

Sydney Metro Northwest

Main North and North Shore Corridor Works

Managing Contractor Contract

FORMAL INSTRUMENT OF AGREEMENT

Transport for NSW (ABN 18 804 239 602)

Principal

Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000)

Managing Contractor

**Due to the size of the Exhibits, these will be
made available only upon request**

FORMAL INSTRUMENT OF AGREEMENT

THIS AGREEMENT is made at _____ on the _____ day of _____ 2015

BETWEEN Transport for NSW (ABN 18 804 239 602) of Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113 ("**Principal**")

AND Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000) of Level 4, Innovation Place, 100 Arthur Street, North Sydney, NSW 2061 ("**Managing Contractor**")

RECITALS

- A. The *Principal* wishes to undertake the Main North and North Shore Corridor Works Project.
- B. The *Managing Contractor* has tendered to undertake *the Services* and the *Principal* wishes to engage the *Managing Contractor* to perform *the Services* upon the terms set out in this *Contract*.

THE PARTIES NOW AGREE as follows:

1. **Managing Contractor's Obligations**

The *Managing Contractor* must:

- (a) carry out and complete *the Services* and execute all other work under the *Contract* required to be completed by the *Managing Contractor* in accordance with the requirements of the *Contract*;
- (b) execute *the Services* under the *Contract* and bring each *Portion* and the *project* as a whole to *completion* by the relevant *dates for completion*; and
- (c) perform and observe all the provisions expressed in or reasonably inferred from the *Contract* which are to be performed and observed by the *Managing Contractor*.

2. **Principal's Obligations**

The *Principal* agrees, subject to the provisions of the *Contract*, to:

- (a) pay the *Managing Contractor* in accordance with the provisions of the *Contract*, the amounts mentioned in clause 3 of this Formal Instrument of Agreement adjusted by any additions or deductions pursuant to the *Contract* (which include *fee adjustments* and *Design Fee adjustments*); and
- (b) perform and observe all the provisions expressed in or reasonably inferred from the *Contract* which are to be performed and observed by the *Principal*.

3. **Payment to Managing Contractor**

The amount payable to the *Managing Contractor* is the total of:

- (a) the *management fee* and *fee adjustments*;
- (b) the *Design Fee* and *Design Fee adjustments*;
- (c) the *Actual Reimbursable Costs*; and

(d) any amount payable under subclauses 23.6 and 25.10 of the *Contract*.

4. Contract Documents

The following documents shall together comprise the *Contract* between the parties:

- (a) this Formal Instrument of Agreement;
- (b) the General Conditions of Contract attached to this Formal Instrument of Agreement;
- (c) the Annexures and Exhibits (excluding Exhibits 5 and 7) to the General Conditions of Contract; and
- (d) the *Works Brief*.

5. Order of Precedence

In the event of any inconsistency, ambiguity or discrepancy between the documents comprising the *Contract*, the order of precedence and interpretation to be applied will be determined in accordance with subclause 5.2 of the General Conditions.

6. Prior Work

The *Managing Contractor* agrees that any work in connection with the performance of the work under the *Contract* carried out by the *Managing Contractor* prior to the *date of execution of the Contract* shall be deemed to be governed by the provisions of this *Contract* and shall be deemed to be work under this *Contract* and any payments made to the *Managing Contractor* by the *Principal* prior to the date of this *Contract* in respect of the subject matter of this *Contract* shall be treated as part payments of the amount required to be paid by the *Principal* under clause 3 above.

7. Costs and Stamp Duty

Each party shall bear its own costs of and incidental to the preparation, negotiation and execution of this *Contract*.

Any stamp duty payable on this *Contract* shall be borne and paid by the *Principal*.

DEED EXECUTION PAGE

DATED day of20.....

Executed and delivered as a Deed in Sydney

Signed sealed and delivered for and on behalf of **TRANSPORT FOR NSW** (ABN 18 804 239 602):

Signature of Authorised Delegate

Signature of Witness

Print Name

(block letters)

Print Name

Position held

(block letters)

Position held

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000)**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Managing Contractor Contract

Contract No: 00013/10604

Main North and North Shore Corridor Works Project

GENERAL CONDITIONS

Transport for NSW (ABN18 804 239 602)

Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000)
Managing Contractor

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EXHIBIT 1	Principal's Insurances
EXHIBIT 2	Planning Approval
EXHIBIT 3	Works Brief
EXHIBIT 4	ASA Charter
EXHIBIT 5	Signalling Functional Specifications
EXHIBIT 6	Sydney Metro Northwest Project Safety Management Plan V3
EXHIBIT 7	Information Documents and Materials
EXHIBIT 8	Global Safety Interface Agreement
EXHIBIT 9	TfNSW Standard Requirements
EXHIBIT 10	Deed of Disclaimer
EXHIBIT 11	Sydney Metro Northwest Programming Protocol
EXHIBIT 12	Procedure 4TP-PR-172/1.0 Co-ordinating and Reporting of AEOC Critical Resources through P6
EXHIBIT 13	The North Shore Headways Capacity Improvement Project Concept of Operations document
EXHIBIT 14	Appendix 25 –ECRL Works
EXHIBIT 15	ECRL Enabling Works Concept Report
EXHIBIT 16	Sydney Metro Northwest Operating Diagrams
EXHIBIT 17	Sydney Metro Northwest - Construction Environmental Management Framework (CEMF)

STANDARDS AUSTRALIA

Australian Standard

Managing Contractor Contract—General conditions

1 Interpretation and construction of Contract**1.1 Definitions**

In the *Contract*, except where the context otherwise requires:

Actual Cost means the final total value of:

- (a) the *management fee* and all *fee adjustments*;
- (b) the *Design Fee* and all *Design Fee adjustments*; and
- (c) the *Actual Reimbursable Costs*; and
- (d) any extra costs payable under subclause 23.6;

Actual Reimbursable Costs means the aggregate of:

- (a) all amounts properly and actually incurred and payable by the *Managing Contractor* to *subcontractors* (excluding the *Designers*) in respect of the *Reimbursable Services*, but excluding:
 - (i) amounts incurred and payable to *subcontractors* for correcting *Defects* or for giving effect to a *variation* for the purpose of overcoming a *Defect*;
 - (ii) amounts (including damages) paid or payable by the *Managing Contractor* to any *subcontractor* by reason of any breach of contract or other wrongful act or omission by the *Managing Contractor* including a breach by the *Managing Contractor* of the *Contract* except where that breach or wrongful act or omission was directly caused by any wrongful act or omission of the *Principal*;
 - (iii) the amounts payable to *subcontractors* under *Approved Subcontract Agreements*:
 - (A) as a result of *variations* directed by the *Principal's Representative* under subclause 24.1 or a *direction* by the *Principal's Representative* under subclause 5.1 that is to be treated as a *variation*; or
 - (B) due to the *Principal's Representative* directing the suspension of the *Services* under subclause 22.1 (excluding suspensions of the kinds referred to in subclauses 22.4(a) and

- 22.4(b)); or
- (C) subject to subclause 19.8B, arising out of or in connection with the *Site Conditions* encountered, including in respect of any *Contamination* which may be encountered by the *Managing Contractor*; or
 - (D) arising out of or in connection with any delay arising from a *compensable cause*; or
 - (E) as a result of a *latent condition*;
- (iv) other amounts not properly incurred in respect of the execution of the *Reimbursable Services*, including any amounts incurred in the circumstances referred to in subclause 6.15;
 - (v) any cost, loss, expenses or amount which is stated not to form the *Actual Reimbursable Costs*;
 - (vi) any legal, expert or other consultants costs incurred by the *Managing Contractor* arising out of or in connection with any *Approved Subcontractor Agreement* other than as provided in subclause 6.12(b); and
 - (vii) any amount in respect of any excess or exclusion in the insurance policies referred to in clauses 13 and 14;
- (b) in respect of the *Managing Contractor Work* means for work for which the *Principal* accepted rates, the sum ascertained by multiplying the number of hours the labour resource or *construction plant* is employed in the execution of the *Managing Contractor Work* for any given period under the *Contract* by:
- (i) any applicable rate listed in the *schedule of rates* for that work; or
 - (ii) where there is no applicable rate listed in the *schedule of rates* for the work, a reasonable rate (which shall exclude any margin for off-site overheads or profit) as determined by the *Principal's Representative*,
- excluding any amount which arises out of or in connection with:
- (iii) correcting a *Defect*;
 - (iv) a *variation*;
 - (v) circumstances in which the *Contract* states that a cost is to be borne by the *Managing Contractor* or is not to form part of the *Actual Reimbursable Costs*; and
 - (vi) any amount stated to be a debt, or moneys due, from the *Contractor* to the *Principal*;
- (c) in respect of:

- (i) a *variation* directed by the *Principal's Representative* under subclause 24.1 or a *direction* by the *Principal's Representative* under subclause 5.1 which is to be treated as a *variation*; or
- (ii) the *Principal's Representative's* direction of a suspension of the *Services* under subclause 22.1 (excluding suspensions of the kinds referred to in subclauses 22.4(a) and 22.4(b)); or
- (iii) a *latent condition*,

the amounts to be included in (or deducted from, as relevant) the *Actual Reimbursable Costs* determined in accordance with the requirements of subclauses 19.8B, 22.4(d), and 24.3 (as the case may be); and

- (d) any amount agreed under subclause 6.9,

less:

- (e) in respect of any *Defect* for which the *Managing Contractor* is responsible and which is the subject of an instruction under subclause 20.3(c), the amount that, in the opinion of the *Principal's Representative*, would have been payable to *subcontractors* for correcting the *Defect* if an instruction had been made under subclause 20.3(a); and
- (f) any debt due and payable by the *Managing Contractor* to the *Principal*;

approved program means the latest *program* that has been submitted for the review of the *Principal's Representative* under subclause 5.4 and which has not been rejected by the *Principal's Representative*;

ASA Authorisation means an authorisation (including a preliminary or provisional authorisation) issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of *Asset Lifecycle* work specified in the authorisation, subject to any conditions of the authorisation;

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of *Rail Transport Agencies* and *AEOs* in relation to the ASA (as amended from time to time), a copy of which (as at the *date of execution of the Contract*) appears in Exhibit 4;

ASA Requirements has the meaning assigned to it in the *ASA Charter*;

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

Assets Services means the aspects of the *Services* which relate to the *Asset Lifecycle* of *NSW Rail Assets*;

Asset Standards Authority* or *ASA means the unit within *TfNSW* which sets, controls, maintains, owns and publishes the network and asset standards for *NSW Rail Assets* as defined in the *ASA Charter*. Information about the ASA and the network and asset standards can be found on www.transport.nsw.gov.au;

Authorised Engineering means a legal entity to whom the ASA has issued an ASA

Organisation or AEO *Authorisation;*

Approved Subcontract Agreement means an agreement which is entered into by the *Managing Contractor* with a *subcontractor* in accordance with subclause 6.2(a)(i) or on terms which have been approved by the *Principal's Representative* under subclause 6.3;

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

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

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

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

Construction Environmental Management Framework (CEMF) means the Sydney Metro Northwest document linking the *Planning Approval* and the *Construction Environmental Management Plan*, a copy of which appears as Exhibit 17;

Construction Environmental Management Plan (CEMP) means the document to be prepared by the *Managing Contractor* addressing the requirements of:

- (a) the *Planning Approval*,
- (b) the conditions of all other environmental *legislative requirements*;
- (c) the *Managing Contractor's* corporate environmental management system;
- (d) the *Construction Environmental Management Framework*;
- (e) all other environmental requirements of this *Contract*; and
- (f) under, arising out of, or in any way in connection with, this *Contract*, including any *direction* of the *Principal's Representative*;

Claim includes any claim for a *fee adjustment*, a *Design Fee adjustment*, for extra costs under subclause 23.6, for payment of money (including damages), for an extension of time to the *date for completion*, for any other form of relief:

- (a) under, arising out of, or in any way in connection with, this *Contract*, including any *direction* of the *Principal's Representative*;
- (b) arising out of, or in any way in connection with, the *Services*, the *project*, execution of the *Services* or the *project*, or either party's conduct prior to the *date of execution of the Contract*; 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 or other quantum meruit;

Codes and Standards means:

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

compensable cause means:

- (a) a breach of contract by the *Principal*; and
- (b) the *qualifying cause of delay* referred to in paragraph (f) of the definition of *qualifying cause of delay*;

Competent Worker means a worker certified as competent to carry out the relevant task;

completion means the stage in the execution of a *Portion* or the *project* when:

- (a) the *Portion* or the *project* is complete in accordance with this *Contract* except for *Defects* not known and except for *Defects* in respect of which the *Managing Contractor* has reasonable grounds for not promptly correcting;
- (b) the *Managing Contractor* has:
 - (i) carried out and passed all tests necessary to verify that the *Portion* or the *project* is in the condition this *Contract* requires the *Portion* or the *project* to be in at *completion*, including those specifically required by

this *Contract*;

- (ii) given to the *Principal's Representative* all documents and information required to be handed over to the *Principal's Representative* before *completion* of that *Portion* or the *project*, including any which evidence the satisfaction of *legislative requirements* which the *Contract* requires the *Managing Contractor* to obtain before *completion* and documents and information required for the use, operation, maintenance and repair of the *Portion* or the *project*; and
- (c) the *Managing Contractor* has done everything else that it is required to do under this *Contract* before *completion* of the *Portion* or the *project*;

Contamination means the presence in, on or under land or any other aspect of the *Environment* of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the *Environment* in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the *Environment*; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the *Environment* including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica;

construction plant means all plant, equipment, appliances and things used in the carrying out of *the Services* but not forming part of the *project*;

Contract means these general conditions titled "Managing Contractor Contract (Contract No.00013/10606) Main North and North Shore corridor Works Project – General Conditions" together with the Annexures and Exhibits to these general conditions and the instrument of agreement to which the general conditions and Annexures and Exhibits are attached, but does not include any of the information, data or documents referred to in Exhibit 7;

Cost Plan has the same meaning as in subclause 3.8(b);

Danger Zone means everywhere within 3m horizontally from the nearest rail, and any distance above or below 3m, unless a safe place exists or has been created;

date for completion means the date or dates in *Item 10*, or that date or those dates resulting from an *EOT*;

date of completion means:

- (a) in respect of a *Portion* or the *project*, the date evidenced in a notice of completion under subclause 25.5; or
- (b) where another date is determined by an expert or in any arbitration as the date upon which *completion* was achieved,

- that other date;
- date of execution of the Contract*** means the date on which the *Contract* comes into existence;
- Deed of Disclaimer*** means Exhibit 10;
- Defect*** means any defect, deficiency, fault, error or omission in the *Services*, the *project* or the *Temporary Works*, or any other aspect of the *Services*, the *project* or the *Temporary Works*, which is not in accordance with the requirements of this *Contract*;
- Defects Liability Period*** means the period set out in *Item 3* as extended pursuant to subclause 20.6;
- design development*** means all design activities required to be undertaken to develop the *Works Brief* into *design documents* suitable for construction;
- design documents*** means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, calculations, drawings, digital records, computer software and all other relevant data) in computer readable and written forms, or stored by any other means, which are necessary to be produced by the *Managing Contractor* to design and construct the *project* and the *Temporary Works*.
- Designer*** means a person referred to in *Item 5* who is to be engaged by the *Managing Contractor* to perform the *Design Services*;
- Design Fee*** means the lump sum set out in Annexure Part C;
- Design Fee adjustment*** means a sum assessed by the *Principal's Representative* to be added to or deducted from the relevant component of the *Design Fee* in accordance with subclauses 5.1, 9.2, 22.4, and 24.3;
- Design Services*** means the part of the *Services* relating to the preparation of the *design documents*;
- direction*** includes agreement, approval, assessment, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
- dispute*** has the meaning in clause 30;
- Electronic Portal*** means the electronic portal or document management system notified by the *Principal's Representative* under clause 4(a);
- Environment*** means components of the earth, including:
- (a) land, air and water;
 - (b) any layer of the atmosphere;
 - (c) any organic or inorganic matter and any living organism;
 - (d) human-made or modified structures and areas; and
 - (e) interacting natural ecosystems that include components referred to in paragraphs (a)–(c).
- EOT (from 'extension of time')*** has the meaning in subclause 23.2;

Extra Land means the land or buildings referred to in subclause 19.4A(a);

fee adjustment means a sum assessed by the *Principal's Representative* to be added to or deducted from the relevant component of the *management fee* in accordance with subclauses 5.1, 9.2, 19.9, 22.4, and 24.3 which will be determined on the basis of:

- (a) where the *fee adjustment* is to be made in accordance with:
 - (i) subclauses 9.2, 19.9 and 22.4; or
 - (ii) subclauses 5.1 or 24.3 but the event giving rise to the *fee adjustment* does not have an impact on the *Reimbursable Services*,
the impact of the event giving rise to the *fee adjustment* on the *Preliminaries*; or
- (b) where the fee adjustment is to be made in accordance with subclause 5.1 or 24.3 and the event giving rise to the *fee adjustment* does have an impact on the *Reimbursable Services*, the margin for profit and overheads set out in *Item 28* as applied to the *Net Actual Reimbursable Costs* arising from the impact of the event upon the *Reimbursable Services*;

final certificate has the meaning in subclause 25.7;

final payment claim means the final payment claim referred to in subclause 25.7;

Force Majeure Event means:

- (a) earthquake;
- (b) act of terrorism;
- (c) act of a public enemy;
- (d) war (declared or undeclared);
- (e) invasion or act of a foreign enemy;
- (f) riot or revolution;
- (g) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (h) pressure waves;
- (i) acts of God; and
- (j) maritime and aviation disasters;

Global Safety Interface Agreement means the Global Safety Interface Agreement which appears in Exhibit 8;

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

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

- from any greenhouse gas project,
relating to any aspect of any *Relevant Matters*;
- Information Documents and Materials** means the information (including documents) and materials referred to, or included, in Exhibit 7;
- intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right;
- Item** means an Item in Annexure Part A;
- key personnel** means those personnel listed in *Item 9*;
- latent condition** means any *site conditions* on the *site* which differ materially from those which an experienced and competent contractor could reasonably have been expected to anticipate at the time of the *Managing Contractor's* tender if such a contractor had inspected:
- (a) all written information made available by the *Principal* to the *Managing Contractor* for the purpose of tendering;
 - (b) all information influencing the risk allocation in the *Managing Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
 - (c) the *site* and its near surrounds;
- legislative requirements** includes:
- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *the Services* or the *project*, or the particular part thereof, are being carried out;
 - (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *the Services* and the *project* (which includes the *Planning Approval*); and
 - (c) fees and charges payable in connection with the foregoing;
- Local Possession Authority** means an authority that closes a defined portion of *Track* for a specified period;
- management fee** means the fee calculated in accordance with Annexure Part C;
- Managing Contractor** means the person bound to carry out and complete *the Services*;
- Managing Contractor Work** means the part of the *Reimbursable Services* to be performed by the *Managing Contractor* itself as described in Annexure Part D;
- Net Actual Reimbursable Costs** has the meaning given to the term in subclause 24.3;
- NGER Legislation** means the *National Greenhouse and Energy Report Act 2007* (Cth), related regulations and legislative instruments;
- NSW Code** means the New South Wales Government Code of Practice for Procurement (January 2005);
- NSW Guidelines** means the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement : Building and Construction (as published by the NSW Treasury July 2013);

- NSW Rail Assets** has the meaning assigned to it in the *ASA Charter*;
- NSW Trains** means the corporation by that name constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW);
- Option** means an option referred to in Annexure Part P;
- Other Contractors** means any contractor, consultant, artist, tradesperson or other person engaged by the *Principal* or *Sydney Trains* to do work (which includes rectification of defective work), including any utility company, other than the *Managing Contractor* and the *subcontractors*;
- Planning Approval** means the document which appears in Exhibit 2;
- Portion** means a portion set out in *Item 8* or created pursuant to subclause 25.6;
- PPS Act** means the *Personal Property Securities Act 2009* (Cth);
- PPS Law** means:
- (a) the *PPS Act* and any regulations made at any time under the *PPS Act*, as amended from time to time; and
 - (a) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a);
- Preliminaries** means the preliminaries to be undertaken or provided by the *Managing Contractor* as set out in Annexure Part B;
- prescribed notice** has the meaning in subclause 29.1;
- Principal** means the Principal in *Item 1*;
- Principal's Representative** means the person stated in *Item 15* as the Principal's Representative or other person from time to time appointed in writing by the *Principal* to be the Principal's Representative and notified as such in writing to the *Managing Contractor* by the *Principal* and, so far as concerns the functions exercisable by an individual appointed in writing by the Principal's Representative as a delegate under subclause 16.2, that person;
- program** has the meaning in clause 21;
- Prohibited Subcontractor** means a person:
- (a) that has been found to have engaged in; or
 - (b) in the case of a company any employee of which has been found to have engaged in,
- corrupt conduct (as defined in the *Independent Commission Against Corruption Act 1988* (NSW)) by the Independent Commission Against Corruption;
- project** means the whole of the *work* to be carried out in accordance with the *Contract* (including *variations* provided for by the *Contract*) which by the *Contract* is to be handed over to the *Principal*;
- public liability policy** means the public liability insurance referred to in clause 13;

qualifying cause of delay means:

- (a) any act, default or omission of the *Principal* or the agents of the *Principal* excluding:
 - (i) any act, default or omission by the *Managing Contractor* or an *Other Contractor*; or
 - (ii) a *direction* of the *Principal's Representative* under subclause 19.9; or
 - (iii) a *direction* of the *Principal's Representative* under the third paragraph of clause 21;
- (b) a *Force Majeure Event*;
- (c) changes in *legislative requirements* which satisfy the requirements in paragraphs (a) and (b) of subclause 9.2 which directly affect the *Managing Contractor's* execution of the *Services*;
- (d) a strike that is industry-wide and not specific to the *Managing Contractor*, the *site* or any part of the *project*;
- (e) a court order under an environmental or other law which directly affects the *Managing Contractor's* execution of the *project* except to the extent that such court order arises out of or in connection with the *Managing Contractor's* non-compliance with its obligations under this *Contract*;
- (f) cancellation by the *Principal* of a *Track Possession* or power isolation referred to in *Item 26*:
 - (i) less than 12 weeks prior to the time at which it was planned to commence; or
 - (ii) in the case of an overnight *Track Possession*, less than 1 week prior to the time at which it was planned to commence,
 unless the *Principal* provides a suitable alternative *Track Possession* or power isolation reasonably able to be used by the *Managing Contractor*; or
- (g) compliance with a *direction* of the *Principal's Representative* under subclause 19.9 in respect of a *Valuable Find*;

RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW);

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

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

- regulations;
- Rail Transport Agency** means Transport for NSW (and each of its divisions), *RailCorp*, *Sydney Trains* and *NSW Trains*;
- Railway Track or Rail Track or Track or Line** means the rails fastened on sleepers or transoms and founded on ballast, track slab or bridge decking, associated signalling and overhead wiring components (in electrified areas);
- Reimbursable Services** means *the Services* referred to in Annexure Part D;
- Schedule 1 Dispute** means a *dispute* in respect of a *direction* by the *Principal's Representative* under one of the clauses or subclauses referred to in *Item 12*;
- schedule of rates** means the schedule in Annexure Part R which shows the rate or respective rates of payment for the execution of the *Managing Contractor Work*;
- site** means the place referred to in *Item 11* and excludes *Extra Land*;
- site conditions** means any physical conditions above, upon, under or over the surface, or in the vicinity, of the *site* or *Extra Land* and includes:
- (a) surface water, ground water, ground water hydrology and the effects of any de-watering;
 - (b) physical and structural conditions, above, upon and below the *site* or *Extra Land*, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;
 - (c) topography of the *site* or *Extra Land*, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the *site* or *Extra Land*;
 - (d) climatic and weather conditions including rain, surface water runoff and drainage, floods, water seepage, windblown dust and sand, seasons and physical conditions that are a consequence of climatic and weather conditions;
 - (e) all existing systems and *Utility Services*, above or below ground level and all facilities with which such systems and *Utility Services* are connected;
 - (f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the *Principal* or others;
 - (g) any *Contamination* or other spoil or waste; and
 - (h) underground strata forming part of the *site* or *Extra Land*;
- SOP Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- subcontractor** means a subcontractor of the *Managing Contractor*, and includes each *Designer*;
- Subcontract Proposal** means a document issued to the *Principal's Representative* by the *Managing Contractor* in accordance with subclause 6.3;

Subcontract Tender Documentation In relation to a *Subcontract Proposal*, means:

- (a) all *design documents* relevant to the work to be subcontracted;
- (b) the conditions of tender and the subcontract agreement; and
- (c) any other documentation necessary for the completion of the work to be subcontracted;

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

Sydney Metro Northwest means the North West Rail Link;

Sydney Metro Northwest IMS means the Sydney Metro Northwest Integrated Management System;

Target Budget means [REDACTED] (excluding GST) (a breakdown of which appears in *Item 16*), which amount will only be adjusted for:

- (a) *fee adjustments*;
- (b) Design Fee adjustments;
- (c) any extra costs payable under subclause 23.6;
- (d) any increase or decrease in the *Actual Reimbursable Costs* that results from:
 - (i) a *variation* directed by the *Principal's Representative* under subclause 24.1 or a *direction* by the *Principal's Representative* under subclause 5.1 that is to be treated as a *variation* ;
 - (ii) changes in *legislative requirements* which satisfy the requirements in paragraphs (a) and (b) of subclause 9.2;
 - (iii) a *direction* by the *Principal's Representative* under the third paragraph of clause 21 except where the *direction* was necessary because of, or arose out of, or in any way in connection with, a failure by the *Managing Contractor* to comply with its obligations under this *Contract*;
 - (iv) a *latent condition*; and
 - (v) a direction given by the *Principal's Representative* under subclause 19.9(c); and
- (e) any increase or decrease in the *Actual Reimbursable Costs* under subclause 22.4(d) due to a suspension directed by the *Principal's Representative*,

and will not otherwise be adjusted on any account (including on account of rise and fall);

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

respect thereof;

- Temporary Works** means any temporary works required to be carried out or provided by the *Managing Contractor* for the purpose of the execution of the *Services* but not forming part of the *project*;
- Tender** means the response provided by a *Tenderer* to the *Principal's* invitation to selected *Tenderers* to submit a tender to carry out the *Services*;
- Tender Form** means the tender form submitted by the *Managing Contractor* as part of its *Tender*;
- Tenderer** means an entity or entities that submitted a *Tender* for the performance of the *Services*;
- the Services or Services** means all things or tasks which the *Managing Contractor* is, or may be, required to do to comply with its obligations under this *Contract*, including the design, construction, commissioning and hand-over of the *project* and the provision of *Temporary Works* and *construction plant*;
- TfNSW** means Transport for NSW (ABN 18 804 239 602) a corporation established by section 3C of the *Transport Administration Act 1988* (NSW);
- TfNSW Accreditation** means the accreditation held by *TfNSW* pursuant to the *Rail Safety National Law*;
- TfNSW Standard Requirements or TSRs** means the documents which appear in Exhibit 9 to the *Contract*;
- Track Occupancy Authority** means an authority for Competent Workers and their equipment to occupy a defined portion of *Track* for an agreed period;
- Track Possession** means closure of one or more lines to allow work to be carried out in the Danger Zone using a Local Possession Authority or a Track Occupancy Authority;
- Utility Service** includes any service, facility or item of public or private infrastructure (including railway systems, pedestrian and vehicular corridors, water, electricity, gas, ethane, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service);
- Valuable Find** means any and all:
- (a) valuable minerals, fossils, or coins;
 - (b) articles or objects of value or antiquity; and
 - (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological, or other special interest,
- found on or under the surface of the *site*;
- variation** means any variation to the scope of the *project*, the *Temporary Works* or *the Services* including any additions, increases, decreases, omissions or deletions in respect of the *project*, the *Temporary Works* or *the Services*;

WHS Legislation means:

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

work includes the provision of materials;

Works Brief means the document which appears in Exhibit 3 and which forms part of the *Works Brief*;

Worksite Protection means the safety measures adopted in relation to rail operations, to protect persons brought to any part of the site within the *Rail Corridor*; and

Worksite Protection Personnel means the personnel assigned to implement the required *Worksite Protection* for work within the *Rail Corridor*, and like words have a corresponding meaning.

1.2 Interpretation

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* must, if it ends on a day which is not a *Business Day*, be deemed to end on the day next following which is a *Business Day*;
- (c) clause headings and subclause headings must not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Principal's Representative* and the *Managing Contractor* must be in the English language;
- (f) measurements of physical quantities must be in legal units of measurements of the jurisdiction in *Item 13*;
- (g) unless otherwise provided, prices are in the currency in *Item 14(a)* and payments must be made in that currency at the place in *Item 14 (b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 13*;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this *Contract* or any part;
- (j) any references to the "Works" in this *Contract* (including any attachments) are to be read as references to the *project*;
- (k) a reference to an Exhibit is a reference to the relevant exhibit to these General Conditions;
- (l) the words "including", "includes" and "include" will be read as if followed by the words "without limitation"; and
- (m) any reference to "the *Contract*" or "this *Contract*" in this document shall not affect the parties' intention that this document constitute and operate as a deed.

1.3 Authorities

This *Contract* will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either *TfNSW* or *Sydney Trains* to exercise any of its functions and powers pursuant to any legislation.

The *Managing Contractor* acknowledges and agrees that:

- (a) there are many authorities and private utility companies with jurisdiction over, or statutory rights in respect of, aspects of the *project*, the execution of *the Services*, parts of the *site* and areas affecting and affected by the execution of *the Services*; and
- (n) such authorities and private utility companies may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the execution of the *project*.

2 Nature of Contract

2.1 Performance and payment

The *Managing Contractor* must carry out and complete *the Services* so as to design and construct the *project* in accordance with the *Contract* (including the *TfNSW Standard Requirements*) and any *directions* given or purported to be given by the *Principal's Representative*.

The *Principal* must pay the *Managing Contractor*:

- (a) in respect of the *Services* other than the *Reimbursable Services*, the *management fee*, *fee adjustments*, the *Design Fee* and *Design Fee adjustments*;
- (b) in respect of the *Reimbursable Services*, the *Actual Reimbursable Costs*; and
- (c) any amounts that may become payable under subclause 25.10,

in accordance with the *Contract*.

The *Managing Contractor* acknowledges that its entitlement to payment for the performance of the *Services* is strictly limited to the amounts set out above and that in no circumstances will it be entitled to any additional payment in respect of any work, on-site or off-site overheads, supervision, preliminaries, design management, provision of services or facilities, profit or otherwise other than as set out above.

2.2 Managing Contractor's warranties

The *Managing Contractor* warrants to the *Principal* that:

- (a) the *Managing Contractor* at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in carrying out and completing *the Services*;
- (b) the *Managing Contractor* has fully and carefully examined the *Works Brief* and all of the other documents that comprise the *Contract* and warrants that:
 - (i) if the *project* and the *Temporary Works* are designed and constructed in accordance with the *Works Brief*, the *project* and the *Temporary Works* will satisfy the requirements of this *Contract*; and
 - (ii) the *Managing Contractor* will carry out and complete the *Services* in accordance with the *Works Brief*;
- (c) the *Managing Contractor* shall carry out and complete the *Managing Contractor's* design obligations to accord with the *Works Brief* and produce *design documents* which:
 - (i) comply with the *Contract* and accord with the *Works Brief* and all performance levels and performance requirements stated in the *Contract*;
 - (ii) comply with all applicable law;

- (iii) are suitable for the *site*; and
- (iv) are fit for the intended purpose of the *project*;
- (d) the *Managing Contractor* is fully responsible for the methods of construction and will execute and complete the *Services* in accordance with the *Contract* and the *design documents* which it is entitled to use for construction purposes under subclauses 3.4 and 5.4;
- (e) all materials, plant, equipment and other items supplied under the *Contract* by the *Managing Contractor* will be new, in conformity with their description, of merchantable quality and fit for the purpose stated in or reasonably inferred from the *Contract*;
- (f) all workmanship will be proper and tradesmanlike and to the standards specified in the *Contract*, and to the extent that such standards are not specified, then to standards commensurate with good industry practice;
- (g) the *Principal* will receive good and clear title to the *project*, including all materials, plant, equipment and other items incorporated therein or supplied by the *Managing Contractor* under the *Contract*; and
- (h) shall carry out and complete the *Services* and construct the *project* in accordance with the *design documents* which it is entitled to use for construction purposes so that the *project*, when completed, shall:
 - (i) comply with the *Contract* in all respects, including the *Works Brief*;
 - (ii) meet and satisfy all performance levels and performance requirements stated in the *Contract*;
 - (iii) comply with all applicable law;
 - (iv) be suitable for the *site*;
 - (v) meet the standards of workmanship specified in the *Contract*, and to the extent that such standards are not specified, then standards commensurate with good industry practice; and
 - (vi) to the extent designed by the *Managing Contractor*, be fit for the intended purpose of the *project*.

2.3 Warranties unaffected

The *Managing Contractor* acknowledges and agrees that:

- (a) the warranties in subclause 2.2, the *Managing Contractor's* design obligations and the *Managing Contractor's* warranties, obligations and liabilities under the *Contract* and at law, remain unaffected; and
- (b) the *Managing Contractor* will bear and continue to bear full liability and responsibility in accordance with the *Contract* for the performance of the *Services* at its cost,

notwithstanding any one or more of the following:

- (c) that design work (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Works Brief*;
- (d) that any ambiguities, errors, inconsistencies, discrepancies or omissions exist in the *Works Brief*;
- (e) that any part of the design included in *Works Brief* is described as having been completed to any stage, including "Approved for Construction", "Preliminary Design Review", "System Concept Review", "Critical Design Review" or otherwise, and an error or omission exists in the design which requires the design to be amended and which requires the *Managing*

Contractor to undertake work that is required to be undertaken to get to the relevant stage of design completion which the relevant design is described as having achieved;

- (f) that the *Managing Contractor* is required to engage the *Designers* in connection with the *Services*;
- (g) the involvement of *subcontractors* in the execution of any of the *Services*;
- (h) any receipt or review of, or comment on, or rejection or approval of, or permission to use or deemed permission to use, or expression of satisfaction or dissatisfaction with:
 - (i) any design document;
 - (ii) any other document or information provided by the *Managing Contractor*;
 - (iii) any submission, proposal or recommendation by the *Managing Contractor*; or
 - (iv) any of the *Managing Contractor's* work methods or procedures,
 - by or on behalf of the *Principal* or the *Principal's Representative*;
- (i) any supervision, superintendence or review of, or comment on, or rejection or approval of, or expression of satisfaction or dissatisfaction with:
 - (i) any of the *Managing Contractor's* subcontractor selections;
 - (ii) any of the *Managing Contractor's* materials, plant or equipment selections;
 - (iii) the execution of any of the *Services*; or
 - (iv) any work, plant, equipment or materials,
 - by or on behalf of the *Principal* or the *Principal's Representative*;
- (j) the making available to the *Managing Contractor*, or the provision to the *Managing Contractor*, by or on behalf of the *Principal* or the *Principal's Representative* (whether prior to or after the *date of execution of the Contract*), of any *Information Documents*; or
- (k) any *variation* directed or approved by the *Principal's Representative* under subclause 24.1.

2.4 No duty of care or liability imposed on Principal

Without limiting any other provision of the *Contract*, no receipt of nor any review, comment, approval, consent, rejection, permission to use, deemed permission to use, permission to proceed, expression of satisfaction or dissatisfaction, supervision or superintendence or any other *direction* by or on behalf of the *Principal* or the *Principal's Representative* concerning:

- (a) any *design document* or other document or information provided by the *Managing Contractor*;
- (b) any work, plant, equipment, materials or other aspect of the *Services*; or
- (c) any of the other things mentioned in subclause 2.3,

nor any failure by the *Principal* or the *Principal's Representative* to do any of those things, will:

- (d) except as expressly stated in the *Contract*, give rise to any entitlement for the *Managing Contractor* to make any *Claim* for any additional payment or for an adjustment to the *Target Budget*;
- (e) limit or exclude any obligation or liability of the *Managing Contractor* (including responsibility for any errors, omissions or non-compliance with the *Contract*);
- (f) prejudice any of the *Principal's* rights against the *Managing Contractor*;
- (g) impose on the *Principal* or the *Principal's Representative* any duty of care to the *Managing Contractor* or any *subcontractor* or any of their agents or employees (whether in contract or in tort or for strict liability or otherwise);

- (h) result in the *Principal* or the *Principal's Representative* assuming any responsibility or liability for:
 - (i) the adequacy, quality, compliance or fitness of; or
 - (ii) any errors in or omissions from,
the *project* or any part thereof or any *design document* or other document or information provided by the *Managing Contractor*; or
- (i) constitute an admission that the *Principal*, the *Principal's Representative* or any of their agents or employees have checked any *design document*, other document, information, work, plant, equipment, materials or other things for errors, omissions or compliance with the requirements of the *Contract*.

2.5 Acknowledgment of reliance

The *Managing Contractor* acknowledges that the *Principal*:

- (a) has in entering into the *Contract*, relied on each of the acknowledgements, representations, warranties and agreements by the *Managing Contractor* in subclauses 2.2, 2.3 and 2.4; and
- (b) would not have entered into the *Contract* but for those acknowledgements, representations, warranties and agreements.

2.6 Managing Contractor Resources

The *Managing Contractor* acknowledges that the *Principal* has relied on the level of resources proposed by the *Managing Contractor* in its *Tender for the Services* and the *Managing Contractor* undertakes to provide a level of resources which is adequate to enable the *Managing Contractor* to comply with its obligations under the *Contract*.

2.7 Security

- (a) The *Managing Contractor* must give the *Principal* within 10 days of the *date of execution of the Contract*, two unconditional undertakings:
 - (i) each for the amount in Item 17;
 - (ii) each in the form of Annexure Part L;
 - (iii) each in favour of the *Principal*;
 - (iv) each issued by an institution approved by the *Principal*; and
 - (v) where required by law, duly stamped.Subject to its rights to have recourse to the unconditional undertakings and subject to subclause 28.3, the *Principal* must:
 - (vi) within 28 days after the *date of completion* of the *project*, release one of the unconditional undertakings provided by the *Managing Contractor* under this subclause 2.7, so that it then holds one unconditional undertaking for the amount in Item 17; and
 - (vii) within 28 days after it receives the *final certificate* under subclause 25.7, release the other unconditional undertaking provided by the *Managing Contractor* under this subclause 2.7.
- (b) The *Managing Contractor* must on or before the *date of execution of the Contract* give the *Principal* a guarantee duly executed by the person referred to in Item 18 in favour of the *Principal* in the form of the deed in Annexure Part S and which is, where required, duly stamped.

2.8 Deed Poll

As a condition precedent to any entitlement of the *Managing Contractor* to submit a payment claim under subclause 25.4 or subclause 25.7, the *Managing Contractor* must, within 14 days of the *date of execution of the Contract*, provide to the *Principal's Representative* executed deed polls in favour of *Sydney Trains* in the form set out in Annexure Part G and Annexure Part H

3 Design and Cost Planning

3.1 Managing Contractor's Design Obligations

The *Managing Contractor* must prepare and complete the design of the *project* and *Temporary Works* by preparing the *design documents*, so that the *design documents* which the *Managing Contractor* prepares are suitable for construction and are fit for their intended purpose and otherwise comply with the requirements of this *Contract*.

In preparing the *design documents* the *Managing Contractor* must comply with the requirements of the *Works Brief* and further develop the *Works Brief* into *design documents* which are suitable for construction.

3.2 Value Engineering

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

3.3 Independent Technical Advisor

The *Principal* may engage an independent consultant to act as a technical reviewer ("**Independent Technical Advisor**") to review, report on and verify compliance with specific aspects of the *Contract*.

The *Managing Contractor* must ensure that the Independent Technical Advisor is given reasonable and timely access to:

- (a) all documents and records relevant to *the Services*;
- (b) all relevant personnel involved in carrying out *the Services*, including employees of the *Managing Contractor* and its *subcontractors*; and
- (c) the *site*,

in order to facilitate the Independent Technical Advisor to perform its functions.

The *Managing Contractor* must not do, or omit to do, anything that may prevent or otherwise inhibit the Independent Technical Advisor from performing its functions.

The *Managing Contractor* will not be relieved from any of its liabilities or responsibilities under this *Contract* or otherwise according to law, nor will the rights of the *Principal* whether under this *Contract* or otherwise according to law be limited, or otherwise affected, by the Independent Technical Advisor's performance of its functions.

The *Managing Contractor* must, if requested, assist the *Principal's Representative* and the *Principal's* consultants in demonstrating compliance of the *project* with the requirements of the *Contract*.

3.4 Review of Design Documents

The *Managing Contractor* must submit all *design documents* which it prepares progressively to the *Principal's Representative* for its review, in accordance with the *TfNSW Standard Requirements* and the requirements of subclause 5.4 and the *Works Brief*.

3.5 Copies of Design Documents

- (a) The *Managing Contractor* must, in accordance with subclause 3.3, progressively submit to the *Principal's Representative* the number of copies specified in *Item 20* all *design documents* prepared by the *Managing Contractor*, whether complete or work in progress, which it intends to use for design or construction purposes.
- (b) The *Managing Contractor* must give the *Principal's Representative* the number of copies specified in *Item 20* of:
 - (i) all survey information used in the design of the *project* and the *Temporary Works*; and
 - (ii) all final *design documents* prepared by the *Managing Contractor*.

3.6 Availability of Design Documents

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

- (a) on the *site*, at least one complete set of all *design documents* that the *Managing Contractor* is entitled to use for construction purposes pursuant to subclauses 3.4 and 5.4; and
- (b) at any area on or off the *site* where the *Services* are being carried out, one copy of each of those items specified in paragraph (a) insofar as they are relevant to the *Services* being carried out in that area.

3.7 No Departure from Design Documents

The *Managing Contractor* must carry out *the Services*, and, where any part of the *Reimbursable Services* are being carried out by *subcontractors*, ensure that the *subcontractors* carry out the *Reimbursable Services* strictly in accordance with the *design documents* which it is entitled to use for construction purposes in accordance with subclause 5.4.

3.8 Cost Planning

The *Managing Contractor* must:

- (a) plan the *project* in consultation with the *Principal's Representative* and provide estimates of and costings for the construction and commissioning phase of the *project*;
- (b) within 7 days of the *date of execution of the Contract* (or any longer period agreed by the *Principal's Representative* in writing), prepare for the approval of the *Principal's Representative* a cost breakdown structure;
- (c) within 28 days of the *date of execution of the Contract* (or any longer period agreed by the *Principal's Representative* in writing), prepare for the approval of the *Principal's Representative* a cost plan which sets out the *Managing Contractor's* proposed packaging of the subcontracts of the *project* and includes:
 - (i) a cost analysis in respect of each part of the work under the *Contract* including a detailed break-up by reference to each separate subcontract package (a scope work breakdown structure), of the costs for construction and commissioning which must set a budget (including a contingency) for each subcontract package (a scope cost breakdown structure);
 - (ii) a map linking the benchmark cost breakdown structure to the scope work and cost breakdown structures;
 - (iii) the cash-flow requirements of the *project*; and
 - (iv) a reconciliation of the various elements of the cost plan against the *Target Budget* for the *project*,

and once this cost plan is approved by the *Principal's Representative* it will be referred to as the "**Cost Plan**";

- (d) institute a system of cost control (including monthly reports to the *Principal* setting out the cost to date, forecast cost to complete and forecast cost at completion) and, together with the *Principal's Representative*, review and, where approved by the *Principal's Representative*, amend the *Cost Plan* to take account of any item affecting or likely to affect any component of the *Cost Plan*, and advise the *Principal's Representative* as to the alternative steps available where:
- (i) the tenders for any part of the *Reimbursable Services* which are to be performed by a *subcontractor* exceed the amount included for that work in the *Cost Plan*; or
 - (ii) the costs incurred in respect of any *Reimbursable Services* (including under any *Approved Subcontract Agreement*) exceed the amount allowed for the particular *Reimbursable Services* in the cash-flow which forms part of the *Cost Plan* or the forecast final costs of that *Reimbursable Works* appear likely to exceed the total amount allowed for that work (including the contingency) in the *Cost Plan*; or
 - (iii) no tenders are received for any part of the *Reimbursable Services*; and
- (e) if requested at any time by the *Principal's Representative*, the *Managing Contractor* must provide to the *Principal's Representative* (or any person authorised by the *Principal's Representative*) all information necessary to corroborate the *Cost Plan* and must co-operate in respect of any audit of the information concerning the *Cost Plan*.

4 Notices

- (a) At any time and from time to time the *Principal's Representative* may notify the *Managing Contractor* of an electronic portal or document management system to be used for the purposes of this *Contract*. The *Principal's Representative's* notice will set out:
- (i) the relevant electronic portal or document management system;
 - (ii) the commencement date for the use of the electronic portal or document management system;
 - (iii) any password, login details or similar information required for the *Managing Contractor* to use the electronic portal or document management system;
 - (iv) address details for the *Principal*, the *Principal's Representative* and the *Managing Contractor*; and
 - (v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.
- (b) Any notices contemplated by this *Contract* must be in writing and must:
- (i) before the date referred to in clause 4(a)(ii), be delivered or posted to the relevant address or sent to the facsimile number shown in *Item 2* or *Item 7* (or to any new address or facsimile number notified by the intended recipient); and
 - (ii) on and from the date referred to in clause 4(a)(ii):
 - (A) in the case of notices by the *Managing Contractor* :
 - 1) without limiting clause 4(b)(ii)(A)2), be sent to the *Electronic Portal* address of the *Principal* or the *Principal's Representative* (as applicable); and
 - 2) under clauses 23, 25, 28, 29 and 30 or concerning a claim for payment (including any communication in respect of the *SOP Act*), in addition to the copy of the notice sent pursuant to clause 4(b)(ii)(A)1), also be

delivered or posted to the relevant address or sent to the facsimile number shown in *Item 2* (or to any new address or facsimile number notified by the intended recipient); and

- (B) in the case of notices by the *Principal* or the *Principal's Representative*:
 - 1) be delivered or posted to the relevant address or sent to the facsimile number shown in *Item 7* (or to any new address or facsimile number notified by the intended recipient); or
 - 2) except in relation to notices by the *Principal* under clauses 27, 28 or 30, be sent to the *Electronic Portal* address of the intended recipient.
- (c) For the avoidance of doubt, no notice referred to in clause 4(b)(ii)(A)2) shall be effective unless delivered in accordance with both clauses 4(b)(ii)(A)1) and 4(b)(ii)(A)2).
- (d) Subject to clause 4(g), a notice sent to the *Electronic Portal* will be taken to have been received on the date recorded on the notice on which it was registered on the *Electronic Portal*.
- (e) Subject to clause 4(g), a notice sent by post will be taken to have been received:
 - (i) in the case of international post, 7 *Business Days* after the date of posting; and
 - (ii) in the case of posting within Australia, 2 *Business Days* after the date of posting.
- (f) Subject to clause 4(g), a notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 4(b)(i), 4(b)(ii)(A)2) or 4(b)(ii)(B)1) (as applicable), which is a *Business Day*.
- (g) Where clause 4(b)(ii)(A)2) applies, the relevant notice will be taken to have been received on the later of:
 - (i) the date determined in accordance with clause 4(d); and
 - (ii) the date determined in accordance with clause 4(e) or 4(f) (as the case may be).

5 Contract documents

5.1 Discrepancies

Figured dimensions shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, error, ambiguity, omission or discrepancy in any document prepared for the purpose of carrying out *the Services*, that party must give the other written notice of it. The *Principal's Representative*, thereupon, and upon otherwise becoming aware, must, subject to subclause 5.2, direct the *Managing Contractor* as to the interpretation and construction which the *Managing Contractor* must follow.

The *Principal's Representative*, in giving a *direction* in accordance with this subclause 5.1, is not required to determine whether or not there is an ambiguity, error, inconsistency, omission or discrepancy in this *Contract*.

Any *direction* which the *Principal's Representative* gives in accordance with this subclause 5.1:

- (a) will not relieve the *Managing Contractor* from or alter its liabilities or obligations under this *Contract* or otherwise at law; and
- (b) will not limit or otherwise affect the *Principal's* rights against the *Managing Contractor*, whether under this *Contract* or otherwise according to law.

The *Managing Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, error, ambiguity, omission or discrepancy:

- (c) in the *design documents* ; or

- (d) between the *design documents* and the *Works Brief*; or
- (e) in the *Works Brief*,

necessitates the *direction* and such cost shall not form part of the *Actual Reimbursable Costs* and shall not entitle the *Managing Contractor* to a *fee adjustment* or a *Design Fee adjustment*.

If compliance with any other *direction* under this subclause 5.1 causes the *Managing Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the *direction* shall be treated as a *variation*.

5.2 Order of Precedence

In the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this *Contract*, unless otherwise directed by the *Principal's Representative*, the interpretation which prescribes or requires the highest standard, quality or quantum will take precedence.

5.3 Principal-supplied documents

The *Principal* must supply to the *Managing Contractor* the documents and number of copies thereof, both stated in *Item 19*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *the Services*.

5.4 Managing Contractor-supplied documents

The *Managing Contractor* must supply to the *Principal's Representative* the documents and the number of copies thereof, both stated in *Item 20*, by the time required by the *Principal's Representative* or otherwise in a timely manner to ensure that each *Portion* and the *project* have achieved *Completion* by the times required by the *Contract*.

If the *Managing Contractor* submits documents to the *Principal's Representative* (including in respect of documents the *Managing Contractor* is required to submit under a provision of the *Contract* to the *Principal's Representative* for review), then except where the *Contract* otherwise provides:

- (a) the *Principal's Representative* may but is not obliged to review such documents, and if the *Principal's Representative* does review any such documents, the *Principal's Representative* shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Principal's Representative's* acknowledgment or approval, or review or rejection of a document shall not prejudice the *Managing Contractor's* obligations nor the *Principal's* rights, whether under the *Contract* or otherwise;
- (c) if the *Contract* requires the *Managing Contractor* to obtain the *Principal's Representative's direction* about such documents, the *Principal's Representative* must give, within the time stated in *Item 21* of receiving the document, a *direction*, including reasons if the documents are not suitable; and
- (d) the *Principal's Representative* may, within the time stated in *Item 21* of receiving the document, reject the document (or any part), giving reasons for the rejection, provided that the *Principal's Representative* may not unreasonably reject the document. The *Managing Contractor* will not be entitled to make any *Claim* in any way in connection with the *Principal's Representative's* review or rejection of such documents, or any failure or inadequacy in the *Principal's Representative's* review. Rejected documents must be revised

and resubmitted within 10 *Business Days* of the rejection, and this subclause 5.4 will reapply to the resubmitted document.

Where a document (other than a *program*) which is required to be submitted for review relates to a part of *the Services* or the *project*, the *Managing Contractor* may not undertake those *Services* or construct the relevant part of the *project*, unless otherwise agreed by the *Principal's Representative* or otherwise expressly stated in the *TSR* entitled 'Project Administration', until 15 *Business Days* have passed since the *Principal's Representative* received the document without the *Principal's Representative* having rejected the document.

Any of *the Services* performed must comply with the requirements of relevant documents that have not been rejected.

5.5 Confidential information

The *Managing Contractor* must ensure that it keeps confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by the *Principal*, the *Managing Contractor* must enter into, or cause any of its *subcontractors* or employees to enter into, a separate agreement on the terms of Annexure Part V or on such other terms as may be reasonably required by the *Principal* not to disclose to anyone else any confidential matter whether before or after *completion* or earlier termination of the *Contract*.

5.6 Information Documents and Materials

- (a) Prior to the date of execution of the *Contract*, the *Managing Contractor* executed the Deed of Disclaimer and provided this to the *Principal* after which the *Principal* provided the *Managing Contractor* with, or gave the *Managing Contractor* access to, the Information Documents and Materials.
- (b) In respect of any information, data or documents (including the *Information Documents and Materials*) made available to the *Managing Contractor* prior to the date of execution of the *Contract*, without limiting subclause 5.6(c) or the warranties or acknowledgements in the Deed of Disclaimer:
 - (i) the *Managing Contractor* acknowledges that:
 - (A) 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 such information, data or documents (including the *Information Documents and Materials*);
 - (B) such information, data and documents (including the *Information Documents and Materials*) do not form part of this *Contract*; and
 - (C) subclause 5.6(c) applies to such information, data or documents (including the *Information Documents and Materials*);
 - (ii) the *Principal* will not be liable upon any *Claim* by the *Managing Contractor* arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of that information, data or documents (including the *Information Documents and Materials*) by the *Managing Contractor* or any other person to whom the information, data or documents (including the *Information Documents and Materials*) is disclosed; or
 - (B) a failure by the *Principal* to provide any other information, data or documents to the *Managing Contractor*.
- (c) The *Managing Contractor*:

- (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to the *Managing Contractor*, by the *Principal* or anyone on behalf of the *Principal* or any other information, data, representation, statement or document for which the *Principal* is responsible or may be responsible whether or not obtained from the *Principal* or anyone on behalf of the *Principal*; or
 - (B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
 for the purposes of entering into this *Contract* except to the extent that any such information, statement or document forms part of this *Contract*;
 - (ii) warrants that it enters into this *Contract* based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that the *Principal* has entered into this *Contract* relying upon the warranties, acknowledgements and agreements in subclauses 5.6(c)(i) and 5.6(c)(ii) and in the *Deed of Disclaimer* and the *Tender Form*.
- (d) The *Managing 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 subclause 5.6(d)(i)) any costs, expenses, losses or damages suffered or incurred by the *Principal*,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of the information data or documents (including the *Information Documents and Materials*), as referred to in subclauses 5.6(b) and 5.6(c)(i), by the *Managing Contractor* or any other person to whom the information data or documents (including the *Information Documents and Materials*) are disclosed;
 - (iv) any breach by the *Managing Contractor* of the warranties in this subclause 5.6; or
 - (v) the information, data or documents (including the *Information Documents and Materials*) being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false and misleading" within the meaning of those terms in sections 18 and 29 of Schedule 2 of the Competition and Consumer Act 2010 (Cth), or any equivalent provision of State or Territory legislation.

5.7 Disclosure of Contract

The *Managing Contractor* acknowledges that the *Principal* may disclose this *Contract* (and information concerning the terms of this *Contract*) under or in accordance with any one or more of the following:

- (a) the Government Information (Public Access) Act 2009 (NSW); and
- (b) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.

6 Assignment and subcontracting

6.1 Assignment

Neither party may, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

6.2 Subcontracting

The Services are subject to the following restrictions:

- (a) all *Reimbursable Services*, other than the *Managing Contractor Work*, must, unless otherwise agreed by the *Principal's Representative* in writing, be performed under *Approved Subcontract Agreements* which will be made between the *Managing Contractor* and *subcontractors*:
 - (i) in the case of minor subcontracts with an estimated value of less than \$50,000.00, in accordance with such procedure as may be requested by the *Managing Contractor* and approved in writing by the *Principal's Representative*, or
 - (ii) otherwise in accordance with the procedure in subclauses 6.3 - 6.10; and
- (b) the *Managing Contractor* must not include any of the work which forms part of the *Preliminaries* in the scope of any part of the work to be performed by the *subcontractors*.

The *Managing Contractor* must in respect of all *Approved Subcontract Agreements* in which it holds retention money from the *subcontractor*, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW).

6.3 Subcontract Proposal

The *Managing Contractor* must, before entering into any subcontract for the performance by another person of *Reimbursable Services*, issue a document titled "**Subcontract Proposal**" to the *Principal's Representative* which sets out particulars of:

- (a) the work to be the subject of a proposed subcontract agreement;
- (b) the amount included for this work in the *Target Budget* and the *Cost Plan* referred to in subclause 3.8; and
- (c) the maximum rate of damages (whether liquidated or otherwise and whether as to any delay in handing back a *Track Possession* or otherwise) the *Managing Contractor* proposes to include in the proposed subcontract agreement and any methods for calculating such damages.

If required by the *Principal's Representative*, the *Managing Contractor* must provide further particulars prior to the *Principal's Representative* giving approval for the *Subcontract Proposal*.

The *Principal's Representative* must give its written approval to the *Managing Contractor* within 5 *Business Days* of receiving from the *Managing Contractor* the *Subcontract Proposal*, unless it requires further particulars.

If further particulars are required by the *Principal's Representative*, the *Principal's Representative* must give its approval within 5 *Business Days* after the latest of the:

- (d) *Managing Contractor* providing the *Subcontract Proposal*; or
- (e) where the *Principal's Representative* requests further particulars under this subclause 6.3, provision by the *Managing Contractor* of the additional information requested by the *Principal's Representative*.

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

- (f) prepare the *Subcontract Tender Documentation* and in doing so:
 - (i) use the relevant parts of the *design documents* which it is entitled to use for construction purposes pursuant to subclauses 3.4 and 5.4;

- (ii) use General Conditions of Subcontract approved by the *Principal's Representative* which in the case of all *subcontractors* other than the *Designers*, must include clauses to the effect of those set out in Annexure Part E; and
- (iii) include the Form of Subcontractor Deed, which is included in Annexure Part Q, to be executed by the *subcontractor* selected to undertake the work;
- (g) submit a copy of the *Subcontract Tender Documentation* to the *Principal's Representative* for his or her approval at least 14 days before tenders are to be invited; and
- (h) subsequently amend the Subcontract Tender Documentation as required by the *Principal's Representative*.

6.4 Calling Tenders

The *Managing Contractor* must:

- (a) recommend to the *Principal's Representative* those persons who in the *Managing Contractor's* opinion are suitable for inclusion in the tender list for the work to be subcontracted (which must not include a *Prohibited Subcontractor*);
- (b) subsequently finalise the tender list in consultation with the *Principal's Representative* who may (in his or her absolute discretion, without the necessity to give reasons) remove or add any person from or to the tender list subject to the *Managing Contractor* not making a reasonable objection to any person which the *Principal's Representative* may remove from or add to the tender list;
- (c) call tenders from the persons in the tender list finalised with the *Principal's Representative* in sufficient time to avoid delays or disruption to the progress of the work required to be undertaken to complete the *project*; and
- (d) if so requested by the *Principal's Representative*, promptly provide a copy of each tender to the *Principal's Representative*.

6.5 Reviewing Tenders

The *Managing Contractor* must:

- (a) examine and analyse all tenders received;
- (b) recommend to the *Principal's Representative* which tenderer, if any, should be accepted by the *Managing Contractor*;
- (c) submit together with any such recommendation:
 - (i) the work to be covered and executed under the proposed subcontract agreement;
 - (ii) the time for commencement and completion of that work and confirmation that these times are in accordance with the then current *approved program*;
 - (iii) the proposed subcontract price and the amounts tendered by other tenderers;
 - (iv) any proposed amendments to the subcontract agreement contained in the *Subcontract Tender Documentation* approved by the *Principal's Representative* under subclause 6.3; and
 - (v) any other details which may be required by the *Principal's Representative*; and
- (d) comply with, and ensure that *subcontractors* comply with, the *NSW Code* and *NSW Guidelines*.

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

6.6 Recommended Tenderer

The *Principal's Representative* will consider the recommended tenderer and approve or disapprove the *Managing Contractor's* recommendation without any obligation to give reasons for the approval or disapproval. If the *Principal's Representative* approves the *Managing Contractor's* recommended tenderer, the *Managing Contractor* must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the subcontract agreement contained in the *Subcontract Tender Documentation* approved by the *Principal's Representative* under subclause 6.3 with only such amendments as the *Principal's Representative* may have approved in writing; and
 - (ii) the subcontract price approved by the *Principal's Representative*; and
- (b) provide the *Principal's Representative* with a copy of the executed subcontract agreement including the *design documents* relevant to that agreement.

If the *Managing Contractor* wishes to claim an extension of time in respect of the *Principal's Representative's* disapproval of the *Managing Contractor's* recommended tenderer, the *Managing Contractor* must, within 3 *Business Days* after the *Principal's Representative* has disapproved the *Managing Contractor's* recommendation, provide to the *Principal's Representative* a written response providing details of how the *Principal's Representative* disapproval has delayed the *Managing Contractor* in achieving completion.

6.7 Co-ordination of Subcontractors

The *Managing Contractor* must:

- (a) administer, supervise, inspect, co-ordinate and control the work of all *subcontractors* engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the *Approved Subcontract Agreements* and all *subcontractors* engaged by it;
- (c) administer the *Approved Subcontract Agreements* in accordance with:
 - (i) the terms of the *Approved Subcontract Agreements*; and
 - (ii) the directions of the *Principal's Representative*; and
- (d) at all times coordinate the performance of *the Services* and the work of its *subcontractors* and ensure execution and completion of the *Approved Subcontract Agreements* in a proper and workmanlike manner according to:
 - (i) the relevant design documents; and
 - (ii) the obligations of the respective subcontractors.

6.8 Changes to Subcontractor's Work

The *Managing Contractor* must:

- (a) not vary the work which is the subject of an *Approved Subcontract Agreement* unless:
 - (i) the *Principal's Representative* has directed a *variation* under clause 24 and that *variation* relates directly to the work the subject of the *Approved Subcontract Agreement*; or
 - (ii) the *Managing Contractor* makes a written request to the *Principal's Representative* to authorise it to issue a *direction* to a *subcontractor* to vary the work, and the *Principal's Representative* gives its written consent to this request (such consent not to be unreasonably withheld or delayed where the *Managing Contractor's* request to issue such a *direction* is required to co-ordinate the work of *subcontractors* with the work of *Other Contractors*); and

- (b) not otherwise give any *direction* to the *subcontractor* which may delay the *subcontractor* or increase the amount payable to the *subcontractor*, unless directed to do so by the *Principal's Representative*.

6.9 Related Companies of Managing Contractor

The *Managing Contractor* or a related body corporate of the *Managing Contractor* may not itself carry out any part of the *Reimbursable Services* other than the *Managing Contractor Work* unless:

- (a) the express written approval of the *Principal's Representative* is obtained; and
- (b) the *Managing Contractor* and the *Principal's Representative* agree upon a fixed price or rates, or a combination of a fixed price and rates, for the work prior to the *Managing Contractor* or the related body corporate commencing the work.

In this paragraph, "related body corporate" has the same meaning as in the *Corporations Act 2001* (Cth).

6.10 Managing Contractor Works

The *Principal's Representative* will not object to the *Managing Contractor* performing the *Managing Contractor Work*.

The *Managing Contractor* must not commence any part of the *Managing Contractor Work* until written approval is received from the *Principal Representative*.

Prior to receiving approval from the *Principal Representative* the *Managing Contractor* must provide to the *Principal's Representative* the following particulars in writing:

- (a) a detailed scope of the proposed work to be undertaken as part of the *Managing Contractor Work*;
- (b) a detailed methodology addressing the following:
 - (i) a description of the resource methodology that will be used to undertake the proposed works;
 - (ii) details of how the *Managing Contractor* will ensure that the quality of the proposed works complies with the *Contract* and ensure compliance with ASA standards;
 - (iii) a statement as to how the *Managing Contractor* will ensure the proposed works are carried out in an efficient manner: and
 - (iv) a description of the information and particulars the *Managing Contractor* will provide to the *Principal's Representative* supporting any progress claim made by the *Managing Contractor* for carrying out the proposed works;
- (c) the target budget (including contingency) for the proposed works broken down into sufficient detail and reconciled against the *Cost Plan* including details of the applicable rate or rates from the *schedule of rates* that will apply to the work, or if there are no applicable rate or rates, explaining why the rates in the *schedule of rates* do not apply and providing details of its proposed rate (which must be exclusive of any margin for off-site overheads or profit);
- (d) the cash flow for the proposed works;
- (e) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current *approved program*;
- (f) the proposed project team to undertake the proposed works including all construction workers, managerial and technical personnel;
- (g) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;

- (h) the cost of any materials and equipment the *Managing Contractor* intends to purchase as part of the *Managing Contractor Work* for use in the proposed works; and
- (i) the type and number of *construction plant* and the anticipated total hours/days the *construction plant* will be used to carry out the proposed works.

If required by the *Principal's Representative* the *Managing Contractor* must provide further particulars prior to the *Principal's Representative* giving approval for the proposed works to commence.

The *Principal's Representative* must give its written approval to the *Managing Contractor* within 15 *Business Days* of receiving from the *Managing Contractor* all particulars required under this subclause 6.10, unless it requires further particulars.

If further particulars are required by the *Principal's Representative*, the *Principal's Representative* must give its approval within 15 *Business Days* after the latest of the:

- (j) *Managing Contractor* providing all materials under this subclause 6.10; or
- (k) where the *Principal's Representative* requests further particulars under this subclause 6.10, provision by the *Managing Contractor* of the additional information requested by the *Principal's Representative*.

In carrying out the *Managing Contractor Work* the *Managing Contractor* must:

- (l) carry out the *Managing Contractor Work* in an efficient manner;
- (m) carry out the *Managing Contractor Work* so as to avoid interfering with, disrupting or delaying the work of *subcontractors* and *Other Contractors*;
- (n) not vary the work which is the subject of the *Managing Contractor Work* unless the *Principal's Representative* has directed a *variation* under clause 24 and that *variation* relates directly to the work the subject of the *Managing Contractor Work*; and
- (o) each day provide the *Principal's Representative* with details of all resources, labour and *construction plant*, used by the *Managing Contractor* in the execution of the *Managing Contractor Work* which identifies as a minimum:
 - (i) the part of the *Managing Contractor Work* being performed by the *Managing Contractor* as described in Annexure Part D;
 - (ii) the name of each person performing the work for each part of the *Managing Contractor Work* with details of their labour category, the time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and
 - (iii) details of the type of plant being used for each part of the *Managing Contractor Work* and the number of hours being claimed.

The *Principal's Representative* may direct the manner in which the matters described in paragraph (o) are to be recorded.

The *Managing Contractor* represents and warrants to the *Principal* that it holds and will continue to hold all relevant licences to legally execute the *Managing Contractor Work*.

The *Managing Contractor Work* is to be undertaken on an "open book" basis and will be subject to an independent third party audit as required by the *Principal's Representative*. The *Managing Contractor* must cooperate in facilitating any such audit including by making available all necessary records and documents to the *Principal's Representative* and the auditor to enable an audit to be conducted of the amount properly incurred and payable pursuant to this subclause 6.10.

6.11 Managing Contractor's responsibility

Except where the *Contract* otherwise provides, the *Managing Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* and employees and agents of *subcontractors* as if they were those of the *Managing Contractor*.

Approval to subcontract shall not relieve the *Managing Contractor* from any liability or obligation under the *Contract*.

6.12 Disputes with Subcontractors

If a *Managing Contractor* has a dispute with a *subcontractor* in respect of any aspect of the *Services* and either the *Managing Contractor* or the *subcontractor* pursues any court action, arbitration or adjudication application under the *SOP Act*, then:

- (a) the *Managing Contractor* will be responsible for carriage of the dispute, provided it must:
 - (i) keep the *Principal's Representative* fully informed of all aspects of the dispute; and
 - (ii) act in accordance with the reasonable instructions of the *Principal's Representative* (including in respect of lodging any appeals against any decisions made in respect of the dispute);
- (b) subject to the *Principal's Representative* prior written approval (which may be given or withheld at the *Principal's Representative's* absolute discretion), any external legal, expert or consultants costs incurred by the *Managing Contractor* arising out of the defence of any court action, arbitration or adjudication will form part of the *Actual Reimbursable Costs*; and
- (c) the *Managing Contractor's* own internal costs of administering the court action, arbitration or adjudication application will not form part of the *Actual Reimbursable Costs*.

6.13 Co-ordination with Other Contractors

The *Managing Contractor* must:

- (a) permit *Other Contractors* to carry out their work (including rectification of defective work and the provision of access to work sites);
- (b) fully co-operate with *Other Contractors*;
- (c) carefully co-ordinate and interface the performance of *the Services* and the work of its *subcontractors* with the work carried out or to be carried out by *Other Contractors*; and
- (d) carry out *the Services*, and ensure that the *subcontractors* carry out their work, so as to avoid interfering with, disrupting or delaying the work of *Other Contractors*.

6.14 Warranty

The *Managing Contractor* must, as a condition precedent to *completion* of the *project* or each *Portion*, procure and provide the *Principal's Representative* with those warranties described in *Item 22* or elsewhere in this *Contract* from the relevant *subcontractors* undertaking or supplying the work or items the subject of the warranty.

These warranties:

- (a) must be in the form set out in Annexure Part W and must be in favour of *the Principal, Sydney Trains* and any other entity nominated by the *Principal's Representative* from time to time; and
- (b) will not derogate from any rights that the *Principal* may have against the *Managing Contractor* in respect of the subject matter of these warranties.

6.15 Contract obligations in relation to *Actual Reimbursable Costs*

The *Managing Contractor* agrees that the *Actual Reimbursable Costs* will not include costs incurred in circumstances where they are incurred in breach of a requirement of the *Contract*.

Without limiting the previous paragraph any costs incurred in breach of :

- (a) *the Cost Plan*;
- (b) any applicable time bar requirements set out in, or as defined in, the *Cost Plan* or in the *Contract*;
- (c) any delegations for approval set out in the *Cost Plan* or in the *Contract*; or
- (d) any requirement set out in the *Contract* to obtain the written approval of the *Principal's Representative* to commence any part of the *Managing Contractor Work*,

will not form part of the *Actual Reimbursable Costs*.

6.16 Specialist Asbestos Removal Subcontractor

Where the *Managing Contractor* becomes aware of the existence of any asbestos at the *site* or of any material at the *site* which may contain asbestos (including in connection with any buildings), it must not disturb the asbestos or the material and must, in accordance with the procedures in this clause 6, employ:

- (a) an occupational hygienist or asbestos consultant, who must be appropriately qualified and licensed to conduct any audits and inspections and prepare any management plans required in relation to the asbestos; and
- (b) a licensed asbestos removal *subcontractor* who:
 - (i) is appropriately qualified;
 - (ii) specialises in the removal of asbestos; and
 - (iii) holds all appropriate licences, which licences are current (including from WorkCover NSW),

("specialist asbestos removal subcontractor") to carry out the removal of the asbestos.

The work of the *specialist asbestos removal subcontractor* and the occupational hygienist / asbestos consultant must be subcontracted to separate persons who are independent of each other and where they are both corporations, neither may be a "related body corporate" of the other (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)).

The *Managing Contractor* must ensure that the occupational hygienist (or asbestos consultant) and the *specialist asbestos removal subcontractor* comply with all *legislative requirements* in respect of the asbestos and its removal, including without limitation and to the extent relevant:

- (c) complying with the Code of Practice issued by WorkCover entitled "How to Remove Safely Remove Asbestos" December 2011;
- (d) obtaining all necessary certificates, licences, consents, permits, approvals;
- (e) complying with all notification requirements;
- (f) appropriately disposing of all asbestos wastes; and
- (g) undertaking all required monitoring.

6.17 Prohibited Subcontractor

The *Principal* may in its absolute discretion direct the *Managing Contractor* to terminate any *subcontract* if:

- (a) that *subcontractor*; or

- (b) where the *subcontractor* is a company, any employee of that *subcontractor* working on the *project*,

has been found to have engaged in corrupt conduct (as defined in the Independent Commission Against Corruption Act 1988 (NSW)) by the Independent Commission Against Corruption.

The *Managing Contractor* must then terminate any *subcontracts* under which that *subcontractor* is engaged in respect of any part of the *project* and ensure that a replacement *subcontractor* is appointed in accordance with this *Contract*.

7 Industrial Relations

7.1 General

The *Managing Contractor* must in carrying out *the Services*:

- (a) assume sole responsibility for and manage all aspects of industrial relations for *the Services*, including ensuring all *subcontractors* manage all aspects of industrial relations with their employees appropriately;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and *project* based agreements and awards, and any relevant law (including statutes), for all employees engaged by any person in connection with *the Services*, are always observed in full; and
- (c) keep the *Principal's Representative* fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of *the Services*, the *subcontractors* and *Other Contractors'* activities or the delivery of the *project*.

7.2 New South Wales Government Requirements

Without limiting subclause 7.3, the *Managing Contractor* must:

- (a) comply with all requirements of the *NSW Code* and the *NSW Guidelines*;
- (b) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan prepared in accordance with the *TfNSW Standard Requirements* and submitted by the *Managing Contractor* as part of *the Services*;
- (c) not commence any work on the *site* until the Workplace Relations Management Plan has been submitted to the *Principal's Representative* and the *Principal's Representative* has not rejected it under subclause 5.4;
- (d) submit to the *Principal's Representative*, before beginning work on the *site*, a statement detailing:
 - (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (ii) the names of Federal or NSW awards that are likely to cover the *Managing Contractor*, *subcontractors* and *Other Contractors* involved in *the Services*; and
 - (iii) the names of those responsible for co-ordinating industrial relations for *the Services*, except that this statement is not required where the *Managing Contractor* engages an independent industry or employer association or other specialist organisation to audit service and verify compliance with employment and legal obligations;
- (e) not do, or omit to do, anything that is, or is likely to be, prejudicial to execution of *the Services*;
- (f) before beginning work on the *site*, submit a statement on the *Managing Contractor's* letterhead and signed by an authorised person, attesting to the *Managing Contractor's*

compliance, in the preceding twelve months, with all employment and legal obligations, including:

- (i) payment of remuneration to employees;
 - (ii) annual leave provisions;
 - (iii) Long Service Leave Payment Scheme registration;
 - (iv) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (v) workers' compensation insurance, including self-insurance arrangements;
 - (vi) superannuation fund membership and contributions; and
 - (vii) over-award payments such as redundancy fund contributions; and
- (g) continue to provide during the execution of *the Services* appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for *the Services*.

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

- (h) are in addition to, but are not in substitution for, any applicable *legislative requirements*; and
- (i) do not limit the powers of the *Principal* or the liabilities and responsibilities of the *Managing Contractor* pursuant to such *legislative requirements*.

The *Managing Contractor* acknowledges and warrants that the *Target Budget* includes all costs and expenses involved in complying with all requirements of this *Contract* relating to industrial relations and all relevant awards, enterprise and industrial agreements and *project* specific agreements and awards.

7.3 NSW Code of Practice

- (a) In addition to terms defined in this *Contract*, terms used in this subclause 7.3 have the same meaning as is attributed to them in the *NSW Guidelines*. The *NSW Code* and *NSW Guidelines* are available at www.industrialrelations.nsw.gov.au
- (b) The *Managing Contractor* must at all times comply with, and meet any obligations imposed by the *NSW Code* and the *NSW Guidelines*.
- (c) The *Managing 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.
- (d) Where the *Managing Contractor* engages a *subcontractor*, the *Managing Contractor* must ensure that the contract imposes on the *subcontractor* equivalent obligations to those in this subclause 7.3, including that the *subcontractor* must at all times comply with, and meet any obligations imposed by, the *NSW Code* and the *NSW Guidelines*.
- (e) The *Managing Contractor* must not appoint or engage another party in relation to the *project* where that appointment or engagement would breach a sanction imposed on the other party in relation to the *NSW Code* or *NSW Guidelines*.
- (f) The *Managing Contractor* must maintain adequate records of compliance with the *NSW Code* and *NSW Guidelines* by it, its *subcontractors* and related entities.
- (g) The *Managing 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 *Managing Contractor*, including the *site*;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the *project*;
 - (v) have access to personnel; and
 - (vi) interview any person,
as is necessary for the authorised personnel to monitor and investigate compliance with the *NSW Code* and *NSW Guidelines*, by the *Managing Contractor*, its *subcontractors* and related entities.
- (h) The *Managing Contractor*, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the *CCU*) for the production of specified documents by a certain date, whether in person, by post or electronic means.
 - (i) The *Managing Contractor* warrants that at the *date of execution of the Contract*, neither it, nor any of its related entities, are subject to a sanction in connection with the *NSW Code* or *NSW Guidelines* that would have precluded it from responding to a procurement process for work to which the *NSW Code* and *NSW Guidelines* apply.
 - (j) If the *Managing Contractor* does not comply with, or fails to meet any obligation imposed by, the *NSW Code* or *NSW Guidelines*, a sanction may be imposed against it in connection with the *NSW Code* or *NSW Guidelines*.
 - (k) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the *CCU*) is entitled to:
 - (A) record and disclose details of non-compliance with the *NSW Code* or *NSW Guidelines* and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the *Managing Contractor* or its related entities, in respect of work to which the *NSW Code* and *NSW Guidelines* apply.
 - (l) The *Managing Contractor* bears the cost of ensuring its compliance with the *NSW Code* and *NSW Guidelines*, including in respect of any positive steps it is obliged to take to meet its obligations under the *NSW Guidelines*. The *Managing Contractor* is not entitled to make a claim for reimbursement or an extension of time from the *Principal* or the State of NSW for such costs.
 - (m) Compliance with the *NSW Code* and *NSW Guidelines* does not relieve the *Managing Contractor* from responsibility to perform the *Services* and any other obligation under this *Contract*, or from liability for any *Defect* in the *Services* or from any other legal liability, whether or not arising from its compliance with the *NSW Code* and *NSW Guidelines*.
 - (n) Where a change in this *Contract* or the *project* is proposed, and that change may, or may be likely to, affect compliance with the *NSW Code* and *NSW Guidelines*, the *Managing Contractor* must immediately notify the *Principal* (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the *NSW Code* and *NSW Guidelines* will be, or is likely to be, affected by the change; and

- (iii) what steps the *Managing Contractor* proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Work Health and Safety Management Plan),

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

7.4 Other Requirements

The industrial relations requirements contained in this *Contract* and the NSW Government Industrial Relations Management Guidelines, December 1999:

- (a) are in addition to, but are not in substitution for, any law, including any *legislative requirement*; and
- (b) do not limit the powers of the *Principal* or the liabilities and responsibilities of the *Managing Contractor*.

The *Managing Contractor* warrants and acknowledges that it has allowed in the *management fee* for all the costs and expenses involved with complying with all the requirements of this *Contract* relating to industrial relations and all relevant awards, enterprise and industrial agreements and *project* specific agreements and awards.

8 Intellectual property rights

8.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Works Brief*, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or *Principal's Representative*, shall not infringe any *intellectual property right*.

The *Managing Contractor* warrants that the *design documents* prepared by the *Managing Contractor* and any other documents and methods of working, each provided by the *Managing Contractor*, shall not infringe any *intellectual property right*.

Each party must indemnify the other against such respective infringements.

8.2 Intellectual property rights granted to Principal

Copyright and property in the *design documents* and in the *Managing Contractor's* documents and methods of working for the *project* hereby vest upon their creation in the *Principal*, and the *Principal* grants to the *Managing Contractor* an irrevocable licence, to use such things for the *project*.

If any *intellectual property rights* in the *design documents* or methods of working are not capable of being vested in the *Principal* because the *Managing Contractor* itself does not own, and is unable at a reasonable cost to obtain ownership of, those *intellectual property rights*, the *Managing Contractor* grants to the *Principal* an irrevocable licence, which may be transferred and is not subject to the payment of any royalties, to use such *design documents* and methods of working for the *project*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts) or additions or alterations to the *project* and the copying of documents for such purposes.

The *Managing Contractor* must do everything necessary to perfect such vesting.

The *Managing Contractor* must ensure that the documents and methods of working are not copied, supplied nor reproduced for any purpose other than *the Services*.

9 Legislative and other requirements and powers of authorities

9.1 Compliance

The *Managing Contractor* must satisfy (and, to the extent relevant, must ensure that all *subcontractors* satisfy) all *legislative requirements* necessary to carry out *the Services* and design and construct the *project* and the *Temporary Works* or necessary for the use, operation, maintenance and repair of the *project*, except those in *Item 23*, those in Annexure Part K or those directed by the *Principal's Representative* to be satisfied by or on behalf of the *Principal*.

The *Managing Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Works Brief*, must promptly give the *Principal's Representative* written notice thereof.

9.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
 - (i) to the *Works Brief*;
 - (ii) to the *project*;
 - (iii) to *the Services* (including the *Design Services*);
 - (iv) being the provision of services by a municipal, public or other statutory authority or private utility company in connection with *the Services* or the *project*; or
 - (v) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the date of execution of the *Contract* and:
 - (i) as at the *date of execution of the Contract* was not published or public notice had been given (even as a possible future *legislative requirement*) or could not otherwise have been reasonably anticipated by a competent contractor; and
 - (ii) in the case of the documents described in paragraph (b) of the definition of *legislative requirements*, only changes a certificate, licence, consent, permit, approval or requirement (including the *Planning Approval*) which was in existence as at the *date of execution of the Contract*; and
- (c) causes the *Managing Contractor* to incur more or less cost than otherwise would have been incurred in performing either or both of the *Preliminaries* or the *Design Services*,

there shall be a *fee adjustment* and/or a *Design Fee adjustment* (as appropriate).

9.3 Changes in Codes and Standards

Where there is a *Change in Codes and Standards*:

- (a) the *Managing Contractor* must give a written notice to the *Principal's Representative* within 20 *Business Days* of the *Change in Codes and Standards* containing:
 - (i) details of the *Change in Codes and Standards*; and
 - (ii) an estimate of the *Managing Contractor's* increased or decreased costs of complying with the *Change in Codes and Standards* (including any additional *Actual Reimbursable Costs*) including sufficient information to support the estimate; and
- (b) if a notice is given by the *Managing Contractor* which complies with subclause 9.3(a), then within 10 *Business Days* of the notice being given, the *Principal's Representative* will either:
 - (i) direct the *Managing Contractor* to disregard the *Change in Codes and Standards*; or

- (ii) direct a *variation* under subclause 24.1 in respect of the *Change in Codes and Standards*.

If there is any change in the *Codes and Standards* which does not constitute a *Change in Codes and Standards* the *Managing Contractor* must comply with the change and will not be entitled to make any *Claim* against the *Principal* arising out of or in any way in connection with the change.

9.4 Exchange of Information Between Government Agencies

The *Managing Contractor* authorises the *Principal*, its employees and agents to make information concerning the *Managing Contractor* available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the *Managing Contractor* to the *Principal* or the *Principal's Representative* and any information relating to the *Managing Contractor's* performance under this *Contract*.

The *Managing Contractor* acknowledges that any information about the *Managing Contractor* from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the *Principal* and NSW government departments and agencies in considering whether to offer the *Managing Contractor* future opportunities for NSW government work.

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

9.5 Rail Safety Accreditation

To the extent that *the Services* require accreditation under the *Rail Safety National Law*, the *Managing Contractor* must carry out *the Services* (including those performed by its *subcontractors*) pursuant to the *TfNSW Accreditation*.

9.6 Principal Contractor

- (a) In this subclause 9.6 the terms "construction project", "construction work", "principal contractor", and "workplace" have the same meanings assigned to the terms under the *WHS Legislation* and the word "Control" has the same meaning as in Annexure Part J.

For the purpose of the *WHS Legislation* and this *Contract*, the *project* and any work by an *Other Contractor* ("*Other Contractor Work*") is taken to be part of the same 'construction project'.

- (b) During any period:
 - (i) for which the *Managing Contractor* is specified in Annexure Part J as being; or
 - (ii) that the *Principal's Representative* directs the *Managing Contractor* to be,
 - in *Control* of any part of the *site* and to the extent that the *Services* or any *Other Contractor Work* includes construction work;
 - (iii) *the Principal engages the Managing Contractor* as the principal contractor in respect of the *Services* and all *Other Contractor Work* carried out on that part of the *site*;
 - (iv) the *Principal* authorises the *Managing Contractor* to have management and control of each workplace at which the *Services* and the *Other Contractor Work* is to be carried out and to discharge the duties of a principal contractor under the *WHS Legislation*; and
 - (v) the *Managing Contractor* accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the *WHS Legislation*.
- (c) To the extent not prohibited by law, the *Managing Contractor* must indemnify the *Principal* against any damage, expense, loss or liability suffered or incurred by the

Principal arising out of or in any way in connection with the *Managing Contractor's* failure to discharge the duties imposed on a principal contractor by the *WHS Legislation* that the *Managing Contractor* is required to discharge in accordance with this subclause 9.6.

- (d) Where the:
- (i) *Managing Contractor* is not specified in Annexure Part J as being; or
 - (ii) the *Principal's Representative* has not directed that the *Managing Contractor* is to be,
 - (iii) in *Control* of a part of the site, the *Managing Contractor*:
 - (iv) acknowledges that the person who is specified in Annexure Part J as being in *Control* of that part of the *site* is the principal contractor in respect of all construction work carried out by or on behalf of the *Principal* on that part of the site during the period during which that person is in *Control* of that part of the *site*; and
 - (v) must comply with any exercise by the person referred to in paragraph (iii) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the *WHS Legislation*.
- (e) The *Managing Contractor* must comply with any direction by the *Principal* for the purposes of compliance with a condition or restriction of the *Principal's* accreditation under the *Rail Safety National Law*, except to the extent that compliance with the direction of the *Principal* is inconsistent with the *Managing Contractor's* obligations under subclause 9.6(b).

9.7 Global Safety Interface Agreement

The *Managing Contractor*:

- (a) acknowledges that the *Principal* has entered or will enter into the *Global Safety Interface Agreement*;
- (b) must:
 - (i) unless otherwise expressly specified in Annexure Part K, comply with, satisfy, carry out and fulfil the conditions and requirements of the *Global Safety Interface Agreement*, including those conditions and requirements that the *Principal* is required, under the terms of the *Global Safety Interface Agreement*, to comply with, satisfy, carry out and fulfil; and
 - (ii) comply with and fulfil any conditions, obligations or requirements allocated to the *Managing Contractor* in Annexure Part K that are additional to or more stringent or onerous than the conditions and requirements described in subclause 9.7(b)(i);
- (c) must assist the *Principal* in any way that the *Principal* reasonably requires to enable the *Principal* to perform the obligations identified for the *Principal* to perform in Annexure Part K ;
- (d) must comply with any reasonable directions of the *Principal's Representative* (who will have regard to any reasonable submissions made by the *Managing Contractor* to the *Principal's Representative*) in relation to compliance with the relevant conditions and requirements of the *Global Safety Interface Agreement*;
- (e) must, where a *Global Safety Interface Agreement* provides for the *Principal* to provide a document, notice or information to a third party, provide such document, notice or information to the *Principal* (and not to a third party) within a reasonable time sufficient for the *Principal* to review and comment on the document, notice or information and provide it to a third party within the time period required by the *Global Safety Interface Agreement*;
- (f) must, in carrying out *the Services*:

- (i) ensure that no act or omission of the *Managing Contractor* constitutes, causes or contributes to any breach by the *Principal* of its obligations to a third party under the *Global Safety Interface Agreement*; and
- (ii) otherwise act consistently with the terms of the *Global Safety Interface Agreement*;
- (g) agrees that whenever, pursuant to the terms of a *Global Safety Interface Agreement*, the *Principal* makes an acknowledgment or gives a release or warranty, indemnity, or covenant to a third party under any clause of the *Global Safety Interface Agreement* then, subject to what is provided in Annexure Part K and the other terms of this *Contract*, the *Managing Contractor* is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the *Principal* on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by the *Principal* under a *Global Safety Interface Agreement* in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this *Contract*; and
- (h) acknowledges that to the extent that a *Global Safety Interface Agreement* contains a provision pursuant to which a third party is stated to make no representation as to a state of affairs, the *Managing Contractor* agrees that the *Principal* similarly makes no representation to the *Managing Contractor* in respect of that state of affairs in the same way as if the relevant terms of the *Global Safety Interface Agreement* were set out fully in this *Contract*.

9.8 ASA Compliance

- (a) The *Managing Contractor* warrants that it is an *AEO* and that its *ASA Authorisation* allows it to perform *the Services*.
- (b) The *Managing Contractor* must hold and maintain its *ASA Authorisation* for so long as the *Services* are carried out.
- (c) The *Managing Contractor* must (and must ensure that its *subcontractors* and all personnel for which the *Managing Contractor* is responsible):
 - (i) comply with the conditions of the applicable *ASA Authorisation*;
 - (ii) implement and comply with the requirements of any *ASA Requirements* applicable to the *Asset Services*;
 - (iii) cooperate fully with the *ASA* in the performance of the *ASA's* functions;
 - (iv) provide access to premises and resources as reasonably required by the *ASA*, including so that it can effectively carry out its review, surveillance and audit functions;
 - (v) comply with the directions, instructions and requirements issued by the *ASA*;
 - (vi) notify the *ASA* of any matter that could reasonably be expected to affect the exercise of the *ASA's* functions;
 - (vii) provide the *ASA* with any information relating to its activities or any documents or other things reasonably required by the *ASA* in the exercise of its functions; and
 - (viii) provide the *Principal* with such reasonable assistance as may be reasonably required by the *Principal* to enable the *Principal* to cooperate fully with the *ASA* and to implement and comply with *ASA Requirements*.
- (d) The *Managing Contractor* acknowledges and agrees that it is not entitled to make (and neither the *Principal* nor the *ASA* will be liable upon) any *Claim* arising out of or in connection with the obligation to comply with the requirements of *ASA* and the *ASA Authorisation*.

9.9 Local Industry Participation

The *Managing Contractor* must:

- (a) maximise the opportunities for Australia and New Zealand industries to bid competitively for items to be supplied for the *Services* in accordance with NSW Government policies and guidelines;
- (b) as part of the *Contract Management Plan*, develop, document and implement a Local Industry Participation Plan, in accordance with the *TfNSW Standard Requirements*;
- (c) submit the proposed Local Industry Participation Plan to the *Principal's Representative* for review under subclause 5.4;
- (d) implement the Local Industry Participation Plan before any decisions are taken in design or construction work that influences the source of products and services; and
- (e) comply with the *TfNSW Standard Requirements* regarding local industry participation management.

9.10 Employment of Aboriginal and Torres Strait Islander People

The *Managing Contractor* must:

- (a) provide employment opportunities to Aboriginal and Torres Strait Islander people in accordance with the NSW Government Policy on Aboriginal Participation in Construction (February 2015);
- (b) as part of the human resources input to and the documentation and implementation of the *Managing Contractor's Contract Management Plan*, address the employment of Aboriginal and Torres Strait Islander people and compliance with the NSW Government Policy on Aboriginal Participation in Construction (February 2015); and
- (c) provide reports to the *Principal's Representative* in such format and within such times as may be required by the *Principal's Representative* which record the performance of the *Managing Contractor* in relation to Aboriginal participation.

9.11 NSW Government Resource Efficiency Policy

The *Managing Contractor* must:

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

9.12 Training Management

- (a) Subject to the express provisions of the *Contract*, the *Managing Contractor* must comply with the NSW Government "Training Management Guidelines", February 2009. The Guidelines are available at:

http://www.dpc.nsw.gov.au/publications/memos_and_circulars/circulars/2009/c2009-08_nsw_government_apprenticeship_program_-_training_management_guidelines

- (b) Training management requirements specified in the *Contract* and the NSW Government "Training Management Guidelines" may be in addition to, but are not in substitution for,

any training obligations of the *Managing Contractor* under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.

- (c) Where applicable, as indicated in *Item 24*, at least 14 days before starting work on the *site* the *Managing Contractor* must document and submit a Project Training Management Plan which complies with the NSW Government "Training Management Guidelines", February 2009.
- (d) The *Managing Contractor* must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the *Contract*.

The *Managing Contractor* must demonstrate to the *Principal*, whenever requested, that it has met and is meeting at all times its obligations under this subclause 9.12.

10 Care of the Work and reinstatement of damage

10.1 Care of the Services and Works

Except as provided in subclause 10.3, the *Managing Contractor* shall be responsible for care of:

- (a) the whole of the *Services* and *project* from and including the date of commencement of the *Services* to 4:00 pm on the *date of completion*, at which time responsibility for the care of the *project* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding work and items to be removed from the *site* by the *Managing Contractor* after 4:00 pm on the *date of completion* until completion of outstanding work or compliance with clause 20.

Without limiting the generality of paragraph (a), the *Managing Contractor* shall be responsible for the care of unfixed items accounted for in a payment schedule and the care and preservation of things entrusted to the *Managing Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out the *Services*.

10.2 Reinstatement

If loss or damage, other than that caused by an *Excepted Risk*, occurs to the *Services* or *project* during the period of the *Managing Contractor's* care, the *Managing Contractor* shall, at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *Excepted Risks* (whether or not in combination with other risks), the *Managing Contractor* shall to the extent directed by the *Principal Representative*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *Excepted Risks* and other risks, the *Principal Representative* in pricing the *variation* shall assess the proportional responsibility of the parties.

10.3 Excepted risks

The *Excepted Risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Principal Representative*, the *Principal* or its consultants, agents, employees or *Other Contractors*;
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) 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 *Managing Contractor* or its *subcontractors* or either's employees or agents; and

- (e) use or occupation of any part of the *Services* or *project* by the *Principal* or its consultants, agents or *Other Contractors*.

11 Damage to persons and property

11.1 Protection

Insofar as compliance with the *Contract* permits, the *Managing Contractor*, on behalf of the *Principal* must effect the taking of measures:

- (a) necessary to protect people and property;
- (b) to avoid unnecessary interference with the passage of people and vehicles; and
- (c) to prevent nuisance and unreasonable noise and disturbance.

If the *Managing Contractor* fails to comply with an obligation under this clause, the *Principal*, after giving reasonable written notice to the *Managing Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The costs incurred by the *Principal* in taking this action will be a debt due and payable by the *Managing Contractor* to the *Principal*.

11.2 Urgent action

If urgent action is necessary to protect the *project*, other property or people and the *Managing Contractor* fails to ensure the action is taken, in addition to any other remedies of the *Principal*, the *Principal* may cause the necessary action to be taken. The costs incurred by the *Principal* in taking this action will be a debt due and payable by the *Managing Contractor* to the *Principal*.

If time permits, the *Principal's Representative* must give the *Managing Contractor* prior written notice of the *Principal's* intention.

11.3 Indemnity by Managing Contractor

The *Managing Contractor* must indemnify the *Principal* and *Sydney Trains and RailCorp* against:

- (a) loss of or damage to the *Principal's* or *Sydney Trains'* or *RailCorp's* property (other than the *project*); and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property, arising out of or as a consequence of the carrying out of *the Services*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Principal*, the *Other Contractors* or the agents of the *Principal*, or other contractors (not being employed by the *Managing Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (c) the extent that the *Managing Contractor's* liability is limited by another provision of the *Contract*;
- (d) exclude any other right of the *Principal* to be indemnified by the *Managing Contractor*;
- (e) damage which is the unavoidable result of the carrying out of *the Services* in accordance with the *Contract*; and
- (f) claims in respect of the *Principal's* right to have the *project* carried out.

12 Professional indemnity insurance

Before commencing *the Services*, the *Managing Contractor* must effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 25(a)(i)*.

The insurance must be maintained until the *final certificate* is issued and thereafter for the period stated in *Item 25(a)(ii)*.

The *Managing Contractor* must ensure that every *subcontractor*, if within a category stated in *Item 25(b)(i)*, must effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 25(b)(i)* applicable to that category.

Each *subcontractor's* professional indemnity insurance must be maintained until the *final certificate* is issued and thereafter for the period stated in *Item 25(b)(ii)*.

13 Insurance by Principal

The *Principal* must, from the *date of execution of the Contract* effect the construction works insurance and public liability insurance on the terms of the insurance policies which appear as Exhibit 1.

This insurance is subject to the exclusions, conditions and excesses noted on the policies and is deemed to satisfy the *Principal's* obligation to effect insurance. The *Managing Contractor* acknowledges and agrees that it was provided with a copy of the insurance policies in Exhibit 1 prior to the *date of execution of the Contract* and it reviewed and examined the terms of those insurance policies and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) must, if required by the *Managing Contractor*, take out at the *Managing Contractor's* expense any insurance to:
 - (i) insure any risks not insured by the insurance policies in Exhibit 1; or
 - (ii) cover any exclusions, conditions of excesses in the insurance policies in Exhibit 1, which the *Managing Contractor* wants to insure against or cover; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the *Principal*, agrees to bear the cost of any excesses or exclusion in the insurance policies in Exhibit 1 and any such amounts will not form part of the *Actual Reimbursable Costs*.

The *Principal* will maintain the policies until the end of all *Defects Liability Periods*.

14 Managing Contractor Insurance

14.1 Insurance of employees

Before commencing *the Services*, the *Managing Contractor* must insure against statutory and common law liability for death of or injury to persons employed by the *Managing Contractor*. The insurance cover must be maintained in accordance with all *legislative requirements*.

Where permitted by law, the insurance policy or policies must be extended to provide indemnity for the *Principal's* statutory liability to the *Managing Contractor's* employees.

The *Managing Contractor* must ensure that all *subcontractors* have similarly insured their employees and have effected all required workers compensation insurance.

14.2 Motor Vehicle Third party Insurance

If the *project* or *the Services* require the use of motor vehicles or *construction plant* licensed for road use to transport items or substances, the *Managing Contractor* must take out or hold a policy of insurance for motor vehicles and such plant covering Third Party Liability for property damage, extended specifically to cover transportation of such items or substances.

The policy must be in the name of the *Managing Contractor* with the *Principal* noted for their respective rights and interests and cover their liabilities to third parties. The policy must be for an

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

The policy must be effected with an insurer and in terms both approved in writing by the *Principal's Representative* which approval will not be unreasonably withheld. The policy must be effected before commencing work covered by the policy and be maintained until the issue of the *final certificate* under subclause 25.7.

In addition the *Managing Contractor* must effect or hold Compulsory Third Party Insurance for bodily injury in accordance with *legislative requirements*.

14.3 Insurance of construction plant

The *Managing Contractor* must, before the *Managing Contractor* commences *the Services* or as otherwise required by this *Contract*, effect and have in place an insurance policy covering loss or damage to the *construction plant* for an amount not less than the amount which represents the full value of all *construction plant*, with insurers and on terms satisfactory to the *Principal's Representative*.

The *Managing Contractor* must ensure that the insurance policy covering loss or damage to the *construction plant*:

- (a) covers the *Principal*, the *Principal's Representative*, the *Managing Contractor* and all *subcontractors* and all of their employees and agents, for their respective rights and interests, and their liabilities to third parties and liability to each other; and
- (b) covers loss or damage to the *construction plant* in any way in connection with, the *project* or the performance of *the Services*.

14.4 Asbestos liability insurance

If *the Services* include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, the *Managing Contractor* must effect, or ensure that its *specialist asbestos removal subcontractor* effects, a policy of insurance with an insurer and in terms both approved in writing by the *Principal's Representative*, covering the *specialist asbestos removal subcontractor*, the *Managing Contractor*, the *Principal*, the *Principal's Representative*, *Sydney Trains*, private sector consultants engaged by the *Principal*, and all *subcontractors* and all of their employees and agents. The asbestos liability policy must provide asbestos liability cover of at least [REDACTED] on any one occurrence and [REDACTED] in aggregate with the premium payable by the *Managing Contractor*.

The asbestos liability insurance must be in place at least 60 days prior to carrying out any work in respect of the asbestos and must be maintained for so long as there is a risk that an event covered by the insurance may occur in relation to the *project* or *the Services*.

15 Inspection and provisions of insurance policies

15.1 Proof of insurance

Before the *Managing Contractor* commences *the Services* and whenever requested in writing by the other party, a party liable to insure must provide satisfactory evidence that such insurance is effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

15.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide satisfactory evidence of compliance, then without prejudice to other rights or remedies, the other party may insure and

the cost thereof shall be moneys due and payable from the party in default. Where the defaulting party is the *Managing Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Managing Contractor*.

15.3 Notices from or to insurer

The *Managing Contractor* must ensure that each insurance policy it is required to effect pursuant to the *Contract* contains provisions acceptable to the *Principal* which:

- (a) require the *Managing Contractor* to inform both parties, whenever the insurer gives a party or a *subcontractor* a notice in connection with the policy;
- (b) provide that a notice of claim given to the insurer by either party or a *subcontractor* must be accepted by the insurer as a notice of claim given by both parties and the *subcontractor*; and
- (c) require the *Managing Contractor*, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

15.4 Notice of potential claims

A party must, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clauses 13 and 14 and must keep the other party informed of subsequent developments concerning the claim.

The *Managing Contractor* must ensure that *subcontractors* in respect of their operations similarly inform the parties.

15.5 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* must include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

16 Principal's Representative's Role

16.1 Principal's Representative

The *Principal* must ensure at all times that a person is appointed as the *Principal's Representative*.

The *Principal's Representative* may give a *direction* orally but must as soon as practicable confirm it in writing.

The *Principal's Representative* will give *directions* and carry out all its other functions under this *Contract* as the agent of the *Principal* (and not as an independent certifier, assessor or valuer).

16.2 Principal's Representative's delegates

The *Principal's Representative* may from time to time appoint individuals to exercise delegated *Principal's Representative's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one delegate;
- (b) delegation shall not prevent the *Principal's Representative* exercising any function; and
- (c) the *Principal's Representative* gives the *Managing Contractor* written notice of respectively:
 - (i) the appointment, including the delegate's name and delegated functions; and
 - (ii) the termination of each appointment.

The *Managing Contractor* acknowledges that pursuant to the *TfNSW Standard Requirements* the *Principal* shall appoint a Rail Safety Manager and that for the purposes of the *Contract* that person will be regarded as a *Principal's Representative's* delegate in respect of all functions of the *Principal's Representative* concerning rail safety.

17 Managing Contractor's representative and key personnel

17.1 Managing Contractor's representative

The *Managing Contractor* must manage *the Services* personally or by a competent representative. Matters within a *Managing Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Managing Contractor's* knowledge.

The *Managing Contractor* must forthwith give the *Principal's Representative* written notice of the representative's name and any subsequent changes.

If the *Principal's Representative* makes a reasonable objection to the appointment of a representative, the *Managing Contractor* must terminate the appointment and appoint another representative.

17.2 Key personnel

The *Managing Contractor* must employ on the *project* the *key personnel* for the functions stated in *Item 9*. Unless otherwise agreed in writing by the *Principal's Representative* the *key personnel* must be based on *site* as a minimum for the percentage allocation specified in *Item 9*.

The *Managing Contractor* must not replace or substitute any of the *key personnel* or alter their functions without the prior written approval of the *Principal's Representative*.

If the *Managing Contractor* wishes to replace or substitute any of its *key personnel* or alter their functions, the *Managing Contractor* must provide to the *Principal's Representative* CVs for a minimum of two (2) alternative persons whom have similar qualifications as the *key personnel* they are intended to replace together with details as to their *project* availability.

18 Managing Contractor's employees and subcontractors

The *Principal's Representative* may direct the *Managing Contractor* to have removed, within a stated time, from any activity of *the Services* or the *project*, any person employed on *the Services* or the *project* by the *Managing Contractor* or by a *subcontractor* who:

- (a) in the *Principal's Representative's* opinion, is incompetent, negligent or guilty of misconduct; or
- (b) has been found to have engaged in corrupt conduct (as defined by the *Independent Commission Against Corruption Act 1988 (NSW)*) by the Independent Commission Against Corruption.

Where the *Principal's Representative* is relying on one of the grounds in paragraph a) the *Managing Contractor* may, within 2 business days respond to the *Principal's Representative* objecting to the direction and providing reasons for its objection. The *Principal's Representative* shall consider the *Managing Contractor's* objections and reasons and either withdraw or confirm its direction.

19 Site

19.1 General

- (a) Subject to subclauses 19.2 and 19.3, the *Principal* must provide the *Managing Contractor* with access to the *site* in accordance with Annexure Part J and *Item 26*. The *Managing Contractor* acknowledges and agrees that access to the *site* will be provided progressively to the *Managing Contractor* as set out in Annexure Part J.

- (b) Subject to subclauses 19.2 and 19.3 and any other provision of this *Contract* affecting access, the *Principal* must:
- (i) give, or ensure the *Managing Contractor* has, access to the *site* by the dates set out in Annexure Part J and *Item 26* (and if a period is specified in relation to a part of the *site*, then by the last day of that period); and
 - (ii) once access to a part of the *site* is provided to the *Managing Contractor*, thereafter continue to allow, or ensure that the *Managing Contractor* is continued to be allowed, access to that part of the *site*.

19.2 Track Possession

Subject to this subclause 19.2, the *Track Possessions* set out in or nominated in *Item 26* are currently planned and will be made available by the *Principal* to the *Managing Contractor* at no cost to the *Managing Contractor*.

If the *Principal* is unable to provide the *Track Possessions* referred to above, the *Principal* will provide an alternative *Track Possession* or *Track Possessions*.

If the *Managing Contractor* requires a *Track Possession* or power isolation in addition to the *Track Possessions* identified in *Item 26* (***Additional Track Possession or Power Isolation***) and requires the *Principal* to liaise with *Sydney Trains* in this regard, it must provide no less than:

- (a) 26 weeks prior written notice in respect of each *Additional Track Possession or Power Isolation* that falls on a weekend; or
- (b) 20 weeks prior written notice in respect of each *Additional Track Possession or Power Isolation* that falls on a weeknight or which requires a power isolation only,

and identify whether a power isolation is required during the requested *Additional Track Possession or Power Isolation*.

Following receipt of a request for an *Additional Track Possession or Power Isolation*, the *Principal* may assist the *Managing Contractor* to obtain the requested *Additional Track Possession or Power Isolation*, but is under no obligation to do so and in no way guarantees that the requested *Additional Track Possession or Power Isolation* will be granted by *Sydney Trains*.

If an *Additional Track Possession or Power Isolation* is granted by *Sydney Trains*, the *Managing Contractor* must:

- (c) make the necessary arrangements for the *Additional Track Possession or Power Isolation* in accordance with clause 8.3 of the *TSR* entitled Project Administration; and
- (d) pay the *Principal* within 20 *Business Days* after the relevant *Additional Track Possession or Power Isolation* the relevant amount (in respect of each *Additional Track Possession or Power Isolation*) set out in *Item 26*.

Costs incurred by the *Managing Contractor* arising out of the *Additional Track Possession or Power Isolation*, excluding those payable to the *Principal* set out in *Item 26*, will form part of the *Actual Reimbursable Costs*.

The *Managing Contractor* acknowledges and agrees the *Principal* may alter or cancel any *Track Possession* or power isolation at any time.

19.3 Contractor's Acknowledgement

The *Managing Contractor* acknowledges and agrees that:

- (a) access to the *site* or any part thereof will only confer on the *Managing Contractor* a right to such control and use as is necessary to enable the *Managing Contractor* to execute *the Services*;

- (b) the *Principal* is not obliged to give the *Managing Contractor* access to any part of the *site* until the *Managing Contractor* has:
 - (i) complied with subclauses 2.7 and 2.8 of this *Contract*;
 - (ii) effected the insurance policies required under clause 14;
 - (iii) submitted the *Construction Environmental Management Plan* and the Project Work Health and Safety Management Plan required by the *TfNSW Standard Requirements* to the *Principal's Representative* under clause 5.4 and the *Principal's Representative* has not rejected the proposed *Construction Environmental Management Plan* or Project Work Health and Safety Management Plan within 15 *Business Days* after such submission in accordance with clause 5.4(c); and
 - (iv) satisfied all requirements in Annexure Part J which must be satisfied prior to access to a part of the *site* being provided to the *Managing Contractor* including obtaining the approval of the *Principal's Representative* to a *Managing Contractor's* Construction Access Notice;
- (c) the *Principal* is not obliged to provide, and the *Managing Contractor* may not be given, exclusive access to the *site*;
- (d) the *Principal* is not obliged to carry out any work or provide any facilities to the *Managing Contractor* which may be necessary to enable the *Managing Contractor* to obtain access to the *site* or carry out *the Services*; and
- (e) the *Principal* and others may engage *Other Contractors* to work upon or in the vicinity of the *site* at the same time as the *Managing Contractor*.

19.4 Management and Control of the site

At all times after being given access to the *site* or a part of the *site* under subclause 19.1 and before the *date of completion* of the *Portion* for which the *site* or the relevant part of the *site* is provided to the *Managing Contractor*, the *Managing Contractor*:

- (a) without limiting any right of the *Principal* or the *Principal's Representative* under this *Contract*, and subject to subclause 9.6, will be responsible for the management and control of the *site*;
- (b) must control access to, and the security and maintenance of, the *site* or that part, except where the *Principal's Representative* advises otherwise;
- (c) must ensure public safety on and adjacent to the *site* or that part;
- (d) must provide for the continuous safe passage of the public, road and railway system users on existing roads, access ways and *Rail Tracks* affected by the *Services* in accordance with this *Contract*;
- (e) subject to subclauses 19.1 and 19.5 and the *TfNSW Standard Requirements*, and any relevant *legislative requirement*, must limit access to the *site* to its employees, *subcontractors* and their employees and *subcontractors*, and those with a legitimate interest in being on the *site* as part of the *Services*; and
- (f) must not impede access to private property.

19.4A Extra Land

- (a) The *Managing Contractor* must:
 - (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the *site*, including any land owned by *Sydney Trains* or *RailCorp*, which is necessary or which it may require for the purposes of carrying out *the Services*;

- (ii) at its own cost carry out all activities and procure all services necessary to make the *Extra Land* suitable for use by the *Managing Contractor*;
 - (iii) as a condition precedent to *completion* of the *project* or each *Portion*:
 - (A) rehabilitate any *Extra Land* in accordance with the requirements of all relevant authorities and other relevant persons; and
 - (B) unless not required by the *Principal's Representative*, provide to the *Principal's Representative* a properly executed certificate in the form of Annexure Part X or a release on terms otherwise satisfactory to the *Principal's Representative* from all *claims* or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, any *Extra Land*; and
 - (iv) indemnify the *Principal* against any damage, expense, loss, cost or liability suffered or incurred by the *Principal* arising out of or in any way in connection with a *Claim* by the owner or occupier of, or any other person having any interest in, any *Extra Land*, provided that the *Managing Contractor's* liability to indemnify the *Principal* will be reduced proportionally to the extent that an act or omission of the *Principal*, or an agent of the *Principal* contributed to the damage, expense, loss, cost or liability.
- (b) The *Managing Contractor* acknowledges and agrees that:
- (i) the *Principal* is not responsible for providing (or assisting the *Managing Contractor* to obtain) access to any *Extra Land*;
 - (ii) it will comply with all directions of the owners, occupiers or persons providing *Extra Land*, including in respect of any *Utility Service* connection points; and
 - (iii) it will not be entitled to make, and the *Principal* will not be liable upon, any *Claim* in respect of any *Extra Land*.

19.5 Principal's Right to Access and Inspect

Subject to subclause 19.6, the *Managing Contractor* must:

- (a) minimise disruption or inconvenience to:
 - (i) the *Principal*, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the site or a part thereof in their occupation or use of, or attendance upon, any part of the *site*; and
 - (ii) others having a right of access to the *site*; and
- (b) at all times:
 - (i) give the *Principal's Representative*, the *Principal* and any person authorised by either the *Principal's Representative* or the *Principal* access to:
 - (A) the project;
 - (B) the *site*; or
 - (C) any areas off-site where the *Services* are being carried out, including unobstructed vehicular access through the *site*; and
 - (ii) provide the *Principal* and the *Principal's Representative* with every reasonable facility necessary for the inspection, including reviewing, testing, surveillance and examination, of the *Services*, including the *Managing Contractor's* compliance with the *legislative requirements*.

19.6 Principal not in Control

The *Contractor* and *Principal* acknowledge that nothing in this *Contract* or the *TfNSW Standard Requirements* including the right to inspect pursuant to subclause 19.5 or any audit by the *Principal* or the *Principal's Representative* at any time will be construed to mean or imply that:

- (a) the *Principal* has any operational control over the *Services* or the *site*; or
- (b) the *Principal* has any responsibility for any act or omission by the *Managing Contractor* or its *subcontractors* or agents including compliance or non-compliance with any relevant *legislative requirements* or the *TfNSW Standard Requirements*.

19.7 Contamination

- (a) The parties acknowledge and agree that:
 - (i) there may be *Contamination* on, in, under or migrating from the *site* including in areas under tracks, surface soils generally and locations which have been filled;
 - (ii) the *Principal* does not make any representation or warranty (express or implied) as to the nature or extent of any *Contamination*; and
 - (iii) the *Services* include taking all steps required by the *Contract* to deal with any *Contamination* which may be encountered by the *Managing Contractor*.
- (b) The *Managing Contractor* must indemnify the *Principal* against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the *Principal* arising out of or in any way in connection with any failure by the *Managing Contractor* to comply with any obligation under the *Contract* in respect of *Contamination*, provided that the *Managing Contractor's* liability to indemnify the *Principal* will be reduced proportionally to the extent that an act or omission of the *Principal*, *Other Contractors* or an agent of the *Principal* contributed to the claim, damage, expense, loss, liability, fine or penalty which shall not, for the avoidance of doubt, include the selection of the *site* for the *project* or the provision of access to the *site*.
- (c) Nothing in this subclause 19.7 limits the *Contractor's* rights under subclause 19.8B.

19.8 Site Conditions

- (a) The *Principal* makes no representation and gives no warranty to the *Managing Contractor* in respect of:
 - (i) the *Site Conditions* likely to be encountered during the execution of the *Services* or otherwise in respect of the condition of:
 - (A) the *site*, *Extra Land* or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the *site* or *Extra Land*; or
 - (ii) the existence, location, condition or availability of any *Utility Service* on, under, above, adjacent to or related to the *site* or *Extra Land*.
- (b) Subject to subclause 19.8B and subclause 19.9, the *Managing Contractor* accepts:
 - (i) the *site* and *Extra Land*; and
 - (ii) any structures or other thing on, under or adjacent to the *site* and *Extra Land*, and any *Site Conditions*,
in their existing condition subject to all sub-surface conditions and defects, and:
 - (iii) agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any

delay in achieving *completion*) it suffers or incurs arising out of or in any way in connection with; and

- (iv) must investigate, design and construct the *project* and *Temporary Works* in accordance with this *Contract*, and will not be relieved of its obligations under this *Contract* irrespective of,

any of the following:

- (v) the *Site Conditions* encountered in performing the *Services*;
- (vi) whatever maybe the condition or characteristics (including all sub-surface conditions) of:
 - (A) the *site*, any *Extra Land*, the *Environment* or their surroundings; or
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the *site*, any *Extra Land*, the *Environment* or their surroundings; and
- (vii) any assumptions, projections, estimates, contingencies or otherwise that the *Managing Contractor* may have made in relation to the *Site Conditions* or the conditions or the characteristics of any of the matters referred to in sub-paragraph (vi),

including:

- (viii) the existence of any *Contamination* or any decontamination or remediation required under subclause 19.7;
- (ix) the suitability or otherwise of any material or condition upon, under, over or in any way associated with the *site* or *Extra Land* for use in the *Services*;
- (x) water, atmospheric, sub-surface and other conditions or characteristics or aspects; and
- (xi) all existing systems and *Utility Services*, above or below ground level and the location of all facilities with which such systems and *Utility Services* are connected.

19.8A Notification of Latent Conditions

The *Managing Contractor*, upon becoming aware of a *latent condition* while carrying out the *Services*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Principal's Representative* written notice of the general nature thereof.

Unless otherwise required by the *Principal's Representative* promptly after receiving that notice, the *Managing Contractor* shall, as soon as practicable, give the *Principal's Representative* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Managing Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Principal's Representative*.

19.8B Impact of Latent Condition

In respect of any *latent condition*, any costs incurred more than 21 days before the date on which the *Managing Contractor* gave the notice required by the first paragraph of subclause 19.8A will not form part of the *Actual Reimbursable Costs*.

The *Managing Contractor* will not be entitled to any *fee adjustment* or *Design Fee adjustment* in respect of a *latent condition*.

19.9 Valuable Finds

As between the *Managing Contractor* and the *Principal*, all *Valuable Finds* will be and remain the property of the *Principal*.

The *Managing Contractor* must:

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

Despite the acknowledgements, warranties, releases and indemnities referred to in subclause 5.6:

- (d) if compliance with a *direction* under subclause 19.9(c) causes the *Managing Contractor* to incur more or less cost in performing either or both the *Preliminaries* and the *Design Services* than otherwise would have been incurred had the *direction* not been given, there shall be either or both a *fee adjustment* and a *Design Fee adjustment* (as appropriate); and
- (e) the *Managing Contractor* will be entitled to make a claim for an *EOT* under subclause 23.2 in respect of any delays the *Managing Contractor* suffers in complying with the *Principal's Representative's* directions,

but only to the extent that the *Valuable Find* could not have been reasonably anticipated by a competent and experienced contractor.

19.10 NGER

The *Managing Contractor* acknowledges and agrees that:

- (a) if any of the *Services*, or the activities of any of the *Managing Contractor's* personnel, in connection with the *Services* (the "**Relevant Matters**") constitute a "facility" within the meaning of the *NGER Legislation*, then, for the purposes of the *NGER Legislation*, the *Managing Contractor* has operational control of that facility and will comply with any obligations arising in respect of the *Principal's* activities under the *NGER Legislation*;
- (b) if, despite the operation of subclause 19.10(a), the *Principal* incurs, or (but for this clause) would incur, a liability under or in connection with the *NGER Legislation* as a result of or in connection with any of the *Relevant Matters*, and the *NGER Legislation* provides that such liability can be transferred by the *Principal* or the NSW Government or any of its agencies to the *Managing Contractor*, the *Managing Contractor* must, on the written request of the *Principal*, do all things reasonably necessary to ensure the liability is transferred to the *Managing Contractor*;
- (c) if the *Principal* requests it, the *Managing Contractor* must provide *Greenhouse Data* to the *Principal*:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the *Principal* to comply with the *NGER Legislation* irrespective of whether the *Principal* or the *Managing Contractor* or any other person has an obligation to comply with the *NGER Legislation* in connection with any *Relevant Matters*; and
 - (ii) otherwise as requested by the *Principal* from time to time.
- (d) the *Managing Contractor* must also provide to the *Principal* all *Greenhouse Data* and other information which the *Managing Contractor* provides to any other person under the *NGER Legislation* in connection with any *Relevant Matters*, at the same time as the *Managing Contractor* provides that *Greenhouse Data* or other information to that other person;
- (e) the *Managing Contractor* must:
 - (i) collect and record all such *Greenhouse Data* as may be required to enable reporting under the *NGER Legislation* or enable the *Managing Contractor* to discharge its

obligations under this subclause 19.10, and keep that *Greenhouse Data* for at least 7 years after the end of the year in which the *Relevant Matters* occur; and

- (ii) permit any persons appointed or authorised by the *Principal* to examine, monitor, measure, copy, audit and/or verify the *Greenhouse Data* and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) the *Principal* may provide or otherwise disclose the *Greenhouse Data* and any other information which the *Principal* obtains under this clause 19.10 to any other person, and may otherwise use the *Greenhouse Data* and other information for any purpose as the *Principal* sees fit; and
- (g) nothing in this subclause 19.10 is to be taken as meaning that the *Principal* has agreed to perform any statutory obligation that the *Managing Contractor* may have regarding the provision of *Greenhouse Data* to any authority.

20 Quality

20.1 Quality Assurance

The *Managing Contractor* must:

- (a) plan, establish and maintain a conforming quality system in accordance with the *TfNSW Standard Requirements*; and
- (b) ensure that the *Principal's Representative* has access to the quality systems of the *Managing Contractor*, and *subcontractors* so as to enable monitoring and quality auditing.

Any such quality system must be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such systems shall not discharge the *Managing Contractor's* other obligations under the *Contract*.

20.2 Defects

The *Managing Contractor* must ensure all *Defects* are corrected in a timely manner (whether by procuring *subcontractors* to correct *Defects* or otherwise), regardless of whether or not they are identified and notified by the *Principal's Representative*.

20.3 Defect Notification

If, prior to the expiration of the *Defects Liability Period* for the *project*, the *Principal's Representative* discovers or believes that there is a *Defect*, the *Principal's Representative* may give the *Managing Contractor* a *direction* specifying the *Defect* and doing one or more of the following:

- (a) requiring the *Managing Contractor* to correct the *Defect* (or any part of it) and specifying the time within which this must occur;
- (b) requiring the *Managing Contractor* to carry out a *variation* to overcome the *Defect*, or any part of it, and specifying the time within which this must be carried out;
- (c) advising the *Managing Contractor* that the *Principal* will accept the work, or any part of it, despite the *Defect*; or
- (d) where it is not practicable for the *Principal's Representative* to give a *direction* under subclause 20.3(a) or 20.3(b), or where a *direction* has been given under either subclause 20.3(a) or 20.3(b) but which has not been complied with by the *Managing Contractor* within the time specified in the *direction* under either of those subclauses, advising the *Managing Contractor* that an *Other Contractor* will rectify the *Defect*, or any part of it, or carry out a *variation* to overcome the *Defect*, or any part of it.

For the purpose of determining whether it is not practicable to give a *direction* under subclause 20.3(a) or 20.3(b), the matters to which the *Principal's Representative* may have regard include any impacts on operation of the rail system or railway stations.

20.4 Correction of Defect or Variation

If a *direction* is given under subclause 20.3(a) or 20.3(b), the *Managing Contractor* must correct the *Defect*, or carry out the *variation*:

- (a) within the time specified in the *Principal's Representative's direction*; and
- (b) if after the relevant *date for completion*, at times approved by the *Principal's Representative*.

If the *Managing Contractor* does not comply with this subclause 20.4, the *Principal's Representative* may, without prejudice to any other rights that the *Principal* may have against the *Managing Contractor* with respect to the *Defect*, give the *Managing Contractor* a *direction* under subclause 20.3(d) and have the correction or *variation* work carried out at the *Managing Contractor's* expense, and the cost of the correction or *variation* work incurred by the *Principal* will be a debt due from the *Managing Contractor* to the *Principal*.

20.5 Claim for Correction of Defect

The *Managing Contractor* will not be entitled to make a *Claim* against the *Principal* for correcting a *Defect* (or part of a *Defect*), including where a *direction* is given under subclause 20.3(a).

Where a *variation* has been directed under subclause 20.3(b), the *Managing Contractor* shall not be entitled to any *fee adjustment* or *Design Fee Adjustment* on account of the *variation*.

20.6 Extension of Defects Liability Period

If:

- (a) the *Principal's Representative* gives the *Managing Contractor* a *direction* under subclause 20.3(a) or 20.3(b) during the *Defects Liability Period*; and
- (b) the *Managing Contractor* corrects the *Defect* (or the relevant part) or completes the *variation* work,

the *Defects Liability Period* will be extended for the work required by the *direction* by the period set out in *Item 4* commencing upon completion of the correction of the *Defect* (or the relevant part) or completion of the *variation*.

20.7 Common Law Rights not Affected

Neither the *Principal's* rights, nor the *Managing Contractor's* liabilities, whether under the *Contract* or otherwise according to law in respect of *Defects*, whether before or after the expiration of the *Defects Liability Period*, will be affected or limited by:

- (a) the rights conferred upon the *Principal* or the *Principal's Representative* by this clause 20 or any other provision of this *Contract*;
- (b) the failure by the *Principal* or the *Principal's Representative* to exercise any such rights; or
- (c) any *direction* of the *Principal's Representative* under subclause 20.3.

21 Programming

The *Managing Contractor* must give the *Principal's Representative* reasonable advance notice of when the *Managing Contractor* needs other information, materials, documents or instructions from the *Principal* or *Principal's Representative*.

The *Principal* and the *Principal's Representative* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Principal's Representative*, as relevant, should reasonably have anticipated.

The *Principal's Representative* may direct in what order and at what time the various stages or *Portions of the Services* must be carried out. If the *Managing Contractor* can reasonably comply with the *direction*, the *Managing Contractor* must do so. If the *Managing Contractor* cannot reasonably comply, the *Managing Contractor* must give the *Principal's Representative* written notice of the reasons. For the avoidance of doubt, no *direction* by the *Principal's Representative* will constitute a *direction* under this clause 21 unless the *direction* is in writing and expressly states that it is a *direction* under this clause 21.

The *Managing Contractor* must:

- (a) provide the *Principal's Representative* with a *program* within 10 *Business Days* of the *date of execution of the Contract* (or any longer period agreed by the *Principal's Representative* in writing) for the review of the *Principal's Representative* under subclause 5.4; and
- (b) submit an updated *program* to the *Principal's Representative* for the review of the *Principal's Representative* under subclause 5.4, on the second *Business Day* of each month to illustrate progress of *the Services* and the *project* and to take account of changes to the *program* and delays which have occurred.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or *Portions of the Services* and the *project* are to be carried out or completed. It shall not be a *Contract* document. The form of, and detail contained within, any *program* prepared in accordance with this clause must be to the satisfaction of the *Principal's Representative* and meet the requirements of:

- (c) the Sydney Metro Northwest Programming Protocol which appears in Exhibit 11;
- (d) Section 5, steps 2 to 6 inclusive, specified in the procedure entitled Co-ordinating and Reporting of AEOC Critical Resources through P6 which appears in Exhibit 12; and
- (e) the *TSR* entitled 'Project Administration'.

The *program* must align with the *Cost Plan*.

The *Managing Contractor* must not, without reasonable cause, depart from the *approved program* and must use all reasonable endeavours to ensure that *subcontractors* adhere to the *approved program*.

22 Suspension

22.1 Principal's Representative's suspension

The *Principal's Representative* may direct the *Managing Contractor* to suspend the carrying out of the whole or part of *the Services* for such time as the *Principal's Representative* thinks fit.

22.2 Managing Contractor's suspension

If the *Managing Contractor* wishes to suspend the carrying out of the whole or part of *the Services*, otherwise than pursuant to subclause 27.9, the *Managing Contractor* must obtain the *Principal's Representative's* prior written approval. The *Principal's Representative* may approve the suspension and may impose conditions of approval.

22.3 Recommencement

As soon as the *Principal's Representative* becomes aware that the reason for any suspension no longer exists, the *Managing Contractor* must recommence suspended *Services* as soon as reasonably practicable.

The *Managing Contractor* may recommence *the Services* suspended pursuant to subclause 22.2 or 27.9 at any time after reasonable notice to the *Principal's Representative*.

22.4 Cost

The *Managing Contractor* must bear the cost of any suspension:

- (a) required due to an act, default or omission of the *Managing Contractor*, a *subcontractor* or either's employees or agents; or
- (b) pursuant to subclause 22.2.

In the case of any other suspension directed under subclause 22.1:

- (c) if the *Managing Contractor* otherwise incurs more or less cost in performing the *Preliminaries* or the *Design Services* than otherwise would have been incurred, there shall be a *fee adjustment* and/or a *Design Fee Adjustment* (as appropriate); and
- (d) any increase or decrease in costs associated with the *Reimbursable Services* as a result of the suspension will:
 - (i) in the case of *Reimbursable Services* performed by a subcontractor under an *Approved Subcontract Agreement*, be included in the *Actual Reimbursable Costs* to the extent provided for in the relevant *Approved Subcontract Agreement*; and
 - (ii) in the case of *Reimbursable Services* performed by the *Managing Contractor* (as agreed by the *Principal's Representative* in accordance with subclause 6.9), be included in the *Actual Reimbursable Costs*.

The *Managing Contractor* must take all reasonable steps to mitigate the extra costs incurred by it and its *subcontractors* as a result of a suspension by the *Principal's Representative* under subclause 22.1.

23 Time, progress and additional remuneration

23.1 Delay

The *Managing Contractor* must perform the *Services* and design and construct the *project* so as to ensure that each *Portion* and the *project* as a whole achieve *completion* by the relevant *dates for completion*.

A party becoming aware of anything which will probably cause delay to *the Services* must promptly give the other party written notice of that cause and the estimated delay.

23.2 Claim

The *Managing Contractor* shall be entitled to an extension of time ("*EOT*") to the *date for completion*, if:

- (a) the *Managing Contractor* is or will be delayed on or prior to the *date for completion* of the *project* or a *Portion* in reaching *completion* by a *qualifying cause of delay* in a manner that will prevent it from achieving *completion* of the *project* or a *Portion* by the relevant *date for completion*; or
- (b) the *Managing Contractor* is, or will be, delayed after the *date for completion* of the *project* or a *Portion* by reason of a *qualifying cause of delay* in a manner which will delay it in achieving *completion* of the *project* or a *Portion*; and
- (c) the *Managing Contractor* gives the *Principal's Representative*, within 28 days of the commencement of the occurrence causing the delay, a written claim for an *EOT* evidencing the facts of causation and of the delay (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Managing Contractor* must claim an *EOT* for such delay by promptly giving the *Principal's Representative* a written claim evidencing the facts of that delay.

23.3 Extension of time

Subject to subclause 23.4, if the *Managing Contractor* is entitled to an *EOT* in accordance with subclause 23.2 the relevant *date for completion* will be extended by a reasonable period determined by the *Principal's Representative* and notified to the *Principal* and the *Managing Contractor* within 28 days after receiving the *Managing Contractor's* claim for an *EOT*.

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

23.4 Reduction in Extension of Time

The *Principal's Representative* will reduce any *EOT* to the relevant *date for completion* it would otherwise have determined under subclause 23.3 to the extent that the *Managing Contractor*:

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

23.5 Unilateral Extensions

Whether or not the *Managing Contractor* has made, or is entitled to make, a claim for an *EOT* to any relevant *date for completion*, or is entitled to be, or has been, granted an *EOT* to any relevant *date for completion*, under subclause 23.3, the *Principal's Representative* may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the *Managing Contractor* and the *Principal*, unilaterally extend any *date for completion* by any period specified in a notice to the *Managing Contractor* and the *Principal*.

The *Principal's Representative* is not required to exercise its discretion under this subclause 23.5 for the benefit of the *Managing Contractor*.

Without limiting subclause 16.1, the discretion to grant an *EOT* under this subclause 23.5 may only be exercised by the *Principal's Representative* and:

- (a) the *Principal's Representative* may or may not (as the case may be) exercise this discretion in accordance with the instructions of the *Principal*; and
- (b) the exercise or failure to exercise that discretion is not a "*direction*" which can be the subject of a *dispute* pursuant to clause 30 or in any other way opened up, reviewed or exercised by any other person in any forum (including by any expert, arbitration or litigation proceedings).

23.6 Delay Costs

For every day the subject of an *EOT* for a *compensable cause* which extends the *date for completion* of the *project* and for which the *Managing Contractor* gives the *Principal's Representative* a claim for additional remuneration pursuant to subclause 29.1, the *Managing Contractor* will be entitled to the extra costs reasonably incurred by the *Managing Contractor* as a direct result of the delay the subject of the *EOT*, as determined by the *Principal's Representative*.

Notwithstanding any other provision of this *Contract*, the amount payable pursuant to this subclause 23.6 will be a limitation upon the *Principal's* liability to the *Managing Contractor* for any delay or disruption that:

- (a) the *Managing Contractor* encounters in carrying out *the Services*; and

(b) arises out of, or in any way in connection with, the breach of this *Contract* by the *Principal*, and the *Managing Contractor* will not be entitled to make, nor will the *Principal* be liable upon, any *Claim* in these circumstances other than for the amount which is payable by the *Principal* under this subclause 23.6.

23.7 Extension of Time in Subcontracts

The *Managing Contractor* must administer the provisions of each *Approved Subcontract Agreement* strictly in accordance with its terms and must not approve an extension of time or unilaterally grant an extension of time to any *subcontractor* unless:

- (a) the *subcontractor* is entitled to such extension of time under the terms of the *Approved Subcontract Agreement*;
- (b) the *Managing Contractor* has given notice of the proposed extension of time to the *Principal's Representative*; and
- (c) the *Principal's Representative* has given its written approval to the extension of time, such written approval to be issued promptly and not to be unreasonably withheld.

23.8 Liquidated damages

Subject to subclause 23.9 and 23.10, if a *Portion* does not reach *completion* by the relevant *date for completion*, the *Principal's Representative* shall certify, as due and payable to the *Principal*, the relevant liquidated damages in *Item 27* for every day after the relevant *date for completion* to and including the earliest of:

- (a) the *date of completion* of the *Portion*;
- (b) termination of the *Contract*; or
- (c) the *Principal* taking *the Services* out of the hands of the *Managing Contractor*.

If an *EOT* is directed after the *Managing Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Managing Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

23.9 General damages

If subclause 23.8 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the *Principal* from recovering liquidated damages, the *Principal* will be entitled to recover general damages as a result of the *Managing Contractor* failing to achieve *completion* by the *date for completion*, but the *Managing Contractor's* liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the *Managing Contractor* would have had if subclause 23.8 had not been void, invalid or otherwise inoperative.

23.10 Cap on liquidated damages

The *Managing Contractor's* liability under subclause 23.8 or subclause 23.9 and clause 3 of the deed poll in Annexure Part G required by subclause 2.8 is limited to 10% of the *Target Budget* in aggregate.

24 Variations

24.1 Directing variations

The *Managing Contractor* must not vary *the Services* or the *project* except as directed in writing by the *Principal's Representative*.

The *Principal's Representative* may direct the *Managing Contractor* to vary *the Services* or the *project* by such *variation* as is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract*.

The *Managing Contractor* acknowledges that:

- (a) the scope of *the Services* includes the production of all the *design documents*, including in respect of the finalisation of the *design documents*, and all negotiations in respect of *Approved Subcontract Agreements*; and
- (b) any *work* that the *Managing Contractor*, or any *subcontractor* is required to undertake in connection with the matters referred to in subclause 24.1(a), including any *work* arising from *design development*, will not constitute a *variation*.

24.2 Proposed variations

The *Principal's Representative* may give the *Managing Contractor* written notice of a proposed *variation*.

The *Managing Contractor* must as soon as practicable after receiving such notice, notify the *Principal's Representative* whether the proposed *variation* can be effected, together with, if it can be effected, the *Managing Contractor's* estimate of the:

- (a) effect on the *approved program* (including the *dates for completion*); and
- (b) cost (including all warranties and time-related costs, if any) of the proposed *variation* in respect of each of the *Preliminaries* and the *Reimbursable Services*.

The *Principal's Representative* may direct the *Managing Contractor* to give a detailed quotation for the proposed *variation*.

24.3 Fee adjustment

Subject to subclause 20.5, the *Principal's Representative* must for each *variation*, as soon as possible, determine a price for the impact of the *variation* upon the *Preliminaries*, the *Design Services* and the *Reimbursable Services* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or fees (excluding any margin for profit and overheads) in the *Contract*;
- (c) rates or fees (excluding any margin for profit and overheads), even though not in the *Contract* documents, to the extent that it is reasonable to use them;
- (d) reasonable rates or fees (excluding any margin for profit and overheads); and
- (e) subject to the final paragraph of this subclause 24.3, where the *variation* has an impact on the *Reimbursable Services*, the margins for profit and off-site overheads set out in *Item 28*.

In applying the margin for profit and off-site overheads set out in *Item 28*, where a single *variation* both deletes or omits work and involves additional work, the margin is to be applied to the net aggregate amount calculated by taking into account both the reductions and increases to the *Actual Reimbursable Costs* arising from the *variation* ("**Net Actual Reimbursable Costs**").

In pricing each *variation* the *Principal's Representative* shall where the price increases the *Target Budget*, only have regard to the extent to which the *variation* increases the cost of performing *the Services* from the original scope of work.

That part of the price determined under this subclause in respect of:

- (f) the impact of the *variation* upon the *Preliminaries*; and
- (g) the margin for profit and overheads,

shall be a *fee adjustment*.

The margin for profit and overhead will not be applied to any part of the price determined under this subclause that relates to a *Design Fee adjustment*.

24.4 Options

The *Principal's Representative* may, by written notice given to the *Managing Contractor* at any time within the period stated in Annexure Part P, exercise any *Option*. Commencing upon the issue of such a notice by the *Principal's Representative*, the *Principal* and the *Managing Contractor* must perform their obligations under this *Contract* on the basis that the *management fee, Design Fee, Target Budget* and the provisions of this *Contract* will be adjusted as set out in Annexure Part P.

For the avoidance of doubt:

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

any *Option*.

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

The exercise of an *Option* by the *Principal's Representative* under this subclause 24.4 will not:

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

whether under this *Contract* or otherwise according to any law.

24.5 Variations under Approved Subcontract Agreements

The *Managing Contractor*:

- (a) must not vary the work which is the subject of an *Approved Subcontract Agreement* unless:
 - (i) the *Principal's Representative* has provided the *Managing Contractor* with a direction to vary the *project* in accordance with subclause 24.1 and that *variation* relates directly to the work the subject of the *Approved Subcontract Agreement*; or
 - (ii) the *Managing Contractor* makes a written request to the *Principal's Representative* to authorise it to issue a direction to a *subcontractor* to vary the work, and the *Principal's Representative* gives written consent to this request; and
- (b) acknowledges that any costs, expenses, losses or damages suffered or incurred by the *Managing Contractor* arising out of or in any way in connection with any variation to the work which is the subject of an *Approved Subcontract Agreement* which occurs other than as provided for under paragraph (a) will not form part of the *Actual Reimbursable Costs*.

25 Payment

25.1 Progress claims

The *Managing Contractor* must claim payment of the *management fee* and the *Design Fee* in accordance with the provisions of Annexure Part C.

An early progress claim shall be deemed to have been made on the date for making that claim.

Subject to satisfaction of the conditions precedent in subclause 25.2, the *Managing Contractor* is entitled to make a progress claim in writing to the *Principal's Representative* by the first *Business Day* of each month in respect of the work performed in the previous month and must include in each progress claim detailed particulars for the value of *the Services* carried out including:

- (a) the *management fee* and any *fee adjustments*;
- (b) the *Design Fee* and any *Design Fee adjustments*;
- (c) the *Actual Reimbursable Costs*; and
- (d) certified copies of all relevant documents to substantiate the value being claimed by it in the progress claim.

The *Managing Contractor* agrees with the *Principal* that the date prescribed in this subclause 25.1 and in subclause 25.7, as the date on which the *Contractor* is entitled to make a progress claim is, for the purposes of section 8 of the *SOP Act*, the "reference date" (as defined in the *SOP Act*).

The *Managing Contractor* agrees with the *Principal* that a progress claim submitted to the *Principal's Representative* under this clause 25 (including the *final payment claim*) is received by the *Principal's Representative* as agent for the *Principal*.

25.2 Condition Precedent to Payment Claim

As a condition precedent to the right of the *Managing Contractor* to make a payment claim under subclause 25.1 or the *final payment claim*, the *Managing Contractor* must prior to submitting the claim:

- (a) provide to the *Principal's Representative* a reconciliation of the amount previously paid to the *Managing Contractor* by the *Principal* in respect to the *Actual Reimbursable Costs* against the amount paid by the *Managing Contractor* to its *subcontractors* carrying out the *Reimbursable Services* and provide an explanation where the amount differs;
- (b) provide the *Principal's Representative* with the *Managing Contractor's* Certificate of Construction Compliance in the form of Annexure Part M, the *Managing Contractor's* Certificate of Design Compliance in the form of Annexure Part U and the monthly report prepared in accordance with the *TfNSW Standard Requirements*; and
- (c) comply with subclauses 2.7 and 2.8 and clause 26.

25.3 Payment Statements

The *Principal's Representative* must, within 10 *Business Days* of receiving a progress claim which complies with the requirements of subclause 25.1 and 25.2 issue to the *Managing Contractor* (on behalf of the *Principal*) and the *Principal* a payment statement which identifies the progress claim to which it relates, and which sets out:

- (a) its determination of the value of the *Services* carried out in accordance with this *Contract* including the *management fee*, any *fee adjustments*, the *Design Fee*, any *Design Fee adjustments* and the *Actual Reimbursable Costs*;
- (b) the amount already paid to the *Managing Contractor*;
- (c) the amount the *Principal* is entitled to retain, deduct, withhold or set-off under this *Contract*;
- (d) the amount (if any) then payable by the *Principal* to the *Managing Contractor* on account of the *management fee*, any *fee adjustments*, the *Design Fee*, any *Design Fee adjustments* and the *Actual Reimbursable Costs* which the *Principal* proposes to pay to the *Managing Contractor*; and
- (e) if the amount in paragraph (d) is less than the amount claimed in the progress claim:
 - (i) the reason why the amount in paragraph (d) is less than the amount claimed in the progress claim; and
 - (ii) if the reason for the difference is that the *Principal* proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the *Principal* retaining, deducting, withholding or setting-off payment.

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

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

The *Principal's Representative* may, in any payment statement, correct any error and modify any assumptions or allowances made in any previous payment statement issued by the *Principal's Representative*.

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

25.4 Payment

Subject to subclause 25.9, the *Principal* must pay the *Managing Contractor* the amount set out in the payment statement within 15 *Business Days* after the *Principal's Representative* receives a progress claim from the *Managing Contractor* under subclause 25.1.

A payment of money shall not be evidence that *the Services* or the *project* have been carried out satisfactorily. All payments shall be regarded as a payment on account only.

Where any part of a payment to be made by the *Principal* to the *Managing Contractor* is in respect of work carried out by a *subcontractor*, that part of the payment (which excludes the *management fee*) must be held on trust for the relevant *subcontractor* until the relevant amount is paid by the *Managing Contractor* to the *subcontractor*. Such amounts must be held in a separate bank account.

Interest earned on any such amounts held on trust belongs to the *Principal*.

25.5 Completion

The *Managing Contractor* must give the *Principal's Representative* at least 14 days written notice of the date upon which the *Managing Contractor* anticipates that *completion* of a *Portion* or the *project* as a whole will be reached.

When the *Managing Contractor* is of the opinion that *completion* has been reached, the *Managing Contractor* must give the *Principal's Representative* a certificate of completion in the form of Annexure Part N together with a written request for the *Principal's Representative* to issue a notice of completion. Within 14 days after receiving the request, the *Principal's Representative* must give the *Managing Contractor* and the *Principal* either a notice of completion evidencing the *date of completion* or written reasons for not doing so.

If the *Principal's Representative* is of the opinion that *completion* has been reached, the *Principal's Representative* may issue a notice of completion even though no request has been made.

25.6 Part of the Project or a Portion

If a part of the *project* has reached *completion* but another part of the *project* has not reached *completion* and the parties cannot agree upon the creation of new *Portions*, the *Principal's Representative* may determine that the respective parts will be *Portions*. The *Principal* may, after the *Managing Contractor* is given written notice by the *Principal's*

Representative, occupy or use any part of the *project* or a *Portion* although the whole of the *project* or the *Portion* has not reached *completion*.

If the *Principal's Representative* gives any such notice:

- (a) the *Principal* must allow the *Managing Contractor* reasonable access to the part of the *project* or the *Portion* referred to in the notice and being occupied or used by the *Principal*, to enable the *Managing Contractor* to bring the *project* or the relevant *Portion* of which the area being occupied or used forms part to *completion*; and
- (b) this will not otherwise limit or affect the obligations of the parties under this *Contract*, including the obligation of the *Managing Contractor* to achieve *completion* of the *project* or the relevant *Portion* of which the area being occupied or used forms part, by the relevant *date for completion*.

Without limiting the previous paragraphs the *Principal's Representative* may at any time create a new *Portion* by notice in writing to the *Managing Contractor*, in which the *Principal's Representative* shall clearly identify:

- (c) the new *Portion*; and
- (d) the *date for completion* of the *portion*.

The interpretations of the terms *date for completion*, *date of completion* and *completion*, and subclause 25.5 and clauses 10, 20 and 23, will apply separately to each *Portion* and references therein to the *project* and to the *Services* will mean so much of the *project* and the *Services* as is comprised in the relevant *Portion*.

25.7 Final payment and certificate

Subject to satisfying the conditions precedent in subclause 25.1, within 28 days after the expiration of the *Defects Liability Period*, the *Managing Contractor* must give the *Principal's Representative* a certificate of final completion in the form of Annexure Part O, a written *final payment claim*, endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 10 *Business Days* after the issue of the *final payment claim*, the *Principal's Representative* must issue to the *Managing Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Managing Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable must be paid by the *Principal* or the *Managing Contractor*, as the case may be, within 15 *Business Days* of receipt of the *final payment claim*.

25.8 Interest

Interest in *Item 29* shall be due and payable after the date of default in payment.

25.9 Other moneys due

The *Principal* may deduct from moneys otherwise due to the *Managing Contractor*:

- (a) any debt or other moneys due from the *Managing Contractor* to the *Principal* (including any debt due from the *Managing Contractor* to the *Principal* pursuant to section 26C of the *SOP Act*) whether under this *Contract* or otherwise at law;
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the *Principal* pursuant to Division 2A of Part 3 of the *SOP Act*; or
- (c) any claim to money which the *Principal* may have against the *Managing Contractor* whether for damages (including liquidated damages) or otherwise whether under this *Contract* or otherwise at law.

If those moneys are insufficient, the *Principal* can have recourse to the security held under clause 2A of this *Contract*.

25.10 Incentive Payments

- (a) If the *Actual Cost* is:
- (i) less than the *Target Budget*, the *Principal* must, after the expiration of the *Defects Liability Period* and as part of the final payment pursuant to subclause 25.7, pay the *Managing Contractor* an amount which is equal to the percentage rate in *Item 30* multiplied by the difference between the *Actual Cost* and the *Target Budget*; or
 - (ii) greater than the *Target Budget*, then subject to subclause 25.10(c), the amount which is equal to the percentage rate in *Item 31* multiplied by the difference between the *Target Budget* and the *Actual Cost*, will be a debt due and payable by the *Managing Contractor* to the *Principal* and the *Principal* will be entitled to progressively deduct the amount to which it is entitled from the next progress payment after it becomes apparent that this subclause 25.10(a)(ii) applies.
- (b) The *Principal* will not be liable upon any *Claim* by the *Managing Contractor* arising out of or in connection with any act, omission or breach of *Contract* by the *Principal* or the *Principal's Representative*, to the extent that this may have contributed to preventing the *Managing Contractor* from maximising the amount it otherwise would have been entitled to under this subclause 25.10.
- (c) The *Managing Contractor's* liability under subclause 25.10(a)(ii) is limited to 10% of the *Target Budget*.

25.11 Security of Payment Act

- (a) The *Managing Contractor* irrevocably chooses The Institute of Arbitrators & Mediators, Australia as the authorised nominating authority for the purposes of section 17.3 of the *SOP Act*.
- (b) When an adjudication occurs under the *SOP Act*, and the *Principal* has paid an adjudicated amount to the *Managing Contractor*:
- (i) the amount will be taken into account by the *Principal's Representative* in issuing a payment schedule under subclause 25.4; and
 - (ii) if it is subsequently determined pursuant to the *Contract* that the *Managing 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 *Managing Contractor* to the *Principal* which the *Managing Contractor* must pay to the *Principal* upon demand and in respect of which the *Managing Contractor* is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (c) Without limiting subclause 25.9, the *Principal* may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the *Principal* pursuant to Division 2A of Part 3 of the *SOP Act*.
- (d) If the *Principal* withholds from money otherwise due to the *Managing Contractor* any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the *Principal* pursuant to Division 2A of Part 3 of the *SOP Act*, then:
- (i) the *Principal* may plead and rely upon Division 2A of Part 3 of the *SOP Act* as a defence to any claim for the money by the *Contractor* from the *Principal*; and

- (ii) the period during which the *Principal* retains money due to the *Managing Contractor* pursuant to an obligation under Division 2A of Part 3 of the *SOP Act* will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the *Principal* to the *Managing Contractor* has been unpaid; and
 - (B) the date by which payment of money owed by the *Principal* to the *Managing Contractor* must be made.
- (e) The *Managing Contractor* agrees not to commence proceedings to recover any amount withheld by the *Principal* pursuant to a payment withholding request served on the *Principal* in accordance with Division 2A of Part 3 of the *SOP Act*.
- (f) Any amount paid by the *Principal* pursuant to section 26C of the *SOP Act* will be a debt due and payable from the *Managing Contractor* to the *Principal*.
- (g) If the *Principal* withholds money pursuant to a payment withholding request served on the *Principal* pursuant to Division 2A of Part 3 of the *SOP Act* and the *Managing Contractor*:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the *Managing Contractor* must so notify the *Principal* and the *Principal's Representative* within 5 days after the occurrence of the event in subparagraph (g)(i) or (ii) (as applicable) by providing to the *Principal* and the *Principal's Representative* a statement in writing in the form of a statutory declaration together with such other evidence as the *Principal* or *Principal's Representative* may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

25.12 Cost Tracking and Audit

- (a) The estimated monthly cash flow summary provided by the *Managing Contractor* as part of the *Cost Plan* must be regularly updated by the *Managing Contractor* to reflect changes to the *approved program* as well as changes to the *Cost Plan* or the *Target Budget* and must be in a suitable form for use by the *Principal's Representative* as a means of assessing costs incurred against the rate of progress of the design, engineering, planning, procurement, construction, pre-commissioning, commissioning and *completion* of the *project*.
- (b) The *Managing Contractor* acknowledges that it is of paramount importance to the *Principal* that all commercial aspects of this *Contract* are administered in a transparent manner that clearly demonstrates that all payments made under this *Contract* are in accordance with the terms of this *Contract*.
- (c) At any time until the issue of a *final certificate*, the *Managing Contractor* is required to provide the *Principal* and any third party engaged by the *Principal* the right to:
 - (i) audit, the process by which the *Actual Reimbursable Costs* are incurred and recorded by the *Managing Contractor*; and
 - (ii) have access at all reasonable times to the personnel and records of the *Managing Contractor* that are related to the *Actual Reimbursable Costs*.
- (d) The *Principal* and any third party engaged by the *Principal* will have the right to reproduce any of the records referred to in subclause 25.12(c).
- (e) Due to the "open book" nature of this *Contract*, the *Managing Contractor* must provide to the *Principal* at its request copies of all records regarding *Actual Reimbursable Costs* or the

Services. Copies of these Records must be provided progressively and no later than the issue of the *final certificate*.

- (f) The provisions of subclauses 25.12(c), 25.12(d) and 25.12(e) continue to operate and bind the *Managing Contractor* after termination of this *Contract*.

25.12A Unfixed Plant and Materials

The *Managing Contractor* is only entitled to make a claim for payment for plant or materials intended for incorporation in the *Project* but not yet incorporated, and the *Principal* is only obliged to make payment for such plant or materials in accordance with subclause 25.4 if:

- (a) the *Managing Contractor* provides evidence of;
- (i) ownership of the plant or materials;
 - (ii) identification and labelling of the plant and materials as the property of the *Principal*; and
 - (iii) adequate and secure storage and protection;
- (b) security acceptable to the *Principal* in the form of the unconditional undertaking in Annexure Part L issued by an institution approved by the *Principal* in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the *Managing Contractor* to the *Principal*;
- (c) the plant and materials are on the *site* or are available for immediate delivery to the *site*;
- (d) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the *Principal's Representative*;
- (e) the condition of the unfixed plant and materials has been confirmed in an inspection by the *Principal's Representative*; and
- (f) if the *PPS Law* applies, the *Managing Contractor* has registered a *Security Interest* in the unfixed plant and materials in favour of the *Principal* in accordance with clause 31.

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

The security provided in accordance with subclause 25.12A(b) will be released once the applicable unfixed plant and materials are incorporated into the *Project* and are fit for their intended purpose.

25.13 Asset Register and Disposal of Plant and Equipment

If as part of the *Reimbursable Services* the *Managing Contractor* purchases any item of plant or equipment which is paid for by the *Principal* as part of the *Actual Reimbursable Costs*, the *Managing Contractor* must maintain an asset register in respect of all such plant or equipment containing such details as may be reasonably required by the *Principal's Representative*.

Upon *completion* of each *Portion* and the *project* as a whole:

- (a) the *Managing Contractor* must undertake a reconciliation of all such plant and equipment providing a report to the *Principal* as to the status and condition of the plant and equipment and its recommendation as to how to dispose of the plant and equipment to maximise the sale price for the plant and equipment; and
- (b) the *Managing Contractor* must dispose of all such plant and equipment as required by the *Principal's Representative* and the proceeds of such disposal must be paid by the *Managing Contractor* to the *Principal*.

Additionally as part of carrying out *the Services* scrap metal will be generated which is not required for *the Services*. The *Managing Contractor* must dispose of this scrap metal and any proceeds received must be paid to the *Principal*. The *Managing Contractor* must provide the *Principal* with a full reconciliation of the excess scrap metal and records of its disposal and the money received for such disposal.

25.14 GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this *Contract* are exclusive of *GST*.

If *GST* is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this *Contract*, *the Services* or the *project*, the party providing consideration for the supply must pay an additional amount to the *Supplier* equal to the *GST* payable by the *Supplier* (or representative member of a *GST* group of which the *Supplier* is a member) in relation to the supply.

Subject to subclause 25.14(c) any amount payable under subclause 25.14(a) will be paid to the *Supplier* at the same time as the consideration for the supply is paid to the *Supplier*.

- (b) If any party is required under this *Contract* to reimburse or pay to the other party an amount (other than any payment on account of the *management fee* and the *Design Fee*) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a *GST* group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (c) Notwithstanding any other provision of this *Contract*, a party will not be obliged to pay any amount in respect of *GST* to the other party (whether under this subclause 25.14 or otherwise) unless and until a tax invoice that complies with the *GST Legislation* has been issued by the *Supplier* in respect of that taxable supply.

Each party agrees to do all things, including providing invoices or other documentation that may be necessary or desirable to:

- (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
- (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under this *Contract*.
- (d) If the *GST* payable in relation to a supply made by the *Supplier* under this *Contract* varies from the additional amount paid by the other party under this subclause 25.14 in respect of that supply, then the *Supplier* will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).
- (e) In this subclause 25.14:
- (i) "**GST**" or "**Goods and Services Tax**" means the tax payable on taxable supplies under the *GST Legislation*;
- (ii) "**GST Legislation**" means *A New Tax System (Goods and Services Tax) Act 1999* and any related Act imposing such tax or legislation that is acted to validate, recapture or recoup such tax;
- (iii) terms defined in *GST Legislation* have the meaning given to them in *GST Legislation*; and
- (iv) any part or progressive or periodic component of a supply that is treated as a separate supply for *GST* purposes (including attributing *GST* to tax periods) will be treated as a separate supply.

26 Payment of workers and subcontractors

As a condition precedent to any entitlement of the *Managing Contractor* to submit a payment claim under clause 25, including the *final payment claim*, or any obligation of the *Principal* to pay the *Managing Contractor* any amount under subclause 25.4 or subclause 25.7, the *Managing Contractor* must, prior to submitting a progress claim under clause 25, including the *final payment claim*, provide to the *Principal's Representative* a statutory declaration by the *Managing Contractor*, or where the *Managing Contractor* is a corporation, by a representative of the *Managing Contractor* who is in a position to know the facts attested to, in the form of Annexure Part F (or such other form as the *Principal* may require), made out not earlier than the date of the relevant progress claim for which the payment is to be made or *final payment claim*.

Nothing in this clause 26 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) or section 127(5) of the *Industrial Relations Act* 1996 (NSW).

27 Default or insolvency

27.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

27.2 Managing Contractor's default

If the *Managing Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Managing Contractor* a written notice to show cause.

Substantial breaches include:

- (a) breach of a warranty in subclause 2.2;
- (b) failing to provide evidence of insurance;
- (c) failing to provide the unconditional undertakings or the guarantee as required by subclause 2.7;
- (d) failing to comply with subclause 25.12;
- (e) wrongful suspension of *the Services*;
- (f) substantial departure from an *approved program* without reasonable cause or the *Principal's Representative's* approval; and
- (g) where there is no *approved program*, failing to proceed with due expedition and without delay.

27.3 Principal's notice to show cause

A notice under subclause 27.2 must state:

- (a) that it is a notice under clause 27 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Managing Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 27.4;
- (d) the date and time by which the *Managing Contractor* must show cause (which must not be less than 5 *Business Days* after the notice is received by the *Managing Contractor*); and
- (e) the place at which cause must be shown.

27.4 Principal's rights

If the *Managing Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Managing Contractor*:

- (a) take out of the *Managing Contractor's* hands the whole or part of *the Services* or the *project* remaining to be completed and suspend payment until an amount (if any) becomes due and payable pursuant to subclause 27.6; or
- (b) terminate the *Contract*.

27.5 Take out

The *Principal* may complete *the Services* and the *project* taken out of the *Managing Contractor's* hands in accordance with subclause 27.4(a) and may:

- (a) use materials, equipment and other things intended for *the Services* and the *project*; and
- (b) without payment of compensation to the *Managing Contractor*:
 - (i) take possession of, and use, such of the *design documents*, *construction plant* and other things on or in the vicinity of the *site* as were used by the *Managing Contractor*; and
 - (ii) contract with such of the *Managing Contractor's subcontractors*,

as are reasonably required by the *Principal* to facilitate completion.

If the *Principal* takes possession of *construction plant*, the *Temporary Works* or other things, the *Principal* must maintain them and, subject to subclause 27.6, on completion of *the Services* taken out, must return such of them as are surplus.

The *Principal's Representative* must keep records of the cost of completing *the Services* and the *project* taken out.

27.6 Adjustment on completion of the Services taken out

When *the Services* and/or the *project* taken out of the *Managing Contractor's* hands have been completed, the *Principal's Representative* must assess the cost thereby incurred and must certify as moneys due and payable accordingly the difference between that cost (showing the calculations thereof) and the amount which would otherwise have been paid to the *Managing Contractor* if *the Services* and the *project* had been completed by the *Managing Contractor*.

If the *Managing Contractor* is indebted to the *Principal*, the *Principal* may retain the *construction plant*, the *Temporary Works* or other things taken under subclause 27.5 until the debt is satisfied. If after reasonable notice, the *Managing Contractor* fails to pay the debt, the *Principal* may sell the *construction plant*, the *Temporary Works* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess must be paid to the *Managing Contractor*.

27.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Managing Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include failing to:

- (a) produce evidence of insurance; or
- (b) make a payment due and payable pursuant to the *Contract*.

27.8 Managing Contractor's notice to show cause

A notice given under subclause 27.7 must state:

- (a) that it is a notice under clause 27 of these General Conditions;

- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Managing Contractor* should not exercise a right referred to in subclause 27.9;
- (d) the date and time by which the *Principal* must show cause (which must not be less than 5 *Business Days* after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

27.9 Managing Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Managing Contractor* may, by written notice to the *Principal*, suspend the whole or any part of the *Services*.

The *Managing Contractor* must remove the suspension if the *Principal* remedies the breach.

The *Managing Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Managing Contractor*.

The *Managing Contractor* shall be entitled to recover damages reasonably incurred by the *Managing Contractor* by reason of the suspension.

27.10 Termination

If the *Contract* is terminated pursuant to subclause 27.4(b) or 27.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

Subclause 28.2 applies upon termination of the *Contract*.

27.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cwlth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

- (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (vii) a mortgagee of any of its property takes possession of that property,
- then, where the other party is:

- (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 27.4(a) or subclause 27.4(b); or
- (B) the *Managing Contractor*, the *Managing Contractor* may, without giving a notice to show cause, exercise the right under subclause 27.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

28 Termination for Convenience or Frustration

28.1 Termination for Convenience

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

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

28.2 Managing Contractor's Obligations

If this *Contract* is terminated, whether pursuant to clause 27, subclause 28.1 or otherwise, or is frustrated, the *Managing Contractor* must, without any entitlement to payment, immediately hand over to the *Principal's Representative* all copies of:

- (a) any documents provided by the *Principal* or the *Principal's Representative* to the *Managing Contractor*;
- (b) all documents and information prepared by or in the possession of the *Managing Contractor*, including any *design documents*, to the date of termination or frustration (whether complete or not); and
- (c) any other documents or information in existence that are to be provided to the *Principal* or the *Principal's Representative* under the terms of this *Contract*.

28.3 Payment upon Termination by frustration or for convenience

If the *Contract* is frustrated or the *Contract* is terminated by the *Principal* under subclause 28.1, the *Principal* must pay the *Managing Contractor*:

- (a) any amount then due to the *Managing Contractor* but unpaid;
- (b) for *the Services* carried out to the date of termination or frustration which are not included in a previous payment claim;

- (c) the cost of materials and equipment reasonably ordered by the *Managing Contractor* for the *project* and which the *Managing Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
- (d) the costs reasonably incurred:
 - (i) returning to their place of engagement the *Managing Contractor*, *subcontractors* and their respective employees engaged in *the Services* at the date of termination or frustration; and
 - (ii) by the *Managing Contractor* in expectation of completing *the Services* and not included in any other payment.

To the extent it has not had recourse to them, the *Principal* will return all unconditional undertakings then held by it under subclause 2.7(a) when the *Managing Contractor* has complied with all its obligations under subclause 28.2.

The amount to which the *Managing Contractor* is entitled under this subclause 28.3 will be a limitation upon the *Principal's* liability to the *Managing Contractor* arising out of, or in any way in connection with, the frustration of the *Contract* or the termination of this *Contract* under subclause 28.1 and the *Principal* will not be liable to the *Managing Contractor* upon any *Claim* arising out of, or in any way in connection with, the frustration of the *Contract* or the termination of this *Contract* other than for the amount payable under this subclause 28.3.

This subclause 28.3 will survive the frustration of the *Contract* or the termination of this *Contract* by the *Principal* under subclause 28.1.

29 Notification of claims

29.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the *Claim*.

Within 40 *Business Days* after the *Managing Contractor* becomes aware of any *Claim* in connection with the subject matter of the *Contract* (including in respect of any *latent condition* which may lead to an increase in the *Actual Reimbursable Costs*), the *Managing Contractor* must give to the *Principal* and the *Principal's Representative* the *prescribed notice* or a notice of *dispute* under subclause 30.1.

If the *Managing Contractor* fails to provide sufficient particulars of the *Claim* to enable the *Principal's Representative* to properly consider the matter, then within 14 days after receipt of a *prescribed notice* the *Principal's Representative* may request the *Managing Contractor* to provide further particulars of the *Claim*, and the *Managing Contractor* must provide such particulars within 14 days of the request.

This subclause shall not apply to any *Claim*, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

29.2 Liability for failure to communicate

The failure of the *Managing Contractor* to comply with the provisions of subclause 29.1 or to communicate a *Claim* in accordance with the relevant provision of the *Contract* shall bar and invalidate the *Claim* and the *Principal* will not have any liability in respect of the *Claim*.

29.3 Resolution

If within 28 days of giving the *prescribed notice*, the *Claim* has not been resolved the *prescribed notice* shall be deemed to be rejected by the *Principal's Representative* and will be deemed to be a notice of *dispute* under subclause 30.1.

30 Dispute resolution

30.1 Notice of dispute

If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning a *Claim*, then either party must, by hand or by registered post, give the other a written notice of *dispute* adequately identifying and providing details of the *dispute*.

If the *Managing Contractor* fails to provide sufficient particulars of the *dispute* to enable the *Principal's Representative* to properly consider the matter, then within 14 days after receipt of the notice of *dispute* (or of a *prescribed notice* being deemed to be a notice of *dispute* under subclause 29.3) the *Principal's Representative* may request the *Managing Contractor* to provide further particulars of the *dispute*.

If within 14 days after such a request the *Managing Contractor* has not furnished the particulars sought, any *Claim* upon which the *dispute* is based will be barred and the *Principal* will not have any liability in respect of the *Claim* or the *dispute*.

Notwithstanding the existence of a *dispute*, the parties must, subject to clauses 27 and 28 and subclause 30.12, continue to perform the *Contract*.

30.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties must confer at least once to resolve the *dispute*. At every such conference each party must be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute* (the "*initial period*") either party may, by giving notice to the other party that those parts of the *dispute* which remain unresolved be resolved in accordance with the balance of this clause 30.

A notice given under subclause 30.2 may be given whether or not the parties have complied with this subclause 30.2 and must:

- (a) be given within 21 days after the expiry of the *initial period*;
- (b) state that it is a notice under this subclause 30.2;
- (c) state whether or not it is a *Schedule 1 Dispute*; and
- (d) include or be accompanied by reasonable particulars of those parts of the *dispute* which remain unresolved.

30.3 Expert Determination

If a notice is given under subclause 30.2 and the *dispute* is a *Schedule 1 Dispute*, the dispute must be submitted to an expert determination.

The dispute will be referred to an expert determination whether or not the parties have complied with the obligation in subclause 30.2 to confer.

30.4 The Expert

The expert determination under subclause 30.3 is to be conducted by:

- (a) an independent industry expert agreed by the *Principal* and the *Managing Contractor*; or
- (b) where the parties are unable to agree upon an independent industry expert within 42 days after the date the notice under subclause 30.2 was given or an independent industry expert appointed under this subclause 30.3:
 - (i) is unavailable;

- (ii) declines to act;
- (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
- (iv) does not make a determination within the time required by subclause 30.5(e),
an independent industry expert appointed by the President of the Institute of Arbitrators & Mediators Australia.

30.5 Rules of Expert Process

- (a) An expert determination conducted under this clause 30 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (b) The expert determination must be made in accordance with the rules for the expert determination process which form part of the agreement in Annexure Part I or such other rules as the parties and the expert may agree.
- (c) The expert must:
 - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the determination without the knowledge of the other.
- (d) Each party will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) pay one-half of the expert's costs.
- (e) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 30 within the period set out in the agreement between the parties and the expert.
- (f) Notwithstanding anything else, to the extent permissible by law, the expert will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

30.6 Expert Agreement

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

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

30.7 Determination of Expert

The determination of the expert:

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

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

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

30.8 Arbitration Agreement

If:

- (a) a notice of appeal is given under subclause 30.7; or
- (b) the dispute does not relate to a *Schedule 1 Dispute* and a notice is given under subclause 30.2,

the dispute must be determined by arbitration in accordance with the following clauses.

The dispute will be referred to arbitration whether or not the parties have complied with the obligation in subclause 30.2 to confer.

30.9 Arbitration

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

- (a) agreed between the parties; or
- (b) failing agreement within 21 days after the *dispute* has been referred to arbitration, appointed by the President for the time being of The Institute of Arbitrators & Mediators Australia.

To the extent that they are not inconsistent with this *Contract*, the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators & Mediators Australia will apply to the arbitration.

The seat of the arbitration will be Sydney, Australia.

The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of the expert under subclause 30.3 that is not final and binding on the parties pursuant to subclause 30.7.

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

30.10 Survive Termination

This clause 30 will survive the termination of this *Contract*.

30.11 Continuation of Work

Despite the existence of a *dispute* between the parties this *Contract*, the *Managing Contractor* must:

- (a) continue to carry out *the Services*; and
- (b) otherwise comply with its obligations under this *Contract*.

30.12 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

31 PPS Law

- (a) By signing this *Contract*, the *Managing Contractor* acknowledges and agrees that if this *Contract* and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the *PPS Law* (*Security Interest*), the *Managing Contractor* shall do anything (including amending this *Contract* or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the *Principal* considers necessary under or as a result of the *PPS Law* for the purposes of:

- (i) ensuring that the *Security Interest* is enforceable, perfected or otherwise effective and has the highest priority possible under *PPS Law*;
 - (ii) enabling the *Principal* to apply for any registration, or give any notification, in connection with the *Security Interest*, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the *Principal* to exercise rights in connection with the *Security Interest* and this *Contract*.
- (b) If Chapter 4 of the *PPS Act* applies to the enforcement of the *Security Interest*, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPS Act* will not apply to the enforcement of the *Security Interest*.
- (c) The *Managing Contractor*:
- (i) acknowledges that the *Security Interests* created under or pursuant to this *Contract* relate to collateral and all proceeds in respect of that collateral (until the *Principal* is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the *PPS Law* in respect of the *Security Interest*; and
 - (iii) undertakes it will not register a financing change statement without the prior written consent of the *Principal*.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPS Act* and that this clause constitutes a confidentiality agreement within the meaning of the *PPS Law*.
- (e) The *Managing Contractor* agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

32 Limitation of Liability

32.1 Provisions Limiting or Excluding Liability

Any provision of this *Contract* which seeks to limit or exclude a liability of the *Principal* or the *Managing Contractor* is to be construed as doing so only to the extent permitted by law.

32.2 Limit of Managing Contractor's Liability

Subject to subclause 32.4, the liability of the *Managing Contractor* to the *Principal*, whether arising under or in connection with this *Contract* or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in law, is limited to an amount equal to the *Target Budget*.

32.3 No Liability for Certain Matters

Subject to subclause 32.4, the *Managing Contractor* will have no liability whatsoever to the *Principal* for loss of use, production, profit, revenue, business, data, contract or anticipated saving or for any financing costs or increase in operating costs.

32.4 Qualification on Limitation of Liability

Subclauses 32.2 and 32.3 do not apply to limit or restrict in any way:

- (a) any liability to the extent to which the *Managing Contractor* is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;

- (b) any liability for which, but for a failure by the *Managing Contractor* to comply with its obligations under this *Contract* or under an insurance policy, the *Managing Contractor* would have received payment or been indemnified under an insurance policy effected in accordance with this *Contract*;
- (c) the *Managing Contractor's* liability to pay liquidated damages under subclause 23.8 or general damages under subclause 23.9 or to pay an amount under subclause 25.10(a);
- (d) the *Managing Contractor's* liability to indemnify the *Principal* under subclauses 5.6(d), 8.1, 9.6(c), 11.3 and 19.4A(b);
- (e) the *Managing Contractor's* liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the *Managing Contractor* or its *subcontractors* or its agents;
- (f) liability which is otherwise limited by another provision of this *Contract*;
- (g) the *Managing Contractor's* liability for the *Managing Contractor* wholly or substantially abandoning the performance of the Services;
- (h) the *Managing Contractor's* liability to indemnify *Sydney Trains* under the deed poll executed in the form of Annexure Part G; or
- (i) liability out of which by law the *Managing Contractor* cannot contract.

32.5 No Circularity

- (a) In determining:
 - (i) whether an insurance policy extends to cover this *Contract* in respect of any matters referred to in subclauses 32.2 or 32.3 and the liability (if any) of the *Managing Contractor* arising out of or in connection with the matter; or
 - (ii) the amount recovered or recoverable by the *Managing Contractor* under an insurance policy in connection with a matter referred to in subclauses 32.2 or 32.3,

(together the **Determinable Matters**), the limitation on the *Managing Contractor's* liability pursuant to subclauses 32.2 or 32.3 will be disregarded and it must be assumed that the *Managing Contractor* has paid in full the amount of its liability to the *Principal* (unlimited by subclauses 32.2 or 32.3) in a manner which entitles the *Managing Contractor* to claim under the relevant insurance policy.
- (b) The *Managing Contractor* waives and disclaims any right or entitlement it may now or in the future have, but for this subclause 32.5(b), to:
 - (i) not disregard subclauses 32.2 or 32.3, in connection with any determination of the *Determinable Matters*; or
 - (ii) do any of the following:
 - (A) claim or assert (including by way of defence, counter-claim or third party proceeding); or
 - (B) instigate, participate in, consent to, or lend its name to, any action or proceedings of any kind under which it is claimed or asserted (including by way of defence, counter-claim or third party proceeding),

that subclauses 32.2 or 32.3 are not to be disregarded in connection with the determination of the *Determinable Matters*.
- (c) The parties agree that subclauses 32.5(a) and 32.5(b) may be pleaded in bar to any claim or assertion by:
 - (i) the *Managing Contractor*; or

- (ii) any insurer;
in any *Claim* to the effect that subclauses 32.2 or 32.3 are not to be disregarded as provided in subclause 32.5(a).
- (d) If for any reason in relation to a matter referred to in subclauses 32.2 or 32.3:
 - (i) subclauses 32.5(a) to 32.5(c) (or any of them) are unenforceable, void, voidable or illegal, subclauses 32.2 and 32.3 will be of no force or effect and will be treated as if they were severed from, and had never been terms of, this *Contract*; and
 - (ii) the *Managing Contractor*, or an insurer is for any reason not obliged to disregard, or is for any reason entitled to have regard to, subclauses 32.2 and 32.3 in determining the *Determinable Matters*, then subclauses 32.2 and 32.3 will be treated as if they were severed from and had never been terms of, this *Contract* and as of no force or effect whatsoever as against the person(s) who is so not obliged, or who is so entitled.

33 General

33.1 Governing Jurisdiction

The *Managing Contractor* irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings referred to in subclause 30.12 that may be brought at any time relating in any way to this *Contract*.

33.2 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this *Contract* by the *Principal* will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this *Contract*.
- (b) Any waiver or consent given by the *Principal* under this *Contract* will only be effective and binding on the *Principal* if it is given or confirmed in writing by the *Principal*.
- (c) No waiver by the *Principal* of:
 - (i) a breach of any term of this *Contract*; or
 - (ii) any other failure by the *Managing Contractor* to comply with a requirement of this *Contract*, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any *Claim* against the *Principal*,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this *Contract* or failure to comply with any other requirement of this *Contract*.

33.3 Assignment

The *Managing Contractor* cannot assign its rights or liabilities under this *Contract* without the prior written consent of the *Principal* and except on such terms and conditions as are determined in writing by the *Principal*.

33.4 Entire Agreement

This *Contract* and the *Deed of Disclaimer* constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this *Contract* and the *Deed of Disclaimer*; or

- (b) any correspondence or other documents relating to the subject matter of this *Contract* and the *Deed of Disclaimer* that may have passed between the parties prior to the *date of execution of the Contract* and the *Deed of Disclaimer* and that are not expressly included in this *Contract* and the *Deed of Disclaimer*.

33.5 Joint and Several Liability

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

33.6 Severability

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

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

33.7 Indemnities to Survive

Each indemnity in this *Contract* is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this *Contract*.

Nothing in this subclause 33.7 prevents any other provision of this *Contract*, as a matter of interpretation also surviving the termination of this *Contract*.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this *Contract*.

33.8 Taxes

Without limiting subclause 9.1 but subject to subclause 25.14 the *Managing Contractor* must pay all *Taxes* that may be payable in respect of *the Services*, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for *the Services*.

33.9 Principal May Act

The *Principal* may, either itself or by a third party, perform an obligation under this *Contract* that the *Managing Contractor* was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the *Principal* in so performing such an obligation will be a debt due from the *Managing Contractor* to the *Principal*.

33.10 No Partnership, Joint Venture or Other Fiduciary Relationship

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

33.11 Variations

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

33.12 Civil Liability Act

- (a) It is agreed that to the extent permitted by law the operation of Part 4 of the *Civil Liability Act* 2002 (NSW) (and any equivalent statutory provision in any other state or territory or

the Commonwealth) is excluded in relation to all and any rights, obligations and liabilities under this *Contract* 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 subclause 33.12(a) it is further agreed that the rights, obligations and liabilities of the *Principal* and the *Managing Contractor* (including those relating to proportionate liability) are as specified in this *Contract* and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (c) The *Managing Contractor* further agrees that:
 - (i) in each subcontract into which it enters for the carrying out of *the Services*, it will include provisions that, to the extent permitted by law, effectively exclude the operations of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory or the Commonwealth) 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 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 Services*, 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) (and any equivalent statutory provision in any other state or territory or the Commonwealth) 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, in tort or otherwise.

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Annexure Part A - Contract Particulars

**ANNEXURE to the Australian
Standard
Managing Contractor Contract—
General conditions
AS 4916—2002**

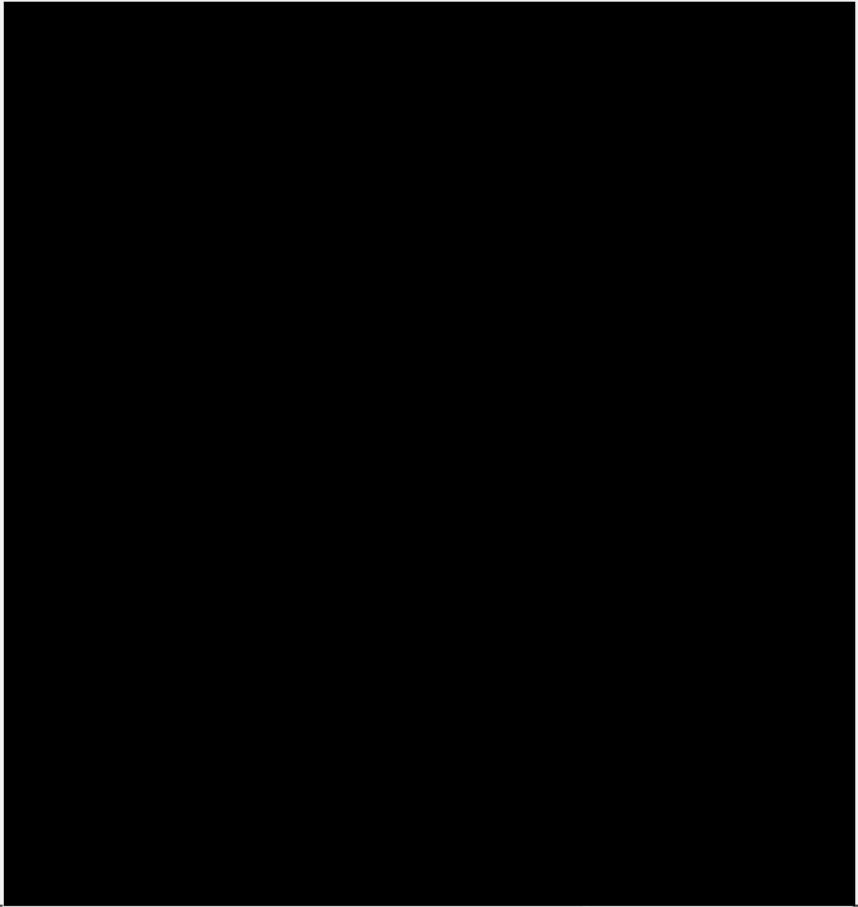
Part A**Contract Particulars**

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to these General Conditions and shall be read as part of the *Contract*.

<i>Item</i>		
1	<i>Principal</i> (subclause 1.1)	Transport for NSW (ABN 18 804 239 602)
2	<i>Principal's address</i>	22 Giffnock Avenue, Macquarie Park, NSW 2113 Phone 8265 6000 Fax 8265 9501
3	<i>Defects Liability Period</i> (subclause 1.1)	For each <i>Portion</i> , commencing on the <i>date of completion</i> of the <i>project</i> and ending 12 months thereafter.
4	<i>Extension of Defects Liability Period</i> (subclause 1.1 and subclause 20.6)	12 months
5	<i>Designers to be</i>	Allen Brock Parsons Brinkerhoff

<p>engaged by <i>Managing Contractor</i> (subclause 1.1)</p>	<p>Kevin Lean</p> <p>Mark Lyons</p> <p>Katherine Chan</p> <p>Peter Davies</p> <p>Phillip Donnelly</p> <p>Subhajit Dey</p> <p>Sathish Veerabadrappa</p>	<p>Keta Rail Pty Ltd (via Parsons Brinkerhoff)</p> <p>Versatile Design & Engineering Pty Ltd (via Parsons Brinkerhoff)</p> <p>Parsons Brinkerhoff</p> <p>Parsons Brinkerhoff</p> <p>Parsons Brinkerhoff</p> <p>Parsons Brinkerhoff</p> <p>Parsons Brinkerhoff</p>
<p>6 <i>Managing Contractor</i> (subclause 1.1)</p>	<p>Laing O'Rourke Australia Construction Pty Ltd ABN (39 112 099 000)</p>	

<p>7</p> <p><i>Managing Contractor's address</i></p>	<p>Level 4, Innovation Place, 100 Arthur Street, North Sydney, NSW 2061</p> <p>Fax No: (02) 9903 0333</p>
<p>8</p> <p><i>Portions (subclause 1.1)</i></p>	<p><i>Portion 1: Changes to the Epping signalling interlocking area to segregate the ECRL from the Main North Line / Sydney Trains network. No ATRICS data change will be undertaken as part of Portion 1.</i></p> <p><i>Portion 2: Changes to the Chatswood signalling interlocking area to segregate the ECRL from the North Shore Line / Sydney Trains network. No ATRICS data change will be undertaken as part of Portion 2.</i></p> <p><i>Portion 3: Upgrading of the North Shore Line signalling, between Artarmon and Roseville, for 20 trains per hour, complete the segregation of the ECRL from the Main North and North Shore Lines and ATRICS data changes completed.</i></p> <p><i>Portion 4: Upgrading of associated HV and DC electrical systems.</i></p> <p><i>Portion 5: Upgrading of the North Shore Line signalling between Waverton and Artarmon, and between Roseville and Waitara, for 20 trains per hour and ATRICS data change completed.</i></p> <p><i>Portion 6: The relocation of existing Sydney Trains Assets south of Chatswood.</i></p>

<p>9 <i>Key personnel and functions</i> (subclause 1.1 and subclauses 2.2 and 17.2)</p>	<p>Key Personnel</p> 	
<p>10 <i>Dates for completion</i> (subclause 1.1)</p>	<p>Portion</p> <p><i>Portion 1:</i></p> <p><i>Portion 2:</i></p> <p><i>Portion 3:</i></p> <p><i>Portion 4:</i></p> <p><i>Portion 5:</i></p> <p><i>Portion 6:</i></p>	<p><i>Date for completion</i></p> <p>27 October 2018</p> <p>27 October 2018</p> <p>17 December 2018</p> <p>31 March 2019</p> <p>17 December 2018</p> <p>15 June 2017</p>
<p>11 <i>Site</i> (subclause 1.1)</p>	<p>As described in Annexure Part J</p>	
<p>12 <i>Schedule 1 Disputes</i> (subclause 1.1)</p>	<p>A <i>direction</i> under subclause 19.9, 20.3, 23.3, 24.3, 25.3, 25.5, 25.7 or 27.6.</p>	

<p>13</p> <p>Governing law (subclause 1.2(f) and 1.2(h))</p>	<p>New South Wales</p>																
<p>14</p> <p>(a) Currency (subclause 1.2(g))</p> <p>(b) Place for payments (subclause 1.2(g))</p>	<p>Australian Dollar</p> <p>The <i>Principal's</i> address</p>																
<p>15</p> <p><i>Principal's Representative</i> (subclause 1.1)</p>	<p>Derek Frend</p>																
<p>16</p> <p><i>Target Budget Breakdown</i> (subclause 1.1)</p>	<table border="1"> <thead> <tr> <th data-bbox="595 1122 663 1200"></th> <th data-bbox="671 1122 1177 1200">Description</th> <th data-bbox="1185 1122 1453 1200">Amount</th> </tr> </thead> <tbody> <tr> <td data-bbox="595 1211 663 1447">1</td> <td data-bbox="671 1211 1177 1447"> <p><i>Managing Contractor's management fee</i> (Annexure Part C) Note. The <i>Managing Contractor's management fee</i> includes the <i>Managing Contractor's</i> off-site overheads and profit on provisional sums</p> </td> <td data-bbox="1185 1211 1453 1447" rowspan="5" style="background-color: black;"></td> </tr> <tr> <td data-bbox="595 1458 663 1525">2</td> <td data-bbox="671 1458 1177 1525"> <p><i>Design Fee</i></p> </td> </tr> <tr> <td data-bbox="595 1536 663 1626">3</td> <td data-bbox="671 1536 1177 1626"> <p><i>Reimbursable Services</i> (Annexure Part D)</p> </td> </tr> <tr> <td data-bbox="595 1637 663 1715">4</td> <td data-bbox="671 1637 1177 1715"> <p><i>Managing Contractor's Contingency</i></p> </td> </tr> <tr> <td colspan="2" data-bbox="595 1727 1177 1794" style="text-align: right;"> <p>Target Budget (= 1+2+3+4)</p> </td> <td data-bbox="1185 1727 1453 1794" style="background-color: black;"></td> </tr> </tbody> </table>			Description	Amount	1	<p><i>Managing Contractor's management fee</i> (Annexure Part C) Note. The <i>Managing Contractor's management fee</i> includes the <i>Managing Contractor's</i> off-site overheads and profit on provisional sums</p>		2	<p><i>Design Fee</i></p>	3	<p><i>Reimbursable Services</i> (Annexure Part D)</p>	4	<p><i>Managing Contractor's Contingency</i></p>	<p>Target Budget (= 1+2+3+4)</p>		
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<p>17</p> <p>Amount of each unconditional undertaking (subclause 2.7(a))</p>	<p>2.5% of the <i>Target Budget</i>.</p>																

18	Name of person providing Parent Company Guarantee (subclause 2.7(b))	Laing O'Rourke Australia Pty Ltd										
19	<i>Principal-supplied documents</i> (subclause 5.3)	<table border="1"> <thead> <tr> <th>Document</th> <th>No. of copies</th> </tr> </thead> <tbody> <tr> <td>1 <i>Works Brief</i></td> <td>1 electronic copy</td> </tr> <tr> <td>2 <i>Planning Approval</i></td> <td>1 electronic copy</td> </tr> <tr> <td>3 <i>TSRs</i></td> <td>1 electronic copy</td> </tr> <tr> <td>4 <i>Global Safety Interface Agreement</i></td> <td>1 electronic copy</td> </tr> </tbody> </table>	Document	No. of copies	1 <i>Works Brief</i>	1 electronic copy	2 <i>Planning Approval</i>	1 electronic copy	3 <i>TSRs</i>	1 electronic copy	4 <i>Global Safety Interface Agreement</i>	1 electronic copy
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3 <i>TSRs</i>	1 electronic copy											
4 <i>Global Safety Interface Agreement</i>	1 electronic copy											

20	<i>Managing Contractor-supplied documents (subclause 3.3 and 5.4)</i>	Document	No. of copies
		<i>design documents</i>	in accordance with the requirements of the <i>TSRs</i>
		All other documents to be supplied under any provision of this <i>Contract</i>	1 electronic copy (on CD) and 3 printed copies (including 1 unbound printed copy).
21	Time for <i>Principal's Representative's direction</i> about documents (subclause 5.4(c))	15 <i>Business Days</i>	
22	Equipment warranties (subclause 6.14)	Not Applicable	
23	<i>Legislative requirements</i> , those excepted (subclause 9.1)	The <i>Principal</i> will obtain the <i>Planning Approval</i> including modifications.	
24	Is the <i>Managing Contractor</i> required to submit a Project Training Management Plan: (subclause 9.12)	YES (refer to requirement for the Project Induction and Training Management Sub-plan set out in section 3.4(e) of <i>TSR</i> entitled 'Project Administration').	



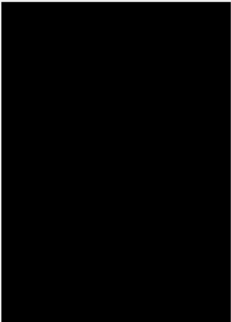

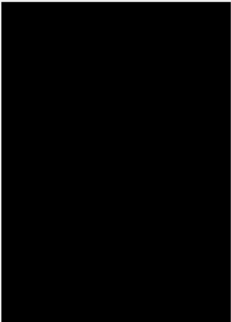
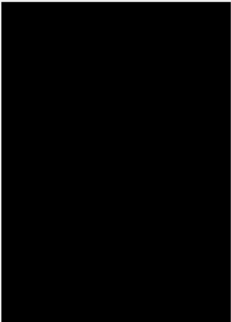
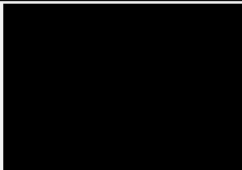


<p>25 Professional indemnity insurance (clause 12)</p> <p>a) <i>Managing Contractor</i></p> <p>i) Levels of cover must be not less than</p>						
<p>ii) Period after issue of the <i>final certificate</i></p> <p>b) <i>Subcontractors</i></p> <p>i) Categories and levels of cover</p> <p>ii) Period after issue of the <i>final certificate</i></p>	 <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">Category</th> <th style="text-align: center;">Levels of cover</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Any subcontract with a <i>Designer</i> including structural design</td> <td rowspan="2" style="vertical-align: middle; text-align: center;">  </td> </tr> <tr> <td style="vertical-align: top;">Others</td> </tr> </tbody> </table> 	Category	Levels of cover	Any subcontract with a <i>Designer</i> including structural design		Others
Category	Levels of cover					
Any subcontract with a <i>Designer</i> including structural design						
Others						
<p>26 <i>Track Possessions</i> (subclause 19.2)</p>						

Table 1 – Table of Track Possessions for ECRL Enabling Works and Conversion of ECRL to Rapid Transit – Configuration 8 (North Shore and ECRL)		
Weekend	Date	Track Possession Programme
Weekend 19	7-8 November 2015	2015/16
Weekend 27	1-3 January 2016	2015/16
Weekend 43	23-24 April 2016	2015/16
Weekend 3	16-17 July 2016	2016/17
Weekend 8	20-21 August 2016	2016/17
Weekend 24	10-11 December 2016	2016/17
Weekend 40	1-2 April 2017	2016/17
Weekend 3	15-16 July 2017	2017/18
Weekend 19	4-5 November 2017	2017/18
Weekend 33	10-11 February 2018	2017/18
Weekend 51	16-17 June 2018	2017/18
Weekend 8	25-26 August 2018	2018/19
Weekend 14	6-7 October 2018	2018/19
Weekend 17	27-28 October 2018	2018/19
Weekend 18	3-4 November 2018	2018/19
Weekend 20	17-18 November 2018	2018/19
Weekend 24	15-16 December 2018	2018/19
Weekend 34	23-24 February 2019	2018/19
Weekend 49	8-10 June 2019	2018/19
Table 2 – Table of Track Possessions for ECRL Enabling Works and Conversion of ECRL to Rapid Transit – Configuration 9 (Main North)		
Weekend	Date	Track Possession Programme
Weekend 17	24-25 October 2015	2015/16
Weekend 33	13-14 February 2016	2015/16
Weekend 50	11-13 June 2016	2015/16
Weekend 7	13-14 August 2016	2016/17
Weekend 18	29-30 October 2016	2016/17
Weekend 37	11-12 March 2017	2016/17
Weekend 51	17-18 June 2017	2016/17
Weekend 9	26-27 August 2017	2017/18
Weekend 18	28-29 October 2017	2017/18
Weekend 38	10-11 March 2018	2017/18
Weekend 7	18-19 August 2018	2018/19
Weekend 15	13-14 October 2018	2018/19
Weekend 29	19-20 January 2019	2018/19
Weekend 35	2-3 March 2019	2018/19
Weekend 50	15-16 June 2019	2018/19

	<p>The <i>Managing Contractor</i> must pay the <i>Principal</i> the relevant amount from the table below in respect of each <i>Additional Track Possession or Power Isolation</i> in accordance with subclause 19.2.</p> <table border="1" data-bbox="598 380 1356 728"> <thead> <tr> <th data-bbox="598 380 997 470">Type of <i>Additional Track Possession or Power Isolation</i></th> <th data-bbox="997 380 1356 470">Amount to be paid to the <i>Principal</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="598 470 997 571">Weekend <i>track possession</i> with power isolation</td> <td data-bbox="997 470 1356 571" style="background-color: black;"></td> </tr> <tr> <td data-bbox="598 571 997 672">Weeknight <i>track possession</i> with power isolation</td> <td data-bbox="997 571 1356 672" style="background-color: black;"></td> </tr> <tr> <td data-bbox="598 672 997 728">Weekend power isolations</td> <td data-bbox="997 672 1356 728" style="background-color: black;"></td> </tr> </tbody> </table>	Type of <i>Additional Track Possession or Power Isolation</i>	Amount to be paid to the <i>Principal</i>	Weekend <i>track possession</i> with power isolation		Weeknight <i>track possession</i> with power isolation		Weekend power isolations							
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Weekend <i>track possession</i> with power isolation															
Weeknight <i>track possession</i> with power isolation															
Weekend power isolations															
<p>27 Liquidated damages, rates (subclause 23.8)</p>	<table border="1" data-bbox="598 739 1356 1388"> <thead> <tr> <th data-bbox="598 739 997 884"><i>Portion</i></th> <th data-bbox="997 739 1356 884">Liquidated damages rate (\$ per day)</th> </tr> </thead> <tbody> <tr> <td data-bbox="598 884 997 974">Portion 1:</td> <td data-bbox="997 884 1356 974" style="background-color: black;"></td> </tr> <tr> <td data-bbox="598 974 997 1064">Portion 2:</td> <td data-bbox="997 974 1356 1064" style="background-color: black;"></td> </tr> <tr> <td data-bbox="598 1064 997 1153">Portion 3:</td> <td data-bbox="997 1064 1356 1153" style="background-color: black;"></td> </tr> <tr> <td data-bbox="598 1153 997 1243">Portion 4:</td> <td data-bbox="997 1153 1356 1243" style="background-color: black;"></td> </tr> <tr> <td data-bbox="598 1243 997 1332">Portion 5:</td> <td data-bbox="997 1243 1356 1332" style="background-color: black;"></td> </tr> <tr> <td data-bbox="598 1332 997 1388">Portion 6:</td> <td data-bbox="997 1332 1356 1388" style="background-color: black;"></td> </tr> </tbody> </table> <p>Provided that in the case of:</p> <p>(a) Portions 1 and 2; and</p> <p>(b) Portions 3 and 5,</p> <p>the liquidated damages are not cumulative and if the <i>Managing Contractor</i> would otherwise be required to pay liquidated damages in respect of each of Portions 1 and 2 or Portions 3 and 5 in respect of the same day, the maximum amount payable in respect of Portions 1 and 2 or Portions 3 and 5 in respect of the one day will be [REDACTED]</p>	<i>Portion</i>	Liquidated damages rate (\$ per day)	Portion 1:		Portion 2:		Portion 3:		Portion 4:		Portion 5:		Portion 6:	
<i>Portion</i>	Liquidated damages rate (\$ per day)														
Portion 1:															
Portion 2:															
Portion 3:															
Portion 4:															
Portion 5:															
Portion 6:															

28	Margin for overheads and profit (clause 1 definition of <i>fee adjustment</i> and subclause 24.3)	
29	Interest rate on overdue payments (subclause 25.8)	The rate applying from time to time for judgment debtors in the Supreme Court of New South Wales.
30	Percentage rate for sharing of savings against <i>Target Budget</i> (subclause 25.10(a)(i))	
31	Percentage rate for sharing of overruns against <i>Target Budget</i> (subclause 25.10(a)(ii))	

Annexure Part B - Preliminaries

ANNEXURE to the Australian Standard Managing Contractor Contract—General conditions AS 4916—2002

Part B

Preliminaries

The *Preliminaries* generally consist of those functions and tasks, (other than as part of the *Reimbursable Services* and *Design Services*), to be performed by the *Managing Contractor* itself including but not limited to the following:

1. providing the *Managing Contractor's* project management team, administration and support staff (including those described in Annexure Part T) including the provision of suitable site vehicles and running costs;
2. providing suitable information technology, document control, stationary and office supplies, administrative systems, communications systems including faxes, phones, radios; walkie talkies etc and other site consumables for use by the *Managing Contractor's* project management team, administration and support staff engaged on the *project*;
3. establishing and providing site offices, meeting rooms and other accommodation for use by the *Managing Contractor's* project management team, administration team and support staff including desks, chairs, photocopiers etc, demobilising and reinstatement of the site on *completion* of the *project*;
4. establishing, providing, demobilising and reinstatement of the site on *completion* of the *project*, an integrated, air conditioned, office facility of a standard that is suitable to accommodate seven (7) full-time staff members of the *Principal* that complies with all relevant building codes and safety requirements, connected to power, communications, water and sewer services that includes:
 - i. one (1) open plan office area that includes six (6) workstations of four (4) square metres each with an appropriate walkway space. Each workstation must include a desk and office chair, a lockable pedestal drawer unit, shelving units, a whiteboard, a separate telephone and computer data point, and a minimum of four (4) power sockets;
 - ii. one (1) lockable office of at least ten (10) square metres suitable for one (1) person equipped with desk and office chair, a whiteboard, shelving units, meeting table and chairs, and cabinets;
 - iii. one (1) main meeting room of at least fifteen (15) square metres suitable for twelve (12) people, equipped with a large wall-mounted whiteboard, ten-person meeting table, twelve (12) chairs and a large cabinet for housing all electronic and communication equipment;
 - iv. one (1) document storage area separate from the open plan office space, office and meeting room including shelving suitable for lever arch files and one (1) adjacent plan table with an area of at least two (2) square metres;

- v. one (1) kitchen and break-out area of at least ten (10) square metres, including one (1) fridge, hot and cold running water and sink with waste, instant hot water system, one (1) microwave, one (1) toaster, storage cupboards, suitable bench area, tables and chairs for seven (7) people; and
 - vi. locks on all windows and doors, security grilles and roller blinds on all windows;
5. providing, maintaining and reinstatement of the site on *completion* of the *project*, a car park with 5 car parking spaces for use by the *Principal* and its representatives at the location of the office facility provided for the *Principal*;
 6. establishing and providing site amenities, toilets, lunch rooms, crib rooms, water bubblers, washing facilities etc for use by the *Managing Contractor's* project's management team, administration and support staff and the *Principal*, demobilising and reinstating the site on *completion* of the *project*;
 7. providing site amenities for construction personnel including *subcontractors*;
 8. ensuring that the *site* is run in a clean, proper and efficient manner having due regard to the occupation of premises adjacent to or near to the *site*, that the working areas are kept clean during the progress of *the Services* and that debris/waste is removed from the *site* as it arises and at *completion* of the *project*;
 9. providing first aid facilities for use by all construction personnel including the *Principal's* staff and consultants engaged on the *project*;
 10. ensuring the requirements set out in the *Sydney Metro Northwest Project Safety Management Plan (PSMP)* (which appears in Exhibit 6) are adhered to;
 11. managing risks identified in the *Global Safety Interface Agreement* as far as reasonably practical;
 12. carrying out all inductions for all personnel (including *Managing Contractor* and *subcontractor* personnel and *Principal's* staff or representatives as required to complete *the Services*;
 13. providing personal protective equipment for *Managing Contractor's* personnel;
 14. allowance for training of all of the *Managing Contractor's* personnel (including those described in Annexure Part T) necessary for the *Managing Contractor* to comply with its obligations under this *Contract*;
 15. payment of the fees and charges referred to in paragraph c) of the definition of *legislative requirements*, including the long service leave levy;
 16. effecting and maintaining relevant insurances other than those provided by the *Principal*;
 17. attending and chairing formal and informal briefings and site meetings including keeping and distributing minutes of the meetings as required;
 18. implementing and complying with the relevant *Sydney Metro Northwest IMS* standards and requirements and incorporating the relevant *Sydney Metro Northwest IMS* standards to meet the objective of the *Sydney Metro Northwest IMS* standards. If the *Sydney Metro Northwest IMS* standards are not chosen,

their replacements must be equal to, or better than the requirements of the *Sydney Metro Northwest IMS* standards, and approved by the *Principal's Representative*;

19. carrying out the functions and tasks described in the *Contract* as being carried out by the *Managing Contractor*;
20. producing a *CEMP* and carrying out the functions and tasks relating to construction that:
 - i. addresses the requirements of Sections 3.2, 3.4(a) and (d), 3.7, 3.8, 3.9, 3.10(b), 3.11(a) to (d), (f) and (g), 3.13, 5.1, 5.2 and 5.3 of the *CEMF*; and
 - ii. includes a risk assessment against the environmental issues identified in Sections 6 to 17 of the *CEMF*, and includes appropriate mitigation responses. Separate sub-plans against these issues may not be required.

Nothing in item (ii) above removes the *Managing Contractor's* obligation to comply with the requirements of the *Planning Approval*;

21. carrying out the functions and tasks performed by the *Managing Contractor's* personnel (including those described in Annexure Part T) necessary for the *Managing Contractor* to discharge its obligations under the *TfNSW Standard Requirements* for working on the *project* including those requirements set out in:
 - i. TSR Prelude;
 - ii. TSR Managing Contract;
 - iii. TSR P – Project Administration;
 - iv. TSR S – Safety Management System;
 - v. TSR C – Communications and Community Liaison; and
 - vi. TSR T – Technical Management.
22. carrying out the functions and tasks relating to design management including:
 - i. determining in conjunction with the *Principal's Representative* the breakup of work into construction packages (including staging of works);
 - ii. documenting and managing Requests for Information (RFIs) ensuring RFIs are sent to the appropriate persons with the ability to correctly supply the information and ensuring the information requested is distributed correctly and in a timely manner;
 - iii. ensuring the requirements of all relevant authorities and utility service providers are complied with in the design;
 - iv. ensuring the hazards identified in the 'Safety Assurance Report' which appears in Exhibit 5 are addressed in the design of the *project*;

- v. completing a detailed cost estimate of the design documentation following each design review stage, ensuring the cost estimate satisfies the *target budget* for construction; and
 - vi. reviewing shop drawings and identifying *Defects* in the drawings and ensuring those *Defects* are corrected.
23. carrying out the functions and tasks relating to construction management including but not limited to
- i. ensuring that all necessary certificates, licences, consents, permits and approvals required from relevant authorities, utility companies and adjoining owners are obtained so building and other certificates, licences, consents, permits and approvals may be obtained in a timely manner;
 - ii. ensuring requirements of all relevant authorities and utility service providers are complied with during the construction of the *project*;
 - iii. advising on the provision and layout of site facilities and site services and obtaining approval from the *Principal's Representative* to those site facilities and site services to be provided by the *Managing Contractor*;
 - iv. coordinating and managing of interface works and access to Worksites described in Annexure Part J;
 - v. monitoring the performance of *subcontractors* against the then current *approved program* and *Cost Plan* to enable corrective action to be taken to minimise stoppages and delays;
 - vi. ensuring that *subcontractors* make good any damage caused by them to the *project* (including the work of other *subcontractors*) or to the *site* or site facilities;
 - vii. initiating a system of documentation and records for recording the performance of all *subcontractors*;
 - viii. developing in conjunction with the *Principal's Representative* an overall construction methodology;
 - ix. managing the staging of the *project* ensuring suitability and buildability with effective use of the *Track Possessions* within the project constraints including liaising with and submitting the plan for review by the *Principal's Representative*, the proposed staging being designed to maintain all rail and station services required to operate the services in a safe manner;
 - x. carrying out progressive work inspections and tests including authority and utility company inspections and tests;
 - xi. securing the prompt remedying of all *Defects* by *subcontractors* in accordance with their subcontracts; and
 - xii. securing the prompt remedying of all *Defects* discovered following *completion* of each *Portion* during the *Defects Liability Period*.
24. carrying out the functions and tasks relating to the *Global Safety Interface Agreement* including the role of Principal Contractor. The *Managing Contractor* is responsible for implementing *site safety*

requirements and ensuring subcontractors comply and have their own appropriate systems and practices;

25. carrying out the functions and tasks required to work under the Sydney Trains Environmental Protection Licence issued by the Environmental Protection Authority pursuant to the *Protection of the Environment Operations Act 1997* (NSW);
26. management and submission of Work-As-Executed drawings and AMI documentation; and
27. security of the *site*.

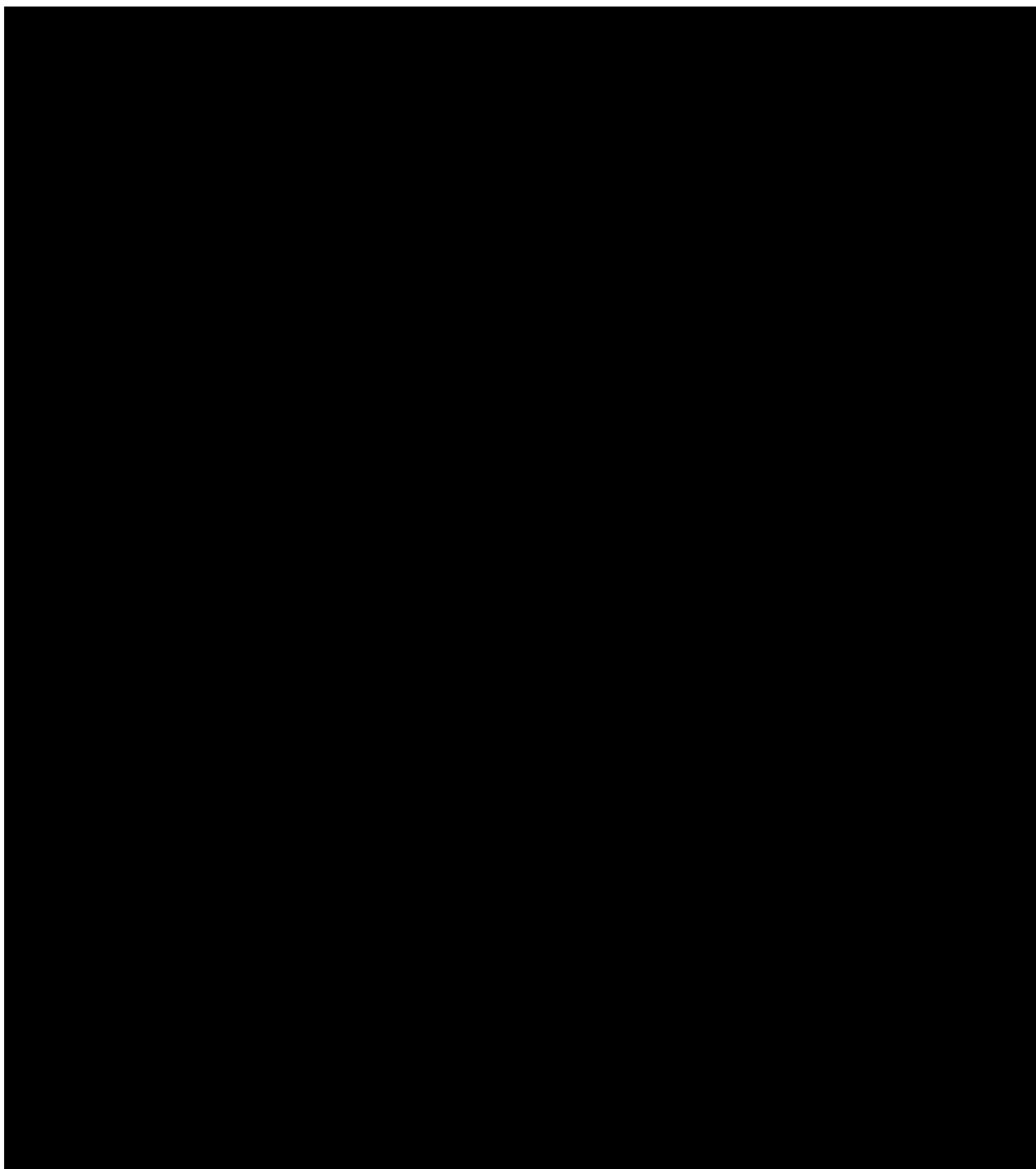
Annexure Part C - Management Fee

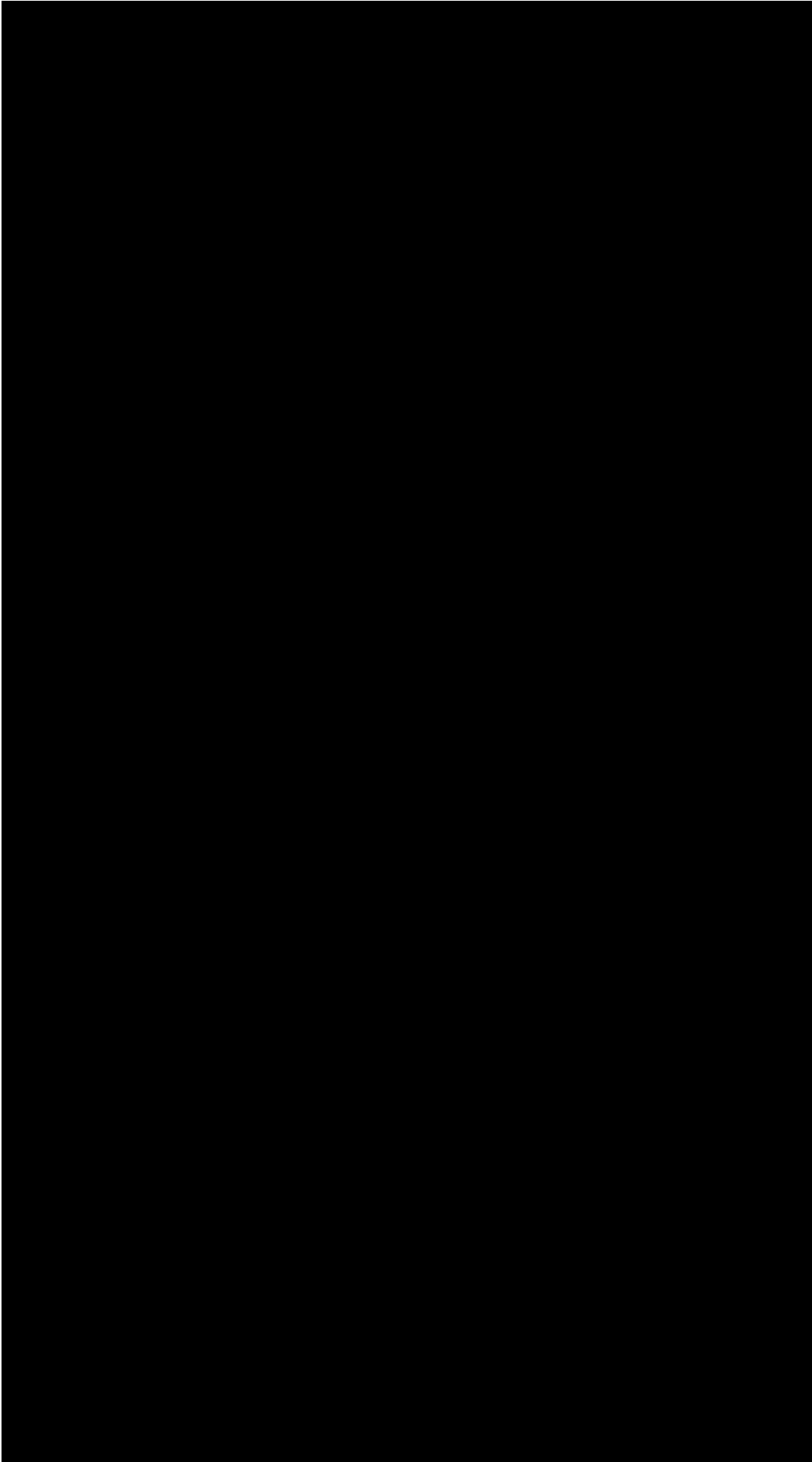
**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

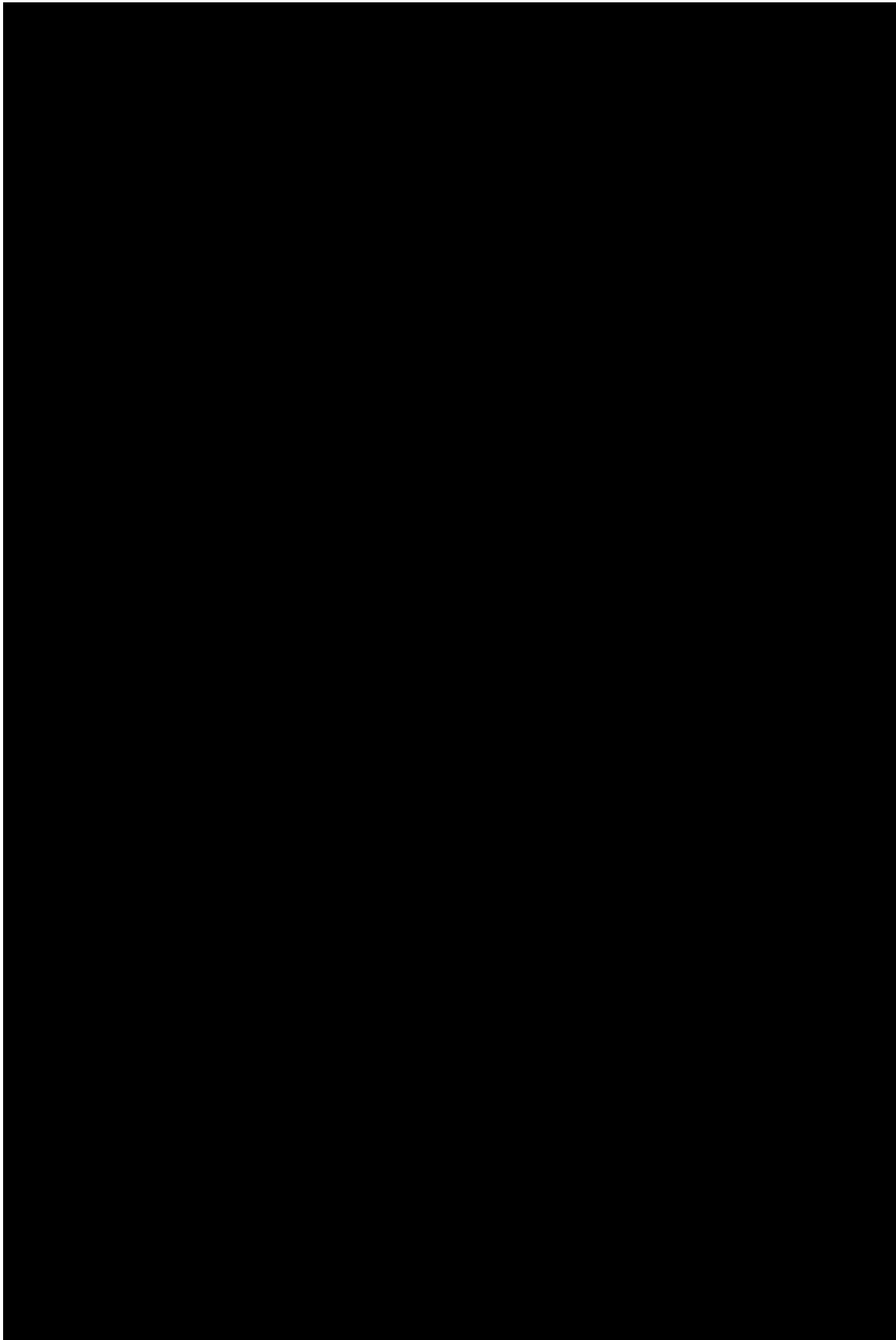
Part C

Management Fee and Design Fee

(clause 25)







Annexure Part D - Reimbursable Services

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part D

Reimbursable Services

(clause 1 – definition of *Reimbursable Services*)

All construction work required to bring the *project* to *completion* including:

- all labour, *construction plant* and materials forming part of the *project*;
- all labour, *construction plant* and materials forming part of the *Temporary Works*;
- traffic management, temporary information and way-finding signage;
- site environmental control measures, waste collection and removal;
- utility adjustments, utility relocations and temporary services other than those servicing the *Managing Contractor's* site establishment; and
- *Worksite Protection*,

but excluding:

- anything that is included in the scope of the *Preliminaries* or the *Design Services*.

Managing Contractor Work

(Item 1 - definition of *Managing Contractor Work*)

Means the following works:

- Signalling Civils and CSR;
- OHW Systems and Power;
- Signalling Systems; and
- any other works approved in writing by the Principal's Representative.

Annexure Part E - Mandatory Subcontract Clauses

Annexure to the Australian Standard
Managing Contractor Contract—General conditions
AS 4916—2002

Part E

Mandatory Subcontract Clauses

(clause 6.3(d)(ii))

1. Options as to Form of Security

A clause which allows the *subcontractor* to lodge an approved unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the subcontract.

A clause which provides that if the *subcontractor* does lodge an unconditional undertaking for the required amount, the *Managing Contractor* must not deduct further retention moneys and any retention moneys or other cash security then held will be promptly released to the *subcontractor*.

2. Trust for Cash Security and Retention Moneys

A clause which requires the *Managing Contractor* to comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW) and which provides that all retentions or cash securities are held on trust for the *subcontractor*.

3. Payment Provisions

A clause which:

- (a) has the effect of requiring the *Managing Contractor* to pay the *subcontractor* (and *subcontractors* their subcontractors) regular progress payments for 100% of the value of work (less only retention moneys, if any, paid into the trust account) for which payment is claimed by the *subcontractor* and for which the *Managing Contractor* has claimed payment from the *Principal*, no later than:
 - (i) in the case of the *Managing Contractor's subcontractors*, 7 days; and
 - (ii) in the case of all other *subcontractors*, 14 days,
 after the last day for payment by the *Principal* to the *Managing Contractor* for such work;
- (b) states nothing in the clause referred to in paragraph (a) is to be read so as to prevent the *Managing Contractor* from paying the *subcontractor* an amount in excess of that claimed from the *Principal*, or before the time stipulated in that clause; and
- (c) states if anything in the clause referred to in paragraph (a) is inconsistent with any other provision in the subcontract, the provisions of that clause will prevail to the extent of the inconsistency.

A clause that prescribes an interest rate for overdue payments that is not less than the interest rate specified in clause 25.8 of the Managing Contractor Contract General Conditions.

4. Alternative Dispute Resolution

A clause that requires alternative dispute resolution procedures of the type required in the Managing Contractor Contract.

A clause making it optional for the *subcontractor* to comply with the alternative dispute resolution process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the subcontract.

5. Form of Subcontractor Deed

Unless otherwise agreed by the *Principal's Representative*, a clause in all subcontracts with an estimated value exceeding \$50,000 (excluding GST) that requires the *subcontractor* to execute a deed in the Form of Subcontractor Deed included as Annexure Part Q to the *Contract* and provide this to the *Principal* within 7 days of executing the *Approved Subcontract Agreement* with the *Managing Contractor*. The provision of this deed will be a condition precedent to practical completion of the work the subject of that *Approved Subcontract Agreement*. However, the provision of this deed will not be a requirement that must be satisfied prior to *completion*.

Annexure Part F - Statutory Declaration

**Annexure to the Australian Standard
Managing Contractor Contract—General conditions
AS 4916—2002**

Part F

Statutory Declaration

(clause 26)

<i>Statutory Declaration</i>	<i>Oaths Act (NSW) Ninth Schedule</i>								
I,	<i>insert full name of Declarant</i>								
of	<i>insert address</i>								
<i>do solemnly and sincerely declare that</i>									
1. I am the representative of <i>("the Contractor")</i> in the Office Bearer capacity of	<i>insert name of Contractor, and ACN if applicable</i>								
2. The Contractor has a contract with the [.....] <i>("the Contract")</i>	<i>insert position title of Declarant</i>								
3. I personally know the facts which I have set out in this declaration.									
4. All employees who have at any time been engaged by the Contractor for work done under the Contract a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation, with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below <table style="width: 100%; border: none;"> <thead> <tr> <th style="text-align: left;"><i>Employee</i></th> <th style="text-align: left;"><i>Amount unpaid or not accrued</i></th> </tr> </thead> <tbody> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> </tbody> </table>	<i>Employee</i>	<i>Amount unpaid or not accrued</i>	<i>insert name of Contract</i>
<i>Employee</i>	<i>Amount unpaid or not accrued</i>								
.....								
.....								
.....								
5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).	<i>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.</i>								
5A Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account Regulation) 2015 (NSW) with the exception of the items listed below									

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

insert names and addresses of the unpaid subcontractors and suppliers, the amounts owing and whether in respect of materials supplied, work performed etc.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration)

- (a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and
- (b) that all their employees and subcontractors, as at the date of the making of such a declaration
 - i) have been paid all remuneration and benefits due and payable to them by; or
 - ii) had accrued to their account all benefits to which they are entitled from; the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and
- (c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration

Subcontractor	Due amount unpaid
---------------	-------------------

.....	
.....	
.....	
.....	

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows

Employee, subcontractor or supplier accrued	Amount unpaid or not accrued
---	------------------------------

.....	
.....	
.....	
.....	

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement

(a) under section 175B of the Workers Compensation Act 1987 in the form and providing the

detail required by that legislation;

- (b) under section 31H of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and
- (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were

- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
- (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.

14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at on
(place) (day) (month) (year)

.....
(Signature of Declarant)

Before me

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title* of the person before whom the declaration is made)

- * The declaration must be made before one of the following persons
 - where the declaration is sworn within the State of New South Wales
 - (i) a justice of the peace of the State of New South Wales;
 - (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
 - (iii) a notary public.
 - where the declaration is sworn in a place outside the State of New South Wales
 - (i) a notary public; or
 - (ii) any person having authority to administer an oath in that place.

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: *[[ABM]*

* 1. has entered into a contract with:*[business name of subcontractor]*

ABN: *[ABM]*

Contract number/identifier: *[contract number/identifier]*

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

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

Signature: Date:

Full name: Position/Title:

Attachment

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

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

Annexure B
SUBCONTRACTOR’S STATEMENT
REGARDING WORKERS COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a “subcontractor” is a person (or other legal entity) that has entered into a contract with a “principal contractor” to carry out work.

This Statement must be signed by a “subcontractor” (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the “subcontractor” has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR’S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:.....
(Business name of principal contractor) **(Note 2)**

Contract number/identifier
(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, **(Note 4)**

subject of the payment claim dated:/...../..... **(Note 5)**

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor’s Statement and declare the following to the best of my knowledge and belief:

- (a)** The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**
- (b)** All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c)** All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d)** Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor’s Statement. **(Note 9)**
- (e)** Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor’s Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f)** Signature Full name.....
- (g)** Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au

Annexure Part G - Deed Poll to Sydney Trains

Annexure to the Australian Standard
Managing Contractor Contract—General conditions
AS 4916—2002

Part G

Form of Managing Contractor Deed Poll in favour of Rail Transport Agency

(subclause 2.8)

This deed poll ("Deed Poll") made the day of 20

By: **Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000)** of Level 4, Innovation Place, 100 Arthur Street, North Sydney, NSW 2061 ("**Managing Contractor**"),

in favour of: **Sydney Trains (ABN 38 284 779 682)** of 477 Pitt Street, Sydney NSW 2000 ("**Rail Transport Agency**")

RECITALS

- A. Rail Transport Agency operates the commuter rail system in Sydney, where certain works are to be undertaken by the Managing Contractor.
- B. Transport for NSW (ABN 18 804 239 602) a statutory state owned corporation constituted by section 18A(1) of the *Transport Administration Act* 1988 (NSW), of Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113 is responsible for developing certain major railway systems and other major projects ("**TfNSW**").
- C. TfNSW is responsible for procuring the execution and completion of certain works at the Main North and North Shore Corridor (the "**Project**") on behalf of Rail Transport Agency and the New South Wales Government, and has entered into a contract ("**Contract**") with the Managing Contractor to achieve this.
- D. Rail Transport Agency is relying on TfNSW to procure the Managing Contractor to execute and complete the Project in accordance with the Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if TfNSW does not procure the Managing Contractor to execute and complete the Project in accordance with the Contract.
- F. It is a condition of the Contract that the Managing Contractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE MANAGING CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of Rail Transport Agency as follows:

1. It will comply with its obligations under the Contract, including with respect to achieving Completion of each Portion and the Project by the relevant Date for Completion.
2. Upon Completion of the Project, the Project will satisfy the requirements of the Contract.
3. In consideration of Rail Transport Agency making available to the Managing Contractor Track Possessions the Managing Contractor agrees that it must indemnify the Rail Transport Agency against all costs, expenses, losses or damages suffered or incurred by Rail Transport Agency in

respect of any delay to rail services or late return of Track Possessions arising out of or in connection with the Services.

The maximum liability which the Managing Contractor will have to Rail Transport Agency pursuant to this clause for each event resulting in delay to rail services or for late return of a Track Possession will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession calculated by applying the following rates:

Period in which delay occurs	Rate per hour or part thereof
During Peak Hours (trains having to arrive and depart Central Station between Monday and Friday (excluding Public holidays) during the hours of 0600 and 0900 and 1600 and 1800 respectively)	██████████
During Non-peak Hours	██████████

4. The aggregate of the Managing Contractor's liability to Rail Transport Agency under this Deed and the Managing Contractor's liability to TfNSW under the Contract:
- (a) will not exceed the liability which the Managing Contractor would have had under the Contract if the Contract had named, as Principal, Rail Transport Agency and TfNSW jointly and severally; and
 - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the General Conditions (which form part of the Contract) including, without limitation, subclauses 23.10 and 25.10(c).
- 4A. Without limiting clause 4 of this Deed Poll and notwithstanding subclause 32.4 of the Contract, the aggregate of:
- (a) the Managing Contractor's liability to Rail Transport Agency under clause 3 of this Deed Poll; and
 - (b) the Managing Contractor's liability under subclause 23.8 and subclause 23.9 of the Contract,
- will not exceed 10% of the Target Budget under the Contract.
5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Managing Contractor is to be construed as doing so only to the extent permitted by law.
6. Rail Transport Agency may assign or charge the benefits and rights accrued under this Deed Poll.
7. This Deed Poll is governed by the laws of the State of New South Wales.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency.
9. Where terms used in this Deed Poll are defined in the Contract, those terms have the meaning given to them in the Contract.

Executed as a deed poll.

Annexure Part H - SIA Deed Poll

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part H**Deed Poll in favour of Rail Transport Agency and Transport for NSW**

(subclause 2.8)

This deed poll ("Deed Poll") made _____ day of _____ 20____

By **Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000) of Level 4, Innovation Place, 100 Arthur Street, North Sydney, NSW 2061 (Managing Contractor)**,

in favour of **Sydney Trains (ABN 38 284 779 682) of 477 Pitt Street, Sydney NSW 2000 ("Rail Transport Agency")**;

and **Transport for NSW (ABN 28 458 799 157) a corporation constituted pursuant to the Transport Administration Act 1988, of Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113 ("TfNSW")**.

RECITALS

- A. Rail Transport Agency operates the commuter rail system in Sydney, including area where the Works are to be undertaken by the Managing Contractor and others.
- B. TfNSW is responsible for developing certain major railway systems and other major projects.
- C. TfNSW is responsible for procuring the execution and completion of certain works on the Main North & North Shore Corridor Works project (the "**Works**") on behalf of Rail Transport Agency and the New South Wales Government, and has entered into a Managing Contractor Contract ("**Contract**") to achieve this.
- D. Rail Transport Agency is relying on TfNSW to procure the Managing Contractor (and others) to execute and complete the Works in accordance with the Managing Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligations to provide an operating commuter rail system.
- E. Rail Transport Agency and TfNSW entered into an Interface Agreement dated 28 June 2013 (the "**Interface Agreement**").

- F. Rail Transport Agency will suffer loss if TfNSW does not procure the Managing Contractor to execute and complete the Works in accordance with the Contract and the Interface Agreement.
- G. It is a condition of the Contract that upon request by TfNSW, the Managing Contractor enters into a Deed Poll in favour of TfNSW and Rail Transport Agency. This Deed Poll binds the Managing Contractor to the Interface Agreement.

THIS DEED WITNESSES THAT THE MANAGING CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES WITH AND FOR THE BENEFIT OF RAIL TRANSPORT AGENCY AND TfNSW AS FOLLOWS:

1. It will observe all the requirements of the Interface Agreement and ensure that it does not do anything which would cause a party to the Interface Agreement to breach the requirements of the Interface Agreement.
2. This Deed Poll is governed by the laws of the State of New South Wales.
3. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency and TfNSW.
4. Where terms used in this Deed Poll are defined in the Contract or Interface Agreement, those terms have the meaning given to them in the Contract or Interface Agreement.

Executed as a Deed Poll

Executed by Laing O'Rourke Australia
Construction Pty Ltd ABN 39 112 099 000
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director

Annexure Part I - Expert Agreement

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part I

Expert Determination Agreement

To:

By a Contract dated between
and of ("**Managing Contractor**")
and of ("**Principal**"),

the Managing Contractor and the Principal agreed to submit disputes or differences that might arise between them to an expert for determination through an expert determination process, as established by the Contract, and the Rules for Expert Determination and the Code of Conduct for an Expert that are attached to this letter or any other rules which you may in your absolute discretion decide.

A dispute has arisen between the parties. A short summary of the dispute is attached to this letter.

The parties agree to appoint you,

.....
..... of

as the sole expert to determine the dispute or difference in accordance with the above procedures. The parties agree to pay you \$.....

The determination of the dispute or difference must be completed within 90 days (or such other period as may be agreed between you, the Principal and the Managing Contractor) of the date of your acceptance of this appointment.

The parties agree that you are not liable for any thing you do which is bona fide and in the exercise or purported exercise of your functions as the expert.

Dated:

.....

For the Principal

.....

For the Managing Contractor

.....

For the Expert

Code of Conduct for an Expert

1. The function of the expert is to make a determination on the dispute or difference in accordance with the rules in Schedule 1 (or any other rules which the expert in his or her absolute discretion decides), this code of conduct and the letter of appointment of the expert.
2. The expert must receive the written submissions and responses of the parties in accordance with the procedures specified in the above rules and may require any further information or documentation from the parties which is reasonably necessary to determine the dispute or difference.
3. The expert must decide whether a conference is necessary to receive further information. The expert must inform the parties of the subject matter of any conference and may hear representations only on those matters.
4. The expert is not bound by the rules of evidence, may receive information in any manner the expert thinks fit (including as an inquisitor), and must meet the requirements of procedural fairness.
5. The expert must disclose to both parties all information and documents received. If a party fails to make a written submission or appear at any conference after having received the appropriate notice, the expert may continue with the process. Subject to this, discussions with the expert must only take place in the presence of both parties.
6. The expert must reach a determination on the basis of the information received from the parties and on the basis of the expert's own expertise. The decision must be reached as an expert and not as an arbitrator. The expert's determination must be made as soon as possible and in any event within the period set out in the letter of appointment of the expert. The determination, signed by the expert, must be notified immediately to the parties in writing.
7. The expert must keep all information received confidential and must not disclose that information without the prior written consent of the parties.
8. The expert must inform the parties immediately of any circumstances that might adversely affect the expert's capacity to act independently or impartially. The expert, in those circumstances, must terminate the proceedings, unless the parties agree otherwise.

Rules for Expert determination

1. Commencement

The expert determination process begins when the expert accepts an appointment to determine the dispute or difference in accordance with these rules and the code of conduct for experts in Annexure Part I.

2. Written submissions

- (a) Within 14 days after the date this process begins, the claimant (that is, the party who gave notice of the dispute or difference) must give the respondent and the expert a written submission setting out details of the dispute or difference, any agreed statement of facts and a written submission on the dispute or difference in support of the claimant's contentions.
- (b) Within 21 days after receipt of a copy of the submission referred to in clause 2(a), the respondent must give the claimant and the expert a written response to the claimant's submission. That response may include cross claims.
- (c) Within 21 days after receipt of the response, the claimant may reply to the response but must not raise new matters.
- (d) Within 14 days after receipt of that reply, the other respondent may make comments upon the reply but not raise new matters.
- (e) For the purpose of counting days in these rules, Saturdays, Sundays, public holidays and the period from 24 December to 15 January inclusive will not be counted. All submissions, responses and comments must be in writing. Unless the expert and the parties otherwise agree, the expert must ignore any submission, response or comment made later than the time prescribed. A party providing anything to the expert must at the same time provide a copy to the other party.
- (f) If the expert considers it appropriate, the claimant may reply in writing to the respondent's comments submitted in accordance with clause 2(d) within the time allowed by the expert.
- (g) If the expert decides further information or documentation is required for the determination of the dispute or difference, the expert:
 - (i) may require a further written submission or documents from one or both parties, giving each party a reasonable opportunity to make a written response to the other's submission;
 - (ii) must not communicate with one party without the knowledge of the other; and
 - (iii) may request a conference in accordance with clause 3 below.

3. Conference

- (a) The expert may notify the parties that a conference between the parties is considered necessary and set out in such a notice the matters that the expert wants to discuss at the conference.
- (b) Provided that the parties agree, at the request of the expert and on such terms as the parties may agree, the expert may arrange a conference. Any such conference will be without

prejudice to the respective rights and liabilities of the parties arising under the Contract or otherwise at law.

- (c) At least 7 days before the conference, the expert must inform the parties of the conference agenda.
- (d) The parties must appear at the conference and make oral submissions on the subject matter of the conference.
- (e) The expert is not bound by the rules of evidence in conducting the conference.
- (f) Neither party may have legal representation at a conference.
- (g) The conference must be held in private.
- (h) If required by either party, minutes of the conference proceedings must be taken and made available to the expert and the parties.
- (i) All proceedings and submissions relating to the expert determination process must be kept confidential except:
 - (i) with the prior written consent of the parties;
 - (ii) as may be required by law; or
 - (iii) in order to enforce the determination of the expert.

4. The Determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than the period of time after the expert's acceptance of appointment agreed by the parties and the expert, the expert must:
 - (i) determine the dispute or difference between the parties by at least providing a written opinion and a statement of reasons for making the determination; and
 - (ii) notify the parties of that determination in writing.
- (b) The expert must make the determination on the basis of the submissions of the parties, including documents, and the expert's own knowledge and expertise.
- (c) Unless the parties agree to extend the time for making a determination, as agreed by the parties under clause 4(a), the expert cannot deliver a determination after that time.
- (d) If the determination contains clerical or mathematical errors or accidental slips or omissions, the expert may correct them after the expiry of the time for making the determination.

5. Costs

- (a) Each party must bear its own costs of the expert determination and must share equally the costs of the expert.
- (b) Security for costs must be deposited by both parties at the commencement of the expert determination process in accordance with any direction of the expert.

6. Modification

These rules may be modified only by agreement of the parties and the expert.

Annexure Part J - Site and Site Requirements

ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002

Part J

Site and Site Requirements

(subclause 9.6; subclause 19.1 and *Item 11*; Annexure Part B)

1. General

The *site* consists of the Worksites listed in the following table ("**Worksites**") and described on the drawings referred to in *Item 11* ("**Drawings**"), and includes the underground strata required to deliver the *project*, and at the alignments and depths described in the Drawings.

Without limiting the *Managing Contractor's* other obligations under this *Contract* in relation to the *site*, the *Managing Contractor* must, in executing *the Services*, comply with the requirements set out in this Annexure Part J.

The *Managing Contractor* will be given access to the parts of the *site* at the times and subject to compliance by the *Managing Contractor* with the conditions set out in this Annexure Part J.

2. Definitions

In this Annexure Part J:

- (a) "**Establish**" a Worksite means providing all the temporary infrastructure required by the *Managing Contractor* for its use of the part of the *site* involved, including satisfying all *legislative requirements*, survey for and construction of all perimeter fences, clearing vegetation, and providing all temporary services, construction roads, signage, traffic management, car wash bays, drainage, perimeter security management, environmental management measures, pedestrian access, road changes off the *site* to provide access, hard stand areas, wheel wash facilities and other facilities required for the Worksite, with all the *Managing Contractor's* establishment such as offices and amenities (including those for the *Principal* where required). *Other Contractors* are responsible for providing their own establishment, including offices and amenities, and to adjust and augment (and maintain such augmentations to) any of the temporary infrastructure to suit their activities. The *Managing Contractor* is responsible for adjusting, augmenting and maintaining the temporary infrastructure provided by *Sydney Trains* as an *Other Contractor* as required for the performance of *the Services*.
- (b) "**Control**" of a Worksite means undertaking all the activities required to manage and control all access to and across the Worksite, and maintaining the temporary and permanent infrastructure required for the Worksite provided by the *Managing Contractor* or *Sydney Trains* including the *Temporary Works*. Such activities will include managing and maintaining the security of the Worksite, conducting basic familiarisation and safety inductions to, and for all those accessing, the Worksite (but not inductions specific to *Other Contractors'* activities), operating and maintaining the temporary and permanent infrastructure provided by the *Managing Contractor* including the *Temporary Works*.

- (c) **"Reinstate"** a Worksite means restoring the Worksite to a condition not less than that existing immediately prior to the *Managing Contractor* obtaining access to the Worksite (except for flora growth and improved surfaces that grow), in compliance with conditions of the *Planning Approval* and any additional conditions required by relevant authorities, but excluding any change to temporary infrastructure required for use of the Worksite after the reinstatement.
- (d) **"Managing Contractor's Construction Access Notice"** means a written notice issued by the *Managing Contractor* to the *Principal* that provides at least 20 *Business Days'* notice of the date that the *Managing Contractor* requires access to a particular Worksite to perform *work*. The *Managing Contractor's* Construction Access Notice must include the following details:
- (i) the date the *Managing Contractor* requires access to the particular Worksite;
 - (ii) the period of time the *Managing Contractor* requires access to the particular Worksite; and
 - (iii) details of the nature of the *work* and/or *Temporary Works* to be carried out in the particular Worksite.
3. **Not Used**
4. **Conditions applying to all worksites**

The *Managing Contractor* must comply with the following conditions in relation to all Worksites:

- (a) the removal of any trees is subject to the prior written approval of the *Principal's Representative*;
- (b) vehicle access to and from the *site*, including the location of all entrances, turning restrictions, slip lanes and the like must comply with the *Planning Approval*, all other *legislative requirements* and the Traffic Management Plan and Site Traffic Management Plan (where required) provided under the *TfNSW Standard Requirements*;
- (c) when the *Managing Contractor* "Controls" a part of the *site*, the *Managing Contractor* must provide access to and across that part of the *site* for *Other Contractors* to suit their work on and adjacent to that part of the *site*;
- (d) when an *Other Contractor* "Controls" a part of the *site*, the *Managing Contractor* must keep the *Other Contractor* informed regarding the *Managing Contractor's* work on and adjacent to, and requirements for access to, that part of the *site*;
- (e) the *Managing Contractor* has Control of, and must Control, the *Site* including any Worksites commencing on the access date and under the conditions identified in clause 6 of this Annexure Part J;
- (f) except where indicated otherwise below, the *Managing Contractor* must Establish all Worksites in accordance with the requirements of the *Contract*, including this Annexure Part J;
- (g) the *Managing Contractor* must ensure that protection and reinstatement of the condition and features of each Worksite comply with the *Planning Approval* and all other *legislative requirements*;
- (h) the *Managing Contractor* must comply with the conditions of all leases, licences and easements under which the *Principal* or *Sydney Trains* or *RailCorp* is entitled (as against the owner of a part of the *site*) to have access to a part of the *site*;
- (i) Worksite property owners and/or their tenants shall have reasonable access to the site, including any Worksites, to facilitate the undertaking of emergency repairs or maintenance on their properties or premises or emergency response in general;

- (j) where vehicular driveways or access and egress points are shared with affected property owners their tenants and/or *Other Contractors*. The *Managing Contractor* must not impede or interfere with the function and use of these driveways or access and egress points; and
- (k) all *Sydney Trains* assets within *Worksites* under the control of the *Managing Contractor* are to be adequately protected against damage during construction.

5. **Site Access Control**

The *Managing Contractor* must ensure that:

- (a) access is only available to authorised personnel and registered visitors, and access control includes:
 - (i) a secure perimeter to the parts of the *site* where hazards exist;
 - (ii) minimal access points;
 - (iii) providing trained personnel at access points during normal working hours; and
 - (iv) control of the access points out-of-hours;
- (b) identification of each accredited person on the *site* by means of a prominently displayed identification card (provided by the *Managing Contractor*), which must be in a tamper-proof format acceptable to the *Principal's Representative* and must include the following information:
 - (i) the full name of the accredited person verified by positive identification with a unique identifier such as a driver's licence, medicard or passport number;
 - (ii) the unique identifier;
 - (iii) project title of the accredited person;
 - (iv) the sponsoring employer or authority;
 - (v) a recognisable photo portrait;
 - (vi) OH&S, environmental management and other induction status;
 - (vii) any access restrictions; and
 - (viii) the expiry date;
- (c) each visitor to the *site* is registered and managed, involving each visitor, as a minimum:
 - (i) having both their name and the name of the accompanying accredited person recorded;
 - (ii) having their name verified by the accompanying accredited person;
 - (iii) having the arrival and departure times recorded;
 - (iv) having the purpose of the visit recorded;
 - (v) being given a short induction covering at least *site* familiarisation and safety rules to observe;
 - (vi) being accompanied by an authorised person at all times; and
 - (vii) observing the *site* safety rules and other *site* requirements; and
- (d) a current register of each authorised and accredited person with access to the *site* and each visitor to the *site* is maintained on the *site* until the *date of completion* of the *project* which includes the information required in paragraphs (b) and (c) above.

6. Constraints and Requirements on Particular Worksites

WORKSITE	DESCRIPTION	Access Dates	ADDITIONAL REQUIREMENTS
A	Chatswood between SH5.80 signal on the Sydney side of Artarmon Station (Approximate kilometerage 9.320 Km) and SH8.51 signal on the Country side of Roseville Station (kilometerage 13.700 Km).	After date of execution of the Contract, subject to clause 19 of the Contract	<p>Within the Danger Zone:</p> <p>The <i>Managing Contractor</i> must Reinstate this Worksite at the end of each <i>Track Possession</i>.</p> <p>The <i>Managing Contractor</i> must comply with <i>TfNSW Standard Requirement</i>; specifically TSR Project Administration clause 8A.12 “Sydney Trains Track Possessions”.</p> <p>The <i>Managing Contractor</i> has Control of a specific area within the Worksite for each <i>Track Possession</i>, as agreed with <i>Sydney Trains</i> and the <i>Principal</i> prior to each <i>Track Possession</i>.</p> <p>The <i>Managing Contractor</i> must provide a draft plan identifying the proposed area within the Worksite to be under Control of the <i>Managing Contractor</i> for each <i>Track Possession</i> at each “Tier 6 Possession Co-ordination Meeting”, for coordination with <i>Sydney Trains</i> and <i>Other Contractors</i>. The final plan must be presented at the “Possession Co-ordination Meeting” and Control will be provided to the <i>Managing Contractor</i> by the <i>Principal</i> prior to each <i>Track Possession</i>.</p>
B	Epping between EG235U / ER233D signals (approximate kilometerage 25.200 Km) and EG62 signal (approximate kilometerage 26.085 Km).	After date of execution of the Contract, subject to clause 19 of the Contract	<p>Within the Danger Zone:</p> <p>The <i>Managing Contractor</i> must Reinstate this Worksite at the end of each <i>Track Possession</i>.</p> <p>The <i>Managing Contractor</i> must comply with <i>TfNSW Standard Requirement</i>; specifically TSR Project Administration clause 8A.12 “Sydney Trains Track Possessions”.</p> <p>The <i>Managing Contractor</i> has Control of a specific area within the Worksite for each <i>Track Possession</i>, as agreed with <i>Sydney Trains</i> and the <i>Principal</i> prior to each <i>Track Possession</i>.</p> <p>The <i>Managing Contractor</i> must provide a draft plan identifying the proposed area within the Worksite to be under Control of the <i>Managing Contractor</i> for each <i>Track Possession</i> at each “Tier 6 Possession Co-ordination Meeting”, for coordination with <i>Sydney Trains</i> and <i>Other Contractors</i>. The final plan must be presented at the “Possession Co-ordination Meeting” and Control will be provided to the <i>Managing Contractor</i> by the <i>Principal</i> prior to each <i>Track Possession</i>.</p>
C	<i>Chatswood (CDRR) and Epping (EPP)</i>	After date of execution of the Contract, subject to clause 19 of the Contract	Subject to the approval of <i>Sydney Trains</i> .

WORKSITE	DESCRIPTION	Access Dates	ADDITIONAL REQUIREMENTS
D	Approximately from 7.500kms (Signal SH4.65) to 24.900kms (new Signal SH15.46) excluding Worksite A	After <i>date of execution of the Contract</i> , subject to clause 19 of the <i>Contract</i>	<p>Within the <i>Danger Zone</i>:</p> <p>The <i>Managing Contractor</i> must Reinstate this Worksite at the end of each <i>Track Possession</i>.</p> <p>The <i>Managing Contractor</i> must comply with <i>TfNSW Standard Requirement</i>; specifically TSR Project Administration clause 8A.12 “Sydney Trains Track Possessions”.</p> <p>The <i>Managing Contractor</i> has Control of a specific area within the Worksite for each <i>Track Possession</i>, as agreed with <i>Sydney Trains</i> and the <i>Principal</i> prior to each <i>Track Possession</i>.</p> <p>The <i>Managing Contractor</i> must provide a draft plan identifying the proposed area within the Worksite to be under Control of the <i>Managing Contractor</i> for each <i>Track Possession</i> at each “Tier 6 Possession Co-ordination Meeting”, for coordination with <i>Sydney Trains</i> and <i>Other Contractors</i>. The final plan must be presented at the “Possession Co-ordination Meeting” and Control will be provided to the <i>Managing Contractor</i> by the <i>Principal</i> prior to each <i>Track Possession</i>.</p>

Annexure Part K - Action in Complying with Planning Approval and Global Safety Interface Agreement

ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002

Part K

Action in Complying with Planning Approval and Global Safety Interface Agreement

(subclauses 9.1 and 9.7)

Part A - Planning Approval

The *Managing Contractor* must arrange for and fulfil all the conditions and requirements of the *Planning Approval* except to the extent that the following table allocates responsibilities to the *Principal*. Nothing specified in this table as being a responsibility of the *Principal* will relieve the *Managing Contractor* from complying with any obligation set out elsewhere in the *Contract* including any obligation under the *TfNSW Standard Requirements (TSR's)*.

Planning Condition No.	Extent of <i>Principal's</i> responsibility for the <i>Planning Approval</i> condition specified.

Part B - Global Safety Interface Agreement

The *Managing Contractor*:

- (a) is responsible for complying with;
- (b) must perform on behalf of the *Principal*; and
- (c) must do nothing to hinder the *Principal* or breach,

all of the *Principal's* obligations under the *Global Safety Interface Agreement* as may be amended from time to time.

Annexure Part L - Unconditional Undertakings

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part L

Form of Unconditional Undertakings

(clause 2.7(a))

This deed poll ("Undertaking") made the day of 20

In favour of: **Transport for NSW ABN 18 804 239 602**, of Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113 ("**Principal**")

Given by: # [] ("**Institution**")

Recitals:

- A. By a contract dated # ("**Contract**") between # ("**Managing Contractor**") and the Principal the Managing Contractor agreed to carry out the Services (as defined in the Contract).
- B. Under the provisions of the Contract, the Managing Contractor is required to provide this Undertaking to the Principal.

Operative:

1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Managing Contractor and notwithstanding any notice given by the Managing Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$).
2. The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
3. The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Contract or the Services or acts or things to be executed, performed and done under the Contract or by reason of any breach or breaches of the Contract by the Managing Contractor or the Principal.
4. The Institution may at any time without being required to do so, pay to the Principal the maximum aggregate sum of \$[] less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.

- 5. The Institution is not required to pay any amount to any person taking an assignment or transfer of the Principal's rights under this Unconditional Undertaking.
- 6. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

Signed Sealed and Delivered)
 by [] being signed)
 sealed and delivered by its duly constituted) (Signature)
 Attorney [] under)
 Power of Attorney No. in the)
 presence of:)

.....
(Signature of Witness)

.....
(Name of Witness in Full)

Annexure Part M - Managing Contractor's Certificate of Construction Compliance

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part M

Managing Contractor's Certificate of Construction Compliance

(subclause 25.2)

**MANAGING CONTRACTOR'S CERTIFICATE OF
CONSTRUCTION COMPLIANCE**

MANAGING CONTRACTOR:

WORK PACKAGE _____

DESCRIPTION _____

(Attach schedule of work packages if insufficient space)

I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the *Contract* between the *Principal* and _____, and comply with the requirements of the *Contract*, subject to the register of outstanding minor construction non- conformance and unresolved issues attached.

I further certify that the attached compliance records as required by the *Contract* reflect the true status of the work packages.

NAME: SIGNATURE: DATE: / /

(Managing Contractor's Representative)

Annexure Part N - Managing Contractor's Certificate of Completion

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part N

Managing Contractor's Certificate of Completion

(subclause 25.5)

MANAGING CONTRACTOR'S CERTIFICATE OF COMPLETION
MANAGING CONTRACTOR:
Description of <i>Portion</i> or <i>project</i> : _____ _____ _____
<p>I certify that the <i>completion</i> of the above <i>project/Portion</i> of the <i>project</i> has/have been achieved in accordance with the requirements of the <i>Contract</i> between the <i>Principal</i> and _____, complies with the requirements of the <i>Contract</i>, subject to the register of unresolved issues attached.</p> <p>I further certify that:</p> <ul style="list-style-type: none"> (a) All written <i>directions of variations</i> (including concessions) are listed in the attached compliance register. (b) All identified <i>Defects</i> (including any non-conformities but excluding <i>Defects</i> accepted as minor by the <i>Principal</i>) have been satisfactorily rectified and their documentation closed out. (c) All required documentation has been submitted. (d) All notices regarding system deficiencies have been satisfactorily closed out. <p>I further certify that the attached compliance records as required by the <i>Contract</i> reflect the true status of the <i>project/Portion</i> of the <i>project</i>.</p> <p>SIGNATURE: _____ <i>(Managing Contractor's Representative)</i></p> <p>DATE: _____</p>

Annexure Part O - Managing Contractor's Certificate of Final Completion

ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002

Part O

Managing Contractor's Certificate of Final Completion

(subclause 25.7)

MANAGING CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION

MANAGING CONTRACTOR:

I hereby certify that final completion has been achieved by [the
Managing Contractor] on / / in accordance with the requirements of the *Contract* (including all *variations* directed in
writing by the *Managing Contractor* as detailed in (a) below) between the *Principal* and the *Managing Contractor*.

I further certify that:

- (a) All written *directions of variations* (including concessions) are listed in the attached compliance register.
- (b) All identified *Defects* (including any minor non-conformities) have been satisfactorily rectified and their documentation closed out.
- (c) All required documentation has been submitted.
- (d) All deficiency notices regarding system deficiencies have been satisfactorily closed out.

I further certify that the attached compliance records as required by the *Contract* reflect the true status of the *project*.

_____ SIGNATURE: _____ DATE: / /

(*Managing Contractor's Representative*)

Annexure Part P - Options

ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002

Part P

Options

(Subclause 24.4)

Option 1 – Upgrading of the North Shore Line signalling between Waverton and Artarmon, and between Roseville and Waitara, for 20 trains per hour.

The following clause changes would apply to the Works Brief (Exhibit 3) for Option 1.

Modify subclause 1.1(a)(iii)

Upgrading of the North Shore Line signalling, between ~~Artarmon~~ North Sydney (exclusive) and ~~Roseville (the Chatswood Interlocking Area)~~ Hornsby (exclusive), for 20 trains per hour; and

Add new subclause 3.1(a)(iii)

Upper and Lower North Shore Lines, Capacity Improvement Project – Signalling Functional Specification.

Modify subclauses 3.1.2 (c)(i) through (vi);

- i. Headway – Up Line – Clearance times for the following signals: ~~SH8.20 (Roseville)~~ SH15.46 (Hornsby) to ~~SH5.80 (Artarmon)~~ SH4.02 (Waverton);
- ii. Headway – Down Line – Clearance times for the following signals: ~~SH6.47 (Artarmon)~~ SH3.77 (Waverton) to ~~SH8.51 (Roseville)~~ SH15.11 (Waitara);
- iii. Braking – Up Line – Braking up to the following signals at red: ~~SH8.08 (Chatswood)~~ SH15.20 (Waitara) to ~~SH5.40 (St Leonards)~~ SH4.02 (Waverton);
- iv. Braking – Down Line - Braking up to the following signals at red: ~~SH6.71 (Chatswood)~~ SH3.87 (Waverton) to ~~LD3 (Roseville)~~ SH15.11 (Waitara);
- v. Overlaps – Up Line – Overlaps past the following signals at red: ~~SH8.20 (Roseville)~~ SH15.20 (Waitara) to ~~SH5.80 (Artarmon)~~ SH4.02 (Waverton); and
- vi. Overlaps – Down Line - Overlaps past the following signals at red: ~~SH6.47 (Artarmon)~~ SH3.77 (Waverton) to ~~SH8.51 (Roseville)~~ SH15.11 (Waitara).

Add new subclause 3.3.1(b)(iv)

The existing SSI at Gordon / Lindfield is to be retained. It should be assumed that there is adequate spare capacity within the SSI to facilitate the changes described in the SFS for the Upper and Lower North Shore Line Capacity Improvement Project; and

Add new subclause 3.3.1(b)(v)

Each Stageworks that requires a SSI data change will require Design Integrity Testing on a SSI Simulator.

Modify subclauses 3.1.1 (c) through (d)

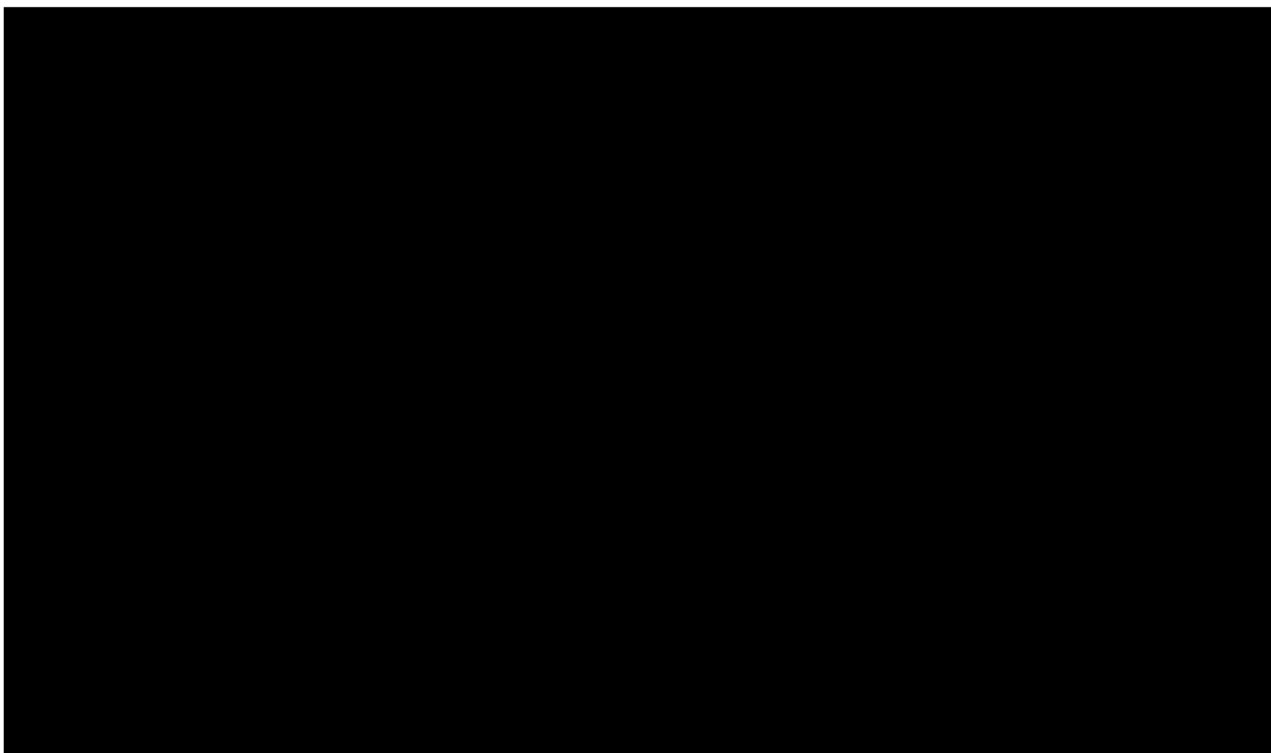
- (c) Any changes to the consolidated SFS required by 3.1.1(b) above as a result of the SFS validation are the responsibility of the Managing Contractor excluding for Portion 5.
- (d) Changes to the number of new and or relocated signals following the SFS validation and consolidation are the responsibility of the Managing Contractor excluding for Portion 5.

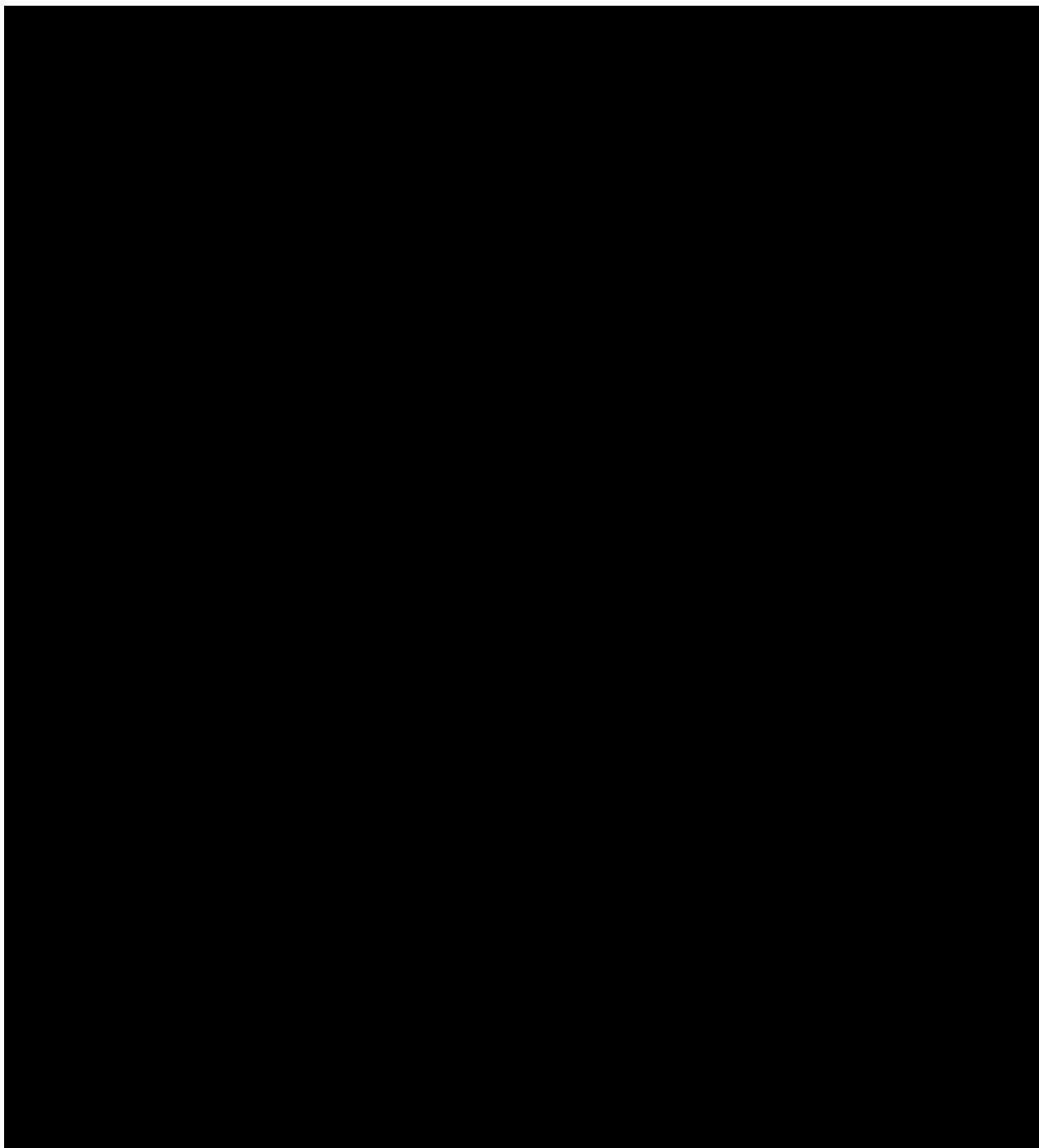
The *Target Budget* and the components thereof will be increased by the amounts set out below:

	Description	Amount
1	<i>Managing Contractor's management fee</i> (Annexure Part C) Note. The <i>Managing Contractor's management fee</i> includes the <i>Managing Contractor's</i> off-site overheads and profit on provisional sums	
2	<i>Design Fee</i>	
3	<i>Reimbursable Services</i> (Annexure Part D)	
4	<i>Managing Contractor's Contingency</i>	
<i>Increase to the Target Budget (= 1+2+3+4)</i>		

Period for exercising Option 1: Prior to 1 January 2016.

Option 1 Indicative Monthly payment schedule:





Option 2 - The relocation of existing Sydney Trains Assets south of Chatswood.

The following clause changes would apply to the Works Brief (Exhibit 3) for Option 2:

Insert new subclause 1.1(a)(iv) and renumber the existing subclause 1.1(a)(iv) to subclause 1.1(a)(v)

iv. The relocation of existing Sydney Trains Assets south of Chatswood; and

Insert new clause 1.5

1.5 Relocation of existing Sydney Trains assets south of Chatswood

- (a) Design development from concept to reference design stage for the relocation of existing Sydney Trains assets south of Chatswood will be conducted by the Principal.
- (b) The proposed date for handover of the reference design to the Managing Contractor is 1st March 2016.

Insert new clause 3.1.3 and renumber the existing clause 3.1.3 to 3.1.4

3.1.3 Relocation of Existing Signalling and Communications Equipment

- (a) The Managing Contractor is to execute the Services in accordance with drawing Attachment 1: Relocation of Sydney Trains Assets South of Chatswood and must replace the existing signalling and communications cable route and equipment from the Down Side south of Chatswood between kilometrage 10+538 and 11+606 with a new signalling and communication cable route and equipment with the equivalent capacity on the Up Side south of Chatswood, including but not limited to;
 - (i) provision of new cable and GST for the entire length including cable support in the vicinity of Hopetoun Avenue Access ramp to allow access to the cess to remain operational at all times. Sydney Trains will joint, test and commission affected communications cables;
 - (ii) replace signalling and communications equipment affected by the relocation from the Down to the Up including signal location cases CD11 & CD12;
 - (iii) provision of new local cable and cable routes for the relocated signalling and communications equipment;
 - (iv) provision of track crossings;
 - (v) staging of the works so that there is continuous operation of Sydney Trains assets; and
 - (vi) terminating the existing signalling and communications cabling, removing GST route on the Down Side and all equipment made redundant.

Add new subclauses 3.2(d) & (e)

- (d) The Managing Contractor is to execute the Services in accordance with drawing Attachment 1: Relocation of Sydney Trains Assets South of Chatswood and must relocate/realign the existing 33kV 768 Feeder and 11kV 527 Feeder and existing cable route between Mowbray Road and Albert Avenue (approx. 11+018 to 11+606) on the Up side of the rail corridor to accommodate the new signalling and communication route, including new galvanised steel troughing on the boundary of the rail corridor including cable support in the vicinity of Hopetoun Avenue Access ramp to allow access to the cess to remain operational at all times.
- (e) The Managing Contractor is to execute the Services in accordance with drawing Attachment 1: Relocation of Sydney Trains Assets South of Chatswood and must provide a new HV cable route of galvanised steel troughing and/or cable

tray with capacity for a minimum of 2 x 11kV, 1 x 33kV on the Down side of the rail corridor from Chatswood North Substation to the City side of Albert Avenue (approx. 11+606 to 12+600). Cables are not required for this section.

Insert new clauses 3.3 and 3.4 and renumber existing clauses 3.3 and 3.4 to clauses 3.5 and 3.6 respectively

3.3 Civil works

3.3.1 Demarcation Barrier

- (a) The Managing Contractor is to execute the Services in accordance with drawing Attachment 1: Relocation of Sydney Trains Assets South of Chatswood and must supply and install a concrete jersey kerb demarcation barrier with safety fence in the Down Cess of the existing Down NSL from Brand Street Artarmon to Albert Avenue Chatswood (10+538 to 11+606) including any necessary preparation work.

3.4 Telstra Service

- (a) The Managing Contractor must survey the existing Telstra service (24 x 100mm conduits) and pits by non-destructive digging at four separate locations between Mowbray Road and Nelson Street bridges in the Down Main and provide detailed cross sections of the four locations identifying the locations of the top and bottom conduits and provide to the Principal.

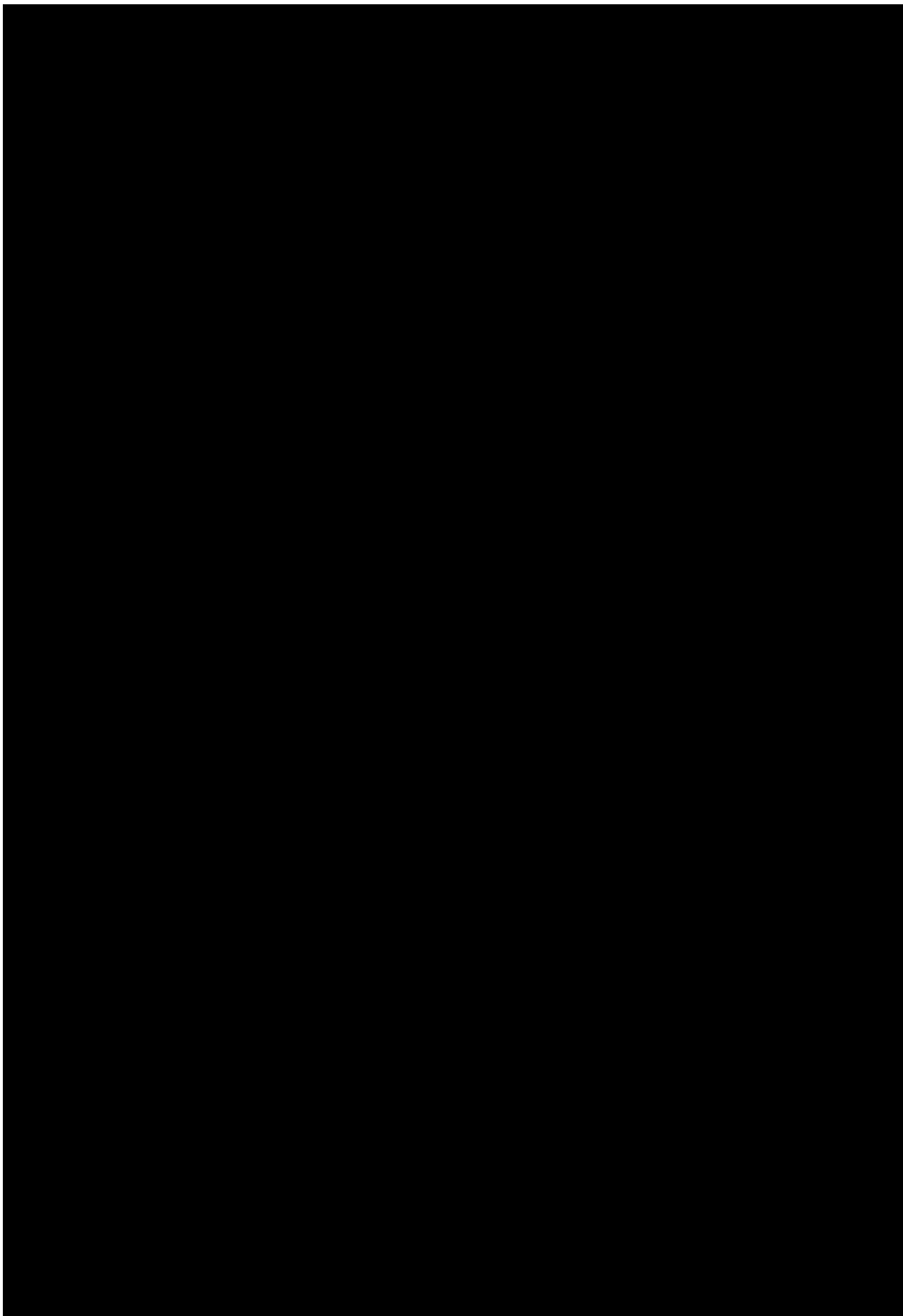
Insert new Attachment 1 - Relocation of Sydney Trains Assets South of Chatswood to the Works Brief

The Target Budget and the components thereof will be increased by the amounts set out below:

	Description	Amount
1	<i>Managing Contractor's management fee</i> (Annexure Part C) Note. The <i>Managing Contractor's management fee</i> includes the <i>Managing Contractor's</i> off-site overheads and profit on provisional sums	
2	<i>Design Fee</i>	
3	<i>Reimbursable Services</i> (Annexure Part D)	
4	<i>Managing Contractor's Contingency</i>	
Increase to the Target Budget (= 1+2+3+4)		

Period for exercising Option 2: Prior to 15 January 2016.

Option 2 Indicative Monthly payment schedule:





Annexure Part Q - Form of Subcontractor Deed

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part Q

Form of Subcontractor Deed

(subclause 6.3)

This deed poll ("Deed Poll") made the day of 20

By: **[insert name of subcontractor] (ABN [insert subcontractor's ABN])** of [insert subcontractor's address] (the "**Subcontractor**").

RECITALS

- A. Transport for NSW (**ABN**), of Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113 ("**Principal**"), has entered into a contract with [] ABN [] ("**Managing Contractor**") for the delivery of the [] Project being part of the [] project (the "**Project**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Managing Contractor for the execution and completion of the [] (the "**Subcontract Works**") for the Project.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

1. It will comply with its obligations under the Subcontract and upon completion of the Project, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
 - (a) must, if required by a written notice by the Principal, execute a deed in the form of the attached Deed of Novation with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and execute the attached Deed of Novation.
4. This Deed Poll is governed by the laws of the State of New South Wales.
5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.

- 6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Managing Contractor in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THE DEED

[Insert details]

Executed as a deed poll.

Executed by [] by or in the
 presence of:

|

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

THIS DEED OF NOVATION is made on [] 20[] between the following parties:

1. [] ABN [] ("**Substitute Managing Contractor**")
2. [] ABN [] ("**Original Managing Contractor**")
3. [] ABN [] ("**Subcontractor**").

RECITALS

- A. By contract dated [] (the "**Contract**") between [] (ABN []) ("**Principal**") and Original Managing Contractor, the Principal engaged the Original Managing Contractor to deliver the Project (which in this deed has the same meaning as the term "*project*" in the Contract).
- B. The Original Managing Contractor has entered into an agreement ("**Subcontract**") with the Subcontractor for the execution and completion of the [] ("**Subcontract Works**") as part of the Project.
- C. The Principal has terminated the Contract and has engaged Substitute Managing Contractor to complete the Project.
- D. The Principal and Substitute Managing Contractor wish to effect a novation of the Subcontract.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. Substitute Managing Contractor must perform all of the obligations of the Original Managing Contractor under the Subcontract which are not performed at the date of this deed. Substitute Managing Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Managing Contractor.
2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if Substitute Managing Contractor was originally named in the Subcontract in place of Original Managing Contractor.
3. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed.

[insert appropriate execution clauses]

Annexure Part R - Rates and Prices

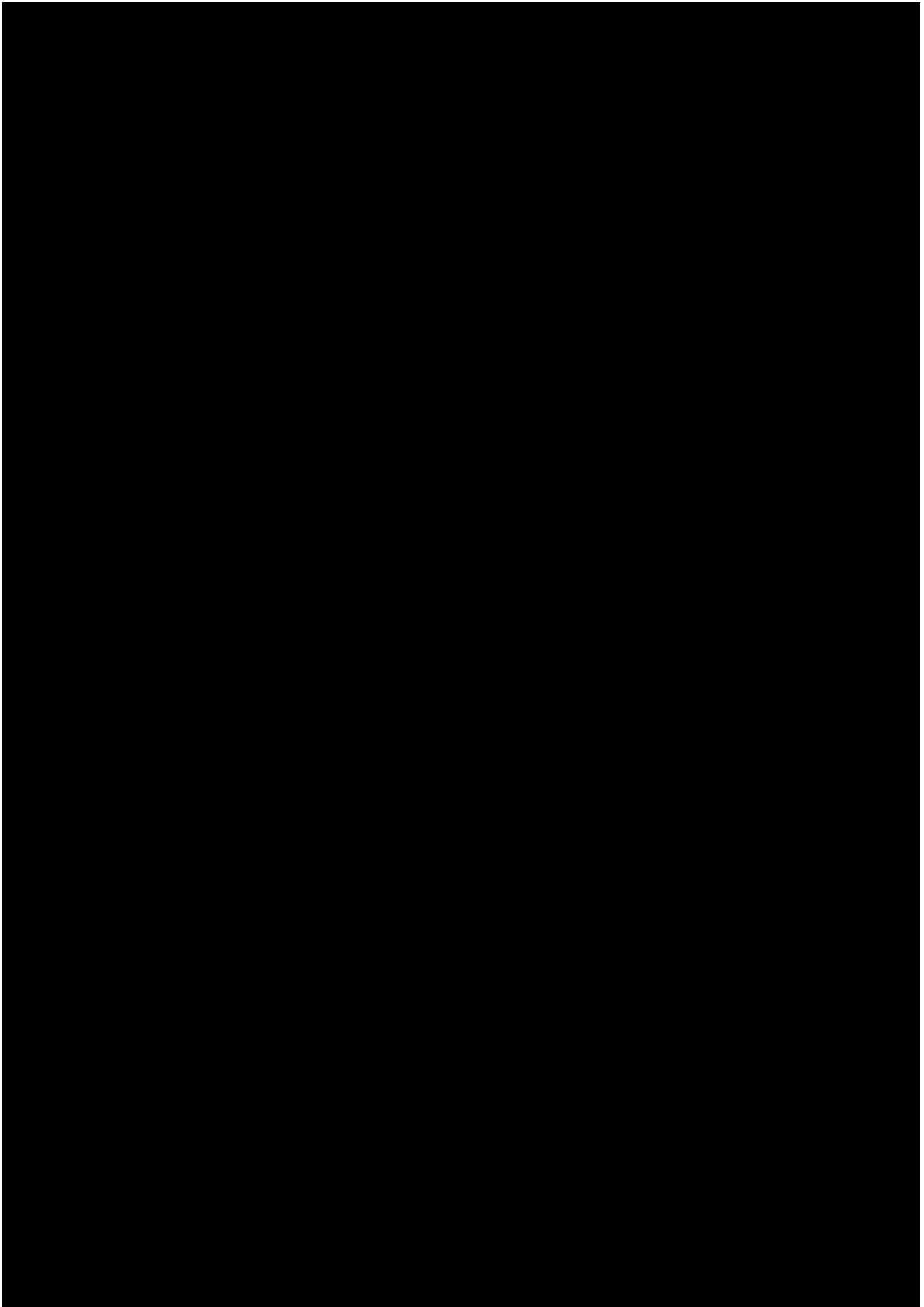
**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
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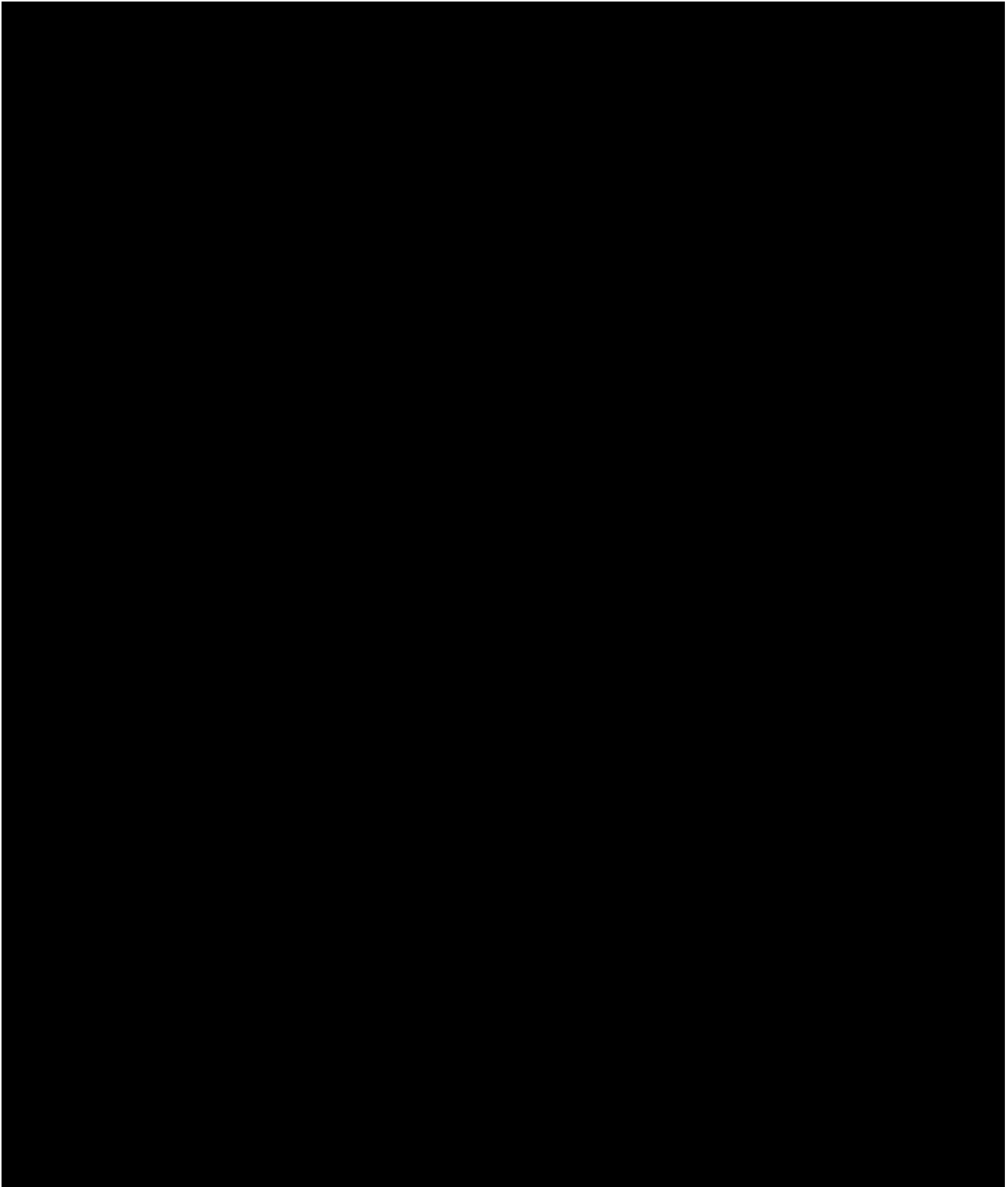
Part R

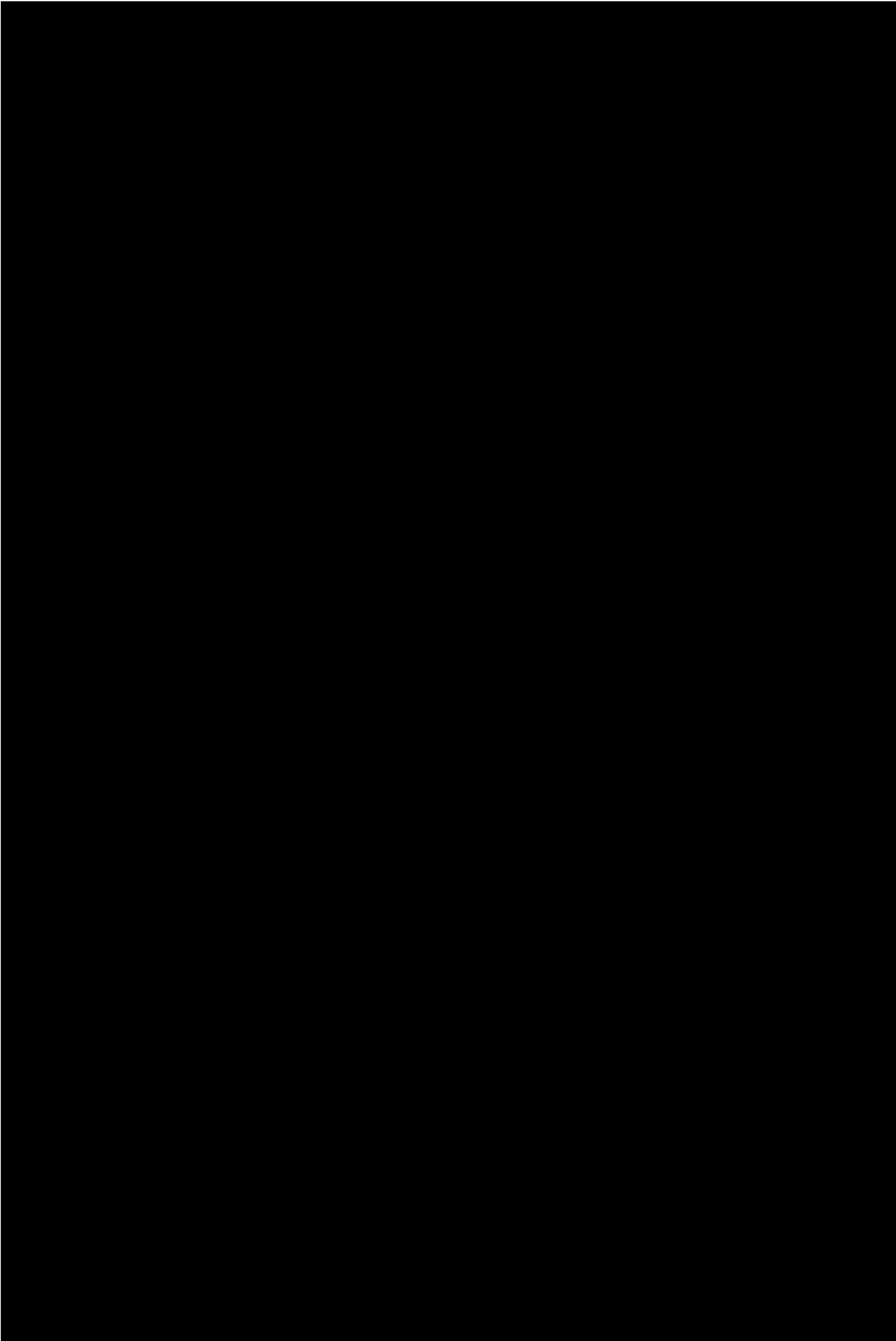
Principal accepted rates and prices to be applied in determining value of *Managing Contractor Work*

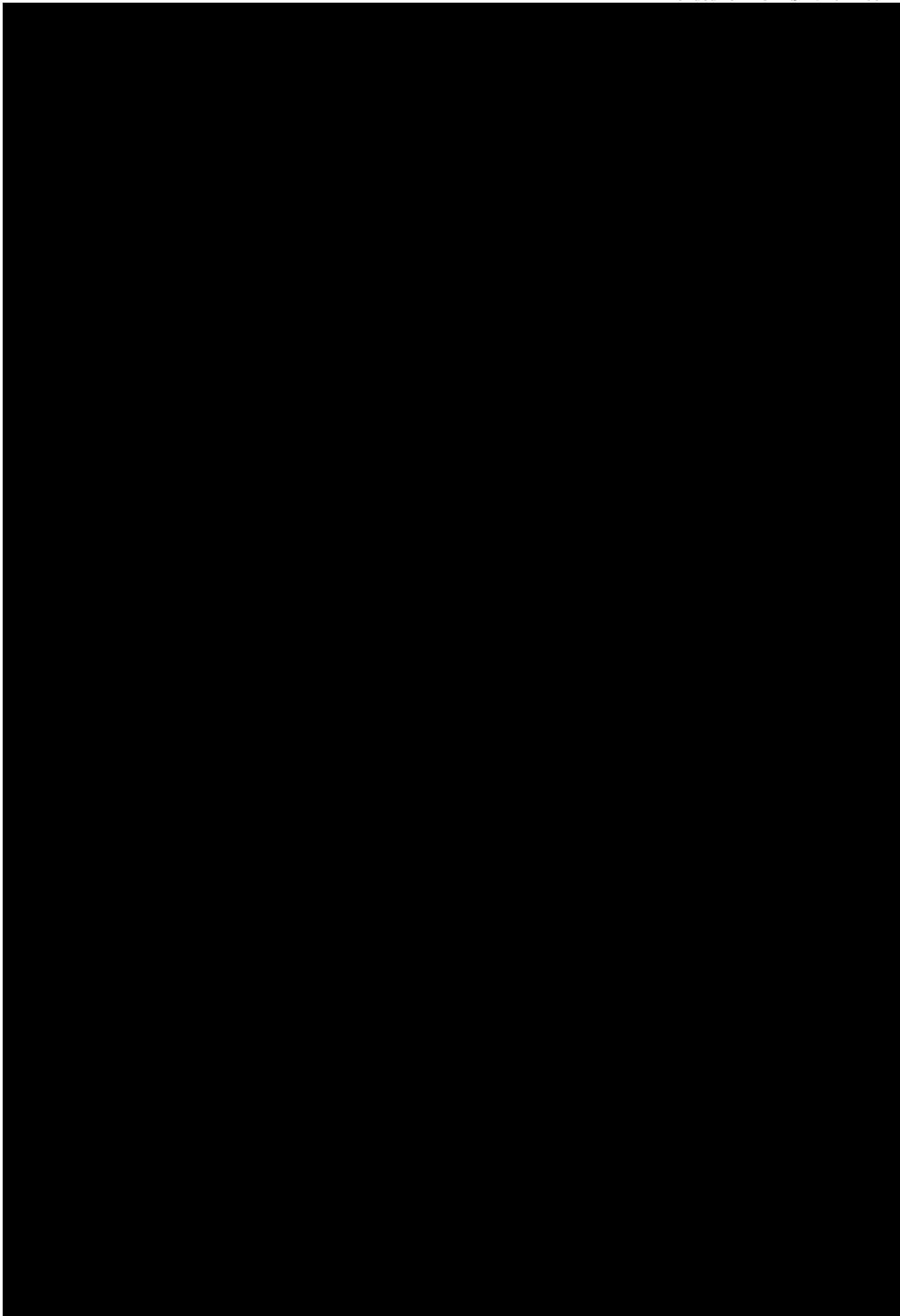
Rates













Annexure Part S - Parent Company Guarantee

ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002

Part S

Parent Company Guarantee

(subclause 2.7(b))

Deed of Guarantee and Indemnity made at _____ **on** _____ **20[]**

Transport for NSW (ABN 18 804 239 602), a corporation established by section 3C of the Transport Administration Act 1988 (NSW), Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113
(Principal)

[_____] ABN [_____] of [_____] (Guarantor)

RECITALS

- A. The Principal has agreed to enter into the Contract with the Managing Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Managing Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

THIS DEED PROVIDES

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the "Main North & North Shore Corridor Works" Managing Contractor Contract dated on or about the date of this Deed between the Principal and the Managing Contractor.

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or

of preferences, and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Managing Contractor means Laing O'Rourke Australia Construction Pty Ltd ABN (39 112 099 000) of Level 4, Innovation Place, 100 Arthur Street, North Sydney, NSW 2061.

Obligations means all the liabilities and obligations of the Managing Contractor to the Principal under or arising out of or in any way in connection with the Contract or the work to be carried out or performed by the Managing Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Managing Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Managing Contractor and the Principal comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at approximately 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Contract.

1.3 Interpretation

In this Deed unless the context otherwise requires:

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

- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Managing Contractor of all the Obligations.

2.2 Payment by Guarantor

If the Managing Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

If the Managing Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Managing Contractor in the same manner as the Managing Contractor is required to perform the Obligations.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Managing Contractor to perform the Obligations duly and punctually; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Managing Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

4. Liability under this deed

4.1 Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Managing Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;
 - (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
 - (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Managing Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Managing Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Managing Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Managing Contractor or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Managing Contractor or the Guarantor;

- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Managing Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Managing Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Managing Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Managing Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Managing Contractor;
- (o) the Principal agreeing with the Managing Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Managing Contractor or the Guarantor; or
- (p) the provisions of section 440J of the Corporations Act 2001 (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Managing Contractor, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the

Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,
 in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or
- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security;
 and
- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Managing Contractor against the Principal.

5.8 Claim on the Guarantor

The Principal is not required to make any claim or demand on the Managing Contractor, or to enforce the Contract, or any other right, power or remedy against the Managing Contractor, before making any demand or claim on the Guarantor.

5.9 No representation by Principal etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Managing Contractor or any other person.

6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Principal that:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law binding on it, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent they are material to the performance of the obligations of the Guarantor under this Deed.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and

- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (**Payment Currency**) other than the currency (**Agreed Currency**) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment or receipt contemplated by this Deed; and
- (b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay any amount described in paragraph (a).

8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (**GST Liability**) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

9. Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.8 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.8 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act 2001 (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

10.4 Consolidation

The parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations.

10.5 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power

to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.6 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory or the Commonwealth) are not conferred on an arbitral tribunal appointed in accordance with clause 10.3.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory or the Commonwealth) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

10.7 Enforcement of interim measures

The parties agree that section 23 of the *International Arbitration Act 1974* (Cth) will apply.

10.8 Award final and binding

Any award will be final and binding upon the parties.

11. Miscellaneous

11.1 Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):
 - (i) to the Principal: 22 Giffnock Avenue
Macquarie Park NSW 2113
Fax: (02) 8265 9501
Attention:
 - (ii) to the Guarantor: Level 4, Innovation Place
100 Arthur Street
North Sydney NSW 2060
Fax: (02) 9903 0333
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

11.5 Entire agreement

This Deed constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

11.6 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

11.7 Severance

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

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

11.8 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Principal.

11.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.

- (b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Deed; or
 - (ii) any other failure by the Guarantor to comply with a requirement of this Deed,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.10A Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

11.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.12 Variations

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

11.13 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Principal or the Guarantor is to be construed as doing so only to the extent permitted by law.

11.14 Counterparts

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

11.15 Confidentiality

- (a) Subject to paragraph (b), each party must keep the terms of this Deed confidential.
- (b) A party may make any disclosure in relation to this Deed:
 - (i) to a professional adviser, financial adviser, insurer, rating agency, financier or auditor if that person is obliged to keep the information disclosed confidential;

- (ii) to the extent required to comply with any law, a requirement of a regulatory body (including any relevant stock exchange) or pursuant to administrative request or Parliamentary requirement;
- (iii) to any of its employees or officers to whom it is necessary to disclose the information;
- (iv) in connection with any legal or arbitral proceeding under or in relation to this Deed;
- (v) to obtain the consent of a third party to a term of, or to an act under, this Deed;
- (vi) to a "related body corporate", as defined in section 9 of the Corporations Act 2001 (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this Deed;
- (vii) (in the case of the Principal) to a potential assignee provided they agree to keep the terms of this Deed confidential;
- (viii) (in the case of the Principal) to a related agency or to its responsible Minister;
- (ix) with the prior consent of the other party to this Deed; or
- (x) if the information disclosed has come into the public domain through no fault of the party (or its employees, officers or related bodies corporate) making the disclosure.

Executed as a deed.

Executed by
in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Annexure Part T - Managing Contractor's Personnel and Functions

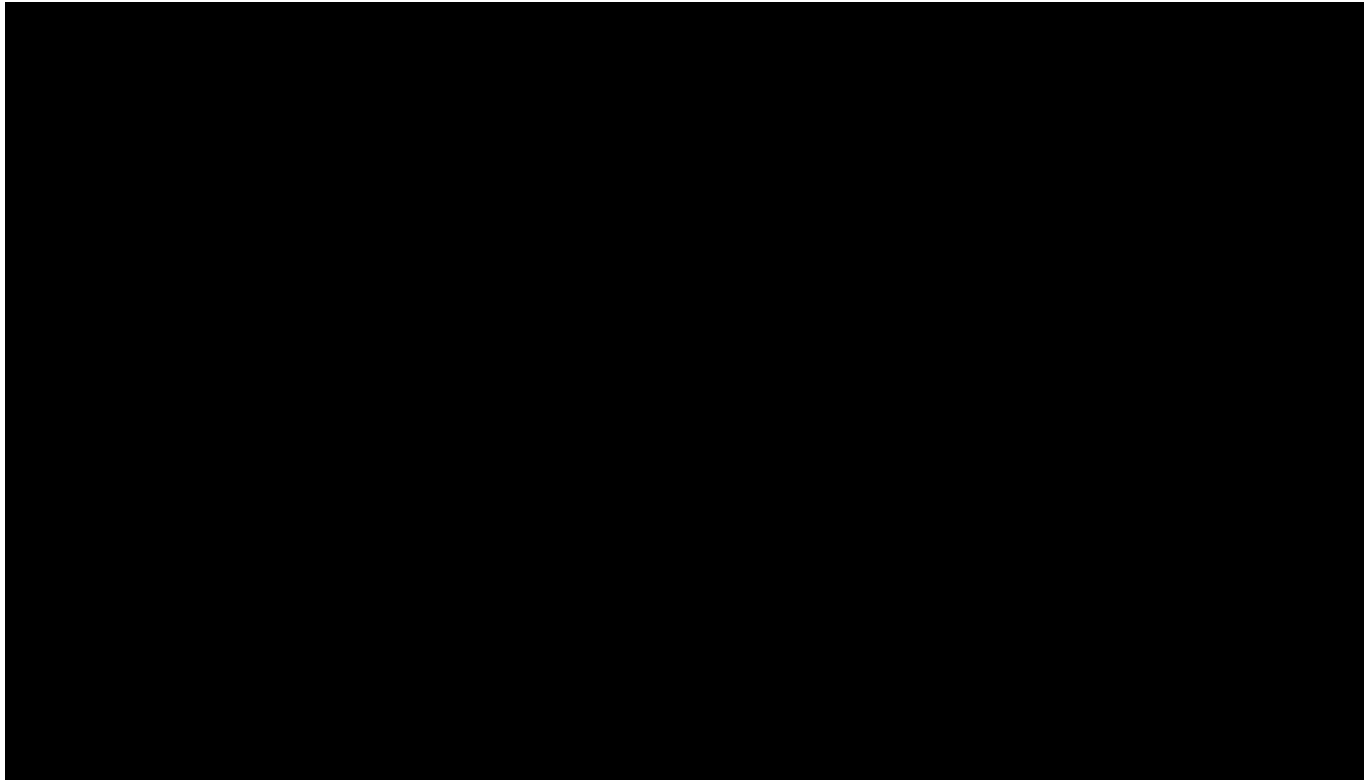
**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
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Part T

Managing Contractor's personnel and functions

(clause 1 and subclause 17.2)

Key Personnel



Annexure Part U - Managing Contractor's Certificate of Design

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
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AS 4916—2002**

Part U

Managing Contractor's Certificate of Design Compliance

(subclause 25.2)

MANAGING CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE	
MANAGING CONTRACTOR:	
<u>DESIGN PACKAGE (limit of 1 per certificate)</u>	<u>DESCRIPTION:</u>
<p>I certify that the design documents for the package or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____ (including as required by the TfNSW Standard Requirements where applicable), and complies with the requirements of the Contract and the <i>Planning Approval</i>, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the design package.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / /</p> <p style="text-align: center;"><i>(Managing Contractor's Representative)</i></p>	

Annexure Part V - Confidentiality Deed

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
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Part V

Confidentiality Deed

(subclause 5.5)

To: []

We [] the engaged
Consultant / Supplier / Subcontractor body, undertake to treat as confidential all information
received/generated from the [] (**Principal**) in respect of work
performed by the Principal and all information generated by the Consultant / Supplier / Subcontractor body
in the course of performing the Services.

The Consultant / Supplier / Subcontractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the written consent of the Principal;
- (c) not to use that information except as necessary in connection with the Consultant / Supplier / Subcontractor body's engagement to perform the Services; and
- (d) to ensure that its employees to whom that information is disclosed will comply with (a), (b) and (c) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant / Supplier / Subcontractor, its employees or agents) or which was already known to the Consultant / Supplier / Subcontractor.

Any breach of this undertaking by the Consultant / Supplier / Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant / Supplier / Subcontractor and at the direction of the Principal the Consultant / Supplier / Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant / Supplier / Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant / Supplier / Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated:

SIGNED for and on behalf of:

.....
(Print Company Name)

By:
(Print Name) (Signature)

in the presence of:

.....
(Print Name) (Signature)

Annexure Part W - Form of Warranty

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part W**Form of Warranty**

(subclause 6.14)

This Deed Poll is made the day of 20

To: **Transport for NSW** (ABN 18 804 239 602), a corporation established by section 3C of the *Transport Administration Act 1988* (NSW), of Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113 (**Principal**); and

[Add other beneficiaries as nominated by TfNSW] Beneficiary

By: That person described in Item 1 of the Schedule (**Warrantor**) which expression will include its successors and assigns.

RECITALS

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (**Equipment**) to the person described in Item 3 of the Schedule (**Managing Contractor**) or the person described in Item 4 of the Schedule, a subcontractor of the Managing Contractor (**Subcontractor**), for the works (**Works**) being carried out by the Managing Contractor under the Contract described in Item 5 of the Schedule (**Contract**) with the Principal.
- B. It is a requirement of the Contract that the Managing Contractor procure the Warrantor to give the following warranties in favour of the Principal and Beneficiary with respect to the Equipment.

OPERATIVE**1. Quality**

The Warrantor:

- (a) warrants to the Principal and Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

2. **Replacement**

The Warrantor warrants to the Principal and Beneficiary that it will replace so much of the Equipment as:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise,

within the period described in Item 7 of the Schedule.

3. **Warrantor to bear cost**

The Warrantor covenants to the Principal and Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

4. **Principal not liable**

The Warrantor acknowledges to the Principal and Beneficiary that nothing contained in this Deed Poll is intended to nor will render either the Principal or Beneficiary in any way liable to the Warrantor in relation to any matters arising out of this Deed Poll or otherwise.

5. **This Deed Poll may not be revoked**

This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal and Beneficiary.

6. **Governing Law and jurisdiction**

- (a) This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Warrantor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

7. **Enforcement of this Deed Poll**

For the avoidance of doubt this Deed Poll is enforceable by any of the Principal or Beneficiary.

Schedule

Item 1	Name and Address of Warrantor	[#]
Item 2	Equipment (Recital A)	[#]
Item 3	Managing Contractor (Recital A)	[#]
Item 4	Subcontractor (Recital A)	[#]
Item 5	Contract (Recital A)	[#]
Item 6	Detailed Warranty of Warrantor (Clause 1(b))	[#]
Item 7	Period of Years (Clause 2)	[#] years from the expiry of the last "Defects Liability Period" as defined in the General Conditions (including any extension under subclause 20.6 of the General Conditions)

EXECUTED AS A DEED POLL

Executed by *[insert name of Warrantor]* (ABN *[insert ABN]*) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Annexure Part X - Property Owner's Certificate

**ANNEXURE to the Australian Standard
Managing Contractor Contract—General
conditions
AS 4916—2002**

Part X

Property Owner's Certificate

(subclause 19.4A)

This deed poll is made the _____ day of _____ 20

To: **Transport for NSW** (ABN 18 804 239 602), a corporation established by section 3C of the *Transport Administration Act 1988* (NSW), of Level 1, South Building, 22 Giffnock Avenue, Macquarie Park NSW 2113 (**Principal**)

By: [_____].

Property Address:

1. I/We confirm that the following works has been carried out and completed on my/our property to my/our satisfaction:
[Insert description of works on property and property]
2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.
4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a deed poll.

Signed sealed and delivered by *[insert name]* in the presence of:

	Signature

Signature of Witness

Name of Witness in full