
 - (iii) as a condition precedent to Opening Completion, ensure that it has:
 - A. obtained all Approvals it is required to obtain under this deed;
 - B. complied with, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out and fulfil under this deed; and
 - C. without limiting clauses 5.1(b)(iii)A and 5.1(b)(iii)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 the obtaining of the approval of any person for anything) under this deed insofar as this is necessary,

including those Approvals which are required or must be satisfied for the purposes set out in paragraph (c) of the definition of "Approval" in clause 23.2.
- (c) Without limiting the Contractor's obligations under clause 5.1(b), before any documentation is submitted to an Authority for the purposes of seeking or otherwise in connection with:
- (i) any Approval which the Contractor is responsible for obtaining under this deed; or
 - (ii) the conditions or requirements of an Approval obtained by the Principal that the Contractor must comply with,

(Approval Related Documentation), the Contractor must:

 - (iii) throughout the preparation of the Approval Related Documentation, give the Principal's Representative, the Independent Certifier and all relevant Authorities the opportunity to monitor the preparation of, and to review and comment on, the Approval Related Documentation as contemplated in this clause 5.1(c);
 - (iv) progressively develop and prepare the Approval Related Documentation and, at regular and frequent intervals, give the Principal's Representative, the Independent Certifier and all relevant Authorities drafts of the Approval Related Documentation as it is being prepared;
 - (v) allow the Principal's Representative, the Independent Certifier and all relevant Authorities (if any of them elect to do so) to consult with the Contractor and to comment on the Approval Related Documentation submitted under clause 5.1(c)(iv);
 - (vi) consider and, to the extent the Contractor considers necessary, address any comments made by the Principal's Representative, the Independent Certifier and all relevant Authorities under clause 5.1(c)(iv) in the Contractor's further preparation of the Approval Related Documentation;
 - (vii) give the Principal's Representative, the Independent Certifier and all relevant Authorities any information which any of the Principal's Representative, the Independent Certifier and all relevant Authorities may reasonably request in order for any of them to review and consider the Approval Related Documentation;
 - (viii) submit to the Principal's Representative a draft of the final version of the applicable Approval Related Documentation which the Contractor proposes be submitted to an Authority for approval, together with a schedule detailing all the

- comments received from the Principal's Representative, the Independent Certifier and all relevant Authorities under clause 5.1(c)(v) and the actions (if any) taken by the Contractor to address those comments;
- (ix) allow 5 Business Days from the date the final version of the applicable Approval Related Documentation is submitted to the Principal's Representative under clause 5.1(c)(viii) for the Principal's Representative (if it elects to do so) to consult with the Contractor and:
 - A. comment on that documentation to the extent to which the Principal's Representative considers that it is not of a suitable standard or content having regard to the nature of the relevant Approval (which comments the Contractor may address to the extent the Contractor considers necessary); or
 - B. reject that documentation if it does not comply with the requirements of this deed; and
 - (x) if any Approval Related Documentation is rejected by the Principal's Representative under clause 5.1(c)(ix)B, promptly amend the Approval Related Documentation to comply with the requirements of this deed, submit the amended documentation to the Principal's Representative and the process in clause 5.1(c)(ix) and this clause 5.1(c)(x) will re-apply to the amended documentation.
 - (d) The Contractor acknowledges and agrees any documentation that is required to be submitted by the Contractor to a 'site auditor' as contemplated by the *Contaminated Land Management Act 1997* (NSW) will be deemed to be Approval Related Documentation for the purposes of this clause.
 - (e) In respect of any documentation submitted:
 - (i) by the Contractor to the Principal's Representative under clause 5.1(c), including whether or not the Principal's Representative reviews it for errors, omissions, compliance with this deed or suitability for submission to the relevant Authority and whether or not the Principal's Representative comments on it or engages in any act or omission in respect of it;
 - (ii) by the Contractor to an Authority following the process in clause 5.1(c); or
 - (iii) by the Principal (if the Principal's Representative agrees or elects to do so in his or her absolute discretion or is required to by Schedule 28 (Environmental Documents) of this deed) to an Authority following the process in clause 5.1(c), the:
 - (iv) Principal's Representative owes no duty to the Contractor;
 - (v) Contractor's liabilities or responsibilities and the Principal's rights under this deed or otherwise will not be changed from what they otherwise would be; and
 - (vi) Contractor will not be entitled to make any Claim in respect of a delay by any relevant Authority in reviewing, considering, approving, requiring amendments to or rejecting any Approval Related Documentation submitted in accordance with clauses 5.1(e)(i) to 5.1(e)(iii).
 - (f) For the avoidance of doubt, the process in clause 5.1(c) is separate from, and does not in any way limit the operation of, any other review process set out in this deed, including the processes in clauses 3.3 or 12.2 to 12.3.
 - (g) The Contractor:
 - (i) must invite and permit the Principal's Representative or its nominee to attend and participate in any meetings held between the Contractor and any 'site auditor' engaged in connection with the Contractor's Activities as contemplated by the *Contaminated Land Management Act 1997* (NSW) (**Site Auditor**);
 - (ii) must provide the Principal's Representative with copies of all notices, reports and other correspondence given or received by the Contractor to or from the Site Auditor; and
 - (iii) acknowledges that the Principal may liaise with the Site Auditor in respect of the Contractor's Activities.

5.2 Environmental requirements

- (a) The Contractor must carry out the Contractor's Activities:
 - (i) in an environmentally responsible manner so as to protect the Environment; and
 - (ii) subject to clause 5.1(b)(ii) and clause 5.2(b), in accordance with the Environmental Documents, the Construction Environmental Management Plans and all relevant Law.
- (b) Except as specified in Schedule 28 (Environmental Documents), and without limiting the Contractor's other obligations under this deed, the Contractor must comply with, carry out and fulfil the conditions and requirements of all Environmental Documents, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works or Contractor's Activities.
- (c) The Contractor must immediately notify the Principal in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any of the Environmental Documents, or any Environmental Law, in the carrying out of the Contractor's Activities and of details of notices received by or proceedings commenced under any Environmental Law of which the Contractor becomes aware relating to a breach, potential breach, non-compliance or potential non-compliance with an Environmental Law.
- (d) Without limiting the Contractor's obligations under clauses 5.2(a) to 5.2(c), the Contractor must, in carrying out the Contractor's Activities do (and ensure that its employees, agents and Subcontractors do) all things necessary to prevent a breach of Environmental Laws.
- (e) To the extent not prohibited by Law the Contractor indemnifies the Principal against any cost, expense, loss or liability suffered or incurred by the Principal arising out of or in connection with a breach of this clause 5.2.
- (f) The Contractor must comply with the NSW Government *Environmental management guidelines - Construction procurement* (Edition 4 December 2019).

5.3 Legal challenge

- (a) If there is a legal challenge in relation to the assessment or determination of the Works under the:
 - (i) *Environmental Planning and Assessment Act 1979* (NSW);
 - (ii) *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
 - (iii) any other Law,the Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:
 - (iv) ordered by a court or tribunal; or
 - (v) directed by the Principal.
- (b) Subject to clause 5.3(d) and clause 18.12, the Principal must pay the Contractor the reasonable net extra Direct Costs incurred by the Contractor arising directly as a result of a court or tribunal order referred to in clause 5.3(a)(iv) or the direction by the Principal under clause 5.3(a)(v) as stated by the Principal's Representative.
- (c) The Contractor's entitlements under clause 5.3(b) and clause 17.6 (if applicable) will be its only right to make any Claim for payment of money arising out of or in any way in connection with a court or tribunal order referred to in clause 5.3(a)(iv) or a direction by the Principal under clause 5.3(a)(v).
- (d) Clause 5.3(b) does not apply to the extent that a legal challenge of the kind referred to in clause 5.3(a) is initiated or upheld or the Principal's direction under clause 5.3(a)(v) is required as a result of, or in connection with, the Contractor's non-compliance with its obligations under this deed.

5.4 Crown building work

- (a) The Contractor must, in relation to any Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) Nothing in clause 5.4(a) will lessen or otherwise affect:
 - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

5.5 Skills Development and Training

- (a) The Contractor must demonstrate its commitment and capacity to plan and manage training in accordance with the *NSW Government Training Management Guideline: Skills, Training and Diversity in Construction* (July 2020) and certain targets relating to the Infrastructure Skills Legacy Program. The Guideline is attached to NSW Procurement Board Direction PBD 2020-03 - *Skills, training and diversity in construction*, which is available for download from: <https://arp.nsw.gov.au/pbd-2020-03-skills-training-and-diversity-in-construction/>. The Contractor must demonstrate its commitment by:
 - (i) providing the levels of skills and training development identified in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information);
 - (ii) cooperating with and assisting the Principal with any reviews undertaken by the Principal of the Contractor's compliance with this clause 5.5;
 - (iii) maintaining records evidencing the Contractor's compliance with this clause 5.5; and
 - (iv) making available all records maintained in accordance with clause 5.5(a)(iii) to the Principal.
- (b) Without limiting clause 5.5(a), the Contractor is required to meet the commitments and outputs set out in the SWTC concerning Skills Development and Training.
- (c) From the date of this deed until the Date of Completion, the Contractor must provide quarterly reports to the Principal's Representative (at the end of March, June, September and December) using the reporting format available for download from: https://www.training.nsw.gov.au/forms_documents/programs_services/islp/attachment_A_reporting_template.xlsx. The reporting must give details of the apprentices and trainees engaged in the carrying out of the Contractor's Activities and demonstrate that the Contractor is meeting (or will meet at Completion) the commitments made in this deed.

5.6 Industrial relations

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

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant Laws, for all employees, are always observed in full; and
- (c) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities.

5.7 Site induction

Without limiting the Contractor's obligations under clause 5.1(b) to comply with the conditions and requirements of all Approvals, the Contractor must provide safety and environmental site induction for persons nominated by the Principal's Representative, and for all personnel directly or indirectly engaged by the Contractor and requiring access to:

- (a) the Construction Site; and
- (b) other areas where the Contractor's Activities are being performed.

5.8 Work health and safety

- (a) In this clause 5.8, "workplace", "construction project" and "construction work" have the same meanings assigned to those terms in the WHS Laws.
- (b) Without limiting the Contractor's obligations under any other provisions of this deed:
 - (i) to the extent that the Contractor's Activities include construction work, the Principal:
 - A. engages the Contractor PC as the Principal Contractor under the WHS Laws in respect of all such construction work carried out by the Contractor under this deed; and
 - B. authorises the Contractor PC to:
 - 1) have management and control of each workplace at which the Contractor's Activities are to be carried out; and
 - 2) discharge the duties of a Principal Contractor under the WHS Laws for the construction project; and
 - (ii) the Contractor PC must exercise and fulfil the functions and obligations of the Principal Contractor under the WHS Laws.
- (c) The Contractor PC's engagement and authorisation as Principal Contractor will continue:
 - (i) until the later of the Date of Opening Completion and the Open to Traffic Date, unless sooner revoked by the Principal; and
 - (ii) in respect of any rectification work under clause 16 or any Landscaping Maintenance that is construction work, during the period any such work is carried out and for the area where such work is carried out.
- (d) Without limiting any other provision of this deed, the Contractor PC:
 - (i) must discharge all its obligations under the WHS Laws and under any plan or any other laws relating to work health and safety;
 - (ii) accepts its engagement as the Principal Contractor and agrees that it has sufficient authority to comply with its obligations as Principal Contractor;
 - (iii) is responsible for all costs associated with performing the role of Principal Contractor;
 - (iv) must comply with any direction on safety issued by a relevant Authority;
 - (v) must immediately notify the Principal of any Notifiable Incident in connection with the Contractor's Activities and the Construction Site and provide the Principal with any information the Principal requires in relation to any Notifiable Incident;
 - (vi) must provide to the Principal all notices and correspondence concerning work health and safety in connection with the Contractor's Activities as soon as reasonably practicable and within no more than 24 hours after the dispatch or receipt of any such notice or correspondence;
 - (vii) acknowledges that it has control and management of the area of the Construction Site;
 - (viii) to the extent not prohibited by Law indemnifies the Principal against any cost, damage, expense, loss or liability suffered or incurred by the Principal arising out of or in connection with:
 - A. the failure of the Contractor PC to exercise or fulfil the functions and obligations of the Principal Contractor under the WHS Laws or under this clause, or any breach of this clause 5.8, except to the extent that the failure or breach is directly caused by an act, neglect, omission or default of the Principal or its servants, agents, employees or contractors (other than the Contractor); and
 - B. any work health and safety claims in connection with the Contractor's Activities and:
 - 1) where the Contractor PC is Principal Contractor, the Construction Site; or

- 2) where the Contractor PC is not Principal Contractor, the Contractor's use or occupation of the Construction Site, except to the extent that they are directly caused by an act, neglect, omission or default of the Principal or its servants, agents, employees or contractors (other than the Contractor);
- (ix) must itself comply, and ensure that all Subcontractors engaged by the Contractor in connection with the Contractor's Activities comply with their respective obligations under the WHS Laws;
 - (x) must ensure that it carries out the Contractor's Activities in a manner which ensures that the Principal satisfies its obligations under the WHS Laws and does not obstruct the Principal in the performance of its obligations under WHS Laws;
 - (xi) must ensure that it does not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the person holds any necessary authorisation, licensing, prescribed qualifications or experience required by any Law;
 - (xii) must display signs that are clearly visible from outside the place of work identifying the Contractor PC as the Principal Contractor and stating the contact telephone numbers of the Contractor PC (including an after-hours emergency telephone number) and the location of the Contractor PC's main site administration facilities for the construction project;
 - (xiii) warrants that it will inform the Principal of any matter which the Principal must be aware of to ensure the health and safety of the Principal's workers in relation to the Contractor's Activities; and
 - (xiv) must consult, co-operate and co-ordinate with the Principal in respect of the discharge of any of the Principal's work, health and safety obligations in connection with the construction project under the WHS Laws.
- (e) If the Principal's Representative notifies the Contractor that:
- (i) work is to be carried out by other contractors engaged by the Principal on or about the Construction Site (**Other Contractor Work**); and
 - (ii) the Contractor PC is the Principal Contractor in respect of the Other Contractor Work,
- then:
- (iii) the Other Contractor Work will form part of the same construction project as the Contractor's Activities; and
 - (iv) the Contractor PC's engagement as Principal Contractor under clause 5.8(b) will include acting as Principal Contractor in respect of the Other Contractor Work.
- (f) The Principal may, at its absolute discretion, notify the Contractor that it has terminated the Contractor PC's engagement as Principal Contractor for all or part of the Contractor's Activities and advise the Contractor of the new Principal Contractor for the Contractor's Activities (or a part thereof). If the Contractor PC's appointment and engagement as Principal Contractor is terminated for all or part of the Contractor's Activities, then the Contractor must comply with all requirements of the new Principal Contractor in executing the Contractor's Activities and its other obligations under this deed so as to enable the new Principal Contractor to meet its obligations under the WHS Laws.
- (g) Without limiting any other provision of this deed, the Contractor must:
- (i) carry out the Contractor's Activities safely so as to protect persons, property and the Environment;
 - (ii) have a corporate work health and safety management system which complies with the WHS Laws and is otherwise in accordance with the NSW Government Work Health and Safety Management Guidelines (6th edition) (December 2019); and
 - (iii) at all times comply with its Project WHS Management Plan.
- (h) If any of the Principal's Representative, the Principal's Assistant Representative or the Principal's Surveillance Officer considers there is a risk of injury to people or damage to property or the Environment arising from the Contractor's Activities:

- (i) the Principal's Representative, the Principal's Assistant Representative or the Principal's Surveillance Officer (as the case may be) may direct the Contractor to change its manner of working or to cease working; and
- (ii) the Contractor must, at its cost, comply with any direction given under clause 5.8(h)(i).

5.9 Safety audit

- (a) The Principal may itself, have a third party, or require the Contractor to, conduct audits from time to time of the Contractor's compliance with its health and safety obligations under:
 - (i) this deed; and
 - (ii) all WHS Laws,
 - (WHS Obligations).
- (b) The Contractor must comply with all requirements of a party undertaking an audit under this clause, including giving reasonable access to all documents necessary to conduct the audit, and access to the Construction Site.
- (c) If the Contractor is required to conduct an audit under this clause, it must do so within the time reasonably required by the Principal and promptly report to the Principal in writing on the outcome of the audit.
- (d) Any corrective work or action which the audit identifies as necessary to rectify any non-compliance with the WHS Obligations must be undertaken by the Contractor at its expense and within a reasonable time, given the nature of the non-compliance.

5.10 Collusive arrangements

- (a) The Contractor:
 - (i) warrants that:
 - A. prior to the close of Tenders; and
 - B. as at the date of this deed,

the Contractor had no knowledge of the Tender price of any other Tenderer and had not directly or indirectly communicated the Contractor's Tender price to any other Tenderer;
 - (ii) warrants that, except as disclosed in the Tender and as agreed with the Principal in writing, the Contractor:
 - A. has not made any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:
 - 1) the Contractor will pay money to or confer any benefit on any of the unsuccessful Tenderers; or
 - 2) the Contractor will pay money to or confer any benefit on any trade or industry association (above the published standard fee) in respect of this deed;
 - B. has not made any allowance in the Contractor's Tender price on account of a contract, arrangement or understanding of a kind referred to in clause 5.10(a)(ii)A; and
 - C. will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 5.10(a)(ii)A; and
 - (iii) acknowledges that it is aware that the Principal entered this deed in reliance on the warranties in clauses 5.10(a)(i) and 5.10(a)(ii).
- (b) The Principal and the Contractor agree that if any matter warranted in clauses 5.10(a)(i) or 5.10(a)(ii) is found not to be true or not to be correct, in addition to any other rights that the Principal may have, the Contractor:
 - (i) will be in fundamental breach of this deed; and
 - (ii) without limiting the Principal's rights under clause 21.3, must pay to the Principal as liquidated damages the sum equivalent to that paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 5.10(a)(ii).

5.11 Long service leave levy

The Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service levy in respect of the Contractor's Activities under the Long Service Payments Act, at the times and in the amounts as are due and payable under the Long Service Payments Act, including:
 - (i) before commencing any construction work under this deed; and
 - (ii) if the Long Service Corporation serves a notice under section 41 of the Long Service Payments Act requiring payment of an additional amount of long service levy, within the time specified in the notice; and
- (b) produce to the Principal's Representative documents evidencing payment of the amounts referred to in clause 5.11(a).

5.12 NSW Government Code of Practice for Procurement and Implementation Guidelines

- (a) The New South Wales Government's Code of Practice for Procurement (**NSW Code**) and the New South Wales Government's Industrial Relations Guidelines to the New South Wales Code of Practice for Procurement, Building and Construction Procurement (**NSW Guidelines**) (as published by the NSW Treasury September 2017) apply to this Project. The NSW Code and NSW Guidelines are available at <https://www.industrialrelations.nsw.gov.au/>.
- (b) In addition to terms defined in this deed, terms used in this clause 5.12 have the same meaning as is attributed to them in the NSW Guidelines.
- (c) The Contractor must at all times comply with and meet any obligations imposed by the NSW Code and the NSW Guidelines.
- (d) The Contractor must notify the Construction Compliance Unit (**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.
- (e) Where the Contractor engages a Subcontractor, the Contractor must ensure that the Subcontract imposes on the Subcontractor equivalent obligations to those in this clause 5.12, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (f) The Contractor must not appoint or engage another party in relation to the Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.
- (g) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (h) 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 the Construction 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 Contractor's Activities;
 - (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 its related entities.
- (i) The Contractor agrees to comply, and will require its related entities to 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.

- (j) The Contractor warrants that at the time of entering into this deed and the Interface Deed, neither it, nor any of its related entities, is 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.
- (k) 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.
- (l) 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.
- (m) 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 Code and 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.
- (n) 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 this deed, or from liability for any Defect in the Project Works, Landscaping Maintenance or the Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (o) Where a change in this deed or the Contractor's Activities are proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines:
 - (i) the Contractor must immediately notify the Principal (or the Principal's Representative) of the change, or likely change and specify:
 - A. the circumstances of the proposed change;
 - B. the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - C. what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project WHS Management Plan); and
 - (ii) the Principal will direct the Contractor as to the course it must adopt within 10 Business Days after receiving notice from the Contractor.

5.13 Transport for NSW Statement of Business Ethics

The parties must comply with the Transport for NSW Statement of Business Ethics available at <https://www.transport.nsw.gov.au>.

5.14 Incident control by the New South Wales Police Force

Despite any other provision of this deed, where the New South Wales Police Force is controlling an incident, the Contractor:

- (a) must liaise with and obtain the approval of the New South Wales Police Force in relation to any proposed closure to a lane or shoulder;
- (b) must not restrict, close, interfere with or obstruct the free flow of traffic on any lane or shoulder of the Works or a Local Road contrary to the instructions of the New South Wales Police Force; and
- (c) if permitted to restrict, close, interfere with or obstruct the free flow of traffic on any lane or shoulder of the Works or a Local Road, must act in accordance with any instructions of the New South Wales Police Force including to suspend any of the Contractor's Activities and to re-open the lane or shoulder. Except to the extent that compliance with

any instructions of the New South Wales Police Force makes it impossible to do otherwise, this clause 5.14 does not relieve the Contractor from its obligations under this deed.

5.15 Road occupancy

- (a) Where any Contractor's Activities will or are likely to have the effect of restricting, interfering with or obstructing the free flow of traffic on, obstruct or close any lane or shoulder of a Classified Road, the Contractor must lodge:
 - (i) with the Principal in its capacity as an Authority an application for a Road Occupancy Licence using the Online Planned Incident System (OPLINC) accessible on the Service NSW website (or in such other form or method as may be required from time to time) for a Road Occupancy Licence, providing all relevant details of the proposed Contractor's Activities; and
 - (ii) with the Principal's Representative, a Traffic Management and Safety Plan as required by the sections of and Appendices to the SWTC identified in Item 37 of Schedule 1 (Contract Information).
- (b) An application and Traffic Management and Safety Plan under clause 5.15(a) must be lodged as early as possible prior to the date when the Contractor intends to undertake the Contractor's Activities (and in any event no less than 10 Business Days prior to that date), to allow for review of the application and traffic guidance scheme, issuing of a notice by the Principal in its capacity as an Authority and, where appropriate, making of arrangements for implementation of the Road Occupancy Licence.
- (c) In considering whether to issue a Road Occupancy Licence in its capacity as an Authority, the Principal may consider the following factors:
 - (i) the expected traffic flow at the time of the proposed Contractor's Activities;
 - (ii) the relative importance and urgency of the proposed Contractor's Activities;
 - (iii) any matters as set out in Appendix 27 to the SWTC and Transport for NSW D&C G10; and
 - (iv) any other factor which the Principal believes to be relevant.
- (d) The Contractor must comply with the Road Occupancy Licence conditions.
- (e) A Road Occupancy Licence may contain such terms and conditions as the Principal, in its capacity as an Authority, sees fit, including:
 - (i) a limitation on the hours during which the proposed Contractor's Activities may be carried out; and
 - (ii) specific traffic control measures that must be taken.
- (f) The Contractor must not undertake any Contractor's Activities, that has the effect of restricting, interfering with or obstructing the free flow of traffic on, obstructs or closes any lane or shoulder of a Classified Road:
 - (i) without a Road Occupancy Licence;
 - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
 - (iii) otherwise than in accordance with the terms and conditions of a Road Occupancy Licence.
- (g) A breach of a term or condition of a Road Occupancy Licence will constitute a breach of this deed.
- (h) The Contractor:
 - (i) acknowledges and agrees that if any Contractor's Activities will or are likely to have the effect of restricting, interfering with or obstructing the free flow of traffic on, obstruct or close any lane or shoulder of a road other than a Classified Road, the Contractor must obtain the necessary Approvals from the relevant Authority to undertake those Contractor's Activities and the Contractor bears the risk of obtaining those Approvals;
 - (ii) must comply with the directions of any relevant Authority (including the Principal in its capacity as an Authority) and the Principal's Representative with respect to road occupancy management; and

- (iii) acknowledges and agrees that the Principal in its capacity as an Authority exercises its own discretion in the exercise of delegated statutory functions and powers, and that nothing that the Principal does, fails to do or purports to do pursuant to such delegation (including a decision not to grant a Road Occupancy Licence) will:
 - A. be considered as an act or omission of the Principal under this Deed;
 - B. constitute an Act of Prevention; or
 - C. entitle the Contractor to make any Claim.
- (i) The Contractor must:
 - (i) fully co-operate with the Northern Package Contractor to do everything reasonably necessary to coordinate traffic management and minimise disruption to the movement of traffic, including by coordinating applications in accordance with 5.15(a); and
 - (ii) provide the Northern Package Contractor with copies of any Road Occupancy Licences granted in accordance with this clause 5.15.

5.16 Principal's Representative's directions

Without limiting clause 17.8 and despite any Road Occupancy Licence issued by the Principal in its capacity as an Authority for any lane or shoulder closure, the Principal or the Principal's Representative may at any time direct the Contractor to temporarily suspend any Contractor's Activities and to re-open the lane or shoulder.

5.17 Heavy Vehicle National Law

- (a) The Contractor must, in carrying out the Contractor's Activities and without limiting any other provisions of this deed, including Schedule 51 (Heavy Vehicle National Law Requirements):
 - (i) comply with, and ensure that each Subcontractor complies with, the provisions of the Heavy Vehicle National Law (including requirements relating to vehicle standards, mass, dimension and loading requirements, driver fatigue management, speed management, maintenance management and the Chain of Responsibility Provisions) and the Road Transport Legislation;
 - (ii) ensure so far as is reasonably practicable, the safety of the Contractor's and any Subcontractors' transport activities relating to the use of any heavy vehicles in the course of the Contractor's Activities;
 - (iii) ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), the Road Transport Legislation and including the provisions of any Chain of Responsibility Management Plan which has been submitted to the Principal's Representative under this clause; and
 - (iv) invite and permit the Principal's Representative or its nominee to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.
- (b) The Contractor acknowledges that for the purposes of the Chain of Responsibility Provisions of the Heavy Vehicle National Law, its Subcontractors may hold a number of roles including as consignor, loader, unloader, loading manager, prime contractor, operator, scheduler and packer.
- (c) The Contractor must ensure that its personnel, and its Subcontractors and their personnel, are provided with adequate information, training, instruction and supervision in relation to any of their obligations and compliance with the Heavy Vehicle National Law, including:
 - (i) induction training prior to the commencement of the Contractor's Activities; and
 - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
- (d) Where the Contractor becomes aware of any suspected, alleged or actual breach by the Contractor or any Subcontractor or its employees or becomes aware of any regulatory or administrative warning or caution, any notice requiring information or production of documents, inspections, infringement notices, notices or legal proceedings issued in

respect of any heavy vehicle used in performing the Contractor's Activities, the Contractor must:

- (i) promptly give the Principal's Representative a detailed written report of the matter and any steps taken or intended to be taken to respond to any such suspected, alleged or actual breach or to prevent any other similar suspected, alleged or actual breach from occurring; and
 - (ii) otherwise comply with Law and the relevant Project Plans (including the Project WHS Management Plan, the Chain of Responsibility Management Plan and the Communication Management Plan).
- (e) The Principal's Representative may, if he or she reasonably believes that the Contractor is not in compliance with, or the Contractor has not procured a Subcontractor's compliance with, its obligations under this clause or Schedule 51 (Heavy Vehicle National Law Requirements), by written notice direct the Contractor to show cause why the Contractor should not be directed to suspend any or all of the Contractor's Activities under this deed (including any activities carried out by any non-compliant Subcontractor) until such time as the Principal can be reasonably satisfied that any non-compliance has been remedied. Without limiting any other provision of this deed, the Principal may also, in its absolute discretion:
- (i) require that the persons responsible for any breach of the Heavy Vehicle National Law are no longer engaged in the Contractor's Activities; and
 - (ii) report any suspected or alleged breach to any State or Territory road safety authority or authorised officer under the Heavy Vehicle National Law.
- (f) The Principal will have no liability to the Contractor in respect of an order by a court or direction by the Principal's Representative that the Contractor cease to perform its obligations under this deed as a result of a suspected, alleged or actual breach of this clause, Schedule 51 (Heavy Vehicle National Law Requirements) or the Heavy Vehicle National Law.
- (g) The Contractor is responsible for preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Construction Site, Extra Land or any other areas affected by the Contractor's Activities, including personal injury or death or loss or damage in connection with the Contractor's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site, Extra Land or any other areas affected by the Contractor's Activities of items that require transport activities or the movement on any road of any heavy vehicle whether loaded or not.
- (h) The Contractor must:
- (i) keep and must ensure that any Subcontractors keep records of any steps taken in compliance with this clause, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan for at least 3 years after taking any such steps; and
 - (ii) have its compliance independently audited, and provide the Principal with an audit report in relation to the Contractor's compliance with this clause, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan by no later than 30 June each year.
- (i) In this clause 5.17, "heavy vehicle", "transport activities", "consignor", "loader", "unloader", "loading manager", "prime contractor", "operator", "scheduler" and "packer" have the same meanings assigned to those terms in the Heavy Vehicle National Law.

5.18 Australian Industry Participation Plan (AIP Plan)

- (a) If required by Item 21 of Schedule 1 (Contract Information), the Contractor must comply with and implement the Certified AIP Plan.
- (b) The Contractor must provide any information or reporting reasonably required by the Principal to assist the Principal in assessing the Contractor's compliance with the Certified AIP Plan and providing any reporting to the Australian Industry Participation Authority.

- redacted to remove any commercially sensitive information) as soon as reasonably practicable after such Subcontract is entered into;
- (ii) ensure the Project Plans take COVID-19, all COVID-19 Directives and COVID-19 Impacts into account for the period during which the COVID-19 Directives and COVID-19 Impacts remain in force or effect and relevant to the Contractor's Activities;
 - (iii) proactively monitor the potential impacts of COVID-19, including all relevant COVID-19 Directives and COVID-19 Impacts on the Contractor's Activities; and
 - (iv) implement mitigation measures to minimise any potential impact of COVID-19, including all relevant COVID-19 Directives and any COVID-19 Impacts on the Contractor's Activities, including:
 - A. as set out in the relevant updated Project Plans and otherwise consistent with Good Industry Practice;
 - B. as set out in the COVID-19 Mitigation Measures; and
 - C. sequencing the Contractor's Activities and employing construction methodologies and practices that minimise the impacts of COVID-19 and any relevant COVID-19 Directives on the Contractor's Activities.
- (e) Without limiting clauses 17.4(b) and 17.5, where there is a New COVID-19 Directive or the Contractor considers that a COVID-19 Impact has occurred, the Contractor must promptly (and in any event within 5 Business Days after becoming aware of the New COVID-19 Directive or COVID-19 Impact) give the Principal's Representative notice in writing, together with detailed particulars of the following:
- (i) details of the New COVID-19 Directive or COVID-19 Impact;
 - (ii) the likely duration of the New COVID-19 Directive or COVID-19 Impact and the impact of the New COVID-19 Directive or COVID-19 Impact on the Contractor's Activities;
 - (iii) the Contractor's plan to deal with the consequences of the New COVID-19 Directive or COVID-19 Impact which must as a minimum include details of the steps that the Contractor will take to:
 - A. avoid, mitigate, resolve or to otherwise manage the relevant effect of the New COVID-19 Directive or COVID-19 Impact;
 - B. minimise any delay to the Works caused by the New COVID-19 Directive or COVID-19 Impact; and
 - C. minimise any additional cost to the Principal in respect of the New COVID-19 Directive or COVID-19 Impact; and
 - (iv) such other information as the Principal's Representative may require (acting reasonably).
- (f) The Principal owes no duty to the Contractor to review any information submitted by the Contractor under this clause 5.22 for errors, omissions or compliance with this deed.
- (g) No review of, comments on, rejection of or failure to comment on or reject any claim, report or other information submitted by the Contractor under this clause 5.22 by the Principal:
- (i) is an admission of liability; or
 - (ii) will lessen or otherwise affect:
 - A. the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - B. the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (h) Where there is a New COVID-19 Directive or a COVID-19 Impact and either party wishes to claim an increase or a decrease (as the case may be) to the D&C Contract Sum on account of a New COVID-19 Directive or COVID-19 Impact:
- (i) where the party wishing to claim is the Contractor, the Contractor must, within 10 Business Days after the commencement of the New COVID-19 Directive or the COVID-19 Impact, give a written notice to the Principal which:
 - A. states that this clause 5.22 applies and containing details of the New COVID-19 Directive or COVID-19 Impact;

[REDACTED]

- (v) the Principal may submit the updated COVID-19 Management and Safety Plan and updated COVID-19 Mitigation Measures and any other information provided by the Contractor pursuant to a notice issued under clause 5.22(h)(i)D to an independent expert appointed by the Principal for that expert to determine whether the updated COVID-19 Management and Safety Plan and updated COVID-19 Mitigation Measures and any other information provided by the Contractor pursuant to clause 5.22(h)(i)D complies with the requirements of this deed.
- (i) For the purposes of calculating the adjustments to the Design Contract Sum, the Construction Contract Sum and the D&C Payment Schedule on account of a New COVID-19 Directive or COVID-19 Impact:
 - (i) the D&C Contract Sum will be taken to allow for the actions, impacts and costs described in the COVID-19 Management and Safety Plan (as updated in accordance with clause 3.3 and this clause 5.22);
 - (ii) any adjustments will be determined:
 - A. with reference to the additions, omissions or changes (as applicable) to the COVID-19 Management and Safety Plan made pursuant to this clause 5.22 as a result of the New COVID-19 Directive or COVID-19 Impact; and
 - B. to the extent a New COVID-19 Directive constitutes or gives rise to a COVID-19 Impact, without double counting;
 - (iii) the Contractor's entitlements will be reduced to the extent that:
 - A. the Contractor would have avoided or reduced any Direct Costs or delay if it had complied with its obligations under clause 5.22(d)(iv); and
 - B. the Contractor will avoid or reduce any Direct Costs or achieve any productivity gains in respect of the Contractor's Activities as a result of the New COVID-19 Directive or COVID-19 Impact; and
 - (iv) the Contractor must:
 - A. take all reasonable steps to mitigate the costs, delay, and other adverse impacts resulting from the New COVID-19 Directive or COVID-19 Impact, including by complying with any COVID-19 Mitigation Measures;
 - B. for that purpose, comply with all reasonable directions of the Principal concerning the New COVID-19 Directive or COVID-19 Impact, and their consequences; and
 - C. ensure that its Subcontractors comply with this clause 5.22(i),and the Principal's liability in respect of the New COVID-19 Directive or COVID-19 Impact will be reduced to the extent that the Contractor fails to comply with this clause 5.22(i).

(j) [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (k) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (l) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

5.23 Commonwealth Building Code

- (a) In this clause 5.23:
- (i) **Building Code** means the Code for the Tendering and Performance of Building Work 2016 (Cth), which is available at <https://www.legislation.gov.au/Details/F2019C00289>, as amended from time to time (including as amended by the Code for the Tendering and Performance of Building Work Amendment Instrument 2022 (Cth));
 - (ii) **Building Contractor** has the same meaning as in the BCIP Act;
 - (iii) **Building Industry Participant** has the same meaning as in the BCIP Act;
 - (iv) **Building Work** has the same meaning as in subsection 3(4) of the Building Code;
 - (v) **Commonwealth Funded Building Work** means Building Work in items 1-8 of Schedule 1 of the Building Code, other than Building Work to which item 10 of that Schedule applies;
 - (vi) **Exclusion Sanction** has the same meaning as in subsection 3(3) of the Building Code;
 - (vii) **Related Entity** has the same meaning as in the Corporations Act;
 - (viii) **Subcontractor** means a Building Contractor or Building Industry Participant who the Contractor has entered, or proposes to enter, into a subcontract with to undertake any of the Works; and
 - (ix) **Works** means Commonwealth Funded Building Work that is the subject of this deed.
- (b) The Contractor declares as at the date of this deed that it and its subcontractors were not subject to an Exclusion Sanction immediately before the commencement of the *Code for the Tendering and Performance of Building Work Amendment Instrument 2022 (Cth)*.
- (c) The Contractor:
- (i) declares as at the date of this deed in relation to the Works; and
 - (ii) must ensure during the term of this deed, that it and its Subcontractors will comply with the Building Code.
- (d) Compliance with the Building Code does not relieve the Contractor from responsibility to perform this deed, or from liability for any defect in the Works arising from compliance with the Building Code.
- (e) The Contractor must notify the Principal of any breach or suspected breach of the Building Code as soon as practicable but no later than 5 Business Days after becoming

aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.

- (f) The Contractor agrees that it and its Subcontractors will comply with any request to provide information, as is relevant to confirming whether it and its Subcontractors have complied with the Building Code, from the Principal, the Commonwealth (or any person authorised by the Commonwealth) or any person contemplated by the BCIP Act or the Building Code as having a right to obtain such information.
- (g) The Contractor must only enter into a Subcontract where:
 - (i) the Subcontractor is not subject to an Exclusion Sanction unless approval to do so is provided by the Minister responsible for administering the Building Code; and
 - (ii) the Subcontract contains clauses which are equivalent to this clause 5.23.
- (h) The Contractor must only use products in building work that comply with the relevant Australian Standards published by, or on behalf of, Standards Australia.
- (i) The Contractor must ensure that any Subcontract requires the Subcontractor to only use products in relation to the Works that comply with the relevant Australian Standards published by, or on behalf of, Standards Australia.
- (j) The Contractor must maintain adequate records of it and its Subcontractors' compliance with the Building Code.

5.24 WHS Accreditation Scheme

The Contractor:

- (a) warrants that the Contractor and any Subcontractors are accredited under the WHS Accreditation Scheme; and
- (b) must ensure that the Contractor and any Subcontractors:
 - (i) maintain accreditation under the WHS Accreditation Scheme; and
 - (ii) comply with all conditions of the WHS Accreditation Scheme accreditation and the National Construction Code performance requirements in relation to building materials,at all times whilst carrying out "building work" (as defined in section 6 of the BCIP Act) in respect of the Contractor's Activities.

5.25 Modern Slavery

- (a) The Contractor warrants that:
 - (i) it is not aware (including through the making of reasonable inquiries), of any Modern Slavery occurring within its operations or supply chains (or in those of any entity it owns or controls); and
 - (ii) as at the date of this deed:
 - A. neither the Contractor, any entity it owns or controls or, to the best of its knowledge, any subcontractor of the Contractor, has been convicted of any Modern Slavery Offence; and
 - B. the Contractor is not aware of any circumstance within its operations or supply chains that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- (b) The Contractor agrees that it must:
 - (i) at all times:
 - A. comply, and take reasonable steps to ensure any entity it owns or controls complies, with the Modern Slavery Laws (to the extent applicable); and
 - B. take reasonable steps (including developing strategies, due diligence processes and training) to ensure that:
 - 1) Modern Slavery is not occurring (whether directly or indirectly) in the operations and supply chains of the Contractor and any entity it owns or controls; and
 - 2) the Contractor, and any entity it owns or controls, do not use (nor procure) any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery;

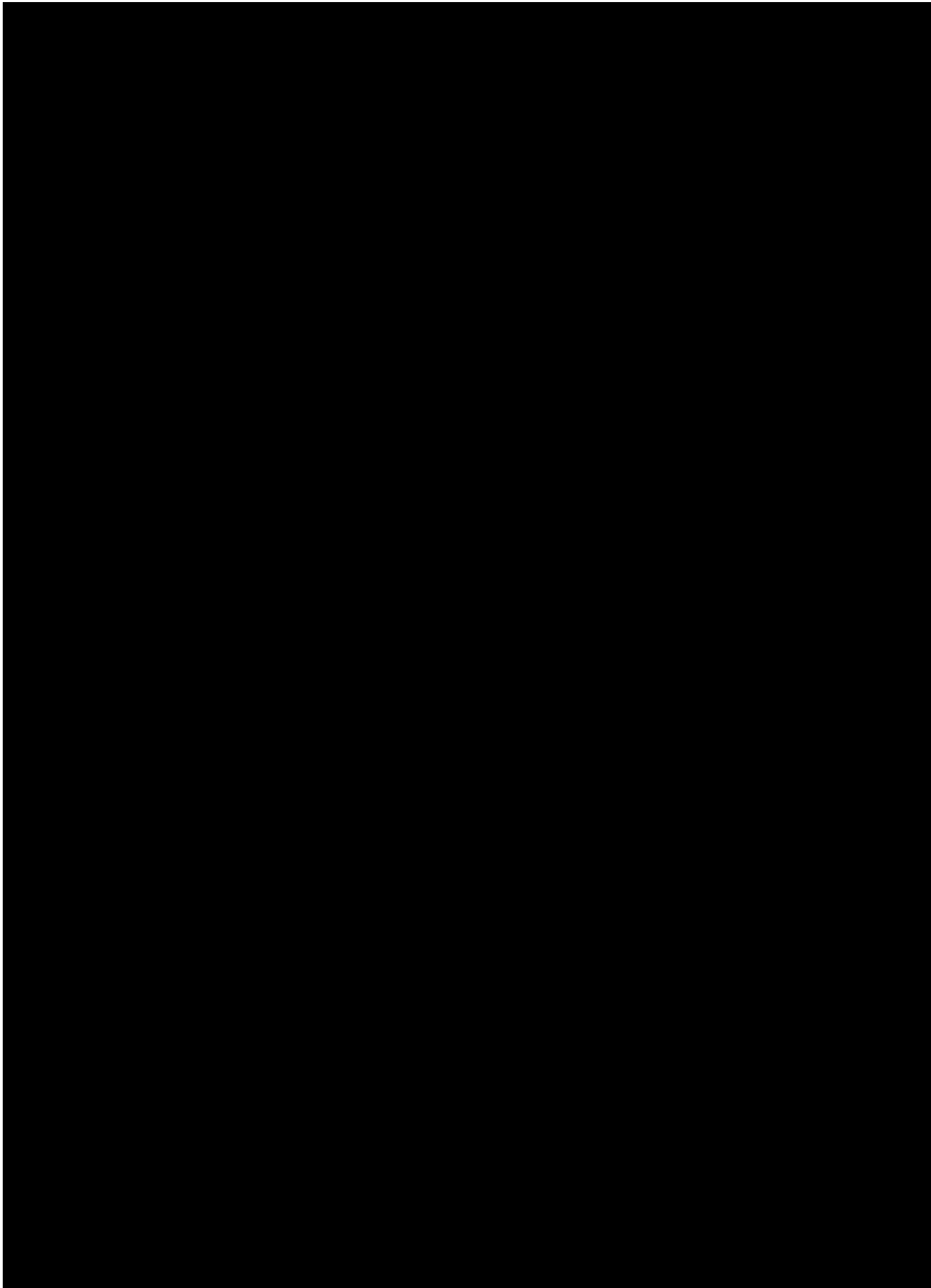
- (ii) provide to the Principal any Information and other assistance, as reasonably requested by the Principal (and within the time required by the Principal, acting reasonably), to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office, providing reasonable access to the Principal's/NSW Audit Office's auditors to interview the Contractor's personnel and disclosing the source, place and country of origin of goods, plant, equipment or other materials and work or services being procured or supplied under or in connection with this deed; and
 - (iii) comply with any policies, procedures, investigations or additional conditions relating to Modern Slavery notified by the Principal to the Contractor from time to time during the term of this deed.
- (c) The Contractor must not (and must ensure any entity it owns or controls does not) at any time engage in any Modern Slavery Practice.
 - (d) If the Contractor is a 'reporting entity' for the purposes of any Modern Slavery Law, it must provide to the Principal a copy of any report or statement (unredacted) it has prepared under the Modern Slavery Law promptly upon the Principal's request.
 - (e) If the Contractor becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Contractor must take reasonable steps to respond to and remedy the occurrence, including in accordance with any internal Modern Slavery strategy and procedures of the Contractor and any relevant Code of Practice or Conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board. The Contractor must immediately notify the Principal in writing of the actual or suspected occurrence of Modern Slavery and the steps it is taking to respond to and remedy the occurrence, which must be satisfactory to the Principal (acting reasonably).
 - (f) The Contractor must take reasonable steps to ensure all subcontracts of the whole or part of this deed contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause 5.25, having regard to the nature and origin of the procurement.
 - (g) In addition to any other right or remedy of the Principal under this deed or at law, the Principal may, in its sole discretion, terminate this deed, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Contractor under this deed and unpaid up until the date of termination), if the Contractor breaches this clause 5.25 or any Modern Slavery Law or if the Contractor or any entity that it owns or controls commits a Modern Slavery Offence.
 - (h) The Contractor consents to the Principal sharing Information obtained from the Contractor in respect of Modern Slavery pursuant to this clause 5.25 with any other NSW Government agency or entity and, without limiting any other provision of this clause 5.25, the Contractor:
 - (i) agrees that the communication of Information to any NSW Government agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
 - (ii) releases and indemnifies the Principal and the State of New South Wales from and against any claim (of any kind or nature) in respect of any matter arising out of such communications, including the use of the Information by the recipient.
 - (i) The Contractor must, during the term of this deed and for a further period of seven (7) years maintain, and upon the Principal's reasonable request, give the Principal access to, and/or copies of, a complete set of records in the possession or control of the Contractor to trace, so far as practicable, the supply chain of all goods and services provided under this deed and to enable the Principal to assess the Contractor's compliance with this clause 5.25.
 - (j) For the purposes of this clause 5.25:
 - (i) "**Anti-slavery Commissioner**" means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW);

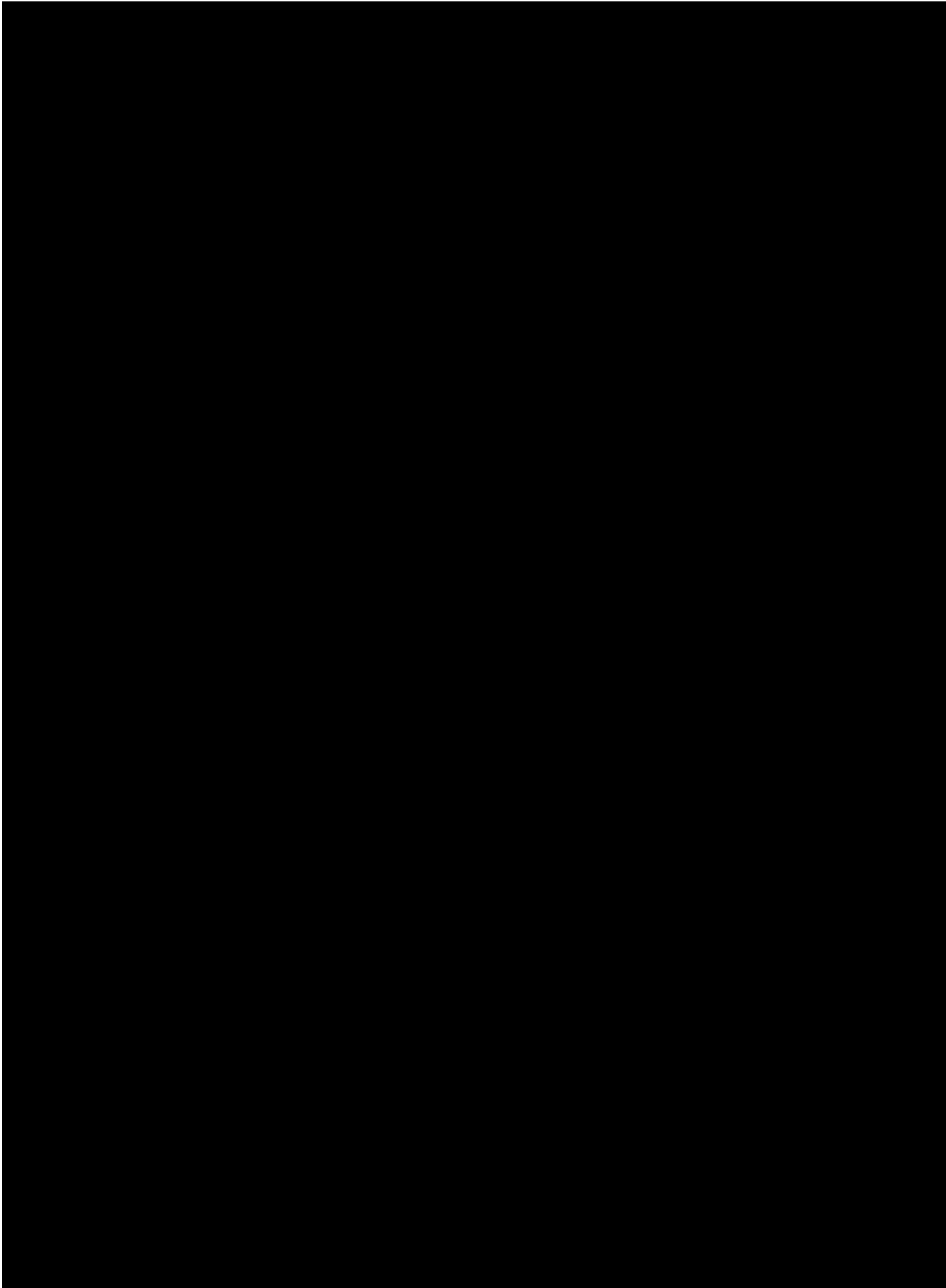
- (ii) **“Information”** may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes "personal information" as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals;
- (iii) **“Modern Slavery”** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children;
- (iv) **“Modern Slavery Laws”** means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth);
- (v) **“Modern Slavery Offence”** has the same meaning as in the *Modern Slavery Act 2018* (NSW); and
- (vi) **“Modern Slavery Practice”** includes any one or more of the following:
 - A. using any form of forced or child labour or deceptive recruitment practices;
 - B. requiring personnel to work excessive hours in the performance of, or in connection with, this deed;
 - C. save for short periods where legally required to do so for the purposes of administering employment, retaining the passports and/or identity documents of personnel or any potential personnel;
 - D. denying personnel the right to terminate their employment or join or form, or discouraging personnel from joining or forming, a trade union if they so desire;
 - E. save where required by law, paying wages to any individual other than personnel; and
 - F. if any personnel are migrant workers, providing migrant workers with any lesser entitlements than given to local employees.

5.26 Security of Critical Infrastructure

The Contractor:

- (a) acknowledges that the Principal has, or may come to have at any time, obligations under the *Security of Critical Infrastructure Act 2018* (Cth); and
- (b) agrees that it must:
 - (i) retain and provide to the Principal such records and reports as may be required; and
 - (ii) comply with such directions given, by the Principal for the purposes of compliance with the *Security of Critical Infrastructure Act 2018* (Cth) and any rules or regulations enacted in connection with that Act, and, notwithstanding any other provision, the Contractor will have no claim (including Claims) against the Principal arising out of or in connection with the Contractor's compliance with this clause 5.26.





6. Care of people, property and the Environment

6.1 Risk and indemnity

- (a) The Contractor is responsible for the care of, and bears the risk of, and indemnifies the Principal against, loss or damage to:
 - (i) the Project Works, the Temporary Works, the Works and those parts of the Construction Site, from:
 - A. in the case of the Project Works, the Temporary Works and the Works, the date of this deed;
 - B. not used; and
 - C. in the case of all other parts of the Construction Site, from the date on which access is granted under clause 9.1(a),
until:
 - D. in the case of each parcel of land within the Local Areas, the date on which the Independent Certifier has issued a written notice to the Contractor that the Contractor has completed the relevant part of the Local Area Works to which the land relates or for which it was provided, in accordance with clause 16.7(f)(i);
 - E. in the case of the Tie-In Works Area, subject to clause 17.12(d), the Date of Completion; or
 - F. in the case of the balance of the Construction Site and the Temporary Works Areas, subject to clause 17.12(d), the Date of Completion; and
 - (ii) during the Landscaping Maintenance Period:

- A. any item or thing entrusted to the Contractor by the Principal for the purpose of carrying out the Landscaping Maintenance;
 - B. any thing brought onto the Site for any Landscaping Maintenance by any person for the purpose of carrying out the Landscaping Maintenance;
 - C. all maintenance plant and equipment;
 - D. the Landscaping Maintenance; and
 - E. any part of the Works or any other area affected by the Landscaping Maintenance.
- (b) After the expiry of a period referred to in clauses 6.1(a)(i)D, 6.1(a)(i)E or 6.1(a)(i)F, as relevant, the Contractor:
- (i) remains responsible for the care of the Project Works, the Temporary Works, the Landscaping Maintenance and the Works, to the extent affected by; and
 - (ii) bears the risk of, and indemnifies the Principal against, any cost, expense, loss, liability or damage suffered or incurred by the Principal arising out of or in connection with,

the Contractor's Activities including performing Variations, making good Defects, performing Landscaping Maintenance and removing any plant, goods or materials from the Construction Site or any other areas affected by the Contractor's Activities.
- (c) The Contractor is responsible for, and bears the risk of, and indemnifies the Principal against, all claims (including Claims), actions, costs, expense, loss or damage and all other liability arising out of or in connection with:
- (i) [REDACTED]
 - (ii) personal injury or death; and
 - (iii) [REDACTED]
- arising out of or in connection with carrying out of the Contractor's Activities.

6.2 Reduction of Contractor's liability

The Contractor's liability and responsibility to indemnify the Principal under clause 6.1 is reduced to the extent that an Excepted Risk contributes to an injury or death or loss or damage to property.

6.3 Responsibility for care

- (a) The Contractor is responsible for:
- (i) preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Landscaping Maintenance, the Construction Site, the Works or any other areas affected by the Contractor's Activities, including personal injury or death, or loss or damage in connection with the Contractor's obligation under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site items that require transport activities;
 - (ii) preventing loss or damage to adjoining and other properties and the Environment;
 - (iii) repairing or making good loss or damage to the Project Works, the Temporary Works, the Landscaping Maintenance, the Environment, the Construction Site, the Works or any other areas affected by the Contractor's Activities; and
 - (iv) except as provided under clause 6.3(b), bearing the cost of repairing, or making good, loss or damage referred to in clause 6.3(a)(iii) or to adjoining and other properties,

arising out of, or in connection with, carrying out the Contractor's Activities.
- (b) Where loss or damage referred to in clause 6.3(a)(iii) or clause 6.3(a)(iv) is caused or contributed to by an Excepted Risk, the Contractor must, if and to the extent directed by the Principal's Representative, repair or make good the loss or damage caused or contributed to by the Excepted Risk, which repair or making good will, to the extent caused by the Excepted Risk, be deemed to be a Variation under clause 15 and valued in accordance with clause 15.4.

6.4 The Principal's action

- (a) If urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately, the Principal may take the action, at the Contractor's cost with any penalty, fine, damage, expense, cost, loss or liability suffered or incurred by the Principal being recoverable, except to the extent prohibited by Law, as a debt due and payable from the Contractor to the Principal on demand.
- (b) If the Contractor fails to carry out any repair work or make good under clause 6.3(a)(iii), the Principal may carry out such work and all damage, expense, cost, loss and liability suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal on demand.
- (c) Clause 6.4(a) does not relieve the Contractor from any of its obligations under this deed.

7. Insurance

7.1 Principal arranged insurance

- (a) The Principal:
 - (i) must, within 10 Business Days after the date of this deed, effect an insurance policy or policies as referred to in Items 1A and 1B of Schedule 36 (Insurance Schedule) and in Item 21B of Schedule 1 (Contract Information), to cover the Principal, the Contractor and all Subcontractors employed from time to time in relation to the Project Works, the Temporary Works and the Landscaping Maintenance for their respective rights, interests and liabilities with respect to:
 - A. **(early works – material damage)** – liability for loss or damage referred to in clause 6.1(a)(i);
 - B. **(early works – general liability)** – liabilities to third parties of the type set out in clause 6.3; and
 - C. **(professional indemnity insurance)** – a project specific professional indemnity policy; and
 - (ii) must, within 60 Business Days after the date of this deed, effect an insurance policy or policies as referred to in Items 1, 2 and 4 of Schedule 36 (Insurance Schedule) to cover the Principal, the Contractor and all Subcontractors employed from time to time in relation to the Project Works, the Temporary Works and the Landscaping Maintenance for their respective rights, interests and liabilities with respect to:
 - A. **(contract works - material damage)** - liability for loss or damage referred to in clauses 6.1(a) and 6.1(b);
 - B. **(third party liability)** - liabilities to third parties of the type set out in clause 6.3; and
 - C. **(environmental impairment liability insurance)** an environmental impairment liability insurance policy as specified in Item 4 of Schedule 36 (Insurance Schedule),and in the case of:
 - (iii) the policy or policies referred to in clauses 7.1(a)(i)A and 7.1(a)(i)B, on terms and conditions no less favourable to the Contractor than the terms and conditions (including sums insured, limits of liability and exclusions) set out in the policy documents referred to in Exhibit N (Insurance Policy Wording); and
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- (b) The Principal may in its absolute discretion:
 - (i) have other insureds named or included in the policy or policies referred to in clause 7.1(a), including any Authority with an interest in the Project Works, the Temporary Works, the Landscaping Maintenance or the Construction Site or any other areas affected by the Contractor's Activities; and

- (ii) at any time, replace any of the policy or policies referred to in clause 7.1(a) with an equivalent policy or policies from a different insurer.
- (c) Subject to clause 7.1(b)(ii):
 - (i) the policy or policies referred to in clauses 7.1(a)(i)A and 7.1(a)(i)B will be maintained by the Principal until each of the policy or policies referred to in clause 7.1(a)(ii) are effected by the Principal; and
 - (ii) the policy or policies referred to in clauses 7.1(a)(i)C and 7.1(a)(ii) will be maintained by the Principal until the end of the period of insurance for that policy specified in Schedule 36 (Insurance Schedule).
- (d) The Contractor must contact the Principal's insurer and must provide to the relevant person all details reasonably requested for the purpose of the insurances referred to in clause 7.1(a) as soon as reasonably practicable and in any event, within 3 Business Days of a request from the Principal.
- (e) Full copies of the policy terms of the insurances effected under clause 7.1(a) will be provided by the Principal.
- (f) If at any time the Actual Project Contract Sum [REDACTED] exceeds [REDACTED]% of the limit of liability for contract works insurance (as referred to in the Principal arranged contract works insurance in Exhibit N (Insurance Policy Wording)), the Principal will effect an increase in the limit of liability for contract works insurance to the full value of the Actual Project Contract Sum [REDACTED].

7.2 Contractor's acknowledgement and obligations

The Contractor:

- (a) acknowledges and agrees that:
 - (i) it has reviewed and examined the proposed wording of the insurance policies which appear in Exhibit N (Insurance Policy Wording) and the actual insurance policies effected by the Principal pursuant to clause 7.1(a) and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in clauses 6.1 and 6.3 and is aware that those insurance policies will not provide cover to the Contractor against all the risks assumed by the Contractor under clauses 6.1 and 6.3;
 - (ii) the obtaining of insurance by the Principal in accordance with clause 7.1 does not limit or otherwise affect the Contractor's obligations under this deed, including those under clauses 6.1 and 6.3; and
 - (iii) the policies of insurance referred to in clause 7.1(a) have been obtained at the Principal's cost; and
- (b) is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a) [REDACTED] and may effect insurance to cover the amount of that excess at its own cost.

7.3 Exclusions to Principal's insurance

The insurance cover under clause 7.1(a) is subject to exclusions. These are set out in the actual insurance policies.

7.4 Reinstatement

- (a) If there is a claim for damage or destruction under the policy of insurance referred to in clause 7.1(a)(i)A or clause 7.1(a)(ii)A (as determined by the Principal's Representative, acting reasonably):
 - (i) all settlement amounts must be paid by the insurer directly to the Principal;
 - (ii) the Principal may decide to have the Project Works reinstated, or may decide not to proceed with the Project Works, without creating any default by the Principal under this deed;
 - (iii) the Contractor must reinstate the Project Works and Temporary Works if instructed to by the Principal's Representative; and

except as otherwise provided in this deed, the Contractor may only make a Claim for payment for reinstatement of the Project Works and Temporary Works progressively as and when the Contractor reinstates, in accordance with this deed, the Project Works and Temporary Works and only up to the amount of any insurance settlement

- (b) If, prior to the Date of Completion, the Project Works or the Temporary Works are damaged or destroyed, the Contractor must:
 - (i) make secure the Project Works, the Temporary Works and the parts of:
 - A. the Site;
 - B. (to the extent appropriate) the Local Areas; and
 - C. the Temporary Works Areas,which are still under the control of the Contractor in accordance with clauses 9.1 and 9.4;
 - (ii) notify:
 - A. appropriate Authorities, emergency services and the like; and
 - B. the insurers for assessment,and comply with their instructions; and
 - (iii) promptly consult with the Principal's Representative to agree on steps to be taken to ensure that, to the greatest extent possible, the Contractor continues to comply with its obligations under this deed.

7.5 Contractor's insurance

- (a) Before starting any work for or in connection with this deed, the Contractor must arrange and have in place insurance with an Approved Insurer (unless otherwise agreed by the Principal's Representative in writing) for the minimum amounts specified in Items 22, 23, 25, 27 and 30 of Schedule 1 (Contract Information), and pay all premiums for:
 - (i) **(workers compensation)** - workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW), as specified in Item 22 of Schedule 1 (Contract Information) and Item 6 of Schedule 36 (Insurance Schedule) except to the extent provided in clause 7.5(e);
 - (ii) **(motor vehicle/third party property)** - either comprehensive motor vehicle insurance or third party property damage insurance, as specified in Item 23 of Schedule 1 (Contract Information) and Item 5 of Schedule 36 (Insurance Schedule);
 - (iii) **(plant and equipment insurance)** - a plant and equipment insurance policy as specified in Item 27 of Schedule 1 (Contract Information);
 - (iv) **(Compulsory Third Party (CTP) insurance)** a Compulsory Third Party (CTP) insurance policy as specified in Item 30 of Schedule 1 (Contract Information); and
 - (v) any other insurance required by Law.
- (b) The Contractor must ensure that every Subcontractor:
 - (i) is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW); and
 - (ii) if within a category stated in Item 25 of Schedule 1 (Contract Information), effects and maintains professional indemnity insurance:
 - A. with levels of cover not less than those; and

- B. for the period,
stated in Item 25 of Schedule 1 (Contract Information).
- (c) If any work for or in connection with this deed includes the use of waterborne craft of 12 or more metres in length, the Contractor must pay all premiums and insure under a marine liability policy to cover the use of such craft, as specified in Item 29 of Schedule 1 (Contract Information).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7.6 Contractor's insurance requirements

- (a) The Contractor must ensure that in respect of each insurance required to be effected or taken out as required by this clause 7 it:
- (i) does not do or permit, or omit to do, anything which prejudices any insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled or if it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 7 which could materially reduce the available limit of indemnity;
 - (iv) comply at all times with the terms of each insurance; and
 - (v) 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.
- (b) The Contractor must ensure that in respect of each insurance required to be effected or taken out as required by this clause 7 by the Contractor or any Subcontractor it:
- (i) reinstates or causes to be reinstated an insurance policy if it lapses; and
 - (ii) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal.

7.7 Period of insurance

The Contractor must ensure that the insurances it is required to take out pursuant to this deed:

- (a) are (except for the insurance referred to in clause 7.5) in force before starting any work for or in connection with this deed; and
- (b) are maintained, for the relevant periods of insurance stated in Items 22, 23, 25, 27 and 30 of Schedule 1 (Contract Information).

7.8 Evidence of policies

Before the Contractor starts any work for or in connection with this deed and whenever requested in writing by the Principal or the Principal's Representative, the Contractor must supply proof that all insurance policies which the Contractor is required to effect and maintain under this deed (including insurance policies required to be taken out by Subcontractors) are current and, provide certificates of currency of those insurances.

7.9 The Principal may effect necessary insurance

- (a) If the Contractor fails to comply with clauses 7.5 and 7.8, the Principal may effect and maintain that insurance and pay the necessary premiums.

- (b) The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due and payable by the Contractor to the Principal on demand.
- (c) The Contractor must provide all reasonable assistance to the Principal to allow it to exercise its rights under this clause 7.9, including by providing to the Principal's insurer information required for the purposes of underwriting the relevant insurance.

7.10 Obligation to inform the Principal

The Contractor must, other than to the extent that disclosure would prejudice a claim under any policy of insurance effected under, or as required by, this deed:

- (a) provide full particulars to:
 - (i) the Principal's Representative;
 - (ii) the Principal's Insurance Co-ordinator; and
 - (iii) the Principal's insurer,
 of any:
 - (iv) occurrence of an event that may give rise to a claim under any policy of insurance effected under, or as required by, this deed; and
 - (v) notice of any claim or subsequent proceeding or action and developments concerning the claim,

as soon as possible, and in any case no later than 2 Business Days after becoming aware of any such circumstance as referred to in clauses 7.10(a)(iv) and 7.10(a)(v); and

- (b) take such steps as are necessary or appropriate to ensure that a Subcontractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor, take in relation to the Principal similar action to that which the Contractor is required to take under clauses 7.6 and 7.10(a).

7.11 Obligations not affected

- (a) The requirements for insurance to be effected and maintained do not affect or limit the Contractor's liabilities (including indemnities given under clause 6) or other obligations under this deed.
- (b) The Principal must inform the Contractor in writing of any material claim or incident arising out of or in connection with the Project Works or the Temporary Works which may have an impact on the Contractor, and must keep the Contractor informed of subsequent developments regarding the Claim.

7.12 Insurance claims procedure

- (a) The Contractor must:
 - (i) not, without the consent of the insurer, make any admission, offer, promise or payment in connection with any occurrence or claim; and
 - (ii) promptly give all information and reasonable assistance to the Principal and the insurer as the Principal or the insurer, or its nominee, may require in the prosecution, defence or settlement of any occurrence or claim.
- (b) Nothing in this clause 7.12 prevents a party from taking immediate action to avoid loss of life or damage to property as contemplated by clauses 6.3 and 6.4 where that is reasonably necessary in the circumstances, and any such action will not prejudice the position of either party under the policies of insurance effected in respect of any loss or damage.

7A. Liability

7A.1 Uncapped Liability

Clause 7A.2 does not limit the Contractor's liability:

- (a) to the extent that it:
 - (i) cannot be limited at Law;
 - (ii) arises out of or in connection with the Contractor's Wilful Default or Wilful Misconduct, fraud or criminal conduct; or

the Principal, but will also lead to the failure of the Principal to achieve its policy objectives on behalf of the Crown to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

- (d) The Contractor agrees that if it does not achieve Completion by the Date for Completion, it will pay the Principal the amount specified in Item 36 of Schedule 1 (Contract Information) (which is exclusive of GST), for every day after the Date for Completion up to and including:
 - (i) the Date of Completion; or
 - (ii) the date that this deed is validly terminated,whichever first occurs.
- (e) The Contractor acknowledges and agrees that the liquidated damages provided by clause 7A.3(d) represent amounts commensurate with the Principal's interests, as calculated at the date of this deed, which will be adversely affected if the Contractor fails to achieve Completion by the Date for Completion, and the Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by the Principal for both its own loss and for its failure to achieve its policy objectives on behalf of the Crown arising from the failure of the Contractor to achieve Completion by the Date for Completion.
- (f) The Principal and the Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (g) The Contractor entered into the obligation to pay the amounts specified in clause 7A.3(d):
 - (i) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms; and
 - (ii) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (h) The Contractor agrees to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed on a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts.
- (i) The Contractor agrees that if clause 7A.3(d) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover common law damages as a result of the Contractor failing to achieve Completion by the Date for Completion, but the Contractor's liability for such damages (whether per day or in the aggregate) will not be any greater than the liability which it would have had if clause 7A.3(d) had not been void, invalid or otherwise inoperative.
- (j) [REDACTED]
- (k) [REDACTED]

8. Security

8.1 Unconditional undertakings

- (a) The Contractor must give the Principal, within 10 Business Days after the date of this deed, three unconditional undertakings as follows:

██████████% ██████████

██████████% ██████████

██████████

██████████% ██████████

each in the form of Schedule 6 (Unconditional Undertaking) and in favour of the Principal and which are, where required, duly stamped.

- (b) Subject to its rights to have recourse to the unconditional undertakings, the Principal must:
- (i) within 20 Business Days after the Date of the Opening Completion, release the unconditional undertaking provided by the Contractor under clause 8.1(a)(i) (or the remaining proceeds if the undertaking has been converted into cash);
 - (ii) within 20 Business Days after the Date of Completion, release the unconditional undertaking provided by the Contractor under clause 8.1(a)(ii) (or the remaining proceeds if the undertaking has been converted into cash); and
 - (iii) subject to clause 8.1(c), within 20 Business Days after the later of:
 - A. the date when all relevant Defects have been corrected and all relevant Variations have been carried out (as applicable) (as determined by the Principal's Representative); and
 - B. the Date of Final Completion,release the remaining unconditional undertaking provided by the Contractor under clause 8.1(a)(iii) (or the remaining proceeds if the undertaking has been converted into cash).
- (c) The Principal:
- (i) may have recourse to any unconditional undertaking provided under this deed at any time in connection with the Project;
 - (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 8.1(c)(ii) on trust for the Contractor.
- (d) Any unconditional undertaking provided under this deed must be issued by a reputable financial institution which has:
- (i) been approved by the Principal;
 - (ii) a rating of 'A-' or better by Standard and Poor's (or an equivalent rating by Moody's or Fitch);
 - (iii) if the financial institution's registered office is not in Australia, a branch in Sydney; and
 - (iv) if the financial institution is not registered in Australia, satisfied any additional compliance requirements required by the Principal.
- (e) The Contractor must not take any steps to injunct or otherwise restrain:
- (i) any issuer of any unconditional undertaking provided under this deed 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 deed or receiving payment under any such unconditional undertaking; or
 - (iii) the Principal using the money received under any unconditional undertaking provided under this deed.

- (f) [REDACTED]

8.2 Parent company guarantee

- (a) The Contractor must, within 10 Business Days after the date of this deed, give the Principal a guarantee duly executed by the Parent Company Guarantor in favour of the Principal in the form of Schedule 7 (Parent Company Guarantee) and which is, where required, duly stamped.
- (b) Not used.
- (c) The Contractor must, within 10 Business Days of the date of this deed, provide a Legal Opinion supporting, and in respect of, the execution of this deed by Gamuda Berhad.

8.3 Not Used

8.4 PPS Law

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

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

8A. Financial Reporting and Notification

8A.1 Financial Reporting

- (a) The Contractor is not obliged to comply with any requirements of this clause 8A that would otherwise put the Contractor (or any entity comprising the Contractor), or any Parent Company Guarantor, in breach of any applicable Law or the listing rules of any recognised stock exchange.
- (b) The Contractor is not obliged to comply with any requirements of this clause 8A to the extent that the Contractor (or any entity comprising the Contractor), or any Parent Company Guarantor, has provided the relevant documents or information to the Principal on a separate project or pursuant to a separate contract.
- (c) The Contractor must give the Principal its most recent audited financial statements (as applicable) for the Contractor (or any entity comprising the Contractor) and any Parent Company Guarantor:
 - (i) if the Contractor (or any entity comprising the Contractor) or any Parent Company Guarantor is not a Listed Entity, annually and half-yearly once prepared; or
 - (ii) if the Contractor (or any entity comprising the Contractor) or any Parent Company Guarantor is a Listed Entity, when Publicly Notified on an annual and half-yearly basis,

but where audited financial statements are not available for the relevant period, then management accounts including profit and loss, balance sheets and cash flow statements.

- (d) The Contractor must prepare (or procure the preparation of) the accounts and financial statements required under clause 8A.1(c) in compliance with all applicable Law and, without limitation, in accordance with the accounting principles generally accepted in Australia or the place of incorporation of the relevant entity and consistently applied.
- (e) Without limiting its obligations under clause 8A.1(a), the Contractor must also provide a document in the form set out in Part 2 of Schedule 54 (Financial Reporting Requirements and Information) setting out the information required by that Schedule at the times the information is required by that Schedule.
- (f) The Contractor must provide the documents and information required under clauses 8A.1(c) and 8A.1(e):
 - (i) from the date of this deed to the achievement of Completion of the last Separable Portion at the required frequencies; and
 - (ii) thereafter until Final Completion, at any time following the Principal's request, provided that the Principal may not request the relevant information at greater frequencies than those required by clauses 8A.1(c) and 8A.1(e), as relevant.
- (g) The Contractor is not required to provide any documents or information under this clause 8A.1 once Final Completion has been reached.
- (h) If the Principal becomes aware of a Financial Capacity Event, Financial Reporting Event or Restructure Event in relation to the Contractor (or any entity that comprises the Contractor) or any Parent Company Guarantor, the Principal may request the Contractor to provide information which is reasonably required by the Principal, provided that, in the case of a Listed Entity, the relevant information is Publicly Notified or is Reportable Information.
- (i) The Contractor warrants that each of the documents and information required to be provided to the Principal in accordance with this clause 8A.1 will be accurate, complete and correct in all respects.

8A.2 Financial Assessment

- (a) The Contractor warrants to the Principal that:
 - (i) the Contractor will, at all times, have sufficient financial capacity to meet all of its obligations under this deed; and
 - (ii) the Parent Company Guarantor will, at all times, have sufficient financial capacity to meet all of its obligations under the guarantee.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Principal may, in its absolute discretion, either itself, or through the engagement of private sector service providers, undertake financial assessments which will be based upon the documents and information required to be provided to the Principal in accordance with clause 8A, including information which is Publicly Notified or Reportable Information (Financial Assessment) of the Contractor (or any entity that comprises the Contractor) and any Parent Company Guarantor;
 - (ii) the Financial Assessment may be undertaken at half yearly or yearly intervals from the date of this deed;
 - (iii) if requested by the Principal's Representative, it must, within 10 Business Days of receiving such request (or such longer period as the Principal's Representative may reasonably agree), provide any documents, information, and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment (but in the case of any Listed Entity, only where such documents, information and/or evidence is Publicly Notified or is Reportable Information). The Principal's Representative may request such documents, information and evidence in addition to any other documents, information and evidence otherwise required to be provided by the Contractor under this clause 8A; and

- (iv) the Principal will provide the Contractor with feedback upon completion of the Financial Assessment.

8A.3 Financial Reporting Events

- (a) Notwithstanding any other clause of this deed, but subject to clause 8A.1(a) [REDACTED] the Contractor must notify the Principal as soon as the Contractor becomes aware that any Financial Reporting Event has occurred.

- (b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8A.4 Confidentiality

The Principal must keep confidential any information provided or communicated by the Contractor pursuant to this clause 8A, except for any information:

- (a) which is in the public domain through no default of the Principal;
- (b) which is disclosed to NSW Treasury or the Principal's advisors or consultants who are subject to a duty of confidentiality to the Principal; or
- (c) the disclosure of which is:
 - (i) required by Law or to obtain legal advice in relation to this deed;
 - (ii) made following the written consent of the Contractor;
 - (iii) given to a court in the course of proceedings to which the Principal is a party; or
 - (iv) for the purposes of performing the Principal's obligations under this deed.

8A.5 Financial Mitigation Plan

- (a) Subject to the requirements of all applicable Law, the Principal may notify the Contractor if a Financial Capacity Event has occurred. In determining if a Financial Capacity Event has occurred, the Principal may have regard to the documents, information, evidence and notifications provided by the Contractor under this clause 8A and any other information it considers relevant in its absolute discretion.
- (b) Following the occurrence of a Financial Capacity Event, the Contractor must meet with the Principal within 5 Business Days of the date of the notice provided pursuant to clause 8A.5(a) (or such longer period as the Principal's Representative may agree) to discuss the nature of the Financial Capacity Event and its implications in respect of the obligations and liabilities of the Contractor under the Contract Documents. Subject to clause 8A.5(o), the Contractor must also procure the attendance at such meeting of any Parent Company Guarantor and Designated Significant Subcontractor specified by the Principal.
- (c) The meeting is for the purpose of:
 - (i) discussing any effect of the Financial Capacity Event on the ability of:
 - A. the Contractor to continue to perform its obligations and meet its liabilities under this deed, including the timely performance of the Contractor's Activities and how any adverse effect will be mitigated;
 - B. any Parent Company Guarantor to meet its liabilities under the relevant guarantee; or
 - C. any Designated Significant Subcontractor to meet its liabilities under the relevant Designated Significant Subcontract, including the timely performance and delivery of the works under the relevant Designated Significant Subcontract and how any adverse effect will be mitigated;
 - (ii) identifying the information relating to the Contractor (or any entity that comprises the Contractor), any Parent Company Guarantor and, [REDACTED] [REDACTED] each Designated Significant Subcontractor that the Principal reasonably requires in order to better understand the matters described in clause 8A.5(c)(i) and the timing for the provision of that information to the extent such information:

- A. may be disclosed to the Principal without breaching any confidentiality obligations; and
 - B. where such information has been Publicly Notified or is Reportable Information; and
- (iii) subject to clause 8A.5(d), specifying the form, duration and content of the Financial Mitigation Plan required to be prepared by the Contractor (if the Principal, acting reasonably, requires a Financial Mitigation Plan to be prepared in response to the Financial Capacity Event) which must include details of the measures the Contractor proposes to take to avoid, mitigate or minimise any adverse effect of the Financial Capacity Event on the matters described in clause 8A.5(c)(i).
- (d) The parties agree that the measures set out in the Financial Mitigation Plan for the purposes of clause 8A.5(c)(iii) must be consistent with those reasonable measures that the governing body of the Contractor and any Parent Company Guarantor (as applicable) determines are in the best interest of the Contractor or the Parent Company Guarantor (as applicable) in accordance with their duties and obligations under applicable Law.
- (e) If a Financial Mitigation Plan is required by the Principal, the Contractor must prepare and submit the Financial Mitigation Plan to the Principal's Representative within 15 Business Days of the meeting held pursuant to clause 8A.5(b).
- (f) The Principal's Representative may:
- (i) review any Financial Mitigation Plan submitted under clause 8A.5(e); and
 - (ii) if the Financial Mitigation Plan submitted does not, in the opinion of the Principal (acting reasonably), satisfy the requirements of clause 8A.5 for the avoidance, mitigation or minimisation of any adverse effect of a Financial Capacity Event, notify the Contractor of its opinion within 10 Business Days of the date of submission of the Financial Mitigation Plan, providing written reasons.
- (g) Subject to clause 8A.5(h), if the Contractor receives a notice under clause 8A.5(f)(ii), the Contractor will, within 10 Business Days (or such longer period as the Principal's Representative may agree) submit an amended Financial Mitigation Plan, or relevant part of it, to the Principal's Representative to the extent required to satisfy the requirements of clause 8A.5. If requested by either party, the Principal and the Contractor must meet within 5 Business Days to discuss the Financial Mitigation Plan. Subject to clause 8A.5(o), the Contractor must also procure the attendance at such meeting of any Parent Company Guarantor and Designated Significant Subcontractor specified by the Principal.
- (h) The Contractor is not required to agree to any amendments to a Financial Mitigation Plan required by the Principal's Representative to the extent that to do so would result in a breach of directors' duties pursuant to any applicable Laws or it can demonstrate to the satisfaction of the Principal (acting reasonably) that it is not in the best interest of the Contractor or the Parent Company Guarantor (as applicable) or in accordance with their duties and obligations under applicable Laws, as notified by the Contractor to the Principal, including detailed reasons.
- (i) The Contractor must diligently implement a Financial Mitigation Plan submitted under clause 8A.5(e) incorporating any amendments required by clause 8A.5(g).
- (j) The Contractor:
- (i) must promptly update the Financial Mitigation Plan to take into account any events or circumstances, including any additional Financial Capacity Event or Financial Reporting Event, which occurs or comes into existence and which has any effect on the matters described in clause 8A.5(c)(i); and
 - (ii) must promptly submit each update of the Financial Mitigation Plan to the Principal's Representative, in which case clauses 8A.5(f) and 8A.5(g) shall again apply and the Contractor must comply with the then current Financial Mitigation Plan until the 10 Business Days period under clause 8A.5(f) has elapsed.
- (k) The Contractor may notify the Principal's Representative at any time if the Contractor reasonably believes that a Financial Capacity Event that is the subject of the Financial



Mitigation Plan has been adequately mitigated in accordance with the Financial Mitigation Plan and/or no longer subsists.

- (l) If the Contractor gives a notice under clause 8A.5(k) and the Principal's Representative agrees (acting reasonably) that the Financial Capacity Event has been adequately mitigated and/or no longer subsists:
 - (i) the Principal's Representative must promptly provide written notice to the Contractor confirming this; and
 - (ii) the Contractor will be relieved of its obligation to comply with the relevant Financial Mitigation Plan under this deed from the date of such notice.
- (m) This clause 8A is without prejudice to and will not lessen or otherwise affect:
 - (i) the Contractor's obligations or liabilities under this deed or otherwise according to Law; or
 - (ii) any of the Principal's rights against the Contractor, whether under this deed or otherwise according to Law, which arise as a result of or in connection with any of the matters dealt with in this clause 8A, including any rights arising under clause 21.3 or 21.8.
- (n) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the performance of any of its obligations under this clause 8A.



9. Access

9.1 Access

- (a) Subject to the terms or conditions of any Road Occupancy Licence, and clauses 5.15, 9.1(b) and 17.12(d), any provision of this deed affecting access (including the SWTC), the Interface Deed, and any provision of the Planning Approval or other Approval affecting access, the Principal must:
 - (i) give, or ensure the Contractor has, sufficient access to each area of the Site, Local Area Works Areas and the Temporary Works Areas, by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Site, Local Area Works Areas or the Temporary Works Areas, then by the last day of that period); and
 - (ii) thereafter continue to allow, or ensure that the Contractor is continued to be allowed, sufficient access to each area of the Site, Local Area Works Areas and the Temporary Works Areas or part thereof, to allow the Contractor to carry out the Contractor's Activities.
- (aa) 
- (ab) 
- (b) The Contractor acknowledges and agrees that:

- (i) the Principal is not obliged to give the Contractor any type of access to any part of the Site, Local Area Works Areas and the Temporary Works Areas, until the Contractor has:
 - A. effected the insurances required under clauses 7.5 and (where applicable) 7.6;
 - B. complied with clause 7.8 with respect to each insurance;
 - C. in respect of any Local Area Works Area, provided to the Principal a copy of the written consent received from the relevant local government authorities, which consent is required for the performance of the Contractor's Activities;
 - D. complied with clauses 8.1(a) and 8.2; and
 - E. prepared a Project WHS Management Plan, which comply with the requirements in clause 3.3 and the SWTC;
 - (ii) it may not be given exclusive access to the Site, Local Area Works Areas and the Temporary Works Areas;
 - (iii) the Principal may permit Other Contractors to perform work on the Site, Local Area Works Areas and the Temporary Works Areas, provided that the Principal will require such persons to comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor;
 - (iv) Authorities may perform work on the Site, Local Area Works Areas and the Temporary Works Areas, including in relation to Services;
 - (v) it will use best endeavours to ensure that there is no substantial interference to the operations of:
 - A. the Other Contractors; or
 - B. Authorities;
 - (vi) it may only use and occupy each part of the Site, Local Area Works Areas and the Temporary Works Areas in accordance with the terms of this deed and the Site Access Schedule; and
 - (vii) it must comply with the Construction Licence Terms when accessing the Licensed Areas.
- (c) Subject to clause 17.12(d), the Principal's obligations under this clause 9.1 will cease on the Date of Completion.

9.2 Principal's access

- (a) The Contractor must ensure that at all times the Principal's Representative, the Principal's Assistant Representatives, the Principal's Surveillance Officers and any person authorised by the Principal (including visitors invited by the Principal) have safe and convenient access to:
 - (i) the Construction Site;
 - (ii) any other place where any part of the Contractor's Activities are being carried out;
 - (iii) the Contractor's Activities;
 - (iv) the Design Documentation; and
 - (v) any other documentation created for the purposes of the Contractor's Activities.
- (b) The Principal's Representative, the Principal's Assistant Representatives, the Principal's Surveillance Officers and any other person authorised by the Principal that is given access pursuant to this clause must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor.

9.3 Principal's right to inspect

- (a) The Principal, the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers may at any time inspect the Contractor's Activities.
- (b) Neither the Principal, the Principal's Representative, the Principal's Assistant Representatives nor the Principal's Surveillance Officers owe any duty to the Contractor to:
 - (i) inspect or otherwise review or monitor the Contractor's Activities or other actions or activities or lack of action; or
 - (ii) review, consider, identify or notify about any aspect of the Contractor's Activities or errors, omissions, compliance or non-compliance with the requirements of this deed (whether or not it does so).
- (c) No inspection, review or monitoring of the Contractor's Activities or of any construction by the Principal, the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations under this deed (including its obligations under clause 13.1(a)) or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor whether under this deed or otherwise according to Law.

9.4 Controlling access

At all times after being given access under clause 9.1 until:

- (a) in the case of the Local Areas, the date on which the Principal's Representative has issued a written notice to the Contractor that the Contractor has completed the relevant part of the Local Area Works to which the land relates or for which it was provided, in accordance with clause 16.7(f)(i) of this deed; or
- (b) in the case of the Site and the Temporary Works Areas and subject to clause 17.12(d), the Date of Completion,

the Contractor must:

- (c) control access to, and ensure public safety on, the land described in clauses 9.4(a) and 9.4(b) (as relevant);
- (d) provide for the continuous safe passage of the public, Service providers and road users on existing roads and access ways affected by the Contractor's Activities in accordance with this deed, which passage must, unless otherwise consented to in writing by the Principal's Representative, be provided at a standard not less than that provided to the public, Service providers and road users prior to the commencement of the Contractor's Activities; and
- (e) subject to clauses 2.4(i)(ii), 2.5(f)(ii), 2.6(h)(ii), 9.1(b), 9.2 and 9.4(d) and any relevant Law, limit access to the land described in clauses 9.4(a) and 9.4(b) (as relevant) to its employees and Subcontractors.

9.5 Extra Land

- (a) The Contractor must:
 - (i) at its own cost:
 - A. identify any land in addition to the Site, the Local Area Works Areas and the Temporary Works Areas, that is necessary or which it may deem requisite or necessary for the execution of the Contractor's Activities including land required for the Local Area Works, Property Works and Service Works (**Extra Land**); and
 - B. procure for itself the occupation or use of or relevant rights over any Extra Land;
 - (ii) prior to the occupation or use of, or exercise of relevant rights over, any Extra Land, give to the Principal's Representative a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the Extra Land; and

- (iii) as a condition precedent to Completion, provide the Principal's Representative:
 - A. a properly executed release on terms satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the Extra Land that includes confirmation that the Extra Land has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the Extra Land; or
 - B. if the Contractor demonstrates to the satisfaction of the Principal's Representative, acting reasonably, that the Contractor is unable to obtain a release under clause 9.5(a)(iii)A despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the Extra Land has failed or refused to execute such a release within 15 Business Days after it is provided by the Contractor to the owner, occupier or other person having an interest in the Extra Land following the proper completion of the work on that Extra Land.
- (b) The Contractor must ensure that:
 - (i) subject to clause 13.2(a)(ii), the use; and
 - (ii) subject to clause 13.2(e), the rehabilitation, of Extra Land is to the reasonable satisfaction of the owner of the Extra Land, the lessee of the Extra Land, the Principal and all relevant Authorities.

9.6 Risk of obtaining access to Extra Land

The Contractor acknowledges that:

- (a) integration of the requirements for access to Extra Land is at the sole risk of the Contractor; and
- (b) the Principal will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
 - (i) identifying and obtaining access to Extra Land; or
 - (ii) subject to clause 13.2(b)(iv)A.2), any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to Extra Land.

9.7 Third Party Interests

The parties acknowledge and agree that:

- (a) the access licences granted by the Principal to the Contractor in respect of the Site, Local Area Works Areas and the Temporary Works Areas pursuant to clause 9.1 are granted to the Contractor subject to the Third Party Interests which exist in relation to the relevant parts of the Site, Local Area Works Areas and the Temporary Works Areas and the Contractor must at all times comply with (and ensure that its employees, agents and Subcontractors comply with) such Third Party Interests; and
- (b) subject to this clause 9.7, the Contractor:
 - (i) must exercise its rights under this deed and conduct the Contractor's Activities so as not to cause the Principal to breach any of its obligations in relation to the Third Party Interests;
 - (ii) accepts all responsibilities and risks associated with the existence of the Third Party Interests and any effect which the Third Party Interests may have on the conduct of the Contractor's Activities; and
 - (iii) indemnifies the Principal and its respective employees and agents, from and against any claim, loss, cost, expense, damage or liability (including Claims) brought by the parties to the Third Party Interests against, suffered or incurred by the Principal or its respective employees and agents to the extent arising out of and in connection with the conduct of the Contractor's Activities. The parties

acknowledge that the indemnity provided by the Contractor under this clause 9.7(b)(iii) is reduced to the extent that the relevant claim, loss, cost, expense, damage or liability was caused or contributed by the Principal or its respective employees and agents.

9.8 No Caveat

The Contractor must not place, or seek to place, any caveat on title on the Construction Site.

9.9 Handback

The Contractor must:

- (a) hand back each part of the Construction Site (excluding the Extra Land) to the Principal in the Handback Condition for that area as specified in the Site Access Schedule;
- (b) ensure as a condition precedent to Opening Completion that any damage caused to the Construction Site by the carrying out of the Contractor's Activities is repaired consistent with the relevant Handback Condition; and
- (c) provide the Principal with at least 10 Business Days' notice of its intention to hand back a part of the Construction Site.

10. The Site and Services

10.1 Services

- (a) The Contractor:
 - (i) must obtain and pay for any Services and all connections for all Services it needs to perform its obligations under this deed;
 - (ii) must establish the location of all Services that may be affected by the Contractor's Activities;
 - (iii) must investigate, decommission, protect, relocate, modify and provide for all Services necessary for it to comply with its obligations under this deed;
 - (iv) assumes the risk of the existence, location, condition and availability of Services in respect of the Contractor's Activities except to the extent that any Service is a Site Condition, and in respect of that Site Condition, the Contractor has complied with clause 10.6; and
 - (v) without limiting clause 10.1(a)(i), must contract for, acquire or otherwise procure or provide the provision of all fuel, energy and other materials required for the performance of its obligations under this deed.
- (b) The Contractor must:
 - (i) invite and permit the Principal's Representative or its nominee to attend and participate in any meetings held between the Contractor and:
 - A. a relevant Authority in connection with any Critical Non-Contestable Works; or
[REDACTED]
 - (ii) keep the Principal's Representative fully and promptly informed of progress of any Critical Non-Contestable Works [REDACTED]
[REDACTED] including any problems or issues which affect or are likely to affect the carrying out of such works; and
 - (iii) provide the Principal's Representative with copies of all notices, or agreements executed by Authorities, reports and other correspondence given or received by the Contractor in connection with any Critical Non-Contestable Works [REDACTED]
[REDACTED], promptly after such notices, reports and other correspondence are given or received or agreements are executed (but in any event no later than 5 Business Days after they are given and received by the Contractor).

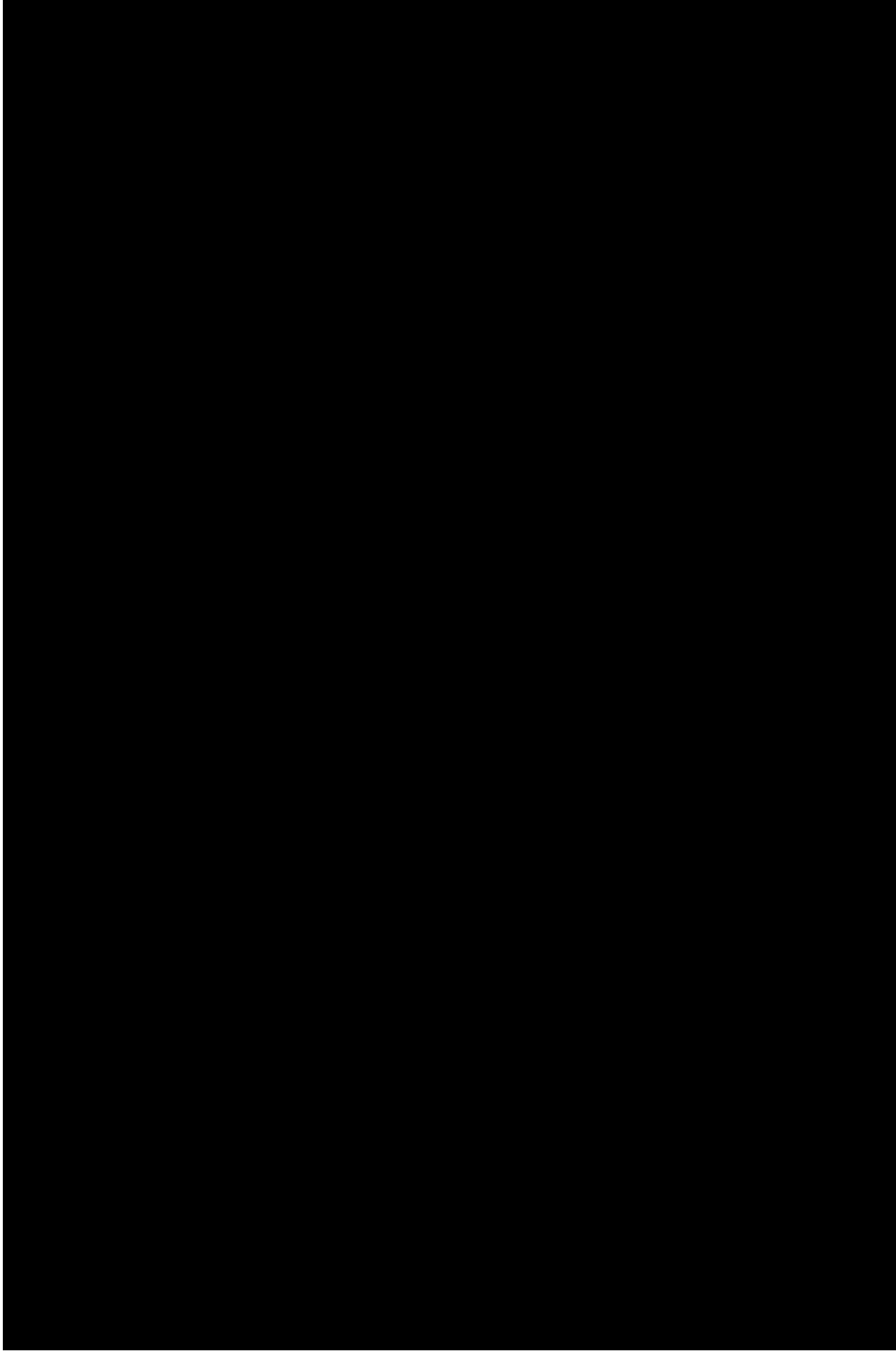
10.2 Physical conditions

- (a) Without limiting clauses 10.2(d), 10.6 or 22.10, the Contractor warrants that, prior to the date of this deed, the Contractor:
- (i) examined this deed, the Site and its surroundings, the Local Areas, the Temporary Works Areas and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor for the purpose of tendering;
 - (ii) examined, and relied solely on 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 deed;
 - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all the obligations of this deed and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities;
 - (iv) informed itself of:
 - A. all matters relevant to the employment of labour at the Site, the Local Areas and the Temporary Works Areas; and
 - B. all industrial matters relevant to the Site, the Local Areas, the Temporary Works Areas and the Contractor's Activities;
 - (v) had sufficient opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - A. relating to the subject matter of Information Documents; and
 - B. for design purposes and otherwise;
 - (vi) had sufficient opportunity to review and obtain, and obtained, all necessary legal, geotechnical and other technical advice in relation to this deed, the Information Documents, the physical conditions and characteristics of the Construction Site, the Environment and their surroundings, as well as the risks, contingencies and other circumstances having an effect on its Tender, the cost of performing its obligations and its potential liabilities under this deed; and
 - (vii) had sufficient access to the Site, the Local Areas and the Temporary Works Areas, 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 deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.
- (b) The Contractor is responsible for, and assumes the risk of all increased costs and any damage, expense, loss, liability, disruption or delay it suffers or incurs arising out of or in connection with the physical conditions and characteristics of the Construction Site, the Environment or their surroundings including:
- (i) the existence of any Contamination [REDACTED]
[REDACTED]
[REDACTED]
 - (ii) the suitability or otherwise of any material on the Site, the Local Areas or the Temporary Works Areas, for use in the Contractor's Activities; and
 - (iii) water, atmospheric and sub-surface conditions or characteristics including heritage and archaeological issues,
- except to the extent that those physical conditions and characteristics are a Site Condition and, in respect of that Site Condition, the Contractor has complied with clause 10.6.
- (c) Prior to the date of this deed the Contractor signed the Confidentiality Deed Poll and provided this to the Principal after which the Principal provided the Information Documents to the Contractor. Without limiting clause 10.2(d) or the warranties or acknowledgements in the Confidentiality Deed Poll:
- (i) except as expressly provided for in this deed, 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;
- (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, the Contractor acknowledges that:
 - A. the Information Document or part thereof does not form part of this deed and that clause 10.2(d) applies to the Information Document or part thereof; and
 - B. where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof; and
 - (iii) except as expressly provided for in this deed, the Principal will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
 - A. the Information Documents; or
 - B. a failure by the Principal to provide any information to the Contractor.
- (d) The Contractor:
- (i) warrants that, it did not in any way rely on:
 - A. any information, data, representation, statement or document made by, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
 for the purposes of entering into this deed and the Interface Deed;
 - (ii) warrants that it enters into this deed and the Interface Deed based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that the Principal has entered into this deed and the Interface Deed relying on the warranties, acknowledgements and agreements in clauses 10.2(d)(i) and 10.2(d)(ii) and in the Confidentiality Deed Poll and the tender form submitted by the Contractor as part of its Tender.
- (e) The Contractor releases and indemnifies the Principal from and against:
- (i) any Claim against the Principal by, or liability of the Principal to, any person; or
 - (ii) (without being limited by clause 10.2(e)(i)) any costs, losses, damages, expenses or liability suffered or incurred by the Principal,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance on, or use of, the Information Documents by the Contractor or any other person to whom the Information Documents are disclosed by or on behalf of the Contractor;
 - (iv) a failure by the Principal to provide any information to the Contractor; or
 - (v) the Information Documents being relied on or otherwise used in the preparation of any information or document.

10.3 Conditions of Construction Site and structures

- (a) The Principal makes no representation and gives no warranty to the Contractor in respect of:
 - (i) the condition of:
 - A. the Construction Site, the Environment or their surroundings; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, the Environment or their surroundings;
 - (ii) the existence, location, condition or availability of Services in respect of the Construction Site; or



[REDACTED]

10.6 Site Conditions

(a) Site Conditions are any [REDACTED], physical conditions or characteristics of the Site, the Local Area Works Areas and the Temporary Works Areas [REDACTED] that:

- (i) consist of one or more objects or substances that are specified in Item 31 of Schedule 1 (Contract Information) as constituting a Site Condition, subject to satisfaction of the other requirements of this clause 10.6(a);
- (ii) were in existence in, on, under or over the Site, the Local Area Works Areas or the Temporary Works Areas;

(iii) [REDACTED]:

- A. were not known, or substantially known, to the Contractor;
- B. differ in nature or scope from the physical conditions or characteristics that could have been reasonably anticipated by a prudent and competent contractor in the position of the Contractor, that had examined (or engaged an expert third party to examine):
 - 1) all information made available in writing by the Principal or by anyone on behalf of the Principal to the Contractor for the purpose of tendering and up to the date of this deed;
 - 2) all information relevant to the risks, contingencies and other circumstances having an effect on the Tender and obtainable by the making of reasonable enquiries; and
 - 3) the Construction Site, the Environment and their surroundings; and

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

[REDACTED]

(iv) will result in the Contractor incurring more cost in performing the Contractor's Activities or, [REDACTED], delays achievement of Opening Completion or Completion.

(b) If during the execution of the Contractor's Activities the Contractor becomes aware of a Site Condition, the Contractor must:

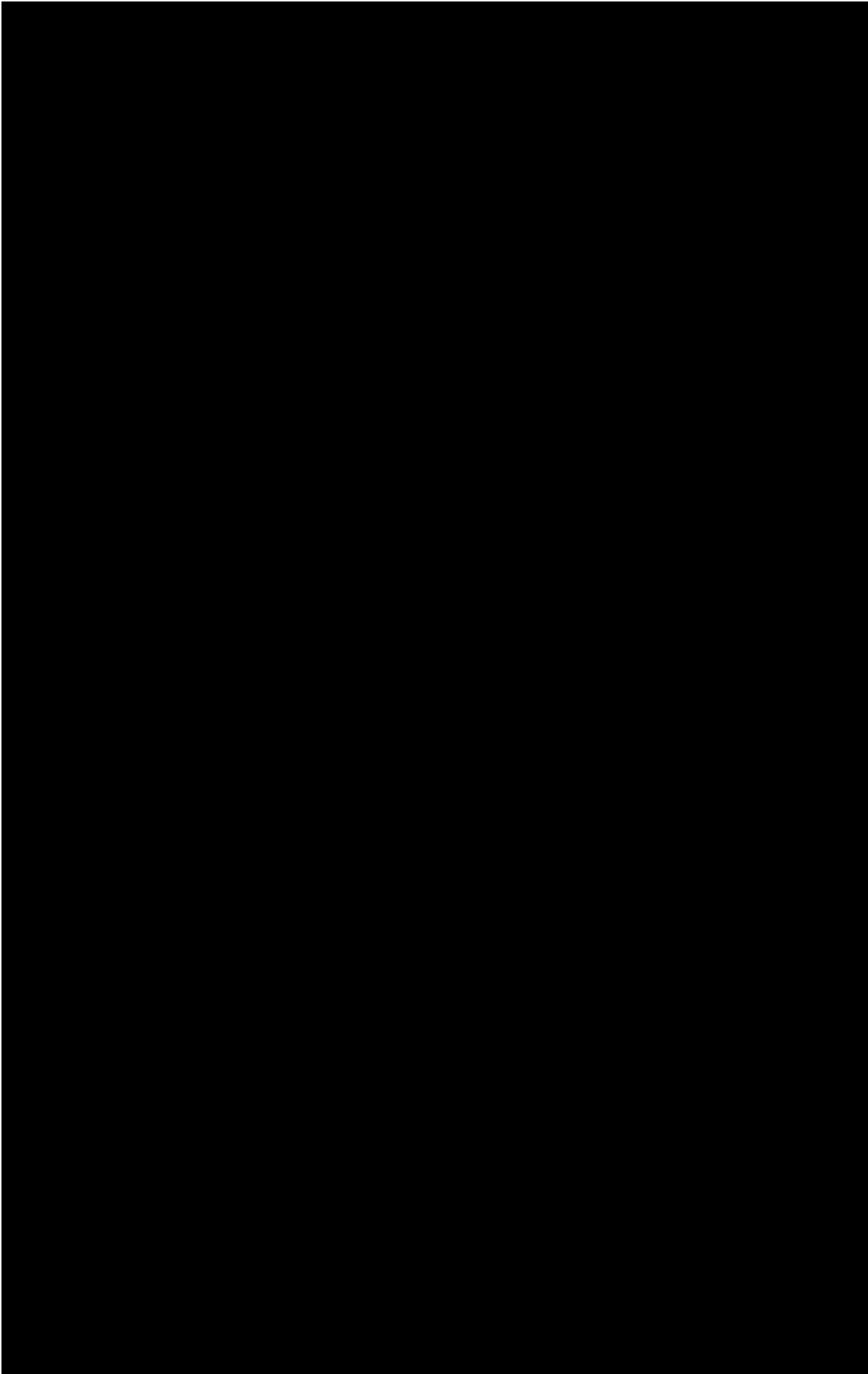
(i) notify the Principal's Representative of the existence and possible scope of the Site Condition as soon as practicable and in any event within [REDACTED] of becoming aware [REDACTED]

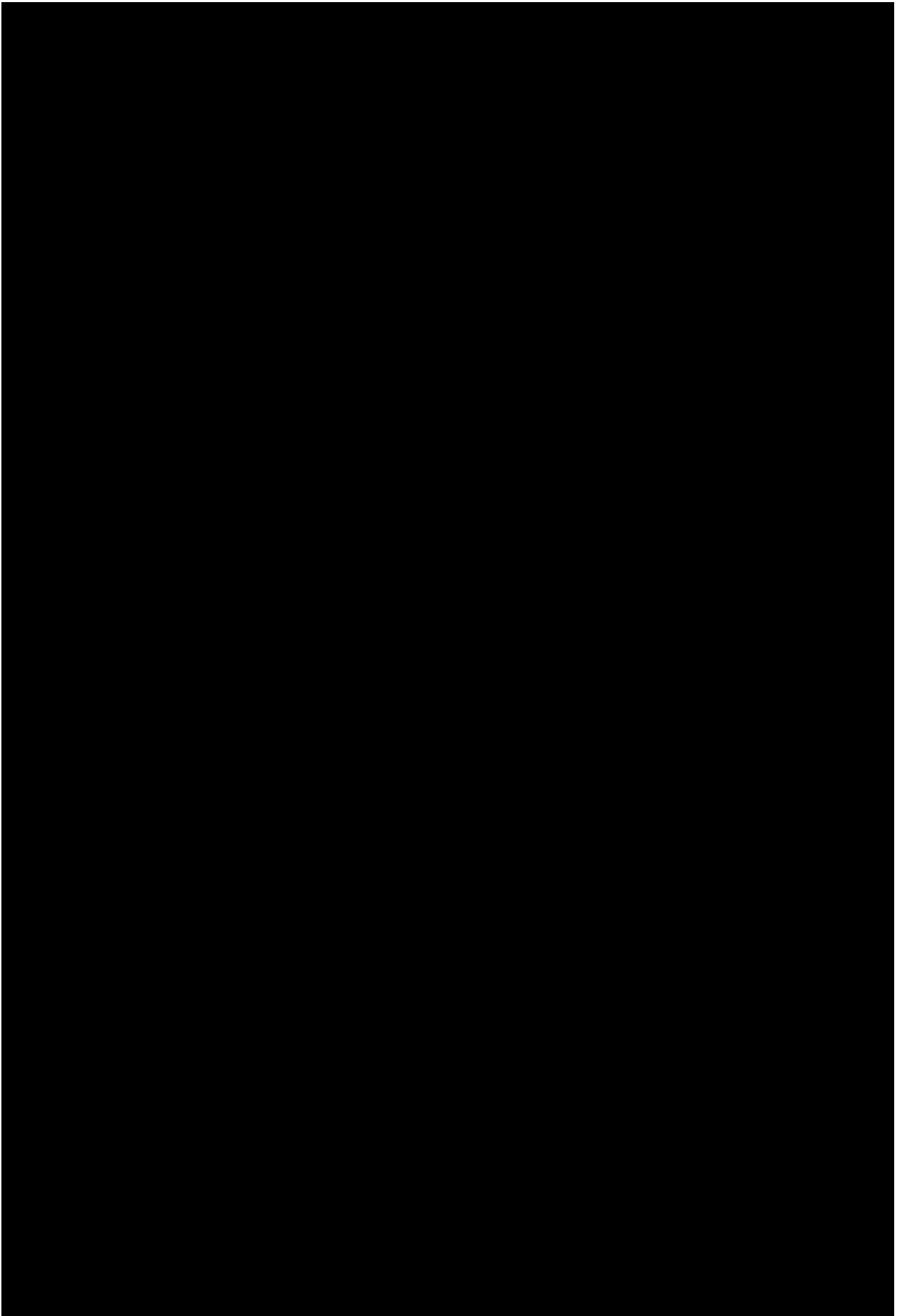
[REDACTED]

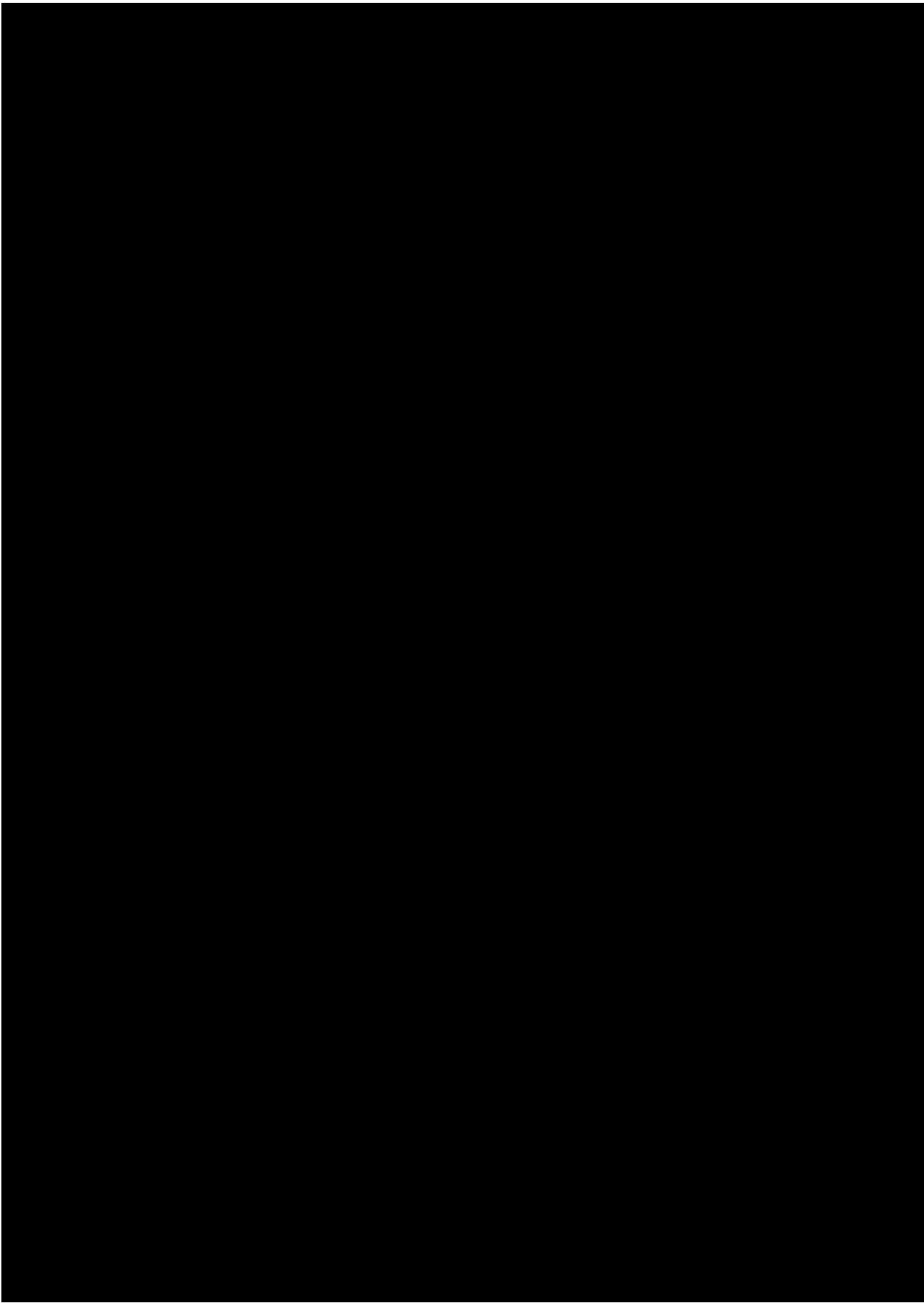
- (v) any other information that the Contractor considers is relevant in the circumstances.
- (d) Following receipt of a Site Condition Notice, the Principal's Representative:
 - (i) may request any additional information it reasonably requires from the Contractor to assess the Site Condition Notice (**Additional Contractor Information**); and

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (e) If the condition referred to in the Site Condition Notice constitutes or involves a Site Condition [REDACTED]:
- (i) the Contractor will be entitled to the reasonable net extra Direct Costs [REDACTED] incurred by the Contractor arising directly as a result of the Site Condition (and limited to the extent the condition or characteristic qualifies as a Site Condition), as stated by the Principal's Representative, provided that the Contractor has:
- A. taken all possible steps to mitigate them including by carrying out all reasonable investigations on the Construction Site as early as possible;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (ii) [REDACTED], if the Site Condition delays achievement of Opening Completion or Completion, clause 17.5 will apply, except that no regard will be had to the value of, and the Contractor waives any entitlement in respect of, any additional work carried out, constructional plant used or costs incurred in respect of the Site Condition earlier than 5 Business Days prior to the date on which the Contractor:
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (iv) otherwise, gives the written notice under clause 10.6(b)(iv).
- (f) The entitlements referred to in this clause 10.6 [REDACTED] and 17.6 will be the Contractor's sole remedy, and the Contractor will have no entitlement to and the Principal will not be liable for any other Claim, arising out of or in connection with a Site Condition.
- (g) Within five Business Days after receipt of:
- (i) the Site Condition Notice;
- [REDACTED]
- (iii) the Additional Contractor Information (if any); and
- (iv) [REDACTED],
- whichever is later, the Principal's Representative must state whether it believes the condition referred to in the Site Condition Notice constitutes or involves a Site Condition and notify the Contractor accordingly.
- (h) If the Principal's Representative does not give a notice under clause 10.6(g) within the time period stated in clause 10.6(g), the Principal's Representative is deemed to have stated that the condition referred to in the Site Condition Notice does not constitute or involve a Site Condition.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]







10.7 Native Title

- (a) If there is a Native Title Claim with respect to the Construction Site, the Contractor must continue to perform its obligations under this deed, unless otherwise:
 - (i) directed by the Principal;
 - (ii) ordered by an Authority, a court or tribunal; or
 - (iii) required by Law.
- (b) For the purposes of clause 10.7(a)(i), the Principal may give a notice directing the Contractor to suspend any or all of its obligations under this deed and the Contractor must comply until such time as the Principal gives the Contractor a further notice.
- (c) A direction of the Principal's Representative, an order by an Authority, court or tribunal, or a requirement of Law to suspend or cease to perform any or all of the Contractor's obligations under the Contract as a consequence of a Native Title Claim in relation to the Construction Site will be deemed to be a Variation under clause 15 and valued in accordance with clause 15.4.

11. Quality

11.1 Quality system

- (a) The Contractor must implement a quality system for the management of all aspects of the Contractor's obligations under this deed and in accordance with the requirements of the section of the SWTC identified in Item 37 of Schedule 1 (Contract Information), the Quality Plan, and AS/NZS ISO 9001.
- (b) The Contractor must develop and implement a Quality Plan in accordance with the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).
- (c) The Contractor must not reduce the number of personnel, the minimum expertise of personnel or the scope of work or extent of surveillance included in the Quality Plan without the approval of the Principal's Representative.
- (d) The Contractor must comply with the NSW Government *Quality management guidelines – Construction procurement* (Edition 4 December 2019).

11.2 Quality management and verification

- (a) The Principal and the Contractor acknowledge that the design and construct project delivery method chosen for the Contractor's Activities:
 - (i) requires the Contractor to assume responsibility for all aspects of quality for the Contractor's Activities and for the durability of the Project Works;
 - (ii) allows the Independent Certifier to observe, monitor, audit and test all aspects of quality in the Contractor's Activities and the durability of the Project Works to verify compliance with the requirements of this deed;
 - (iii) requires the Independent Certifier by reviewing and assessing quality in the Contractor's Activities and the durability of the Project Works, to verify the Contractor's compliance with the requirements of this deed; and
 - (iv) allows the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers to monitor, audit and test compliance of the Contractor's Activities with the requirements of this deed.
- (b) The Contractor must ensure a Quality Manager is engaged who must:
 - (i) independently certify the effectiveness and integrity of the Contractor's quality system in achieving conformity with the requirements of this deed;

- (ii) report to the Principal's Representative, relevant Principal's Assistant Representatives, relevant Principal's Surveillance Officers and the Independent Certifier on quality issues in accordance with the requirements of this deed; and
 - (iii) have the requisite experience and ability described for the Quality Manager in Schedule 19 (Contractor's Personnel).
- (c) The Contractor must provide to the Principal's Representative a certificate executed by the Quality Manager in the form of:
- (i) Schedule 9 (Quality Manager's Certificate – Quality) every 3 months from the date of this deed up to the Date of Final Completion;
 - (ii) Schedule 9A (Quality Manager's Certificate – Progressive and at end of the Landscaping Maintenance Period):
 - A. every 3 months from the date of this deed up to the end of the Landscaping Maintenance Period; and
 - B. at the end of the Landscaping Maintenance Period as a condition precedent to the Principal's Representative issuing a notice to the Contractor under clause 13A.5(b)(i);
 - (iii) Schedule 10 (Quality Manager's Certificate - Opening Completion and Completion) as a condition precedent to Opening Completion and as a condition precedent to Completion; and
 - (iv) Schedule 11 (Quality Manager's Certificate – Final Completion) on the expiry of the last Defects Correction Period and as a condition precedent to Final Completion.
- (d) The Independent Certifier must audit and review each revision of the Quality Plan within 10 Business Days after submission of that plan to the Principal's Representative.

11.3 Hold Points and Witness Points

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

- (a) procedures set out in:
 - (i) Schedule 46 (Hold Points);
 - (ii) the SWTC; and
 - (iii) the Quality Plan; and
- (b) requirements inserted in the Project Plans by the Independent Certifier.

11.4 Project quality non-conformity

- (a) The Contractor must comply with the procedure for non-conformities set out in the SWTC and the Quality Plan.
- (b) In addition to the procedure for non-conformities referred to in clause 11.4(a), and without limiting clauses 16.1A and 16.2, if the Contractor has not complied with the SWTC, the Principal's Representative may give written notice to the Contractor of the Contractor's failure to comply and requiring compliance within a reasonable time.
- (c) If the Contractor does not comply with the notice referred to in clause 11.4(b), the Principal may employ others to carry out the direction.
- (d) The amount of any cost, damage, expense, loss or liability the Principal suffers or incurs in taking the action contemplated in clause 11.4(c) or as a result of the Contractor's failure to comply with clause 11.4(b) will be a debt due and payable from the Contractor to the Principal on demand.
- (e) Corrective actions implemented under the Contractor's quality system must comply with the requirements of this deed including the SWTC.
- (f) The Contractor must promptly issue all documents relating to quality non-conformities to the Principal's Representative.

11.5 Monitoring and audits by the Principal's Representative

- (a) The Contractor acknowledges that the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers may, at any time up to the Date of Final Completion, arrange monitoring and audits (including testing) to see if the Contractor is complying with this deed (including the Quality Plan, Construction

Environmental Management Plans, Project WHS Management Plan and the Chain of Responsibility Management Plan).

- (b) The Contractor must:
- (i) make arrangements to ensure that the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers have access to all facilities, documentation, Records and personnel (including those of Subcontractors) that are needed by the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers for the carrying out of the monitoring and audits referred to in clause 11.5(a); and
 - (ii) ensure that the Quality Manager, the Environmental Manager, the Contractor's work health and safety management representative and the Contractor's personnel responsible for the Chain of Responsibility Provisions are available, as necessary, to discuss relevant details with the Principal's Representative, relevant Principal's Assistant Representatives and relevant Principal's Surveillance Officers during the above monitoring and audits.

11.6 Testing

- (a) The Contractor must carry out all tests required:
 - (i) by this deed; or
 - (ii) otherwise directed by the Principal's Representative.
- (b) The costs of a test directed by the Principal's Representative and not otherwise required by this deed will be borne by the Principal unless the test detects a Defect or is upon a Defect.
- (c) Where any test that is not otherwise required by this deed is directed by the Principal's Representative under clause 11.6(a)(ii), the Contractor must, as soon as practicable and before carrying out the relevant test, notify the Principal's Representative if the Contractor is, or should reasonably be, aware that carrying out the relevant test will, or is likely to, delay Opening Completion or Completion, giving details of the estimated delay and how Opening Completion or Completion are likely to be affected (if at all).
- (d) Despite clause 17.4(b), the requirement to notify the Principal's Representative in accordance with clause 11.6(c) is a condition precedent to the Contractor's entitlement to any extension of time in connection with a test directed by the Principal's Representative under clause 11.6(a)(ii).

11.7 No relief from obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 16) or otherwise according to Law nor will the rights of the Principal whether under this deed or otherwise according to Law be limited or otherwise affected by:

- (a) the implementation and compliance with any quality system or the Quality Plan;
- (b) compliance with any Hold Point and Witness Point procedures and requirements;
- (c) failure by the Principal, the Principal's Representative, the Principal's Assistant Representatives, the Principal's Surveillance Officers or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect whilst participating in any Hold Point or Witness Point procedure including where such failure is the result of a negligent act or omission; or
- (d) any monitoring or audit arranged by the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers, under clause 11.5 or discussions between the Quality Manager and the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers, as contemplated under clause 11.5(b)(ii).

12. Design development and documentation

12.1 The Contractor's design obligations

The Contractor:

- (a) warrants to the Principal that:

- (i) the Contractor remains responsible for ensuring that the Project Works, the Temporary Works and Landscaping Maintenance will satisfy the requirements of this deed despite the Contractor's Concept Design (as further developed by the Contractor under this deed);
- (ii) the Contractor has checked and carefully considered the SWTC and Environmental Documents and that:
 - A. the Contractor's Concept Design has been prepared by the Contractor and will be fit for its stated purpose;
 - B. it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
 - C. it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC (including in respect of the constructability of the Project Works) to enable the Contractor to carry out and fulfil its obligations under this deed; and
 - D. it has taken into consideration and made due allowance for the risks and costs associated with carrying out the Contractor's Activities and with assuming the obligations and potential liabilities imposed on it under this deed;
- (iii) the Design Documentation will:
 - A. satisfy the requirements of the SWTC, the Third Party Agreements and the other requirements of this deed;
 - B. be as shown in, and in accordance with, the Contractor's Concept Design, subject to such changes as may be necessary to ensure compliance with this deed or may be necessitated by any of the factors referred to in clauses 12.1(d)(ii)A and 12.1(d)(ii)B, and so as to meet the functional requirements and specifications contained in the Contractor's Concept Design, unless otherwise agreed by the Principal (in its absolute discretion);
 - C. be fit for its stated purpose;
 - D. be prepared, certified, verified, completed and used in accordance with the requirements of this deed; and
 - E. be in accordance with Law;
- (iv) construction will be carried out in accordance with the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 12.2(g);
- (v) construction carried out in accordance with the Design Documentation which the Contractor is entitled to use in accordance with clause 12.2(g) will satisfy the requirements of the SWTC and the other requirements of this deed;
- (vi) the Project Works will:
 - A. be completed in accordance with, and satisfy the requirements of, this deed;
 - B. upon Opening Completion, be fit for their stated purposes;
 - C. upon Completion, be fit for their stated purposes; and
 - D. thereafter, at all relevant times, be capable of remaining fit for their stated purposes;
- (vii) the Landscaping Maintenance will be completed in accordance with, and satisfy the requirements of, this deed; and
- (viii) in preparing the Design Documentation, if any change in accordance with clause 12.1(a)(iii)B and this deed is necessary from the Contractor's Concept Design, no change is to be made that would reduce the:
 - A. durability;
 - B. aesthetics and visible features;
 - C. whole of life performance;

- D. user benefits; or
 - E. functional performance,
- of any part of the Project Works or increase the user or maintenance costs of the Project Works;
- (b) agrees that in the preparation of the Design Documentation it must ensure that:
 - (i) each Design Package for the Project Works and the Temporary Works is consistent with each other Design Package; and
 - (ii) the Design Documentation for the Project Works submitted at each of the following design development stages:
 - A. Developed Concept Design Stage;
 - B. Substantial Detailed Design Stage; and
 - C. Final Design Documentation Stage,
 for each discrete design element of the Project Works is consistent with the Design Documentation for the preceding design development stage;
 - (c) agrees that its obligations under, and the warranties given in, this clause 12.1 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Project Works and Temporary Works notwithstanding:
 - (i) any design work carried out by others prior to the date of this deed and incorporated in this deed; or
 - (ii) any Variation the subject of a Direction by the Principal's Representative, and that the development of the Design Documentation in accordance with clauses 12.1 to 12.3 does not amount to a Variation; and
 - (d) is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor or anyone claiming through the Contractor may suffer or incur arising out of or in connection with:
 - (i) the design of the Project Works and the Temporary Works in accordance with the Contractor's Concept Design and the construction of the Project Works and the Temporary Works in accordance with the Design Documentation, including costing more or taking longer than anticipated; and
 - (ii) any differences between the Project Works and the Temporary Works which the Contractor is required to design or construct (excluding for this purpose any differences which are the subject of a Variation Order issued under clause 15.2, or any approved Variation under clause 15.6(d)) and the Contractor's Concept Design including:
 - A. differences necessitated by the physical conditions (including sub-surface conditions) or characteristics of the Construction Site, the Environment or their surroundings, except to the extent that those physical conditions or characteristics are a Site Condition, and in respect of that Site Condition, the Contractor has complied with clause 10.6; and
 - B. differences required to ensure that the Project Works and Temporary Works will be fit for their stated purposes and satisfy the requirements of this deed,
 irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to any of the matters set out in clauses 12.1(a), 12.1(b), and 12.1(c).

12.2 Preparation of Design Documentation

- (a) The Contractor must prepare, develop and complete all Design Documentation in accordance with this deed, the Design Plan and comply with its design obligations under the WHS Laws and, to the extent applicable, the *Design and Building Practitioners Act 2020* (NSW).
- (b) Throughout the preparation of the Design Documentation, the Contractor must give each Reviewer an opportunity to review, to comment on and to monitor the design

performance of the Contractor, in accordance with clauses 12.2 to 12.3 and the Contractor Documentation Schedule.

- (c) The Contractor must arrange regular meetings of the Project Design Group.
- (d) The Contractor must ensure that the Design Documentation, with respect to the Substantial Detailed Design Stage, for each discrete design element of the Project Works is verified by the Independent Certifier by providing a signed document in the form of Schedule 15 (Independent Certifier's Certificate - Design Documentation), which attaches a register of the Design Documentation the subject of the verification and by way of notation on each document.
- (e) The Contractor must ensure that the Design Documentation, with respect to the Final Design Documentation Stage, for each discrete design element of the Project Works and the Temporary Works:
 - (i) is verified by the Independent Certifier by providing a signed document in the form of Schedule 15 (Independent Certifier's Certificate – Design Documentation), which attaches a register of the Design Documentation the subject of the verification and by way of notation on each document;
 - (ii) where a Subcontractor (including the Designer responsible for the Design Documentation the subject of the certification) has been involved in the preparation of the design, is certified by the Subcontractor which prepared the design by providing a signed document in the form of Schedule 25 (Subcontractor's Certificate – Design Documentation);
 - (iii) is certified by the Contractor by providing a signed document in the form of Schedule 20 (Contractor's Certificate – Design Documentation);
 - (iv) is certified by the Proof Engineer, in respect of the relevant elements identified in Item 14 of Schedule 1 (Contract Information), by providing a signed document in the form of Schedule 27 (Proof Engineer's Certificate – Design Documentation); and
 - (v) in the case of any Design Documentation in respect of the Local Area Works, is approved by each Authority with jurisdiction over those Local Area Works by providing a written notice from each Authority with jurisdiction over those Local Area Works that the Authority is satisfied with the Design Documentation, in accordance with the Contractor Documentation Schedule.
- (f) In considering any Design Documentation submitted under this clause the Principal's Representative and the Independent Certifier are entitled to consult with and take into account any views and requirements of any Reviewer and any relevant Authority.
- (g) Subject to clause 12.2(i) and the Contractor Documentation Schedule, the Contractor must not:
 - (i) in respect of any Design Documentation for a particular design development stage, proceed with any subsequent design development stage; or
 - (ii) use for construction purposes any parts of the Design Documentation, including any Design Documentation for Temporary Works,unless:
 - (iii) in respect of clause 12.2(g)(i), the relevant Design Documentation has been submitted to the Principal and the Independent Certifier and the Independent Certifier has certified or provided a Response in accordance with the Contractor Documentation Schedule; or
 - (iv) in respect of 12.2(g)(ii), the applicable Design Documentation is "Issued for Construction Design Documentation" in accordance with the Contractor Documentation Schedule,by the Independent Certifier providing a signed document in the form of Schedule 15 (Independent Certifier's Certificate – Design Documentation), which attaches a register of the Design Documentation the subject of the verification and by way of notation on each document.
- (h) Without limiting clauses 2.4(m) to 2.4(o), any determination or certification of the Independent Certifier under section 24.3.3 of the Contractor Documentation Schedule will, in the absence of manifest error, be final and binding on the parties for the purpose

of permitting the Contractor to proceed with the Contractor's Activities using the relevant Design Documentation in accordance with section 24.3.3 of the Contractor Documentation Schedule. If the Principal issues a notice under section 24.3.3.5(a)(iv) of the Contractor Documentation Schedule the Contractor may proceed with the relevant Contractor's Activities at its own risk using the relevant Design Documentation whilst the dispute is resolved.

- (i) If the Independent Certifier has not responded to a Design Package in accordance with the Contractor Documentation Schedule by the end of the relevant timeframe for the Independent Certifier to provide a response to the Contractor under the Contractor Documentation Schedule, the Contractor may proceed with a subsequent design development stage, or in relation to Design Packages in the Final Design Documentation Stage undertake construction work, at its own risk and acknowledges and agrees that:
 - (i) any design or construction work undertaken by the Contractor using Design Documentation which has not been prepared, reviewed, certified, verified and not rejected in accordance with the Contractor Documentation Schedule will be at the sole risk of the Contractor, including all delays and costs that may be suffered or incurred, or re-work required to be performed, by the Contractor as a result;
 - (ii) it will not be entitled to make, nor will the Principal be liable, on any Claim including any Claim for damages, costs, expenses or losses for any delay, disruption or interference arising out of or in connection with the carrying out of such construction work;
 - (iii) nothing in this clause 12.2(i) or in clause 12.2(g) limits or otherwise qualifies the Contractor's obligation to have all Design Documentation prepared, reviewed, certified, verified and not rejected in accordance with the Contractor Documentation Schedule;
 - (iv) the payment for any Contractor's Activities that have progressed to construction undertaken without the requisite certification under the Contractor Documentation Schedule is at the discretion of the Principal; and
 - (v) in addition to any other rights of the Principal:
 - A. the Contractor must, if it is subsequently determined that any relevant Design Documentation does not comply with this deed, promptly:
 - 1) amend so that the Design Documentation does comply and resubmit; and
 - 2) replace and rectify any construction work that does not comply with this deed (if applicable); and
- (j) The Contractor acknowledges and agrees that compliance with the design process set out in this clause 12.2 is a condition precedent to the Contractor making any progress claim in respect of the Contractor's Activities that are the subject of this clause.

- (k) If the Contractor wishes to amend Design Documentation that has been prepared in accordance with the Contractor Documentation Schedule, any amendments must be made in accordance with the requirements of the Contractor Documentation Schedule.

12.3 No duty

The Contractor acknowledges and agrees that:

- (a) the Contractor is responsible for carrying out the design obligations under the WHS Laws;
- (b) neither the Principal, the Principal's Representative, nor the Independent Certifier, has any design obligations in respect of the Project Works, the Temporary Works or the Design Documentation;
- (c) neither the Principal, the Principal's Representative, the Independent Certifier nor any other Reviewer (each a **Relevant Party**) owes any duty to the Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation (within any time frames contemplated in this deed or otherwise); and
- (d) neither:
 - (i) the Principal's nor any Reviewer's participation in the Project Design Group;
 - (ii) any review or rejection of, or consultation or comments by, or any approval (including any approval of any non-compliance or approval subject to conditions) by, a Relevant Party, nor any failure by a Relevant Party regarding any Design Documentation or any other Direction by the Principal's Representative in respect of any Design Documentation; nor
 - (iii) the verification of any Design Documentation by the Independent Certifier, will lessen or otherwise affect:
 - (iv) the Contractor's warranties under clause 12.1 or any other of the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (v) a Relevant Party's rights against the Contractor, whether under this deed or otherwise according to Law.

12.4 Ownership of Design Documentation

- (a) Ownership of, and all Intellectual Property Rights in, the Contractor Documentation and Deliverables vests in the Principal when each item of Design Documentation comes into existence (**Contractor Developed IP**). On request by the Principal, the Contractor must do all things necessary to perfect the vesting of such ownership and Intellectual Property Rights in the Principal.
- (b) The Contractor has an irrevocable licence to use the Contractor Documentation and Deliverables for performing the Contractor's Activities and performance of its obligations under this deed.
- (c) Subject to clause 12.4(h), the Contractor grants to the Principal a perpetual, non-exclusive, irrevocable, royalty-free and fully assignable licence to use (including to sub-license) any Contractor Documentation and Deliverables which are required by the Principal in order to obtain the full benefit of the Contractor's Activities but in which the Contractor Developed IP is not vested in the Principal as a result of clause 12.4(a) (**Contractor Background IP**).
- (d) The licence in clause 12.4(c):
 - (i) will permit the Principal to use the Contractor Background IP for all purposes associated with the Contractor's Activities and the Works or the general performance by the Principal of its statutory functions, including by the Northern Package Contractor or any contractors or subcontractors engaged by the Principal; and
 - (ii) will survive the termination of this deed on any basis.
- (e) The Contractor warrants that:
 - (i) neither the Contractor Documentation and Deliverables, the Project Works (including any plant, equipment or material forming part of the Project Works) nor any method of working used by the Contractor in performing the Contractor's

Activities will infringe any Intellectual Property Right or any moral right in an artistic work; and

- (ii) it has or will have sufficient interest in the Contractor Documentation and Deliverables and Contractor Background IP to comply with its obligations under clauses 12.4(a) and 12.4(c).
- (f) The Contractor must indemnify the Principal against any claim, loss, cost, expense, damage or liability suffered or incurred by the Principal arising out of or in connection with Design Documentation, the Project Works (including any plant, equipment or materials forming part of the Project Works) or any method of working used by the Contractor in performing the Contractor's Activities infringing or allegedly infringing any Intellectual Property Rights or any author's moral rights.
- (g) The Contractor must ensure that it obtains irrevocable written consent, for the benefit of the Principal and the Contractor, from the author of any artistic work to be incorporated into, or used during the design or construction or maintenance of, the Project Works, including any necessary consents from its employees and any consultants engaged by it, to:
 - (i) any non-attribution or false attribution of authorship of the artistic work; and
 - (ii) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the artistic work or the Project Works.

The terms "artistic work" and "attribution" have the meanings in the *Copyright Act 1968* (Cth).

- (h) The licence in clause 12.4(c) will not extend to:
 - (i) a part of the Contractor Background IP that is not owned by the Contractor (**Third Party Rights**) if:
 - A. the Third Party Rights are generally commercially available on reasonable commercial terms; or
 - B. the Contractor has:
 - 1) been unable (despite using its best endeavours) to procure from the relevant third party the right to grant the licence in clause 12.4(c) in respect of those Third Party Rights; and
 - 2) the Contractor has notified the Principal:
 - (a) that it has been unable to procure the necessary licence rights for those Third Party Rights; and
 - (b) as to the terms, if any, (including any cost) on which the Principal will be able to procure the required rights to use, reproduce and modify those Third Party Rights; and
 - (ii) without limiting clause 12.4(h)(i), the right to:
 - A. install or use the Software other than as part of the Project Works; or
 - B. obtain any Source Code in respect of the Software.
- (i) The Contractor:
 - (i) acknowledges the Principal may provide the Northern Package Contractor with copies of any documents (including any Design Documentation) provided to the Principal or the Independent Certifier by or on behalf of the Contractor in any way in connection with this deed, the Project Works, the Temporary Works or the Contractor's Activities; and
 - (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any documents (including any Design Documentation) in any way in connection with this deed, the Project Works, the Temporary Works or the Contractor's Activities that the Northern Package Contractor may reasonably require.

12.5 Reference Design

- (a) The Contractor acknowledges that prior to the date of this deed the Principal prepared the Reference Design, a copy of which was provided to the Contractor as an Information Document.
- (b) The Reference Design will not form part of this deed and is subject to the provisions of this deed and the Confidentiality Deed Poll concerning Information Documents.
- (c) The Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or reliance by the Contractor on, the Reference Design and the existence of the Reference Design will not limit any of the Contractor's obligations under this deed, including that the Contractor remains responsible for ensuring that the Project Works and the Temporary Works satisfy the requirements of this deed.

12.6 Delivery up of Design Documentation

- (a) If this deed is terminated by the Principal, the Contractor must immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not) then in existence to the Principal.
- (b) The Contractor must, if requested, provide evidence acceptable to the Principal's Representative that the Contractor is at all times able to comply with clause 12.6(a) in respect of any Foreign Sourced Design.

12.7 Change in Codes and Standards

- (a) Where there is a Change in Codes and Standards:
 - (i) the Contractor must give a notice to the Principal within the later of 15 Business Days after the Change in Codes and Standards or when the Contractor first became aware (or ought reasonably to have first become aware) of the change containing details of the Change in Codes and Standards and the information specified in clause 15.3 in respect of the proposed Change in Codes and Standards (even though the notice under this clause 12.7 is not a notice given under clause 15.3); and
 - (ii) if a notice is given by the Contractor which complies with clause 12.7(a)(i), then within 12 Business Days after the notice having been given, the Principal will either:
 - A. direct the Contractor to disregard the Change in Codes and Standards where doing so will not result in the Project Works not complying with the requirements of Law;
 - B. direct a Variation in respect of the Change in Codes and Standards; or
 - C. notify the Contractor it requires additional information from the Contractor regarding the Change in Codes and Standards, in which event:
 - 1) the Contractor must provide the additional information sought by the Principal within a further period of 7 Business Days; and
 - 2) this clause 12.7(a)(ii) will reapply as if the additional information were the notice given by the Contractor under clause 12.7(a)(i), provided that, if it is not reasonably practicable for the Contractor to provide the additional information sought by the Principal within the 7 Business Day period and the Contractor gives the Principal written notice of that within that period, the 7 Business Day period will be extended by a further 5 Business Days.
- (b) If the Principal gives a direction under clause 12.7(a)(ii)A:
 - (i) the Contractor will not be regarded as being in breach of this deed to the extent that it disregarded the relevant Change in Codes and Standards; and
 - (ii) the Principal will not be precluded from subsequently issuing a Variation Proposal Request or Variation Order under clause 15 in respect of a Change in Codes and Standards that has been the subject of a notice from the Contractor under clause 12.7(a)(i).

- (c) If the Principal fails to give a direction or notice under clause 12.7(a)(ii) within the time required by clause 12.7(a)(ii), then the Principal will be deemed to have issued a notice under clause 12.7(a)(ii)A and clause 12.7(b) will apply.
- (d) If the Principal gives a notice under clause 12.7(a)(ii)B or otherwise issues a Variation Proposal Request or Variation Order under clause 15 in respect of a Change in Codes and Standards that has been the subject of a notice from the Contractor under clause 12.7(a)(i), the Contractor will not have any Claim against the Principal:
 - (i) for delay costs incurred in relation to changes to Design Documentation or changes to the Project Works or Temporary Works to the extent they are a result of such changes to Design Documentation, except to the extent that the relevant Design Documentation, before the issue of:
 - A. a notice under clause 12.7(a)(ii)B; or
 - B. a Variation Proposal Request or Variation Order under clause 15, as applicable, complied, or would have complied, with the requirements of this deed, including any requirement that the Design Documentation be fit for its stated purpose (or any similar reference); or
 - (ii) to the extent that, despite the Change in Codes and Standards, the Contractor would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that:
 - A. the Project Works be fit for their stated purposes (or any similar reference) at Opening Completion;
 - B. the Project Works be fit for their stated purposes (or any similar reference) at Completion; and
 - C. the Temporary Works be fit for their stated purposes (or any similar reference).
- (e) The Contractor acknowledges and agrees that nothing in this clause 12.7 prevents the Principal from issuing a Variation Proposal Request or Variation Order under clause 15 in respect of any Change in Codes and Standards that the Principal becomes aware of that the Contractor does not notify the Principal of in accordance with clause 12.7(a)(i).

13. Construction

13.1 Construction

- (a) The Contractor must construct the Project Works and Temporary Works:
 - (i) in accordance with the requirements of this deed including:
 - A. the SWTC;
 - B. subject to clause 13.1(b), any relevant Design Documentation which has:
 - 1) been verified by the Independent Certifier and, where relevant, the Proof Engineer and certified by the Subcontractor who prepared it and by the Contractor under clause 12.2(e);
 - 2) been submitted under clause 12.2; and
 - 3) not been rejected under clause 12.2 and the Contractor Documentation Schedule; and
 - C. any direction of the Principal's Representative given or purported to be given under a provision of this deed, including any Variation directed by the Principal's Representative by a Variation Order under clause 15.2;
 - (ii) in accordance with:
 - A. all Approvals and applicable Laws; and
 - B. the requirements of all relevant Authorities,
 and so as to meet the functional requirements and specifications contained in the SWTC;
 - (iii) with good workmanship and materials which are:

- A. new (with respect to the Project Works) and free of Defects and other imperfections; and
 - B. of the quality specified in the SWTC; and
- (iv) so that:
- A. the Project Works are:
 - 1) upon Opening Completion, fit for their stated purposes;
 - 2) upon Completion, fit for their stated purposes; and
 - 3) thereafter, at all relevant times, capable of remaining fit for their stated purposes; and
 - B. the Temporary Works are fit for their stated purposes at all relevant times.
- (b) If there is any ambiguity, discrepancy or inconsistency between this deed and any Design Documentation which has been verified and certified under clause 12.2(e), submitted under clause 12.2 and not rejected under the Contractor Documentation Schedule, then unless otherwise directed by the Principal's Representative, the requirements of this deed will prevail.

13.2 Property Works

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

- 1) the Contractor has used its best endeavours to obtain sufficient access to carry out the Property Works; and
 - 2) the Contractor will be delayed in achieving Opening Completion or Completion (as applicable) by the owner or owners of a property failing to provide access,

not carry out the relevant Property Works at all, in which case the Principal's Representative must give a notice to the Contractor directing a Variation under clause 15.2(a) deleting the relevant Property Works, following which relevant adjustments must be made under clause 15.4.
- (c) On being given access to any property for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Parcel.
- (d) The Contractor must:
- (i) carry out the Property Works with respect to each Parcel:
 - A. in accordance with the SWTC;
 - B. so that the Property Works are:
 - 1) upon Opening Completion, fit for their stated purposes;
 - 2) upon Completion, fit for their stated purposes; and
 - 3) thereafter, at all relevant times, capable of remaining fit for their stated purposes; and
 - C. in accordance with Law; and
 - (ii) in carrying out the Property Works, satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or on which, Property Works are being undertaken.
- (e) The Contractor must:
- (i) rehabilitate any part of a Parcel to the state it was in immediately prior to the Contractor obtaining access to the Parcel; and
 - (ii) otherwise repair any damage or degradation to any part of a Parcel arising out of or in any way in connection with the performance of its obligations under this clause 13.2,

including satisfying the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or on which, the Property Works were undertaken.
- (f) The completion of all Property Works under this clause 13.2, including all work under clause 13.2(e) is a condition precedent to Opening Completion and Completion (as applicable).
- (g) The Contractor must, after completion of the Property Works with respect to a Parcel, including the work described in clause 13.2(e), and as a condition precedent to Opening Completion or Completion (as applicable), provide to the Independent Certifier and the Principal's Representative:
- (i) a deed in the form of Schedule 35 (Owner's Deed Poll), duly executed by the owner or owners of any part of the Parcel; or
 - (ii) if the Contractor demonstrates to the satisfaction of the Principal's Representative, acting reasonably, that the Contractor is unable to obtain a deed under clause 13.2(g)(i) despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner or owners have failed or refused to execute a deed in the form of Schedule 35 (Owner's Deed Poll) within 15 Business Days after it is provided by the Contractor to the owner or owners following the proper completion of the Property Works including the work described in clause 13.2(e).
- (h) The acceptance of a deed or statement provided by the Contractor under clause 13.2(g) by the Principal's Representative is not approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this clause 13.2.
- (i) The Contractor must indemnify the Principal against any liability to or claim by the owner or owners of any part of a Parcel where:

- (i) such owner or owners have not duly signed a deed in the form of Schedule 35 (Owner's Deed Poll); and
- (ii) the liability or claim arises out of or in connection with the Property Works, but the Contractor's liability shall be reduced proportionally to the extent that the liability to, or claim by, the owner or owners of any part of a Parcel arises out of an act or omission of the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Independent Certifier and the ER).
- (j) The section of the SWTC identified in Item 37 of Schedule 1 (Contract Information):
 - (i) is indicative only of the scope of those Property Works of the kind referred to in paragraph (b) of the definition of "Property Works" in clause 23.2; and
 - (ii) does not limit or otherwise affect the Contractor's obligations under this deed in relation to the Property Works.

13.3 Notice of accidents and incidents

Where the Contractor becomes aware of:

- (a) any accidents involving damage to persons or property occurring on or in the vicinity of the Construction Site or in the supply chain where the Chain of Responsibility Provisions apply; or
 - (b) any incidents affecting the Environment,
- the Contractor must:
- (c) promptly give the Principal's Representative a detailed written report of the accident or incident; and
 - (d) otherwise comply with Law, the Project WHS Management Plan, the Chain of Responsibility Management Plan, the Construction Environmental Management Plans and the Communication Management Plan.

13.4 Cleaning up

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

- (a) keep the Construction Site and any other areas affected by the Contractor's Activities clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Construction Site and any other areas affected by the Contractor's Activities; and
- (c) as a condition precedent to Opening Completion and Completion (as applicable), remove all rubbish, surplus materials, plant, equipment, scaffolding, loose materials and Temporary Works from the relevant parts of the Construction Site and any other areas affected by the Contractor's Activities except where the retention of any of these are required for the correction of Defects during the Defects Correction Periods and this is approved in writing by the Principal's Representative.

13.5 Work method

If:

- (a) this deed prescribes a particular work method or a work method is otherwise a part of this deed;
- (b) a work method is reviewed or approved (expressly or impliedly) by the Principal or the Principal's Representative; or
- (c) any work method that the Contractor adopts or proposes to adopt is impractical or impossible,

and the Contractor, with or without the approval of the Principal's Representative, uses another work method (**New Work Method**):

- (d) the Contractor is not entitled to make any Claim against the Principal arising out of or in any way in connection with the New Work Method; and
- (e) the New Work Method will not cause this deed to be frustrated.

13.6 Temporary Works Areas

As a condition precedent to Completion, the Contractor must reinstate all Temporary Works

Areas and the Contractor must as a minimum:

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

13.7 Notification of material issues

Without limiting any other obligation under this deed, the Contractor must notify the Principal:

- (a) as soon as reasonably practicable after it becomes aware of any matter which materially affects, or may materially affect:
 - (i) the carrying out of the Project Works and Temporary Works in accordance with this deed; or
 - (ii) the Construction Site, including any issues in relation to industrial relations, work health and safety, and the Environment; and
- (b) of the progress or resolution of such matters.

13.8 Cooperation with Other Contractors

- (a) Without limiting clause 5.8(e), the Contractor must cooperate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Laws.
- (b) The Contractor:
 - (i) acknowledges that:
 - A. the Principal and others may engage Other Contractors to carry out Other Contractors' Activities upon or in the vicinity of the Construction Site at the same time as the Contractor;
 - B. the Contractor's Activities may interface with the Other Contractors' Activities;
 - C. Other Contractors may be executing work on parts of the Construction Site, or adjacent to the Construction Site, at the same time as the Contractor is performing the Contractor's Activities; and
 - D. Other Contractors may require the Contractor to provide information to them to coordinate the Other Contractors' Activities with the Contractor's Activities, and this must be provided in a timely manner by the Contractor;
 - (ii) must at all times:
 - A. permit Other Contractors to carry out the Other Contractors' Activities on the applicable parts of the Construction Site including any such person engaged by the Principal, a Third Party or an Authority or any adjacent property to the Construction Site:
 - 1) at the same time as the Contractor is performing the Contractor's Activities; and
 - 2) at the times agreed with the Other Contractor, or failing agreement at times determined by the Principal's Representative,and for this purpose ensure they have safe, clean and clear access to those parts of the Construction Site, or property adjacent to the Construction Site (to the extent that the Contractor has access to that property and for the period of such access), required by them for the purpose of carrying out their work, subject to the Other Contractor complying with the Contractor's reasonable site access and work health and safety procedures;
 - B. take all reasonably necessary precautions to ensure that the Project Works, the Temporary Works, and the Construction Site are protected from accidental damage by the Other Contractor;

- C. not damage the work performed by the Other Contractor or its plant and equipment except to the minimum extent necessary to perform the Contractor's Activities;
 - D. fully co-operate with Other Contractors, and do everything reasonably necessary to:
 - 1) facilitate the Other Contractors' Activities, including providing Other Contractors with such assistance as may be directed by the Principal's Representative;
 - 2) ensure the effective coordination of the Contractor's Activities with the Other Contractors' Activities; and
 - 3) coordinate traffic management and minimise disruptions to the movement of traffic;
 - E. carefully coordinate and interface the Contractor's Activities with the Other Contractors' Activities;
 - F. perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Other Contractors' Activities;
 - 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, Other Contractors' Activities; and
 - H. attend coordination meetings chaired by the Principal's Representative with Other Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues;
- (iii) must promptly advise the Principal's Representative if the Contractor becomes aware of any matter arising out of the Other Contractors' Activities that may have an adverse effect upon the Contractor's Activities or the safety of the public or any other persons; and
 - (iv) without limiting this clause, must indemnify the Principal from and against any claims against the Principal, or cost, damage, expense, loss or liability suffered or incurred by the Principal, arising out of or in any way in connection with a breach of this clause by the Contractor.

13.9 Northern Contract Interface

- (a) Without limiting the Contractor's obligations under the Interface Deed, the Contractor acknowledges that:
 - (i) the Contractor's Activities interface with the Northern Package Project Works;
 - (ii) the Northern Package Contractor may be executing the Northern Package Project Works on land adjacent to parts of the Construction Site (including the Tie-In Works Area) at the same time as the Contractor is performing the Contractor's Activities;
 - (iii) it may require certain design and work methodology input from the Northern Package Contractor to coordinate the design of the Works with the Northern Package Project Works;
 - (iv) the Northern Package Contractor may require the Contractor to provide design and work methodology information to them to coordinate the design or conduct of the Northern Package Project Works with the Works, and this must be provided in a timely manner by the Contractor; and
 - (v) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or cooperating and coordinating with the Northern Package Contractor, may adversely impact upon, delay or disrupt the Northern Package Contractor or the Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, losses and damages.
- (b) To the extent that the obligation of the Contractor to coordinate the design of the Project Works with the design of the Northern Package Project Works pursuant to the Interface Deed requires the Contractor to prepare a design for the Project Works that is

inconsistent or incompatible with the other requirements for the Project Works set out in this deed, then (provided the Contractor has otherwise complied with its obligations under this deed in designing the relevant aspect of the Project Works):

- (i) the Contractor must notify the Principal before commencing the relevant coordination of design, including details of any potential additional requirements resulting from the design coordination and details of the inconsistency or incompatibility with the other requirements of this deed; and
- (ii) within ten Business Days of receipt of such notice, the Principal must either:
 - A. issue a Variation Proposal Request under clause 15.1 or a Variation Order under clause 15.2 to change the other requirements for the Project Works so as to remove the inconsistency or incompatibility with the design;
 - B. direct the Contractor that it does not need to coordinate the design of the relevant Project Works with the design of the Northern Package Project Works; or
 - C. notify the Contractor that the Principal does not consider the requirements of the Interface Deed requires the Contractor to prepare a design for the Project Works that is inconsistent or incompatible with the other requirements for the Project Works set out in this deed.
- (c) The Contractor must promptly advise the Principal's Representative of all matters arising out of the liaison with the Northern Package Contractor that may involve a change to design or construction work under this deed or otherwise have an adverse effect upon the Contractor's Activities.
- (d) The Contractor acknowledges that conditions similar to those in clauses 13.9(a) applying to the Contractor will apply to all the Northern Package Contractor engaged by the Principal, whether working on the Construction Site or on any other site.
- (e) If, despite the Contractor having complied with all of its obligations under clause 13.9 and the Interface Deed, the Contractor and the Northern Package Contractor fail to resolve any interface issue or dispute between them, the Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with the Northern Package Contractor (with a copy to the Northern Package Contractor).
- (f) Upon receipt of the Contractor's notice under clause 13.9(e), the Principal's Representative must:
 - (i) convene a meeting between the Contractor, the Northern Package Contractor and any other relevant person (as reasonably determined by the Principal's Representative); and
 - (ii) both the Principal's Representative and the Contractor must work in good faith with the Northern Package Contractor to resolve the issues or dispute.
- (g) The Contractor acknowledges and agrees that:
 - (i) no act or omission by the Northern Package Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of deed or Variation directed by the Principal's Representative);
[REDACTED]
[REDACTED]
[REDACTED];
 - (iii) the Northern Package Contractor may require access to the Construction Site or the Tie-In Works Area in order to perform their obligations under its contract with the Principal;
 - (iv) the Contract Program will accommodate requirements for design iterations as part of the Northern Package Project Works and incorporate the requirements of the Interface Deed;
 - (v) it accepts the risk of the interfaces between, and the integrations of the Project Works and the Northern Package Project Works; and



13.10 Interface Deed

- (a) The Contractor must:
 - (i) within 5 Business Days of receipt of a request from the Principal, provide to the Principal the Interface Deed duly executed by the Contractor in the number of counterparts required by the Principal; and
 - (ii) at all relevant times comply with the terms of the executed Interface Deed.
- (b) If the Principal issues a request pursuant to clause 13.10(a)(i) the Principal will also request that the Northern Package Contractor execute the Interface Deed but:
 - (i) does not represent or warrant that the Northern Package Contractor will execute the Interface Deed; and
 - (ii) will not be liable upon any Claim (insofar as is permitted by Law) by the Contractor arising out of or in any way in connection with the Northern Package Contractor not executing the Interface Deed.

13.11 Principal Supplied Items

- (a) The Principal must make available the Principal Supplied Items:
 - (i) at its own cost; and
 - (ii) at the respective places referred to in Schedule 49 (Principal Supplied Items).
- (b) In respect of the Principal Supplied Items, the Contractor:
 - (i) warrants that it has reviewed the SWTC 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 deed;
 - (ii) 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;
 - (iii) is not relieved from, and remains liable for complying with, all of its obligations under this deed, despite the Principal making available the Principal Supplied Items;
 - (iv) acknowledges and agrees that the *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligation under clause 13.11(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness for purpose of the Principal Supplied Items;
 - (v) may as part of the Contractor's Activities, incorporate any of the Principal Supplied Items into the Temporary Works; and
 - (vi) if the Contractor chooses to incorporate any Principal Supplied Items into the Temporary Works, must, at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 49 (Principal Supplied Items) to the relevant part of the Construction Site and ownership of the Principal Supplied Items will vest in the Contractor on and from the date of such transportation.

13A Landscaping Maintenance

13A.1 Landscaping Maintenance

Without limiting the Contractor's obligations under clause 16, the Contractor must carry out Landscaping Maintenance in accordance with this deed during the Landscaping Maintenance Period, including in a manner that ensures:

- (a) the Works are at all times during the Landscaping Maintenance Period open to the public for safe, continuous and efficient passage of vehicles;
- (b) the Landscaping Maintenance is fit for its stated purpose; and

- (c) the requirements of the Environmental Documents are met.

13A.2 Access during Landscaping Maintenance Period

- (a) The Principal must, during the Landscaping Maintenance Period, give, or ensure that the Contractor has, sufficient access to perform the Landscaping Maintenance.
- (b) The Principal and the Principal's Representative may at any time inspect areas where the Landscaping Maintenance is being performed.
- (c) Neither the Principal nor the Principal's Representative owes any duty to the Contractor to:
 - (i) inspect the Landscaping Maintenance; or
 - (ii) review any Landscaping Maintenance for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (d) No inspection or review of the Landscaping Maintenance by the Principal or the Principal's Representative will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations under this deed (including its obligations under clause 13A.1) or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor whether under this deed or otherwise according to Law.

13A.3 Ensure performance of the Principal's statutory functions

- (a) The Contractor acknowledges that the Principal has, by virtue of the *Roads Act 1993* (NSW) and the Road Transport Legislation, certain obligations and powers relating to the use and control of the Works.
- (b) In undertaking Landscaping Maintenance, the Contractor must:
 - (i) not interfere or cause interference with the exercise or performance by the Principal of any of its obligations or powers under the Road Transport Legislation or any other applicable Law; and
 - (ii) perform the Landscaping Maintenance consistently with the obligations imposed on the Principal under the Road Transport Legislation or any other applicable Law.

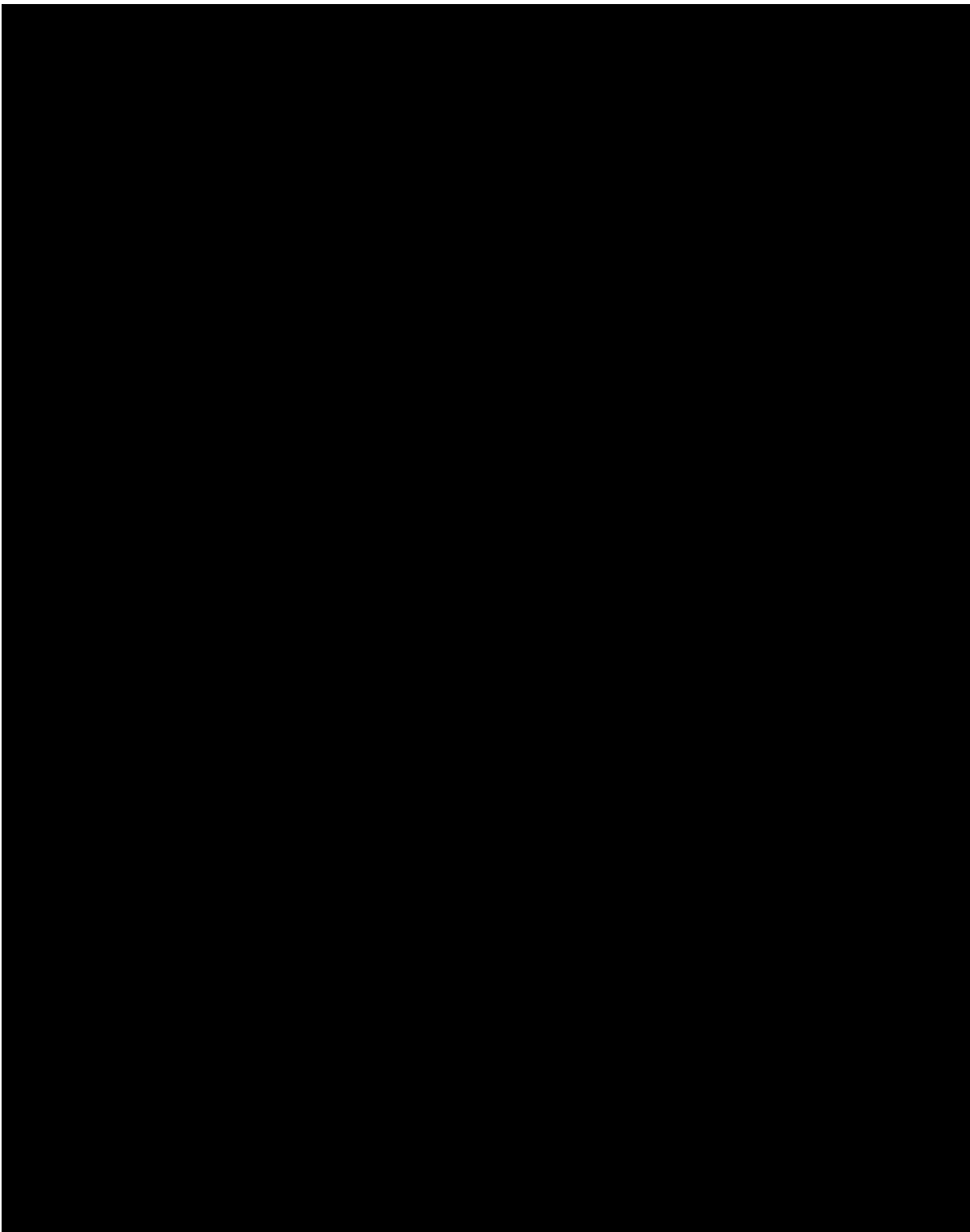
13A.4 Performance of Landscaping Maintenance

- (a) Without limiting clause 13A.1, in performing the Landscaping Maintenance the Contractor must:
 - (i) give priority to the safety of motorists, and any other persons or vehicles, including pedestrians and pedal cyclists, using the Works or otherwise potentially affected by the performance of the Landscaping Maintenance;
 - (ii) minimise the impact of the performance of the Landscaping Maintenance on motorists and other users of the Works, Local Roads and Services and any access to the Works, Local Roads and Services;
 - (iii) ensure that no unnecessary interference is caused to members of the public or the operations of the Principal or other Authorities;
 - (iv) do all things and take all measures necessary to protect people and property; and
 - (v) prevent nuisance, unreasonable noise and disturbance and comply with the requirements of Authorities including the Environment Protection Authority.
- (b) Without limiting clause 13A.1, the Contractor warrants that it will:
 - (i) perform the Landscaping Maintenance using workmanship and materials to the standard required by this deed and which are fit for their purpose; and
 - (ii) if, in the performance of the Landscaping Maintenance, it is required to replace any dead, diseased or damaged plants or trees, the replacements will be:
 - A. of equal quality to those required under this deed; and
 - B. fit for their intended purpose.

- (c) The Contractor must take all reasonable precautions to avoid obstruction and damage to the Works, Local Roads, the Services and any property arising out of the performance of Landscaping Maintenance.
- (d) During the Landscaping Maintenance Period, if any damage is caused to the Works, Local Roads, the Services or any property by the Contractor, its employees, agents or Subcontractors, the Contractor must promptly make good the damage at its own cost and pay any compensation payable in connection with the damage.
- (e) On completion of any Landscaping Maintenance, the Contractor must promptly and in a good and workmanlike manner remove all temporary protection measures installed in connection with the Landscaping Maintenance.

13A.5 Completion of Landscaping Maintenance

- (a) When the Contractor considers the Landscaping Maintenance has been completed, the Contractor must notify the Principal's Representative in writing. Thereafter the Principal's Representative and the Project Director must, within 5 Business Days of receipt of a notice under this clause 13A.5(a), jointly inspect the areas where the Landscaping Maintenance has been performed, at a mutually convenient time.
- (b) Following the joint inspection under clause 13A.5(a) and in any event within 10 Business Days of receipt of a notice under clause 13A.5(a), the Principal's Representative must notify the Contractor whether, in the opinion of the Principal's Representative:
 - (i) the Landscaping Maintenance has been completed in accordance with this deed and the areas where the Landscaping Maintenance has been performed are ready to be handed over to the Principal; or
 - (ii) the Landscaping Maintenance has not been completed in accordance with this deed and the services the Principal's Representative believes must be completed before the Landscaping Maintenance can be considered to be completed.
- (c) If the Principal's Representative issues a notice under clause 13A.5(b)(ii) the Contractor must proceed with the Landscaping Maintenance and thereafter when it considers the Landscaping Maintenance has been completed it must give the Principal's Representative a further written notice to that effect under clause 13A.5(a), after which clauses 13A.5(b) and 13A.5(c) will reapply.
- (d) As conditions precedent to the Principal's Representative issuing a notice to the Contractor under clause 13A.5(b)(i), the Contractor must provide to the Principal's Representative:
 - (i) a certificate executed by the Quality Manager in the form of Schedule 9A (Quality Manager's Certificate – Progressive and at end of Landscaping Maintenance Period);
 - (ii) a certificate executed by the Independent Certifier in the form of Schedule 14A (Independent Certifier's Certificate – Progressive and at end of Landscaping Maintenance Period); and
 - (iii) a certificate executed by the Contractor in the form of Schedule 21A (Contractor's Certificate – End of Landscaping Maintenance Period).
- (e) As a condition precedent to Final Completion, the Principal's Representative must issue a notice to the Contractor under clause 13A.5(b)(i).



15. Variations

15.1 Proposed Variations

- (a) Within 10 Business Days after receipt of a notice in writing from the Principal's Representative titled "Variation Proposal Request" notifying the Contractor of a proposed Variation, the Contractor must, at its cost, provide the Principal's Representative with a written notice containing the following details:
 - (i) the effect which the Contractor anticipates the Variation will have on:
 - A. the Design Contract Sum and the D&C Payment Schedule (supported by reasonable measurements or other evidence of costs) and including

- any costs the Contractor proposes to claim under clause 17.6 in respect of the proposed variation;
 - B. the Construction Contract Sum and the D&C Payment Schedule (supported by reasonable measurements or other evidence of costs);
 - C. the Contract Program, the Subsidiary Contract Programs, the Date for Opening Completion, and the Date for Completion;
 - D. the performance of the Landscaping Maintenance;
 - E. the functionality or integrity of any of the elements of the Project Works or Temporary Works or the quality or performance standards required by this deed including specific details of:
 - 1) the elements of the Project Works or Temporary Works that will be affected;
 - 2) how and to what extent the functionality, integrity or aesthetics of those elements will be affected;
 - 3) the quality or performance standards affected and how and to what extent they will be affected; and
 - 4) any adverse effect which the Variation will have on the Contractor's ability to satisfy its obligations under this deed; and
 - F. the Northern Package Project Works, including whether a variation to the work under the Northern Contract is likely to be required to enable the proposed Variation to be implemented or as a consequence of the proposed Variation; and
- (ii) any other information concerning the proposed Variation which the Principal's Representative requires including:
- A. sufficient details to allow the Principal to reconsider the need for the Variation; and
 - B. the net extra Direct Costs that the Contractor anticipates would be incurred by it if a direction was given under clause 17.7 to compress the performance of the Contractor's Activities to overcome:
 - 1) any delay in achieving Opening Completion and/or Completion caused by the Variation; or
 - 2) part of any delay in achieving Opening Completion and/or Completion caused by the Variation as specified in the Variation Proposal Request.
- (b) The Principal will:
- (i) consider the details provided under clause 15.1(a)(i) and the information provided under clause 15.1(a)(ii); and
 - (ii) not be obliged to proceed with any proposed Variation the subject of a Variation Proposal Request.
- (c) The Principal's Representative may issue a Variation Proposal Request under clause 15.1(a) at any time up to Final Completion.

15.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a Variation Proposal Request under clause 15.1(a), the Principal's Representative may, by a written document titled "Variation Order", direct the Contractor to implement a Variation as specified in the Variation Order.
- (b) Where the Contractor has provided a notice under clause 15.1(a) with respect to the Variation Proposal Request, the Variation Order issued by the Principal's Representative will state whether any one or more of the following will be adjusted as set out in the Contractor's notice under clause 15.1(a):
 - (i) the Design Contract Sum and the D&C Payment Schedule;
 - (ii) the Construction Contract Sum and the D&C Payment Schedule;
 - (iii) the Date for Opening Completion; and
 - (iv) the Date for Completion.
- (c) Where the Contractor receives a Variation Order, it must perform its obligations under this deed in accordance with the Variation specified in the Variation Order.

- (d) The Principal's Representative may issue a Variation Order under this clause 15.2 at any time up to Final Completion.

15.3 Notice of Variation

- (a) If the Contractor believes any Direction of the Principal's Representative, other than the issuing of a Variation Order under clause 15.2, constitutes or involves a Variation it must:
 - (i) without delay and before complying with the Direction, and in any event within 5 Business Days after the Direction, give notice to the Principal's Representative:
 - A. that it considers the Direction constitutes or involves a Variation; and
 - B. which notice must state that it is a notice under this clause 15.3(a)(i);and
 - (ii) within 10 Business Days after giving the notice under clause 15.3(a)(i), submit a written claim to the Principal's Representative which includes detailed particulars of why the Contractor believes the Direction constitutes or involves a Variation and all other details required by clause 19.2(b).
- (b) Despite the fact that the Contractor considers that a Direction by the Principal's Representative constitutes or involves a Variation, the Contractor must continue to perform its work in accordance with this deed including, unless otherwise directed, any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 15.3(a).

15.4 Valuation

Subject to clauses 15.3, 15.6(h), 15.7(c)(ii)A, 15.8(f), 16.4 and 19, one or more of the following will be adjusted for all Variations or where this deed provides that there is to be a valuation in accordance with this clause 15.4, which have been the subject of a Direction by the Principal's Representative:

- (a) the Design Contract Sum and the D&C Payment Schedule; and
 - (b) the Construction Contract Sum and the D&C Payment Schedule,
- in accordance with:
- (c) where a Variation Order under clause 15.2 specifies any adjustments under clause 15.2(b), those adjustments as specified in the Variation Order;
 - (d) where a Variation Order under clause 15.2 specifies any adjustments and conditions of adjustment that have been agreed in writing between the Principal and the Contractor in respect of the Variation specified in the Variation Order, those adjustments and conditions of adjustment as specified in the Variation Order; or
 - (e) otherwise for the Design Contract Sum and the Construction Contract Sum and the D&C Payment Schedule by the cost of the work and materials to be added or omitted as a result of the Variation, valued under clause 15.4(e)(i), clause 15.4(e)(ii) or clause 15.4(e)(iii), or a combination of them, as determined by the Principal's Representative (including as specified in a Variation Order):
 - (i) on the basis of the schedules of Contractor's rates or prices (if any) set out in the D&C Payment Schedule;
 - (ii) where the Variation Order specifies that the Variation is to be carried out as Daywork, on the basis of the procedure set out in the D&C Payment Schedule; or
 - (iii) on the basis of a reasonable amount,such value to be as stated by the Principal's Representative [REDACTED]
[REDACTED]. No other amounts are to be included in the Principal's Representative's valuation of the Variation.

If the Variation will delay, disrupt or interfere with the Contractor in carrying out the Contractor's Activities, any increased costs incurred by the Contractor due to the delay, disruption or interference in carrying out of the Contractor's Activities will not be valued under this clause 15.4, and the Contractor's entitlement (if any) for that delay, disruption or interference will be determined under and in accordance with clauses 17.5 and 17.6.

15.5 Omissions

If the Principal's Representative directs a Variation omitting or deleting any work from the Contractor's Activities:

- (a) the Principal may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;
- (b) the Principal will not be liable for any Claim by the Contractor as a result of 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 another person or persons to carry out and execute the omitted or deleted work; and
- (c) except for work omitted or deleted by a direction by the Principal's Representative of a Pre-Agreed Variation made under clause 15.7(a) by the relevant date set out in section 1 of Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations), the work which has been omitted or deleted shall be valued in accordance with clause 15.4.

15.6 The Contractor may propose Variation

- (a) The Principal and the Contractor acknowledge that:
 - (i) the design and construct project delivery method chosen is intended, among other things, to allow the Contractor to identify project cost savings while maintaining or enhancing the quality of the Contractor's Activities; and
 - (ii) it is their intention that any cost savings should benefit the Principal and the Contractor equally.
- (b) The Contractor may propose a Variation by giving written notice to the Principal's Representative:
 - (i) with details of the proposed Variation; and
 - (ii) which notice must state that it is a notice under this clause 15.6(b).
- (c) On receiving a notice under clause 15.6(b), the Principal's Representative may give written notice to the Contractor requiring it to give the Principal's Representative:
 - (i) written details of:
 - A. the proposed Variation in addition to those details provided in accordance with clause 15.6(b);
 - B. the reason for the proposed Variation;
 - C. the effect of the proposed Variation on the Contractor's Activities;
 - D. the effect of the proposed Variation on the Contract Program, the Subsidiary Contract Programs, the Date for Opening Completion, and the Date for Completion;
 - E. the effect (if any) that the proposed Variation will have on the Northern Package Project Works, including whether a variation to the work under the Northern Contract is likely to be required to enable the proposed Variation to be implemented or as a consequence of the proposed Variation; and
 - F. the cost effect of the proposed Variation including proposals for any cost savings arising from the Variation;
 - (ii) a written statement stating that the proposed Variation:
 - A. will not adversely affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Activities or the performance standards required by this deed; and
 - B. will not adversely affect the quality standards required under this deed; and
 - (iii) any other information and supporting documentation the Principal's Representative requires.
- (d) The Principal's Representative:
 - (i) (in his or her absolute discretion) may, by notice in writing, approve or reject any Variation the Contractor proposes; and
 - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the Contractor.

- (e) Prior to giving any direction under clause 15.6(d), the Principal's Representative may seek to negotiate with the Contractor over the level of cost savings arising from the proposed Variation. If the parties agree in writing on a different level of cost savings the Contractor's notice will be deemed to be amended by the inclusion of this different level of cost savings in place of the original cost savings notified by the Contractor.
- (f) If the Principal's Representative gives a direction under clause 15.6(d) approving the Variation, the Contractor must perform its obligations under this deed in accordance with the approved Variation.
- (g) With respect to any Variation the subject of a direction under clause 15.6(d), one or more of the following will be adjusted:
 - (i) the Design Contract Sum and the D&C Payment Schedule; and
 - (ii) the Construction Contract Sum and the D&C Payment Schedule,
 to reflect ■% of the cost savings notified by the Contractor under clause 15.6(c)(i)F (or such other amount as may be agreed between the Principal and the Contractor pursuant to clause 15.6(e) prior to the Principal's Representative's direction under clause 15.6(d)).
- (h) The Contractor will:
 - (i) bear all costs:
 - A. associated with proposing a Variation under clause 15.6(b);
 - B. associated with providing any details, information, statements or documents under clause 15.6(c);
 - C. reasonably incurred by the Principal (or the Principal's Representative) in assessing the proposed Variation (such costs to be a debt due and payable from the Contractor to the Principal on demand); and
 - D. associated with carrying out the proposed Variation where it is approved by the Principal's Representative; and
 - (ii) unless otherwise agreed, not be entitled to make any Claim against the Principal arising out of or in connection with the Variation.

15.7 Pre-Agreed Variations

- (a) The Principal's Representative may, in his or her absolute discretion and without being under any obligation to do so, direct by way of Variation any Pre-Agreed Variation by giving written notice to the Contractor.
- (b) The Principal and the Contractor agree that if a notice pursuant to clause 15.7(a) is given in respect of a Pre-Agreed Variation by the relevant date specified in the table in section 1 of Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations), this deed, including any relevant components of the D&C Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in section 2 of Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations) from the date the Contractor receives such notice.
- (c) Where the Principal's Representative directs a Pre-Agreed Variation by giving written notice to the Contractor by the relevant date referred to in clause 15.7(b), the Contractor, in respect of that Pre-Agreed Variation:
 - (i) must carry out its obligations under this deed as amended by clause 15.7(b); and
 - (ii) acknowledges and agrees that:
 - A. any adjustment of the components of the D&C Contract Sum made pursuant to clause 15.7(b) will be full compensation for all costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the D&C Contract Sum under clause 15.4; and
 - B. the Contractor is not entitled to make any Claim for:
 - 1) any acceleration to the carrying out of the Contractor's Activities which the Contractor must perform at any time in order to achieve Opening Completion by the Date for Opening Completion or Completion by the Date for Completion; or

- 2) any extension of time for any delay to the carrying out of the Contractor's Activities,
in connection with the issue of such a notice or the amendment of this deed pursuant to clause 15.7(b).
- (d) Nothing in this clause 15.7 prevents the Principal's Representative from:
 - (i) issuing a Variation Proposal Request as referred to in clause 15.1(a); or
 - (ii) directing a Variation by issue of a Variation Order under clause 15.2(a),
that involves the same (or similar) changes to the Project Works or the Landscaping Maintenance as a Pre-Agreed Variation after the relevant date for giving notice of the Pre-Agreed Variation specified in section 1 of Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations).
- (e) If the Principal's Representative:
 - (i) issues a Variation Proposal Request as referred to in clause 15.1(a); or
 - (ii) directs a Variation by issue of a Variation Order under clause 15.2(a),
which involves the same or similar changes to the Project Works or the Landscaping Maintenance as are required by a Pre-Agreed Variation and which is issued or directed (as relevant) after the relevant date in section 1 of Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations) for that Pre-Agreed Variation, the Principal and the Contractor agree that the Variation will be valued in accordance with clause 15.4.

15.8 Change in Law

- (a) Subject to this clause 15.8, the Contractor will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, any changes in Law.
- (b) Where there is a Qualifying Change in Law and either party wishes to claim an increase or a decrease (as the case may be) to the Initial Project Contract Sum or to the Actual Project Contract Sum on account of the Qualifying Change in Law:
 - (i) the party wishing to claim an increase or decrease must, and in the case of the Contractor must within 20 Business Days after the later of the occurrence of the Qualifying Change in Law and when the party first became aware of (or ought reasonably to have first become aware of) the Qualifying Change in Law, give a written notice to the other party stating that this clause 15.8(b) applies and containing:
 - A. details of the Qualifying Change in Law;
 - B. the party's estimate of the increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law including sufficient information to support the estimate; and
 - C. if the party wishing to claim is the Contractor, any other details reasonably required by the Principal;
 - (ii) the Principal and the Contractor will meet within 10 Business Days after a notice is given under clause 15.8(b)(i) and will negotiate and endeavour to agree any increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law and where agreement is reached as to the amount of the increase or decrease in costs:
 - A. in the case of a decrease, the relevant component or components of the D&C Contract Sum will be decreased and if the amounts paid by the Contractor under clause 18.4 on account of the D&C Contract Sum exceed the D&C Contract Sum, then the excess amount will be a debt due and payable from the Contractor to the Principal on demand; and
 - B. in the case of an increase, the relevant component or components of the D&C Contract Sum will be increased;
 - (iii) subject to clause 15.8(b)(iv), if no agreement is reached within 20 Business Days (or such other period that the Principal and the Contractor agree on) after a notice is given under clause 15.8(b)(i):

- A. in the case of a decrease in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law, the amount of the decrease in the Contractor's costs will be a debt due and payable from the Contractor to the Principal on demand, such amount to be as stated by the Principal's Representative; and
 - B. in the case of an increase in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law, and subject to clause 15.8(d) (if applicable) and clause 18.12, the relevant component or components of the D&C Contract Sum will be increased by the reasonable net extra Direct Costs actually incurred by the Contractor, such amount to be as stated by the Principal's Representative; and
- (iv) before making a determination under clause 15.8(b)(iii)A or B, the Principal's Representative may seek review by an independent expert of the documents referred to in clause 15.8(b)(i)C.
- (c) The Contractor must comply, and ensure the Project Works comply, with all changes in Law (including any Qualifying Change in Law).
- (d) Subject to clause 15.8(e), the Contractor will have no Claim against the Principal arising out of or in any way in connection with:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
 - (ii) a change in an Approval after the date of this deed.
- (e) If a requirement (which may include changes to permitted hours of work or noise and vibration limits), which the Contractor could not reasonably have anticipated and has not been caused or contributed to by the Contractor, of:
- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
 - (ii) a change in an Approval after the date of this deed,
- has a direct effect on the Contractor's performance of the Contractor's Activities and necessitates a Variation, the Contractor must within 10 Business Days after the new Approval or change taking effect notify the Principal's Representative in writing with detailed particulars of the reason why the new Approval or change necessitates a Variation (which for the purposes of this clause 15.8(e) includes a change to the timing, means or method of performing the Contractor's Activities). If the Contractor gives such a notice and the new Approval or change does necessitate a Variation, the Principal's Representative will direct a Variation under clause 15.2(a) after which, subject to clause 15.8(f), relevant adjustments will be made under clause 15.4.
- (f) If a requirement necessitating a Variation referred to in clause 15.8(e):
- (i) relates to an Approval other than an Approval specified in paragraph 1 of Schedule 28 (Environmental Documents);
 - (ii) could reasonably have been anticipated by a prudent, competent and experienced contractor in the position of the Contractor; or
 - (iii) arises out of or in connection with an act or omission of the Contractor, including any design development by the Contractor, or any change in the Contractor's construction methodology,
- no adjustments will be made under clause 15.4 and the Contractor will have no entitlement to, and the Principal will not be liable for, any Claim arising out of or in connection with that Variation.

16. Defects

16.1 Defects

- (a) The Contractor must promptly give the Principal's Representative and the Independent Certifier a detailed written report of:
 - (i) any Defect it detects; and
 - (ii) all action proposed to correct that Defect, including the estimated time required.

- (b) Subject to any direction contained in a Defects Rectification Notice and to clause 16.4, the Contractor must correct all Defects whether or not the Principal's Representative notifies it of them and, in the case of Defects detected:
 - (i) prior to Opening Completion, those Defects must be corrected prior to and as a condition precedent to achieving Opening Completion (other than Defects referred to in paragraph (a)(ii) of the definition of Opening Completion);
 - (ii) after Opening Completion and prior to Completion, those Defects must be corrected prior to and as a condition precedent to achieving Completion; and
 - (iii) after Completion (as applicable to the relevant Project Works, Temporary Works or Contractor's Activities), those Defects must be corrected as soon as practicable after detection.

16.1A Defects process

- (a) Either the Principal's Representative or the Independent Certifier may, from time to time prior to the expiry of an applicable Defects Correction Period, if they discover or believe there is a Defect, without prejudice to any other rights which the Principal may have under this deed or otherwise according to Law, notify the Contractor of the Defect.
- (b) The Contractor must on the 25th day of the month prior to the expiry of an applicable Defects Correction Period provide to the Principal's Representative and the Independent Certifier a report setting out:
 - (i) all Defects the subject of a written report in accordance with clause 16.1(a); and
 - (ii) all Defects notified by the Principal's Representative or the Independent Certifier in accordance with clause 16.1A(a).
- (c) Where the Principal's Representative considers that any matter the subject of a report or notification in accordance with clause 16.1(a), clause 16.1A(a) or clause 16.1A(b) constitutes a Defect, the Principal's Representative may, at any time prior to the expiry of an applicable Defects Correction Period:
 - (i) direct the Contractor to correct the Defect or any part of it (which direction may include other matters associated with the carrying out of the rectification work, including the time within which the rectification work must be carried out);
 - (ii) direct a Variation to overcome the Defect or any part of it (which direction may include other matters associated with the carrying out of the Variation, including the time within which the Variation must be carried out); and/or
 - (iii) notify the Contractor that the Principal will accept the work or any part of it despite the Defect,

by written notice to the Contractor in accordance with clause 3.10(a)(iii) (**Defects Rectification Notice**).
- (d) The Contractor may, within 5 Business Days after receiving a Defects Rectification Notice, notify the Principal's Representative and Independent Certifier that it does not agree that one or more matters the subject of a Defects Rectification Notice constitute a Defect.
- (e) If the Contractor does not issue a notice in accordance with clause 16.1A(d), then the Contractor must comply with the Defects Rectification Notice and its obligations under clauses 16.1(b), 16.2, 16.3 and 16.5 (as applicable).
- (f) If the Contractor issues a notice under clause 16.1A(d) then the issue as to whether there is any Defect and the nature and extent of any Defect will be referred to the Independent Certifier for determination.
- (g) If the Independent Certifier determines that a matter is a Defect, then the Contractor must comply with the Defects Rectification Notice and its obligations under clauses 16.1(b), 16.2, 16.3 and 16.5 (as applicable) in respect of that Defect.
- (h) If the Independent Certifier determines that a matter is not a Defect, the Defects Rectification Notice will be deemed to have been withdrawn to the extent applicable to the matter that is determined not to be a Defect.

16.2 Correction of Defect

- (a) Where a Defects Rectification Notice directs the Contractor to correct a Defect in accordance with clause 16.1A(c)(i) the Contractor must prepare and deliver a rectification methodology (**Defects Rectification Methodology**) to the Independent Certifier for review within 5 Business Days after the later of:
- (i) receiving that Defects Rectification Notice; and
 - (ii) where the Contractor issues a notice under clause 16.1A(d), the Independent Certifier determining that there is a Defect,
- and the Defects Rectification Methodology must comply with any requirements specified in the Defects Rectification Notice.
- (b) Within:
- (i) 5 Business Days after receipt of the Defects Rectification Methodology, the Independent Certifier must; and
 - (ii) 10 Business Days after receipt of the Defects Rectification Methodology, the Principal may,
- review and comment on the Defects Rectification Methodology.
- (c) The Contractor must correct the Defect:
- (i) in accordance with the Defects Rectification Methodology, as amended to reflect the comments provided by the Independent Certifier and the Principal in accordance with clause 16.2(b) (if applicable);
 - (ii) at times required by the Principal's Representative;
 - (iii) in accordance with the requirements of any relevant Authority;
 - (iv) so as to minimise the impact on the use of the relevant part of the Project Works;
 - (v) in a manner which causes as little inconvenience as possible to:
 - A. the activities of the Northern Package Contractor; or
 - B. users of the Project Works, Local Areas, a Service, or any access and the adjacent community;
 - (vi) where the Contractor proposes to perform any work which will or is likely to have the effect of restricting interfering with or obstructing the free flow of traffic on, or obstruct or close any lane or shoulder of the Works or a Local Road, in accordance with a Road Occupancy Licence obtained under clause 5.15; and
 - (vii) in accordance with its obligations under the Interface Deed.
- (d) When it considers that a Defect the subject of the correction works has been corrected, the Contractor must request the Independent Certifier to determine that the Defect no longer constitutes a Defect and the Contractor must:
- (i) provide to the Independent Certifier all relevant documentation, including quality assurance records and test results; and
 - (ii) if required by the Independent Certifier, organise an inspection to be attended by the Independent Certifier and the Principal's Representative.
- (e) The Independent Certifier must, within a reasonable time, notify the Principal's Representative and the Contractor whether it determines that:
- (i) the Defect has been corrected; or
 - (ii) the Defect has not been corrected, in which case the Contractor must continue to correct the Defect and the process in clause 16.2(d) will be repeated.

16.3 Variation to overcome Defect

- (a) Subject to clause 16.1A, where a Defects Rectification Notice directs a Variation to overcome a Defect or any part of it under clause 16.1A(c)(ii), the Contractor must carry out the Variation:
- (i) within any time period specified in the Principal's Representative's direction;
 - (ii) if during the Defects Correction Period applicable to the relevant part of the Project Works or Temporary Works, or in the case of a Defect in the Landscaping Maintenance, the Landscaping Maintenance Period:

- A. at times and in the manner required by the Principal's Representative;
 - B. in accordance with the requirements of any relevant Authority;
 - C. so as to minimise the impact on the use of the relevant part of the Project Works;
 - D. in a manner which causes as little inconvenience as possible to users of the Project Works, Local Areas, a Service, or any access and the adjacent community; and
 - E. where the Contractor proposes to perform any work which will or is likely to have the effect of restricting, interfering with or obstructing the free flow of traffic on, obstruct or close any lane or shoulder of the Works or a Local Road, in accordance with a Road Occupancy Licence obtained under clause 5.15.
- (b) The Contractor's entitlement to an extension of time (if relevant) or any adjustment to the D&C Contract Sum for carrying out the Variation will be determined in accordance with clause 17.5 and valued in accordance with clause 15.4, and the Contractor will not have any Claim for delay costs against the Principal.

16.4 The Principal's correction of Defects

- (a) Despite clauses 16.1A and 16.2, if the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clauses 16.1(a) or 16.1A(b) which the Principal's Representative reasonably believes:
- (i) involves an event serious enough to cause significant inconvenience and disruption to users of the Works, Local Areas, a Service or any access or to the adjacent community and the Contractor will be unable to remedy the relevant Defect in the time required by the Principal's Representative to prevent the event, inconvenience of disruption occurring; or
 - (ii) involves a Defect in the Tie-In Works,
- then, without prejudice to any other rights which the Principal may have under this deed or otherwise according to Law:
- (iii) the Principal may:
 - A. correct, or procure that a third party correct, the Defect or any part of it; or
 - B. in the case of a Defect referred to in clause 16.4(a)(ii), procure that the Northern Package Contractor correct the Defect or any part of it, at the risk and cost of the Contractor; and
 - (iv) the Contractor must pay to the Principal the costs of the correction work incurred by the Principal.
- (b) Nothing in this clause 16.4 requires the Principal to inspect any part of the Project Works or the Landscaping Maintenance for Defects or to correct any Defect and the Contractor is not relieved from, and remains fully responsible for, its obligations under this deed.

16.5 Acceptance of work

Subject to clause 16.1A, where a Defects Rectification Notice provides notification to the Contractor in accordance with clause 16.1A(c)(iii) that the Principal will accept the work or any part of it despite the Defect, the relevant component of the Actual Project Contract Sum [REDACTED] will be reduced by the amount which represents the reasonable cost of correcting the Defect (or the part of it), such amount to be as stated by the Principal's Representative.

16.6 Works

The Works have:

- (a) a Defects Correction Period of [REDACTED] months, which begins on the Date of Opening Completion; and
- (b) a further Defects Correction Period of [REDACTED] months in respect of any work the subject of a direction under clause 16.1A(c)(i) or 16.1A(c)(ii) during the Defects Correction Period, which begins on the date of the correction of the Defect or completion of the Variation,

[REDACTED]

the Principal's Representative may [REDACTED] waive the requirement for the Contractor to obtain the written notice as a condition precedent to the commencement of the relevant Defects Correction Period or Completion (as the case may be).

16.8 Service Works

- (a) Each discrete part of the Service Works has:
- (i) a Defects Correction Period which begins when:
 - A. the relevant Authority that has jurisdiction in respect of the Service or, if applicable, the owner of the Service gives written notice that the work is complete; and
 - B. the Independent Certifier and the Principal's Representative have been provided with a copy of the notice,and ends [REDACTED] months after the Date of Opening Completion; and
 - (ii) a further Defects Correction Period of [REDACTED] months in respect of any work the subject of a direction under clause 16.1A(c)(i) or 16.1A(c)(ii) (relating to the discrete part of the Service Works) during the Defects Correction Period, which begins when:
 - A. the relevant Authority or, if applicable, the owner of the Service gives written notice that the Defect has been corrected or the Variation completed; and
 - B. the Independent Certifier and Principal's Representative have been provided with a copy of the notice,[REDACTED]
[REDACTED]
- (b) Subject to clause 16.8(c), it is a condition precedent to Opening Completion and Completion, that:
- (i) a written notice of the kind referred to in clause 16.8(a)(i) has been given for each discrete part of the Service Works; and
 - (ii) the Independent Certifier and the Principal's Representative have been provided with a copy of each such notice.
- (c) If the Contractor demonstrates to the satisfaction of the Principal's Representative that an Authority or, if applicable the owner of the Services has failed to provide a written notice required under clauses 16.8(a)(i)A, 16.8(a)(ii)A or 16.8(b), despite the Contractor using its best endeavours to obtain the written notice, and that failure has prevented:
- (i) the commencement of the relevant Defects Correction Period applicable to a discrete part of the Service Works; or
 - (ii) the Contractor achieving Opening Completion or Completion,
- the Principal's Representative may [REDACTED], waive the requirement for the Contractor to obtain the written notice required for commencement of the relevant Defects Correction Period or as a condition precedent to Opening Completion or Completion (as the case may be).

16.9 Property Works

Each discrete part of the Property Works has:

- (a) a Defects Correction Period which begins on:
- (i) the completion of the Property Works; and
 - (ii) submission by the Contractor of a deed or signed statement (as the case may be) to the Independent Certifier and the Principal's Representative under clause 13.2(g),
- whichever is the later, and ends [REDACTED] months after the Date of Opening Completion; and
- (b) a further Defects Correction Period of [REDACTED] months in respect of any work the subject of a direction under clause 16.1A(c)(i) or 16.1A(c)(ii) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect or completion of the Variation,

16.10 Failure by the Contractor to comply with direction

- (a) Without limiting clause 22.9, if the Contractor does not comply with its obligations under clause 16.1A or clause 16.2, the Principal may employ others to carry out that direction.
- (b) The costs, losses, expenses, damages and liability suffered or incurred by the Principal in taking the action contemplated in clause 16.10(a) or as a result of the Contractor's failure to comply with clause 16.1A or clause 16.2 will be a debt due and payable from the Contractor to the Principal on demand.

16.11 Rights not affected

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

- (a) the rights conferred on the Principal, the Principal's Representative or the Independent Certifier by clause 16 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal, the Principal's Representative or the Independent Certifier to exercise, any such rights; or
- (c) any direction or requirement of the Principal's Representative or the Independent Certifier under clause 16.1A or act under clause 16.4.

16.12 Use of defective facilities

The Contractor must not allow the use of any part of the Project Works or Temporary Works which the Contractor knows are defective or unsafe and which threaten the safety of members of the public.

17. Time and Completion

17.1 The Contractor's programming obligations

- (a) Within 20 Business Days after the date of this deed, the Contractor must prepare and submit to the Independent Certifier and the Principal's Representative Subsidiary Contract Programs for all activities to be undertaken in carrying out the Contractor's Activities (including procurement of goods and materials).
- (b) The Subsidiary Contract Programs must be based upon, and be consistent with, the Contract Program.
- (c) The Contract Program and the Subsidiary Contract Programs must:
 - (i) comply with the requirements in the section of the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information); and
 - (ii) be in hard copy form and in an electronic form and include such detail as the Principal's Representative reasonably requires and be accurate, comprehensive and complete in all respects.
- (d) The requirements of clause 17.1(c) and the underlying program logic must be accessible and clearly shown in the electronic form of the Contract Program and all Subsidiary Contract Programs. The software used by the Contractor must be acceptable to the Principal's Representative.
- (e) The Contract Program and all Subsidiary Contract Programs must be reviewed and updated as reasonably required by the Principal's Representative and in any event at least:
 - (i) on the 25th day of each month; and
 - (ii) within 10 Business Days after the granting of each extension of time under clause 17.5(d) and of each direction to compress the Contractor's Activities under clause 17.7,

to take into account the actual progress of the Contractor's Activities and the impact of each extension of time and direction to compress and must disclose the Contractor's

proposed changes to activities, sub-activities and events from the previously provided Contract Program or Subsidiary Contract Program. These updated programs must be given to the Independent Certifier and the Principal's Representative with the reports required by the Contractor Documentation Schedule.

- (f) The Principal's Representative may reject a program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program within 10 Business Days after that program is given to the Principal's Representative if it does not comply with the requirements of clauses 17.1(b), 17.1(c), 17.1(d) or 17.1(e). If the Principal's Representative rejects a program submitted by the Contractor as a Contract Program or a Subsidiary Contract Program the Contractor must submit a corrected program within 5 Business Days. If the Principal's Representative raises no objection and the program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program complies with clauses 17.1(b), 17.1(c), 17.1(d) and 17.1(e) (as relevant), it becomes the Contract Program or Subsidiary Contract Program, as applicable.
- (g) A program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program that is rejected by the Principal's Representative is not a Contract Program or a Subsidiary Contract Program for the purposes of this deed.
- (h) Neither a Direction relating to, nor review of nor comment on nor any update to, a program (including the Contract Program and any Subsidiary Contract Program) by the Principal or the Principal's Representative, nor the inclusion of the Contract Program as an exhibit to this deed, will:
 - (i) relieve the Contractor from or reduce its liabilities or obligations under this deed, especially (without limitation) the obligations under clauses 17.3(a) and 17.3(b);
 - (ii) evidence or constitute an extension of time by the Principal's Representative or a Direction by the Principal's Representative to compress, accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
 - (iii) reduce the time for carrying out of the Principal or the Principal's Representative's obligations under this deed, including by obliging the Principal or the Principal's Representative to perform an obligation earlier than it was required to do so at the date of this deed.
- (i) Whether or not the Contractor chooses to compress or accelerate the carrying out of the Contractor's Activities:
 - (i) neither the Principal nor the Principal's Representative will be obliged to take or avoid taking any action to assist or enable the Contractor to achieve Opening Completion by or before the Date for Opening Completion or Completion by or before the Date for Completion; and
 - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.
- (j) Where the Contractor chooses to compress or accelerate the carrying out of the Contractor's Activities:
 - (i) neither the Principal nor the Principal's Representative will be obliged to avoid inhibiting the Contractor from achieving Opening Completion by or before the Date for Opening Completion or Completion by or before the Date for Completion; and
 - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

17.2 Sequencing

- (a) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 17.2, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 17.2 unless the direction is in writing and expressly states that it is a direction under this clause 17.2.
- (b) If compliance with a written direction expressly stated to be pursuant to this clause 17.2 causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued under clause 15.4 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 deed.

- (c) The Contractor's costs of compliance under clause 17.2(b) 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 17.2.

17.3 Date for Opening Completion and Date for Completion

- (a) The Contractor must achieve Opening Completion by the Date for Opening Completion.
- (b) The Contractor must achieve Completion by the Date for Completion.
- (c) The Contractor acknowledges:
 - (i) the importance of complying with its obligations under clauses 17.3(a) and 17.3(b); and
 - (ii) that the Date for Opening Completion and the Date for Completion will only be extended as set out in clause 17.5.

17.4 Risk and notice of delay

- (a) Except as expressly provided for in clauses ■, 17.5 ■ the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities (which, for the avoidance of doubt, includes the Contractor accepting the risk of all delays in, and disruption to, the carrying out of the Provisional Sum Work) and the performance of its obligations under this deed.
- (b) Except as provided under clause 11.6(d), within 5 Business Days after the Contractor first became aware, or should reasonably have first become aware, that an event has caused or will or is likely to cause any delay, the Contractor must give the Principal's Representative written notice of the event and estimated delay, with details of the event and how Opening Completion and/or Completion and the Date of Opening Completion and/or the Date of Completion are likely to be affected (if at all).

17.5 Extension of time

- (a) If the Contractor has been or will be delayed in achieving Opening Completion or Completion by an Excusable Cause of Delay, the Contractor may claim:
 - (i) if Opening Completion has not occurred, an extension of time to both the Date for Opening Completion and the Date for Completion of an equivalent number of days; and
 - (ii) if Opening Completion has occurred, an extension of time to the Date for Completion only,in accordance with the requirements of this clause 17.5. If the Contractor claims an extension of time under this clause 17.5, it may also claim an extension to any expiration date for access in the Site Access Schedule.
- (b) To claim an extension of time the Contractor must:
 - (i) within 14 days of the earlier of when the Contractor:
 - A. became aware; or
 - B. should reasonably have become aware,of the Excusable Cause of Delay that has or will cause delay to achieving Opening Completion and/or Completion, submit a written claim to the Principal's Representative for an extension to the Date for Opening Completion and/or the Date for Completion, which:
 - C. gives detailed particulars of the Excusable Cause of Delay and the events or circumstances giving rise to the delay and the period of the delay;
 - D. states the date on which the Excusable Cause of Delay giving rise to the delay first arose; and
 - E. states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the delay involves an activity that is critical to the maintenance of progress in the

- execution of the Contractor's Activities and that has delayed or will actually delay the Contractor in achieving Opening Completion and/or Completion in the manner described in clause 17.5(c)(iii); and
- (ii) if the delay continues beyond the period referred to in the particulars provided under clause 17.5(b)(i)E and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
 - A. every 14 days after the first written claim until 7 days after the end of the effects of the delay; and
 - B. containing the information required by clauses 17.5(b)(i)C and 17.5(b)(i)E.
 - (c) Without limiting clauses 17.5(g) and 17.5(h), each of the following is a condition precedent to the Contractor's entitlement to an extension of time:
 - (i) the Contractor must have given all notices and claims required by clauses 11.6(c) (in respect of an extension of time claim in respect of clause 11.6), 17.4(b) and 17.5(b) in accordance with the requirements of those clauses, including within the time frames required by those clauses;
 - (ii) the Excusable Cause of Delay was beyond the reasonable control of the Contractor;
 - (iii) the Excusable Cause of Delay has or will actually delay the Contractor in achieving Opening Completion and/or Completion and the delay is evidenced by delay to an activity or activities on the critical path as identified on the Contract Program and any relevant Subsidiary Contract Program; and
 - (iv) the Principal's Representative has not given the Contractor a Direction under clause 17.7 to compress the Contractor's Activities in respect of the delay in question.
 - (d) If the conditions precedent in clause 17.5(c) have been satisfied, the Principal's Representative must extend the Date for Opening Completion and/or the Date for Completion by:
 - (i) if the cause of delay is a Variation, a period consistent with the adjusted Date for Opening Completion and/or Date for Completion notified in the relevant Variation Order under clause 15.2(b); or
 - (ii) otherwise, a reasonable period not exceeding the period of delay, as stated by the Principal's Representative,
 in either case having regard to any reduction in accordance with clauses 17.5(f) or 17.7(b).
 - (e) The Principal's Representative must notify the Principal and the Contractor of the extension of time that has been granted within 28 days after the Contractor's last claim under clause 17.5(b).
 - (f) The Contractor's entitlement to any extension to the Date for Opening Completion and/or the Date for Completion under clause 17.5(d)(i) or clause 17.5(d)(ii) will be reduced to the extent:
 - (i) that the Contractor could have avoided or lessened the delay by taking reasonable steps to avoid or prevent the cause of the delay or to avoid or minimise the delay and its consequences; and
 - (ii) where more than one event causes delay and the cause of at least one of those delays is not an Excusable Cause of Delay, of any Concurrent Delay (regardless of which delay event commenced first or the time of commencement of the respective delay events).
 - (g) The Principal's Representative may in his or her absolute discretion unilaterally extend the Date for Opening Completion and/or Date for Completion by any period specified in a notice to the Contractor, whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under this clause 17.5.
 - (h) The power to extend the Date for Opening Completion and/or Date for Completion under clause 17.5(g):

- (i) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise his or her discretion under clauses 17.5(g) and 17.5(h) for the benefit of the Contractor; and
- (ii) is not a Direction which can be the subject of a Dispute pursuant to clause 20 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

17.6 Delay costs

(a) The Contractor will be entitled to be paid, [REDACTED] the reasonable Direct Costs (for this purpose, as if the definition of Direct Costs excluded the words "excluding any allowance for delay or delay costs" [REDACTED])

[REDACTED] reasonably and necessarily incurred by the Contractor [REDACTED] as determined by the Principal's Representative, for each day by which the Date for Opening Completion and/or the Date for Completion is extended:

(i) due to a breach of this deed by the Principal;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(vi) under clause 9.1(d);

(vii) subject to clauses 12.7(d), 15.6, 15.8(f), 16.3, 17.6(d) and 17.6(e), due to a Variation the subject of a Direction by the Principal's Representative or any deemed Variation under clause 5.20 or 6.3(b) of this deed;

[REDACTED]

[REDACTED]

[REDACTED]

(b) The Contractor must:

- (i) provide the Principal's Representative with such evidence of the delay costs referred to in clause 17.6(a) as may be reasonably required by the Principal's Representative; and
- (ii) take all steps reasonably practicable to mitigate (including demobilising from the Construction Site where practicable) the delay costs incurred by it as a result of the delay.

(c) The Principal's liability under [REDACTED] is limited to the amounts stated in rows 1 to 3 of Item 34 of Schedule 1 (Contract Information).

[REDACTED]

[REDACTED]

[REDACTED]

(d) Despite clause 15.8, the Contractor will not be entitled to delay costs under clause 17.6(a) arising out of or in any way in connection with:

- (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
- (ii) a change in an Approval after the date of this deed, regardless of whether a new Approval or change in an Approval necessitates a Variation.

- (e) [REDACTED]
[REDACTED]
[REDACTED] the delay costs that the Contractor is entitled to under clause 17.6(a):
 - (i) are the agreed damages which will be payable by the Principal where the Date for Opening Completion and/or Date for Completion is extended due to a breach of this deed by the Principal; and
 - (ii) will be a limitation on the Principal's liability to the Contractor for any delay, disruption or interference which arises out of or in connection with any breach of this deed by the Principal or any other matters described in clause 17.6(a).
- (f) Subject to clauses 17.6(d) and 17.6(e), if the Principal's Representative has unilaterally extended the Date for Opening Completion and/or Date for Completion under clause 17.5(g), the Principal's Representative may in his or her absolute discretion decide to pay delay costs to the Contractor for such amount as the Principal's Representative in his or her absolute discretion sees fit.
- (g) The power to pay delay costs to the Contractor under clause 17.6(f):
 - (i) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise his or her discretion under clause 17.6(f) for the benefit of the Contractor; and
 - (ii) is not a Direction which can be the subject of a dispute pursuant to clause 20 or in any other way opened up or reviewed by any other person (including any arbitrator or court).
- (h) [REDACTED]
[REDACTED]
[REDACTED], the Contractor will not be entitled to make nor will the Principal be liable on any Claim, including any Claim for damages, costs, expenses or losses for any delay, disruption or interference arising out of or in connection with the Contractor's Activities, other than for any amount which is paid or payable by the Principal under this clause 17.6.
- (i) The Principal shall not be obliged to pay any costs under this clause 17.6 which have already been included in the value of a Variation or any other payment (including a payment of Direct Costs) under this deed.

17.7 Compression

- (a) Subject to clause 17.7(b), the Principal's Representative may direct the Contractor to compress the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of any delay, which may include taking those measures necessary to achieve Opening Completion by the Date for Opening Completion or Completion by the Date for Completion, whether or not the cause of any delay entitles the Contractor to an extension of time to the Date for Opening Completion and/or the Date for Completion. The Principal's Representative may not give a direction under this clause 17.7(a) which requires the Contractor to compress the Contractor's Activities so as to achieve Opening Completion earlier than the Date for Opening Completion or Completion earlier than the Date for Completion.
- (b) The Principal's Representative may only direct the Contractor to compress the Contractor's Activities under clause 17.7(a) to the extent that the compression is reasonably capable of being achieved or would be reasonably capable of being achieved by a prudent and competent contractor in the position of the Contractor.
- (c) If, following receipt of a claim under clause 17.5(b), the Principal's Representative gives the Contractor a direction to compress under clause 17.7(a):
 - (i) and the direction to compress only applies to part of the delay, the Contractor's entitlement to any extension of time to which it may otherwise have been entitled will be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome or minimise the delay, as stated by the Principal's Representative; and
 - (ii) the Principal's Representative may at any time by notice in writing withdraw the direction after which the Contractor will be entitled to any extension of time to

which it may have otherwise been entitled to in respect of the claim, such entitlement to an extension of time to be reduced to the extent that any compression of the Contractor's Activities pursuant to the direction undertaken by the Contractor prior to the withdrawal of the direction has overcome or minimised the delay the subject of that claim, as stated by the Principal's Representative.

- (d) If the Principal's Representative gives a direction to the Contractor under clause 17.7(a):
 - (i) the Contractor must compress the performance of the Contractor's Activities to overcome and minimise the delay to the extent to which the direction requires the Contractor to overcome and minimise the delay;
 - (ii) to the extent that the Contractor would, but for the direction, have been entitled to an extension of time to the Date for Opening Completion and/or the Date for Completion for the cause of delay in respect of which the Contractor made a claim under clause 17.5(b), the Contractor will be entitled to be paid:
 - A. if the direction relates to:
 - 1) all of the delay caused by a Variation; or
 - 2) part of any delay caused by a Variation as specified in the relevant Variation Proposal Request under clause 15.1, any amount notified by the Contractor under clause 15.1(a)(ii)B and approved by the Principal's Representative; or
 - B. otherwise and subject to clause 18.12, the reasonable net extra Direct Costs incurred by the Contractor (which if the Principal's Representative gives a notice to withdraw the direction under clause 17.7(a), will be those reasonable net extra Direct Costs incurred prior to the giving of such notice) and directly attributable to compressing the performance of the Contractor's Activities as required by the Principal's Representative's direction under clause 17.7(a) as stated by the Principal's Representative; and
 - (iii) the Contractor will have no Claim arising out of or in connection with the cause of delay or the delay or any direction under clause 17.7(a) (whether for an extension of time to the Date for Opening Completion and/or Date for Completion which the Contractor might have had but for the direction or otherwise) except for its entitlements under clause 17.7(b) and clause 17.7(d)(ii).
- (e) The Principal's rights to liquidated damages under clause 7A.3 for a failure by the Contractor to achieve Opening Completion by the Date for Opening Completion or to achieve Completion by the Date for Completion are not affected by the Principal's Representative giving the Contractor a direction to compress under this clause 17.7.

17.8 Suspension

- (a) The Principal's Representative may direct the Contractor to suspend and subsequently to re-commence performance of all or any of the Contractor's obligations under this deed.
- (b) If the suspension under clause 17.8(a) arises as a result of:
 - (i) the Contractor's failure to carry out its obligations under this deed, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to perform its obligations under this deed:
 - A. a direction to suspend under this clause 17.8 will entitle the Contractor to:
 - 1) subject to clause 18.12, be paid by the Principal the reasonable net extra Direct Costs incurred by it as a result of the suspension as stated by the Principal's Representative; and
 - 2) an extension of time to the Date for Opening Completion and/or the Date for Completion and delay costs where it is otherwise so entitled under clauses 17.5 and 17.6; and

- B. the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this clause 17.8(b)(ii).

17.9 Not used

17.10 Opening Completion and Completion

- (a) The Contractor must give the Principal's Representative and the Independent Certifier:
 - (i) 95 Business Days; and
 - (ii) 1 month,written notice of the estimated:
 - (iii) Date of Opening Completion; and
 - (iv) Date of Completion.
- (b) The Principal's Representative, the Project Director and the Independent Certifier must, within 10 Business Days after receipt of the notice referred to in clause 17.10(a)(ii), jointly inspect the Contractor's Activities at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.10(b), the Independent Certifier must give the Contractor a notice either:
 - (i) containing a list of items which it believes must be completed before Opening Completion or Completion (as applicable) is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Opening Completion or Completion (as applicable) that it is not practicable to issue a list as contemplated in clause 17.10(c)(i).
- (d) If, after the Contractor gives a notice referred to in clause 17.10(a), the estimated Date of Opening Completion or the estimated Date of Completion changes, the Contractor must promptly notify the Principal's Representative and the Independent Certifier of the revised date.
- (e) When the Contractor considers it has achieved Opening Completion or Completion (as applicable), the Contractor must notify the Principal's Representative and the Independent Certifier in writing.
- (f) The Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days after receipt of the Contractor's notice referred to in clause 17.10(e), jointly inspect the Contractor's Activities at a mutually convenient time.
- (g) Following the joint inspection under clause 17.10(f) and in any event within 10 Business Days after receipt of a notice under clause 17.10(e), the Independent Certifier must state and notify the Contractor of:
 - (i) if Opening Completion or Completion has been achieved, the date on which the Contractor achieved Opening Completion or Completion (as applicable); and
 - (ii) if Opening Completion or Completion has not been achieved:
 - A. the items, including any Defects, which remain to be completed before Opening Completion or Completion (as applicable) is achieved; or
 - B. that the Contractor is so far from achieving Opening Completion or Completion (as applicable) that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.10(g)(ii)A.
- (h) If the Independent Certifier issues a notice under clause 17.10(g)(ii), the Contractor must proceed with the Contractor's Activities and thereafter when it considers it has achieved Opening Completion or Completion it must give the Principal's Representative and the Independent Certifier a further written notice to that effect under clause 17.10(e) after which clauses 17.10(f) and 17.10(g) will reapply.
- (i) The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative and Independent Certifier may invite any other person to attend any joint inspection provided for by clause 17.10 including representatives of Third Parties; and
 - (ii) Third Parties may provide comments to the Independent Certifier in relation to any non-compliance of the Contractor's Activities with this deed.

- (j) The Contractor:
 - (i) acknowledges that, at the date of this deed, it is anticipated that achieving Opening Completion before the Date for Opening Completion and Completion before the Date for Completion will be of benefit to the Principal; and
 - (ii) must co-operate to ensure that any potential for early Opening Completion and early Completion is maximised in light of the Principal's total requirements for the development of the Project.

17.11 Part of the works or section

- (a) If required by the Principal, the Contractor must:
 - (i) permit the Principal to use; or
 - (ii) permit the opening for the use of the public of, any parts of the Works and any Local Area, irrespective of whether Opening Completion or Completion has been achieved.
- (b) Such use of a part of the Works or a Local Area prior to Opening Completion or Completion under clause 17.11(a) will not relieve the Contractor of any of its responsibilities, obligations or liabilities under this deed, including its responsibility for the care of the Contractor's Activities under clauses 6.1 and 6.3.

17.12 Opening of the Project Works following Opening Completion and Completion

- (a) If Opening Completion has been achieved, regardless of whether Completion has been achieved, the Principal's Representative may, in its absolute discretion, notify the Contractor that it proposes to open the part of the Project Works to the public for the continuous passage of vehicles by a date stated in the notice (which date must be within a reasonable time following Opening Completion having regard to the Contractor's obligation to achieve Completion by the Date for Completion) (the **Open to Traffic Date**). The Principal will then have the right to open the Motorway for the use of the public from the date stated in the Principal's Representative's notice.
- (b) If the Principal's Representative gives a notice under clause 17.12(a):
 - (i) the notice will not limit or otherwise affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve Completion by the Date for Completion; and
 - (ii) the Contractor must provide all reasonable assistance required by the Principal to allow the Principal to open the Motorway for the use of the public from the Open to Traffic Date.
- (c) A notice issued under clause 17.12(a) is not:
 - (i) evidence that Opening Completion has been achieved but is only on account of the relevant component or components of Opening Completion;
 - (ii) an admission of liability; or
 - (iii) approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under or compliance with this deed.
- (d) Despite clause 9.1, the Site Access Schedule and any other provision of this deed:
 - (i) the Contractor's right of access to the parts of the Construction Site, Site, the Local Area Works Areas, the Tie-In Works Area, and the Temporary Works Areas that are opened to the public for the continuous passage of vehicles will end on the later of:
 - A. the Date of Opening Completion; or
 - B. the Open to Traffic Date; and
 - (ii) on and from the Open to Traffic Date, the defined terms 'Construction Site', 'Site', 'Local Area Works Areas', 'Tie-In Works Area', and the 'Temporary Works Areas' (as applicable) will be interpreted in accordance with clause 17.12(d)(i).

17.13 Warranties by others

- (a) The Contractor must, as a condition precedent to Final Completion, obtain and provide the Principal with warranties from the Subcontractors supplying any plant or equipment

for incorporation in the Project Works in favour of the Principal on the terms in Schedule 34 (Form of Warranty) or on terms otherwise agreed by the Principal.

- (b) The provision of those warranties will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of those warranties.

17.14 Final Completion

- (a) The Contractor must give the Principal's Representative and the Independent Certifier two months' written notice of the estimated Date of Final Completion.
- (b) The Principal's Representative, the Project Director and the Independent Certifier must, within 15 Business Days after the notice referred to in clause 17.14(a), jointly inspect the Works at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.14(b), the Independent Certifier must give the Contractor a list of items which must be completed before Final Completion is achieved.
- (d) When the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative and the Independent Certifier in writing and the Principal's Representative, the Project Director and the Independent Certifier must jointly inspect the Works at a mutually convenient time.
- (e) Following the joint inspection under clause 17.14(d) and in any event within 20 Business Days after receipt of a notice under clause 17.14(d), the Independent Certifier must state and notify the Contractor of:
 - (i) if Final Completion has been achieved, the date on which the Contractor achieved Final Completion; or
 - (ii) if Final Completion has not been achieved:
 - A. the items which remain to be completed before Final Completion is achieved; or
 - B. that the Contractor is so far away from achieving Final Completion, it is not practicable to specify the items referred to in clause 17.14(e)(ii)A.
- (f) If the Independent Certifier issues a notice under clause 17.14(e)(ii)B, the Contractor must proceed with the Contractor's Activities and thereafter when it considers it has achieved Final Completion it must give the Principal's Representative and the Independent Certifier further written notice to that effect under clause 17.14(d) after which clauses 17.14(e) and 17.14(f) will reapply.

17.15 Effect of notice of Opening Completion, Completion, Landscaping Maintenance or Final Completion

A notice issued under clauses 13A.5(b)(i), 17.10(g)(i) or 17.14(e)(i) will not:

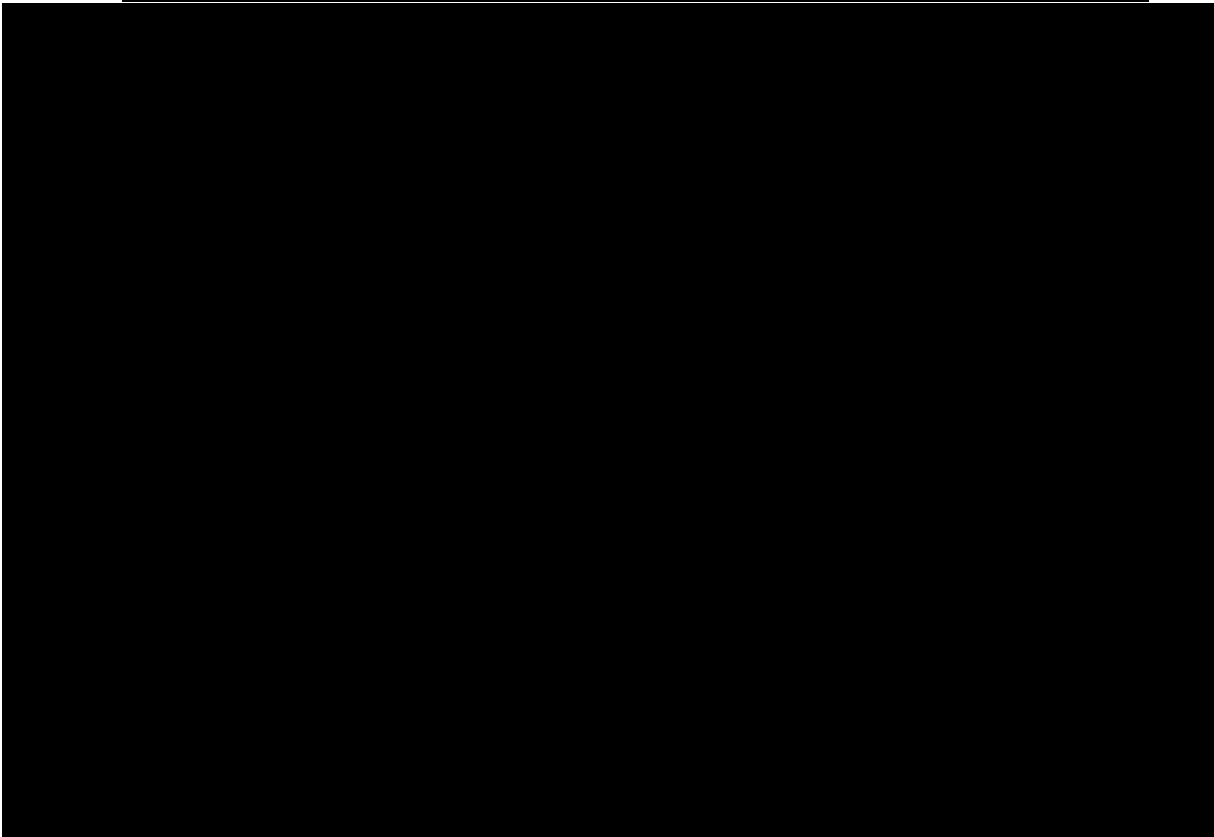
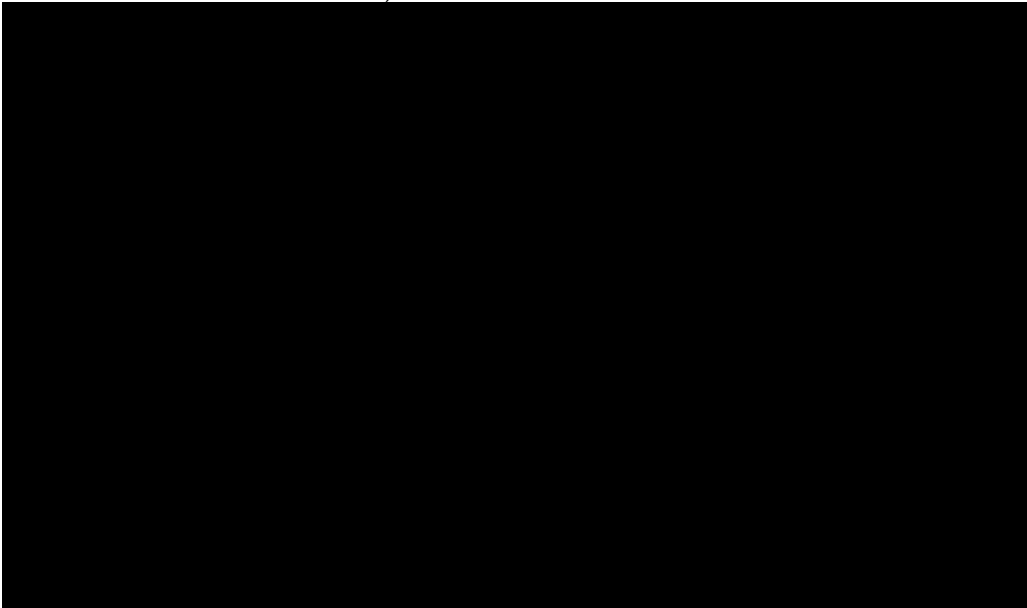
- (a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this deed;
- (b) be taken as an admission or evidence that the Project Works or the Landscaping Maintenance comply with this deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative, including the right to correct any Defect that may have existed on the issue of a notice under clauses 17.10(g)(i) or 17.14(e)(i), whether or not the Defect was known to exist.

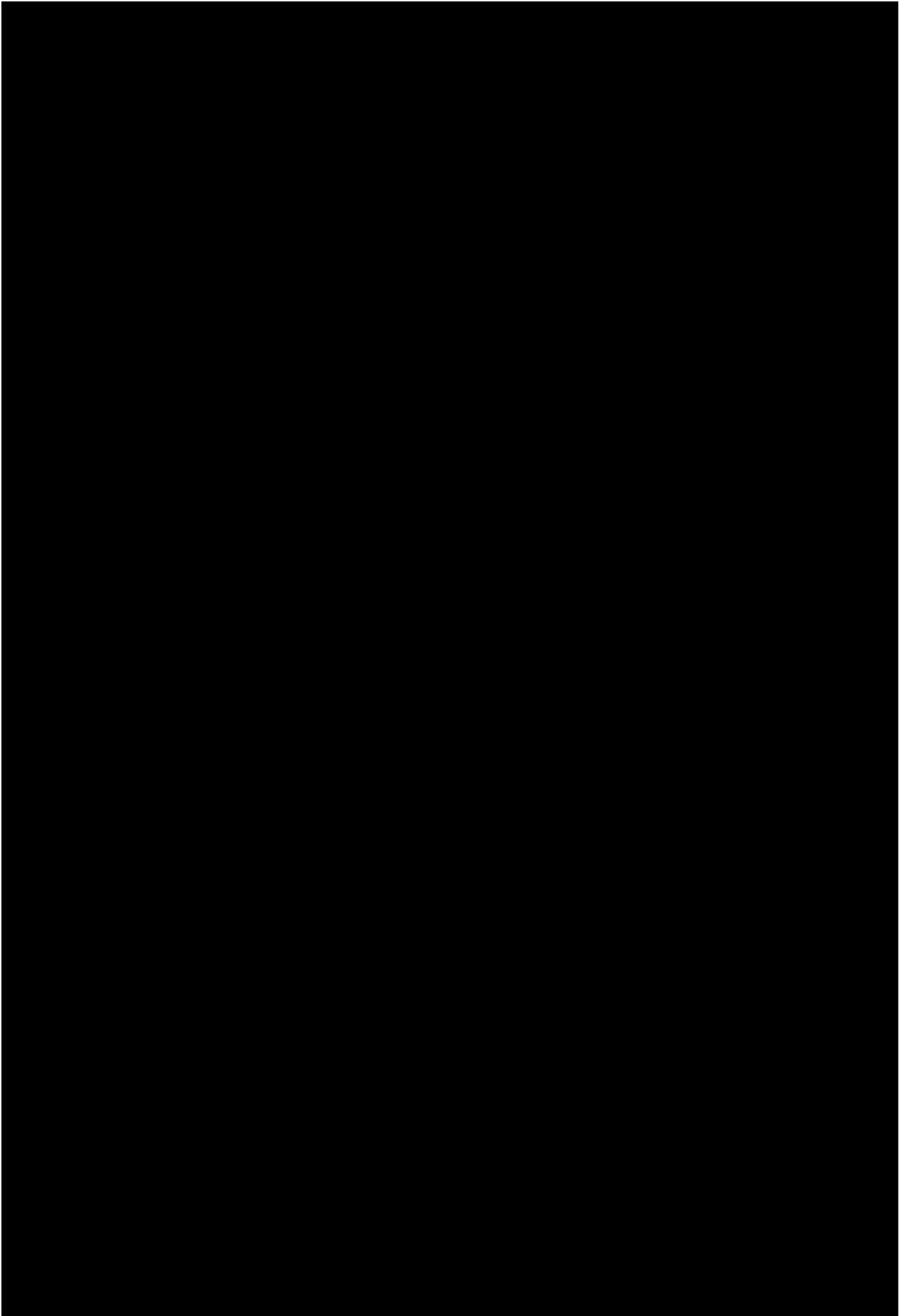
18. Payment

18.1 Principal's payment obligation for design and construction

- (a) Subject to clause 22.8 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor the Actual Project Contract Sum in accordance with clause 18 and the D&C Payment Schedule for the progressive completion of the Contractor's Activities.
- (b) Without limiting clause 18, the D&C Payment Schedule sets out (among other things):
 - (i) those parts of the Contractor's Activities which must be completed before the Contractor may claim a Progress Payment with respect to that part;

- (ii) the payment the Contractor may claim for each Progress Payment;
 - (iii) any limitations or other constraints on the Contractor's ability to make claims for payment; and
 - (iv) restrictions on the timing and sequencing of the Contractor's Activities with which the Contractor must comply.
- (c) The Principal may retain [REDACTED] % from any amount payable by the Principal to the Contractor until the Contractor provides the Principal with:
- (i) all as-built documentation (including the as-built durability assessment reports, as-built drawings and as-built records) in accordance with the requirements of the deed, including section 24.4 of the Contractor Documentation Schedule; and
 - (ii) the certificate set out in Schedule 17A (Independent Certifier's Certificate -As-Built documentation).





18.2 Payment claims

- (a) The Contractor must give the Principal's Representative a progress claim, with respect to the Actual Project Contract Sum, on the later to occur of:
- (i) the twenty-fifth day of each month; and
 - (ii) the date on which the last of the following occurs:
 - A. the Contractor demonstrates to the Principal's Representative that it has complied with clauses 2.9(f)(i)B, 2.9(h), 2.9(i), 2.9(j), 8.1(a) and 8.2;
 - B. the Contractor demonstrates to the Principal's Representative that it has effected and is maintaining all insurances required to be effected by the Contractor under clause 7 and has complied with clause 7.8; and
 - C. the Contractor provides to the Principal's Representative a Contractor Statement and Supporting Statement;
 - 1) which is executed on or after the twenty-fifth day of the relevant month; and
 - 2) which has been duly executed by a representative of the Contractor who is in a position to know the facts declared.
- (b) Without limiting clause 18.2(e), the Contractor agrees that the amount of a progress payment (for the purposes of section 9 of the SOP Act and this clause 18) will be calculated by reference to:
- (i) any relevant statement or certificate in relation to the Contractor's Activities by:
 - A. the Quality Manager in the form of Schedule 8 (Quality Manager's Certificate – Payment Claim); and
 - B. the Independent Certifier in the form of Schedule 13 (Independent Certifier's Certificate – Payment Claim);
 - (ii) the Contractor's Activities that have been completed up to and including the date on which the Contractor Statement and Supporting Statement was executed; and
 - (iii) for unfixed goods and materials, in accordance with clause 18.6.
- (c) For each claim made under clause 18.2(a) the Contractor must give the Principal's Representative (at the same time as the claim is made):
- (i) a statement in the format required by Schedule 4 (Progress Claim) (in an electronic format) showing the amount the Contractor claims, [REDACTED]
 - (ii) a statement by the Quality Manager in the form of Schedule 8 (Quality Manager's Certificate – Payment Claim) that the parts of the Contractor's Activities claimed for payment comply with the requirements of this deed;
 - (iii) verification by the Independent Certifier in the form of Schedule 13 (Independent Certifier's Certificate – Payment Claim) that the parts of the Contractor's Activities claimed for payment comply with the requirements of this deed;
 - (iv) evidence of the Contractor's compliance with any outstanding obligations under clause 2.5(a) and clause 5.4; and
 - (v) its forecast monthly cashflow projections for the following 18 month period in respect of the Actual Project Contract Sum [REDACTED].
- (d) The Principal's Representative must, on behalf of the Principal, within 10 Business Days after receipt of the Contractor's claim under clause 18.2(a), issue to the Contractor and the Principal, a payment schedule:
- (i) identifying the payment claim to which it relates;
 - (ii) stating the amount of the payment that the Principal proposes to make to the Contractor or that is due from the Contractor to the Principal (**Progress Payment**), including details of the calculation of the Progress Payment, noting that if the Contractor has not provided the monthly Contract Program and all Subsidiary Contract Programs as required by clause 17.1(e)(i) the calculation of the Progress Payment may include a retention of [REDACTED]%. This retention amount

- may be claimed in a subsequent progress claim once the Contractor has provided the documentation required by clause 17.1(e)(i) for the relevant month; and
- (iii) if the Progress Payment is less than the amount claimed by the Contractor, setting out why the Progress Payment is less and, if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (e) In issuing a payment schedule the Principal's Representative may deduct from the amount which would otherwise be payable to the Contractor, any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including any amount which the Principal is entitled to set-off or withhold under clause 22.8.
 - (f) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.
 - (g) The Principal's Representative may at any time (but is not obliged to) issue a payment schedule to the Contractor as if a progress claim was made on the twenty-fifth day of a month.
 - (h) The Contractor agrees with the Principal that a progress claim submitted to the Principal's Representative under this clause 18.2 is received by the Principal's Representative as agent for the Principal and that a payment schedule issued by the Principal's Representative under this clause 18.2 is issued by the Principal's Representative as agent for the Principal.

18.3 Payment on account

A payment schedule issued under clause 18.2 is not:

- (a) evidence of the value of work but is only on account of the relevant component or components of the Actual Project Contract Sum;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under or compliance with this deed.

Despite clause 19.6(a), the Principal's Representative may modify or amend any payment schedule issued under clause 18.2 (including any amount included in a Principal's Representative's Statement).

18.4 Due date for payment

- (a) On the due date for payment of a Progress Payment payable to the Contractor, the Principal must pay the Progress Payment to the Contractor, subject to the Principal's rights to retain, deduct, withhold or set off payment of all or some of the progress amount under clauses 18.5, 18.6 and 22.8 and, in respect of a Progress Payment under clause 18, the D&C Payment Schedule. The due date for payment for the purposes of this clause 18.4(a) is the date that is 15 Business Days after the day on which the Contractor made the progress claim under clause 18.2(a).
- (b) On the due date for payment of a Progress Payment payable to the Principal, the Contractor shall pay the Progress Payment to the Principal. The due date for payment for the purposes of this clause 18.4(b) is 10 Business Days after the issue of a payment schedule under clause 18.2(d) or 18.2(g).

18.5 Payment of Subcontractors, workers compensation and payroll tax

- (a) If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid shall be a debt due and payable from the Contractor to the Principal on demand.

- (b) Nothing in this clause 18.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), Schedule 2, Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

18.6 Unfixed goods and materials

- (a) The Contractor is not entitled to claim payment for any unfixed goods or materials except as permitted under this clause 18.6.
- (b) The Contractor is entitled to claim payment for unfixed goods or materials listed in Schedule 41 (Unfixed Goods and Materials) (even though such goods or materials have not been incorporated into the Project Works) once the following conditions precedent have been satisfied:
 - (i) the Contractor has provided to the Principal at the same time as its progress claim under clause 18.2(a) an unconditional undertaking in the form of Schedule 6 (Unconditional Undertaking) in favour of the Principal and issued by a financial institution approved by the Principal equal to the payment claimed for the goods and materials;
 - (ii) the Contractor has done all things the Principal considers necessary to ensure that the Principal's Security Interest over the relevant unfixed goods or materials is enforceable, perfected, effective and has the best priority available;
 - (iii) the Contractor has provided the Independent Certifier with such evidence (satisfactory to the Independent Certifier) that:
 - A. title to the unfixed goods and materials will vest in the Principal on payment and that no other person holds a Security Interest in the unfixed goods and materials; and
 - B. the Contractor has done everything required by the Principal under clause 18.6(b)(ii);
 - (iv) the Contractor has established to the satisfaction of the Independent Certifier that the relevant unfixed goods or material are:
 - A. properly stored at a location agreed to by the Principal;
 - B. labelled the property of the Principal; and
 - C. adequately protected from damage or loss; and
 - (v) the Contractor has paid, or is legally obliged to pay, for the relevant unfixed goods or materials.
- (c) On payment of a payment schedule under clause 18.2(d) or 18.2(g), which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.
- (d) The Contractor acknowledges and agrees that each unconditional undertaking provided under clause 18.6(b)(i) will secure the Contractor's obligations under this deed in respect of the relevant unfixed goods or materials, including to supply them to the Principal and incorporate them into the Project Works.
- (e) The Contractor agrees that the Principal may, but is not obliged to, perfect, for the purposes of the PPS Law, any Security Interest it holds in unfixed goods and materials for which the Principal pays.
- (f) If the Contractor provides an unconditional undertaking for payment for unfixed goods and materials, the Principal must release that unconditional undertaking to the Contractor if those goods and materials are:
 - (i) incorporated into the Project Works; and
 - (ii) complying with the requirements of this deed.

18.7 GST

- (a) Words or expressions used in this clause 18.7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this deed, unless specifically described in this deed as 'GST inclusive', does not include an amount on account of GST.

- (c) Despite any other provision in this deed, if a party (**Supplier**) makes a supply under or in connection with this deed on which GST is imposed (not being a supply the consideration for which is specifically described under this deed as 'GST inclusive'):
 - (i) the consideration payable or to be provided for that supply under this deed but for the application of this clause (**GST Exclusive Consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on the supply (**GST Amount**); and
 - (ii) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand (subject to clause 22.8 of this deed), at the same time as the GST Exclusive Consideration is payable or to be provided.
- (d) If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. For the purposes of this clause 18.7(d), the Contractor shall be deemed to be entitled to a full input tax credit in respect of such losses, costs or expenses, unless it can demonstrate to the Principal reasonable satisfaction that it is not so entitled.
- (e) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- (f) Except in relation to a supply for which the Principal will issue a recipient created tax invoice (**RCTI**) to the Contractor in accordance with clause 18.7(g), the Recipient need not make a payment of a GST Amount in respect of a taxable supply made under or in connection with this deed unless the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- (g) The parties agree that, unless otherwise agreed in writing, the following will apply to all supplies made by the Contractor to the Principal under or in connection with this deed:
 - (i) the Principal will issue to the Contractor a RCTI for each taxable supply made by the Contractor to the Principal under this deed;
 - (ii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal;
 - (iii) each party acknowledges and warrants that at the time of entering into this deed, it is registered for GST and will notify the other party if it ceases to be registered; 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 deed, 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 pursuant to clause 18.7(f).
- (h) The Contractor will ensure that it has provided its ABN to the Principal prior to the earlier of the date on which the Principal is required to:
 - (i) issue a payment schedule; or
 - (ii) make a payment to the Contractor.
- (i) The Contractor acknowledges and agrees that if the Principal has not been provided with the Contractor's ABN on or before the time the Principal is required to make a payment to the Contractor pursuant to this deed, then the Principal will withhold from the amounts due to the Contractor as required by section 12-190 of Schedule 1 to the *Tax Administration Act 1953* (Cth), unless the Contractor is able to establish to the reasonable satisfaction of the Principal that one of the exceptions outlined in that section applies.

18.8 Security of Payment Act

- (a) The Contractor must not at any time, without the written consent of the Principal, divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied on by the Principal or any details thereof in respect of an adjudication

application made under Part 3 Division 2 of the SOP Act (in this paragraph, the **Information**). For the avoidance of doubt:

- (i) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of Information;
 - (ii) despite the Contractor's obligation in respect of the Information, the Principal has a sole and unfettered discretion to divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person the Information;
 - (iii) the Principal may divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied on by the Contractor or any details thereof in respect of an adjudication application made under Part 3 Division 2 of the SOP Act; and
 - (iv) any Information which the Principal provides or relies on in respect of an adjudication application made under Part 3 Division 2 of the SOP Act is made without affecting the Principal's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.
- (b) 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 schedule under clause 18.2; and
 - (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 on 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.
- (c) If the Principal receives a payment withholding request from a Subcontractor under section 26A of the SOP Act, the Principal will be entitled to withhold the amount in the request from any payment due to the Contractor without any obligation on the Principal to consider whether the notice is valid and whether section 26B(2) of the SOP Act applies.

18.9 Price adjustment for Provisional Sum Work

- (a) To the extent to which Provisional Sum Work is specified in the SWTC as only to be carried out if instructed by the Principal:
- (i) the Contractor must not carry out any of the relevant Provisional Sum Work unless instructed to by the Principal or the Principal's Representative;
 - (ii) if and to the extent that the Principal or the Principal's Representative does not instruct the Contractor to carry out the relevant Provisional Sum Work, to the extent to which an amount is allowed for the relevant Provisional Sum Work in the D&C Payment Schedule, the Design Contract Sum and/or the Construction Contract Sum (as the case may be) must be adjusted to deduct the applicable amount allowed for the relevant Provisional Sum Work; and
 - (iii) if and to the extent that the Principal or the Principal's Representative instructs the Contractor to carry out the relevant Provisional Sum Work:
 - A. the Contractor must comply with the instruction; and
 - B. the Design Contract Sum and/or the Construction Contract Sum (as the case may be) must be adjusted as allowed for in clause 18.9(b).
- (b) To the extent to which Provisional Sum Work is included in the Design Contract Sum and/or the Construction Contract Sum, the Design Contract Sum and/or the Construction Contract Sum (as the case may be) will be adjusted for the item(s) of Provisional Sum Work by the difference between:

- (i) the applicable amount allowed for the item(s) of Provisional Sum Work in the D&C Payment Schedule; and
- (ii) either:
 - A. an amount agreed between the Contractor and the Principal's Representative; or
 - B. if they fail to agree, an amount determined by the Principal's Representative for the actual, necessary and reasonable costs to be incurred by the Contractor in carrying out the Provisional Sum Work by reference to the Payment Constraints applicable to the Provisional Sum Work in the D&C Payment Schedule.
- (c) The Contractor must, promptly upon request, provide to the Principal's Representative a detailed breakdown, on a transparent and open book basis, of the actual costs incurred by the Contractor in carrying out the Provisional Sum Work.

18.10 Not used

18.11 Audit rights

The Contractor acknowledges and agrees that:

- (a) the Principal's Representative (or any other person nominated by the Principal's Representative, including the Independent Certifier) may on one Business Days' notice at any time carry out an audit of and copy the Contractor's documents, accounts and other records to the extent reasonably necessary to verify:
 - (i) the Contractor's performance of its obligations under this deed;
 - (ii) that any amounts claimed by the Contractor for any Variations, Direct Costs or delay costs claimed under clause 17.6 or other additional cost entitlements have been properly calculated; and



except to the extent that the documents, accounts or records:

- (iv) are subject to legal professional privilege; or
- (v) must not be disclosed in accordance with any Law.
- (b) Each party will bear its own costs incurred in complying with this clause 18.11 unless it is revealed, by the Principal exercising its rights under this clause 18.11, that:
 - (i) the Contractor has committed a breach of its obligations under this deed; or
 - (ii) there is a material discrepancy between the information that has been disclosed to the Principal by the Contractor under this deed and the results of any audit conducted under this clause 18.11,

in which case any costs incurred by the Principal in connection with the exercise of its rights under this clause 18.11 will be a debt due and payable by the Contractor to the Principal.
- (c) The Contractor must:
 - (i) provide the Principal's Representative, and any other person authorised by the Principal's Representative, with such assistance as they may reasonably require in connection with their inspection or audit, including making all relevant documents available; and
 - (ii) supply to the Principal's Representative, and any other person authorised by the Principal's Representative, photocopies or electronic copies of information requested.

18.12 Direct Costs Principles

- (a) Any entitlement of the Contractor to Direct Costs under this deed shall be limited to the extent that the Contractor:
 - (i) has incurred such costs reasonably;
 - (ii) has taken all possible steps to mitigate such costs;
 - (iii) did not cause or contribute to an event giving rise to the relevant entitlement to Direct Costs; and

- (iv) has provided evidence acceptable to the Principal's Representative that the Direct Costs have been reasonably incurred, including invoices and any other information or clarification requested by the Principal's Representative.
- (b) The Principal's Representative may request the Contractor to provide information or clarifications to assist with its assessment of the costs incurred by the Contractor, in which case the Contractor must provide such information within 5 Business Days after receiving the request.
- (c) The Contractor acknowledges that any Direct Costs claimed by the Contractor must be calculated in a manner that avoids double counting with any other payment that the Contractor has claimed from the Principal under this deed.
- (d) Clause 18.11 applies in relation to any Direct Costs claimed by the Contractor.

19. Notification of claims

19.1 Notice of Claims

Except for Claims:

- (a) for a Variation to which clause 15.3 applies;
 - (b) with respect to a Qualifying Change in Law under clause 15.8;
 - (c) arising out of:
 - (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
 - (ii) a change in an Approval after the date of this deed, under clause 15.8(e);
 - (d) for an extension of time under clause 17.5; or
 - (e) for payment under clause 18 of any part of the Actual Project Contract Sum,
- the Contractor must give the Principal's Representative the notices required by clause 19.2 if it wishes to make a Claim against the Principal in respect of any Direction of the Principal, the Principal's Representative, the Principal's Assistant Representatives with relevant authority or other act, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed or the Contractor's Activities including anything in respect of which:
- (f) the Contractor is otherwise given an express entitlement under this deed; or
 - (g) this deed expressly provides that:
 - (i) costs are to be paid to the Contractor; or
 - (ii) the Initial Project Contract Sum will be increased or adjusted by an amount stated by the Principal's Representative.

19.2 Prescribed notices

The notices referred to in clause 19.1 are:

- (a) within 15 Business Days after the first occurrence of the Direction or other act, fact, matter or thing on which the proposed Claim will be based, a written notice by the Contractor that it proposes to make the Claim and the Direction or other act, fact, matter or thing on which the proposed Claim will be based; and
- (b) within 20 Business Days after giving the notice under clause 19.2(a), a written notice by the Contractor which must include:
 - (i) detailed particulars concerning the Direction or other act, fact, matter or thing on which the proposed Claim will be based;
 - (ii) the legal basis for the proposed Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (iii) the facts relied on in support of the proposed Claim in sufficient detail to permit verification; and
 - (iv) details of the amount the Contractor proposes to claim and how it has been calculated.

19.3 Continuing events

If the Direction or act, fact, matter or thing on which the proposed Claim under clause 19.1 will be based, is continuing, or if the consequences of the Direction or act, fact matter or thing are continuing, the Contractor must continue to give the information required by clause 19.2(b) every 20 Business Days after the written notice under clause 19.2(b) was submitted or given, until after the Direction or act, fact, matter or thing on which the proposed Claim will be based has, or the consequences thereof have, ceased.

19.4 Bar

If the Contractor fails to comply with clauses 15.3, 15.8(b)(i), 15.8(e), 17.5, 19.1 or 19.3, the Principal will not be liable for any Claim by the Contractor, arising out of or in any way in connection with, the relevant Direction or act, fact, matter or thing (as the case may be).

19.5 Other provisions unaffected

Nothing in clauses 19.1 to 19.4 will limit the operation or effect of any other provision of this deed which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

19.6 Principal's Representative's Statements

- (a) Without limiting the rights of the Principal's Representative under clause 18.3, either party may seek to have any Principal's Representative's Statement opened up, reviewed, decided and substituted pursuant to the dispute resolution provisions in clause 20 by giving a Notice of Dispute to the other party in accordance with the Dispute Resolution Procedure. If either party wishes to have a Principal's Representative's Statement opened up, reviewed, decided and substituted it must give the Notice of Dispute required under the Dispute Resolution Procedure within 15 Business Days after the date of receipt of the Principal's Representative's Statement.
- (b) Subject to clause 19.6(c) but without limiting the rights of the Principal's Representative under clause 18.3, each party acknowledges and agrees that its sole means of altering, redressing, replacing or overturning any Principal's Representative's Statement (except for typographical errors and errors of mathematical calculation) is by giving a Notice of Dispute in accordance with the Dispute Resolution Procedure.
- (c) Where the Contractor incurs additional cost arising out of a Principal's Representative's Statement and that the Principal's Representative's Statement is subsequently altered, redressed, replaced or overturned pursuant to clause 20, the Contractor will be entitled to be paid:
 - (i) where the Principal's Representative's Statement is one described in paragraphs (c), (d), (m), (n) or (o) of the definition of Principal's Representative's Statement, the Contractor's reasonable net extra Direct Costs incurred in complying with the relevant Principal's Representative's Statement (subject to clause 18.12) as stated by the Principal's Representative; and
 - (ii) interest calculated in accordance with clause 22.5(a),
by the Principal, but that entitlement will be the Contractor's sole remedy, and the Contractor will have no entitlement to, and the Principal will not be liable for, any Claim for any cost, loss, damage, expense, fine, penalty or liability suffered or incurred by the Contractor arising out of or in connection with that Principal's Representative's Statement or any action in response to it.
- (d) If neither party gives a Notice of Dispute in accordance with the Dispute Resolution Procedure within 15 Business Days after the date of receipt of a Principal's Representative's Statement, then, subject to clause 18.3:
 - (i) the Principal's Representative's Statement will be binding on the parties and will not thereafter be capable of being opened up or reviewed by any person, including any expert, arbitrator, court or tribunal, at the request of or on any application by either party; and
 - (ii) neither party will be liable for any Claim by the other party arising out of or in any way in connection with the relevant Principal's Representative's Statement (other than in accordance with the Principal's Representative's Statement).

20. Dispute avoidance and dispute resolution

20.1 Dispute Avoidance Board Formation

- (a) The Dispute Avoidance Board is formed by an initial member of the Dispute Avoidance Board, the Principal and the Contractor entering into the DAB Agreement.
- (b) The DAB Agreement must be signed by the parties on, or as soon as is reasonably practicable following, the date of this deed.
- (c) The Principal will determine the Dispute Avoidance Board member from the list of nominees set out in Item 40 of Schedule 1 (Contract Information) (**Member Nominee List**).
- (d) The role of the Dispute Avoidance Board will be to perform the functions and activities identified in the DAB Agreement (including Attachment 1).
- (e) The parties acknowledge and agree that the Dispute Avoidance Board must act honestly, impartially, without bias and independently of the Contractor and the Principal.
- (f) Nothing that the Dispute Avoidance Board does or fails to do pursuant to the purported exercise of its functions and activities under the DAB Agreement will entitle the Contractor to make any Claim against the Principal.

20.2 Replacement of DAB Member

- (a) If the member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Principal will nominate a replacement member, who must be approved by the Contractor (unless the Principal's replacement nominee is selected from the Member Nominee List, in which case the Contractor's approval is not required to be obtained).
- (b) If, within 30 Business Days after the member declines to act or is unable to act on the Dispute Avoidance Board as contemplated by clause 20.2(a), the member has not been replaced by a person selected in accordance with clause 20.2(a), either party may request the Resolution Institute to select a replacement member. This selection will be final and conclusive.
- (c) Any selection made under clause 20.2(a) or 20.2(b) must be made in accordance with the criteria set out in Attachment 4 to Schedule 39 (Dispute Avoidance Board Agreement) and the Dispute Avoidance Board re-formed by the replacement member of the Dispute Avoidance Board, the Principal and the Contractor signing a replacement DAB Agreement in accordance with clause 14.3 of the DAB Agreement.

20.3 Termination of DAB

- (a) The appointment of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by the Principal or the Contractor acting alone.
- (b) Unless otherwise agreed by both parties, the appointment of the Dispute Avoidance Board will terminate one month after the Date of Final Completion.

20.4 Dispute resolution

Any dispute, difference or Claim arising out of, relating to, or in connection with this deed or the conduct of the parties in relation to this deed (including conduct before the date of this deed), or its subject matter (including any question regarding the existence, validity or termination of this deed) (**Dispute**), must be resolved in accordance with the Dispute Resolution Procedure which is set out in Schedule 38 (Dispute Resolution Procedure).

20.4A Joinder

The Contractor unconditionally and irrevocably consents to the Parent Company Guarantor being joined to any Dispute between the parties.

21. Termination

21.1 Notice of default

The Principal may give a written notice to the Contractor under this clause 21.1 if the Contractor commits a substantial breach of this deed. A substantial breach includes if the Contractor:

- (a) does not commence to perform its obligations in accordance with the requirements of this deed;
- (b) does not progress the Contractor's Activities in accordance with clause 1.2;
- (c) does not comply with any Direction of the Principal's Representative made in accordance with this deed;
- (d) fails to implement or maintain a Subcontractors Proof of Payment Procedure in accordance with clause 2.9(h) or 2.9(i);
- (e) fails to comply with clause 4.4;
- (f) fails to comply with clause 5.8;
- (g) Abandons the carrying out of the Contractor's Activities;
- (h) suspends the carrying out of the Contractor's Activities, other than pursuant to a Direction under clause 5.16 or 17.8(a) or an entitlement to do so under the SOP Act;
- (i) fails to obtain or maintain any Approvals for which it is responsible to obtain;
- (j) fails to provide unconditional undertakings as required under clauses 8.1 or 18.6;
- (k) fails to provide a parent company guarantee from the Parent Company Guarantor or Legal Opinion as required under clause 8.2;
- (l) in respect of any insurance the Contractor is required to effect pursuant to clause 7:
 - (i) fails to provide evidence of the insurance as required under clause 7;
 - (ii) does not effect insurance that meets the requirements of clause 7; or
 - (iii) fails to maintain the insurance policy as required under clause 7;
- (m) breaches a term or condition of a Road Occupancy Licence;
- (n) [REDACTED]
- (o) [REDACTED]
- (p) fails to comply with clause 8A.

21.2 Contents of notice

The notice under clause 21.1 must state:

- (a) that it is a notice under clause 21.1;
- (b) the breach relied on;
- (c) that the Principal requires the Contractor to remedy the breach; and
- (d) the time and date by which the Contractor must remedy the breach, which shall not be less than ■ Business Days after the notice is given to the Contractor under clause 21.1.

21.3 Principal's rights

Without limiting clause 21.10, the Principal may by notice in writing to the Contractor:

- (a) terminate this deed; or
- (b) exercise a Step-in Right,
from the date stated in the notice if:
 - (c) an Insolvency Event occurs to:
 - (i) the Contractor;
 - (ii) where the Contractor comprises more than one person, any one of those persons;
or
 - (iii) the Parent Company Guarantor,
 which Insolvency Event will be a fundamental breach of this deed;
 - (d) the Contractor does not remedy a breach of this deed the subject of a notice under clause 21.1 within the time specified in the notice under clause 21.1;
 - (e) [REDACTED]
 - (f) [REDACTED];

- (g) neither the Project Works nor the Temporary Works have commenced on the Licensed Areas by the Sunset Date, except to the extent that the failure to commence is directly caused by the Principal's breach of this deed;
- (h) the Contractor is in fundamental breach as contemplated in clause 5.10(b)(i);
- (i) [REDACTED]
- (j) [REDACTED]
- (k) a Change in Control of the Contractor or any entity that comprises the Contractor occurs without the consent of the Principal (other than a Change in Control under clause 4.5(c));
- (l) a Change in Control of the Parent Company Guarantor occurs without the consent of the Principal (other than a Change in Control under clause 4.6(c));
- (m) a Restructure Event occurs, and the Contractor has failed to demonstrate to the satisfaction of the Principal (acting reasonably) that the remaining or replacement entities comprising the Contractor or the Parent Company Guarantor (as relevant) are of sufficient commercial and financial standing to meet their obligations under this deed or the relevant guarantee (as relevant); or
- (n) if the Contractor breaches clause 5.25 or any Modern Slavery Law or if the Contractor or any entity that it owns or controls commits a Modern Slavery Offence.

Any exercise of a Step-in Right does not in any way limit the exercise or the further exercise of the Principal's rights under clause 21.1 or 21.3.

The Principal may not terminate this deed pursuant to clause 21.3(a) or exercise a Step-In Right in accordance with clause 21.3(b) in respect of events provided for in clause 21.3(m) where the Contractor demonstrates (and continues to demonstrate) to the satisfaction of the Principal (acting reasonably), that the remaining or replacement entities comprising the Contractor or Parent Company Guarantors (as relevant) are of sufficient commercial and financial standing to meet its obligations under this deed or the relevant guarantee.

21.3A Exercise of Principal's Rights

Despite clause 21.3, the Principal may not terminate this deed pursuant to clause 21.3(c)(i) or 21.3(c)(ii) so long as:

- (a) the Contractor comprises more than one person and an Insolvency Event occurs to one, but no more than one, of those persons; and
- (b) the Contractor demonstrates within 20 Business Days (or any longer period agreed to by the Principal in its absolute discretion) of the Insolvency Event occurring, and continues to demonstrate thereafter, to the satisfaction of the Principal (in its absolute discretion) that:
 - (i) the remaining or replacement entities comprising the Contractor are of sufficient commercial and financial standing to meet its obligations under this deed and are otherwise able to carry out the Contractor's Activities;
 - (ii) the unconditional undertakings and guarantees provided to the Principal by the Contractor are adequate security for the Contractor's obligations under this deed; and
 - (iii) there are no other relevant circumstances that may result in the Contractor being unable to carry out the Contractor's Activities.

21.4 Exercise of Step-in Rights by the Principal

- (a) If the Principal exercises a Step-in Right under clause 21.3(b), the Contractor must take all action the Principal believes necessary to ensure that the Principal is able to exercise the Step-in Right effectively and expeditiously, including:
 - (i) allowing the Principal to:
 - A. use materials, equipment and other things intended for the Contractor's Activities;
 - B. take possession of, and use, such of the Construction Plant and other things on or in the vicinity of the Construction Site as were used by the Contractor;
 - C. contract with the Subcontractors; and

- D. take possession of, and use, the Design Documents, without payment of compensation to the Contractor;
 - (ii) giving the Principal or its nominees access to the Construction Site and any other land on which the Contractor's Activities are being carried out;
 - (iii) providing sufficient resources, including personnel, to assist the Principal in exercising the Step-in Right; and
 - (iv) not doing anything to hinder, disrupt or prevent the Principal in exercising the Step-in Right.
- (b) On the Principal exercising a Step-in Right under clause 21.3(b), the Contractor's rights and obligations under the deed are suspended to the extent necessary to permit the Principal to exercise that Step-in Right.
 - (c) If the Principal exercises a Step-in Right under clause 21.3(b), the Principal may cease to exercise that right at any time.
 - (d) On the Principal ceasing to exercise a Step-in Right under clause 21.3(b):
 - (i) the Contractor must recommence performance of the obligations under the deed that were suspended;
 - (ii) the Principal must give reasonable assistance to the Contractor to ensure that the process of the Principal ceasing to exercise the Step-in Right and the Contractor recommencing to perform its obligations under the deed is effected as smoothly as possible; and
 - (iii) subject to clause 21.5, the Principal shall return any Construction Plant, Design Documents or other things used by the Principal in exercising the Step-in Right.
 - (e) Except to the extent that the Contractor's obligations are suspended under clause 21.4(b), the exercise by the Principal of a Step-in Right (or the cessation of the exercise of a Step-in Right) will not relieve the Contractor of its liabilities or responsibilities whether under the deed or otherwise according to Law.

21.5 Adjustment following exercise of Step-in Rights

- (a) This clause only applies if the Principal exercises a Step-in Right under clause 21.3(b).
- (b) The Principal's Representative must assess the cost incurred by the Principal arising out of or in connection with the exercise of a Step-in Right under clause 21.3(b) and must issue a certificate pursuant to this clause to the Principal and the Contractor by whichever is the earlier of:
 - (i) the Date of Completion; or
 - (ii) the date the Principal ceases to exercise a Step-in Right under clause 21.4(b), certifying:
 - (iii) the amount of that cost, and setting out the calculations employed to arrive at that cost;
 - (iv) the amount which would otherwise have been paid to the Contractor if the Principal had not exercised its Step-in Right and the relevant work had been completed by the Contractor; and
 - (v) the difference.
- (c) If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the Principal had not exercised the Step-in Right and the relevant work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal.
- (d) In assessing the cost incurred by the Principal within the meaning of this clause, the Principal's Representative must also include any loss, expense or damage which the Principal has suffered or incurred in connection with the circumstances that gave rise to the exercise of the Step-in Right under clause 21.3(b).
- (e) If the Contractor is indebted to the Principal in accordance with this clause, the Principal may retain Construction Plant or other things used by the Principal in exercising its Step-in Right until the debt is satisfied. If, after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant or other things and apply the

proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

- (f) The Principal will have no liability to the Contractor, and the Contractor will not be entitled to make any Claim against the Principal, arising out of or in connection with the exercise by the Principal of a Step-in Right under clause 21.3(b).
- (g) The Contractor:
 - (i) irrevocably appoints the Principal and the Principal's nominees from time to time, jointly and severally, as its attorney with full power and authority to enforce any right or perform any obligation of the Contractor for the purpose of exercising a Step-in Right under clause 21.3(b); and
 - (ii) agrees to ratify and confirm whatever action the attorney appointed by the Contractor under clause 21.5(g) takes in accordance with clauses 21.3, 21.3A and 21.4.

21.6 Principal's entitlements after termination

After termination under clause 21.3(a):

- (a) the Principal will:
 - (i) be entitled to take over and use or have removed from the Construction Site or any area affected by the Contractor's Activities any Construction Plant and other things of the Contractor or Temporary Works;
 - (ii) to the extent permitted by law, not be obliged to make any further payments to the Contractor, including any money the subject of a progress claim under clause 18.2 or a payment schedule under clause 18.2;
 - (iii) be entitled to have recourse to any unconditional undertaking held under this deed; and
 - (iv) be entitled to recover from the Contractor any losses, liabilities, expenses, costs and damages suffered or incurred by the Principal arising out of or in any way in connection with the breach, Insolvency Event or termination of this deed; and
- (b) property in all information, documents and Records relating to the Contractor's Activities will immediately vest in the Principal and the Contractor must:
 - (i) immediately hand over all information, documents and Records, except for one copy of such information, documents and Records which it may retain for use in connection with this deed; and
 - (ii) do all other things to enable the Principal to complete the design and construction of the Project Works and Temporary Works, and to undertake the Landscaping Maintenance.

21.7 Termination by the Contractor

- (a) The Contractor may terminate this deed by giving the Principal 20 Business Days' prior written notice (**Termination Notice Period**) if:
 - (i) the Principal has failed to pay to the Contractor an amount [REDACTED] certified as being due and payable (in a payment schedule or otherwise) (**Outstanding Amount**);
 - (ii) the Contractor has given the Principal a written notice to show cause; and
 - (iii) the Principal has not paid the Outstanding Amount within [REDACTED] Business Days after receiving the Contractor's show cause notice,provided that such termination will only take effect if the Outstanding Amount remains unpaid at the end of the Termination Notice Period.
- (b) Termination under this clause 21.7 is the sole basis at Law or otherwise upon which the Contractor is entitled to terminate, rescind or accept a repudiation of this deed.
- (c) The Contractor waives all rights at Law to terminate, rescind or treat the Contract as repudiated, otherwise than in accordance with this clause 21.7.
- (d) If the Contractor exercises its termination right under and in accordance with clause 21.7, the Contractor's sole rights in such circumstances will be those set out in clause 21.9.

21.8 Termination for convenience

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

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

21.9 Consequences of termination by the Contractor and termination for convenience

If the Contractor terminates this deed under clause 21.7 or the Principal terminates this deed under clause 21.8, without prejudice to any of the Principal's other rights, entitlements or powers under this deed, the Contractor will be entitled to payment of the following amounts:

- (a) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the Contractor submitted a payment claim under clause 18.2 for work carried out to the date of termination;
- (b) the reasonable demobilisation costs incurred by the Contractor as a direct consequence of termination of this deed;
- (c) [REDACTED]
- (d) the cost of goods or materials or other items reasonably ordered by the Contractor for the Contractor's Activities and for which it is legally bound to pay provided that:
 - (i) the value of the goods, materials and other items have not been previously paid or included in the amount payable under clause 21.9(a); and
 - (ii) title in the goods or materials will vest in the Principal on payment;
- (e) the reasonable cost of removing from the Site, the Local Area Works Areas and the Temporary Works Areas and the Works all Construction Plant and other things used in the performance of the Contractor's obligations;
- (f) costs reasonably incurred by the Contractor in the expectation of completing the Contractor's Activities and not included in any other payment by the Principal; and
- (g) where termination occurs prior to Completion and the Unearned Balance of the Construction Sum is greater than 0, ■% of the Unearned Balance of the Construction Sum.

Property in all information, documents and Records relating to the Contractor's Activities will immediately vest in the Principal and the Contractor must:

- (h) take all steps possible to mitigate the costs referred to in clauses 21.9(d) to 21.9(f); and
- (i) immediately hand over all information, documents and Records, except for one copy of such information, documents and Records, which it may retain for use in connection with this deed.

On payment of the amount payable under this clause 21.9 title in the goods and materials referred to in clause 21.9(d) will vest in the Principal.

The amount to which the Contractor is entitled under this clause 21.9 will be the maximum monetary compensation the Contractor is entitled to arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the Contractor for any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under this clause 21.9.

21.10 Preservation of rights

Nothing in clause 21 or that the Principal does or fails to do pursuant to clause 21 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 22.8) which it may have where the Contractor breaches

(including repudiates) this deed.

22. General

22.1 Cost

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this deed and the performance of its obligations in respect of this deed.

22.2 Taxes

Without limiting clauses 5 and 15.8, the Contractor must pay all Taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported materials, plant and equipment required for the Contractor's Activities.

22.3 Indemnities to survive

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

22.4 Variations

This deed may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

22.5 Interest

- (a) The Principal will pay simple interest at the Bank Bill Rate on any amount that is due and owing to the Contractor under this deed, but which is not paid when due.
- (b) This will be the Contractor's sole entitlement to interest or to damages for loss of use of, or the cost of borrowing, money.
- (c) The Contractor will pay simple interest at the Bank Bill Rate on any amount that is due and owing to the Principal under this deed, but which is not paid when due.

22.6 Confidentiality

The Contractor must comply, and must ensure that each of its officers, employees and Subcontractors complies, with the Confidentiality Obligations.

22.7 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 22.7(a) it is further agreed that the rights, obligations and liabilities of the Principal and the Contractor (including those relating to proportionate liability) are as specified in this deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (c) The Contractor further agrees that:
 - (i) subject to clause 22.7(c)(ii), it will include in each Subcontract it enters into for the carrying out of the Contractor's Activities provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise; and
 - (ii) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of the Contractor's Activities, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or

liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

22.8 Right of set-off

The Principal may at any time deduct from moneys otherwise due to the Contractor:

- (a) any debt or other moneys due from the Contractor to the Principal; or
- (b) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under this deed or otherwise in connection with the Project.

22.9 The Principal may act

- (a) If the Contractor fails to perform an obligation under this deed, then the Principal may take such action as may be necessary to remedy the failure by the Contractor and the Principal may for this purpose enter the Construction Site and any other land on which the Contractor's Activities are being carried out.
- (b) The costs, losses, expenses, damages and liability suffered or incurred by the Principal in so performing such an obligation will be a debt due and payable from the Contractor to the Principal on demand.

22.10 Non-reliance

Without limiting clauses 10.2 or 10.3, the Contractor:

- (a) warrants that it did not in any way rely on any information, representation, statement or documentation, whether forming part of this deed or not, made by or provided to the Contractor by the Principal or anyone on behalf of the Principal for the purposes of entering into this deed and the Interface Deed;
- (b) warrants that it enters into this deed and the Interface Deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into this deed and the Interface Deed relying on the warranties in clauses 22.10(a) and 22.10(b).

22.11 Entire agreement

This deed, the Confidentiality Deed Poll and the Interface Deed embody the entire understanding of the parties and constitute the entire terms agreed on between the parties and supersede any prior agreement (whether in writing or not in writing) between the parties, in relation to the subject matter of this deed, the Confidentiality Deed Poll and the Interface Deed.

22.12 All work included

- (a) Except to the extent otherwise expressly provided in this deed, the Contractor warrants that it has allowed to, and must, without adjustment to any component of the Initial Contract Sum, provide all services, work, labour, plant, equipment and materials necessary for the Contractor's Activities whether or not they are expressly mentioned in this deed or the Design Documentation prepared by the Contractor.
- (b) Such services, work, labour, plant, equipment and materials must be undertaken and provided by the Contractor at its own cost and will not constitute a Variation or otherwise entitle the Contractor to make a Claim.

22.13 Unlimited discretion

- (a) Except as expressly provided in this deed (including in clause 22.14), no procedural or substantive limitation or requirement (including any which may otherwise be implied by law) is intended to be imposed on the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 22.13(a):
 - (i) except as expressly provided in this deed (including in clause 22.14), neither the Principal nor the Principal's Representative will be:
 - A. constrained in the manner in which it exercises; or
 - B. under any obligation to exercise,

any discretion, power or entitlement conferred by this deed because of the

operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement; and

- (ii) any approval or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise.

22.14 Implied terms

Nothing in clause 22.13 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

22.15 Indemnity

The Contractor must indemnify the Principal against:

- (a) any liability to or claim by any other person; and
- (b) all costs, losses, damages, expenses, liabilities, fines or penalties suffered or incurred by the Principal,

caused by, arising out of, or in any way in connection with, the Contractor's breach of a term of this deed, but the Contractor's liability shall be reduced proportionally to the extent that the act or omission of the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Independent Certifier, the ER, and the Northern Package Contractor) contributed to the costs, losses, damages, expenses, liabilities, fines or penalties.

22.16 No partnership, joint venture or other fiduciary relationship

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

22.17 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 a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

22.18 Provisions limiting or excluding liability

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

22.19 Survivorship

- (a) Clauses 7A, 20, 21.9, 22.6 and 22.8 and any provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed and any rights arising on termination shall survive, including any warranties, guarantees, licences or indemnities given under this deed.
- (b) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

22.20 Joint and several liability

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

22.21 Joint Venture Agreement

The Contractor must not amend the Joint Venture Agreement without the Principal's consent (not to be unreasonably withheld).

22.22 Severability

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

- (a) 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.

22.23 Privacy

If under this deed the Contractor is required to disclose Personal Information, the Contractor must:

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

22.24 Language is English

- (a) It is agreed that the language of this deed is English and that:
 - (i) any document provided by the Contractor to the Principal under this deed, including the Design Documentation, is to be in English; and
 - (ii) any spoken communication (including any meeting) is to be in English.
- (b) If any document to be provided by the Contractor to the Principal is initially produced in a language other than English, the Contractor must ensure that:
 - (i) the document is translated by a National Accreditation Authority for Translators and Interpreters (NAATI) accredited translator;
 - (ii) the translated document is an accurate representation of the original source document, including ensuring that no information is lost or altered during the translation; and
 - (iii) evidence acceptable to the Principal's Representative that the requirements under clauses 22.24(b)(i) and 22.24(b)(ii) have been satisfied is provided with the document at the same time that the document is required to be provided.

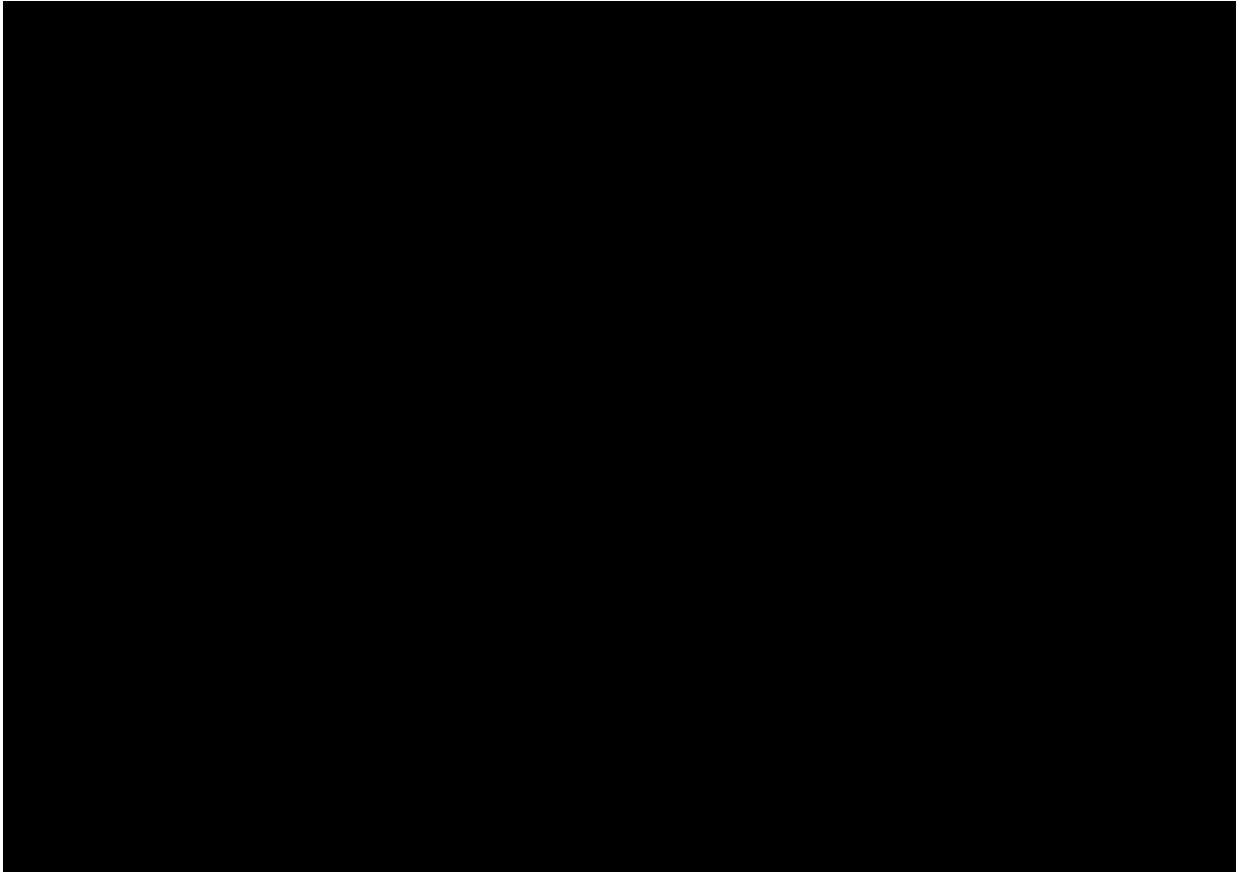
22.25 Jurisdiction

Subject to Schedule 38 (Dispute Resolution Procedure), each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the 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 22.25(a).

22.26 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this deed may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this deed executed by it will not affect the validity of this deed.



23. Definitions and interpretation

23.1 Interpretation and contra proferentum

- (a) In this deed unless the context otherwise requires:
 - (i) the expression "person" includes an individual, body politic, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
 - (ii) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
 - (iii) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
 - (iv) a reference to any Authority, institute, association or body is:

- A. 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
 - B. if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (v) a reference to this deed or to any other deed, agreement, document, instrument, guideline or code of practice includes, respectively, this deed or such other deed, agreement, document, instrument, guideline or code of practice as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of it or any statutory provision substituted for it and all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under it;
 - (vii) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
 - (viii) headings are for convenience only and do not affect the interpretation of this deed;
 - (ix) a reference to a clause, schedule or exhibit is a reference to a clause, schedule or exhibit of or to this deed;
 - (x) a reference to:
 - A. this deed includes all schedules and the Exhibits referred to in Item 38 of Schedule 1 (Contract Information) and, subject to clause 17.1(e), the Contract Program; and
 - B. a reference to the SWTC includes all Appendices to the SWTC;
 - (xi) 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;
 - (xii) where under this deed:
 - A. a notice, certificate or direction is required to be given;
 - B. payment of money must be made;
 - C. an unconditional undertaking must be released; or
 - D. a default must be remedied,

within a stated number of days (not being stated as Business Days), then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;
 - (xiii) for the purposes of:
 - A. clauses 12.2 to 12.3, any reference to "day"; and
 - B. clauses 17.5 and 17.6:
 - 1) any extension of time stated in days; or
 - 2) any reference to "day",

will exclude public holidays and include only those days which are stated in the most recent Subsidiary Contract Program submitted under clause 17.1(e) as working days;
 - (xiv) for all purposes other than as set out in clauses 23.1(a)(xii) and 23.1(a)(xiii), "day" means calendar day;
 - (xv) a reference to a "month" is a reference to a calendar month;
 - (xvi) a reference to "\$" is to Australian currency;
 - (xvii) any reference in this deed or in the Environmental Documents (or in any documents referred to in the Environmental Documents) to:
 - A. the "Project Environmental Plan", or "PEMP";
 - B. the "Construction Environmental Plan", or "CEMP";

- C. the "Environmental Management Plan (Construction Stage)", or "EMP (Construction Stage)";
 - D. the "environmental management plan", "EMP" or "EMP(s)"; and
 - E. any other form of letters or words indicating an intention to refer to a plan relating to environmental management,
- will be read as a reference to the Construction Environmental Management Plan;
- (xviii) for the avoidance of doubt, the Environmental Representative will perform the role and functions of the Environmental Representative or the ER under the Planning Approval (to the extent relevant to the Project Works) and this deed, but all references to the Environmental Representative or ER in all other Environmental Documents and in the documents referred to in the documents comprising the Planning Approval or in the Environmental Documents, means the Environmental Manager; and
 - (xix) a reference to 'fit for purpose', 'fit for the purpose', 'fit for its purpose', 'fit for their purpose', 'fitness for purpose', 'fit for the stated purpose', 'fit for its stated purpose', 'fit for their stated purpose', 'adequate and suitable for their stated purpose', 'effective and durable for its stated purpose' and 'used for their stated purpose' or similar expressions means the purpose or purposes as stated in, implied from, contemplated by or ascertainable from, this deed.
- (b) In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this deed or any provision in it.

23.2 Definitions

In this deed, unless the context otherwise indicates:

Abandons and **Abandonment** mean where the Contractor has:

- (a) ceased executing the Works, carrying out the Contractor's Activities or carrying out its obligations under this deed;
- (b) withdrawn its personnel from the Site; or
- (c) failed or refused to carry out the Works, a substantial part of the Works or the Contractor's Activities for:
 - (i) [REDACTED]; or
 - (ii) [REDACTED] days [REDACTED],

except to the extent the Contractor is relieved of the obligation to carry out the Works, such part of the Works or the Contractor's Activities by the express provisions of this deed.

Aboriginal Participation Plan means the Project Plan prepared by the Contractor in accordance with the requirements of Appendix 21 to the SWTC and contained in Appendix 48 to the SWTC.

Aboriginal Procurement Policy means the NSW Government's Aboriginal Procurement Policy and published at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>, as amended or updated from time to time.

ACICA means the Australian Centre for International Commercial Arbitration.

Act of Prevention means:

- (a) an act or omission (including breach of this deed) by the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Independent Certifier and the ER), but not including any act or omission that is a Reserved Act or any act or omission of the Northern Package Contractor; and
- (b) subject to clauses 15.6 and 16.3, a Variation the subject of a Direction by the Principal's Representative or a Variation deemed in accordance with clauses 5.20(c) or 6.3(b).

[REDACTED]
Actual Project Contract Sum means the sum of the following components:

- (a) the D&C Contract Sum;
- [REDACTED]

[REDACTED]

Additional Contractor Information has the meaning given in clause 10.6(d).

Appointed Principal Contractor has the meaning given in the Interface Deed.

Approval means any licence, permit, consent, approval (including the Planning Approval), determination, certificate 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):

- (a) to perform or to enable the performance of the Contractor's Activities;
- (b) in connection with the Construction Site;
- (c) for the use and occupation of the Project Works including for the safe, efficient and continuous passage of vehicles after Opening Completion; or
- (d) otherwise to comply with Law,

but does not include:

- (e) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or
- (f) the exercise by the Principal of its rights under this deed.

Approved Insurer has the meaning given in Schedule 36 (Insurance Schedule) in the section titled "Definitions and Notes".

[REDACTED]

Artefacts means any and all:

- (a) valuable minerals, fossils or coins;
- (b) articles or objects of value or antiquity; or
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest.

Authority means:

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

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

Bank Bill Rate is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average mid rate on the Reuters Monitor System Page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or

- (b) if no average mid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the Contractor and the Principal for Bank Bills having a tenor as described above.

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

Certified AIP Plan means the Australian Industry Participation Plan drafted by the Principal, updated with the Contractor's details (where relevant) and certified by the relevant Authority, as set out in Exhibit M.

Chain of Responsibility Management Plan means the Chain of Responsibility Management Plan to be developed in accordance with Schedule 51 (Heavy Vehicle National Law Requirements).

Chain of Responsibility Provisions refers to any section of the Heavy Vehicle National Law under which the Contractor or its Subcontractors may be "a party in the Chain of Responsibility" (within the meaning given to the term "Chain of Responsibility" under the Heavy Vehicle National Law).

Change in Codes and Standards means a change in Codes and Standards which takes effect after [REDACTED], other than a change in Codes and Standards that, as at [REDACTED]

- (a) was published or of which public notice had been given (even as a possible change in an existing Code and Standard); or
- (b) a party experienced and competent in the delivery of works and services similar to the Project Works, Landscaping Maintenance and Temporary Works would have reasonably foreseen or anticipated,

in substantially the same form as the change in an existing Code and Standard.

Change in Control means, in respect of an entity, the occurrence of any event which results in a change in Control of that entity.

Claim includes any claim for an increase in the Initial Project Contract Sum or Actual Project Contract Sum, for payment of money (including damages) or for an extension of time:

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

Classified Road has the meaning given to that term in the *Roads Act 1993* (NSW).

Codes and Standards means all codes, standards, specifications and guidelines referred to in the SWTC.

Commonwealth means the Commonwealth of Australia.

Communication Management Plan means the Project Plan referred to as the Communication Management Plan in Appendix 21 to the SWTC.

Community and Stakeholder Engagement Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Complaint includes, in addition to any meaning according to Law, an expression of dissatisfaction, discontent, regret, pain, censure, resentment, grief, lament or fault-finding made

by a complainant or their representative, either explicit or implied, verbally or in writing, which relates to:

- (a) a specific episode, occurrence or failure that has, or repeated episodes, occurrences or failures that have, resulted in an impact on any individual or group; or
- (b) the complaints handling process itself,

whether or not a response or resolution is explicitly or implicitly expected.

Completion means the stage when:

- (a) the balance of the Project Works not completed as part of Opening Completion have been completed, including correcting all Defects:
 - (i) referred to in paragraph (a) of the definition of Opening Completion;
 - (ii) notified by the Contractor in accordance with clause 16.1(a) prior to the Date for Completion; or
 - (iii) notified by the Principal in accordance with clause 16.1A prior to the Date for Completion;
- (b) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before Completion; or
 - B. must necessarily be carried out and passed to verify that the Project Works are in the condition this deed requires them to be in at Completion;
 - (ii) obtained all Approvals that it is required under this deed to obtain but which were not obtained before Opening Completion, and provided such Approvals to the Principal's Representative;
 - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Completion;
 - (iv) given to the Principal's Representative all documents or other information in respect of the design, construction, use, occupation, maintenance and repair of the Project Works which are required to be handed over to the Principal before Completion; and
 - (v) executed a certificate in the form of Schedule 21 (Contractor's Certificate – Opening Completion and Completion) and provided it to the Principal's Representative;
- (c) the Quality Manager has executed a certificate in the form of Schedule 10 (Quality Manager's Certificate - Opening Completion and Completion) and provided it to the Principal's Representative;
- (d) the Independent Certifier has executed a certificate in the form of Schedule 16 (Independent Certifier's Certificate – Opening Completion and Completion) and the Contractor has provided it to the Principal's Representative in accordance with clause 2.4(j); and
- (e) the Contractor has done everything else which it is required to do before Completion.

Concurrent Delay means where the effects of two or more occurrences of delay are felt on the same day(s).

Conditions Precedent means the conditions precedent set out in clause 1.4(b).

Confidentiality Deed Poll means the Confidentiality Deed Poll signed by the Contractor in favour of the Principal, a copy of which appears in the Exhibit referred to in Item 38 of Schedule 1 (Contract Information).

Confidentiality Obligations means the terms set out in Schedule 3 (Confidentiality Obligations).

Construction Contract Sum means the sum specified in Item 2 of Schedule 1 (Contract Information), as adjusted in accordance with this deed.

Construction Environmental Management Plans means the Project Plans referred to as the Environmental Management Plans in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Construction Licence Terms means the terms set out in the Site Access Schedule.

Construction Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Construction Management Plan means the Project Plan referred to as the Construction Management Plan in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information), the initial version of which is set out in Appendix 38 of the SWTC.

Construction Plant means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things (whether owned, leased, hired or otherwise) used in the carrying out of the Contractor's Activities but not forming part of the Project Works or Temporary Works.

Construction Site means, subject to clause 17.12(d), the Site, the Local Area Works Areas, the Temporary Works Areas, the Tie-In Works Area and any Extra Land.

Contamination:

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

[REDACTED]

Contract Program means the overall program for design and construction activities which is the Exhibit referred to in Item 38 of Schedule 1 (Contract Information) as updated in accordance with clause 17.1.

Contractor means the contractor specified in Item 1 of Schedule 1 (Contract Information).

Contractor PC means the entity specified in Item 1A of Schedule 1 (Contract Information).

Contractor Background IP has the meaning given in clause 12.4(c).

[REDACTED]

Contractor Developed IP has the meaning given in clause 12.4(a).

Contractor Documentation and Deliverables means:

- (a) Design Documentation; and

- (b) the Project Plans, Software, Deliverables and all other information, documents, reports, images, inventions, discoveries, designs, innovations, technology, processes, methods, techniques, know-how, data and other materials in any media whatsoever which the Contractor or its related parties prepares, obtains, uses or provides to the Principal in the performance of the Contractor's Activities.

Contractor Documentation Schedule means the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Contractor Statement and Supporting Statement means a contractor statement and a supporting statement in the form set out in Schedule 5 (Contractor's Statement and Supporting Statement).

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

Contractor's Concept Design means the concept design prepared by the Contractor and included in the Appendices to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Control has the meaning given in section 50AA of the Corporations Act.

Cooperation and Integration Control Group has the meaning given to that term in the Interface Deed.

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

COVID-19 means the disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020, or any future forms or strains of the disease known as or deriving from Coronavirus (COVID-19).

COVID-19 Construction Site Closure means the closure of the whole of the Construction Site for not less than a full working day as a result of an outbreak of COVID-19, such closure to be in accordance with the Contractor's COVID-19 Management and Safety Plan.

COVID-19 Directive means any Law or a direction by an Authority in Australia, including public health orders, under a Law arising out of or directly related to avoiding, controlling, minimising or eliminating COVID-19.

COVID-19 Impact means any of the following occurring after the date of this deed:

- (a) a COVID-19 Construction Site Closure; or
- (b) the closure or partial closure of a Subcontractor's plant or factory within Australia in respect of Critical Domestic Materials as a result of COVID-19, which:
- (i) occurs after the date which is the later of the date of execution of the relevant Subcontract and date of that Subcontract;
 - (ii) has been closed in compliance with a "COVID-19 management and safety plan" prepared by the relevant Subcontractor; and
 - (iii) has a material impact on the performance of the Contractor's Activities,

in each case which delays the Contractor in achieving Opening Completion or Completion by more than one day per event and subject to the Contractor demonstrating to the Principal that it has complied and is complying with the COVID-19 Management and Safety Plan.

COVID-19 Management and Safety Plan means the Project Plan referred to as the COVID-19 Management and Safety Plan in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information), the initial version of which is set out in Appendix 50 of the SWTC.

COVID-19 Mitigation Measures means measures set out in the initial version of the COVID-19 Management and Safety Plan set out in Appendix 50 of the SWTC.

Critical Domestic Materials means the goods and materials required for the Works and supplied by the suppliers listed in Item 21A of Schedule 1 (Contract Information) or any other materials or suppliers approved in writing by the Principal's Representative from time to time.

Critical Non-Contestable Work means the packages of work set out in Item 41 of Schedule 1 (Contract Information).

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

D&C Contract Sum means the:

- (a) Design Contract Sum; and
- (b) Construction Contract Sum.

D&C Payment Schedule means Schedule 2 (D&C Payment Schedule).

DAB Agreement means the agreement entered into between the Contractor, the Principal and the member of the Dispute Avoidance Board and substantially in the form of Schedule 39 (Dispute Avoidance Board Agreement).

Date for Completion means:

- (a) as at the date of this deed, the date specified in Item 3B of Schedule 1 (Contract Information); or
- (b) where an extension of time for Completion is granted by the Principal's Representative, determined in any expert determination, or determined by the Dispute Avoidance Board (unless such determination is the subject of a Notice of Dissatisfaction under Schedule 38 (Dispute Resolution Procedure), in which case as determined in any arbitration or litigation proceedings), the date resulting therefrom.

Date for Opening Completion means:

- (a) as at the date of this deed, the date specified in Item 3A of Schedule 1 (Contract Information); or
- (b) where an extension of time for Opening Completion is granted by the Principal's Representative, determined in any expert determination, or determined by the Dispute Avoidance Board (unless such determination is the subject of a Notice of Dissatisfaction under Schedule 38 (Dispute Resolution Procedure), in which case as determined in any arbitration or litigation proceedings), the date resulting therefrom.

Date of Completion means:

- (a) the date notified in accordance with clause 17.10(g)(i) as the date Completion was achieved; or
- (b) where another date is determined in any expert determination or by the Dispute Avoidance Board (unless such determination is the subject of a Notice of Dissatisfaction under Schedule 38 (Dispute Resolution Procedure), in which case as determined in any arbitration or litigation proceedings) as the date on which Completion was achieved, that date.

Date of Final Completion means:

- (a) the date notified in accordance with clause 17.14(e)(i) as the date Final Completion was achieved; or
- (b) where another date is determined in any expert determination or by the Dispute Avoidance Board (unless such determination is the subject of a Notice of Dissatisfaction under Schedule 38 (Dispute Resolution Procedure), in which case as determined in any arbitration or litigation proceedings) as the date on which Final Completion was achieved, that date.

Date of Opening Completion means:

- (a) the date notified in accordance with clause 17.10(g)(i) as the date Opening Completion was achieved; or
- (b) where another date is determined in any expert determination or by the Dispute Avoidance Board (unless such determination is the subject of a Notice of Dissatisfaction under Schedule 38 (Dispute Resolution Procedure), in which case as determined in any arbitration or litigation proceedings) as the date on which Opening Completion was achieved, that date.

Day 1 Clauses mean clauses 1.4 (Condition Precedent), 3.10 (Notices), 4 (This deed), 22 (General) and 23 (Definitions and Interpretation).

Daywork means a Variation carried out by the Contractor which is valued on the basis of daily job time and cost records for workmen, constructional plant, materials, services and other costs as provided in the D&C Payment Schedule.

Deed of Appointment of ER means the deed entered into between the Principal, the Contractor and the Environmental Representative and substantially in the form of Schedule 37 (Deed of Appointment of ER).

Deed of Appointment of Independent Certifier means the deed entered into between the Contractor, the Principal and the Independent Certifier and substantially in the form of Schedule 12 (Deed of Appointment of Independent Certifier).

Defect means any:

- (a) defect, shrinkage, movement, deficiency, subsidence, fault, error or omission in the Project Works, Temporary Works or the Landscaping Maintenance; or
- (b) other aspect of the Project Works, Temporary Works, the Landscaping Maintenance or Contractor's Activities that is not in accordance with the requirements of this deed.

Defects Correction Period means a period referred to in clauses 16.6, 16.7(a), 16.8(a) or 16.9.

Defects Rectification Methodology has the meaning given in clause 16.2(a).

Defects Rectification Notice has the meaning given in clause 16.1A(c).

Deliverable means the Project Works, the Temporary Works and any other deliverable required to be delivered or goods and services required to be provided by or for the Contractor to the Principal under this deed or the Information Documents.

Design Contract Sum means the sum specified in Item 4 of Schedule 1 (Contract Information), as adjusted in accordance with this deed.

Design Documentation means all:

- (a) items, materials or documentation (including design standards, design reports, durability reports, specifications, models, calculations, drawings, shop drawings, digital records and all other relevant data) in computer readable and written forms, or stored by any other means, which are required for the performance of the Contractor's Activities, or which the Contractor or any other person creates or develops in performing the Contractor's Activities (including the design of Temporary Works); and
- (b) Software (including both source code and object code versions) where the Software has been specifically created or specifically modified for the purposes of the Contractor's Activities.

Design Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Design Package has the meaning given in section 24.3 of the Contractor Documentation Schedule.

Design Plan means the Project Plan referred to as the Design Plan in the Appendix to the Scope of the Works and Technical Criteria identified in Item 37 of Schedule 1 (Contract Information).

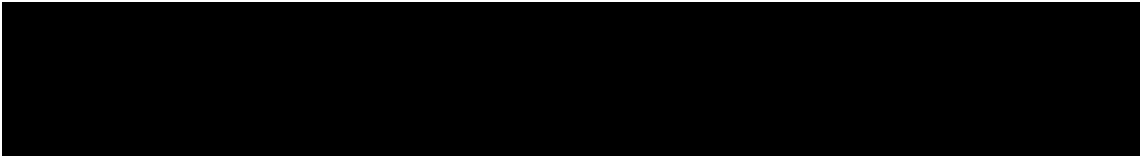
Designated Significant Subcontractor means the Subcontractors set out in Part 1 of Schedule 54 (Financial Reporting Requirements and Information) and any other Subcontractor that the parties agree in writing from time to time is a Designated Significant Subcontractor.

Designer means all designers engaged by the Contractor in relation to performing the design work to be carried out by the Contractor in designing the Works, and includes technical support during construction.

Developed Concept Design Stage is the design stage described in section 24.3 of the Contractor Documentation Schedule.

Direct Cost means:

- (a) the amount of wages and allowances paid or payable by the Contractor at rates as agreed by the Contractor and the Principal's Representative or, if no agreement, at reasonable rates as stated by the Principal's Representative;
- (b) the labour on-costs paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the wages paid or payable;
- (c) the amount of hire charges in respect of constructional plant used on the work in accordance with such hiring rates and conditions as may be agreed by the Principal's Representative and the Contractor or, if no agreement, in accordance with reasonable rates and conditions as stated by the Principal's Representative;
- (d) the reasonable amounts paid by the Contractor for services, Subcontracts and professional fees;
- (e) the reasonable actual cost to the Contractor at the Site, the Local Area Works Areas, the Tie-In Works Areas and the Temporary Works Areas of all materials supplied and required for the work;



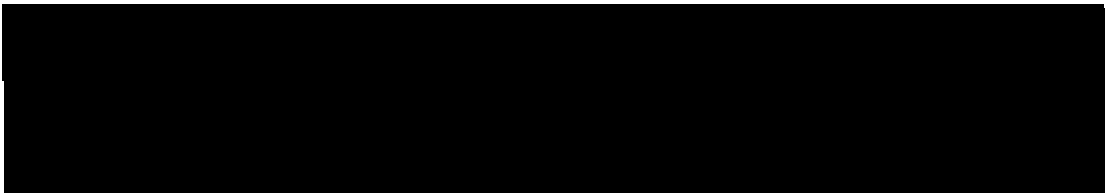
excluding any allowance for delay or delay costs.

Direction means any certificate, decision, demand, determination, direction, instruction, order, rejection, request, requirement or a Principal's Representative's Statement.

Dispute has the meaning given in clause 20.4.

Dispute Avoidance Board means the board consisting of the member nominated in accordance with clause 20.1 or his or her replacement referred to in clause 20.2.

Dispute Resolution Procedure means the procedure for resolving Disputes set out in Schedule 38 (Dispute Resolution Procedure).



Easements means the easements, restrictions on use, covenants, agreements, affectations, or other similar arrangements, together with any leases, sub-leases, licences and rights and privileges, to benefit or burden the Construction Site that are registered on title of the Construction Site (excluding any Extra Land) at the date of this deed.

Electronic Files means the Exhibit referred to in Item 38 of Schedule 1 (Contract Information).

Environment includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.



Environmental Documents means the Planning Approval and the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Environmental Laws means any and all Laws relating to the protection of the Environment.

Environmental Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Environmental Representative or **ER** means the person specified in Item 5 of Schedule 1 (Contract Information) or such other person(s) as engaged by the Principal and the Contractor in accordance with a Deed of Appointment of ER.

Environmental Review Group means the group referred to in clause 9 of Schedule 40 (Workshops and Meetings).

Evaluation Meetings has the meaning given in clause 3(a) of Schedule 40 (Workshops and Meetings).

Excepted Risks means:

- (a) any negligent act or omission of the Principal or the Principal's Representative or the employees, consultants or agents of the Principal;
- (b) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
- (c) 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 the Contractor's employees or agents.

Excusable Cause of Delay means:

- (a) an Act of Prevention;
- (b) a Force Majeure Event;
- (c) a Qualifying Change in Law;
- (d) a Site Condition:

- (e) a court or tribunal order referred to in clause 5.3(a)(iv) or a direction by the Principal under clause 5.3(a)(v);

Expert means the individual agreed by the Principal and the Contractor or nominated by the President of the New South Wales Bar Association to determine a dispute in accordance with section 3A of Schedule 38 (Dispute Resolution Procedure) and the Resolution Institute Expert Determination Rules (2016 Edition), as modified by Appendix A to Schedule 38 (Dispute Resolution Procedure).

Extra Land has the meaning given in clause 9.5(a)(i)A.

Final Completion means the stage when:

- (a) the last Defects Correction Period has expired;
- (b) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before Final Completion; or
 - B. must necessarily be carried out and passed to verify that the Works are in the condition this deed requires them to be in at Final Completion;
 - (ii) obtained all Approvals that it is required under this deed to obtain but which were not obtained before Completion, and provided such Approvals to the Principal's Representative;
 - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Final Completion;
 - (iv) given to the Principal's Representative all documents or other information in respect of the design, construction, use, occupation, maintenance and repair of the Works which are required to be handed over to the Principal before Final Completion; and
 - (v) executed a certificate in the form of Schedule 22 (Contractor's Certificate - Final Completion) and provided it to the Principal's Representative;
- (c) the Quality Manager has executed a certificate in the form of Schedule 9A (Quality Manager's Certificate – Progressive and at end of Landscaping Maintenance Period) in accordance with clause 13A.5(d)(i) and provided it to the Principal's Representative;
- (d) the Quality Manager has executed a certificate in the form of Schedule 11 (Quality Manager's Certificate - Final Completion) and provided it to the Principal's Representative;
- (e) the Independent Certifier has executed a certificate in the form of Schedule 14A (Independent Certifier's Certificate – Progressive and at end of Landscaping Maintenance Period) in accordance with clause 13A.5(d)(ii) and provided it to the Principal's Representative;
- (f) the Independent Certifier has executed a certificate in the form of Schedule 18 (Independent Certifier's Certificate - Final Completion) and the Contractor has provided it to the Principal's Representative in accordance with clause 2.4(j);

- (g) the Contractor has executed a certificate in the form of Schedule 21A (Contractor's Certificate – End of Landscaping Maintenance Period) in accordance with clause 13A.5(d)(iii) and provided it to the Principal's Representative;
- (h) the Principal's Representative has issued a notice under clause 13A.5(b)(i); and
- (i) the Contractor has done everything else which it is required to do before Final Completion.

Final Design Documentation Stage is the design stage described in section 24.3 of the Contractor Documentation Schedule.

Financial Assessment has the meaning given to that term in clause 8A.2(b).

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

Financial Mitigation Plan means a plan which satisfies the requirements of clause 8A.5 for the mitigation of a Financial Capacity Event.

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

- (a) a substantial downgrade in any applicable credit rating;
- (b) a significant loss suffered or incurred;
- (c) a material statutory fine or statutory financial penalty;
- (d) a profit warning to a stock exchange or the making of any public announcement regarding a material deterioration in financial position or prospects;
- (e) a public investigation into improper financial accounting and reporting or suspected fraud;
- (f) a material refinancing (other than a material refinancing in the ordinary course of business);
- (g) a failure to pay a Subcontractor (other than for reason of a bona fide dispute);
- (h) any financial indebtedness becoming due as a result of an event of default; or
- (i) its external auditor expressing a qualified opinion in relation to its audited accounts, provided that, in the case of a Listed Entity, the relevant event has been Publicly Notified or is Reportable Information.

Force Majeure Event means:

- (a) earthquake, [REDACTED]
- (b) [REDACTED], act of a public enemy, terrorism or civil unrest taking place in Australia;
- (c) war, invasion, hostility between nations, civil insurrection, military coup or act of a foreign enemy taking place in Australia;
- (d) ionising radiation or radioactive contamination from nuclear waste or the combustion of nuclear fuel taking place in Australia;
- (e) confiscation, [REDACTED] under the order of any government taking place in Australia; or

[REDACTED] which is beyond the reasonable control of the parties and their respective related parties and prevents or delays the Contractor from performing its obligations under this deed and could not have been avoided by the party affected by the Force Majeure Event or its related parties.

COVID-19, a New COVID-19 Directive or a COVID-19 Impact are not Force Majeure Events.

Foreign Sourced Design means any part of the Design Documentation that is prepared or developed at or from a location that is outside of Australia.

General Liability Cap has the meaning given in clause 7A.2(e).

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of the Contractor or its officers, employees and Subcontractors, as the case may be, under the same or similar circumstances as the performance of the Contractor's Activities.

GST, GST law and other terms used in clause 18.7 have the same meanings assigned to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except GST law also includes any applicable rulings and any reference to GST payable by the Supplier includes GST payable by the representative member of any GST group of which the Supplier is a member.

GST Amount has the meaning given in clause 18.7(c)(i).

GST Exclusive Consideration has the meaning given in clause 18.7(c)(i).

Handback Condition means, in relation to each area of the Construction Site (excluding the Extra Land) identified in the Site Access Schedule, the condition in which the Contractor must hand back that area as set out in the Site Access Schedule.

Heavy Vehicle National Law means the:

- (a) *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as it applies through being adopted in other States and Territories, including through, *inter alia*, the *Heavy Vehicle National Law* (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW), as amended, reproduced or updated from time to time; and
- (b) regulations in force under the Schedule to the *Heavy Vehicle National Law 2012* (Qld) and as they apply through being adopted in other States and Territories, including through, *inter alia*, the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) as amended, reproduced or updated from time to time.

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

[REDACTED]

Independent Certifier means the person engaged by the Principal and the Contractor in accordance with the Deed of Appointment of Independent Certifier.

Indirect or Consequential Loss means:

- (a) loss of business opportunity;
- (b) loss of goodwill;
- (c) loss of contracts;
- (d) loss arising from business interruption;
- (e) loss of anticipated savings;
- (f) loss of profit; or
- (g) the cost of capital or other financing costs, whether incurred by the Principal, the Contractor or a third party.

Information Documents means the following information, data, documents or material in any format or medium including any electronic form:

- (a) the documents specified in Schedule 44 (Information Documents);

- (b) all other information or documents provided to the Contractor prior to, on or after the date of this deed and which were expressly stated to be Information Documents;
 - (c) all other information or documents issued or made available by, or on behalf of, the Principal or the NSW Government to the Contractor prior to, on or after the date of this deed in connection with this deed, the Project Works, the Temporary Works, the Contractor's Activities or the Project, but that do not form part of this deed; and
 - (d) any other information or document which is referred to or incorporated by reference in information or a document referred to in paragraphs (a), (b) or (c),
- and includes any documents that are "Information Documents" pursuant to the Confidentiality Deed Poll, but does not include any information or document that is otherwise expressly stated to form part of this deed.

[REDACTED]

Initial Project Contract Sum means the sum of the following components:

- (a) the D&C Contract Sum;

[REDACTED]

Insolvency Event means:

- (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with its obligations under this deed for financial reasons;
- (b) execution is levied against a person by a creditor; or
- (c) 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;
 - (ii) the corporation entering a deed of company arrangement with creditors;
 - (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (iv) an application is made to a court for the winding up of the corporation and not stayed within 10 Business Days;
 - (v) a winding up order is made in respect of the corporation;
 - (vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members voluntary winding-up); or
 - (vii) a mortgagee of any property of the corporation takes possession of that property.

[REDACTED]

Insured Liability means in respect of a liability:

[REDACTED]

[REDACTED]

Intellectual Property Right means any copyright, patent or registered or unregistered rights including design, circuit layouts, trade marks or name or other protected right.

Interface Deed means the deed to be entered into between the Principal, the Contractor and the Northern Package Contractor in the form set out in Schedule 53.

Issued for Construction Design Documentation or IFC Design is the design stage described in section 24.3 of the Contractor Documentation Schedule.

Joint Venture Agreement means the deed entered into between John Holland and Gamuda Berhad, executed on or about the date of this deed.

[REDACTED]

[REDACTED]

Landscaping Maintenance means the services described or specified in the sections of the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Landscaping Maintenance Plan means the plan for maintenance of the landscaping described as the Landscaping Maintenance Plan in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Landscaping Maintenance Period means the period of 24 months commencing on the Date of Opening Completion.

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation (including ordinances, instruments, codes of practice, policy and statutory guidance);
- (b) common law;
- (c) Approvals (including any condition or requirement under them); and
- (d) for the purposes of the definition of COVID-19 Directives or New COVID-19 Directives, any other government legislation including regulations, by-laws and other subordinate legislation (including ordinances, instruments, codes of practice, policy and statutory guidance) of a State or Territory of Australia, other than New South Wales.

Legal Opinion means a legal opinion from lawyers to Gamuda Berhad, authorised to practise in the place of incorporation of Gamuda Berhad, stating that this deed is binding and enforceable against Gamuda Berhad, which:

- (a) states that it may be relied upon by the Principal; and
- (b) is in a form reasonably satisfactory to the Principal.

Licensed Area means the parts of the Construction Site identified in the 'Site Access Schedule' (which forms part of the Site Access Schedule).

Listed Entity means a company or other body which is included in the official list of ASX Limited ACN 008 624 691, or is listed on any other recognised stock exchange (including any company which is a subsidiary of an entity listed on any recognised stock exchange where that

subsidiary is required by any applicable laws or the rules of the relevant stock exchange to comply with the listing rules applicable to its listed parent company).

Local Areas means all:

- (a) Local Roads; and
 - (b) public spaces, parks, pedestrian ways, pedal cycle paths that:
 - (i) cross;
 - (ii) are adjacent to;
 - (iii) connect to;
 - (iv) are made redundant by; or
 - (v) are in any way affected by,
- the Works, Property Works, Service Works or Temporary Works.

Local Area Works means the construction, modification, reinstatement and improvement of Local Areas which the Contractor must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed, as specified in the sections of and Appendices to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Local Area Works Areas means the areas described as such in the Site Access Schedule.

Local Roads means all local roads, service roads, state highways, regional roads, main roads and any roads on land owned by the Commonwealth, including their associated road reserves, that:

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

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

Long Service Corporation means the corporation established under the *Long Service Corporation Act 2010* (NSW).

Long Service Payments Act means the *Building and Construction Industry Long Service Payments Act 1986* (NSW).

Maintenance Plan means the Project Plan referred to as the Maintenance Plan in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information), as developed in accordance with clause 3.4, including the Project Plans incorporated into it as required by clause 3.3(m).

Management Review Group means the group referred to in clause 5 of Schedule 40 (Workshops and Meetings).

[REDACTED]

Minimum Aboriginal Participation Requirements means

- (a) the Minimum Aboriginal Participation Spend; and
- (b) the Contractor's Australian based workforce (full time equivalent) that directly contribute to the Contractor's Activities must include at least [REDACTED]% Aboriginal employees.

Minimum Aboriginal Participation Spend means the amount identified in Item 16 of Schedule 1 (Contract Information). It represents [REDACTED]% of the Initial Project Contract Sum (excluding GST) at the date of this deed less allowable exclusions, in line with the

Aboriginal Procurement Policy goals. Allowable exclusions are costs incurred by the Contractor over which it has little or no control. For example:

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

as agreed in writing by the Principal and the Contractor or if not agreed as directed by the Principal.

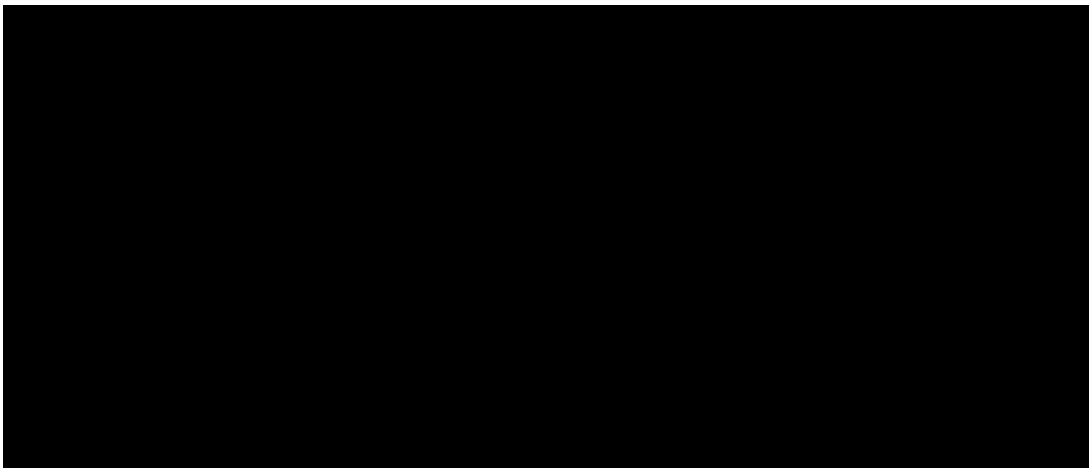
Motorway means on and from the Date of Opening Completion, the roads and other physical works, facilities, systems and Services (including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements) on or in the Motorway Stratum.

Motorway Stratum means the stratum of real property on which the Motorway will be located.

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

Native Title Claim means any claim or application relating to native title under the *Native Title Act 1993* (Cth) or any other Law concerning native title.

New COVID-19 Directive means



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

Nominated Authority has the meaning given in the section of the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Northern Contract means the design and construct deed between the Northern Package Contractor and the Principal dated 20 December 2022.

Northern Package means the roads and other physical works, facilities, systems and Services, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the section of the extension of the M1 Pacific Motorway to the Pacific Highway at Raymond Terrace to be known as the 'Heatherbrae Bypass'.

Northern Package Contractor means Seymour Whyte Constructions Pty Ltd ABN 48 105 493 187 in its capacity as contractor under the Northern Contract.

Northern Package Contractor's Activities has the meaning given to the term 'Contractor's Activities' in the Northern Contract.

Northern Package Project Works means the Project Works, Temporary Works and Landscaping Maintenance, each as defined in the Northern Contract.

Notice of Dispute has the meaning given in clause 1 of Schedule 38 (Dispute Resolution Procedure).

Notifiable Incident has the meaning given under the WHS Laws.

NSW Code means the New South Wales Government's Code of Practice for Procurement dated 18 January 2005.

NSW Guidelines means the New South Wales Government's Industrial Relations Guidelines: Building and Construction Procurement dated July 2013 and updated September 2017 and any practice direction current at the date of this deed.

[REDACTED]

Open to Traffic Date has the meaning given in clause 17.12(a).

Opening Completion means the stage when:

- (a) the Project Works are complete in accordance with this deed, except for Defects:
 - (i) not known; or
 - (ii) Defects which:
 - A. do not prevent the Project Works from being reasonably capable of being used for their stated purpose;
 - B. can be corrected without prejudicing the convenient or intended use of the Project Works; and
 - C. the Contractor has reasonable grounds for not promptly rectifying;
- (b) without limiting paragraph (a):
 - (i) the Project Works are capable of being opened to the public for the safe, efficient and continuous passage of vehicles; and
 - (ii) the Project Works are complete in accordance with:
 - A. the Design Documentation;
 - B. all Approvals and applicable Laws; and
 - C. all relevant Australian standards and other applicable codes in relation to the Project Works and Temporary Works;
- (c) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before Opening Completion; and
 - B. must necessarily be carried out and passed before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles;
 - (ii) obtained all Approvals that it is required under this deed to obtain before Opening Completion and provided such Approvals to the Principal's Representative;
 - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Opening Completion;
 - (iv) given to the Principal's Representative all documents and other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the Project Works which:
 - A. are required to be given to the Principal's Representative before Opening Completion; or
 - B. must necessarily be handed over before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles;

- (b) degraded in its capacity to support plant life;
- (c) contaminated; or
- (d) otherwise environmentally degraded.

PPS Law means:

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

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

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

Pre-Agreed Variation means any of the Variations listed in Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations).

Principal means Transport for NSW.

Principal Contractor has the meaning given to the term "principal contractor" in the WHS Laws.

Principal Supplied Items means the items listed in Schedule 49 (Principal Supplied Items).

Principal's Assistant Representative has the meaning given in clause 2.1(b).

Principal's Enabling Works means the works described in Schedule 52 (Principal's Enabling Works / Services Locations) which have been, or will be, carried out and completed by the Principal or a Subcontractor engaged by the Principal on its behalf.

Principal's Insurance Co-ordinator means the officer of the Principal so designated or, if that role ceases to exist, the officer of the Principal who is responsible for the functions of that officer, and for the purposes of this deed, that officer may be communicated with in writing as follows:

TfNSW Insurance Co-ordinator Transport for NSW
20-44 Ennis Road
MILSONS POINT NSW 2061.

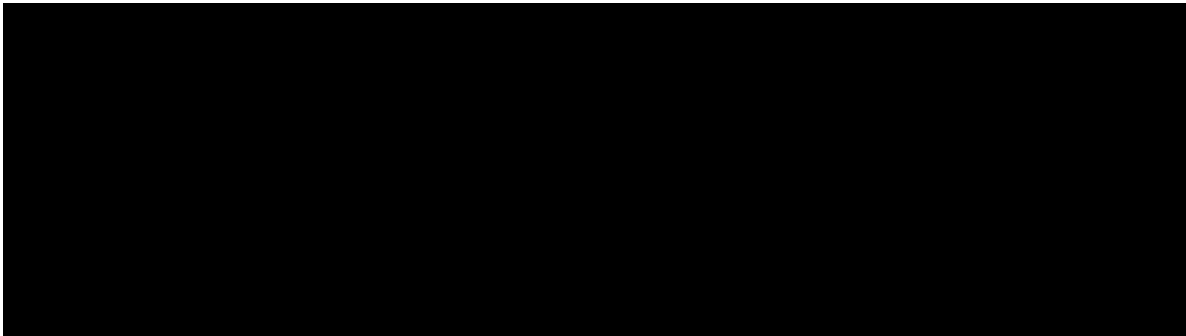
Principal's Insurer means the Principal's external insurer from time to time, whose contact details at the date of this deed are set out in Item 11 of Schedule 1 (Contract Information).

Principal's Representative means:

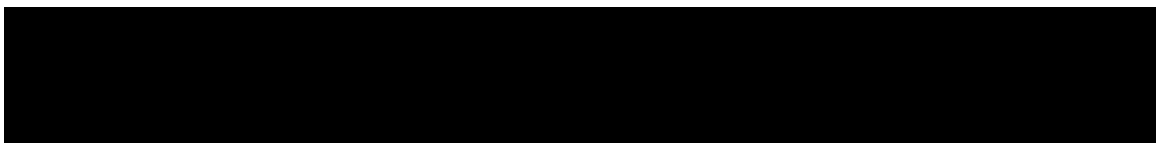
- (a) the person appointed by the Principal under clause 2.1(a)(i); or
- (b) any other person appointed from time to time by the Principal under clause 2.1(a)(ii).

Principal's Representative's Statement means any one of the following statements by the Principal's Representative:

- (a) pursuant to clause 5.3(b), the reasonable net extra Direct Costs incurred by the Contractor arising directly as a result of a court or tribunal order referred to in clause 5.3(a)(iv);
- (b) pursuant to clause 10.4(c), the reasonable net extra Direct Costs incurred by the Contractor in complying with clauses 10.4(b)(i)B and 10.4(b)(ii);
- (c) pursuant to clause 10.6(e)(i), the reasonable net extra Direct Costs incurred by the Contractor as a result of a Site Condition;
- (d) pursuant to clause 10.6(g), whether a condition referred to in a Site Condition Notice constitutes or involves a Site Condition;
- (e) pursuant to clause 13A.5(b):
 - (i) whether the Landscaping Maintenance has been completed; or
 - (ii) if the Landscaping Maintenance has not been completed, the services to be completed before the Landscaping Maintenance can be considered to be completed;



- (j) pursuant to clause 15.4(e), a valuation pursuant to clause 15.4(e);
- (k) pursuant to clause 15.8(b)(iii), the amount of the decreased or increased costs of carrying out the Contractor's Activities;
- (l) pursuant to clause 16.4, the amount which represents the cost of correcting the Defect;
- (m) pursuant to clause 16.5, the amount which represents the reasonable cost of correcting the Defect as accepted by the Principal under clause 16.1A;
- (n) pursuant to clause 17.5(d), the reasonable period for the extension to the Date for Opening Completion and/or Completion;
- (o) pursuant to clause 17.7(c), the reduction in an extension of time in relation to compression of the Contractor's Activities;
- (p) pursuant to clause 17.7(d), the reasonable net extra Direct Costs incurred by the Contractor and directly attributable to compressing the performance of the Contractor's Activities as required by the Principal's Representative's direction under clause 17.7(a);
- (q) pursuant to clause 17.8(b)(ii)A.1), the reasonable net extra Direct Costs incurred by the Contractor as a result of the suspension;
- (r) pursuant to clauses 18.2(d) and 18.2(g), the Progress Payment due to the Contractor;
- (s) pursuant to clause 19.6(c)(i), the reasonable net extra Direct Costs incurred in complying with a Principal's Representative's Statement;
- (t) pursuant to clause 21.9, the amounts stated in respect of clauses 21.9(a) to 21.9(f); and
- (u) pursuant to the definition of "Direct Costs" in clause 23.2, the reasonable rates in paragraph (a) of that definition and the reasonable rates and conditions in paragraph (c) of that definition.



Principal's Surveillance Officer has the meaning given in clause 2.1(c).

Privacy Acts means:

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

Progress Payment has the meaning given in clause 18.2(d)(ii).

Project means the Southern Package.

Project Control Group means the group referred to in clause 4 of Schedule 40 (Workshops and Meetings).

Project Design Group means the group referred to in clause 6 of Schedule 40 (Workshops and Meetings).

Project Director means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

Project Insurances means any policy or policies of insurance that either party is obliged to obtain or cause to be obtained under clause 7 and Schedule 36 (Insurance Schedule).

Project Plan means any plan of the kind referred to in clause 3.3(a) as that plan may be updated, amended and further developed under clause 3.3.

Project WHS Management Plan means the Project Plan referred to as the Project WHS Management and Safety Plan in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Project Works means the physical works which the Contractor must design, construct, complete and hand over under this deed including the Works, Service Works, Property Works, the Tie-In Works and Local Area Works, but excluding Temporary Works, Landscaping Maintenance and the Principal's Enabling Works.

Proof Engineer means the person or persons specified in Item 9 of Schedule 1 (Contract Information) or such other person or persons as may be engaged from time to time by the Contractor to perform the role of Proof Engineer, as approved by the Principal.

Property Works means:

- (a) those works described or specified in the sections of and Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information); and
- (b) all other works necessary to ensure that:
 - (i) the amenity of;
 - (ii) access to and egress from; or
 - (iii) the functionality of, any property (including any structure thereon) including such property located outside of the Site, the Local Areas and the Temporary Works Areas which is affected by the Contractor's Activities, is maintained to at least the standard that it was in immediately prior to the date of this deed including:
 - (iv) fencing work to separate the property located outside the Site from the property located within the Site, the Local Areas and the Temporary Works Areas;
 - (v) construction of access;
 - (vi) construction of drainage; and
 - (vii) reinstatement and landscaping.

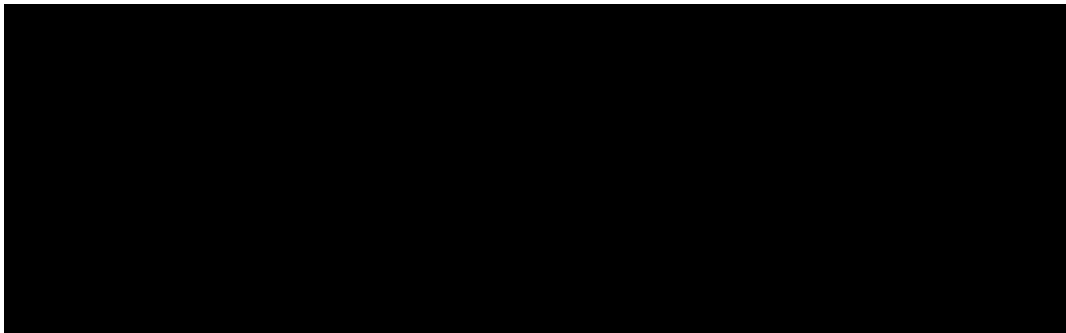
Provisional Sum Work means that part of the Project Works and Temporary Works specified as Provisional Sum Work in the sections of the SWTC identified in Item 37 of Schedule 1 (Contract Information).

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

- (a) pursuant to the listing rules of a recognised stock exchange;
- (b) pursuant to any applicable Law, including Law relating to corporations, security of payment or industrial relations; or
- (c) via the public website of a Listed Entity.

Qualifying Change in Law means:

- (a) a change in an existing Law, the introduction of a new [REDACTED]; or



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 Opening Completion by the Date for Opening Completion and/or Completion by the Date for Completion in accordance with clause 17.5(a),

but excludes:

- (e) a COVID-19 Directive or New COVID-19 Directive;
- (f) any Approvals ([REDACTED]);
- (g) common law (and reference in this definition to Law excludes common law); and
- (h) a change in Law which, as at [REDACTED]
 - (i) was published or of which public notice had been given (even as a possible change in an existing Law); or
 - (ii) a party experienced and competent in the delivery of works and services similar to the Project Works and Temporary Works would have reasonably foreseen or anticipated,
 in substantially the same form as the change in an existing Law, or new Law eventuating after [REDACTED].

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

Quality Manager means the person appointed to that position under clause 2.2(b) as at the date of this deed and any person appointed as a replacement under clause 2.2(b).

Quality Plan means the Project Plan referred to as the Quality Plan in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

RCTI has the meaning given in clause 18.7(f).

Recipient has the meaning given in clause 18.7(c)(i).

Records include both electronic and physical versions of records, accounts, ledgers, payroll, correspondence, tenders, minutes of meetings, notes, reports, instructions, plans, drawings, invoices, dockets, receipts, vouchers and computer programs.

Reference Design means the reference design for the Project Works and which is contained in the Information Documents.

Reportable Information means information or documents which are not Publicly Notified but the provision of which by the Contractor to the Principal pursuant to this deed does not trigger any reportable event pursuant to any applicable Law or the listing rules of any recognised stock exchange.

Reserved Act means an act or omission by the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Independent Certifier and the ER):

- (a) [REDACTED]
or
- (b) authorised or permitted under this deed, other than:
 - (i) a direction by the Principal under clause 5.3(a)(v), provided the relevant legal challenge is not initiated or upheld due to, or the direction is not attributable to, the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
 - (ii) a direction by the Principal's Representative under clause 5.16, provided the direction is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
 - (iii) tests directed by the Principal's Representative under clause 11.6(a)(ii) and not otherwise required by this deed, unless the test detects a Defect or is upon a Defect;
 - (iv) a direction by the Principal's Representative under clause 17.8(a), provided the direction is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission; or
 - (v) a requirement by the Principal for the Contractor:
 - A. in accordance with clause 17.11(a)(i), to permit the Principal to use (other than use as contemplated by this deed); or
 - B. in accordance with clause 17.11(a)(ii), to permit the opening for the use of the public of,
any parts of:
 - C. the Works (irrespective of whether Opening Completion and/or Completion has been achieved); or
 - D. any Local Area before the relevant part of the Local Area Works has been completed,
provided the requirement by the Principal is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission.

Response has the meaning given in the Contractor Documentation Schedule.

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

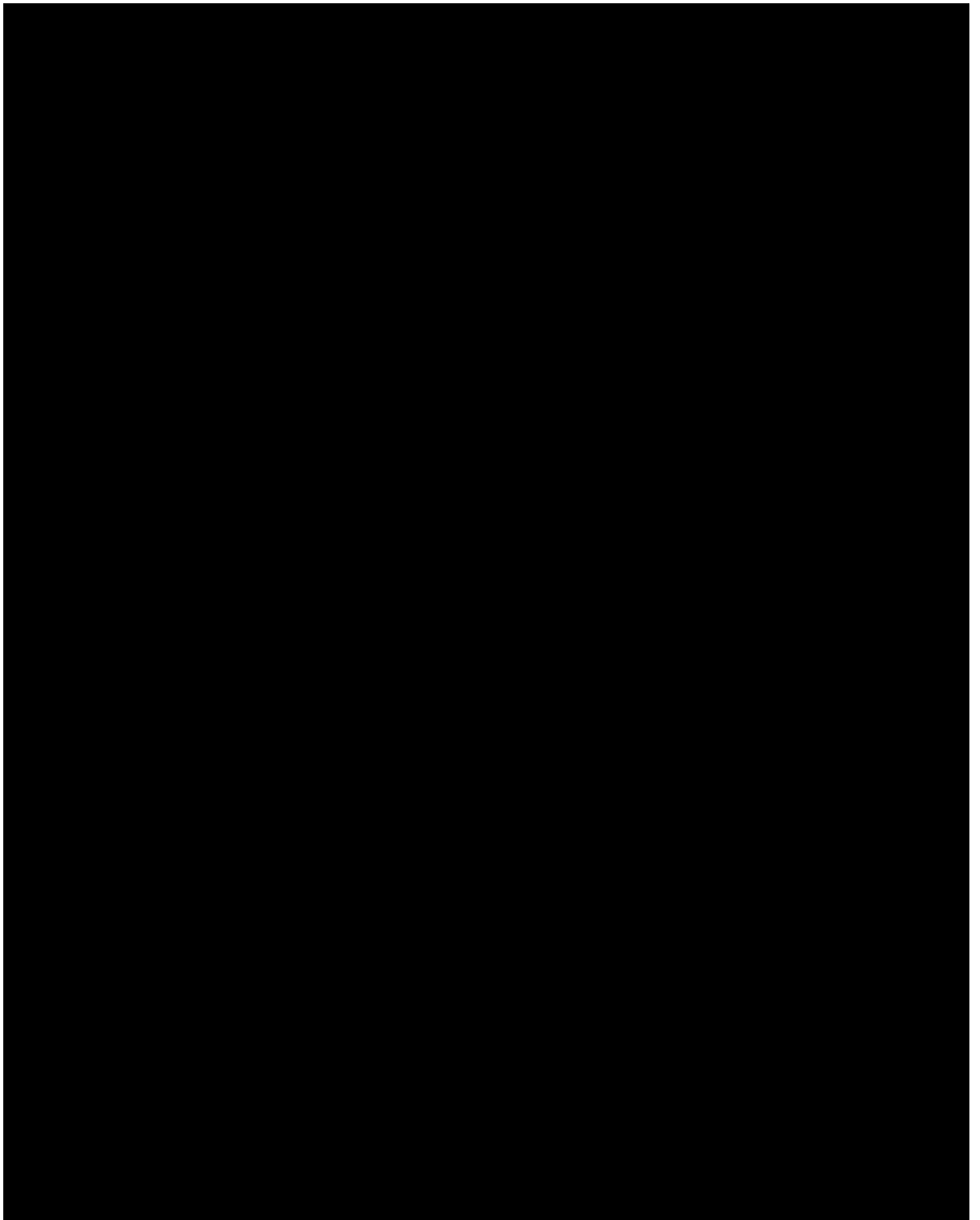
- (a) results in any Parent Company Guarantor or the Contractor (or any entity that comprises the Contractor) having a materially diminished financial capacity; and
- (b) adversely affects the ability of any Parent Company Guarantor or the Contractor (or any entity that comprises the Contractor) to meet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

Reviewer has the meaning given in the Contractor Documentation Schedule.

Road Occupancy Licence is a licence which the Contractor must obtain from the Principal, in its capacity as an Authority, under clause 5.15.

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

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



Scope of Works and Technical Criteria or SWTC means the Exhibit referred to in Item 38 of Schedule 1 (Contract Information).

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

Separable Portion means a part of the Project Works as determined under clause 2.10(b).

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

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Service Works means the construction, modification, protection, support or relocation of Services all of which are to be designed and constructed by the Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed and excludes those aspects of the Principal's Enabling Works related to Services.

Site Access Schedule means the Exhibit referred to in Item 38 of Schedule 1 (Contract Information).

Site Audit Statement means a site audit statement:

- (a) prepared under Part 4 of the *Contaminated Land Management Act 1997* (NSW) by a site auditor accredited in accordance with Part 4 of the *Contaminated Land Management Act 1997* (NSW) and any regulations under that Act;
- (b) that certifies that an area of land is suitable, in its condition as at the date of the Site Audit Statement, to be used for its proposed use; and
- (c) that is in a form satisfactory to the Principal's Representative.

Site means, subject to clause 17.12(d), the areas described as such in the Site Access Schedule.

Site Condition has the meaning given in clause 10.6(a).

Site Condition Notice means a notice under and in accordance with clause 10.6(c).

Skills Development and Training has the meaning given in the SWTC.

Software means all software which forms, or is provided as, part of the Project Works, including all Updates and New Releases to it provided to the Principal under this deed.

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

Source Code means the complete high level language computer programs which, when compiled, generate the object and executable program that constitutes the useable software product, and includes the make files, flow charts, programming notes and other necessary instructions to the compiler and linker.

Southern Package means the roads and other physical works, facilities, systems and Services, including all plant, machinery, equipment, fixtures, furniture, fittings, landscaping, spare parts and other improvements which comprise the section of the extension of the M1 Pacific Motorway to the Pacific Highway at Raymond Terrace to be known as the 'Black Hill to Tomago'.

State Planning Approval means the approval under section 5.19 of the EP&A Act as issued by the Minister for Planning and Public Spaces dated 8 November 2022 in respect of the Project (Instrument of Approval application no SSI 7319).

Step-in Right means the Principal's right to do (or have its nominee do) one or more of the following:

- (a) perform any or all of the tasks or activities which comprise the obligations of the Contractor under this deed; and
- (b) enforce the rights of the Contractor under any subcontract or other agreement entered into by the Contractor in connection with Contractor's Activities.

Subcontract includes an agreement for the performance of works, an agreement for the supply of goods or services (including plant hire) or an agreement with a consultant (including a Designer) or any of them.

Subcontractor includes a subcontractor, a supplier of goods or services (including plant hire) or a consultant (including a Designer) or any of them.

Subcontractors Proof of Payment Procedure means the administrative procedure set out in clauses 2.9(h) and 2.9(i) by which:

- (a) the monthly process set out in Schedule 5A (Subcontractors Proof of Payment Process) is implemented;
- (b) the Contractor:
 - (i) provides proof to the Principal that it has paid Subcontractors; and

- (ii) satisfies the Principal that subcontractors, suppliers and consultants to Subcontractors have been paid; and
- (c) as relevant:
 - (i) the Principal obtains an irrevocable payment direction in favour of each unpaid Subcontractor if the Contractor fails to provide proof of payment; or
 - (ii) where clause 2.9(f) applies, the Contractor obtains an irrevocable payment direction in favour of each unpaid subcontractor, supplier and consultant if a Subcontractor fails to provide proof of payment.

Subsidiary Contract Program means a program for all activities of the kind referred to in clause 17.1(a), which complies with clauses 17.1(b), 17.1(c) and 17.1(d), as updated under clause 17.1(e).

Substantial Detailed Design Stage is the design stage described in section 24.3 of the Contractor Documentation Schedule.

Sunset Date means the date listed in Item 13 of Schedule 1 (Contract Information).

Supplier has the meaning given in clause 18.7(c).

Taxes means income, stamp, indirect or other taxes, levies, imposts, deductions, charges, duties, 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 physical structure, appliance or thing used or works done in the carrying out of the Contractor's Activities (excluding Construction Plant) but which does not form part of the Project Works.

Temporary Works Areas means, subject to clause 17.12(d), the areas described as such in the Site Access Schedule.

Tender means the response provided by a Tenderer to undertake the Contractor's Activities.

Tenderer means an entity which submits a tender for the Contractor's Activities.

Termination Notice Period has the meaning given in clause 21.7(a).

Testing Management Plan is the Project Plan referred to as the Testing Management Plan in the Appendix of the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Tie-In Works means the work to be performed by the Contractor, as part of the Contractor's Activities to achieve the integration of the Works with the Northern Package Project Works.

Tie-In Works Area means, subject to clause 17.12(d), the area of the Construction Site on which the Tie-In Works will be carried out by the Contractor, described as such in the Site Access Schedule.

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

Third Party Agreement means:

- (a) any agreement or draft agreement referred to in the Exhibit referred to in Item 38 of Schedule 1 (Contract Information) entered into or to be entered into by the Principal with the party referred to in that Exhibit; and
- (b) any agreement between the Principal and an Authority arising out of, in connection with, or for the purposes of enabling, the Contractor's Activities.

Third Party Interests means:

- (a) any Easements; and
- (b) any statutory rights of Service providers or Authorities in relation to any Services installed as contemplated under or in accordance with statute or similar rights including for the purposes of providing water, gas, fuel, electricity, sewerage, telephone, drainage, stormwater, and communications services to other persons.

Third Party Rights has the meaning given in clause 12.4(h).

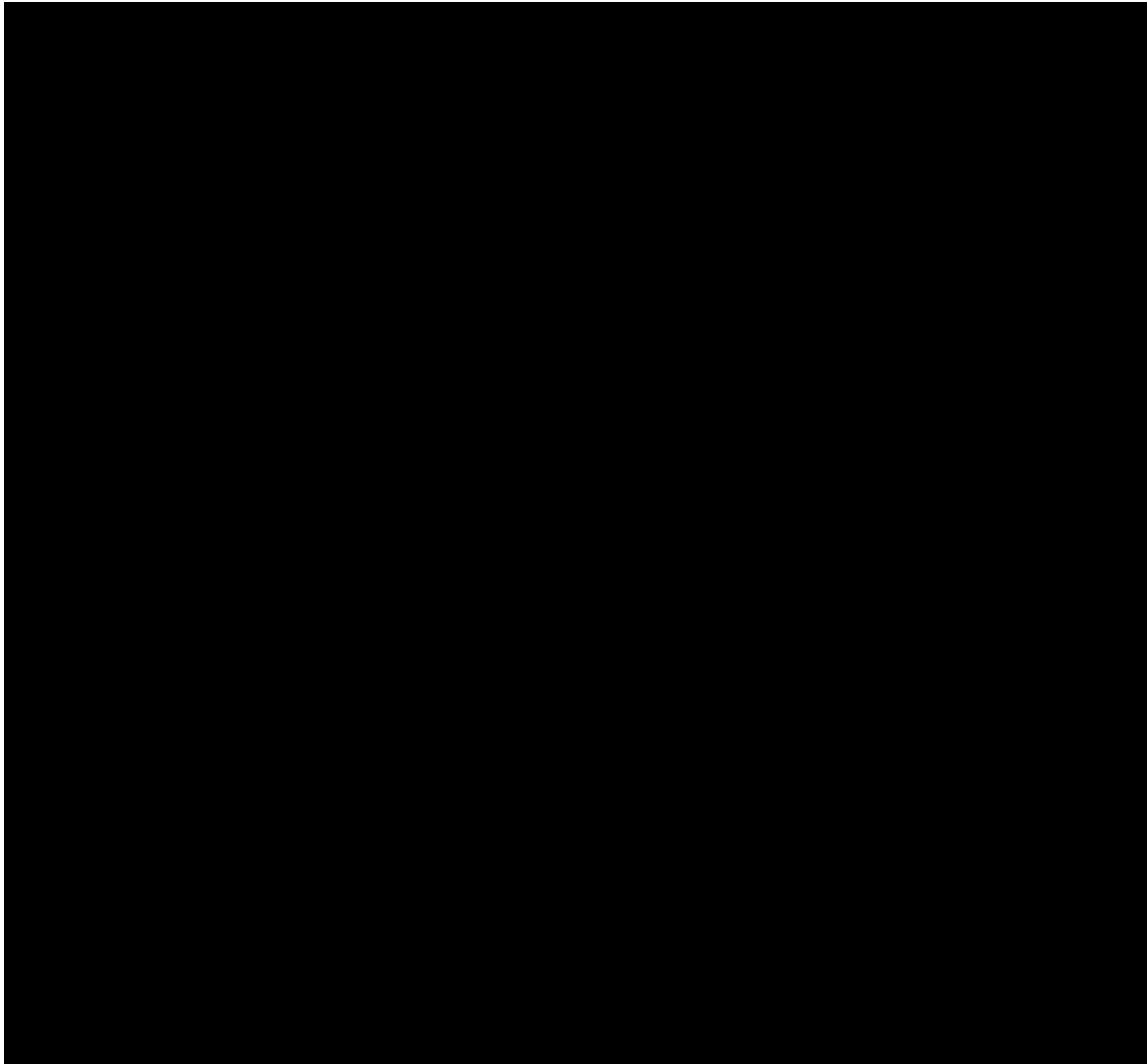
[REDACTED]
[REDACTED]
[REDACTED]

Traffic Management and Safety Plan means the Project Plan referred to as the Traffic Management and Safety Plan in the Appendix to the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Transport for NSW or TfNSW means Transport for NSW (ABN 18 804 239 602).

Unearned Balance of the Construction Sum means the original Construction Contract Sum as set out in Item 2 of Schedule 1 (Contract Information) less the aggregate of:

- (a) all amounts paid on account of the Construction Contract Sum; and
- (b) the amounts payable under clauses 21.9(a) to 21.9(f).



Unspent Amounts has the meaning given in clause 3.7(e).

Update means software which has been produced primarily to overcome defects in, or to improve the operation of, Software.

Variation means any change to the Project Works, the Temporary Works or the Landscaping Maintenance, and includes additions, increases, decreases, omissions, deletions, demolition or removal to or from any of the Project Works, the Temporary Works or the Landscaping Maintenance.

Variation Order means a notice in writing issued under and in accordance with clause 15.2(a) from the Principal's Representative directing the Contractor to implement a Variation as specified in the notice.

Variation Proposal Request means a notice in writing issued under and in accordance with clause 15.1(a) from the Principal's Representative notifying the Contractor of a proposed Variation.

[REDACTED]

WHS Accreditation Scheme has the meaning given in the BCIP Act.

WHS Laws means the:

- (a) *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW); and
- (b) *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth).

Wilful Default means [REDACTED]

Wilful Misconduct means [REDACTED]

Witness Point means a point in a work process for which the Contractor must give prior notice to the Principal's Representative to allow the Principal's Representative to attend and witness the point in the work process should it choose to do so.

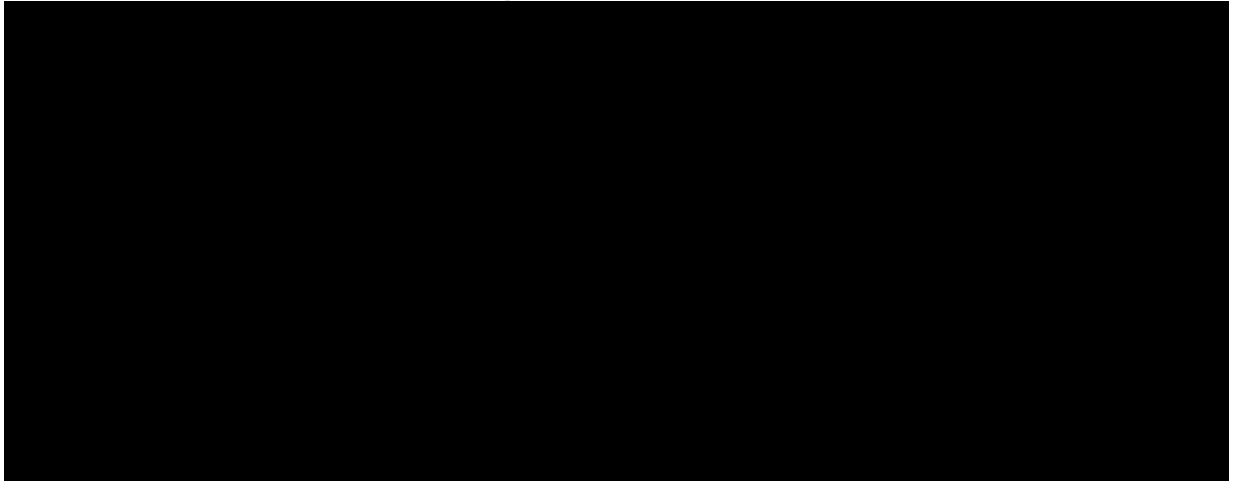
Workplace Relations Management Plan is the Project Plan referred to as the Workplace Relations Management Plan in the Appendix of the SWTC identified in Item 37 of Schedule 1 (Contract Information).

Works means the physical works, Services, materials and equipment within the Site which the Contractor must design, construct, complete and hand over to the Principal in accordance with this deed, including the Tie-In Works but excluding:

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

EXECUTED AND DELIVERED as a deed on 20 December 2022

Executed for and on behalf of **Transport for NSW (ABN 18 804 239 602)** by its duly authorised delegate in the presence of:



Executed for **John Holland Pty Ltd (ABN 11 004 282 268)** by its attorney under Power of Attorney dated 15 December 2022 in the



Signed Sealed and Delivered for Gamuda Berhad (ARBN 632 738 768) a company incorporated in Malaysia on 6 October 1976 under the Companies Act 1965, and bearing Company Registration number 197601003632 (29579-T) by its attorney under Deed of Authorisation dated 8 June 2022 in the presence

