



Transport  
for NSW



Execution Version

Sydney Metro City & Southwest  
Central Station Main Works  
Incentivised Target Cost Contract

Contract No: 00013/300

Transport for NSW

ABN 18 804 239 602

and

Laing O'Rourke Australia Construction Pty Ltd

ABN 39 112 099 000

## CONTENTS

CLAUSE	PAGE
1. INTERPRETATION.....	9
1.1 Definitions .....	9
1.2 Interpretation.....	57
1.3 Ambiguous terms.....	62
1.4 Order of Precedence.....	62
1.5 Deed Poll by CSM Contractor .....	63
1.6 Authorities .....	63
1.7 Sydney Metro Northwest Augmentation .....	63
1.8 Electronic Files.....	64
2. OBJECTIVES AND PROJECT VALUES .....	64
2.1 Objectives for Sydney Metro City & Southwest.....	64
2.2 Objectives for the Project Works .....	64
2.3 Achievement of the Project Values .....	65
3. CSM CONTRACTOR'S OBLIGATIONS .....	66
3.1 General .....	66
3.2 Cooperation and coordination with Interface Contractors .....	67
3.3 Co-operation with Other Contractors .....	70
3.4 Cooperation and Integration Deeds .....	71
3.5 Incident Management Reporting .....	71
3.6 Third Party Agreements .....	73
3.7 Adjoining Properties .....	76
3.8 Adjoining Property Easements .....	77
3.9 Commissioning .....	79
3.10 Existing Operations .....	79
3.11 Management Plans .....	81
3.12 Cleaning Up.....	81
3.13 Construction Plant and Materials Removal .....	81
3.14 Principal Supplied Items .....	82
3.15 SMCSW Master Interface Protocols Deed Poll.....	83
3.16 Collateral Warranty .....	83
4. CHANGES TO TARGET COSTS, REIMBURSABLE COST ELEMENT, PRELIMINARIES FEE AND MANAGEMENT FEE .....	83
4.1 Changes .....	83
4.2 Reimbursable Cost Element Adjustments .....	83
4.3 Target Cost (Design) Adjustments.....	84
4.4 Preliminaries Fee Adjustments.....	84
4.5 Management Fee Adjustment .....	84
4.6 Escalation .....	85
4.7 Principal's determinations .....	85
5. SECURITY .....	85
5.1 Unconditional Undertakings.....	85
5.2 Requirements for unconditional undertakings .....	85
5.3 Recourse to unconditional undertakings .....	85

5.4	Release of unconditional undertakings .....	86
5.5	Replacement of unconditional undertakings – expiry date .....	86
5.6	Replacement of unconditional undertakings – Required Rating .....	87
5.7	Substitution of unconditional undertakings .....	87
5.8	Cash Collateralisation .....	88
5.9	No injunction .....	88
5.10	No interest .....	88
5.11	No trust .....	88
5.12	Parent Company Guarantee .....	88
6.	LAW AND APPROVALS .....	89
6.1	Compliance with Law .....	89
6.2	Approvals .....	89
6.3	Change in Codes and Standards .....	90
6.4	Change in Law .....	91
6.5	Changes to Planning Approval .....	91
6.6	Legal Challenge to Planning Approval .....	92
6.7	Crown Building Work .....	93
6.8	Long Service Leave Levy .....	93
7.	THE SITE, TRACK POSSESSIONS AND LOCATION OF THE PROJECT WORKS .....	93
7.1	Access .....	93
7.2	Temporary Works .....	95
7.3	Management and Control of the Site .....	95
7.4	Land in Addition to the Site .....	96
7.5	Condition of the Site .....	97
7.6	Latent Conditions .....	98
7.7	Contamination .....	99
7.8	Disposal of Contamination and Waste .....	101
7.9	Remediation Action Plans .....	102
7.10	Artefacts .....	103
7.11	Utility Services .....	104
7.12	Information Documents .....	105
7.13	Principal's Right to Access and Inspect .....	107
7.14	Condition Surveys .....	108
7.15	Setting Out .....	108
7.16	Works to be constructed within Site .....	108
7.17	Survey .....	108
7.18	Principal not in Control .....	109
7.19	Track Possessions and Extended Track Possessions .....	109
7.20	Liquidated damages for late Hand Back of Track Possessions .....	111
7.21	Principles applicable to Liquidated Damages .....	112
8.	COMPLIANCE .....	113
8.1	Quality of Work .....	113
8.2	Management Requirements .....	113
8.3	Environmental Management .....	113
8.4	Health and Safety Management .....	114
8.5	Safety .....	114
8.6	Rail Safety .....	117
8.7	Principal Contractor .....	119
8.8	No Relief from Obligations .....	121
8.9	Engineering Authorisation .....	121
8.10	ASA Compliance .....	121
8.11	Australian Government Requirements .....	122
8.12	NSW Code of Practice .....	124
8.13	TfNSW's Statement of Business Ethics .....	126
8.14	Independent Advisers .....	126

8.15	Asset Management Information .....	127
9.	DESIGN, DESIGN DOCUMENTATION AND COST PLANNING .....	128
9.1	Design obligations.....	128
9.2	CSM Contractor's Tender Design .....	129
9.3	Design warranties .....	129
9.4	Preparation and submission of Design Documentation .....	131
9.5	Third Party Works .....	132
9.6	Certification of Design Documentation .....	132
9.7	Explanation of Design Documentation.....	132
9.8	Review of Design Documentation .....	133
9.9	Interface Contractors.....	138
9.10	Design Documentation for construction.....	138
9.11	Amendments to Final Design Documentation .....	139
9.12	No duty to review .....	140
9.13	Ownership of documentation .....	140
9.14	Delivery up of Design Documentation .....	143
9.15	Not used .....	144
9.16	Design Life.....	144
9.17	Value Engineering .....	144
9.18	Cost Planning .....	144
9.19	Cost Control.....	145
10.	CHANGES.....	146
10.1	Proposed Changes.....	146
10.2	Change Orders .....	146
10.3	Options.....	147
10.4	Omissions .....	148
10.5	CSM Contractor's entitlements.....	148
10.6	CSM Contractor may propose Change .....	148
11.	REIMBURSABLE WORK AND PROVISIONAL SUM WORK.....	150
11.1	Restrictions on Reimbursable Work .....	150
11.2	Subcontract Proposal.....	151
11.3	Subcontract Tender Documentation.....	152
11.4	Tendering .....	152
11.5	Consideration of Tenders .....	153
11.6	Post Tender Negotiations .....	153
11.7	Subcontracts .....	153
11.8	Procedure on Disapproval .....	155
11.9	Subcontractor Warranties.....	155
11.10	Coordination of Subcontractors.....	156
11.11	Disputes with Subcontractors .....	156
11.12	Responsibility for Subcontractors .....	156
11.13	Subcontractor Insolvency.....	157
11.14	Reimbursable Work by CSM Contractor or Related Body Corporate.....	158
11.15	Tendering Probity.....	160
11.16	Lifts and Escalators .....	160
11.17	Provisional Sum Work.....	161
11.18	Design Work.....	162
11.19	Pre-Approved Subcontracts .....	163
11.20	Recognised Aboriginal Business Subcontracts .....	163
12.	DEFECTS, INSPECTION AND REPAIR.....	163
12.1	Defects.....	163
12.2	Principal's Representative's direction .....	164
12.3	Correction of Defect or Change .....	165
12.4	Acceptance of work or rectification by others.....	166

12.5	Changes under other contracts to overcome Defects .....	166
12.6	Works.....	166
12.7	Sydney Trains Works.....	166
12.8	Failure by the CSM Contractor to comply with Direction .....	167
12.9	Rights not affected.....	167
12.10	Use of defective facilities.....	167
12.11	Final inspections of Project Works .....	168
12.12	Final inspections of the Sydney Trains Works.....	168
13.	ADMINISTRATION .....	168
13.1	Principal's Representative .....	168
13.2	Replacement of the Principal's Representative .....	169
13.3	Delegation of Functions .....	169
13.4	CSM Contractor's Personnel.....	169
13.5	Design development meetings .....	171
13.6	Site Meetings .....	171
13.7	Environmental Representative .....	171
13.8	Acoustics Advisor .....	172
13.9	Independent Certifier .....	173
13.10	Industrial Relations .....	173
13.11	Submission for review by the Principal's Representative.....	175
13.12	Work Method.....	177
13.13	Exchange of Information between Government Agencies .....	177
13.14	Financial Assessment.....	178
13.15	Employment of Aboriginal and Torres Strait Islander People .....	178
13.16	Waste Reduction and Purchasing Policy.....	178
13.17	Training Management.....	179
13.18	<i>National Greenhouse and Energy Reporting Act 2007 (Cth)</i> .....	179
13.19	Early warning procedure and risk reporting .....	180
13.20	Management Review Group .....	181
13.21	Management Review Group functions .....	181
13.22	Management Review Group meetings .....	182
13.23	Completion Steering Committee.....	183
13.24	Completion Working Group.....	183
13.25	Legal effect of meetings.....	184
13.26	Quarterly whole of project reviews .....	185
13.27	Independent Property Impact Assessment Panel .....	185
14.	TIME AND PROGRESS .....	186
14.1	Rate of Progress .....	186
14.2	CSM Contractor's Programming Obligations.....	187
14.3	CSM Contractor not Relieved .....	188
14.4	Importance of Milestone Achievement, Construction Completion and Completion on Time .....	189
14.5	Risk and Notice of Delay .....	189
14.6	Recovery Plan.....	190
14.7	Entitlement to Claim Extension of Time.....	190
14.8	Claim for Extension of Time.....	191
14.9	Conditions Precedent to Extension of Time .....	192
14.10	Extension of Time .....	193
14.11	Reduction in Extension of Time .....	194
14.12	Unilateral Extensions .....	194
14.13	Suspension .....	195
14.14	Compression .....	196
14.15	Compression by CSM Contractor .....	197
14.16	Deferred Activities.....	197
15.	PAYMENT .....	198

15.1	Principal's payment obligation for design and construction .....	198
15.2	Payment Claims .....	199
15.3	Effect of payment schedules and payments .....	204
15.4	Provision of documentation and other requirements .....	204
15.5	Payment of Subcontractors, workers compensation and payroll tax .....	205
15.6	Unfixed Plant and Materials .....	206
15.7	SOP Act .....	207
15.8	Right of set-off .....	209
15.9	Interest .....	210
15.10	Title .....	210
15.11	Incentive Payments .....	210
15.12	Outturn Cost exceeds Target Cost .....	211
15.13	No claim by CSM Contractor .....	211
15.14	GST .....	211
15.15	Initial payment .....	212
15.16	Target Costs Escalation .....	213
16.	CONSTRUCTION COMPLETION AND COMPLETION .....	213
16.1	Progressive Inspection and Testing .....	213
16.2	Construction Completion .....	214
16.3	Unilateral Issue of Notice of Construction Completion .....	216
16.4	Completion .....	216
16.5	Part of the Project Works or a Portion .....	219
16.6	Liquidated Damages and indemnity for delay in reaching Construction Completion and Completion .....	220
16.7	Effect of Notice of Construction Completion or Notice of Completion .....	222
16.8	Access following Construction Completion of a Portion .....	223
17.	MILESTONE ACHIEVEMENT .....	223
17.1	Date for Milestone Achievement .....	223
17.2	Milestone Achievement .....	223
17.3	Unilateral Issue of Notice of Milestone Achievement .....	224
17.4	Liquidated Damages and indemnity for delay in reaching Milestone Achievement in respect of a Specified Milestone .....	224
17.5	Effect of Notice of Milestone Achievement .....	226
18.	CARE OF THE PROJECT WORKS, RISKS AND INSURANCE .....	227
18.1	Responsibility for care of the Project Works .....	227
18.2	Indemnity by the CSM Contractor .....	228
18.3	Principal's insurance .....	228
18.4	CSM Contractor's insurance obligations .....	229
18.5	Workers compensation insurance .....	229
18.6	Asbestos liability insurance .....	229
18.7	Professional indemnity insurance .....	230
18.8	Construction Plant insurance .....	230
18.9	Motor vehicle insurance .....	230
18.10	Periods of insurance .....	230
18.11	Evidence of policies .....	231
18.12	Provisions in policies .....	231
18.13	General Obligations .....	232
18.14	Premiums .....	232
18.15	Undertaking to inform .....	232
18.16	Reinstatement .....	233
18.17	Application of insurance proceeds .....	234
18.18	Damage to property .....	234
18.19	Risk of deductibles or excesses .....	234
19.	DEFAULT OR INSOLVENCY .....	234

19.1	CSM Contractor's Default .....	234
19.2	Contents of Notice.....	235
19.3	Rights of the Principal Following Notice .....	236
19.4	Immediate Termination or Take-Out.....	236
19.5	Principal's Common Rights After Take-Out or Termination .....	237
19.6	Principal's Entitlements after Take-Out .....	238
19.7	Principal's Rights after Termination .....	239
19.8	CSM Contractor's Rights after Repudiation or Wrongful Termination .....	239
19.9	Termination for Convenience .....	240
19.10	Payment for Termination for Convenience .....	240
19.11	Preservation of Rights.....	241
19.12	Termination by Frustration .....	241
19.13	Codification of CSM Contractor's Entitlements.....	242
20.	DISPUTE RESOLUTION.....	242
20.1	Disputes generally .....	242
20.2	Independent Dispute Avoidance and Resolution Panel.....	242
20.3	Consultation and executive negotiation.....	243
20.4	Recommendation .....	244
20.5	Expert determination.....	245
20.6	Notice of dissatisfaction .....	245
20.7	Final and binding decision .....	246
20.8	Amicable settlement.....	246
20.9	Litigation or arbitration .....	246
20.10	Arbitration rules.....	246
20.11	Exclusion from determination or award .....	247
20.12	Payments.....	247
20.13	CSM Contractor to continue performing obligations .....	247
20.14	Urgent relief.....	247
20.15	Dispute under related contracts .....	248
20.16	Survive termination.....	248
21.	LIABILITY.....	248
21.1	Limitation of Liability .....	248
21.2	Exclusion of proportionate liability scheme .....	250
21.3	CSM Contractor not to apply proportionate liability scheme .....	251
21.4	Subcontracts .....	251
21.5	Insurance requirements.....	251
21.6	Provisions Limiting or Excluding Liability .....	251
22.	GENERAL .....	252
22.1	Notices generally .....	252
22.2	Governing Law .....	255
22.3	No Waiver.....	255
22.4	Assignment and Change in Control.....	255
22.5	Entire Agreement.....	258
22.6	Joint and Several Liability .....	259
22.7	Severability.....	259
22.8	Indemnities to Survive.....	259
22.9	Stamp Duty and Other Fees .....	259
22.10	Taxes .....	260
22.11	Confidentiality .....	260
22.12	Principal May Act .....	261
22.13	Process Agent.....	261
22.14	Variations .....	261
22.15	Prior Work.....	261
22.16	Counterparts .....	262
22.17	Personal Property Securities Act.....	262

22.18	Vienna Convention .....	262
22.19	No Merger.....	263
22.20	Transfer of Functions or NSW Rail Assets .....	263
23.	NOTIFICATION OF CLAIMS .....	263
23.1	Notice of Change .....	263
23.2	Notice of Other Claims.....	264
23.3	Prescribed Notices.....	264
23.4	Register of potential claims .....	265
23.5	Submission of Claims .....	265
23.6	Continuing Events .....	265
23.7	Bar.....	265
23.8	Other Provisions Unaffected .....	266
24.	REPRESENTATIONS AND WARRANTIES .....	266
24.1	Principal representations and warranties .....	266
24.2	CSM Contractor Representations and Warranties.....	266
24.3	Repetition of representation and warranties .....	267



THIS DEED is made on 6 MARCH 2018

**BETWEEN:**

- (1) **Transport for NSW** ABN 18 804 239 602 a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (2) **Laing O'Rourke Australia Construction Pty Ltd** (ACN 112 099 000) of Level 4, 100 Arthur Street, North Sydney NSW 2060 (**CSM Contractor**).

**RECITALS:**

- (A) The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW government and the people of New South Wales.
- (B) The Project Works are a critical component of Sydney Metro City & Southwest. The successful completion of the Project Works will require a high level of co-operation and collaboration between the CSM Contractor and other works being procured by the Principal.
- (C) Following the completion of a request for proposal process, the Principal selected the CSM Contractor as the successful proponent for the delivery of the Project Works.
- (D) The Principal and the CSM Contractor now wish to enter into this Contract to record the terms on which the Project Works will be designed, constructed, tested, commissioned and handed over by the CSM Contractor to the Principal.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

In this Contract, unless the context otherwise indicates:

**ABC Commissioner** means the commissioner of the Australian Building and Construction Commission referred to in subsection 15(1) of the BCIIP Act.

**ABCC** means the body referred to in subsection 29(2) of the BCIIP Act.

**Accepted Defect** means a Defect (other than a Minor Defect) in relation to which the Principal has issued a direction under clauses 12.2(a)(iii), 12.2(a)(iv) or 12.2(a)(v) prior to the Date of Construction Completion of any Portion.

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

**Accredited Site Auditor** means a person who is accredited as a site auditor under the *Contaminated Land Management Act 1997* (NSW).

**Acoustics Advisor** means the person identified in Schedule A1 as the acoustics advisor appointed by the Principal, or any replacement notified to the CSM Contractor by the Principal's Representative.

**Additional Third Party Agreement** has the meaning given in clause 3.6.

**Additional Track Possession or Power Isolation** has the meaning given in clause 7.19(g).

**Adjoining Owner** means an entity identified in Schedule E8 as an "Adjoining Owner".

**Adjoining Property** means a property specified in Schedule E8.

**Adjoining Property Access Licence** means a licence on the terms set out at clause 2 of the Pro-forma Adjoining Property Owner Agreement.

**Adjoining Property Easement** means an:

- (a) Easement for Crane Access;
- (b) Easement for Rock Anchors; or
- (c) Easement for Scaffolding.

**Adjoining Property Owner Agreement** means an agreement with an Adjoining Owner substantially in the form of the Pro-forma Adjoining Property Owner Agreement (or such other form as the Principal may agree with any Adjoining Owner).

**Advertising and Retail Work** means work of a similar nature to the works set out in Appendix B13 and B14 of the SWTC which are over above the minimum requirements set out in Appendix B13 and B14 of the SWTC.

**Agreed Defect** means a Defect (other than a Minor Defect) that:

- (a) the Principal and the CSM Contractor agree in writing; or
- (b) the Principal's Representative otherwise directs,

does not need to be rectified in order to achieve Construction Completion of a Portion.

**Approved Subcontract Agreement** means:

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

**ASA Authorisation** means an 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 can be found on [www.asa.transport.nsw.gov.au](http://www.asa.transport.nsw.gov.au).

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

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

**Asset Lifecycle Services** means the aspects of the CSM Contractor's Activities which relate to the Asset Lifecycle of NSW Rail Assets.

**Asset Management Information** means the information required to be delivered by the CSM Contractor as set out in Appendix B12 to the SWTC and MR-T.

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

**Associates** means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excludes:
  - (i) the Independent Certifier;
  - (ii) the Environmental Representative;
  - (iii) the CSM Contractor and its Subcontractors;
  - (iv) any Interface Contractors and their respective subcontractors;
  - (v) the Operator and its subcontractors; and
  - (vi) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (v) above; and
- (b) in respect of the CSM Contractor, its Subcontractors, each entity that comprises the CSM Contractor, the Parent Company Guarantors and any of the respective employees, agents, contractors or officers of the CSM Contractor, its Subcontractors and the Parent Company Guarantors (excluding the Independent Certifier and its employees, agents, consultants and officers).

**ATSB** means the Australian Transport Safety Bureau constituted under the *Transport Safety Investigation Act 2003 (Cth)*.

**Ausgrid** means the statutory state owned corporation of that name established under the *Energy Services Corporations Act 1995 (NSW)*.

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

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

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

- (a) to carry out the CSM Contractor's Activities;
- (b) to conduct work in the Rail Corridor;

- (c) to deal with, transport or dispose of Contamination or Waste; or
- (d) in connection with the Site and any Extra Land (but only to the extent required for the performance of the CSM Contractor's Activities);
- (e) for the use and occupation of:
  - (i) any Portion (both individually and in combination with any earlier completed Portions) after Construction Completion of the Portion; or
  - (ii) the Project Works after Construction Completion of every Portion;
- (f) otherwise to comply with Law,

and for the avoidance of doubt includes:

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

but does not include:

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

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

**Bank Bill Rate** is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if there is a manifest error in the calculation of the average bid rate under paragraph (a) or if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the CSM Contractor and the Principal having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

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

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

**Building Management Control System** has the meaning given in Appendix B04B of the SWTC.

**BMCS Work** means that part of the CSM Contractor's Activities which includes the installation of a Building Management Control System for the Metro Station Works and the Central Station Works (each as defined in the SWTC) in accordance with Appendix B04B of the SWTC.

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

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

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

**Certified Environmental Consultant** means an environmental consultant that holds current certification as:

- (a) a "Certified Practitioner: Site Assessment and Management" from Site Contamination Practitioners Australia; or
- (b) a "Certified Environmental Practitioner" in the "Contaminated Land Specialist" category from the Environment Institute of Australia and New Zealand.

**Chain of Responsibility Management Plan** means the Contract Management Plan which is required to be provided and implemented by the CSM Contractor pursuant to, and in accordance with, the MRs and the Planning Approval.

**Chain of Responsibility Provisions** refers to any section of the Heavy Vehicle National Law under which the CSM Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

**Chair** means the chairperson of the IDAR Panel as appointed under the IDAR Panel Agreement from time to time.

**Change** means any change to the CSM Contractor's Activities, the Project Works or the Temporary Works including:

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

but it excludes:

- (d) any Provisional Sum Work; and
- (e) any changes to the Project Works or the Temporary Works that are required as a result of the exercise of an Option by the Principal's Representative under clause 10.3.

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

- (a) was published or of which public notice had been given (even as a possible change in the Codes and Standards); or

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

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

**Change in Planning Approval** means a change:

- (a) in a Planning Approval which has been obtained by the Principal which is in existence as at the date of this Contract;
- (b) which is not caused or contributed to by an act or omission of the CSM Contractor; and
- (c) which occurs after the date of this Contract.

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

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

compliance with which:

- (c) has a direct effect on the CSM Contractor carrying out the CSM Contractor's Activities; and
- (d) directly results in an increase or decrease in the CSM Contractor's costs of carrying out the CSM Contractor's Activities, or a delay to the CSM Contractor achieving:
  - (i) Construction Completion of a Portion by the relevant Date for Construction Completion; or
  - (ii) a Specified Milestone by the Date for Milestone Achievement; or
  - (iii) Completion of Portion 3 by the Date for Completion of Portion 3,

in accordance with clause 14.7(a), 14.7(c) or 14.7(e),

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

- (e) in respect of Tax;
- (f) which was caused or contributed to by any act or omission of the CSM Contractor;
- (g) which, as at the date of this Contract:
  - (i) was published or of which public notice had been given (even as a possible amendment, repeal or change in an existing Law or a possible new Law); or
  - (ii) a person experienced and competent in the delivery of the works and services similar to the Project Works or the CSM Contractor's Activities would have reasonably foreseen or anticipated.

**Change Order** has the meaning given in clause 10.2

**Change Proposal Request** has the meaning given in clause 10.1.

**Claim** includes any claim, demand, action, proceeding or suit of any kind whatsoever for an increase in any component of the Target Cost (Design) or the Target Cost (MPR), for payment of money (including costs, expenses, losses or damages), for an extension of time to a Date for Construction Completion or for any other form of relief:

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

**Code for the Tendering and Performance of Building Work** means the building code issued under section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Codes and Standards** means:

- (a) the codes and standards specified in section 3.2 of the SWTC; and
- (b) the Code of Practice for Procurement (January 2005), NSW Government Policy on Aboriginal Participation in Construction (May 2015), NSW Code, NSW Guidelines, Environmental Management Systems Guidelines (3rd edition) (May 2014), WHS Guidelines, Training Management Guidelines (February 2009), Quality Management System Guidelines for Construction (August 2013), GREP and any other NSW Government guidelines and requirements specified or required by this Contract.

**Collateral Warranty Deed Poll** means the deed poll entitled "Collateral Warranty Deed Poll" to be executed by the CSM Contractor in favour of the Operator in substantially the same form as Schedule A24.

**Commissioning** has the meaning given to that term in the MR Prelude.

**Commonwealth** means the Commonwealth of Australia.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Completion** means:

- (a) in respect of all Portions, the stage in the execution of the CSM Contractor's Activities in respect of a Portion when:
  - (i) Construction Completion has been achieved in respect of the Portion;
  - (ii) the CSM Contractor has given to the Principal's Representative (with a copy to the Operator if required by the Principal) all Asset Management Information (including as-built drawings) which has not been rejected by the Principal's Representative in accordance with clause 8.15(c) relating to that Portion; and
  - (iii) the CSM Contractor has corrected all Minor Defects and Agreed Defects that are listed in the Independent Certifier's Notice of Construction Completion; and
  - (iv) the CSM Contractor has done everything else which is stated to be a condition precedent to Completion of the Portion or which the CSM Contractor is otherwise expressly required by this Contract to do before Completion of the Portion; and
  
- (b) in respect of Portion 3, the stage in the execution of the CSM Contractor's Activities when the CSM Contractor has:
  - (i) rectified all Defects identified after Construction Completion (including any Defects identified in a Pre-Completion Notice);
  - (ii) completed all Post Construction Completion Activities;
  - (iii) carried out and passed all tests which are required under this Contract to be carried out and passed prior to Completion of Portion 3 being achieved;
  - (iv) carried out and passed all tests which must necessarily be carried out and passed before Portion 3 can be used for its intended purpose and to verify Portion 3 is in the condition this Contract requires it to be in at Completion of Portion 3;
  - (v) obtained all Approvals that it is required under this Contract to obtain prior to Completion of Portion 3 being achieved and provided those Approvals to the Principal's Representative;
  - (vi) given to the Principal's Representative (with a copy to any of the Interface Contractors as required by TfNSW) all documents or other information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of Portion 3 which:
    - (A) are required by this Contract to be given to the Principal's Representative prior to Completion of that Portion being achieved; or
    - (B) must necessarily be handed over before that Portion can be used for its intended purpose,including copies of all documentation in accordance with the requirements of the SWTC;



- (vii) provided the training referred to in Appendix B12 to the SWTC to the reasonable satisfaction of the Principal's Representative;
- (viii) removed all rubbish, surplus materials (including Construction Materials) and Temporary Works from the relevant parts of the Site and Extra Land relevant to that Portion in accordance with clause 3.12;
- (ix) removed all Construction Plant from the parts of the Site that relate to Portion 3, other than any Construction Plant necessary to facilitate the handover of Portion 3 to the Principal or the Operator or which is required to be retained on the Site in accordance with clause 3.13 (where approved by the Principal's Representative in accordance with clause 3.13);
- (x) given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information (including as-built drawings) which has not been rejected by the Principal's Representative in accordance with clause 8.15(c) relating to Portion 3 to the extent not already provided;
- (xi) provided the Principal with all spare parts, consumables and special tools as required by the SWTC;
- (xii) executed the Collateral Warranty Deed Poll; and
- (xiii) completed any Deferred Activities.

**Completion Steering Committee** means the group referred to in clause 13.23.

**Completion Working Group** means the group referred to in clause 13.24.

**Confidentiality Undertaking** means a confidentiality undertaking in the form set out in Schedule B7.

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

**Configuration Control Board** means the board established by TfNSW to manage configuration changes for the Sydney Metro delivery office in accordance with the Configuration Management Framework.

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

**Consequential Loss** means any:

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

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

**Construction Completion** means the stage in the execution of the CSM Contractor's Activities in respect of a Portion when:

- (a) the Portion is complete in accordance with this Contract except for any:
  - (i) Minor Defects;

- (ii) Accepted Defects; and
- (iii) Agreed Defects;
- (b) the CSM Contractor has rectified all Mandatory Defects;
- (c) the CSM Contractor has:
  - (i) carried out and passed all tests that:
    - (A) are required under this Contract to be carried out and passed before the Portion reaches Construction Completion; or
    - (B) must necessarily be carried out and passed before the Portion can be used for its intended purpose and to verify that the Portion is in the condition this Contract requires it to be in at Construction Completion;
  - (ii) obtained all Authority Approvals that it is required under this Contract to obtain before Construction Completion of the Portion and provided such Authority Approvals to the Principal's Representative;
  - (iii) obtained from the Independent Certifier a certificate in the form of Schedule B9 for all Design Stage 3 Design Documentation for that Portion;
  - (iv) given to the Principal's Representative (with a copy to the Operator or any other party as required by the Principal) all documents and information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Portion which:
    - (A) are required by this Contract to be given to the Principal's Representative before Construction Completion of the Portion; or
    - (B) must necessarily be handed over before the Portion can be used for its intended purpose,

including copies of all documentation in accordance with the requirements of Appendix B12 of the SWTC and MR-T, but not including Asset Management Information (including as-built drawings) as directed by the Principal's Representative;
  - (v) executed a certificate in the form of Schedule B4 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
  - (vi) provided the training required by the SWTC and the MRs to the reasonable satisfaction of the Principal's Representative; and
  - (vii) removed all Construction Plant from the parts of the Site that relate to the Portion, other than any Construction Plant necessary to facilitate the handover of the Portion (or, if approved in writing by the Principal's Representative, any other Portion) to the Principal or which is required to be retained on the Site in accordance with clause 3.12(c) (where approved by the Principal's Representative in accordance with clause 3.12(c));
- (d) the CSM Contractor has, in respect of any Extra Land occupied or used in connection with the Portion, provided the Principal's Representative with:
  - (i) unless not required by the Principal's Representative, a properly executed certificate in the form of Schedule B6 or properly executed releases on

terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or

- (ii) statements under clause 7.4(c)(iii); and
- (e) submitted to the Principal's Representative the survey certificate referred to in clause 7.17 with respect to the relevant Portion;
- (f) removed all rubbish, surplus materials (including Construction Materials) and Temporary Works from the relevant parts of the Site and Extra Land relevant to that Portion in accordance with clause 3.12; and
- (g) the CSM Contractor has submitted all information required to be submitted by it under MR-T of sufficient quality to support the Gate 5 submission that permits the Principal to gain a TNAC acceptance notice;
- (h) the CSM Contractor has done everything else which is stated to be a condition precedent to Construction Completion of the Portion or which the CSM Contractor is otherwise expressly required by this Contract to do before Construction Completion of the Portion.

**Construction Environmental Management Plan** means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the CSM Contractor pursuant to, and in accordance with, the MRs and the Planning Approval.

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

**Consultation** has the meaning given to that term in clause 20.3.

**Contamination** means the presence in, on or under land or water or any other aspect of the Environment or a building of:

- (a) a substance (whether occurring naturally or otherwise) which is at a concentration above the concentration at which the substance (whether occurring naturally or otherwise) is normally present in, on or under land or water 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) a Hazardous Chemical.

**Contract** means this contract between the Principal and the CSM Contractor in respect of the Project Works.

**Contract Documentation and Materials** has the meaning given in clause 9.13(b).

**Contract Management Plan** means the documents required to be provided and implemented by the CSM Contractor pursuant to MR-PA and as developed, amended or updated from time to time in accordance with the Contract.

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

- (a) the Design Fee;
- (b) the Management Fee;
- (c) the Preliminaries Fee;

- (d) the Reimbursable Costs;
- (e) the amounts paid to the CSM Contractor in respect of Provisional Sum Work; and
- (f) the amounts paid to the CSM Contractor in respect of the Post Construction Completion Activities and the Post Completion Activities.

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

**Cost Incentive (Design)** means the amounts (if any) to which the CSM Contractor may become entitled to or which may become payable by the CSM Contractor under clause 15.11(a).

**Cost Incentive (MPR)** means the amounts (if any) to which the CSM Contractor may become entitled to or which may become payable by the CSM Contractor under clause 15.11(b).

**Cost Plan** means the cost plan prepared in accordance with the requirements for the cost plan set out in Part 1 of Schedule F7, the initial draft of which is set out in Part 2 of Schedule F7.

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

**CSM Contract Documents** means:

- (a) this Contract;
- (b) the Independent Certifier Deed;
- (c) the CSM Operator Cooperation and Integration Deed;
- (d) each CSM Interface Contractor Cooperation and Integration Deed;
- (e) the Deeds of Disclaimer;
- (f) the Interface Agreement Deed Poll (to be executed by the CSM Contractor in the form of Schedule A8);
- (g) the SLR Deed Poll (to be executed by the CSM Contractor in the form of Schedule A22);
- (h) the CSM Contractor Deed Poll (to be executed by the CSM Contractor in the form of Schedule A9);
- (i) the Collateral Warranty Deed Poll; and
- (j) the SMCSW Master Interface Protocols Deed Poll.

**CSM Contractor** means the person named as the CSM Contractor in Schedule A1.

**CSM Contractor Insurance Policy** means a policy of insurance required under clause 18.4.

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

- (a) the Design Work, the Preliminaries, the Reimbursable Work and the correction of Defects; and

- (b) the activities covered by the Management Fee;
- (c) without limiting paragraph (a):
  - (i) the design, construction, testing, Commissioning and hand-over of the Project Works;
  - (ii) the provision of Temporary Works and Construction Plant;
  - (iii) anything incidental or ancillary to the obligations in paragraphs (i) and (ii); and
  - (iv) the Post Construction Completion Activities and the Post Completion Activities.

**CSM Contractor's Initial Program** means the program in Schedule E6.

**CSM Contractor's Program** means the program prepared and provided by the CSM Contractor in accordance with clause 14.2, as developed and updated in accordance with clause 14.2 from time to time.

**CSM Contractor's Representative** means the person notified to the Principal's Representative in accordance with clause 13.4(a) as being the CSM Contractor's Representative.

**CSM Contractor's Tender Design** means the CSM Contractor's tender design for the Project Works as set out in Schedule C2.

**CSM Interface Contractor Cooperation and Integration Deed** means a deed to be entered into between the Principal, the CSM Contractor and an Interface Contractor substantially in the form of Schedule A17.

**CSM Operator Cooperation and Integration Deed** means a deed to be entered into between the Principal, the CSM Contractor and the Operator substantially in the form of Schedule A18.

**Date for Completion** means:

- (a) in respect of a Portion (other than Portion 3) the date that is [REDACTED] days after the Date of Construction Completion of the relevant Portion; and
- (b) in respect of Portion 3:
  - (i) [REDACTED] or
  - (ii) where, in respect of Portion 3, an extension of time for Completion is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting therefrom.

**Date for Construction Completion** means, in respect of a Portion:

- (a) at the date of this Contract, the applicable date specified for the Portion in Schedule A2; or
- (b) where, in respect of a Portion, an extension of time for Construction Completion is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting therefrom.

**Date for Early Completion Payment** means, in respect of each Milestone, the date specified as the Date for Early Completion Payment for the relevant Milestone in table 2 of Schedule A2.

**Date for Milestone Achievement** means, in respect of a Milestone:

- (a) at the date of this Contract, the applicable date specified as the date for Milestone Achievement for the relevant Milestone in table 2 of Schedule A2; or
- (b) where, in respect of a Specified Milestone, an extension of time for Milestone Achievement is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting therefrom.

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

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

**Date of Milestone Achievement** means the date notified in a Notice of Milestone Achievement as the date Milestone Achievement was achieved.

**Declaration of Compliance** means a declaration in substantially the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code.

**Deed of Disclaimer** means each deed of disclaimer signed by the CSM Contractor in favour of the Principal, a copy of which appears in Schedule A13.

**Defect** means any:

- (a) defect, deficiency, fault, error or omission in the Project Works or Temporary Works; or
- (b) any:
  - (i) cracking, shrinkage, movement or subsidence in the Project Works or Temporary Works; or
  - (ii) other aspect of the Project Works, Temporary Works or CSM Contractor's Activities,

which is not in accordance with the requirements of this Contract,

but does not include:

- (c) any damage caused to the Project Works after the Date of Construction Completion to the extent that damage was not caused or contributed to by the CSM Contractor or its Associates; or
- (d) any of the matters in paragraph (a) or (b) arising in respect of the Project Works after the Date of Construction Completion or, in respect of Portion 3, the Date of Completion, due to a failure to operate and maintain the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information.

**Defects Correction Period** means the period referred to in clause 12.6 or clause 12.7(a), as the case may be.

**Deferred Activities** has the meaning given in clause 14.16(h)(i).

**Deferred Activities Estimate** means the CSM Contractor's estimate of the Reimbursable Cost Element Adjustment, Target Cost (Design) Adjustment and Preliminaries Fee Adjustment (including sufficient information to support the estimate) arising from deferring the relevant CSM Contractor's Activities until after the relevant Date for Construction Completion.

**Deferred Activities Proposal** means:

- (a) a proposal issued by the CSM Contractor in accordance with clause 14.16(d); or
- (b) a response issued by the CSM Contractor in accordance with clause 14.16(f).

**Demolition and Construction Licence** means a licence on the terms set out at clause 6 of the Pro-forma Adjoining Property Owner Agreement.

**Design Agreement** means an agreement which is entered into by the CSM Contractor with a Designer for the Design Work which has been approved in writing by the Principal's Representative under clause 11.18.

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

**Design Fee** means the aggregate in respect of:

- (a) Design Work other than Self-Performed Design Work, all amounts properly and actually incurred and payable by the CSM Contractor to Designers for the performance of Design Work in accordance with the Design Agreements; and
- (b) Self-Performed Design Work (if any):
  - (i) to the extent that the CSM Contractor and the Principal's Representative have agreed that the Self-Performed Design Work will be subject to a fixed price, that agreed amount; and
  - (ii) otherwise, the sum ascertained by multiplying the number of hours the design resource is employed in the execution of the Self-Performed Design Work for any given period under the Contract by:
    - (A) the applicable rate in Schedule F2; or
    - (B) where there is no applicable agreed rate in in Schedule F2 or otherwise agreed between the parties in writing, a reasonable rate as determined by the Principal's Representative;

but excluding, in any event, all Excluded Costs (Design).

**Design Management Plan** means the Contract Management Plan referred to as the Engineering Management Plan in the MRs, as updated from time to time in accordance with clause 13.11.

**Design Notice** has the meaning given in Schedule E10.

**Design Stage** means each of Design Stage 1, Design Stage 2 and Design Stage 3.

**Design Stage 1** means stage 1 of the development of the Design Documentation as described in MR-T and MR-Prelude.

**Design Stage 2** means stage 2 of the development of the Design Documentation as described in MR-T and MR-Prelude.

**Design Stage 3** means stage 3 of the development of the Design Documentation as described in MR-T and MR-Prelude.

**Design Work** means the design work to be carried out by the CSM Contractor in designing the Project Works and Temporary Works, including technical support during construction and those tasks defined in Schedule C4.

**Designer** means all designers identified in Schedule A1 engaged by the CSM Contractor in relation to performing the Design Work.

**Dispute** means any dispute, controversy or claim arising out of, relating to or in connection with this Contract or the Project Works, the Temporary Works, the CSM Contractor's Activities, including any question regarding its validity, existence or termination, but excluding a failure by a party to comply with any final and binding decision of the Expert.

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

**Draft Third Party Agreement** has the meaning given in clause 3.6(a)(iii)(A) and includes the Pro-forma Adjoining Property Owner Agreement.

**DSI Contract** means the contract to be entered into between the CSM Contractor and the L&E Contractor in respect of the Lifts and Escalators Work.

**Early Completion Payment** means the amounts (if any) to which the CSM Contractor may become entitled to under Schedule A2 in respect of a Milestone.

**Easement for Crane Access** means an easement for crane access in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Easement for Rock Anchors** means an easement for rock anchors in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Easement for Scaffolding** means an easement for scaffolding in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**East Concourse** has the meaning given in the SWTC.

**ENM** has the meaning given in NSW EPA Excavated Natural Material Order 2014.

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

- (a) land, air and water;
- (b) any layer of the atmosphere;



- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

**Environmental Documents** means the documents listed as such in Schedule E3 and Appendix B8 of the SWTC.

**Environmental Representative** means the person identified in Schedule A1 as the environmental manager appointed by the Principal, or any replacement notified to the CSM Contractor by the Principal's Representative.

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

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

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

**Excepted Risk** means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage, in each case occurring within Australia;
- (b) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth)); and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

in each case occurring within Australia and only to the extent not caused by the CSM Contractor or its Associates.

**Excluded Claim** means any claim:

- (a) with respect to a Change in Law under clause 6.4;
- (b) for a Change directed in accordance with clause 10.2 or a direction by the Principal's Representative to which clause 23.1 applies;
- (c) for an extension of time under clause 14.8; or
- (d) for payment under clause 15.

**Excluded Costs** means any of the following amounts paid or payable by the CSM Contractor or incurred by the CSM Contractor:

- (a) amounts incurred in correcting Defects, including amounts paid or payable by the CSM Contractor to any Subcontractors for correcting Defects;
- (b) amounts (including damages) paid or payable by the CSM Contractor to any Subcontractors or third party by reason of any breach of contract or other wrongful act or omission by the CSM Contractor including a breach by the CSM Contractor of the Contract, except to the extent that such breach or wrongful act or omission

was directly caused by any breach of contract or other wrongful act or omission of the Principal;

- (c) subject to clause 18.1(e), amounts incurred in carrying out any replacement, making good or repair under clause 18.16 (including any excesses and deductibles under any insurances amounts which are recovered or but for the CSM Contractor's failure to comply with the relevant insurance policy would have been reimbursed under insurance policies, and any amounts paid or payable by the CSM Contractor to any Subcontractors);
- (d) any legal, expert or other consultants costs incurred by the CSM Contractor arising out of or in connection with any Approved Subcontractor Agreement other than as provided in clause 11.11;
- (e) other amounts not properly incurred in respect of the execution of the Reimbursable Work or which the Contract provides are to be borne or paid by the CSM Contractor or to be a debt due from the CSM Contractor to the Principal or which are payable by the CSM Contractor to the Principal under any indemnity;
- (f) costs which the CSM Contractor cannot substantiate on an arm's length or Open Book Basis;
- (g) any costs attributable to the termination of a Pre-Approved Subcontractor and the engagement of a replacement subcontractor;
- (h) amounts in respect of which the Management Fee, Design Fee and the Preliminaries Fee are paid or payable;
- (i) liquidated damages;
- (j) amounts paid or payable under any indemnity in this Contract;
- (k) amounts which are recovered or but for the CSM Contractor's failure to comply with the relevant insurance policy would have been reimbursed under insurance policies;
- (l) amounts payable by the CSM Contractor under the IDAR Panel Agreement; and
- (m) the following amounts in respect of Lifts and Escalators Work:
  - (i) any increase in the contract sum of the DSI Contract as the result of a change directed by the CSM Contractor under the DSI Contract, except to the extent that such change was required as the result of a Change directed by the Principal under this Contract; and
  - (ii) any amounts payable to the L&E Contractor in connection with the use of any lift as a builder's lifts following practical completion.
- (n) other amounts stated in any other provision of this Contract:
  - (i) to not be "Reimbursable Costs";
  - (ii) for which the Principal is expressly stated to not be liable for; or
  - (iii) to be at the CSM Contractor's cost.

**Excluded Costs (Design)** means any of the following amounts paid or payable by the CSM Contractor or incurred by the CSM Contractor:

- (a) amounts incurred in correcting defective Design Work, including amounts paid or payable by the CSM Contractor to any Designers for correcting defective Design Work;
- (b) amounts (including damages) paid or payable by the CSM Contractor to any Designers by reason of any breach of contract or other wrongful act or omission by the CSM Contractor including a breach by the CSM Contractor of the Contract, except to the extent that such breach or wrongful act or omission was directly caused by any breach of contract or other wrongful act or omission of the Principal;
- (c) any legal, expert or other consultants costs incurred by the CSM Contractor arising out of or in connection with any Design Agreement other than as provided in clause 11.11;
- (d) other amounts not properly incurred in respect of the execution of the Design Work or which the Contract provides are to be borne or paid by the CSM Contractor or to be a debt due from the CSM Contractor to the Principal or which are payable by the CSM Contractor to the Principal under any indemnity;
- (e) costs which the CSM Contractor cannot substantiate on an arm's length or Open Book Basis;
- (f) amounts in respect of which the Management Fee, Reimbursable Costs and the Preliminaries Fee are paid or payable;
- (g) amounts paid or payable under any indemnity in this Contract;
- (h) amounts which are recovered or but for the CSM Contractor's failure to comply with the relevant insurance policy would have been reimbursed under insurance policies; and,
- (i) other amounts stated in any other provision of this Contract:
  - (i) for which the Principal is expressly stated to not be liable for; or
  - (ii) to be at the CSM Contractor's cost.

**Exclusion Sanction** has the meaning given to that term in subsection 3(1) of the Building Code.

**Existing Operations** means:

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

on or in the vicinity of the Site.

**Existing Operator** means:

- (a) RailCorp;
- (b) Sydney Trains;

- (c) NSW Trains;
- (d) RMS;
- (e) Ausgrid;
- (f) Sydney Water;
- (g) Telstra;
- (h) Jemena; or
- (i) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and the Utility Services) or undertakes any business or operation on or in the vicinity of the Site,

and any of their related bodies corporate (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) and contractors.

**Expert** means the person appointed to determine a Dispute pursuant to clause 20.5.

**Extended Track Possession** means a track possession configuration set out in Table 3 of Schedule E2.

**Extension Event** means:

- (a) an act or omission of the Principal, the Principal's Associates or the Principal's Representative (including any breach of contract or Change directed by the Principal's Representative) but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by the Contract; or
- (b) [REDACTED]
- (c) [REDACTED]
- (d) the cancellation of a Track Possession:
  - (i) less than 12 weeks prior to the time at which it was planned to commence in accordance with Schedule E2; or
  - (ii) with more than 12 weeks' notice prior to the time at which it was planned to commence in accordance with Schedule E2, but without the provision of an alternative Track Possession at a time the CSM Contractor is reasonably able to utilise in substitution for the cancelled Track Possession;
- (e) compliance with any Change in Codes and Standards as described in clause 6.3;
- (f) compliance with any Change in Law as described in clause 6.4;
- (g) a Change in Planning Approval, but only where the change has a direct effect on the CSM Contractor carrying out the CSM Contractor's Activities and necessitates a Change as described in clause 6.5;
- (h) a legal challenge to the assessment, determination or modification of a Planning Approval as described in clause 6.6(b);

[REDACTED]

[REDACTED]

[REDACTED]

- (j) a failure by the Principal to provide access to the Site in accordance with clause 7.1 (including failure to provide an Extended Track Possession, but not including cancellation of a Track Possession);
- (k) the discovery of Contamination originating from former gas works as described in clause 7.7(d);

[REDACTED]

[REDACTED]

- (n) the:
  - (i) Configuration Change Acceptance Notice has not been obtained as contemplated by clause 9.8(n); or
  - (ii) the TNAC acceptance notice for a Gate 5 design package is not issued within 10 Business Days after submission to the TNAC;
- (o) any Change under clause 10;
- (p) suspension of the Project Works by the Principal unless the direction to suspend is as a result of the CSM Contractor's failure to perform its obligations in accordance with this Contract, as described in clause 14.13;
- (q) a Force Majeure Event;
- (r) a Native Title Claim;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Extra Land** means the land referred to in clause 7.4.

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

**Final Design Documentation** means any Design Documentation which:

- (a) the CSM Contractor is entitled to use for construction in accordance with clause 9.10(a); or
- (b) has been amended by a Change directed or approved by the Principal's Representative in accordance with clause 10.

**Final Inspection** has the meaning given to that term in clause 12.11(a).

**Final Sydney Trains Works Inspection** has the meaning given in clause 12.12.

**Financial Auditor** means the financial auditor appointed under clause 8.14(c).

**Force Majeure Event** means any of the following:

- (a) an Excepted Risk;
- (b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;
- (c) an earthquake occurring within Australia;
- (d) a flood which might at the date of this Contract be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia; or
- (e) a fire or explosion resulting from an event referred to in paragraphs (a) to (d) (inclusive) of this definition occurring within Australia

which:

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

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

**Gate 5** means the configuration gate for asset acceptance as detailed in the TFNSW Configuration Management Plan.

**General Conditions** means clauses 1 to 24 of this Contract.

**General Solid Waste** means Contamination which is general solid waste (non putrescible) as defined in the Department of Environment, Climate Change and Water NSW Waste Classification Guidelines dated December 2009.

**Global Safety Interface Agreement** means the Third Party Agreement of that name set out in Schedule E5.

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

**GRC** means glassfibre reinforce concrete.

**GRC Work** that part of the CSM Contractor's Activities which requires the provision of GRC in the North South Concourse and the East Concourse in accordance with Schedule C2.

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

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

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

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

**GST Legislation** has the meaning given in clause 15.14(i)(ii).

**Hand Back** occurs when the CSM Contractor provides Sydney Trains with a copy of the signed infrastructure booking authority certifying that the relevant infrastructure is booked back into use.

**Hazardous Chemical** has the meaning given in WHS Legislation.

**IDAR Panel** means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement, referred to in clause 20.

**IDAR Panel Agreement** means the agreement which appears in Schedule A20.

**IDAR Panel Agreement Accession Deed Poll** means an accession deed poll substantially in the form of Schedule 1 of the IDAR Panel Agreement.

**IC Design Re-Review Period** is 5 Business Days.

**IC Design Review Period** means 20 Business Days after the date on which the Independent Certifier is provided with any Design Documentation for Design Stage 3 in accordance with clause 9.4(b).

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

- (a) any work health and safety or environmental or security incident including:
  - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW, ONRSR, or other work health and safety regulator;
  - (ii) an occurrence or set of circumstances as a consequence of which pollution (air, water, noise or land) or an adverse environmental impact has occurred or is likely to occur;
  - (iii) any fire or dangerous event on the Site or Extra Land;
  - (iv) a security breach;
  - (v) any unauthorised removal of trees;
  - (vi) any incident involving the community;
  - (vii) any accidents involving damage to persons or property occurring upon or in the vicinity of the Site or any Extra Land or in the supply chain where the Chain of Responsibility Provisions apply;
  - (viii) a non-compliance with an Authority Approval;
  - (ix) any public complaint; or
  - (x) any incident defined in MR-S;
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property or existing infrastructure, interruption to operations or environmental impairment,

and includes:

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

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

**Independent Certifier Deed** means the deed so titled dated on or about the date of this Contract between the Principal, the CSM Contractor and the Independent Certifier substantially in the form set out in Schedule B8.

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

**Independent Estimator** means the independent estimator appointed in accordance with clause 8.14(b).



**Independent Property Impact Assessment Panel** means the independent property impact assessment panel established by the Principal for the purpose of the Project in accordance with the requirements of the Planning Approval.

**Independent Safety Advisor** means the independent safety advisor appointed in accordance with clause 8.14(a), subject to replacement or termination in accordance with clause 8.14(a).

**Independent Safety Assessment** means an independent safety assessment undertaken in accordance with the Major Project Guidelines.

**Information Documents** means:

- (a) the items specified in Schedule A14; and
- (b) all other documents, core and other samples, Schedules and materials in any format or medium including any electronic form provided to the CSM Contractor unless expressly identified as forming part of this Contract,

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

**Initial Payment** means the initial payment to be made to the CSM Contractor as set out in Schedule F1.

**Initial Payment Security** means one or more unconditional undertakings issued by an Institution in the form of Schedule F3 (or by such other institution or in such other form as may be approved by the Principal) in favour of the Principal for the amount set out in Schedule A1.

**Insolvency Event** means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Contract for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
  - (ii) the corporation enters a deed of company arrangement or composition with creditors;
  - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
  - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;

- (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
  - (vi) a sequestration order or winding up order is made in respect of the corporation;
  - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
  - (viii) a mortgagee of any property of the corporation takes possession of that property;
  - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets; or
- (e) any act which is done or event which is analogous or similar effect to any of the events in paragraphs (a) to (d).

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

**Institution** means:

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

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

**Interface Contractor** means an Other Contractor listed in Schedule A1 or otherwise identified by the Principal's Representative as an Interface Contractor that is carrying out, or that will carry out, Interface Work.

**Interface Management Plan** means the plan to be developed by the CSM Contractor in accordance with MR PA.

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

**Investigative Authority** means any Authority having a statutory right to investigate:

- (a) the CSM Contractor's Activities, the Project Works or the Project; or
- (b) any activities of the Principal which are affected by the CSM Contractor's Activities, the Project Works or the Project,

including ATSB, ONRSR and OTSI.

**Jemena** means Jemena Limited ABN 95 052 167 405.

**KPI Incentive** means the amounts (if any) to which the CSM Contractor may become entitled to under Schedule F6.

**L&E Contractor** means the contractor engaged by the Principal under a framework agreement and appointed by the CSM Contractor under the DSI Contract to perform the Lifts and Escalators Work.

**Latent Conditions** has the meaning given in clause 7.6.

**Law** means:

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

**LD Step-Up Date** has the meaning given in Schedule A2 in respect of each relevant Portion and Milestone.

**Legal Opinion** means a legal opinion:

- (a) from lawyers acceptable to the Principal, authorised to practice in the place of incorporation of the Parent Company Guarantor, stating that the Parent Company Guarantee provided under clause 5.12 is binding and enforceable against that Parent Company Guarantor;
- (b) in favour of the Principal; and
- (c) which is in a form reasonably satisfactory to the Principal.

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

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

**Lifts and Escalators Work** means the work to be performed by the L&E Contractor under the DSI Contract as set out in Schedule E10.

**Loss** means:

- (a) any cost, expense, fee, loss, damage, Liability, or other amount; and

- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential Loss.

**LWC Contractor** means a contractor appointed to perform LWC Works.

**LWC Works** means the:

- (a) TRK\_TUS-OHW-TRS Works;
- (b) HV Works;
- (c) TVS Works;
- (d) PSD Works;
- (e) RAD Works;
- (f) SIG Works;
- (g) CCS Works; and
- (h) COM Works,

each as defined in Schedule A1.

**Management Fee** means the lump sum amount set out in Schedule F1 as adjusted by any Management Fee Adjustment, which is on account of profit and costs and expenses related to off-site business functions of the CSM Contractor in respect of the Project Works, including the following:

- (a) financial, legal, human resources and commercial support;
- (b) executive management;
- (c) corporate infrastructure and support;
- (d) parent company fees;
- (e) corporate head office(s) running costs and payroll; and
- (f) attendance at meetings of the Management Review Group, the IDAR Panel and similar meetings (by the CSM Contractor's non-site personnel).

**Management Fee Adjustment** means an adjustment to the Management Fee in respect of a Management Fee Adjustment Event, as agreed by the parties or calculated in accordance with clause 4.5.

**Management Fee Adjustment Event** means any of the following:

■ [REDACTED]

■ [REDACTED]



**Mandatory Defect** means a Defect which has been notified by the Principal's Representative under clause 12.2(a) at any time before the date that is 28 days prior to the Date of Construction Completion of any relevant Portion.

**Milestone Achievement** means the stage in the execution of the CSM Contractor's Activities in respect of a Milestone when the specified parts of the Project Works as set out in Schedule A2 in respect of the relevant Milestone have been completed.

**Milestones** means the milestones as set out under Schedule A2 and **Milestone** means any one of them.

**Minor Defect** means a Defect which:

- (a) is capable of being corrected:
  - (i) after the relevant part of the Site has been handed over to the Principal; and
  - (ii) without causing delay or disruption to the activities that are to be performed by:
    - (A) the Operator under its contract with the Principal; or
    - (B) any Interface Contractor under its contract with the Principal;within the relevant part of the Site; and
- (b) the Independent Certifier determines the CSM Contractor has reasonable grounds for not promptly correcting prior to handover of the relevant Portion to the Principal,

but does not include a Mandatory Defect, an Accepted Defect or an Agreed Defect.

**Minor Non-Compliance** means a minor error, minor omission or minor non-compliance which:

- (a) does not:
  - (i) prevent the Project Works or the Temporary Works from being fit for their intended purpose; or
  - (ii) prevent the achievement of the performance requirements specified in the SWTC;
  - (iii) (in the case of Third Party Agreement Design Documentation for the Sydney Trains Interface Works only) interfere with Sydney Trains operations or activities or the safe operation of Sydney Trains' Facilities; and
- (b) the Independent Certifier determines the CSM Contractor has reasonable grounds for not promptly correcting prior to the certification required to be obtained under this Contract; or
- (c) the parties agree is a Minor Non-Compliance.

**Mitigation Measure** means a measure, action, standard or precaution to mitigate the impact of the Project Works as specified in the Sydney Metro City & South West Chatswood to Sydenham Preferred Infrastructure Report located on the NSW Department of Planning and Environment website <http://www.planning.nsw.gov.au>.

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

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

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

**Nominated Member** has the meaning given to that term in clause 20.3.

**Non-Contestable Unknown Specified Utility Services Work** means the work identified as Non-Contestable Unknown Specified Utility Services Work in Schedule A25.

**North South Concourse** has the meaning given in the SWTC.

**Notice of Completion** means a notice in the form of Schedule B11 issued by the Independent Certifier pursuant to clause 16.4(a)(ii)(A).

**Notice of Construction Completion** means a notice in the form of Schedule B10 issued by the Independent Certifier pursuant to clause 16.2(f)(i).

**Notice of Dispute** means a notice given under clause 20.4.

**Notice of Issue** means a notice given under clause 20.3.

**Notice of Milestone Achievement** means a notice in the form of Part 2 of Schedule B12 issued by the Independent Certifier pursuant to clause 17.2.

**NRT** means NRT Pty Ltd (ACN 166 610 313).

**NSW Code** has the meaning given in clause 8.12.

**NSW Guidelines** has the meaning given in clause 8.12.

**NSW Rail Assets** has the meaning assigned to it in the ASA Charter.

**NSW Trains** means NSW Trains, a body corporate constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

**ONRSR** means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

**Operator** means an entity that is engaged by the Principal to operate and, if required by the Principal, maintain all or part of the Project.

**Open Book Basis** means the provision of pricing, costing and other information to enable an assessment of actual costs and profit margins in a clear, transparent and fully auditable manner.

**Option** means any of the options listed in Schedule A3.

**Other Contractor** means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work on or about the Site, other than the CSM Contractor and its subcontractors of any tier involved in the CSM Contractor's Activities.

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

**OTS Project Deed** means the deed titled "North West Rail Link Operations, Trains and Systems Project Deed" between the Principal and NRT dated 15 September 2014.

**OTS Project Works** means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that NRT must, in accordance with the OTS Project Deed, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro Northwest, including equipment, systems (including all information and communications systems), hardware and software, stations, rolling stock, trackwork and support structures and the stabling yard and maintenance depot and control centre.

**OTS2 Project Deed** means a deed between the Principal and the Operator for the provision of the OTS2 Project Works and the performance of various services, including in particular the operation and maintenance of Sydney Metro City & Southwest and Sydney Metro Northwest.

**OTS2 Project Works** means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the Operator must, in accordance with the OTS2 Project Deed, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro City & Southwest.

**OTSI** means the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

**Outturn Cost (Design)** means the Contract Price less:

- (a) the Management Fee, the Preliminaries Fee and the Reimbursable Costs;
- (b) amounts paid for Provisional Sum Work under clause 11.17; and
- (c) amounts paid for Post Construction Completion Activities and Post Completion Activities under clause 15.1(a)(iii)(C).

**Outturn Cost (MPR)** means the Contract Price less:

- (a) the Design Fee;
- (b) amounts paid for Provisional Sum Work under clause 11.17; and
- (c) amounts paid for Post Construction Completion Activities and Post Completion Activities under clause 15.1(a)(iii)(C).

**Parent Company Guarantee** means the Deed which appears in Schedule F4.

**Parent Company Guarantor** means the entity identified in Schedule A1.

**Payment Claim** has the meaning given to it in clause 15.2(a) of this Contract.

**Payment Schedule** has the meaning given to it in section 14 of the SOP Act.

**PDCS** means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 22.1(b).

**Peak Hours** means the hours between 0600 and 0900 and 1600 and 1800 respectively on Monday to Friday (excluding public holidays).

**Permitted Use** means the investigation, design, construction, testing, commissioning and completion of the Project Works and the Temporary Works, the carrying out of the CSM



Contractor's Activities and the performance by the CSM Contractor of its other obligations under this Contract.

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

- (a) will not cost, or result in an increase to the cost of the Subcontract works of, more than [REDACTED];
- (b) will not cost, or result in an increase to the cost of the Subcontract works of, more than [REDACTED] when aggregated with the costs of all variations to the Subcontract or Subcontract works made up to that time;
- (c) will not extend the date for practical completion under the Subcontract by more than 5 Business Days for any single variation or more than 20 Business Days when aggregated with all variations made up to that time,

but which is not a variation to the Subcontract works:

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

**Planning Approval** means each of:

- (a) the Project Planning Approval (Chatswood to Sydenham);
- (b) any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning and Infrastructure (acting in their capacity as determining authority) under the EP&A Act in respect of the CSM Contractor's Activities; and
- (c) any Mitigation Measures and statements of commitment that are required to be complied with or fulfilled in the documents referred to in paragraphs (a) and (b).

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

**Portion** means a part of the CSM Contractor's Activities or Project Works, as described in Schedule A2 or as determined under clause 16.5(a) or directed under clause 16.5(a).

**Portion 3** means the Project Works described in "Portion 3" in Schedule A2.

**Post Completion Activities** means those CSM Contractor's Activities to be performed by the CSM Contractor after Completion of Portion 3 as described in Part 2 of Schedule C6.

**Post Construction Completion Activities** means those CSM Contractor's Activities to be performed by the CSM Contractor after Construction Completion (and prior to Completion) of Portion 3 as described in Part 1 of Schedule C6.

**Post Construction Completion Site** means:

- (a) the worksite area created by the new Metro Station, generally in the location in accordance with the SWTC;

- (b) the worksite area consisting of all areas of Central Station which are safely accessible without a Track Possession, including the concourses, buildings, platforms, substations, pedestrian and goods tunnels, and for which access is given for the purpose of construction works for Other Contractors under the procedure Principal Contractor Process for Construction Works within Sydney Trains' Railway Stations (SM PS-PW-318); and
- (c) from the Date of Construction Completion of the last Portion to reach Construction Completion, the worksite areas shown as Worksite A2, A3 and Y1 on the drawing "NWRLSRT-RPS-SCS-SR-DWG-000017-B Sheets 1 of 3" included in Schedule E1.

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

**PPS Law** means:

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

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

**Pre-Approved Subcontractor** means a subcontractor listed in Schedule A1 for the corresponding works which has been pre-approved by the Principal.

**Pre-Completion Notice** means the notice issued under clause 16.4(b)(v).

**Pre Step-Up Rate** has the meaning given in Schedule A2 in respect of each relevant Portion and Milestone.

**Preliminaries** means that part of the CSM Contractor's Activities other than the Design Work or Reimbursable Work, including those tasks or matters specified in Schedule C3.

**Preliminaries Fee** means the lump sum set out in Schedule F1 payable to the CSM Contractor for performing the Preliminaries, as adjusted for any Preliminaries Fee Adjustment Event.

**Preliminaries Fee Adjustment** means an adjustment to the Preliminaries Fee in respect of a Preliminaries Fee Adjustment Event, as agreed by the parties or calculated in accordance with clause 4.4.

**Preliminaries Fee Adjustment Event** means any of the following:

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

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



■ [REDACTED]

**Principal** means TfNSW.

**Principal Insurance Policy** means a policy of insurance required under clause 18.3.

**Principal Supplied Items** means the items listed in Schedule A16.

**Principal's Design Re-Review Period** means the number of Business Days taken by the CSM Contractor to re-submit the Design Documentation rejected under clause 9.8(c)(ii)(A) or the Asset Management Information rejected under clause 8.15(c)(i) (as applicable), provided that:

- (a) if the CSM Contractor has taken less than 5 Business Days to re-submit the Design Documentation or Asset Management Information (as applicable), the period is 5 Business Days; or
- (b) if the CSM Contractor has taken more than 10 Business Days to re-submit the Design Documentation or Asset Management Information (as applicable), the period is 10 Business Days.

**Principal's Representative** means:

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

**Pro-forma Adjoining Property Owner Agreement** means the pro-forma adjoining property owner agreement set out in Schedule E5.

**Pro-forma Easement for Crane Access** means the pro-forma easement terms set out in clause 2 of Schedule E7.

**Pro-forma Easement for Rock Anchors** means the pro-forma easement terms set out in clause 1 of Schedule E7.

**Pro-forma Easement for Scaffolding** means the pro-forma easement terms set out in clause 3 of Schedule E7.

**Prohibited Subcontractor** means:

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

**Project** means the Sydney Metro City & Southwest project which will, as part of the completion of Sydney Metro City & Southwest, include the integration of Sydney Metro Northwest to form a single end to end metro system from Cudgegong Road to Bankstown and the operation of the same.

**Project Bank Account** means the bank account as notified in writing by the CSM Contractor to the Principal, held in the CSM Contractor's name, to which the Principal is a signatory.

**Project Health and Safety Management Plan** means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the CSM Contractor pursuant to the MRs and which must:

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

**Project Planning Approval (Chatswood to Sydenham)** means:

- (a) the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 9 January 2017, a copy of which is located on the NSW Department of Planning and Environment website <http://www.planning.nsw.gov.au>; and
- (b) includes all:
  - (i) conditions to such approval; and
  - (ii) documents incorporated by reference,

as modified from time to time.

**Project Values** means the values that will guide the delivery of the Project, being:

- (a) safety & wellbeing;
- (b) collaboration;
- (c) integrity;
- (d) innovation;
- (e) excellence; and
- (f) achievement.

**Project Works** means the physical works which the CSM Contractor must design, construct, complete and hand over under this Contract (including, to the extent relevant to such works, Changes directed in accordance with this Contract), including the Works and Sydney Trains Works, but excluding Temporary Works.

**Proponent** means an entity or entities that submitted a Proposal for the CSM Contractor's Activities.

**Proposal** means the response provided by a Proponent to the RFP.

**Proposed Deferred Activities** means the CSM Contractor's Activities:

- (a) referred to in clause 14.16(d)(i); or
- (b) specified in a notice under clause 14.14(d), together with the Temporary Works referred to in clause 14.16(d)(i).

**Provisional Sum** means the estimate of the amount payable for performing Provisional Sum Work in Schedule F1.

**Provisional Sum Work** means:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

- (a) any illness or personal injury to, or death of, any person;
- (b) the loss or destruction of (whether total or partial) or damage to any real or personal property; or
- (c) loss of use of or access to any real or personal property where such loss of use or access is caused by the CSM Contractor's wrongful act or omission or breach of this Contract and the CSM Contractor:
  - (i) recovers its liability for that loss under a Principal Insurance Policy; or
  - (ii) is indemnified or entitled to be indemnified for its liability for that loss under a CSM Contractor Insurance Policy,

or would have recovered its liability or been indemnified or entitled to be indemnified for its liability (as applicable) for that loss but for:

- (iii) the operation of any deductible or excess that the CSM Contractor is required to bear under this Contract; or
- (iv) any act or omission of the CSM Contractor or its Associates including any failure by the CSM Contractor to:
  - (A) diligently pursue a claim under the relevant policy of insurance;
  - (B) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
  - (C) comply with its insurance obligations under this Contract.

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

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

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

**Rail Safety National Law** means the *Rail Safety National Law 2012* (NSW) No 82a, as defined in the *Rail Safety (Adoption of National Law) Act 2012*, and any associated regulations.

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

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

**Recognised Aboriginal Business** has the meaning given in MR-Prelude.

**Recognised Aboriginal Business Subcontract** means an agreement which is entered into between the CSM Contractor and a Recognised Aboriginal Business in accordance with clause 2.3.1(d) of MR-W.

**Recommendation** has the meaning given to that term in clause 20.4.

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

**Reimbursable Cost Element** means the estimate of Reimbursable Costs set out in Schedule F1 and included in the Target Cost (MPR). The Reimbursable Cost Element excludes amounts paid for Provisional Sum Work and amounts paid for the Post Construction Completion Activities and the Post Completion Activities.

**Reimbursable Cost Element Adjustment** means an adjustment to the Reimbursable Costs Element in respect of a Reimbursable Cost Element Adjustment Event, as agreed by the parties or calculated in accordance with clause 4.2. A Reimbursable Cost Element Adjustment can be a positive or negative amount.

**Reimbursable Cost Element Adjustment Event** means:





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Reimbursable Costs** means the aggregate of:

- (a) in respect of:
    - (i) Reimbursable Work other than Self-Performed Reimbursable Work, all amounts properly and actually incurred and payable by the CSM Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontract Agreements; and
    - (ii) Self-Performed Reimbursable Work (if any):
      - (A) to the extent that the CSM Contractor and the Principal's Representative have agreed that the Self-Performed Reimbursable Work will be subject to a fixed price, that agreed amount; and
      - (B) otherwise, the sum ascertained by multiplying the number of hours the labour resource or Construction Plant is employed in the execution of the Self-Performed Reimbursable Work for any given period under the Contract by:
        - (aa) the applicable rate in Schedule F2; or
        - (bb) where there is no applicable agreed rate in Schedule F2 or otherwise agreed between the parties in writing, a reasonable rate (which will exclude any margin for off-site overheads or profit) as determined by the Principal's Representative;
  - but excluding, in any event, all Excluded Costs;
  - (b) any amount agreed under clause 11.14(i); and
  - (c) any other amount stated in this Contract to be "Reimbursable Costs",
- less, in respect of any Defect which is the subject of an instruction under clause 12.2(a)(iii), the amount determined by the Principal's Representative pursuant to clause 12.4.

**Reimbursable Work** means the entirety of the CSM Contractor's Activities other than the activities covered by the Management Fee, the Design Work and the Preliminaries.

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

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

**Remediation Action Plan** means a plan for the Remediation of Contamination which satisfies with the requirements of clause 7.9(b).

**Remote 1500V Switching Pilot Work** means that part of the CSM Contractor's Activities which includes the associated rail infrastructure works to support the remote 1500V switching pilot project.

**Reports** means the reports attached at Schedule A15 and **Report** means any one of them as the context may require.

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

**Resolution Institute** means the Resolution Institute, Australia.

**RFP** means the request for proposal issued by the Principal on 19 June 2017.

**Risk Register** means a register of risks which the parties have notified in accordance with clause 13.19.

**RMS** means the Roads and Maritime Services, a NSW Government agency constituted by section 46 of the *Transport Administration Act 1988* (NSW).

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

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

**Schedule of Rates** means the schedule of rates set out in Schedule F2.

**Security Interest** has the meaning given to that term in clause 22.17.

**Self-Performed Design Work** means the part of the Design Work to be performed by the CSM Contractor itself or a Related Body Corporate of the CSM Contractor as described in Schedule F2.

**Self-Performed Reimbursable Work** means the part of the Reimbursable Work to be performed by the CSM Contractor itself or a Related Body Corporate of the CSM Contractor as described in Schedule F2.

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

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



[REDACTED]

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

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

**Subcontract Adjustment Event** means an adjustment event under a Subcontract which corresponds with:

- (a) a Target Cost (Design) Adjustment Event;
- (b) a Management Fee Adjustment Event;
- (c) a Preliminaries Fee Adjustment Event;
- (d) a Reimbursable Cost Element Adjustment Event; or
- (e) any other adjustment event under an Approved Subcontract Agreement or Design Agreement or as otherwise approved by the Principal's Representative.

**Subcontract Proposal** means a document issued by the CSM Contractor under clause 11.2.

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

- (a) the Design Documentation, which the CSM Contractor is entitled to use for tendering purposes under clause 13.11(k), relevant to the part of the Reimbursable Work to be subcontracted;

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

**Subcontractor** means any person (including a supplier and a Designer) engaged by the CSM Contractor to perform any part of the Project Works not being performed by the CSM Contractor as Self-Performed Reimbursable Work.

**Survey Certificate** has the meaning given to that term in the *Surveying and Spatial Information Regulation 2012* (NSW).

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

**SWTC** means the Scope of Works and Technical Criteria for the Project Works described in Schedule C1.

**Sydney Metro Northwest Augmentation** has the meaning given to that term in clause 1.7(a)(ii).

**Sydney Metro Northwest** means the railway line from Chatswood to Cudgegong Road, including the stabling yard and maintenance depot at Tallawong Road, the stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

**Sydney Trains** means Sydney Trains, a body corporate constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

**Sydney Trains' Facilities** has the meaning given to that term in the Sydney Trains Transition Agreement.

**Sydney Trains Interface Works** means:

- (a) Sydney Trains Works;
- (b) Sydney Trains Interim Works; and
- (c) Sydney Trains Project Works.

**Sydney Trains Interim Works** has the meaning given to the term "Interim Works" in the Sydney Trains Transition Agreement.

**Sydney Trains Project Works** has the meaning given to the term "Sydney Metro Works" in the Sydney Trains Transition Agreement.

**Sydney Trains Transition Agreement** means the Draft Third Party Agreement titled "Sydney Metro City & Southwest –Transition Agreement (000-TPA-ST\_RC) and the "Scope of Works and Access Schedule for the Central Station Main Works" between the Principal, RailCorp and Sydney Trains (as may be updated or replaced in accordance with clause 3.6).

**Sydney Trains Works** has the meaning given to the term "Sydney Trains Works" in the Sydney Trains Transition Agreement, including the physical works which the CSM Contractor must design, construct, complete and handover to Sydney Trains in order to



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Target Cost (MPR)** means the amount so described as set out in Schedule A1, which amount will only be adjusted for:

- (a) Management Fee Adjustments;
- (b) Reimbursable Cost Element Adjustments; and
- (c) Preliminaries Fee Adjustments.

**Target Costs** mean both of the Target Cost (Design) and the Target Cost (MPR).

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

**Telstra** means Telstra Corporation Limited ABN 33 051 775 556.

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

**Tendering Probity Plan** means the tendering probity plan prepared by the CSM Contractor and finalised under clause 11.15, which must set out in adequate detail all procedures the CSM Contractor will implement to ensure the probity and competitiveness of the tender process for Reimbursable Work is maintained including:

- (a) the matters specified in Schedule A1; and
- (b) any other matters required by the Principal's Representative.

**TfNSW** means Transport for NSW, an entity constituted as a body corporate by section 3C of the *Transport Administration Act 1988* (NSW) and all present and future iterations of that body corporate which continue in existence under the *Transport Administration Act 1988* (NSW) or any other legislation or another entity appointed to undertake some or all of the functions of that body.

**TFNSW Configuration Management Plan** means the plan available at <https://www.transport.nsw.gov.au/operations/standards-and-accreditation/standards/find-a-standard/tfnsw-configuration-management>.

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

**Third Party Agreement** means:

- (a) an agreement which appears in Schedule E5;
- (b) any Draft Third Party Agreement or Additional Third Party Agreement which the CSM Contractor must comply with pursuant to clause 3.6;
- (c) any Adjoining Property Owner Agreement entered into by the Principal pursuant to clause 3.7; and
- (d) any other agreement that the Principal from time to time informs the CSM Contractor constitutes a 'Third Party Agreement'.

**Third Party Agreement Design Documentation** means any Design Documentation that is required to be submitted under or in connection with any Third Party Agreement.

**TNAC** has the meaning given in the TFNSW Configuration Management Plan.

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

**Transportation** means, in respect of Compensable Contamination Work:

- (a) costs associated with transportation from the Site to the licenced facility including tolls and charges for distance travelled;
- (b) tipping fees at a licenced facility;
- (c) reporting and tracking of materials as required by Law; and
- (d) specialist extraction and containment of material (including bagging of asbestos and vapour containment for special waste at source).

**Urgent Defect** means a Defect, which:

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

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



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

**VENM** has the meaning given in the *Protection of the Environment Operations Act 1997* (NSW).

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

**WHS** means work health and safety.

**WHS Accreditation Scheme** means the Australian Government Building and Construction WHS Accreditation Scheme established by the *Fair Work (Building Industry) Act 2012* (Cth), or any scheme replacing it.

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

**WHS Legislation** means:

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

**Works** means the physical works which the CSM Contractor must design, construct, complete and hand over to the Principal in accordance with this Contract (including, to the extent relevant to such works, Changes directed in accordance with this Contract) but excluding the Sydney Trains Works.

**Worksite** has the meaning given in the Site Access Schedule.

**Workplace Relations Management Plan** has the meaning given in clause 13.10(a)(vi).

## 1.2 Interpretation

In this Contract:

- (a) headings are for convenience only and do not affect the interpretation of this Contract,

and unless the context indicates a contrary intention:

- (b) "person" includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) "includes" in any form is not a word of limitation;
- (e) 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 object as that Authority, institute, association or body;
- (f) a reference to a document (including this Contract and any other deed, agreement, instrument, guideline, code of practice or Code and Standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
- (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Contract;
- (i) a reference to:
- (i) this Contract includes all schedules, exhibits (subject to clause 7.12), attachments and annexures to it, including the SWTC; and
  - (ii) a reference to the SWTC includes all appendices to the SWTC;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) for the purposes of clauses 14.10, 14.11, and 14.12:
- (i) any extension of time stated in days; or
  - (ii) any reference to "day",
- will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Program submitted under clause 14.2 as working days;
- (m) for all purposes other than as set out in clause 1.2(l) or where otherwise designated as a Business Day, "day" means calendar day;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;

- (p) a reference to a "month" is a reference to a calendar month;
- (q) a reference to "\$" or "dollar" is to Australian currency;
- (r) any reference to:
  - (i) the Project Works;
  - (ii) the Temporary Works;
  - (iii) Works;
  - (iv) the Asset Management Information;
  - (v) the SWTC;
  - (vi) the Design Documentation; or
  - (vii) any other document or thing,or any part of any of them:
  - (viii) being fit for its purpose or for its intended purpose; or
  - (ix) as having an intended use,(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:
  - (x) the Principal's intention that the Project Works will be used as an integral part of an operating rail system intended to provide frequent high speed mass transit services between Bankstown and Chatswood and which may:
    - (A) be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;
    - (B) be subject to continuous operation;
    - (C) be operated by either the State of New South Wales or by private operator(s) on its behalf;
    - (D) involve further development of rail stations, including station structures and fitout to the extent referred to in this Contract;
    - (E) be upgraded, augmented, extended and expanded to the extent referred to in this Contract;
    - (F) be connected to and/or integrated with other transport infrastructure to the extent referred to in this Contract; and
    - (G) involve future construction and development of buildings and/or other infrastructure on, over or adjacent to railway stations to the extent referred to in this Contract;
  - (xi) any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:
    - (A) this Contract, including:
      - (aa) the objectives referred to in clause 2; and

- (bb) the requirement that the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
- (B) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change) any document provided by the Principal to the CSM Contractor specifically in connection with the Change (excluding any Information Documents);
- (s) any reference to the Project Works or any part of any of them being capable of remaining at all relevant times fit for their purpose or for their intended purpose will be read as being subject to the Principal, the Operator and their respective Associates operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information;
- (t) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (u) any obligation of the CSM Contractor under this Contract with respect to:
  - (i) a Contract Management Plan, will be read as an obligation with respect to the version of the relevant Contract Management Plan last submitted by the CSM Contractor to the Principal's Representative under MR-PA; or
  - (ii) the Asset Management Information will be read as an obligation with respect to the version of the relevant Asset Management Information last submitted by the CSM Contractor to the Principal's Representative under clause 8.15(a) which has not been rejected by the Principal's Representative under clause 8.15(c)(i);
- (v) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (w) on the basis that the Principal is notionally liable to pay GST under the GST Law, a reference in this Contract to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement;
- (x) if a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled;
- (y) where under this Contract:
  - (i) a direction is required to be given or must be complied with;
  - (ii) payment of money must be made;
  - (iii) an unconditional undertaking must be released; or
  - (iv) a default must be remedied,within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;

- (z) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;
- (aa) a reference to "direction" in the definition of "Claim" in clause 1.1 or in any of clauses 3.1(a)(vi), 13.1, 13.11(o), 20 and 23, will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document;
- (bb) 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;
- (cc) the word "subcontractor" will include subcontractors, suppliers, Designers and Subcontractors, and the word "subcontract" will include a contract with a subcontractor (including an Approved Subcontract Agreement);
- (dd) where, in this Contract, it is stated that the CSM Contractor is not entitled to make any Claim against the Principal or words to this effect, then the CSM Contractor releases absolutely the Principal from any Claim whatsoever and however arising (including in negligence) which the CSM Contractor had or, but for this Contract, might have had in connection with the subject matter for which the Contract states that the CSM Contractor has no entitlement to make a Claim;
- (ee) nothing in, or contemplated by, this Contract will be construed or interpreted as:
  - (i) constituting a relationship between the Principal, or the NSW Government and the CSM Contractor and any of its related companies, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
  - (ii) imposing any general duty of good faith on the Principal to the CSM Contractor in relation to or arising out of the Project, other than to comply with the obligations (if any) expressly stated to be assumed by the Principal under the Contract on a good faith basis;
- (ff) when the Principal 'may' exercise a right or remedy, the Principal has an absolute discretion whether or not to do so, and is not required to exercise the discretion in good faith or having regard to, or for the benefit of, the CSM Contractor; and
- (gg) if the Principal is required to exercise best or reasonable endeavours, the CSM Contractor acknowledges that:
  - (i) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
  - (ii) the Principal cannot guarantee the relevant outcome; and
  - (iii) the Principal, by undertaking to exercise reasonable endeavours, does not agree to:
    - (A) interfere with or influence the exercise by any person of a statutory power or discretion;
    - (B) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Contract if the Principal regards that exercise as not in the public interest;
    - (C) develop policy or legislate by reference only or predominantly to the interests of the Contract;

- (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Contract; or
  - (E) act in any other way that the Principal regards as not in the public interest; and
- (hh) the interpretations of:
- (i) CSM Contractor's Activities;
  - (ii) Project Works;
  - (iii) Temporary Works;
  - (iv) Site;
  - (v) Construction Completion;
  - (vi) Date for Construction Completion;
  - (vii) Date of Construction Completion;
  - (viii) Completion;
  - (ix) Date for Completion;
  - (x) Date of Completion; and
  - (xi) Defects Correction Period,

and clauses 7.1 to 7.4, 3.5, 3.12, 9.3(a)(v), 12, 14, 15.2, 18.1, 18.4, 18.5, 18.16, Schedules E1 and E2, the SWTC and the MRs will apply separately to each Portion (including any Portion determined under clause 16.5) and references therein to any of the terms in clauses 1.2(hh)(i) to 1.2(hh)(xi) (inclusive) will mean so much of the CSM Contractor's Activities, Project Works, Temporary Works, Site, Construction Completion, Date for Construction Completion, Date of Construction Completion, Completion, Date for Completion, Date of Completion and Defects Correction Period as is comprised in, or associated with, the relevant Portion.

### 1.3 **Ambiguous terms**

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

### 1.4 **Order of Precedence**

- (a) In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Contract then:
  - (i) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the SWTC, then to the extent of any

inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and

- (ii) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in Schedule A1 applies.
- (b) The SWTC, the MRs and the Environmental Documents are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Project Works comply with this Contract and are fit for their intended purposes.

#### 1.5 **Deed Poll by CSM Contractor**

The CSM Contractor must within 10 days of the date of this Contract, provide to the Principal's Representative an executed deed poll:

- (a) in the form set out in Schedule A8 in favour of Sydney Trains;
- (b) in the form set out in Schedule A9 in favour of Sydney Trains and Rail Corporation New South Wales; and
- (c) in the form set out in Schedule A22 in favour of, amongst others, the ALTRAC Light Rail Partnership.

#### 1.6 **Authorities**

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

#### 1.7 **Sydney Metro Northwest Augmentation**

- (a) The parties acknowledge that:
  - (i) the Principal and NRT are parties to the OTS Project Deed under which NRT must undertake the OTS Project Works and subsequently operate and maintain Sydney Metro Northwest;
  - (ii) the OTS Project Deed contains provisions pursuant to which the Principal and NRT may seek to negotiate and agree an augmentation which includes the design, construction, testing and commissioning of the OTS2 Project Works and the subsequent operation and maintenance of the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest (**Sydney Metro Northwest Augmentation**); and
  - (iii) the Principal and NRT are currently negotiating a Sydney Metro Northwest Augmentation.

- (b) The Principal will notify the CSM Contractor in writing of the outcome of any negotiations in relation to any Sydney Metro Northwest Augmentation.
- (c) If the Principal and NRT do not agree to a Sydney Metro Northwest Augmentation, the Principal may procure the delivery of the OTS2 Project Works by alternative means and engage an alternate Operator to operate the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest. This Contract therefore contemplates that:
  - (i) the OTS2 Project Works may be carried out by NRT or an alternate Operator; and
  - (ii) the operation and maintenance of the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest may be carried out by NRT or an alternate Operator.

## 1.8 **Electronic Files**

Where this Contract refers to an electronic file which forms part of this Contract, such electronic files are contained in the discs or other electronic storage device included in Schedule G1.

## 2. **OBJECTIVES AND PROJECT VALUES**

### 2.1 **Objectives for Sydney Metro City & Southwest**

The Principal's objectives for the Project are to:

- (a) improve the quality of the transport experience for customers;
- (b) provide a fully integrated transport system that is able to satisfy long-term demand;
- (c) grow public transport patronage and mode share;
- (d) support the global economic corridor;
- (e) serve and stimulate urban development;
- (f) improve the resilience of the transport network;
- (g) improve the efficiency and cost effectiveness of the public transport system;
- (h) implement a feasible solution recognising impacts, constraints and delivery risk; and
- (i) deliver an enduring and sustainable legacy for Sydney.

### 2.2 **Objectives for the Project Works**

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

- (a) ensure the Project Works are safe and de-risked through innovation and expertise in planning, design and delivery methodologies;
- (b) provide new metro station infrastructure at Central Station, including the station box and structural works, platforms, vertical transport, rooms, finishes and provisions rail and tunnel infrastructure and systems, which is suitable for integration into the Project;



- (c) provide the Central Walk infrastructure to relieve existing congestion, provide better connectivity and greatly enhance the customer experience, as an integral element of the Central Station Precinct Plan;
- (d) provide all other station infrastructure required to integrate the new metro station into Central Station as well as Central Station Works and Central Walk Works;
- (e) provide a technical solution that demonstrates the significance of the new metro station and revitalises Central Station to meet Sydney's transport needs;
- (f) deliver an easy and efficient experience with intuitive wayfinding for Sydney Metro and Central Station customers to interchange with other transport services and access destinations in the southern CBD;
- (g) deliver the Project Works and perform the CSM Contractor's Activities in a collaborative and cooperative manner to ensure the timely and effective delivery of the Project;
- (h) minimise impacts on the environment, including but not limited to noise and vibration, air quality, traffic and transport, heritage, waste, water and energy management and embodied environmental impacts;
- (i) maximise opportunities in relation to social sustainability, including workforce development and local procurement;
- (j) minimise disruption, delay and inconvenience to the affected public, road and public transport users, adjacent businesses, stakeholders and the community during the construction of the Project Works;
- (k) achieve a value-for-money outcome when viewed on the basis of effective risk management, certainty of delivery and whole-of-life cost; and
- (l) commence the Project Works in 2018 and progressively hand over the completed Portions of the Project Works by the times and in accordance with the requirements set out in this Contract; and
- (m) consider, meet and positively respond to the key challenges set out in section 3.5 of the RFP.

### 2.3 **Achievement of the Project Values**

The parties:

- (a) acknowledge that:
  - (i) the CSM Contractor's Activities form part of the Project;
  - (ii) adhering to and upholding the Project Values is of fundamental importance to the Principal; and
- (b) agree to:
  - (i) adhere to and uphold the Project Values; and
  - (iii) work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this Contract.

### 3. **CSM CONTRACTOR'S OBLIGATIONS**

#### 3.1 **General**

- (a) The CSM Contractor:
  - (i) must execute the CSM Contractor's Activities, including design, construct, test, commission and hand-over the Project Works and each Portion, in accordance with this Contract;
  - (ii) warrants that it will use its best endeavours to ensure that it achieves Completion of the Project Works in accordance with the Cost Plan and so that the:
    - (A) Outturn Cost (Design) does not exceed the Target Cost (Design); and
    - (B) Outturn Cost (MPR) does not exceed the Target Cost (MPR);
  - (iii) warrants that the Temporary Works will at all relevant times be fit for their intended purposes;
  - (iv) warrants that the Project Works and each Portion will:
    - (A) upon Construction Completion, be fit for their intended purposes; and
    - (B) thereafter be capable of remaining at all relevant times fit for their intended purposes;
  - (v) warrants that it will exercise a duty of the utmost good faith to the Principal in performing the following obligations under the Contract:
    - (A) the preparation of the Subcontract Tender Documentation for the Reimbursable Work and in all post-tender communications (verbal or otherwise) with tenderers prior to the entry of an Approved Subcontract Agreement (where applicable);
    - (B) the administration of Approved Subcontract Agreements including all negotiations concerning Changes and extensions of time; and
    - (C) in making payment claims under clause 15.2(b);
  - (vi) must commence and progress the CSM Contractor's Activities expeditiously and in accordance with any directions of the Principal and achieve:
    - (A) Construction Completion of each Portion by the relevant Date for Construction Completion;
    - (B) Milestone Achievement of each Specified Milestone by the relevant Date for Milestone Achievement; and
    - (C) Completion of each Portion by the relevant Date for Completion;
  - (vii) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the CSM Contractor's Activities; and
  - (viii) must liaise, cooperate and confer with others as directed by the Principal.

- (b) Without limiting the generality of the CSM Contractor's obligations, the CSM Contractor will be responsible for (and will control, coordinate, administer and direct) all activities necessary for the planning, design, commencement, construction, testing, Commissioning, completion and handover of the Project Works including:
  - (i) the performance of the Design Work and the Preliminaries; and
  - (ii) the engagement, supervision, control, coordination and direction of all Subcontractors and the execution of the Reimbursable Work.

### 3.2 Cooperation and coordination with Interface Contractors

- (a) Without limiting the CSM Contractor's obligations under each CSM Interface Contractor Cooperation and Integration Deed and the CSM Operator Cooperation and Integration Deed, the CSM Contractor:
    - (i) acknowledges that:
      - (A) the CSM Contractor's Activities interface with the Interface Work;
      - (B) Interface Contractors will be executing work on parts of the Site, or Extra Land, or adjacent to the Site or Extra Land, at the same time as the CSM Contractor is performing the CSM Contractor's Activities;
      - (C) it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Project Works and Temporary Works with the Interface Work;
      - (D) Interface Contractors may require the CSM Contractor to provide design and work methodology information to them to coordinate the design of the Interface Work with the Project Works and Temporary Works, and this must be provided in a timely manner by the CSM Contractor; and
      - (E) any delay in the performance of the CSM Contractor's Activities or in the CSM Contractor providing information to, or cooperating and coordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the CSM Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages; and
    - (ii) must at all times:
      - (A) permit Interface Contractors to execute the Interface Work on the applicable parts of the Site or Extra Land, or on any adjacent property to the Site or Extra Land:
        - (aa) at the same time as the CSM Contractor is performing the CSM Contractor's Activities; and
        - (bb) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,
- and for this purpose ensure they have safe, clean and clear access to those parts of the Site or Extra Land, or property adjacent to the Site or Extra Land, required by them for the purpose of carrying out their work;

- (B) protect the Project Works, Temporary Works and other improvements on the Site or Extra Land from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors in accordance with clause 5.7.2 of the SWTC;
- (C) cooperate with Interface Contractors, and do everything reasonably necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;
- (D) carefully coordinate and interface the CSM Contractor's Activities with the Interface Work and for this purpose:
  - (aa) make proper allowance in all programs for the Interface Work;
  - (bb) review all programs provided by Interface Contractors and confirm that they adequately allow for the CSM Contractor's Activities and the interfaces between the Interface Work and the CSM Contractor's Activities;
  - (cc) monitor the progress of the Interface Work;
  - (dd) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Construction Completion of any Portion, Completion of Portion 3 or Milestone Achievement of any Milestone; and
  - (ee) provide the Interface Contractors with sufficient information about the current and expected CSM Contractor's Activities to assist them to coordinate their Interface Work with the CSM Contractor's Activities;
- (E) it must cooperate, meet with, liaise and share information so that the CSM Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- (F) perform the CSM Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- (G) be responsible for coordinating the CSM Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative copies of working method statements for those parts of the Project Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- (H) work directly with Interface Contractors where required to complete the design of the Project Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Project Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the SWTC and the MRs;

- (I) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others each 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
  - (J) when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 days (except in special circumstances) or any longer period of notice required under the SWTC to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
  - (K) ensure that any written notice given under clause 3.2(a)(ii)(J) provides the Interface Contractor with the longest possible time for the provision of the information;
  - (L) when any information is requested by the Principal or the Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Project Works or the CSM Contractor's Activities:
    - (aa) provide the information to the Principal's Representative or the Interface Contractor, with a copy to the Principal's Representative (as the case may be), within the time requested by the Principal or the Interface Contractor, provided that this time is reasonable; and
    - (bb) ensure and warrant that the information provided is accurate; and
  - (M) use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
    - (aa) the provision of information;
    - (bb) the obtaining of information;
    - (cc) the adequacy of information provided to, or received from, Interface Contractors;
    - (dd) the compatibility of the Project Works and Temporary Works with the Interface Work;
    - (ee) coordination in accordance with this clause 3.2(a); and
    - (ff) technical issues with the information provided to, or received from, Interface Contractors;
- (iii) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Contract or otherwise have an adverse effect upon the CSM Contractor's Activities; and

- (iv) acknowledges that conditions similar to those in this clause 3.2(a) applying to the CSM Contractor will apply to all Interface Contractors engaged by the Principal, whether working on the Site or on any other site.
- (b) If, despite the CSM Contractor having complied with all of its obligations under clause 3.2(a), the CSM Contractor and any Interface Contractor fail to resolve any interface issue or dispute between them, the CSM Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor (with a copy to the relevant Interface Contractor).
- (c) Upon receipt of the CSM Contractor's notice under clause 3.2(b), the Principal's Representative must:
  - (i) convene a meeting between the CSM Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative); and
  - (ii) work in good faith with the CSM Contractor and the Interface Contractor to resolve the issues or dispute.
- (d) Without limiting the CSM Contractor's rights and entitlements in relation to access to the Site under clause 7.1, the CSM Contractor:
  - (i) acknowledges and agrees:
    - (A) no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the CSM Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Change directed by the Principal's Representative);
    - (B) that except where the Principal's Representative directs a Change in circumstances where the CSM Contractor has fully complied with clause 3.2(a), the Principal will not be liable upon any Claim by the CSM Contractor arising out of or in any way in connection with:
      - (aa) the Interface Contractors carrying out their work; or
      - (bb) any act or omission of an Interface Contractor;
    - (C) that the Interface Contractors will require access to the Site in order to perform their obligations under their respective contracts with the Principal;
    - (D) that the CSM Contractor's Program will accommodate requirements for design iterations as part of the Interface Work and incorporate the requirements specified in clauses 3.2(a) and (b) of the CSM Interface Contractor Cooperation and Integration Deed; and
  - (ii) warrants that as at the date of this Contract, each element of the Target Cost (Design) and Target Cost (MPR) and the CSM Contractor's Program contain sufficient allowances for the assumption by the CSM Contractor of the obligations and risks under clauses 3.2(a) and 3.2(d)(i), including the cost of all the design iterations required to accommodate Interface Work.

### 3.3 Co-operation with Other Contractors

- (a) Without limiting or being limited by clauses 3.2 and 8.7, the CSM Contractor must:

- (i) permit Other Contractors to carry out their work;
  - (ii) fully co-operate with Other Contractors;
  - (iii) carefully coordinate and interface the CSM Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
  - (iv) carry out the CSM Contractor's Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.
- (b) The Principal will procure that each of its Other Contractors that it engages to undertake work on part of the Site during any period in which the CSM Contractor has been engaged as principal contractor in respect of that part of the Site executes a deed poll in favour of the CSM Contractor, as principal contractor, and the Principal in the form set out in Schedule A10 and provide the CSM Contractor with an executed copy of each such deed poll.

### 3.4 Cooperation and Integration Deeds

- (a) The CSM Contractor must:
- (i) within 5 Business Days of receipt of a request from the Principal, provide to the Principal:
    - (A) the CSM Operator Cooperation and Integration Deed; or
    - (B) a CSM Interface Contractor Cooperation and Integration Deed with any LWC Contractor nominated by the Principal,duly executed by the CSM Contractor in the number of counterparts required by the Principal;
  - (ii) at all relevant times comply with:
    - (A) the terms of the CSM Operator Cooperation and Integration Deed and each CSM Interface Contractor Cooperation and Integration Deed; and
    - (B) the Interface Management Plan; and
  - (iii) update the Interface Management Plan as required to reflect the interface between the CSM Contractor's Activities and the activities to be performed by each relevant Interface Contractor.
- (b) The Principal will ensure that the Operator and each applicable Interface Contractor execute the CSM Operator Cooperation and Integration Deed and each CSM Interface Contractor Cooperation and Integration Deed (as applicable).

### 3.5 Incident Management Reporting

- (a) The CSM Contractor must identify clear guidelines for responding to any Incident arising from the performance of the CSM Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the MRs.

- (b) Should an Incident occur which:
  - (i) is reportable under any relevant Law, the CSM Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the MRs; and
  - (ii) relates to rail safety, the CSM Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Contamination, Pollution or other waste that arises during the performance of the CSM Contractor's Activities, the CSM Contractor must, subject to clauses 7.7(c) and 7.8(f):
  - (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination, Pollution or other waste arising from the Incident;
  - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
  - (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) If the CSM Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the CSM Contractor.
- (e) Without prejudice to the Principal's other rights under this Contract, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the CSM Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident.
- (f) If the Principal takes any action under clause 3.5(e) it will be entitled to recover its reasonable costs and expenses from the CSM Contractor as a debt due from the CSM Contractor to the Principal.
- (g) Without prejudice to the Principal's other rights under this Contract, the Principal's Representative may issue a direction under clause 14.13 requiring the CSM Contractor to suspend the carrying out of the whole or any part of the CSM Contractor's Activities in the event:
  - (i) of any Incident involving:
    - (A) a significant spill of Contamination;
    - (B) any accident or release of Contamination which it believes may pose a danger to health, life or property; or
    - (C) any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
  - (ii) any safety Incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to



SafeWork NSW, ONRSR or other work health and safety regulator) or damage to property.

- (h) Other than as specified in clause 14.13(b), the Principal will not be liable upon any Claim by the CSM Contractor for any cost, expense, Loss, delay, disruption or penalty arising out of or in connection with:
  - (i) any suspension due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in clause 3.5(g); and
  - (ii) complying with a direction issued under clause 3.5(i), including complying with the steps which the Principal's Representative directs that the CSM Contractor must take before the Principal's Representative will issue a direction to recommence the CSM Contractor's Activities.
- (i) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.5(g), the CSM Contractor may not recommence the CSM Contractor's Activities in respect of the part of the CSM Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the CSM Contractor permitting the CSM Contractor to recommence the CSM Contractor's Activities affected by the notice to suspend.
- (j) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.5(g) the Principal's Representative may also direct the CSM Contractor as to the steps which the CSM Contractor must take before the Principal's Representative will issue a direction pursuant to clause 14.13 permitting the CSM Contractor to recommence the CSM Contractor's Activities affected by the notice to suspend.
- (k) If clause 3.5(j) applies, the CSM Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the CSM Contractor has complied with the requirements of the direction issued under clause 3.5(i) will the Principal's Representative issue a direction to the CSM Contractor permitting the CSM Contractor to recommence the CSM Contractor's Activities affected by the notice to suspend.
- (l) The Principal may recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 3.5(g), as a debt due and payable from the CSM Contractor to the Principal.

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**3.9 Commissioning**

The CSM Contractor acknowledges that:

- (a) Commissioning is part of the CSM Contractor's Activities; and
- (b) Commissioning must be completed as a condition precedent to Construction Completion of the Project Works.

**3.10 Existing Operations**

- (a) The CSM Contractor acknowledges that:

- (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the CSM Contractor's Activities;
  - (ii) the access ways to the Site are used by Existing Operators and other persons and will not be available exclusively to the CSM Contractor; and
  - (iii) in using these access ways the CSM Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The CSM Contractor must coordinate its access to the Site with any other relevant party (including Existing Operators) that use the access ways to the Site.
- (c) Without limiting any other obligations of the CSM Contractor, the CSM Contractor must:
- (i) to the extent reasonably possible in performing the CSM Contractor's Activities, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Site or the Existing Operations or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;
  - (ii) comply with the Principal's reasonable directions in connection with:
    - (A) the Existing Operations (including access to and use of the Site); and
    - (B) workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any WHS Legislation;
  - (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
  - (iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Site;
  - (v) ensure that in carrying out and completing the CSM Contractor's Activities, the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this Contract; and
  - (vi) immediately:
    - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the CSM Contractor's Activities; and
    - (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 3.10(c) are complied with.
- (d) Except to the extent expressly permitted by this Contract, the CSM Contractor must:



- (i) not disrupt, interrupt or interfere in any way with the Existing Operations;
  - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the CSM Contractor's Activities in accordance with this Contract; and
  - (iii) program and coordinate the CSM Contractor's Activities under this Contract using design and construct best practices and so as to minimise the effect that the carrying out of the CSM Contractor's Activities under this Contract has on the Existing Operations.
- (e) The CSM Contractor must ensure that its Subcontractors and any of the respective employees, agents, contractors or officers of the CSM Contractor and its Subcontractors at all times comply with this clause 3.10.

### 3.11 **Management Plans**

The CSM Contractor must:

- (a) develop the Contract Management Plans as required by the MRs;
- (b) update the Contract Management Plans as required by the MRs or as directed by the Principal's Representative; and
- (c) comply with the Contract Management Plans.

### 3.12 **Cleaning Up**

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

- (a) keep the Site, Extra Land and the Project Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site and Extra Land; and
- (c) as a condition precedent to Construction Completion of a Portion and Completion of Portion 3, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site and Extra Land or the part of the Site or Extra Land relevant to the Project Works or the Portion, except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

### 3.13 **Construction Plant and Materials Removal**

Except for the purpose of achieving Construction Completion as contemplated by clause 3.12(c), the CSM Contractor must not remove from the Site or the CSM Contractor's Activities any:

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

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

### 3.14 Principal Supplied Items

- (a) The Principal will:
  - (i) make available the Principal Supplied Items to the CSM Contractor:
    - (A) at its own cost;
    - (B) at the respective places referred to in Schedule A16; and
    - (C) by the respective dates referred to in Schedule A16; and
  - (ii) use its best endeavours to procure that the CSM Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.
- (b) The CSM Contractor:
  - (i) agrees that, in respect of Principal Supplied Items, the:
    - (A) CSM Contractor:
      - (aa) warrants that it has reviewed the SWTC and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the CSM Contractor to satisfy the requirements of this Contract;
      - (bb) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except:
        - (a) under clause 14 if a Principal Supplied Item is not made available by the relevant date set out in Schedule A16; and
        - (b) if a Principal Supplied Item is non-compliant with the SWTC and prevents the CSM Contractor's Activities from being fit for purpose; and
      - (cc) is not relieved from and remains liable for complying with, all of its obligations under this Contract, despite the Principal making available the Principal Supplied Items; and
    - (B) *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under clause 3.14(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and
  - (ii) must:
    - (A) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule A16 to the Site or Extra Land (as applicable); and
    - (B) as part of the CSM Contractor's Activities, incorporate each Principal Supplied Item into the Project Works.

**3.15 SMCSW Master Interface Protocols Deed Poll**

The CSM Contractor must:

- (a) within ■ Business Days of receipt of a request from the Principal, provide to the Principal the SMCSW Master Interface Protocols Deed Poll, duly executed by the CSM Contractor in the number of counterparts required by the Principal; and
- (b) at all relevant times comply with the terms of the SMCSW Master Interface Protocols Deed Poll.

**3.16 Collateral Warranty**

The CSM Contractor must, within 5 Business Days of receipt of a request from the Principal, provide to the Principal's Representative an executed Collateral Warranty Deed Poll.

**4. CHANGES TO TARGET COSTS, REIMBURSABLE COST ELEMENT, PRELIMINARIES FEE AND MANAGEMENT FEE**

**4.1 Changes**

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

- (a) in respect of the Target Cost (Design), Target Cost (Design) Adjustments; and
- (b) in respect of the Target Cost (MPR):
  - (i) Reimbursable Cost Element Adjustments;
  - (ii) Preliminaries Fee Adjustments; and
  - (iii) Management Fee Adjustments.

**4.2 Reimbursable Cost Element Adjustments**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

(b) Nothing in this clause 4.2 limits the operation of clause 12.5.

**4.3 Target Cost (Design) Adjustments**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) Nothing in this clause 4.2 limits the operation of clause 12.5.

**4.4 Preliminaries Fee Adjustments**

(a) In respect of each Preliminaries Fee Adjustment Event for which the CSM Contractor has made a valid Claim and where the parties have not agreed a Preliminaries Fee Adjustment, the Principal will determine a Preliminaries Fee Adjustment as a reasonable amount to reflect the increase or decrease in Preliminaries and the resources required to perform the Preliminaries resulting from the Preliminaries Fee Adjustment Event, which a prudent, competent and experienced contractor could not have anticipated as at the date of this Contract.

[REDACTED]

**4.5 Management Fee Adjustment**

In respect of each Management Fee Adjustment Event, the Principal will determine the Management Fee Adjustment [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (b) The parties agree that if the Management Review Group resolves the CSM Contractor's claim in accordance with clauses 13.21(c) and 13.21(d), the Principal's Representative will determine the CSM Contractor's claim in accordance with the Management Review Group's determination.

**5. SECURITY**

**5.1 Unconditional Undertakings**

- (a) The CSM Contractor must give the Principal within 5 Business Days of the date of this Contract [REDACTED] unconditional undertakings with a face value in aggregate equal to [REDACTED] of the sum of the Target Costs as at the date of this Contract.
- (b) Without limiting clauses 5.3 and 5.10, the unconditional undertakings to be provided under this clause 5 are for the purpose of ensuring the due and proper performance by the CSM Contractor of its obligations under this Contract and to provide for the bearing of risk of financial burden during the time of any unresolved dispute or difference to be borne by the CSM Contractor.
- (c) To the extent an unconditional undertaking contains an expiry date, such expiry date must be no earlier than 6 months after the date upon which it is reasonably expected that the relevant unconditional undertaking will be released in accordance with clause 5.4 of this Contract.

**5.2 Requirements for unconditional undertakings**

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

- (a) in the form of Schedule F3 (or such other form approved by the Principal);
- (b) in favour of the Principal;
- (c) issued by an Institution approved by the Principal; and
- (d) where required by Law, duly stamped.

**5.3 Recourse to unconditional undertakings**

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

#### 5.4 Release of unconditional undertakings

- (a) Subject to clause 5.4(b) and to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal must:
- (i) within 20 Business Days after the Date of Completion of the last Portion to reach Completion, release so much of the unconditional undertakings provided by the CSM Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of [REDACTED] of the sum of the Target Costs as at the date of this Contract;
  - (ii) within 20 Business Days [REDACTED], release so much of the unconditional undertakings provided by the CSM Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of the greater of:
    - (A) [REDACTED] of the sum of the Target Costs as at the date of this Contract; and
    - (B) such amount as the Principal's Representative determines to be reasonable, having regard to any outstanding Defects and Defects rectified in the preceding 12 months;
  - (iii) within 20 Business Days after [REDACTED], release so much of the unconditional undertakings provided by the CSM Contractor under clause 5.1(a) as may be then held by the Principal, to such amount as the Principal's Representative determines to be reasonable, having regard to the work to which the Defects Correction Periods, as extended under clause 12.6(b) and clause 12.7(a)(ii), apply; and
  - (iv) within 50 Business Days after the expiry of the final Defects Correction Period, as notified by the Principal's Representative, release the balance of the unconditional undertakings provided by the CSM Contractor under clause 5.1 as may be then held by the Principal.
- (b) Despite any other provision of this Contract to the contrary, where this Contract may otherwise require the Principal to release an unconditional undertaking or this Contract is terminated by the Principal either pursuant to clause 19 or by reason of the CSM Contractor repudiating this Contract (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this Contract to the extent of any claim which the Principal may have against the CSM Contractor arising out of, or in any way in connection with, this Contract or the CSM Contractor's Activities whether for damages or otherwise.

#### 5.5 Replacement of unconditional undertakings – expiry date

- (a) Subject to clause 5.5(b), the CSM Contractor must provide to the Principal a replacement unconditional undertaking for any one or more of the unconditional undertakings provided by the CSM Contractor under this Contract, within 3 months prior to the expiry date of any relevant unconditional undertaking.
- (b) Any replacement unconditional undertaking under this clause 5.5 must have a face value equal to that of the unconditional undertaking being replaced, and must comply in all respects with the requirements of this Contract, including the requirements related to the Institution issuing the relevant unconditional undertaking and the expiry date.

- (c) The CSM Contractor must give the Principal at least 20 Business Days' prior written notice of its intention to provide a replacement unconditional undertaking under this clause 5.5.
- (d) Subject to receiving notice under clause 5.5(c), the Principal must release the relevant unconditional undertaking then held by the Principal in exchange for the issue of the replacement unconditional undertaking which complies with the requirements of clause 5.5(b).

#### 5.6 **Replacement of unconditional undertakings – Required Rating**

If the issuer of any unconditional undertaking provided under this Contract ceases to:

- (a) be subject to prudential oversight by the Australian Prudential Regulation Authority; or
- (b) have the Required Rating,

as applicable, and at that time, another institution acceptable to the Principal meets the requirements of an Institution as contemplated under this Contract, then the CSM Contractor must:

- (c) promptly notify the Principal of that circumstance; and
- (d) within 15 Business Days of being requested to do so, procure the issue to the Principal of a replacement unconditional undertaking which must:
  - (i) have a face value equal to that of the unconditional undertaking being replaced;
  - (ii) comply in all respects with the requirements of this Contract, including the requirements related to the Institution issuing the relevant unconditional undertaking,

and the Principal must surrender the original unconditional undertaking to the CSM Contractor in exchange for the issue of the replacement unconditional undertaking which complies with the requirements of this clause 5.6(d).

#### 5.7 **Substitution of unconditional undertakings**

- (a) Subject to clause 5.7(b), the CSM Contractor may at any time, provide to the Principal a replacement unconditional undertaking for any one or more of the unconditional undertakings provided by the CSM Contractor under clause 5.1 and held by the Principal under this Contract in circumstances where the CSM Contractor wishes to change the identity of the issuer of the unconditional undertaking.
- (b) Any replacement unconditional undertaking under this clause 5.7 must be for the amount then held by the Principal in respect of the unconditional undertaking and must comply in all respects with the requirements of this Contract, including the requirements related to the Institution issuing the relevant unconditional undertaking.
- (c) The CSM Contractor must give the Principal at least 20 Business Days' prior notice of its intention to provide a replacement unconditional undertaking for the purposes of this clause 5.7.
- (d) Subject to receiving the notice under clause 5.7(c), the Principal must release the applicable unconditional undertaking then held by the Principal in exchange for the

replacement unconditional undertaking which complies with the requirements of clause 5.7(b).

#### 5.8 **Cash Collateralisation**

In addition to any other rights in respect of the unconditional undertakings that the Principal may have under this Contract, the Principal may have recourse to the unconditional undertakings if the obligation to provide a replacement unconditional undertaking under 5.5 or 5.6 is not satisfied:

- (a) by the date specified in clause 5.5(a), where the obligation to replace is under clause 5.5; or
- (b) within 15 Business Days of a written request by the Principal, where the obligation to replace is under clause 5.6,

in which event the Principal may draw the full face value of the relevant unconditional undertaking and hold that amount as security, in accordance with this Contract.

#### 5.9 **No injunction**

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

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

#### 5.10 **No interest**

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

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

#### 5.11 **No trust**

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

#### 5.12 **Parent Company Guarantee**

The CSM Contractor must within 5 Business Days of the date of this Contract:

- (a) give the Principal a guarantee duly executed by the person referred to in Schedule A1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped; and
- (b) if the Parent Company Guarantor is incorporated outside of Australia, give the Principal:
  - (i) a Legal Opinion supporting, and in respect of, the executed Parent Company Guarantee; and



- (ii) any other assistance reasonably required by the Principal to enforce the Parent Company Guarantee in the jurisdiction in which the Parent Company Guarantor is domiciled.

6. **LAW AND APPROVALS**

6.1 **Compliance with Law**

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

- (a) comply with, and ensure that the Project Works and the Temporary Works comply with, all applicable Law;
- (b) give all notices and pay all fees, bonds and other amounts which it is required to pay in respect of the performance of its obligations under this Contract and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
- (c) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;
- (d) at all times conform and comply with, and ensure that the Project Works and the Temporary Works conform and comply with, all Codes and Standards; and
- (e) not engage in any fraud, bribery or corruption.

6.2 **Approvals**

The CSM Contractor must:

- (a) obtain all Authority Approvals required for the execution of the CSM Contractor's Activities and occupation and use of the completed Portions (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for those Authority Approvals specified in Schedule E3 that either:
  - (i) were obtained by the Principal prior to the date of this Contract; or
  - (ii) will be obtained by the Principal after the date of this Contract where required;
- (b) comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the CSM Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil, except for the conditions and requirements of Authority Approvals which are to be satisfied or fulfilled by the Principal as set out in Schedule E3;
- (c) in respect of any:
  - (i) Authority Approvals which are to be obtained by the Principal after the date of this Contract; or
  - (ii) conditions and requirements of Authority Approvals which are to be satisfied or fulfilled by the Principal as set out in Schedule E3,

provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;

- (d) for the purpose of obtaining all Authority Approvals as required by clause 6.2(a), prepare all associated studies and reports required because of the design of the Project Works or Temporary Works proposed by the CSM Contractor; and
- (e) as a condition precedent to Construction Completion of the Project Works or a Portion, ensure that it has:
  - (i) obtained all Authority Approvals it is required to obtain under this Contract;
  - (ii) complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
  - (iii) without limiting clauses 6.2(e)(i) and 6.2(e)(ii), complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and
  - (iv) unless it is included in Schedule E3 as an Authority Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Project Works or the Portion, as designed and built, comply with the requirements of the Building Code of Australia to the extent applicable,

including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Principal, the Operator and any Rail Transport Agency to occupy and use the Project Works or Portion for its intended purpose.

### 6.3 Change in Codes and Standards

- (a) Where there is a Change in Codes and Standards:
  - (i) the CSM Contractor must give a written notice to the Principal's Representative promptly after becoming aware of a proposed or future Change in Codes or Standards;
  - (ii) notwithstanding clause 6.3(a)(i), the CSM Contractor must give a written notice to the Principal's Representative within 20 Business Days of the CSM Contractor first becoming aware (or when it ought reasonably to have first become aware) of the Change in Codes and Standards coming into effect containing:
    - (A) details of the Change in Codes and Standards or the proposed future Change in Codes and Standards, as the case may be; and
    - an estimate of [REDACTED] [REDACTED] for complying with the Change in Codes and Standards, including sufficient information to support the estimate; and
  - (iii) if a notice is given by the CSM Contractor which complies with clause 6.3(a)(ii), then:

- (A) within 10 Business Days of the notice being given, the Principal's Representative will either:
    - (aa) direct the CSM Contractor to disregard the Change in Codes and Standards (to the extent that to do so would not place the CSM Contractor in breach of Law); or
    - (bb) direct the CSM Contractor to comply with the Change in Codes and Standards and notify the CSM Contractor that clause 4 will apply in respect of [REDACTED] (to the extent the Principal does not agree with the CSM Contractor's estimate under clause 6.3(a)(ii)); and
  - (B) the CSM Contractor may make a claim for an extension of time under clause 14.8 in respect of any delays the CSM Contractor suffers in complying with the Change in Codes and Standards under clause 6.3(a)(iii)(A)(bb).
- (b) If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards, the CSM Contractor must comply with the change and will not be entitled to make any Claim (other than for payment under clause 15) against the Principal arising out of or in any way in connection with the change.

#### 6.4 Change in Law

Where there is a Change in Law:

- (a) if either party wishes this clause 6.4(a) to apply, then that party must, within 20 Business Days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 6.4(a) applies and containing details of the Change in Law, including, where the notice is given by the CSM Contractor:
  - (i) an estimate of [REDACTED] [REDACTED] for complying with the Change in Law, including sufficient information to support the estimate; and
  - (ii) any effect it will have on the CSM Contractor's Program;
- (b) if such a notice is given:
  - (i) clause 4 will apply in respect [REDACTED] (to the extent the Principal does not agree with the CSM Contractor's estimate under clause 6.4(a)(i)); and
  - (ii) the CSM Contractor may make a claim for an extension of time under clause 14.8 in respect of any delays the CSM Contractor suffers in complying with the Change in Law; and
- (c) the CSM Contractor must comply with the Change in Law.

#### 6.5 Changes to Planning Approval

- (a) If a Change in Planning Approval occurs which has a direct effect on the CSM Contractor carrying out the CSM Contractor's Activities and necessitates a Change, the CSM Contractor must within 10 Business Days of the date on which the CSM

Contractor becomes aware or ought reasonably to have become aware of the Change in Planning Approval taking effect, notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Planning Approval necessitates a Change, together with an estimate of [REDACTED]

[REDACTED] for complying with the Change in Planning Approval, including sufficient information to support the estimate.

- (b) If the CSM Contractor gives a notice under clause 6.5(a) and the Change in Planning Approval does necessitate a Change the Principal's Representative will direct a Change under clause 10.2(a) in respect of the Change in Planning Approval.
- (c) Other than as set out in clauses 6.5(a) and 6.5(b), the CSM Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim (other than for payment under clause 15) arising out of or in any way in connection with:
  - (i) any Change in Planning Approval;
  - (ii) a Planning Approval obtained or issued or which otherwise takes effect after the date of this Contract;
  - (iii) a change in a Planning Approval after the date of this Contract; or
  - (iv) any:
    - (A) assumptions the CSM Contractor makes; or
    - (B) failure by the CSM Contractor to adequately satisfy itself,as to what work methodologies and Temporary Works might be permissible under the Planning Approval.

#### 6.6 Legal Challenge to Planning Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for a Planning Approval or a modification of a Planning Approval under:
  - (i) the *Environmental Planning and Assessment Act 1979* (NSW);
  - (ii) the *Protection of the Environment Operations Act 1997* (NSW);
  - (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
  - (iv) any other Law,the CSM Contractor must continue to perform its obligations under this Contract unless, as a result of that legal challenge, proceedings or action, it is otherwise:
  - (v) ordered or directed by an Authority;
  - (vi) ordered by a court or tribunal; or
  - (vii) directed by the Principal or the Principal's Representative.
- (b) Subject to clause 6.6(c), the Principal will determine under clause 4 [REDACTED]

[REDACTED] as a direct result of:

- (i) an Authority order referred to in clause 6.6(a)(v);
- (ii) a court order referred to in clause 6.6(a)(vi); or
- (iii) a direction by the Principal referred to in clause 6.6(a)(vii),

to the extent that such Authority order, court order, or direction prevents the CSM Contractor from achieving Construction Completion of a Portion by the relevant Date for Construction Completion.

- (c) Clause 6.6(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 6.6(a) is brought or upheld due to the CSM Contractor's non-compliance with its obligations under this Contract or any Planning Approval.
- (d) The CSM Contractor's entitlement under clause 6.6(b) will be its only right to payment arising out of or in any way in connection with an Authority order, court order or direction by the Principal in accordance with clause 6.6(a)(v), 6.6(a)(vi) or 6.6(a)(vii).

#### 6.7 **Crown Building Work**

- (a) The CSM Contractor must, in relation to any part of the Project Works that is a Crown Building Work, certify (on behalf of the Principal) as required by section 109R of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) Any certification under clause 6.7(a) will not lessen or otherwise affect:
  - (i) the CSM Contractor's other liabilities or responsibilities under this Contract or otherwise according to law; or
  - (ii) the Principal's rights against the CSM Contractor, whether under this Contract or otherwise according to law.

#### 6.8 **Long Service Leave Levy**

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

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the CSM Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 6.8(a).

### 7. **THE SITE, TRACK POSSESSIONS AND LOCATION OF THE PROJECT WORKS**

#### 7.1 **Access**

- (a) The CSM Contractor acknowledges and agrees that access to the Site will be provided progressively to the CSM Contractor as set out in the Site Access Schedule.
- (b) Subject to clause 7.1(c) and any other provision of this Contract affecting access, the Principal must:

- (i) give, or ensure the CSM Contractor has, access to the Site by the dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Site, then by the last day of that period); and
  - (ii) once access to a part of the Site is provided to the CSM Contractor, thereafter continue to allow, or ensure that the CSM Contractor is continued to be allowed reasonable access to that part of the Site in accordance with the Site Access Schedule.
- (c) The CSM Contractor acknowledges and agrees that:
- (i) access to the Site or any part thereof will only confer on the CSM Contractor a right to such management and control as is necessary to enable the CSM Contractor to execute the CSM Contractor's Activities in accordance with this Contract and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
  - (ii) the Principal is not obliged to give the CSM Contractor access to any part of the Site until the CSM Contractor has:
    - (A) complied with clause 5.1(a) and 5.12 of this Contract;
    - (B) submitted the Project Health and Safety Management Plan, the Construction Environmental Management Plan and the Construction and Site Management Plan, as required by the MRs, to the Principal's Representative under clause 13.11 and the Principal's Representative has not rejected the proposed Construction Environmental Management Plan, Construction and Site Management Plan or Project Health and Safety Management Plan within 15 Business Days after such submission in accordance with clause 13.11(h);
    - (C) effected the insurance policies required under clauses 18.5, 18.6 (where required in accordance with clause 18.6), 18.7, 18.8 and 18.9; and
    - (D) complied with the preconditions set out in the Site Access Schedule;
  - (iii) the Principal is not obliged to provide, and the CSM Contractor may not be given, exclusive access to the Site;
  - (iv) the Principal is not obliged to carry out any work or provide any facilities to the CSM Contractor which may be necessary to enable the CSM Contractor to obtain access to the Site or carry out the CSM Contractor's Activities; and
  - (v) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site and Extra Land at the same time as the CSM Contractor.
- (d) The Principal's obligations under clause 7.1(a) and 7.1(b) in respect of each part of the Site will cease:
- (i) where the Site Access Schedule specifies that access to the Site for the purposes of this clause 7.1 is provided for a particular period, on the date specified in the Site Access Schedule;
  - (ii) in respect of all Portions other than Portion 3, upon the issue of a Notice of Construction Completion in respect of the final Portion occupying that part of the Site; and

- (iii) in respect of Portion 3, upon the issue of the Notice of Completion, except to the extent required to allow the CSM Contractor to comply with its obligations during the Defects Correction Periods or to undertake Deferred Activities, Post Construction Completion Activities or Post Completion Activities.
- (e) Failure by the Principal to give access as required by clause 7.1(a) will not be a breach of this Contract but will entitle the CSM Contractor to:
  - (i) an extension of time to any relevant Date for Construction Completion, Date for Milestone Achievement or Date for Completion of Portion 3 under clause 14.8 if the requirements of that clause are satisfied; and
  - (ii) [REDACTED] in accordance with clause 4.
- (f) The CSM Contractor's entitlement under clause 7.1(e) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clause 7.1(a).
- (g) The CSM Contractor must:
  - (i) not use the Site for any purpose other than the Permitted Use without the prior written consent of the Principal's Representative; and
  - (ii) comply with:
    - (A) any access conditions that apply to an area of the Site as specified in the Site Access Schedule;
    - (B) the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW).

## 7.2 Temporary Works

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

## 7.3 Management and Control of the Site

At all times after being given access to the Site or a part of the Site under clause 7.1 and before the Date of Completion of the Project Works or the last Portion to reach Completion, the CSM Contractor:

- (a) without limiting any right of the Principal or the Principal's Representative under this Contract, and subject to clause 3.7, 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, footpaths access ways, cycleways and Rail Tracks affected by the CSM Contractor's Activities in accordance with this Contract;

- (e) must, subject to clauses 7.1 and 7.13 and the MRs, and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the CSM Contractor's Activities;
- (f) must not impede access or Utility Services to private property without the consent of the Principal's Representative and the relevant owner or occupier of that property; and
- (g) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the CSM Contractor if that forms part of the CSM Contractor's Activities.

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

The CSM Contractor must at its own cost:

- (a) procure for itself the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the CSM Contractor's Activities (**Extra Land**);
- (b) carry out all activities and procure all Utility Services necessary to make the Extra Land suitable for use by the CSM Contractor;
- (c) as a condition precedent to Construction Completion of any Portion:
  - (i) rehabilitate any Extra Land of the kind referred to in paragraph (a) in accordance with the requirements of all relevant Authorities and other relevant persons with a proprietary interest in the Extra Land;
  - (ii) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule B6 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land;
  - (iii) if the CSM Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the CSM Contractor to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days after it being provided by the CSM Contractor to the owner, occupier or other person following completion of the work on the Extra Land; and
- (d) indemnify the Principal against any damage, expense, Loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in any Extra Land, provided that the CSM Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, its Associates, an Other Contractor or an agent of the Principal contributed to the damage, expense, Loss, cost or liability.



7.5 **Condition of the Site**

- (a) Subject to clauses 7.6, 7.7, 7.10, 7.11(b) and 7.11(c) the CSM Contractor accepts:
- (i) the Site and any Extra Land;
  - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Site and any Extra Land; and
  - (iii) all Adjoining Properties;

in their present condition subject to all defects and Site conditions and agrees that it is responsible for, and assumes the risk of:

- (iv) all Loss (other than any claim for payment under clause 15), delay or disruption it suffers or incurs; and
- (v) any adverse effect on the Project Works or the Temporary Works,

arising out of, or in any way in connection with the Site conditions or any other condition of the Site encountered in performing the CSM Contractors Activities.

- (b) Subject to clause 7.5(a) and without limiting clause 7.12(c), the CSM Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Contract, the CSM Contractor:

- (i) examined this Contract, the Site and its surroundings and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the CSM Contractor for the purpose of providing a Proposal;
- (ii) satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of the CSM Contractor's Activities;
- (iii) informed itself of:
  - (A) all matters relevant to the employment of labour at the Site; and
  - (B) all industrial matters relevant to the Site; and
- (iv) was given the opportunity during the RFP period to itself undertake, and to request others to undertake, tests, enquiries and investigations (but without destructive testing on the Site):
  - (A) relating to the subject matter of Information Documents; and
  - (B) for design purposes and otherwise;
- (v) had a sufficient opportunity (but without Site access for the purposes of destructive tests) to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this Contract, each Deed of Disclaimer, the Reports, the Information Documents, the Site conditions, as well as the risks, contingencies and other circumstances having an effect on its Proposal, the performance of its obligations and its potential liabilities under this Contract; and

- (vi) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the CSM Contractor.
- (c) Without limiting or otherwise affecting clauses 7.6, 7.7, 7.8 and 7.10, the Principal makes no representation and gives no warranty to the CSM Contractor in respect of:
  - (i) the Site conditions likely to be encountered during the execution of the CSM Contractor's Activities or otherwise in respect of the condition of:
    - (A) the Site, Extra Land or their surroundings; or
    - (B) any structure or other thing on, under, above or adjacent to the Site or Extra Land; 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; or
  - (iii) the condition or characteristics of any Adjoining Property.

**7.6 Latent Conditions**

- (a) Latent Conditions are:
  - (i) adverse geotechnical conditions on the Site or its surroundings which differs from the geotechnical conditions identified in the Reports and which difference results in a material impact on cost or time; or
- (b) If during the execution of the CSM Contractor's Activities, the CSM Contractor becomes aware of a Latent Condition the CSM Contractor must:
  - (i) promptly; and
  - (ii) where possible before the physical conditions are disturbed,give written notice thereof to the Principal's Representative.
- (c) The CSM Contractor must provide in that notice to the Principal's Representative a statement specifying:
  - (i) the conditions encountered and in what respects the CSM Contractor considers they constitute a Latent Condition;
  - (ii) the additional work and additional resources which the CSM Contractor estimates to be necessary to deal with the Latent Condition;
  - (iii) the time the CSM Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Construction Completion (if any) as a result of dealing with the Latent Condition;
  - (iv) the CSM Contractor's estimate of

[REDACTED] required to reflect the cost of the measures necessary to deal with the Latent Condition, including sufficient information to support the estimate; and

- (v) other details reasonably required by the Principal's Representative.
- (d) The CSM Contractor acknowledges and agrees if a Latent Condition is encountered that:
  - (i) has a direct effect on the CSM Contractor carrying out the CSM Contractor's Activities; and
  - (ii) directly results in an increase in the CSM Contractor's costs of carrying out the CSM Contractor's Activities,

which a competent and experienced contractor could not have avoided or mitigated, clause 4 will apply in respect of [REDACTED]

[REDACTED] (to the extent the Principal does not agree with the CSM Contractor's estimate under clause 7.6(c)(iv)).

- (e) In making a valuation pursuant to clause 7.6(d) regard will not be had to any CSM Contractor's Activities, additional costs incurred more than 14 days before the date on which the CSM Contractor gives the written notice required by clause 7.6(b).

## 7.7 Contamination

- (a) Subject to clauses 7.7(c), 7.7(d) and 7.8(f), the CSM Contractor bears the risk of all Contamination:
  - (i) on, in, over, under or about the Site or any Extra Land which is disturbed by or interfered with in the carrying out of the CSM Contractor's Activities;
  - (ii) which migrates:
    - (A) on to the Site or any Extra Land as a result of the CSM Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined:
      - (aa) the Site and its surroundings;
      - (bb) any Extra Land and its surroundings; and
      - (cc) all Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the CSM Contractor during the request for proposal period; or
    - (B) from the Site or any Extra Land as a result of the CSM Contractor's Activities; or
  - (iii) which otherwise arises out of or in connection with the CSM Contractor's Activities.

(b) To the extent clauses 7.7(a)(i), 7.7(a)(ii) or 7.7(a)(iii) applies, the CSM Contractor must undertake Remediation of any such Contamination in accordance with Law, all guidelines made or approved by the EPA and any applicable Remediation Action Plan submitted under clause 7.9 which has not been the subject of a notice under clause 7.9(c)(ii) so that:

- (i) the Site and any Extra Land is suitable for the performance of the CSM Contractor's Activities and the further construction, operation and maintenance of the Project; and
- (ii) whole of life costs associated with the further construction, operation and maintenance of the Project at the relevant parts of the Site where the Remediation is undertaken are minimised.

(c) If:

- (i) Contamination on, in, over, under or about the Site is caused by the Principal (or its Associates) after the date of this Contract and such Contamination is disturbed by or interfered with in the carrying out of the CSM Contractor's Activities, clause 7.7(b) will apply; or
- (ii) the CSM Contractor is otherwise required by Law, an Authority or this Contract to undertake Remediation of Contamination for which the CSM Contractor is not responsible under clause 7.7(a), the CSM Contractor must comply with its obligations at Law, under the Environmental Documents and all guidelines made or approved by the EPA in respect of any such requirement,

however:

- (iii) where such compliance causes the CSM Contractor to incur greater cost than otherwise would have been incurred had the Contamination not been caused by the Principal (or its Associates) or the CSM Contractor had not been required by Law, an Authority or this Contract to Remediate such Contamination (as applicable), the difference will be dealt with and valued as if it were a Change; and
- (iv) the CSM Contractor will be entitled to an extension of time under clause 14.8 if the requirements of that clause are satisfied.

(d) If the CSM Contractor discovers Contamination on Site originating from former gas works on, adjacent to, or in the vicinity of the Site:

(i) the CSM Contractor must promptly give written notice to the Principal's Representative specifying:

(A) the time the CSM Contractor anticipates will be required to deal with the Contamination and the expected delay to Completion (if any) as a result of dealing with the Contamination; and

(B) the CSM Contractor's estimate

(ii) clause 4 will apply in respect of the

[REDACTED] (to the extent that the Principal does not agree with the CSM Contractor's estimate); and

- (iii) the CSM Contractor will be entitled to an extension of time to any relevant Date for Construction Completion, Date for Milestone Achievement or Date for Completion of Portion 3 under clause 14.8 if the requirements of that clause are satisfied.
- (e) Except to the extent prohibited by Law, the CSM Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the CSM Contractor to comply with any obligation under this Contract in connection with Contamination.

#### 7.8 Disposal of Contamination and Waste

- (a) The CSM Contractor must:
  - (i) remove from the Site and any Extra Land; and
  - (ii) dispose of,  
  
any Contamination or Waste pursuant to its obligations under this Contract to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) The CSM Contractor must:
  - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or Waste from the Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
  - (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.
- (c) The CSM Contractor must:
  - (i) sort all Contamination and Waste (including separating Compensable Contamination from clean material and any other type of Contamination or Waste);
  - (ii) not contaminate clean material by intermixing any Contamination or Waste; and
  - (iii) not intermix Compensable Contamination with clean material or any other type of Contamination or Waste.
- (d) The CSM Contractor must ensure, and must ensure that its Associates ensure, that their respective employees, agents and contractors, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws and Approvals.
- (e) The CSM Contractor must:
  - (i) keep complete, accurate and up to date records of all materials that are disposed of or otherwise removed from the Site or any Extra Land (including all Contamination and other wastes) including classification certificates and tip dockets for all loads; and

- (ii) if requested, provide a copy of any such records to the Principal's Representative.

- [REDACTED]
- (g) The CSM Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the CSM Contractor to comply with any obligation under this clause, provided that the CSM Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal contributed to the claim or Loss.

#### 7.9 Remediation Action Plans

- (a) Prior to commencing Remediation of Contamination in respect of the former gas works, the CSM Contractor must prepare and submit to the Principal's Representative a Remediation Action Plan for the relevant area.
- (b) Each Remediation Action Plan must:
  - (i) describe the manner in which the CSM Contractor will Remediate the relevant area in accordance with the requirements of this Contract (including the SWTC); and
  - (ii) be prepared:
    - (A) by a Certified Environmental Consultant;
    - (B) in consultation with an Accredited Site Auditor;
    - (C) using Good Industry Practice; and
    - (D) in accordance with the requirements of Law, all guidelines made or approved by the EPA and any other requirements of this Contract; and
  - (iii) certified by an Accredited Site Auditor as being suitable for Remediation of the relevant area.
- (c) The Principal's Representative may:
  - (i) review any Remediation Action Plan submitted under clause 7.9(a); and
  - (ii) if the Remediation Action Plan submitted does not comply with this Contract, notify the CSM Contractor within 15 Business Days of the initial submission of the Remediation Action Plan providing reasons for the non-compliance.
- (d) If the CSM Contractor receives a notice under clause 7.9(c)(ii), the CSM Contractor must promptly submit an amended Remediation Action Plan, or relevant part or component of it, to the Principal's Representative and the process in this clause 7.9 will reapply.
- (e) The CSM Contractor may not commence Remediation of Contamination in any area of the Site unless and until the Remediation Action Plan for the relevant area has been submitted to the Principal's Representative and have not been the subject of a notice under clause 7.9(c)(ii).

- (f) The Principal's Representative owes no duty to the CSM Contractor to review any Remediation Action Plan submitted by the CSM Contractor for errors, omissions or compliance with this Contract.
- (g) No review of, comments upon, notice in respect of any Remediation Action Plan or any other act or omission of the Principal's Representative (including a direction under clause 7.9(c)) in relation to any Remediation Action Plan will lessen or otherwise affect:
  - (i) the CSM Contractor's liabilities or responsibilities under this Contract or otherwise according to Law; or
  - (ii) the Principal's rights against the CSM Contractor, whether under this Contract or otherwise according to Law.

**7.10 Artefacts**

- (a) All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Site (all **Artefacts**) are, and will as between the CSM Contractor and the Principal be and remain, the property of the Principal.
- (b) The CSM Contractor must:
  - (i) immediately notify the Principal's Representative if it discovers an Artefact;
  - (ii) ensure the Artefact is protected and not lost, removed, disturbed or damaged;
  - (iii) comply with all requirements of Authorities and Law in relation to the Artefact (noting compliance with Law is a contractual requirement and does not constitute a direction of the Principal);
  - (iv) comply with any directions of the Principal's Representative in relation to the Artefact; and
  - (v) continue to perform the CSM Contractor's Activities except to the extent otherwise:
    - (A) ordered or directed by an Authority;
    - (B) ordered by a court or tribunal;
    - (C) directed by the Principal or the Principal's Representative; or
    - (D) required by Law.
- (c) The CSM Contractor acknowledges and agrees that compliance with clause 7.10(b)(iii) does not constitute a direction of the Principal's Representative for the purposes of clause 7.10(d).
- (d) Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 7.12(a) to 7.12(d):

[REDACTED] the Principal will determine under clause 4 [REDACTED]  
[REDACTED]  
[REDACTED] as a result of the CSM Contractor complying with the:

- (A) requirements of Authorities in accordance with clause 7.10(b)(iii); or
  - (B) Principal's Representative's directions under clause 7.10(b)(iv); and
- (ii) the CSM Contractor may make a claim for an extension of time under clause 14.8 in respect of the discovery of an Artefact to the extent that the discovery of that Artefact results in the CSM Contractor being directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform the CSM Contractor's Activities, for more than 5 days in aggregate for each discovery of an Artefact.

**7.11 Utility Services**

- (a) The CSM Contractor must:
- (i) investigate, relocate, remove, modify, support, protect, reinstate and provide all Utility Services necessary for the CSM Contractor to comply with its obligations under this Contract;
  - (ii) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the CSM Contractor to comply with its obligations under this Contract, including any such devices reasonably required by the Principal's Representative;
  - (iii) despite any other provision in the Contract to the contrary, ensure that no Utility Services are:
    - (A) damaged or destroyed; or
    - (B) disconnected, disrupted, interfered with or interrupted during normal operating hours,by reason of the performance of the CSM Contractor's Activities;
  - (iv) cooperate and coordinate with the owners of all Utility Services; and
  - (v) indemnify the Principal against any claim, damages, expense, costs, Loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Utility Service arising out of or in any way in connection with the CSM Contractor's Activities, provided that the CSM Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, its Associates, an Other Contractor (including an Interface Contractor) or an agent of the Principal contributed to the claim, damages, expense, costs, Loss, liability, fine or penalty.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

and





- (B) a failure by the Principal to provide any other information, data or documents to the CSM Contractor.
- (c) The CSM 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 CSM 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:
    - (A) enters into this Contract based on its own investigations, interpretations, deductions, information and determinations;
    - (B) has examined and will continue to examine all other relevant information available on reasonable enquiry;
    - (C) has obtained and considered all necessary information relevant to the risks, contingencies and other circumstances having an effect on the CSM Contractor's Activities;
    - (D) has satisfied itself as to the correctness and sufficiency of the Contract having regard to the risks referred to in clause 7.12(c)(ii)(C); and
    - (E) has taken such professional advice as is appropriate for projects of the type contemplated by this Contract; and
  - (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon the warranties, acknowledgements and agreements in clauses 7.12(c)(i) and 7.12(c)(ii).
- (d) Subject to clause 7.12(e), the CSM Contractor irrevocably releases and indemnifies the Principal (and any of its officers, employees, consultants and agents) from and against:
  - (i) any claim against them by, or liability of them to, any person; or
  - (ii) (without being limited by clause 7.12(d)(i)) any costs, expenses, Losses, liabilities or damages suffered or incurred by them,arising out of or in any way in connection with:
  - (iii) the provision of, or the purported reliance upon, or use of the Information Documents, as referred to in clauses 7.12(b) and 7.12(c)(i), to or by the CSM Contractor or any other person to whom the Information Documents are disclosed or a failure by the Principal to provide any information, data or documents to the CSM Contractor (other than any information, data or

documents which the Principal is required to provide to the CSM Contractor by the terms of this Contract);

- (iv) any breach by the CSM Contractor of this clause 7.12; or
- (v) the Information Documents being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).
- (e) The releases and indemnities under clause 7.12(d) benefit the Principal and its officers, employees, consultants and agents. The Principal may enforce each release and indemnity in its own right and on behalf of its officers, employees, consultants and agents.
- (f) The acknowledgements, warranties, releases and indemnities referred to in clauses 7.12(a) to 7.12(d) do not affect the CSM Contractor's rights under clause 7.6(d).

#### 7.13 **Principal's Right to Access and Inspect**

Subject to clause 7.15, the CSM Contractor must:

- (a) without limiting clauses 7.3 and 7.4, minimise disruption or inconvenience to:
  - (i) the Principal, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site, Extra Land or any other land or buildings above or adjacent to the Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site or Extra Land, including any occupation or use of the Project Works, a Portion or a part thereof under clause 16.5;
  - (ii) others having a right of access to the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land; and
  - (iii) the occupants of the Adjoining Properties and of any other land adjoining the Site or located in the vicinity of the Site.
- (b) at all times:
  - (i) give the Principal's Representative, the Principal, the Interface Contractors, and any person authorised by either the Principal's Representative or the Principal access to:
    - (A) the Project Works;
    - (B) the Site; or
    - (C) any other areas where the CSM Contractor's Activities are being carried out,including unobstructed vehicular access through the Site; and
  - (ii) provide the Principal, the Principal's Representative, the Independent Certifier and any person authorised by either the Principal's Representative or the Principal with every reasonable facility necessary for the Inspection of

the CSM Contractor's Activities, including the CSM Contractor's compliance with the Authority Approvals.

#### 7.14 **Condition Surveys**

- (a) The CSM Contractor must:
  - (i) identify and prepare a condition survey of all property that could be affected or damaged by the CSM Contractor's Activities and as required by the Planning Approval and in accordance with MR PA;
  - (ii) prepare this condition survey a minimum of two weeks prior to commencing any work on the Site, or on any other land which is necessary for performing the CSM Contractor's Activities or undertaking the Project Works, where that work could damage property on or off the Site;
  - (iii) in preparing this condition survey must use suitably skilled, qualified, and experienced personnel or Subcontractors; and
  - (iv) prior to Construction Completion, rectify any damage to property caused by the CSM Contractor's Activities.

#### 7.15 **Setting Out**

- (a) The CSM Contractor must:
  - (i) set out the Project Works in accordance with the requirements of this Contract, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the CSM Contractor that are suitable for their purposes;
  - (ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
  - (iii) for this purpose keep all survey marks in their true positions.
- (b) If the CSM Contractor discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the CSM Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the CSM Contractor must at its cost rectify the error.

#### 7.16 **Works to be constructed within Site**

The CSM Contractor must ensure that the Works are constructed within the relevant boundaries of the Site.

#### 7.17 **Survey**

- (a) The CSM Contractor must, as a condition precedent to Construction Completion of the Project Works or any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:
  - (i) for its review under clause 13.11 a Survey Plan for the Project Works or the relevant Portion that:
    - (A) has regard to the setback requirements in the Building Code of Australia;

- (B) has regard to any stratum lots whether above or below ground;
  - (C) has regard to the survey control requirements of any relevant Rail Transport Agency;
  - (D) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
  - (E) shows all internal title boundaries;
  - (F) shows all easements; and
  - (G) shows the location of the Project Works and all Utility Services; and
- (ii) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
- (A) the whole of the Project Works or the Portion has been constructed within the relevant boundaries of the Site stipulated in this Contract, except only for parts of the Project Works or Portion specifically required by this Contract to be outside those boundaries;
  - (B) the elements of the Project Works or the Portion are in the positions and within the tolerances required by Law and this Contract; and
  - (C) the survey information included in the configuration materials provided pursuant to the MRs complies with the requirements of this Contract.

**7.18 Principal not in Control**

The CSM Contractor and Principal acknowledge that nothing in this Contract including the right to inspect pursuant to clause 7.13 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

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

**7.19 Track Possessions and Extended Track Possessions**

- (a) Schedule E2 identifies the available Track Possessions and Extended Track Possessions (with power isolations).
- (b) The Principal will liaise with any relevant Rail Transport Agency to procure for the benefit of the CSM Contractor the Track Possessions and Extended Track Possessions as set out in Schedule E2.
- (c) The CSM Contractor must, as a condition to receiving an Extended Track Possession contemplated in Schedule E2 (other than the initial Extended Track Possession):
  - (i) provide the Principal with no less than 14 weeks' notice that it intends to Hand Back the current Extended Track Possession; and

- (ii) Hand Back the current Extended Track Possession by the date so notified and in condition acceptable to the Principal.
- (d) If the CSM Contractor fails to Hand Back the current Extended Track Possession by the date notified to the Principal under clause 7.19(c)(i), the CSM Contractor must reapply for an Extended Track Possession and clause 7.19(c) will apply.
- (e) The CSM Contractor must:
  - (i) coordinate the CSM Contractor's Activities with the calendar of available Track Possessions and Extended Track Possessions and make proper allowances in all programs for the calendar of available Track Possessions and Extended Track Possessions; and
  - (ii) set out in each version of the CSM Contractor Program the Track Possessions and Extended Track Possessions that it proposes to utilise in carrying out the Project Works.
- (f) The CSM Contractor acknowledges that it will not have exclusive access to any Track the subject of a Track Possession (including an Extended Track Possession) and must:
  - (i) without limiting clauses 3.2 or 3.3 coordinate its activities with whoever else is sharing the relevant Track Possession or Extended Track Possession; and
  - (ii) allow any relevant Rail Transport Agency and Other Contractors to pass through any track the subject of the relevant Track Possession or Extended Track Possession.
- (g) If the CSM Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in clause 7.19(a) for the performance of the CSM Contractor's Activities (**Additional Track Possession or Power Isolation**) and requires the Principal to liaise with the relevant Rail Transport Agency in this regard, it must provide no less than:
  - (i) 52 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or
  - (ii) 26 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight,

and identify whether a power isolation is required during the requested Additional Track Possession or Power Isolation.
- (h) Following receipt of a request for an Additional Track Possession or Power Isolation under clause 7.19(g), the Principal may assist the CSM 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 any relevant Rail Transport Agency.
- (i) If an Additional Track Possession or Power Isolation is granted by a Rail Transport Agency, the CSM Contractor must:
  - (i) make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with the MRs; and
  - (ii) 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 table 6 of Schedule E2.

- (j) The CSM Contractor must effectively and efficiently utilise each Track Possession and Extended Track Possession.
- (k) The CSM Contractor acknowledges and agrees that:
  - (i) the Principal or any relevant Rail Transport Agency may alter or cancel any Track Possession, Extended Track Possession, power isolation or Additional Track Possession or Power Isolation at any time; and
  - (ii) its only remedy for:
    - (A) any failure by the Principal to procure a Track Possession, Extended Track Possession or power isolation referred to in clause 7.19(a); or
    - (B) cancellation of Additional Track Possession or Power Isolation once it has been obtained,

is set out in clauses 4 and 14.8.

#### 7.20 **Liquidated damages for late Hand Back of Track Possessions**

- (a) The CSM Contractor must:
  - (i) Hand Back the relevant part of the Rail Corridor by the scheduled end of any Track Possession; or
  - (ii) in the event of an emergency, cease to occupy the relevant part of the Rail Corridor within a reasonable period of the emergency occurring; and
  - (iii) immediately notify Sydney Trains' Representative (with a copy to the Principal) if the CSM Contractor anticipates it may be late in vacating the Rail Corridor.
- (b) Subject to clause 7.20(d), if:
  - (i) the CSM Contractor is late in achieving Hand Back of the relevant part of the Rail Corridor that is the subject of a Track Possession; or
  - (ii) there is a delay to rail services arising out of or in connection with the CSM Contractor's Activities,

the CSM Contractor must pay the Principal:

- (iii) [REDACTED] for each hour or part thereof that elapses during Peak Hours between the time that the relevant part of the Rail Corridor the subject of the Track Possession was scheduled to end and:
  - (A) the Hand Back of the Track Possession; or
  - (B) the time at which the delay to rail services arising out of or in connection with the CSM Contractor's Activities has ended,

whichever is the later; and

(iv) [REDACTED] per hour or part thereof that elapses outside of Peak Hours between the time that the relevant part of the Rail Corridor the subject of the Track Possession was scheduled to end and:

(A) the Hand Back of the Track Possession; or

(B) the time at which the delay to rail services arising out of or in connection with the CSM Contractor's Activities has ended,

whichever is the later.

- (c) A payment in accordance with clause 7.20(b) is the Principal's sole and exclusive remedy for loss as a result of an event described in clause 7.20(b)(i) and 7.20(b)(ii).
- (d) The CSM Contractor is not required to pay the Principal liquidated damages as contemplated by clause 7.20(b) to the extent the delay arises as a result of any act or omission of the Principal or Sydney Trains.
- (e) The Principal and the CSM Contractor agree and acknowledge that the principles and objectives set out in clause 16.6(a) and 16.6(b) apply equally to the events described in clause 7.20(b)(i) and 7.20(b)(ii).
- (f) The CSM Contractor acknowledges and agrees that the occurrence of the events described in clause 7.20(b)(i) and 7.20(b)(ii) will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives, including but not limited to minimising the adverse effects of the CSM Contractor's Activities on the safety and operability of the Existing Operations conducted by Sydney Trains, to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

#### 7.21 Principles applicable to Liquidated Damages

- (a) The parties agree that the liquidated damages provided for in clause 7.20(b):
  - (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the occurrence of the events described in clause 7.20(b)(i) and 7.20(b)(ii) and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the CSM Contractor; and
  - (ii) will be recoverable by the Principal from the CSM Contractor as a debt due and payable.
- (b) The Principal and the CSM Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this Contract.
- (c) The CSM Contractor agrees to pay the liquidated damages under clause 7.20(b) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (d) The CSM Contractor entered into the obligation to pay the amounts specified in clause 7.20(b) with the intention that it is a legally binding, valid and enforceable contractual provision against the CSM Contractor in accordance with its terms.



- (e) The CSM Contractor agrees:
- (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
  - (ii) that if clauses 7.20 or 7.21 (or any part of them) 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 (including loss of revenue and loss of profits from the loss of use of the Project Works) as a result of the occurrence of the events described in clause 7.20(b)(i) and 7.20(b)(ii), but the CSM Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (f) The Principal's Representative, when issuing a payment schedule pursuant to clauses 15.2(d) or 15.2(f) after the time that the relevant part of the Rail Corridor the subject of the Track Possession was scheduled to end, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 7.20(b) to the date of the payment schedule (despite the liability under clause 7.20(b) still accruing).

## 8. COMPLIANCE

### 8.1 Quality of Work

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

### 8.2 Management Requirements

The CSM Contractor must comply with the requirements of the MRs.

### 8.3 Environmental Management

The CSM Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of the MRs for so long as any CSM Contractor's Activities are carried out;
- (b) as part of the Contract Management Plan, document, implement and maintain a project-specific Construction Environmental Management Plan for the management of environmental matters in accordance with the MRs;
- (c) carry out the CSM Contractor's Activities in accordance with the Construction Environmental Management Plan;

- (d) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and MRs in relation to environmental management on the Site and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles in the design and construction of the Project Works, Temporary Works and all other CSM Contractor's Activities.

#### 8.4 **Health and Safety Management**

The CSM Contractor must:

- (a) hold and maintain a health and safety management system for so long as any CSM Contractor's Activities are carried out that complies with the WHS Guidelines and the MRs;
- (b) as part of the Contract Management Plans, develop, document and implement a contract specific Project Health and Safety Management Plan (including safe work method statements) in accordance with the WHS Guidelines and MRs;
- (c) carry out the CSM Contractor's Activities in accordance with the Project Health and Safety Management Plan and safe work method statements;
- (d) create a safe working environment for ensuring the safety of all authorised personnel on the Site and Extra Land and that no unauthorised individual gains access to the Site; and
- (e) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the MRs in relation to the WHS management on the Site and Extra Land.

#### 8.5 **Safety**

- (a) The CSM Contractor must ensure that the CSM Contractor's Activities are carried out:
  - (i) safely and in a manner that does not put the health and safety of persons at risk; and
  - (ii) in a manner that protects property.
- (b) If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the CSM Contractor's Activities:
  - (i) the Principal's Representative may direct the CSM Contractor to change its manner of working or to cease working; and
  - (ii) the CSM Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 8.5(b)(i).
- (c) The CSM Contractor must:
  - (i) ensure that in carrying out the CSM Contractor's Activities:
    - (A) it complies with all Law, including the WHS Law, RSNL, HVNL and other requirements of this Contract for work health, safety, rail safety and rehabilitation management (including, but not limited to, those requirements set out in the WHS Guidelines);

- (B) the CSM Contractor, all Subcontractors, contractors or consultants engaged by the CSM Contractor comply with the requirements referred to in this clause 8.5 and their respective obligations under the WHS Legislation and RSNL; and
  - (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to the same matter;
- (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety, rail safety, chain of responsibility and rehabilitation matters arising out of, or in any way in connection with, the CSM Contractor's Activities, unless otherwise directed by the Principal;
  - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
  - (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 8.5(c)(i), together with written assurance(s) from the CSM Contractor about the CSM Contractor's ongoing compliance with the WHS Legislation;
  - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 13.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 8.5), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the CSM Contractor's compliance with the WHS Legislation;
  - (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
  - (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Project Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
  - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
  - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 8.5.
- (d) Without limiting clause 22.12 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Project Works, the Environment, other property or the health or safety of people.
  - (e) If the action taken by the Principal under clause 8.5(d) is action which the CSM Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), Loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:
    - (i) taking the action contemplated in this clause 8.5(d); or
    - (ii) the CSM Contractor's failure to take that action,

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

- (f) the CSM Contractor:
- (i) warrants that it is accredited under the WHS Accreditation Scheme;
  - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while "building work" (as defined in section 6 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)) is carried out; and
  - (iii) must ensure that all Subcontracts with Subcontractors carrying out work or providing services on the Site impose obligations on those Subcontractors that enable the CSM Contractor to comply with its obligations under this clause 8.5(f).
- (g) Without limiting the CSM Contractor's obligations under any other clause of this Contract, insofar as the CSM Contractor, in carrying out the CSM Contractor's Activities, is:
- (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies;
  - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the *Work Health and Safety Act 2011* (NSW) applies;
  - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the *Work Health and Safety Act 2011* (NSW) applies;
  - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the *Work Health and Safety Act 2011* (NSW) applies; or
  - (v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the *Work Health and Safety Act 2011* (NSW) applies,

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

- (h) Without limiting the CSM Contractor's obligations under any other clause of this Contract, the CSM Contractor must:
- (i) ensure that, if any Law, including in the State or Territory in which the Project Works are situated or the Project Works are carried out (as the case may be), require that:
    - (A) a person:
      - (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or

- (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
- (B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of subparagraph (i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (iii) if requested by the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the CSM Contractor or Subcontractor (as the case may be) commences such work.

#### 8.6 Rail Safety

- (a) Without limiting any other clause in the Contract, the CSM Contractor must comply with the Rail Safety National Law.
- (b) The CSM Contractor must ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the Rail Safety National Law and Rail Safety Regulations.
- (c) The CSM Contractor acknowledges that:
  - (i) the CSM Contractor's Activities and the Project Works are being undertaken for the purpose of constructing a railway;
  - (ii) the Principal holds Accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
  - (iii) to the extent that the CSM Contractor's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law it carries out those CSM Contractor's Activities for and on behalf of the Principal's Accreditation.
- (d) In carrying out any part of the CSM Contractor's Activities which require Accreditation as a Rail Infrastructure Manager, the CSM Contractor:
  - (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
  - (ii) must not do anything or fail to do anything that may cause the Principal to breach its obligations under the Rail Safety National Law;
  - (iii) carry out the CSM Contractor's Activities so as not to put the Principal in breach of its obligations as a Rail Infrastructure Manager under the Rail Safety National Law and Rail Safety Regulations;
  - (iv) not do anything (or fail to do anything) which jeopardises the Principal's Accreditation; and

- (v) without limiting clause 8.6(d), must ensure that the CSM Contractor's Subcontractors engaged in or in connection with the CSM Contractor's Activities, comply with clauses 8.6(d)(i) and 8.6(d)(ii).
- (e) In carrying out any part of the CSM Contractor's Activities which require Accreditation as a rolling stock operator, the CSM Contractor must:
  - (i) ensure that the CSM Contractor, or one of its Subcontractors, holds the necessary Accreditation for that part of the CSM Contractor's Activities; and
  - (ii) comply with the conditions of that Accreditation.
- (f) Without limiting or otherwise affecting any other provision under this Contract, the CSM Contractor must, and must ensure that its Subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the CSM Contractor's Activities which require Accreditation as a rolling stock operator.
- (g) The CSM Contractor must liaise and cooperate with the Principal and any other Rail Transport Operator and provide any reasonable assistance and documentation to the Principal, or any other Rail Transport Operator, as such party may require in relation to safety matters.
- (h) Without limiting clause 8.6(g), the CSM Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the CSM Contractor under or in connection with the Rail Safety National Law and the Rail Safety Regulations:
  - (i) relating to the CSM Contractor's Activities or the Project Works; or
  - (ii) which may adversely affect the ability of the CSM Contractor to perform the CSM Contractor's Activities,promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the CSM Contractor).
- (i) Without limiting clause 8.6(f), the CSM Contractor must ensure that all persons engaged by the CSM Contractor in or in connection with the CSM Contractor's Activities:
  - (i) are competent to carry out the work for which they are engaged for the purposes of section 52 of the Rail Safety National Law; and
  - (ii) comply with their obligations under the Rail Safety National Law (including under section 56 of the Rail Safety National Law).
- (j) The CSM Contractor must and must ensure that its Subcontractors:
  - (i) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
  - (ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested;
  - (iii) do not hinder or delay any Investigative Authority in carrying out its duties.

- (k) Compliance by the CSM Contractor with its obligations under this clause 8.6 does not discharge the CSM Contractor from complying with its other obligations under the Contract and is not evidence of compliance by the CSM Contractor with its other obligations under the Contract.
- (l) To the extent not prohibited by Law, the CSM 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 CSM Contractor's failure to comply with this clause 8.6.

#### 8.7 **Principal Contractor**

- (a) In this clause 8.7 the terms 'construction project', 'construction work', 'notifiable incident', 'place of work', 'person conducting a business or undertaking' (**PCBU**), 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (b) For the purpose of the WHS Legislation and the Contract, the Project Works and any Other Contractor Work is taken to be part of the same construction project.
- (c) The Principal:
  - (i) engages the CSM Contractor as the principal contractor in respect of the CSM Contractor's Activities and all Other Contractor Work carried out on the Site; and
  - (ii) authorises the CSM Contractor to have management and control over the Site and of each workplace at which the CSM Contractor's Activities and the Other Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation.
- (d) The CSM Contractor:
  - (i) accepts the engagement as principal contractor and agrees to discharge all the duties imposed on a principal contractor by the WHS Legislation and the Contract;
  - (ii) must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
    - (A) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
    - (B) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Site.
- (e) The CSM Contractor's engagement and authorisation as principal contractor continues until the termination of the Contract unless sooner revoked by the Principal.
- (f) To the extent not prohibited by law, the CSM Contractor must indemnify the Principal from and against all claims against the Principal, or Loss (including reasonable legal fees) suffered or incurred by the Principal, arising out of or in any way in connection with any failure of:
  - (i) the CSM Contractor to exercise or fulfil the functions and responsibilities of a principal contractor under the WHS Legislation that the CSM Contractor is required to discharge in accordance with this clause 8.7; or

- (ii) the CSM Contractor to otherwise comply with the WHS Legislation, Rail Safety National Law, Rail Safety National Regulations, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 8.4, 8.5 and 8.6.
- (g) Where the Principal is not otherwise able to validly engage the CSM Contractor as principal contractor pursuant to clause 8.7(c), the CSM Contractor must exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if the CSM Contractor had been validly engaged as the principal contractor under the WHS Legislation so as to ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged. For this purpose the Principal authorises the CSM Contractor to exercise such authority of the Principal as is necessary to enable the CSM Contractor to discharge the responsibilities imposed on a principal contractor under the WHS Legislation.
- (h) Without limiting anything else in this clause 8.7, the CSM Contractor must, in respect of any construction work carried out on all or part of the Extra Land, discharge the duties of a principal contractor under the WHS Legislation in respect of such construction work.
- (i) Without limiting any other provision of this Contract, the CSM Contractor:
  - (i) must discharge all the obligations under the WHS Legislation and under any plan or any other laws relating to WHS;
  - (ii) accepts that it is the PCBU:
    - (A) carrying out the construction work; and
    - (B) in respect of the Project Works,for the purposes of the WHS Legislation;
  - (iii) is responsible for all costs associated with performing the role of principal contractor;
  - (iv) must comply with any direction on safety issued by a relevant Authority;
  - (v) must immediately notify the Principal of any notifiable incident in connection with the Project Works and/or the Site;
  - (vi) must provide to the Principal all notices and correspondence concerning WHS issued in connection with the Project Works within 5 Business Days after the dispatch and/or receipt of any such notice or correspondence;
  - (vii) acknowledges that it has control and management of the area of the parts of the Site on which it is carrying out the CSM Contractor's Activities;
  - (viii) must itself comply, and ensure that all subcontractors engaged by the CSM Contractor in connection with the Project Works, comply with their respective obligations under the WHS Legislation;
  - (ix) must ensure that it carries out the Project Works in a manner which ensures that the Principal satisfies its obligations under the WHS Legislation; and
  - (x) must display signs that are clearly visible from outside the place of work identifying the CSM Contractor as the principal contractor and stating the contact telephone numbers of the CSM Contractor (including an after-hours



emergency telephone number) and the location of the CSM Contractor's main site administration facilities for the construction project.

- (j) The Principal may notify the CSM Contractor that it has terminated the CSM Contractor's engagement as principal contractor and advise the CSM Contractor of the new principal contractor for the Project Works.
- (k) If the CSM Contractor's appointment and engagement as principal contractor is terminated under clause 8.7(j), then the CSM Contractor must (and must ensure that its officers, employees, contractors, subcontractors, and agents also):
  - (i) comply with all requirements of the new principal contractor in executing the Project Works and its other obligations under this Contract so as to enable the new principal contractor to meet its obligations under the WHS Legislation; and
  - (ii) refrain from doing anything that may impede upon the new principal contractor from complying with its obligations under the WHS Legislation.

#### 8.8 **No Relief from Obligations**

The CSM Contractor will not be relieved from any of its liabilities or responsibilities under this Contract (including under clause 12 or otherwise according to law) nor will the rights of the Principal whether under this Contract or otherwise according to law be limited or otherwise affected, by:

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

#### 8.9 **Engineering Authorisation**

The CSM Contractor represents and warrants that the CSM Contractor is an AEO and has obtained ASA Authorisation to carry out the Asset Lifecycle Services.

#### 8.10 **ASA Compliance**

- (a) Without limiting or otherwise restricting clauses 8.10(b) and 8.10(c), the CSM Contractor must:
  - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the CSM Contractor's Activities are carried out; and

- (ii) comply (and must ensure that its Subcontractors and all personnel for which the CSM Contractor is responsible comply) with the conditions of the applicable ASA Authorisation.
- (b) The CSM Contractor must (and must ensure that its Subcontractors and all personnel for which the CSM Contractor is responsible):
- (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
  - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 8.9 and 8.10;
  - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
  - (iv) provide access to premises and resources as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
  - (v) comply with the directions, instructions and requirements issued by the ASA;
  - (vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
  - (vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
  - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (c) The CSM 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 performance of any of its obligations under this clause 8.10.

#### 8.11 **Australian Government Requirements**

- (a) The CSM Contractor:
- (i) declares as at the date of this Contract; and
  - (ii) must ensure during the term of this Contract,
- that, in relation to the Project Works, it and its Subcontractors, consultants and each related entity:
- (iii) complies with, and acts consistently with, the Building Code;
  - (iv) meets the requirements of section 11 of the Building Code;
  - (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
  - (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIP Act, a designated building law, work health and safety

law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);

- (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIP Act);
  - (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
  - (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
  - (x) will comply with any Workplace Relations Management Plan which has been approved by the ABCC in accordance with Part 6 of the Building Code.
- (b) The CSM Contractor acknowledges and agrees that compliance with the Building Code does not relieve the CSM Contractor from any responsibility or obligation under this Contract, or from liability for any Defect in the Project Works arising from compliance with the Building Code.
- (c) The CSM Contractor must promptly:
- (i) notify the ABCC of:
    - (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the CSM Contractor to rectify the breach; and
    - (B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 8.11(c)(i)(A); and
  - (ii) give the Principal a copy of any notification given by the CSM Contractor to the ABCC under clause 8.11(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) The CSM Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (i) for entry under section 72 of the BCIIP Act;
  - (ii) to interview any person under section 74 of the BCIIP Act;
  - (iii) to produce records or documents under sections 74 and 77 of the BCIIP Act; and
  - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) The CSM Contractor must not enter into a Subcontract for any aspect of the Project Works unless:

- (i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the CSM Contractor agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
  - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 8.11.
- (f) The CSM Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 8.11(e) promptly upon request.
- (g) The CSM Contractor must maintain adequate records of the compliance with the Building Code by:
- (i) the CSM Contractor;
  - (ii) the Subcontractors;
  - (iii) the CSM Contractor's consultants; and
  - (iv) any related entity of the CSM Contractor.
- (h) For the purposes of this clause 8.11, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

#### 8.12 **NSW Code of Practice**

- (a) NSW Code and NSW Guidelines

In addition to terms defined in this document, terms used in this clause 8.12 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (**NSW Guidelines**) (as published by the NSW Treasury in July 2013). The NSW Code and NSW Guidelines are available at [www.procurepoint.nsw.gov.au](http://www.procurepoint.nsw.gov.au).

- (b) Primary Obligation

- (i) The CSM Contractor must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (**NSW Code**) and NSW Guidelines.
- (ii) The CSM Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (iii) Where the CSM Contractor engages a Subcontractor, the CSM Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 8.12, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (iv) The CSM Contractor must not appoint or engage another party in relation to the Project Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

(c) Access and information

- (i) The CSM Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (ii) The CSM Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (A) enter and have access to sites and premises controlled by the CSM Contractor, including but not limited to the Site;
  - (B) inspect any work, material, machinery, appliance, article or facility;
  - (C) access information and documents;
  - (D) inspect and copy any record relevant to the Project Works;
  - (E) have access to personnel; and
  - (F) interview any person,

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

- (iii) The CSM 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.

(d) Sanctions

- (i) The CSM Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (ii) If the CSM 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.
- (iii) Where a sanction is imposed:
  - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (B) the State of NSW (through its agencies, Ministers and the CCU) may:
    - (aa) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - (bb) take them into account in the evaluation of future procurement processes and responses that may be submitted by the CSM Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

(e) Compliance

- (i) The CSM Contractor:
  - (A) 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; and
  - (B) 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.
- (ii) Compliance with the NSW Code and NSW Guidelines does not relieve the CSM Contractor from responsibility to perform the CSM Contractor's Activities and any other obligation under the Contract, or from liability for any Defect in the Project Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (iii) Where a change in the Contract or the Project Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the CSM Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
  - (A) the circumstances of the proposed change;
  - (B) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
  - (C) what steps the CSM 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 Health and Safety Management Plan),

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

#### 8.13 **TfNSW's Statement of Business Ethics**

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

#### 8.14 **Independent Advisers**

- (a) Independent Safety Advisor
  - (i) Until and including the date of expiry of the final Defects Correction Period, the Principal will engage an Independent Safety Advisor to perform Independent Safety Assessments.
  - (ii) The CSM Contractor acknowledges that:
    - (A) the Independent Safety Advisor may take into account any reasonable comments made by the Principal in relation to the Independent Safety Assessment or any material prepared or produced in connection with an Independent Safety Assessment; and

(B) any material prepared or produced in connection with an Independent Safety Assessment will be provided to the Principal promptly after the relevant material is prepared or produced.

(b) Independent Estimator

Until and including the date of expiry of the final Defects Correction Period, the Principal will engage an Independent Estimator to provide advice, as and when requested by the Principal, in respect of any adjustments to the Target Costs in order to determine if such adjustments offer value for money.

(c) Financial Auditor

(i) The Principal will until the date of expiry of the final Defects Correction Period, engage a Financial Auditor to provide a quarterly report to the Principal's Representative in which the Financial Auditor provides the following:

(A) undertake financial assessments of the CSM Contractor;

(B) certify that payments have been made to Subcontractors in accordance with requirements of the Contract;

(C) reconcile the Project Bank Account statements; and

(D) undertake sample audits, using a risk-based approach, of the costs claimed as reimbursable by the CSM Contractor to confirm if were correctly incurred and are actual costs exclusive of margins, design and preliminaries related costs.

(ii) The report provided under clause 8.14(c)(i) will be provided to the Principal's Representative.

(d) The CSM Contractor acknowledges that:

(i) the Independent Estimator and the Financial Auditor will require full access to all accounts, subcontracts and financial information for the Contract;

(ii) it will cooperate in facilitating any functions of the Independent Estimator and the Financial Auditor including by making available all necessary accounts, subcontracts and financial information to the Principal's Representative, the Independent Estimator and the Financial Auditor to enable an audit to be conducted; and

(iii) the Principal is under no obligation to proceed on the basis of the advice and reports provided by the Independent Safety Advisor, the Independent Estimator or the Financial Auditor under this clause 8.14.

**8.15 Asset Management Information**

(a) The CSM Contractor must prepare and submit Asset Management Information for the relevant Portion in accordance with the requirements of Appendix B12 of the SWTC.

(b) All Asset Management Information must comply with the requirements of this Contract including the SWTC.

(c) The Principal's Representative must, within 15 Business Days of the submission of the Asset Management Information for a Portion, either:

- (i) reject the Asset Management Information for a failure to comply with the requirements of this Contract, which rejection must specify what development, updating and amendment of the Asset Management Information is required (together with reasons) and a time within which this must occur; or
  - (ii) advise in writing that the Asset Management Information is not rejected.
- (d) If the Asset Management Information for a Portion is rejected by the Principal's Representative, the CSM Contractor must update and resubmit the Asset Management Information and clause 8.15(c) will re-apply except that the reference to "15 Business Days" will be deemed to be a reference to the Principal's Design Re-Review Period.
- (e) The CSM Contractor acknowledges and agrees that the Principal's Representative may make comments to the CSM Contractor in respect of any Asset Management Information submitted under clause 8.15(a) or clause 8.15(d).
- (f) The Principal's Representative may:
- (i) provide copies of any Asset Management Information to; and
  - (ii) seek comments in respect of any Asset Management Information, from, the Independent Certifier and any Interface Contractor.
- (g) The Principal's Representative owes no duty to the CSM Contractor to review any Asset Management Information submitted by the CSM Contractor for errors, omissions or compliance with this Contract.
- (h) No review of, comments upon, non-rejection or rejection of any Asset Management Information by the Principal's Representative, nor any other Direction by the Principal's Representative in respect of any Asset Management Information, will lessen or otherwise affect:
- (i) the CSM Contractor's liabilities or responsibilities under this Contract or otherwise according to Law; or
  - (ii) the Principal's rights against the CSM Contractor, whether under this Contract or otherwise according to Law.
- (i) Without limiting any other obligation of the CSM Contractor to provide Asset Management Information under this Contract, the CSM Contractor must, in respect of Portion 3 only, provide to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information (including as built drawings) which has not been rejected by the Principal's Representative under clause 8.15(c) relating to Portion 3, to the extent directed by the Principal's Representative, within 90 days after the Date of Construction Completion of Portion 3.

## 9. DESIGN, DESIGN DOCUMENTATION AND COST PLANNING

### 9.1 Design obligations

The CSM Contractor must design the Project Works and the Temporary Works in accordance with:

- (a) the SWTC;



- (b) any Change:
  - (i) directed by the Principal by a Change Order; or
  - (ii) otherwise approved by the Principal under the terms of this Contract; and
- (c) the other requirements of this Contract.

#### 9.2 **CSM Contractor's Tender Design**

- (a) The CSM Contractor acknowledges that prior to the date of this Contract it prepared the CSM Contractor's Tender Design.
- (b) The CSM Contractor agrees that the use by the CSM Contractor of, or the reliance by the CSM Contractor upon, the CSM Contractor's Tender Design in performing the CSM Contractor's Activities will not limit any of its obligations under this Contract.
- (c) The CSM Contractor is responsible for any differences between the Project Works and the Temporary Works which the CSM Contractor is required to design and construct (ignoring for this purpose any differences which are the subject of a Change Order) and the CSM Contractor's Tender Design to satisfy the requirements of this Contract including differences required to ensure that:
  - (i) the Project Works and the Temporary Works satisfy the requirements of this Contract;
  - (ii) upon Construction Completion the Project Works are, and will be capable of remaining at all relevant times, fit for their intended purposes; and
  - (iii) the Temporary Works will be and remain fit for their intended purposes.

#### 9.3 **Design warranties**

- (a) The CSM Contractor warrants to the Principal that:
  - (i) the CSM Contractor's Tender Design has been prepared by the CSM Contractor;
  - (ii) it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this Contract despite the CSM Contractor's Tender Design;
  - (iii) if the Project Works and the Temporary Works are designed and constructed using the CSM Contractor's Tender Design, the Project Works and the Temporary Works will satisfy the requirements of this Contract but nothing in this clause 9.3(a)(iii) affects or limits clauses 9.2(a), 9.2(b) or 9.2(c), which will prevail to the extent of any inconsistency;
  - (iv) it will carry out and complete the CSM Contractor's Activities using the CSM Contractor's Tender Design but nothing in this clause 9.3(a)(iv) affects or limits clauses 9.2(a), 9.2(b) or 9.2(c), which will prevail to the extent of any inconsistency;
  - (v) it will not make any adjustments to the CSM Contractor's Tender Design that will reduce the:
    - (A) durability;

- (B) whole of life performance;
- (C) environment and sustainability performance;
- (D) functional performance; or
- (E) safety,

of any part of the Project Works, or increase the whole of life costs associated with any part of the Project Works, other than to the extent directed by the Principal's Representative;

(vi) it has checked, examined, analysed and carefully considered the SWTC and Environmental Documents and that:

- (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC;
- (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
- (C) the SWTC is proper, adequate and fit for its intended purpose including for the purpose of enabling the CSM Contractor to carry out the CSM Contractor's Activities in accordance with, and to ensure that the Project Works and the Temporary Works comply with, this Contract including the other warranties in this clause 9.3;
- (D) it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the Independent Certifier or the Principal's Representative (as applicable) in accordance with this Contract;
- (E) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the CSM Contractor of, or reliance upon, the SWTC; and
- (F) the use of, or reliance upon, the SWTC does not affect any of its obligations under this Contract or entitle the CSM Contractor to make any Claim against the Principal arising out of or in any way in connection with the SWTC;

(vii) the Design Documentation will:

- (A) satisfy the requirements of the SWTC and the other requirements of this Contract;
- (B) be and will remain at all relevant times fit for its intended purpose; and
- (C) be prepared, certified, verified, completed and used in accordance with the requirements of this Contract;

(viii) construction will be carried out in accordance with the Design Documentation which the CSM Contractor is entitled to use for construction purposes in accordance with clause 9.10(a);

- (ix) construction carried out in accordance with the Design Documentation which the CSM Contractor is entitled to use in accordance with clause 9.10 will satisfy the requirements of this Contract; and
- (x) each Portion (both individually and in combination with any earlier completed Portions) and the Project Works as a whole, will:
  - (A) be completed in accordance with, and satisfy the requirements of, this Contract;
  - (B) upon Construction Completion, be fit for their intended purposes; and
  - (C) thereafter be capable of remaining at all relevant times fit for their intended purposes.
- (b) The CSM Contractor agrees that its obligations under, and the warranties given in, clauses 9.2 and 9.3 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:
  - (i) any design work carried out by others prior to the date of this Contract and incorporated in this Contract;
  - (ii) any Change the subject of a direction by the Principal's Representative; or
  - (iii) the termination (for any reason) of this Contract.

#### 9.4 **Preparation and submission of Design Documentation**

- (a) The CSM Contractor must:
  - (i) prepare the Design Documentation in the following three Design Stages:
    - (A) Design Stage 1;
    - (B) Design Stage 2; and
    - (C) Design Stage 3,

or as otherwise contemplated by the Design Management Plan;
  - (ii) submit all Design Documentation (not including Design Documentation to the extent that it relates solely to Temporary Works) to the Principal's Representative:
    - (A) in accordance with the Design Management Plan;
    - (B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and the Independent Certifier (in respect of Design Stage 3 Design Documentation) a reasonable opportunity to review the submitted Design Documentation; and
    - (C) in accordance with the requirements of the SWTC;
  - (iii) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement at the same time that

the CSM Contractor submits such Design Documentation to the Principal's Representative under this Contract;

- (iv) within 5 Business Days of a request by the Principal's Representative, provide the Principal's Representative with any Design Documentation to the extent it relates solely to Temporary Works;
- (v) ensure the Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the Independent Certifier and the Principal's Representative to determine whether:
  - (A) the Design Documentation complies with this Contract; and
  - (B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this Contract.
- (b) The Principal will, within 1 Business Day of receiving any Design Stage 3 Design Documentation from the CSM Contractor, provide to the Independent Certifier the Design Stage 3 Design Documentation (if any) to be reviewed by the Independent Certifier.

#### 9.5 **Third Party Works**

Design Documentation that must be provided under or in connection with any Third Party Agreement must comply with the requirements of the relevant Third Party Agreement.

#### 9.6 **Certification of Design Documentation**

- (a) All Design Documentation submitted pursuant to clause 9.4 for Design Stage 1 and Design Stage 2 must be accompanied by a certificate in the form of Schedule B1 from the CSM Contractor certifying that the Design Documentation complies with all requirements of this Contract including the SWTC.
- (b) All Design Documentation submitted pursuant to clause 9.4 for Design Stage 3 must be accompanied by a certificate in the form of Schedule B2:
  - (i) from the CSM Contractor certifying that the Design Documentation:
    - (A) complies with all requirements of this Contract including the SWTC; and
    - (B) is suitable for construction; and
  - (ii) from each Designer that prepared the Design Documentation certifying that the Design Documentation complies with all requirements of this Contract including the SWTC.

#### 9.7 **Explanation of Design Documentation**

The CSM Contractor must, whenever it submits Design Documentation for Design Stage 1, Design Stage 2 or Design Stage 3 pursuant to clause 9.4:

- (a) deliver a design presentation workshop within 5 Business Days of its submission; and
- (b) if required by the Principal's Representative (and, in respect of Design Stage 3 only, the Independent Certifier), make available the appropriate design personnel to:

- (i) explain the Design Documentation; and
- (ii) provide such information regarding the Design Documentation as the Principal's Representative or the Independent Certifier reasonably requests.

9.8 **Review of Design Documentation**

- (a) **(Principal's Representative review – Design Stages 1 and 2):** The Principal's Representative must, within 20 Business Days of the date on which any Design Documentation for Design Stage 1 or Design Stage 2 is submitted to it in accordance with clause 9.4:
  - (i) review the Design Documentation and, in so doing, will consider any non-compliances or potential non-compliances raised by any Authorities (including Sydney Trains and Sydney City Council); and
  - (ii) notify the CSM Contractor of any actual non-compliance with the requirements of this Contract (with detailed reasons).
- (b) **(Non-compliance of Design Stage 1 or Stage 2 Design Documentation):** If the Principal's Representative notifies the CSM Contractor under clause 9.8(a)(ii) that any Design Stage 1 or Design Stage 2 Design Documentation contains an actual non-compliance with the requirements of this Contract:
  - (i) the CSM Contractor:
    - (A) must, at the same time or within 20 Business Days after receiving such notice, give the Principal's Representative a written response:
      - (aa) which explains how the CSM Contractor will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved prior to submitting the Design Stage 3 Design Documentation; or
      - (bb) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative opinion, together with its reasons for doing so;
    - (B) must, prior to submitting Design Stage 3 Design Documentation that relates to a Design Stage 2 Design Documentation actual non-compliance, give the Principal's Representative a written statement which explains how the non-compliance has been addressed; and
    - (C) is not obliged to respond to any comments received from the Principal's Representative regarding any potential non-compliance with the requirements of this Contract or any other observation or comment which the Principal's Representative has on the Design Documentation which does not concern an actual non-compliance; or
  - (ii) following the receipt of a notice under clause 9.8(b)(i)(A)(bb), the parties will meet in good faith to seek to resolve the disagreement.
- (c) **(Principal's Representative review – Design Stage 3):** The Principal's Representative must, within 10 Business Days of the date on which any Design Stage 3 Design Documentation is submitted to it in accordance with clause 9.4:

- (i) review the Design Stage 3 Design Documentation and, in so doing, will consider any non-compliances or potential non-compliances raised by any Authorities (including Sydney Trains);
  - (ii) either:
    - (A) reject the Design Documentation (in writing, with detailed reasons, to the CSM Contractor with a copy to the Independent Certifier) if it considers that the Design Documentation:
      - (aa) does not comply with the requirements of this Contract (Minor Non-Compliances excepted); or
      - (bb) is not sufficiently complete to enable the Principal's Representative to form a view on whether it is compliant; or
    - (B) notify the CSM Contractor (with a copy to the Independent Certifier) that the Design Documentation is not rejected, together with a list of:
      - (aa) any non-compliances which the Principal's Representative considers to be Minor Non-Compliances; and
      - (bb) proposed actions that the CSM Contractor may take to address those Minor Non-Compliances.
- (d) **(Independent Certifier review – Design Stage 3):** The Independent Certifier must:
- (i) review any Design Stage 3 Design Documentation which is provided to the Independent Certifier in accordance with clause 9.4(b), addressing the comments received by it from the Principal's Representative under clause 9.8(c); and
  - (ii) within the IC Design Review Period determine whether or not the Design Documentation complies with the requirements of this Contract and either:
    - (A) reject the Design Documentation (in writing, with detailed reasons to the CSM Contractor with a copy to the Principal's Representative) if the Independent Certifier considers that the Design Documentation:
      - (aa) does not comply with the requirements of this Contract (Minor Non-Compliances excepted); or
      - (bb) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
    - (B) if the Independent Certifier considers that the Design Documentation complies with the requirements of this Contract, certify the Design Documentation by:
      - (aa) including a notation on each document forming part of the Design Documentation;
      - (bb) providing to the Principal's Representative, the CSM Contractor and, if required by the Principal's Representative, the Operator, a certificate in the form of Schedule B9; and
      - (cc) where the Design Documentation relates to Sydney Trains Interface Works, providing to the Principal's Representative

and the CSM Contractor a certificate in the form of Schedule 7 of the Sydney Trains Transition Agreement.

(e) **(Rejection of Design Documentation):** If any Design Stage 3 Design Documentation is rejected by:

(i) the Principal's Representative under clause 9.8(c)(ii)(A):

(A) the CSM Contractor must:

(aa) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it to the Principal in accordance with clause 9.4, in which case the process in this clause 9.8 will be reapplied to the amended element of the Design Documentation except that the reference to the review periods will be deemed to be a reference to the Principal's Design Re-Review Period; or

(bb) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion, together with its reasons for doing so; or

(ii) the Independent Certifier under clause 9.8(d)(ii)(A), the CSM Contractor must:

(A) amend the relevant non-compliant element of the Design Documentation and re-submit it to the Independent Certifier within 5 Business Days of receiving the notice under clause 9.8(d)(ii)(A), in which case the process in this clause 9.8(d) will be reapplied to the amended element of the Design Stage 3 Design Documentation, except that reference to the IC Design Review Period will be deemed to be a reference to the IC Design Re-Review Period;

(B) provide the Independent Certifier with a notice setting out any matters in relation to which it disagrees with the Independent Certifier's opinion, together with its reasons for doing so,

but the CSM Contractor may commence or continue construction of those elements of the Design Documentation that the Independent Certifier has not identified as being non-compliant with this Contract.

(f) **(Response by Principal or Independent Certifier):** If the CSM Contractor gives a notice under:

(i) clause 9.8(e)(i)(A)(bb) the Principal's Representative must, promptly after receipt of the notice, determine and notify the parties as to whether or not the notice satisfactorily addresses its concerns, together with its reasons for forming that opinion and:

(A) if the Principal's Representative considers that the CSM Contractor's notice satisfactorily addresses its concerns, it must provide the notice under clause 9.8(c)(ii)(B) as part of its notice; or

(B) if the Principal's Representative does not consider that the CSM Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet in good faith to seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of the notice under clause 9.8(c)(ii)(A); and

- (ii) clause 9.8(e)(ii)(B), the Independent Certifier must promptly after receipt of the notice, determine and notify the parties as to whether or not the notice satisfactorily addresses the Independent Certifier's concerns together with its reasons for forming that opinion and:
  - (A) if the Independent Certifier considers that the CSM Contractor's notice satisfactorily addresses its concerns, it must provide the certification under clause 9.8(d)(ii)(B) as part of its notice; or
  - (B) if the the Independent Certifier considers that the notice does not satisfactorily address its concerns, the Independent Certifier, the CSM Contractor and the Principal will meet in good faith to seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of receiving the notice under clause 9.8(d)(ii)(A).
  
- (g) **(Resubmission of Design Documentation):** If:
  - (i) the relevant parties reach resolution under clause 9.8(f)(i)(B) or 9.8(f)(ii)(B) and the CSM Contractor is required to resubmit any Design Documentation; or
  - (ii) any Design Documentation is the subject of a direction by the Principal's Representative under clause 9.8(h),
 then:
  - (iii) the CSM Contractor must promptly amend the relevant non-compliant element of the Design Documentation and re-submit the relevant element to the Principal's Representative and, in respect of Design Stage 3 Design Documentation, the Independent Certifier; and
  - (iv) the process in clause 9.8(c) or 9.8(d) (as applicable) will be reapplied to the amended element of the Design Documentation except that reference to the:
    - (A) review periods under clause 9.8(a) or 9.8(c) (as applicable) will be deemed to be a reference to the Principal's Design Re-Review Period; and
    - (B) IC Design Review Period will be deemed to be a reference to the IC Design Re-Review Period.
  
- (h) **(Principal's Direction):** The Principal's Representative may at any time (including after the Independent Certifier has certified the Design Documentation pursuant to clause 9.8(d)(ii)(B) or 9.8(f)(ii)(A)) direct the CSM Contractor to make amendments to the Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this Contract and, if it does so, clause 9.8(g)(iv) will apply.
  
- (i) **(Temporary Works):** The Independent Certifier is not required to certify any Design Documentation for Temporary Works.
  
- (j) **(Changes):** If the CSM Contractor considers that any Design Documentation which is the subject of a direction by the Principal's Representative under clause 9.8(h) constitutes or involves a Change, the CSM Contractor must, if it wishes to make a Claim in relation to the matter, give a notice and submit a claim in accordance with, and otherwise comply with, clause 10.



- (k) **(Independent Certifier response to Principal):** If the Principal's Representative's notice under clause 9.8(c)(ii)(B) proposed any Minor Non-Compliances in the CSM Contractor's Design Stage 3 Design Documentation, the Independent Certifier must, within 5 Business Days after certifying Design Stage 3 Design Documentation under clause 9.8(d)(ii)(B) or 9.8(f)(ii)(A), provide the Principal's Representative with detailed written reasons of why it did not include any of the the Principal's Representative's proposed Minor Non-Compliances in the certification of the Design Stage 3 Design Documentation.
- (l) **(Minor Non-Compliances):** If the certificate provided by the Independent Certifier pursuant to clause 9.8(d)(ii)(B)(bb) lists any Minor Non-Compliances:
- (i) the Independent Certifier may, in the certificate, recommend the action that could be taken by the CSM Contractor to address the Minor Non-Compliance; and
  - (ii) the CSM Contractor must complete the recommended action, or take any other action the CSM Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with this Contract, within the timeframe (if any) specified by the Independent Certifier and, in any event, as a pre-condition to Construction Completion of each relevant Portion.
- (m) **(Configuration Control Board) Where:**
- (i) any Design Stage 3 Design Documentation:
    - (A) comprises a design package which the Contract requires the CSM Contractor to submit to the Configuration Control Board; and
    - (B) the Principal's Representative has given a notice to the Independent Certifier under clause 9.8(c)(ii)(B) in relation to such Design Documentation,

the CSM Contractor must obtain a Configuration Change Acceptance Notice (where relevant) for the relevant design package from the Configuration Control Board.
  - (ii) any Design Stage 3 Design Documentation:
    - (A) comprises a design package which the Contract requires the Principal to submit to TNAC for Gate 5; and
    - (B) the Principal's Representative has given a notice to the Independent Certifier under clause 9.8(c)(ii)(B) in relation to such Design Documentation,

the Principal will use reasonable endeavours to obtain a Gate 5 TNAC acceptance notice.
- (n) **(Configuration Change Acceptance Notice) Where:**
- (i) the Design Documentation for the relevant CSM Contractor's design package to which clause 9.8(m) applies, complies with the requirements of this Contract;
  - (ii) the Configuration Change Acceptance Notice (where relevant) for that design package is not issued within 10 Business Days after submission to the Configuration Control Board;

- (iii) the TNAC acceptance notice for a Gate 5 design packages is not issued within 10 Business Days after submission to the TNAC; and
- (iv) as a result, the CSM Contractor is actually or will be delayed in achieving Construction Completion,

the CSM Contractor may make a claim for an extension of time under clause 14.8. The CSM Contractor will not in any event be entitled to make any claim for a [REDACTED] regardless of whether it is granted an extension of time.

#### 9.9 **Interface Contractors**

The CSM Contractor acknowledges and agrees that the Principal's Representative may, in respect of Design Documentation submitted by the CSM Contractor at Design Stage 1, Design Stage 2 or Design Stage 3:

- (a) provide copies of such Design Documentation to; and
- (b) seek comments from and take into account the views of,

the tenderers for any Interface Works or any operation and maintenance services, the Operator and any Authority (including Sydney Trains and Sydney City Council).

#### 9.10 **Design Documentation for construction**

- (a) Subject to clauses 9.8(b) and 9.10(c), unless otherwise approved in writing by the Principal's Representative, the CSM Contractor must only use for construction purposes any Design Documentation that has been:
  - (i) submitted to the Principal's Representative and the Independent Certifier under clause 9.4;
  - (ii) certified in accordance with clause 9.6(b);
  - (iii) the subject of a Configuration Change Acceptance Notice in accordance with clause 9.8(m);
  - (iv) certified by the Independent Certifier under clauses 9.8(d)(ii)(B) or 9.8(f)(ii)(A).
- (b) The CSM Contractor must give the Principal's Representative one electronic copy, of:
  - (i) all Design Documentation which, pursuant to clause 9.10(a), the CSM Contractor is entitled to use for construction purposes, in accordance with the requirements of the SWTC; and
  - (ii) surveys and work as executed Design Documentation in accordance with the requirements of the SWTC.
- (c) If:
  - (i) the CSM Contractor and the Independent Certifier have not resolved any disagreement within the period contemplated under clause 9.8(f)(ii)(B); or
  - (ii) the Independent Certifier does not, in respect of Design Stage 3 Design Documentation that has been the subject of a written notice from the

Principal's Representative under clause 9.8(c)(ii)(B) but which is not Third Party Agreement Design Documentation, certify or reject the Design Documentation within the IC Design Review Period,

the CSM Contractor may use the Design Documentation for construction purposes at the CSM Contractor's own risk.

#### 9.11 Amendments to Final Design Documentation

- (a) Subject to clause 10, if the CSM Contractor wishes to amend Final Design Documentation prior to the Date of Construction Completion of a Portion to which the Final Design Documentation relates:
  - (i) the CSM Contractor must submit the amended Design Documentation to the Principal's Representative and the Independent Certifier together with:
    - (A) the certifications referred to in clause 9.6(b); and
    - (B) an explanation as to why it is seeking to amend the Final Design Documentation; and
  - (ii) clause 9.8 will apply as if the Design Documentation is Design Stage 3 Design Documentation.
- (b) The CSM Contractor may, at its own risk, use the amended Final Design Documentation submitted in accordance with clause 9.11(a) for construction purposes prior to certification by the Independent Certifier under clause 9.8(d)(ii)(B) if, and only if, the amendment to the Final Design Documentation:
  - (i) is minor;
  - (ii) does not adversely impact the Project Works or the Temporary Works; and
  - (iii) is necessary to overcome an issue which:
    - (A) prevents or adversely affects the CSM Contractor proceeding with construction; and
    - (B) has arisen or become evident since the Final Design Documentation was submitted to the Principal's Representative and the Independent Certifier.
- (c) If the CSM Contractor exercises its right under clause 9.11(b) and Principal's Representative or the Independent Certifier subsequently rejects the amended Final Design Documentation in accordance with clause 9.8(c)(ii)(A) or 9.8(d)(ii)(A) respectively, then (unless otherwise approved in writing by the Principal's Representative):
  - (i) the CSM Contractor must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the amended Final Design Documentation, but the CSM Contractor may commence or continue construction in accordance with any element of the amended Final Design Documentation that the Principal's Representative or the Independent Certifier has not identified as being non-compliant with this Contract; and
  - (ii) clause 9.8(b) to 9.8(g) will reapply in relation to the non-compliant element of the amended Final Design Documentation.

- (d) The CSM Contractor must submit any amended Final Design Documentation which is Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement at the same time that the CSM Contractor submits such amended Final Design Documentation to the Principal's Representative and the Independent Certifier under clause 9.11(a)(i).

#### 9.12 **No duty to review**

The Principal and the CSM Contractor acknowledge and agree that:

- (a) neither the Principal nor the Principal's Representative assume a duty or owe any duty to the CSM Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this Contract or to consult with the CSM Contractor or make any comments regarding any Design Documentation; and
- (b) none of:
  - (i) any review or rejection of, or consultation or comments by the Principal, the Principal's Representative or the Independent Certifier, nor any failure by the Principal, the Principal's Representative or the Independent Certifier regarding, any Design Documentation or any other Direction by the Principal's Representative in respect of any Design Documentation;
  - (ii) the non-rejection of any Design Documentation by the Principal's Representative under clause 9.8(c)(ii)(B); or
  - (iii) the certification of any Design Documentation by the Independent Certifier under clause 9.8(d)(ii)(B),will lessen or otherwise affect:
  - (v) the CSM Contractor's warranties under clause 9.3 or any other of its liabilities or responsibilities under this Contract or otherwise according to Law; or
  - (vi) the Principal's rights against the CSM Contractor, whether under this Contract or otherwise according to Law.

#### 9.13 **Ownership of documentation**

- (a) Documents (including Design Documentation) supplied by or on behalf of the CSM Contractor will be the Principal's property.
- (b) The CSM Contractor (irrevocably for all time and despite any termination of this Contract for any reason):
  - (i) to the fullest extent permitted by law, assigns to the Principal all of the CSM Contractor's right, title and interest in the Intellectual Property Rights in or relating to:
    - (A) the Design Documentation; and
    - (B) the materials, documents, images, photographs and software relevant to the CSM Contractor's Activities (other than processes and methods of working),

(collectively called the **Contract Documentation and Materials**) prepared or created by the CSM Contractor for or in connection with the CSM

Contractor's Activities or the Project Works, which assignment is effective immediately from the time it is prepared or created; and

- (ii) in respect of all other Intellectual Property Rights in or relating to:
  - (A) the Contract Documentation and Materials; and
  - (B) the Temporary Works and the processes and methods of working relevant to the CSM Contractor's Activities (collectively called the **Contract Processes**),

grants to the Principal an irrevocable, royalty free, perpetual and fully assignable licence to use (and to sublicense others to use) the same for:

- (C) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the CSM Contractor's Activities or the Project Works and the Temporary Works;
- (D) any purpose associated with further development of the Site; and
- (E) any other purpose connected with transport projects in New South Wales,

which licence is effective immediately and will survive termination of this Contract on any basis.

- (c) The CSM Contractor:
  - (i) warrants that the Principal's use of the Contract Documentation and Materials, or any other work provided by the CSM Contractor under this Contract, will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction; and
  - (ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Project Works, the Temporary Works, the CSM Contractor's Activities or the Contract Documentation and Materials.
- (d) For the purposes of clause 9.13(c), the Principal's use of the Contract Documentation and Material includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or Material or part of the Project Works or Temporary Works to which the Contract Documentation or Material or any other work provided by the CSM Contractor under this Contract relates:
  - (i) with or without attribution of authorship;
  - (ii) in any medium; and
  - (iii) in any context and in any way it sees fit.
- (e) The CSM Contractor agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal

or its licensees, assignees or successors and their licensees, or any other person authorised by it) as reasonably requested by the Principal to give full effect to the provisions of this Contract and to:

- (i) allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned or licensed Intellectual Property Rights (as the case may be) or of any such adaptation); or
  - (ii) prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (f) The CSM Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 9.8 if the CSM Contractor fails to execute the document or do the relevant act or thing within 5 Business Days of a written request by the Principal's Representative.
- (g) The Principal grants to the CSM Contractor a royalty free licence for the duration of this Contract to use, only for the purpose of executing the CSM Contractor's Activities, the Principal's Intellectual Property Rights in respect of which the Principal has absolute title under clause 9.13(b)(i).
- (h) The CSM Contractor warrants that:
- (i) the:
    - (A) assignment to the Principal and any use of the Intellectual Property Rights assigned under this clause 9.13; and
    - (B) use of the Intellectual Property Rights licensed under this clause 9.13 pursuant to the terms of this Contract,does not and will not infringe the Intellectual Property Rights of any party;
  - (ii) were it not for the assignments effected by this Contract, the CSM Contractor would be the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 9.13(b)(i); and
  - (iii) the CSM Contractor is either:
    - (A) the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 9.13(b)(i); or
    - (B) able to grant the licence granted in clause 9.13(b)(ii).
- (i) Without limiting clause 9.13(h), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by it, of the Contract Documentation and Materials, the Contract Processes, the CSM Contractor's Activities or the Project Works or any part of them, being disrupted, impaired or adversely affected, the CSM Contractor must at its own expense and at the Principal's option:
- (i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by it the

right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 9.13, in accordance with this Contract; or

- (ii) modify or replace the Contract Documentation and Materials, the Contract Processes, the CSM Contractor's Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.13, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, the CSM Contractor's Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.13 will:
  - (A) comply with the requirements of this Contract; and
  - (B) not limit or otherwise affect the Principal's rights, or the CSM Contractor's ability to comply with its obligations, under this Contract or otherwise according to Law.
- (j) The CSM Contractor indemnifies, and agrees to keep indemnified, the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
  - (i) a breach by the CSM Contractor of any warranty set out in this clause 9.13; or
  - (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Contract Processes, the CSM Contractor's Activities or the Project Works or any part of them.
- (k) The CSM Contractor:
  - (i) acknowledges that the Principal may provide the Operator or any Interface Contractor with copies of any documents (including Design Documentation) provided to the Principal or the Independent Certifier by or on behalf of the CSM Contractor in any way in connection with this Contract, the Project Works, the Temporary Works or the CSM Contractor's Activities; and
  - (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation or Materials that the Operator or any Interface Contractor may reasonably require.

#### 9.14 **Delivery up of Design Documentation**

If this Contract is terminated whether pursuant to clause 19 or otherwise at Law:

- (a) the CSM Contractor must:
  - (i) subject to clause 9.14(b), immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not and including any Design Documentation stored electronically) then in existence to the Principal; and
  - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Design Documentation; and
- (b) the CSM Contractor and each Subcontractor may retain a copy of all such Design Documentation.

9.15 **Not used**

9.16 **Design Life**



9.17 **Value Engineering**

Prior to the commencement of Stage 1 Design by the CSM Contractor, the relevant personnel of the CSM Contractor (including as a minimum the CSM Contractor's design manager, construction manager and a project engineer) and the Designers must participate in a value engineering process, including participation in a series of workshops, to identify and eliminate any unnecessary costs and optimise whole of life costs of the Project Works, while ensuring that all other requirements for the Project Works are satisfied.

9.18 **Cost Planning**

The CSM Contractor must:

- (a) plan the Project Works and CSM Contractor's Activities in consultation with the Principal's Representative and provide estimates of and costings for the construction and Commissioning phase of the Project Works;
- (b) within 10 Business Days of the date of this 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 30 Business Days of the date of this 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 meets the requirements of Part 1 of Schedule F7 and is not inconsistent with the Initial Cost Plan set out in Part 2 of Schedule F7. 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, forecast cost at completion and any amounts received by the CSM Contractor from the sale of material salvaged from the Site in performing the CSM Contractor's Activities) and, together with the



Principal's Representative, review and, where approved by the Principal's Representative, amend the Cost Plan to take account of any item affecting or likely to affect any component of the Cost Plan, and advise the Principal's Representative as to the alternative steps available where:

- (i) the tenders for any part of the Reimbursable Work 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 Work (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 Work 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 Work; and
- (e) if requested at any time by the Principal's Representative, the CSM 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.

#### 9.19 **Cost Control**

The CSM Contractor must:

- (a) use its best endeavours to ensure that it achieves Completion so that the:
  - (i) Outturn Cost (Design) does not exceed the Target Cost (Design); and
  - (ii) Outturn Cost (MPR) does not exceed the Target Cost (MPR);
- (b) without limiting paragraph (a), review the Cost Plan with the Principal's Representative as the preparation of the Design Documentation proceeds, to:
  - (i) ensure that the cost of construction of the design is in accordance with the Cost Plan; and
  - (ii) advise the Principal's Representative how the design should or can be modified to ensure that the cost of the design is in accordance with the Cost Plan; and
- (c) without limiting paragraph (a), institute a system of cost control and, together with the Principal's Representative, review and, where approved by the Principal's Representative, amend the Cost Plan to take account of any item affecting or likely to affect any component of the Cost Plan, and advise the Principal's Representative as to the alternative steps available where:
  - (i) the design costs incurred under any Design Agreement exceed (or appear likely to exceed) the amount allowed for that particular Design Agreement in the Cost Plan;
  - (ii) the tenders for any part of the Reimbursable Work exceed the amount included for that work in the Cost Plan; or

- (iii) the Reimbursable Costs incurred under any Approved Subcontract Agreement exceed (or appear likely to exceed) the amount allowed for that particular Approved Subcontract Agreement in the Cost Plan; or
- (iv) the Reimbursable Costs incurred in respect of Self-Performed Reimbursable Work exceed (or appear likely to exceed) the amount allowed for that particular Self-Performed Reimbursable Work in the Cost Plan.

10. **CHANGES**

10.1 **Proposed Changes**

- (a) At any time prior to the Date of Construction Completion of the Project Works or the last Portion to reach Construction Completion (but without limiting clauses 12 and 18.16) the Principal's Representative may issue a document titled "Change Proposal Request" (**Change Proposal Request**) to the CSM Contractor, which will set out details of a proposed Change that the Principal is considering.
- (b) The CSM Contractor must immediately take all action required under the relevant Subcontract in relation to each Subcontractor that would be involved in carrying out the proposed Change.
- (c) Within 10 Business Days of the receipt of a Change Proposal Request, or at such other time as is approved by the Principal's Representative, the CSM Contractor must provide the Principal's Representative with a written notice in which the CSM Contractor sets out:
  - (i) any proposed [REDACTED] to carry out the proposed Change; and
  - (ii) the effect (if any) that the carrying out of the proposed Change will have on the CSM Contractor's Program, including the achievement of each Date for Construction Completion.
- (d) The Principal will not be obliged to proceed with any proposed Change that is the subject of a Change Proposal Request.

10.2 **Change Orders**

- (a) Whether or not the Principal's Representative has issued a Change Proposal Request under clause 10.1, the Principal's Representative may at any time prior to the Date of Construction Completion of the Project Works or the last Portion to reach Construction Completion (but without limiting clauses 12 and 18.16) direct the CSM Contractor to carry out a Change by issuing a written document titled "Change Order" (**Change Order**), in which the Principal's Representative will state one of the following:
  - (i) the proposed [REDACTED] as set out in the CSM Contractor's notice under clause 10.1 (if any) are agreed and will be made; or
  - (ii) the proposed [REDACTED] as set out in the CSM Contractor's notice under clause 6.5(a) (if any) are agreed and will be made; or

(iii) any [REDACTED] will be determined under clause 4.

- (b) There is no limitation on the power of the Principal's Representative to direct a Change, and no Change or direction to carry out a Change will invalidate this Contract.
- (c) The CSM Contractor must comply with a Change Order irrespective of:
  - (i) the nature, extent or value of the work the subject of the Change;
  - (ii) the location or timing (including the impact on any Date for Construction Completion) of the work involved in the Change; or
  - (iii) any Dispute related to the Change.
- (d) The CSM Contractor's entitlement (if any) to an extension of time arising out of or in connection with a Change will be dealt with under clause 14.

### 10.3 Options

- (a) The Principal's Representative may, by written notice given to the CSM Contractor at any time within the period stated in Schedule A3, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the CSM Contractor must perform their obligations under this Contract on the basis that the Target Costs, the SWTC and the provisions of this Contract will be adjusted as set out in Schedule A3 for the relevant Option.
- (b) For the avoidance of doubt:
  - (i) the Principal is not under any obligation whatsoever to exercise; and
  - (ii) the CSM Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising, any Option.
- (c) Where the Principal does not exercise its discretion to exercise an Option which increases the scope of the CSM Contractor's Activities, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.
- (d) The exercise of an Option by the Principal's Representative under this clause 10.3 will not:
  - (i) relieve the CSM Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
  - (ii) limit or otherwise affect the Principal's rights against the CSM Contractor or the CSM Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or
  - (iii) entitle the CSM Contractor to an extension of time, whether under this Contract or otherwise according to any Law.
- (e) Nothing in this clause prevents the Principal's Representative from:
  - (i) issuing a "Change Proposal Request" as referred to in clause 10.1; or

(ii) directing a Change by issue of a Change Order under clause 10.2,

that involves the same (or similar) changes to the Project Works as an Option after the relevant period for exercise of the Option specified in Schedule A3.

(f) If the Principal's Representative:

(i) issues a "Change Proposal Request" as referred to in clause 10.1; or

(ii) directs a Change by issue of a Change Order under clause 10.2,

which involves the same or similar changes to the Project Works as are required by an Option and which is issued or directed (as relevant) after the relevant date in Schedule A3 for that Option, the Principal and the CSM Contractor agree that the Change will be valued in accordance with clause 10.2(a)(iii).

#### 10.4 Omissions

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

(a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;

(b) the Principal will not be liable upon any Claim by the CSM Contractor arising out of or in any way in connection with any work being omitted or deleted from the CSM Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work; and

(c) the adjustment to the amounts payable to the CSM Contractor under the Contract arising from the work that has been omitted or deleted will be valued in accordance with clause 4.

#### 10.5 CSM Contractor's entitlements

This clause 10 is an exhaustive code of the CSM Contractor's rights in any way in connection with any Change. The CSM Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 10 otherwise than in accordance with the terms of this Contract.

#### 10.6 CSM Contractor may propose Change

(a) The Principal and the CSM Contractor acknowledge that:

(i) the project delivery method chosen is intended, among other things, to allow the CSM Contractor to identify:

(A) Changes which may enhance the quality of the CSM Contractor's Activities; and

(B) Changes which may permit project cost savings while maintaining or enhancing the quality of the CSM Contractor's Activities; and

(ii) it is their intention that any cost savings should benefit the Principal and the CSM Contractor equally.

- (b) The CSM Contractor may propose a Change by giving written notice to the Principal's Representative with details of the proposed Change.
- (c) On receiving a notice under clause 10.6(b), the Principal's Representative may give written notice to the CSM Contractor requiring it to give the Principal's Representative:
  - (i) details of:
    - (A) the proposed Change in addition to those provided in accordance with clause 10.6(b);
    - (B) the reason for the proposed Change;
    - (C) the effect of the proposed Change on the CSM Contractor's Activities;
    - (D) the effect of the proposed Change on the Program and the Dates for Construction Completion of the Portions; and
    - (E) the cost effect of assessing and carrying out the proposed Change, including:
      - (aa) any proposed [REDACTED] to carry out the Proposed Change; and
      - (bb) the effect the proposed Change will have on operating and maintenance costs;
  - (ii) a written statement stating that the proposed Change:
    - (A) will not adversely affect the functional integrity of any of the elements of the CSM Contractor's Activities and the performance standards required by this Contract;
    - (B) will not adversely affect the quality standards required under this Contract; and
    - (C) is consistent with and complies with the conditions and requirements of the Planning Approval;
  - (iii) any other information and supporting documentation the Principal's Representative reasonably requires.
- (d) The Principal's Representative:
  - (i) (in its absolute discretion) may, by notice in writing, approve or reject any Change the CSM Contractor proposes; and
  - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the CSM Contractor.
- (e) Prior to giving any direction under clause 10.6(d), the Principal's Representative may seek to negotiate with the CSM Contractor over the level of any proposed [REDACTED] to carry out the Proposed Change.

- (f) If the Principal's Representative gives a direction under clause 10.6(d) approving a Change proposed by the CSM Contractor, the CSM Contractor must perform its obligations under this Contract in accordance with the approved Change.
- (g) With respect to any Change approved by the Principal's Representative pursuant to a direction under clause 10.6(d), the Principal's Representative will notify the CSM Contractor that [REDACTED] (if any) will be:
  - (i) as set out in the CSM Contractor's notice under clause 10.6(c) (if any); or
  - (ii) as agreed under clause 10.6(e); or
  - (iii) as determined under clause 4.
- (h) The CSM Contractor and the Principal acknowledge and agree that:
  - (i) they will each bear their own costs:
    - (A) associated with proposing a Change under clause 10.6(b); and
    - (B) associated with providing details under clause 10.6(c);
  - (ii) the Principal will bear its own costs incurred in assessing the proposed Change;
  - (iii) the CSM Contractor will bear all costs reasonably incurred by any Interface Contractor or any Operator in assessing the proposed Change (such costs to be a debt due from the CSM Contractor to the Principal); and
  - (iv) unless otherwise agreed and except as provided for in clause 10.6(g):
    - (A) where a proposed Change is approved by the Principal's Representative, the CSM Contractor will bear its own costs associated with carrying out the proposed Change; and
    - (B) the CSM Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Change.

**11. REIMBURSABLE WORK AND PROVISIONAL SUM WORK**

**11.1 Restrictions on Reimbursable Work**

- (a) Subject to clause 11.14, Reimbursable Work must, unless otherwise agreed by the Principal's Representative in writing, be performed by Subcontractors under Approved Subcontract Agreements which will be made between the CSM Contractor and Subcontractors in accordance with the procedure in this clause 11.
- (b) The CSM Contractor must not include any of the work which forms part of the Preliminaries in the scope of any part of the Reimbursable Work or in any Subcontract Proposal.
- (c) The CSM Contractor must not enter into any Subcontract with a Prohibited Subcontractor.
- (d) The CSM Contractor must ensure that all Subcontract Tender Documentation is prepared and all tender processes for Reimbursable Work are conducted:

- (i) on terms which maximise Value for Money for the Principal; and
- (ii) with the highest standards of probity, fairness and equal opportunity and in accordance with the Tendering Probity Plan.

**11.2 Subcontract Proposal**

(a) The parties acknowledge and agree that clauses 11.2, 11.3, 11.4, 11.5, 11.6, 11.7(a)-11.7(b) and 11.8 do not apply to Pre-Approved Subcontractors.

(b) The CSM Contractor must:

(i) advise the Principal and the Principal's Representative on (and obtain the consent of the Principal's Representative to) how the Reimbursable Work should be divided into packages for the purposes of facilitating the calling of tenders for Subcontractors;

(ii) before inviting tenders for the performance of Reimbursable Work valued at or above:

(A) [REDACTED] in relation to the supply of items by a Subcontractor; or

(B) [REDACTED] in relation to all other Reimbursable Work by a Subcontractor,

issue a document titled "Subcontract Proposal" to the Principal's Representative for approval which will set out particulars of:

(C) the part of the Reimbursable Work to be the subject of the tender;

(D) the amount included for this work in the Cost Plan;

(E) how the CSM Contractor will ascertain the tender list for the part of the Reimbursable Work to be the subject of the tender, including:

(aa) if an expression of interest process is to be used - details of the criteria (with weightings) for the assessment of each expression of interest; or

(bb) if an expression of interest process is not to be used - details of, and justification for the manner in which the tender list will be established;

(F) how the CSM Contractor will select the preferred Tenderer including details of the evaluation criteria (with weightings) for the assessment of tenders;

(G) the method of delivery for the work;

(H) the proposed conditions of Subcontract which the CSM Contractor proposes to use to enter into the Subcontract; and

(I) the proposed date for calling of tenders and for tender responses;

(iii) subject to paragraph (iv), for the purposes of paragraph (ii)(E), if the tender list is to be ascertained by an expression of interest process, do all things necessary to carry out the expression of interest process including:

(A) preparing and arranging advertising;

- (B) preparing and distributing briefing documents;
  - (C) evaluating responses from prospective Tenderers; and
  - (D) making a recommendation to the Principal's Representative for the purposes of clause 11.4;
- (iv) obtain the prior written approval of the Principal's Representative to all advertisements and briefing documents prior to requesting expressions of interest or invitations to tender; and
  - (v) pay for all advertising (local, State, Territory and national) in respect of all expressions of interest or invitations to tender. The CSM Contractor will not be entitled to payment or reimbursement of any such costs by the Principal (whether as Reimbursable Costs or otherwise).

### 11.3 Subcontract Tender Documentation

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

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

### 11.4 Tendering

Regardless of whether or not a Subcontract Proposal is required under clause 11.2, the CSM Contractor must:

- (a) subject to clause 11.4(c)(ii), recommend to the Principal's Representative at least three persons which in the CSM Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
- (b) subject to clause 11.4(c)(ii), subsequently finalise the tender list in consultation with the Principal's Representative who may (in the Principal's Representative's absolute discretion, without the necessity to give reasons) remove or add any person from or to the tender list subject to the CSM Contractor not making a reasonable objection to any person which the Principal's Representative may remove from or add to the tender list;
- (c) call tenders from:
  - (i) subject to clause 11.4(c)(ii), the persons in the tender list finalised with the Principal's Representative; or
  - (ii) for the persons, activities or items listed as trade packages in Schedule A21 - the relevant persons, service providers or suppliers listed in Schedule A21 only,

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

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



## 11.5 Consideration of Tenders

The CSM 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 CSM Contractor (which recommendation will be deemed to include a warranty by the CSM Contractor that the recommended Tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted, that the CSM Contractor knows of no reason why that Tenderer's tender should not be accepted and that the Tenderer's tender will provide Value for Money for the Principal); and
- (c) submit together with any such recommendation:
  - (i) an evaluation report detailing the CSM Contractor's assessment of tenders against the evaluation criteria;
  - (ii) the work to be covered and executed under the proposed Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3;
  - (iii) the time for commencement and completion of that work and confirmation that these times are in accordance with the CSM Contractor's Program;
  - (iv) the proposed subcontract price (including any amount allowed for contingency) and the amounts tendered by other Tenderers;
  - (v) any proposed amendments to the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3;
  - (vi) the proposed Tenderer's contact details;
  - (vii) if any Law in the State or Territory in which the Project Works are situated requires that a person be registered or licensed to carry out that part of the work, evidence to the satisfaction of the Principal's Representative that the proposed Tenderer is so registered or licensed; and
  - (viii) any other details which may be required by the Principal's Representative.

## 11.6 Post Tender Negotiations

If required by the Principal's Representative, the CSM 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.

## 11.7 Subcontracts

- (a) The Principal's Representative will consider the recommended Tenderer and (in its absolute discretion) may approve or disapprove the CSM Contractor's recommendation giving detailed reasons in writing.
- (b) If the Principal's Representative approves the CSM Contractor's recommended Tenderer, the CSM Contractor must promptly enter into an agreement with the approved Tenderer on the basis of:

- (i) the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 with only such amendments as the Principal's Representative may have approved in writing; and
  - (ii) the subcontract price approved by the Principal's Representative;
- (c) The CSM Contractor must:
- (i) ensure that each agreement entered into by the CSM Contractor pursuant to clause 11.7(b), each Pre-Approved Subcontract Agreement, each Design Agreement and the DSI Contract does not contain any provisions that may in any way hinder (or potentially hinder) the exercising of the Principal's rights under clauses 22.20 or 22.4(d);
  - (ii) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed Subcontract, together with all documentation relevant to that agreement;
  - (iii) ensure that each Subcontractor executes a Confidentiality Undertaking in the form of Schedule B7 and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor;
  - (iv) where a Subcontractor is to carry out Design Work or other professional services, unless not required by the Principal's Representative, procure that Subcontractor to execute a deed in the form of Schedule A11 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor; and
  - (v) procure that each Subcontractor:
    - (A) engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule A1; or
    - (B) in respect of the categories of work set out in Schedule A1 (regardless of subcontract price),
 

executes a deed in the form of Schedule A7 and provides this to the Principal's Representative within 7 days of being engaged by the CSM Contractor.
- (d) The CSM Contractor must in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW).
- (e) Without limiting clause 11.7(b)(i), the CSM Contractor must ensure that each Subcontract contains provisions which bind the Subcontractor to participate in any novation required by the Principal under clause 19.5(a)(iv)(A) at no cost to the Principal.
- (f) The CSM Contractor must not cause, instruct, permit, request or consent to:
- (i) a variation or amendment to the Subcontract or the work under the Subcontract other than a Permitted Variation;
  - (ii) any increase in the amount payable to the Subcontractor under, or for the performance of, the Subcontract works other than the cost of Permitted Variations or in response to a Subcontract Adjustment Event; or

- (iii) the termination of any Subcontract without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

#### 11.8 Procedure on Disapproval

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

- (a) promptly enter into an agreement with the approved Tenderer on the basis of:
  - (i) the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 with only such amendments as the Principal's Representative may have approved in writing; and
  - (ii) the subcontract price approved by the Principal's Representative; and
- (b) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed Subcontract including the Design Documentation relevant to that agreement.

#### 11.9 Subcontractor Warranties

- (a) As a condition precedent to Construction Completion of a Portion, the CSM Contractor must procure and provide the Principal with the warranties described in Schedule A4 or elsewhere in this Contract:
  - (i) from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty;
  - (ii) in favour of, and directly enforceable by, the Principal and any other entity nominated in Schedule A4; and
  - (iii) in the form set out in Schedule A5.
- (b) No warranty from a Subcontractor will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the CSM Contractor whether under the Contract or otherwise.
- (c) If the CSM Contractor is unable to or fails for any reason to provide any warranty from a Subcontractor required by this Contract:
  - (i) the CSM Contractor is deemed to have provided the Subcontractor warranty itself on like terms;
  - (ii) the Principal will be entitled to elect to take an assignment of all the right, title and interest in the CSM Contractor's rights against the Subcontractor in relation to the CSM Contractor's Activities; and
  - (iii) for the purpose of paragraph 11.9(c)(ii), the CSM Contractor irrevocably appoints the Principal as its lawful attorney to execute any instrument necessary to give effect to the assignment.
- (d) No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the CSM Contractor whether under the Contract or otherwise.

#### 11.10 Coordination of Subcontractors

The CSM Contractor must:

- (a) administer, supervise, inspect, coordinate and control the work of all Subcontractors engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, coordinate and control each Approved Subcontract Agreement and Design Agreement and all Subcontractors engaged by it;
- (c) appoint a duly qualified person to exercise the functions of the CSM Contractor's Representative under each Design Agreement and Approved Subcontract Agreement and otherwise ensure each Design Agreement and Approved Subcontract Agreement are administered in accordance with:
  - (i) the terms of the Design Agreement or Approved Subcontract Agreement (as applicable); and
  - (ii) the directions of the Principal's Representative; and
- (d) at all times coordinate the CSM Contractor's Activities and ensure execution and completion of the Approved Subcontract Agreements in a proper and workmanlike manner according to:
  - (i) the Design Documentation which the CSM Contractor is entitled to use for construction purposes under clause 13.11(k); and
  - (ii) the obligations of the respective Subcontractors.

#### 11.11 Disputes with Subcontractors

If the CSM Contractor has a dispute with a Subcontractor in respect of any aspect of the CSM Contractor's Activities and either the CSM Contractor or the Subcontractor pursues any court action, arbitration or adjudication application under the SOP Act, then:

- (a) the CSM 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 CSM Contractor arising out of the defence of any court action, arbitration or adjudication will form part of the Reimbursable Costs; and
- (c) the CSM Contractor's own internal costs of administering the court action, arbitration or adjudication application will not form part of the Reimbursable Costs.

#### 11.12 Responsibility for Subcontractors

- (a) The CSM Contractor will:

- (i) not be relieved from any of its liabilities or obligations under the Contract; and
- (ii) remain responsible for all Subcontractors and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any Subcontractors default or otherwise fail to observe or comply with the requirements of the relevant Subcontract,

despite:

- (iii) subcontracting any part of the Preliminaries, Design Work or the Reimbursable Work;
  - (iv) any comments upon, consent to or review, approval or disapproval of:
    - (A) a Subcontract Proposal under clause 11.2; or
    - (B) a tenderer recommended by the CSM Contractor under clause 11.5(b),
 by the Principal or the Principal's Representative;
  - (v) the Principal listing the persons from whom tenders are to be obtained under clause 11.4(c)(ii) for the trade packages listed in Schedule A21;
  - (vi) any direction by the Principal's Representative under clause 11.7 to accept the tender of a tenderer other than that recommended by the CSM Contractor; or
  - (vii) any other act or omission of the Principal or the Principal's Representative in connection with the subcontracting of any part of the Preliminaries, Design Work or the Reimbursable Work.
- (b) Subject to clause 11.13 but otherwise without limitation, if the CSM Contractor terminates a Pre-Approved Subcontract Agreement, the CSM Contractor must:
- (i) complete the work the subject of the terminated Pre-Approved Subcontract Agreement; and
  - (ii) bear the extra costs incurred by the CSM Contractor in completing this work, and such costs will not form part of the Design Fee or the Reimbursable Costs (as applicable).

#### 11.13 **Subcontractor Insolvency**

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

- (a) promptly notify the Principal's Representative of this fact; and
- (b) if the CSM Contractor terminates the Approved Subcontract Agreement:
  - (i) promptly notify the Principal's Representative of this; and
  - (ii) engage another person as Subcontractor in accordance with this clause 11 to complete the work the subject of the terminated Approved Subcontract Agreement.

**11.14 Reimbursable Work by CSM Contractor or Related Body Corporate**

- (a) The CSM Contractor must not commence any part of the Self-Performed Reimbursable Work until written approval is received from the Principal Representative.
- (b) Prior to receiving approval from the Principal Representative pursuant to clause 11.14(a) the CSM Contractor must provide to the Principal's Representative the following particulars in writing:
  - (i) a detailed scope of the proposed work to be undertaken as Self-Performed Reimbursable Work;
  - (ii) a detailed methodology addressing the following:
    - (A) a description of the resource methodology that will be used to undertake the proposed works;
    - (B) details of how the CSM Contractor will ensure that the quality of the proposed works complies with the Contract and ensure compliance with ASA Requirements;
    - (C) a statement as to how the CSM Contractor will ensure the proposed works are carried out in an efficient manner; and
    - (D) a description of the information and particulars the CSM Contractor will provide to the Principal's Representative supporting any Payment Claim made by the CSM Contractor for carrying out the proposed works;
  - (iii) the fixed price or (where rates are agreed to apply to the work) estimate (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Cost Plan including details of the applicable rate or rates from the Schedule of Rates 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 overheads or profit);
  - (iv) the cash flow for the proposed works;
  - (v) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current CSM Contractor's Program;
  - (vi) the proposed project team to undertake the proposed works including all construction workers, managerial and technical personnel;
  - (vii) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;
  - (viii) the cost of any materials and equipment the CSM Contractor intends to purchase as part of the Self-Performed Reimbursable Work for use in the proposed works; and
  - (ix) the type and number of Construction Plant and the anticipated total hours/days the Construction Plant will be used to carry out the proposed works.

- (c) If required by the Principal's Representative the CSM Contractor must provide further particulars prior to the Principal's Representative giving approval for the proposed works to commence.
- (d) In carrying out the Self-Performed Reimbursable Work the CSM Contractor must:
  - (i) carry out the Self-Performed Reimbursable Work in an efficient manner;
  - (ii) carry out the Self-Performed Reimbursable Work so as to avoid interfering with, disrupting or delaying the work of Subcontractors and Other Contractors;
  - (iii) not vary the work which is the subject of the Self-Performed Reimbursable Work unless the Principal's Representative has directed a Change under clause 10.2 and that Change relates directly to the work the subject of the Self-Performed Reimbursable Work; and
  - (iv) each day provide the Principal's Representative with details of all resources, labour and construction plant, used by the CSM Contractor in the execution of the Self-Performed Reimbursable Work which identifies as a minimum:
    - (A) the part of the Self-Performed Reimbursable Work being performed by the CSM Contractor as described in Schedule F2;
    - (B) the name of each person performing the work for each part of the Self-Performed Reimbursable Work with details of their labour category, the time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and
    - (C) details of the type of plant being used for each part of the Self-Performed Reimbursable Work and the number of hours being claimed.
- (e) The Principal's Representative may direct the manner in which the matters described in clause 11.14(d)(iv) are to be recorded.
- (f) The CSM Contractor represents and warrants to the Principal that it holds and will continue to hold all relevant licences to legally execute the Self-Performed Reimbursable Work.
- (g) The Reimbursable Work (including Self-Performed Reimbursable Work) is to be undertaken on an Open Book Basis and may be subject to an independent third party audit as required by the Principal's Representative.
- (h) The CSM Contractor must cooperate in facilitating any audit under clause 11.14(g) including by making available all necessary records and documents to the Principal's Representative and the auditor to enable an audit to be conducted of the amount properly incurred and payable pursuant to this clause 11.14.
- (i) The CSM Contractor or a Related Body Corporate of the CSM Contractor must not itself carry out any part of the Reimbursable Work other than the Self-Performed Reimbursable Work unless:
  - (i) the prior written approval of the Principal's Representative is obtained (which approval may be given or withheld in the Principal's Representative's absolute discretion and, if given, may be subject to conditions); and

- (ii) the CSM 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 CSM Contractor or the Related Body Corporate of the CSM Contractor commencing the work.
- (j) The Principal's Representative will not object to the CSM Contractor performing the Reimbursable Work as Self-Performed Reimbursable Work provided that:
  - (i) in the Principal's Representative's opinion doing so represents Value for Money to the Principal, including:
    - (A) the CSM Contractor following the procurement process in clause 11.2(b)(ii) for supply of items over [REDACTED] and
    - (B) the CSM Contractor's price is consistent with the Schedule of Rates;
  - (ii) the Principal is satisfied that the Self-Performed Reimbursable Work is to be undertaken on an Open Book Basis in accordance with clause 11.14(g).

#### 11.15 **Tendering Probity**

- (a) The CSM Contractor must:
  - (i) prepare the Tendering Probity Plan in accordance with clause 13.11;
  - (ii) carry out the tender processes for Reimbursable Work:
    - (A) so as to ensure the probity and competitiveness of the tender process; and
    - (B) in accordance with the Tendering Probity Plan; and
  - (iii) comply with any direction by the Principal's Representative concerning the probity and competitiveness of the tender processes for Reimbursable Work.
- (b) The CSM Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of any direction of the Principal's Representative or the Principal's probity auditor concerning the probity and competitiveness of the tender process for Reimbursable Work.

#### 11.16 **Lifts and Escalators**

- (a) The CSM Contractor must enter into a DSI Contract with the L&E Contractor for the performance of Lifts and Escalators Work required for the Works.
- (b) The CSM Contractor acknowledges and agrees that:
  - (i) the Principal will enter into a framework agreement with the L&E Contractor after the date of this Contract;
  - (ii) under that framework agreement, the L&E Contractor will be required to make a standing offer to enter into contracts with other contractors of the Principal for the Project, including the CSM Contractor;
  - (iii) in order to accept the L&E Contractor's offer, the CSM Contractor must issue a valid Design Notice;



- (iv) the DSI Contract will be binding on the CSM Contractor and the L&E Contractor on issue of a valid Design Notice; and
  - (v) the CSM Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay by the CSM Contractor in issuing a valid Design Notice to the L&E Contractor.
- (c) The CSM Contractor acknowledges that:
- (i) Schedule E10 sets out the key terms proposed for the DSI Contract; and
  - (ii) the terms of the DSI Contract have not been finalised.
- (d) TfNSW will provide the CSM Contractor with the DSI Contract following finalisation with the L&E Contractor.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

**11.17 Provisional Sum Work**

- (a) The CSM Contractor will perform or procure the performance of Provisional Sum Work where such work is necessary in order to comply with its obligations under this Contract.
- (b) The CSM Contractor must:
  - (i) act in good faith in determining whether Provisional Sum Work is required to be performed as set out under clause 11.17(a); and
  - (ii) minimise the cost of undertaking Provisional Sum Work.
- (c) The provisions of:
  - (i) clauses 11.1 to 11.15 will apply to Provisional Sum Work (other than Lifts and Escalators Work); and
  - (ii) clauses 11.1, 11.7(c) to 11.7(f) and clauses 11.9 to 11.14 and clause 11.16 will apply to Lifts and Escalators Work,as if it was Reimbursable Work.
- (d) The CSM Contractor will be entitled to be paid:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (e) For the purpose only of clauses 11.17(d)(i) to 11.17(d)(ix), Reimbursable Costs will [REDACTED]
- (f) For each item of Provisional Sum Work, the Principal's Representative may at any time during the performance of the Provisional Sum Work request the CSM Contractor to provide a reasonable estimate of the amount payable for the Provisional Sum Work, including sufficient information to support such estimate.

**11.18 Design Work**

The CSM Contractor must:

- (a) submit a copy of the terms on which it proposes to engage Designers to the Principal's Representative for approval;
- (b) subsequently amend the proposed terms as required by the Principal's Representative; and
- (c) promptly enter into an agreement with each Designer on the basis of the terms approved by the Principal's Representative under clause 11.18(a).

### 11.19 **Pre-Approved Subcontracts**

The CSM Contractor must:

- (a) submit a copy of the terms on which it proposes to engage any Pre-Approved Subcontractor to the Principal's Representative for approval;
- (b) subsequently amend the proposed terms as required by the Principal's Representative; and
- (c) promptly enter into an agreement with a Pre-Approved Subcontractor on the basis of the terms approved by the Principal's Representative under clause 11.19(a).

### 11.20 **Recognised Aboriginal Business Subcontracts**

The CSM Contractor must:

- (a) submit a copy of the terms of any Recognised Aboriginal Business Subcontract to the Principal's Representative for approval;
- (b) subsequently amend the proposed terms as required by the Principal's Representative; and
- (c) promptly enter into the Recognised Aboriginal Business Subcontract on the basis of the terms approved by the Principal's Representative under clause 11.20(a).

## 12. **DEFECTS, INSPECTION AND REPAIR**

### 12.1 **Defects**

- (a) The CSM Contractor must promptly give the Principal's Representative and, if required by the Principal's Representative, the Operator, a detailed written report of:
  - (i) any Defect it detects; and
  - (ii) all action proposed to correct that Defect, including the estimated time required.
- (b) The CSM Contractor must correct all Defects arising prior to the expiry of the Defects Correction Period whether or not the Principal's Representative, the Independent Certifier, or the Operator notifies the CSM Contractor of them, including correcting any Defects in a Portion which existed at the time of issue of the Notice of Construction Completion (including any Minor Defects and Agreed Defects listed in the Notice of Construction Completion).
- (c) Without limiting any other obligation of the CSM Contractor to correct Defects, the CSM Contractor must:
  - (i) correct all Mandatory Defects as a pre-condition to the achievement of Construction Completion and Completion of the relevant Portion;
  - (ii) use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion within thirty (30) days after the Date of Construction Completion of the relevant Portion;
  - (iii) in respect of all Portions other than Portion 3, correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion as a pre-condition to the achievement of Completion of the relevant Portion; and

- (iv) in respect of Portion 3, correct all Minor Defects and Agreed Defects identified in the Notice of Construction Completion for Portion 3 within 90 days after the Date of Construction Completion of Portion 3.

## 12.2 Principal's Representative's direction

- (a) If prior to or during the relevant Defects Correction Period, the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 12.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this Contract or otherwise at Law, give the CSM Contractor a direction specifying the Defect and doing one or more of the following:
  - (i) requiring the CSM Contractor to correct the Defect or a part of it and specifying the time within which this must occur;
  - (ii) requiring the CSM Contractor to carry out a Change to overcome the Defect or a part of it and specifying the time within which this must be carried out;
  - (iii) advising the CSM Contractor that the Principal will accept the work or a part of it despite the Defect;
  - (iv) advising the CSM Contractor that the Principal will direct an Interface Contractor or the Operator to carry out a change or variation under its contract with the Principal (as applicable) to overcome the Defect or a part of the Defect; or
  - (v) in respect of any Defect:
    - (A) to which clause 12.3(b) applies; or
    - (B) subject to clause 12.2(c), discovered during a Defects Correction Period,  
  
advising the CSM Contractor that an Interface Contractor or other contractor will correct (or has corrected) the Defect, or any part of it.
- (b) In determining the times at which the CSM Contractor is required to correct a Defect or carry out a Change for the purposes of this clause, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities which:
  - (i) any Interface Contractor may be carrying out in discharge of its obligations under its contract with the Principal;
  - (ii) the Operator may be carrying out in discharge of its obligations under its contract with the Principal;
  - (iii) are being undertaken by the Existing Operator.
- (c) Unless the Principal's Representative considers that a Defect is an Urgent Defect (to which paragraph (a) of the definition of Urgent Defect applies) or the CSM Contractor is in breach of clause 8.5, 8.6 or 8.7, the Principal's Representative may not accept the work or a part of the work under clause 12.2(a)(iii) or direct an Interface Contractor, the Operator or other contractor to rectify a Defect, or any part of a Defect, pursuant to clauses 12.2(a)(iv) or 12.2(a)(v)(B), unless the Principal's Representative has first given the CSM Contractor a direction under clause 12.2(a)(i) and the CSM Contractor has:

- (i) failed to comply with such direction; or
  - (ii) otherwise failed to comply with its obligations under clause 12.3(a)(i).
- (d) Where the Principal's Representative considers that a Defect is an Urgent Defect (to which paragraph (a) of the definition of Urgent Defect applies) or the CSM Contractor is in breach of clause 8.5, 8.6 or 8.7, the Principal's Representative may accept the work or a part of the work under clause 12.2(a)(iii) or give the CSM Contractor a direction under clause 12.2(a)(iv) or 12.2(a)(v)(B) whether or not a direction has first been given under clause 12.2(a)(i).

### 12.3 Correction of Defect or Change

- (a) If a direction is given under clause 12.2(a)(i) or 12.2(a)(ii) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works (whether before or after Construction Completion or Completion), the CSM Contractor:
- (i) must correct the Defect (or the part of it) or carry out the Change (as the case may be):
    - (A) within the time specified in the Principal's Representative's direction;
    - (B) at times notified by the Principal's Representative;
    - (C) in accordance with the requirements of any relevant Authority;
    - (D) so as to minimise the impact on the use of the relevant part of the Project Works;
    - (E) in a manner which causes as little inconvenience as possible to the activities:
      - (aa) which any Interface Contractor may be carrying out in discharge of its obligations under its contract with the Principal; or
      - (bb) that the Operator may be carrying out in discharge of its obligations under its contract with the Principal; and
      - (cc) of users of the Project Works or any access and the adjacent community; and
    - (F) at the CSM Contractor's risk in respect of any restrictions on access;
    - (G) if an Interface Contractor or the Operator, as applicable, has taken possession of the relevant part of the Site for the purposes of designing and constructing any Interface Works or operating and maintaining the Project, as applicable, in accordance with the requirements of the relevant Interface Contractor or the Operator, as applicable, in relation to access and site safety; and
    - (H) in accordance with its obligations under the:
      - (aa) relevant CSM Interface Contractor Cooperation and Integration Deed; or
      - (bb) CSM Operator Cooperation and Integration Deed,

as applicable; and

- (I) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect; and

- (b) If the CSM Contractor does not comply with clause 12.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the CSM Contractor with respect to the Defect under this Contract or otherwise at Law, give the CSM Contractor a direction under clause 12.2(a)(v) and have the correction or Change work carried out at the CSM Contractor's expense, and the cost of the correction or Change work incurred by the Principal will be a debt due from the CSM Contractor to the Principal.

#### 12.4 **Acceptance of work or rectification by others**

If a direction is given under clause 12.2(a)(iii) or 12.2(a)(v)(B) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the CSM Contractor is responsible for the Defect (or the part of it), the amount which represents the reasonable cost of correcting the Defect (or the part of it) as stated by the Principal's Representative will become a debt due and payable by the CSM Contractor to the Principal.

#### 12.5 **Changes under other contracts to overcome Defects**

If a direction is given by the Principal's Representative under clause 12.2(a)(iv):

- (a) the CSM Contractor indemnifies the Principal from and against any Loss suffered or incurred by the Principal arising out of or in connection with the change or variation directed by the Principal under the relevant Interface Contract or contract with the Operator or other contract (as applicable) to the extent necessary to overcome the Defect (or the part of it); and
- (b) clause 12.4 will not apply with respect to the Defect the subject of that direction.

#### 12.6 **Works**

The Works within a Portion have:

- (a) a Defects Correction Period which begins on the date of Construction Completion of the Portion and ends on [REDACTED]; and
- (b) in respect of any work the subject of a direction under clause 12.2(a)(i) or 12.2(a)(ii) during the Defects Correction Period, a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Change and continues for 12 months.

#### 12.7 **Sydney Trains Works**

- (a) The Sydney Trains Works within a Portion have:
  - (i) a Defects Correction Period of 12 months, which begins on the Date of Construction Completion of the relevant Portion; and
  - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i) or 12.2(a)(ii) (relating to the relevant Sydney Trains Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Change,

provided that no Defects Correction Period for any relevant part of the Sydney Trains Works will extend beyond the date that is 24 months after the Date of Construction Completion of the Relevant Portion.

- (b) It is a condition precedent to the commencement of the Defects Correction Period for any Sydney Trains Works that the CSM Contractor provide the Principal's Representative with:
  - (i) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete;
  - (ii) if the CSM Contractor is unable to obtain a notice required under clause 12.7(b)(i) despite having used its best endeavours to do so, a statement from the CSM Contractor to the effect that:
    - (A) the relevant Sydney Trains Works are complete and the CSM Contractor has notified the relevant Authority of this matter; and
    - (B) the relevant Authority has failed or refused to provide the written notice required under clause 12.7(b)(i) despite being given 15 Business Days to provide the notice requested by the CSM Contractor;
  - (iii) the Independent Certifier has executed and provided to the Principal's Representative, Sydney Trains and RailCorp a certificate in the form of Schedule 8 to the Sydney Trains Transition Agreement with respect to those Sydney Trains Works.

#### **12.8 Failure by the CSM Contractor to comply with Direction**

- (a) If the CSM Contractor does not comply with a direction referred to in clause 12.2(a)(i) or 12.2(a)(ii), the Principal may employ others to carry out that direction.
- (b) The Loss suffered or incurred by the Principal arising out of or in connection with taking the action contemplated in clause 12.8(a) or as a result of the CSM Contractor's failure to comply with clause 12.3(a)(i) will be a debt due from the CSM Contractor to the Principal.

#### **12.9 Rights not affected**

- (a) Neither the Principal's rights, nor the CSM Contractor's liability, whether under this Contract or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period, will be in any way affected or limited by:
  - (i) the rights conferred upon the Principal or the Principal's Representative by this clause 12 or any other provision of this Contract;
  - (ii) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
  - (iii) any direction of the Principal's Representative under clause 12.2.

#### **12.10 Use of defective facilities**

The CSM Contractor must not allow the use of any part of the Project Works or Temporary Works which the CSM Contractor knows is defective or unsafe and which threatens the health or safety of people.

#### 12.11 Final inspections of Project Works

- (a) The CSM Contractor, the Principal's Representative, the Operator and any person nominated by the Principal's Representative, will carry out a final inspection of the Project Works (other than the Sydney Trains Works) 1 month before the end of the original Defects Correction Period (**Final Inspection**).
- (b) Where the Operator is not involved in the Final Inspection:
  - (i) within 10 Business Days after the Final Inspection, the Principal's Representative may give the CSM Contractor and the Operator written notice of any Defects which the Principal's Representative observed during the Final Inspection or of which they are otherwise aware;
  - (ii) the Principal may give a notice under clause 12.2 in respect of any such Defect.
- (c) Where the Operator is involved in the Final Inspection, clause 5 of the CSM Operator Cooperation and Integration Deed will apply in relation to the Final Inspection.

#### 12.12 Final inspections of the Sydney Trains Works

- (a) The CSM Contractor, the Principal's Representative and applicable Authorities, will carry out a final inspection of the Sydney Trains Works 3 months before the end of the original Defects Correction Period for the relevant Sydney Trains Works (or at such other time specified by the relevant Third Party Agreement) (**Final Sydney Trains Works Inspection**).
- (b) If the Principal's Representative or applicable Authority identifies any Defects during the Final Sydney Trains Works Inspection, the Principal may give a notice under clause 12.2 in respect of such Defect.

### 13. ADMINISTRATION

#### 13.1 Principal's Representative

- (a) The Principal must ensure that at all times until the date of expiry of the final Defects Correction Period there is a Principal's Representative. The CSM Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.
- (b) A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Contract if exercised or made (or if it is not exercised or made) by the Principal's Representative:
  - (i) independently;
  - (ii) after consultation with the Principal and its advisers; or
  - (iii) as directed by the Principal.
- (c) Any control or influence exercised by the Principal over the Principal's Representative does not:



- (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
- (ii) entitle the CSM Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.
- (d) The CSM Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.
- (e) Except where this Contract otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (f) The Principal will not be liable upon any Claim by the CSM Contractor arising out of or in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 20 or is unreasonable (other than in accordance with the corrected determination).
- (g) The CSM Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a notice of dispute in accordance with clause 20.3.

### 13.2 **Replacement of the Principal's Representative**

- (a) The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the CSM Contractor of that appointment.
- (b) Any substitute Principal's Representative appointed under this clause 13.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

### 13.3 **Delegation of Functions**

- (a) The Principal's Representative may:
  - (i) by written notice to the CSM Contractor appoint persons to exercise any of the Principal's Representative's functions under this Contract;
  - (ii) not appoint more than one person to exercise the same function under this Contract; and
  - (iii) revoke any appointment under clause 13.3(a)(i) by notice in writing to the CSM Contractor.
- (b) The Principal's Representative may continue to exercise a function under this Contract despite appointing another person to exercise the function under clause 13.3(a)(i).
- (c) All references in this Contract to the Principal's Representative include a reference to an appointee appointed under clause 13.3(a)(i).

### 13.4 **CSM Contractor's Personnel**

- (a) The CSM Contractor must notify the Principal's Representative in writing of the name of the CSM Contractor's Representative (who at the date of this Contract is the relevant person listed in Schedule A6) and of any subsequent changes.

- (b) The CSM Contractor must:
- (i) employ the individuals nominated by the CSM Contractor and listed in Schedule A6 in the positions specified in Schedule A6 or equivalent positions;
  - (ii) subject to clause 13.4(b)(iii), not replace the individuals referred to in clause 13.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld;
  - (iii) if any of the individuals referred to in clause 13.4(b)(i):
    - (A) dies;
    - (B) becomes unable to continue in their positions due to illness;
    - (C) resigns from the employment of the CSM Contractor (other than to accept other employment with the CSM Contractor or any "related body corporate" of the CSM Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
    - (D) becomes the subject of a direction under clause 13.4(c),  
replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and
  - (iv) without limiting clauses 13.4(b)(i), 13.4(b)(ii) or 13.4(b)(iii), ensure that the:
    - (A) positions specified in Schedule A6 as 100% are full-time, dedicated positions; and
    - (B) individuals who occupy the full-time, dedicated positions in accordance with clause 13.4(b)(iv)(A), apply themselves fully to the position to the exclusion of all other work,  
until Completion of the last Portion to achieve Completion or such earlier time as may be approved by the Principal's Representative.
- (c) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the CSM Contractor to remove any person (including a person referred to in clause 13.4(a) or clause 13.4(b)) from the Site and the CSM Contractor's Activities.
- (d) If the Principal's Representative issues a notice in accordance with clause 13.4(c), the CSM Contractor must:
- (i) then cease to engage that person in the CSM Contractor's Activities and must appoint a replacement; and
  - (ii) ensure that any person the subject of a direction under clause 13.4(c) is not again employed in the CSM Contractor's Activities or on the Site.
- (e) Any direction under clause 13.4(c) will be deemed to have been given to the CSM Contractor if given to the CSM Contractor's Representative. Matters within the knowledge of the CSM Contractor's Representative will be deemed to be within the knowledge of the CSM Contractor.

### 13.5 Design development meetings

- (a) The CSM Contractor must hold regular meetings of its design team including the Designers (and in any event at Design Stage 1 and Design Stage 2 of each discrete design part or element in the CSM Contractor's Activities).
- (b) The CSM Contractor must give reasonable notice to the Principal's Representative of those meetings and of any other meetings at which design issues are to be discussed to enable the Principal's Representative, its delegate and any representatives of any Other Contractor to attend. The Principal may request the CSM Contractor to ensure the presence at the meeting of any relevant persons from any of the CSM Contractor's Subcontractors involved in the design of any part of the Project Works.
- (c) The CSM Contractor must give the Principal's Representative:
  - (i) an agenda prepared in consultation with or as directed by the Principal's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
  - (ii) minutes of each design meeting within 48 hours after each meeting.
- (d) Neither party may rely on such agenda or minutes of meeting as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this Contract.

### 13.6 Site Meetings

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

- (a) prior to the Date of Construction Completion of the Project Works or the last Portion to reach Construction Completion, weekly or at such longer intervals as may be directed in writing by the Principal's Representative; and
- (b) at monthly intervals after the Date of Construction Completion of the Project Works or the last Portion to reach Construction Completion until all Defects Correction Periods (including any extension under clauses 12.6(b) and 12.7(a)(ii)), have expired or at such other intervals as may otherwise be agreed between the parties.

### 13.7 Environmental Representative

The CSM Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
  - (i) is independent of the parties;
  - (ii) will oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
  - (iii) will advise the Principal and the Principal's Representative on the CSM Contractor's compliance with the Planning Approval; and

- (iv) will have the authority and independence to:
  - (A) direct the CSM Contractor as to; or
  - (B) advise the Principal's Representative to direct the CSM Contractor as to,  
  
reasonable steps the CSM Contractor must take to avoid or minimise unintended or adverse environmental impacts;
- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 13.7(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 13.7(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

13.8 **Acoustics Advisor**

The CSM Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Acoustics Advisor as required by an Authority Approval;
- (b) the Acoustics Advisor:
  - (i) is independent of the parties;
  - (ii) will oversee the implementation of all noise and vibration management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
  - (iii) will advise the Principal and the Principal's Representative on the CSM Contractor's compliance with the Planning Approval; and
  - (iv) will have the authority and independence to:
    - (A) direct the CSM Contractor as to; or
    - (B) advise the Principal's Representative to direct the CSM Contractor as to,  
  
reasonable steps the CSM Contractor must take to avoid or minimise unintended or adverse noise and vibration impacts;
- (c) it must comply with the directions of the Acoustics Advisor or the Principal's Representative as contemplated by clause 13.8(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Acoustics Advisor or the Principal's Representative as contemplated by clause 13.8(c) and none of the Principal, the Principal's Representative or the Acoustics Advisor will be liable upon any Claim arising out or in any way in connection with such directions.

### 13.9 Independent Certifier

- (a) The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) In certifying Design Stage 3 Design Documentation, the Independent Certifier is not required to act as an AEO.
- (c) The Independent Certifier is obliged to act independently of the Principal, the CSM Contractor and the Subcontractors.
- (d) Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
  - (i) to attend meetings; and
  - (ii) access to all premises,as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.
- (e) All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (f) The Principal's Representative may provide comments to the Independent Certifier in respect of the CSM Contractor's Activities.

### 13.10 Industrial Relations

- (a) The CSM Contractor must in carrying out the CSM Contractor's Activities:
  - (i) assume sole responsibility for and manage all aspects of industrial relations for the CSM Contractor's Activities;
  - (ii) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
  - (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the CSM Contractor's Activities, are always observed in full;
  - (iv) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the CSM Contractor's Activities and Other Contractors' activities;
  - (v) without limiting clauses 7.11 and 8.12, comply with all the requirements of the NSW Code and the NSW Guidelines;
  - (vi) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the CSM Contractor as part of the Contract Management Plan, in accordance with the MRs and clause 13.11;

- (vii) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft outline Industrial Relations Management Plan (if any) submitted with the CSM Contractor's Proposal;
  - (viii) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 13.11;
  - (ix) submit to the Principal's Representative, before beginning work on the Site or Extra Land, a statement detailing:
    - (A) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
    - (B) the names of each award or enterprise agreement that is likely to cover the CSM Contractor and Subcontractors involved in the CSM Contractor's Activities; and
    - (C) the names of those responsible for coordinating industrial relations for the CSM Contractor's Activities;
  - (x) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the CSM Contractor's Activities;
  - (xi) before beginning work on the Site or Extra Land, submit a statement on the CSM Contractor's letterhead and signed by an authorised person, attesting to the CSM Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
    - (A) payment of remuneration to employees;
    - (B) annual leave provisions;
    - (C) Long Service Leave Payment Scheme registration;
    - (D) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
    - (E) workers' compensation insurance, including self-insurance arrangements;
    - (F) superannuation fund membership and contributions; and
    - (G) over-award payments such as redundancy fund contributions; and
  - (xii) continue to provide during the CSM Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the CSM Contractor's Activities.
- (b) If the CSM Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the CSM Contractor under paragraph (a)(ix).

- (c) The industrial relations requirements contained in this Contract, the NSW Code and the NSW Guidelines:
  - (i) are in addition to, but are not in substitution for, any requirements of Law; and
  - (ii) do not limit the powers of the Principal or the liabilities and responsibilities of the CSM Contractor.

**13.11 Submission for review by the Principal's Representative**

- (a) This clause 13.11 applies to all documents except Design Documentation and Asset Management Information to the extent addressed in clause 9 and clause 8.15.
- (b) Without limiting clause 23.1, the CSM Contractor must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in the SWTC or the MRs or as otherwise required by the Principal's Representative.
- (c) Documents supplied to the CSM Contractor:
  - (i) will remain the property of the Principal;
  - (ii) must be returned by the CSM Contractor to the Principal on demand in writing; and
  - (iii) must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the CSM Contractor's Activities.
- (d) The CSM Contractor must keep all the CSM Contractor's records relating to the CSM Contractor's Activities in a secure and fire proof storage.
- (e) The CSM Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 13.11.
- (f) The CSM Contractor must ensure that any Information Documents that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
  - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
  - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.
- (g) A Document will be deemed not to have been submitted unless and until:
  - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
  - (ii) the CSM Contractor has otherwise complied with this clause 13.11, in addition to any other requirement of this Contract relating to the submission of that Document.

- (h) After the submission of a Document which satisfies the requirements of clause 13.11(g):
  - (i) the Principal's Representative may review the Document, or any resubmitted Document prepared and submitted by the CSM Contractor; and
  - (ii) where submitted or resubmitted in accordance with a program which has not been rejected by the Principal's Representative, within 15 Business Days of submission by the CSM Contractor of such Document or resubmitted Document:
    - (A) reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this Contract, stating the nature of the non-compliance;
    - (B) make comments on the Document; or
    - (C) notify the CSM Contractor that it has no (or has no further) comments to make.
- (i) If any Document is:
  - (i) rejected or deemed to be rejected, the CSM Contractor must submit an amended Document to the Principal's Representative within 10 Business Days of the date of such rejection or deemed rejection and this clause 13.11 will re-apply; or
  - (ii) not rejected and the Principal's Representative responds to the submission with comments, the CSM Contractor must respond to the comments within 10 Business Days or such other period as may be directed by the Principal's Representative.
- (j) If the CSM Contractor fails to respond to the Principal's Representative's comments within the relevant period set out in clause 13.11(i) in a manner satisfactory to the Principal's Representative the Document will be deemed to be rejected.
- (k) The CSM Contractor must not:
  - (i) issue any Subcontract Tender Documentation to tenderers for; or
  - (ii) commence construction of,
 

any part of the Project Works to which any Document (other than the CSM Contractor's Program) submitted to the Principal's Representative applies unless the Principal's Representative has had the period referred to in clause 13.11(h)(ii) to review the Document and has not rejected the Document or made any comments on the Document (except in the case where the CSM Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 13.11(i)).
- (l) The CSM Contractor must not amend for construction purposes any Document that has:
  - (i) been submitted to the Principal's Representative; and
  - (ii) not been rejected or not had comments made about it under clause 13.11(h)(ii),



unless the CSM Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 13.11 will re-apply.

- (m) The Principal's Representative does not assume or owe any duty of care or other responsibility to the CSM Contractor to review, or in reviewing, a Document submitted by the CSM Contractor, including for errors, omissions or non-compliance with this Contract.
- (n) The CSM Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the CSM Contractor of any errors, omissions or non-compliance with the requirements of this Contract in any Document submitted.
- (o) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the CSM Contractor, or any other direction by the Principal's Representative in connection with the Document, will:
  - (i) constitute a direction to carry out a Change pursuant to clause 10.2, unless it is in a written document titled Change Order and describes the nature of the Change in accordance with clause 10.2(a);
  - (ii) relieve the CSM Contractor from or alter its liabilities or obligations, whether under this Contract or otherwise according to any Law; or
  - (iii) limit or otherwise affect the Principal's rights against the CSM Contractor, whether under this Contract or otherwise according to any Law.
- (p) In considering any Document, the Principal's Representative may consult with and take into account any views or requirements of relevant persons, including any Authority.

#### 13.12 **Work Method**

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

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

#### 13.13 **Exchange of Information between Government Agencies**

- (a) The CSM Contractor authorises the Principal, its employees and agents to make information concerning the CSM Contractor (including any information provided under clause 13.11) available to NSW Government departments or agencies. Such information may include any information provided by the CSM Contractor to the Principal and any information relating to the CSM Contractor's performance under this Contract.
- (b) The CSM Contractor acknowledges that any information about the CSM 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 CSM Contractor future opportunities for NSW Government work.

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

#### 13.14 **Financial Assessment**

Without limiting or otherwise restricting clause 13.13, the CSM Contractor acknowledges and agrees that:

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

#### 13.15 **Employment of Aboriginal and Torres Strait Islander People**

The CSM 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 (August 2016);
- (b) as part of the human resources input to and the documentation and implementation of the 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 (August 2016); 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 CSM Contractor in relation to Aboriginal and Torres Strait Islander participation.

#### 13.16 **Waste Reduction and Purchasing Policy**

The CSM Contractor must:

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

### 13.17 **Training Management**

- (a) Subject to the express provisions of the Contract, the CSM Contractor must comply with the NSW Government "Training Management Guidelines" (February 2009).
- (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 CSM Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.
- (c) At least 14 days before starting work on the Site the CSM Contractor must document and submit a 'Project Training Management Plan' which complies with the NSW Government "Training Management Guidelines" (February 2009).
- (d) The CSM Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (e) The CSM Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 13.17.

### 13.18 **National Greenhouse and Energy Reporting Act 2007 (Cth)**

The CSM Contractor acknowledges and agrees that:

- (a) if any of the CSM Contractor's Activities, or the activities of any of the CSM Contractor's personnel, in connection with the CSM Contractor's Activities (the Relevant Matters) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the CSM Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 13.18(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 CSM Contractor, the CSM Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the CSM Contractor;
- (c) if the Principal requests it, the CSM 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 CSM 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 CSM Contractor must also provide to the Principal all Greenhouse Data and other information which the CSM Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the CSM Contractor provides that Greenhouse Data or other information to that other person;
- (e) the CSM Contractor must:

- (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the CSM Contractor to discharge its obligations under this clause 13.18, 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 13.18 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 13.18 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the CSM Contractor may have regarding the provision of Greenhouse Data to any Authority.

**13.19 Early warning procedure and risk reporting**

- (a) The CSM Contractor must give early warning of a risk by notifying the Principal's Representative as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:
  - (i) a delay to Construction Completion of any Portion;
  - (ii) a delay to the Completion of any Portion;
  - (iii) an adverse effect on the performance of the CSM Contractor's Activities or the Project Works;
  - (iv) a Claim by the CSM Contractor; or
  - (v) a party being in breach of any term of the Contract.
- (b) At the same time as it gives an early warning notification in accordance with clause 13.19(a), the CSM Contractor will enter the risk the subject of the early warning notification on the Risk Register (which will include a description of the risk and the actions which are to be taken to avoid or mitigate the risk).
- (c) The CSM Contractor must provide to the Principal's Representative with real time access to the Risk Register or as otherwise directed by the Principal's Representative.
- (d) The CSM Contractor will attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's Representative. At risk management meetings, the parties agree to:
  - (i) review the current Risk Register;
  - (ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register, including what assistance the Principal may be able to provide to the CSM Contractor. The CSM Contractor must inform the Principal's Representative if it considers any such proposal or solution would

give rise to a Change or otherwise give rise to a Claim by the CSM Contractor;

- (iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and
  - (iv) remove from the Risk Register those risks which have been avoided or passed.
- (e) A notification, record or action under this clause 13.19 will not relieve the CSM Contractor from or alter its liabilities or obligations under this Contract, including any and all notification obligations under this Contract.

#### 13.20 **Management Review Group**

- (a) The Management Review Group comprises no more than two representatives from each of the Principal and the CSM Contractor. The representatives at the date of this Contract are those persons identified in Schedule A1 as being part of the Management Review Group.
- (b) The Principal's Representative may direct the attendance at Management Review Group meetings of:
  - (i) representatives of any of the CSM Contractor's Subcontractors which the Principal's Representative reasonably requires; and
  - (ii) any other person the Principal's Representative reasonably requires from time to time.
- (c) Each party acknowledges and agrees that its representatives on the Management Review Group have the authority to make decisions that bind that party.

#### 13.21 **Management Review Group functions**

- (a) The role of the Management Review Group is to provide leadership, governance and oversight.
- (b) The functions of the Management Review Group include reviewing:
  - (i) the progress of the CSM Contractor's Activities in relation to the CSM Contractor's Program and the performance of the CSM Contractor prior to the expiry of the final Defects Correction Period;
  - (ii) issues arising out of community relations and community concerns;
  - (iii) issues arising out of the quality of the CSM Contractor's Activities;
  - (iv) matters arising from the Design Documentation, including any proposed design changes;
  - (v) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
  - (vi) the potential impact of design and construction outcomes on operation and maintenance requirements;
  - (vii) all notices issued by the CSM Contractor referred to in clauses 23.1(a) and 23.2(c);

- (viii) all claims issued by the CSM Contractor in respect of Excluded Claims;
  - (ix) other unresolved matters arising between the parties that are not yet a Dispute;
  - (x) environmental issues;
  - (xi) safety issues; and
  - (xii) any other matters or determined or directed by the Principal's Representative.
- (c) The Management Review Group will, in respect of potential Claims referred to in clause 13.21(b)(vii) and claims referred to in clause 13.21(b)(viii), seek to determine a resolution or process for resolution.
- (d) To be effective, a determination of the Management Review Group must be:
- (i) a unanimous decision of all representatives;
  - (ii) in writing; and
  - (iii) confirmed in writing by the Principal's Representative and the CSM Contractor's Representative.
- (e) If the Management Review Group makes a determination in accordance with clause 13.21(d), then:
- (i) in respect of notices referred to in clause 13.21(b)(vii), clauses 23.1(b) and 23.2(d) do not apply; and
  - (ii) in respect of a claim referred to in clause 13.21(b)(viii), the Principal's determination in respect of that claim in accordance with the Management Review Groups determination is not subject to Dispute.

### 13.22 **Management Review Group meetings**

- (a) The Management Review Group must meet:
- (i) regularly in the frequency identified in Schedule A1 until the expiry of the final Defects Correction Period or such other regular period as the Principal and the CSM Contractor agree in writing;
  - (ii) in accordance with this clause 13.22; and
  - (iii) at other times which the Principal's Representative or the CSM Contractor requires.
- (b) The CSM Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting of the Management Review Group no less than 48 hours prior to each meeting.
- (c) The agenda must include:
- (i) the minutes of the most recent risk management meeting, together with the current Risk Register;
  - (ii) any issues referred to the Management Review Group by the Completion Steering Committee;

- (iii) full details of all Excluded Claims issued by the CSM Contractor in the period since the last meeting of the Management Review Group; and
- (iv) the register of potential claims described in clause 23.4.
- (d) The Principal's Representative will be the chairperson for meetings of the Management Review Group.
- (e) The Principal's Representative must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting.

**13.23 Completion Steering Committee**

- (a) Within 3 months of the date of this Contract, the parties must establish a Completion Steering Committee.
- (b) The Completion Steering Committee will consist of:
  - (i) the Principal's Representative;
  - (ii) the CSM Contractor's Representative;
  - (iii) the Independent Certifier's Representative; and
  - (iv) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Steering Committee is to:
  - (i) provide leadership on matters relating to Completion and handover of the Project Works;
  - (ii) approve processes and procedures prepared by the Completion Working Group;
  - (iii) consider issues referred to it by the Completion Working Group;
  - (iv) refer any significant issues to the Management Review Group for resolution; and
  - (v) such other roles and functions as may be agreed by the parties.
- (d) The Completion Steering Committee must meet:
  - (i) at least once every 2 months; and
  - (ii) at such other times as the parties may agree,
 until the achievement of Completion of the last Portion.

**13.24 Completion Working Group**

- (a) Within 3 months of the date of this Contract, the parties must establish a Completion Working Group.
- (b) The Completion Working Group will consist of:
  - (i) the Principal's Representative;
  - (ii) any nominees of the Principal's Representative;

- (iii) the CSM Contractor's Representative;
  - (iv) any nominees of the CSM Contractor's Representative; and
  - (v) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Working Group is to:
- (i) provide a collaborative forum through which the parties can:
    - (A) plan and agree procedures for completion and handover of the Project Works;
    - (B) plan and agree the process for the progressive submission of records and documentation required for Construction Completion and Completion of each Portion;
    - (C) monitor the status of activities and tasks that must be completed in order to achieve Construction Completion and Completion of each Portion;
    - (D) identify issues which may adversely impact upon the achievement of Construction Completion or Completion of any Portion by the applicable Date for Construction Completion or Date for Completion (as applicable); and
    - (E) consider the Recovery Plans submitted by the CSM Contractor to the Principal's Representative in accordance with clause 14.5(b)(ii) and provide feedback.
  - (ii) report to the Completion Steering Committee on matters relating to completion and handover of the Project Works; and
  - (iii) such other roles and functions as may be agreed by the parties.
- (d) The Completion Working Group must meet:
- (i) at least once each month; and
  - (ii) at such other times as the parties may agree,
- until the achievement of Completion of the last Portion.

### 13.25 Legal effect of meetings

- (a) Subject to clause 13.25(b), the Management Review Group, the Completion Steering Committee and the Completion Working Group are consultative and advisory only and nothing which occurs during or as part of the process of a meeting, no resolution or communication at any meeting (nor minutes recording any resolution or communication) of any such group will:
  - (i) limit or otherwise affect the rights or obligations of either party under this Contract, any Approved Subcontract or otherwise according to Law;
  - (ii) entitle a party to make any Claim against the other;
  - (iii) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this Contract or otherwise according to law;



- (iv) prejudice a party's rights against the other whether under this Contract or otherwise according to law; or
  - (v) be construed as or amount to a direction by the Principal or the Principal's Representative unless and until a separate direction is given to the CSM Contractor in writing by the Principal's Representative.
- (b) A determination of the Management Review Group made in accordance with clause 13.21(d) will be binding on the parties.


**13.26 Quarterly whole of project reviews**

- (a) In each quarter in a calendar year at any time prior to the expiry of the final Defects Correction Period, the Principal may require that the CSM Contractor attend and participate in one or more meetings with the Principal and its other contractors for Sydney Metro City & Southwest.
- (b) The purpose of the meetings in clause 13.26(a) is for the Principal, the CSM Contractor and the Principal's other contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:
  - (i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;
  - (ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;
  - (iii) improvements that can be implemented to save time, reduce cost or improve the quality of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;
  - (iv) the manner in which any such solutions and improvements can be implemented; and
  - (v) any other matters that the Principal may require.
- (c) If the Principal requires the CSM Contractor to attend and participate in any meeting contemplated by clause 13.26(a), the Principal's Representative must provide the CSM Contractor with at least 10 Business Days prior written notice of any such meeting.
- (d) If the Principal's Representative provides the CSM Contractor with a notice under clause 13.26(b), the CSM Contractor must ensure that the following personnel attend and participate in the meeting:
  - (i) the CSM Contractor's Representative;
  - (ii) representatives of any of the CSM Contractor's Subcontractors which the Principal's Representative reasonably requires; and

any other person the Principal's Representative reasonably requires.

**13.27 Independent Property Impact Assessment Panel**

- (a) The CSM Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for the Project in accordance with the requirements of the Planning Approval.

- (b) The CSM Contractor must (at its cost):
- (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
  - (ii) permit the Independent Property Impact Assessment Panel to access the Site and inspect the CSM Contractor's Activities provided that the CSM Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the CSM Contractor's reasonable work health and safety procedures; and
  - (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that the CSM Contractor is given reasonable prior written notice of any such meeting.
- 

14. **TIME AND PROGRESS**

14.1 **Rate of Progress**

- (a) The CSM Contractor must:
- (i) start to perform its obligations under this Contract from the date of this Contract;
  - (ii) regularly and diligently progress the CSM Contractor's Activities in accordance with this Contract to ensure that:
    - (A) Construction Completion of each Portion is achieved by the relevant Date for Construction Completion for the Portion;
    - (B) Completion of each Portion is achieved by the relevant Date for Completion for the Portion; and
    - (C) Milestone Achievement of each Milestone is achieved as contemplated in clause 17.1.
- (b) Without limiting its rights under the SOP Act, the CSM Contractor must not suspend the progress of the whole or any part of the CSM Contractor's Activities except where directed by a court or by the Principal's Representative under clauses 6.6(a)(vi) or 14.13.
- (c) Without limiting clauses 14.1(d), 14.1(k) or clause 14.15, the CSM Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the CSM Contractor to carry out the CSM Contractor's Activities in accordance with this Contract.
- (d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's

Representative, as the case may be, should reasonably have anticipated at the date of this Contract.

- (e) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 14.1, direct in what order and at what time the various stages or parts of the CSM Contractor's Activities must be performed.
- (f) If, in relation to a direction under clause 14.1(e):
  - (i) the CSM Contractor can reasonably comply with the direction, the CSM Contractor must do so; or
  - (ii) the CSM Contractor cannot reasonably comply with the direction, the CSM Contractor must notify the Principal's Representative in writing, giving reasons.
- (g) For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under clause 14.1(e) unless the direction is in writing and expressly states that it is a direction under clause 14.1(e).
- (h) If the CSM Contractor considers that compliance with a written direction expressly stated to be pursuant to this clause 14.1 will or is likely to:
  - (i) require the CSM Contractor to undertake more or less Reimbursable Work, Design Work or Preliminaries than otherwise would have been incurred; or
  - (ii) result in the CSM Contractor being unable to satisfy the requirements of clause 14.1(a),the CSM Contractor must, as a condition precedent to any entitlement to make a Claim promptly, and within five (5) Business Days after first receipt of such direction and in any event before following the written direction, notify the Principal's Representative of such.
- (i) The CSM Contractor will have no Claim against the Principal in relation to a written direction under this clause 14.1 if it does not comply with clause 14.1(h).
- (j) If the CSM Contractor has complied with the conditions in clause 14.1(h), the direction will be dealt with as if it was a Change under clause 10 except the CSM Contractor will have no entitlement to a Change where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the CSM Contractor to comply with its obligations under this Contract.
- (k) The CSM Contractor will not otherwise be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 14.1.

#### 14.2 CSM Contractor's Programming Obligations

The CSM Contractor must:

- (a) prepare and provide a CSM Contractor's Program that complies with and includes the details required by this Contract and any requirements of the Principal's Representative. The parties acknowledge and agree that the CSM Contractor's Initial Program is deemed to have been submitted to the Principal's Representative for review under clause 13.11 and not been rejected by the Principal's Representative;

- (b) submit the CSM Contractor's Program to the Principal's Representative for its review in accordance with clause 14.2(a) within the earlier of:
  - (i) 20 Business Days of the date of this Contract; or
  - (ii) any time required by the MRs;
- (c) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the CSM Contractor's Activities within 5 Business Days of receipt of such a direction;
- (d) update, revise and submit to the Principal's Representative an updated CSM Contractor's Program:
  - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Construction Completion, Date for Milestone Achievement or Date for Completion, the actual progress made by the CSM Contractor, Changes, Deferred Activities and any other changes to the CSM Contractor's Activities but excluding claims for extensions of time to any Date for Construction Completion, Date for Milestone Achievement or Date for Completion which have been submitted by the CSM Contractor to the extent that they have not been granted by the Principal's Representative;
  - (ii) to take account of any Recovery Plan submitted by the CSM Contractor; and
  - (iii) on a monthly basis or whenever directed to do so by the Principal's Representative;
- (e) prepare and provide for the Principal's Representative's information only, versions of all CSM Contractor's Programs prepared in accordance with clause 14.2(d) that also allow for those claims for an extension of time to any Date for Construction Completion, Date for Milestone Achievement or Date for Completion that have been made by the CSM Contractor in accordance with clause 14.8 but to which the Principal's Representative has not yet responded in accordance with clause 14.10;
- (f) comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirements in clause 13.11; and
- (g) not depart from the current version of the CSM Contractor's Program that has been submitted to the Principal's Representative for review under clause 14.2(a) and not been rejected by the Principal's Representative within 15 Business Days.

#### 14.3 **CSM Contractor not Relieved**

Without limiting clauses 13.11 and 14.2, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the CSM Contractor's Program) prepared by the CSM Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the CSM Contractor from or alter its liabilities or obligations under this Contract, including the obligation under clause 14.1;
- (b) evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Construction Completion, Date for Milestone Achievement or Date for Completion or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the CSM Contractor's Activities; or

- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Contract, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable the CSM Contractor to achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion, Completion of a Portion by the Date for Completion of the Portion or Milestone Achievement by the Date for Milestone Achievement.

**14.4 Importance of Milestone Achievement, Construction Completion and Completion on Time**

The CSM Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 14.1 to enable the Operator, or any other party elected by the Principal, to carry out the work required under its contract with the Principal in order that operations of Sydney Metro City & Southwest may commence, including so as to allow the Principal to pursue improved public transport in Sydney;
- (b) that a Date for Construction Completion of any Portion, the Date for Completion of Portion 3 or a Date for Milestone Achievement of a Specified Milestone will only be extended in accordance with clause 14.10 or clause 14.12, or when so determined under clause 20; and
- (c) that a Date for Completion of any Portion (other than Portion 3) or a Date for Milestone Achievement of a Milestone other than a Specified Milestone will not be extended for any reason.

**14.5 Risk and Notice of Delay**

- (a) Except as expressly provided for in clause 14.10, the CSM Contractor accepts the risk of all delays in, and disruption to, the carrying out of the CSM Contractor's Activities and performance of its obligations under this Contract both before and after any Date for Milestone Achievement, Date for Construction Completion or any Date for Completion (as applicable).
- (b) The CSM Contractor must:
  - (i) within 5 Business Days after the CSM Contractor first becoming aware (or when it ought reasonably to have first become aware) of the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of:
    - (A) any delay or likely delay to the carrying out of the CSM Contractor's Activities;
    - (B) details of the cause;
    - (C) how any Date of Milestone Achievement in respect of a Specified Milestone, Date of Construction Completion or Date of Completion (as applicable) is likely to be affected (if at all); and
  - (ii) as soon as reasonably practicable, give the Principal's Representative the CSM Contractor's Recovery Plan for recovery of the delay in accordance with clause 14.6.
- (c) If the Principal reasonably believes that the CSM Contractor will be, or has been, delayed in achieving:

- (i) Milestone Achievement by the Date for Milestone Achievement in respect of a Specified Milestone;
- (ii) Construction Completion by the Date for Construction Completion; or
- (iii) Completion by the Date for Completion,

then the Principal may give notice to that effect to the CSM Contractor, and the CSM Contractor must as soon as reasonably practicable give the Principal the CSM Contractor's Recovery Plan for recovery of the delay in accordance with clause 14.6.

#### 14.6 **Recovery Plan**

- (a) Each Recovery Plan which the CSM Contractor must provide pursuant to clause 14.5 must:
  - (i) describe the actions and measures which the CSM Contractor will diligently pursue to remedy or mitigate all delay and to ensure the CSM Contractor achieves Milestone Achievement of the Specified Milestone by the Date for Milestone Achievement or Construction Completion by the Date for Construction Completion or Completion by the Date for Completion; or
  - (ii) contain a proposed updated CSM Contractor's Program.
- (b) Each Recovery Plan will be reviewed by:
  - (i) the Principal's Representative under clause 13.11; and
  - (ii) the Completion Working Group under clause 13.24.
- (c) The CSM Contractor must implement and comply with its Recovery Plan subject to any comments on that plan provided by the Completion Working Group under clause 13.24 and compliance with the review procedures under clause 13.11.
- (d) The CSM Contractor will not be relieved of any liability or responsibility under this Contract or otherwise at law arising out of or in connection with:
  - (i) any comments given by the Completion Working Group or the Principal's Representative on review of the Recovery Plan; or
  - (ii) the implementation of any Recovery Plan in respect of which the Completion Working Group or the Principal's Representative has or has not given comments.
- (e) The CSM Contractor may not make any Claim against the Principal arising out of or in connection with any comments by the Completion Working Group or the Principal's Representative on review of the Recovery Plan or any Loss suffered or incurred by the CSM Contractor in preparing, or complying with, a Recovery Plan.

#### 14.7 **Entitlement to Claim Extension of Time**

- (a) If the CSM Contractor is, or will be, delayed on or prior to the Date for Construction Completion of a Portion, by reason of an Extension Event in a manner that will delay it from achieving Construction Completion of a Portion by the Date for Construction Completion of the Portion, the CSM Contractor may claim an extension of time to the relevant Date for Construction Completion.

- (b) If the CSM Contractor is, or will be, delayed after the Date for Construction Completion of a Portion, by reason of Extension Events (a), (d), (e), (j), (o), (p) or (q) in a manner which will delay it in achieving Construction Completion of a Portion by the Date for Construction Completion of the Portion, the CSM Contractor may claim an extension of time to the relevant Date for Construction Completion.
- (c) If the CSM Contractor is, or will be, delayed on or prior to Date for Milestone Achievement in respect of a Specified Milestone, by reason of an Extension Event in a manner that will delay it from achieving the Specified Milestone by the Date for Milestone Achievement, the CSM Contractor may claim an extension of time to the relevant Date for Milestone Achievement.
- (d) If the CSM Contractor is, or will be, delayed after the Date for Milestone Achievement in respect of a Specified Milestone, by reason of Extension Events (a), (d), (e), (j), (o), (p) or (q) in a manner which will delay it from achieving the Specified Milestone by the Date for Milestone Achievement in respect of a Specified Milestone, the CSM Contractor may claim an extension of time to the relevant Date for Milestone Achievement.
- (e) If the CSM Contractor is, or will be, delayed on or prior to Date for Completion of Portion 3 by reason of an Extension Event in a manner that will delay it from achieving Completion of Portion 3 by the Date for Completion of Portion 3, the CSM Contractor may claim an extension of time to the Date for Completion of Portion 3.
- (f) If the CSM Contractor is, or will be, delayed after the Date for Completion of Portion 3 by reason of Extension Events (a), (d), (e), (j), (o), (p) or (q) in a manner which will delay it from achieving Completion of Portion 3 by the Date for Completion of Portion 3, the CSM Contractor may claim an extension of time to the relevant Date for Completion of Portion 3.

#### 14.8 **Claim for Extension of Time**

- (a) To claim an extension of time the CSM Contractor must:
  - (i) within 10 Business Days after first becoming aware (or when it ought reasonably to have first become aware of) the commencement of the occurrence causing the delay, submit a written notice of its intention to claim for an extension to the Date for Construction Completion of the Portion, the Date for Completion of Portion 3 or Date for Milestone Achievement of the Specified Milestone, which:
    - (A) gives details of the delay and the occurrence causing the delay; and
    - (B) states the number of days for which the extension of time is to be claimed;
  - (ii) within 10 Business Days after the CSM Contractor's notice issued under clause 14.8(a)(i), submit a written claim to the Principal's Representative for an extension to the Date for Construction Completion of the Portion, the Date for Completion of Portion 3 or Date for Milestone Achievement of the Specified Milestone, which:
    - (A) gives detailed particulars of the delay and the occurrence causing the delay; and
    - (B) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that:

- (aa) the delay involves an activity which is critical to the maintenance of progress in the execution of the CSM Contractor's Activities and which will delay it in achieving Construction Completion of the Portion, Completion of Portion 3 or Milestone Achievement of the Specified Milestone in the manner described in clause 14.9(a)(iii); and
  - (bb) the conditions precedent to an extension of time in clause 14.9 have been met; and
- (iii) if the effects of the delay continue for more than 20 Business Days from the date of the CSM Contractor's notice issued under clause 14.8(a)(i) and the CSM Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
- (A) every 10 Business Days after the first written claim made under clause 14.8(a)(ii), until 5 Business Days after the end of the effects of the delay; and
  - (B) containing the information required by paragraph 14.8(a)(ii).
- (b) The Principal's Representative may, within 10 Business Days after receiving the CSM Contractor's claim or further claim for an extension of time for Completion, Construction Completion or Milestone Achievement, by written notice to the CSM Contractor, request additional information in relation to the claim or further claim.
- (c) The CSM Contractor must, within 10 Business Days after receiving a notice under clause 14.8(b), provide the Principal's Representative with the information requested.

#### 14.9 **Conditions Precedent to Extension of Time**

- (a) Subject to clause 14.14(h), it is a condition precedent to the CSM Contractor's entitlement to an extension of time that:
- (i) the CSM Contractor gives the notices and claims required by clauses 14.5(b) and 14.8(a) as required by those clauses;
  - (ii) the cause of the delay is beyond the reasonable control of the CSM Contractor; and
  - (iii) the CSM Contractor is actually, or will be, delayed in achieving:
    - (A) Construction Completion:
      - (aa) on or prior to the Date for Construction Completion of a Portion, by reason of one or more Extension Events in the manner described in clause 14.7(a); or
      - (bb) after the Date for Construction Completion of a Portion, by reason of Extension Events (a), (d), (e), (j), (o), (p) or (q) in the manner described in clause 14.7(b); or
    - (B) Milestone Achievement of a Specified Milestone:
      - (aa) on or prior to the Date for Milestone Achievement of a Specified Milestone, by reason of one or more Extension Events in the manner described in clause 14.7(c); or



- (bb) after the Date for Milestone Achievement in respect of a Specified Milestone, by reason of Extension Events (a), (d), (e), (j), (o), (p) or (q) in the manner described in clause 14.7(d); or
- (C) Completion of Portion 3:
  - (aa) on or prior to the Date for Completion of Portion 3, by reason of one or more Extension Events in the manner described in clause 14.7(e); or
  - (bb) after the Date for Completion of Portion 3, by reason of Extension Events (a), (d), (e), (j), (o), (p) or (q) in the manner described in clause 14.7(f).
- (b) If the CSM Contractor fails to comply with the conditions precedent in clause 14.9(a):
  - (i) the Principal will not be liable upon any Claim by the CSM Contractor; and
  - (ii) the CSM Contractor will be absolutely barred from making any Claim against the Principal,

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

#### 14.10 Extension of Time

- (a) Subject to clauses 14.11 and 14.14, if the conditions precedent in clause 14.9(a) have been satisfied, the Principal's Representative must extend the Date for Construction Completion of a Portion, Date for Completion of Portion 3 or Date for Milestone Achievement of a Specified Milestone by a reasonable period, such period to be stated by the Principal's Representative, and notified to the Principal and the CSM Contractor within 15 Business Days after:
  - (i) the latest of the:
    - (A) CSM Contractor's written claim under clause 14.8; and
    - (B) provision by the CSM Contractor of any additional information regarding the claim required under clause 14.8; and
    - (C) date of the meeting of the Management Review Group at which the CSM Contractor's written claim was considered by the Management Review Group; or
  - (ii) where the Principal's Representative has given the CSM Contractor a direction to compress under clause 14.14 and subsequently issues a notice under clause 14.14 withdrawing the direction to compress given under clause 14.14, the date of issue of the notice withdrawing the compression.
- (b) A failure of the Principal's Representative to grant a reasonable extension of time to the Date for Milestone Achievement, Date for Construction Completion or Date for Completion of Portion 3 or to grant an extension of time to the Date for Milestone Achievement, Date for Construction Completion or Date for Completion of Portion 3 within the relevant 15 Business Day period will not cause an affected Date for Milestone Achievement, Date for Construction Completion or Date for Completion to be set at large, but nothing in this clause 14.10 will prejudice any right of the CSM Contractor to damages.

- (c) The parties agree that if the Management Review Group determines the CSM Contractor's claim in accordance with clauses 13.21, the Principal's Representative will extend the Date for Construction Completion of a Portion, Date for Milestone Achievement of a Specified Milestone or Date for Completion of Portion 3 as determined by the Management Review Group.

#### 14.11 Reduction in Extension of Time

In respect of each claim for an extension of time under clause 14.8(a), the CSM Contractor's entitlement to an extension of time will be reduced by the extent to which the CSM Contractor:

- (a) could have lessened or avoided the delay if it had taken all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay, including the expenditure of reasonable sums of money and taking reasonable steps to accommodate or re-schedule within the CSM Contractor's Program the cause of delay and the CSM Contractor's Activities affected by the delay; or
- (b) contributed to the delay.

#### 14.12 Unilateral Extensions

- (a) 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 CSM Contractor and the Principal, unilaterally extend the Date for Completion for Portion 3, Date for Construction Completion of a Portion or a Date for Milestone Achievement by any period specified in a notice to the CSM Contractor and the Principal. The power to extend the Date for Construction Completion of a Portion or a Date for Milestone Achievement under clause 14.12:
  - (i) may be exercised whether or not the CSM Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Construction Completion, Date for Milestone Achievement or Date for Completion of Portion 3, or is entitled to be, or has been, granted an extension of time to any relevant Date for Construction Completion, Date for Milestone Achievement or Date for Completion of Portion 3, under clause 14.8;
  - (ii) subject to clause 14.12(a)(iii), may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 14.12(a) for the benefit of the CSM Contractor;
  - (iii) without limiting clause 13.1(a), may be exercised or not exercised (as the case may be) by the Principal's Representative in accordance with the directions of the Principal; and
  - (iv) is not a direction which can be the subject of a Dispute pursuant to clause 20 or in any other way opened up or reviewed by any other person (including the IDAR Panel or any arbitrator or court).
- (b) If the Principal's Representative gives the CSM Contractor a direction to compress under clause 14.14 and the direction only applies to part of the delay, the CSM Contractor's entitlement to any extension of time which it otherwise would have had if that direction had not been given will be reduced to the extent that the direction to compress requires the CSM Contractor to compress to overcome the delay.

14.13 **Suspension**

- (a) The Principal's Representative may direct the CSM Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the CSM Contractor's Activities.
- (b) If the suspension under this clause 14.13 arises in the circumstance set out in clause 3.5(g) then clauses 3.5(h) to 3.5(l) will apply, otherwise where it arises as a result of:
  - (i) the CSM Contractor's failure to carry out its obligations in accordance with this Contract (including under clauses 8.9 or 8.10 or where the CSM Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Contract or where any process, procedure, test method, calculation, analysis or report required by this Contract has resulted in or will result in a non-conformance):
    - (A) the Reimbursable Costs will not include the costs incurred as a result of the suspension;
    - (B) there will be no [REDACTED] as a result of the suspension; and
    - (C) the CSM Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
  - (ii) a cause other than the CSM Contractor's failure to perform its obligations in accordance with this Contract:
    - (A) a direction to suspend under this clause 14.13 will entitle the CSM Contractor to an extension of time to any relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion of Portion 3 where it is otherwise so entitled under clause 14;
    - (B) to the extent a direction to suspend requires the CSM Contractor to carry out more Reimbursable Work, Design Work or Preliminaries than the CSM Contractor would otherwise have done as a result of complying with the direction to suspend, the CSM Contractor may notify the Principal of its estimate of any [REDACTED] for complying with the direction, including sufficient information to support the estimate;
    - (C) if a notice is given under clause 14.13(b)(ii)(B), clause 4 will apply in respect of [REDACTED] (to the extent the Principal does not agree with the CSM Contractor's estimate under clause 14.13(b)(ii)(B)); and
    - (D) the CSM Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 14.13(b)(ii).

14.14 **Compression**

- (a) Subject to clause 14.14(d), if the CSM Contractor makes a claim under clause 14.8, the Principal's Representative may direct the CSM Contractor to compress the CSM Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement, Construction Completion of a Portion by its Date for Construction Completion or Completion of Portion 3 by the Date for Completion of Portion 3.
- (b) The Principal's Representative will have the right to direct that the CSM Contractor's Activities be compressed by means of overtime, additional crews, additional shifts, resequencing of the CSM Contractor's Activities, or otherwise, whether or not the CSM Contractor's Activities are progressing without delay or in accordance with the CSM Contractor's Program.
- (c) Prior to carrying out any compression of the CSM Contractor's Activities, the CSM Contractor must provide a plan for such compression, including the methodology required for an effective and economical compression of the CSM Contractor's Activities and, where the compression is pursuant to a direction under this clause 14.14, an estimate of the [REDACTED] for complying with the direction, including sufficient information to support the estimate.
- (d) Clause 4 will apply in respect of [REDACTED] (to the extent the Principal does not agree with the CSM Contractor's estimate under clause 14.14(c)).
- (e) Despite clause 14.14(a), the Principal's Representative may give such a direction whether or not the cause of delay for which the CSM Contractor has made its claim under clause 14.8 entitles the CSM Contractor to an extension of time to any relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion of Portion 3.
- (f) The Principal's Representative may at any time by notice in writing withdraw any direction given by it under clause 14.14, after which the CSM Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the CSM Contractor made a claim under clause 14.8.
- (g) Any extension in accordance with clause 14.14(f) will be determined having regard to the effect which the acceleration of the CSM Contractor's Activities taken by the CSM Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the CSM Contractor under clause 14.8.
- [REDACTED]
- (i) The CSM Contractor will not be entitled to make any Claim, and releases and waives any entitlement it may have to a Claim, against the Principal in respect of

any compression of the CSM Contractor's Activities, except as provided for under this clause 14.14.

#### 14.15 **Compression by CSM Contractor**

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

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

#### 14.16 **Deferred Activities**

- (a) The parties acknowledge that the Principal may, at any time prior to Construction Completion of Portion 3, direct the CSM Contractor to defer activities within Portion 3 until after the Date of Construction Completion of Portion 3.
- (b) The CSM Contractor must notify the Principal if it considers that it is Value for Money for the Principal to defer activities in Portion 3 to avoid re-work arising from the LWC Works.
- (c) The CSM Contractor may, following issue of a notice under clause 14.5(b), request that the Principal direct the CSM Contractor to defer activities within Portion 3 until after the Date of Construction Completion of Portion 3. The Principal may issue any such direction in its absolute discretion.
- (d) Any notice issued by the CSM Contractor under clause 14.16(b) or clause 14.16(c) must specify:
  - (i) the CSM Contractor's Activities to be deferred until after Construction Completion of Portion 3 and any necessary Temporary Works required to enable deferral of those activities;
  - (ii) any effect that deferring the activities will have on the CSM Contractor's Program; and
  - (iii) the:
    - (A) value of any re-work that may be required if the activities are not deferred; and
    - (B) the Deferred Activities Estimate.
- (e) At any time prior to Construction Completion of Portion 3, the Principal's Representative may notify the CSM Contractor of the CSM Contractor's Activities that the Principal is considering deferring until after the Date of Construction Completion of Portion 3.
- (f) Within 10 Business Days of a notice under clause 14.16(e) the CSM Contractor must notify the Principal of:

- (i) any necessary Temporary Works required to enable deferral of the specified activities;
  - (ii) any effect that deferring the specified activities will have on the CSM Contractor's Program; and
  - (iii) the:
    - (A) value of any re-work that may be required if the specified activities are not deferred; and
    - (B) the Deferred Activities Estimate.
- (g) The Principal's Representative will within 5 Business Days of receiving a Deferred Activities Proposal confirm whether:
- (i) the Deferred Activities Proposal is accepted (in whole or in part); or
  - (ii) the Deferred Activities Proposal is not accepted.
- (h) Any notice issued by the Principal's Representative under clause 14.16(g)(i) must:
- (i) confirm the CSM Contractor Activities that are deferred (the **Deferred Activities**);
  - (ii) state:
    - (A) the Deferred Activities Estimate is agreed; or
    - (B) the extent to which the Deferred Activities Estimate is not agreed, in which case clause 4 will apply in respect of any [REDACTED] and [REDACTED];
  - (iii) specify a reasonable time period within which the CSM Contractor must complete the Deferred Activities.

## 15. PAYMENT

### 15.1 Principal's payment obligation for design and construction

- (a) Subject to clause 15.3(b) and to any other right to set-off that the Principal may have, the Principal will pay the CSM Contractor in progressive payments as follows:
- (i) monthly instalments of the Reimbursable Costs, relating to the Reimbursable Work which has been carried out in the relevant month (distinguishing Reimbursable Costs relating to Provisional Sum Work);
  - (ii) monthly instalments of the Design Fee, relating to the Design Work which has been carried out in the relevant month; and
  - (iii) the:
    - (A) Preliminaries Fee will be paid in monthly instalments in accordance with the provisions of Schedule F1;
    - (B) Management Fee will be paid in monthly instalments in accordance with the provisions of Schedule F1;

- (C) amounts to be paid for the Post Construction Completion Activities and Post Completion Activities will be paid in accordance with the provisions of Schedule F1;
  - (D) KPI Incentive (if any) under Schedule F6 will be paid in monthly instalments in accordance with the provisions of Schedule F6;
  - (E) Cost Incentive (Design) (if any) and Cost Incentive (MPR) (if any) under clause 15.11(a) or 15.11(b) (as applicable) can only be claimed with the Payment Claim made under clause 15.11; and
  - (F) Early Completion Payment (if any) under Schedule A2 can only be claimed with the Payment Claim made under clause 15.11.
- (b) Schedules F1 and F6 may set out (among other things):
- (i) those parts of the CSM Contractor's Activities which must be completed before the CSM Contractor may claim a progressive payment with respect to that part;
  - (ii) the payment the CSM Contractor may claim for each progressive payment;
  - (iii) any limitations or other constraints on the CSM Contractor's ability to make claims for payment; and
  - (iv) the restrictions (if any) on the timing and sequencing of the CSM Contractor's Activities with which the CSM Contractor must comply.
- (c) Clause 15.2(k) sets out further payment constraints that are to apply.

## 15.2 Payment Claims

- (a) The CSM Contractor must give the Principal's Representative a claim for payment on account of all amounts then payable by the Principal to the CSM Contractor under the Contract (**Payment Claim**) on the following dates:
- (i) on the twenty-fifth day of each month (or if this day is not a Business Day, the next Business Day after this day); and
  - (ii) 30 Business Days after:
    - (A) the issue of a Notice of Completion for the last Portion to reach Completion; and
    - (B) the expiry of the final Defects Correction Period.
- (b) For each claim made under clause 15.2(a) the CSM Contractor must:
- (i) give the Principal's Representative:
    - (A) a claim in a format required by the Principal's Representative (including electronic format) showing the amount the CSM Contractor claims on account of:
      - (aa) the Reimbursable Costs (distinguishing Reimbursable Costs relating to Provisional Sum Work and Design Work) payable to:
        - (a) Subcontractors; and

- (b) the CSM Contractor;
  - (bb) the Design Fee payable to:
    - (a) Designers; and
    - (b) the CSM Contractor;
  - (cc) the Preliminaries Fee;
  - (dd) the Management Fee;
  - (ee) the KPI Incentive (if any);
  - (ff) the Cost Incentive (Design) and Cost Incentive (MPR) (if any);
  - (gg) the Early Completion Payment (if any);
  - (hh) the amounts payable for the Post Construction Completion Activities and the Post Completion Activities; and
  - (ii) other amounts payable under the Contract by the Principal to the CSM Contractor; and
- (B) where the Principal has given notice under clause 15.14(g)(iv), a valid tax invoice for any taxable supplies to which the payment relates; and
- (ii) in the case of the payment claims issued after:
- (A) the issue of a Notice of Completion for the last Portion to reach Completion; and
  - (B) the expiration of the final Defects Correction Period,
- comply with clause 15.2(m).
- (c) Each claim for payment must set out or attach (to a standard directed by the Principal from time to time) sufficient details, calculations, supporting documentation and any other information required by the Principal in respect of all amounts claimed by the CSM Contractor:
- (i) to enable the Principal's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the CSM Contractor under the Contract and by the CSM Contractor to the Principal; and
  - (ii) including any such documentation or information which the Principal's Representative may by written notice from time to time require the CSM Contractor to set out or attach, whether in relation to a specific payment or not.
- (d) The Principal's Representative must, on behalf of the Principal, within 10 Business Days of receipt of the CSM Contractor's claim under clause 15.2(a), issue to the CSM Contractor and the Principal, a payment schedule stating the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the CSM Contractor under this Contract and which the Principal proposes to pay to the CSM Contractor or the amount which the Principal's Representative believes to



be then payable by the CSM Contractor to the Principal, including details of the calculation of the progress amount.

- (e) In issuing a payment schedule the Principal's Representative:
  - (i) may deduct from the amount which would otherwise be payable to the CSM Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this Contract, including any amount which the Principal is entitled to set-off or withhold under clause 15.8; and
  - (ii) must if the payment schedule shows an amount less than the amount claimed by the CSM Contractor in the progress claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (f) If the CSM Contractor does not give the Principal's Representative a progress claim at a time required by clause 15.2(a), the Principal's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a progress claim was made at the time required.
- (g) A payment schedule issued under clause 15.2(d) or 15.2(f) will separately identify the sum of the amounts due on account of the:
  - (i) the Reimbursable Costs (distinguishing Reimbursable Costs relating to Provisional Sum Work) payable to:
    - (A) Subcontractors; and
    - (B) the CSM Contractor;
  - (ii) the Design Fee payable to:
    - (A) Designers; and
    - (B) the CSM Contractor;
  - (iii) the Preliminaries Fee;
  - (iv) the Management Fee;
  - (v) the KPI Incentive (if any);
  - (vi) the Cost Incentive (Design) and Cost Incentive (MPR) (if any);
  - (vii) the Early Completion Payment (if any); and
  - (viii) other amounts payable under the Contract by the Principal to the CSM Contractor.
- (h) Where the Principal has given notice under clause 15.14(g)(iv), if the amount set out in a payment schedule issued under clause 15.2(d) is different to the amount in the CSM Contractor's progress claim or if the Principal's Representative issues a payment schedule under clause 15.2(f), the CSM Contractor must, within 2 Business Days of receiving the payment schedule, issue a revised tax invoice or adjustment note (as the case may be) to the Principal to reflect the amount in the payment schedule.

- (i) Within 15 Business Days of the date of the CSM Contractor's progress claim in accordance with clause 15.2(a) or within 5 Business Days of the issue of a payment schedule in accordance with clause 15.2(f):
  - (i) where the payment schedule provides that an amount is payable by the Principal to the CSM Contractor, but subject to clauses 15.6, 15.7, 15.8 and 20.12 and Schedules F2 and F6, the Principal must pay the CSM Contractor the progress payment due to the CSM Contractor as certified in the payment schedule; and
  - (ii) where the payment schedule provides that an amount is payable by the CSM Contractor to the Principal, the CSM Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (j) If the CSM Contractor lodges a progress claim earlier than at the times specified under clause 15.2(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that progress claim earlier than it would have been obliged had the CSM Contractor submitted the progress claim in accordance with this Contract.
- (k) Despite any other provisions of this Contract to the contrary, the amount of any progress claim to which the CSM Contractor is entitled in relation to this Contract and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 15.2(d) as the amount payable to the CSM Contractor arising out of or in any way in connection with this Contract will:
  - (i) not include the following amounts:
    - (A) any amount which this Contract provides cannot be claimed or is not payable because of the failure by the CSM Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);
    - (B) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
    - (C) any amount which this Contract provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Schedules F2 and F6);
    - (D) any amount in respect of which the obligation of the Principal to make payment has been suspended under this Contract;
    - (E) any amount in respect of which the CSM Contractor has failed to provide supporting information as required by this Contract; or
    - (F) any amount for work which is not in accordance with this Contract;
  - (ii) deduct the following amounts:
    - (A) any amounts which have become due from the CSM Contractor to the Principal under this Contract; and
    - (B) any amounts which the Principal is entitled under this Contract to retain, deduct, withhold or set-off against the progress claim, including under clauses 15.5, 15.6 or 15.9;

- (iii) in determining amounts to be excluded or deducted under clauses 15.2(k)(i) and 15.2(k)(ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and
  - (iv) be determined having regard to the amounts payable in accordance with Schedule F1.
- (l) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the CSM 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.
- (m) The CSM Contractor must include in the payment claim lodged by it after:
- (i) the issue of a Notice of Completion for the last Portion to reach Completion; and
  - (ii) the expiration of the final Defects Correction Period,
- all Claims (excluding third party claims for death, injury or property damage of which the CSM Contractor is unaware (and ought not reasonably have been aware)) that the CSM Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the CSM Contractor's Activities, the Project Works or this Contract which occurred:
- (iii) in the case of the payment claim referred to in clause 15.2(m)(i), prior to the date of that payment claim; and
  - (iv) in the case of the payment claim referred to in clause 15.2(m)(ii), in the period between the date of the payment claim referred to in clause 15.2(m)(i) and the date of the payment claim.
- (n) The CSM Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the CSM Contractor's Activities, the Project Works or this Contract that occurred prior to the date of submission of the relevant payment claim referred to in clauses 15.2(m)(i) or 15.2(m)(ii), except for any claim which:
- (i) has been included in the relevant payment claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 15.2(a); and
  - (ii) has not been barred under another provision of this Contract.
- (o) Where any part of a payment to be made by the Principal to the CSM Contractor is in respect of work carried out by a Subcontractor, the Principal will pay that part of the payment into the Project Bank Account.
- (p) The CSM Contractor may only make withdrawals from the Project Bank Account to pay the relevant Subcontractor for work carried out by that Subcontractor that forms part of the relevant Payment Claim.
- (q) Interest on amounts standing to the credit of the Project Bank Account will accrue for the benefit of the Principal.

### 15.3 **Effect of payment schedules and payments**

- (a) Neither the issue of a payment schedule under clause 15.2(d), nor the making of any payment pursuant to any such payment schedule, will:
- (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
  - (ii) constitute evidence of the value of any work or an admission of liability or evidence that work has been executed or completed in accordance with this Contract; or
  - (iii) prejudice the right of either party to dispute under clause 20 whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 20 or as otherwise agreed, of the amount properly due and payable, the Principal or the CSM Contractor, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),
- and any payments made pursuant to a payment schedule are payments on account only.
- (b) The Principal's Representative may at any time correct, modify or amend any payment schedule.

### 15.4 **Provision of documentation and other requirements**

- (a) The Principal is not obliged to pay the CSM Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless the CSM Contractor has:
- (i) provided the deeds poll required by clause 1.5;
  - (ii) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 5;
  - (iii) provided the Principal's Representative with:
    - (A) a statutory declaration by the CSM Contractor, or where the CSM Contractor is a corporation, by a representative of the CSM Contractor who is in a position to know the facts attested to, in the form of Schedule B5, made out not earlier than the date of the payment claim;
    - (B) where clause 15.7(q) applies, the statement and the evidence (if any) required to be provided by the CSM Contractor pursuant to that clause;
    - (C) the Asset Management Information and evidence of compliance with the reporting requirements of MR-PA, MR-W and the sustainability reporting requirements in MR-SY; and
  - (iv) where the Principal has given notice under clause 15.14(g)(iv), provided the Principal's Representative with a tax invoice, revised tax invoice or adjustment note (as applicable) as required under clause 15.2(b)(i)(B) and clause 15.2(h);

- (v) in relation to any unfixed plant and materials which the CSM Contractor proposes to claim in a Payment Claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 15.6;
  - (vi) demonstrated to the Principal's Representative that it has effected and is maintaining, or has procured to be effected the insurances required to be effected by the CSM Contractor under clause 18 and (if requested) provided supporting evidence of this to the Principal's Representative;
  - (vii) provided such evidence as the Principal's Representative may require that this Contract has been properly executed by or on behalf of the CSM Contractor and that the CSM Contractor is bound under this Contract;
  - (viii) subject to clauses 15.4(c), 15.4(d) and 15.4(e), in relation to each tenderer approved by the Principal's Representative pursuant to clause 11.7(a), evidence to the satisfaction of the Principal's Representative of the CSM Contractor's compliance with clause 11.7 (including the provision of each of the agreements referred to in clause 11.7(a) having been duly stamped (if required by Law)); and
  - (ix) done everything else that it is required to do under this Contract before being entitled to make a payment claim or receive payment.
- (b) The Principal is not obliged to pay the CSM Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the CSM Contractor has provided the updated CSM Contractor's Program required by clause 14.2.
  - (c) In relation to the CSM Contractor's first Payment Claim after the claim for the Initial Payment, to satisfy the evidentiary requirements of clause 15.4(a)(viii), the CSM Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of this Contract and the date of the first Payment Claim.
  - (d) In relation to the second Payment Claim after the claim for the Initial Payment, to satisfy the evidentiary requirements of clause 15.4(a)(viii), the CSM Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of the Payment Claim referred to in clause 15.4(c) and the date of this second Payment Claim.
  - (e) In relation to each subsequent Payment Claim, to satisfy the evidentiary requirements of clause 15.4(a)(viii), the CSM Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of the Payment Claim referred to in clause 15.4(d) and the date of that Payment Claim.

[REDACTED]

**15.5 Payment of Subcontractors, workers compensation and payroll tax**

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

Subcontractor, and the amount paid will be a debt due from the CSM Contractor to the Principal.

- (b) If the Principal receives notices of:
- (i) the CSM Contractor being placed under administration; or
  - (ii) the making of a winding up order in respect of the CSM Contractor,
- the Principal will not make any payment to a worker or Subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.
- (c) If any moneys are shown as unpaid in the CSM Contractor's statutory declaration under clause 15.4(a)(iii)(A), the Principal may withhold the moneys so shown until the CSM Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (d) Nothing in this clause 15.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

#### 15.6 **Unfixed Plant and Materials**

- (a) Subject to clause 15.6(b), the value of unfixed or off-site plant and materials must not be included in a Payment Claim.
- (b) The CSM Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Project Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clauses 15.4(a) and/or 15.4(c) if:
- (i) the CSM Contractor provides evidence of;
    - (A) ownership of the plant or materials;
    - (B) identification and labelling of the plant and materials as the property of the Principal; and
    - (C) adequate and secure storage and protection;
  - (ii) security acceptable to the Principal in the form of the unconditional undertaking in Schedule F3 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 CSM Contractor to the Principal;
  - (iii) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
  - (iv) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal's Representative; and
  - (v) if the PPS Law applies, the CSM Contractor has registered a Security Interest in the unfixed plant and materials in favour of the Principal in accordance with clause 22.17.
- (c) The only such unfixed plant or materials to be allowed for in a Payment Schedule are those that have become or (on payment) will become the property of

the Principal. Upon a payment against a Payment Schedule that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.

- (d) The security provided in accordance with clause 15.6(b)(ii) will be released once the applicable unfixed plant and materials are incorporated into the Project Works and are fit for their intended purpose.

#### 15.7 **SOP Act**

- (a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) The CSM Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) In responding to the CSM Contractor under the SOP Act, the Principal's Representative also acts as the agent of the Principal.
- (d) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
  - (i) serve the payment schedule itself; or
  - (ii) notify the CSM Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

then a payment schedule issued by the Principal's Representative under this Contract which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).

- (e) Without limiting paragraph (c), the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (f) For the purposes of this Contract, the amount of the progress payment to which the CSM Contractor is entitled under this Contract will be the amount certified by the Principal's Representative in a payment schedule under clause 15.2 less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this Contract.
- (g) The CSM Contractor agrees that the date prescribed by clause 15.2(a) as the date on which the CSM Contractor is entitled to make a progress claim is, for the purposes of the SOP Act (including section 8 of the SOP Act), the reference date.
- (h) Nothing in this Contract will be construed to:
  - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this Contract (unless the Principal would have been in breach of this Contract if the SOP Act had no application); or
  - (ii) subject to paragraph (i), give to the CSM Contractor rights under this Contract which extend or are in addition to rights given to the CSM Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.

- (i) If the CSM Contractor suspends the whole or part of the CSM Contractor's Activities pursuant to the SOP Act, except to the extent (if any) expressly provided under the SOP Act and clause 15.7(h), the Principal will not be liable for and the CSM Contractor is not entitled to Claim any Loss suffered or incurred by the CSM Contractor as a result of the suspension.
- (j) The CSM Contractor must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:
  - (i) a suspension by a Subcontractor of work which forms part of the CSM Contractor's Activities pursuant to the SOP Act; or
  - (ii) a failure by the CSM Contractor to comply with its obligations under paragraph (b).
- (k) The CSM Contractor agrees that for the purposes of section 17(3) of the SOP Act:
  - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the CSM Contractor's Activities is to be made; and
  - (ii) the CSM Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (l) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the CSM Contractor:
  - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 15.2(d);
  - (ii) if it is subsequently determined pursuant to this Contract that the CSM Contractor was not entitled under this 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 CSM Contractor to the Principal which the CSM Contractor must pay to the Principal upon demand and in respect of which the CSM Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
  - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the CSM Contractor to the Principal upon demand and in respect of which the CSM Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
  - (iv) the Principal's Representative:
    - (A) is not bound by the adjudication determination;
    - (B) may reassess the value of the work that was valued by the adjudicator; and
    - (C) may, if it disagrees with the adjudication determination, express its own valuation in any payment schedule.
- (m) Without limiting clause 15.8, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.



- (n) If the Principal withholds from money otherwise due to the CSM Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
  - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the CSM Contractor from the Principal; and
  - (ii) the period during which the Principal retains money due to the CSM Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
    - (A) any period for which money owed by the Principal to the CSM Contractor has been unpaid; and
    - (B) the date by which payment of money owed by the Principal to the CSM Contractor must be made.
- (o) The CSM Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (p) Any amount paid by the Principal pursuant to section 26C of the SOP Act will, to the extent not already withheld, deducted or set off under clause 15.8, be a debt due from the CSM Contractor to the Principal.
- (q) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the CSM 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 CSM Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 15.7(n)(i) or 15.7(n)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

#### 15.8 **Right of set-off**

- (a) The Principal's Representative may (on behalf of the Principal) in any payment schedule issued under clauses 15.2(d) or 15.2(f) withhold, set-off or deduct from the money which would otherwise be certified as payable to the CSM Contractor or which would otherwise be due to the CSM Contractor under this Contract:
  - (i) any debt or other moneys due from the CSM Contractor to the Principal (including any debt due from the CSM Contractor to the Principal pursuant to section 26C of the SOP Act or any amount due from the CSM Contractor to the Principal as determined under clause 20);
  - (ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act;

- (iii) any amount received by the CSM Contractor from the sale of material salvaged from the Site in performing the CSM Contractor's Activities;
- (iv) any amount that the Principal is entitled to withhold under clause 15.4;
- (v) any amount that the Principal is entitled to withhold under clause 15.12(c);
- (vi) any bona fide claim to money which the Principal may have against the CSM Contractor whether for damages (including liquidated damages) or otherwise; or
- (vii) any other amount the Principal is entitled to withhold, set-off or deduct under this Contract,

under or arising out of or in connection with this Contract or the CSM Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

- (b) This clause 15.8 will survive the termination of this Contract.

**15.9 Interest**

- (a) The Principal will pay simple interest at the rate of [REDACTED] above the [REDACTED] on any:
  - (i) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 15.2(d), but which is not paid by the Principal within the time required by this Contract;
  - (ii) damages; and
  - (iii) amount which is found after the resolution of a Dispute to be payable to the CSM Contractor, and which has not been paid by the Principal,

from the date such amount was first due and payable until the date such amount is paid.

- (b) This will be the CSM Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

**15.10 Title**

Title in all items forming part of the Project Works will pass progressively to the Principal on the earlier of payment for or delivery of such items to the Site. Risk in all such items remains with the CSM Contractor in accordance with clause 18.

**15.11 Incentive Payments**

The CSM Contractor will be entitled to claim the following payments:

- (a) in respect of the Cost Incentive (Design), if the Outturn Cost (Design) is less than the Target Cost (Design), an amount which is equal to the Share of Savings (Design), as part of the Payment Claim made under clause 15.2(a)(ii)(A);
- (b) in respect of the Cost Incentive (MPR), if the Outturn Cost (MPR) is less than the Target Cost (MPR), an amount which is equal to the Share of Savings (MPR), as part of the Payment Claim made under clause 15.2(a)(ii)(A);

- (c) in respect of the KPI Incentive, in accordance with Schedule F6; and
- (d) in respect of the Early Completion Payment, in accordance with Schedule A2.

**15.12 Outturn Cost exceeds Target Cost**

- (a) If the Outturn Cost (Design) is greater than the Target Cost (Design), the Share of Cost Overrun (Design) will be a debt due and payable by the CSM Contractor to the Principal.
- (b) If the Outturn Cost (MPR) is greater than the Target Cost (MPR), the Share of Cost Overrun (MPR) will be a debt due and payable by the CSM Contractor to the Principal.
- (c) The Share of Cost Overrun (Design) and the Share of Cost Overrun (MPR) are limited, in aggregate, to an amount equal to [REDACTED]
- (d) If the Principal reasonably determines during the carrying out of the CSM Contractor's Activities that the Outturn Cost (MPR) will exceed the Target Cost (MPR), the Principal may withhold payment of all or part of the Management Fee otherwise due to the CSM Contractor to meet the Principal's determination of the CSM Contractor's liability under clause 15.12(a).

**15.13 No claim by CSM Contractor**

The Principal will not be liable upon any Claim by the CSM 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 CSM Contractor from maximising the amount it otherwise would have been entitled to under clause 15.11 other than as set out in clause 14.7.

**15.14 GST**

- (a) Unless otherwise stated, all amounts set out in this Contract are GST exclusive.
- (b) Subject to paragraphs (e) and (f), where any supply occurs under or in connection with the Contract or the Project Works for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (c) Reimbursable Costs payable by the CSM Contractor to Subcontractors will not be reduced for any input tax credits and will be paid in full to the CSM Contractor. In consideration of this, the CSM Contractor is not entitled to any additional amount in respect of GST on those Reimbursable Costs.
- (d) Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Project Works (other than on account of Reimbursable Costs payable by the CSM Contractor to Subcontractors) which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (b).
- (e) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (f) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):

- (i) is more than the GST on the supply, then the Supplier will refund the excess to the recipient; or
  - (ii) is less than the GST on the supply, then the recipient will pay the deficiency to the Supplier.
- (g) The parties agree that unless and until otherwise agreed in writing, the following will apply to all taxable supplies made by the CSM Contractor to the Principal under or in connection with this Contract:
- (i) the Principal will issue to the CSM Contractor a recipient created tax invoice ("**RCTI**") for each taxable supply made by the CSM Contractor to the Principal under this Contract;
  - (ii) the Principal will issue to the CSM Contractor a recipient created adjustment note for any adjustment event;
  - (iii) the CSM Contractor will not issue a tax invoice or adjustment note in respect of any taxable supply it makes to the Principal; and
  - (iv) the Principal may notify the CSM Contractor that it will no longer issue a RCTI or recipient created adjustment note for each taxable supply made by the CSM Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs and recipient created adjustment notes in respect of such supplies and the CSM Contractor will be required to issue tax invoices and adjustment notes to the Principal in respect of any such taxable supply.
- (h) Each party acknowledges and warrants that at the time of entering into this Contract it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (i) In this clause and clause 15.14:
- (i) "**GST**" means the tax payable on taxable supplies under the GST Legislation;
  - (ii) "**GST Legislation**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
  - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation.

#### 15.15 Initial payment

- (a) **Principal's obligation to pay Initial Payment**
- (i) The Principal will pay to the CSM Contractor the Initial Payment on the later of:
    - (A) 15 Business Days of the date of this Contract; and
    - (B) provision by the CSM Contractor of the Initial Payment Security.
  - (ii) The CSM Contractor must submit to the Principal a payment claim for the Initial Payment on the date of this Contract reflecting the payment terms in clause 15.15(a).

- (iii) The parties agree that the Initial Payment:
  - (A) is on account of Preliminaries; and
  - (B) will be paid directly to the CSM Contractor and not into the Project Bank Account.
- (b) **Initial Payment Security**
  - (i) Clauses 5.6 to 5.8 apply to the Initial Payment Security except that references to the unconditional undertakings will be deemed to be references to the Initial Payment Security.
  - (ii) The CSM Contractor must ensure that the Initial Payment Security remains valid and enforceable until the date of its release in accordance with clause 15.15(d).
- (c) **Recourse to the Initial Payment Security**
  - (i) If this Contract is terminated, for any reason, prior to 6 June 2018, the CSM Contractor must repay to the Principal the amount set out in Schedule A1.
  - (ii) If the CSM Contractor does not pay the amount contemplated in clause 15.15(c)(i) within 5 Business Days of the date of termination of this Contract, the Principal may have recourse to the Initial Payment Security.
- (d) **Release of Initial Payment Security**

The Principal will, on 21 June 2018, release so much of the Initial Payment Security then held by the Principal.

15.16 **Target Costs Escalation**

The Target Cost (Design), Preliminaries Fee and Reimbursable Costs Element will be escalated in accordance with the principles set out in Schedule F8.

16. **CONSTRUCTION COMPLETION AND COMPLETION**

16.1 **Progressive Inspection and Testing**

- (a) At any time prior to Construction Completion of a Portion, the Principal's Representative may direct that any materials or work forming part of the CSM Contractor's Activities in respect of that Portion be tested. The CSM Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the CSM Contractor's Activities or Project Works as may be required. On completion of any test the CSM Contractor must make good the CSM Contractor's Activities or Project Works so that they fully comply with this Contract.
- (b) The Principal's Representative may direct that any part of the CSM Contractor's Activities or the Project Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.
- (c) The tests prescribed in this Contract must be conducted by the CSM Contractor as and when provided for in this Contract, or may be conducted by the Principal's Representative or a person (that may include the CSM Contractor or the Independent Certifier) nominated by the Principal's Representative.

- (d) Any testing required to be done by an independent authority must be carried out by an authority recognised by Joint Accreditation System of Australia and New Zealand (JAS-ANZ) ABN 49 614 982 550 (or their successors or assigns).
- (e) Unless otherwise stated in this Contract before conducting a test under this Contract the Principal's Representative or the CSM Contractor must give not less than 2 Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.
- (f) Without prejudice to any other rights or remedies under this Contract, if the CSM Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.
- (g) Each party must promptly make the results of tests available to the other and to the Principal's Representative.
- (h) Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing will be Reimbursable Costs unless:
  - (i) this Contract provides that the CSM Contractor must bear the costs or the test is one which the CSM Contractor was required to conduct other than pursuant to a direction under clause 16.1;
  - (ii) the test shows that the material or work is not in accordance with this Contract;
  - (iii) the test is in respect of a part of the CSM Contractor's Activities or the Project Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
  - (iv) the test is consequent upon a failure of the CSM Contractor to comply with a requirement of this Contract.
- (i) Where the extra costs are not to be borne by the Principal, they will be borne by the CSM Contractor and will be a debt due from the CSM Contractor to the Principal and paid by the CSM Contractor to the Principal on demand.

## 16.2 Construction Completion

- (a) The CSM Contractor must, in respect of each Portion, give the Principal's Representative:
  - (i) 6 months;
  - (ii) 3 months;
  - (iii) 1 month; and
  - (iv) 1 week,
 written notice of the estimated Date of Construction Completion of the Portion.
- (b) The completion of the Sydney Trains Works will be assessed on an area by area basis in accordance with the procedure in the Sydney Trains Transition Agreement in relation to Practical Completion (Sydney Trains Works) (as defined in the Sydney Trains Transition Agreement).

- (c) Subject to clause 16.2(h), the Principal's Representative, the CSM Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 16.2(a)(ii) jointly inspect the CSM Contractor's Activities at a mutually convenient time.
- (d) Within 2 Business Days after the joint inspection referred to in clause 16.2(b), the Independent Certifier must give the CSM Contractor and the Principal a notice either:
  - (i) containing a list of items which it believes must be completed before Construction Completion of the Portion is achieved; or
  - (ii) stating that it believes the CSM Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 16.2(d)(i).
- (e) When the CSM Contractor considers it has achieved Construction Completion of the Portion, the CSM Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B4. Thereafter, and subject to clause 16.2(h), the Principal's Representative, the CSM Contractor's Representative, the Independent Certifier and, in respect of Sydney Trains Works only the representative of any relevant Authority, must jointly inspect the CSM Contractor's Activities at a mutually convenient time.
- (f) Following the joint inspection under clause 16.2(e), the Independent Certifier must within 5 Business Days after receipt of a notice under clause 16.2(e), or of receipt of a notice under clause 16.2(g):
  - (i) if Construction Completion of the Portion has been achieved:
    - (A) provide to the Principal's Representative and the CSM Contractor a document signed by the Independent Certifier in the form in Schedule B10; and
    - (B) additionally:
      - (aa) if the relevant Portion includes Sydney Trains Works, provide to the Principal's Representative a certificate in the form of Schedule B13 in relation to those Sydney Trains Works; and
      - (bb) if the relevant Portion includes Sydney Trains Project Works, provide to the Principal's Representative, Sydney Trains and RailCorp a certificate in the form of schedule 8 to the Sydney Trains Transition Agreement with respect to the Sydney Trains Project Works.
  - (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the CSM Contractor and the Principal in which it states:
    - (A) the items which remain to be completed before Construction Completion of the Portion; or
    - (B) that the CSM Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the CSM Contractor of the items which remain to be completed as contemplated by clause 16.2(f)(ii)(A).

- (g) If the Independent Certifier issues a notice under clause 16.2(f)(ii) the CSM Contractor must proceed with the CSM Contractor's Activities and thereafter when it considers it has achieved Construction Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 16.2(e) and 16.2(f) will reapply.
- (h) The CSM Contractor acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 16.2, including representatives of the Operator; and
  - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CSM Contractor) in relation to any non-compliance of the CSM Contractor's Activities with this Contract.
- (i) Without affecting the CSM Contractor's obligation to achieve Construction Completion of each Portion by the relevant Date for Construction Completion of each Portion the parties acknowledge that:
  - (i) no separate Date for Construction Completion of the Project Works is specified in this Contract;
  - (ii) Construction Completion of the Project Works is achieved by achieving Construction Completion of all Portions;
  - (iii) Construction Completion of the Project Works will be taken to have occurred once Construction Completion of all Portions has occurred; and
  - (iv) the Date of Construction Completion of the Project Works will be taken to be the Date of Construction Completion of the last Portion to reach Construction Completion.

### 16.3 **Unilateral Issue of Notice of Construction Completion**

If at any time a notice required to be given by the CSM Contractor to the Independent Certifier under either of clauses 16.2(d) or 16.2(f) is not given by the CSM Contractor yet the Principal's Representative is of the opinion that Construction Completion of a Portion has been achieved, the Principal's Representative may direct the Independent Certifier to issue a Notice of Construction Completion under clause 16.2(f)(i)(A) for the Portion.

### 16.4 **Completion**

- (a) In respect of Completion of a Portion (other than Portion 3):
  - (i) When the CSM Contractor considers that it has achieved Completion of a Portion, the CSM Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B3. Thereafter, and subject to clause 16.4(a)(iv), the Principal's Representative, the CSM Contractor's Representative and the Independent Certifier must jointly inspect the CSM Contractor's Activities at a mutually convenient time.
  - (ii) Following the joint inspection under clause 16.4(a)(i), the Independent Certifier must, within 5 Business Days after receipt of a notice under clause 16.4(a)(i) or a notice under clause 16.4(a)(iii):



- (A) if Completion of the Portion has been achieved, provide to the Principal's Representative and the CSM Contractor with a document signed by the Independent Certifier in the form in Schedule B11; or
  - (B) if Completion of the Portion has not been achieved, issue a notice to the CSM Contractor and the Principal in which it states:
    - (aa) the items which remain to be completed before Completion of the Portion; or
    - (bb) that the CSM Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the CSM Contractor of the items which remain to be completed as contemplated by clause 16.4(a)(ii)(B)(aa).
  - (iii) If the Independent Certifier issues a notice under clause 16.4(a)(ii)(B), the CSM Contractor must proceed with the CSM Contractor's Activities and thereafter, when it considers that it has achieved Completion of the Portion, it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 16.4(a)(i) and 16.4(a)(ii) will reapply.
  - (iv) The CSM Contractor acknowledges and agrees that:
    - (A) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 16.3, including representatives of the Operator; and
    - (B) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CSM Contractor) in relation to any non-compliance of the CSM Contractor's Activities with this Contract.
- (b) In respect of Completion of Portion 3:
- (i) The CSM Contractor must give TfNSW's Representative:
    - (A) 6 months;
    - (B) 3 months;
    - (C) 1 month; and
    - (D) 1 week,
 written notice of the estimated Date of Completion of Portion 3.
  - (ii) Subject to clause 16.4(b)(x), the Principal's Representative, the CSM Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 16.4(b)(i)(B) jointly inspect the CSM Contractor's Activities at a mutually convenient time.
  - (iii) Within 2 Business Days after the joint inspection referred to in clause 16.4(b)(ii), the Independent Certifier must give the Principal and the CSM Contractor a notice either:
    - (A) containing a list of items which it believes must be completed before Completion of the Portion is achieved; or

- (B) stating that it believes the CSM Contractor is so far from achieving Completion of Portion 3 that it is not practicable to issue a list as contemplated in clause 16.4(b)(iii)(A).
- (iv) Within 3 Business Days after receipt of the notice referred to in clause 16.4(b)(i)(C) and 16.4(b)(ix), the Independent Certifier must inspect the CSM Contractor's Activities.
- (v) Within 2 Business Days after the inspection referred to in clause 16.4(b)(iv), the Independent Certifier must provide the CSM Contractor with list of Defects (including Minor Defects and Agreed Defects) which the Contractor must rectify in order to achieve Completion of Portion 3 (**Pre-Completion Notice**).
- (vi) The parties acknowledge and agree that the Defects identified in the Pre-Completion Notice are representative of the Defects that may be present at that period in time only and does not represent a complete list of all Defects that may prevent the CSM Contractor from achieving Completion.
- (vii) When the CSM Contractor considers it has achieved Completion of Portion 3, the CSM Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B3. Thereafter, and subject to clause 16.4(b)(x), the Principal's Representative, the CSM Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the CSM Contractor's written notice, jointly inspect the CSM Contractor's Activities at a mutually convenient time.
- (viii) Following the joint inspection under clause 16.4(b)(iv), the Independent Certifier must within 5 Business Days after receipt of a notice under clause 16.4(b)(iv), or of receipt of a notice under clause 16.4(b)(ix):
  - (A) if Completion of Portion 3 has been achieved, provide to the Principal's Representative and the CSM Contractor a document signed by the Independent Certifier in the form in Schedule B11:
  - (B) if Completion of the Portion has not been achieved, issue a notice to the Principal and the CSM Contractor in which it states:
    - (aa) the items which remain to be completed before Completion of Portion 3; or
    - (bb) that the CSM Contractor is so far from achieving Completion of Portion 3 that it is not practicable to notify the CSM Contractor of the items which remain to be completed as contemplated by clause 16.4(b)(viii)(B)(aa).
- (ix) If the Independent Certifier issues a notice under clause 16.4(b)(viii)(B) the CSM Contractor must proceed with the CSM Contractor's Activities and thereafter when it considers it has achieved Completion of Portion 3 it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 16.4(b)(iv) and 16.4(b)(viii) will reapply.
- (x) The CSM Contractor acknowledges and agrees that:
  - (A) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 16.4, including representatives of any Interface Contractor; and

- (B) the Principal's Representative and any Interface Contractor may provide comments to the Independent Certifier (with a copy to the CSM Contractor) in relation to any non-compliance of the CSM Contractor's Activities with this Contract.
- (xi) Without affecting the CSM Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion, the parties acknowledge that:
  - (A) no separate Date for Completion of the Project Works is specified in this Contract;
  - (B) Completion of the Project Works is achieved by achieving Completion of all the Portions;
  - (C) Completion of the Project Works will be taken to have occurred once Completion of all Portions has occurred
  - (D) the Date of Completion of the Project Works will be taken to be the Date of Completion of the last Portion to achieve Completion.

**16.5 Part of the Project Works or a Portion**

- (a) If part of a Portion has reached a stage equivalent to Construction Completion but another part of the Portion has not reached Construction Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may determine that the respective parts will be Portions.
- (b) Without limiting clause 16.5(a), the Principal may, after the CSM Contractor is given written notice by the Principal's Representative, occupy or use any part of a Portion although the whole of the Portion has not reached Construction Completion.
- (c) If the Principal's Representative gives a notice under clause 16.5(b):
  - (i) the Principal must allow the CSM Contractor reasonable access to the part of the Portion referred to in the notice and being occupied or used by the Principal, to enable the CSM Contractor to bring the relevant Portion of which the area being occupied or used forms part to Construction Completion; and
  - (ii) this will not otherwise limit or affect the obligations of the parties under this Contract, including the obligation of the CSM Contractor to achieve Construction Completion of the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Construction Completion.
- (d) Without limiting clause 16.5, further Portions may be created by the Principal's Representative by issuing a written direction to the CSM Contractor which clearly identifies for each Portion,:
  - (i) the Project Works and Temporary Works;
  - (ii) the Date for Construction Completion; and
  - (iii) respective amounts of liquidated damages,
 all as determined by the Principal's Representative (acting reasonably).

16.6 **Liquidated Damages and indemnity for delay in reaching Construction Completion and Completion**

- (a) The Principal and the CSM Contractor agree and acknowledge that the Principal is pursuing a policy of building the Project and the Project Works for purposes that include achieving the objectives set out in clause 2.
- (b) The CSM Contractor and the Principal acknowledge and agree that the CSM Contractor's Activities represent a most important element of the building of the Project, as a major new public transport link which, together with Sydney Metro Northwest (and their integration), will service the needs of Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after the CSM Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (c) The CSM Contractor acknowledges and agrees that its failure to achieve:

- (i) Construction Completion of the Portions by the required Dates for Construction Completion; and
- (ii) Completion of Portion 3 by the Date for Completion of Portion 3

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

- (d) The CSM Contractor agrees that if it does not achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion, it must:
  - (i) pay the Principal the applicable amount for that Portion set out in Schedule A2 (each of which is exclusive of GST) for every day after the Date for Construction Completion of the Portion up to and including:
    - (A) the Date of Construction Completion of the applicable Portion; or
    - (B) the date that this Contract is validly terminated,whichever first occurs; and
  - (ii) to the extent that Construction Completion of a Portion has not occurred by the relevant LD Step-Up Date for the applicable Portion, indemnify the Principal from and against any Liability suffered or incurred by the Principal arising out of or in connection with the failure to achieve Construction Completion of the Portion by the relevant LD Step-Up Date for the applicable Portion to the extent that such claim or Liability falls within a head of Loss specified in Schedule A1, up to an aggregate of the Pre Step-Up Rate for every day after the relevant LD Step-Up Date for the applicable Portion, up to and including:
    - (A) the Date of Construction Completion of the applicable Portion; or
    - (B) the date that this Contract is validity terminated,whichever first occurs.

- (e) The CSM Contractor agrees that if it does not achieve Completion of Portion 3 by the Date for Completion of Portion 3, it must:
- (i) pay the Principal the applicable amount for Portion 3 set out in Schedule A2 (exclusive of GST) for every day after the Date for Completion of Portion 3 up to and including:
    - (A) the Date of Completion of Portion 3; or
    - (B) the date that this Contract is validly terminated,whichever first occurs; and
  - (ii) to the extent that Completion of Portion 3 has not occurred by the relevant LD Step-Up Date for Portion 3, indemnify the Principal from and against any Liability suffered or incurred by the Principal arising out of or in connection with the failure to achieve Completion of Portion 3 by the relevant LD Step-Up Date for Portion 3 to the extent that such claim or Liability falls within a head of Loss specified in Schedule A1, up to an aggregate of the Pre Step-Up Rate for every day after the relevant LD Step-Up Date for Portion 3, up to and including:
    - (A) the Date of Completion of Portion 3; or
    - (B) the date that this Contract is validity terminated,whichever first occurs.
- (f) The parties agree that the liquidated damages provided for in clauses 16.6(d)(i) and 16.6(e)(i):
- (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the CSM Contractor to achieve Construction Completion of the Portion by the Date for Construction Completion of the Portion and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the CSM Contractor; and
  - (ii) will be recoverable by the Principal from the CSM Contractor as a debt due and payable.
- (g) The Principal and the CSM Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this Contract.
- (h) The CSM Contractor agrees to pay the liquidated damages, and indemnify the Principal, under clauses 16.6(d) and 16.6(e) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (i) The CSM Contractor entered into the obligation to pay the amounts specified in clauses 16.6(d) and 16.6(e) with the intention that it is a legally binding, valid and enforceable contractual provision against the CSM Contractor in accordance with its terms.
- (j) The CSM Contractor agrees:

- (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
  - (ii) that if this clause 16.6 (or any part of this clause 16.6) 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 (including loss of revenue and loss of profits from the loss of use of the Works) as a result of the CSM Contractor failing to achieve Construction Completion of a relevant Portion by its Date for Construction Completion, but the CSM Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (k) The Principal's Representative, when issuing a payment schedule pursuant to clauses 15.2(d) and 15.2(e) after the Date for Construction Completion of a relevant Portion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 16.6(d)(i) or under the indemnity in clause 16.6(d)(ii) to the date of the payment schedule (despite Construction Completion of that Portion not having occurred).
- (l) The Principal and the CSM Contractor agree that the aggregate of the amount payable under:
- (i) clauses 16.6(d)(i), 16.6(e)(i) 16.6(j)(ii), 17.4(c)(i) and 17.4(h)(ii) is limited as set out in clause 21.1(b); and
  - (ii) clauses 16.6(d)(ii), 16.6(e)(ii) and 17.4(c)(ii) is limited as set out in clause 21.1(c); and
  - (iii) a limitation on the CSM Contractor's liability to the Principal for a failure to achieve Construction Completion of any Portion by the relevant Date for Construction Completion,

and the Principal will not be entitled to make, nor will the CSM Contractor be liable upon, any Claim in these circumstances other than for the amount for which the CSM Contractor is liable under this clause 16.6 (including where applicable common law damages under clauses 16.6(j)(ii) and 17.4(h)(ii)). Nothing in this clause 16.6(l) in any way limits the CSM Contractor's liability where this Contract is terminated by the Principal under clause 19.3 or otherwise at Law.

#### 16.7 **Effect of Notice of Construction Completion or Notice of Completion**

- (a) A Notice of Construction Completion or Notice of Completion (as applicable) will not:
- (i) constitute approval by the Principal, the Independent Certifier or the Principal's Representative of the CSM Contractor's performance of its obligations under this Contract;
  - (ii) be taken as an admission or evidence that the Portion complies with the requirements of this Contract; or
  - (iii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.

- (b) Without limiting clause 16.7(a), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Construction Completion or Notice of Completion is final and binding on the parties for the purposes only of establishing that Construction Completion or Completion of the relevant Portion has occurred.

**16.8 Access following Construction Completion of a Portion**

- (a) Where Construction Completion has been achieved in respect of a Portion but the CSM Contractor still requires access to such Portion in order to continue the CSM Contractor's Activities, the Principal must procure that the CSM Contractor is provided with reasonable access to such Portion to enable the CSM Contractor to continue the CSM Contractor's Activities.
- (b) The occupation and use of such Portion by the Principal (and its nominees) will not limit or affect the responsibilities, obligations or liabilities of the CSM Contractor including the obligation of the CSM Contractor to achieve Construction Completion of any remaining Portion by the relevant Date for Construction Completion.

**17. MILESTONE ACHIEVEMENT**

**17.1 Date for Milestone Achievement**

The CSM Contractor must, in respect of the Specified Milestones, reach Milestone Achievement of the relevant Specified Milestone by the Date for Milestone Achievement.

**17.2 Milestone Achievement**

- (a) The CSM Contractor must, in respect of each Milestone, give the Principal's Representative:
  - (i) 6 months;
  - (ii) 3 months;
  - (iii) 1 month; and
  - (iv) 1 week,written notice of the estimated Date of Milestone Achievement of the Milestone.
- (b) Subject to clause 17.2(g), the Principal's Representative, the CSM Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 17.2(a)(ii) jointly inspect the CSM Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 17.2(b), the Independent Certifier must give the CSM Contractor and the Principal a notice either:
  - (i) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is reached; or
  - (ii) stating that it believes the CSM Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 17.2(c)(i).
- (d) When the CSM Contractor considers it has achieved Milestone Achievement of the Milestone, the CSM Contractor must notify the Principal's Representative and the

Independent Certifier in writing and provide them with an executed certificate in the form of Part 1 of Schedule B12. Thereafter, and subject to clause 17.2(g), the Principal's Representative, the CSM Contractor's Representative, the Independent Certifier and any other persons nominated by the Principal's Representative must jointly inspect the CSM Contractor's Activities at a mutually convenient time.

- (e) Following the joint inspection under clause 17.2(d), the Independent Certifier must within 5 Business Days after receipt of a notice under clause 17.2(d), or of receipt of a notice under clause 17.2(f):
  - (i) if Milestone Achievement of the Milestone has been reached, provide to the Principal's Representative and the CSM Contractor a document signed by the Independent Certifier in the form in Part 2 of Schedule B12.
  - (ii) if Milestone Achievement of the Milestone has not been reached, issue a notice to the CSM Contractor and the Principal in which it states:
    - (A) the items which remain to be completed before Milestone Achievement of the Milestone; or
    - (B) that the CSM Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to notify the CSM Contractor of the items which remain to be completed as contemplated by clause 17.2(e)(ii)(A).
- (f) If the Independent Certifier issues a notice under clause 17.2(e)(ii)(B) the CSM Contractor must proceed with the CSM Contractor's Activities and thereafter when it considers it has reached Milestone Achievement of the Milestone it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 17.2(d) and 17.2(e) will reapply.
- (g) The CSM Contractor acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 17.2, including representatives of the Operator; and
  - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the CSM Contractor) in relation to any non-compliance of the CSM Contractor's Activities with this Contract.

### 17.3 **Unilateral Issue of Notice of Milestone Achievement**

If at any time a notice required to be given by the CSM Contractor to the Independent Certifier under either of clauses 17.2(c) or 17.2(e) is not given by the CSM Contractor yet the Principal's Representative is of the opinion that Milestone Achievement of a Milestone has been reached, the Principal's Representative may direct the Independent Certifier to issue a Notice of Milestone Achievement under clause 17.2(e)(i) for the Portion.

### 17.4 **Liquidated Damages and indemnity for delay in reaching Milestone Achievement in respect of a Specified Milestone**

- (a) The Principal and the CSM Contractor agree and acknowledge that the principles and objectives set out in clause 16.6(a) and 16.6(b) apply equally to the achievement of Milestones.
- (b) The CSM Contractor acknowledges and agrees that its failure to reach Milestone Achievement of the Specified Milestones by the required Dates for Milestone Achievement in respect of the Specified Milestones will not only result in direct



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

- (c) The CSM Contractor agrees that if it does not reach Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement of the Specified Milestone, it must:
- (i) pay the Principal the applicable amount for that Specified Milestone set out in Schedule A2 (each of which is exclusive of GST) for every day after the Date for Milestone Achievement of the Specified Milestone up to and including:
    - (A) the Date of Milestone Achievement of the applicable Specified Milestone; or
    - (B) the date that this Contract is validly terminated,whichever first occurs; and
  - (ii) to the extent that Milestone Achievement of a Specified Milestone has not occurred by the relevant LD Step-Up Date for the applicable Specified Milestone, indemnify the Principal from and against any Liability suffered or incurred by the Principal arising out of or in connection with the failure to reach Milestone Achievement by the relevant LD Step-Up Date for the applicable Specified Milestone to the extent that such claim or Liability falls within a head of Loss specified in Schedule A1, up to an aggregate of the Pre Step-Up Rate for every day after the relevant LD Step-Up Date for the applicable Specified Milestone, up to and including:
    - (A) the Date of Milestone Achievement of the applicable Specified Milestone; or
    - (B) the date that this Contract is validity terminated,whichever first occurs.
- (d) The parties agree that the liquidated damages provided for in clause 17.4(c):
- (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the CSM Contractor to reach Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement of the Specified Milestone and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the CSM Contractor; and
  - (ii) will be recoverable by the Principal from the CSM Contractor as a debt due and payable.
- (e) The Principal and the CSM Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this Contract.
- (f) The CSM Contractor agrees to pay the liquidated damages and indemnify the Principal, under clause 17.4(c) without any duress, coercion, undue influence or

any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.

- (g) The CSM Contractor entered into the obligation to pay the amounts specified in clause 17.4(c) with the intention that it is a legally binding, valid and enforceable contractual provision against the CSM Contractor in accordance with its terms.
- (h) The CSM Contractor agrees:
  - (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
  - (ii) that if this clause 17.4 (or any part of this clause 17.4) 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 (including loss of revenue and loss of profits from the loss of use of the Project Works) as a result of the CSM Contractor failing to reach Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement of the Specified Milestone, but the CSM Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (i) The Principal's Representative, when issuing a payment schedule pursuant to clauses 15.2(d) and 15.2(e) after the Date for Milestone Achievement of a relevant Specified Milestone, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 17.4(c) to the date of the payment schedule (despite Milestone Achievement of that Specified Milestone not having occurred).
- (j) The Principal and the CSM Contractor agree that the aggregate of the amount payable under clauses 17.4(c) is limited as set out in clause 21.1(b) and is a limitation on the CSM Contractor's liability to the Principal for a failure to achieve Milestone Achievement of Specified Milestones by the required Dates for Milestone Achievement.
- (k) The Principal will not be entitled to make, nor will the CSM Contractor be liable upon, any Claim in these circumstances other than for the amount for which the CSM Contractor is liable under this clause 17.4 (including where applicable common law damages under clause 17.4(h)(ii)). Nothing in this clause 17.4(k) in any way limits the CSM Contractor's liability where this Contract is terminated by the Principal under clause 19.3 or otherwise at Law.

#### 17.5 **Effect of Notice of Milestone Achievement**

- (a) A Notice of Milestone Achievement will not:
  - (i) constitute approval by the Principal, the Independent Certifier or the Principal's Representative of the CSM Contractor's performance of its obligations under this Contract;
  - (ii) be taken as an admission or evidence that the relevant Milestone complies with the requirements of this Contract; or

- (iii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.
- (b) Without limiting clause 17.5(a), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Milestone Achievement is final and binding on the parties for the purposes only of establishing that Milestone Achievement of the relevant Milestone has occurred.

## 18. CARE OF THE PROJECT WORKS, RISKS AND INSURANCE

### 18.1 Responsibility for care of the Project Works

- (a) Subject to clause 18.1(d), the CSM Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:
  - (i) the CSM Contractor's Activities, the Project Works and the Temporary Works and any Extra Land, from the date of this Contract; and
  - (ii) the relevant parts of the Site, from the date on which access is granted under clause 7.1(a),  
  
up to and including the:
    - (iii) Date of Construction Completion for the relevant Portion (other than Portion 3); and
    - (iv) Date of Completion of Portion 3.
- (b) After the time after which the CSM Contractor ceases to be responsible under clause 18.1(a) for the care of a part of the Project Works or any other thing referred to in clause 18.1(a), subject to clause 18.1(d), the CSM Contractor will bear the risk of any destruction, loss of or damage to that part of the Project Works or other thing, arising from:
  - (i) any act or omission of the CSM Contractor during the Defects Correction Period (including any extension under clauses 12.6(b) and 12.7(a)(ii)) or any other CSM Contractor's Activities; or
  - (ii) any event which occurred while the CSM Contractor was responsible for the care of the relevant part of the Project Works or other thing under clause 18.1(a) in connection with the CSM Contractor's Activities.
- (c) Subject to clause 18.1(d), the CSM Contractor must:
  - (i) in accordance with clause 18.16, (at its own cost) promptly make good destruction, loss or damage to anything caused during the period the CSM Contractor is responsible for its care; and
  - (ii) indemnify the Principal against such destruction, loss or damage.
- (d) This clause 18.1 does not apply to the extent that any destruction, loss or damage for which the CSM Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause results from an Excepted Risk.
- (e) Where any destruction, loss or damage arises to any extent from an Excepted Risk, the CSM Contractor must where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage in which event such making

good or repair will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Change the subject of a direction by the Principal's Representative and clause 10 applies.

## 18.2 Indemnity by the CSM Contractor

- (a) The CSM Contractor must indemnify the Principal from and against:
- (i) the loss of, loss of use of or access to (whether total or partial), or any destruction or damage to, any of the Principal's real or personal property (other than property referred to in clause 18.1 while the CSM Contractor is responsible for its care);
  - (ii) any claim against the Principal or Liability the Principal may have to third parties in respect of or arising out of or in connection with:
    - (A) any illness, personal injury to, or death of, any person; or
    - (B) the loss of, loss of use of or access to (whether total or partial) or destruction or damage to any real or personal property, caused by, arising out of, or in any way in connection with, the CSM Contractor's Activities, the Project Works or the Temporary Works or any failure by the CSM Contractor to comply with its obligations under this Contract; or
  - (iii) any:
    - (A) Liability to or claim by any other person; or
    - (B) Loss suffered or incurred by the Principal, arising out of, or in any way in connection with, the CSM Contractor's breach of a term of this Contract.
- (b) Where the CSM Contractor indemnifies the Principal under this Contract from and against any Liability, claim or Loss, the CSM Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal or its Associates contributed to the Liability, claim or Loss.
- (c) Clause 18.2(a) does not limit or otherwise affect the CSM Contractor's other obligations under this Contract or otherwise according to Law.
- (d) The CSM Contractor is not relieved of any obligation to indemnify the Principal under this clause 18.2 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal pursuant to clause 18.3.

## 18.3 Principal's insurance

- (a) The Principal must effect and maintain insurances on the terms of the policies set out in Schedule F5.
- (b) Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the CSM Contractor must:
- (i) satisfy itself of the nature and extent of the cover provided by these insurance policies;
  - (ii) acknowledge that the Principal's insurances do not cover every risk to which the CSM Contractor might be exposed and are subject to deductibles and

limits and the CSM Contractor may, if it chooses to do so, at its cost effect insurance for any risk or liability which is not covered by the Principal's insurances; and

(iii) where the CSM Contractor:

(A) bears the risk of the relevant destruction, loss or damage under clause 18.1, or is required to indemnify the Principal under clause 18.2, and makes a claim under any of these insurance policies in respect of the destruction, loss or damage or the event giving rise to the indemnity; or

(B) otherwise makes a claim under or in respect of any of these insurance policies,

bear the cost of any excesses or deductibles in the insurance policies in Schedule F5 or any insurance taken out by the CSM Contractor under clause 18.4, that may apply in those circumstances.

#### 18.4 **CSM Contractor's insurance obligations**

The CSM Contractor must effect and maintain the following insurance:

- (a) workers compensation insurance referred to in clause 18.5;
- (b) asbestos liability insurance referred to in clause 18.6;
- (c) professional indemnity insurance referred to in clause 18.7;
- (d) Construction Plant insurance referred to in clause 18.8; and
- (e) motor vehicle insurance referred to in clause 18.9.

#### 18.5 **Workers compensation insurance**

- (a) The CSM Contractor must effect and maintain workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
  - (i) for the maximum amount required by Law; and
  - (ii) in the name of the CSM Contractor and (if legally possible) extended to indemnify the Principal for its statutory liability to persons employed by the CSM Contractor.
- (b) The CSM Contractor must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
  - (i) for the maximum amount required by Law; and
  - (ii) in the name of the Subcontractor and (if legally possible) extended to indemnify the Principal and the CSM Contractor for their statutory liability to persons employed by the Subcontractor.

#### 18.6 **Asbestos liability insurance**

If the CSM Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, the CSM Contractor must



[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

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





- (e) keep the Principal's Representative fully informed of the progress of the repair and replacement activities.

#### 18.17 **Application of insurance proceeds**

Where, prior to the Date of Construction Completion of the last Portion to achieve Construction Completion, the Project Works or the Temporary Works are damaged or destroyed, all insurance proceeds in respect of that damage or destruction that are payable under any insurances maintained by the Principal in accordance with clause 18.3 will be:

- (a) paid to the Principal;
- (b) paid by the Principal to the CSM Contractor by progress payments under clause 15.2 as and when the CSM Contractor reinstates the Project Works and the Temporary Works; and
- (c) subject to clause 18.1(e), the limit of the CSM Contractor's entitlement to payment for reinstatement of the destruction, loss or damage.

#### 18.18 **Damage to property**

- (a) Subject to clause 18.18(c), where any loss of or destruction or damage to real or personal property or the Environment (including any Utility Services but excluding the Project Works or the Temporary Works) occurs arising out of, or in any way in connection with, the carrying out by the CSM Contractor of the CSM Contractor's Activities or a failure by the CSM Contractor to comply with its obligations under this Contract, the CSM Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) If the CSM Contractor fails to carry out any repair work under clause 18.18(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal will be a debt due and payable from the CSM Contractor to the Principal.
- (c) This clause 18.18 does not apply where the owner of the real or personal property does not agree to the CSM Contractor carrying out the work under clause 18.18(a).
- (d) Nothing in this clause 18.18 limits the operation of the indemnity in clause 18.2(a).

#### 18.19 **Risk of deductibles or excesses**

The CSM Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 18 and any such amounts will not form part of the Reimbursable Costs.

### 19. **DEFAULT OR INSOLVENCY**

#### 19.1 **CSM Contractor's Default**

- (a) If the CSM Contractor commits a breach of this Contract referred to in clause 19.1(b), the Principal may give the CSM Contractor a written notice.
- (b) The breaches by the CSM Contractor to which this clause applies are:
  - (i) not commencing or not progressing the CSM Contractor's Activities regularly and diligently in accordance with the requirements of this Contract, in breach of clause 14.1;

- (ii) suspension of work in breach of clause 14.1;
- (iii) the CSM Contractor fails to implement, comply with or otherwise diligently pursue a Recovery Plan in accordance with clause 14.6(c);
- (iv) failing to provide the unconditional undertakings and Parent Company Guarantees, in breach of clause 5.12;
- (v) failing to insure or provide evidence of insurance, in breach of clause 18;
- (vi) failing to use the materials or standards of workmanship required by this Contract, in breach of clause 8.1;
- (vii) not complying with any direction of the Principal's Representative made in accordance with this Contract, in breach of clause 13.1(a);
- (viii) not complying with the requirements of this Contract regarding the Contract Management Plan in a material respect;
- (ix) not complying with its obligations under the MR-PA with regard to the Contract Management Plan;
- (x) not complying with its environmental obligations under this Contract;
- (xi) not complying with its obligations under this Contract regarding work health and safety;
- (xii) not complying with its obligations under clause 8.7;
- (xiii) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 6.2;
- (xiv) the failure to provide the deeds poll in accordance with clause 1.5;
- (xv) breach of the subcontracting obligations set out in each of clauses 11.3, 11.7 or 11.8;
- (xvi) failure to achieve Construction Completion of a Portion by the relevant Date for Construction Completion;
- (xvii) lack or breach of Accreditation (where it is obliged to obtain Accreditation), AEO status, ASA Authorisation, or threatened or actual suspension or revocation of Accreditation;
- (xviii) fraud of the CSM Contractor in relation to this Project or an adverse Independent Commission Against Corruption (**ICAC**) finding is made against the CSM Contractor;
- (xix) the Parent Company Guarantee becoming void or voidable; or
- (xx) any other failure to comply with a material obligation under the Contract.

## 19.2 Contents of Notice

A written notice under clause 19.1 must:

- (a) state that it is a notice under clause 19.1;

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

**19.3 Rights of the Principal Following Notice**

If, by the time specified in a notice under clause 19.1, the CSM Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the CSM Contractor:

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

**19.4 Immediate Termination or Take-Out**

If:

- (a) an Insolvency Event occurs:
  - (i) to the CSM Contractor;
  - (ii) where the CSM Contractor comprises more than one person, any one of those persons; or
  - (iii) to a person specified in Schedule A1; or
- (b) the CSM Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 3.5(d);
- (c) the aggregate liability of the CSM Contractor to the Principal under or in connection with the CSM Contract Documents is equal to or exceeds [REDACTED] of the sum of the Target Costs;
- (d) the aggregate liability of the CSM Contractor to the Principal under or in connection with:
  - (i) [REDACTED]
  - (ii) [REDACTED]
  - (iii) clause 15.12(a) and clause 15.12(b) is equal to or exceeds the [REDACTED]

and the CSM Contractor has not notified the Principal in writing within 5 Business Days of receipt of a notice from the Principal advising of such aggregate liability being reached that it agrees to increase:

(iv)

(v)

except to the extent that the Principal forms the view (acting reasonably) that there is no reasonable prospect of the CSM Contractor achieving Construction Completion within the time required to avoid this increased cap on liability being reached or exceeded; or

- (e) a Change in Control occurs in respect of an entity that comprises the CSM Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 22.4(a)(i));
- (f) a Change in Control occurs in respect of a Parent Company Guarantor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 22.4(b)(i));

then, whether or not the CSM Contractor is then in breach of this Contract, the Principal may, without giving a notice under clause 19.1, exercise the right under clause 19.3(a) or 19.3(b).

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

- (a) If:
  - (i) the Principal:
    - (A) exercises its rights under clause 19.3(a); or
    - (B) terminates this Contract under clauses 19.3(b), 19.4 or 19.9;
  - (ii) the CSM Contractor repudiates this Contract and the Principal otherwise terminates this Contract; or
  - (iii) this Contract is frustrated under the Law,

then:

- (iv) the CSM Contractor:
  - (A) must novate to the Principal or the Principal's nominee those Subcontracts between the CSM Contractor and its Subcontractors that the Principal directs by executing a deed of novation substantially in the form of Schedule A12;
  - (B) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the CSM Contractor's attorney to:
    - (aa) execute, sign, seal and deliver all notices, deeds and documents; and
    - (bb) undertake actions in the name of the CSM Contractor,

for the purposes referred to in clause 19.5(a)(iv)(A); and

- (C) must immediately handover to the Principal's Representative all copies of:
  - (aa) any documents provided by the Principal to the CSM Contractor;
  - (bb) all Contract Documentation and Materials prepared by the CSM Contractor to the date on which the Principal exercises its rights under clauses 19.3(a) or 19.3(b) (whether complete or not); and
  - (cc) any other documents or information in existence that is to be provided to the Principal under the terms of this Contract; and
- (v) the Principal:
  - (A) will be entitled to require the CSM Contractor to remove from the Site or any area affected by the Project Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Project Works;
  - (B) may complete that work;
  - (C) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site or Extra Land as are owned by the CSM Contractor and are reasonably required by the Principal to facilitate completion of the work; and
  - (D) must, if it takes possession of the items referred to in clause 19.5(a)(v)(C):
    - (aa) for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the CSM Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 20; and
    - (bb) maintain the Construction Plant, Temporary Works or other things and, subject to clause 19.6, on completion of the work return to the CSM Contractor the Construction Plant, Temporary Works and any things taken under clause 19.5(a)(v)(C) which are surplus.
- (b) This clause 19.5 will survive the termination or frustration of this Contract.

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

- (a) If the Principal exercises the right under clause 19.3(a), the CSM Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the CSM Contractor unless a payment becomes due to the CSM Contractor under this clause 19.6.
- (b) When all of the work taken out of the hands of the CSM Contractor under clause 19.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate to the CSM Contractor certifying the amount.

- (c) If the cost incurred by the Principal is:
  - (i) greater than the amount that would have been paid to the CSM Contractor if the CSM Contractor had completed the work, the difference will be a debt due from the CSM Contractor to the Principal; or
  - (ii) less than the amount that would have been paid to the CSM Contractor if the CSM Contractor had completed the work, the difference will be a debt due to the CSM Contractor from the Principal.
- (d) Without limiting clause 19.6(c), if the Principal exercises the right under clause 19.3(a), the Principal will be entitled to recover from the CSM Contractor any costs, expenses, Losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the CSM Contractor is indebted to the Principal, the CSM Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 19.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the CSM Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the CSM Contractor.

**19.7 Principal's Rights after Termination**

- (a) Subject to clause 19.11, if the Principal terminates this Contract under clauses 19.3 or 19.4, or if the CSM Contractor repudiates this Contract and the Principal otherwise terminates this Contract the Principal will:
  - (i) not be obliged to make any further payments to the CSM Contractor, including any money that is the subject of a Payment Claim under clause 15.1(b) or a Payment Schedule under clause 15.3;
  - (ii) be absolutely entitled to call upon, convert and have recourse to and retain without limiting clause 5 the proceeds of any unconditional undertaking held under clause 5; and
  - (iii) be entitled to recover from the CSM Contractor any costs, expenses, Losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.
- (b) This clause 19.7 survives the termination of this Contract.

**19.8 CSM Contractor's Rights after Repudiation or Wrongful Termination**

- (a) If the Principal:
    - (i) repudiates this Contract and the CSM Contractor terminates this Contract; or
    - (ii) wrongfully:
      - (A) exercises or attempts to exercise any right or power conferred on it by clauses 19.3, 19.4 or 19.9; or
      - (B) determines or purports to determine this Contract at common law,
- then the:

- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 19.9 and the CSM Contractor's sole rights in such circumstances will be those set out in clause 19.10; and
  - (iv) CSM Contractor:
    - (A) will not be entitled to the payment of damages;
    - (B) will not be entitled to any payment on a quantum meruit basis; and
    - (C) waives all other rights it has to make a Claim in such circumstances.
- (b) This clause 19.8 will survive the termination of this Contract.

#### 19.9 Termination for Convenience

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

- (a) at any time for its sole convenience, and for any reason, by written notice to the CSM 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 CSM Contractor; and
- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the CSM Contractor's Activities or the Project Works either itself or by engaging other contractors.

#### 19.10 Payment for Termination for Convenience

- (a) If the Principal terminates this Contract under clause 19.9, the CSM Contractor:
  - (i) will be entitled to payment of the following amounts as determined by the Principal's Representative (excluding all Excluded Costs):
    - (A) for work carried out prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the CSM Contractor submitted a Payment Claim under clause 15.2 for work carried out to the date of termination;
    - (B) the cost of plant and materials reasonably ordered by the CSM Contractor for the Project Works and for which it is legally bound to pay provided that:
      - (aa) the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (i)(A); and
      - (bb) title in the plant and materials vests in the Principal upon payment;
    - (C) the costs reasonably incurred by the CSM Contractor in expectation of completing the whole of the CSM Contractor's Activities and the reasonable cost of removing from the Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the CSM Contractor's Activities that are not part of, or to be part of, the Project Works; and



- (D) the amount calculated by multiplying the percentage specified in Schedule A1 by the costs determined under sub-paragraphs (i)(B) and (i)(C), for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (i)(B), and (i)(C); and
- (ii) must take all steps possible to mitigate the costs referred to in sub-paragraphs (i)(B), (i)(C) and (i)(D).
- (b) To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 5 when the CSM Contractor has complied with all its obligations under this clause.
- (c) The amount to which the CSM Contractor is entitled under this clause 19.10 will be a limitation upon the Principal's liability to the CSM Contractor arising out of, or in any way in connection with, the termination of this Contract and the Principal will not be liable to the CSM Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Contract other than for the amount payable under this clause 19.10.
- (d) This clause 19.10 will survive the termination of this Contract by the Principal under clause 19.9.

#### 19.11 **Preservation of Rights**

Subject to clauses 19.8, nothing in this clause 19 or that the Principal does or fails to do pursuant to this clause 19 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 15.8) which it may have where the CSM Contractor breaches (including repudiates) this Contract.

#### 19.12 **Termination by Frustration**

- (a) If under the law this Contract is frustrated the Principal will:
  - (i) pay the CSM Contractor the following amounts as determined by the Principal's Representative:
    - (A) an amount calculated in accordance with clause 19.10(a)(i)(A) for work carried out prior to the date of frustration;
    - (B) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 19.10(a)(i)(B); and
    - (C) the costs calculated in accordance with the terms of clause 19.10(a)(i)(C); and
  - (ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 5 when the CSM Contractor has complied with its obligations under this clause.
- (b) The amount to which the CSM Contractor is entitled under this clause 19.12 will be a limitation upon the Principal's liability to the CSM Contractor arising out of, or in any way in connection with, the frustration of this Contract and the Principal will not be liable to the CSM Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Contract other than for the amount payable under this clause 19.12.

- (c) Without limiting any other provision of this Contract, this clause 19.12 will survive the frustration of this Contract.

#### 19.13 **Codification of CSM Contractor's Entitlements**

This clause 19 is an exhaustive code of the CSM Contractor's rights arising out of or in any way in connection with any termination and the CSM Contractor:

- (a) cannot otherwise terminate, rescind or treat this Contract as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Contract as repudiated, otherwise than in accordance with this clause 19.

### 20. **DISPUTE RESOLUTION**

#### 20.1 **Disputes generally**

Any Dispute must be resolved in accordance with this clause 20.

#### 20.2 **Independent Dispute Avoidance and Resolution Panel**

- (a) The IDAR Panel will be constituted under the IDAR Panel Agreement.
- (b) Prior to the formation of the IDAR Panel, the Principal will notify the CSM Contractor of the proposed members that will constitute the IDAR Panel (**Proposed Members**).
- (c) Within 5 Business Days of receiving the notice contemplated under clause 20.2(b), the CSM Contractor may notify the Principal of any circumstance that might reasonably be considered to affect the Proposed Member's capacity to act independently, impartially and without bias (**Conflict of Interest Notice**).
- (d) If the CSM Contractor is able to demonstrate that a circumstance exists that might reasonably be considered to affect the Proposed Member's capacity to act independently, impartially and without bias, the Principal will propose an alternative member to be appointed to the IDAR Panel and clauses 20.2(b) and 20.2(c) will reapply.
- (e) The CSM Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll provided that the Principal may not issue such request before the expiry of the 5 Business Day period contemplated under clause 20.2(c) where no Conflict of Interest Notice has been issued.
- (f) The provisions of clauses 20.2(b) to 20.2(e) will reapply where an appointed member of the IDAR Panel declines to act or is unable to act as a result of death, disability, resignation or termination of appointment and the Principal is seeking to replace the relevant member.
- (g) Each Party must:
  - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
  - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this Contract; and

- (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the CSM Contractor's Activities, including providing all information it reasonably requests.

### 20.3 Consultation and executive negotiation

- (a) Where a Dispute arises, the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute (**Notice of Issue**) from the dissatisfied party (**Party A**) to the IDAR Panel and the other party (**Party B**). The Notice of Issue must provide brief particulars of the issues in Dispute.
- (b) Within 5 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel (**Nominated Member**) to review the Dispute. If:
  - (i) the parties fail to reach such agreement within 2 Business Days; or
  - (ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,the Chair must nominate a replacement Nominated Member within a further 2 Business Days.
- (c) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.
- (d) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 20.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.
- (e) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting (**Consultation**) to facilitate genuine and good faith negotiations with a view to:
  - (i) resolving the Dispute; and
  - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) Each Consultation will be attended by:
  - (i) the Nominated Member;
  - (ii) the Principal's Representative;
  - (iii) the CSM Contractor's Representative; and
  - (iv) other persons as agreed between the Principal's Representative and Contractor's Representative.
- (g) The Nominated Member will advise the parties in writing once the Consultation process has concluded.
- (h) If the Dispute is not resolved following the Consultation process, the Dispute will be referred to executive negotiators nominated by each of the parties (which persons must be more senior than the persons that attended the Consultation and who are

not involved in the day to day running of this Contract and who have authority to resolve the Dispute). The executive negotiators must, within 10 Business Days following the conclusion of the Consultation process, meet and negotiate with a view to resolving the Dispute.

#### 20.4 **Recommendation**

- (a) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:
- (i) the formulation of the issues in Dispute;
  - (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 20.5; and
  - (iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 20.9,

**(Recommendation).**

- (b) Subject to clause 20.4(d), if the Dispute is not resolved within the later of:
- (i) 20 Business Days of the Recommendation; and
  - (ii) 20 Business Days after the date on which the Recommendation should have been issued,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) (**Notice of Dispute**).

- (c) The Notice of Dispute must:
- (i) be in writing;
  - (ii) state that it is a Notice of Dispute under this 20.4(c);
  - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
    - (A) references to any:
      - (aa) provisions of this Contract;
      - (bb) acts or omissions of any person, relevant to the Dispute;
    - (B) the relief sought and the basis for claiming the relief sought; and
    - (C) include copies of, or relevant extracts from, any documents in support of the claim.
- (d) If the Nominated Member makes a Recommendation:
- (i) under clause 20.4(a)(ii), the parties may accept the recommendation or clause 20.5(a) will apply; or
  - (ii) under clause 20.4(a)(iii) that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in

accordance with clause 20.9, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 20.5 will apply.

**20.5 Expert determination**

- (a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A19 to this Contract.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Site and appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) The parties agree that, to the extent permitted by law:
  - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* NSW are not conferred on the Expert; and
  - (ii) the Expert 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 provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.
- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 20.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed in an amicable settlement or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 20.

**20.6 Notice of dissatisfaction**

- (a) If:
  - (i) either party is dissatisfied with a determination made by an Expert under clause 20.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
  - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties) then either party may, within 10 Business Days after this period has expired, give a notice of dissatisfaction to the other party,

**(Notice of Dissatisfaction).**

- (b) A Notice of Dissatisfaction issued under this clause 20.6 must:
  - (i) state that it is given under this clause 20.6; and
  - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 20.4(d), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 20.6.

**20.7 Final and binding decision**

- (a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 20.6, within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.
- (b) Once a determination of an Expert has become final and binding under clause 20.7(a), neither party will be entitled to challenge the determination on any basis.

**20.8 Amicable settlement**

Where a Notice of Dissatisfaction has been given under clause 20.6, both parties must attempt to settle the Dispute amicably before the commencement of any further proceedings. However, unless both parties agree otherwise, if no amicable settlement has been reached within 15 Business Days after the day on which the Notice of Dissatisfaction was given, the Dispute will be determined in accordance with clause 20.9 whether or not the parties have met and attempted to settle the dispute amicably.

**20.9 Litigation or arbitration**

Where this clause applies, the Principal in its absolute discretion, may within 5 Business Days:

- (a) after the expiry of the 15 Business Day period referred to in clause 20.8; or
- (b) following agreement under clause 20.4(d)(ii),

(as applicable) issue a notice to the CSM Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

**20.10 Arbitration rules**

- (a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The language of the arbitration will be English.
- (d) The parties agree:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
  - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
    - (A) the number of written submissions that will be permitted;
    - (B) where appropriate, the length of written submissions;
    - (C) the extent of document discovery permitted, if any;

- (D) the consolidation of proceedings, when requested;
  - (E) the joinder of parties, when requested;
  - (F) the length of any hearing, if any; and
  - (G) the number of experts, if any, each party is permitted to appoint.
- (e) The parties agree that:
- (i) subject to clause 20.11, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
  - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (g) Any award of the arbitral tribunal will be final and binding upon the parties.
- (h) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

**20.11 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) are not conferred on an arbitral tribunal appointed in accordance with this clause 20.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

**20.12 Payments**

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

**20.13 CSM Contractor to continue performing obligations**

Despite the existence of any Dispute the CSM Contractor must:

- (a) continue to perform the CSM Contractor's Activities; and
- (b) perform its other obligations under this Contract.

**20.14 Urgent relief**

Nothing in this clause 20 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

20.15 **Dispute under related contracts**

The parties acknowledge and agree that:

- (a) the provisions of this clause 20 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed;
- (c) the provisions of this clause 20 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under the CSM Operator Cooperation and Integration Deed;
- (d) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the CSM Operator Cooperation and Integration Deed; and
- (e) where the Dispute is a Common Dispute, as that term is defined in clause 7 of Schedule E4, then this clause 20 will apply subject to the provisions of clause 7 of Schedule E4.

20.16 **Survive termination**

This clause 20 will survive termination of this Contract.

21. **LIABILITY**

21.1 **Limitation of Liability**

[REDACTED]

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

[REDACTED]

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

[REDACTED]







are as specified in this Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

**21.3 CSM Contractor not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) the CSM Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to any claim by the Principal against the CSM Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002 (NSW)* are applied to any claim by the Principal against the CSM Contractor (whether in contract, tort or otherwise), the CSM Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the CSM Contractor because of the operation of Part 4 of the *Civil Liability Act 2002 (NSW)*.

**21.4 Subcontracts**

The CSM Contractor must:

- (a) in each Subcontract into which it enters for the carrying out of the CSM Contractor's Activities include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each Subcontractor to include, in any further contract that it enters into with a third party for the carrying out of the CSM Contractor's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002 (NSW)* in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

**21.5 Insurance requirements**

The CSM Contractor must ensure that all policies of insurance covering third party liability which it is required by this Contract to effect or maintain (including the policies set out in clauses 18.6, 18.7 and 18.9):

- (a) cover the CSM Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002 (NSW)*; and
- (b) do not exclude any potential liability the CSM Contractor may have to the Principal under or by reason of this Contract.

**21.6 Provisions Limiting or Excluding Liability**

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

22. **GENERAL**

22.1 **Notices generally**

- (a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this Contract.
- (b) At any time and from time to time, the Principal's Representative may notify the CSM Contractor that a PDCS will be used for giving Notices under or in connection with this Contract. The Principal's Representative's notice will set out:
  - (i) the name of the relevant PDCS;
  - (ii) the commencement date for use of the PDCS;
  - (iii) any password, login details or similar information required for the CSM Contractor to use the PDCS;
  - (iv) any requirements for specific notices (eg notices of Claims);
  - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this Contract; and
  - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (ba) At any time and from time to time, the Principal's Representative may notify the CSM Contractor that a PDCS will not be used for giving certain Notices under or in connection with this Contract. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 22.1(c)(i).
- (c) Each Notice must:
  - (i) before the date referred to in clause 22.1(b)(ii) or where clause 22.1(ba) applies:
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the CSM Contractor, to the Principal's Representative and any additional person notified by the Principal in writing; or
      - (bb) in the case of a Notice from the Principal, to the CSM Contractor's Representative; or
  - (C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
  - (D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
  - (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

(aa) to the Principal

Address: Level 43, 680 George Street  
Sydney NSW  
2000

Email: [REDACTED]

For the attention of: [REDACTED]

Any Notice in relation to a Claim or a Dispute must also be addressed to the Deputy General Counsel – Sydney Metro and sent to [REDACTED]

(bb) to the Principal's Representative

Address: Level 43, 680 George Street  
Sydney NSW  
2000

Email: [REDACTED]

Attention: [REDACTED]

Any Notice in relation to a Claim or a Dispute must also be addressed to the Deputy General Counsel – Sydney Metro and sent to [REDACTED]

(cc) to the CSM Contractor:

Address: Level 4, 100 Arthur Street, North Sydney  
NSW 2060

Email: [REDACTED]

Attention: [REDACTED] the CSM Contractor's Representative

(ii) from the commencement date for use of the PDCS referred to in clause 22.1(b)(ii) and other than where clause 22.1 (ba) applies:

(A) be sent through the PDCS in accordance with the requirements set out in clause 22.1(e) and:

(aa) in the case of a Notice from the CSM Contractor, be addressed to the Principal's Representative and any additional person notified in accordance with clause 22.1(b)(v) and comply with any requirements notified in accordance with clause 22.1(b)(iv); or

(bb) in the case of a Notice from the Principal, be addressed to the CSM Contractor's Representative; or

(B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 22.1(c)(i).

- (d) A communication is taken to be received by the addressee:
- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
  - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
  - (iii) (in the case of international post) 7 Business Days after the date of posting;
  - (iv) (in the case of delivery by hand) on delivery; and
  - (v) (in the case of email):
    - (A) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
    - (B) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day,

provided that if the communication is received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

- (e) With respect to Notices sent through the PDCS:
- (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
  - (ii) only the text in any Notice, or subject to paragraph 22.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
  - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
    - (A) .pdf format;
    - (B) a format compatible with Microsoft Office; or
    - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The CSM Contractor must:
- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
  - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
  - (iii) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
  - (iv) advise the Principal's Representative of which personnel require access to the PDCS;

- (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
- (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 22.1(c)(ii)(B) to the Principal's Representative through the PDCS.

The Principal has no liability for any losses the CSM Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the CSM Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the CSM Contractor's access to or use of the PDCS or any failure of the PDCS.

## 22.2 **Governing Law**

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

## 22.3 **No Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Contract.
- (b) Any waiver or consent given by the Principal under this Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
  - (i) a breach of any term of this Contract; or
  - (ii) any other failure by the CSM 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.

## 22.4 **Assignment and Change in Control**

- (a) **Change in control of an entity that comprises the CSM Contractor**
  - (i) Subject to the terms of this clause 22.4(a), the CSM Contractor must ensure that there is no Change in Control of any entity that comprises the CSM Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
  - (ii) The CSM Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the CSM Contractor, and provide:

- (A) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
  - (B) all other information necessary for the Principal to determine whether to exercise its rights under clause 22.4(a)(iv), in relation to the Change in Control of the relevant entity that comprises the CSM Contractor.
- (iii) The Principal's approval is not required for a Change in Control arising from:
- (A) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (B) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the CSM Contractor gives the Principal prior written notice of the transfer.
- (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the CSM Contractor where the Principal is of the reasonable opinion that:
- (A) the person or entity which will exercise Control of the CSM Contractor or the relevant entity that comprises the CSM Contractor:
    - (aa) is not solvent and reputable;
    - (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
  - (B) as a result of the Change in Control, the CSM Contractor will no longer:
    - (aa) have sufficient expertise and ability; or
    - (bb) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the CSM Contractor under this Contract.
- (v) If a Change in Control of any entity that comprises the CSM Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 22.4(a)(iii)), the CSM Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the CSM Contractor.
- (vi) The Principal's approval of a Change in Control of any entity that comprises the CSM Contractor will not relieve the CSM Contractor of any of its obligations under this Contract.
- (b) **Change in control of a Parent Company Guarantor**
- (i) Subject to the terms of this clause 22.4(b), the CSM Contractor must ensure that there is no Change in Control of a Parent Company Guarantor without



- the prior written consent of the Principal (which must not be unreasonably withheld).
- (ii) The CSM Contractor must notify the Principal in writing of any Change in Control of a Parent Company Guarantor, and provide:
    - (A) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
    - (B) all other information necessary for the Principal to determine whether to exercise its rights under clause 22.4(b)(iv), in relation to the Change in Control of that Parent Company Guarantor.
  - (iii) The Principal's approval is not required for a Change in Control arising from:
    - (A) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
    - (B) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the CSM Contractor gives the Principal prior written notice of the transfer.
  - (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a Parent Company Guarantor where the Principal is of the reasonable opinion that:
    - (A) the person or entity which will exercise Control of the relevant Parent Company Guarantor:
      - (aa) is not solvent and reputable;
      - (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
      - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
    - (B) as a result of the Change in Control, the relevant Parent Company Guarantor will no longer:
      - (aa) have sufficient expertise and ability; or
      - (bb) be of sufficiently high financial and commercial standing, to properly carry out the obligations of the Parent Company Guarantor under the relevant Parent Company Guarantee.
  - (v) If a Change in Control of a Parent Company Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 22.4(b)(iii)), the CSM Contractor acknowledges that the Principal may terminate this Contract by notice in writing to the CSM Contractor.
  - (vi) The Principal's approval of a Change in Control of a Parent Company Guarantor will not relieve the CSM Contractor of any of its obligations under this Contract.

(c) **Assignment by the CSM Contractor**

The CSM Contractor cannot assign, transfer or novate any of its rights or liabilities under this Contract without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

(d) **Assignment and Novation by the Principal**

(i) Without limiting clause 22.20, the Principal may:

- (A) assign, novate or otherwise transfer all or any part of its rights under this Contract without the CSM Contractor's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State; and
- (B) not otherwise assign, novate or otherwise transfer all or any part of its rights under this Contract without the CSM Contractor's prior written consent (which must not be unreasonably withheld or delayed),

and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the CSM Contractor.

The CSM Contractor agrees to such assignment, novation or transfer such that no further consent is required.

(ii) In the case of a novation by the Principal under this clause:

- (A) the Principal will be released from its obligations under this Contract and the respective rights of the Principal and the CSM Contractor against one another under this Contract will cease;
- (B) the novated agreement will be on the same terms as this Contract, such that the incoming party and the CSM Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 22.4(d)(ii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and
- (C) the CSM Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.

(iii) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

**22.5 Entire Agreement**

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; and
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the date of this Contract and that are not expressly included in this Contract.

22.6 **Joint and Several Liability**

- (a) The rights and obligations of the Principal and the CSM Contractor, if more than one person, under this Contract, are joint and several.
- (b) Each person constituting the CSM Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

22.7 **Severability**

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

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

22.8 **Indemnities to Survive**

- (a) 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.
- (b) Nothing in this clause 22.8 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

22.9 **Stamp Duty and Other Fees**

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

## 22.10 Taxes

Without limiting clause 6 but subject to clause 15.14, the CSM Contractor must pay all Taxes that may be payable in respect of the CSM Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the CSM Contractor's Activities.

## 22.11 Confidentiality

- (a) Subject to clause 22.11(b), the CSM Contractor must:
- (i) keep confidential this Contract, all Information Documents and any information relating to the CSM Contractor's Activities and any discussions concerning this Contract or any Information Documents;
  - (ii) not use the information referred to in sub paragraph (a)(i) except as necessary for the performance of the CSM Contractor's Activities; and
  - (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).
- (b) The CSM Contractor is not obliged to keep confidential any information:
- (i) which is in the public domain through no default of the CSM Contractor; or
  - (ii) the disclosure of which is:
    - (A) required by Law;
    - (B) consented to in writing by the Principal; or
    - (C) given to a court in the course of proceedings to which the CSM Contractor is a party.
- (c) The CSM Contractor must:
- (i) execute and submit to the Principal within 14 days of the date of this Contract a Confidentiality Undertaking in the form of Schedule B7;
  - (ii) ensure that all employees of the CSM Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
  - (iii) ensure that each Subcontractor to the CSM Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The CSM Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
- (i) the *Government Information (Public Access) Act 2009* (NSW);
  - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
  - (iii) any other Law.

- (e) The CSM Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 22.11(d).

**22.12 Principal May Act**

- (a) Without limiting any other provision of this Contract, the Principal may, either itself or by a third party, perform an obligation under this Contract that the CSM Contractor was obliged to perform but which it failed to perform.
- (b) The Principal must provide 5 Business Days' written notice of the Principal's intention to take action under clause 22.12(a).
- (c) The costs, Losses, liabilities, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the CSM Contractor to the Principal.
- (d) Where the Principal or the Principal's Representative is entitled under this Contract to exercise any right or power to:
  - (i) direct or instruct the CSM Contractor to; or
  - (ii) itself step-in to,take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.
- (e) Where the Principal or the Principal's Representative does exercise any such right or power, the CSM Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Project Works.

**22.13 Process Agent**

If the CSM Contractor is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the CSM Contractor must:

- (a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Contract. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
- (b) obtain the process agent's consent to the appointment.

**22.14 Variations**

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

**22.15 Prior Work**

The CSM Contractor agrees that the work in connection with the CSM Contractor's Activities carried out by the CSM Contractor prior to the date of this Contract will be deemed to be governed by the provisions of this Contract and will be deemed to be part of the CSM Contractor's Activities and any payments made to the CSM Contractor by the Principal prior to the date of this Contract in respect of the CSM Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Contract.

## 22.16 Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

## 22.17 Personal Property Securities Act

- (a) By signing this Contract, the CSM 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 CSM Contractor must do anything (including amending this Contract or any other document, executing any new terms or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
  - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
  - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- (b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the CSM 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 CSM 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 CSM 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.

## 22.18 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

**22.19 No Merger**

Terms contained in this Contract which are capable of taking effect, or capable of continuing after Completion, will remain in full force and effect and will not merge on Completion.

**22.20 Transfer of Functions or NSW Rail Assets**

(a) The parties acknowledge that:

(i) a Rail Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Rail Transport Agency may be transferred to or vested in another entity;

(ii) if a Rail Transport Agency is reconstituted, renamed, dissolved, replaced or restructured or if some or all of a Rail Transport Agency's powers, functions, rights or responsibilities are transferred to another entity, then other than as notified by the Rail Transport Agency, references in this Contract to that party (as the case may be) must, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

(iii) a Rail Transport Agency may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets forming part of a Rail Transport Agency's assets at its absolute discretion.

(b) The CSM Contractor acknowledges and agrees that it must, to the extent required by a Rail Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this Contract, or any replacement agreement or agreements for this Contract to give effect to a Rail Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.

(c) The CSM Contractor will be taken for all purposes to have consented to, and will not have, and no Rail Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 22.20.

(d) For the purposes of this clause 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

**23. NOTIFICATION OF CLAIMS**

**23.1 Notice of Change**

If a direction by the Principal's Representative, other than a Change Order under clause 10.2, constitutes or involves a Change, the CSM Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

(a) within the time specified in Schedule A1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Change;

- (b) within the time specified in Schedule A1, submit a written Claim to the Principal's Representative, which includes the details required by clause 23.3(b); and
- (c) continue to carry out the CSM Contractor's Activities in accordance with this Contract and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 23.1.

### 23.2 **Notice of Other Claims**

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

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

the CSM Contractor must give the Principal's Representative:

- (c) the notice required by clause 23.3(a); and
- (d) a Claim in accordance with clause 23.3(c).

### 23.3 **Prescribed Notices**

- (a) Any written notice referred to in clauses 23.1(a) and 23.2 must:
  - (i) be provided not later than the time specified in Schedule A1 after the CSM Contractor first becoming aware (or when it ought reasonably to have first become aware) of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
  - (ii) expressly specify:
    - (A) that the CSM Contractor proposes to make a Claim; and
    - (B) the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 23.1(b) must include:
  - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
  - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
  - (iii) details of the amount claimed and how it has been calculated.



- (c) Any written Claim referred to in clause 23.2 must:
  - (i) be provided not later than the time specified in Schedule A1 of giving the written notice under clause 23.3(a); and
  - (ii) include:
    - (A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
    - (B) the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
    - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
    - (D) details of the amount claimed and how it has been calculated.

#### 23.4 **Register of potential claims**

The CSM Contractor must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Principal under clauses 23.1(a) and 23.3(a) and provide a copy of this register to the Principal's Representative at least 3 Business Days in advance of each meeting of the Management Review Group. This register must be in a form acceptable to the Principal and must include, for each potential Claim, the claim number, a brief description, the date of the potential Claim, any agreed next steps and the status of such next steps.

#### 23.5 **Submission of Claims**

- (a) Claims submitted by the CSM Contractor under clauses 23.1(b) and 23.2(d) will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.
- (b) If within 20 Business Days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 20th Business Day.

#### 23.6 **Continuing Events**

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the CSM Contractor must continue to give the information required by clause 23.3(b) or 23.3(c) every 20 Business Days after the written Claim under clause 23.1(b) or 23.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

#### 23.7 **Bar**

If the CSM Contractor fails to comply with clauses 6.3, 6.4, 6.5, 14.8, 23.2, 23.3 or 23.6:

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

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

#### 23.8 **Other Provisions Unaffected**

Nothing in clauses 23.1 to 23.7 will limit the operation or effect of any other provision of this Contract that requires the CSM Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

#### 24. **REPRESENTATIONS AND WARRANTIES**

##### 24.1 **Principal representations and warranties**

The Principal represents and warrants for the benefit of the CSM Contractor that:

- (a) it is a statutory body validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this Contract (or will have them in full force and effect at the time the obligation is to be performed);
- (c) the Contract constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) the execution, delivery and performance of the Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

##### 24.2 **CSM Contractor Representations and Warranties**

The CSM Contractor represents and warrants for the benefit of the Principal that:

- (a) is duly registered and remains in existence;
- (b) the execution, delivery and performance of the Contract does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all action required to enter into the Contract and to authorise the execution and delivery of the Contract and the satisfaction of its obligations under it;
- (d) the Contract constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (h) there has been no material change in the financial condition of the CSM Contractor (since the date of its last audited accounts) which would prejudice the ability of the CSM Contractor to perform its obligations under the Contract;

- (i) the most recently published financial statements of the CSM Contractor has been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the CSM Contractor;
- (j) the CSM Contractor is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this contract with the CSM Contractor; and
- (k) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under the Contract.

**24.3 Repetition of representation and warranties**

The representations and warranties contained in clauses 24.2(h), 24.2(i), 24.2(j) and 24.2(k) are made on the date of this Contract. Each other representation and warranty contained in this clause 24:

- (a) is made on the date of this Contract; and
- (b) will be deemed to be repeated on each anniversary of the date of this Contract, with reference to the facts and circumstances then subsisting.

**CONTRACT EXECUTION PAGE**

DATED 6<sup>th</sup> day of MARCH 2018

Executed and delivered as a Deed in Sydney

Principal

SIGNED for **TRANSPORT FOR NSW**  
(**ABN 18 804 239 602**) by its duly  
authorised officer, in the presence of:

