



Transport
for NSW

Remediation Contract – 6 Grand Avenue, Camellia

ISD-17-6467

Dated *9 May 2018*

Transport for NSW (ABN 18 804 239 602) ("**Principal**")
Ventia Utility Services Pty Ltd (ABN 69 010 725 247) ("**Contractor**")

Remediation Contract – 6 Grand Avenue, Camellia

Details

Parties

Principal	Name	Transport for NSW
	ABN	18 804 239 602
	Address	Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067

Contractor	Name	Ventia Utility Services Pty Ltd
	ABN	69 010 725 247
	Address	Suite 4, Level 1, Building C – Rhodes Corporate Park, 1 Homebush Bay Drive, Rhodes, NSW 2138
	Attention	, Executive Manager, Environmental Services

- Background**
- A** The Principal is the landowner of the Site, which has been subject to long term regulation by the EPA under the CLM Act. Due to the Site's contamination conditions, the Portion 1 Barrier Works are required to satisfy the Principal's legal and regulatory obligations as landowner of the Site.
- B** The Principal intends to carry out Portion 1 Barrier Works independently of the Project.
- C** The Principal has been selected by the NSW Government as the proponent for the development and delivery of the Project. If the Project proceeds:
- (1) the Principal may require the Contractor to undertake Portion 2 Optional Works;
 - (2) the Principal may novate this Contract to the SOM Contractor; or
 - (3) Portion 2 Optional Works may be performed by others and not under this Contract.
- D** The Project is being delivered in the following packages:

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- (1) this Contract;
 - (2) the Infrastructure Works which are being delivered by the Infrastructure Contractor under the Infrastructure Contract;
 - (3) the SOM Works which are being delivered by the SOM Contractor under the SOM Contract; and
 - (4) the Enabling Works which are being delivered by the Enabling Works Contractor under the Enabling Works Contract.

E The Contractor acknowledges the importance of:

- (1) the successful delivery of the Contractor's Activities in accordance with the requirements of this Contract, including all Approvals;
- (2) producing all necessary documents, and satisfying all of the necessary requirements in order to demonstrate compliance with all Approvals;
- (3) delivering the Works in accordance with the Works Brief, in a manner which will enable a Site Audit Statement to be issued under section 53B of the CLM Act;
- (4) compliance with the Program;
- (5) a whole of Project approach to the Project and the importance of co-ordination and co-operation with the SOM Contractor and the Site Auditor;
- (6) the safety of the public and all participants during the construction of the Works;
- (7) the minimisation of disruption to the community; and
- (8) the need to approach the performance of the Contractor's Activities in a co-operative and positive manner.

F Following completion of a public tender process, the Principal selected the Contractor as the successful proponent to design and construct the Works in consideration of the Contract Sum, in accordance with the terms of this Contract.

G The Principal has reposed trust in the Contractor to deliver the Works:

- (1) in accordance with this Contract;
 - (2) consistently with the matters set out in this Preamble; and
-

(3) consistently with the Contractor's representation that it has the resources and expertise to perform the Contractor's Activities in accordance with this Contract.

H In reliance on these representations made by the Contractor and on the basis of the trust reposed by the Principal, the Principal has engaged the Contractor to perform the Contractor's Activities on the terms of this Contract.

The parties agree

(1) The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract.

(2) Unless the context indicates otherwise, capitalised terms in these Details have the meaning given in the attached General Conditions of Contract.

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General Conditions of Contract

1 Definitions and interpretation

1.1 Definitions

In the Contract, unless the context indicates otherwise:

Accreditation means accreditation (including provisional accreditation) under Part 3, Division 4 of the *Rail Safety National Law*.

Act of Prevention means:

- (a) a breach of the Contract by the Principal;
- (b) any other act of the Principal, the Principal's Representative, or an Other Contractor engaged by the Principal, except where such act is:
 - (i) expressed as not constituting an Act of Prevention pursuant to the provisions of this Contract;
 - (ii) caused by or arising out of the failure by the Contractor to fulfil its obligations under this Contract or any act or omission of an Associate of the Contractor; or
 - (iii) the exercise by the Principal of any of its statutory functions or powers; or
- (c) a Variation the subject of a Direction by the Principal's Representative.

Additional Voluntary Management Proposal has the meaning given in clause 8.2.

Additional Security has the meaning given in clause 4.4(a).

Administrative Completion means Portion 1 Administrative Completion and Portion 2 Administrative Completion, as appropriate.

AFC or Approved for Construction means the Design Documentation prepared to a level of detail, definition and design resolution such that they are capable of being constructed from.

Approval means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission, endorsements, conditions or other requirement of any Authority having any jurisdiction in connection with the Works or the Contractor's Activities, or under any applicable Law, and any variations or modifications to them, which must be obtained or satisfied to:

- (a) carry out the Contractor's Activities; or
- (b) occupy or use the completed Works or a completed Portion,

and includes:

- (c) the Part 5 Approval, the RAP, the Voluntary Management Proposal and the SSI Approval;

- (d) all other relevant approvals under the EP&A Act and the CLM Act; and
- (e) Construction Certificates and Complying Development Certificates.

ASA Authorisation means an authorisation (other than a Project Limitation 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), which is available at <http://www.asa.transport.nsw.gov.au/> or upon request from the Principal's Representative.

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 Standards Authority or **ASA** means the unit within Transport for NSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets as defined in the ASA Charter.

Associate means in relation to a person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of that person or that Related Body Corporate and:

- (a) in the case of the Contractor, includes its Subcontractors and their respective Associates (but does not include the Principal or any of its Associates);
- (b) in the case of the Principal, does not include the Contractor or its Associates; and
- (c) in the case of both parties, does not include the Site Auditor or the Environmental Representative.

Australian Standards means national standards developed by Standards Australia.

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 the ASA and ONRSR) including a joint regional planning panel and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works or the Contractor's Activities.

Award Date means the date on which this Contract has been completed and signed by the last party to sign.

Best Industry Practice means (subject to any express provisions of this Contract which impose higher standards) the practices which are generally engaged in or observed by experienced and competent designers, builders, operators and maintenance contractors with respect to works similar to the Works which, with respect to any objective, may be expected, in the exercise of its expertise, to accomplish that objective in a manner consistent with recognised highest standards regarding quality, safety and environmental protection, including:

- (a) using effective procurement methods;
- (b) complying with all Law;
- (c) using good quality, new, undamaged equipment and materials for the Works which are suitable for the purpose for which they are required;
- (d) ensuring that all workmanship and construction techniques are of the highest quality and standards; and
- (e) complying with relevant Australian Standards and best practice guidelines.

Building Code of Australia means the uniform set of technical provisions for the design and construction of buildings and other structures throughout Australia that are produced and maintained by the Australian Building Codes Board.

Business Day means a day on which banks are open for general banking business in New South Wales (not being a Saturday, Sunday or public holiday) and excluding 24, 27, 28, 29, 30 and 31 December.

Cash Retention has the meaning given in clause 4.1(d).

Certificate of Final Completion means a certificate referred to in clause 16.1(d), substantially in the form of Schedule 25.

Certified Consultant means a consultant which holds a current and valid certification under one or more of the contaminated land consultant certification schemes which are endorsed by the EPA.

Change in Approval means a change:

- (a) in an Approval which is in existence as at the Award Date; and
- (b) which occurs after the Award Date.

Change in Codes and Standards means a change in Codes and Standards taking effect after the Award Date, excluding a change in the Codes and Standards which, as at the Award Date:

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

Change in Law means (if it takes effect after the Award Date):

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

compliance with which:

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

but excludes:

- (e) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes; and
- (f) a change in an existing Law or a new Law which, as at the date of this Contract:
 - (i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or
 - (ii) a party experienced and competent in the delivery of works and services similar to the Works or the Contractor's Activities (as applicable) would have reasonably foreseen or anticipated.

Claim includes any claim, action, demand or proceeding for relief from or suspension of obligations, for an increase in the Contract Sum, for payment of money (including damages) or for an extension of time:

- (g) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;
- (h) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Contractor's Activities, the Works or either party's conduct before the Contract; or
- (i) otherwise at Law or in equity, including:
 - (i) under, or for breach of, any statute;
 - (ii) in tort (for negligence or otherwise, including negligent misrepresentation); or
 - (iii) for restitution, including restitution based on unjust enrichment.

CLM Act means the *Contaminated Land Management Act 1997 (NSW)*.

Code of Conduct means the Principal's Code of Conduct which is available at <http://www.rms.nsw.gov.au/documents/about/careers/code-of-conduct-transport.pdf> or upon request from the Principal's Representative, as updated from time to time.

Codes and Standards means:

- (a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the Award Date (including the *Disability (Access to Premises – Buildings) Standards 2010*), including any specified or required by this Contract;
- (b) if (and to the extent) the codes and standards referred to in paragraph (a) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the Award Date; and
- (c) the Government Policies and Guidelines.

Commissioning has the meaning given in the TfNSW Standard Requirements.

Compensable Cause means:

- (a) a breach of the Contract by the Principal; and
- (b) the events listed in Item 1 of the Key Details.

Completion means Portion 1 Completion and Portion 2 Completion, as appropriate.

Complying Development Certificate means a complying development certificate referred to in section 85 of the EP&A Act.

Confidentiality Undertaking means a deed in the form of Schedule 11.

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 the Principal to manage configuration changes for the Infrastructure & Services Division of the Principal's programs and projects in accordance with the Configuration Management Framework.

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

Consequential or Indirect Loss means:

- (a) any Loss that does not flow directly and naturally from the relevant breach of this Contract or a duty of care; and
- (b) any 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, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect),

however, does not include:

- (c) any Loss the subject of an indemnity given by the Contractor in favour of the Principal; and
- (d) any Loss incurred by the Principal to the SOM Contractor.

Construction Certificate means a certificate issued under section 109C(1)(b) of the EP&A Act.

Construction Environmental Management Plan means the project plan of that name required by Law and the TfNSW Standard Requirements.

Construction Plant Insurance means a policy of insurance insuring construction plant that is material to the Contractor's ability to perform the Contractor's Activities against loss, theft, damage or destruction.

Contamination means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality being a presence that presents a risk of harm to human health or any aspect of the environment.

Contract means the contractual relationship between the parties constituted by:

- (a) these General Conditions of Contract;
- (b) the Key Details;

- (c) the Schedules and Annexures (excluding any Information Documents which form part of the Schedules or Annexures); and
- (d) the other documents (if any) referred to in Item 2 of the Key Details.

Contract Sum means:

- (a) in relation to the Portion 1 Works, the amount specified in Item 3(a) the Key Details; and
- (b) if the Principal issues a Portion 2 Notice to Proceed, the aggregate of Item 3(a) and Item 3(b),

as adjusted under the Contract.

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

- (a) the design, construction, commissioning and handover of the Works;
- (b) the provision of Temporary Works;
- (c) Commissioning and Operational Readiness;
- (d) Provisional Sum Work; and
- (e) anything incidental or ancillary to the obligations in paragraphs (a) to (d).

Contractor's Representative means the person so named in Item 4 of the Key Details or any other person from time to time appointed as the Contractor's Representative in accordance with clause 3.4.

Date for Completion means the date, or period of time, specified in Item 5 of the Key Details, as adjusted under the Contract.

Date of Administrative Completion means in respect of:

- (a) Portion 1 Barrier Works: the date of Portion 1 Administrative Completion; and
- (b) Portion 2 Optional Works: the date of Portion 2 Administrative Completion.

Date of Completion means in respect of:

- (a) Portion 1 Barrier Works: the date of Portion 1 Completion; and
- (b) Portion 2 Optional Works: the date of Portion 2 Completion,

as set out in a Notice of Completion.

Date of Final Completion means the date on which Final Completion is achieved, being the date stated by the Principal's Representative in the Certificate of Final Completion.

Defect means any:

- (a) defect, deficiency, fault, error or omission in the Works or Temporary Works, including subsidence, shrinkage and movement outside the required tolerances; or

- (b) other aspect of the Works, Temporary Works or Contractor's Activities that is not in accordance with the requirements of this Contract, including non-compliances, non-conformances and non-conformities.

Defects Liability Period means the period which commences on the Date of Completion of the Works or a Portion, and which continues for the period described in Item 6 of the Key Details, as extended by clause 11.12.

Deliverables means all items, materials, documentation (including the Design Documentation) and products produced, created or developed for, or provided to, the Principal by or on behalf of the Contractor as part of providing the Works or Contractor's Activities for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed prior to the Award Date.

Design Documentation means:

- (a) all design documentation (including design standards, concrete mix designs, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, shop drawings, digital records, computer software and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, required by this Contract, required for the performance of the Contractor's Activities, or necessary to be produced by the Contractor to design and construct the Works and Temporary Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Contract; and
- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Activities.

Design Life means the period specified for the Works in section 5.6 of the Works Brief, commencing on the Date of Completion of the Works or Portion and ending on the day after expiry of the period specified for the Works in section 5.6 of the Works Brief.

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement in writing, given by a person with the authority to do so.

Enabling Works means the works that the Enabling Works Contractor must design and construct under the Enabling Works Contract.

Enabling Works Contract means the contract between the Principal and the Enabling Works Contractor in respect of the Enabling Works.

Enabling Works Contractor means the contractor appointed under the Enabling Works Contract.

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 Harm means any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Representative means the person appointed as the environmental manager by the Principal and notified to the Contractor, or any replacement notified to the Contractor by the Principal's Representative.

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

EPA means the New South Wales Environmental Protection Authority, a statutory authority established pursuant to the *Protection of the Environment Administration Act 1991* (NSW).

Excepted Risks means:

- (a) any risk specifically excepted in the Contract;
- (b) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's Personnel or subcontractors or the employees or agents of any of these.

Excluded Claim means any claim:

- (a) with respect to a Change in Law under clause 10.5;
- (b) for a Variation directed in accordance with clause 13.1 or clause 13.2;
- (c) for an extension of time to any Date for Completion under clause 12.7; or
- (d) for payment under clause 14.

Extra Land has the meaning given in clause 7.5(a).

Final Completion has the meaning given in clause 16.1(b).

Fit for Purpose means:

- (a) in relation to the Portion 1 Barrier Works, the Works:
 - (i) comply with Law;
 - (ii) achieve the validation criteria defined in the RAP, to demonstrate that the remediation objectives for the Site have been achieved; and
 - (iii) will remain fit for their intended purposes, functions and uses as specified in the Works Brief for the Design Life;
- (b) in relation to the Portion 2 Optional Works, the Works:
 - (i) comply with Law;

- (ii) achieve the validation criteria defined in the RAP, to demonstrate that the remediation objectives for the Site have been achieved;
 - (iii) are compatible with and support the construction of the SaM Works on the Site;
 - (iv) will remain fit for their intended purposes, functions and uses as specified in the Works Brief for the Design Life; and
- (c) in relation to all of the Works, that they otherwise meet and are fit for their intended purposes, functions and uses, as specified in the Works Brief and this Contract.

Force Majeure Event means:

- (a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;
- (b) industrial action in the form of a strike that is not specific to, or caused by, the Contractor; and
- (c) earthquakes, substantial fire (which is not caused by the Contractor or the Contractor's Personnel) or severe tropical cyclone, but excluding weather conditions, regardless of severity,

but only where such events or circumstances:

- (d) are beyond the reasonable control of the affected party;
- (e) where the affected party is the Contractor, are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under the Contract if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor supplying similar works; and
- (f) are not caused or contributed to in whole or in part by a breach by the affected party (or their Personnel) of the Contract.

General Conditions of Contract means these General Conditions of Contract.

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

Government Policies and Guidelines means the following policies and guidelines, as updated from time to time:

- (a) the policies, codes and standards that appear on the Railsafe website at <https://railsafe.org.au/>, including but not limited to:
 - (i) the policy entitled "Health and Safety Policy"; and
 - (ii) the applicable specifications on the safety and environment specifications page, available at: <https://railsafe.org.au/safety-and-environment-specifications>;
- (b) the New South Wales Government Code of Practice for Procurement (January 2005);
- (c) the WHS Guidelines;

- (d) the NSW Guidelines;
- (e) the NSW Government Policy on Aboriginal Participation in Construction (1 May 2015, updated 1 August 2016);
- (f) NSW Government Environmental Management Systems Guidelines (3rd edition) (January 2014);
- (g) Training Management Guidelines (February 2009);
- (h) Quality Management System Guidelines for Construction (August 2013); and
- (i) any other government policies that are notified to the Contractor by the Principal from time to time.

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.

GST or Goods and Services Tax means the tax payable, or notionally payable on taxable supplies under the GST Legislation.

IC Deed for Remediation Contract means the deed that will be entered into by the Principal, the Contractor and the Independent Certifier.

Incident means an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, epidemic or war like action) which endangers or threatens to endanger the safety or health of persons, environmental harm, or destroys or damages property (actual or potential).

Inclement Weather Allowance means the period of delay specified in the Key Details caused by inclement weather for which the Contractor might otherwise have been entitled to make a Claim for an extension of time and for which the Contractor would have been entitled to an extension of time under this Contract.

Independent Certifier means the person engaged by the Principal in accordance with the Independent Certifier Deed.

Information Documents means:

- (a) the Reports; and
- (b) all other documents, samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor by or on behalf of the Principal or the Principal's Representative unless expressly identified as forming part of this Contract,

which are contained on the USB titled 'Remediation Contract – 6 Grand Avenue, Camellia – Information Documents' located in Schedule 16.

Information Documents do not form part of this Contract.

Infrastructure Contract means the contract between the Principal and the Infrastructure Contractor in respect of the Infrastructure Works, which will be entered into after the Award Date.

Infrastructure Contractor means the contractor appointed to undertake the Infrastructure Works pursuant to the Infrastructure Contract.

Infrastructure Works means the design and construction of the infrastructure package for the Project, which is to be delivered under the Infrastructure Contract.

Initial Portion 2 Price means the price for the Portion 2 Optional Works as contained in Schedule 2.

Initial Portion 2 Program means the program for the Portion 2 Optional Works as contained in Schedule 22.

Insolvency Event means in relation to a party to the Contract, any of the following:

- (a) the 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 the Contract for financial reasons;
- (b) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge;
- (c) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power is appointed to the party;
- (d) the party:
 - (i) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual becomes bankrupt or insolvent;
 - (ii) 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);
 - (iii) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
 - (iv) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
 - (v) files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
 - (vi) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets;
 - (vii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (viii) files a petition or otherwise commences any proceeding seeking any reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition;

- (ix) 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;
 - (x) a mortgagee of any property of the corporation takes possession of that property;
 - (xi) 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 is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b), (c) or (d).

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Interface Contractor means an Interface Contractor listed in Item 8 of the Key Details, or otherwise identified by the Principal's Representative, as an Interface Contractor, that is carrying out, or that will carry out, Interface Work.

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

Interim Site Audit Advice means a written report prepared by the Site Auditor as part of the Site audit process.

Interim Site Management Plan has the meaning given in section 6.3.5.2 of the Works Brief.

Item means the corresponding item in the Key Details.

Key Details means the particulars which appear in Schedule 1.

Key Personnel mean those people specified in Item 14 of the Key Details, including the Contractor's Representative specified in Item 4 of the Key Details.

Latent Condition has the meaning given in clause 7.2.

Law means:

- (a) any legally binding law, Commonwealth, New South Wales or local government legislation, statute, act, requirements, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, instrument, directive or code of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes or Standards Australia codes), which is enacted, issued or promulgated by the Commonwealth, or any State or Territory government;
- (b) principles of law and equity established by decisions of courts;
- (c) the Approvals; and

(d) any other relevant Authority requirements.

Loss means:

- (a) any cost, expense, 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 or Indirect Loss.

Material means material in any form, including documents (written or electronic), reports, data and software.

Milestone means each event noted in the column titled "Description" of Schedule 21.

Milestone Date means the date in the column titled "Date" of Schedule 21.

Moral Rights means any moral rights including the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any applicable Law (including the *Copyright Act* 1968 (Cth) or any Law outside Australia), that exists or may come to exist anywhere in the world.

Motor Vehicle Insurance means a policy of insurance covering vehicle third party bodily injury and property damage in respect of all vehicles to be used by the Contractor (whether owned, rented or leased) in connection with the Contractor's Activities.

New Portion has the meaning given in clause 1.10(a).

Nominated Reports means the materials identified in Schedule 24.

Notice of Completion means a notice under clause 15.2(a)(ii) by the Principal's Representative stating that Completion of the Works or a Portion has been achieved.

Notice of Dispute has the meaning given in clause 19.1(b).

NSW Guidelines has the meaning given in clause 6.1 of Schedule 3.

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

NSW Trains means the corporation by that name (ABN 50 325 560 455) constituted by Part 2B of the *Transport Administration (General) Regulation 2005* (NSW).

ONRSR means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the Rail Safety National Law.

Operational Readiness has the meaning given in the TfNSW Standard Requirements.

Other Contractor means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or other to do work, including any Interface Contractors.

Overhead Costs means the costs referable to the items described in section 2 of Schedule 2.

Parramatta Light Rail or PLR means the Parramatta Light Rail and includes any modification or augmentation to the Parramatta Light Rail.

Part 5 Approval means:

- (a) the Determination and Conditions of Approval under Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) dated 20 December 2017 and set out in Annexure E to the Works Brief, as modified from time to time, and any other Approvals issued from time to time by either the Principal (acting in their capacity as determining authority) under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Works; and
- (b) any other conditions of approval, mitigation measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraph (a).

Permanent Light Rail Corridor means that part of the Site required for the commission, operation and maintenance of the Parramatta Light Rail.

Personal Information means information or an opinion (including information or an opinion forming part of a database), collected, held, used or disclosed in connection with this Contract whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Personnel means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents, Subcontractors and Associates of the Contractor; and
- (b) in respect of the Principal, any directors, officers, employees, consultants, agents and contractors of the Principal (other than the Contractor).

Plant, Equipment and Work means those things used, or work undertaken, by the Contractor to construct the Works or a Portion but which will not form part of the Works or the Portion.

Pollution means direct and indirect alteration of the Environment to its detriment or degradation that involves an emission, including an emission of waste, dust, noise, vibration, odour or any form of radiation.

Pollution Liability (Including Asbestos) Insurance means a policy of insurance in the joint names of the Contractor and the Principal covering:

- (a) the respective rights and interests and liabilities of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time in respect of bodily Injury, environmental damage or property damage; and
- (b) emergency response costs, restoration costs, or clean-up costs,

arising out of or in connection with the Contractor's Activities.

Portion means a portion of the Works which is described in Item 10 of the Key Details.

Portion 1 Barrier Works means the works described in in Item 10 of the Key Details, and undertaken in accordance with this Contract.

Portion 1 Administrative Completion means when, in respect of the Portion 1 Barrier Works, the Contractor has achieved Portion 1 Completion and the Site Auditor has given to the Principal's Representative:

- (a) the "Section B" Site Audit Statement; and
- (b) the Site Auditor's report which accompanies the Site Audit Statement referred to in paragraph (a).

Portion 1 Completion means when, in respect of the Portion 1 Barrier Works, each of the following is satisfied:

- (a) the Portion 1 Barrier Works are complete in accordance with this Contract except for minor Defects, which in the opinion of the Principal's Representative:
 - (i) do not prevent the Portion 1 Barrier Works from being reasonably capable of fulfilling the intended purpose of the Portion 1 Barrier Works;
 - (ii) can be rectified without prejudicing the convenient use of the Portion 1 Barrier Works; and
 - (iii) do not prevent the commencement or hinder or in any way delay the design and construction of the SaM Works;
- (b) those Tests which are required by the Contract to be carried out and passed before the Portion 1 Barrier Works reach Portion 1 Completion have been carried out and passed;
- (c) if required by the Works Brief, Commissioning and Operational Readiness has been completed;
- (d) the Contractor has provided the Principal's Representative with the Contractor's Certificate of Completion in the relevant form set out in Schedule 17 for the Portion 1 Barrier Works;
- (e) the Contractor has obtained all Approvals that are required under this Contract to be obtained before Portion 1 Completion and provided such Approvals to the Principal, as required under this Contract;
- (f) the Site Auditor has provided to the Principal's Representative the Interim Site Audit Advice confirming that the Site Auditor has all information and data necessary in order to deliver the Site Audit Statement, on terms satisfactory to the Principal's Representative;
- (g) the Contractor has obtained and provided to the Principal's Representative:
 - (i) all necessary Validation Reports; and
 - (ii) the Interim Site Management Plan, on terms satisfactory to the Principal's Representative;
- (h) given to the Principal's Representative all other documents and information which is required to be handed over under this Contract before Portion 1 Completion; and

- (i) the Contractor has done everything which the Contract requires it to do for Portion 1 Completion.

Portion 2 Administrative Completion means when, in respect of the Portion 2 Optional Works, the Contractor has achieved Portion 2 Completion and the Site Auditor has given to the Principal's Representative:

- (a) the Section B Site Audit Statement; and
- (b) the Site Auditor's report which accompanies the Site Audit Statement referred to in paragraph (a).

Portion 2 Completion means when, in respect of the Portion 2 Optional Works, each of the following is satisfied:

- (a) the Portion 2 Optional Works are complete in accordance with this Contract except for minor Defects, which in the opinion of the Principal's Representative:
 - (i) do not prevent the Portion 2 Optional Works from being reasonably capable of fulfilling the intended purpose of the Portion 2 Optional Works;
 - (ii) can be rectified without prejudicing the convenient use of the Portion 2 Optional Works; and
 - (iii) do not prevent the commencement or hinder or in any way delay the design and construction of the SaM Works;
- (b) those Tests which are required by the Contract to be carried out and passed before the Portion 2 Optional Works reach Portion 2 Completion have been carried out and passed;
- (c) if required by the Works Brief, Commissioning and Operational Readiness has been completed;
- (d) the Contractor has provided the Principal's Representative with the Contractor's Certificate of Completion in the relevant form set out in Schedule 17 for the Portion 2 Optional Works;
- (e) the Contractor has obtained all Approvals that are required under this Contract to be obtained before Portion 2 Completion and provided such Approvals to the Principal, as required under this Contract;
- (f) the Site Auditor has provided to the Principal's Representative the Interim Site Audit Advice, confirming that the Site Auditor has all information and data necessary in order to deliver the Site Audit Statement, on terms satisfactory to the Principal's Representative; and
- (g) the Contractor has obtained and provided to the Principal's Representative:
 - (i) all necessary Validation Reports; and
 - (ii) the Interim Site Management Plan, on terms satisfactory to the Principal's Representative;
- (h) given to the Principal's Representative all other documents and information which is required to be handed over under this Contract before Portion 2 Completion; and

- (i) the Contractor has done everything which the Contract requires it to do for Portion 2 Completion.

Portion 2 Optional Works means the works described in in Item 10 of the Key Details, which the Contractor may be required to undertake pursuant to clauses 1.7 and 6.8.

Portion 2 Notice to Proceed means a notice issued by the Principal pursuant to clause 1.7(c)(i).

PPSA means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

Pre-existing Materials means any Materials which are provided, or required to be provided, by or on behalf of the Contractor which are:

- (a) pre-existing as at the Award Date, but do not include any Materials developed by the Contractor or any of its Personnel for the purposes of, or in anticipation of, providing the Works, or carrying out the Contractor's Activities; or
- (b) brought into existence other than as a result of the performance of its obligations under this Contract.

Preliminary Design means the drawings, specifications and other materials contained in the Information Documents.

Principal mean Transport for NSW (ABN 18 804 239 602).

Principal's EDMS means the electronic document management system to be used by the Contractor and the Principal in accordance with this Contract, as notified by the Principal from time to time.

Principal's Representative means the person so nominated in Item 9 of the Key Details, or any other person nominated by the Principal from time to time under clause 3.2 to replace that person.

Professional Indemnity Insurance means a policy of insurance to cover claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its Subcontractors in carrying out the Contractor's Activities.

Program means the program contained in Schedule 22.

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 paragraphs (a)(i) or (a)(ii) apply.

Project means the Parramatta Light Rail project which will be delivered through the Works, Infrastructure Works, SOM Works, Enabling Works and any preceding, subsequent or consequent works.

Project Work Health and Safety Management Plan means the Project plan of that name required to be provided and implemented pursuant to the TfNSW Standard Requirements.

Provisional Sum Work means the work or goods so described in Item 22 of the Key Details for which the sum of money referred to in Item 22 of the Key Details is included in the Contract Sum.

Public and Product Liability Insurance means a policy of insurance in the joint names of the Contractor and the Principal covering:

- (a) the respective rights and interests and liabilities of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time; and
- (b) the parties' respective liability to each other for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance policy),

arising out of, or in any way in connection with, the Contractor's Activities.

Qualifying Cause means any one of:

- (a) an Act of Prevention; and/or
- (b) the events listed in Item 11 of the Key Details.

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

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

Rail Safety Work has the meaning given in section 8 of the Rail Safety National Law.

Rail Safety Worker has the meaning given in section 4 of the Rail Safety National Law.

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

RAP or Remediation Action Plan means the Remediation Action Plan prepared by Golder Associates Pty Ltd and dated 2 November 2017 in accordance with the guidelines of the EPA, attached as Annexure A to the Works Brief.

RCTI has the meaning given in clause 14.14(f).

Recipient has the meaning given in clause 14.14(b).

Reimbursable Work Price means the amount calculated on an open-book basis, on rates to be agreed between the Contractor and the Principal.

Related Body Corporate means:

- (a) in relation to the Principal, any entity controlled by the Secretary of Transport; and
- (b) in relation to any other person, has the same meaning as in the *Corporations Act 2001* (NSW).

Remediation Steps has the meaning given in clause 7.7(d)(ii).

Replacement Certifier means the successor of the Independent Certifier.

Reports means the reports included in Annexure D, which form part of the Information Documents.

Rolling Stock Operator has the meaning given in the Rail Safety National Law.

SaM Works means the works which will be completed pursuant to the SOM Contract, to design, construct, operate and maintain the stabling and maintenance facilities for the Parramatta Light Rail on the Site.

Schedule of Prices means the document (if any) so described in Schedule 2.

Services means any service and includes any utilities facility or item of public or private infrastructure, including railway systems, pedestrian and vehicular corridors, water, electricity, gas, fuel, telephone, existing drainage (including piped, open or subsoil drains), sewerage, industrial waste disposal and electronic communications service.

Site means any land which is owned by the Principal and made available by the Principal to the Contractor to carry out the Contractor's Activities, if any, including any such land described in Annexure F of the Works Brief.

Site Access Date has the meaning given in clause 2.2(a).

Site Audit Statement means a site audit statement issued by an accredited site auditor under section 53B of the CLM Act certifying that the Works have been performed in accordance with the RAP.

Site Auditor means, as at the Award Date, Jason Clay from Senversa Pty Ltd, or any other person nominated by the Principal from time to time to replace that person, provided the replacement person is accredited under the site audit scheme in accordance with the CLM Act.

SOM Contract means the contract between the Principal and the SOM Contractor in respect of the SOM Works, which will be entered into after the date of this Contract.

SOM Contractor means the contractor appointed to undertake the SOM Works pursuant to the SOM Contract.

SOM Deed of Novation means the deed of novation to be entered into by the Principal, the Contractor and the SOM Contractor if this Contract is novated to the SOM Contractor substantially in the form set out in Schedule 23.

SOM Interface Dispute means a dispute in connection with the SOM Contract that involves the conduct of the Contractor or the Contractor's compliance with this Contract.

SOM Tender Process means the tender process that will be conducted in relation to the selection of the SOM Contractor.

SOM Works means the physical works, assets, systems and deliverables that the SOM Contractor must design, construct, manufacture, install, test and commission under the SOM Contract, and includes the SaM Works.

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

SSI Application means the state significant infrastructure application number 8285 dated 19 April 2017 as amended from time to time.

SSI Approval means the Minister's approval of the SSI Application on such terms and conditions as the Principal considers appropriate.

SSI Approval Matrix has the meaning given in clause 9(b)(ii).

Step-in Event has the meaning given in clause 17.1.

Step-in Party means an agent, attorney or nominee of the Principal (which may be the SOM Contractor), and may be more than one person appointed to act jointly.

Step-in Powers has the meaning given in clause 17.3.

Step-in Rights has the meaning given in clause 17.2(a).

Subcontract includes an agreement for supply of goods or services (including professional services and plant hire) with a Subcontractor, including suppliers and consultants.

Subcontractor means any person engaged by the Contractor for the performance of any of the Contractor's Activities.

Supplier has the meaning given in clause 14.14(b).

Sydney Trains means the corporation by that name (ABN 38 284 779 682) constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

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

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

Tests means:

- (a) the tests and procedures specified in the Works Brief which are to be carried out before Completion;
- (b) any other tests required by the Principal's Representative;
- (c) any other tests required to ascertain whether the Works or a specified part thereof meet the requirements of the Contract;
- (d) the tests and procedures specified in the Remediation Works Validation Plan (as that term is defined in the Works Brief); and

- (e) the tests and procedures required as part of the Design Documentation which is submitted to the Principal pursuant to clause 6.7,

and each of them is a Test.

TfNSW Standard Requirements or TSRs means the documents which appear as Annexure B to this Deed.

Third Party Agreement means an agreement which appears in Annexure E.

Treatment Design means the approved treatment design in relation to toxicity reduction as described in section 5.4 of the Works Brief.

Tripartite Dispute Process means any arbitration, binding expert determination or litigation that is commenced in connection with a SOM Interface Dispute.

Unconditional Undertaking means an unconditional bank undertaking (duly stamped) on terms, and given by a financial institution:

- (a) approved by the Principal;
- (b) in accordance with clause 4.1(c); and
- (c) in accordance with the terms of the unconditional undertaking set out in Schedule 9.

Umbrella IC Deed means the deed that will be entered into by the Principal and the Independent Certifier.

Urgent Defect means any Defect which has, or which in the opinion of the Principal's Representative, might have, any of the following effects:

- (a) is a risk to safety of any person;
- (b) contaminates any place;
- (c) causes an abatement under the SOM Contract; or
- (d) impacts on the construction, commissioning, operation or maintenance of the SOM Works.

Validation Reports has the meaning given in the Works Brief.

Valuable Find has the meaning given in clause 7.8(a).

Variation means, unless otherwise stated in this Contract:

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

but for the avoidance of doubt excludes:

- (b) any changes to the Works or the Temporary Works or the requirements of the Works Brief that are required to ensure the Contractor complies with its obligations under this Contract; and
- (c) any Provisional Sum Work.

Variation Order means an order issued pursuant to clause 13.2.

Voluntary Management Proposal means the voluntary management proposal to be entered into between the EPA and the Principal, substantially in the form attached as Annexure F, as amended from time to time, in accordance with clause 8.2.

WHS Accreditation Scheme means the Australian Government Building and Construction WHS Accreditation Scheme established by the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

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 legislation relating to health and safety at work including:

- (a) the *Work Health and Safety Act 2011* (NSW);
- (b) the *Work Health and Safety Regulation 2017* (NSW);
- (c) any rail safety legislation in New South Wales, including the *Rail Safety National Law* (NSW) and any rail safety regulations;
- (d) any other legislation in New South Wales or legislation in other States and Territories of Australia addressing work health and safety which applies to the Works, the Temporary Works, any other works or activities under this Contract or the Contractor's Activities; and
- (e) any codes of practice and statutory guidelines issued by any government or regulatory body relating to work health and safety as issued or updated from time to time.

Workers Compensation Insurance means a policy of insurance to insure against liability for death of or injury to employees, including liability by statute and at common law.

Works means the whole of the physical works which the Contractor must complete and hand over to the Principal, a brief description of which appears in Item 12 of the Key Details, including all Variations to the Works.

Works Brief means the:

- (a) document in Annexure A; and
- (b) Voluntary Management Proposal,

and includes all schedules and annexures to the Works Brief.

Works Brief Services means the services set out in the Works Brief.

Works Insurance means a policy of insurance to:

- (a) cover the Principal, the Contractor and all Subcontractors for their respective rights, interests and liabilities; and
- (b) insure all the things referred to in clause 5.1 for which the Contractor bears the risk against loss or damage resulting from any insurable event.

1.2 Interpretation

In this Contract:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) labels used for definitions are for convenience only and do not affect interpretation;
- (c) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (d) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (f) a reference to a document (including the Contract) is to that document as varied, novated, ratified or replaced from time to time and includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (i) the obligations of the Principal under and in connection with this Contract are limited to those expressly stipulated in this Contract;
- (j) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (k) 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 the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it (excluding any Information Documents which form part of the schedules or annexures);
- (l) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;

- (m) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (n) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a reference to "\$" or "dollar" is to Australian currency; and
- (q) any reference in this deed to "the Contract" or "this Contract" will be taken to be a reference to this deed.

1.3 No bias against drafting party

No term or provision of the Contract will be construed against a party on the basis that the Contract or the term in question was put forward or drafted by or on behalf of that party.

1.4 Provisions limiting or excluding liability

Any provision of the Contract which seeks to limit or exclude a liability of a party, is to be construed as doing so only to the extent permitted by applicable Law.

1.5 Discretion

- (a) Subject to any express provision in the Contract to the contrary:
 - (i) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
 - (ii) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.
- (b) Without limiting clause 1.5(a), neither the Principal nor the Principal's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Contract conferring the discretion, power or entitlement.

1.6 Authorities

- (a) The 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, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to any Configuration Management Framework.

- (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 the Contract.
- (c) The Contractor:
 - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal, any Rail Transport Agency or the ASA of their respective functions and powers either as an AEO or under any legislation, the ASA Charter or the Configuration Management Framework; and
 - (ii) acknowledges and agrees that:
 - (A) there are many Authorities with jurisdiction over aspects of the Contractor's Activities, the Permanent Light Rail Corridor, and other matters affecting and affected by the Contractor's Activities;
 - (B) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
 - (C) it bears the full risk of all occurrences of the kind referred to in clause 1.6(c)(ii)(B) and will not be entitled to make, and the Principal will not be liable for, any Claim arising out of or in any way in connection with such occurrences.

1.7 Contract structure

- (a) The Works are divided into the:
 - (i) Portion 1 Barrier Works; and
 - (ii) Portion 2 Optional Works.
- (b) The Contractor must complete the Portion 1 Barrier Works in accordance with the Contract.
- (c) In relation to the Portion 2 Optional Works, at the latest by the date which is 10 Business Days (or any longer time agreed by the parties in writing) after the Contractor has given the Principal a notice under clause 15.1(a), the Principal will direct the Contractor whether:
 - (i) the Contractor will complete the Portion 2 Optional Works for the benefit of the Principal pursuant to this Contract (being the Portion 2 Notice to Proceed);
 - (ii) the Contract will be novated to the SOM Contractor; or
 - (iii) the Portion 2 Optional Works will be deleted from this Contract and performed by:

- (A) the Contractor under a separate contract with the SOM Contractor; or
- (B) others.

1.8 Portions

(a) In this Contract:

(i) the expressions:

- (A) Administrative Completion;
- (B) Completion;
- (C) Date for Completion;
- (D) Date of Completion;
- (E) Defect;
- (F) Defects Liability Period;
- (G) liquidated damages;
- (H) Notice of Completion; and
- (I) Urgent Defect,

apply separately to each Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Portion; and

(ii) clauses 2, 5.1, 5.3, 11, 12, 15 and 16 apply separately to each Portion and references therein to the Works or the Contractor's Activities mean so much of the Works or the Contractor's Activities as are comprised in the relevant Portion.

(b) The Principal or the Principal's Representative may waive any of the requirements for Completion in respect of a Portion, by notice in writing to the Contractor.

1.9 SOM Novation

(a) Subject to the giving of a notice pursuant to clause 1.7(c)(ii), the Principal may at any time, in its sole discretion, novate the Contract to the SOM Contractor.

(b) If the Principal elects to novate the Contract to the SOM Contractor, the Principal will provide the Contractor with a duly completed SOM Deed of Novation and the Contractor must, at the Contractor's cost:

- (i) duly execute the SOM Deed of Novation and return it to the Principal within 5 Business Days of receipt of the SOM Deed of Novation;
- (ii) procure and deliver a replacement Unconditional Undertaking, in accordance with the provisions of the SOM Deed of Novation; and

- (iii) procure amendments to the Contractor's insurance policies, in accordance with the provisions of the SOM Deed of Novation.
- (c) If the Contractor fails to properly execute the SOM Deed of Novation within the time period required under clause 1.9(b), then for the purpose of executing the SOM Deed of Novation, the Contractor irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars and execute, sign, send and deliver in the name of the Contractor the SOM Deed of Novation and all notices, deeds and documents for that purpose.

1.10 Works and Works Brief Services after Completion

- (a) The Principal may direct:
 - (i) the design and construction of additional works ("**New Portion**"); and/or
 - (ii) the performance of additional Works Brief Services,

at any time prior to the Date of Administrative Completion of the last Portion to achieve Administrative Completion.
- (b) If the Principal directs a New Portion pursuant to clause 1.10(a)(i), then:
 - (i) (**Defects Liability Period**) the Defects Liability Period for the New Portion will commence on the completion of those works, and the Defects Liability Period for the other Works under this Contract will remain unaffected;
 - (ii) (**Unconditional Undertaking**) the Contractor must provide the Principal with an Unconditional Undertaking in respect of the New Portion, for an amount equal to 5% of the value of the New Portion;
 - (iii) (**Liquidated Damages**) the rate of liquidated damages in respect of the New Portion will be as agreed between the parties (or failing agreement, as reasonably directed by the Principal's Representative) and will be capped at an amount not exceeding 10% of the value of the New Portion;
 - (iv) (**Control of the Site**) if directed by the Principal, the Contractor will remain as principal contractor of the Site, and must satisfy its obligations under this Contract in relation to work, health and safety on the Site;
 - (v) (**Insurance**) the Contractor must maintain or take out all additional insurances which are reasonably required by the Principal; and
 - (vi) (**Pricing**) the parties will agree the Reimbursable Work Price for the New Portion, or in the absence of agreement, the Reimbursable Work Price for the New Portion will be as reasonably directed by the Principal's Representative.
- (c) If the Principal directs additional Works Brief Services pursuant to clause 1.10(a)(ii), then:
 - (i) (**Insurance**) the Contractor must maintain or take out all additional insurances which are reasonably required by the Principal; and

- (ii) **(Pricing)** the parties will agree the Reimbursable Work Price for the Works Brief Services, or in the absence of agreement, the Reimbursable Work Price for the additional Works Brief Services will be as reasonably directed by the Principal's Representative.
- (d) Any Contractor's Activities, Works or Works Brief Services carried out under this clause 1.10 must:
 - (i) be carried out diligently and within time frames agreed by the parties;
 - (ii) be completed to the standards stipulated in this Contract, as if:
 - (A) the New Portion are "Works"; and
 - (B) the new services are "Works Brief Services",under this Contract;
 - (iii) be undertaken in a manner which does not interfere with the SOM Contract or SOM Contractor; and
 - (iv) be otherwise in compliance with this Contract.
- (e) If the Principal's Representative issues a direction in relation to the pricing or rate of liquidated damages pursuant to this clause and the Contractor disagrees with such a direction, the Contractor may refer the matter to dispute in accordance with clause 19.

2 Parties' obligations

2.1 Contractor's obligations

The Contractor:

- (a) must commence the Contractor's Activities:
 - (i) in relation to Portion 1 Barrier Works, immediately; and
 - (ii) in relation to Portion 2 Optional Works, upon the issue of a Portion 2 Notice to Proceed;
- (b) must perform and complete the Contractor's Activities in accordance with, and to fulfil the requirements of:
 - (i) this Contract; and
 - (ii) Law,in a manner which is not less than Best Industry Practice, so that the Works are:
 - (iii) safe and Fit for Purpose; and
 - (iv) must fulfil and comply with the requirements of this Contract;
- (c) must, subject to clause 2.2(a), commence construction of:

- (i) Portion 1 Barrier Works within 40 Business Days of the Site Access Date; and
 - (ii) Portion 2 Optional Works in accordance with the Portion 2 Notice to Proceed; and
- (d) must perform the Works Brief Services in accordance with, and fulfil the requirements of:
- (i) this Contract; and
 - (ii) Law,
- in a manner which is not less than Best Industry Practice, so that the Works Brief Services are:
- (iii) safe and Fit for Purpose; and
 - (iv) fulfil and comply with the requirements of this Contract; and
- (e) must not do, or permit anything to be done, which would impede or interfere with the grant of a Site Audit Statement for the Site, at any stage; and
- (f) warrants that each Portion will be safe and Fit for Purpose upon Completion of the relevant Portion,

unless otherwise expressly stated, at its cost and in accordance with the requirements of this Contract.

2.2 The Principal's obligations

The Principal must:

- (a) give the Contractor sufficient access to the Site to allow it to commence work on the Site, on the date which is 10 Business Days after the last to occur of:
 - (i) in relation to:
 - (A) Portion 1 Barrier Works: the date the Contractor's Representative delivers a written notice to the Principal, notifying the Principal of the date it wishes to commence construction on the Site; and
 - (B) Portion 2 Optional Works: in accordance with the Portion 2 Notice to Proceed;
 - (ii) the date that the Contractor has provided the Principal's Representative with:
 - (A) any required Unconditional Undertaking and parent company guarantee required under clause 4;
 - (B) evidence of any insurance taken out by the Contractor which is required under the Contract; and
 - (C) evidence that the Contractor has complied with the requirements of Annexure G of the Works Brief and the TfNSW Standard Requirements in respect of Site access; and

(iii) the date specified in Item 13 of the Key Details,

("Site Access Date"). A delay or failure by the Principal to give the Contractor access of the Site or any part of the Site shall not constitute a breach of this Contract;

- (b) subject to other provisions of the Contract affecting access, continue to allow the Contractor sufficient access to the Site to enable it to carry out the Contractor's Activities; and
- (c) pay the Contract Sum.

2.3 Works Brief Services

- (a) The Contractor must perform the Works Brief Services efficiently, safely, reliably and in a manner that ensures that the Works Brief Services are undertaken in accordance with, and fulfil the requirements of:
 - (i) Law;
 - (ii) Best Industry Practice;
 - (iii) the Works Brief;
 - (iv) the TfNSW Standard Requirements; and
 - (v) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).
- (b) The Contractor must perform all such work and supply all such materials, services and equipment necessary for the performance of the Works Brief Services in accordance with this Contract.

3 Personnel

3.1 The Principal's Representative

- (a) Subject to clause 10.15(e)(i) the Principal's Representative will give Directions and carry out all of its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).
- (b) The Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of the Contract.
- (c) Except where the Contract otherwise provides, the Principal's Representative may give a Direction orally but will as soon as practicable confirm it in writing.

3.2 Replacement of the Principal's Representative

- (a) The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.
- (b) Any substitute Principal's Representative appointed under this clause 3.2 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.

3.3 The Principal's Representative's representative

The Principal's Representative may:

- (a) by written notice to the Contractor, appoint persons to exercise any of the Principal's Representative's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under clause 3.3(a) by notice in writing to the Contractor.

All references in the Contract to the Principal's Representative include a reference to a representative appointed under this clause 3.3.

3.4 Contractor's Representative

- (a) The Contractor must ensure that the Contractor's Representative is present on the Site at all times which are reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.
- (b) A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.
- (c) Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (d) If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint another representative within 10 Business Days of being notified by the Principal's Representative, subject again to the reasonable objection of the Principal's Representative.

3.5 Key Personnel

The Contractor must:

- (a) employ the Key Personnel in the jobs specified in Item 14 of the Key Details;
- (b) subject to clause 3.5(c), not replace the Key Personnel without the Principal's Representative's prior written approval; and
- (c) if any of the Key Personnel die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

3.6 Removal of persons

- (a) The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who, in the reasonable opinion of the Principal's

Representative, is guilty of misconduct or is incompetent or negligent, or whose involvement is not in the best interests of the Principal.

- (b) The Contractor must ensure that any person which is removed pursuant to clause 3.6(a) is not again employed in the Contractor's Activities.

4 Security

4.1 Form of security

- (a) Within 5 Business Days of the Award Date, the Contractor must provide the Principal with security in the form of two Unconditional Undertakings, each for an amount representing 2.5% of the Contract Sum for the Portion 1 Barrier Works (the Unconditional Undertaking being for an aggregate amount of 5% of the Contract Sum for the Portion 1 Barrier Works).
- (b) Within 5 Business Days of receiving the Portion 2 Notice to Proceed, the Contractor must provide the Principal with security in the form of two Unconditional Undertakings each for an amount representing 2.5% of the Contract Sum for the Portion 2 Optional Works (the Unconditional Undertaking being for an aggregate amount of 5% of the total Contract Sum for the Portion 2 Optional Works).
- (c) The Unconditional Undertakings must be issued by a bank:
 - (i) which is authorised under section 9 of the *Banking Act 1959* (Cth), which has its principal place of business in Australia; and
 - (ii) that has a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service Inc.
- (d) If the Contractor fails to provide any of the Unconditional Undertakings required by clause 4.1(a) or 4.1(b) then the Principal may retain from any payment otherwise due to the Contractor amounts up to the amount of the Unconditional Undertakings not provided under clause 4.1(a) or 4.1(b) ("**Cash Retention**").
- (e) The Cash Retention will be:
 - (i) the property of the Principal;
 - (ii) not held on trust for the Contractor; and
 - (iii) paid to the Contractor 5 Business Days after the Contractor provides the Unconditional Undertakings required by clause 4.1(a) or 4.1(b), as the case may be.
- (f) The Principal may:
 - (i) at any time, make demand on and convert the Unconditional Undertakings into cash; and
 - (ii) utilise the proceeds of the conversion of the Unconditional Undertakings and the Cash Retention:
 - (A) to pay for any costs, expenses or damages which the Principal claims that it has incurred, or might in the future incur, as a consequence of any act or omission of

the Contractor which the Principal asserts constitutes a breach of this Contract by the Contractor;

(B) to satisfy any amount which the Principal asserts is payable by the Contractor pursuant to the Contract; and

(C) in the event of:

(aa) a termination of this Contract by the Principal;
or

(ab) an Insolvency Event.

(g) It is not necessary for the Principal to establish the validity of the claim before demanding, converting, utilising or dealing with the Unconditional Undertaking or Cash Retention.

(h) The Contractor must not take any steps whatsoever to injunct the issuer of the Unconditional Undertakings or the Principal in respect of converting or dealing with the Unconditional Undertaking or Cash Retention.

(i) If the Principal demands, converts, utilises or deals with the Unconditional Undertaking or Cash Retention, the Principal:

(i) does not hold the amount received on trust for the Contractor;
and

(ii) is not obliged to pay the Contractor interest on that amount.

(j) If the Principal demands, converts, utilises or deals with the Unconditional Undertaking or Cash Retention and it is later established that the Principal was not entitled to demand, convert, utilise or deal with the Unconditional Undertaking or Cash Retention the Principal must return the amount demanded to the Contractor which will be the sole remedy of the Contractor arising out of the Principal's conversion of or dealing with the Unconditional Undertaking or Cash Retention.

(k) The Contractor is responsible for all stamp duty (including penalties, if applicable) payable in connection with:

(i) the Unconditional Undertaking; and

(ii) any conversion of the Unconditional Undertaking.

4.2 Release of security

(a) Subject to its rights to have recourse to the security, the Principal must:

(i) within 10 Business Days of achieving Administrative Completion for the Portion 1 Barrier Works, release from the security held under clause 4.1(a), an amount equal to the lesser of:

(A) 50% of the security required under clause 4.1(a); and

(B) an amount determined by the Principal's Representative to be reasonable to ensure the Principal's interests are not prejudiced;

- (ii) within 10 Business Days of achieving Administrative Completion for the Portion 2 Optional Works, release from the security held under clause 4.1(b), an amount equal to the lesser of:
 - (A) 50% of the security required under clause 4.1(b); and
 - (B) an amount determined by the Principal's Representative to be reasonable to ensure the Principal's interests are not prejudiced;
- (iii) release the balance of the security then held:
 - (A) when the last Defects Liability Period (including any extensions under clause 11.12) has expired;
 - (B) when the Contractor has provided the Principal with the final payment claim required by clause 14.9;
 - (C) when the Contractor has complied with all of its obligations under the Contract; and
 - (D) on the final resolution of any Dispute, including the payment of any costs orders and other judgement or award made in favour of the Principal.
- (b) If the Principal terminates the Contract pursuant to clause 18.7 then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it when the Contractor has complied with its obligations under clause 18.8(c).

4.3 Replacement security

- (a) If:
 - (i) the Principal holds security provided under clause 4.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor; or
 - (ii) the credit rating of the issuing bank falls below the rating required under clause 4.1(c),

the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security or within 48 hours of the credit downgrade (as applicable), provide the Principal with replacement security from a bank with the required credit rating in the form of an Unconditional Undertaking in exchange for the security which is being replaced.

- (b) If clause 4.3(a) applies in respect of any Unconditional Undertaking and the Principal has not received from the Contractor replacement security in the form of an Unconditional Undertaking at least 20 Business Days prior to the expiry date for that Unconditional Undertaking then, irrespective of anything contained in, and without limiting the Principal's rights, the Principal may make a demand under any Unconditional Undertaking for the entire amount payable under that Unconditional Undertaking and thereafter retain the proceeds.
- (c) Subject to the Principal's rights to use these proceeds, the proceeds from any demand made by the Principal pursuant to clause 4.3(b) will be paid to the Contractor at the same time as the Principal would have been

required to return the Unconditional Undertaking from which the proceeds were obtained.

- (d) The Contractor acknowledges that damages will not be an adequate remedy for the Principal if the Contractor fails to comply with its obligations under this clause 4.

4.4 Additional Security

- (a) If the Principal directs a Variation under clause 13.2 which increases the Contract Sum, the Principal may direct the Contractor to provide additional security so as to ensure that the amount of the Unconditional Undertaking then held by it equals 5% of the Contract Sum ("**Additional Security**").
- (b) The Contractor must provide Additional Security in the form of an Unconditional Undertaking within 10 Business Days of a Direction under clause 4.4(a).

4.5 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Unconditional Undertaking or Cash Retention, including the proceeds of any bank guarantee if it is converted into cash; and
- (b) does not hold the proceeds or money referred to in clause 4.5(a) on trust for the Contractor.

4.6 Parent company guarantee

If the Contractor is required in Item 16 of the Key Details to provide a parent company guarantee, the Contractor must, prior to or on the Award Date, provide that parent company guarantee to the Principal's Representative in the form set out in Schedule 10 and duly executed by the person named in Item 16 of the Key Details.

4.7 PPSA

- (a) To the extent that the PPSA applies to any goods, materials or other items supplied by the Contractor to the Principal, the Contractor warrants that:
 - (i) the supply of goods, materials or other items to the Principal does not breach any security agreement the Contractor has with a third party; and
 - (ii) the supply of goods, materials or other items to the Principal is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies the Principal against any Claims against, or costs, losses or damages suffered or incurred by the Principal directly or indirectly in connection with any infringement of, or Claim in regard to, any third party security agreement or security interest under the PPSA arising as a result of:
 - (i) the Contractor carrying out the Contractor's Activities; or

- (ii) goods, materials or other items supplied to the Principal by the Contractor infringing that third party's rights under the PPSA.

5 Risks and insurance

5.1 Risk of Works

Save to the extent that loss or damage is caused by an Excepted Risk, the Contractor will bear the risk of and indemnify the Principal against:

- (a) any loss of or damage to:
 - (i) the Works;
 - (ii) Plant, Equipment and Work and Temporary Works; and
 - (iii) unfixed goods and materials (whether on or off Site), including anything provided by the Principal to the Contractor or brought onto Site by a Subcontractor, used or to be used in carrying out the Contractor's Activities,until:
 - (iv) in the case of loss or damage to the Works, a Notice of Completion is issued for the Works; and
 - (v) otherwise, a Notice of Completion is issued for the Works to reach Completion; and
- (b) after the issue of a Notice of Completion for the Works, any loss of or damage to the Works arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Completion for the Works.

5.2 Contractor's indemnity

- (a) The Contractor will indemnify the Principal against any Loss incurred by the Principal in respect of:
 - (i) damage to, loss or destruction of, or loss of use or access to (whether total or partial), any real or personal property of the Principal (other than property referred to in clause 5.1(a));
 - (ii) any Claim against the Principal in respect of:
 - (A) any illness, personal injury to or death of any person; or
 - (B) damage to, loss or destruction of, or loss of use of or access to (whether total or partial) any real or personal property,caused by, arising out of, or as a consequence of, any act or omission of the Contractor or its Associates; and
 - (iii) any Claims by a third party in respect of loss of or damage to property or injury to or death of persons, caused by, or arising out of, or in any way in connection with, the Contractor's Activities.

- (b) The Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Principal's Representative or an Other Contractor contributed to the loss, damage, injury or death.

5.3 Reinstatement

- (a) During the period which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must, unless otherwise directed by the Principal's Representative:
 - (i) promptly replace or otherwise make good any loss of, or repair the damage to; and
 - (ii) (if the loss or damage arises as a result of a faulty or flawed design) redesign in accordance with the provisions of clause 6, the Works or a Portion, any Plant, Equipment and Work, the Site or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities.
- (b) The Contractor will bear the cost of such redesign, replacement, making good or repair, except to the extent the loss or damage was caused or contributed to by an act or omission of the Principal, the Principal's Representative or an Other Contractor.

5.4 Insurance by the Principal

- (a) The Principal must, from the Award Date, effect the insurance (if any) specified in Item 17 of the Key Details.
- (b) If the Principal is required under this clause 5.4 to effect any insurance, copies of the relevant insurance policies are included in Annexure C.
- (c) The insurance required under this clause 5.4 is subject to the exclusions, conditions and excesses noted in the policies, and the Contractor:
 - (i) must satisfy itself of the nature and extent of the Principal's insurance;
 - (ii) acknowledges that the insurances effected by the Principal do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits, and the Contractor may at its cost, take out insurance to:
 - (A) insure any risks not insured by the Principal's insurance; or
 - (B) cover any such exclusions, conditions or excesses in that insurance,which the Contractor wants to insure against or cover;
 - (iii) where it bears the risk of the relevant loss or damage under clause 5.1 or is required to indemnify the Principal under clause 5.2, must bear the cost of any excesses in the Principal's insurance;
 - (iv) will be responsible for paying or bearing all excesses in relation to insured matters under the insurances effected by the Principal in accordance with the policy terms; and

- (v) may effect its own insurance to cover the amount of any excess.

5.5 Contractor insurance obligations

The Contractor must:

- (a) from the Award Date effect and have in place the following insurance with insurers and on terms satisfactory to the Principal's Representative, unless the Principal is required to effect any such insurance in accordance with clause 5.4:
 - (i) Workers Compensation Insurance;
 - (ii) Construction Plant Insurance which provides cover against all physical loss or damage to any such Construction Plant;
 - (iii) Motor Vehicle Insurance which provides cover against:
 - (A) loss or damage to the Contractor's vehicles whether owner, hired or leased by the Contractor, in connection with the Contractor's Activities;
 - (B) third party property damage and injury or death to persons (other than as required by statute) in respect of all vehicles used in connection with the Contractor's Activities; and
 - (iv) Professional Indemnity Insurance which covers the Contractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Contractor or its Subcontractors in carrying out the works or the Contractor's Activities,for at least the amounts specified in Item 18 of the Key Details;
- (b) in relation to the Workers Compensation Insurance, ensure that each of its Subcontractors has similar insurance to the Workers Compensation Insurance covering the Subcontractors' employees;
- (c) on each anniversary of the date of this Contract, or as reasonably required by the Principal, provide the Principal's Representative with certificates of currency in a form acceptable to the Principal (acting reasonably); and
- (d) except in the case of Professional Indemnity Insurance, if the forms of the certificates of currency are not in a form acceptable to the Principal (acting reasonably), it may arrange a time to inspect the policies at the Contractor's insurance brokers' offices.

5.6 Period of insurance

The insurance which the parties are required to have in place under this clause 5 must be maintained:

- (a) in the case of Works Insurance, until the later of:
 - (i) the end of the last Defects Liability Period; and
 - (ii) the date upon which all Defects have been rectified in accordance with the Contract;

- (b) in the case of Public and Product Liability Insurance and Workers Compensation Insurance, until the later of:
 - (i) the end of the last Defects Liability Period; and
 - (ii) the date upon which all Defects have been rectified in accordance with the Contract;
- (c) in the case of Construction Plant Insurance, until the later of:
 - (i) the end of the last Defects Liability Period; and
 - (ii) the date upon which all Defects have been rectified in accordance with the Contract;
- (d) in the case of Motor Vehicle Insurance, until the later of:
 - (i) the end of the last Defects Liability Period; and
 - (ii) the date upon which all Defects have been rectified in accordance with the Contract;
- (e) in the case of Professional Indemnity Insurance, until the expiration of 6 years following the Date of Administrative Completion of the last Portion to achieve Administrative Completion;
- (f) in the case of Workers Compensation Insurance, until the later of:
 - (i) the end of the last Defects Liability Period; and
 - (ii) the date upon which all Defects have been rectified in accordance with the Contract; and
- (g) in the case of Pollution Liability (Including Asbestos) Insurance, until the later of:
 - (i) the end of the last Defects Liability Period; and
 - (ii) the date upon which all Defects have been rectified in accordance with the Contract.

5.7 Insurers

The insurance which the Contractor is required to have in place under clause 5.5 must be maintained with insurers that:

- (a) are authorised under the *Insurance Act 1973* (Cth) to carry on an insurance business in Australia and are supervised by the Australian Prudential Regulation Authority; and
- (b) have a credit rating of at least A- from Standard & Poor's or an equivalent rating from another internationally recognised rating agency.

5.8 Insurance obligations

- (a) The Contractor must ensure that it:
 - (i) does not do anything which prejudices any insurance;

- (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
 - (v) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.
- (b) The Contractor must ensure that each insurance which is required to be effected by it under this Contract covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the insured who suffers the loss that is claimed.
- (c) The insurances referred to in clause 5.5(a)(ii) and 5.5(a)(iii) must name the Principal and the Contractor and must provide that:
- (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering the Principal and the Contractor;
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
 - (iii) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy;
 - (iv) a notice to the insurer by one insured will be deemed to be notice by all insured parties; and
 - (v) the insurer:
 - (A) waives all rights, remedies or relief to which it might become entitled by way of subrogation against the Principal and the Contractor; and
 - (B) agrees to provide the Principal with a copy.

5.9 Failure to insure

If the Contractor fails to comply with its obligations under clauses 5.5 to 5.8, the Principal may, without prejudice to any other rights it may have, effect the insurance and the cost will be a debt due from the Contractor to the Principal.

5.10 Notice of potential Claim

- (a) The Contractor must:
- (i) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract;

- (ii) keep the Principal informed of subsequent developments concerning the claim; and
 - (iii) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences which may give rise to a claim by them.
- (b) This clause 5.10 will not apply to the extent that the relevant claim is brought by the Principal against the Contractor.

5.11 Cross liability

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

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

5.12 Liabilities unaffected

The effecting of insurance by the Contractor or the Principal and the approval of any insurance policy, terms of insurance or insurer by the Principal's Representative does not limit any obligations or liabilities of the Contractor (including the obligation to effect the insurances required by the Contract).

6 Design and documentation

6.1 The Principal's documents

The Principal must provide to the Contractor the documents specified in the Works Brief.

6.2 Contractor's design

- (a) The Contractor must design the Works in accordance with and to fulfil the requirements of the Works Brief, including the RAP.
- (b) The Contractor must:
 - (i) design the parts of the Works and the Temporary Works which the Contract requires it to design and for this purpose prepare all relevant Design Documentation; and
 - (ii) prepare all Design Documentation required for the performance of the Contractor's Activities.

6.3 RAP

- (a) The Principal is responsible for and accepts the risk of the adequacy and accuracy of the RAP.
- (b) If a change is required to deal with any inadequacy or inaccuracy in the RAP, then such change will be a Variation and a Compensable Cause.
- (c) The Contractor may not depart from, or amend, the RAP without the prior written approval of the Site Auditor and the Principal's Representative.
- (d) If the RAP is amended at the request or suggestion of the Contractor, then the Contractor will bear all risk in relation to any delay or cost increase resulting from such change.

6.4 Preliminary Design

Without limiting clause 6.2, the Contractor:

- (a) acknowledges that, prior to the Award Date, the Preliminary Design was created by or on behalf of the Principal;
- (b) acknowledges that the Preliminary Design is incomplete and may contain ambiguities, errors, inconsistencies, discrepancies or omissions;
- (c) warrants that, prior to the Award Date, it checked and carefully reviewed and considered the Preliminary Design to ensure that it is consistent with the requirements of the Contract, including that the works produced pursuant to the Preliminary Design are Fit for Purpose; and
- (d) acknowledges and agrees that the Contractor's warranties (including under clause 6.13), obligations and liabilities under the Contract and at Law, remain unaffected notwithstanding any one or more of the following:
 - (i) that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Works Brief;
 - (ii) that any ambiguities, errors, inconsistencies, discrepancies or omissions exist in the Preliminary Design; or
 - (ii) that any part of the Preliminary Design is described or represented by the Principal as having been completed to any particular design stage.

6.5 Contractor's design obligations

The Contractor:

- (a) must:
 - (i) develop the Design Documentation to incorporate the requirements of the Works Brief; and
 - (ii) prepare and complete the design of the Works and the Temporary Works (including the Design Documentation), so that they:

- (A) are Fit for Purpose; and
 - (B) otherwise comply with Law and the requirements of this Contract; and
- (b) warrants that:
- (i) it has fully and carefully checked, examined and considered the Preliminary Design, the Works Brief and the Approvals and that it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of them;
 - (ii) it remains responsible for ensuring that the Works and the Temporary Works will satisfy the requirements of Law and this Contract;
 - (iii) the completed design of the Works and the Temporary Works as represented in the Design Documentation will:
 - (A) satisfy the requirements of the:
 - (aa) Works Brief;
 - (ab) Law; and
 - (ac) other requirements of this Contract; and
 - (B) be and remain at all relevant times safe and Fit for Purpose; and
 - (iv) construction in accordance with the Design Documentation will satisfy the requirements of the:
 - (A) Works Brief;
 - (B) Law; and
 - (C) other requirements of this Contract.
- (c) The warranties given in clause 6.5(b) will not be affected by:
- (i) any design work carried out by others prior to the Award Date; or
 - (ii) termination of this Contract for any reason.

6.6 Submission of Design Documentation

- (a) The Contractor must submit all Design Documentation:
 - (i) progressively to the Principal's Representative in accordance with the Works Brief, the TfNSW Standard Requirements and the requirements of clause 6.7; and
 - (ii) at the times set out in:
 - (A) Schedule 21;
 - (B) the Works Brief; and
 - (C) the TfNSW Standard Requirements.

- (b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for review (including at the completion of the design of each design package) ensure that the Design Documentation is accompanied by the following documents:
- (i) the Contractor's Certificate of Design Compliance in the relevant form set out in Schedule 17;
 - (ii) the Designers' Certificates of Design Compliance in the relevant form set out in Schedule 17;
 - (iii) a register of records of design verification and reviews applicable to the design package and other compliance records required by this Contract (all records being satisfactorily completed and signed);
 - (iv) where the design the subject of the Design Documentation must have Approval prior to being implemented, then the Contractor must with the Design Documentation submit evidence (to the reasonable satisfaction of the Principal's Representative) of the relevant Approval, including for those documents in the Works Brief which are required to be authored or reviewed by a Certified Consultant, evidence of such author or review by the Certified Consultant;
 - (v) a register of any outstanding design non-conformities, non-compliances and unresolved issues;
 - (vi) a register of deficiency notices and evidence of their close out; and
 - (vii) a register of concessions (if any) granted for non-conforming Design Documentation.

6.7 Submission of Design Documentation for review by the Principal

- (a) The Contractor must submit the Design Documentation which is required to be submitted for the review of the Principal or the Principal's Representative under a provision of this Contract:
- (i) in accordance with the times stated in this Contract, or where no times are stated, progressively and in a timely manner to ensure that the Contractor's Activities are commenced, progressed and completed by the times required under this Contract, and by the times or within the periods:
 - (A) identified in the Works Brief and TfNSW Standard Requirements, which is not rejected by the Principal's Representative; or
 - (B) in the absence of a time or period in the Works Brief or TfNSW Standard Requirements, required by the Principal's Representative; and
 - (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - (A) the Design Documentation; and
 - (B) the provision of this Contract under which the Design Documentation is submitted.

- (b) Design Documentation will be deemed not to have been submitted to the Principal's Representative unless and until:
 - (i) the Design Documentation covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the Contractor has otherwise complied with this clause 6, in addition to any other requirement of this Contract relating to the submission of that Design Documentation.
- (c) The Principal's Representative may:
 - (i) direct that any Design Documentation the Contractor:
 - (A) previously submitted prior to the Award Date is Design Documentation that is to be reviewed under the provisions of this clause 6.7; and
 - (B) is obliged to submit will be reviewed under the provisions of this clause 6.7;
 - (ii) after the submission of Design Documentation that satisfies the requirements of clause 6.7(a) and 6.7(b), review the Design Documentation, or any resubmitted Design Documentation, prepared and submitted by the Contractor; and
 - (iii) where Design Documentation is submitted or resubmitted in accordance with this Contract, the Principal or the Principal's Representative may:
 - (A) reject the Design Documentation (and state its reasons) if in its opinion the Design Documentation (or any part) does not comply with the requirements of this Contract;
 - (B) engage the Site Auditor to review the Design Documentation and the Site Auditor may make comments on the Design Documentation, or request clarification or additional information; or
 - (C) notify the Contractor that it has no (or has no further) comments to make,

within the later of:

 - (D) where a time or period is stated in the Works Brief or TfNSW Standard Requirements for specific Design Documentation, that time or the expiry of that period; and
 - (E) 15 Business Days from submission for all other Design Documentation.
- (d) If any Design Documentation is:
 - (i) rejected or deemed to be rejected, the Contractor must submit an amended Design Documentation to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 6.7 will re-apply; or

- (ii) not rejected and the Principal's Representative or the Site Auditor responds to the submission with comments, or requests clarification or additional information, the Contractor must respond to the comments or request within 10 Business Days or such other period as may be directed by the Principal's Representative.
- (e) If the Contractor:
- (i) responds to the Principal's Representative's or Site Auditor's comments or request within the period referred to in clause 6.7(d)(ii), if the Principal's Representative and/or the Site Auditor is not satisfied with the Contractor's response, the Principal's Representative must within 10 Business Days of receipt of the Contractor's response notify the Contractor that it is not satisfied that the response adequately deals with the comments; or
 - (ii) fails to respond to the Principal's Representative's comments or request within the period referred to in clause 6.7(d)(ii), or the Principal's Representative gives a notice under clause 6.7(e)(i):
 - (A) the Design Documentation will be deemed to be rejected; and
 - (B) clause 6.7 will re-apply.
- (f) The Contractor must not commence construction of any part of the Works or Temporary Works to which any Design Documentation submitted to the Principal's Representative applies, unless:
- (i) the Principal's Representative has notified the Contractor under clause 6.7(c)(iii)(C) that it has no (or has no further) comments to make;
 - (ii) the AFC Design Documentation exists for that part or element of the Works or Temporary Works; and
 - (iii) (for Portion 2 Optional Works), the Principal's Representative has issued a Portion 2 Notice to Proceed.
- (g) The Contractor must not amend for construction purposes any Design Documentation that has been submitted to the Principal's Representative and, in respect of which:
- (i) the Principal's Representative has given the Contractor the notice referred to in clause 6.7(c)(iii)(C); or
 - (ii) the relevant period of time in clause 6.7(c)(iii) has expired and the Principal's Representative has not rejected it or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and the Principal's Representative has not issued a notice under clause 6.7(e)(i)),
- unless the Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 6.7 will re-apply.
- (h) In considering, reviewing, commenting upon, or rejecting any Design Documentation, the Principal's Representative may:
- (i) consult with;

- (ii) take into account any views or requirements of; and
 - (iii) direct the Contractor to comply with the lawful requirements of, any relevant Authority.
- (i) The restrictions on the commencement of any part of the Works in this clause 6.7 are in addition to any restrictions that exist elsewhere in this Contract.

6.8 Interaction with SOM Contractor

- (a) As at the Award Date the Principal has not entered into the SOM Contract.
- (b) Following the execution of the SOM Contract the SOM Contractor may elect to require the Principal to amend the design of the Portion 2 Optional Works.
- (c) If the SOM Contractor makes that election then:
 - (i) the Principal may implement the change under this Contract through the Variation process in clause 13.9; and
 - (ii) the Contractor must liaise with the SOM Contractor to the extent reasonably required by the Principal's Representative.
- (b) The implementation of the Variation will not diminish the obligations of the Contractor under this Deed except to the extent that the Contractor expressly advises the Principal of such issues in the advice provided pursuant to clause 13.9.

6.9 Configuration Control Board

Where any Design Documentation comprises a design package which the Contract requires the Principal to submit to the Configuration Control Board, after this Design Documentation has been submitted for the review of the Principal's Representative under clause 6.5, and the period of time for review in clause 6.7 has expired and the Principal's Representative has not rejected the Design Documentation, the Principal will use reasonable endeavours to obtain a Configuration Change Acceptance Notice (where relevant) for the design package from the Configuration Control Board.

6.10 No obligation to review

- (a) The Principal's Representative and the Principal do not assume or owe any duty of care or other responsibility to the Contractor to review, or in reviewing, the Design Documentation submitted by the Contractor, including for errors, omissions or non-compliance with the Contract.
- (b) No review of, approval of, comments upon, rejection of, or failure to review, approve or comment upon or reject, any Design Documentation prepared by the Contractor or any other Direction by the Principal's Representative about the Design Documentation will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 13.2 unless it is described as a "Variation Price Request" under clause 13.1 or a "Variation Order" pursuant to clause 13.2 and describes the nature of the Variation;

- (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to Law; or
 - (ii) limit, prejudice or otherwise affect the Principal's rights against the Contractor, whether under the Contract or otherwise according to Law.
- (c) References in this Contract to "Approved for Construction" or "AFC" or their use by the Principal or the Principal's Representative or the processes referred to in this Contract involving those concepts occurring during development of the Design Documentation do not relieve the Contractor from its liability under this Contract in connection with the Design Documentation.
- (d) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Contract in any Design Documentation submitted.

6.11 Contractor proceeds at own risk

Provided that the Contractor has submitted to the Principal the required Design Documentation under clause 6.6, regardless of any review, comment, or recommendation by the Principal's Representative under this Contract, the Contractor may proceed at its own risk with carrying out the Works and the Contractor:

- (a) does so entirely at the Contractor's own risk and the Principal is not liable for, or in connection with, any Claim by the Contractor arising out of or in connection with having done so; and
- (b) must, if it is subsequently determined that any Design Documentation does not comply with this Contract, promptly:
 - (i) replace and rectify any Works that do not comply with this Contract; and
 - (ii) amend and resubmit the relevant Design Documentation,

at the Contractor's sole cost and expense.

6.12 Copies of Design Documentation

For the purposes of clause 6.2 and 6.5, the Contractor must submit or resubmit to the Principal's Representative, the number of copies specified in Item 19 of the Key Details of any Design Documentation.

6.13 Fitness for purpose

The Contractor warrants that:

- (a) all Design Documentation will be Fit for Purpose;
- (b) upon Completion the Works and each Portion, the relevant Works and Portion will be safe and Fit for Purpose; and
- (c) documents provided by the Principal under clause 6.1 are suitable for their purposes under the Contract.

6.14 IP warranties and representations

The Contractor warrants and represents that:

- (a) it owns, or is licensed by the owner to use and sub-license, all Pre-existing Materials (and the Intellectual Property Rights in them), as contemplated by this Contract;
- (b) in carrying out the Contractor's Activities, the Contractor will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (c) the Principal's use of any Deliverables or Works for any purpose, and the exercise of the rights granted under clause 6.16 will not infringe the Intellectual Property Rights or Moral Rights of the Contractor or any third party.

6.15 Ownership

- (a) The Contractor agrees that, subject to clause 6.16(a), immediately upon the creation of any Deliverables, the Principal owns the Deliverables and the Intellectual Property Rights in the Deliverables.
- (b) The Contractor assigns to the Principal all existing and (upon creation) future Intellectual Property Rights subsisting in and to any Deliverables (including any Deliverables which have been jointly created, developed or brought into existence by the Principal and Contractor) excluding all Intellectual Property Rights in Pre-existing Materials.
- (c) The Contractor must do all things reasonably required, including executing any documents, to further effect the assignment or novation of the Intellectual Property Rights in the Deliverables from the Contractor to the Principal in this clause 6.15.
- (d) The Contractor must procure that its Personnel ensure that the ownership of the Intellectual Property Rights in the Deliverables which would, but for the application of this clause 6.15, vest in such Personnel, vest in or are transferred or assigned immediately to the Principal on and from the later of the date of creation and the Award Date.

6.16 Pre-existing Materials

- (a) Nothing in this Contract assigns or transfers the Intellectual Property Rights in Pre-existing Materials of one party to another.
- (b) The Contractor grants to the Principal a non-exclusive, perpetual, irrevocable, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-license any other third party to do so) all Pre-existing Materials (including all existing and future Intellectual Property Rights subsisting in them) to:
 - (i) allow the Principal the full benefit and enjoyment of the Deliverables and the Works and the Contractor's Activities;
 - (ii) use the Pre-existing Materials:
 - (A) to procure any works, activities, goods or services for any further upgrade or refurbishment of the Deliverables and Works;
 - (B) to install, operate and maintain the Works;

- (C) to integrate the Works with any other infrastructure systems which are owned, operated or maintained by the Principal, any Rail Transport Agency, or any contractor which is engaged by the Principal or Rail Transport Agency (including the SOM Contractor); and
- (iii) disclose the Pre-existing Materials on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in clause 6.16(b)(ii).

6.17 Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, 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 Intellectual Property Rights in or associated with the Works, the Temporary Works or any Deliverables provided by the Contractor, any breach of a warranty or representation under clause 6.14 or any breach by the Contractor of clause 6.18.

6.18 Moral Rights

The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Deliverables and the Works to the extent necessary to ensure that the Principal may do or authorise any acts or omissions consistent with the ownership and licences granted by clauses 6.15 and 6.16 without infringing any Moral Rights.

6.19 Contractor to notify errors

The Contractor must review any documentation which makes up the Contract, and any revisions of and additions to such documentation issued by the Principal's Representative for the purposes of the Contractor's Activities, for any ambiguity, discrepancy, inconsistency, errors, contradictions or omissions and promptly notify the Principal's Representative of any ambiguity, discrepancy, inconsistency, such errors, contradictions or omissions of which the Contractor becomes aware for the attention and action of the Principal's Representative.

6.20 Resolution of ambiguities

- (a) The documents making up this Contract are complementary and are to be read as a single document that is mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all.
- (b) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, with those higher in the list having precedence over those lower in the list:
 - (i) the General Conditions of Contract
 - (ii) the Works Brief (and the schedules and attachments to the Works Brief);
 - (iii) the other schedules to the General Conditions of Contract; and
 - (iv) the Annexures to the General Conditions of Contract (excluding the Information Material and the Works Brief and schedules and attachments to the Works Brief).

- (c) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for construction purposes:
 - (i) the party must promptly give notice to the other; and
 - (ii) the Principal's Representative must instruct the Contractor as to the course it must adopt within 10 Business Days of the notice under clause 6.20(c)(i).
- (d) If the Principal's Representative's instruction under clause 6.20(c)(ii):
 - (i) is not consistent with the order of precedence set out in clause 6.20(b); and
 - (ii) (subject to clause 6.20(f)) causes the Contractor to incur more or less cost than a competent and experienced contractor (having the experience of a contractor that is an expert in carrying out work of a nature similar to the Contractor's Activities) could reasonably have anticipated if it had carefully examined the Contract documents on or before the Award Date,

then the difference in cost, as determined by the Principal's Representative, will be added to or deducted from the Contract Sum (as applicable).
- (e) If any ambiguity, discrepancy or inconsistency exists between the Works Brief and any part of the Design Documentation (which the Contractor is entitled to use for construction purposes under clause 6.5) then, unless otherwise directed in writing by the Principal's Representative, the Works Brief will prevail.
- (f) Despite the order of precedence set out in clause 6.20(b), if the documents making up the Contract stipulate different standards of quality, product workmanship, scope or finish, then the highest standard or most comprehensive scope will prevail. A direction by the Principal's Representative to apply the highest standard or the most comprehensive scope will not be a Variation.

6.21 Document management

- (a) The Contractor is committed to the use of the Principal's EDMS, for the efficient delivery of the Contractor's Activities.
- (b) The Contractor acknowledges and agrees that it will use the Principal's EDMS and participate in any related process as reasonably required by the Principal Representative during the term of this Contract.

7 Site and information

7.1 Contractor to inform itself

- (a) The Contractor warrants that it has, (and it will be deemed to have), done everything that would be expected of a prudent, competent and experienced contractor in:
 - (i) assessing the risks which it is assuming under the Contract; and

- (ii) ensuring that the Contract Sum contains allowances to protect it against any of these risks eventuating.
- (b) Any failure by the Contractor to have done any of those things will not relieve the Contractor of its obligation to carry out and complete the Contractor's Activities in accordance with the Contract.
- (c) The Contractor agrees that:
 - (i) the Information Documents do not form part of this Contract; and
 - (ii) where Information Documents form a schedule or annexure to this Contract, they do so only for the purposes of identification of that document.
- (d) The Contractor:
 - (i) acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
 - (ii) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
 - (B) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,

for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
 - (iii) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations;
 - (iv) warrants that it has the resources and expertise to perform the Contractor's Activities in accordance with this Contract; and
 - (v) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in clauses 7.1(d)(ii), 7.1(d)(iii) and 7.1(d)(iv).
- (e) Subject to clauses 7.2 and 7.8, the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - (i) the provision of, or the purported reliance upon, or use of the Information Documents to or by the Contractor or any other person to whom the Information Documents are disclosed; or
 - (ii) a failure by the Principal to provide any other information, data or documents to the Contractor.

7.2 Latent Conditions and Services

- (a) Subject to clause 7.2(b), Latent Conditions are:

- (i) physical conditions on the Site or its surroundings (including artificial things) which differ materially from the physical conditions which should reasonably have been anticipated by a competent and experienced contractor as at the date of the Contractor's tender, if such a contractor had:
 - (A) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering (including the Reports);
 - (B) examined all information (including the Reports) relevant to the risks, contingencies and other circumstances having an effect on the Contractor's tender and obtainable by the making of reasonable enquiries; and
 - (C) inspected the Site and its surroundings;
 - (ii) any Services on the Site which are:
 - (A) not identified in the Reports;
 - (B) not capable of otherwise having been anticipated by the Contractor at the time of the Contractor's tender if it had done the things referred to in clause 7.2(a)(i)(A), (B) and (C); and
 - (C) discovered only after the Contractor has undertaken potholing of the Services identified in the Works Brief (including drawings and specifications) or Reports to confirm their exact location.
- (b) Latent Conditions do not include:
- (i) weather conditions or physical conditions which are a consequence of weather conditions at the Site;
 - (ii) geotechnical conditions, except to the extent that such conditions reflect factually inaccurate data expressly set out in the Nominated Reports. Factual inaccuracy does not include any commentary, advice, or interpretation in connection with the data. Factual inaccuracy is confined to an express:
 - (A) value;
 - (B) quantity of material; or
 - (C) type of materials,
 in respect of a location actually sampled at the time of the taking of the sample; or
 - (iii) the chemical make-up or condition of the Site, including Contamination.
- (c) If during the execution of the Contractor's Activities, the Contractor becomes aware of a Latent Condition the Contractor must:
- (i) promptly; and
 - (ii) where possible, before the physical conditions are disturbed,

give a written notice to the Principal's Representative specifying:

- (iii) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
 - (iv) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
 - (v) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Completion (if any) as a result of dealing with the Latent Condition;
 - (vi) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
 - (vii) other details reasonably required by the Principal's Representative.
- (d) Notwithstanding clause 7.1, if a Latent Condition:
- (i) has a direct effect on the Contractor carrying out the Contractor's Activities; and
 - (ii) directly results in an increase in the Contractor's costs of carrying out the Contractor's Activities,

which a competent and experienced contractor could not have avoided or mitigated, and could not reasonably have anticipated at the Award Date, the Contract Sum will be increased by an amount determined by the Principal's Representative under clause 13.3(b) or 13.3(c)(ii) as if the Contractor's Activities required to deal with the Latent Condition were the subject of a Variation.

- (e) In making a valuation pursuant to clause 7.2(d) or determining an extension of time under clause 12, regard will not be had to any Contractor's Activities, additional costs or delays suffered or incurred more than 10 Business Days before the date on which the Contractor gives the written notice required by clause 7.2(c).

7.3 Site access

The Principal:

- (a) is not obliged to:
 - (i) provide the Contractor with sole access to the Site; or
 - (ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities; and
- (b) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

7.4 Management and control of the Site

During the periods in which the Contractor has access to the Site, or a part of the Site, under clause 7.3, the Contractor:

- (a) subject to clause 7.11, 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 affected by the Contractor's Activities in accordance with this Contract;
- (e) must, subject to the other requirements of this Contract and any Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities, including the Other Contractors;
- (f) must not impede access or Services to private property without the consent of the Principal's Representative and the relevant owner or occupier;
- (g) must ensure that existing buildings on the Site are preserved and protected from damage, subject to any Works required under this Contract;
- (h) must allow the Other Contractors and any person authorised in writing by them to access the Site, so that the Other Contractors can undertake their works;
- (i) must allow the SOM Contractor and any person authorised in writing by it to access the Site, in order to inspect the Portion 2 Optional Works, provided that:
 - (i) the Contractor has been provided with not less than 2 Business Days' notice;
 - (ii) the SOM Contractor or any person authorised in writing by it agree to adhere to all protocols of the Contractor applicable to the visit to the Site; and
 - (iii) the Principal shall reimburse the Contractor for all direct costs incurred on-Site as a result of the relevant Site visit; and
- (j) must not damage the work performed by the Other Contractors or their plant and equipment.

7.5 Land in addition to the Site

- (a) The Contractor must:
 - (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which are necessary or which it may require for the purposes of carrying out the Contractor's Activities ("**Extra Land**");
 - (ii) at its own cost carry out all activities and procure all Services necessary to make the Extra Land suitable for use by the Contractor;

- (iii) as a requirement in order to achieve Completion of the Works or any Portion:
 - (A) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (B) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate on terms satisfactory to the Principal's Representative or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands from the owner or occupier of, and from other persons having an interest in, such Extra Land.
- (b) The Contractor indemnifies the Principal against any Claim against, or costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with a Claim by any other person having any interest in any Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Principal's Representative or an Other Contractor contributed to the Claim, costs, losses or damages.

7.6 Contamination

- (a) The Contractor must take all measures required to protect workers and others in accordance with the Law, the WHS Guidelines and the TfNSW Standard Requirements.
- (b) Without limiting clause 7.6(a), the Contractor may undertake any investigations it considers reasonable or necessary to inform its design and delivery of the Works in accordance with the requirements of this Contract, prior to commencing any part of the Contractor's Activities on the Site.
- (c) In dealing with any Contamination, the Contractor must:
 - (i) take all measures necessary to protect workers and others in accordance with Law and the WHS Guidelines;
 - (ii) take all reasonable steps to ensure that the Contamination is quarantined from other in-situ or excavated materials so as to prevent cross-contamination;
 - (iii) provide waste classification reports and documents demonstrating that cross-contamination has not occurred;
 - (iv) dispose of any waste or Contaminated material arising from performance of the Contractor's Activities from the Site in accordance with the Voluntary Management Proposal, the RAP and the Law;
 - (v) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Site holds all relevant Approvals; and
 - (vi) ensure that its Personnel 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.

(d) The Contractor must indemnify the Principal against any Claim against, or costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to:

(i) comply with any obligation under this clause 7.6; and

(ii) satisfy the requirements of the RAP,

provided that the Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Principal's Representative or an Other Contractor may have contributed to the Claim, costs, losses or damages.

(e) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the discovery of Contamination or the discharge of the Contractor's obligations under this clause 7.6.

7.7 Contamination caused by the Contractor

(a) The Contractor must perform the Contractor's Activities in a manner which ensures that the Contractor's Activities and the Works do not cause or threaten to cause Pollution, Contamination or Environmental Harm of, on, under or outside the Site.

(b) The Contractor is responsible for, and must make good, all Pollution, Contamination and Environmental Harm which:

(i) arises from the performance of the Contractor's Activities; or

(ii) is not identified within the Information Documents.

(c) Any Pollution, Contamination or Environmental Harm which is not identified within the Information Documents is taken to be Pollution, Contamination or Environmental Harm arising from the performance of the Contractor's Activities within the meaning of this clause 7.7(b)(i) unless the Contractor can prove that the relevant Pollution, Contamination or Environmental Harm was not caused or contributed to by the Contractor in the performance of the Contractor's Activities.

(d) The Contractor must in respect of all Pollution, Contamination or Environmental Harm arising from the performance of the Contractor's Activities:

(i) notify the Principal's Representative in writing within 5 Business Days of becoming aware of the existence of any Pollution, Contamination or Environmental Harm arising from the performance of the Contractor's Activities, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request;

(ii) promptly after providing a notice under clause 7.7(d)(i), submit a notice for the review of the Principal's Representative containing details of the steps which the Contractor proposes to take to investigate, remediate, dispose of, manage, monitor, contain or otherwise deal with the Pollution, Contamination or Environmental Harm arising from the performance of the Contractor's Activities so that the Site is remediated to a standard suitable in order to comply with the requirements of this Contract ("**Remediation Steps**");

- (e) The Contractor must in respect of all Pollution, Contamination or Environmental Harm which is not identified within the Information Documents, but is found on Site:
 - (i) notify the Principal's Representative in writing within 5 Business Days of becoming aware of the existence of any Pollution, Contamination or Environmental Harm which is not identified in the Information Documents, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request;
 - (ii) If the Contractor considers that it has not caused the Pollution, Contamination or Environmental Harm then, promptly after providing a notice under clause 7.7(e)(i), submit a notice for the review of the Principal's Representative containing:
 - (A) evidence to prove that the relevant Pollution, Contamination or Environmental Harm was not caused or contributed to by the Contractor in the performance of the Contractor's Activities; and
 - (B) details the Contractor's proposed Remediation Steps for the Pollution, Contamination or Environmental Harm which is not identified within the Information Documents, but is found on Site.
- (f) The Principal's Representative may:
 - (i) approve the Remediation Steps submitted in accordance with clause 7.7(d) or clause 7.7(e), in which case the Contractor must implement the Remediation Steps; or
 - (ii) reject the Remediation Steps submitted in accordance with clause 7.7(d) or clause 7.7(e), in which case the Contractor must re-submit a Remediation Steps and clause 7.7(d), clause 7.7(e) and this clause 7.7(f) will re-apply.
- (g) The Contractor must:
 - (i) clean up all Pollution, Contamination and Environmental Harm arising from the performance of the Contractor's Activities in accordance with the approved Remediation Steps;
 - (ii) clean up all Pollution, Contamination and Environmental Harm which is not identified within the Information Documents, but is found on Site and is determined to be the Contractor's responsibility pursuant to clause 7.7(c), in accordance with the approved Remediation Steps;
 - (iii) comply with all Directions of any Authority regarding cleaning up Pollution, Contamination and Environmental Harm; and
 - (iv) dispose of any waste or contaminated material arising from performance of the Contractor's Activities from the Site in accordance with the Voluntary Management Proposal, the RAP and the Law.
- (h) If required by the Principal following an incident which constitutes an offence under a relevant environmental Law which is caused or contributed to by the Contractor, the Contractor must, as a condition

precedent to Completion, provide the Principal with a report authored or reviewed by a Certified Consultant:

- (i) certifying that Pollution, Contamination and Environmental Harm of, on, under or outside the Site arising from the performance of the Contractor's Activities has been properly removed, made good and disposed of in accordance with this clause 7.7 and the Law; and
 - (ii) which expressly states that the report has been prepared for the benefit of the Principal and that the Principal can rely upon the report.
- (i) Notwithstanding any terms of this clause 7.7, the Contractor will not be in breach of any of these provisions where the relevant Contamination, Pollution, Environmental Harm, disposal of waste or contaminated material is in accordance with this Contract and all applicable laws and Approvals and other requirements of any Authority.
 - (j) The Contractor must indemnify the Principal against any Claim against, or costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 7.7, provided that the Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Principal's Representative or an Other Contractor may have contributed to the Claim, costs, losses or damages.
 - (k) Subject to clause 7.2, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the discovery of Contamination or the discharge of the Contractor's obligations under this clause 7.7.

7.8 Valuable finds

- (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 "**Valuable Finds**") are, and will as between the Contractor and the Principal be and remain, the property of the Principal.
- (b) The Contractor must:
 - (i) immediately notify the Principal's Representative if it discovers a Valuable Find;
 - (ii) ensure the Valuable Find is protected and not lost, removed, disturbed or damaged; and
 - (iii) comply with any directions of the Principal's Representative and all Laws in relation to the Valuable Find.
- (c) Notwithstanding clause 7.1:
 - (i) the Contract Sum will be increased by the extra costs reasonably incurred by the Contractor as determined by the Principal's Representative in complying with the Principal's Representative's directions under this clause 7.8; and
 - (ii) the Contractor will be entitled to make a claim for an extension of time under clause 12.9 in respect of any delays the Contractor

suffers in complying with the Principal's Representative's directions,

but only to the extent that the Valuable Find was not capable of having been anticipated by the Contractor at the time of the Contractor's tender if it had done the things referred to in clauses 7.2(a)(i)(A), (B) and (C).

7.9 Services

- (a) The Contractor:
- (i) must obtain, pay for, contract for the provision of, acquire or otherwise procure or provide any Services and all connections for all Services it requires to perform the Contractor's Activities;
 - (ii) must investigate, protect, relocate, modify and provide for all Services necessary for it to comply with its obligations under the Contract and all Approvals;
 - (iii) must not, without the Principal's Representative's prior written consent, obtain any Services or connect any Services to the Works, Temporary Works or the Site that are not necessary to allow the Contractor to carry out the Contractor's Activities;
 - (iv) must obtain the Principal's Representative's prior written consent in respect of any new connections for Services or changes or modifications to existing connections for Services;
 - (v) must consult with and keep the Principal fully informed as to the Contractor's dealings with the Authorities providing the Services;
 - (vi) must ensure there are no unplanned disruptions to the Services in carrying out the Contractor's Activities and that planned disruptions to the Services are minimised and that otherwise no Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the Contractor's Activities;
 - (vii) must ensure that maintenance points for Services are located within the Site and only with the prior written consent of the Principal's Representative;
 - (viii) assumes the risk of the availability of Services (in so far as they affect the Contractor's Activities);
 - (ix) must provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this Contract, including any such devices reasonably required by the Principal's Representative; and
 - (x) must cooperate and coordinate with the owners of all Services, and implement their requirements as part of the Contractor's Activities.
- (b) The Contractor indemnifies the Principal against any Claim against, or costs, losses or damages suffered or incurred by, the Principal arising out of or in any way in connection with:
- (i) any damage to, disconnection or destruction of, interference with, interruption or disruption to any Service arising out of or in

any way in connection with the Contractor's Activities (including any act or omission of the Contractor or its Associates); or

- (ii) a failure by the Contractor to comply with any obligations under this Contract with respect to the Service,

provided that the Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Principal's Representative or an Other Contractor contributed to the Claim, costs, losses or damage.

- (c) Subject to clause 7.2:

- (i) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the existence, location, condition and availability of Services required for the execution of the Contractor's Activities; and
- (ii) the Contractor is responsible for, and assumes the risk of, all additional work, increased costs and any other Loss, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.

7.10 Contractor's obligation to provide access

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

- (a) minimise disruption or inconvenience and provide safe access to:
 - (i) the Principal, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and
 - (ii) others having a right of access to the Site, including the SOM Contractor and the Site Auditor;
- (b) give the Principal's Representative, the Principal, the Site Auditor and any person authorised by either the Principal's Representative or the Principal immediate access to the Works, the Site or any areas off-Site where Contractor's Activities are being carried out, provided that the Principal, the Site Auditor and the Principal's Representative have complied with all of the Contractor's reasonable site induction, work health and safety procedures; and
- (c) provide the Principal, the Site Auditor and the Principal's Representative with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

7.11 Work health and safety

- (a) In this clause 7.11, the terms "construction work", "construction project", "principal contractor" and "workplace" have the same meanings assigned to those terms under the WHS Legislation.
- (b) Without limiting the Contractor's obligations under any other provision of the Contract, for the purpose of the WHS Legislation the Principal hereby:

- (i) appoints and engages the Contractor as principal contractor in respect of any construction project forming part of the Works and Temporary Works or the Contractor's activities; and
 - (ii) authorises the Contractor to have management and control of each workplace at which such work or activities are to be carried out and to discharge the duties of a principal contractor, under the WHS Legislation.
- (c) The Contractor warrants that it has the skills, qualifications and experience necessary to discharge the duties of a principal contractor under WHS Legislation and accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (d) The Contractor's engagement and authorisation as principal contractor will continue:
- (i) until the Date of Completion of the Works (or the Date of Completion of each Portion, as applicable); and
 - (ii) while ever any rectification work that forms part of a construction project (as that term is defined under the WHS Legislation) is carried out during the Defects Liability Period,
- unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to Law.
- (e) The Contractor must prepare and submit the Project Work Health and Safety Management Plan to the Principal's Representative for approval (such approval not to be unreasonably withheld) before the Principal will be required to provide access to, or possession of the Site.
- (f) No comment upon nor any review, acceptance or approval of the Project Work Health and Safety Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.
- (g) Without limiting its obligations, the Contractor must:
- (i) comply, and must ensure that its Subcontractors, Personnel and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter), the Project Work Health and Safety Management Plan and any Safety Management System, as well as Best Industry Practice and Government Policies and Guidelines relevant to work health and safety and rehabilitation matters;
 - (ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, the Project Work Health and Safety Management Plan and Safety Management System and Best Industry Practice and Government Policies and Guidelines relevant to work health and safety and rehabilitation matters, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information, document, register, record or material relevant to work health and safety matters;

- (iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters (including Incidents) arising out of, or in any way in connection with, the Contractor's Activities including in connection with any Subcontractor activities or activities on Site;
 - (iv) insofar as the Contractor, in carrying out the Contractor's Activities is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and
 - (v) 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.
- (h) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any Claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed on a principal contractor under the WHS Legislation or otherwise comply with this clause 7.11.
- (i) The Contractor:
- (i) acknowledges and agrees that it is accredited under the WHS Accreditation Scheme; and
 - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 5 of the *Fair Work (Building Industry) Act 2012* (Cth) is carried out.

8 Voluntary Management Proposal

8.1 Voluntary Management Proposal

The Contractor acknowledges and agrees that:

- (a) the Principal has prepared the Voluntary Management Proposal and has provided copies of the Voluntary Management Proposal to the Contractor;
- (b) it must comply with, satisfy, carry out and fulfil the obligations of the Principal, and support the Principal, in order to satisfy the conditions and requirements of the Voluntary Management Proposal (including completing the Works in accordance with the RAP proposed under the Voluntary Management Proposal);
- (c) it must provide the Principal with all documentation and information which is reasonably necessary in order for the Principal to negotiate the Voluntary Management Proposal (or any amendment or addition to the Voluntary Management Proposal) with the EPA;
- (d) it must comply with any reasonable directions of the Principal's Representative in relation to compliance with the relevant obligations and conditions and requirements of the Voluntary Management Proposal and the RAP;
- (e) it must discharge its obligations under this Contract, so as to satisfy and discharge the Principal's corresponding obligations under the Voluntary Management Proposal and the RAP, in such a way that the Principal

may obtain all benefits and remedies under the Voluntary Management Proposal;

- (f) it must not do, or omit to do, anything which causes the Principal to be in breach of its obligations under the Voluntary Management Proposal; and
- (g) it must provide the Principal with all reasonable assistance in preparing all information that the Principal is required (or reasonably proposes) to provide to EPA the in connection with the Works.

8.2 Additional Voluntary Management Proposal

- (a) The Contractor acknowledges and agrees that the Principal may, at any time after the Award Date, make further or amended voluntary management proposals to the EPA ("**Additional Voluntary Management Proposal**").
- (b) If the Principal makes an Additional Voluntary Management Proposal:
 - (i) the Principal will use reasonable endeavours to negotiate the Additional Voluntary Management Proposal on terms consistent with this Contract; and
 - (ii) the Contractor will be required to comply with all Additional Voluntary Management Proposals in the same manner that the Contractor must comply with the Voluntary Management Proposal under clause 8.1.
- (c) If the Additional Voluntary Management Proposal requires a Variation to the Works or the Temporary Works, then the Principal's Representative must give a written notice to the Contractor directing a Variation under clause 13 in respect of the Additional Voluntary Management Proposal, after which the relevant adjustments will be made under clause 13.3.
- (d) If the Principal's Representative directs a Variation pursuant to clause 8.2(c), all references to the "Voluntary Management Proposal" in this Contract will also include the requirements of the Additional Voluntary Management Proposal.
- (e) Other than as set out in this clause 8.2, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Additional Voluntary Management Proposal.

9 SSI Application

- (a) The Contractor acknowledges and agrees that:
 - (i) the Principal has prepared the "Environmental Impact Statement" dated 22 August 2017 and has provided copies of the document to the Contractor as an Information Document; and
 - (ii) the "Environmental Impact Statement" referred to in clause 9(a)(i) seeks approval for among other things, the carrying out of Portion 2 Optional Works.
- (b) As soon as reasonably practicable after the Minister has granted the SSI Approval, the Principal's Representative must provide:

- (i) a copy of the SSI Approval; and
 - (ii) a list of conditions which the Contractor must comply with in carrying out Portion 2 Optional Works ("**SSI Approval Matrix**"),
to the Contractor.
- (c) If the Principal issues a Variation price request under clause 13.1 and subsequent Variation order under clause 13.2 in respect of Portion 2 Optional Works, it:
- (i) must comply with, satisfy, carry out and fulfil the conditions and requirements of the SSI Approval Matrix;
 - (ii) must not do, or omit to do, anything which may cause the Principal to be in breach of its obligations under the SSI Approval in so far as they relate to Portion 2 Optional Works; and
 - (iii) must provide the Principal with all reasonable assistance in preparing and providing to the Principal all information that the Principal is required (or reasonably proposes) to provide to any Authority in connection with Portion 2 Optional Works.
- (d) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the SSI Approval.

10 Construction

10.1 Description of Works

- (a) Subject to clause 6.20, the Contractor must construct the Works and the Temporary Works in accordance with:
- (i) this Contract;
 - (ii) Law;
 - (iii) Best Industry Practice;
 - (iv) the Works Brief;
 - (v) the TfNSW Standard Requirements;
 - (vi) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.7(f);
 - (vii) any Direction of the Principal's Representative given or purported to be given under a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and
 - (viii) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract);

so that the Works:

- (ix) are safe and Fit for Purpose; and
- (x) fulfil the requirements of and comply with:
 - (A) this Contract;
 - (B) Law;
 - (C) Best Industry Practice;
 - (D) the Works Brief;
 - (E) the TfNSW Standard Requirements;
 - (F) any Design Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.7(f);
 - (G) any Direction of the Principal's Representative given or purported to be given under a provision of the Contract, including any Variation directed by the Principal's Representative by a document titled "Variation Order"; and
 - (H) the other requirements of the Contract (including any performance guarantees or other performance levels or performance requirements stated in the Contract).
- (b) The Contractor must ensure that the Works are constructed within the relevant boundaries of the Site set out in Annexure F of the Works Brief.
- (c) The Contractor must perform all work that is not specifically mentioned in this Contract which can be reasonably inferred as being required for the proper completion of the Works as if that work was expressly stipulated in this Contract.

10.2 Construction Warranties

The Contractor warrants that:

- (a) construction will be carried out:
 - (i) in accordance with the Design Documentation which the Contractor is entitled to use for construction purposes, in accordance with clause 6.7(f);
 - (ii) in accordance with Best Industry Practice;
 - (iii) in a manner which satisfies the requirements of this Contract; and
 - (iv) in a manner that does not disrupt or cause nuisance to any person or have any detrimental effect on any land or activities carried out in the vicinity of the Site;
- (b) the Works and Temporary Works will be completed in accordance with, and will satisfy the requirements of, this Contract; and
- (c) the Works will, upon Completion be safe and Fit for Purpose.

10.3 All work included

- (a) The Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all Plant, Equipment and Work, Temporary Works, materials and other work necessary for the Contractor's Activities, whether or not expressly mentioned in the Works Brief, any Design Documentation or this Contract.
- (b) Any such Plant, Equipment and Work, materials, Temporary Works and other work:
 - (i) must be undertaken and provided by the Contractor at its own cost;
 - (ii) forms part of the Contractor's Activities and will not constitute a Variation; and
 - (iii) will not entitle the Contractor to make a Claim except as expressly provided for in this Contract.

10.4 Compliance with Law

The Contractor must:

- (a) in carrying out the Contractor's Activities, comply with all applicable Law and Codes and Standards;
- (b) ensure that its Subcontractors, in performing the Contractor's Activities, comply with all applicable Law and Codes and Standards;
- (c) ensure that the Works and the Temporary Works comply with all applicable Law and Codes and Standards;
- (d) obtain all Approvals except for those specified in Item 20 of the Key Details, which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal;
- (e) unless otherwise specified in Schedule 4, comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in Item 20 of the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in Item 20 of the Key Details to comply with, carry out and fulfil;
- (f) comply with, carry out and fulfil the conditions and requirements of the EPA in relation to the Deliverables, Works and Temporary Works comply with the EPA;
- (g) prepare and give the Principal's Representative any documents that an Authority requires in order for the Principal to obtain the Approvals it requires to use the Works; and
- (h) before Completion of the Works or a Portion can be achieved under this Contract, ensure that it has obtained, complied with, carried out and fulfilled all conditions and requirements of all Approvals it is required to obtain under this Contract, including any Approvals, conditions, certifications or requirements which must be obtained, carried out or fulfilled to enable the Principal and any Rail Transport Agency to occupy and use the Works or Portion for its intended purpose.

10.5 Change in Law

If there is a Change in Law after the Award Date, then the additional costs necessarily and reasonably incurred by the Contractor in complying with the Change in Law, will be valued pursuant to clause 13.3(c).

10.6 Change in Codes and Standards

- (a) Where there is a Change in Codes and Standards:
- (i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:
 - (A) details of the Change in Codes and Standards; and
 - (B) an estimate of the Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and
 - (ii) Within 10 Business Days of the Contractor's notice under clause 10.6(a)(i), the Principal's Representative will either:
 - (A) direct the Contractor to disregard the Change in Codes and Standards; or
 - (B) direct a Variation under clause 13 in respect of the Change in Codes and Standards after which the relevant adjustments will be made under clause 13.3.
- (b) Other than as set out in clause 10.6(a)(ii)(B), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any change in Codes and Standards.

10.7 Change in Approval

- (a) Subject to clause 8 and clause 9, if a Change in Approval occurs which necessitates a Variation, the Contractor must:
- (i) if the relevant Approval was obtained by the Principal, within 10 Business Days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Approval taking effect; or
 - (ii) otherwise within 10 Business Days of the Change in Approval taking effect,
- notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Approval necessitates a Variation.
- (b) If the Contractor gives such a notice and the Change in Approval does necessitate a Variation, the Principal's Representative may direct a Variation under clause 13.2 after which relevant adjustments will be made under clause 13.3.
- (c) Other than as set out in clause 10.7(b), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any change in Approval or a new Approval.

10.8 Legal Challenge to Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Approval, a modification of an Approval, or compliance with any Approval, the Contractor must continue to perform its obligations under this Contract unless, as a result of that legal challenge, proceedings or action, it is otherwise:
- (i) ordered or directed by an Authority;
 - (ii) ordered by a court or tribunal; or
 - (iii) directed by the Principal or the Principal's Representative.
- (b) Subject to clause 10.8(c), the Principal must pay the Contractor the costs reasonably incurred by the Contractor as a direct result of an Authority order, court order, or a direction by the Principal referred to in clause 10.8(a) to the extent that such Authority order, court order, or direction:
- (i) applies to the Part 5 Approval or the SSI Approval; and
 - (ii) prevents the Contractor from achieving Completion of the Works or a Portion by the relevant Date for Completion.
- (c) Clause 10.8(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 10.8(a) is brought or upheld due to the Contractor's non-compliance with its obligations under this Contract or any Approval.

10.9 Third Party Agreements

If any Third Party Agreements exist, the requirements set out in Schedule 8 apply.

10.10 Subcontracting

- (a) Subject to clause 10.10(b), the Contractor may enter into Subcontracts for the performance of its obligations under this Contract.
- (b) The Contractor:
- (i) must not enter into any Subcontract with a Prohibited Subcontractor;
 - (ii) must obtain the prior written approval of the Principal's Representative (which may be conditional but which will not be unreasonably withheld), prior to entering into a Subcontract which has an initial subcontract price equal to or over the amount specified in Item 21 of the Key Details; or
 - (iii) agrees that any request by the Contractor for approval from the Principal's Representative to subcontract must be in writing and include such details as may be required by the Principal's Representative, including details of the proposed Subcontract conditions, and the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation), environmental compliance (including any environmental management system) and other performance management systems and proposed safe working procedures;

- (iv) acknowledges that, within 10 Business Days after a request by the Contractor for approval, the Principal's Representative will advise the Contractor whether the request is approved (and, if approved, any relevant conditions) or not and, where it is not approved, the reasons why approval is not given;
 - (v) must ensure that, if any Law requires that:
 - (A) a person:
 - (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - (ab) 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;
 - (vi) must not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of clause 10.10(b)(v) are met (including any requirement to be authorised, licensed, qualified or supervised);
 - (vii) if requested by the Principal's Representative or required by the WHS Legislation, must produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Contractor or Subcontractor (as the case may be) commences such work; and
 - (viii) must in all cases ensure that any Subcontractor engaged by the Contractor is sufficiently skilled, qualified and experienced to undertake the work the Subcontractor is to perform
- (c) The Contractor must ensure that each Subcontract which has an initial subcontract price equal to or over the amount specified in Item 21 of the Key Details:
- (i) effects and maintains professional indemnity insurance which:
 - (A) covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;
 - (B) covers the Subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in Item 18 of the Key Details;
 - (C) unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy,

includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and

- (D) remains in place at least until the expiration of a period referred to in Item 18 of the Key Details from completion of the relevant Subcontract works or professional services; and
- (ii) is obliged under the relevant Subcontract to comply with clause 10.10(c)(i).
- (d) The Contractor will be:
 - (i) fully responsible for the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and
 - (ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.
- (e) Whenever requested by the Principal's Representative, the Contractor must give the Principal's Representative details of each of its Subcontracts, including the name and address of the Subcontractor (and its Subcontractors), and the works, goods or services being provided under the Subcontract.
- (f) The Contractor must:
 - (i) ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in Item 21 of the Key Details or more includes provisions to the effect set out in Schedule 15 and a clause to the same effect as this clause 10.10(f)(i) that is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative;
 - (ii) 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 7 and provide this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor;
 - (iii) ensure that each Subcontractor (and their Subcontractors) executes a Confidentiality Undertaking and provides this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor;
 - (iv) procure that each of its Subcontractors engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Item 21 of the Key Details executes a deed in the form of Schedule 20 and provides this to the Principal's Representative within 5 Business Days of being engaged by the Contractor; and
 - (v) 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).

- (g) The Contractor must, before the Contractor can achieve Completion of the Works or each Portion, procure and provide the Principal's Representative with those warranties described in Schedule 12 or elsewhere in this Contract from the relevant Subcontractors undertaking or supplying the work or items the subject of the warranty. These warranties:
- (i) must be in the form set out in Schedule 12 and must be in favour of the Principal and any other entity nominated by the Principal's Representative from time to time, including any Rail Transport Agency; and
 - (ii) will not derogate from any rights that the Principal may have against the Contractor in respect of the subject matter of these warranties.
- (h) If directed by the Principal, the Contractor must, without being entitled to compensation, within 5 Business Days of the date of receipt by the Contractor of the direction, execute and deliver to the Principal a deed of assignment or deed of novation, in the form required by the Principal, such deed being between the Principal, the Contractor and the relevant Subcontractor.
- (i) Any direction given by the Principal and any assignment or novation occurring pursuant to this clause 10.10 will not:
- (i) relieve the 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 Contractor (including those arising out of any warranties given under this Contract); or
 - (iii) entitle the Contractor to make any Claim,
- whether under this Contract or otherwise according to any Law.
- (j) The Contractor will, from time to time, provide to the Principal a certificate confirming that each Subcontract and Subcontractor fulfils the requirements of this clause 10.10.

10.11 Cleaning up

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

- (a) at all times keep the Site and the Works clean and tidy and free of refuse;
- (b) comply with the requirements of the Approvals and the Works Brief; and
- (c) before the Contractor can achieve Completion of the Works or a Portion, remove all:
 - (i) rubbish, materials, Temporary Works and Plant, Equipment and Work from the part of the Site relevant to the Works or the Portion; and

- (ii) remove all spoil and unsuitable land fill from the Site, in order to meet the requirements of the Works Brief.

10.12 The Environment

The Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of TfNSW Standard Requirements for so long as any Contractor's Activities are carried out;
- (b) supervise the Subcontractor's activities and ensure that they are complying with all relevant Law, Approvals and TfNSW Standard Requirements in relation to environmental management on the Site and Extra Land; and
- (c) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any of the Principal's sustainability requirements, as set out in the Works Brief and TfNSW Standard Requirements) in the design and construction of the Works, Temporary Works and all other Contractor's Activities.

10.13 Environmental Representative

(a) The Contractor acknowledges and agrees that:

- (i) the Principal has appointed the Environmental Representative;
- (ii) the Environmental Representative is independent of the parties; and
- (iii) the Environmental Representative will have the authority and independence to advise the Principal's Representative to direct the Contractor as to reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts.

(b) The Contractor:

- (i) must comply with the directions of the Principal's Representative as contemplated by clause 10.13(a)(iii); and
- (ii) bears the full risk of complying with any directions given by the Principal's Representative as contemplated by clause 10.13(a)(iii) 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.

10.14 Site Auditor

(a) The Contractor acknowledges and agrees that:

- (i) the Principal has appointed the Site Auditor in accordance with the CLM Act;
- (ii) the Site Auditor is independent of the parties; and
- (iii) the Site Auditor has the authority and independence to advise the Principal's Representative to direct the Contractor as to reasonable steps the Contractor must take in order for the

Contractor to deliver the Works in accordance with the requirements of the Site Auditor.

- (b) The Contractor:
 - (i) must provide the Site Auditor with unimpeded access to the Site;
 - (ii) must provide the Site Auditor with such information or documents that the Site Auditor requires;
 - (iii) must comply with the directions of the Principal's Representative as contemplated by clause 10.14(a)(iii); and
 - (iv) bears the full risk of complying with any Directions given by the Principal's Representative as contemplated by clause 10.14(a)(iii) and none of the Principal, the Principal's Representative or the Site Auditor will be liable upon any Claim arising out or in any way in connection with such directions.
- (c) The Contractor must ensure that any documents prepared by third parties which are provided to the Site Auditor in accordance with clause 10.14(b)(ii) can be relied upon by the Principal and the Site Auditor as if the Principal and the Site Auditor commissioned those documents.

10.15 Independent Certifier

- (a) The Principal will enter into the Umbrella Independent Certifier Deed with the Independent Certifier after the execution of this Contract.
- (b) Under the terms of the Umbrella Independent Certifier Deed the Independent Certifier will be required to enter into the IC Deed for Remediation Contract on terms that are substantially the same as the form of deed contained Schedule 5.
- (c) The Contractor agrees to execute the IC Deed for Remediation Contract upon being presented with it for execution provided that the deed is in substantially the same as the form of deed contained Schedule 5.
- (d) The Principal will keep the Contractor informed of the progress of the negotiation of the IC Deed for Remediation Contract. If requested by the Principal the Contractor will participate in negotiations with the Principal and the Independent Certifier.
- (e) If the Contractor refuses to execute the IC Deed for Remediation Contract upon being presented with it for execution then the Principal may elect to:
 - (i) have the Principal's Representative perform the Assumed Remediation Contract Services and the Assumed Stage 2 Remediation Works Services (as specified in Schedule 5), in which case the Principal must ensure that the Principal's Representative acts reasonably; or
 - (ii) terminate the Contract under clause 18.7.
- (f) An act or omission (including negligence) of the Independent Certifier will not:
 - (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this Contract or otherwise according to Law; or

- (ii) prejudice or limit a party's rights against the other party whether under this Contract or otherwise according to Law.
- (g) The Principal and the Contractor acknowledge and agree that each certification, determination and confirmation given by the Independent Certifier pursuant to the IC Deed for Remediation Contract and this Contract, in the absence of an express provision in this Contract to the contrary, or manifest error of fact or Laws, are final and binding on the Principal and the Contractor under the IC Deed for Remediation Contract and this Contract.
- (h) The Principal and the Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
 - (i) to attend meetings; and
 - (ii) access to the Site,
 as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the IC Deed for Remediation Contract.
- (i) 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.
- (j) The Principal and the Contractor must appoint a Replacement Certifier as the successor to the Independent Certifier as soon as practicable after termination of the IC Deed for Remediation Contract.
- (k) The Principal and the Contractor must enter into a deed with the Replacement Certifier on terms substantially the same as the IC Deed for Remediation Contract.
- (l) In the event that the Principal and the Contractor do not agree on the identity of the Replacement Certifier within 10 Business Days of the termination of the IC Deed for Remediation Contract, the Replacement Certifier will be selected by the Principal.

10.16 Government requirements

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with the:
 - (i) Code of Conduct;
 - (ii) TfNSW Standard Requirements;
 - (iii) Government Policies and Guidelines; and
 - (iv) requirements of Schedule 3.
- (b) For the purposes of clause 10.16(a), any reference to "NSW government sector employees" or "Transport for NSW employees" in the Government Policies and Guidelines is to be read as a reference to the Contractor's employees

10.17 Co-operation with Interface Contractors

- (a) The Contractor must at all times:
- (i) permit Interface Contractors to carry out their work on the applicable parts of the Site or on any adjacent property to the Site:
 - (A) at the same time as the Contractor is performing the Contractor's Activities; and
 - (B) at the times agreed with the Interface Contractor,

but for this purpose ensure they have safe, clean and clear access to those parts of the Site or property adjacent to the Site required by them for the purpose of carrying out their work;
 - (ii) fully co-operate and consult with Interface Contractors;
 - (iii) do everything reasonably necessary to facilitate the execution of work by Interface Contractors with such assistance as may be reasonably required;
 - (iv) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Interface Contractors, and for this purpose:
 - (A) make proper allowance in all programs for the Interface Contractor's work;
 - (B) review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and any interfaces of the Interface Contractor's work with the Contractor's Activities;
 - (C) monitor the progress of the Interface Work;
 - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the Works or any Portion;
 - (E) ensure the effective coordination of the design and construction of the Works and Temporary Works with the design and construction of the Interface Work;
 - (v) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
 - (vi) protect the Works and Temporary Works from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors; and
 - (vii) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Interface Contractors.
- (b) To the extent the Contractor's Activities interface with Interface Contractor's work, the Contractor must:

- (i) provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their work with the Contractor's Activities;
- (ii) cooperate, meet with, liaise, and share information with the Interface Contractor;
- (iii) coordinate the Contractor's Activities with Interface Contractors' personnel and work;
- (iv) work directly with Interface Contractors where required to complete the design of the Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Contractor's work;
- (v) when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 Business Days (except in special circumstances) requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
- (vi) when any information is requested by Interface Contractors:
 - (A) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time period is reasonable;
 - (B) ensure that such information is provided to Interface Contractors by the requested dates; and
 - (C) ensure and warrant that the information provided is accurate;
- (vii) use its best endeavours to resolve any problems and work closely and iteratively, with Interface Contractors, including providing design options, iterations and work methodologies, to achieve the best solution to such problems, related to:
 - (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, Interface Contractors;
 - (D) the compatibility of the Works with the Interface Work;
 - (E) coordination in accordance with this clause 10.17; and
 - (F) technical issues with the information provided to, or received from, Interface Contractors.
- (viii) promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Contract or otherwise have an adverse effect upon the Contractor's Activities; and

- (ix) use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors.
- (c) In the event that the Contractor and any Interface Contractor fail to resolve a problem or dispute between them:
 - (i) the Contractor must give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem or dispute;
 - (ii) upon receipt of the Contractor's notice under clause 10.17(c)(i), the Principal's Representative must within 10 Business Days convene a meeting between the Contractor, the relevant Interface Contractor and any other relevant person; and
 - (iii) the parties must work in good faith with the Interface Contractor to resolve the problem or dispute.
- (d) The Contractor acknowledges that conditions similar to those in this clause 10.17 will apply to all Interface Contractors engaged by the Principal, whether working on the Site or on any other site.
- (e) The Contractor acknowledges and agrees:
 - (i) no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Deed or Variation); and
 - (ii) that except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with this clause 10.17, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any act or omission of an Interface Contractor.

10.18 Disputes with Interface Contractors

- (a) Where the Contractor has complied with all of its obligations in clause 10.17, it must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor.
- (b) Upon receipt of our notice under clause 10.18(a), the Principal's Representative may:
 - (i) within 5 Business Days convene a meeting between the Principal's Representative, the relevant Interface Contractor and any other relevant person; and
 - (ii) work in good faith with the Contractor and the Interface Contractor to resolve the issues or dispute.

10.19 Provisional Sum Work

- (a) For each item of Provisional Sum Work, the Principal's Representative will give the Contractor an instruction either deleting that item of Provisional Sum Work from the Contract or requiring the Contractor to proceed with the relevant work.
- (b) If any item of Provisional Sum Work is deleted from this Contract:

- (i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Item 22 of the Key Details;
 - (ii) the Principal may engage an Other Contractor to carry out the item of Provisional Sum Work; and
 - (iii) the Principal will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, the deletion of the item of Provisional Sum Work.
- (c) If the Contractor is instructed to proceed with an item of Provisional Sum Work, the Contractor will progressively prepare the Design Documentation for the item of Provisional Sum Work. The Contractor must inform the Principal's Representative when the Design Documentation is being discussed at design and other meetings and the Principal's Representative may attend all meetings.
- (d) Where the Contractor is instructed to proceed with an item of Provisional Sum Work, it must, unless otherwise directed by the Principal's Representative, be carried out under Subcontracts to be let after a competitive tender by the Contractor in accordance with such procedure as may be required by the Principal's Representative.
- (e) If the Contractor enters into a Subcontract for an item of Provisional Sum Work:
- (i) the Contract Sum will, if the amount tendered by the tenderer with whom the Contractor is instructed to enter into the subcontract is more or less than the amount allowed in Item 22 of the Key Details for that item of Provisional Sum Work, be adjusted by the amount of the difference, with no further allowance for overhead and profit; and
 - (ii) any Variation to that work will be dealt with under clause 13.
- (f) If the Principal's Representative directs that an item of Provisional Sum Work is not to be put out to tender in accordance with clause 10.19(d), the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:
- (i) the amount allowed for the item of Provisional Sum Work in Item 22 of the Key Details; and
 - (ii) either:
 - (A) an amount agreed between the Contractor and the Principal's Representative; or
 - (B) if they fail to agree, an amount determined by the Principal's Representative under clause 13.3(b) or 13.3(c)(ii) as if the item of Provisional Sum Work were a Variation.

10.20 Setting out

The Contractor must

- (a) set out the Works in accordance with the requirements of this Contract, based on information and survey marks identified by the Contractor that are suitable for their purposes;

- (b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
- (c) keep all survey marks in their true positions.

If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must at its cost rectify the error.

10.21 Survey

The Contractor must, before the contractor can achieve Completion of the Works or any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

- (a) a survey plan under the *Surveying and Spatial Information Act 2002* (NSW) for the Works or the relevant Portion that:
 - (i) has regard to the setback requirements in the Building Code of Australia;
 - (ii) has regard to any stratum lots whether above or below ground;
 - (iii) has regard to the survey control requirements of any relevant Rail Transport Agency;
 - (iv) shows the location of all Monuments (as defined in the *Surveying and Spatial Information Regulation 2006* (NSW)), and their relation to horizontal and vertical boundaries;
 - (v) shows all internal title boundaries;
 - (vi) shows all easements; and
 - (vii) shows the location of the Works and all Services; and
- (b) a survey certificate under the *Surveying and Spatial Information Regulation 2006* (NSW) addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
 - (i) the whole of the Works or the Portion has been constructed within the relevant boundaries of the Site stipulated in Annexure F of the Works Brief;
 - (ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law and this Contract; and
 - (iii) the survey information included in the configuration materials provided pursuant to the TfNSW Standard Requirements complies with the requirements of this Contract.

10.22 Plant, Equipment and Work

The Contractor must not remove from the Site any Plant, Equipment and Work without the Principal's Representative's prior written approval, except for the purpose of achieving Completion as contemplated under clause 10.11(c).

10.23 Working hours

Unless otherwise agreed between the Contractor and the Principal's Representative, the hours of work applicable to the Contractor's Activities to be carried out on Site are those set out in Item 23 of the Key Details.

10.24 Incident Management Reporting

- (a) The Contractor must establish clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the TfNSW Standard Requirements.
- (b) Should an Incident occur which:
 - (i) is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the TfNSW Standard Requirements; and
 - (ii) relates to rail safety, the Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal may without prejudice to any other right it has under this Contract immediately terminate the Contract by written notice to the Contractor.
- (d) The Contractor must, upon the occurrence (or imminent risk of the occurrence) of an Incident, manage the Incident in accordance with Best Industry Practice and all Law, or control or eliminate the adverse impact or the risk of such an Incident arising in the future (as the case may be).

10.25 Industrial relations

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

- (a) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
- (b) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
- (c) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;
- (d) before beginning work on the Site or Extra Land, submit to the Principal's Representative a statement detailing:
 - (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (ii) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and

- (iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
- (e) before beginning work on the Site or Extra Land, submit to the Principal's Representative a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - (i) payment of remuneration to employees;
 - (ii) annual leave provisions;
 - (iii) long service leave payment scheme registration;
 - (iv) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986 (NSW)*;
 - (v) workers' compensation insurance, including self-insurance arrangements;
 - (vi) superannuation fund membership and contributions; and
 - (vii) over-award payments such as redundancy fund contributions; and
- (f) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

10.26 AEO Status

The Contractor represents and warrants that it is, or it will employ, an AEO for the purposes of assuring the Contractors Activities, the Works, the Temporary Works and the Works Brief Services.

11 Quality and Defects

11.1 Construction

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

- (a) use workmanship:
 - (i) of:
 - (A) the standard prescribed in the Works Brief; or
 - (B) to the extent it is not so prescribed, a standard consistent which is Best Industry Practice; and
 - (ii) which is safe and Fit for Purpose;
- (b) use materials which:
 - (i) are new and comply with the requirements of the Works Brief, the Approvals and the Contract; and

- (ii) to the extent not fully described in the Contract, which are consistent with Best Industry Practice;
- (iii) are free from defects and other imperfections; and
- (iv) are safe and Fit for Purpose;
- (c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the Best Industry Practice for work of a nature similar to the Contractor's Activities;
- (d) carry out the Contractor's Activities in a manner that is safe to both people and the environment, in accordance with Law and Best Industry Practice for work of a nature similar to the Contractor's Activities;
- (e) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal's operations, or any Other Contractors;
- (f) ensure that the Contractor's Personnel engaged in carrying out the Contractor's Activities are suitably qualified and competent; and
- (g) comply with the requirements of the Contract.

11.2 Quality assurance

The Contractor:

- (a) must implement a quality assurance system representing Best Industry Practice and as required under the TfNSW Standard Requirements;
- (b) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Deed obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non compliance with that system;
 - (iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system; or
 - (iv) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any Defect including where any such failure arises from any negligence on the part of the Principal's Representative or other person.

11.3 Right to inspect

- (a) The Principal's Representative may at any time inspect the Contractor's Activities.

- (b) The Contractor acknowledges that:
 - (i) the Principal's Representative owes no duty to the Contractor to:
 - (A) inspect the Contractor's Activities; or
 - (B) review construction for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and
 - (ii) no inspection of the Contractor's Activities or review of construction by the Principal's Representative will in any way lessen or otherwise affect:
 - (A) the Contractor's obligations whether under the Contract or otherwise by Law; or
 - (B) the Principal's rights against the Contractor whether under the Contract or otherwise by Law.

11.4 Testing

- (a) The Contractor must carry out all Tests required by the Contract.
- (b) All Tests are to be carried out in accordance with any procedure:
 - (i) set out in the Contract which may apply to the Tests; or
 - (ii) if no procedure exists, as reasonably directed by the Principal's Representative.
- (c) Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.

11.5 Test not passed

If the Works fail any Test, the Contractor must:

- (a) promptly remedy the cause of the failure;
- (b) give the Principal's Representative notice of the cause and the remedial action taken; and
- (c) reschedule, re-perform and report on results of the Test until the Test is passed.

Neither the carrying out of a Test nor the issue of a Test report or certificate will release the Contractor from any of its responsibilities, obligations or liabilities under the Contract (including the repair or replacement or both of any part of the Works damaged during the course of any Test).

11.6 Further Tests and opening up

At any time before the expiry of the Defects Liability Period, the Principal's Representative may direct the Contractor:

- (a) to repeat any Test already carried out (whether or not the Test was previously passed);

- (b) to carry out a Test not otherwise required by the Contract; or
- (c) to open up or uncover any part of the Works for inspection or testing,

and the Contractor must comply with any such Direction as soon as practicable and must reinstate and make good any part of the Works so tested, inspected, opened up or uncovered.

11.7 Costs of testing

If:

- (a) the Principal's Representative directs the Contractor to carry out a Test (including a retest) or to open up or uncover any part of the Works for inspection or testing, and that Test or that opening up or uncovering:
 - (i) is not otherwise required by the Contract; or
 - (ii) does not relate to a Defect in respect of which the Principal's Representative gave an instruction under clause 11.9; and
- (b) the results of the Test or the opening up or uncovering show the work is in accordance with the Contract,

the reasonable additional costs necessarily incurred by the Contractor in complying with the Direction, as determined by the Principal's Representative, will be added to the Contract Sum.

11.8 Defects Liability

- (a) Subject to clause 11.9, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.
- (b) Without limiting clause 11.8(a), the Contractor must rectify any Defects in the Works or any Portion existing at Completion of the Works or that Portion as soon as possible after Completion of the Works or that Portion.
- (c) When rectifying Defects which existed at Completion, the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works, or Other Contractors, as is reasonably possible.

11.9 Defect Notification

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

- (a) requiring the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring the Contractor to investigate and report on any Defect (or any part of it) with the Contractor's proposed methods and methodologies for rectification and specifying the form of the report and the time within which this must be carried out;

- (c) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out;
- (d) advising the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
- (e) in respect of any Defect:
 - (i) to which clause 11.10(d) applies; or
 - (ii) discovered during a Defects Liability Period, whether or not a direction has first been given under clause 11.9(a) or 11.9(c),
 advising the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Variation to overcome the Defect, or any part of it.

11.10 Rectification of Defect

- (a) If:
 - (i) a direction is given under clauses 11.9(a), 11.9(b) or 11.9(c) (subject to clause 11.10(f)); and
 - (ii) the Contractor considers that the Defect referred to in the direction given under clauses 11.9(a), 11.9(b) or 11.9(c) is not a Defect,
 then the Contractor must issue the Principal with written notice notifying the Principal that the Contractor does not consider there to be a Defect, prior to complying with the direction.
- (b) If the Contractor issues the notice referred to in clause 11.10(a), the Principal's Representative may:
 - (i) confirm that the direction entitles the Contractor to make a Claim (other than an Excluded Claim) by the giving of a notice under this clause 11.10(b)(i), which notice will also confirm that clause 11.10(c) applies;
 - (ii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 11.10(b)(ii), which notice will also confirm that clause 11.10(c) applies, and the Contractor may issue a notice of dispute under clause 19.1;
 - (iii) deny that the direction entitles the Contractor to make a Claim by the giving of a notice under this clause 11.10(b)(iii), in which case the Contractor must:
 - (A) issue a notice of dispute under clause 19.1; and
 - (B) not comply with the direction unless and until:
 - (aa) the dispute is settled or determined under clause 19; and
 - (ab) the Principal's Representative subsequently gives notice to the Contractor that clause 11.10(c) applies; or

- (iv) withdraw the direction by giving a notice under this clause 11.10(b)(iv).
- (c) If the Principal's Representative gives a notice under clause 11.9(a), 11.9(b) or 11.9(c) (where clause 11.10(a)(ii) is not applicable) or clause 11.10(b)(i), 11.10(b)(ii) or 11.10(b)(iii)(B)(ab), the Contractor must rectify the Defect (or the part of it notified), investigate and report or carry out the Variation work (as the case may be):
- (i) within the time specified in the Principal's Representative's direction which will generally be limited to the periods during which the operational needs from time to time of any Rail Transport Agency will allow for access to the Works;
 - (ii) if after Completion of the Works or relevant Portion:
 - (A) at other times otherwise agreed with the Principal's Representative;
 - (B) in accordance with the requirements of any Rail Transport Agency and any other relevant Authority;
 - (C) so as to minimise the impact on the use of the Works or the Portion; and
 - (D) in a manner which causes as little inconvenience as possible to users of the Works or the Portion or the public, any Service or any access to the Works or the Portion; and
 - (iii) 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 in fact a Defect.
- (d) If:
- (i) the Contractor does not comply with clause 11.10(c); or
 - (ii) the Defect is an Urgent Defect,
- then the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Contract or otherwise at Law, give the Contractor a direction under clause 11.9(e) and have the rectification or Variation work carried out at the Contractor's expense, and the cost of the rectification or Variation work incurred by the Principal will be a debt due from the Contractor to the Principal.
- (e) The Contractor acknowledges and agrees that, in respect of carrying out the rectification of any Defects:
- (i) due to the operational needs of any Rail Transport Agency and/or other operational needs:
 - (A) access may be limited, delayed and rescheduled from time to time;
 - (B) the period of access may be compressed or limited to periods of line shutdown at night, on weekends or on public holidays; and

- (C) the Principal's Representative may direct the Contractor as to:
 - (aa) the times and dates for; and
 - (ab) the work method that must be employed in, carrying out Defect rectification works;
- (ii) its obligation to rectify Defects survives the expiry of the Defects Liability Period where it has received a direction under clause 11.9 prior to the expiration of any Defects Liability Period; and
- (iii) it will not be relieved of its liabilities or responsibilities whether under this Contract or otherwise according to Law by reason of the matters set out in this clause 11.10(e).
- (f) Where a direction is given under clause 11.9(a), the Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect unless:
 - (i) the Principal's Representative has issued a notice under clause 11.10(b)(i); or
 - (ii) the Principal's Representative has issued a notice under clause 11.10(b)(ii), in which case any entitlement which the Contractor has is not affected by proceeding as directed under clause 11.10(c) before the determination of any dispute.

11.11 Acceptance of work

If:

- (a) a direction is given under clause 11.9; and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Contract Sum will be reduced by the amount determined by the Principal's Representative which represents the cost of correcting the Defect (or the relevant part of it).

11.12 Extension of Defects Liability Period

If:

- (a) the Principal's Representative gives the Contractor a direction under clause 11.9 during the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part of it),

the Defects Liability Period will be extended for the work required by the instruction for a period of 12 months, commencing upon completion of the correction of the Defect (or the relevant part of it).

11.13 Legal rights not affected

Neither the Principal's rights, nor the Contractor's liability, whether under the Contract or otherwise according to Law in respect of Defects, whether before or after the expiry of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 11 or any other provision of the Contract;
- (b) the failure by the Principal or the Principal's Representative to exercise any such rights; or
- (c) any direction of the Principal's Representative under clause 11.9.

12 Time

12.1 Progress and time for Completion

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities with due expedition and without delay; and
- (b) use its best endeavours to achieve each Milestone by the relevant Milestone Date; and
- (c) achieve Completion of the Works or each Portion by the relevant Date for Completion.

12.2 Programming

- (a) The Contractor acknowledges and agrees that:
 - (i) that the Program contained in Schedule 22 has been prepared on the basis that the Award Date will be 4 May 2018; and
 - (ii) to the extent that the Award Date is later than 4 May 2018, the Contractor must, within 5 Business Days of the later Award Date, prepare a program that is identical except that it is that is adjusted to reflect the later Award Date, which will replace the Program contained in Schedule 22.
- (b) The Program will be used to monitor the progress of the Contractor's Activities.
- (c) The Contractor must:
 - (i) update the Program periodically, in accordance with the TfNSW Standard Requirements (unless otherwise required by the Principal's Representative) to take account of:
 - (A) changes to the Program which have been approved by the Principal's Representative in accordance with this Contract; and
 - (B) extensions of time granted under clause 12.9 and/or clause 12.11; and
 - (ii) must give the Principal's Representative copies of the updated Program for approval by the Principal's Representative.

12.3 Resequencing the Contractor's Activities

- (a) The Principal's Representative may, by written notice to the Contractor, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed.
- (b) If the Contractor can reasonably comply with the Principal's Representative's direction under clause 12.3(a), the Contractor must do so. If the Contractor cannot reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons.
- (c) For the avoidance of doubt a direction under this clause 12.3:
 - (i) will not constitute a direction under this clause 12.3 unless the direction is in writing and expressly states that it is a direction under this clause 12.3; and
 - (ii) will be valued as a Variation under clause 13.3(c).

12.4 Contractor not relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Principal's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract, especially (without limitation) the obligation to achieve:
 - (i) each Milestone by the Milestone Date; and
 - (ii) Completion of the Works or each Portion by the relevant Date for Completion;
- (b) evidence or constitute the granting of an extension of time or an instruction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the carrying out of the Principal's or the Principal's Representative's Deed obligations.

12.5 Acceleration chosen by Contractor

If the Contractor chooses to accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve a Milestone by the relevant Milestone Date, or Completion of the Works or each Portion by the relevant Date for Completion;
- (b) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected; and
- (c) the Contractor will not be entitled to make any Claim against the Principal in relation to such acceleration.

12.6 Delays entitling Claim

Subject to clause 12.8, if the Contractor is or will be delayed in achieving a Milestone or Completion of the Works or a Portion by a Qualifying Cause in a manner which will prevent it from achieving Completion of the Works or the Portion by the Date for Completion, unless that date is extended, the Contractor may claim an extension of time.

12.7 Extension of time Claim

To claim an extension of time under clause 12.6 the Contractor must:

- (a) within 10 Business Days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension to the Date for Completion which:
 - (i) gives detailed particulars of the delay and the occurrence causing the delay; and
 - (ii) states the number of days extension of time claimed, together with the basis of calculating that period, including evidence that the Contractor has been, or will be, delayed in achieving Completion in the manner set out in clause 12.8(c); and
- (b) if the effects of the delay continue beyond the period of 10 Business Days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim for an extension to the Principal's Representative:
 - (i) every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and
 - (ii) containing the information required by clause 12.7(a).

12.8 Conditions precedent to extension

It is a condition precedent to the Contractor's entitlement to an extension of time that:

- (a) the Contractor must give the written claims required by clause 12.7 as required by that clause;
- (b) the cause of the delay was beyond the reasonable control of the Contractor and was not caused or contributed to by the Contractor or the Contractor's Personnel; and
- (c) the Contractor must have actually been delayed in achieving a Milestone or Completion of the Works or a Portion by a Qualifying Cause, in a manner which will prevent it from achieving Completion of the Works or the Portion by the relevant Date for Completion, unless that date is extended.

12.9 Extension of time

Subject to clause 12.10, if the conditions precedent in clause 12.8 have been satisfied, the Date for Completion will be extended by a reasonable period determined by the Principal's Representative and notified to the Principal and the Contractor within 15 Business Days of the Contractor's written claim under clause 12.7(a), but where further Claims are submitted under clause 12.7(b), then within 15 Business Days of the last of those Claims.

12.10 Reduction in extension of time

The Principal's Representative will reduce any extension of time it would otherwise have notified to the Principal and the Contractor under clause 12.9 to the extent that the Contractor or the Contractor's Personnel:

- (a) contributed to the delay; or

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

12.11 Unilateral extensions

- (a) Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under this clause 12, the Principal's Representative may, in its absolute discretion at any time and from time to time by written notice to the Contractor and the Principal, unilaterally extend the Date for Completion.
- (b) The power to extend any Date for Completion under this clause 12.11:
 - (i) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 12.11 for the benefit of the Contractor; and
 - (ii) is not a Direction which can be the subject of a dispute pursuant to clause 19 or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

12.12 Delay costs

- (a) The Contractor will not be entitled to make any Claim against the Principal for delay arising out of or in any way in connection with delay or completion of the Contractor's Activities, however that delay may have been caused, other than under this clause 12.12.
- (b) Subject to clause 12.12(g), where an extension of time has been granted under clause 12.9 for a Compensable Cause, the Principal will pay the Contractor such reasonable additional direct on-site costs (if any) as are necessarily incurred by the Contractor as a result of that delay, as determined by the Principal's Representative, up to the maximum amount stated in Item 24 of the Key Details. The Contractor must take reasonable steps to mitigate the extra costs incurred by it as a result of the delay.
- (c) The Contractor may only include a claim for delay costs in the progress claim delivered immediately after the Date of Completion.
- (d) In calculating the amount to be paid pursuant to clause 12.12(b) the Principal's Representative shall only have regard to, and the Contractor's entitlement will be capped by reference to the lesser of:
 - (i) the number of days of extensions of time granted for Compensable Causes; and
 - (ii) the period by which the Date of Completion is later than the original Date for Completion.
- (e) The extra costs payable to the Contractor under this clause 12.12 will not include any profit, loss of profit or offsite overheads.
- (f) Any delay costs payable under this clause 12.12 will be a limitation upon the Principal's liability to the Contractor in respect of any Claim by the Contractor for any loss suffered or incurred by the Contractor arising out of or in any way in connection with any delay which the Contractor suffers or encounters in carrying out the Contractor's Activities as a result of a breach of Deed by the Principal.

- (g) The Principal's liability to the Contractor under this clause 12.12 is limited to, in respect of each category:
 - (i) the amount per day; and
 - (ii) the total aggregate amount,up to the amount stated in Item 24 of the Key Details.

12.13 Suspension

- (a) The Principal's Representative may instruct the Contractor to suspend and, after a suspension has been instructed, to re commence, the carrying out of all or a part of the Contractor's Activities.
- (b) If a suspension under this clause 12.13 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to carry out its obligations in accordance with this Contract:
 - (A) an instruction to suspend under this clause 12.13 will entitle the Contractor to be paid by the Principal the reasonable extra costs necessarily incurred by the Contractor as a result of the suspension as determined by the Principal's Representative;
 - (B) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (C) the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this clause 12.13(b)(ii).

12.14 Instruction to accelerate

If:

- (a) the Contractor gives the Principal's Representative a Claim under clause 12.7; or
- (b) the Principal's Representative forms the view that the progress of the Works or a Portion is not in accordance with the Program or Schedule 21;

the Principal's Representative may:

- (c) instruct the Contractor to accelerate the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay including, if required, in order to achieve:
 - (i) a Milestone by the relevant Milestone Date; and/or

- (ii) Completion of the Works or the Portion by the relevant Date for Completion; and
- (d) give such an instruction whether or not the cause of delay for which the Contractor has given its Claim under clause 12.7 otherwise entitles the Contractor to an extension of time to any relevant Milestone Date and/or Date for Completion.

12.15 Partial acceleration

If the Principal's Representative gives the Contractor an instruction to accelerate under clause 12.14 requiring it to accelerate the Contractor's Activities and it only applies to part of the delay, the Contractor's entitlement to any extension of time which it otherwise would have had will only be reduced to the extent to which the instruction to accelerate requires the Contractor to accelerate to overcome the delay.

12.16 Acceleration

If the Principal's Representative gives an instruction to the Contractor under clause 12.14:

- (a) the Contractor must accelerate the Contractor's Activities to overcome or minimise the extent and effect of some or all of the delay as instructed, including, if required, in order to achieve (using its best endeavours) the Milestone by the relevant Milestone Date and/or Completion of the Works or the Portion by the relevant Date for Completion;
- (b) if the Contractor would, but for the instruction, have been entitled to an extension of time to the Date for Completion for the cause of delay, the Contractor will be entitled to be paid the extra costs reasonably incurred by it and directly attributable to accelerating the Contractor's Activities; and
- (c) subject to clause 12.15, the Contractor will not be entitled to make any Claim against the Principal, arising out of, or in any way in connection with, the cause of delay and the instruction other than for the amount which is payable by the Principal under this clause 12.16.

12.17 The Principal's rights to liquidated damages not affected

The Principal's rights to liquidated damages under clause 15.4 for a failure by the Contractor to achieve Completion of the Works or a Portion by any relevant Date for Completion are not affected by the Principal's Representative giving the Contractor an instruction to accelerate under clause 12.14.

13 Variations

13.1 Variation price request

- (a) At any time prior to the Date of Completion of the Works or a Portion (but without limiting clauses 5.3 and 11.7), the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.
- (b) Within 10 Business Days of the receipt of a "Variation Price Request" the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (i) the adjustment (if any) to the Contract Sum to carry out the proposed Variation; and
- (ii) the effect (if any) which the proposed Variation will have on the then approved Program, including the relevant Milestone Dates and Date for Completion.

13.2 Variation order

- (a) Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 13.1, the Principal's Representative may at any time prior to the Date of Completion of the Works or the Portion (but without limiting clauses 5.3 and 11.7), instruct the Contractor to carry out a Variation by issuing a written document to the Contractor titled "Variation Order" in which the Principal's Representative will state one of the following:
 - (i) the proposed adjustment to the Contract Sum as set out in the Contractor's notice under clause 13.1 (if any) is agreed and the Contract Sum will be adjusted accordingly; or
 - (ii) any adjustment to the Contract Sum will be determined under clauses 13.3(b) and 13.3(c).
- (b) No Variation will invalidate the Contract, irrespective of the nature, extent or value of the works the subject of the Variation.

13.3 Adjustment for Variation

Subject to clause 20.1, the Contract Sum will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

- (a) where clause 13.2(a)(i) applies, the agreed amount; or
- (b) where clause 13.2(a)(ii) applies an amount determined by the Principal's Representative using any rates or prices which appear in the Schedule of Prices to the extent they are applicable to, or it is reasonable to use them for valuing the Variation, to which will be added:
 - (i) the following percentage or percentages of the amount determined:
 - (A) where the adjustment to the Contract Sum is to be an increase, those percentages specified in Item 25 of the Key Details for non time related Overhead Costs and profit; or
 - (B) where the adjustment to the Contract Sum is to be a decrease, the percentage specified in Item 25 of the Key Details for off site Overhead Costs and profit; and
 - (ii) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor; or
- (c) to the extent clause 13.3(b) does not apply, a reasonable amount:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Principal's Representative, to which will be added:

- (iii) the following percentage or percentages of the amount determined:
 - (A) where the adjustment to the Contract Sum is to be an increase, those percentages specified in Item 25 of the Key Details for non-time related Overhead Costs and profit; or
 - (B) where the adjustment to the Contract Sum is to be a decrease, the percentage specified in Item 25 of the Key Details for off site Overhead Costs and profit; and
- (iv) any reasonable costs and expenses incurred by the Contractor arising from the Variation delaying the Contractor.

13.4 Omissions and deletions

If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Works or a Portion, the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.

13.5 Variations requested by Contractor

The Contractor may, for its convenience, request the Principal's Representative to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and
- (c) any benefits which will flow to the Principal from the Variation.

13.6 The Principal's Representative's determination

After a request is made by the Contractor in accordance with clause 13.5, the Principal's Representative will, in its absolute discretion, give a written notice to the Contractor:

- (a) rejecting the request; or
- (b) approving the request either conditionally or unconditionally.

the Principal's Representative will not be obliged to exercise its discretion under this clause 13.6 for the benefit of the Contractor.

13.7 Variation approved by the Principal's Representative

If the Principal's Representative issues a written notice under clause 13.6 approving the Contractor's request under clause 13.5:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;

- (b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Sum will be reduced by the amount offered by the Contractor in its request; and
- (c) the Contractor will be responsible for all parts of the Works which are in any way affected by the Variation.

13.8 Compensable Causes

If a Compensable Cause necessitates a change to the Works or the Contractor's Activities then:

- (a) the Principal must direct a Variation under clause 13.2 in respect of that change to the Works; and
- (b) any delay costs will be valued pursuant to clause 12.12.

13.9 Variation due to SOM Contractor request

- (a) If the Principal instructs a Variation to the design of the Portion 2 Optional Works in accordance with clause 6.8 the Principal's Representative must issue a document titled 'Variation Price Request' to the Contractor which sets out the details of the Variation.
- (b) Within 20 Business Days of receipt of the 'Variation Price Request' the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:
 - (i) the price to carry out the proposed Variation; and
 - (ii) the effect (if any) which the proposed Variation will have on:
 - (A) the approved Program, including the relevant Milestone Dates and Date for Completion; and
 - (B) the RAP or any other aspect of the Works or Approvals.
- (c) The price for the Variation must be agreed between the parties (acting reasonably) before commencement of the Works.

14 Payment

14.1 Payment obligation

Subject to clause 14.10 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor:

- (a) the Contract Sum; and
- (b) any other amounts which are payable by the Principal to the Contractor under the Contract.

14.2 Payment claims

- (a) The Contractor must give the Principal's Representative claims for payment on account of the Contract Sum and any other amounts payable by the Principal to the Contractor under this Contract:

- (i) subject to clause 14.4 and the requirements of the TfNSW Standard Requirements:
 - (A) on the 6th day of each month after the Award Date or where that day is not a Business Day, the next Business Day; and
 - (B) at the time required by clause 14.9;
 - (ii) be in the form of the payment breakdown schedule in Schedule 2 or in such other form which the Principal's Representative reasonably requires; and
 - (iii) which are based on the Schedule of Prices to the extent such prices are relevant.
- (b) The Contractor cannot include in any payment claim under this clause 14.2, a Claim which is barred by clause 20.5.
 - (c) The Contractor agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 14.2 is received by the Principal's Representative as agent for the Principal.

14.3 Payment statements

- (a) The Principal's Representative must within 10 Business Days of receiving a payment claim under clauses 14.2 or 14.9 give the Contractor, on behalf of the Principal, a payment statement which states:
 - (i) the value of the work completed in accordance with the Contract;
 - (ii) the amount already paid to the Contractor;
 - (iii) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;
 - (iv) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Sum and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and
 - (v) if the amount in clause 14.3(a)(iv) is less than the amount claimed in the payment claim:
 - (A) the reason why the amount in clause 14.3(a)(iv) is less than the amount claimed in the payment claim; and
 - (B) 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 payment.
- (b) The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract.
- (c) Failure by the Principal's Representative to set out in a payment statement an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to

the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract.

- (d) If the Principal has notified the Contractor in accordance with clause 14.14(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor for the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative, provide to the Principal a valid tax invoice from the Contractor for the amount set out as payable in the payment statement.

14.4 Conditions precedent to payment

The Contractor is not entitled to give the Principal a payment claim under clause 14.2 or 14.9, and the Principal is not obliged to make any payment under clause 14.5, unless the Contractor has provided the Principal's Representative with:

- (a) a Certificate of Design Compliance and a Certificate of Construction Compliance, in the relevant forms set out in Schedule 17;
- (b) any Unconditional Undertakings and parent company guarantee required under clause 4;
- (c) any evidence of any insurance taken out by the Contractor which is required under clause 5.5;
- (d) all duly executed deed polls as required under the Contract ;
- (e) all duly executed Confidentiality Undertakings as required by clause 10.10(f)(iii); and
- (f) documents showing compliance by the Contractor with clause 14.11.

14.5 Payment

- (a) Subject to clauses 14.4 and 14.10, the Principal must pay the Contractor the amount set out as payable in the payment statement within 15 Business Days of receipt by the Principal's Representative of the payment claim under clause 14.2 or 14.9.
- (b) If a payment statement issued under this clause 14.5 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 5 Business Days of receipt by the Contractor of the payment statement.

14.6 Payment on account

- (a) Any payment statement or payment of moneys is not:
 - (i) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;
 - (ii) an admission of liability; or
 - (iii) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with the Contract.
- (b) Payment is only to be taken as payment on account.

14.7 Unfixed goods and materials

- (a) Unfixed goods and materials will not be included in the value of work in a payment statement under clause 14.3 unless:
 - (i) the Contractor gives the Principal's Representative with its payment claim under clause 14.2:
 - (A) an Unconditional Undertaking equal to the payment claimed for the unfixed goods and materials; and
 - (B) such evidence as may be required by the Principal's Representative that title to the unfixed goods and materials will vest in the Principal upon payment;
 - (ii) the unfixed goods and materials are clearly marked as the property of the Principal and are on the Site or available for immediate delivery to the Site; and
 - (iii) the unfixed goods and materials are properly stored in a place approved by the Principal's Representative.
- (b) Upon payment of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.
- (c) If the Contractor has given the Principal an Unconditional Undertaking for payment for unfixed goods and materials, the Principal must release it to the Contractor once those goods and materials are incorporated into the Works.

14.8 Completion payment claim and notice

- (a) Within 40 Business Days after the Date of Completion of the Works or a Portion, the Contractor must give the Principal's Representative:
 - (i) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Sum or otherwise under the Contract; and
 - (ii) notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the Date of Completion.
- (b) The payment claim and notice required under this clause 14.8 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.
- (c) Without limiting this clause 14.8, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 20.5.
- (d) After the date for submitting the payment claim and notice under this clause 14.8 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the Date of Completion except for any Claim included in a payment claim or notice under this clause 14.8 which is given to the

Principal's Representative within the time required by, and in accordance with the terms of, this clause 14.8.

14.9 Final payment claim and notice

- (a) Within 20 Business Days after the expiry of the last Defects Liability Period the Contractor must give the Principal's Representative:
 - (i) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Sum or otherwise under the Contract; and
 - (ii) notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period.

- (b) The payment claim and notice required under this clause 14.9 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.
- (c) Without limiting this clause 14.9, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 20.5.
- (d) After the date for submitting the payment claim and notice under this clause 14.9 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which occurred prior to the expiry of the last Defects Liability Period except for any Claim included in a payment claim or notice under this clause 14.9 which is given to the Principal's Representative within the time required by, and in accordance with the terms of, this clause 14.9.

14.10 Right of set off

- (a) The Principal may deduct from any moneys otherwise due to the Contractor and from any security held by the Principal:
 - (i) any debt or other moneys due from the Contractor to the Principal (including any due debt from the Contractor to the Principal pursuant to section 26C of the SOP Act); or
 - (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; or
 - (iii) any Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under the Contract, any other contract or agreement or otherwise at Law, whether or not relating to the Contractor's Activities.

- (b) The rights given to the Principal under this clause 14.10 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or Claim in question or any balance that remains owing.

- (c) Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 14.10, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause 14.10.
- (d) This clause 14.10 will survive any termination of the Contract.

14.11 Payment of workers and Subcontractors

The Contractor is not entitled to give the Principal a payment claim under clause 14.2 or 14.9, and the Principal is not obliged to make any payment under clause 14.5, unless the Contractor has provided the Principal's Representative with:

- (a) a statutory declaration in the form of Schedule 13, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared; and
- (b) copies of all relevant certificates of currency in respect of Workers Compensation Insurance which the Contractor has in place in connection with the Contractor's Activities.

14.12 Interest

The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment statement under clause 14.3, but which is not paid by the Principal within the time required by the Contract. This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

14.13 SOP Act

- (a) The Contractor agrees with the Principal that the date prescribed in clause 14.2(a)(i) as the date on which the Contractor must make a payment claim is, for the purposes of section 8 of the SOP Act, the "reference date" (as defined in the SOP Act).
- (b) For the purposes of section 17(3) of the SOP Act, the Contractor irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Contract.
- (c) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 14.3; and
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

- (d) Without limiting clause 14.10, 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.
- (e) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may lead and rely upon Division 2A of the SOP Act as a defence to any Claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Contractor must be made.
- (f) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of the SOP Act.
- (g) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.
- (h) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within 5 days of the occurrence of the event in clauses 14.13(h)(i) or 14.13(h)(ii) (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

14.14 GST

- (a) The parties acknowledge that unless otherwise expressly stated all consideration payable or to be provided in the Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with the Contract, including the Contractor's Activities, the party providing consideration for the supply ("**Recipient**") must pay an additional amount to the Supplier equal to the GST payable

by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.

- (c) Any amount payable under clause 14.14(b) will be paid to the Supplier at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be) is paid or provided to the Supplier.
- (d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of the Contract, where the Recipient is the Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 14.14 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a tax invoice that complies with the GST Legislation in respect of that taxable supply.
- (f) The parties agree that, unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Contract:
 - (i) the Principal will issue to the Contractor a recipient created tax invoice ("RCTI") for each taxable supply made by the Contractor to the Principal under the Contract within 28 days from the date that the taxable supply is made;
 - (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
 - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under the Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 14.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect any such taxable supply.

Each party acknowledges and warrants that at the time of entering into the 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.

- (g) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 14.14 in respect of that supply, then:
 - (i) the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate); and

- (ii) the Supplier agrees to issue an adjustment note.
- (h) In this clause 14.14:
 - (i) unless the contrary intention appears, terms defined in GST Legislation have the meaning given to them in GST Legislation; and
 - (ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

14.15 Initial Portion 2 Price

- (a) As at the Award Date the Contract Sum includes the Initial Portion 2 Price.
- (b) If following the execution of the SOM Contract by all parties to it this Contract is:
 - (i) novated to the SOM Contractor, the Initial Portion 2 Price and the Initial Portion 2 Program will be adjusted as provided for in the SOM Deed of Novation; or
 - (ii) amended by the deletion of the Portion 2 Optional Works, the Initial Portion 2 Price will be deducted from the Contract Sum; or
 - (iii) neither novated nor amended, the Initial Portion 2 Price and the Initial Portion 2 Program will be adjusted as provided for in clause 6.8.

15 Completion

15.1 Contractor to notify

The Contractor must give the Principal's Representative written notice:

- (a) 28 Business Days; and
- (b) 14 Business Days,

before it anticipates achieving Completion of the Works or a Portion.

15.2 The Principal's Representative to inspect

- (a) The Principal's Representative must:
 - (i) promptly, and in any event no later than 10 Business Days after receiving the Contractor's second written notice under clause 15.1 or a notice under clause 15.2(b) (as the case may be), inspect the Works or a Portion; and
 - (ii) if satisfied that Completion has been achieved, issue a notice to the Principal and the Contractor:
 - (A) stating the date upon which the Principal's Representative determines Completion was achieved; and

- (B) containing a list of any minor Defects of the type described in paragraph (a) of the definition of "Portion 1 Completion" or "Portion 2 Completion" (as applicable) in clause 1.1; or
 - (C) if not satisfied that Completion has been achieved, issue a notice so advising the Contractor and the Principal.
- (b) If the Principal's Representative issues a notice under clause 15.2(a)(ii)(C) the Contractor must proceed to bring the Works or the Portion to Completion and thereafter when it considers it has achieved Completion it will give the Principal's Representative written notice to that effect after which this clause 15.2 will reapply.

15.3 Take over upon Completion

Upon the issue of a Notice of Completion:

- (a) the Contractor must hand over the Works or the Portion to the Principal; and
- (b) the Contractor must correct all minor Defects listed in the Notice of Completion as soon as possible after the Date of Completion.

15.4 Liquidated damages

- (a) If the Date of Completion of the Works or a Portion has not occurred by the Date for Completion for the Works or the Portion, the Contractor must pay liquidated damages at the rate specified in Item 26 of the Key Details for every day after the Date for Completion until the Date of Completion or until the Contract is terminated, whichever occurs first.
- (b) The amount payable under this clause 15.4 will be a debt due from the Contractor to the Principal.
- (c) This amount is an agreed genuine pre-estimate of the Principal's damages if the Date of Completion does not occur by the Date for Completion.
- (d) No liquidated damages or other damages will be payable by the Contractor for the Contractor's failure to achieve a Milestone by the Milestone Date.

15.5 General damages if liquidated damages unenforceable

If the liquidated damages under clause 15.4 are found to be a penalty, or if clause 15.4 is found to be void or unenforceable for any reason (whether in whole or in part), then the Contractor will be liable to pay unliquidated damages at Law for the breach for which the liquidated damages under clause 15.4 would have been payable had the relevant liquidated damages or clause 15.4 not been a penalty or not been void or unenforceable.

15.6 Cap on liquidated damages

The Contractor's total aggregate liability to the Principal under clauses 15.4 and 15.5 is limited to the amount stated in Item 27 of the Key Details.

16 Final Completion

16.1 Final Completion

- (a) Immediately after the Date of Completion, the Contractor must expeditiously and diligently progress the rectification of Defects and outstanding Contractor's Activities which are required to achieve Final Completion.
- (b) Final Completion will be achieved when the:
 - (i) Defects specified under 15.2(a)(ii) have been corrected or waived by the Principal's Representative;
 - (ii) Contractor has reinstated all Temporary Works in accordance with the requirements of this Contract; and
 - (iii) Contractor has done everything else which this Contract requires the Contractor to have done as a condition precedent or precondition to Final Completion.
- (c) When the Contractor considers that Final Completion has been achieved, the Contractor must:
 - (i) notify the Principal's Representative of its opinion; and
 - (ii) request the Principal's Representative to issue a Certificate of Final Completion.
- (d) Within 15 Business Days of Contractor's request under clause 16.1(c), the Principal's Representative must either:
 - (i) if Final Completion has been achieved, issue to the Principal and the Contractor a Certificate of Final Completion stating as the Date of Final Completion the date on which Final Completion was achieved; or
 - (ii) if Final Completion has not been achieved, issue a notice to the Principal and the Contractor listing the work remaining to be performed to achieve Final Completion.
- (e) If the Principal's Representative issues a notice under clause 16.1(d)(ii) the Contractor must continue with the rectification of the Defects and the Contractor's Activities to achieve Final Completion and clause 16.1(d) will reapply.
- (f) The Principal's Representative, in making a determination as to whether Final Completion has been achieved:
 - (i) will not be restricted by any:
 - (A) certification, notice, list or opinion already provided under this Contract; or
 - (B) obligation of the Contractor under this Contract to correct any Defects which may be discovered after Final Completion; and
 - (ii) will be entitled to raise any items of work as a ground for determining that Final Completion has not been achieved.

16.2 Effect of Certificates

- (a) The Principal's Representative's certification as set out in a Certificate of Final Completion is final and binding on the parties for the purposes only of establishing that Final Completion has occurred and the date on which it occurred.
- (b) Subject to clause 16.2(a), a certification of the Principal's Representative will not:
 - (i) constitute an approval by the Principal of the Contractor's performance of its obligations under this Contract;
 - (ii) be taken as an admission or evidence that the Works comply with this Contract; or
 - (iii) prejudice any rights or powers of the Principal under this Contract or otherwise according to Law, including any rights which the Principal may have in respect of Defects.

17 Step-In

17.1 Step-in Events

Each of the following is a Step-in Event:

- (a) an event set out in clause 18.2; and
- (b) an event or circumstance which arises out of or in connection with the Contractor's Activities that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the health or safety of persons;
 - (ii) the Environment;
 - (iii) any property; or
 - (iv) the safe performance of Contractor's Activities.

17.2 Step-in Rights

- (a) If:
 - (i) a Step-in Event occurs; and
 - (ii) the Principal has given notice to Contractor in accordance with clause 17.2(b),

then a Step-in Party may exercise all or any of the Step-in Powers set out in clause 17.3 in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event ("**Step-in Right**").

- (b) The notice referred to in clause 17.2(a)(ii) must be in writing and must specify:
 - (i) the Step-in Event which has triggered the Step-in Right;

- (ii) the Contractor's Activities which the Principal proposes the Step-in Party will perform;
 - (iii) the date on which the relevant Step-in Party proposes to commence performing the relevant Contractor's Activities; and
 - (iv) the date, if any, on which the relevant Step-in Party proposes to cease exercising the relevant Contractor's Activities.
- (c) The Step-in Right is without prejudice to the Principal's other rights in respect of a Step-in Event.

17.3 Step-in Powers

A Step-in Party may, in performing Contractor's Activities referred to in the notice under clause 17.2(a)(ii), do anything in respect of those activities that Contractor could do including:

- (a) exercise all or any of Contractor's rights, and perform all or any of Contractor's obligations:
 - (i) in connection with the performance of Contractor's Activities;
 - (ii) under or in relation to any other document to which Contractor is a party; and
 - (iii) under or in relation to any Accreditation or other Approval held by the Contractor, as if it were the Contractor, to the exclusion of the Contractor;
- (b) do anything the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
- (c) do anything incidental to the matters listed in clauses 17.3(a) or 17.3(b), ("Step-in Powers").

17.4 Contractor's obligations

- (a) The Contractor must:
 - (i) cooperate with the Step-in Party in the exercise of the Step-in Powers;
 - (ii) assist the Step-in Party to enable the Step-in Party to perform all or any of the Contractor's obligations under or in relation to any Accreditation or other Approval held by the Contractor;
 - (iii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
 - (iv) ensure that its Subcontractors do likewise.
- (b) Without limiting clause 17.4(a), the Contractor must:
 - (i) allow the Step-in Party to access and use:
 - (A) all or any of the land and assets used in the performance of Contractor's Activities;

- (B) the Contractor's Personnel; and
 - (C) any information the Step-in Party reasonably requires;
 - (ii) to the extent necessary, procure any consents to disclose Personal Information to the Step-in Party;
 - (iii) assist the Step-in Party in dealing with ONRSR in relation to any Accreditation issues;
 - (iv) comply with all reasonable directions given by the Step-in Party; and
 - (v) ensure that its Subcontractors do likewise,
- to enable the Step-in Party to exercise its Step-in Powers.
- (c) The Contractor irrevocably appoints the Principal as its attorney with full power to exercise the Step-in Powers (or to delegate the exercise of the Step-in Powers to another Step-in Party).
 - (d) The Contractor's obligations under this Contract will be suspended to the extent and for such period as is necessary to permit the Principal to exercise its Step-in Rights.
 - (e) The Contractor acknowledges that a Step-in Party is not under any obligation to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.

17.5 The Principal's obligations

The Principal must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform the Contractor's Activities in accordance with the requirements of this Contract.

17.6 No liability

The Contractor acknowledges that the Principal will have no liability to the Contractor, and the Contractor will not be entitled to make any Claim against the Principal, arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) any Loss which results, except where it arises from:
 - (i) fraud, wilful default or recklessness on the part of the Step-in Party;
 - (ii) a Compensable Cause; or
 - (iii) a Qualifying Cause.

17.7 Step-out

- (a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier of:

- (i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome) to the satisfaction of the Principal; and
 - (ii) the Principal's Representative notifying the Contractor in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) The Principal must give written notice to the Contractor of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by the Principal to the Contractor at least 10 Business Days prior to the date the Step-in Party propose ceases to exercise the Step-in Powers).
- (c) Upon the Step-in Party ceasing to exercise the Step-in Powers, the Contractor must resume the performance of relevant Contractor's Activities in accordance with this Contract (unless this Contract has been terminated).

18 Termination

18.1 Preservation of rights

Subject to clause 18.6, nothing in this clause 18, or that a party does or fails to do pursuant to this clause 18, will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

18.2 Contractor default

The Principal may give a written notice under clause 18.3 to the Contractor, if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities otherwise than in accordance with clause 12.13 or otherwise does not regularly and diligently progress the Contractor's Activities with due expedition and without delay;
- (c) fails to enter into the SOM Deed of Novation, if required, pursuant to clause 1.9(b);
- (d) fails to provide security as required by clause 4.1, 4.3 or 4.4, or a parent company guarantee as required by clause 4.6;
- (e) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.4;
- (f) fails to use the materials or standards of workmanship required by the Contract;
- (g) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;
- (h) abandons the Contractor's Activities or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (i) is in substantial breach of any applicable Law;

- (j) does not comply with the requirements of the Approvals;
- (k) would become liable to the Principal for liquidated damages or unliquidated damages under clauses 15.4 or 15.5 for an amount exceeding the amount referred to in clause 15.6, but for the cap on liability under clause 15.6;
- (l) fails to achieve a Milestone by the Milestone Date;
- (m) fails to achieve Completion by the Date for Completion;
- (n) does not comply with the TfNSW Standard Requirements; or
- (o) is in material breach of the Contract.

18.3 Contents of notice of default

A notice under this clause 18.3 must state:

- (a) that it is a notice under clause 18.3;
- (b) the breach relied upon;
- (c) if:
 - (i) the breach is capable of being remedied, that the Principal requires the Contractor to remedy the breach within a period stipulated by the Principal in the notice of receiving the notice; or
 - (ii) if the breach is not capable of being remedied, the Principal requires the Contractor to demonstrate within a period stipulated by the Principal in the notice how it will prevent a recurrence of the breach or further breaches.

18.4 Termination for insolvency or breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or
- (b) the Contractor does not:
 - (i) remedy a breach of Deed the subject of a notice under clause 18.3 within the period stipulated in the notice under clause 18.3; or
 - (ii) demonstrate to the Principal's satisfaction within a period stipulated by the Principal in the notice how it will prevent a recurrence of the breach or further breaches,

then the Principal may by written notice to the Contractor terminate the Contract.

18.5 The Principal's entitlements after termination

Subject to clause 18.1, if:

- (a) the Principal terminates the Contract under clause 18.4; or

- (b) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,

then:

- (c) the Principal will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work, the Temporary Works and all materials, equipment and other things intended for the Works;
 - (ii) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 14.2 or 14.9 or a payment statement under clause 14.3; and
 - (iii) be entitled to recover from the Contractor any costs, 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 on the basis that the Contractor has repudiated the Contract and the Principal has accepted the Contractor's repudiation; and
- (d) the Contractor must immediately hand over to the Principal all copies of:
 - (i) documents provided by the Principal under clause 6.1; and
 - (ii) any Deliverables prepared by the Contractor to the date of termination (whether complete or not).

This clause 18.5 will survive any termination of the Contract.

18.6 Contractor's entitlements after termination

If the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

- (a) be entitled to claim damages; and
- (b) not be entitled to a quantum meruit.

This clause 18.6 will survive any termination of the Contract.

18.7 Termination for convenience

Without prejudice to any of the Principal's other rights, the Principal may:

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

18.8 Costs

- (a) If the Principal terminates the Contract under clause 18.7, the Contractor:

- (b) will be entitled to payment of the following amounts as determined by the Principal's Representative:
- (i) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;
 - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Plant, Equipment and Work for which the Contractor is legally bound to pay provided that:
 - (A) the value of the goods or materials is not included in any previous payment by the Principal or the amount payable under clause 18.8(b)(i); and
 - (B) ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and
 - (iii) the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,

but in no case will the total amount payable to the Contractor under the Contract (including under this clause 18.8) be more than the Contract Sum; and

- (c) must:
- (i) take all steps possible to mitigate the costs referred to in clause 18.8(b); and
 - (ii) immediately:
 - (A) deliver all items in which ownership has passed to the Principal under the Contract; and
 - (B) hand over to the Principal all copies of:
 - (aa) documents provided by the Principal under clause 6.1; and
 - (ab) Deliverables prepared by the Contractor to the date of termination (whether complete or not).

- (d) The amount to which the Contractor is entitled under this clause 18.8 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 18.8.

- (e) This clause 18.8 will survive the termination of the Contract by the Principal under clause 18.7.

19 Disputes

19.1 Notice of dispute

- (a) If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 19.
- (b) Where such a dispute or difference arises, either party may give a notice in writing ("**Notice of Dispute**") to the Principal's Representative and the other party specifying:
- (i) the dispute or difference;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.

19.2 Negotiation

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 5 Business Days of a notice being given under clause 19.1, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.

19.3 Executive negotiation

Whether or not negotiations have taken place under clause 19.2, if dispute or difference is not resolved within 10 Business Days after a notice is given under clause 19.1, it must be referred to senior executives of each party (as nominated by each party) who must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

19.4 Expert determination

Whether or not negotiations have taken place under clause 19.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after a notice is given under clause 19.1, either party may submit the dispute or difference to an expert determination.

19.5 The expert

The expert determination under clause 19.4 is to be conducted by an independent industry expert appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

19.6 Not arbitration

An expert determination conducted under this clause 19 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

19.7 Procedure for determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

19.8 Disclosure of interest

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

19.9 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one half of the expert's costs.

19.10 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 19 within 20 Business Days from the acceptance by the expert of his or her appointment.

19.11 Agreement with expert

- (a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (b) The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 14 or such other terms as the parties and the expert may agree.

19.12 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be:
 - (i) substituted for the relevant Direction of the Principal's Representative (if applicable); and
 - (ii) final and binding,unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in this Contract or the Agreement with the expert under clause 19.11.

19.13 Arbitration

- (a) If:
 - (i) the expert fails to notify the parties of his or her decision within the time required by clause 19.10; or
 - (ii) a notice of appeal is given under clause 19.12,the dispute or difference will be referred to arbitration.
- (b) The arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).
- (c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.
- (d) The seat of the arbitration will be Sydney, Australia.
- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 19.12.
- (f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

19.14 SOM Interface Disputes

- (a) SOM Interface Disputes will be resolved in accordance with this clause.
- (b) A SOM Interface Dispute arises where:
 - (i) a dispute arises under or in connection with the SOM Contract and such dispute:

- (A) is based on facts, matters or circumstances that are substantially the same as facts, matters or circumstances that are the basis of a dispute that has arisen under or in connection with this Contract; or
- (B) a claim is made by the SOM Contractor against the Principal that arises out of the conduct of the Contractor or a breach of this Contract by the Contractor; or
- (ii) a dispute arises under or in connection with this Contract and such dispute:
 - (A) is based on facts, matters or circumstances that are substantially the same as facts, matters or circumstances that are the basis of a dispute that has arisen under or in connection with the SOM Contract; or
 - (B) a claim is made by the Contractor against the Principal that arises out of the conduct of the SOM Contractor or a breach of the SOM Contract by the SOM Contractor.
- (c) If a SOM Interface Dispute arises then:
 - (i) the Principal may notify the Contractor in writing setting out details as to why the dispute is a SOM Interface Dispute; and
 - (ii) at the direction of the Principal, the Contractor:
 - (A) must participate in any negotiations, mediation, or expert determination process in relation to the SOM Interface Dispute;
 - (B) consents to having any dispute or Claim made by it, the SOM Contractor or the Principal in relation to a SOM Interface Dispute resolved in the Tripartite Dispute Process and to being joined as a party to the Tripartite Dispute Process;
 - (C) consents to having any dispute or Claim made under or in connection with this Contract stayed pending the final resolution of the SOM Interface Dispute to the extent of the matters and issues the subject of the SOM Interface Dispute; and
 - (D) the outcome of the Tripartite Dispute process will be binding on the Contractor to the extent of the matters and issues the subject of the SOM Interface Dispute.
- (d) The Contractor must comply with a direction under clause 19.15(c) and any dispute as to whether the dispute the subject of the direction is a SOM Interface Dispute will be resolved as part of the Tripartite Dispute Process.

19.15 Tripartite Dispute Process

- (a) The Tripartite Dispute process is as set out in this clause.
- (b) The Principal, the Contractor and the SOM Contractor must, within 5 Business Days of a notice being given under clause 19.14(c)(i) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.

- (c) Whether or not negotiations have taken place under clause 19.15(b) if the dispute or difference is not resolved within 10 Business Days after a notice is given under clause 19.14(c)(i) it must be referred to senior executives of each party (as nominated by each party) who must:
 - (i) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
 - (ii) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.
- (d) Whether or not negotiations have taken place under this clause if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after a notice is given under this 19.14(c)(i) any party may submit the dispute or difference to an expert determination.
- (e) If a party refers the dispute or difference to expert determination then:
 - (i) clauses 19.4 to 19.13(expert determination and arbitration) will apply but on the basis that the parties will be the Contractor, the SOM Contractor and the Principal; and
 - (ii) the expert and the arbitrator will make findings and determinations in relation to the rights and obligations of:
 - (A) the Principal and the SOM Contractor under or in connection with the SOM Contract; and
 - (B) the Principal and the Contractor under or in connection with this Contract.

19.16 Survive termination

This clause 19 will survive any termination of the Contract.

19.17 Continuation of Contractor's Activities

Despite the existence of a dispute or difference between the parties, the Contractor must:

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

20 Notices

20.1 Notice of Variation

If the Contractor considers that a Direction by the Principal's Representative which is not expressed to be a "Variation Order" under clause 13.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:

- (a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;

- (b) within 15 Business Days of giving the notice under clause 20.1(a), submit a written claim to the Principal's Representative which includes the details required by clause 20.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 20.1.

20.2 Notice of other Claims

Except for Claims for:

- (a) an extension of time under clause 12.7;
- (b) a Variation instructed in a "Variation Order" under clause 13.2 or to which clause 20.1 applies; or
- (c) payment under clause 14.2 or 14.9 of the original Contract Sum specified in Item 3 of the Key Details,

the Contractor must give the Principal's Representative the notices required by clause 20.3 if it wishes to make a Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the Contract or the Contractor's Activities, including anything in respect of which:

- (d) it is otherwise given an express entitlement under the Contract; or
- (e) the Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Sum; or
 - (ii) the Contract Sum will be otherwise increased or adjusted,

as determined by the Principal's Representative.

20.3 Prescribed notices

The notices referred to in clause 20.2 are:

- (a) a written notice within 5 Business Days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written claim within 15 Business Days of giving the written notice under clause 20.3(a), which must include:
 - (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;

- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated.

20.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 20.1(b) or clause 20.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 20.3(b) every 20 Business Days after the written claim under clause 20.1(b) or 20.3(b) (as the case may be) was submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

20.5 Time bar

If the Contractor fails to comply with clauses 20.1, 20.2, 20.3 or 20.4:

- (a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 20.1 or 20.2 applies.

20.6 Other provisions unaffected

Nothing in clauses 20.1, 20.2, 20.3, 20.4 or 20.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

21 Limitation of liability

21.1 Exclusion of Liability

Subject to clauses 21.2, 21.3 and 21.4, neither party will be liable to the other for any Consequential or Indirect Loss howsoever arising.

21.2 Contractor's liability cap

The Contractor's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in Item 28 of the Key Details.

21.3 The Principal's Liability Cap

The Principal's aggregate liability to the Contractor in contract, tort (including negligence) or otherwise under the Contract is limited to the amount stated in Item 29 of the Key Details.

21.4 Exceptions to liability exclusions and caps

Clauses 21.1 and 21.2 do not operate to limit or restrict Contractor's liability:

- (a) arising out of or in connection with any criminal acts or fraud on the part of Contractor or an Associate of the Contractor;
- (b) arising out of or in connection with wilful misconduct or recklessness on the part of Contractor or an Associate of the Contractor;
- (c) arising out of or in connection with to the extent to which, by Law, the parties cannot limit or contract out of such liability;
- (d) arising out of or in connection with termination on the basis of the Contractor's repudiation of the Contract or pursuant to clause 18.4;
- (e) arising out of or in connection with the Contractor's indemnification under clauses 4.7(b), 5.1, 5.2, 6.17, 7.5(b), 7.6(d), 7.7(j), 7.9(b), 7.11(h), 22(a), 23.21(c), 23.23(c)(ii);
- (f) arising out of or in connection with in respect of injury to or death of persons caused or contributed to by the Contractor or an Associate of the Contractor;
- (g) to the extent that Contractor has:
 - (i) recovered from a third party (including any Subcontractor and whether by way of indemnity or otherwise); or
 - (ii) would have recovered from a third party, had it diligently pursued a claim against the third party,
 an amount in respect of that liability;
- (h) to the extent that Contractor:
 - (i) is indemnified in respect of that liability by a policy of insurance required under this Contract; or
 - (ii) would have been indemnified in respect of that liability by a policy of insurance required under this Contract if Contractor had:
 - (A) diligently pursued a claim under that policy of insurance;
 - (B) complied with the terms and conditions of that policy of insurance; or
 - (C) complied with its insurance obligations under this Contract.

22 Indemnities

- (a) The Contractor indemnifies the Principal against all liability suffered or incurred by the Principal arising out of:
 - (i) any Claim by a third party in respect of Moral Rights;
 - (ii) liability in respect of loss of or damage to any other property (including any adjoining property);
 - (iii) liability in respect of personal injury, disease, illness of death; and

- (iv) payment of Taxes, assessments and contributions, dues, costs and fees and all liability arising in respect of non-payment of any Taxes.
- (b) The Contractor's liability to indemnify the Principal under clause 22(a) will be reduced proportionally to the extent that an act or omission of the Principal has contributed to the loss, damage, expense, injury, disease, illness, death or other liability. The Contractor's liability will not be reduced if the act or omission of the Principal was caused by the failure of the Contractor to fulfil its obligations under this Contract provided that, in such circumstances the Principal must not act with reckless indifference to the interests of the Contractor.

23 Miscellaneous

23.1 Confidentiality

- (a) The Contractor must, at all times, comply with the requirements of the confidentiality undertaking which was entered into by the Contractor on 24 October 2017.
- (b) The Contractor must, and must ensure its Personnel, keep confidential and do not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with the Contractor's Activities or the Contract to any person other than:
 - (i) as necessary to perform the Contractor's Activities;
 - (ii) with respect to any matter already within the public domain; or
 - (iii) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).
- (c) Without limiting clause 4.1 of Schedule 3, the Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:
 - (i) the GIPA Act; and
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,and the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under this clause 23.1(c).
- (d) If the Principal is required to include a copy of the Contract in the government contracts register pursuant to the GIPA Act:
 - (i) the Principal will not disclose the Key Details (except for the Contract Sum) but may disclose the remainder of the Contract;
 - (ii) if the Contractor considers that the Principal should not disclose any other provisions of the Contract on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Contractor must within 10 Business Days of the Award Date give the Principal written notice of:

- (A) any provisions of the Contract it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and
- (B) details of:
 - (aa) the reasons why the provisions should not be disclosed;
 - (ab) whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed; and
 - (ac) a general description of the types of provisions that the Contractor proposes should not be disclosed; and
- (iii) in complying with its disclosure obligations under the GIPA Act, the Principal will consider, but will not be bound by, any proposal made by the Contractor under clause 23.1(d)(ii).

23.2 Media

The Contractor must not disclose any information concerning the Contract for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Contract.

23.3 Contractor to retain records

The Contractor must, for a period of seven years after completion of the Contractor's Activities, keep true and accurate accounts and records of:

- (a) all Contractor's Activities performed under the Contract; and
- (b) all associated accounts and records including all supporting materials used to generate and substantiate invoices submitted in respect of the Contractor's Activities.

23.4 Auditing and probity

The Contractor acknowledges and agrees that:

- (a) the Principal's Representative (or any other person nominated by the Principal's Representative) may carry out regular audits on the Contractor's compliance with its obligations under the Contract; and
- (b) the Contractor must provide reasonable access to any premise where the Contractor's Activities are being undertaken to enable the Principal or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and Personnel (including those of Subcontractors).

23.5 Survive termination

Clauses 6.14 to 6.18 and clauses 23.1 to 23.4, and the licences granted to the Principal under them, will survive any termination of the Contract.

23.6 Address for service

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with this Contract:
- (i) must be in writing;
 - (ii) must be delivered either:
 - (A) by hand;
 - (B) by registered post; or
 - (C) (subject to clause 23.6(b)) uploaded onto the Principal's EDMS;
 - (iii) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party, which may include an electronic signature;
 - (iv) subject to clause 23.6(b), must be delivered or posted by prepaid post to the address stipulated in the Details, of the Principal's Representative or the Contractor's Representative (as applicable) set out in the Details or such other address as may be notified in writing by a party to the other party; and
 - (v) are taken to be received by the addressee:
 - (A) (in the case of prepaid post) on the Business Day that is the third Business Day after the date of posting to an address within the same country from which the communication is sent, and on the fifth Business Day after the date of posting by airmail to an address outside the country from which the communication is sent;
 - (B) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 23.6(a)(iv); and
 - (C) (in the case of the Principal's EDMS), at the time the direction has been uploaded onto the Principal's EDMS by the sender.

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) If:
- (i) the Contractor sends a notice under clause 12, 13, 14, 15, 18, 19 or 20 or concerning a claim for payment (including any communication in respect of the SOP Act); or
 - (ii) the Principal sends a notice under clause 13.2, 18.2, 18.3, 18.4, 18.7 or 19.1,

by the Principal's EDMS, the Contractor or the Principal (as applicable) must also deliver or post such notice to the relevant address provided in clause 23.6(a)(iv).

- (c) For the avoidance of doubt:
 - (i) no notice referred to in clause 23.6(b) will be effective until it has unless it has been delivered or posted in accordance with clause 23.6(b); and
 - (ii) if a notice referred to in clause 23.6(b) is issued by both the Principal's EDMS and is also either delivered by hand or posted both notices must be identical, and in the event that they are not identical, neither notice will constitute a valid notice.
- (d) Where clause 23.6(b) applies, the relevant notice will be taken to have been received on the date determined in accordance with clause 23.6(a)(v)(A) or 23.6(a)(v)(B) (as the case may be).
- (e) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (f) the Principal will not be liable to the Contractor or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
 - (i) the transmission of any harmful code (such as viruses) to the Contractor by electronic mail (including any document attached to electronic mail); or
 - (ii) any failure by the Principal to notify the Contractor that the Principal may have received any harmful code (such as viruses) from the Contractor in any electronic mail (including in any document attached to electronic mail).

23.7 Access to the Principal's EDMS

- (a) If a party is unable to use the Principal's EDMS as a result of the failure of the Principal's EDMS, that party must use one of the alternative means of communication set out in clause 23.6.
- (b) With respect to notices sent through the Principal's EDMS:
 - (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 clause 23.7(b)(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 Principal's EDMS 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.

(c) The Contractor must:

- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the Principal's EDMS;
- (ii) ensure that relevant personnel log on and use the Principal's EDMS and check whether notices have been received on each Business Day; and
- (iii) at all times, ensure that it has access to personnel trained in the use of the Principal's EDMS so as to be able to view, receive and submit communications (including notices) using the Principal's EDMS.

(d) The Principal has no liability for any losses the Contractor may suffer or incur arising out of or in connection with its access to or use of the Principal's EDMS or any failure of the Principal's EDMS, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Contractor's access to or use of the Principal's EDMS or any failure of the Principal's EDMS.

23.8 Governing Law

The Contract is governed by and must be construed according to the Laws of the State of New South Wales.

23.9 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the Contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 23.9(a).

23.10 Counterparts

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

23.11 Entire agreement

This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Contract; or
- (b) any correspondence or other documents relating to the subject matter of this Contract that may have passed between the parties prior to the Award Date and that are not expressly included in this Contract.

23.12 Amendments

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

23.13 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under the Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under the Contract.
- (b) A waiver or consent given by a party under the Contract is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract.

23.14 Assignment

- (a) In addition to the Principal's rights under clause 1.9, the Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under the Contract or create or allow to exist, a security interest over or in respect of the Contract or any right or interest of the Principal under the Contract.
- (b) The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.

23.15 Consents

A consent required under the Contract from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless the Contract expressly provides otherwise.

23.16 Expense

Except as otherwise provided in the Contract, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing the Contract.

23.17 Severance

If at any time a provision of the 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 the Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Contract.

23.18 Indemnities

- (a) Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

23.19 United Nations Convention not applicable

The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

23.20 English language

All communications between the parties and all documentation provided in connection with the Contractor's Activities (including the Deliverables) must be in the English language.

23.21 Taxes

- (a) Without limiting clause 10.4, the Contractor must pay and reimburse the Principal for all taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported plant, equipment and materials required for the Contractor's Activities.
- (b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.
- (c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax in circumstances where a withholding was required by Law, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

23.22 No partnership, joint venture or other fiduciary relationship

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

23.23 Proportionate liability

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 23.23(a), the rights, obligations and liabilities of the Principal and the Contractor under the Contract with respect to proportionate liability are as specified in the Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
 - (i) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to recover from the Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

23.24 Prior work

- (a) The terms of the Contract apply to all of the work performed by the Contractor in connection with the Contractor's Activities even if it was performed prior to the Award Date.
- (b) Any payment made to the Contractor by the Principal in connection with the Contract or the Contractor's Activities prior to the Award Date will be treated as a payment under the Contract and will be in part discharge of the Principal's obligation to pay the Contract Sum.

Remediation Contract – 6 Grand Avenue, Camellia

Schedule 1 Key Details

Clause 1 - Definitions and Interpretation						
1.	<p>“Compensable Cause” (Clause 1.1)</p>	<p>(a) factually inaccurate data expressly set out in the Nominated Reports. Factual inaccuracy does not include any commentary, advice, or interpretation in connection with the data. Factual inaccuracy is confined to an express:</p> <ul style="list-style-type: none"> (i) value; (ii) quantity of material; or (iii) type of materials, <p>in respect of a location actually sampled at the time of the taking of the sample.</p> <p>(b) where a change is required to deal with any inadequacy or inaccuracy in the RAP, pursuant to clause 6.3(b);</p> <p>(c) a Change in in Codes and Standards; and</p> <p>(d) a Change in Approval to which clause 10.7 applies.</p>				
2.	<p>“Contract” - Other documents forming part of this Contract: (Clause 1.1)</p>	Nil				
3.	<p>“Contract Sum”: (Clause 1.1)</p>	<p>(a) Portion 1 Works (including the \$90,000 Ground Improvement payment)</p> <ul style="list-style-type: none"> - \$13,388,192.00 (excluding GST) <p>(b) [REDACTED]</p>				
4.	<p>“Contractor's Representative”: (Clause 1.1)</p>	<p>Name: [REDACTED]</p> <p>Address: Suite 4, Level 1, Building C – Rhodes Corporate Park, 1 Homebush Bay Drive, Rhodes NSW 2138</p> <p>Email: [REDACTED]</p>				
5.	<p>“Date for Completion”: (Clause 1.1)</p>	<table border="1"> <thead> <tr> <th>Portion</th> <th>Date for Completion</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Portion	Date for Completion		
Portion	Date for Completion					

		<table border="1"> <tr> <td>1</td> <td>150 Business Days after the Award Date.</td> </tr> <tr> <td>2</td> <td>200 Business Days after the Principal issues the Portion 2 Notice to Proceed.</td> </tr> </table>	1	150 Business Days after the Award Date.	2	200 Business Days after the Principal issues the Portion 2 Notice to Proceed.
1	150 Business Days after the Award Date.					
2	200 Business Days after the Principal issues the Portion 2 Notice to Proceed.					
6.	“Defects Liability Period”: (Clause 1.1)	24 months				
7.	“Inclement Weather Allowance” (Clause 1.1)	<p>Portion 1 Barrier Works: 10 Business Days</p> <p>Portion 2 Optional Works: 10 Business Days</p>				
8.	“Interface Contractor” (Clause 1.1)	The Interface Contractors listed in Annexure C to the Works Brief.				
9.	“Principal's Representative”: (Clause 1.1)	<p>Name: Tim Poole</p> <p>Address: Level 10, 130 George Street Parramatta NSW 2150</p> <p>Email: Tim.Poole@transport.nsw.gov.au</p>				
10.	“Portions” of the Works: (Clause 1.1)	<p>Portion 1 Barrier Works: that portion of the Works which is described in section 2.5.1 of the Works Brief.</p> <p>Portion 2 Optional Works: that portion of the Works which is described in section 2.5.2 of the Works Brief.</p>				
11.	Other “Qualifying Causes”: (Clause 1.1)	<p>(a) a Force Majeure Event;</p> <p>(b) factually inaccurate data expressly set out in the Nominated Reports. Factual inaccuracy does not include any commentary, advice, or interpretation in connection with the data. Factual inaccuracy is confined to an express:</p> <p>(i) value;</p> <p>(ii) quantity of material; or</p> <p>(iii) type of materials;</p> <p>in respect of a location actually sampled at the time of the taking of the sample.</p> <p>(c) where the Principal fails, in breach of clause 2.2(a), to give the Contractor access to the Site to enable the Contractor to commence and carry out the Contractor’s Activities, but only if</p>				

		<p>the failure continues for longer than 10 Business Days;</p> <p>(d) where a change is required to deal with any inadequacy or inaccuracy in the RAP, pursuant to clause 6.3(b);</p> <p>(e) a Change in Codes and Standards;</p> <p>(f) a Change in Law;</p> <p>(g) a Change in Approval to which clause 10.7 applies;</p> <p>(h) a legal challenge to an Approval under clause 10.8;</p> <p>(i) a Direction to suspend that satisfies clause 12.13(b)(ii);</p> <p>(j) the discovery of a Latent Condition in the circumstances described in clause 7.2;</p> <p>(k) compliance with any direction given by the Principal's Representative under clause 7.8 in respect of any Valuable Find in the circumstances described in clause 7.8;</p> <p>(l) inclement weather where the inclement weather occurs after the Inclement Weather Allowance has been exhausted; and</p> <p>(m) a strike that is industry-wide and not specific to the Contractor, the Site, or the Contractor's Activities.</p>
12.	<p>"Works":</p> <p>(Clause 1.1)</p>	<p>Means the works described in section 2.5 of the Works Brief.</p>
Clause 2 - Parties' obligations		
13.	<p>Site access date:</p> <p>(Clause 2.2(a))</p>	<p>21 May 2018.</p>
Clause 3 - Personnel		
14.	<p>Key Personnel</p> <p>(Clause 1.1 and 3.5)</p>	<p>██████████ Project Director</p> <p>██████████, Project Manager</p> <p>██████████ Design Manager</p> <p>██████████ Senior Project Engineer</p> <p>██████████, Environmental Manager</p>

		<p>██████████, Hexavalent Chromium Technical Advisor</p> <p>██████████, Contamination Lead</p> <p>██████████, Occupational Hygiene Lead</p> <p>██████████, Site WHS Manager</p> <p>██████████, Community Relations Manager</p> <p>██████████, Site Superintendent / Foreman</p> <p>██████████, Hydrogeologist</p> <p>██████████, Design Manager and AEO Oversight</p> <p>██████████, Geotechnical Lead</p> <p>██████████, Senior Environmental Consultant</p> <p>██████████, Principal Environmental Consultant</p> <p>██████████, Site Environmental Consultant</p> <p>██████████, Environmental Scientist (Groundwater Treatment Plant)</p> <p>██████████, Soil Vapour Specialist</p> <p>██████████, Hydrogeological Modelling</p> <p>██████████, Treatment Design Option Lead</p> <p>██████████, Groundwater Treatment Plant</p>
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Clause 4 - Security

15.	Does clause 4.1 apply?: (Clause 4.1)	Yes
16.	Is a parent company guarantee required?: (Clause 4.6)	Yes The parent company guarantee is to be provided within 5 Business Days of execution of the Contract.

Clause 5 - Risks and Insurance

17.	Insurance policies required to be effected by the Principal: (Clause 5.4(c)(ii))	<p>Works Insurance</p> <p>Pollution Liability (Including Asbestos) Insurance</p> <p>Public and Product Liability Insurance</p>
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18.	Insurance policies required to be effected by the Contractor: (Clause 5.5(a))	<p>Workers Compensation Insurance</p> <p>Amount of Cover: The maximum amount required by Law</p> <p>Construction Plant Insurance</p> <p>Amount of Cover:</p> <p>[REDACTED]</p> <p>Motor Vehicle Insurance</p> <p>Amount of Cover:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Professional Indemnity Insurance</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Clause 6 - Design and Documentation		
19.	Number of copies of the Design Documentation to be submitted by Contractor: (Clause 6.12)	Two hard copies
Clause 10 - Construction		
20.	Existing Approvals and other Approvals which the Principal is to obtain: (Clause 10.4(d))	<p>(a) Part 5 Approval;</p> <p>(b) SSI Approval;</p> <p>(c) RAP; and</p> <p>(d) Voluntary Management Proposal.</p>
21.	Subcontracts requiring the Principal's approval (Clause 10.10(b)(ii))	Initial Subcontract price equal or greater than: \$500,000

22.	Provisional Sum Work: (Clauses 1.1 and 10.19)	Provisional Sum Work	Provisional Sum
		Off-site disposal – unsuitable spoil	█
		Design and construct wall to close utility tunnel at air raid shelter	█
		Telstra telecommunications disconnections	█
		Handover Works	█

Portion 2 Optional Works

Provisional Sum Work	Provisional Sum
Treatment of localised soft spots	█

23. Working hours for Contractor's Activities on Site:
(Clause 10.23)

Portion 1 Barrier Works: As set out in the Part 5 Approval.

Portion 2 Optional Works: As set out in the SSI.

Clause 12 - Time

24. Cap on delay costs:
(Clause 12.12(g))

	A\$ (excl. GST) per day
█	█
█	
█	
█	
█	
█	

10% of the Contract Sum in the aggregate

Clause 13 - Variations

25. Percentage adjustments for valuing a Variation:
(Clause 13.3(b))

(a) For non-time related Overhead Costs and profit where the adjustment is to be an increase: █ of the amount determined.

(b) For off site Overhead Costs and profit where the adjustment is to be a

		decrease: [redacted] of the amount determined.
(Clause 13.3(c))	(a)	For non-time related Overhead Costs and profit where the adjustment is to be an increase: [redacted] of the amount determined.
	(b)	For off site Overhead Costs and profit where the adjustment is to be a decrease: [redacted] of the amount determined.

Clause 15 - Completion

26.	Liquidated Damages payable by Contractor when Date of Completion occurs after Date for Completion: (Clause 15.4)	<p>Portion Liquidated damages</p> <p>Portion 1 Barrier Works [redacted] per day for the first [redacted] days of delay and thereafter [redacted] per day for each day of delay.</p> <p>Portion 2 Optional Works: [redacted] per day for the first [redacted] days of delay and thereafter [redacted] per day for each day of delay.</p> <p>are payable in respect of both Portions:</p> <ul style="list-style-type: none"> • [redacted] • [redacted]
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27.	Cap on liquidated damages: (Clause 15.6)	[redacted] % of the Contract Sum
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Clause 21 - Limitation of liability

28.	Limitation of liability (Contractor): (Clause 21)	<p>An amount equal to:</p> <p>(a) the Contract Sum as adjusted from time to time, including on account of any Variations; plus</p> <p>(b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any delay costs under clause 12.12 and any suspension costs under clause 12.13.</p>
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29.	Limitation of liability (the Principal): (Clause 21)	<p>An amount equal to:</p> <p>(a) the Contract Sum as adjusted from time to time, including on account of any Variations; plus</p>
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		(b) any other amounts paid or payable by the Principal to the Contractor under or in connection with the Contract, including any delay costs under clause 12.12 and any suspension costs under clause 12.13).
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- Schedule 2 Payment Schedule
- Schedule 3 Government requirements
- Schedule 4 Action in complying with Approvals
- Schedule 5 IC Deed for Remediation Contract
- Schedule 6 Not used
- Schedule 7 Consultant Deed of Covenant
- Schedule 8 Third Party Agreements
- Schedule 9 Approved Form Of Unconditional
Undertaking
- Schedule 10 Parent company guarantee

Schedule 11 Confidentiality Undertaking

Schedule 12 Form of Subcontractor Warranty

Schedule 13 Form of Statutory Declaration

Schedule 14 Terms of Expert Appointment

Schedule 15 Subcontracts – Security of
Payment

Schedule 16 CD-ROM

Schedule 17 Form of Certificates

Schedule 18 Not used

Schedule 19 Template for report on training of apprentices and trainees

Schedule 20 Form of Subcontractor Deed

Schedule 21 Milestone Schedule

Schedule 22 Program

Schedule 23 SOM Deed of Novation

Schedule 24 Nominated Reports

Schedule 25 Certificate of Final Completion

Annexures A to E - Any request for review of these Annexures is to be sent to the PLR Project Office: procurement.plr@transport.nsw.gov.au

Annexure A Works Brief

Annexure B TfNSW Standard Requirements

Annexure C The Principal's Insurance Policies

Annexure D Reports

Annexure E Third Party Agreements

Annexure F Voluntary Management Proposal

Schedule 2 Payment Schedule

Schedule of Prices

CBS Ref	CBS Level	ITEM	Unit	Qty	Rate	Amount (Excl GST)
P1	L1	Parramatta Light Rail Stage 1				
EW1	L2	Early Works - Portion 1 Barrier Works				
DC	L3	Direct Costs				
FA-LDPT-01	L5	Site Enabling Works				
CV	L6	Establish Site Environmental and Safety Controls and Maintain throughout Works	Item	1		
CV	L6	Asbestos Monitoring and Controls (including Occupational Hygienist)	Item	1		
CV	L6	Decommissioning of Groundwater Wells (as required for site preparation)	Item	1		
UT	L6	Protect, Remove or Replace Existing Communication Utilities (as required)	Item	1		
UT	L6	Protect, Remove or Replace Existing Drainage Utilities (as required)	Item	1		
UT	L6	Protect, Remove or Replace Existing Electricity Utilities (as required)	Item	1		
UT	L6	Protect, Remove or Replace Existing Fire Service Utilities (as required)	Item	1		
UT	L6	Protect, Remove or Replace Existing Sewer Utilities (as required)	Item	1		
UT	L6	Protect, Remove or Replace Existing Water Utilities (as required)	Item	1		
FA-LDPT-02	L5	Groundwater Treatment Plant				
EW	L6	Construct, Install and Commission New Groundwater Treatment Plan (GTP)	Item	1		
EW	L6	Supply and Installation of Electrical and Control System, Pipework and Infrastructure for New GTP	Item	1		
EW	L6	Supply and Installation of Replacement Extraction Well(s) and Pumps (if required)	Item	1		
EW	L6	Operation, Maintenance and Monitoring of Existing GTP in accordance with Trade Wastewater Agreement (TWA)	Item	1		

EW	L6	Operation, Maintenance and Monitoring of New GTP in accordance with TWA	Item	1	\$ -	Not required in Portion 1
FA-LDPT-02	L5	Demolition				
EW	L6	Hazardous Materials Survey	Item	1		
EW	L6	Demolition and Removal of Redundant Structures and Infrastructure	Item	1		
FA-LDPT-04	L5	Hydraulic Barrier Wall				
CV	L6	Mobilisation, Materials Supply, Establishment of Specialist Plant and Equipment	Item	1		
CV	L6	Excavate to Design Level and Install Barrier Wall (including geotechnical controls)	Item	1	\$	
EW	L6	Water Management	Item	1		
EW	L6	On Site Handling, Management and stockpiling of Excavated Materials	Item	1		
CV	L6	Remove Plant from Site	Item	1		
FA-LDPT-06	L5	Remediation and Validation Monitoring				
EW	L6	Site Supervision (Environmental Consultant) throughout Stage 1 Remediation Works	Item	1		
EW	L6	Validation Sampling, Monitoring and materials tracking for Stage 1 Remediation Works	Item	1		
CV	L6	Reporting (including progress and validation reporting, Interim Site Management Plan, liaison with Site Auditor)	Item	1		
DE	L3	Design				
EW	L4	Data Review	Item	1		
UT	L4	Investigations and Assessments for Detailed Design of Stage 1 Remediation Works (including treatment trials as required)	Item	1		
EW	L4	Remediation Works and Validation Plan	Item	1		
EW	L4	CCB Gate 2 Design Submission for Stage 1 Remediation Works (including Geotechnical Interpretive Report)	Item	1		
CV	L4	CCB Gate 3 Design Submission for Stage 1 Remediation Works (including AFC Approval)	Item	1		
CV	L4	Gate Stage Documentation Requirements (CCB Gate 4 Approval)	Item	1		
CV	L4	Final Gate Stage Documentation Requirements (CCB Gate 5	Item	1		

		Approval)				
CV	L4	Work as Executed (WAE) Drawings Approval (As Built)	Item	1		
CV	LV	Design - Treatment Design (Section 5.4 of the Works Brief)	Item	1		
PR	L3	Preliminaries				
0001	L4	Mobilisation (including utilities connections)	Item	1		
0002	L4	Project Management and Supervision	Item	1		
0003	L4	Indirect Labour	Item	1		
0004	L4	Induction and Training	Item	1		
0005	L4	Plant, Equipment and Small Tools	Item	1		
0006	L4	Computer and IT	Item	1		
0007	L4	Fees and Insurances	Item	1		
0008	L4	Site Buildings and Offices (including Facilities for Principal)	Item	1		
0009	L4	Preliminary Dilapidation Survey	Item	1		
0010	L4	Communications and Community Consultation Support (TfNSW to lead)	Item	1		
0011	L4	Temporary Hoardings and Fencing	Item	1		
0012	L4	General Site Investigations (Geotechnical, Utility Services) and Cadastral and Topographic Survey	Item	1		
0013	L4	Final Dilapidation Survey	Item	1		
0014	L4	Traffic Management	Item	1		
0015	L4	Site Security	Item	1		
0016	L4	Remote Real Time CCTV and Time Lapse Video	Item	1		
0017	L4	Make Good and Demobilisation	Item	1		
0018	L4	Approvals, Permits and Licenses	Item	1		
		Provisional Sums				
		Provisional Sum - Off-site disposal – unsuitable spoil	Item	1		
		Provisional Sum - Design and construct wall to close utility tunnel at air raid shelter	Item	1		
		Provisional Sum - Telstra telecommunications disconnections	Item	1		
		Provisional Sum - Handover Works	Item	1		

<i>Sub Total: Preliminaries, Design, Direct Costs and Provisional Sums for Portion 1 Barrier Works (A):</i>	
<i>REF Obligations (B)</i>	
<i>Total Addendum 7 Lump Sum Price for Ground Improvement Design (C):</i>	
<i>Total Lump Sum Price for Portion 1 Works (A+B+C)</i>	<i>\$13,388,192.00</i>

Portion 2 Pricing Schedule

CBS Ref	CBS Level	ITEM	Unit	Qty	Rate	Amount (Excl GST)
P1	L1	Parramatta Light Rail Stage 1				
EW1	L2	Early Works - Portion 2 Optional Works				
DC	L3	Direct Costs				
FA-LDP T-01	L5	Site Enabling Works (sub-total)				
EW	L6	Maintain Site Environmental and Safety Controls throughout Portion 2 Works	Item	1		
UT	L6	Continued Protection of Utilities (as required)	Item	1		
FA-LDP T-02	L5	Groundwater Treatment Plant (sub-total)				
EW	L6	Operation, Maintenance and Monitoring of New GTP in accordance with TWA	Item	1		
FA-LDP T-05	L5	Integrated Capping System (sub-total)				
EW	L6	Grade Existing Site Surface to Design Levels	Item	1		
EW	L6	Supply and Install Capillary Break Layer (including Infiltration Pits and Standpipes)	Item	1		
EW	L6	Supply and Install Pipework for Vapor Venting System for Open Areas	Item	1		
EW	L6	Supply and Install Pipework for Vapor Venting System for Maintenance Building	Item	1		
EW	L6	Install Marker Layers	Item	1		
FA-LDP T-05	L5	Final Site Cap (sub-total)				
CV	L6	Import and Place Clean Fill Capping Layer to Final Design Level	Item	1		
CV	L6	Supply and Install Vapour Barrier System for Maintenance Building	Item	1		
CV	L6	Compact and Proof Roll under Maintenance Building Footprint	Item	1		
CV	L6	Install and Commission Above Ground Vapour Extraction Infrastructure	Item	1		
FA-LDP T-06	L5	Remediation and Validation Monitoring (sub-total)				

EW	L6	Site Supervision (Environmental Consultant) throughout Stage 2 Remediation Works	Item	1		
EW	L6	Validation Sampling, Monitoring and materials tracking for Stage 2 Remediation Works	Item	1		
CV	L6	Reporting (including progress and validation reporting, Interim Site Management Plan, liaison with Site Auditor)	Item	1		
DE	L3	Design				
UT	L4	Investigations and Assessments for Detailed Design of Stage 2 Remediation Works (including treatment trials as required)	Item	1		
EW	L4	Remediation Works and Validation Plan	Item	1		
EW	L4	CCB Gate 2 Design Submission for Stage 2 Remediation Works (including Geotechnical Interpretive Report and Design Integration with Interface Contractor)	Item	1		
CV	L4	CCB Gate 3 Design Submission for Stage 2 Remediation Works (including AFC Approval)	Item	1		
CV	L4	Gate Stage Documentation Requirements (CCB Gate 4 Approval)	Item	1		
CV	L4	Final Gate Stage Documentation Requirements (CCB Gate 5 Approval)	Item	1		
CV	L4	Work as Executed (WAE) Drawings Approval (As Builts)	Item	1		
PR	L3	Preliminaries				
1	L4	Re-mobilisation	Item	1		
2	L4	Continued Project Management and Supervision	Item	1		
3	L4	Indirect Labour	Item	1		
4	L4	Induction and Training	Item	1		
5	L4	Plant, Equipment and Small Tools	Item	1		
6	L4	Computer and IT	Item	1		
7	L4	Fees and Insurances	Item	1		
8	L4	Site Buildings and Offices (including Facilities for Principal)	Item	1		
9	L4	Communications and Community Consultation Support (TfNSW to lead)	Item	1		
10	L4	Temporary Hoardings and Fencing	Item	1		
11	L4	General Site Investigations (Geotechnical, Utility Services) and Cadastral and Topographic Survey	Item	1		
12	L4	Traffic Management	Item	1		
13	L4	Site Security	Item	1		
14	L4	Remote Real Time CCTV and Time Lapse Video	Item	1		

15	L4	Make Good and Demobilisation	Item	1		
16	L4	Approvals, Permits and Licenses	Item	1		
A7		Ground Improvement Design (Addendum 7)				
1		Ground Improvement concept design development				
2		Ground Improvement Design				
3		Construction of Ground Improvement Works				
4		Mobilisation and demobilisation ground improvement works				
P		Provisional Sums				
1		Provisional Sum for the Treatment of localised soft spots	Item	1		

Total Lump Sum Price for Portion 2 Optional Works:

Baseline Conditions of Approval

TOTAL Lump Sum Price for Portion 2 Optional Works

Pre- Agreed Rates

Schedule of Rates for Labour

Ref	Description	Normal Time	Time and a Half	Double Time
		06:00 - 18:00 Weekdays & 06:00 - 13:00 Saturdays (per hour)	18:00 - 06:00 Weekdays & 13:00 - 06:00 Saturdays (per hour)	Sundays & Public Holidays (per hour)
3A.1	Project Director		N/A	N/A
3A.2	Commercial Manager		N/A	N/A
3A.3	Project Manager		N/A	N/A
3A.4	Cost Administrator		N/A	N/A
3A.5	Engineering Manager / Lead Engineer		N/A	N/A
3A.6	Senior: Engineer / Environmental Scientist / Geologist		N/A	N/A
3A.7	Engineer / Environmental Scientist / Geologist		N/A	N/A
3A.8	CAD Resource		N/A	N/A
3A.9	Project Engineer		N/A	N/A
3A.10	Site Engineer / Junior Engineer		N/A	N/A
3A.11	Construction Manager		N/A	N/A
3A.12	WHS Manager		N/A	N/A
3A.13	Environmental Manager		N/A	N/A
3A.14	Environmental Officer		N/A	N/A
3A.15	Community Liaison Officer		N/A	N/A
3A.16	Site Foreman/Supervisor		N/A	N/A
3A.17	Surveyor (including vehicle and equipment)			
3A.18	Carpenter			

Ref	Description	Normal Time	Time and a Half	Double Time
		06:00 - 18:00 Weekdays & 06:00 - 13:00 Saturdays (per hour)	18:00 - 06:00 Weekdays & 13:00 - 06:00 Saturdays (per hour)	Sundays & Public Holidays (per hour)
3A.19	Steel Fixer			
3A.20	Concreter			
3A.21	Electrician			
3A.22	Plumber			
3A.23	Leading Hand			
3A.24	Traffic Officer (including vehicle & equipment)			
3A.25	Security Guard			
3A.26	General Labourer			
3A.27	Plant Operator (not otherwise included in rate for plant)			
3A.28	Truck Driver (not otherwise included in rate for plant)			
3A.29	Occupational Hygienist			
3A.31	Scientific/Engineering Site supervision (half day) - 4 hours minimum includes vehicle and field equipment			
3A.32	Scientific/Engineering Site Supervision (full day) - 10 hours maximum onsite, included vehicle and field equipment			

Schedule of Rates for Plant and Equipment

Ref	Description	Normal Wet Hire Rate \$/hour	Overtime Wet Hire Rate \$/hour	Dry Hire Day Rate	Standing Time Day Rate	Mobilisation / Demobilisation Each way
3B.1	Excavator - 12T to 20T					
3B.2	Excavator - 21T to 35T					
3B.3	Excavator - 36T to 50T					
3B.4	Hydraulic Hammer / Rock Saw - 12T to 20T					
3B.5	Hydraulic Hammer / Rock Saw - 21T to 35T					
3B.6	Hydraulic Hammer / Rock Saw - 36T to 50T					
3B.7	Tipper Truck 3T / Light truck					
3B.8	Tipper Truck 12T (Bogie)					
3B.9	Tipper Truck 31T with trailer					
3B.10	Cat D8R Dozer or similar with ripper					
3B.11	Front end loader WA380 or similar					
3B.12	Front end loader WA430 or similar					
3B.13	Crane Truck (Incl. lifting gear)					
3B.14	4WD Backhoe					
3B.15	Skid Steer loader					
3B.16	15T smooth drum or pad foot roller					
3B.17	3T smooth drum roller					
3B.18	Jackhammer					
3B.19	Generator 5 KVA					
3B.20	Site Vehicle (4WD)					
3B.21	Watercart (9,001 – 15,000 Litre)					
3B.22	Watercart (15,001 – 20,000 Litre)					
3B.23	Street Sweeper (Incl. disposal)					
3B.24	Super Sucker (Incl. disposal)					
3B.25	Franna Crane 20T					
3B.26	100T All Terrain Crane (Including operating team and lifting gear)					
3B.27	Site Dumper Truck 2T					
3B.28	Concrete Line Pump					

Ref	Description	Normal Wet Hire Rate \$/hour	Overtime Wet Hire Rate \$/hour	Dry Hire Day Rate	Standing Time Day Rate	Mobilisation / Demobilisation Each way
3B.29	Plate Compactor					
3B.30	Road Plate					
3B.31	Forklift					
3B.32	Grader Cat 140H or similar					
3B.33	Compactor 825B (32T)					

Schedule of Rates for Materials and Works

Ref	Description	Unit	Rate
3C.1	Granular fill vent layer - supply and lay	Per Cubic Metre	
3C.2	Structural fill capping - supply and compact in layers	Per Cubic Metre	
3C.3	100mm diameter slotted vent pipe - supply lay and connect (Incl. bends)	Per Lin metre	
3C.4	100mm diameter slotted vent pipe caps - supply and install	Each	
3C.5	100mm diameter slotted vent pipe T-piece - supply and install	Each	
3C.6	100mm diameter slotted vent pipe hood / screen - supply and install	Each	
3C.7	150mm diameter slotted vent pipe - supply lay and connect (Incl. bends)	Per Lin metre	
3C.8	150mm diameter slotted vent pipe caps - supply and install	Each	
3C.9	150mm diameter slotted vent pipe T-piece - supply and install	Each	
3C.10	150mm diameter slotted vent pipe hood / screen - supply and install	Each	
3C.11	Vapour Barrier - supply, join, lay on suitable bed and protect	Per square metre	
3C.12	Bentonite (Supply and store)	Ton	
3C.13	Drilling of Non-Cored Borehole for Environmental Sampling	Per Lin Metre	
3C.14	Drilling of Non-Cored Borehole for Geotechnical Sampling	Per Lin Metre	
3C.15	Drilling of Cored Borehole	Per Lin Metre	
3C.16	Install and Develop Groundwater Monitoring Well (up to 20 m depth)	Each	
3C.17	Install and Develop Groundwater Monitoring Well (greater than 20 m depth)	Each	
3C.18	Install and Commission Groundwater Extraction Pumps in Groundwater Monitoring Well (including connection to GTP)	Each	
3C.19	Install Soil Vapour / Ground Gas Monitoring Well	Each	
3C.20	Concrete Coring (up to 500 mm thickness)	Each	
3C.21	Concrete Coring (greater than 500 mm thickness)	Each	
3C.22	Collection of Groundwater Sample	Per Location	
3C.23	Soil Vapour / Ground Gas Monitoring	Per Location	
3C.24	Laboratory Analysis: Soil - Heavy Metals	Per Sample	
3C.25	Laboratory Analysis: Soil - BTEX and TRH	Per Sample	
3C.26	Laboratory Analysis: Soil - TRH with Silica Gel Cleanup	Per Sample	
3C.27	Laboratory Analysis: Soil - PAHs	Per Sample	
3C.28	Laboratory Analysis: Soil - Hexavalent Chromium	Per Sample	
3C.28	Laboratory Analysis: Soil - Total Chromium	Per Sample	
3C.29	Laboratory Analysis: Soil - Volatile Chlorinated Hydrocarbons (VCHs)	Per Sample	
3C.30	Laboratory Analysis: Soil - Volatile Organic Compounds (VOCs)	Per Sample	

Ref	Description	Unit	Rate
3C.31	Laboratory Analysis: Soil - Semi-Volatile Organic Compounds (SVOCs)	Per Sample	
3C.32	Laboratory Analysis: Soil - Speciated Phenols	Per Sample	
3C.33	Laboratory Analysis: Soil - Pesticides (OCPs and OPPs) and Herbicides	Per Sample	
3C.34	Laboratory Analysis: Soil - Polychlorinated Biphenyls (PCBs)	Per Sample	
3C.35	Laboratory Analysis: Soil - Explosives	Per Sample	
3C.36	Laboratory Analysis: Soil - Asbestos in Soils (% by weight)	Per Sample	
3C.37	Laboratory Analysis: Soil - Asbestos ID in Soils (Presence / Absence)	Per Sample	
3C.38	Laboratory Analysis: Soil - Acid Sulphate Soils	Per Sample	
3C.39	Laboratory Analysis: Soil - TCLP Preparation	Per Sample	
3C.40	Laboratory Analysis: Materials - Asbestos Identification (Presence / Absence)	Per Sample	
3C.41	Laboratory Analysis: Materials - Lead	Per Sample	
3C.42	Laboratory Analysis: Water - Dissolved Metals	Per Sample	
3C.43	Laboratory Analysis: Water - BTEX and TRH	Per Sample	
3C.44	Laboratory Analysis: Water - TRH with Silica Gel Cleanup	Per Sample	
3C.45	Laboratory Analysis: Water - PAHs	Per Sample	
3C.46	Laboratory Analysis: Water - Hexavalent Chromium	Per Sample	
3C.47	Laboratory Analysis: Water - Total Chromium	Per Sample	
3C.48	Laboratory Analysis: Water - Volatile Chlorinated Hydrocarbons (VCHs)	Per Sample	
3C.49	Laboratory Analysis: Water - Volatile Organic Compounds (VOCs)	Per Sample	
3C.50	Laboratory Analysis: Water - Semi-Volatile Organic Compounds (SVOCs)	Per Sample	
3C.51	Laboratory Analysis: Water - Speciated Phenols	Per Sample	
3C.52	Laboratory Analysis: Water - Pesticides (OCPs and OPPs) and Herbicides	Per Sample	
3C.53	Laboratory Analysis: Water - Polychlorinated Biphenyls (PCBs)	Per Sample	
3C.54	Laboratory Analysis: Water - Explosives	Per Sample	
3C.55	Laboratory Analysis: Water - Trade Wastewater Agreement Suite	Per Sample	
3C.56	Laboratory Analysis: Water - Total Dissolved Solids (TDS) and Total Suspended Solids (TSS)	Per Sample	
3C.57	Laboratory Analysis: Water - pH	Per Sample	
3C.58	Laboratory Analysis: Water - Alkalinity	Per Sample	
3C.59	Laboratory Analysis: Water - Hardness	Per Sample	
3C.60	Laboratory Analysis: Water - Ferrous Iron	Per Sample	
3C.61	Laboratory Analysis: Water - Dissolved Gases (Methane, Ethane & Ethylene)	Per Sample	
3C.62	Laboratory Analysis: Dust - Hexavalent Chromium	Per Sample	
3C.63	Laboratory Analysis: Soil Vapour - VOCs in Air	Per Sample	
3C.64	Laboratory Analysis: Soil Vapour - Ground Gases	Per Sample	
3C.62	Site Management in accordance with Interim Site Management Plan (including operation, maintenance and monitoring of GTP)	Per month	
3C.63	Laboratory Analysis: Administration Charge per batch of samples	Per Batch	

Schedule of Rates for Off-Site Disposal (Provisional Sum Work)

Ref	Material Description In accordance with <i>Waste Classification Guidelines, Part 1: Classifying Waste</i> (NSW EPA, November 2014)	Rate up to 50Tn	Rate for 51Tn to 1,000Tn	Rate for > 1,000Tn
3D.1	1. General Solid Waste (non-putrescible) (a) Load, transport and dispose off-site to licensed facility			
3D.2	2. General Solid Waste (putrescible) (a) Load, transport and dispose off-site to licensed facility			
3D.3	3. Restricted Solid Waste (a) Load, transport and dispose off-site to licensed facility			
3D.4a	4. Site Won Spoil * (a) On-site treatment / stabilisation to use as structural fill			
3D.4b	4. Hazardous Waste (b) On-site treatment / stabilisation to classify as general solid waste (where not suitable as structural fill)			
3D.4c	4. Hazardous Waste (c) Load, transport and dispose off-site to licensed facility as General Solid Waste			
3D.5	5. Special Waste - Asbestos (a) Load, transport and dispose off-site to licensed facility			

*The above rate in Item 3D.4a, that materials requiring treatment would be those broadly consistent with the site characteristics; namely a predominantly clayey soil matrix and treatment requires the addition of 5% Agricultural Lime.

Further, it only contemplates a structural requirement (as the description implies) of the materials and no other geotechnical parameters such as Atterburg Limits.

Schedule 8 Third Party Agreements

1 Definitions

In this Schedule 8, a reference to a clause is a reference to a clause of this Schedule 8 unless otherwise indicated, and the following terms have the following meanings:

Difference in Conditions has the meaning given in paragraph 3(c).

Draft Third Party Agreement has the meaning given in paragraph 3(a)(i).

Replacement Third Party Agreement has the meaning given in paragraph 3(a)(i).

Revised Allocation has the meaning given in paragraph 3(b)(iv).

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

2 Compliance with requirements

The Contractor:

- (a) acknowledges that the Principal has entered or will enter into the Third Party Agreements;
- (b) must:
 - (i) unless otherwise expressly specified in paragraph 6, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that the Principal is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
 - (ii) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in paragraph 6 that are additional to or more stringent or onerous than the conditions and requirements described in paragraph 2(b)(i);
- (c) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in paragraph 6;
- (d) must comply with any reasonable directions of the Principal's Representative in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
- (e) where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, must provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and

comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;

- (f) must, ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement and otherwise act consistently with the terms of the Third Party Agreement;
- (g) agrees that whenever, pursuant to the terms of a Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in paragraph 6 and the other terms of this Contract, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal as if the relevant terms were set out in full in this Contract; and
- (h) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor in respect of that state of affairs in the same way as if the relevant terms were set out fully in this Contract.

3 Draft and Replacement Third Party Agreements

- (a) The parties acknowledge that as at the Award Date:
 - (i) the terms and conditions of the Third Party Agreements identified in Annexure H as "Draft" have not been finalised between the Principal and the relevant Third Party (each a "**Draft Third Party Agreement**"); and
 - (ii) certain Third Party Agreements may need to be replaced with new agreements on different terms (each a "**Replacement Third Party Agreement**").
- (b) Following:
 - (i) finalisation of any Draft Third Party Agreement; or
 - (ii) the execution of any Replacement Third Party Agreement, after the Award Date, the Principal must promptly give the Contractor a copy of the:
 - (iii) executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - (iv) amendments (if any) to paragraph 6 arising out of the execution of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable) ("**Revised Allocation**").
- (c) Within 20 Business Days of receipt of an executed copy of a Draft Third Party Agreement or a Replacement Third Party Agreement, and the associated Revised Allocation, the Contractor must notify the Principal's Representative in writing if any terms and conditions of:
 - (i) the executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); or

- (ii) the associated Revised Allocation,
- (iii) are substantially more onerous than those contained in:
- (iv) the relevant Draft Third Party Agreement or Third Party Agreement which was replaced; and
- (v) paragraph 6,

("Difference in Conditions"), including:

- (vi) where the Difference in Conditions will result in additional administration, details of such additional administration costs to be incurred by the Contractor; and
- (vii) where the Difference in Conditions will result in additional physical works:
 - (A) not forming part of the Contractor's Activities; and
 - (B) which is otherwise in addition to any physical works contemplated by the Third Party Agreements executed at the Award Date and the Draft Third Party Agreements,

details of such additional physical works and the cost of carrying out such additional physical works.

4 Adjustments to Contract

- (a) If the Principal does not receive a notice from the Contractor under paragraph 3(c) within the 20 Business Day period:
 - (i) paragraph 6 is amended in accordance with the Revised Allocation on and from the date that the Contractor received the:
 - (A) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - (B) Revised Allocation,
 under paragraph 3(b); and
 - (ii) the Contractor must carry out its obligations under this Contract on the basis of:
 - (A) the executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (as applicable); and
 - (B) the Revised Allocation,
 without any adjustment to the Contract Sum or any entitlement to make any other Claim.
- (b) If the Principal's Representative receives a notice from the Contractor under paragraph 3(c) within the 20 Business Day period, then:

- (i) paragraph 6 is amended in accordance with the Revised Allocation as and from the date that the Contractor received the:
 - (A) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - (B) Revised Allocation,
 under paragraph 3(b);
- (ii) the Contractor must carry out its obligations under this Contract on the basis of:
 - (A) the executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (as applicable); and
 - (B) the Revised Allocation;
- (iii) the Principal's Representative must:
 - (A) where the Contractor has provided the details referred to in paragraph 3(c)(vi), give the Contractor a notice setting out the Principal's Representative's determination of the reasonable, additional administration costs incurred or to be incurred by the Contractor in complying with the executed version of the Draft Third Party Agreement, the Replacement Third Party Agreement or Revised Allocation and the Contract Sum will be increased by that amount; and
 - (B) where the Contractor has provided the details referred to in paragraph 3(c)(vii), if the terms of any executed version of a Draft Third Party Agreement, the Replacement Third Party Agreement or Revised Allocation require the Contractor to carry out any physical work which:
 - i. does not form part of the Contractor's Activities; and
 - ii. is additional to any physical works contemplated by the Third Party Agreements executed at the Award Date and the Draft Third Party Agreements,
 direct the Contractor to carry out such physical work as a Variation under the General Conditions of Contract.

5 Indemnity

- (a) The Contractor indemnifies the Principal against and Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement or a Replacement Third Party Agreement executed after the Award Date) to the extent that the Claim, costs, losses or damages arises out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, the Principal's Representative or an Other Contractor contributed to the Claim, costs, losses or damages.

- (b) The Contractor agrees that it:
 - (i) bears the full risk of:
 - (A) complying with the obligations under this clause 5; and
 - (B) any acts or omissions of Third Parties; and
 - (ii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the risks referred to in paragraph (i).

6 Extent of Principal's responsibility for complying with Third Party Agreements

Agreement and Clause No	Extent of Principal's responsibility for clause specified
Sydney Water Trade Waste: Consent no: 15831 Schedule 3	TfNSW will affect all payment to Sydney Water due as a result of this agreement.

Schedule 3 Government requirements

All clause references in this Schedule 3 are references to clauses in this Schedule 3 unless otherwise indicated.

1 Contractor's compliance with Government Policies and Guidelines and other Agreements

- (a) The Contractor acknowledges that when selecting the Contractor, the Principal, as a NSW Government authority, was obliged to consider the Contractor's compliance with the:
- (i) Government Policies and Guidelines;
 - (ii) NSW Government Local Jobs First Plan, unless the Contractor's Activities are construction services;
 - (iii) NSW Government Preference Scheme, unless the Contractor's Activities are construction services;
 - (iv) Australian New Zealand Government Procurement Agreement; and
 - (v) Australia-United States Free Trade Agreement.
- (b) The Contractor warrants that any information it provided to the Principal in its tender proposal in respect of its compliance with the requirements of the documents listed in clauses 1(a)(i) to 1(a)(v) will remain true for the duration of the Contract.

2 Anti - Corruption and Business Ethics

2.1 Corruption Prevention

- (a) The Contractor warrants and represents to the Principal that:
- (i) it has not, and none of its Personnel have, engaged in any corrupt conduct at any time prior to the Award Date; and
 - (ii) it will not, and will ensure that its Personnel do not, at any time engage in any corrupt conduct.
- (b) Without limiting or otherwise restricting any other rights of the Principal under the Contract, if:
- (i) the Contractor or any of its Personnel are at any time found to have engaged in corrupt conduct; or
 - (ii) the Contractor is at any time found to have breached the warranty and representation given in clause 2.1(a),

the Principal may terminate the Contract with immediate effect by giving written notice to the Contractor.

- (c) In this clause 2.1, terms which are defined in the *Independent Commission Against Corruption Act 1988* (NSW) ("**ICAC Act**") have the meaning given in the ICAC Act.

2.2 Statement of Business Ethics

- (a) The Contractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at www.transport.nsw.gov.au ("**Statement of Business Ethics**").
- (b) Prior to the engagement of any Subcontractor, the Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Principal's or any Rail Transport Agency's Statement of Business Ethics found at <http://www.transport.nsw.gov.au/>. The Contractor must retain the documentation required by this clause 2.2(a) for a period of seven years and must provide such documentation to the Principal as and when requested.
- (c) If a person has committed a material breach of the Principal's statement of business ethics and the Contractor has material information, knowledge of, or believes that such a breach has been committed, the Contractor must notify the Principal's Representative of such information, knowledge or belief.

3 Safety

3.1 Safety Management

- (a) The Contractor must provide its safe work method statements (as defined in the WHS Legislation) to the Principal's Representative within 10 Business Days of the date of the Contract.
- (b) If at any time the Contractor becomes aware of any health or safety hazard in relation to the Contractor's Activities either prior to or after performing the Contractor's Activities, the Contractor must promptly review the Contractor's Activities and immediately suspend provision of any Contractor's Activities where there is a possibility of injury to persons or damage to property.
- (c) To the extent permitted by Law, the Contractor indemnifies the Principal from and against any and all claims, loss, expense or damage caused by, or arising out of, or in any way in connection with any breach by the Contractor or its Personnel of the Rail Safety National Law or this clause 3.1.
- (d) The Contractor's liability to indemnify the Principal under clause 3.1(c) will be reduced proportionally to the extent that the claim, loss, expense or damage was caused or contributed to by a negligent act or omission of the Principal or its Personnel.
- (e) The Principal may from time to time amend the obligations imposed upon the Contractor under the Safety Specification.

3.2 Work Health and Safety

- (a) Without limiting or otherwise restricting any other provision of the Contract, the Contractor acknowledges that it has read and understands the sections of the Principal's or any Rail Transport Agency's Safety Management System which are relevant to the Contractor's Activities,

found at <http://railsafe.org.au/sms-documents> and <http://www.transport.nsw.gov.au> as amended from time to time, or as otherwise notified by the Principal to the Contractor.

- (b) The Contractor must, and must ensure that all of its Personnel, at all times comply with the requirements of the Principal's Safety Management System.
- (c) The Contractor must establish, implement and maintain for the duration of the Contract, a work health and safety management system ("**WHS Management System**") which:
 - (i) complies with the WHS Guidelines;
 - (ii) complies with the WHS Legislation;
 - (iii) reflects the Principal's minimum requirements set out in the Principal's Safety Management System; and
 - (iv) includes an ongoing commitment to the training of its Personnel.
- (d) If clause 3.2(c) includes conflicting obligations, the obligation which imposes the highest standard of health and safety applies.
- (e) The Contractor must:
 - (i) ensure that all of its Personnel comply with the WHS Management System (including identifying and exercising all necessary precautions for the health and safety of all persons undertaking any part of the Contractor's Activities); and
 - (ii) monitor the compliance of its Personnel with the WHS Management System and the relevant sections of the Principal's Safety Management System.
- (f) As required by the Principal, the Contractor must provide to the Principal's Representative in a format acceptable to the Principal:
 - (i) acknowledgement of any changes to rail network documents such as rules, procedures, standards, manuals and other documents; and
 - (ii) evidence that any initiatives or changes referred to in clause 3.2(f)(i) have been communicated to its Personnel.
- (g) The Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may in its absolute discretion, direct changes to the WHS Management System;
 - (ii) in the event that the Principal's Representative gives a direction in accordance with clause 3.2(g)(i), the responsibility of the Contractor under the Contract will not be relieved or reduced nor will the Principal be made responsible to the Contractor as a result of issuing that direction except to the extent that it gives rise to a Variation; and
 - (iii) in the event that the Principal discovers a non-compliance or [REDACTED] breach of clause 3.1 or this clause 3.2, the Principal may immediately suspend the work associated with the non-

compliance or breach. The suspension will not be lifted until the unsafe practice is removed or the breach rectified. All direct costs under this clause will be borne by the Contractor.

4 Information

4.1 Exchange of information between government agencies

- (a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and the Contract available to NSW government departments or agencies, including:
 - (i) any information provided by the Contractor to the Principal;
 - (ii) any information relating to the Contractor's performance under the Contract; and
 - (iii) the terms of the Contract.
- (b) The Contractor acknowledges and agrees that:
 - (i) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work;
 - (ii) the communication of such information to any NSW government department or agency is a communication falling within section 30 of the *Defamation Act 2005 (NSW)*; and
 - (iii) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

4.2 Financial Assessment

The Contractor acknowledges and agrees that:

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

5 Commonwealth requirements

5.1 Building Code

This clause 5.1 applies if so stated in clause 8.

- (a) as at the Award Date the Contractor declares, and the Contractor must ensure that during the term of this Contract in relation to any Commonwealth funded building work, that it and its Subcontractors:
 - (i) comply with the Building Code;
 - (ii) are not covered by an "enterprise agreement" (as defined in the *Fair Work Act 2009* (Cth)) that does not meet the requirements of section 11 of the Building Code;
 - (iii) are not subject to an "exclusion sanction" (as defined in the Building Code);
 - (iv) have not had an adverse decision, direction or order made by a court or tribunal for a breach of the BCI(IP) Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order;
 - (v) will only use products in relation to the Commonwealth funded building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (vi) unless approved otherwise by the ABC Commissioner, are not excluded from performing "building work" (within the meaning in subsection 3(4) of the Building Code) funded by a state or territory government; and
 - (vii) where:
 - (A) the Commonwealth's contribution to the project that includes the Works is at least \$5,000,000 and represents at least 50% of the total construction project value proportion of that project; or
 - (B) the Commonwealth's contribution to the project that includes the Works is at least \$10,000,000 (irrespective of its proportion of the total construction project value),comply with the workplace relations management plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Works.
- (b) Compliance with the Building Code does not relieve the Contractor from responsibility to perform this Contract, or from liability for any Defect in the Contractor's Activities or the Works in relation to any Commonwealth funded building work arising from compliance with the Building Code.
- (c) The Contractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (d) The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCI(IP) Act and the Building

Code and will ensure that it and its Subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCI(IP) Act, requests to interview any person under section 74 of the BCI(IP) Act, requests to produce records or documents under sections 74 and 77 of the BCI(IP) Act and requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.

- (e) The Contractor must only enter into a Subcontract for any of the Commonwealth funded building work where:
 - (i) the Subcontractor has submitted a Declaration of Compliance; and
 - (ii) the Subcontract with the Subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- (f) The Contractor must provide the Principal and the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 5.1(e)(i) on request.
- (g) In this clause 5.1:
 - (i) **"ABC Commissioner"** means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCI(IP) Act;
 - (ii) **"ABCC"** means the body referred to in subsection 29(2) of the BCI(IP) Act;
 - (iii) **"BCI(IP) Act"** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
 - (iv) **"Commonwealth funded building work"** means "building work" in items 1-8 of Schedule 1 of the Building Code that is the subject of this Contract; and
 - (v) **"Declaration of Compliance"** means a declaration in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code, including the further information outlined in 'Attachment A' to that model declaration of compliance.

5.2 WHS Accreditation Scheme

- (a) This clause 5.2 applies if so stated in clause 8.
- (b) The Contractor:
 - (i) warrants that it is accredited under the WHS Accreditation Scheme; and
 - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while "building work" (as defined in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)) is carried out.

5.3 NGER Legislation

- (a) If any of the Contractor's Activities, or the activities of any of the Contractor's Personnel in connection with the Contractor's Activities (the "Relevant Matters") constitute a "facility" within the meaning of the NGER Legislation then for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation.
- (b) If, despite the operation of clause 5.3(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the Contractor.
- (c) If the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time.
- (d) The Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person.
- (e) The Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 5.3, 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 5.3 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit.
- (g) Nothing in this clause 5.3 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

6 NSW Code of Practice for Procurement

6.1 NSW Code and NSW Guidelines

In addition to terms defined in this document, terms used in this clause 6 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement : Building and Construction ("**NSW Guidelines**") (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

6.2 Primary Obligation

- (a) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement ("**NSW Code**") and NSW Guidelines.
- (b) The Contractor must notify the Construction Compliance Unit ("**CCU**") and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 6, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

6.3 Access and information

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

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

- (c) The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

6.4 Sanctions

- (a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

6.5 Compliance

- (a) The Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Contractor from responsibility to perform the Works and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change,

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

7 Other NSW government requirements

7.1 Chain of responsibility legislation

- (a) Without limiting or otherwise restricting any of the Contractor's responsibilities or obligations under or in connection with the Heavy Vehicle Law, to the extent heavy vehicles are used in the performance of the Contractor's Activities, the Contractor:
- (i) acknowledges that it is a primary duty holder under the COR Laws with responsibility for developing COR Systems;
 - (ii) must ensure that:
 - (A) any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension limits and are appropriately secured;
 - (B) operators carrying freight containers have a valid Container Weight Declaration; and
 - (C) drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements;
 - (iii) must proactively provide reasonable assistance to the Principal's Representative to enable the Principal (and any of the Principal's Personnel) to satisfy its duties and responsibilities under the COR Laws;
 - (iv) must obtain and maintain, and ensure that each of its Personnel obtains and maintains, all approvals required to enable the applicable activity, function or task to be undertaken lawfully;
 - (v) must undertake any audits or monitoring as requested by the Principal's Representative to demonstrate compliance with this clause; and
 - (vi) warrants that it is familiar with and has the capability and resources to comply with the COR Laws and ensure that its Personnel comply with all COR Laws.
- (b) Where used in this clause 7.1:
- (i) **"COR Laws"** means any section of the Heavy Vehicle Law under which the Contractor is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle Law);
 - (ii) **"COR Systems"** means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with the COR Laws;
 - (iii) **"Heavy Vehicle Law"** means the:
 - (A) Heavy Vehicle National Law (NSW) within the meaning of that term under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW); and

- (B) regulations in force under the Heavy Vehicle National Law (NSW) as applied (with modifications) under the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW) as amended, reproduced or updated from time to time; and
- (iv) terms which are defined in the Heavy Vehicle Law have the meaning given in the Heavy Vehicle Law.

7.2 Aboriginal Participation in Construction

Where the NSW Government Policy on Aboriginal Participation in Construction (May 2015) ("Policy") is applicable to the Contractor's Activities, the Contractor must:

- (a) comply with the requirements of the Policy;
- (b) within 60 days of the Award Date, provide to the Principal an "Aboriginal Participation Plan" in accordance with the Policy; and
- (c) provide to the Principal an "Aboriginal Participation Report" every 3 months in the form required by the Policy.

7.3 Crown Building Work

- (a) The Contractor must, in relation to any part of the Works that is a "Crown Building Work" (as defined in section 109R of the *Environmental Planning and Assessment Act 1979* (NSW)), 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 7.3(a) will not lessen or otherwise affect:
 - (i) the Contractor's other liabilities or responsibilities under this Contract or otherwise according to law; or
 - (ii) the Principal's rights against the Contractor, whether under this Contract or otherwise according to law.

7.4 Long service leave levy

Before commencing the Contractor's Activities, the Contractor must:

- (a) pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation's agent the amount of the long service levy payable in respect of the building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal the documentary evidence of payment of the levy.

7.5 Waste reduction and purchasing policy

The Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the NSW Government Resource Efficiency Policy ("GREP"); and

- (b) 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.

7.6 Training of apprentices and trainees

- (a) Subject to the express provisions of the Contract, the Contractor must comply with the NSW Procurement Board direction PBD-2016-02 Construction Apprenticeships ("**PBD-2016-02**").
- (b) Training management requirements specified in the Contract and compliance with PBD-2016-02 may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW Law.
- (c) Where applicable, as indicated in clause 8, at least 10 Business Days before starting work on the Site the Contractor must document and submit a Project Training Management Plan which complies with PBD-2016-02.
- (d) The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (e) The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 7.6.
- (f) The Contractor:
 - (i) acknowledges that the target for the engagement of apprentices and trainees engaged by the Contractor to perform the percentage of the Contractor's Activities is as specified in clause 8 ("**Training Target**");
 - (ii) must make reasonable endeavours to achieve the Training Target;
 - (iii) provide written reports to the Principal quarterly, in the form set out in Schedule 19, and at such other times as may be requested by the Principal, detailing the number of apprentices and trainees engaged by the Contractor in the Contractor's Activities against the Training Target; and
 - (iv) provide the Principal with all other assistance and information it requires in relation to the Contractor's performance against the Training Target in order for the Principal to comply with its reporting obligations at Law, including promptly making all relevant records available to the Principal after any written request by the Principal.

8 Key details for Schedule 3

Is the Contractor required to submit a Project Training Management Plan?: (Clause 7.6(c))	Yes
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Training Target: (Clause 7.6(f))	0%
Applicability of Building Code clause: (Clause 5.1)	Clause 5.1 does not apply
Applicability of WHS Accreditation Scheme: (Clause 5.2)	Clause 5.2 does not apply

Schedule 4 – Action in complying with Approvals

Part 5 Approval – Obligations Matrix

Portion 1 Barrier Works

- 1 The Principal determined the Conditions of Approval to carry out site remediation of 6 Grand Avenue, Camellia in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) ("**Part 5 Approval**"), dated **20 December 2017**
- 2 Capitalised terms used in this Schedule 4 have the meanings given to them in the Part 5 Approval, unless otherwise specified.
- 3 All obligations of the Principal under the Part 5 Approval are the responsibility of the Contractor, other than those listed below. Where the Contractor is required to assist the Principal pursuant to the requirements of this Schedule 4, the Contractor must do so.
- 4 In addition to paragraph 3 above, where the Part 5 Approval requires the Proponent to notify or provide documentation to a government authority or agency (such as the NSW Environment Protection Authority (EPA) or Office of Environment and Heritage), this will be read as the Contractor must give such notice or documentation directly to the Principal.

Condition	Extent of the Principal's responsibility for the specified condition
2	All rights and obligations of the Principal remain with the Principal. The Contractor must provide all reasonable assistance to the Principal in relation to Condition 2 and comply with any modification of the Project.
4	The Principal will comply with Condition 4. The Contractor must implement the community liaison plan and provide all reasonable assistance to the Principal in relation to Condition 4.
5	The Principal will comply with Condition 5. The Contractor must provide all reasonable assistance to the Principal in relation to Condition 5.
6	The Principal is responsible for establishing dedicated pages within its existing website in relation to the Project.

Condition	Extent of the Principal's responsibility for the specified condition
	The Contractor must provide all reasonable assistance to the Principal in relation to Condition 6.
7	<p>The Principal will establish a 24 hour construction response line number and will report to the EMR.</p> <p>The Contractor must comply with all other obligations under Condition 7.</p>
9	The Principal is responsible for the appointment of the Environmental Management Representative. The Contractor must comply with all other obligations under Condition 9.
19	<p>The Principal is responsible for submitting a Voluntary Management Proposal (VMP) to the EPA prior to the commencement of remediation.</p> <p>The Contractor must provide all reasonable assistance to the Principal in relation to Condition 19 and must comply with all requirements of the VMP.</p>

Portion 2 Optional Works

Tender Baseline Conditions of Approval

- 5 The Principal is the proponent for Planning Approval for the construction and operation of Parramatta Light Rail Stage 1. The Principal is seeking for the application to be assessed by the Minister for Planning as critical state significant infrastructure (**CSSI**) pursuant to Division 5.2 of the *Environmental Planning and Assessment Act 1979 (EPA Act)*. If the Minister for Planning grants approval to the Project, it is open to the Minister to impose such conditions as the Minister may determine. As at the date of this Schedule, an application for Parramatta Light Rail Stage 1 of the Project has been lodged with the Minister but has yet to be determined. In the interim, the Principal has prepared Tender Baseline Conditions of Approval for Stage 1 of the Project as set out in the document entitled Parramatta Light Rail – Stage 1 Tender Baseline Conditions of Approval (**Baseline Conditions**) and contained in Annexure E to the Works Brief.
- 6 Capitalised terms used in this Schedule 4 have the meanings given to them in the Baseline Conditions, unless otherwise specified.
- 7 The Schedule set out below contains columns which allocate responsibility as between the Principal and the Contractor. The Contractor must comply with all obligations of the Principal under the Baseline Conditions in undertaking the Contractor's Activities and Works, other than those listed in the Schedule as allocated to the Principal.
- 8 In addition to compliance with the relevant Baseline Conditions in accordance with the Schedule, the Contractor must comply with paragraphs 9 to 13 of this Schedule.
- 9 Where a Baseline Condition is capable of applying after Completion of the Contractor's Activities and to the extent that requests made by the Principal to the Contractor are reasonable and require only off-site support, the Contractor must:
 - (a) comply with the Baseline Condition to the extent necessary to achieve Completion;
 - (b) comply with the Baseline Condition to the extent necessary to comply with the Contractor's obligations which are required to be performed under the Contract after Completion (including in relation to defects and other works); and
 - (c) provide to the Principal prior to Completion all documents relating to the Contractor's Activities which, in the reasonable opinion of the Principal, would be required in order to permit the Principal, any contractor of the Principal or any third party to comply with the Baseline Condition after Completion.
- 10 The Contractor must, where the Principal is required to take any action in compliance with a Baseline Condition, provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal).

- 11 Where a Baseline Condition requires the proponent to notify or provide documentation to the Secretary (or Department of Planning and Environment), then the Contractor must give such notice or documentation directly to the Principal, except in respect of the following clauses, which must be issued by the Contractor to the Principal and the Secretary:
- (a) Condition 10 (A36 to A39) Incident Notification. The Contractor must also give notification to the Environment Protection Authority if required under the *Protection of the Environment Operations Act 1997 (NSW)* [***TfNSW to confirm instructions***]
- 12 Unless otherwise directed by the Principal in writing, where a Baseline Condition requires the proponent to notify, submit documentation or consult with a government agency or body (such as RMS, Sydney Co-ordination Office, Office of Environment and Heritage, the Environment Protection Authority, Department of Primary Industries, State Emergency Services, NSW Health or City of Parramatta) or stakeholder (such as a landowner or member of the Aboriginal community), then the Contractor must give such notice or documentation or undertake consultation directly with the government agency or body or stakeholder, and provide a copy of any such notice or documentation or consultation to the Principal.
- 13 In relation to any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule:
- (a) to submit information, reports, plans and other documentation (**Approval Documents**) to the Secretary, other body or to publish the Approval Documents, that obligation is subject to the Contractor having first provided the Approval Documents, to the Principal a reasonable period (of no less than 20 business days) in advance of the date upon which the Approval Documents are required to be submitted; and
- (b) the Contractor must submit any information, report, plan or other documentation required to be prepared by the Contractor in a format which is consistent with, and permits the preparation of, the Approval Documents.

No.	Tender Baseline Condition	6 Grand Avenue Camellia Remediation Works Portion 2 Optional Works
General		
A9	This approval lapses five (5) years after the date on which it is granted, unless works for the purpose of the CSSI are physically commenced on or before that date.	The Principal will comply with condition A9.
Environment Representative		
A20	A suitably qualified and experienced ER who is independent of the design and construction personnel must be nominated by the Proponent, approved by the Secretary and engaged for the duration of construction of the CSSI. Additional ERs may be engaged for the purpose of this Condition A20 , in which case the obligations to be carried out by an ER under the terms of this approval may be satisfied by any ER that is approved by the Secretary. The details of	The Principal will engage, nominate and seek approval from the Secretary of a suitable qualified and experienced ER. The Principal will be the single point of contact with the Secretary and provide the Contractor with the date the submission for approval is made, or any other timeframe relevant to this condition.

No.	Tender Baseline Condition	6 Grand Avenue Camellia Remediation Works Portion 2 Optional Works
	nominated ER(s) must be submitted to the Secretary for approval no later than one month prior to the commencement of works, or within another timeframe agreed with the Secretary.	
Community Information, Consultation and Involvement		
B1	A Community Communication Strategy must be prepared to provide mechanisms to facilitate communication between the Proponent, the ER, the relevant Council and the community (including adjoining affected landowners and businesses, and others directly impacted by the CSSI), during the design and construction of the CSSI and for a minimum of 12 months following the completion of construction of the CSSI.	The Principal will prepare the Community Communication Strategy. The Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request this condition. The Contractor must implement all requirements within the Community Communication Strategy that relate to its Contractor's Activities.
B2	The Community Communication Strategy must: (a) identify people to be consulted during the design and construction phases; (b) set out procedures and mechanisms for the regular distribution of accessible information about or relevant to the CSSI; (c) provide for the formation of community-based forums, if required, that focus on key environmental management issues for the CSSI; (d) set out procedures and mechanisms: i. through which the community can discuss or provide feedback to the Proponent; ii. through which the Proponent will respond to enquiries or feedback from the community; and iii. to resolve any issues and mediate any disputes that may arise in relation to environmental management and delivery of the CSSI, including disputes regarding rectification or compensation.	The Principal will prepare the Community Communication Strategy. The Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request this condition. The Contractor must implement all requirements within the Community Communication Strategy that relate to its Contractor's Activities.
B3	The Community Communication Strategy must be submitted to the Secretary for approval no later than one month prior to commencement of any work.	The Principal will prepare the Community Communication Strategy and submit it to the Secretary. The Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request this condition.
Complaints Management System		
B6	A Complaints Management System must be prepared prior to the commencement of any works in respect of the CSSI and be implemented and maintained for the duration of construction and for a	The Principal will prepare a Complaints Management System, relying on information in respect of the Works and the Contractor's Activities provided by the Contractor to the Principal, except that the

No.	Tender Baseline Condition	6 Grand Avenue Camellia Remediation Works Portion 2 Optional Works
	minimum for 12 months following completion of construction of the CSSI.	Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition. The Contractor must implement and maintain all requirements within the Complaints Management System that relate to its Contractor's Activities from time to time. For clarity, the Principal is required to maintain the Complaints Management System.
B7	The information contained in the Complaints Management System must be provided to the Secretary upon request, and within the timeframe stated in the request.	The Principal will comply with condition B7, relying on information in respect of the Works and the Contractor's Activities provided by the Contractor to the Principal, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
B8	The following information must be available to facilitate community enquiries and complaints within one (1) month from the date of this approval and for 12 months following the completion of construction: (a) a 24 hour telephone number for the registration of complaints and enquiries about the CSSI; (b) a postal address to which written complaints and enquires may be sent; (c) an email address to which electronic complaints and enquiries may be transmitted; and (d) a mediation system for complaints unable to be resolved. This information must be accessible to all in the community regardless of age, ethnicity, disability or literacy level.	The Principal will comply with condition B8, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
B9	The telephone number, postal address and email address required under Condition B8 of this approval must be published in a newspaper circulating in the local area prior to the commencement of construction and published in the same way again prior to the commencement of operation. This information must also be provided on the website required under Condition B12 of this approval.	The Principal will comply with condition B9, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
B10	A Complaints Register must be maintained recording information on all complaints received about the CSSI during the carrying out of any works for the purposes of the CSSI and for a minimum of 12 months following the completion of construction. The Complaints Register	The Principal will comply with condition B10, relying on information in respect of the Works and the Contractor's Activities provided by the Contractor to the Principal, except that the Contractor must provide all documents, information, assistance and co-operation reasonably

No.	Tender Baseline Condition	6 Grand Avenue Camellia Remediation Works Portion 2 Optional Works
	must record the: (a) number of complaints received; (b) number of people affected in relation to a complaint; (c) means by which the complaint was addressed and whether resolution was reached, with or without mediation.	requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
B11	The Complaints Register must be provided to the Secretary upon request, within the timeframe stated in the request.	The Principal will comply with condition B11, relying on information in respect of the Works and the Contractor's Activities provided by the Contractor to the Principal, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
Provision of Electronic Information		
B12	A website providing information in relation to the CSSI must be established prior to commencement of construction and maintained for the duration of construction, and for a minimum of 12 months following the completion of construction. Up-to-date information (excluding confidential commercial information) must be published and maintained on the website or dedicated pages including:(a) information on the current implementation status of the CSSI;(b) a copy of the documents listed in Condition A1 and Condition A2 of this approval, and any documentation relating to any modifications made to the CSSI or the terms of this approval;(c) a copy of this approval in its original form, a current consolidated copy of this approval (that is, including any approved modifications to its terms), and copies of any approval granted by the Minister to a modification of the terms of this approval;(d) a copy of each statutory approval, licence or permit required and obtained in relation to the CSSI;(e) a current copy of each document required under the terms of this approval and any endorsements, approvals or requirements from the ER and Secretary, all of which must be published prior to the commencement of any works to which they relate or prior to their implementation as the case may be; and(f) the outcomes of compliance tracking under Condition A23 , Condition A24 and Condition A25 of this approval.	The Principal will comply with condition B12, relying on information in respect of the Works and the Contractor's Activities provided by the Contractor to the Principal, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
Operational Environmental Management		
D1	An Operational Management Plan (OEMP) must be prepared to	The Principal will comply with condition D1, except that the Contractor

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	detail how the performance outcomes, commitments and mitigation measures made and identified in Section 17.5.3 of the EIS (as modified by the Response to Submissions and Preferred Infrastructure Report) will be implemented and achieved during operation. This condition (Condition D1) does not apply if Condition D2 of this approval applies.	must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
D2	<p>An OEMP is not required for the CSSI if the Proponent has an Environmental Management System (EMS) or equivalent as agreed with the Secretary, and can demonstrate, to the written satisfaction of the Secretary, that through the EMS:</p> <p>(a) the performance outcomes, commitments and mitigation measures, made and identified in the EIS (as modified by the Response to Submissions and Preferred Infrastructure Report), and specified relevant terms of this approval can be achieved;</p> <p>(b) issues identified through ongoing risk analysis can be managed; and</p> <p>(c) procedures are in place for rectifying any non-compliance with this approval identified during compliance auditing, incident management or any other time during operation.</p>	The Principal will comply with condition D2, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
D3	<p>Where an OEMP is required, the Proponent must include the following OEMP Sub-plans in the OEMP:</p> <p>Required OEMP Sub-plan and Relevant government agencies to be consulted for each OEMP Sub-plan</p> <p>(a) Noise and vibration / EPA</p> <p>(b) Electromagnetic interference / NSW Health</p> <p>(c) Traffic and Transport / Sydney Coordination Office, Relevant road authority and non-private transport operators</p> <p>(d) Flooding / Directly affected landowners, OEH, SES, Relevant Council(s)</p>	The Principal will comply with condition D3, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
D4	Each of the OEMP Sub-plans must include the information set out in Condition D2 of this approval.	The Principal will comply with condition D4, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
D5	The OEMP Sub-plans must be developed in consultation with	The Principal will comply with condition D5, except that the Contractor

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	relevant government agencies as identified in Condition D4 and must include, to the written satisfaction of the Secretary, information requested by an agency to be included in an OEMP Sub-plan during such consultation. Details of all information requested by an agency to be included in an OEMP Sub-plan as a result of consultation, including copies of all correspondence from those agencies, must be provided with the relevant OEMP Sub-Plan .	must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
D6	The OEMP Sub-plans must be submitted to the Secretary as part of the OEMP .	The Principal will comply with condition D6.
D7	The OEMP or EMS or equivalent as agreed with the Secretary, must be submitted to the Secretary for information no later than one (1) month prior to the commencement of operation unless another timeframe is agreed with the Secretary.	The Principal will comply with condition D7.
D8	The OEMP or EMS or equivalent as agreed with the Secretary, as submitted to the Secretary and amended from time to time, must be implemented for the duration of operation and the OEMP or EMS must be made publicly available prior to the commencement of operation.	The Principal will comply with condition D8.
Operational Performance Audit		
D10	Within 15 months of the completion of construction, or any other timeframe as agreed with the Secretary, the Proponent must commission an independent, qualified person or team to undertake an Operational Performance Audit of the CSSI. The independent person or team must be approved by the Secretary before commencement of the Audit. The Operational Performance Audit Report must be submitted to the Secretary within one month of the completion of the Audit or other timeframe agreed with the Secretary. The Audit must: (a) assess compliance with the requirement of this approval; (b) assess the environmental performance of the CSSI against the predictions made and conclusions drawn in the EIS as amended by the PIR; and (c) review the effectiveness of the environmental management of the CSSI, including any environmental impact mitigation.	The Principal will comply with condition D10.
Operational Monitoring		
D11	The Proponent must prepare an Operational Noise and Vibration	The Principal will comply with condition D11.

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	Monitoring Program to confirm that the operational noise and vibration levels meet the CSSI proposed design objectives as determined in Condition E19 following the commencement of operations.	
D12	Should the operational noise and vibration levels exceed the CSSI design objectives, the Proponent is to prepare a report, outlining actions that will be taken so that the CSSI meets the design objectives in the future. The report is to be prepared within three (3) months following the identification of the exceedance and be forwarded to the Secretary for information. All recommendations in the report must be implemented within three (3) months of the date of the report or as agreed with the Secretary.	The Principal will comply with condition D12.
Electromagnetic Fields		
E1	Prior to construction the Proponent shall undertake pre-operational electromagnetic field monitoring in consultation with Health Infrastructure to establish existing electromagnetic field levels at the relevant Health Administration Corporation assets in the vicinity of the project. Targeted consultation shall be carried out with identified sensitive receivers for EMI. Results from these studies shall be documented in an Electro Magnetic Management Plan at Condition D3 .	The Principal will comply with condition E1.
E2	During detailed design of the CSSI and prior to construction, the Proponent shall prepare a detailed Electro-Magnetic Management Plan in consultation with Health Infrastructure. The plan shall be provided to and approved by the Secretary prior to the construction of the CSSI. The plan shall identify how construction and operational magnetic fields attributed to the light rail may impact on the operation of the relevant Health Administration Corporation assets near the project. The Plan is to be implemented to the satisfaction of the Secretary for both construction and operational phases. This Plan shall include but not be limited to: (a) identification of affected receivers; (b) establish pre-construction electro-magnetic field levels at affected receivers; (c) predict construction and operational electro-magnetic field levels at the monitored sites resulting from the CSSI;	The Principal will comply with condition E2.

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	<p>(d) electro-magnetic field reduction strategies, technologies and design and operational measures that will be implemented to reduce and manage impacts such that existing sensitive receivers can continue to operate;</p> <p>(e) identify appropriate limits/criteria to minimise construction and operational interference to affected receivers that are to be maintained;</p> <p>(f) internal audits of compliance of electro-magnetic field levels to the limits/criteria identified in (e); and</p> <p>(g) details of an electro-magnetic field monitoring program and timeframes for monitoring.</p>	
Vegetation and Biodiversity		
E4	The Biodiversity Offset Strategy (BOS) detailed in the EIS must be implemented within 12 months of the commencement of construction or within another timeframe agreed with the Secretary	The Principal will comply with condition E4.
E8	<p>The Proponent shall develop and implement a Tree Offset Package for the CSSI to outline how impacts on vegetation will be compensated. The Tree Offset Package shall be prepared and submitted to the Secretary for approval within 3 months of removal of vegetation, unless otherwise agreed by the Secretary, and in consultation with the relevant Councils. The Strategy shall be developed in accordance with the TfNSW's Vegetation Offset Guide (2016). The Strategy should ensure that all vegetation loss, is appropriately offset through regeneration or replanting and include:(a) the identification of the extent and types of vegetation impacts as a result of the final design of the CSSI;(b) details of impact mitigation measures to compensate for vegetation removal; (c) measures for the management, protection and monitoring of the compensatory vegetation, for a minimum period of two years;(d) timing and responsibilities for the implementation of the provisions of the Package.The Tree Offset Package may be prepared for the entire CSSI or separate reports may be prepared to demonstrate that the Proponent is achieving the necessary offsetting for the entire CSSI.To mitigate visual impacts, direct replacement of vegetation lost should be undertaken in the vicinity of where the vegetation was impacted (where reasonable and feasible). For all other vegetation to be replanted as part of the Tree Offset Package, vegetation shall be</p>	<p>The Principal will develop and implement the Tree Offset Package. The Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) to assist the Principal in the development and implementation of the Tree Offset Package.The Contractor is responsible for complying with all other obligations under this condition.</p>

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	replaced within the same Local Government Area as the impact occurs, unless otherwise agreed by the Secretary. Where monitoring shows inadequate compensation has been achieved, remedial actions must be undertaken to ensure that the objectives of the Package are achieved.	
Urban Design and Visual Amenity		
E9	<p>The Proponent must establish a Design Review Panel (DRP) to review and improve the architecture, landscape architecture, structures, public domain, and heritage aspects of the project design. The DRP must:</p> <ul style="list-style-type: none"> (a) comprise five members with expertise in one or more of landscape architecture, architecture, urban design and heritage : (b) include: <ul style="list-style-type: none"> (i) the NSW Government Architect as Chair; (ii) a representative from the Heritage Council, (iii) a member with significant recent light rail project experience (c) meet monthly, unless otherwise agreed by the DRP (d) keep meeting minutes and a schedule of action items arising from each meeting. <p>At the first meeting of the DRP, the proponent must submit for the approval of the Design Review Panel a draft design review plan including:</p> <ul style="list-style-type: none"> (a) a schedule of all major project design milestones and preceding review windows; (b) the format and scope of information to be presented and submitted to the DRP; (c) a process for documenting and addressing DRP input, critique and suggestions <p>The Chair may invite public agencies, local government and other stakeholders to observe DRP meetings and to provide advice on issues, policy and context.</p>	The Principal will comply with condition E9, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
E10	<p>The Proponent must prepare an Urban Design Requirements report documenting the project's concept design for public domain, architecture, landscape architecture and identity. The UDR must include:</p> <ul style="list-style-type: none"> (a) design principles and objectives (b) identification of relevant land use changes, masterplans and initiatives (c) analysis and mapping of local and metropolitan context and character (d) 	The Principal will comply with condition E10.

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	<p>analysis and mapping of functional and transport context of precincts Concept designs in the Urban Design Requirements must:(a) demonstrate responsiveness to local streetscape and landscape character,(b) integrate with, or allow for, known land use changes, masterplans and developments(c) contribute to the character and identity of the local area(d) respond sensitively to heritage elements and landscapes(e) demonstrate careful material selection and detailing(f) achieve a safe, functional and efficient transport network for all street users(g) maintain local access and circulation for residents, business and road users(h) carefully address sensitive receivers to minimise noise, vibration, electromagnetic interference, light spill and nuisance(i) maximise urban tree canopy and soft landscaping(j) sensitively address flooding and drainage issues(k) contribute to the activation of precincts(l) maximise local connectivity and minimise barriers(m) maximise walk-in catchments and offer legible, direct pedestrian connections(n) demonstrate clear wayfinding(o) maximise user safety, crime prevention and comfort(p) demonstrate value for money The proponent shall demonstrate consultation with the City of Parramatta Council, road and public transport agencies, NSW Health, Western Sydney University and Urban Growth NSW. The Urban Design document shall be made available to the Secretary on request.</p>	
E11	<p>The DRP must verify that the final detailed urban design outcomes meet or exceed the minimum requirements as set in the Urban Design Requirements document as required under Condition E10.</p>	<p>The Principal will comply with condition E11.</p>
Operational Noise		
E15	<p>The Proponent shall ensure that unless they are required for safety reasons, no public address system is to be used as part of the normal operations of the CSSI. Any emergency public address system shall be designed to minimise noise spillage from the site. Speakers shall be installed with their pointing axis directed away from residential buildings and sensitive receivers unless otherwise specified in the Operational Noise and Vibration Management Plan.</p>	<p>The Principal will comply with condition E15.</p>
E16	<p>The Proponent shall ensure that warning bells associated with the movements of Light Rail Vehicles occur only in emergency traffic or pedestrian safety situations but not as part of normal operations of</p>	<p>The Principal will comply with condition E16.</p>

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	the CSSI. Testing of warning bells in the maintenance facility shall be undertaken with all doors of the facility closed. No testing of warning bells is permitted to take place at the stabling facility unless it meets the noise goals in the Industrial Noise Policy.	
E17	The source noise level specification for light rail vehicles must achieve the levels identified in the documents referred to in Condition A1 for the LpAeq,Tp noise level during a passby measured of the Light Rail Vehicle at a point 7.5 metres from the centreline of the track and 1.2 metres above rail level at a running speed of 60km/hr.	The Principal will comply with condition E17.
E18	The Proponent shall establish a wheel monitoring program to identify wheel flats and other issues that impact operational noise and vibration. The proponent must address such issues as soon as practical.	The Principal will comply with condition E18.
E20	The Proponent shall undertake noise and vibration monitoring to assess the adequacy of the rail, traffic and stationary sources and the adequacy of noise mitigation measures to demonstrate compliance with the predictions of the noise assessment referred to in the Operational Noise and Vibration Review required by Condition E19. This shall be developed in consultation with the EPA and relevant Councils and be undertaken prior to operation of the CSSI, or as otherwise agreed by the Secretary. A Noise and Vibration Compliance Assessment Report providing the results of the monitoring shall be submitted to the Secretary and relevant Councils within 28 days of its completion. The report shall provide an assessment of compliance with Conditions E15 to E19 of this approval and details of any complaints received relating to operational noise and vibration impacts.	The Principal will comply with condition E20, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.
E21	An Operational Noise and Vibration Management Plan in consultation with relevant Councils and Health Infrastructure to provide details of noise and vibration control measures to be implemented during operation that are sufficient to address the requirements of the Rail Infrastructure Noise Guideline, the Industrial Noise Policy and the Road Noise Policy. The Plan shall include, but not be limited to: (a) identification of the appropriate operational noise criteria;	The Principal will comply with condition E21, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.

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	<p>(b) predicted noise levels at all affected residential, recreational, commercial, industrial and sensitive land uses;</p> <p>(c) location, type and timing of erection of permanent noise barriers and/or other noise mitigation measures demonstrating all reasonable and feasible noise mitigation;</p> <p>(d) specific physical and managerial measures for controlling noise, including potential wheel squeal;</p> <p>(e) noise and vibration monitoring;</p> <p>(f) reporting and response procedures including the monitoring on surrounding roads which experience significantly increased traffic volumes as a result of the SSI and the assessment, examination and implementation of mitigation measures to reduce traffic noise impacts, as appropriate;</p> <p>(g) additional noise mitigation measures as negotiated with affected residents and other sensitive receivers; and</p> <p>(h) how post-operational vibration levels shall be maintained throughout the life of the CSSI.</p> <p>The Plan shall be provided to the Secretary and made publicly available prior to operation.</p>	
E22	<p>In the event of the change to the future frequency of services, the Proponent shall undertake noise and vibration monitoring to assess the adequacy of mitigation measures to demonstrate compliance with the predictions of the noise assessment referred to in the Operational Noise and Vibration Review required by Condition E19. If the report indicates an exceedance of the noise and vibration criteria identified in the Operational Noise and Vibration Review, the Proponent shall implement further reasonable and feasible measures to mitigate these exceedances in consultation with affected property owners and/or occupiers. A copy of the report shall be submitted to the Secretary within 28 days of its completion.</p>	The Principal will comply with condition E22.
E23	<p>Ground-borne noise from rail traffic shall not exceed the following criteria as measured at the nearest residential receiver:</p> <p>(a) LAmax 40 dBA between the hours of 6.00 pm and 10.00 pm; and</p> <p>(b) LAmax 35 dBA between the hours of 10.00 pm and 7.00 am.</p>	The Principal will comply with condition E23.
Flooding		
E25	Measures identified in Chapter 17 of the EIS (as modified by the	The Principal will comply with condition E25.

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	Response to Submission and PIR) to maintain or improve flood characteristics must be incorporated into the detailed design of the CSSI. The incorporation of these measures into the detailed design must be reviewed and endorsed by a suitably qualified and experienced person in consultation with directly affected landowners, OEH, NSW State Emergency Service (SES) and Relevant Councils.	
E26	The Proponent shall design and construct the CSSI, to the extent that is reasonable and feasible and as agreed by the Secretary, to not worsen existing flood characteristics in the vicinity of the CSSI. Not worsen is defined as:(a) A maximum increase flood levels of 10 mm in a 100 year average recurrence interval (ARI) flood event; and(b) A material increase in time of inundation in a 100 year ARI flood event; and(c) any increase in high hazard flooding as defined in Appendix L of the NSW Government's Floodplain Development Manual (2005).	The Principal will comply with condition E26.
E27	Flood information including flood reports, models and geographic information system outputs, and work as executed information from a registered surveyor certifying finished ground levels and the dimensions and finished levels of all structures within the flood prone land, must be provided to the relevant Council, OEH and the SES in order to assist in preparing relevant documents and to reflect changes in flood behaviour as a result of the CSSI. The Council, OEH and the SES must be notified in writing that the information is available no later than one month following the completion of construction. Information requested by the relevant Council, OEH or the SES must be provided no later than six months following the completion of construction or within another timeframe agreed with the relevant Council, OEH and the SES.	The Principal will comply with condition E27.
Sustainability		
E57	The proponent must seek to achieve a best practice level of performance for the CSSI using market leading sustainability ratings tools (including a minimum 'Design' and 'As built' rating score of 65 using the Infrastructure Sustainability Council of Australia infrastructure rating tool, or an equivalent level of performance using a demonstrated equivalent rating tool).	The Principal will comply with condition E57.
E58	The Proponent must prepare a Sustainability Strategy to be submitted to the Secretary within six (6) months of the date of this approval, or	The Principal will comply with condition E58, except that the Contractor must adhere to and document the implementation of the

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	<p>within another timeframe agreed with the Secretary, which must be implemented throughout design, construction and operation of the CSSI. The Sustainability Strategy must include:</p> <p>(a) details of the sustainability objectives and targets for the design, delivery and operation of the CSSI;</p> <p>(b) details of the sustainability initiatives which will be investigated and / or implemented; and</p> <p>(c) a description of how the strategy will be implemented for the CSSI.</p>	Sustainability Strategy with respect to the Contractor's Activities.
E60	The Proponent must fully offset the greenhouse gas emissions associated with consumption of electricity during operation of the CSSI.	The Principal will comply with condition E60.
Construction Traffic		
E69	Permanent road works, including vehicular access, signalised intersection works, and works relating to pedestrians, cyclists and public transport users will be subject to safety audits demonstrating consistency with relevant design, engineering and safety standards and guidelines. Safety audits must be included within each relevant CTMP and carried out in consultation with the TTLG before the completion and use of the subject infrastructure and must be made available to the Secretary on request.	The Principal will comply with condition E69.
E70	The Proponent shall prepare a Parking Offsets and Management Strategy in consultation with RMS, and the City of Parramatta to manage car parking impacts and kerbside parking access, on a per precinct basis, as a result of the CSSI. The Parking Offsets and Management Strategy shall include, but not be limited to: (a) the provision of parking spaces consistent with hierarchy identified in Table 6.1 and Figure 6.1 of the Transport Operations Report, prepared by GTA; (b) appropriate replacement parking for impacted special kerbside uses (e.g. disabled parking and loading zones) within the local vicinity with consideration of the Disability Discrimination Act 1992 (DDA) Public Transport Standards and the DDA Access Code 2010; (c) the identification of strategies to identify and address parking impacts, including but not limited to replacement parking, parallel parking, resident parking schemes and provision of clearways; and (d) monitoring on the efficacy of these measures, including potential unintended traffic impacts, and contingencies in	The Principal will comply with condition E70, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.

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	<p>the event that these measures are inadequate. The Proponent shall be responsible for the coordination of these measures in consultation with the relevant Councils. The Strategy shall be submitted to the Secretary and the reporting of monitoring incorporated into the Operational Traffic, Transport and Access Performance Review required by Condition E90.</p>	
E71	<p>A Construction Network Management Plan would be developed prior to construction to identify appropriate traffic management measures and establish a framework for coordinating their implementation during the construction of the project. The plan would have the high level objective of maintaining network journey times and congestion at acceptable levels. The plan would consist of the following three elements:</p> <p>(a) demand management strategy — Strategies that would be promoted and implemented prior to construction to reduce peak period demands on the network.</p> <p>(b) network optimisation strategy — Strategies that would be promoted and implemented prior to construction, which represent network optimisation objectives closely associated with the operational phase of the project.</p> <p>(c) incident management strategy — Strategies that would seek to pre-empt and respond to possible unplanned events based on general network operations during construction. These strategies are likely to represent enhancements to current incident management tools that would remain in place following construction to assist light rail network operations.</p> <p>The construction network management plan would comprise a live document that would be updated as a greater understanding of the required construction staging is achieved, and as new management measures are identified in response to unforeseen events during construction.</p> <p>The plan would be prepared in consultation with the Sydney Coordination Office, Roads and Maritime Services, City of Parramatta Council, emergency services, NSW Police and bus operators.</p>	<p>The Principal will comply with condition E71, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.</p>
E73	<p>A Pedestrian and Cyclist Network and Facilities Strategy shall be prepared in consultation with Councils, RMS, and Bicycle NSW. The Strategy shall identify alternative pedestrian and cycle paths, during</p>	<p>The Principal will prepare the Pedestrian and Cyclist Network and Facilities Strategy and undertake any necessary consultation with Councils, RMS and Bicycle NSW. The Contractor must provide all</p>

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	<p>construction and operation, including facilitation of future cycle paths and dedicated cycleways as identified in state and local government plans, with the objective of providing seamless, coherent, visible, and safe pedestrian and cycle access throughout and adjacent to the corridor. The Strategy shall consider:</p> <ul style="list-style-type: none"> (a) existing and proposed local and regional pedestrian and cycle facilities and strategies; (b) safety for pedestrians in pedestrianised zones; (c) alternative cycle routes during construction, based on safety and efficiency, and contingencies in the event that relocated routes are found to be inadequate; (d) pedestrian and cycle access, including local and regional pedestrian and bicycle connections; (e) demand for pedestrian and cycle facilities with consideration of encouraging an increased pedestrian and cycle mode share; (f) signage and way finding along the routes; (g) cycle storage facilities on light rail vehicles; and (h) the requirements of relevant design standards, including Austroads and NSW bicycle guidelines. <p>The Proponent shall implement the Strategy and incorporate it into the Stop Access and Design Plan(s) (Condition E72).</p>	<p>documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request this condition. The Contractor must implement all requirements within the Pedestrian and Cyclist Network and Facilities Strategy that relate to its Contractor's Activities.</p>
Soil and Water		
E75	<p>A Soil, Stormwater and Flooding Management Plan(s) shall be prepared in consultation with the EPA, DPI (Water) and Council during detailed design of the CSSI and prior to construction. The Plan shall identify actions to ensure that the SSI addresses the management of soil and existing flooding characteristics within the vicinity of the SSI for a full range of flood sizes up to and including the probable maximum flood. The Plan(s) shall be prepared by appropriately qualified person(s) and facilitate a holistic approach to detailed hydrologic assessment and stormwater management, which gives consideration to the cumulative impacts of the SSI associated with its construction and operation, and shall include but not be limited to: (a) Soil and water management measures that are consistent with the guideline Managing urban stormwater: soils and construction (including Volume 1 – Blue Book and Volume 2 – Installation of Services); (b) the identification of flood risks to the SSI</p>	<p>The Principal will comply with condition E75.</p>

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	and adjoining areas, including the consideration of local and regional drainage catchment assessments, strategies and guidelines; and climate change implications on rainfall and drainage characteristics; and(c) identification of design and mitigation measures that would be implemented to protect proposed construction and operational activities and not worsen existing flooding characteristics, including soil erosion and scouring. Design of mitigation measures should consider more frequent floods besides flood of design. For surface components of the SSI located on floodplains, flood impacts shall be confirmed in accordance with the Floodplain Development Manual (2005), and other relevant NSW Government Guidelines.	
E76	A flood management strategy shall be prepared for flood affected land as a result of the CSSI prior to construction. The strategy would demonstrate how the CSSI design achieves the performance criteria in Table 17 of the EIS. The strategy shall be supported by additional flood modelling. The design responses and construction management measures identified in the strategy shall be implemented by the Proponent.	The Principal will comply with condition E76.
Operational		
E88	The ongoing maintenance and operation costs of urban design and landscaping items and works implemented as part of this approval shall remain the Proponent's responsibility until satisfactory arrangements have been put in place for the transfer of the asset to the relevant authority. Prior to the transfer of assets, the Proponent will maintain items and works to the design standards established in the Urban Design Plan, including the engagement of a landscape specialist and the removal of graffiti within performance standards specified in a Stop Access and Design Plan and Condition E10 .	The Principal will comply with condition E88.
E89	The Proponent shall prepare an Operational Traffic, Transport and Access Performance Review in consultation with RMS. The monitoring and review shall be undertaken at twelve months and 5 years after the commencement of operation of the CSSI, or as otherwise agreed by the Secretary. The assessment shall include, but not necessarily be limited to: (a) a traffic, transport and access assessment, to assess compliance with the conditions of approval;	The Principal will comply with condition E89, except that the Contractor must provide all documents, information, assistance and co-operation reasonably requested by the Principal (and within the time requested by the Principal) in connection with a request under this condition.

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	<p>(b) consideration of the outcomes of the Greater Parramatta Access Plan, including changes to bus network and infrastructure associated with the CSSI;</p> <p>(c) results of monitoring and performance of the light rail and pedestrian zones;</p> <p>(d) details of any complaints received relating to traffic, transport and access impacts;</p> <p>(e) an assessment of the performance and effectiveness of the traffic, transport and access management and mitigation measures;</p> <p>(f) reporting against the framework for improving traffic performance;</p> <p>(g) identification, if required, of further traffic, transport and access mitigation measures to meet the objectives identified in the NMP; and</p> <p>(h) an assessment of the adequacy of the parking provision and management strategies.</p> <p>A Traffic, Transport and Access report providing the results of the assessment shall be submitted to the Secretary and the RMS within 60 days of its completion and made publicly available. If the assessment indicates ongoing traffic, transport and access issues attributable to the CSSI, via level of service, queue lengths, road safety, and other relevant parameters of performance, the Proponent shall implement further reasonable and feasible measures to mitigate these impacts in consultation with the RMS.</p>	
E90	<p>Within twelve months of the completion of construction of the CSSI, unless the Secretary directs otherwise, the Proponent shall commission and pay the full cost of an Independent Environmental Audit of the CSSI. The audit report shall be submitted to the Secretary within one month of its completion, unless otherwise agreed by the Secretary and must: (a) be conducted by a suitably qualified, experienced and independent person or team of experts whose appointment has been endorsed by the Secretary; (b) assess the operational performance of the SSI against the aims and objectives for the project specified in the documents referred to under Condition A1 of this approval; (c) assess the environmental performance of the SSI against the predictions made and conclusions drawn in the documents referred to under Condition A1 of this approval; (d) assess compliance with the requirements of this approval, and other licences and approvals that apply to the SSI; (e)</p>	The Principal will comply with condition E90.

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	review the effectiveness of the environmental management of the CSSI, including any environmental impact mitigation works; and(f) review the adequacy of any strategy/plan/program required under this approval; and if necessary recommend measures or actions to improve the environmental performance of the CSSI, and/or any strategy/plan/program required under this approval.	
Contaminated Sites		
E92	A Site Contamination Report , documenting the outcomes of Stage 1 and Stage 2 contamination assessments of land upon which the CSSI is to be carried out, or land associated with the CSSI, that is suspected, or known to be, contaminated must be prepared by a suitably qualified and experienced person in accordance with guidelines made or approved under the Contaminated Land Management Act 1997 (NSW).	The Principal will comply with condition E92.
E94	A copy of the Site Audit Statement and Site Audit Report must be submitted to the Secretary and Council for information no later than one month prior to the commencement of operation.	The Principal will comply with condition E94.
Lighting and Security		
E101	All permanent external lighting must be the minimum level of illumination necessary and must comply with AS: 4282:1997 – Control of the Obtrusive Effects of Outdoor Lighting and relevant Australian Standards in the series AS/NZ 1158 – Lighting for Roads and Public Spaces.	The Principal will comply with condition E101.
E102	The placement of CCTV cameras associated with the CSSI must be undertaken in consultation with the relevant public authority and the NSW Police.	The Principal will comply with condition E102.

Schedule 5 IC Deed for Remediation Contract



Transport
for NSW

PLR Stage 1 Independent Certifier Contract Deed for Remediation Contract

Dated

Contract Number: ISD-YY-XXXX

PARRAMATTA LIGHT RAIL
PLR STAGE 1

Transport for NSW (ABN 18 804 239 602) ("**TfNSW**")

[Insert] Pty Ltd (ABN XXX) ("**Independent Certifier**")

[Insert] Pty Ltd (ABN XXX) ("**Other Party**")

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Independent Certifier Contract Deed for Remediation Contract Details

Parties	TfNSW	
TfNSW	Name	Transport for NSW
	ABN	18 804 239 602
	Formed in	Australia
	Address	Level 10, 130 George Street Parramatta NSW 2150
	Email	<i>[Insert details]</i>
	Attention	<i>[Insert details]</i>
	Independent Certifier	Name
ABN		<i>[##]</i>
Formed in		<i>[##]</i>
Address		<i>[##]</i>
Email		<i>[##]</i>
Attention		<i>[##]</i>
Other Party	Name	<i>[##]</i>
	ABN	<i>[##]</i>
	Formed in	<i>[##]</i>
	Address	<i>[##]</i>
	Email	<i>[##]</i>
	Attention	<i>[##]</i>
Governing law	New South Wales	
Representatives	<i>[##]</i>	
Term		
Liability Cap	<i>[##]</i>	

Aggregate Liability Cap	[##]
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Business Day place(s)	Sydney
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- | | | |
|-----------------|----------|--|
| Preamble | A | TfNSW and the Independent Certifier have entered into the Umbrella IC Deed. |
| | B | TfNSW and the Other Party have entered into the Contract. |
| | C | The Umbrella IC Deed and the Contract provide for certain functions to be carried out by the Independent Certifier. |
| | D | By this Deed, TfNSW, the Independent Certifier and the Other Party set out their rights and obligations in relation to the performance of the Independent Certifier of the Services in connection with the Contract. |

Independent Certifier Contract Deed for Remediation Contract

General terms

1 Interpretation

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes ASA), and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the PLR Stage 1.

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

Best Industry Practice means (subject to any express provisions of this Deed which impose higher standards) the practices which are adopted by consultants with respect to services similar to the Services and which, with respect to any purpose to which the performance of the Services is directed, may be expected, in the exercise of that expertise, to accomplish that purpose in a manner consistent with recognised highest standards.

Business Day means a day on which banks are open for general banking business, not being a Saturday, Sunday or public holiday in Sydney or 24, 27, 28, 29, 30 or 31 December or 2 January.

Certification and Monitoring Plan means the plan to be developed and implemented in accordance with Umbrella IC Deed.

Claim means any claim, action, demand or proceeding for the payment of money (including damages), for an extension of time or for any other form of relief:

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

Consequential or Indirect Loss means:

- (a) any Loss that does not flow directly and naturally from the relevant breach of this Deed or a duty of care; and
- (b) any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of

contract (other than this Deed), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

Contract means the deed entered into by TfNSW and the Other Party dated [###] in relation to [*insert details*].

Contract Fee means the fee specified in Schedule 2.

Deed means this document and its schedules.

Design Documentation means the designs, drawings, specifications and other design materials produced pursuant to the Contract and any other Project Contract (as applicable).

Details means the details set out on page one of this Deed.

Environmental Representative Fee means the fee to be paid in respect of the Environmental Representative Services as specified in Schedule 2.

Environmental Representative Services means the services described in Schedule 1, as amended by the Contract.

HAC means the Health Administration Commission.

Independent Certifier Default means an event so described in clause 11.1(a).

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 Services under this Deed for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
- (c) execution is levied against a 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 scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;

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

Insurances means the insurances specified in Schedule 3 required to be effected and maintained under clause 9.

Key Individual means the person employed by the Independent Certifier that is to make and issue the decisions, certifications and determinations required as part of the exercise of its Services, as specified in Schedule 7.

Law means:

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

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.

Loss means:

- (a) any cost, expense, 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 or Indirect Loss.

Payment Schedule means Schedule 2.

PLR Stage 1 means the 12km light rail system from Westmead to Carlingford via Parramatta CBD and Camellia, including all track, catenary, systems, stops, and the maintenance yard.

Principal Parties means TfNSW and the Other Party.

Project Contracts means the various contracts that will be entered into by TfNSW for the delivery of the Project, being primarily those referred to in the Umbrella IC Deed.

Project Data Collaboration System (PDCS) means the web based project data and collaboration system to be used by the Principal Parties in connection with the Project, as notified by the Principal, from time to time.

Replacement Certifier means the successor of the Independent Certifier.

Representatives means the persons specified in the Details as replaced from time to time pursuant to this Deed.

RMS means the Roads and Maritime Service.

Services means the services set out in Schedule 1.

Term means the period specified in the Details.

Umbrella IC Deed means the deed entered into by TfNSW and the Independent Certifier, which is set out in Schedule 5.

2 Services

2.1 Standard

- (a) The Independent Certifier must perform the Services during the Term.
- (b) The Independent Certifier warrants that it has the resources and expertise to perform the Services.
- (c) In performing the Services, the Independent Certifier must:
- (i) comply with this Deed;
 - (ii) comply with all Laws;
 - (iii) apply Best Industry Practice; and
 - (iv) perform all its Services:
 - (A) independently;

- (B) within the times specified in this Deed, and if no time is specified, promptly and with all due expedition;
- (C) in a manner which will not delay or disrupt the Principal Parties; and
- (D) in accordance with the requirements of the Contract.

2.2 Variations

- (a) TfNSW may from time to time give the Independent Certifier a notice that:
 - (i) changes the Services;
 - (ii) deletes any Services;
 - (iii) adds new Services; and/or
 - (iv) changes the Term.
- (b) If directed by TfNSW, the Independent Certifier must provide a detailed proposal in relation to the pricing, timing and resources impacts of a notice that TfNSW is contemplating giving under clause 2.2(a), together with any other information reasonably required by TfNSW within the time reasonably directed by TfNSW.
- (c) The Independent Certifier must comply with any notice given under clause 2.2(a).
- (d) If TfNSW issues a notice under clause 2.2(a), then:
 - (i) TfNSW and the Independent Certifier will seek to agree any required amendments to the Contract Fee and timing requirements; and
 - (ii) failing agreement, the adjustment to the Contract Fee and timing requirements will be determined by the TfNSW Representative:
 - (A) in relation to pricing:
 - (aa) by applying the rates and prices in this Deed; and
 - (ab) in the absence of any applicable rates and prices, on the basis of reasonable rates and prices; and
 - (B) in relation to timing requirements, acting reasonably.
- (e) If the Independent Certifier considers that the TfNSW Representative has not acted reasonably as required by this clause:
 - (i) the Independent Certifier must continue to perform the Services;
 - (ii) the Independent Certifier may refer the TfNSW's Representative's determination to dispute under clause 18; and
 - (iii) if it is determined that the TfNSW Representative has not acted reasonably then the TfNSW Representative must re-consider its determination acting reasonably.

- (f) If TfNSW gives the Independent Certifier a notice under clause 2.2(a)(ii) then TfNSW may have the deleted Services undertaken by others.
- (g) If the Independent Certifier considers that any direction or other circumstance changes the Services or adds new Services in relation to some or all of the Contracts, and TfNSW has not given a notice under this clause, the Independent Certifier must, if it wishes to make a Claim against TfNSW for an adjustment to the Contract Fee or timing requirements:
 - (i) give a notice to TfNSW within 10 Business Days of becoming aware of the changed or new Services (but in any event before commencing work on the subject matter of any direction), expressly specifying the direction, event, circumstance, act, omission, facts or matters giving rise to the alleged entitlement to Claim; and
 - (ii) continue to carry out the Services in accordance with this Deed and all directions of TfNSW, including any direction in respect of which notice has been given under this clause 2.2(g).
- (h) Claims submitted by the Independent Certifier under clause 2.2(g) will be considered in the first instance by TfNSW's Representative, who may accept or reject the Claim in part or full, and may consult with any Other Party to verify the alleged event, circumstance, act, omission, fact or matter giving rise to the Independent Certifier's Claim. If the Independent Certifier wishes to dispute the rejection of the Claim it may do so under clause 18.
- (i) If within 20 Business Days after first receipt of a Claim under clause 2.2(g) TfNSW's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected by TfNSW.

3 Contract Fees

3.1 Contract Fee

In consideration of the Independent Certifier undertaking the Services in accordance with this Deed, TfNSW must pay the Independent Certifier the Contract Fee.

3.2 Payment

- (a) At the end of each month the Independent Certifier must submit to TfNSW's Representative a claim for payment of the Contract Fee in accordance with the Umbrella Deed that:
 - (i) sets out the amount due in respect of the Services and any expert advice obtained by the Independent Certifier in accordance with this Deed; and
 - (ii) is in such form and with such details and supporting documentation as TfNSW's Representative reasonably requires including details of the time expended by the Independent Certifier and its staff and contractors in performing the Services.
- (b) Each claim for payment submitted by the Independent Certifier must be accompanied by:

- (i) a supporting statement which complies with section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW); and
 - (ii) a duly signed written statement in a form which complies with the Contractor's Services under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Worker's Compensation Act 1987* (NSW) to provide a statement to the "principal contractor" as contemplated by that legislation.
- (c) Within 10 Business Days after receipt of the claim for the month the TfNSW's Representative must assess the amount and issue a payment statement to the Independent Certifier setting out the portion of the payment claim which is agreed and any portion which is disputed.
- (d) The Independent Certifier must give the TfNSW Representative a valid tax invoice for the amount assessed and within 3 Business Days of receipt of a payment statement under clause 3.2(c).
- (e) TfNSW must, within the later of:
- (i) 5 Business Days of the payment statement; and
 - (ii) receipt of a valid tax invoice under clause 3.2(d),
- but in any event within 15 Business Days of receipt of a claim for payment received under clause 3.2(a), pay the Independent Certifier the portion of each claim for payment which is not disputed.
- (f) If the TfNSW Representative disputes an amount included in claim submitted by the Independent Certifier then within 10 Business Days of receipt of the Independent Certifier's claim, the TfNSW Representative must notify the Independent Certifier in writing of the reasons for any amount which is disputed.

3.3 Payment on account only

Payments made by TfNSW are on account only and are not:

- (a) evidence of the value of the Services performed by the Independent Certifier; or
- (b) an admission of Liability on the part of the Principal Parties.

4 Relationship

4.1 No conflict of interest

The Independent Certifier warrants for the benefit of the Principal Parties that it has no conflict of interest with respect to the carrying out of the Services.

4.2 Nature of relationship

- (a) The Independent Certifier is an independent contractor and is not an employee or agent of any of the Principal Parties.

- (b) The Independent Certifier's employees, contractors, consultants and agents are not the employees, contractors, consultants or agents of any of the Principal Parties.
- (c) The Independent Certifier assumes full responsibility for the benefit of the Principal Parties for the acts and omissions of its employees, contractors, consultants and agents.
- (d) No Principal Party is liable for, nor will they be taken to have a Liability for, or to have assumed or become (on enforcement of any of its powers or otherwise) liable for, the performance of any obligation of the Independent Certifier under this Deed.

4.3 Authority to act

The Independent Certifier has no authority to represent the Principal Parties and, in particular:

- (a) to give directions to any Principal Party;
- (b) to waive or alter any terms of any Contract; or
- (c) to discharge or release a party from any of its obligations under any Contracts.

4.4 Representatives

- (a) The parties have appointed the Representatives.
- (b) The Representatives have authority to give and receive directions and instructions and are the agents of the parties for the purposes of this Deed.
- (c) The parties may change their Representatives by notice in writing to the other parties.

5 Independent Certifier's powers

In performing the Services the Independent Certifier:

- (a) will act as an expert and not as an arbitrator;
- (b) will not be bound to observe the rules of evidence;
- (c) must take into consideration all documents, information and other written material that the Principal Parties place before the Independent Certifier;
- (d) will not be expected or required to obtain or refer to any other documents or information or material but may do so if the Independent Certifier requires them.

6 Determinations

- (a) All determinations made by the Independent Certifier in connection with the Contract must be:
 - (i) in writing;

- (ii) delivered within the time required under the Contract; and
 - (iii) supported by detailed reasons.
- (b) In making a determination in connection with the Contract the Independent Certifier must not obtain any expert advice without the prior written consent of the Principal Parties (including in relation to the cost), not to be unreasonably withheld.
- (c) If it obtains expert advice the Independent Certifier must:
 - (i) ensure that such advice is in writing and sets out:
 - (A) the advice;
 - (B) the basis of the advice in detail; and
 - (C) all materials reviewed and other investigations undertaken in relation to the advice; and
 - (ii) deliver the advice to the Principal Parties together with the determination and explain in detail the manner in which the expert advice has been utilised in making the determination.
- (d) If the Independent Certifier obtains expert advice then such advice will be deemed to form part of the Independent Certifier's determination.

7 Assistance access and information

7.1 Co-operation and assistance

- (a) The Principal Parties must:
 - (i) co-operate with the Independent Certifier;
 - (ii) reasonably assist the Independent Certifier; and
 - (iii) act honestly and fairly,to enable the Independent Certifier to perform the Services.
- (b) Subject to any Law or duty of confidentiality and without limiting any other clause in this Deed, each Principal Party must:
 - (i) provide to the Independent Certifier any information reasonably necessary to enable the Independent Certifier to perform the Services; and
 - (ii) provide the Independent Certifier with any such information within the time required by this Deed or any relevant Contracts.

7.2 Information provided to Independent Certifier

- (a) The Independent Certifier may rely on information provided to it by any of the Principal Parties as being true and correct in all material respects unless:
 - (i) such information is:

- (A) manifestly incorrect;
 - (B) expressly provided on the basis that it cannot be relied on; or
 - (C) actually known or ought to have been known by the Independent Certifier to be untrue or incorrect; or
- (ii) the relevant Principal Party subsequently informs the Independent Certifier of any change to the information provided to it.
- (b) The Principal Parties must use their best endeavours to ensure that all information provided to the Independent Certifier is accurate and true.
 - (c) Where a Principal Party is entitled to comment on Design Documentation that party agrees:
 - (i) to provide all comments in a format reasonably required by the Independent Certifier, which as a minimum must contain:
 - (A) a unique reference number;
 - (B) a description of the Design Documentation; and
 - (C) the reasons for the non-compliance; and
 - (ii) make available the author of the comment or appropriate personnel to meet with the Independent Certifier to clarify any comments.

7.3 Access

- (a) A Principal Party must give access to the Independent Certifier to such places that it controls as may be reasonably necessary to enable the Independent Certifier to perform the Services.
- (b) A Principal Party must, within a reasonable time of request by the Independent Certifier, allow the Independent Certifier access to any records held or systems maintained by it or its subcontractors or sub-consultants in relation to the works to which the Services relate, which are reasonably necessary to enable the Independent Certifier to perform the Services.
- (c) The Independent Certifier must within a reasonable time of any request, give the Principal Parties, access to and copies of any records, reports, advice or other documents received, prepared, or generated by or for the Independent Certifier in the course of performing the Services.
- (d) The Independent Certifier must comply with the reasonable requirements of the Principal Parties when accessing any place under the control of a Principal Party, including in relation to safety.

7.4 Copies of notices and documents

All notices and documents:

- (a) provided by the Independent Certifier to one Principal Party must be copied to the Other Party; and

- (b) provided by a Principal Party to the Independent Certifier must be provided by the Independent Certifier to the Other Party.

8 Independent Certifier's personnel

8.1 Independent Certifier's personnel

The Independent Certifier must ensure that its personnel:

- (a) undertake the minimum attendance;
- (b) have the minimum level of skill and expertise; and
- (c) apply the minimum level of surveillance,

as set out in Schedule 7.

8.2 List of personnel

Upon the request at any time by any Principal Party, the Independent Certifier must promptly provide a list of the personnel which it will use or will be using to perform the Services and detailing the qualifications and experience of each person.

8.3 Removal of personnel

- (a) If TfNSW considers that the:
 - (i) conduct of the Independent Certifier's personnel (including the Key Individual) is prejudicial to the provision of the Services; or
 - (ii) Independent Certifier has not engaged personnel (including the Key Individual) who are sufficiently competent, experienced and qualified to perform the Services.
- (b) TfNSW may, after consultation with the Independent Certifier and the Other Party, by written notice to the Independent Certifier require the removal of any person from any involvement in the provision of the Services. The Independent Certifier must within 10 Business Days replace the person named in that notice with the person approved by TfNSW.

8.4 Key Individuals

- (a) Subject to clause 8.4(b), the Independent Certifier must not terminate the appointment of the Key Individual, or substitute another person for the Key Individual to carry out the Services under this Deed without the prior written approval of TfNSW.
- (b) If the Key Individual resigns or is unable to work due to illness or other circumstances, the Independent Certifier must procure that they are replaced as soon as reasonably practicable and in any event with 10 Business Days. TfNSW and the Independent Certifier must agree the identity of the replacement Key Individual in writing. In endeavouring to reach agreement under this clause 8.4(b), the parties must act reasonably.

8.5 Subcontracting

- (a) The Independent Certifier must not subcontract the performance of any of the Services without the prior written consent of TfNSW.
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting.
- (c) The Subcontracts contained in Schedule 6 have been consented to by TfNSW.

8.6 Adequacy of resourcing

- (a) The Independent Certifier acknowledges and agrees that the Principal Parties are relying on the performance by the Independent Certifier of the Services in a timely manner.
- (b) If the Independent Certifier fails to perform the Services in a timely manner TfNSW may direct the Independent Certifier to:
 - (i) commit additional resources to the performance of the Services; and/or
 - (ii) provide a plan for the improvement of the performance of the Services.
- (c) Any additional resources committed to the performance of the Services by the Independent Certifier pursuant to a direction from TfNSW or pursuant to a plan developed by the Independent Certifier will be at its own cost, except to the extent that the inadequacy of resourcing is attributable to:
 - (i) an increase in the scope of the Services;
 - (ii) the need to perform the Services for a longer period due to causes beyond the control of the Independent Certifier; or
 - (iii) the failure of any Principal Party to comply with a Contract.

9 Insurance

9.1 General

The Independent Certifier must:

- (a) obtain and maintain the Insurances as further defined in Schedule 3;
- (b) obtain and maintain such additional insurances and make such variations to existing Insurances, as may reasonably be requested TfNSW promptly after that request, provided that the Contract Fee must be adjusted to reflect the additional costs incurred as a result;
- (c) ensure that each insurance policy will comply with the following requirements:
 - (i) the policy must contain provisions which are reasonably standard in the market for insurance of the type covered by the policy;

- (ii) the insurers must be reputable, and approved by the TfNSW;
 - (iii) the named insured on the policy (except where the policy is for professional indemnity insurance) must be the Principal Parties or such other persons as TfNSW reasonably require; and
 - (iv) Insurance must at all times cover liability for an amount stated in Schedule 3; and
- (d) ensure that each insurance policy must contain the following:
- (i) the insurer must waive its right to set-off or reduce by way of counterclaim, or make any deduction or withholding, in relation to any payment to be made by it under any Insurances;
 - (ii) the insurer must waive its right to claim from the Principal Parties any insurance premiums, fees, commissions or the like;
 - (iii) the Insurances must continue unaltered in relation to each named insured, despite any act, omission, breach or misrepresentation by any other named insured or person;
 - (iv) each named insured may pay premiums not paid when due (in satisfaction of the premium due), but only the Independent Certifier has an obligation to do so;
 - (v) each named insured must have rights which are of the same nature and extent as they would have had had a separate policy been individually taken out by that named insured (subject to limits on liability); and
 - (vi) the insurer must undertake to promptly notify the Principal Parties of:
 - (A) cancellation or avoidance of any Insurances;
 - (B) any change whatsoever of a restrictive nature which affects any Insurances;
 - (C) any act or omission or any event which might invalidate an Insurance policy or render it unenforceable; or
 - (D) any failure to pay an amount on account of premiums when due; and
 - (vii) the insurer must undertake to notify each named insured of non-receipt of any renewal instructions no later than 5 Business Days prior to the due date for expiry of any Insurance;
 - (viii) despite the occurrence of an event referred to in clauses 9.1(d)(vi) and clause 9.1(d)(vii), the Insurances must continue unaltered for the benefit of the Principal Parties for a period of at least 20 Business Days after notice is given to the Principal Parties under either of those clauses;
 - (ix) there must be no reduction of limits or coverage without the prior consent of the Principal Parties; and
 - (x) the insurer's indemnity must be a primary indemnity, without right of contribution in respect of any other indemnity or insurance cap; and

- (e) provide the Principal Parties with:
 - (i) a true and complete copy of each Insurance policy, promptly after receipt of the policy by or on behalf of the Independent Certifier;
 - (ii) certificates of currency evidencing the maintenance of the Insurances, or a component of the Insurances, promptly after the Insurances (or a component) is or are renewed or extended;
 - (iii) it will give the Principal Parties a copy of any notice received by the Independent Certifier from any insurer in respect of Insurances, promptly after receipt; and
 - (iv) such other details in respect of Insurances as the Principal Parties may from time to time reasonably request, promptly after the request; and
- (f) pay when due all premiums, commissions, stamp duties, charges and other expenses incurred or payable in relation to Insurances, and give evidence of that payment to the Principal Parties;
- (g) do all things necessary or desirable to maintain the Insurances in full force;
- (h) not, without the Principal Parties' consent, vary, cancel or allow to lapse any Insurances;
- (i) do all things reasonably necessary or desirable to permit or facilitate the collection or recovery of any moneys payable by the insurers under Insurances;
- (j) not, without the consent of the Principal Parties do (or omit to do) anything which does or might (or the omission of which does or might) adversely affect the nature or extent of the rights of any named insured under Insurances, or extinguish, qualify or limit any indemnity of the insurer in respect of any Insurances;
- (k) immediately rectify anything which may have an adverse effect on the Insurances and reinstate any of the Insurances if it lapses;
- (l) not, without the consent of the Principal Parties, do, or take any steps to, cancel, materially change or reduce the amount of coverage of any Insurances;
- (m) not, without the consent of the Principal Parties:
 - (i) consent to any reduction in limits or coverage; or
 - (ii) enforce, conduct, settle or compromise any claims,
 in respect of any Insurances, whether or not any of them cover other property; and
- (n) notify the Principal Parties immediately when:
 - (i) an event occurs which gives rise or might give rise to a claim under or which could adversely affect any one of the Insurances; or
 - (ii) any of the Insurances are cancelled.

9.2 Failure to produce proof of insurance

If the Independent Certifier fails to comply with its obligations under this clause to effect any of the insurances, TfNSW may effect and maintain the insurances and pay the premiums. The Independent Certifier must pay to TfNSW on demand a sum equal to the amount paid by the Principal Parties and the amount of any such premiums and other costs incurred by TfNSW will be deducted from the Contract Fee.

10 Suspension of Services

- (a) TfNSW may by notice to the Independent Certifier, instruct the Independent Certifier to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Services.
- (b) During the period which the Independent Certifier's performance of the Services are suspended in accordance with clause 10(a), TfNSW must pay the Independent Certifier:
 - (i) subject to the provisions of this Deed, for the Services that are not suspended (if any); and
 - (ii) subject to:
 - (A) the Independent Certifier using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Services; and
 - (B) provided that the suspension is not as a result of the Independent Certifier failing to comply with this Deed, such unavoidable costs or expenses incurred arising in connection with the suspension of the Services and costs and expenses incurred by the Independent Certifier in anticipation of their Services not being suspended.

11 Default

11.1 Independent Certifier Default

- (a) Each of the following is an Independent Certifier Default:
 - (i) the Independent Certifier does not perform any of the Services to the standard of care required by this Deed;
 - (ii) the Independent Certifier fails to comply with any obligation relating to Insurance;
 - (iii) the Independent Certifier fails to act independently;
 - (iv) the Independent Certifier breaches a term of this Deed in a material way;
 - (v) the Independent Certifier persistently breaches this Deed;
 - (vi) the Independent Certifier becomes the subject of an Insolvency Event;

- (vii) a representation or warranty made by or for the Independent Certifier in connection with this Deed is found to have been incorrect or misleading when made;
 - (viii) the Independent Certifier fails to commit adequate resources to the performance of the Services; and
 - (ix) the Independent Certifier ceases to carry on its business or a material part of it.
- (b) This Deed will terminate automatically upon termination of the Contract.

11.2 Termination by TfNSW

- (a) If:
- (i) an Independent Certifier Default occurs, and either:
 - (A) the Independent Certifier Default is not remedied by the Independent Certifier within 10 Business Days of notice of that default being given to the Independent Certifier by TfNSW; or
 - (B) if the Independent Certifier Default cannot be remedied, the Independent Certifier does not establish to the satisfaction of TfNSW that:
 - (aa) there was a reasonable explanation for the Independent Certifier Default; and
 - (ab) the Independent Certifier Default will not be repeated; or
 - (ii) TfNSW terminates any:
 - (A) Contract; or
 - (B) Contract Deed on the basis of Independent Certifier default,
- then TfNSW may terminate this Deed by notice in writing to the Independent Certifier.
- (b) TfNSW may, without giving advance notice, terminate this Deed by giving notice in writing to the Independent Certifier and the Other Party if an event described in clause 11.1(a)(ii) 11.1(a)(iii) 11.1(a)(vi) ,11.1(a)(ix),or 11.2(a)(ii) occurs.
- (c) TfNSW may terminate this Deed at any time for convenience.
- (d) For the avoidance of doubt:
- (i) the Independent Certifier may not terminate this Deed;
 - (ii) only TfNSW may terminate this Deed whether:
 - (A) pursuant to this clause 11.2;
 - (B) otherwise under this Deed; or
 - (C) pursuant to Law; and

- (iii) the Other Party may not terminate this Deed whether:
 - (A) pursuant to this clause 11.2;
 - (B) otherwise under this Deed; or
 - (C) pursuant to Law.

11.3 Rights on termination

If this Deed is terminated under:

- (a) clause 11.2(a) or at Law:
 - (i) the Independent Certifier will only be entitled to payment of amounts due to it under clause 3 up to and including the date of termination;
 - (ii) TfNSW may suspend the payment of the Contract Fee and the Environmental Representative Fee until all of the Services that would have been performed by the Independent Certifier have been performed by others;
 - (iii) without limiting its rights TfNSW may set off from any payment any amount which TfNSW would otherwise be obliged to make to the Independent Certifier any Loss incurred by TfNSW as a result of the termination of this Deed; and
 - (iv) the rights of the parties will otherwise be on basis that the Independent Certifier has repudiated the Deed and the repudiation has been accepted by the Principal Parties; or
- (b) clause 11.1(b) or clause 11.2(c), then the Independent Certifier will only be entitled to payment of all amounts due to it under clause 3 up to and including the date of termination plus the reasonable costs incurred by it directly arising from early termination. For the avoidance of doubt the Independent Certifier will have no Claim in respect of any foregone profit.

11.4 Return of records

- (a) Within 2 Business Days of the termination of this Deed, the Independent Certifier must deliver all documentation, records, and materials in the possession or control of the Independent Certifier relating to the Services including all contracts, correspondence, records, plans, specifications and other documents:
 - (i) where directed by TfNSW, to the Replacement Certifier; or
 - (ii) otherwise, to TfNSW, which will be received by TfNSW subject to clause 11.4(e).
- (b) The documentation, records, and materials must be:
 - (i) delivered in such form as directed by the TfNSW Representative; and
 - (ii) indexed and organized as directed by the TfNSW Representative.
- (c) The Independent Certifier may not exercise any lien against any of the documentation, records, and materials referred to in this clause 11.4.

- (d) If this Deed is terminated, the Independent Certifier must co-operate with and assist TfNSW and the Replacement Certifier to ensure an effective and smooth transition of its duties and Services under this Deed to the Replacement Certifier.
- (e) If TfNSW receives pursuant to clause 11.4(a)(ii) documentation, records, and materials that were provided to the Independent Certifier by the Other Party, TfNSW will deliver that documentation, records, and materials to the Other Party, as directed by the Other Party.

11.5 Novation

If this Deed is terminated, the Independent Certifier:

- (a) must novate to the Principal or the Replacement Certifier (as directed by TfNSW) those subcontracts that have been entered into by the Independent Certifier that the Principal directs; and
- (b) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Independent Certifier's attorney to:
 - (i) execute, sign, seal and deliver all notices, deeds and documents; and
 - (ii) undertake actions in the name of the Independent Certifier.

11.6 Survival

This clause will survive the termination of this Deed.

12 Indemnity

- (a) The Independent Certifier is liable for and indemnifies each Principal Party against any Liability or Loss brought against, suffered or incurred by a Principal Party to the extent that Liability or Loss arises out of:
 - (i) any damage to, loss of or loss of use of (whether total or partial) any real or personal property;
 - (ii) illness or death of or injury to any person; or
 - (iii) any negligent act or omission of or any breach of this Deed by the Independent Certifier or its agents, subcontractors or consultants.that arises out of the performance of the Services.
- (b) This clause will survive the termination of this Deed.

13 Assignment

13.1 Assignment by the Independent Certifier

Neither the Independent Certifier nor any Other Party may assign or transfer its rights or obligations under this Deed without the prior written consent of TfNSW (which may be given or withheld in its absolute discretion and with or without conditions).

13.2 Assignment by TfNSW

The Independent Certifier acknowledges and agrees TfNSW may at any time assign, novate or otherwise transfer any of its rights or obligations under this Deed at any time to any entity which succeeds to its rights under the Contract.

14 Notices

14.1 Delivery of Notices

- (a) Notices must be (subject to clause 14.4) uploaded onto PDCS.
- (b) A notice takes effect on the day that:
 - (i) if delivered by hand, upon actual receipt by the addressee; or
 - (ii) in the case of a notice sent through PDCS, at the time the direction has been uploaded onto PDCS by the sender.
- (c) If a notice takes effect after 5.00 pm on a day, the notice will be deemed to have been received at 9.00 am on the next Business Day.

14.2 Delivery of Design Documentation

In the case of Design Documentation, Design Documentation is deemed to be delivered through the PDCS at the time the Design Documentation has been uploaded onto the PDCS by the sender.

14.3 PDCS

- (a) Subject to clause 14.4, at any time, and from time to time, the TfNSW Representative may notify the Independent Certifier that the PDCS will be used for giving notices under or in connection with this Deed. The TfNSW Representative's notice will set out:
 - (i) the commencement date for use of the PDCS; and
 - (ii) any other information reasonably necessary for the effective use and service of notices via the PDCS.
- (b) If a party is unable to use the PDCS as a result of the failure of the PDCS, that party must use one of the alternative means of communication set out in this clause.
- (c) 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 clause 14.3(c)(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.
- (d) The Independent Certifier 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 PDCS and check whether notices have been received on each Business Day; and
 - (iii) 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.
- (e) The Principal Parties have no Liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of PDCS or any failure of PDCS, and the Independent Certifier will not be entitled to make, and the Principal Parties will not be liable upon, any Claim against the Principal Parties arising out of or in connection with the Independent Certifier's access to or use of PDCS or any failure of PDCS.

14.4 Notices for delivery by hand and PDCS

The parties acknowledge and agree that notices issued pursuant to clauses 10 and 18 must be delivered by hand to the other party and by the PDCS, pursuant to this Deed.

15 GST

15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14.1 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.1.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

15.2 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost or other amount paid or incurred will be limited to the total cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost or amount relates.

15.3 Additional amount of GST payable

Subject to clause 15.5, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed or a Contract:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14.1), for that supply is exclusive of GST;
- (b) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 15.3(b).

15.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 15.3 and clause 15.5, varies from the additional amount paid by the Recipient under clause 15.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 15.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 15.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

15.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 15.3 applies is a taxable supply made by the Recipient in the same tax period ("**Recipient Supply**"), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 15.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 15.3 (or the time at which such GST Amount would have been payable in accordance with clause 15.3 but for the operation of clause 15.5(a)).

15.6 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

15.7 No merger

This clause 14.1 will not merge on completion or termination of this Deed.

16 Representations and warranties

The Independent Certifier represents and warrants that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into this Deed to which it is a party and comply with its obligations under it;
- (c) this Deed and the transactions under it which involve it do not contravene its constituent documents (if any) or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;
- (d) it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with and perform the Services and exercise its rights under it, and allow it to be enforced;
- (e) the Services are valid and binding and are enforceable against it in accordance with its terms;
- (f) it benefits by entering into this Deed;
- (g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (h) unless stated in this Deed, it does not enter into this Deed as trustee;
- (i) there is no pending or threatened proceeding affecting it or any of its assets before a court, governmental authority or arbitrator except those in which a decision against it would be insignificant;
- (j) it does not have immunity from the jurisdiction of a court or from legal process;
- (k) it has the appropriate qualifications and Authority Approvals to undertake all of the certification requirements forming part of the Services; and
- (l) it and all its representatives, employees, agents, contactors and consultants engaged in the performance of the Services possesses, and will continue to possess, the appropriate experience, skill, qualifications and resources which are required to properly perform the Services.

17 General

17.1 Set-off

Without limiting its rights TfNSW may set off any amount due for payment by TfNSW to the Independent Certifier against any amount due for payment by the Independent Certifier to TfNSW under this Deed.

17.2 Discretion in exercising rights

A Principal Party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Deed expressly states otherwise.

17.3 Partial exercising of rights

If a Principal Party does not exercise a right or remedy fully or at a given time that Principal Party may still exercise it later.

17.4 No liability for Loss

The Principal Parties are not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except to the extent of any fraud by any Principal Party.

17.5 Conflict of interest

The Principal Parties' rights and remedies under this Deed may be exercised even if this involves a conflict of duty or the Principal Parties have a personal interest in their exercise.

17.6 Remedies cumulative

The Principal Parties' rights and remedies under this Deed are in addition to other rights and remedies given by law independently of this Deed.

17.7 Other encumbrances or judgments

- (a) This Deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
 - (i) any encumbrance or other right or remedy to which the Principal Parties are entitled; or
 - (ii) a judgment which the Principal Parties obtain against the Independent Certifier in connection with this Deed.
- (b) Notwithstanding clause 17.7(a), the Principal Parties may still exercise their rights under this Deed as well as under the judgment, the encumbrance or the right or remedy.

17.8 Variation and waiver

Unless this Deed expressly states otherwise, a provision of this Deed, or right created under it, may not be waived or varied except in writing signed by the Other Party, Independent Certifier and TfNSW.

17.9 Confidentiality

- (a) All information provided by one party to another party under this Deed or a Contract and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person except:
 - (i) with the consent of the party providing the information;
 - (ii) if required by law or required by any stock exchange;

- (iii) in connection with any legal proceedings relating to this Deed or any Contract;
 - (iv) if the information is generally and publicly available;
 - (v) to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed; or
 - (vi) publication of a redacted copy of this Deed where the redactions have been agreed between the parties (acting reasonably).
- (b) The recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and do not disclose it to any person.

17.10 Further steps

The Independent Certifier agrees to do anything TfNSW asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to:

- (a) bind the Independent Certifier and any other person intended to be bound under this Deed; or
- (b) show whether the Independent Certifier is complying with this Deed.

17.11 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

17.12 Applicable Law

This Deed is governed by the Law in force in New South Wales. The Independent Certifier and the Principal Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

17.13 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, Services and liabilities arising under or in relation to this Deed howsoever such rights, obligations or liabilities are sought to be enforced.

18 Dispute resolution

18.1 Application

- (a) Any dispute or difference between the parties arising out of, relating to or in connection with this Deed, including any dispute or difference as to the formation, validity, existence or termination of this Deed ("**Dispute**") must be determined in accordance with this clause 18.
- (b) Disputes arising out of, relating to or in connection with a Contract, including any dispute or difference as to the formation, validity, existence or termination of that Deed will be subject to the dispute resolution process in that deed.

18.2 Executive negotiation

- (a) If any dispute arises, a party to the dispute ("**Referring Party**") may, by giving notice to the other parties ("**Dispute Notice**"), refer the dispute to the Representatives for resolution.
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given in accordance with this clause 18.2;
 - (iii) state whether it is in relation to this Deed only or the Umbrella IC Deed;
 - (iv) include or be accompanied by reasonable particulars of the dispute, including:
 - (A) a brief description of the circumstances in which the dispute arose; and
 - (B) references to any:
 - (aa) provisions of this Deed or the Contract; and
 - (ab) acts or omissions of any person,relevant to the dispute.
- (c) Within 5 Business Days of the Referring Party giving the Dispute Notice, the Representatives must meet at least once to attempt to resolve the Dispute. The parties must not delegate the function of the Representative to any other person.
- (d) The Representatives may meet more than once to try and resolve a Dispute during the period of 10 Business Days after the service of the Dispute Notice ("**Resolution Period**") and may meet in person, via telephone, videoconference, or any other agreed means of instantaneous communication to effect the meeting.
- (e) Discussions conducted in accordance with this clause 18.2 must be undertaken in good faith and will be held on a 'without prejudice' basis.

18.3 Arbitration

- (a) Any dispute not resolved through executive negotiation including any questions regarding the existence, validity or termination of the Deed or a Contract, may be referred by either party to and finally resolved by arbitration administered by the Australian Disputes Centre (**ADC**).
- (b) The arbitration shall be conducted in Sydney in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to ADC (**Rules**).
- (c) The terms of the Rules are hereby deemed incorporated into this Deed.
- (d) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

18.4 Continuance of performance

Despite the existence of a Dispute, the parties must continue to perform their respective Services under this Deed.

18.5 Summary relief

Nothing in this clause 18 will prevent a party from commencing proceedings to enforce payment due under this Deed or to seek urgent injunctive interlocutory or declaratory relief in respect of a Dispute.

18.6 Survives termination

This clause will survive the termination of this Deed and the applicable Contract.

19 Liability and exclusions

19.1 Liability

- (a) Subject to clause 19.1(b), the Independent Certifier's Liability to the Principal Parties under and in connection with this Deed will be capped at the amount specified in the Details.
- (b) The Principal Parties acknowledge and agree that:
 - (i) the aggregate Liability of the Independent Certifier in respect of all services provided by it in connection with the Project is capped at the Aggregate Liability Cap set out in Details;
 - (ii) the Aggregate Liability Cap might be eroded by claims made by third parties that TfNSW has entered into contracts with in respect of the Project (**Balance Aggregate Liability Cap**); and
 - (iii) if the Balance Aggregate Liability Cap is eroded to the extent that it is less than the Liability Cap, then the Liability of the Independent Certifier under and in connection with this Deed will be capped at the Balance Aggregate Liability Cap.
- (c) The limitations of Liability referred to in clause 19.1(a) will not limit the Liability of the Independent Certifier in respect of:
 - (i) fraud, wilful misconduct, recklessness or illegal or unlawful acts;
 - (ii) termination on the basis of the Independent Certifier's repudiation or default;
 - (iii) in respect of injury to or death of persons caused or contributed to by the Independent Certifier;
 - (iv) to the extent that the Independent Certifier:
 - (A) is indemnified in respect of that Liability by a policy of insurance required under this Deed; or
 - (B) would have been indemnified in respect of that Liability by a policy of insurance required under this Deed if the Independent Certifier had:
 - (aa) diligently pursued a claim under that policy of insurance;

- (ab) complied with the terms and conditions of that policy of insurance; or
- (ac) complied with its insurance obligations under this Deed; or
- (v) to the extent to which, by Law, the parties cannot limit or contract out of such Liability.

19.2 Exclusion of Consequential and Indirect Loss

- (a) Subject to clause 19.2(b), the Independent Certifier will have no Liability to the Principal Parties and the Principal Parties will have no Liability to the Independent Certifier for Consequential and Indirect Loss.
- (b) Clause 19.2(a) does not operate to limit or restrict the Independent Certifier's Liability to a Principal Party in respect of Consequential or Indirect Loss:
 - (i) to the extent that the Independent Certifier:
 - (A) is indemnified in respect of that Liability by a policy of insurance required under this Deed; or
 - (B) would have been indemnified in respect of that Liability by a policy of insurance required under this Deed if the Independent Certifier had:
 - (aa) diligently pursued a claim under that policy of insurance;
 - (ab) complied with the terms and conditions of that policy of insurance; or
 - (ac) complied with its insurance obligations under this Deed;
 - (ii) in respect of any Liability of a Principal Party to a third party, except to the extent that the Liability to the third party is in respect of Consequential or Indirect Loss arising under a contractual claim;
 - (iii) arising from any criminal acts or fraud on the part of the Independent Certifier;
 - (iv) arising from wilful misconduct on the part of the Independent Certifier; or
 - (v) to the extent to which, by Law, the parties cannot limit or contract out of such Liability.

EXECUTED as a deed

Independent Certifier Contract Deed for Remediation Contract Schedule 1 Services

The Services for the purposes of the Contract are:

1 Assumed Remediation Contract Services

The Assumed Remediation Contract Services for the purposes of the Remediation Contract are:

Item	Function
Construction and completion phase services	
1	Quality management surveillance in accordance with project plans prepared by the Remediation Works Contractor at the request of TfNSW.
2	Inspect the Portion 1 Barrier Works for any Defects prior to Completion and notify TfNSW of any non-compliances at the request of TfNSW.
3	Issue a certificate that the Portion 1 Barrier Works have achieved Completion in accordance with the Remediation Contract at the request of TfNSW.
Post-completion phase services	
4	Inspect the Portion 1 Barrier Works for any Defects during the Defects Liability Period at the request of TfNSW.
5	Review and comment on any Defect rectification methodology at the request of TfNSW.
6	Inspect and certify the rectification of any Defects at the request of TfNSW.
Other	
7	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Remediation Contract as specified in, or reasonably inferable from, the Remediation Contract.

2 Assumed Stage 2 Remediation Works Services

If a direction is given by TfNSW for the Stage 2 Remediation Works to be performed under the Remediation Contract or the SOM Contract, the Assumed Stage 2 Remediation Works Services are:

Item	Function
Design phase services	
1	Review and comment on the Design Documentation and design report submitted by the Contractor at each Design Stage.
Construction and completion phase services	
2	Quality management surveillance in accordance with the SAQP and RWVP management plans prepared by the Contractor and approved by the Site

		Auditor.
3		Issue a certificate that the Portion 2 Optional Works have achieved Completion in accordance with the Remediation Contract.
Post-completion phase services		
4		Inspect the Stage 2 Remediation Works for any Defects during the Defects Liability Period at the request of TfNSW.
5		Review and comment on any Defect rectification methodology at the request of TfNSW.
6		Inspect and certify the rectification of any Defects at the request of TfNSW.
Other		
7	2	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Remediation Contract as specified in, or reasonably inferable from, the Remediation Contract.

Independent Certifier Contract Deed for Remediation Contract

Schedule 2 Payment Schedule

1 Contract Fee

[insert]

2 Monthly payment schedule

The Independent Certifier is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to paragraphs 3 and 4 of this Payment Schedule, the indicative monthly payment to be made is set out in the following table:

Month	Contract Fee (\$ excluding GST)

3 Schedule of rates

The Independent Certifier is entitled to include in a payment claim the cost of performing any Variable Services as described below which are the subject of a written direction by TfNSW.

Variable Services will be valued by the TfNSW Representative using the applicable rates in the schedule of rates table below.

Item	Variable Services	Contract
Phase		
1	[As may be agreed with the successful Tenderer]	

The rates contain allowances for the provision of all labour, materials, work, telecommunications, disbursements (other than as described in and payable under paragraph 3) and other costs necessary for and arising out of or in connection with any services for which the Independent Certifier is to be paid on a schedule of rates basis under this Deed.

In order to avoid any double up of payment, the Independent Certifier may not make a payment claim for the performance of Services on a schedule of rates basis to the extent that the Independent Certifier's personnel whose Services are the basis of such claim are covered by the payment of either rates or a lump sum for the performance of other services.

The rates will be increased every 12 months with the first adjustment to occur on the date which is 12 months after the date of this Deed. On each occasion on which the rates are to be adjusted the rates will be increased by [#]%.

When claiming payment for any Services for which the Independent Certifier is to be paid on a schedule of rates basis the Independent Certifier must provide details of the time expended by the Independent Certifier in performing the Services for which the Independent Certifier is entitled to be paid on a schedule of rates basis together with such further evidence as may be requested by TfNSW.

Role	Nominated Personnel	Additional Personnel	Hourly Rate \$ (excl GST)	Daily Rate \$ (excl GST)
------	---------------------	----------------------	---------------------------	--------------------------

[To be inserted from successful Tender]

4 Payment claim

- (a) At the end of each month after the date of this Deed, the Independent Certifier must submit to TfNSW an account for payment on account of the Contract Fee:
- (i) setting out the value of the Services performed in accordance with this Deed during the relevant month;
 - (ii) calculated in accordance with this Payment Schedule; and
 - (iii) in such form and with such details and supporting documentation as TfNSW may reasonably require, broken down for each Contract Deed, including:
 - (A) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period, including:
 - (aa) the visits made by the Independent Certifier to the site and elsewhere in connection with the Project; and
 - (ab) any attendance at tests;
 - (B) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Principal Parties;
 - (C) details of any Defects (as that term is defined under the Contract) raised by the Independent Certifier or TfNSW and details of the rectification of Defects; and
 - (D) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period.
- (b) Each account for payment submitted by the Independent Certifier must be accompanied by an executed Subcontractor's Statement and

Supporting Statement in the form set out at paragraph 11 of this Payment Schedule.

5 Payment and notification of disputed amounts

- (a) The parties agree that TfNSW will pay 100% of the Contract Fee.
- (b) Subject to paragraph 7 of this Payment Schedule, TfNSW must, within 15 Business Days after receipt of the account for the month (submitted in accordance with paragraph 5, pay the Independent Certifier any portion of the Contract Fee attributable to the Services performed during the month which is not disputed.
- (c) If TfNSW disagrees with an amount included in an account submitted by the Independent Certifier then, within 10 Business Days of receipt of the Independent Certifier's account, TfNSW must notify the Independent Certifier in writing of the reasons for any amount which is disputed.
- (d) If the parties do not resolve the matter within 10 Business Days after the issue of TfNSW's written notice, TfNSW's Representative (acting reasonably and independently) must determine the dispute. Any determination by TfNSW's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

6 GST

All lump sums, rates and amounts in this Payment Schedule exclude GST.

7 Subcontractor's statement and supporting statement



SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

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

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

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

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

Contract number/identifier **(Note 3)**

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

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

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

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

(f) Signature Full name:

(g) Position/Title Date / /

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

Version 2

Notes

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

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

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

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

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

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

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

Schedule 3 Insurance

1 Public liability

Coverage: The legal liabilities of the Independent Certifier, the Principal Parties and their employees and agents to third parties for bodily injury and property damage and resulting loss of use arising from the or in connection with the Services.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this Deed until the Independent Certifier ceases to perform the Services.

Limit: A minimum of \$20 million for any one occurrence, (unlimited in any period of insurance) arising out of or in the course of or caused by the execution of the Services.

2 Professional indemnity

Coverage: The professional activities and duties of the Independent Certifier and its employees and agents in respect of the Services.

The policy must be on a project specific basis and insure the Independent Certifier in respect of claims that arise only out of the performance of the Services. The Independent Certifier must not be insured under the policy in respect of any other project or services.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of the Umbrella IC Deed until the seventh anniversary of the last Project Contract to achieve final completion (as set out in that Contract).

Limit: A minimum of \$50 million for any one occurrence and in the aggregate subject to an automatic reinstatement.

3 Workers' compensation insurance

Coverage: A suitable policy against any liability, loss, claim, demand, suit or proceeding, Costs and expenses arising at common law or under any statute (including the Workers Compensation Act 1987 (NSW)) or other legislative provision relating to workers compensation, as a result of personal injury or death of any person employed or taken to be employed by the Independent Certifier.

Insurance Term: From the date of this Deed until the Independent Certifier ceases to perform the Services.

4 Other insurances

Such other insurances as may be reasonably required by the Principal Parties from time to time which are obtainable with a reasonable premium (having regard to the nature of the risk to be insured against) including, without limitation, motor vehicle insurance covering third party property damage for all vehicles for a minimum of \$20 million for any one occurrence.

Insurance Term: From the date of this Deed until the Independent Certifier ceases to perform the Services.

**Independent Certifier Contract Deed for
Remediation Contract**
Schedule 4 Not used

Schedule 5 Umbrella IC Deed



Transport
for NSW

IC ITT VERSION: 23/3/2018

Parramatta Light Rail Umbrella Independent Certifier Deed

Dated

PARRAMATTA LIGHT RAIL
PLR STAGE 1

Transport for NSW (ABN 18 804 239 602) ("TfNSW")
[Name of Independent Certifier] (ABN ##) ("Independent Certifier")

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Parramatta Light Rail Umbrella Independent Certifier Deed Details

Parties

TfNSW	Name	Transport for NSW
	ABN	18 804 239 602
	Address	Level 10, 130 George Street Parramatta, 2150
	Telephone	[##]
	Attention	[##]

Independent Certifier	Name	[##]
	ABN	[##]
	Address	[##]
	Telephone	[##]
	Attention	[##]

Representatives

Aggregate Liability Cap

Governing law New South Wales

**Business Day
place (s)** Sydney, New South Wales

Recitals	A	On 8 December 2015, the NSW Government announced its intention to deliver the Project.
	B	TfNSW has been selected by the NSW Government as the proponent for the development and delivery of the Project.
	C	The Project is being delivered in the following packages: <ul style="list-style-type: none">(i) the Remediation Contract;(ii) the Enabling Works Contract;(ii) the SOM Contract; and

(iii) the Infrastructure Contract.

- D** Those contracts, together with the CoPC Contract, UrbanGrowth Contract, HAC Development Agreement and the RMS Documents involve the performance of Services by the Independent Certifier.
- E** The Independent Certifier is aware of the criticality of its role in providing the Services on a Project wide basis and the need for it to maintain a sufficient level of committed, expert and available resources in order to fulfil its obligations under this Deed and the Contract Deeds in a timely and effective manner.
- F** The Independent Certifier has represented to TfNSW that it has the resources and expertise required to perform the Services in accordance with this Deed and the Contract Deeds and TfNSW has entered into this Deed and will enter into the Contract Deeds in reliance on that representation.
- G** Under this Deed, the Independent Certifier promises to enter into the Contract Deeds on pre-agreed terms as set out in this Deed.
- H** Under the Contract Deeds, the relevant Principal Parties will appoint the Independent Certifier to perform the Services in relation to each of the Contracts.
- I** The Independent Certifier accepts the appointment and agrees to carry out the Services on the terms of this Deed and the Contract Deeds.
-

Parramatta Light Rail Umbrella Independent Certifier Deed

General terms

1 Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Assumed Services means the Services proposed in respect of each Contract, as specified in Schedule 1.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes ASA), and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the PLR Stage 1.

Authority Approval means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to carry out the Services, the HAC Services and the RMS Services.

Best Industry Practice means (subject to any express provisions of this Deed which impose higher standards) the practices which are adopted by consultants with respect to services similar to the Services, the HAC Services or the RMS Services and which, with respect to any purpose to which the performance of the Services, HAC Services or RMS Services are directed, may be expected, in the exercise of that expertise, to accomplish that purpose in a manner consistent with recognised highest standards.

Business Day means a day on which banks are open for general banking business, not being a Saturday, Sunday or public holiday in Sydney or 24, 27, 28, 29, 30 or 31 December or 2 January.

Certification and Monitoring Plan means the plan to be developed and implemented in accordance with Schedule 5.

Claim means any claim, action, demand or proceeding for the payment of money (including damages), for an extension of time or for any other form of relief:

- (a) under or arising out of, or in any way in connection with, this Deed or a Contract Deed;
- (b) arising out of, or in any way in connection with, the Services, the HAC Services, the RMS Services or any party's conduct prior to the date of this Deed; or
- (c) otherwise at Law including:
 - (i) under or for breach of any statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or

- (iii) for restitution, including restitution based on unjust enrichment.

Collaboration Deed RMS means the Parramatta Light Rail – Project Collaboration Deed entered into by TfNSW and RMS.

Consequential or Indirect Loss means:

- (a) any Loss that does not flow directly and naturally from the relevant breach of this Deed or a duty of care; and
- (b) any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract (other than this Deed), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

Contract means each of the:

- (a) Remediation Contract;
- (b) Enabling Works Contract;
- (c) SOM Contract;
- (d) Infrastructure Contract;
- (e) CoPC Contract;
- (f) UrbanGrowth Contract;
- (g) HAC Development Agreement;
- (h) Collaboration Deed RMS; and
- (i) RMS WAD.

Contract Deed means:

- (a) the RMS Deed Poll; and
- (b) the deed executed by each of the relevant Principal Parties and the Independent Certifier for the provision of Services in relation to a Contract.

Contract Fee means the fee payable by TfNSW to the Independent Certifier in accordance with a Contract Deed, which will be determined in accordance with the fee allocation and rates contained in Schedule 3 to this Deed.

CoPC means City of Parramatta Council (ABN 804 239 602).

CoPC Contract means the deed that will be entered into between TfNSW and the CoPC in connection with the Project.

CoPC Contract Deed means the deed entered into by the Independent Certifier, TfNSW and CoPC a draft of which is exhibited in Exhibit J.

Deed means this deed, its schedules and its exhibits.

Delivery Contract means the Remediation Contract, Enabling Works Contract, Infrastructure Contract and/or SOM Contract.

Design Documentation means the designs, drawings, specifications and other design materials produced pursuant to the Contracts.

Details means the details set out on page one of this Deed.

Enabling Works Contract means the deed that will be entered into between TfNSW and the Enabling Works Contractor in connection with the Project.

Enabling Works Contract Deed means the Contract Deed entered into by the Independent Certifier, TfNSW and the Enabling Works Contractor, a draft of which is exhibited in Exhibit B.

Enabling Works Contractor means the contractor with whom TfNSW enters into the Enabling Works Contract.

Environmental Representative Fee means the fee to be paid in respect of the Environmental Representative Services as specified in Schedule 3.

Environmental Representative Services means the services so described in Schedule 1, as amended by this Deed or any Contract Deed.

HAC means the Health Administration Commission.

HAC Development Agreement means the development agreement to be entered into by TfNSW and HAC.

HAC Services means the services to be provided by the Independent Certifier in connection with the HAC Development Agreement.

Independent Arborist Fee means the fee to be paid in respect of the Independent Arborist Services as specified in Schedule 3.

Independent Arborist Services means the services so described in Schedule 1, as amended by this Deed or any Contract Deed.

Independent Certifier Default means an event so described in clause 11.1(a).

Infrastructure Contract means the deed that will be entered into between TfNSW and the Infrastructure Contractor in connection with the Project.

Infrastructure Contract Deed means the Contract Deed to be entered into by the Infrastructure Contractor, TfNSW and the Independent Certifier, a draft of which is exhibited in Exhibit D.

Infrastructure Contractor means the contractor with whom TfNSW enters into the Infrastructure Contract.

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 the Services, the HAC Services or the RMS Services under this Deed for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
- (c) execution is levied against a 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 scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
- (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
- (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
- (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
- (vi) a sequestration order or winding up order is made in respect of the corporation;
- (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
- (viii) a mortgagee of any property of the corporation takes possession of that property; or
- (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

Insurances means the insurances specified in Schedule 2 required to be effected and maintained under clause 9.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Key Individual means the person or persons employed by the Independent Certifier that is to make and issue the decisions, certifications and determinations required as part of the exercise of its Services, as specified in Schedule 4.

Key Personnel means the persons specified in Schedule 4, including the Key Individual(s).

Law means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other

building codes, or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;

- (b) principles of law or equity established by decisions of courts; and
- (c) Authority Approvals (including any condition or requirement under them).

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.

Loss means:

- (a) any cost, expense, 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 or Indirect Loss.

Lump Sum Fee means the fee payable by TfNSW to the Independent Certifier for the performance of Services (excluding any Variable Services) under each applicable Contract Deed and the Environmental Representative Services and Independent Arborist Services performed under this Deed, as apportioned in Schedule 3 and as adjusted in accordance with this Deed.

Maximum Term means the period commencing on the date of this Deed and ceasing on 15 December 2022 or the earlier expiration of the period stated in Part A of Schedule 1 in respect of the Services under a Contract Deed.

Other Party means in relation to any Contract, the Principal Party other than TfNSW.

Planning Approval means the Authority Approval exhibited to the applicable Delivery Contracts, as modified from time to time under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Project.

PLR Stage 1 means the 12km light rail system from Westmead to Carlingford via Parramatta CBD and Camelia, including all track, catenary systems, stops, LRVs, the SaM Facility, and the assets as more particularly described in the Contracts, including any modifications.

Primary Contract Deeds means the Remediation Contract Deed, Enabling Works Contract Deed, Infrastructure Contract Deed and SOM Contract Deed.

Principal Parties means TfNSW and each of the parties to the Contracts.

Project means the design, construction commissioning and operation of PLR Stage 1 which will be delivered through the Remediation Works, Enabling Works, Infrastructure Works and SOM Works, and any preceding, subsequent or consequent works.

Project Data Collaboration System (PDCS) means the web based project data and collaboration system to be used by the Principal Parties in connection with the Project, as notified by the Principal, from time to time.

Remediation Contract means the deed entered into between TfNSW and the Remediation Works Contractor in connection with the Project.

Remediation Contract Deed means the deed entered into by the Independent Certifier, TfNSW and the Remediation Contractor exhibited in Exhibit A.

Remediation Works Contractor means the contractor with whom TfNSW enters into the Remediation Contract.

Replacement Certifier means the successor of the Independent Certifier.

Representatives means the persons specified in the Details as replaced from time to time pursuant to this Deed.

RMS means the Roads and Maritime Service.

RMS Deed Poll means the deed poll to be granted by the Independent Certifier in favour of RMS pursuant to the Collaboration Deed RMS and the RMS WAD a draft of which is exhibited in Exhibit G.

RMS Documents means the Collaboration Deed RMS, the Deed Poll RMS and the RMS WAD.

RMS Services means the services to be performed under the RMS Documents.

RMS WAD means the Works Authorisation Deed between TfNSW and RMS in relation to certain aspects of the Infrastructure Works.

Roads Act Approval means the approval issued pursuant to the *Roads Act 1993* (NSW) as contemplated in the Collaboration Deed RMS.

Services means the services and duties to be provided by the Independent Certifier to the Principal Parties under the Contract Deeds, including any Variable Services.

SOM Contract means the deed to be entered into between TfNSW and the SOM Contractor in connection with the Project.

SOM Contract Deed means the deed entered into by the Independent Certifier, the SOM Contractor and TfNSW a draft of which is exhibited in Exhibit C.

SOM Contractor means the contractor with whom TfNSW enters into the SOM Contract.

Stage 2 Remediation Works means the works described in section 2.5.2 of the works brief which forms part of the Remediation Contract.

Stage 2 Remediation Works Fee means, where TfNSW has given a direction under clause (d), the fee to be paid in respect of the Stage 2 Remediation Works as specified in Schedule 3.

Supplier has the meaning given to that term in clause 16.3.

UrbanGrowth means UrbanGrowth NSW Development Corporation (ABN 49 907 174 773).

UrbanGrowth Contract means the deed to be entered into between TfNSW and UrbanGrowth in connection with the Project.

UrbanGrowth Contract Deed means the deed entered into by the Independent Certifier, TfNSW and Urban Growth a draft of which is exhibited in Exhibit I.

Variable Services means services described in Schedule 3 as may be directed by TfNSW.

1.2 Interpretation

In this Deed unless the context otherwise requires:

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

- (i) the obligations of TfNSW under and in connection with this Deed and any Contract Deed are limited to those expressly stipulated in this Deed and the Contract Deed;
- (j) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Deed; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (k) a reference to this Deed includes all Schedules and Exhibits;
- (l) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) where under this Deed:
 - (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;
- (n) for all purposes (otherwise designated as a Business Day), "day" means calendar day;
- (o) a reference to \$ is to Australian currency;
- (p) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (q) any reference to "work" will be read as referring to work or services, as the context permits; and
- (r) defined terms used in the Assumed Services in Schedule 1 but not defined in this Deed will have the meaning given to that term in the applicable Contract.

1.3 No bias against drafting party

No term or provision of this Deed will be construed against a party on the basis that the Deed or the term in question was put forward or drafted by or on behalf of that party.

1.4 Provisions limiting or excluding liability

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

1.5 Discretion

- (a) Subject to any express provision in the Deed to the contrary:
 - (i) a provision of the Deed which says that TfNSW or the TfNSW's Representative "may" do or not do something is not to be construed as imposing an obligation on TfNSW or TfNSW's Representative to do or not do that thing; and
 - (ii) there will be no procedural or substantive limitation upon the manner in which TfNSW or the TfNSW's Representative may exercise any discretion, power or entitlement conferred by the Deed.
- (b) Without limiting clause 1.5(a), neither TfNSW nor the TfNSW's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Deed conferring the discretion, power or entitlement.

2 Appointment of Independent Certifier

2.1 Scope

- (a) Subject to clause 2.1(d), the Independent Certifier must enter into the Contract Deeds from time to time when directed by TfNSW.
- (b) The Independent Certifier has reviewed and agreed to the terms of:
 - (i) the draft Contract Deeds; and
 - (ii) the RMS Deed Poll,as set out in Exhibits A to G on the basis of the Assumed Services in respect of each Contract.
- (c) The Independent Certifier's appointment to perform the Services and any Variable Services in respect of a Contract will commence on the execution of the Contract Deed in respect of the relevant Contract.
- (d) The Independent Certifier may refuse to enter into a Contract Deed only if the terms of the Contract Deed as proposed by TfNSW are materially different to and materially less favourable in relation to the Independent Certifier than the terms of the relevant draft Contract Deed.
- (e) As conditions precedent to the right of the Independent Certifier to refuse to enter into a Contract Deed:
 - (i) the Independent Certifier must give written notice to the TfNSW Representative setting out in detail the grounds for its refusal;
 - (ii) the Representatives must meet to resolve whether the refusal can be resolved. Such meetings may involve the Other Party to the proposed Contract Deed if directed by the Principal's Representative; and
 - (iii) if, following such meetings, the Independent Certifier continues to refuse to enter into the relevant Contract Deed, it must give a

further written notice to the TfNSW Representative setting out in detail the grounds for its refusal.

- (f) If the Independent Certifier gives notice pursuant to clause 2.1(e)(iii), TfNSW may:
 - (i) if:
 - (A) the Independent Certifier is not acting in good faith in refusing to enter into the relevant Contract Deed: or
 - (B) the terms of the Contract Deed as proposed by TfNSW are not materially different to and materially less favourable in relation to the Independent Certifier than the terms of the relevant draft Contract Deed
 - terminate this Deed and any or all existing Contract deeds pursuant to clause 11.2(b); or
 - (ii) otherwise terminate this Deed and any or all existing Contract deeds pursuant to clause 11.2(c).
- (g) The Independent Certifier may not decline to enter into a Contract Deed solely on the basis that the Services in respect of the relevant Contract Deed are different to the Assumed Services.
- (h) TfNSW is not obliged to enter into any Contract or any Contract Deed.

2.2 Contract Deeds

- (a) TfNSW will prepare and deliver the Contract Deeds to the Independent Certifier for execution from time to time.
- (b) The Independent Certifier must, if requested by TfNSW, participate in negotiations in relation to a Contract Deed.
- (c) The Independent Certifier must bear all costs incurred by it in connection with the negotiation and formation of the Contract Deeds.
- (d) Upon the execution of a Contract Deed, that deed will constitute a separate contract between TfNSW, the Independent Certifier and the Other Party.

2.3 Copies of documents

- (a) TfNSW must deliver to the Independent Certifier copies of each executed Contract.
- (b) The Independent Certifier must familiarise itself with the Contracts including in relation to:
 - (i) the requirements of the Contracts;
 - (ii) the nature of the work necessary for the performance of the Services;
 - (iii) the accuracy and completeness of the description of the Services; and
 - (iv) all matters and things necessary or ancillary to the due and proper performance of the Services.

3 Services

3.1 Assumed Services

- (a) The Assumed Services described in Schedule 1 to this Deed reflect the known functions to be performed by the Independent Certifier under the Contracts as at the date of this Deed.
- (b) The Independent Certifier acknowledges that:
 - (i) the procurement process for each of the Delivery Contracts is ongoing;
 - (ii) following a period of alignment with each Contract, TfNSW intends to enter into a Contract Deed with the Independent Certifier and the relevant Principal Party, as contemplated by clause 2.2; and
 - (iii) the Contract Deeds will set out the scope of Services and corresponding Contract Fee in respect of the relevant Contract(s), while will be based on the Assumed Services, Lump Sum Fee and rates in this Deed to the extent applicable to that Contract.

3.2 Standard

- (a) The Independent Certifier must perform the Services in accordance with the Contract Deeds and the Environmental Representative Services and Independent Arborist Services in accordance with this Deed.
- (b) The Independent Certifier warrants that it has the resources and expertise to perform the Services, the Environmental Representative Services and Independent Arborist Services.
- (c) In performing the Services, the Environmental Representative Services and Independent Arborist Services, the Independent Certifier must:
 - (i) comply with this Deed;
 - (ii) comply with all Laws;
 - (iii) apply Best Industry Practice; and
 - (iv) perform the Environmental Representative Services and Independent Arborist Services:
 - (A) independently;
 - (B) promptly and with all due expedition; and
 - (C) in accordance with the requirements of the Planning Approval.

3.3 Variations

- (a) TfNSW may from time to time give the Independent Certifier a notice under this Deed that:
 - (i) changes the Environmental Representative Services and/or Independent Arborist Services;

- (ii) deletes any Environmental Representative Services and/or Independent Arborist Services; and/or
 - (iii) adds new Environmental Representative Services and/or Independent Arborist Services.
- (b) If directed by TfNSW, the Independent Certifier must provide a detailed proposal in relation to the pricing, timing and resources impacts of a notice that TfNSW is contemplating giving under clause 3.3(a), together with any other information reasonably required by TfNSW within the time reasonably directed by TfNSW.
- (c) The Independent Certifier must comply with any notice given under clause 3.3(a).
- (d) If TfNSW issues a notice under clause 3.3(a), then:
- (i) TfNSW and the Independent Certifier will seek to agree any required amendments to the Environmental Representative Fee and/or Independent Arborist Fee and timing requirements; and
 - (ii) failing agreement, the adjustment to the Environmental Representative Fee and/or Independent Arborist Fee and timing requirements will be determined by the TfNSW Representative:
 - (A) in relation to pricing:
 - (aa) by applying the rates and prices in this Deed; and
 - (ab) in the absence of any applicable rates and prices, on the basis of reasonable rates and prices; and
 - (B) in relation to timing requirements, acting reasonably.
- (e) If the Independent Certifier considers that the TfNSW Representative has not acted reasonably as required by this clause:
- (i) the Independent Certifier must continue to perform the Environmental Representative Services and Independent Arborist Services;
 - (ii) the Independent Certifier may refer the TfNSW's Representative's determination to dispute under clause 19; and
 - (iii) if it is determined that the TfNSW Representative has not acted reasonably then the TfNSW Representative must re-consider its determination acting reasonably.
- (f) If TfNSW gives the Independent Certifier a notice under clause 3.3(a)(ii) then TfNSW may have the deleted Environmental Representative Services and Independent Arborist Services undertaken by others.
- (g) If the Independent Certifier considers that any direction or other circumstance changes the Environmental Representative Services and/or Independent Arborist Services or adds new Environmental Representative Services and/or Independent Arborist Services and TfNSW has not given a notice under this clause, the Independent Certifier must, if it wishes to make a Claim against TfNSW for an adjustment to the Contract Fee or timing requirements:

- (i) give a notice to TfNSW within 10 Business Days of becoming aware of the changed or new Environmental Representative Services and/or Independent Arborist Services (but in any event before commencing work on the subject matter of any direction), expressly specifying the direction, event, circumstance, act, omission, facts or matters giving rise to the alleged entitlement to Claim; and
 - (ii) continue to carry out the Environmental Representative Services and/or Independent Arborist Services in accordance with this Deed and all directions of TfNSW, including any direction in respect of which notice has been given under this clause 3.3(g).
- (h) Claims submitted by the Independent Certifier under clause 3.3(g) will be considered in the first instance by TfNSW's Representative, who may accept or reject the Claim in part or full, and may consult with relevant third parties to verify the alleged event, circumstance, act, omission, fact or matter giving rise to the Independent Certifier's Claim. If the Independent Certifier wishes to dispute the rejection of the Claim it may do so under clause 19.
- (i) If within 20 Business Days after first receipt of a Claim under clause 3.3(g) TfNSW's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected by TfNSW.
 - (j) TfNSW may from time to time give the Independent Certifier a notice under any Contract Deed to vary the relevant Services and the variation provisions in the Contract Deed will apply.

4 Administrative obligations

4.1 Plans

- (a) The Independent Certifier must develop and implement such plans as reasonably required by the TfNSW Representative in connection with the Services.
- (b) In developing the certification and monitoring plans under the Contract Deeds the Independent Certifier must implement the requirements in Schedule 5.

4.2 Reporting

- (a) The Independent Certifier must prepare a consolidated monthly report of a maximum of 20 A4 pages (plus attachments, if necessary) setting out:
 - (i) the tasks undertaken by the Independent Certifier during that month in respect of:
 - (A) Services performed under each Contract Deed;
 - (B) Environmental Representative Services; and
 - (C) Independent Arborist Services;
 - (ii) the visits made by the Independent Certifier to each relevant site and elsewhere in connection with the Project during that month;

- (iii) the documents reviewed by the Independent Certifier during that month and the current status of those documents as they relate to each Contract;
- (iv) the progress made under each Contract in the development of Design Documentation or the construction of works performed under each Contract with reference to the applicable Contract program(s);
- (v) early warning of any Design Documentation proposed for certification in the coming month that in the Independent Certifier's opinion is not likely to achieve certification;
- (vi) tests attended by the Independent Certifier during that month and the results of those tests;
- (vii) details of any Defects identified by the Independent Certifier or alleged Defects notified to the Independent Certifier by any party in respect of any Contractor's Activities under a Contract; and
- (viii) any non-conformances or other issues identified by the Independent Certifier,

and submit that report to TfNSW no later than 5 Business Days after the end of the month to which the report relates.

- (b) The report prepared under clause 4.2(a) must separately identify the RMS Services performed by the Independent Certifier in a manner capable of being provided to RMS as a standalone report and which addresses all requirements of the Independent Certifier under the RMS Documents.

4.3 Review of documentation

- (a) The Independent Certifier must use the PDCS to manage and record all correspondence, including certificates, comments, determinations and all other records.
- (b) All information submitted or exchanged between the Independent Certifier and the Principal Parties and any relevant Authorities must occur within the PDCS.
- (c) The PDCS will be provided to the Independent Certifier at no cost, with training available from TfNSW as required.

4.4 Attendance

- (a) The Independent Certifier must attend all meetings, including all contract administration meetings, discipline-specific meetings, interface management meetings and issues resolution meetings, as contemplated by each Contract or as reasonably requested by TfNSW.
- (b) The Independent Certifier must attend all safety and environmental inductions as required by a Principal Party or any Approval Authority in order for the Independent Certifier to discharge its obligations under this Deed or a Contract Deed.

5 Payment

- (a) In consideration for the Independent Certifier undertaking the Services, the Environmental Representative Services and the Independent Arborist Services in accordance with this Deed and the relevant Contract Deeds, TfNSW must pay the Independent Certifier:
 - (i) the Contract Fee under each Contract Deed; and
 - (ii) the Environmental Representative Fee and Independent Arborist Fee under this Deed.
- (b) The Lump Sum Fee contained in Schedule 3 to this Deed will be apportioned between the applicable Contract Deeds by TfNSW based on the proposed division in Schedule 3.
- (c) The Environmental Representative Fee and the Independent Arborist Fee will be paid by TfNSW on a project-wide basis in accordance with this Deed.
- (d) TfNSW will notify the Independent Certifier whether the Stage 2 Remediation Works are to be performed under the Remediation Contract or the SOM Contract following which the Stage 2 Remediation Works Fee will become payable under either the Remediation Contract Deed or the SOM Contract Deed (as applicable).
- (e) The Lump Sum Fee, the Stage 2 Remediation Works Fee, the Environmental Representative Fee and the Independent Arborist Fee, have been agreed on the basis of:
 - (i) the Assumed Services; and
 - (ii) the Maximum Term.
- (f) The cost to the Independent Certifier of complying with other obligations under this Deed, including under clauses 4, 6 and 9, are deemed to be included in the Lump Sum Fee in Schedule 3 and will be apportioned across each applicable Contract Deed in the manner contemplated by Schedule 3.
- (g) If the Services agreed in a Contract Deed are materially different to the applicable Assumed Services or a term materially differs from the relevant Maximum Term then:
 - (i) TfNSW and the Independent Certifier will seek to agree any required amendments to the Contract Fee and/or the Stage 2 Remediation Works Fee the timing requirements and the resources impacts applicable to the relevant Contract Deed; and
 - (ii) failing agreement the adjustment (by way of increase or decrease) to the Contract Fee and/or the Stage 2 Remediation Works Fee and the timing requirements will be determined by the TfNSW Representative:
 - (A) in relation to pricing:
 - (aa) by applying the rates and prices in this Deed; and

(ab) in the absence of any applicable rates and prices, on the basis of reasonable rates and prices; and

(B) in relation to timing requirements, acting reasonably.

- (h) If the Independent Certifier considers that the TfNSW Representative has not acted reasonably as required by this clause:
- (i) the Independent Certifier must continue to perform the Services;
 - (ii) the Independent Certifier may refer the Independent Certifier's determination to dispute under clause 19; and
 - (iii) if it is determined that the TfNSW Representative has not acted reasonably then the TfNSW Representative must re-consider its determination acting reasonably.

6 Systems and documentation

6.1 Systems to be approved

The Independent Certifier must establish and maintain such systems as are required for the proper administration and recording of the Services, including in relation to quality assurance, communications, review of digital mediums, the making of determinations, analysis and records as approved by the TfNSW Representative.

6.2 Access

The Independent Certifier must allow access to all of premises, systems, records, documents and materials occupied or held by it in connection with the Services to TfNSW and its nominees upon receiving 24 hours' notice from TfNSW that such access is required.

6.3 Intellectual Property Rights

- (a) Title to and Intellectual Property Rights in or in relation to the all documentation, records, and materials created for the performance of the Services will vest upon their creation in TfNSW.
- (b) To the fullest extent permitted by Law, the Independent Certifier hereby assigns to TfNSW all of its rights, titles, and interests in, and to, all Intellectual Property Rights in or in relation to all documentation, records, and materials created for the performance of the Services on the later of creation and the date of this Deed.
- (c) Upon request by TfNSW, the Independent Certifier must do all things necessary to vest that title and Intellectual Property Rights in TfNSW.

7 Independent Certifier's personnel

7.1 Independent Certifier's personnel

The Independent Certifier must ensure that its personnel:

- (a) undertake the minimum attendance;

- (b) have the minimum level of skill and expertise; and
- (c) apply the minimum level of surveillance,

as set out in Schedule 4.

7.2 Key Personnel

- (a) The Independent Certifier must ensure that the Key Personnel (including the Key Individual(s)) are engaged in the performance of the Services in the manner specified in Schedule 4.
- (b) Subject to clause 7.2(c), the Independent Certifier must not terminate the appointment of any Key Personnel, or substitute another person for any Key Personnel to carry out the Services without the prior written approval of TfNSW.
- (c) If any Key Personnel resigns or is unable to work due to illness or other circumstances, the Independent Certifier must procure that they are replaced as soon as reasonably practicable. TfNSW and the Independent Certifier must agree the identity of the replacement Key Personnel in writing.

7.3 Environmental Representative

In consideration for the payment of the Environmental Representative Fee, the Independent Certifier must engage an environmental representative approved by TfNSW on terms approved by TfNSW by such time as reasonably directed by the TfNSW Representative.

7.4 Independent Arborist

In consideration for the payment of the Independent Arborist Fee, the Independent Certifier must engage an independent arborist approved by TfNSW on terms approved by TfNSW by such time as reasonably directed by the TfNSW Representative.

8 Liability and exclusions

8.1 Liability caps

- (a) The Independent Certifier's Liability to TfNSW and the Other Parties will be capped in relation to each Contract Deed as specified in that Contract Deed.
- (b) The aggregate Liability of the Independent Certifier to TfNSW, the Other Parties, RMS and HAC will be capped, in aggregate at the amount specified in the Details.
- (c) The limitations of Liability in clause 8.1(b) will not limit the Liability of the Independent Certifier in respect of:
 - (i) fraud, wilful misconduct, recklessness or illegal or unlawful acts;
 - (ii) termination on the basis of the Independent Certifier's repudiation or default;
 - (iii) in respect of injury to or death of persons caused or contributed to by the Independent Certifier;

- (iv) to the extent that the Independent Certifier:
 - (A) is indemnified in respect of that Liability by a policy of insurance required under this Deed or the relevant Contract Deed; or
 - (B) would have been indemnified in respect of that Liability by a policy of insurance required under this Deed or the relevant Contract Deed if the Independent Certifier had:
 - (aa) diligently pursued a claim under that policy of insurance;
 - (ab) complied with the terms and conditions of that policy of insurance; or
 - (ac) complied with its insurance obligations under this Deed and the relevant Contract Deed; or
- (v) to the extent to which, by Law, the parties cannot limit or contract out of such Liability.

8.2 Exclusion of Consequential and Indirect Loss

- (a) Subject to clause 8.2(b), the Independent Certifier will have no Liability to the Principal Parties and the Principal Parties will have no Liability to the Independent Certifier for Consequential and Indirect Loss.
- (b) Clause 8.2(a) does not operate to limit or restrict the Independent Certifier's Liability to a Principal Party in respect of Consequential or Indirect Loss:
 - (i) to the extent that the Independent Certifier:
 - (A) is indemnified in respect of that Liability by a policy of insurance required under this Deed or the relevant Contract Deed; or
 - (B) would have been indemnified in respect of that Liability by a policy of insurance required under this Deed or the relevant Contract Deed if the Independent Certifier had:
 - (aa) diligently pursued a claim under that policy of insurance;
 - (ab) complied with the terms and conditions of that policy of insurance; or
 - (ac) complied with its insurance obligations under this Deed and the relevant Contract Deed;
 - (ii) in respect of any Liability of a Principal Party to a third party, except to the extent that the Liability to the third party is in respect of Consequential or Indirect Loss arising under a contractual claim;
 - (iii) arising from any criminal acts or fraud on the part of the Independent Certifier;
 - (iv) arising from wilful misconduct on the part of the Independent Certifier; or

- (v) to the extent to which, by Law, the parties cannot limit or contract out of such Liability.

9 Insurance

9.1 General

The Independent Certifier must:

- (a) obtain and maintain the Insurances as further defined in Schedule 2;
- (b) obtain and maintain such additional insurances and make such variations to existing Insurances, as may reasonably be requested TfNSW promptly after that request, provided that the Contract Fees must be adjusted to reflect the additional costs incurred as a result;
- (c) ensure that each insurance policy complies with the following requirements:
 - (i) the policy must contain provisions which are reasonably standard in the market for insurance of the type covered by the policy and which are approved by TfNSW;
 - (ii) the insurers must be reputable, and approved by TfNSW;
 - (iii) the named insured on the policy (except where the policy is for professional indemnity insurance) must be the Principal Parties or such other persons as TfNSW reasonably requires; and
 - (iv) the Insurance must at all times cover liability for an amount stated in Schedule 2; and
- (d) ensure that each insurance policy contains the following:
 - (i) the insurer must waive its right to set-off or reduce by way of counterclaim, or make any deduction or withholding, in relation to any payment to be made by it under any Insurances;
 - (ii) the insurer must waive its right to claim from the Principal Parties any insurance premiums, fees, commissions or the like;
 - (iii) the Insurances must continue unaltered in relation to each named insured, despite any act, omission, breach or misrepresentation by any other named insured or person;
 - (iv) each named insured may pay premiums not paid when due (in satisfaction of the premium due), but only the Independent Certifier has an obligation to do so;
 - (v) each named insured must have rights which are of the same nature and extent as they would have had had a separate policy been individually taken out by that named insured (subject to limits on liability);
 - (vi) the insurer must undertake to promptly notify the Principal Parties of:
 - (A) cancellation or avoidance of any Insurances;

- (B) any change whatsoever of a restrictive nature which affects any Insurances;
 - (C) any act or omission or any event which might invalidate an Insurance policy or render it unenforceable; or
 - (D) any failure to pay an amount on account of premiums when due;
- (vii) the insurer must undertake to notify each named insured of non-receipt of any renewal instructions no later than 5 Business Days prior to the due date for expiry of any Insurance;
 - (viii) despite the occurrence of an event referred to in clauses 9.1(d)(vi) and 9.1(d)(vii), the Insurances must continue unaltered for the benefit of the Principal Parties for a period of at least 20 Business Days after notice is given to the Principal Parties under either of those clauses;
 - (ix) there must be no reduction of limits or coverage without the prior consent of the Principal Parties; and
 - (x) the insurer's indemnity must be a primary indemnity, without right of contribution in respect of any other indemnity or insurance cap; and
- (e) provide the Principal Parties with:
 - (i) a true and complete copy of each Insurance policy, promptly after receipt of the policy by or on behalf of the Independent Certifier;
 - (ii) certificates of currency evidencing the maintenance of the Insurances, or a component of the Insurances, promptly after the Insurances (or a component) is or are renewed or extended;
 - (iii) it will give the Principal Parties a copy of any notice received by the Independent Certifier from any insurer in respect of Insurances, promptly after receipt; and
 - (iv) such other details in respect of Insurances as the Principal Parties may from time to time reasonably request, promptly after the request; and
 - (f) pay when due all premiums, commissions, stamp duties, charges and other expenses incurred or payable in relation to Insurances, and give evidence of that payment to the Principal Parties;
 - (g) do all things necessary or desirable to maintain the Insurances in full force;
 - (h) not, without the Principal Parties' consent, vary, cancel or allow to lapse any Insurances;
 - (i) do all things reasonably necessary or desirable to permit or facilitate the collection or recovery of any moneys payable by the insurers under Insurances;
 - (j) not, without the consent of the Principal Parties do (or omit to do) anything which does or might (or the omission of which does or might) adversely affect the nature or extent of the rights of any named insured

under Insurances, or extinguish, qualify or limit any indemnity of the insurer in respect of any Insurances;

- (k) immediately rectify anything which may have an adverse effect on the Insurances and reinstate any of the Insurances if it lapses;
- (l) not, without the consent of the Principal Parties, do, or take any steps to, cancel, materially change or reduce the amount of coverage of any Insurances;
- (m) not, without the consent of the Principal Parties:
 - (i) consent to any reduction in limits or coverage; or
 - (ii) enforce, conduct, settle or compromise any claims,in respect of any Insurances, whether or not any of them cover other property; and
- (n) notify the Principal Parties immediately when:
 - (i) an event occurs which gives rise or might give rise to a claim under or which could adversely affect any one of the Insurances; or
 - (ii) any of the Insurances are cancelled.

9.2 Failure to produce proof of insurance

If the Independent Certifier fails to comply with its obligations under this clause to effect any of the insurances TfNSW may effect and maintain the insurances and pay the premiums. The Independent Certifier must pay to TfNSW on demand a sum equal to the amount paid by TfNSW and the amount of any such premiums and other costs incurred by TfNSW will be deducted from the Contract Fee payable in respect of any Contract Deed.

10 Suspension of Services

- (a) TfNSW may by notice to the Independent Certifier, instruct the Independent Certifier to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Environmental Representative Services or the Independent Arborist Services.
- (b) During the period which the Independent Certifier's performance of the Environmental Representative Services or the Independent Arborist Services are suspended in accordance with clause 10(a), TfNSW must pay the Independent Certifier:
 - (i) subject to the provisions of this Deed, for the Environmental Representative Services or the Independent Arborist Services that are not suspended (if any); and
 - (ii) subject to:
 - (A) the Independent Certifier using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Environmental

Representative Services or the Independent Arborist Services; and

- (B) provided that the suspension is not as a result of the Independent Certifier failing to comply with this Deed,

such unavoidable costs or expenses incurred arising in connection with the suspension of the Environmental Representative Services or the Independent Arborist Services and costs and expenses incurred by the Independent Certifier in anticipation of the Environmental Representative Services or the Independent Arborist Services not being suspended.

11 Default

11.1 Independent Certifier Default

- (a) Each of the following is an Independent Certifier Default:
- (i) the Independent Certifier does not perform any of the Services, the Environmental Representative Services or the Independent Arborist Services to the standard of care required by this Deed or the relevant Contract Deed;
 - (ii) the Independent Certifier fails to comply with any obligation relating to insurance;
 - (iii) the Independent Certifier fails to act independently under a Contract Deed or in respect of the Environmental Representative Services or the Independent Arborist Services;
 - (iv) the Independent Certifier breaches a term of this Deed or a Contract Deed in a material way;
 - (v) the Independent Certifier persistently breaches this Deed or a Contract Deed;
 - (vi) the Independent Certifier becomes the subject of an Insolvency Event;
 - (vii) a representation or warranty made by or for the Independent Certifier in connection with this Deed or a Contract Deed is found to have been incorrect or misleading when made;
 - (viii) TfNSW terminates any Contract Deed on the basis of Independent Certifier default;
 - (ix) the failure of the Independent Certifier to commit adequate resources to the performance of the Services, the Environmental Representative Services or the Independent Arborist Services; and
 - (x) the Independent Certifier ceases to carry on its business or a material part of it.
- (b) The termination of a Contract Deed or a Contract will not, of itself, automatically terminate this Deed or any Contract Deed other than the Contract Deed which relates to the Contract which was terminated.

11.2 Termination by TfNSW

- (a) If:
 - (i) an Independent Certifier Default occurs; and
 - (ii) either:
 - (A) the Independent Certifier Default is not remedied by the Independent Certifier within 10 Business Days of notice of that default being given to the Independent Certifier by TfNSW; or
 - (B) the Independent Certifier Default cannot be remedied, and the Independent Certifier does not establish to the satisfaction of TfNSW that:
 - (aa) there was a reasonable explanation for the Independent Certifier Default; and
 - (ab) for the Independent Certifier Default will not be repeated,
- then TfNSW may terminate this Deed and/or any or all Contract Deeds by notice in writing to the Independent Certifier.
- (b) TfNSW may, without giving advance notice, terminate this Deed and/or any or all Contract Deeds by giving notice in writing to the Independent Certifier and each other Principal Party:
 - (i) if an event described in clauses 11.1(a)(ii) 11.1(a)(iii) 11.1(a)(vi), 11.1(a)(vii), 11.1(a)(viii), or 11.1(a)(x) occurs; or
 - (ii) pursuant to clause 2.1(f).
 - (c) TfNSW may terminate this Deed and/or any or all of the Contract Deeds at any time for convenience.
 - (d) For the avoidance of doubt:
 - (i) the Independent Certifier may not terminate this Deed or any Contract Deed;
 - (ii) only TfNSW may terminate this Deed or any Contract Deed; and
 - (iii) no Other Party may terminate this Deed or any Contract Deed.

11.3 Rights on termination

If this Deed and/or a Contract Deed is terminated under:

- (a) clauses 11.2(a), 11.2(b) or at Law:
 - (i) the Independent Certifier must allow access to all of its premises, systems, records, documents and materials occupied or held by it in connection with the Services, Environmental Representative Services and the Independent Arborist Services to TfNSW and its nominees as directed by the TfNSW Representative;

- (ii) subject to clause 11.3(a)(iii) and TfNSW's rights of set off the Independent Certifier will only be entitled to payment of amounts due to it under this Deed or the relevant Contract Deed up to and including the date of termination;
 - (iii) TfNSW may suspend the payment of all Contract Fees, the Stage 2 Remediation Works Fee, the Environmental Representative Fee and the Independent Arborist Fee until all of the Services, Environmental Representative Services and the Independent Arborist Services that would have been performed by the Independent Certifier have been performed by others;
 - (iv) without limiting its rights, TfNSW may set off from any payment any amount which TfNSW would otherwise be obliged to make to the Independent Certifier any Loss incurred by TfNSW as a result of the termination of this Deed and/or a Contract Deed; and
 - (v) the rights of the parties will otherwise be on basis that the Independent Certifier has repudiated the Deed and the Contract Deed and the repudiation has been accepted by, in the case of this Deed, TfNSW and, in the case of a Contract Deed, the Principal Parties; or
- (b) clause 11.2(c), then the Independent Certifier will only be entitled to payment of all amounts due to under this Deed or the relevant Contract Deed up to and including the date of termination plus the reasonable costs incurred by it directly arising from early termination. For the avoidance of doubt, the Independent Certifier will have no Claim in respect of any foregone profit.

11.4 Return of records

- (a) Within 2 Business Days of the termination of this Deed and/or a Contract Deed, the Independent Certifier must deliver all documentation, records, and materials in the possession or control of the Independent Certifier relating to the Services, the Environmental Representative Services or the Independent Arborist Services (or in the case of the termination of a Contract Deed only, to the extent applicable to the relevant Contract) including all contracts, correspondence, records, plans, specifications and other documents:
 - (i) where directed by TfNSW, to the Replacement Certifier; or
 - (ii) otherwise, to TfNSW, which will be received by TfNSW subject to clause 11.4(e).
- (b) The all documentation, records, and materials must be:
 - (i) delivered in such form as directed by the TfNSW Representative; and
 - (ii) indexed and organized as directed by the TfNSW Representative.
- (c) The Independent Certifier may not exercise any lien against any of the documentation, records, and materials referred to in this clause 11.4.
- (d) If this Deed and/or a Contract Deed is terminated, the Independent Certifier must co-operate with and assist TfNSW and the Replacement Certifier to ensure an effective and smooth transition of its duties and

services under this Deed and/or the Contract Deed to the Replacement Certifier.

- (e) If TfNSW receives pursuant to clause 11.4(a)(ii), documentation, records, and materials that were provided to the Independent Certifier by the Other Party, TfNSW will deliver that documentation, records, and materials to the Other Party, as directed by the Other Party.

12 Novation

12.1 Termination of subcontracts

If this Deed and/or a Contract Deed is terminated, the Independent Certifier:

- (a) must novate to the Principal or the Replacement Certifier (as directed by TfNSW) those subcontracts that have been entered into by the Independent Certifier that the Principal directs; and
- (b) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Independent Certifier's attorney to:
 - (i) execute, sign, seal and deliver all notices, deeds and documents; and
 - (ii) undertake actions in the name of the Independent Certifier for the purpose of effecting such novation.

12.2 Survival

This clause will survive the termination of this Deed and the applicable Contract Deed.

13 Replacement contractor

If a Contract is terminated then:

- (a) the relevant Contract Deed will terminate automatically;
- (b) subject to TfNSW's rights of termination under this Deed or a Contract Deed the other Contract Deeds will remain in full force and effect; and
- (c) the Independent Certifier must negotiate in good faith to provide services in relation to any replacement contract.

14 Assignment

14.1 Assignment by the Independent Certifier

The Independent Certifier may not assign or transfer its rights or obligations under this Deed without the prior written consent of TfNSW (which may be given or withheld in its absolute discretion and with or without conditions).

14.2 Assignment by TfNSW

TfNSW may at any time assign, novate or otherwise transfer any of its rights or obligations under this Deed at any time to any entity which succeeds to its rights under the Contracts.

15 Notices

15.1 Delivery of Notices

- (a) Notices must be (subject to clause 15.4) uploaded onto PDCS.
- (b) A notice takes effect on the day that
 - (i) if delivered by hand, upon actual receipt by the addressee; or
 - (ii) in the case of a notice sent through PDCS, at the time the direction has been uploaded onto PDCS by the sender.
- (c) If a notice takes effect after 5.00 pm on a day, the notice will be deemed to have been received at 9.00 am on the next Business Day.

15.2 Delivery of Design Documentation

In the case of Design Documentation, Design Documentation is deemed to be delivered through the PDCS at the time the Design Documentation has been uploaded onto the PDCS by the sender.

15.3 PDCS

- (a) Subject to clause 15.4, at any time, and from time to time, the TfNSW Representative may notify the Independent Certifier that the PDCS will be used for giving notices under or in connection with this Deed. The TfNSW Representative's notice will set out:
 - (i) the commencement date for use of the PDCS; and
 - (ii) any other information reasonably necessary for the effective use and service of notices via the PDCS.
- (b) If a party is unable to use the PDCS as a result of the failure of the PDCS, that party must use one of the alternative means of communication set out in this clause.
- (c) 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 clause 15.3(c)(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.
- (d) The Independent Certifier 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 PDCS and check whether notices have been received on each Business Day; and
 - (iii) 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.
- (e) TfNSW has no Liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of PDCS or any failure of PDCS, and the Independent Certifier will not be entitled to make, and TfNSW will not be liable upon, any Claim against TfNSW arising out of or in connection with the Independent Certifier's access to or use of PDCS or any failure of PDCS.

15.4 Notices for delivery by hand and PDCS

The parties acknowledge and agree that notices issued pursuant to clauses 10 and 19 must be delivered by hand to the other party and by the PDCS, pursuant to this Deed.

16 GST

16.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 16.1 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16.1.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

16.2 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost or amount relates.

16.3 Additional amount of GST payable

Subject to clause 16.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 16.1), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 16.3(b).

16.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 16.3 and clause 16.5, varies from the additional amount paid by the Recipient under clause 16.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 16.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 16.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

16.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 16.3 applies is a taxable supply made by the Recipient in the same tax period (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 16.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 16.3 (or the time at which such GST Amount would have been payable in accordance with clause 16.3 but for the operation of clause 16.5(a)).

16.6 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

16.7 No merger

This clause 16 will not merge on completion or termination of this Deed.

17 Representations and warranties

The Independent Certifier represents and warrants for the benefit of the Principal Parties that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into this Deed to which it is a party and comply with its obligations under it;
- (c) this Deed and the transactions under it which involve it do not contravene its constituent documents (if any) or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;
- (d) it has in full force and effect the authorisations necessary for it to enter into this Deed, to comply with and perform the Services, the Environmental Representative Services and the Independent Arborist Services and exercise its rights under it, and allow it to be enforced;
- (e) the Services, the Environmental Representative Services and the Independent Arborist Services are valid and binding and are enforceable against it in accordance with its terms;
- (f) it benefits by entering into this Deed;
- (g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (h) unless stated in this Deed, it does not enter into this Deed as trustee;
- (i) there is no pending or threatened proceeding affecting it or any of its assets before a court, governmental authority or arbitrator except those in which a decision against it would be insignificant;
- (j) it does not have immunity from the jurisdiction of a court or from legal process;
- (k) it has the appropriate qualifications and Authority Approvals to undertake all of the certification requirements forming part of the Services, the Environmental Representative Services and the Independent Arborist Services; and
- (l) it and all its representatives, employees, agents, contactors and consultants engaged in the performance of the Services, the Environmental Representative Services and the Independent Arborist Services possesses, and will continue to possess, the appropriate experience, skill, qualifications and resources which are required to properly perform the Services, the Environmental Representative Services and the Independent Arborist Services.

18 General

18.1 Set-off

Without limiting its rights TfNSW may set off any amount due for payment by TfNSW to the Independent Certifier against any amount due for payment by the Independent Certifier to TfNSW under this Deed.

18.2 Discretion in exercising rights

TfNSW may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Deed expressly states otherwise.

18.3 Partial exercising of rights

If TfNSW does not exercise a right or remedy fully or at a given time TfNSW may still exercise it later.

18.4 No liability for Loss

TfNSW is not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except to the extent of any fraud by TfNSW.

18.5 Conflict of interest

TfNSW's rights and remedies under this Deed may be exercised even if this involves a conflict of duty or TfNSW has a personal interest in their exercise.

18.6 Remedies cumulative

TfNSW's rights and remedies under this Deed are in addition to other rights and remedies given by law independently of this Deed.

18.7 Other encumbrances or judgments

- (a) This Deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
 - (i) any encumbrance or other right or remedy to which TfNSW is entitled; or
 - (ii) a judgment which TfNSW obtains against the Independent Certifier in connection with this Deed.
- (b) Notwithstanding clause 18.7(a), TfNSW may still exercise its rights under this Deed as well as under the judgment, the encumbrance or the right or remedy.

18.8 Variation and waiver

Unless this Deed expressly states otherwise, a provision of this Deed, or right created under it, may not be waived or varied except in writing signed by the Independent Certifier and TfNSW.

18.9 Confidentiality

- (a) All information provided by one party to another party under this Deed, a Contract Deed or a Contract and which is identified as confidential at the

time it is provided, or which by its nature is confidential, must not be disclosed to any person except:

- (i) with the consent of the party providing the information;
 - (ii) if required by law or required by any stock exchange;
 - (iii) in connection with any legal proceedings relating to this Deed or any Contract;
 - (iv) if the information is generally and publicly available;
 - (v) to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed; or
 - (vi) publication of a redacted copy of this Deed where the redactions have been agreed between the parties (acting reasonably).
- (b) The recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and do not disclose it to any person.

18.10 Further steps

The Independent Certifier agrees to do anything TfNSW asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to bind the Independent Certifier and any other person intended to be bound under this Deed; or
- (b) to show whether the Independent Certifier is complying with this Deed.

18.11 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

18.12 Applicable Law

This Deed is governed by the Law in force in New South Wales. The Independent Certifier and the Principal Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

18.13 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Deed howsoever such rights, obligations or liabilities are sought to be enforced.

19 Dispute resolution

19.1 Application

- (a) Any dispute or difference between the parties arising solely out of, relating to or in connection with this Deed (but not a Contract Deed),

including any dispute or difference as to the formation, validity, existence or termination of this Deed ("**Dispute**") must be determined in accordance with this clause 19.

- (b) Disputes arising out of, relating to or in connection with a Contract Deed, including any dispute or difference as to the formation, validity, existence or termination of that deed will be subject to the dispute resolution process in that deed.

19.2 Executive negotiation

- (a) If any dispute arises, a party to the dispute ("**Referring Party**") may, by giving notice to the other parties ("**Dispute Notice**"), refer the dispute to the Representatives for resolution.
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given in accordance with this clause 19.2;
 - (iii) state whether it is in relation to this Deed only or a Contract Deed as well;
 - (iv) include or be accompanied by reasonable particulars of the dispute, including:
 - (A) a brief description of the circumstances in which the dispute arose; and
 - (B) references to any:
 - (aa) provisions of this Deed or the Contract Deed; and
 - (ab) acts or omissions of any person,relevant to the dispute.
- (c) Within 5 Business Days of the Referring Party giving the Dispute Notice, the Representatives must meet at least once to attempt to resolve the Dispute. The parties must not delegate the function of the Representative to any other person.
- (d) The Representatives may meet more than once to try and resolve a Dispute during the period of 10 Business Days after the service of the Dispute Notice and may meet in person, via telephone, videoconference, or any other agreed means of instantaneous communication to effect the meeting.
- (e) Discussions conducted in accordance with this clause 19.2 must be undertaken in good faith and will be held on a 'without prejudice' basis.

19.3 Arbitration

- (a) Any dispute not resolved through executive negotiation including any questions regarding the existence, validity or termination of the Deed or a Contract Deed, may be referred by either party to and finally resolved by arbitration administered by the Australian Disputes Centre (**ADC**).

- (b) The arbitration shall be conducted in Sydney in accordance with the ADC Rules for Domestic Arbitration operating at the time the Dispute is referred to ADC (**Rules**).
- (c) The terms of the Rules are hereby deemed incorporated into this Deed.
- (d) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).

19.4 Continuance of performance

Despite the existence of a Dispute, the parties must continue to perform their respective Services under this Deed.

19.5 Summary relief

Nothing in this clause 19 will prevent a party from commencing proceedings to enforce payment due under this Deed or to seek urgent injunctive interlocutory or declaratory relief in respect of a Dispute.

19.6 Survives termination

This clause will survive the termination of this Deed and the applicable Contract Deed.

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Parramatta Light Rail Umbrella Independent Certifier Deed

Schedule 1 Maximum Term and Assumed Services

PART A – MAXIMUM TERM

Contract	Maximum Term
Enabling Works Contract	24 months
Remediation Contract	15 months
Infrastructure Contract	33 months
SOM Contract	51 months
Environmental Representative Services	As required under the Planning Approval
Independent Arborist Services	As required under the Planning Approval

PART B – ASSUMED SERVICES

1 Assumed Remediation Contract Services

The assumed Remediation Contract Services for the purposes of the Remediation Contract are:

Item	Function
Construction and completion phase services	
1	Quality management surveillance in accordance with project plans prepared by the Remediation Works Contractor at the request of TfNSW.
2	Inspect the Portion 1 Barrier Works for any Defects prior to Completion and notify TfNSW of any non-compliances at the request of TfNSW.
3	Issue a certificate that the Portion 1 Barrier Works have achieved Completion in accordance with the Remediation Contract at the request of TfNSW.
Post-completion phase services	
4	Inspect the Portion 1 Barrier Works for any Defects during the Defects Liability Period at the request of TfNSW.
5	Review and comment on any Defect rectification methodology at the request of TfNSW.
6	Inspect and certify the rectification of any Defects at the request of TfNSW.

Item	Function
Other	
7	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Remediation Contract as specified in, or reasonably inferable from, the Remediation Contract.

[Note to Tenderers: The scope of Independent Certifier services under the Remediation Contract are to be confirmed and will be performed as Variable Services. Services of the IC in relation to the performance of any Portion 2 Optional Works under the Remediation Contract are described below.]

2 Assumed Stage 2 Remediation Works Services

If a direction is given by TfNSW for the Stage 2 Remediation Works to be performed under the Remediation Contract or the SOM Contract, the assumed Stage 2 Remediation Works Services are:

Item	Function
Design phase services	
1	Review and comment on the Design Documentation and design report submitted by the Contractor at each Design Stage.
Construction and completion phase services	
2	Quality management surveillance in accordance with the SAQP and RWVP management plans prepared by the Contractor and approved by the Site Auditor.
3	Issue a certificate that the Portion 2 Optional Works have achieved Completion in accordance with the Remediation Contract.
Post-completion phase services	
4	Inspect the Stage 2 Remediation Works for any Defects during the Defects Liability Period at the request of TfNSW.
5	Review and comment on any Defect rectification methodology at the request of TfNSW.
6	Inspect and certify the rectification of any Defects at the request of TfNSW.
Other	
7	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Remediation Contract as specified in, or reasonably inferable from, the Remediation Contract.

3 Assumed Enabling Works Contract Services

The assumed Enabling Works Contract Services for the purposes of the Enabling Works Contract are:

Item	Function
Design phase services	
1	For each Design Stage, collate and check all notified comments on Design Documentation (and the Survey Plan), provide a consolidated register of comments to the Contractor with proposed actions for how and when each comment will be closed out and direct the Contractor as to whether such comments must be addressed at the next Design Stage.
2	Make a written determination on any matter which is referred to the Independent Certifier by the Contractor because it disagrees with the Principal's Representative's determination regarding any comments on Design Documentation.
3	For the "Approved for Construction" Design Stage only, collate the comments received from the Principal's Representative, the Third Parties or relevant Authority, undertake an independent review of whether the Design Documentation complies with the Enabling Works Contract and notify the Contractor and Principal in writing of any deficiencies.
4	Issue an Independent Certifier's Certificate of Compliance for relevant Design Documentation at the "Approved for Construction" Design Stage.
5	Collate comments, undertake an independent review, notify the Contractor and Principal in writing of any deficiencies, and issue an Independent Certifier's Certificate of Compliance in relation to "Approved for Construction" Design Documentation which the Contractor wishes to amend prior to the Date of Completion.
Construction and completion phase services	
6	Undertake minimum surveillance of the Contractor's Activities in accordance with the requirements of Schedule 4 in respect of the following signalised intersections: <ul style="list-style-type: none"> • Factory and O'Connell streets • George and Church streets • George and Harris streets
7	Review and, where necessary, instruct the Contractor to amend the procedure and draft defects management plan it submits following notice that it anticipates achieving the Completion of the Works or a Portion within 21 days.
8	Undertake a joint inspection of the Works or a relevant Portion within 7 days' of receiving the Contractor's notice that it anticipates achieving Completion of the Works or a Portion. Following this joint inspection, issue a notice to the Principal's Representative which either lists items the Independent Certifier believes must be completed before Completion is achieved or stating that the Contractor is so far from achieving completion that compiling such a list is not practicable.

Item	Function
9	<p>Undertake another joint inspection of the Works or relevant Portion after receiving a Contractor's Certificate of Completion.</p> <p>Following this joint inspection, within 21 days of receiving a Contractor's Certificate of Completion, issue a notice to the Principal's Representative and the Contractor either stating the date on which the Independent Certifier determines Completion of the Works or the Portion was achieved and containing a list of minor Defects, or either a list of items the Independent Certifier believes must be completed before Completion is achieved or stating that the Contractor is so far from achieving completion that compiling such a list is not practicable.</p>
10	<p>Undertake a joint inspection of the Works prior to Final Completion.</p> <p>Following this joint inspection, issue a notice to the Principal's Representative and the Contractor containing a list of items it believes must be completed before Final Completion.</p>
11	<p>Following receipt of the Contractor's Certificate of Final Completion, undertake another joint inspection of the Works.</p> <p>Following this joint inspection, issue a notice to the Principal's Representative and the Contractor either stating the date on which it determines that Final Completion was achieved, issuing a list of items which the Independent Certifier believes must be completed before Final Completion is achieved or stating that the Contractor is so far from achieving Final Completion that compiling such a list is not practicable.</p>
12	<p>Where necessary, issue a list of Roads Act Approval Defects to the Principal's Representative which will become Defects under the Enabling Works Contract.</p>
Other	
12	<p>Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Enabling Works Contract as specified in, or reasonably inferable from, the Enabling Works Contract.</p>

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4 Assumed Infrastructure Contract Services

The assumed Infrastructure Contract Services for the purposes of the Infrastructure Contract are:

Item	Function
Design phase services	
1	<p>Review, comment and approve as compliant with the Infrastructure Contract the following Project Plans:</p> <ul style="list-style-type: none"> • Quality Management Plan • Systems Engineering, Assurance and Design Management Plan • Construction Environment Management Plan • Interface Management Plan • Testing and Commissioning Plan
2	<p>Review and comment to the Contractor and the Principal's Representative on the completeness and appropriateness of the Contractor's Requirements Verification Traceability Matrix in accordance with the Management Requirements for the purpose of enabling the Independent Certifier to certify compliance of Design Documentation with the Infrastructure Contract.</p>
3	<p>For every Design Stage, collate and check all notified comments on Design Documentation, providing a consolidated register to the Contractor and the Principal's Representative of:</p> <ul style="list-style-type: none"> (a) non-compliances with the Deed with proposed actions for how and when each non-compliance will be closed out; and (b) all other comments and observations with reasons why the comment is not considered to be a non-compliance with the Contract.
4	<p>For:</p> <ul style="list-style-type: none"> (a) nominated requirements for design verification in the Requirement Verification and Traceability Matrix at the PDR Design Stage; and (b) all Design Documentation received at the DDR Design Stage and all subsequent Design Stages, including for amended AFC Design Documentation, <p>undertake an independent review within the Review Period of whether the Design Documentation is complete and complies with the Infrastructure Contract.</p>
5	<p>In respect of Temporary Works:</p> <ul style="list-style-type: none"> (a) review the design to the extent any element of Temporary Works relates to public safety or amenity; and (b) provide an Independent Certifier's Certificate of Design Compliance to the extent any element of Temporary Works relates to public safety or amenity.
6	<p>Meet with the Contractor, each relevant Designer and the Principal's Representative to review the registers of comments on Design Documentation and record all actions to be taken by either the Contractor or Principal.</p>

Item	Function
7	Attend all design presentation workshops delivered by the Contractor, engage with the Contractor's design personnel to obtain an explanation of any Design Documentation, and request any review information necessary to explain the Design Documentation to assist certification of compliance with the Infrastructure Contract.
8	Maintain a record of the close out of all comments provided on Design Documentation, including amended AFC Design Documentation.
9	Provide an Independent Certifier's Certificate of Design Compliance for all Design Stages nominated in the Infrastructure Contract. [Note to Tenderers: Design certification will only be required for nominated items at the PDR Design Stage and at the AFC Design Stage, including amendments to AFC Design Documentation.]
10	In respect of procurement or construction of the Infrastructure Works, certify the applicable Design Documentation as "Approved for Construction".
Construction and completion phase services	
11	Undertake minimum surveillance of the Contractor's Activities in accordance with the requirements of Schedule 4 of this Deed to the extent: (a) applicable to the Infrastructure Works; and (b) deemed necessary by the Independent Certifier to be able to issue the certificates required by the Infrastructure Contract.
12	Nominate Hold Points and Witness Points during the performance of the Contractor's Activities. Nominate persons to attend or witness the release of any Hold Point or to attend a Witness Point. Release Hold Points in accordance with the Infrastructure Contract, as necessary, witnessing any inspections and tests conducted prior to a Hold Point being released.
13	Undertake surveillance, process quality audits, Quality Management System Audits and product quality audits in accordance with the Management Requirements. Issue Corrective Action Requests and non-conforming product notifications in accordance with the Management Requirements.
14	Advise the Contractor of apparent non-conformances, receive reports of non-conformances from the Contractor, review corrective action plans submitted by the Contractor and review corrective actions (taking all durability objectives, safety objectives and performance requirements into account).
15	Certify whether the Safety Case Documentation includes all materials relating to the Infrastructure Works within the Portion that are required in order for the SOM Contractor to obtain accreditation as a Rail Transport Operator under the Rail Safety National Law, including all safety performance reports prepared and certified by an AEO.
16	Approve a "Final Clean Management Plan" as a condition precedent to Portion Completion of a Portion.

Item	Function
17	<p>Following receipt of a notice from the Contractor 30 days' prior to the date it anticipates achieving Construction Completion, undertake a joint inspection of the Infrastructure Works and issue to the Principal's Representative and the Contractor either:</p> <p>(a) a notice confirming that Construction Completion is achievable by the date estimated by the Contractor; or</p> <p>(b) in the Independent Certifier's opinion, Construction Completion is not capable of being achieved by the date estimated by the Contractor.</p>
18	<p>Following receipt of a Contractor's Certificate of Construction Completion, undertake a joint inspection of the relevant Infrastructure Works.</p> <p>After this joint inspection the Independent Certifier must:</p> <p>(a) if Construction Completion has been achieved, provide the Principal's Representative, the Contractor and the SOM Contractor with an Independent Certifier's Certificate of Construction Completion; or</p> <p>(b) if Construction Completion has not been achieved, provide a notice to the Contractor, Principal and the SOM Contractor stating the items which remain to be completed before Construction Completion of the Section can be achieved.</p>
19	<p>Following receipt of an executed Contractor's Certificate of Portion Completion, undertake a joint inspection of the Portion.</p> <p>After this inspection, the Independent Certifier must:</p> <p>(a) if Portion Completion of the Portion has been achieved, provide to the Principal's Representative, the Contractor and the SOM Contractor an Independent Certifier's Certificate of Portion Completion; or</p> <p>(b) if Portion Completion of the Portion has not been achieved, provide a notice to the Contractor, the Principal and the SOM Contractor stating the items which remain to be completed before Portion Completion of the Portion will be achieved.</p>
20	<p>Review and approve reinstatement of the Site on removal or relocation of Site amenities in accordance with the requirements of the Planning Approval.</p>
21	<p>Prior to Portion Completion of the last Portion:</p> <p>(a) review any written reports provided by the Contractor with details of Defects detected and actions proposed to correct that Defect including estimated time requirement;</p> <p>(b) notify the Contractor from time to time of matters the Independent Certifier alleges are defects;</p> <p>(c) review and comment on the Defects Rectification Methodology having regard to:</p> <ul style="list-style-type: none"> • the requirements of any relevant Authority; • the minimisation of the impact on the use of the relevant part and operations of PLR Stage 1; • the requirement to cause as little inconvenience and disruption as possible to the SOM Contractor's Activities, the operation of the PLR,

Item	Function
	<p>Local Areas, Utility Services or the community;</p> <ul style="list-style-type: none"> • if the Defects Rectification Methodology is prepared following Portion Completion and the SOM Contractor has taken control of the relevant part of the Site, the relevant requirements of the SOM Contractor in relation to time, access, site safety and any other matter relating to the operation and maintenance of the PLR Stage 1; and • the requirements of the Co-operation and Integration Deed; <p>(d) inspect the rectification of Defects; and</p> <p>following an inspection, certify that the rectification works have resulted in the rectification of the Defect/s.</p>
Post-completion phase services	
22	<p>During the Defects Rectification Period:</p> <p>(a) review any written reports provided by the Contractor with details of Defects detected and actions proposed to correct that Defect including estimated time requirement;</p> <p>(b) notify the Contractor from time to time of matters the Independent Certifier alleges are defects;</p> <p>(c) review and comment on the Defects Rectification Methodology having regard to:</p> <ul style="list-style-type: none"> • the requirements of any relevant Authority; • the minimisation of the impact on the use of the relevant part and operations of PLR Stage 1; • the requirement to cause as little inconvenience and disruption as possible to the SOM Contractor's Activities, the operation of the PLR, Local Areas, Utility Services or the community; • if the Defects Rectification Methodology is prepared following Portion Completion and the SOM Contractor has taken control of the relevant part of the Site, the relevant requirements of the SOM Contractor in relation to time, access, site safety and any other matter relating to the operation and maintenance of the PLR Stage 1; and • the requirements of the Co-operation and Integration Deed; <p>(d) inspect the rectification of Defects; and</p> <p>(e) following an inspection, certify that the rectification works have resulted in the rectification of the Defect/s.</p>
Issue resolution	
23	<p>Make a written determination on any matter of interpretation of the SPR or Management Requirements which is referred by the Contractor or the Principal's Representative to the Independent Certifier, including a failure to agree whether Design Documentation complies with the SPR or the Management Requirements.</p>
24	<p>Determine whether or not there is a Defect in the event that the Principal's Representative directs the rectification of a Defect and the Contractor notifies the Independent Certifier that it disagrees with the Principal's Representative's determination.</p>

Item	Function
Other	
25	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Infrastructure Contract as specified in, or reasonably inferable from, the Infrastructure Contract.

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5 Assumed SOM Contract Services

The assumed SOM Contract Services for the purposes of the SOM Contract are:

Item	Function
Design phase services	
1	<p>Review, comment and approve as compliant with the SOM Contract the following Project Plans:</p> <ul style="list-style-type: none"> • Quality Management Plan • Systems Engineering, Assurance and Design Management Plan • Construction Environment Management Plan • Interface Management Plan • Testing and Commissioning Plan • Operations Management Plan
2	<p>Review and comment to the Contractor and the Principal's Representative on the completeness and appropriateness of the Contractor's Requirements Verification Traceability Matrix for the purpose of enabling the Independent Certifier to certify compliance of Design Documentation with the SOM Contract.</p>
3	<p>For every Design Stage, collate and check all notified comments on Design Documentation, providing a consolidated register to the Contractor and the Principal's Representative of:</p> <ul style="list-style-type: none"> (a) non-compliances with the Deed with proposed actions for how and when each non-compliance will be closed out; and (b) all other comments and observations with reasons why the comment is not considered to be a non-compliance with the Contract.
4	<p>For:</p> <ul style="list-style-type: none"> (a) nominated requirements for design verification in the Requirement Verification and Traceability Matrix at the PDR Design Stage; and (b) all Design Documentation received at the DDR Design Stage and all subsequent Design Stages, including for amended AFC Design Documentation, <p>undertake an independent review within the Review Period of whether the Design Documentation is complete and complies with the SOM Contract.</p>
5	<p>In respect of Temporary Works:</p> <ul style="list-style-type: none"> (a) review the design to the extent any element of Temporary Works relates to public safety or amenity; and (b) provide an Independent Certifier's Certificate of Design Compliance to the extent any element of Temporary Works relates to public safety or amenity.
6	<p>Attend all design presentation workshops delivered by the Contractor, engage with the Contractor's design personnel to obtain an explanation of any Design Documentation, and request and review any information necessary to explain the Design Documentation to assist certification of compliance with the SOM Contract.</p>

7	Maintain a record of the close out of all comments provided on Design Documentation, including amended AFC Design Documentation.
8	Provide an Independent Certifier's Certificate of Design Compliance for all Design Stages nominated in the SOM Contract. <i>[Note to Tenderers: Design certification will only be required for nominated items at the PDR Design Stage and at the AFC Design Stage, including amendments to AFC Design Documentation.]</i>
9	In respect of procurement or construction of the Infrastructure Works, certify the applicable Design Documentation as "Approved for Construction".
Construction and completion phase services	
10	Undertake minimum surveillance of the Contractor's Activities in accordance with the requirements of Schedule 4 of this Deed to the extent: (a) applicable to the Infrastructure Works; and (b) deemed necessary by the Independent Certifier to be able to issue the certificates required by the Infrastructure Contract.
11	Nominate Hold Points and Witness Points during the performance of the Contractor's Activities. Nominate persons to attend or witness the release of any Hold Point or to attend a Witness Point. Release Hold Points in accordance with the SOM Contract, as necessary, witnessing any inspections and tests conducted prior to a Hold Point being released.
12	Undertake surveillance, process quality audits, Quality Management System Audits and product quality audits in accordance with the Management Requirements. Issue Corrective Action Requests and non-conforming product notifications in accordance with the Management Requirements.
13	Advise the Contractor of apparent non-conformances, receive reports of non-conformances from the Contractor, reviewing corrective action plans submitted by the Contractor and review corrective actions (taking all durability objectives, safety objectives and performance requirements into account).
14	Receiving the monthly report of Infrastructure Defects from the Infrastructure Contractor and provide this to the SOM Contractor for review and comment.
15	Certify whether the Safety Case Documentation provided by the Principal from the Infrastructure Contractor fulfils the requirements of the Rail Safety National Law
16	Issue an Independent Certifier's Certificate of Construction Completion identifying the work covered, with a register of deficiency notices and a register of concessions granted for non-conforming work.
17	Issue all certificates required by the SPR in respect of the completion of all performance, testing and training requirements.
18	Comment on the Trial Running for the purposes of the Manuals required by the SPR.

19	<p>Following receipt from the Contractor of a Certificate of Readiness for First Passenger Service, undertake a joint inspection with the Contractor and Principal of the SOM Works.</p> <p>After this inspection the Independent Certifier must:</p> <p>(a) if it considers that Readiness for First Passenger Service has been achieved, provide to the Principal's Representative an Independent Certifier's Certificate of Readiness for First Passenger Service; or</p> <p>(b) if not achieved, provide a notice to the Contractor and the Principal which sets out the items which remain to be completed before Readiness for First Passenger Service will be achieved.</p>
20	<p>Review and approve reinstatement of the Site on removal or relocation of Site amenities in accordance with the requirements of the Planning Approval.</p>
21	<p>Until the Date of First Passenger Service:</p> <p>(a) review any written reports provided by the Contractor with details of Defects and Project Defects detected by the SOM Contractor, including any Latent Infrastructure SPR Non-Compliances, including:</p> <p style="padding-left: 40px;">(i) all action proposed to correct a Defect, including the estimated time; and</p> <p style="padding-left: 40px;">(ii) in the case of a Project Defect, all action the Contractor considers to be required to correct the Project Defect, including the estimated time and cost required if the Contractor were to correct the Project Defect;</p> <p>(b) notify the Contractor from time to time of matters the Independent Certifier alleges are Defects;</p> <p>(c) notify the Principal's Representative and the Infrastructure Contractor of all alleged defects in the Infrastructure Works; and</p> <p>(d) inspect rectification work undertaken by the Infrastructure Contractor with the SOM Contractor at the SOM Contractor's request.</p>
Post-completion phase services	
22	<p>Review any written reports provided by the Contractor with details of Defects detected and actions proposed to correct that Defect.</p>
23	<p>Determine the existence of Project Defects, providing comments on the defect rectification methodology.</p>
Issue resolution	
24	<p>Make a written determination on any matter of interpretation of the SPR or Management Requirements which is referred by the Contractor or the Principal's Representative to the Independent Certifier, including a failure to agree whether Design Documentation complies with the SPR or the Management Requirements.</p>
25	<p>Determine whether or not there is a Defect in the event that the Principal's Representative determines there is a Defect and the Contractor notifies the Independent Certifier that it disagrees with that determination.</p>

Other	
26	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the SOM Contract as specified in, or reasonably inferable from, the SOM Contract.

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6 Assumed CoPC Contract Services

The assumed CoPC Contract Services for the purposes of the CoPC Contract are:

Item	Function	Clause
Design phase services		
1	Receive comments from CoPC regarding Category 1 Design Documents and, unless the Principal agrees with a claimed non-compliance with the Category 1 Requirements, determining whether those matters constitute non-compliances with the Category 1 Requirements.	Cl 9.1 and 9.2
2	Receive comments from CoPC regarding Category 2 Works Detailed Designs and any notice that CoPC is withholding approval for non-compliance with the Category 2 Requirements. Unless the Principal agrees with a claimed non-compliance with Category 2 Requirements, the Independent Certifier must determine whether those matters constitute non-compliances with the Category 2 Requirements.	Cl 10.4 and 10.5
Construction and completion phase services		
3	Jointly inspect the Category 2 Works following request by Contractor for a Certificate of Practical Completion (Category 2 Works). Within 5 Business Days of completing this joint inspection, the Independent Certifier must give the Principal (and a copy to CoPC) either: (a) a Certificate of Practical Completion (Category 2 Works) which must contain a list of any Minor Defects existing at Practical Completion, if Practical Completion has been achieved; or (b) the reasons for not issuing that certificate, and provide a detailed list of work required to be completed in order for Practical Completion to be achieved.	Cl 10.18 – 10.21
Post-completion phase services		
4	At the request of CoPC, inspect the Category 2 Works for any Defects during the Defects Liability Period.	Cl 10.25
5	Inspect the Enabling Works for any Defects during the Defects Liability Period, at the request of CoPC, and giving a Defects Notice (Enabling Works) to the Principal (with a copy to CoPC) detailing Defects and requiring their rectification.	Cl 7.20(m)-(o)
6	Give notice in writing to CoPC and the Principal of any Defects in the Enabling Works which in the Independent Certifier's reasonable opinion still remain to be rectified and specify a reasonable time for their rectification, following notice from the Principal that Defects subject to a Defects Notice (Enabling Works) have been rectified (or the Principal failing to provide such notice in the time required under the Defects Notice (Enabling Works)).	Cl 7.20(s)

Item	Function	Clause
7	Inspect the Category 2 Works for any Defects during the Defects Liability Period, at the request of CoPC, and give a Defects Notice (Category 2 Works) to the Principal (with a copy to CoPC) detailing Defects.	Cl 10.25 and 10.26
8	Give notice in writing to CoPC and the Principal of any Defects in the Category 2 Works which in the Independent Certifier's reasonable opinion still remain to be rectified and specify a reasonable time for their rectification, following notice from the Principal that Defects subject to a Defects Notice (Category 2 Works) have been rectified (or the Principal failing to provide such notice in the time required under the Defects Notice (Category 2 Works)).	Cl 10.27(b)
9	At the end of the Defects Liability Period for a Separable Portion, if there are no Defects in the Category 2 Works outstanding, issue a Final Certificate stating that the Category 2 Works have been completed in accordance with the CoPC Contract. If Defects still need to be rectified at the end of the Defects Liability Period the Independent Certifier must issue a Final Certificate, stating that Final Completion has been achieved, as soon as all Defects the subject of Defects Notices (Category 2 Works) have been rectified.	Cl 10.29
Other		
8	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the CoPC Contract as specified in, or reasonably inferable from, the CoPC Contract.	

Parramatta Light Rail Umbrella Independent Certifier Deed

1 Assumed RMS Services

1.1 Collaboration Deed RMS

The assumed RMS Contract Services for the purposes of the Collaboration Deed RMS are:

Item	Function	Clause
Design phase services		
1	Review (taking into account RMS' comments) and endorse each Relevant Design Documentation with a certificate in the form contained in Annexure A to the Independent Certifier Deed Poll – the Independent Certifier Design Certificate, as required under the Roads Act Approval.	Cl 17 Schedule 6 Annexure A
Construction and completion phase services		
2	Issue the Independent Certifier Certificate of Relevant Works Completion, as required under the Roads Act Approval.	Schedule 6 Annexure B
Other		
3	Complete the Independent Certifier Certificate - Road Safety Audit, as required under the Roads Act Approval.	Schedule 6 Annexure C
4	Complete the Independent Certifier Certificate - Project Plans, as required under the Roads Act Approval.	Schedule 6 Annexure D
5	Provide a monthly progress report to TfNSW and RMS, setting out the information required by clause 5 of the Independent Certifier's Deed Poll.	Schedule 6 Clause 5
6	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Collaboration Deed RMS as specified in, or reasonably inferable from, the Collaboration Deed RMS.	

1.2 Roads Act Approval

The assumed RMS Contract Services for the purposes of the Roads Act Approval are:

Item	Function	Clause
Design phase services		
1	Review the Relevant Design Documentation, the Relevant Design Documentation (Bridges and Complex Structures) and the Relevant Design Documentation (Traffic Signals). At Design Stage 2, notify the Principal of any non-compliances with the Consent Conditions. At Design Stage 3, provide certifications, with a certificate in the form agreed by the Consent Authority and the Principal.	Cl 23

Item	Function	Clause
2	<p>Address any comments from the Consent Authority when reviewing the Relevant Design Documentation, Relevant Design Documentation (Traffic Signals) or Relevant Design Documentation (Bridges and Complex Structures).</p> <p>Provide a written response in relation to the Consent Authority's comments, indicating which of those comments have been incorporated and, if any comments have not been incorporated, the reasons why those comments have not been incorporated.</p>	Cl 21(g)
3	<p>Provide to the Consent Authority all communications with respect to the Relevant Design Documentation, Relevant Design Documentation (Bridges and Complex Structures) or Relevant Design Documentation (Traffic Signals) which have been commented upon by the Consent Authority.</p> <p>If requested by the Consent Authority, meet the Consent Authority to discuss the resolution of any comments by the Consent Authority on those design documents.</p>	Cl 21 (i) and (j)
Construction and completion phase services		
4	<p>Inspect each discrete part of the Relevant Works (Completion) jointly with the Consent Authority, and determine if the discrete part is complete in accordance with the Consent Conditions.</p> <p>Receive submissions from the Consent Authority as to whether the discrete part is complete, and details of any defects to be rectified.</p> <p>If the Independent Certifier determines that a discrete part of the Relevant Works (Completion) is not complete, determine a Defects List (including any details of defects provided by the Consent Authority) and provide it to the Principal and Consent Authority.</p> <p>If the Independent Certifier determines that the discrete part of the Relevant Works (Completion) is complete, the Independent Certifier must, within 5 Business Days of the date of inspection, execute and provide to the Consent Authority a certificate in the form agreed by the Consent Authority and the Applicant.</p>	Cl 43-48
Other		
5	<p>Review the Project Plans and receive and address the Consent Authority's comments in that review.</p> <p>Audit the Project Plans for compliance with the requirements of the Consent Conditions.</p> <p>Certify the Project Plans.</p>	Cl 9(d), 29 and 32
6	<p>Certify to the Consent Authority that all findings / non-conformances found during Road Safety Audits have been satisfactorily addressed and closed out.</p>	Cl 5.4 of Schedule 4
7	<p>Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the Roads Act Approval as specified in, or reasonably inferable from, the Roads Act Approval.</p>	

1.3 RMS WAD

The assumed RMS Contract Services for the purposes of the RMS WAD are:

Item	Function	Clause
Design phase services		
1	<p>Receive and review the Design Documents for Design Stage 1 and Design Stage 2 and make comments in writing to the Principal and RMS in relation to the compliance of the Design Documents.</p> <p>Receive and review the Design Documents for Design Stage 3 and either reject the Design Documents with reasons or certify they comply with the RMS WAD, in writing to the Principal and RMS.</p> <p>Carry out related processing of Design Documents under the relevant clauses, including taking into account RMS' comments.</p>	Cl 11.1-11.4 and 11.7
2	Issue the certificate in the form required by clause 10.2(d) of the RMS WAD which attaches a full set of Design Documents for Design Stage 3.	Cl 12.3
3	Attend inspection and testing sessions and certifying summaries of results of all inspections and tests.	Cl 12.9
4	Issue a certificate in the form of Schedule 3 of the RMS WAD which attaches a full set of Design Documents for Design Stage 3.	Cl 14.1
5	Issue a certificate in the form of Schedule 8 of the RMS WAD.	Cl 14.3
Construction and completion phase services		
6	Inspect the Road Works and determining any items required to be determined by the Independent Certifier in accordance with the regime for determining Practical Completion in clause 15 of the RMS WAD and issue a certificate in the form of Schedule 4 or notice of all items to be completed.	Cl 15 and 23(a)
7	Determine any items required to be determined by the Independent Certifier in accordance with the regime for determining Final Completion in clause 16 of the RMS WAD and issue a certificate in the form of Schedule 5.	Cl 16 and 23(a)
8	Verify As-Built Drawings and that the Works as constructed comply with all Statutory Approvals, Laws and the requirements of the RMS WAD.	Cl 1.1
Other		
9	Attend Risk Management Workshops in accordance with the RMS WAD.	Cl 11.5

Item	Function	Clause
10	<p>Conduct the activities and functions described in clause 23 of the RMS WAD, including:</p> <ul style="list-style-type: none"> • continually monitoring the integrity and efficiency of the Quality System of the Infrastructure Contractor and certifying that Quality System; • continually monitoring and verifying the compliance of the design and construction of the Works and Temporary Works with the RMS WAD; • issuing certificates in the form set out in Schedule 10 within 10 Business Days of the end of each month; and • ensuring that any non-compliance is rectified in accordance with structured verifiable processes, including reporting protocols. 	CI 23
11	<p>Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the RMS WAD as specified in, or reasonably inferable from, the RMS WAD.</p> <p>As well as any other Services which the Independent Certifier is required to undertake in accordance with the Deed of Appointment of Independent Certifier.</p>	

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2 Assumed UrbanGrowth Contract Services

The assumed UrbanGrowth Contract Services for the purposes of the UrbanGrowth Contract are:

Item	Function	Clause
Design phase services		
1	Receive comments from UrbanGrowth regarding Category 1 Design Documents and, unless the Principal agrees with a claimed non-compliance with the Category 1 Requirements, determine whether those matters constitute non-compliances with the Category 1 Requirements.	Cl 7.2
2	Receive comments from UrbanGrowth regarding Category 2 Works Detailed Designs and any notice that UrbanGrowth is withholding approval for non-compliance with the Category 2 Requirements. Unless the Principal agrees with a claimed non-compliance with Category 2 Requirements, the Independent Certifier must determine whether those matters constitute non-compliances with the Category 2 Requirements.	Cl 8.4 and 8.5
Construction and completion phase services		
3	Review the Category 2 Works following request by Contractor for a Certificate of Practical Completion (Category 2 Works). Within 5 Business Days of receipt of the Contractor's request, the Independent Certifier must give the Principal (and a copy to UrbanGrowth) either: (a) a Certificate of Practical Completion (Category 2 Works); or (b) the reasons for not issuing that certificate, and provide a detailed list of work required to be completed in order for Practical Completion to be achieved.	Cl 8.25 – 8.28
Post-completion phase services		
4	Inspect the Category 2 Works for any Defects during the Defects Liability Period, at the request of UrbanGrowth and give a Defects Notice (Category 2 Works) to the Principal (with a copy to UrbanGrowth) detailing Defects and requiring their rectification.	Cl 8.32 and 8.33
5	Give notice in writing to UrbanGrowth and the Principal of any Defects in the Category 2 Works which in the Independent Certifier's reasonable opinion still remain to be rectified, following notice from the Principal that Defects subject to a Defects Notice (Category 2 Works) have been rectified.	Cl 8.34
6	When Defects the subject of a Defects Notice (Category 2 Works) have been rectified (as determined by the Independent Certifier acting reasonably) and all Defects required to be rectified by the Principal under the UrbanGrowth Contract have been rectified, issue a Final Certificate stating that the Category 2 Works have been completed in accordance with the UrbanGrowth Contract.	Cl 8.36

Item	Function	Clause
Other		
6	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the UrbanGrowth Contract as specified in, or reasonably inferable from, the UrbanGrowth Contract.	

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3 Assumed HAC Services

Item	Function	Clause
Design phase services		
1	Receive (pursuant to the Principal's nomination to receive such documents) comments from HAC regarding Category 1 Design Documents and, unless the Principal agrees with a claimed non-compliance with the Category 1 Requirements, determine between the Principal and the Contractor whether those matters constitute non-compliances with the Category 1 Requirements.	Cl 5.1
2	Receive (pursuant to the Principal's nomination to receive such documents) comments from HAC regarding Category 2 Works Detailed Designs and any notice that HAC is withholding approval for non-compliance with the Category 2 Requirements. Unless the Principal agrees with a claimed non-compliance with Category 2 Requirements, determine between the Principal and the Contractor whether those matters constitute non-compliances with the Category 2 Requirements.	Cl 6.1 and 6.2
3	In relation to Category 3 Works, provide a peer review and comments on 80 and 100% design documentation provided by TfNSW.	
Construction and completion phase services		
4	Jointly inspecting the Category 2 Works following a request by the Contractor for a draft Certificate of Practical Completion (Category 2 Works), and give to the Principal (and a copy to HAC) either: <ul style="list-style-type: none"> a draft Certificate of Practical Completion (Category 2 Works); or the reasons for not issuing that certificate, and provide a detailed list of work required to be completed in order for that certificate to be provided. 	Cl 6.18
5	In relation to Category 3 Works: <ul style="list-style-type: none"> provide site surveillance as necessary to certify that the Category 3 Works have been carried out in accordance with design documentation; inspecting Category 3 Works prior to notified date for completion of those works; and certify to TfNSW that the Category 3 Works have been completed in accordance with the design documentation provided by TfNSW. <p>[Note to Tenderers: Details of scope of Category 3 works to be confirmed.]</p>	
Post-completion phase services		

6	When Defects the subject of a Defects Notice (Category 2 Works) have been rectified (as determined by HAC acting reasonably and in good faith) and all Defects required to be rectified by the Principal under the HAC Contract have been rectified, issue a draft Final Certificate stating that the Category 2 Works have been completed in accordance with the HAC Contract.	CI 6.26
Other		
7	Any other Services incidental or necessary to discharge the Independent Certifier's obligations under the HAC Contract as specified in, or reasonably inferable from, the HAC Contract.	

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Parramatta Light Rail Umbrella Independent Certifier Deed

4 Assumed Environmental Representative Services

The Environmental Representative must undertake the functions outlined in conditions A20 and A22 of the Planning Approval (a copy of the tender baseline conditions forms part of relevant Contracts).

In addition to the functions outlined in the Planning Approval, the Environmental Representative is to undertake the Assumed Environmental Representative Services for the purposes of the Planning Approval for the Project as set out in the table below:

[Note to Tenderers: To be updated if the Planning Approval is received prior to contract award.]

Item	Function
1	Review and provide comment on environmental documentation prepared to meet the requirements of each Contract, the Planning Approval conditions, relevant environmental legislation, other relevant regulatory requirements and relevant standards
2	Monitor and report on the effective ongoing implementation of, and performance against, the environmental documentation referred to in paragraph (2), including compliance with the conditions of the Planning Approval and other relevant regulatory authorisations for the Project, using the TfNSW compliance monitoring system.
3	Carry out weekly physical inspections (surveillance) of the Site to verify compliance with environmental controls as documented in any Construction Environmental Management Plan, "Environmental Control Maps" and any other relevant Project Plans prepared pursuant to a Contract.
4	Maintain an action tracking register of issues raised during site inspections or other compliance reviews, and the dates for close out (in a format agreed with TfNSW).
5	Provide an inspection report (in a format agreed with TfNSW) and updated action tracking register to TfNSW and the relevant Contractor(s) within 24 hours of conducting an inspection.
6	Review and certify the "Environmental Control Maps" prior to their implementation.
7	Carry out regular, and as a minimum 6 monthly, compliance audits of each Contractor's performance against its Construction Environmental Management Plan.
8	Provide independent guidance and advice to TfNSW throughout construction in relation to key emerging environmental and compliance issues, Planning Approval conditions, relevant environmental legislation, other relevant regulatory requirements and relevant standards and best practice environmental management.
9	Monitor site environmental controls and management in relation to site environmental plans and discuss any identified issues with the Independent Certifier's construction surveillance team under each of the Contracts for inclusion in the Independent Certifier's construction issues register.
10	Review and certify revisions to the environmental management documentation as required.

11	Provide regular (i.e. every two months or more frequent when required) training sessions / tool box talks for each Contractor and associated subcontractors on key aspects of the Project (i.e. erosion and sediment control, groundwater management, noise and vibration mitigation etc).
12	Attend regular environmental management coordination meetings with TfNSW and the Contractor(s) to review environmental performance, upcoming activities and strategies to minimise adverse impacts and maximise beneficial opportunities.

5 Assumed Independent Arborist Services

The IC must commission an independent, experienced and suitably qualified arborist. The arborist must be suitably experienced and have a minimum AQF Level 5 qualification in Arboriculture.

The assumed Independent Arborist Services for the Project are to:

- (a) verify and certify that opportunities to avoid, minimise and manage impacts on trees arising from any Contractor's Activities have been undertaken in accordance with the requirements of the Planning Approval and TfNSW's Vegetation Offset Guide;
- (b) verify and certify all Tree Registers produced under any Contract;
- (c) verify and certify the elements of each Contractor's Environmental Design Review Report relating to tree impacts and endorse the proposed level of impact and mitigation measures prior to the impact occurring;
- (d) oversee the interfacing between Project contractors on matters relating to tree impacts and ensuring a whole of project outcome is achieved;
- (e) endorse (along with the Environment Representative) that each Project contractor has demonstrated that is not feasible or reasonable to retain a tree(s) that meet the following following criteria;
 - large mature trees (refer to definition in Planning Approval)
 - trees of medium or high retention value, as assessed under the IACA (2010) Significance of a Tree, Assessment Rating System (STARS).

Parramatta Light Rail Umbrella Independent Certifier Deed

Schedule 2 Insurances

1 Public liability

Coverage: The legal liabilities of the Independent Certifier, the Principal Parties and their employees and agents to third parties for bodily injury and property damage and resulting loss of use arising from the or in connection with the Services, the HAC Services and the RMS Services.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this Deed until the Independent Certifier ceases to perform the Services, the HAC Services and the RMS Services.

Limit: A minimum of \$20 million for any one occurrence, (unlimited in any period of insurance) arising out of or in the course of or caused by the execution of the Services, the HAC Services and the RMS Services.

2 Professional indemnity

Coverage: The professional activities and duties of the Independent Certifier and its employees and agents in respect of the Services, the HAC Services and the RMS Services.

The policy must be on a project specific basis and insure the Independent Certifier in respect of claims that arise only out of the performance of the Services, the HAC Services and the RMS Services. The Independent Certifier must not be insured under the policy in respect of any other project or services.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this Deed until the seventh anniversary of the last Contract to achieve final completion (as set out in that Contract).

Limit: A minimum of \$50 million for any one occurrence and in the aggregate subject to an automatic reinstatement.

3 Workers' compensation insurance

Coverage: A suitable policy against any liability, loss, claim, demand, suit or proceeding, Costs and expenses arising at common law or under any statute (including the Workers Compensation Act 1987 (NSW)) or other legislative provision relating to workers compensation, as a result of personal injury or death of any person employed or taken to be employed by the Independent Certifier.

Insurance Term: From the date of this Deed until the Independent Certifier ceases to perform the Services, the HAC Services and the RMS Services.

4 Other insurances

Such other insurances as may be reasonably required by the Principal Parties from time to time which are obtainable with a reasonable premium (having regard to the nature of the risk to be insured against) including, without limitation, motor vehicle insurance covering third party property damage for all vehicles for a minimum of \$20 million for any one occurrence.

Insurance Term: From the date of this Deed until the Independent Certifier ceases to perform the Services, the HAC Services and the RMS Services.

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Parramatta Light Rail Umbrella Independent Certifier Deed

Schedule 3 Payment Schedule

1 Fee allocation

Subject to the terms of this Deed and each applicable Contract Deed, the Lump Sum Fee payable by TfNSW to the Independent Certifier will be apportioned as set out in the table below:

[Note to Tenderers: Amounts to be inserted from successful Tender.]

	Contract Deed	Fee	Project services	Amount
(1)	Remediation Contract Deed	Remediation Contract Fee (Schedule of rates)	Assumed Remediation Contract Services	[\$#]
(2)	Remediation or SOM Contract Deed as directed by TfNSW	Stage 2 Remediation Works Fee (Lump Sum Fee)	Assumed Stage 2 Remediation Works Services	[\$#]
(3)	Enabling Works Contract Deed	Enabling Works Contract Fee (Lump Sum Fee and Schedule of rates)	Assumed Enabling Works Contract Services To the extent applicable to the Enabling Works: <ul style="list-style-type: none"> • Assumed CoPC Contract Services • Assumed RMS Services 	[\$#]
(4)	Infrastructure Contract Deed	Infrastructure Contract Fee (Lump Sum Fee and Schedule of rates)	Assumed Infrastructure Contract Services To the extent applicable to the Infrastructure Works: <ul style="list-style-type: none"> • Assumed CoPC Contract Services • Assumed RMS Services • Assumed UrbanGrowth Contract Services • Assumed HAC Services 	[\$#]

	Contract Deed	Fee	Project services	Amount
(5)	SOM Contract Deed	SOM Contract Fee	Assumed SOM Contract Services To the extent applicable to the SOM Works: <ul style="list-style-type: none"> Assumed CoPC Contract Services Assumed RMS Services Assumed UrbanGrowth Contract Services 	[\$#]
(6)	CoPC Contract Deed	Included as part of other Contract Fees	Assumed CoPC Contract Services	Nil
(7)	UrbanGrowth Contract Deed	Included as part of other Contract Fees	Assumed UrbanGrowth Contract Services	Nil
(8)	RMS Deed Poll	Included as part of other Contract Fees	Assumed RMS Services	Nil
(9)	Umbrella IC Deed	Environmental Representative Fee	Assumed Environmental Representative Services	[\$#]
(10)	Umbrella IC Deed	Independent Arborist Fee	Assumed Independent Arborist Services	[\$#]
Lump Sum Fee				[\$#]

The Lump Sum Fee is not subject to rise and fall and is payable for the performance of the Assumed Services and the Independent Certifier's other obligations under this Deed, as may be adjusted under this Deed or any Contract Deed.

The Lump Sum Fee does not include payment for the performance of any services directed by TfNSW where it is expressly stated in this Payment Schedule that those Services will be paid for on a Schedule of Rates basis (in which case the rates in this Schedule 3 will apply).

2 Monthly payment schedule

The Independent Certifier is not entitled to payment or to make a claim for payment to the extent that any Services, Environmental Representative Services or Independent Arborist Services have not been carried out for the month in question.

Subject to paragraphs 3 and 4 of this Payment Schedule, the indicative monthly payment to be made is set out in the following table:

Month	Contract Fee (1)	Contract Fee (2)	Contract Fee (3)	Contract Fee (4)	Contract Fee (5)	ER Contract Fee (9)	IA Contract Fee (10)	Maximum Fee
1								
2								

Month	Contract Fee (1)	Contract Fee (2)	Contract Fee (3)	Contract Fee (4)	Contract Fee (5)	ER Contract Fee (9)	IA Contract Fee (10)	Maximum Fee
3								

[Note: To be inserted from successful Tender]

3 Adjustments to the Lump Sum Fee

Adjustments may be made to the amounts payable in paragraphs 1 and 2 of this Payment Schedule by TfNSW in accordance with the appropriate rates set out in the schedule of rates in paragraph 4 below in circumstances where clause 3.3 or clause 5 of this Deed apply.

4 Schedule of rates

The Independent Certifier is entitled to include in a payment claim the cost of performing any Variable Services as described below which are the subject of a written direction by TfNSW.

Variable Services will be valued by the TfNSW Representative using the applicable rates in the schedule of rates table below.

Item	Variable Services	Contract
Remediation Works Services		
1	All Remediation Works Services as directed by TfNSW under the Remediation Contract Deed.	
Enabling Works Contract Services		
2	All Post-Completion Phase Services	
Infrastructure Contract Services		
3	All Post-Completion Phase Services	
4	All Issue Resolution Services after the last Date for Portion Completion.	
SOM Contract Services		
5	All Post-Completion Phase Services	
6	All Issue Resolution Services after the Date for First Passenger Service.	
Other		
7	[As may be agreed with the successful Tenderer]	

The rates contain allowances for the provision of all labour, materials, work, telecommunications, disbursements (other than as described in and payable under paragraph 3) and other costs necessary for and arising out of or in connection with any services for which the Independent Certifier is to be paid on a schedule of rates basis under this Deed.

In order to avoid any double up of payment, the Independent Certifier may not make a payment claim for the performance of Services on a schedule of rates basis to the extent that the IC personnel whose Services are the basis of such claim are covered by the payment of either rates or a lump sum for the performance of other services.

The rates will be increased every 12 months with the first adjustment to occur on the date which is 12 months after the date of this Deed. On each occasion on which the rates are to be adjusted the rates will be increased by [#]%.

[Note to Tenderers: Percentage to be inserted from successful Tender.]

When claiming payment for any Services for which the Independent Certifier is to be paid on a schedule of rates basis the Independent Certifier must provide details of the time expended by the Independent Certifier in performing the Services for which the Independent Certifier is entitled to be paid on a schedule of rates basis together with such further evidence as may be requested by TfNSW.

Role	Nominated Personnel	Additional Personnel	Hourly Rate \$ (excl GST)	Daily Rate \$ (excl GST)
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[Note: To be inserted from successful Tender]

5 Payment claims

- (a) At the end of each month after the date of this Deed, the Independent Certifier must submit to TfNSW a payment claim on account of the Lump Sum Fee and any Variable Services:
- (i) setting out the value of the Services, Environmental Representative Services and Independent Arborist Services performed in accordance with this Deed and each Contract Deed during the relevant month;
 - (ii) calculated in accordance with this Payment Schedule; and
 - (iii) in such form and with such details and supporting documentation as TfNSW may reasonably require, broken down for this Deed and each Contract Deed, including:
 - (A) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period, including:
 - (aa) the visits made by the Independent Certifier to the site and elsewhere in connection with the Project; and
 - (ab) any attendance at tests;
 - (B) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Principal Parties;
 - (C) details of any Defects (as that term is defined under the Contract) raised by the Independent Certifier or TfNSW and details of the rectification of Defects; and

- (D) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period.
- (b) Each account for payment submitted by the Independent Certifier must be accompanied by an executed Subcontractor's Statement and Supporting Statement in the form set out at paragraph 11 of this Payment Schedule.

6 Payment and notification of disputed amounts

- (a) The parties agree that TfNSW will pay 100% of the Lump Sum Fee and any Variable Services.
- (b) Subject to paragraph 7 of this Payment Schedule, TfNSW must, within 15 Business Days after receipt of the account for the month (submitted in accordance with paragraph 5, pay the Independent Certifier any portion of the Contract Fee attributable to the Services performed during the month which is not disputed.
- (c) If TfNSW disagrees with an amount included in an account submitted by the Independent Certifier then, within 10 Business Days of receipt of the Independent Certifier's account, TfNSW must notify the Independent Certifier in writing of the reasons for any amount which is disputed.
- (d) If the parties do not resolve the matter within 10 Business Days after the issue of TfNSW's written notice, TfNSW's Representative (acting reasonably and independently) must determine the dispute. Any determination by TfNSW's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

7 GST

All lump sums, rates and amounts in this Payment Schedule exclude GST.

Parramatta Light Rail Umbrella Independent Certifier Deed

Schedule 4 Minimum Resources, Key Personnel and Surveillance Levels

1 Minimum resources commitment

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Schedule 4 (Minimum Resources, Key Personnel and Surveillance Levels) are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services, the Environmental Representative Services and the Independent Arborist Services in accordance with the Umbrella Deed or the Contract Deeds.

In this Schedule 4, a reference to "days" excludes public holidays and includes only those days which are stated in the Contracts as working days.

1.1 Remediation Contract Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Remediation Contract Services:

Role/Position	Name	Minimum Attendance (in man-days) and Location

Note: In the table above, full time means a minimum of [#] hours per day Monday to Friday and a minimum of [#] hours on Saturday.

1.2 Stage 2 Remediation Works Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the Stage 2 Remediation Works Services if directed by TfNSW:

Role/Position	Name	Minimum Attendance (in man-days) and Location

Note: In the table above, full time means a minimum of [#] hours per day Monday to Friday and a minimum of [#] hours on Saturday.

1.3 Enabling Works Contract Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the Enabling Works Contract Services (including the CoPC Contract Services and RMS Services to the extent applicable to the Enabling Works):

Role/Position	Name	Minimum Attendance (in man-days) and Location

Note: In the table above, full time means a minimum of [#] hours per day Monday to Friday and a minimum of [#] hours on Saturday.

1.4 Infrastructure Contract Services

The Independent Certifier must provide the following personnel, as a minimum in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Infrastructure Contract Services (including the CoPC Contract Services, RMS Services, UrbanGrowth Services and HAC Services to the extent applicable to the Infrastructure Works):

Role/Position	Name	Minimum Attendance (in man-days) and Location

Note: In the table above, full time means a minimum of [#] hours per day Monday to Friday and a minimum of [#] hours on Saturday.

1.5 SOM Contract Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below to perform the relevant aspects of the SOM Contract Services (including the CoPC Contract Services, RMS Services and UrbanGrowth Services to the extent applicable to the SOM Works):

Role/Position	Name	Minimum attendance (in man-days) and Location

Note: In the table above, full time means a minimum of [#] hours per day Monday to Friday and a minimum of [#] hours on Saturday.

1.6 Environmental Representative Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below to perform the Environmental Representative Services:

Role/Position	Name	Minimum attendance (in man-days) and Location

Note: In the table above, full time means a minimum of [#] hours per day Monday to Friday and a minimum of [#] hours on Saturday.

Whilst it is the Independent Certifier's responsibility to appropriately resource the Environmental Representative Services, the start-up phase of each Contract is considered to be the most resource intensive period. Therefore, it is suggested that multiple resources would be required particularly during this start-up phase.

1.7 Independent Arborist Services

The Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below to perform the Independent Arborist Services:

Role/Position	Name	Minimum attendance (in man-days) and Location

Note: In the table above, full time means a minimum of [#] hours per day Monday to Friday and a minimum of [#] hours on Saturday.

2 Minimum ability, knowledge, skill, expertise and experience of Independent Certifier's Key Personnel

2.1 General

- (a) The Independent Certifier's must provide at least two Key Personnel at all times that have a demonstrated understanding of and experience with the Authorised Engineering Organisation (AEO) framework administered by the Asset Standards Authority (ASA) within TfNSW.

2.2 Independent Certifier's project director

- (a) The Independent Certifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project certification of large projects similar to PLR Stage 1.
- (b) The Independent Certifier's project director must at all times have authority to act on behalf of the Independent Certifier in respect of the Services.

[Note: To be updated to reflect other key personnel once agreed.]

3 Minimum surveillance commitment

The Independent Certifier acknowledges and agrees that the minimum surveillance levels set out in this Schedule 4 ("Minimum Resources, Key Personnel and Surveillance Levels") are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services, the Environmental Representative Services and the Independent Arborist Services in accordance with this Deed.

Notwithstanding the minimum surveillance requirements specified in this Schedule 4, the Independent Certifier must carry out all surveillance activities considered necessary by the Independent Certifier to be able to issue the certificates required by the Contracts.

The Independent Certifier must carry out, as a minimum, the following surveillance activities at the frequencies set out below:

Surveillance Activity	Minimum Frequency
<p>Third Party Works and property adjustment works</p> <p>Modification to existing and establishment of new works:</p> <ul style="list-style-type: none"> • Roadworks • Pedestrian areas • Stormwater infrastructure • Interfaces with Utility Services • Street Furniture • Street Lighting • Landscaping • Paths • Signage, wayfinding and linemarking 	<p>Weekly</p>
<p>Stops, Precinct and Public Domain and Architectural Building Works</p> <p>Finishes, fixtures, fittings and material for each Stop and public domain area including:</p> <ul style="list-style-type: none"> • Pavements and footpaths • Street furniture • Shelters • Landscaping • Finishes, fixtures, fittings and material for each Stop. 	<p>Upon completion</p>

Surveillance Activity	Minimum Frequency
<p>Trackwork</p> <ul style="list-style-type: none"> • Installation of track including <ul style="list-style-type: none"> ○ Track fastening system ○ Turnouts ○ Trackform • Non-destructive testing of track • No destructive testing of welds 	<p>Each test</p>
<p>Civil and structural works</p> <p>Structural works</p> <p>Civil works including:</p> <ul style="list-style-type: none"> • Earthworks • Retaining Walls • Roadworks • Drainage works and drainage systems <p>Site Contamination remediation</p>	<p>Twice weekly</p> <p>Twice weekly</p> <p>Twice weekly</p>
<p>Rolling Stock</p> <ul style="list-style-type: none"> • Static testing including: <ul style="list-style-type: none"> – Detrainment – LRV control – Fire system – Torsional stiffness – Static wheel loading – Waterproofing – Bogie rotation – Static interior and exterior noise – Climatic testing • Dynamic testing • Integrated Factory Acceptance Tests for LRVs, signalling and control systems 	<p>Each test event</p>

Surveillance Activity	Minimum Frequency
<p>Maintenance and Stabling Facilities</p> <ul style="list-style-type: none"> • Maintenance facility • Servicing tracks • Component exchange facility • Automatic train wash • Automatic wheel monitoring • Power supply • Vehicle access, internal roads, car parking and stormwater drainage • Permanent Utility Services connections • Administration building • Fire systems • Landscaping • Security and outdoor lighting 	<p>Every other day, or as defined for Hold and Witness Points</p>
<p>Operation Control Centre</p> <ul style="list-style-type: none"> • Management and control facilities • Administration offices and data storage rooms • Equipment rooms • Security • Staff amenities including toilets, kitchens and break out areas • Furniture, fixtures and fittings 	<p>Twice Weekly</p>
<p>Utility Services Treatments</p> <p>Monitor all works affecting Utility Services</p>	<p>Twice Weekly</p>

Surveillance Activity	Minimum Frequency
<p>Testing and Commissioning</p> <ul style="list-style-type: none"> • First article inspection tests of defined unproven items • Type tests of defined unproven items • Factory inspection tests of define unproven items • Integrated factory acceptance tests for LRVs, signalling and control systems • PLR site tests • PLR railway initial performance test • Trial running of PLR • Permanent Light Rail Corridor Tests • System performance Test • Capacity performance Test • Final Performance Test 	<p>Each test event</p>
<p>Signalling and Movement Control Systems</p> <ul style="list-style-type: none"> • Civil Works and hardware installation • Cable and major equipment installation • Major equipment and systems testing • Major systems commissioning 	<p>Weekly</p> <p>As required</p> <p>Each test event</p> <p>Each test event</p>
<p>Earthing and Bonding, Electrolysis and EMC</p> <ul style="list-style-type: none"> • Earthing and bonding installations • Final Earthing and Bonding testing • Base line electrolysis model • Electrolysis mitigations/installations • Final Electrolysis verification/testing • Base line EMC model • EMC mitigations/installations • Final EMC verification 	<p>Weekly</p> <p>Each test event</p> <p>Each test event</p> <p>Weekly</p> <p>Each test event</p> <p>Each test event</p> <p>Weekly</p> <p>Each test event</p>

Surveillance Activity	Minimum Frequency
<p>Communications Systems and Passenger Information</p> <ul style="list-style-type: none"> • Cable and major equipment installation • PLR connections into other parties' networks/systems • Major equipment and systems testing • Major systems commissioning 	<p>Twice Weekly</p> <p>Each event</p> <p>Each test event</p> <p>Each test event</p>
<p>Ticketing System</p> <ul style="list-style-type: none"> • Civil and cabling works for power supply to ETS equipment at stations • Secure storage for rotables and consumables • Storage and charging of portable card readers • Civil works for ETS equipment • Data communications infrastructure 	<p>Weekly</p>
<p>Low Voltage Distribution and Building Services</p> <ul style="list-style-type: none"> • Switchboards and distribution boards • Electrical works • UPS and facilities • Cable installation 	<p>Weekly</p>
<p>High Voltage Supply and Reticulation</p> <ul style="list-style-type: none"> • Bulk power supply equipment and cables including protection and control equipment • HV reticulation equipment and cables including protection and control equipment • SCADA and communications equipment • Auxiliary systems and backup power supply • Lighting and surge protection equipment • Harmonic suppression and filtering • Isolation and earthing equipment 	<p>Twice weekly, or as otherwise defined by Hold and Witness Points</p>

Surveillance Activity	Minimum Frequency
<p>Traction Power, Electrification Systems and Control (SPR Appendix 29)</p> <ul style="list-style-type: none"> • Traction power supply equipment and cables, including Traction return, rectification, protection and control equipment • Overhead wiring systems • SCADA and communications equipment for operational control and monitoring by a Power Control System (PCS) • Auxiliary systems and backup power supply for operations critical and safety service components including protection, control and monitoring devices • Lightning and surge protection equipment • Harmonic suppression and filtering • Rail voltage limiting devices • Isolation and earthing equipment 	<p>Twice weekly, or as otherwise defined by Hold and Witness Points</p>
<p>Hydraulic Systems</p> <ul style="list-style-type: none"> • Water services systems • Potable domestic cold water • Potable domestic heated water • Recycled non-potable cold water, where external supply is available • Drainage systems • Sewer drainage, including tradewaste management • Rainwater capture and drainage • Tunnel drainage of all tunnel water inflows, including seepage water • Associated equipment and system component supports, connections, discharge points, risers, civil and structural works, and acoustic treatments • Respective power supply, control, and monitoring systems and interfaces • Respective fire separation, fire stopping, fire proofing, and fire system interfaces 	<p>Twice Weekly</p>

Surveillance Activity	Minimum Frequency
<p>Environmental Observation</p> <ul style="list-style-type: none"> • Observe the implementation of physical environmental controls, in accordance with Contractors' Construction Environmental Management Plans and sub-plans, including: <ul style="list-style-type: none"> – noise and vibration; – air quality; – mud, dirt and debris on roadways; – water quality; – contamination; – property accesses; – temporary pedestrian pathways and cycleways; – working within the approved hours; – spoil stockpiling and disposal; – waste management and disposal; – heritage management; – landscape maintenance; and – report to TfNSW and relevant Contractors. 	<p>Daily</p>

Surveillance Activity	Minimum Frequency
<p>Traffic and Transport Surveillance</p> <ul style="list-style-type: none"> • Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans, compliance with road occupancy licences and compliance with property access provisions including: <ul style="list-style-type: none"> – layouts for compliance with approved Traffic and Transport Management Plans and control plans, including sign maintenance and delineation; – provisions for cyclists, pedestrians, disabled persons, public transport passengers, public transport operators and road traffic; – timing and duration of road occupancies; – qualifications of traffic control personnel; and – truck haulage routes off the Construction Site. 	Daily
<p>Work Health and Safety Observation</p> <ul style="list-style-type: none"> • In conjunction with provision of the other Services, advise Contractors of issues that the Independent Certifier becomes aware of which may affect the safety of persons or property. 	As required
<p>Quality Management Surveillance</p> <ul style="list-style-type: none"> • Inspect Contractors' Activities for compliance with the requirements of the Project Deed. Weekly • Inspect circumstances where significant non-conformances are or will be reported. Each occurrence • Check compliance with the Project Plans, process control plans and work processes. Each method statement • Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> – testing frequencies; – test methods; – test result verifications; and – release of Hold Points. 	Weekly Each occurrence Each method statement } Weekly All Hold Points All Hold Points

Surveillance Activity	Minimum Frequency
<ul style="list-style-type: none"> Monitor the rectification of non-conforming product or work. 	All rectifications
<p>Construction Surveillance</p> <ul style="list-style-type: none"> Monitor the Contractors' obligations to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses. Weekly Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with the Project Deed. Weekly Check that durability requirements of the PLR works are being addressed and applied; Weekly Witness construction trials and commissioning tests, including: <ul style="list-style-type: none"> use of any materials, plant and equipment that differs from accepted industry standards; concrete including in-situ concrete and precast elements; water collection, treatment and discharge systems; and Utility Service diversions. Record photographically and catalogue general and detailed work in progress. 20 digital photographs/day of work areas Witness the construction of the PLR works and Temporary Works including: <ul style="list-style-type: none"> provisions to access, secure, support and hand over the Third Party Works, Property Adjustment Works, Utility Services works and any unknown works; Utility Service diversions; and adjustments to or demolition of existing infrastructure and buildings. 	<p>Each trial and test</p>
<p>Quality Product Surveillance Monitoring</p> <ul style="list-style-type: none"> Monitor structure foundation and subgrade preparation and treatments. 	Initial preparation and treatment

Surveillance Activity	Minimum Frequency
<ul style="list-style-type: none"> • Monitor compaction of earthworks and spoil. 	Weekly
<ul style="list-style-type: none"> • Monitor manufacture of off-site elements. 	Weekly
<ul style="list-style-type: none"> • Monitor concreting and associated works, including: <ul style="list-style-type: none"> – preparation; – formwork; – bracing; – reinforcement; – placing; – stressing; – finishing; – curing; and – stripping formwork. 	Initial activity and weekly thereafter
<ul style="list-style-type: none"> • Sprayed concrete, including: <ul style="list-style-type: none"> – batching and mixing; – application; – depth control; – curing; – production tests; – monitor steel fabrication; and – reviews of welding procedures. 	Initial activity and weekly thereafter
<ul style="list-style-type: none"> • Monitoring of the fabrication and welding processes for major members (off-site). 	Initial activity and weekly thereafter
<ul style="list-style-type: none"> • Monitor protective treatment systems (off-site). 	Weekly
<ul style="list-style-type: none"> • Monitor equipment monitors of construction impacts including: <ul style="list-style-type: none"> – audit of measurements – audits of equipment; and – review of results. 	Weekly

Parramatta Light Rail Umbrella Independent Certifier Deed

Schedule 5 Requirements for Certification and Monitoring Plan

The Certification and Monitoring Plan must, as a minimum, address and detail:

- (a) the detailed schedule of functions, obligations, duties and services which the Contracts contemplate will be discharged by the Independent Certifier;
- (b) the detailed functions, obligations, duties and services which will be discharged by the Environmental Representative and Independent Arborist;
- (c) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the site for the Project and the roles and tasks of the nominated personnel and subcontractors;
- (d) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (e) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the parties to the Contracts;
- (f) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (g) all compliance records to be maintained;
- (h) the proposed timing of progressive performance of discrete elements of the Services, the Environmental Representative Services and the Independent Arborist Services, including the timing for conducting reviews, audits of Design Documentation and other aspects of the Project;
- (i) the Independent Certifier's comprehensive plans for:
 - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the Project;
 - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the physical works to determine, verify and ensure compliance with the Contracts;
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
 - (iv) off-site surveillance of critical activities.
- (j) the Independent Certifier's strategies, processes, methodologies and procedures for:

- (i) reviewing the plans and progress of the Project;
 - (ii) addressing environmental monitoring and protection;
 - (iii) audit, surveillance and monitoring of design and construction activities for the Works, including the processes used for determining the levels and scope of surveillance of activities;
 - (iv) identifying and managing the Services, the Environmental Representative Services and the Independent Arborist Services to be subcontracted, including quality, reporting and communication aspects of the Services, the Environmental Representative Services and the Independent Arborist Services;
 - (v) ensuring that the contractors for the Works have addressed all issues of review, comment and consultation with TfNSW in respect of the Design Documentation and the Works; and
 - (vi) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (k) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby all certificates and determinations required as part of the Works will be achieved and satisfied; and
- (l) the Independent Certifier's proposed standards including:
- (i) committed surveillance activities; and
 - (ii) committed surveillance resources.

DATED: _____

DRAFT

Exhibit A – Draft Remediation Contract Deed

DRAFT

Exhibit B – Draft Enabling Works Contract Deed

DRAFT

Exhibit C – Draft SOM Contract Deed

DRAFT

Exhibit D – Draft Infrastructure Contract Deed

DRAFT

Exhibit E – Draft CoPC Contract Deed

DRAFT

Exhibit F – Draft Urban Growth Contract Deed

DRAFT

Parramatta Light Rail Umbrella Independent Certifier Deed

Exhibit G – Draft RMS Deed Poll

Independent Certifier Contract Deed for Remediation Contract

Schedule 6 Subcontracts

Independent Certifier Contract Deed for Remediation Contract

Schedule 7 Minimum Resources, Key Personnel and Surveillance Levels

Independent Certifier Contract Deed for Remediation Contract

Signing page

Executed as a Deed.

DATED: _____

EXECUTED by **TRANSPORT FOR**)
NSW (ABN 18 804 239 602) by its)
authorised delegate in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Signature of secretary/other director)

Schedule 9 Approved Form of Unconditional Undertaking

This deed poll (Undertaking) made the day of 20

In favour of: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067 ("**Principal**"); and

Given by: [#insert relevant financier] ("**Institution**")

Recitals

- A. By a deed dated [#insert date] ("**Deed**") between [#insert Contractor details] ("**Contractor**") and the Principal, the Contractor agreed to carry out the Contractor's Activities (as defined in the Deed).
- B. Under the provisions of the Deed, the Contractor is required to provide this Undertaking to the Principal.

Operative

- (a) The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Deed and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of [#insert].
- (b) The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
- (c) The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Deed or the Contractor's Activities or acts or things to be executed, performed and done under the Deed or by reason of any breach or breaches of the Deed by the Contractor or the Principal.
- (d) The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
- (e) This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

[#insert Institution's execution block and witness.]

Schedule 7 Consultant Deed of Covenant

This deed poll is made the _____ day of _____ 20_____

To: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067 ("**Principal**"); and

By: [# _____] ("**Consultant**")

RECITALS

- A. The Principal has engaged [#insert Contractor details] ("**Contractor**") to carry out certain works for the Principal under the Remediation Contract – 6 Grand Avenue, Camellia dated [#insert date of Remediation Deed] ("**Deed**").
- B. The Contractor has engaged the Consultant by agreement dated [#insert date of Subcontract] ("**Subcontract**") to carry out the professional services to be performed under the Subcontract ("**Professional Services**") for the purposes of the performance of the Contractor's obligations under the Deed as they relate those professional services.
- C. Under the Deed, the Contractor is required to procure the Consultant to execute this deed poll in favour of the Principal.

OPERATIVE

1 Duty of Care

- (a) The Consultant:
 - (i) warrants to the Principal that:
 - (A) in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a consultant experienced in and expert in the provision of the type of professional services required by the Principal;
 - (B) the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right; and
 - (ii) acknowledges that it is aware that the Principal will be relying upon the skill and judgment of the Consultant in performing the Professional Services and the warranties given by the Consultant in this deed poll.
- (b) The Consultant must:

- (i) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal's operations, or any Other Contractors;;
 - (ii) ensure title to and Intellectual Property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Deed in the Principal;
 - (iii) obtain an assignment to the Principal from any third party who owns any Intellectual Property created in the Professional Services;
 - (iv) if any Intellectual Property in or in relation to documents, designs and computer programs created for the purposes of the Deed is not capable of being vested in the Principal because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to the Principal an irrevocable licence to use that Intellectual Property, by sub-licence from the Consultant or direct licence from a third party; and
 - (v) ensure that the Intellectual Property created for the purposes of the Deed is not used, adapted or reproduced other than for the purposes of the Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (c) The Consultant must indemnify the Principal from and against:
- (i) any Claim by a third party in respect of Moral Rights;
 - (ii) liability in respect of loss of or damage to any other property (including any adjoining property);
 - (iii) liability in respect of personal injury, disease, illness or death; and
 - (iv) payment of Taxes, assessments and contributions, dues, costs and fees and all liability arising in respect of non-payment of any Taxes.

The Consultant's liability to the Principal will be reduced proportionally by the acts, errors or omissions of the Principal, its employees, agents, the Other Contractors, the Contractor, other contractors and consultants of the Contractor contributed to the loss, damage, expense, injury, disease, illness, death or other liability.

2 Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the facsimile number shown below (or to a party's new address or facsimile number which that party notifies to the others):
 - (i) to the Principal: **[#Insert details]**
 - (ii) to the Consultant: **[#Insert details]**

A notice sent by post will be taken to have been received on the Business Day that is the third Business Day after the date of posting (to an address within the same country) and on the fifth Business Day after the date of posting by airmail to an address outside the country from which the communication is sent.

- (b) If the Consultant is a foreign company (as defined in the *Corporations Act 2001 (Cth)*), the Consultant must within 14 days of the date of this deed poll:
 - (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed poll; and
 - (ii) obtain the process agent's consent to the appointment.

The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

3 Miscellaneous

- (a) This deed poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Consultant hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.
- (d) Terms used in this deed poll which are otherwise not defined will have the meaning given to them in the Deed.

4 Liability of the Consultant

For the avoidance of doubt, and notwithstanding any other provision of this deed poll:

- (a) the Consultant will have no greater obligations (including any obligation to warrant) or liability to TfNSW under, arising out of, or in connection with, this deed poll, than it would have had if the TfNSW had been named in place of Contractor under the Deed; and
- (b) the aggregate of the liability of the Consultant under, arising out of, or in connection with:
 - (i) this deed poll; and
 - (ii) the Consultancy Agreement,

taken together (whether for breach of contract, negligent act, omission or otherwise) will not exceed the maximum liability of the Consultant under the Consultancy Agreement alone and shall be the total aggregate amount of Consultant's liability to TfNSW and Contractor jointly and severally.

Schedule

[#Insert description of Professional Services] as more particularly described in the Subcontract.

Executed as a deed poll.

[#Insert Consultant's execution block and witness details]

Schedule 10 Parent Company Guarantee

Deed of Guarantee and Indemnity made at _____ on _____ 20____

Transport for NSW (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067 ("**Principal**")

[#insert Guarantor details.] ("**Guarantor**")

RECITALS

- A. The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

THIS DEED PROVIDES

1 Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the Remediation Deed – 6 Grand Avenue, Camellia (Contract Number: ISD-17-6467) dated on or about the date of this Deed between the Principal and the Contractor.

Contractor means Ventia Utility Services Pty Ltd (ABN 69 010 725 247).

Event of Default means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Obligations means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract or

the work to be carried out or performed by the Contractor under the Contract, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:
- (g) whether the Contractor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Contractor and the Principal comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at or about 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Contract.

1.3 Interpretation

In this Deed unless the context otherwise requires:

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

- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.4 Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Contractor under the Contract;
 - (ii) the liability of the Guarantor under this Deed in connection with a breach of the Contract by the Contractor shall not be greater than the liability of the Contractor under the Contract in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Contractor and the Guarantor liable for the same loss twice for the one breach of the Contract by the Contractor;
 - (iv) the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the Contractor under the Contract;
 - (v) where the Guarantor is performing any Obligation, the Guarantor will not be required to perform any such Obligation in a manner any different than that required by the Contract; and
 - (vi) payment by one of the Contractor or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment.
- (b) The limitation of liability under this clause 1.4 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Obligations which arise from or would have arisen from any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such liability not exceeding the liability that the Contractor would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

2 Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

2.2 Payment by Guarantor

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.

3 Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason.

4 Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5 Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;

- (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
- (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;

- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor; or
- (p) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Contract or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Contractor, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:

- (i) the Guarantor from its obligations under this Deed; or
- (ii) any assets of the Guarantor from a Security,

in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or

- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security;

and:

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and

- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

Subject to clause 1.4(a)(iv), the liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

5.8 Claim on the Guarantor

- (a) Subject to clause 5.8(b), the Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.
- (b) The Principal agrees not to make a claim or demand for payment of Guaranteed Money against the Guarantor under this Deed unless:
 - (i) the Principal has made a written claim or demand against the Contractor for such Guaranteed Money, a copy of which the Principal gives to the Guarantor at the same time as the Principal makes the claim or demand against the Contractor, and such Guaranteed Money remains unpaid, in whole or in part, for 10 Business Days after the claim or demand is made; or

- (ii) an Insolvency Event has occurred in relation to the Contractor or the Guarantor.

5.9 No representation by Principal etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Contractor or any other person.

6 Representations and Warranties

6.1 General representations and warranties

The Guarantor or if there is more than one Guarantor, each Guarantor, represents and warrants to the Principal that:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law binding on it, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent they are material to the performance of the obligations of the Guarantor under this Deed.

7 Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) subject to clause 1.4(a)(iv), free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future taxes (not being taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those taxes which it is compelled by law to

deduct or withhold, and indemnify the Principal for any taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those taxes; and

- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency ("**Payment Currency**") other than the currency ("**Agreed Currency**") in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

8 Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar taxes, including fines and penalties, financial institutions duty and debits tax, which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed; and
- (b) the Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay taxes.

8.3 Goods and Services Tax

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed ("GST Liability") then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

9 Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

10 Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed, and where applicable the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act 2001 (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.

- (e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

10.6 Joinder

The arbitral tribunal has the power, on the application of any party to the arbitration, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.7 Award final and binding

Any award will be final and binding upon the parties.

11 Miscellaneous

11.1 Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):
- (i) to the Principal: [#insert]
 - (ii) to the Guarantor: [#insert]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

11.5 Entire agreement

This Deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

11.6 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

11.7 Severance

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

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

11.8 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Principal.

11.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Principal will not in any way preclude,

or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.

- (b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Deed; or
 - (ii) any other failure by the Guarantor to comply with a requirement of this Deed,

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

11.10 Consents

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.11 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

11.12 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.13 Variations

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

11.14 Provisions limiting or excluding liability

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

11.15 Counterparts

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

11.16 Confidentiality

- (a) Subject to paragraph (b), each party must keep the terms of this Deed confidential.

- (b) A party may make any disclosure in relation to this Deed:
- (i) to a professional adviser, financial adviser, insurer, rating agency, financier or auditor if that person is obliged to keep the information disclosed confidential;
 - (ii) to the extent required to comply with any law, a requirement of a regulatory body (including any relevant stock exchange) or pursuant to administrative request or Parliamentary requirement;
 - (iii) to any of its employees or officers to whom it is necessary to disclose the information;
 - (iv) in connection with any legal or arbitral proceeding under or in relation to this Deed;
 - (v) to obtain the consent of a third party to a term of, or to an act under, this Deed;
 - (vi) to a "related body corporate", as defined in section 9 of the *Corporations Act 2001* (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this Deed;
 - (vii) (in the case of the Principal) to a potential assignee provided they agree to keep the terms of this Deed confidential;
 - (viii) (in the case of the Principal) to a related agency or to its responsible Minister;
 - (ix) with the prior consent of the other party to this Deed; or
 - (x) if the information disclosed has come into the public domain through no fault of the party (or its Personnel or related bodies corporate) making the disclosure.

Executed as a deed.

[#insert execution block of Principal.]

[#insert execution block of Guarantor.]

Schedule 19 – Template for report in training of apprentices and trainees

Alternative 1 - applies where targets are set in hours or days

Requirement	Minimum targets for the Contract as a whole (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentices to be engaged to carry out work under the Contract	(hours / days)	
Trainees to be engaged to carry out work under the Contract	(hours / days)	

* Note: Days are to be calculated as hours/7.

[Individual targets may be set for specific trades and occupations as a subset of the total targets specified above - if not specified, delete this table]

The targets below for specific trades must be achieved as part of achieving the specified targets for the Contract as a whole.

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentices to be engaged to carry out work in the following trades: <ul style="list-style-type: none"> • [specific trade] • [specific trade] 	(hours / days)	
Trainees to be engaged to carry out work in the following occupations: <ul style="list-style-type: none"> • [specific occupation] • [specific occupation] 	(hours / days)	

* Note: Days are to be calculated as hours/7.

Alternative 2 - applies where targets are set as a percentage of estimated time worked by qualified tradespersons and occupations with recognised traineeships

Insert the targets in the table below. The specified target percentage should be 20% of hours worked unless there is information supporting a different target.

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentice hours as a percentage of hours worked by qualified trades	(% of hours worked)	%
Trainee hours as a percentage of hours worked by occupations with recognised traineeships:	(% of hours worked)	%

[Individual targets may be set for specific trades and occupations as a subset of the total targets specified above - if not specified, delete this table]

The targets below for specific trades must be achieved as part of achieving the specified targets for the Contract as a whole.

Requirement	Minimum targets (in terms of time worked)	Quantity achieved by Contractor for reporting period
Apprentice hours as a percentage of hours work by the following trades: <ul style="list-style-type: none"> • [specific trade] • [specific trade] 	<ul style="list-style-type: none"> • (% of hours worked) • (% of hours worked) 	<ul style="list-style-type: none"> • % • %
Trainee hours as a percentage of hours worked by the following occupations: <ul style="list-style-type: none"> • [specific occupation] • [specific occupation] 	<ul style="list-style-type: none"> • (% of hours worked) • (% of hours worked) 	<ul style="list-style-type: none"> • % • %

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Schedule 11 Confidentiality Undertaking

To: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067 ("**Principal**")

We [#insert Subcontractor details] ("**Subcontractor**") undertake to treat as confidential all information received/generated from the Ventia Utility Services Pty Ltd and/or the Principal in respect of work performed for the Principal.

The Subcontractor hereby undertakes:

- (a) to disclose information to its employees only on a need-to-know basis;
- (b) not to disclose information to any other person without first obtaining the written consent of the Principal; and
- (c) to ensure that its employees to whom information is disclosed will comply with (a) and (b) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Subcontractor, its employees or agents) or which was already known to the Subcontractor at the date of entering into this undertaking.

Any breach of this undertaking by the Subcontractor's employee or agent will constitute a breach of this undertaking by the Subcontractor and at the direction of the Principal the Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated:

SIGNED for and on behalf of:

[#insert Subcontractor's execution block and witness.]

Schedule 15 – Subcontracts – Security of Payment

The following terms must be included in each Subcontract, and the Subcontracts let by those Subcontractors, as referred to in clause 10.10(f)(i) of the General Conditions of Contract.

1.1 Options as to form of security

- (a) A clause which allows the Subcontractor to lodge an approved unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.
- (b) A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, the Contractor must not deduct further retention moneys and any retention moneys or other cash security then held will be promptly released to the Subcontractor.

1.2 Trust for cash security and retention moneys

A clause which has the effect that:

- (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into and held in a trust account with a bank within 24 hours of receipt or conversion;
- (b) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract;
- (c) the security holder must hold proper records and account to the security provider for the trust moneys; and
- (d) any interest earned by the trust account will not be held in trust, and will be owned by the security holder.

1.3 Payment Provisions

A clause which:

- (a) has the effect of requiring the Contractor to pay the Subcontractor (and Subcontractors their Subcontractors) regular progress payments for 100% of the value of work (less only retention moneys, if any, paid into the trust account) for which payment is claimed by the Subcontractor and for which the Contractor has claimed payment from the Principal, no later than:
 - (i) in the case of the Contractor's Subcontractors, 5 days; and
 - (ii) in the case of the Subcontractor's subcontractors, 10 days,

after the last day for payment by the Principal to the Contractor for such work;

- (b) states nothing in the clause referred to in paragraph (a) is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in that clause; and
- (c) states if anything in the clause referred to in paragraph (a) is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.

1.4 Alternative Dispute Resolution

- (a) A clause that requires alternative dispute resolution procedures.
- (b) A clause making it optional for the Subcontractor to comply with the alternative dispute resolution process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the Subcontract.

Schedule 12 Form of Subcontractor Warranty

Part 1 – Form of Subcontractor Warranty

This Deed Poll is made on the date the Warrantor executes this Deed Poll.

To: Transport for NSW (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067 (“**Principal**”)

[#Add other beneficiaries as nominated by Transport for NSW] (“**Beneficiary**”).

By: [#insert warrantor details] (“**Warrantor**”) which expression will include its successors and assigns

Recitals

- A. The Warrantor has supplied the [#insert description of Equipment] (“**Equipment**”) to Ventia Utility Services Pty Ltd (“**Contractor**”) or [#insert Subcontractor’s details] (“**Subcontractor**”), for the works (“**Works**”) being carried out by the Contractor under the Remediation Deed – 6 Grand Avenue, Camellia dated [] (“**Contract**”) with the Principal.
- B. It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

1 Operative

1.1 Quality

The Warrantor:

- (a) warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 3 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

1.2 Replacement

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 4 of the Schedule:

- (a) is found to be of a lower quality or standard than that referred to in paragraph 1.1; or
- (b) shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

1.3 Warrantor to bear cost

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of paragraph 1.2 to be carried out or to make good the Works afterwards.

1.4 Principal not liable

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

1.5 This deed poll may not be revoked

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

1.6 Governing law

This deed poll is governed by the laws of the State of New South Wales.

1.7 Jurisdiction

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

1.8 Enforcement of this deed poll

For the avoidance of doubt this deed poll is enforceable by any of the Principal or the Beneficiary.

Schedule

Item 1:	Name and Address of Warrantor [#insert]
Item 2:	Equipment (Recital A) [#insert]
Item 3:	Detailed Warranty of Warrantor (Clause 1(b)) [#insert]
Item 4:	Period of Years (Clause 2)

[#insert] years from the expiry of the last "Defects Liability Period" as defined in the General Conditions (including any extension under clause 11.12 of the General Conditions).

Executed as a deed poll.

[#insert Warrantor's execution block.]

Part 2 – List of warranties required from Subcontractors

Description of Equipment and Warranty	Beneficiaries of Warranty (in addition to TfNSW)	Period of Years
Portion 2: Vapour Barrier	SOM Contractor	25 years
Mechanical and electrical equipment	SOM Contractor	5 years

Schedule 17 – Form of Certificates

1 Contractor's Certificate of Design Compliance

CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE	
CONTRACTOR:	
<u>DESIGN PACKAGE</u>	DESCRIPTION
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the design for the packages or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and complies with the requirements of the Contract, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the design packages.</p>	
SIGNATURE: _____ <i>(Contractor's Representative)</i>	SIGNATURE: _____ <i>(Contractor's Subcontractor/Designer)</i>
DATE: _____	DATE: _____

2 Contractor's Certificate of Construction Compliance

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
CONTRACTOR:	
<u>WORK PACKAGE</u>	<u>DESCRIPTION</u>
<i>(Attach schedule of work packages if insufficient space)</i>	
<p>I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / / <i>(Contractor's Representative)</i></p>	
THIS SECTION MUST BE COMPLETED BY THE RELEVANT CONTRACTOR'S SUBCONTRACTOR/DESIGNER	
<p>I certify that the procurement/construction of the work packages (one certificate per work package) or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>SIGNATURE: _____ <i>(Contractor's Subcontractor/Designer)</i></p> <p>DATE: _____</p>	

3 Contractor's Certificate of Completion

CONTRACTOR'S CERTIFICATE OF COMPLETION	
CONTRACTOR:	
Description of Portion or Works: _____ _____ _____ _____	
I certify that the Completion of the above Portion/the Works has/have been achieved in accordance with the requirements of the Contract between the Principal and _____, complies with the requirements of the Contract, subject to the register of unresolved issues attached.	
I further certify that: (a) All Variation Orders (including concessions) are listed in the attached compliance register. (b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out. (c) All required documentation has been submitted. (d) All notices regarding system deficiencies have been satisfactorily closed out.	
I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion/the Works.	
SIGNATURE: _____ <i>(Contractor's Representative)</i>	SIGNATURE: _____ <i>(Contractor's Subcontractor/Designer)</i>
DATE: _____	DATE: _____

Schedule 13 Form of Statutory Declaration

<p>Schedule 13 - Statutory Declaration</p>	<p>Oaths Act (NSW) Ninth Schedule</p>								
<p>I,.....</p> <p>of.....</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of: (ABN.....) ("the Contractor") in the Office Bearer capacity of: </p> <p>2. The Contractor has a contract with the [.....]: ("the Contract")</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <p style="margin-left: 20px;">(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</p> <p style="margin-left: 20px;">(b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Employee:</td> <td style="width: 40%;">Amount unpaid or not accrued:</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </table>	Employee:	Amount unpaid or not accrued:	<p>insert full name of Declarant insert address</p> <p>insert name of Contractor, and ABN if applicable</p> <p>insert position title of Declarant</p> <p>Insert name of Principal insert name of Contract</p> <p>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.</p>
Employee:	Amount unpaid or not accrued:								
.....								
.....								
.....								
<p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>5A. Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW),</p> <p>with the exception of the items listed below:</p> <p>.....</p>									

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

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

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

(a) *that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors;*

(b) *that all their employees and subcontractors, as at the date of the making of such a declaration:*
(i) *have been paid all remuneration and benefits due and payable to them by; or*
(ii) *had accrued to their account all benefits to which they are entitled from;*

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract; and
(c) *of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,*

except for the following subcontractors to the Contractor who have failed to provide such a declaration:
Subcontractor: Due amount unpaid:

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

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

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

suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

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

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

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

- 10. *In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.*
- 11. *Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:*
 - (a) *under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;*
 - (b) *under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and*
 - (c) *under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.*
- 12. *I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.*
- 13. *All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:*
 - (a) *given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and*
 - (b) *given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.*
- 14. *I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.*

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 (NSW).

Declared at
this day of
20
Before me:

face of the declarant **and** either that they have known the declarant for more than 12 months, or confirmed their identity by sighting an approved identification document. For more detail see Affidavits and Statutory Declarations – How to administer an oath, affirmation or declaration in NSW (100086819).

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

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

ABN: *[ABN]*

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

OR

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

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

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

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

Signature: Date:
.....

Full name: Position/Title:
.....

Attachment

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

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

Annexure B

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

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

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

Subcontractor: ABN:
(Business name)

of

.....
(Address of Subcontractor)

has entered into a contract with
ABN:.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier

(Note 3)

This Statement applies for work between:/...../..... and/...../..... Inclusive

(Note 4)

subject of the payment claim dated:/...../.....

(Note 5)

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

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007 (NSW)*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature Full name.....

(g) Position/Title Date
...../...../.....

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

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relation Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* (NSW) defines remuneration '*as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'
Section 127(11) of the *Industrial Relations Act 1996* (NSW) states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

Schedule 14 Terms of Expert Appointment

THIS AGREEMENT is made on [#insert date]

BETWEEN [#insert name, company number and address] (“Principal”)

AND [#insert name, company number and address] (“Supplier”)

AND [#insert name and address] (“Expert”)

Recitals

- A. The Principal and the Supplier (together the “Parties” and each a “Party”) are parties to the Remediation Deed – 6 Grand Avenue, Camellia (the “Contract”).
- B. By written notice dated [to be inserted], the [insert Principal or Contractor as applicable] has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause [19] of the Contract (the “Matter”).
- C. Pursuant to clause [19] of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1 Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination;
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;
 - (v) in making the determination, the Expert may determine that a Party pay the other Party's costs of the expert determination.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect

the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

2 Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3 Costs and fees

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) Subject to any direction as to costs given by the Expert in the Expert's determination, the Parties agree as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

4 Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

5 Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws in force in the place stated in Schedule 1.

7 Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the in the place stated in Schedule 1.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

SCHEDULE 1

1. **The Matter**

[#to be inserted when it comes time for Expert determination]

2. **Governing law - the place**

[#insert place - it should be the same as that nominated for the purposes of the Contract.]

3. **Jurisdiction - the place**

[#insert place - it should be the same as that nominated for the purposes of the Contract.]

4. **Place for conferences with Expert (clause 3(a) of Schedule 2)**

[#insert place - it should be the same place as that nominated for meetings and hearings the purposes of the Contract.]

SCHEDULE 2

Rules for Expert Determination Process

1 Commencement

Except as provided in clause 4(c) of these Rules, the Expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2 Written submissions

- (a) No later than 7 days after the date this process begins, Party A (ie the Party who gave notice under the Contract) must, in addition to any particulars provided by Party A under the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- (b) Within 7 days after the statement in clause 2(a) is served, the other Party must give Party A and the Expert a written response to Party A's submissions.

If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2(b) within the time allowed by the Expert.

If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3 Conference

- (a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in the place nominated in Schedule 1.
- (b) At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- (c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- (d) The Parties:
 - (i) may be accompanied at a conference by legal or other advisers; and
 - (ii) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

- (e) The conference must be held in private.
- (f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4 General

- (a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with this Contract.
- (b) All proceedings and submissions relating to the Expert determination process must be kept confidential except:
 - (i) with the prior consent of the Parties;
 - (ii) as may be required by law; or
 - (iii) as may be required in order to enforce the determination of the Expert.
- (c) The Expert must:
 - (i) inform the Parties of:
 - (A) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (B) any interest the Expert has in the matters in dispute; and
 - (C) any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,
 - (D) immediately upon becoming aware of any such circumstances; and
 - (ii) upon making any disclosure under this clause 4(c), unless and until the Parties agree otherwise or it is otherwise determined under the Contract, terminate the proceedings.

5 The determination

- (a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 20 Business Days after the Expert's acceptance of appointment, the Expert must:
 - (i) determine the Matter between the Parties; and
 - (ii) notify the Parties of that determination.
- (b) The determination of the Expert must meet the requirements of this Contract.
- (c) To the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a party gives a notice of appeal to the other party in accordance with the Contract.

6 Costs

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7 Modification

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS

Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3(c) of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

SCHEDULE 3

The Expert's Fees and Disbursements

[#to be inserted when it comes time for expert determination]

Schedule 20 – Form of Subcontractor Deed

This deed poll is made the _____ day of _____ 20____

To: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067 ("**Principal**"); and

By: [# _____] ("**Subcontractor**")

RECITALS:

- A. The Principal has engaged Ventia Utility Services Pty Ltd ("**Contractor**") to carry out certain works for the Principal under the Remediation Deed – 6 Grand Avenue, Camellia dated [#insert date of Remediation Deed] ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Contractor for the execution and completion of the [#insert] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

OPERATIVE:

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
 - (a) must if required by a written notice by the Principal sign a deed in the form of the attached Deed of Novation with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
4. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
5. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those

courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
7. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THIS DEED POLL

Transport for NSW (ABN 18 804 239 602)

[#Insert details of other Beneficiaries.]

EXECUTED AS A DEED POLL.

[#Insert Subcontractor execution block.]

(Attached Deed Of Novation)

THIS DEED OF NOVATION is made on [] 20 between the following parties:

- (1) [] ACN [] of [] ("**Contractor**")
- (2) [] ACN [] of [] ("**New Contractor**");
and
- (3) [] ACN [] of [] ("**Subcontractor**").

Recitals

- A. By agreement dated [] (the "**Agreement**"), the Contractor engaged the Subcontractor to, and the Subcontractor agreed to, carry out certain works for the Contractor.
- B. Under clause 3 of the Deed Poll executed on [], which forms part of the Agreement, the Subcontractor must enter into this deed when the Principal under the Deed Poll requires it to do so.
- C. Subject to this deed, the Subcontractor agrees to accept the New Contractor in place of the Contractor for the performance of all the obligations of the Contractor and to release completely and discharge the Contractor from all of its obligations under the Agreement and from all claims and demands in respect of it.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Subcontractor must perform its obligations under, and be bound by, the Agreement as if the New Contractor was originally named in the Agreement as the Contractor.
2. The Subcontractor:
 - (a) releases and forever discharges the Contractor from its obligations under the Agreement and from all claims and demands in respect of the Agreement; and
 - (b) accepts the liability of the New Contractor in place of the liability of the Contractor in respect of the Agreement.
3. The New Contractor must perform all the obligations of the Contractor under, and be bound by, the Agreement as if the New Contractor were originally named in the Agreement as the Contractor.
4. Upon the execution and exchange of this deed:
 - (a) the Contractor must release any securities given to it by the Subcontractor in accordance with the Agreement;
 - (b) the Subcontractor must give the New Contractor security in the same form and for the same amounts as any security required by the Agreement; and
 - (c) the Subcontractor must ensure that the New Contractor is appropriately noted on all relevant insurance policies as required by the Agreement.
5. The New Contractor must pay all stamp duty and any penalties in respect of this deed.

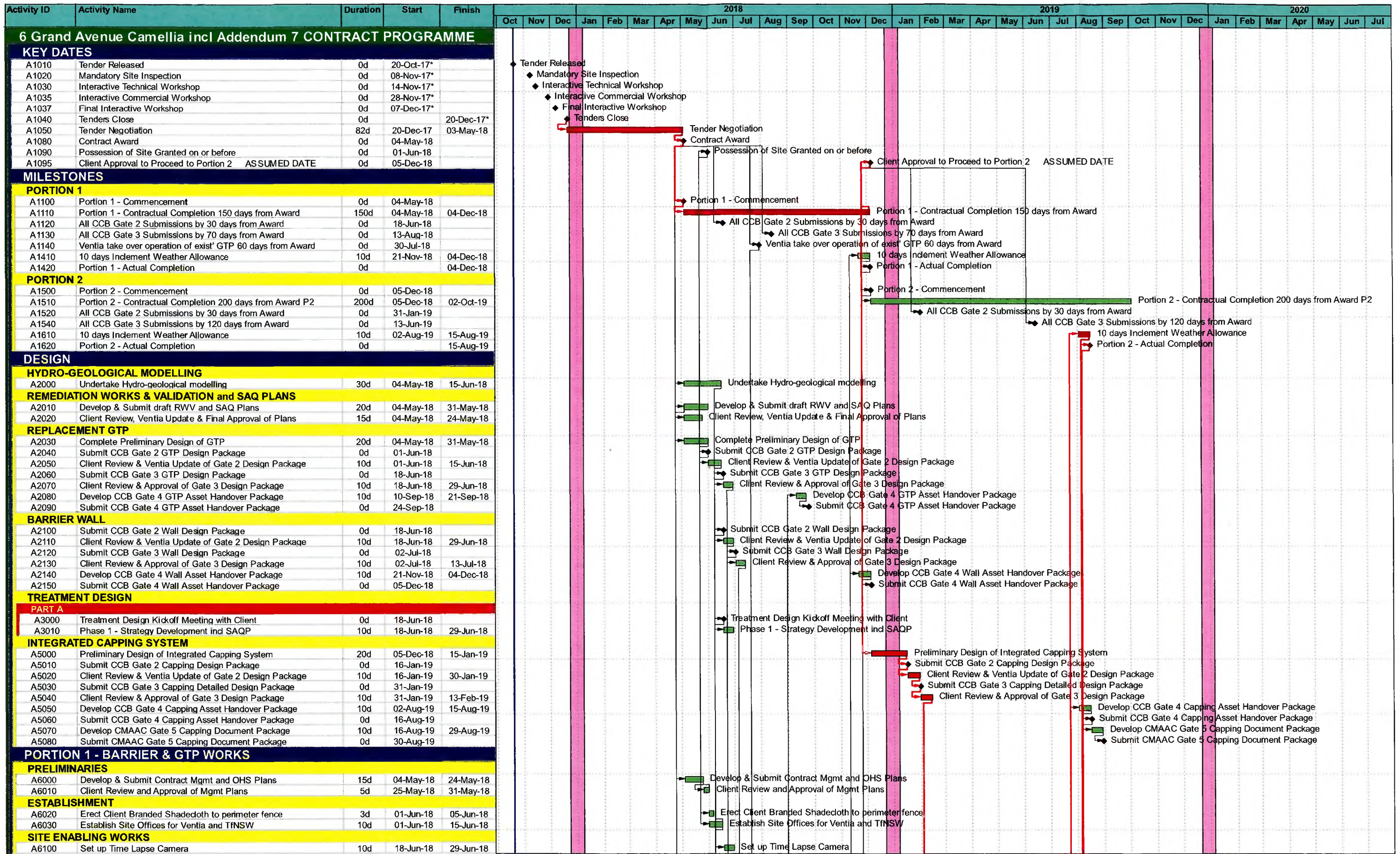
6. This deed is governed by the laws of New South Wales and the parties agree to submit to the non exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

[#Insert appropriate execution blocks for each party.]

Schedule 21 – Milestone Schedule

Milestone	Description	Date
1	Portion 1 – CCB Gate 2 submission	30 Business Days after the Award Date
2	Portion 1 – CCB Gate 3 submission	70 Business days after the Award Date
3	Contractor take over GTP Operation	60 Business days after the Award Date
4	Portion 1 – Completion	150 Business days after the Award Date
5	Portion 2 – CCB Gate 2 submission	30 Business days after the Principal issues the Portion 2 Notice to Proceed
6	Portion 2 – Agree SOM requirements	80 Business days after the Principal issues the Portion 2 Notice to Proceed
7	Portion 2 – CCB Gate 3 submission	120 Business days after the Principal issues the Portion 2 Notice to Proceed
8	Portion 2 – Completion	200 Business days after The Principal issues the Portion 2 Notice to Proceed



- ◆ Milestone
- Actual Work
- Remaining Work
- Critical Remaining Work

**6 GRAND AVENUE, CAMELLIA
REMEDICATION CONTRACT
Contract Programme**



Date	Revision	Checked	Approved
04-May-18	Contract Programme	DB	

Schedule 23 – SOM Deed of Novation

Details

Parties		
<hr/>		
Retiring Party	Name	Transport for NSW
	ABN	18 804 239 602
	Address	Level 5, Tower A 821 Zenith Centre, Pacific Highway, Chatswood, NSW 2067
	Telephone	
	Attention	
<hr/>		
Continuing Party	Name	[#Insert name of Continuing Party]
	ABN	[#insert]
	Address	[#insert]
	Telephone	[#insert]
	Attention	[#insert]
<hr/>		
Incoming Party	Name	[#Insert name of Incoming Party]
	ABN	[#insert]
	Address	[#insert]
	Telephone	[#insert]
	Attention	[#insert]
<hr/>		
Governing law	New South Wales	
<hr/>		
Business Day place (s)	Sydney, New South Wales	
<hr/>		
Recitals	A	The Retiring Party and the Continuing Party are parties to the Contract.

- B** The Retiring Party and the Incoming Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this Deed.
- C** The Continuing Party has agreed to the novation of the Contract on the terms of this Deed.

DRAFT

General terms

1 Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this Deed, unless the contrary intention appears, and in this Deed:

Contract means the agreement between the Retiring Party and the Continuing Party entitled Remediation Deed – 6 Grand Avenue, Camellia and dated [#insert date].

Deed means this document and its schedules.

Security means the unconditional undertakings (if any) issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and where required by the Contract, by a Related Entity of that party.

Effective Date means [#insert Effective Date].

GST means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth).

Liability means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

Related Entity means:

- (a) in respect of [#insert party which is Transport for NSW] any 'public transport agency' (as defined in the *Transport Administration Act 1988* (NSW)), the State of NSW, and any entity controlled by any of them; and
- (b) in respect of the other parties, has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

2 Condition Precedent to Novation

Clause 3 of this Deed shall have no force and effect until the Effective Date.

3 Novation

3.1 Novation

- (a) The parties novate the Contract so that the Incoming Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party shall be read as a reference to the Incoming Party.

3.2 Assumptions of rights and obligations

- (a) The Incoming Party:
 - (i) will be bound by and must comply with the terms of the Contract as amended by this Deed;
 - (ii) shall enjoy the rights and benefits:
 - (A) conferred on the Retiring Party under the terms of the Contract; and
 - (B) arising out of any breach of:
 - (aa) the Contract by the Continuing Party; or
 - (ab) duty of care owed by the Continuing Party to the Retiring Party
- that occurred prior to the execution of this Deed; and

- (iii) will assume the obligations and Liability of the Retiring Party under and in connection with the Contract,

in all respects as if the Incoming Party had originally been named in the Contract as a party instead of the Retiring Party.

(b) The Continuing Party:

- (i) must comply with the Contract on the basis that the Incoming Party has replaced the Retiring Party under the Contract in accordance with this Deed;
- (ii) will be liable to the Incoming Party for all breaches of the Contract whether committed before or after the execution of this Deed; and
- (iii) will be deemed to have owed a duty of care to the Incoming Party from the date of the Contract.

3.3 Amendments and clarifications

- (a) From the Effective date the Contract is amended as provided for in Schedule 1.
- (b) The Continuing Party must provide security in favour of the Incoming Party as provided for in Schedule 1
- (c) The Contract Sum will be as set out in Schedule 1.

3.4 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in connection with the Contract; and
 - (ii) any action, Claim and demand it has against the Retiring Party under or in connection with the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Incoming Party as a result of the assumption by the Incoming Party under the terms of this Deed of the obligations and Liability of the Retiring Party under the terms of the Contract.

3.5 Release by Retiring Party

- (a) Subject to clause 4, the Retiring Party releases the Continuing Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in connection with the Contract.
- (b) Nothing in this clause affects the obligations of the Continuing Party to the Incoming Party under the Contract.

3.6 Release by Incoming Party

The Retiring Party has no Liability to the Incoming Party arising out of or in connection with this Deed or the Contract.

3.7 Contract accounts

The parties agree that the accounts in relation to the Contract are as set out in Schedule 2.

4 Ongoing and excluded obligations

- (a) The Continuing Party:
- (i) must continue to comply with its obligations under clauses [#7.10] and [#10.25] of the Contract for the benefit of the Retiring Party as well as the Incoming Party; and
 - (ii) must meet with the Retiring Party and the Incoming Party as directed by the Retiring Party.
- (b) After the Effective Date the Continuing Party and the Incoming Party must provide access to and, where requested by the Retiring Party, copies of, all reports, minutes of meetings, records, correspondence and other documentation relating to the Contract.
- (c) The obligations set out in Schedule 3 are excluded from the novation and will continue to be performed for the benefit of the Retiring Party on the terms set out in Schedule 3.

5 Insurance

As from the Effective Date:

- (a) the Incoming Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Incoming Party is named in place of the Retiring Party as required by the Contract.

6 Replacement of Security

The Continuing Party must replace or procure the replacement of the Security in favour of the Incoming Party on the same terms as required by the Contract within five Business Days of the execution of this Deed.

7 Overriding effect

The parties agree that the execution and operation of this Deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Incoming Party.

8 Representations and warranties

8.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this Deed.

8.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms.

8.3 Binding obligations

Each party represents and warrants to each other party that this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

9 Duties, Costs and Expenses

9.1 Stamp Duty

The Incoming Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this Deed or any transaction contemplated by this Deed (except to the extent the terms of the Contract provide otherwise).

9.2 Costs

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

9.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this Deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in clause 9.3(a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

10 General

10.1 Governing law

This Deed is governed by and must be construed according to the laws applying in New South Wales.

10.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.2(a).

10.3 Amendments

This Deed may only be varied by a document signed by or on behalf of each party.

10.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of any other breach of that term or of a breach of any other term of this Deed.

10.5 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the Deed of each party who has executed and delivered that counterpart.

10.6 Severance

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

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

10.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Deed.

10.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior consent of each other party.

Executed as a Deed.

Schedule 24 – Nominated Reports

Refer to Annexure D

Schedule 25 – Contractor's Certificate of Final Completion

CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION	
CONTRACTOR:	
I hereby certify that Final Completion has been achieved by _____ in accordance with the requirements of the ontract (including all Variation orders detailed in (a) below) between the Principal and the Contractor.	
I further certify that:	
(a) All Variation Orders (including concessions) are listed in the attached compliance register.	
(b) All identified Defects (including any non-conformities) have been satisfactorily rectified and their documentation closed out.	
(c) All required documentation has been submitted.	
(d) All notices regarding system deficiencies have been satisfactorily closed out.	
I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion/the Works.	
SIGNATURE: _____	SIGNATURE: _____
_____ (Contractor's Representative) Subcontractor/Designer	_____ (Contractor's
DATE: _____	DATE: _____