

**SCHEDULE A1**  
**Conditions Precedent**  
**(Clauses 1.1 and 2)**

No.	Condition Precedent	Benefiting Party
1.	<p>The following documents have been executed by all parties to them in a form satisfactory to the Principal:</p> <p>(a) this deed;</p> <p>(b) the Independent Certifier Deed (and all conditions precedent to its effectiveness have been satisfied or waived by the relevant parties);</p> <p>(c) the Parent Company Guarantees;</p> <p>(d) a significant subcontractor side deed in the form of Schedule A15 with [REDACTED]; and</p> <p>(e) a significant subcontractor side deed in the form of Schedule A15 with [REDACTED].</p>	The Principal and the Tunnelling Contractor
2.	The Tunnelling Contractor has provided the unconditional undertakings required by clause 6.1 of the deed.	The Principal
3.	The Tunnelling Contractor has effected the policies of insurance required by clause 23.5 of the deed (other than the insurances referred to in clauses 23.7, 23.12 and 23.13 of the deed).	The Principal and the Tunnelling Contractor
4.	The Tunnelling Contractor has provided the Principal with a certified copy of the Tunnelling Contractor Consortium Deed executed by all entities that comprise the Tunnelling Contractor.	The Principal
5.		

<b>No.</b>	<b>Condition Precedent</b>	<b>Benefiting Party</b>

No.	Condition Precedent	Benefiting Party
6.		

No.	Condition Precedent	Benefiting Party
7.		
8.		

No.	Condition Precedent	Benefiting Party

**SCHEDULE A2**

**Portions and Milestones**

**(Clauses 1.1, 10.1, 12.2(g) and 19.11(d)(i)-(ii))**

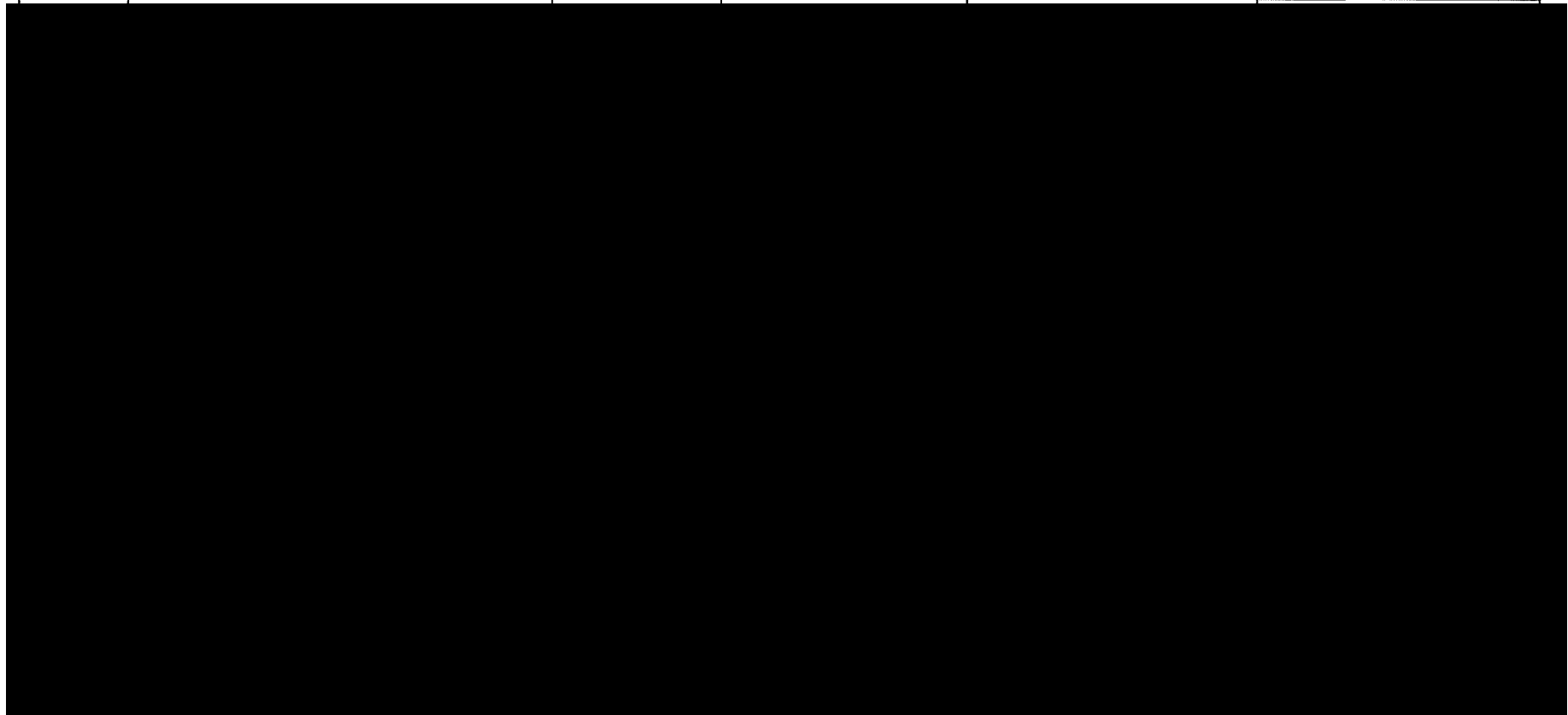
**1. GENERAL**

- (a) Unless the context requires otherwise, terms which are defined in the Particular Specification or the General Specification have the same meaning where used in this Schedule A2.
- (b) Areas that are referred to in this Schedule A2 by an individual area number are references to the areas so numbered and described in the drawings described in Table 1 of Schedule D1.
- (c) The parts of the Construction Site that are related to :
  - (i) a Portion for the purposes of clause 12.2(g) of the deed are, for each Portion identified in the column headed "Portion", the parts of the Construction Site described in the corresponding column headed "Part of Construction Site"; and
  - (ii) a Milestone for the purposes of clause 12.2(h) of the deed are, for each Milestone identified in the column headed "Milestone", the parts of the Construction Site described in the corresponding column headed "Milestone Area".

2. PORTIONS

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages \$/day (clause 19.11(d)(ii))	Additional conditions precedent to Substantial Completion	Part of Construction Site
[Redacted content]					

<b>Portion</b>	<b>Description of Infrastructure</b>	<b>Date for Substantial Completion</b>	<b>Liquidated damages \$/day (clause 19.11(d)(ii))</b>	<b>Additional conditions precedent to Substantial Completion</b>	<b>Part of Construction Site</b>
----------------	--------------------------------------	--	--	--	----------------------------------



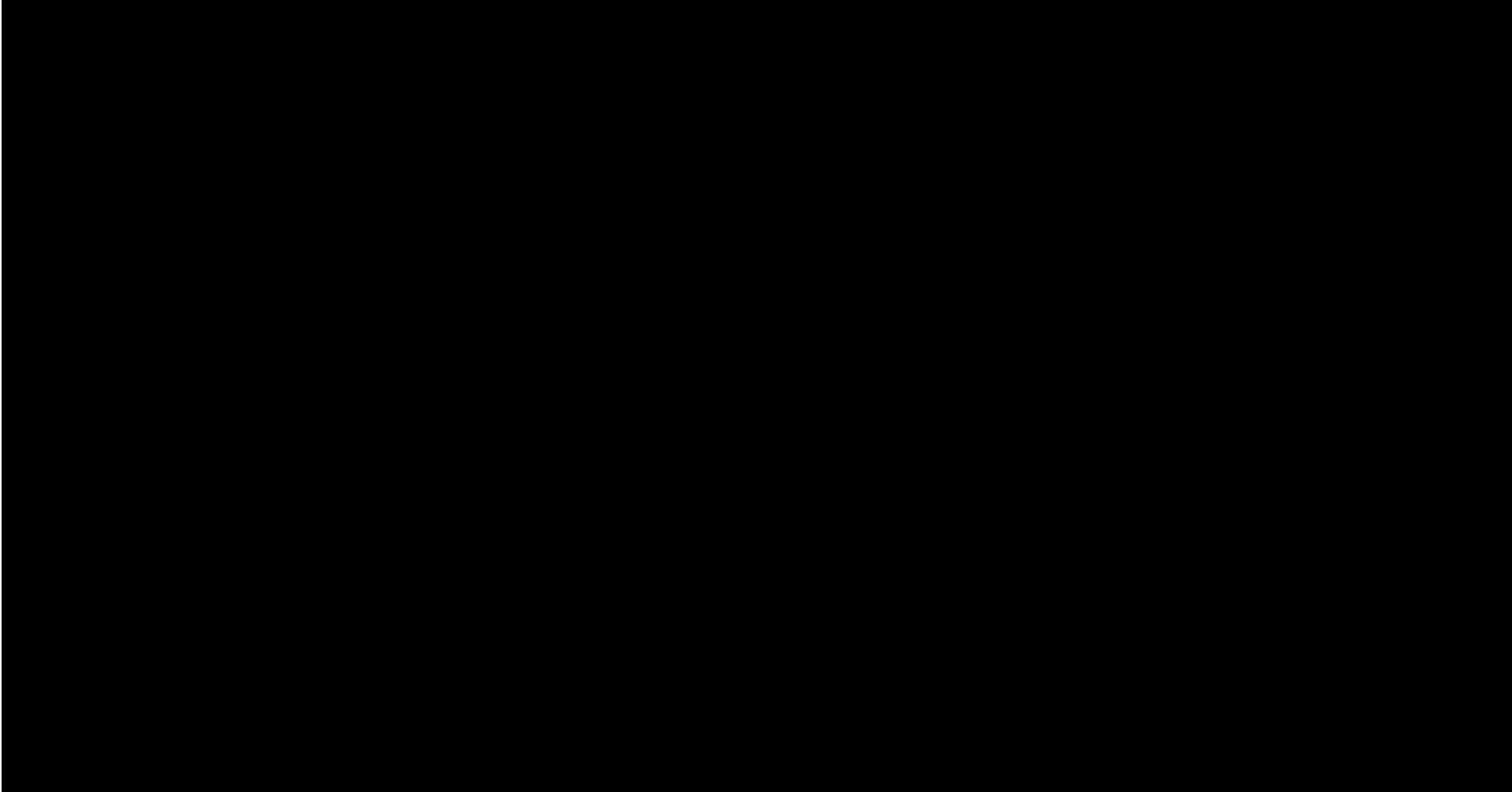


Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages \$/day (clause 19.11(d)(ii))	Additional conditions precedent to Substantial Completion	Part of Construction Site
[Redacted Content]					

<b>Portion</b>	<b>Description of Infrastructure</b>	<b>Date for Substantial Completion</b>	<b>Liquidated damages \$/day (clause 19.11(d)(ii))</b>	<b>Additional conditions precedent to Substantial Completion</b>	<b>Part of Construction Site</b>

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages \$/day (clause 19.11(d)(ii))	Additional conditions precedent to Substantial Completion	Part of Construction Site
[Redacted content]					

<b>Portion</b>	<b>Description of Infrastructure</b>	<b>Date for Substantial Completion</b>	<b>Liquidated damages \$/day (clause 19.11(d)(ii))</b>	<b>Additional conditions precedent to Substantial Completion</b>	<b>Part of Construction Site</b>
----------------	--------------------------------------	--	--	--	----------------------------------



<b>Portion</b>	<b>Description of Infrastructure</b>	<b>Date for Substantial Completion</b>	<b>Liquidated damages \$/day (clause 19.11(d)(ii))</b>	<b>Additional conditions precedent to Substantial Completion</b>	<b>Part of Construction Site</b>
					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages \$/day (clause 19.11(d)(ii))	Additional conditions precedent to Substantial Completion	Part of Construction Site
					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages \$/day (clause 19.11(d)(ii))	Additional conditions precedent to Substantial Completion	Part of Construction Site
[Redacted content]					

Portion	Description of Infrastructure	Date for Substantial Completion	Liquidated damages \$/day (clause 19.11(d)(ii))	Additional conditions precedent to Substantial Completion	Part of Construction Site
[Redacted content]					

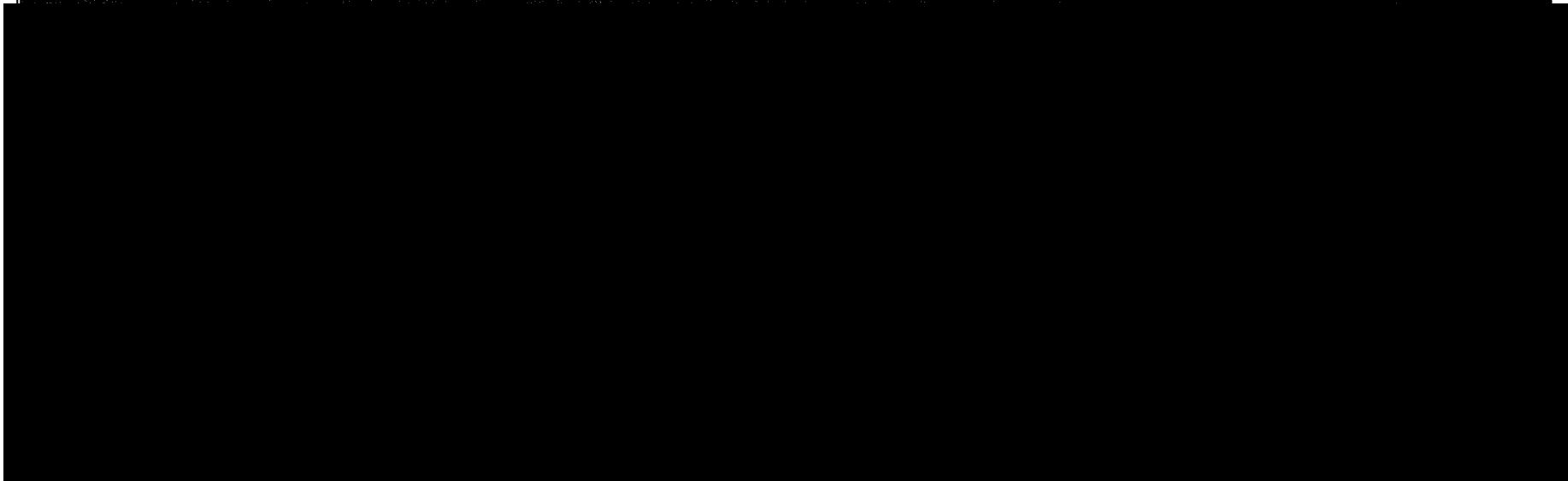


<b>Portion</b>	<b>Description of Infrastructure</b>	<b>Date for Substantial Completion</b>	<b>Liquidated damages \$/day (clause 19.11(d)(ii))</b>	<b>Additional conditions precedent to Substantial Completion</b>	<b>Part of Construction Site</b>
					

<b>Portion</b>	<b>Description of Infrastructure</b>	<b>Date for Substantial Completion</b>	<b>Liquidated damages \$/day (clause 19.11(d)(ii))</b>	<b>Additional conditions precedent to Substantial Completion</b>	<b>Part of Construction Site</b>
[Redacted content]					

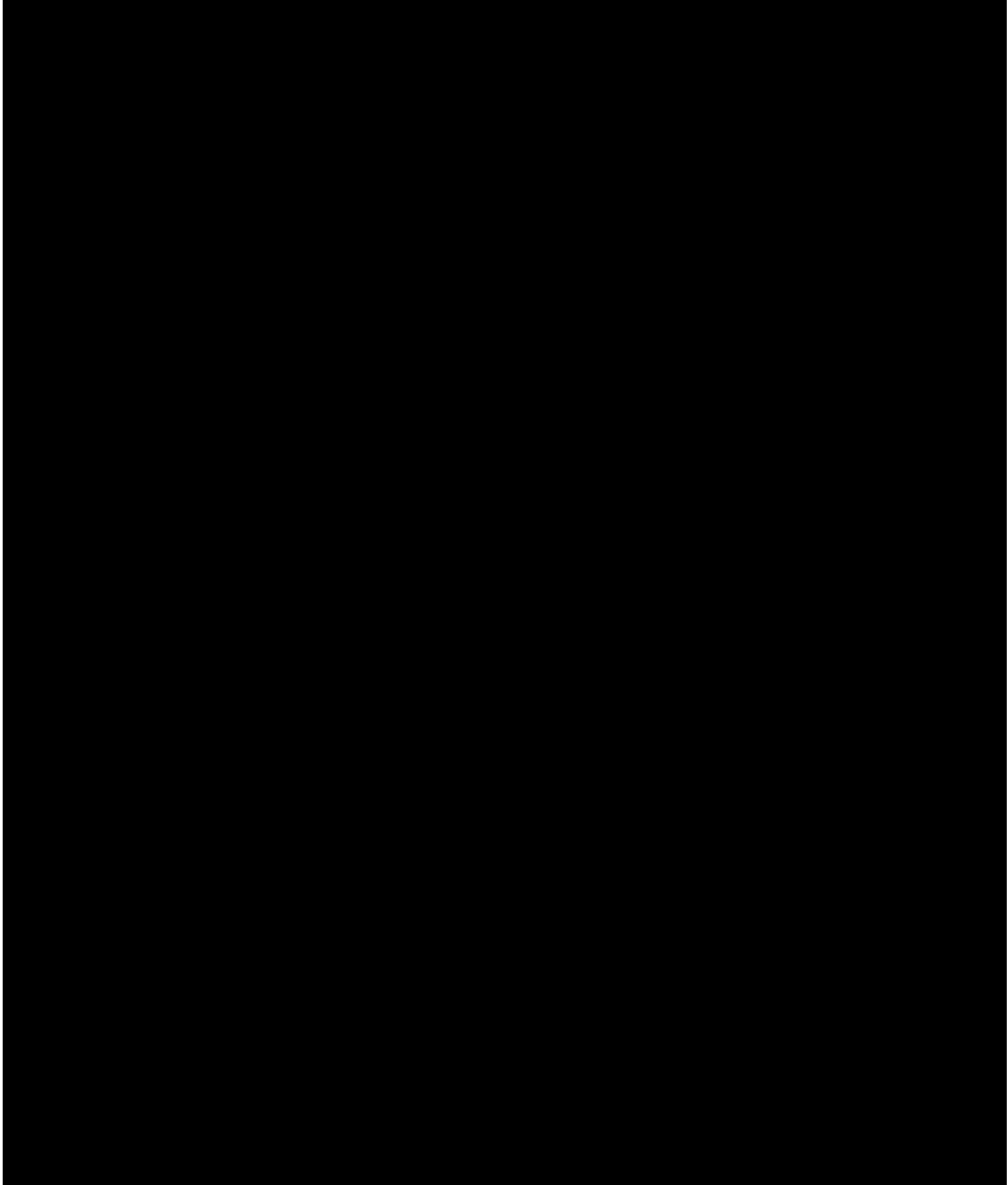
3. MILESTONES

Milestone	Description	Date for Milestone Achievement	Liquidated damages \$ / day  (clause 19.11(d)(i))	Milestone Area (Where applicable)
-----------	-------------	--------------------------------	---	-----------------------------------



**SCHEDULE A3**

**Pre-Agreed Changes**

























































**SCHEDULE A4**

**Transitional Handover Services**

**(Clauses 1.1 and 19.16)**

Where the Principal's Representative gives a notice under clause 19.16(a) for a Portion or a Milestone Area, the Transitional Handover Services to be performed by the Tunnelling Contractor in respect of that Portion or Milestone Area (as applicable) comprise the general Transitional Handover Services described in clause 1 of this Schedule A4.

**1. General Transitional Handover Services**

- (a) Continuing to comply with the obligations under clause 8.2 of this deed.
- (b) Acciona Construction Australia Pty Ltd ABN 66 618 030 872 continuing to fulfil the role of "principal contractor" (as that term is defined in clause 8.3(a) of this deed).
- (c) Any activities required to ensure that:
  - (i) the Portion or Milestone Area (as applicable) itself, and the Portion together with any previously completed Portions will, upon the completion of the Transitional Handover Services:
    - (A) be fit for their intended purposes; and
    - (B) be capable of remaining at all relevant times fit for their intended purpose; and
  - (ii) the Portion or the Milestone Area (as applicable) remains ready for an Interface Contractor to take over the Portion.
- (d) Continuing to comply with all obligations of the Tunnelling Contractor that relate to access to the relevant parts of the Construction Site, including the obligations under clause 12.5 of this deed and any relevant obligations under the Site Access Schedule.
- (e) Without limiting clause 12.5 of this deed or any obligations under the Site Access Schedule:
  - (i) securing and protecting all relevant areas of the Portion or the Milestone Area (as applicable); and
  - (ii) keeping all relevant areas of the Portion or the Milestone Area (as applicable) clean, including removing rubbish, litter, graffiti and surplus material.
- (f) Maintaining and (to the extent applicable) operating any Handover Works related to the Portion.
- (g) Regular inspection, lubrication, adjustment, cleaning, replacement of parts (including drains, screens and filters).
- (h) Any activities provided for in the relevant Asset Management Information that must be carried out at a time that occurs before the relevant Portion Handover Date or the relevant Milestone Area Handover Date (as applicable).
- (i) Continuing to comply with, carry out and fulfil the conditions and requirements of all relevant Approvals (including, including, where relevant, ongoing monitoring).

- (j) All activities required to obtain and maintain any Approval required for the performance of the Transitional Handover Services and complying with, carrying out and fulfilling the conditions and requirements of any such Approval.
- (k) Payment of any costs in connection with Utility Services associated with the performance of the Transitional Handover Services.
- (l) Replacement of parts and consumables, including water treatment chemicals and supplies, used during the performance of the Transitional Handover Services.
- (m) Providing safe and convenient access to the relevant parts of the Construction Site to the Principal's Representative and any person authorised by the Principal.
- (n) Providing a monthly report, in which the Tunnelling Contractor must provide an overview of to the general Transitional Handover Services described in this clause 1 of Schedule A4 and confirm compliance with its obligations under paragraph (m) above specifically.

## SCHEDULE A5

## Subcontract Requirements

## (Clause 5.3)

Item	Requirement
<b>1. Subcontracts and Significant Subcontracts</b>	
(a)	Each Subcontract must contain a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002</i> (NSW) in relation to all and any rights, obligations or Liabilities of either party under each Subcontract whether these rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(b)	Each Subcontract must contain a requirement that in any further contract that a Subcontractor enters into with a third party for the performance of the Tunnelling Contractor's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002</i> (NSW) in relation to all and any rights, obligations or Liabilities of either party under each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(c)	Each Subcontract must include provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions and each further Subcontract that a Subcontractor enters into must also contain a clause to the same effect which is binding on the Subcontractor.
(d)	Each Subcontract must contain provisions equivalent to clauses 4.20 ( <i>Australian Jobs Act</i> ) and 4.21 ( <i>Workforce development and industry participation</i> ), and each further Subcontract that a Subcontractor enters into must also contain clauses to the same effect which are binding on the Subcontractor.
(e)	Each Subcontract with a contract value greater than [REDACTED] with a Subcontractor that carries out design work or other technical professional services must contain provisions equivalent to clause 5.1(c), expressly requiring the Subcontractor to execute a deed in the form of Schedule A14 (or such other form as the Principal may agree, acting reasonably) and provide this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor.
(f)	Each Subcontract must contain provisions equivalent to clause 8.1 ( <i>Care of people, property and Environment</i> ), clause 8.2 ( <i>Work health and safety</i> ) and clause 8.3(d) ( <i>Principal contractor</i> ).
(g)	To the extent the relevant Subcontract work falls within the jurisdiction of the ASA, the Subcontract must contain provisions equivalent to clauses 9(b)(ii) and 9(c) ( <i>Engineering Authorisation and ASA Compliance</i> ).
(h)	Each Subcontract must contain provision equivalent to clause 13.7 ( <i>Monitoring and audits by the Principal's Representative</i> ).

Item	Requirement
(i)	Each Subcontract which involves the performance of design work must contain provisions equivalent to clauses 14.4(c)(ii) and 14.4(d).
(j)	Each Subcontract must contain provision requiring the Subcontractor attend, upon request, the meetings contemplated in clauses 18.4(b), 18.5(d) and 18.18(c)(ii) of the deed.
(k)	Each Subcontract with Subcontractor that prepared Design Documentation must contain provisions equivalent to clauses 2(a)(ii) and 2(b)(i)(B) of Schedule A26 with respect to certification requirements that are relevant to the Subcontractor's scope of work.
(l)	Each Subcontract with Subcontractor that prepared Work as Executed Design Documentation must contain provisions equivalent to clauses 16.14(b)(ii) with respect to the preparation of a certificate in the form of Schedule B19.
(m)	Each Subcontract must contain provisions equivalent to clause 28 ( <i>Transport for NSW Statement of Business Ethics</i> ), clause 29 ( <i>NSW Industrial Guidelines: Building and Construction Procurement</i> ) and clause 30 ( <i>Australian Government Requirements</i> ).
<b>2. Significant Subcontracts</b>	
(a)	Each Significant Subcontract must contain provisions recognising the Principal's rights under clause 16.5 ( <i>Principal's right to inspect and seek comments</i> ).
(b)	Each Significant Subcontract must contain provisions that require the Tunnelling Contractor's consent to any assignment or subcontract proposed by the Subcontractor.
(c)	Each Significant Subcontract must include a clause providing that if this deed is terminated for any reason or the Principal takes over the Tunnelling Contractor's work, the Tunnelling Contractor and the Subcontractor must, after the Principal has given a Direction to do so, promptly (and within 5 Business Days) execute a deed of novation in the form of Schedule A18.
(d)	Each Significant Subcontract which involves the performance of design work or other professional services must include provisions requiring the Subcontractor to effect and maintain professional indemnity insurance on similar terms (other than in respect of the amount of insurance cover required and the duration for which the insurance is to be maintained) as are required under clause 23 (unless such insurance has been arranged by the Tunnelling Contractor for the Subcontractor).
(e)	The Tunnelling Contractor must (unless otherwise approved in writing by the Principal's Representative) ensure that each Designated Significant Subcontract that it enters into in connection with the Tunnelling Contractor's Activities includes provisions that will enable the Tunnelling Contractor to comply with clause 27 of the deed.



<b>Item</b>	<b>Requirement</b>
(f)	Each Significant Subcontract must contain provisions requiring that all documentation and information provided by the Significant Subcontractor under its Significant Subcontract be provided on an Open Book Basis.

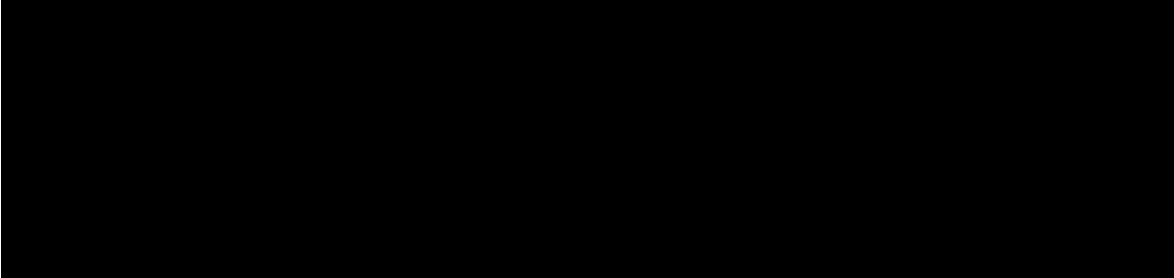
**SCHEDULE A6**  
**Significant Subcontractors**  
**(Clauses 1.1 and 5.2(a))**

No.	Significant Subcontract Work	Significant Subcontractor	ABN	Address
1.	TBM supply			
2.	Concrete supply			
3.	Design of any part of the Project Works or the Temporary Works			
4.	Geotechnical design or consultancy services			
5.	Demolition works			

**SCHEDULE A7**

**Subcontractors to provide warranties**

**(Clause 17.11)**

<b>Subcontract Work</b>	<b>Warranty Period</b>
	

**SCHEDULE A8**  
**Form of Warranty**  
**(Clause 17.11)**

**THIS DEED POLL** is made the                      day of                      20

**TO:**        **Sydney Metro** ABN 12 354 063 515 a New South Wales agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and

[*Insert name of relevant beneficiary*] ABN [*Insert ABN*] of [*Insert address*]  
(**Beneficiary**)

**BY:**        That person described in Item 1 of the Schedule (**Warrantor** which expression will include its successors and assigns).

**BACKGROUND**

- A.        The Warrantor has supplied the items described in Item 2 of the Schedule (**Equipment**) to the person described in Item 3 of the Schedule (**Tunnelling Contractor**) for the tunnel and station excavation works component of the Sydney Metro West (**Project**) being carried out by the Tunnelling Contractor under the deed described in Item 4 of the Schedule (**Deed**) with the Principal.
- B.        It is a requirement imposed by the Principal under the Deed that the Tunnelling Contractor procures the Warrantor to give the following warranties in favour of the Beneficiaries with respect to the Equipment.

**OPERATIVE**

- 1.        The Warrantor:
  - (a)       warrants to the Beneficiary that the Equipment will be to the quality and standard stipulated by the Deed 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 5 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

- 2.        The Warrantor warrants to the Beneficiary that it will replace so much of the Equipment as:
  - (a)       is found to be of a lower quality or standard than that referred to in clause 1; or
  - (b)       shows deterioration of such extent that in the opinion of the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise,

within the period described in Item 6 of the Schedule.

3. The Warrantor covenants to the Beneficiary that it will bear the cost of any work necessary to any part of the Project to enable the requirements of clause 2 to be carried out or to make good the Project afterwards.
4. The Warrantor acknowledges to the Beneficiary that nothing contained in this Deed Poll is intended to nor will render the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.
5. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
6. The Warrantor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

**SCHEDULE**

Item 1: *Name and address of Warrantor*

Item 2: *Details of the Equipment*

(Background clause A)

Item 3: *The Tunnelling Contractor*

(Background clause A)

Item 4: *The deed titled "Sydney Metro West, Central Tunnelling Works Design and Construction Deed"*

(Background clause A)

Item 5: *Detailed warranty of Warrantor*

(Clause 1)

Item 6: *Period of years*

[ ] years from the date of the Final Certificate issued pursuant to clause 19.17(b) of the Deed.

(Clause 2)

**Executed** as a deed poll.

**Executed** by  
[ ] in the  
presence of:

---

Signature of Director

---

Name of Director in full

---

Signature of Secretary/other Director

---

Name of Secretary/other Director in full

**SCHEDULE A9**

**Tunnelling Contractor's Personnel**

**(Clauses 4.18(b), 13.4 and 18.2)**

**Project Director**

- (a) The Project Director must possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and be experienced in the design, construction and project management of large projects similar to the Project Works and Temporary Works.
- (b) The Project Director must at all times have authority to act on behalf of and bind the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.
- (c) The Project Director must be engaged full-time during the design phase of the Project Works and the Temporary Works and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works.
- (d) At the date of this deed, the Project Director is [REDACTED].

**Design Manager**

- (a) The Design Manager must possess a recognised engineering qualification relevant to the position and the Tunnelling Contractor's Activities and have at least fifteen years' experience in the overall management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works and Temporary Works.
- (b) The Design Manager must manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Overall D&C Program and any other Programs).
- (c) The Design Manager must be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works up until six months after the completion of the design review process for Design Stage 3, as set out in Schedule A26.
- (d) The Design Manager must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.
- (e) At the date of this deed, the Design Manager is [REDACTED].

**Construction Manager**

- (a) The Construction Manager must possess a recognised engineering qualification relevant to the position and the Tunnelling Contractor's Activities and have at least fifteen years' experience in the overall management of construction on large projects similar to the Project Works and Temporary Works.
- (b) The Construction Manager must be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works and must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.
- (c) At the date of this deed, the Construction Manager is [REDACTED].

**Quality and Systems Manager**

- (a) The Quality and Systems Manager must:
- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in quality management on projects similar to the Project Works and the Temporary Works;
  - (ii) have at least fifteen years' quality management experience, with extensive experience in the development and implementation of quality management systems and plans;
  - (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on quality matters;
  - (iv) give the Principal's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels;
  - (v) be responsible for an induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
  - (vi) be responsible for and have the authority to develop the Quality Plan;
  - (vii) be responsible for the Tunnelling Contractor's requirements management tool in accordance with section 3.3 of the General Specification;
  - (viii) be given authority by the Tunnelling Contractor to act freely and independently and to stop the progress of the relevant part of the Tunnelling Contractor's Activities when any non-conformance with the quality requirements of this deed is identified and at specified Hold Points; and
  - (ix) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to quality management of the Tunnelling Contractor's Activities.
- (b) At the date of this deed, the Quality and Systems Manager is [REDACTED]

**Commercial Manager**

- (a) The Commercial Manager must:
- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and be experienced in the management of commercial issues on major civil construction projects;
  - (ii) have at least ten years commercial management experience on major civil construction projects;
  - (iii) have recent relevant experience in effectively negotiating and communicating at a senior level with clients on major civil construction projects;
  - (iv) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on contractual and commercial matters; and



(v) must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of contractual and commercial matters.

(b) At the date of this deed, the Commercial Manager is [REDACTED]

**Stakeholder and Community Engagement Manager**

(a) The Stakeholder and Community Engagement Manager must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in community involvement on projects similar to the Project Works and Temporary Works and have an understanding of stakeholder and community attitudes and needs in relation to the Project Works and Temporary Works;
- (ii) have at least ten years' communications and community relations experience, with extensive experience in the management of community liaison, consultation and communications on major infrastructure projects;
- (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on stakeholder and community relations matters;
- (iv) be experienced in the development and implementation of community involvement strategies and plans;
- (v) be experienced in and have an understanding of NSW government public affairs processes;
- (vi) be responsible for a stakeholder and community relations induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
- (vii) be responsible for and have the authority to develop and implement the Community Liaison Plan; and
- (viii) be engaged full-time by the Tunnelling Contractor during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to stakeholder and community relations management of the Tunnelling Contractor's Activities and be available at all times:
  - (A) to take a proactive role in the stakeholder and community relations processes relating to the Tunnelling Contractor's Activities as set out in this deed; and
  - (B) for contact by stakeholders and the community to answer questions and deal with complaints relating to the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Stakeholder and Community Engagement Manager is [REDACTED]

**Public Affairs and Events Manager**

- (a) The Public Affairs and Events Manager must:
- (i) have a recognised and appropriate public affairs qualification, ten years of active industry experience and demonstrated competence in public affairs management (with a background in journalism or public relations);
  - (ii) commence within 14 Business Days of the date of this deed and continue until the Date of Completion of the last Portion to achieve Completion;
  - (iii) be engaged full-time by the Tunnelling Contractor during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works; and
  - (iv) have comprehensive knowledge of the Tunnelling Contractor's Activities, have access to key personnel and on-site information, and be authorised to prepare and issue media and other urgent copy to the Principal's Representative on a 24 hour a day, seven day a week basis.
- (b) At the date of this deed, the Public Affairs and Events Manager is [REDACTED]

**Environmental Manager**

- (a) The Environmental Manager must:
- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in environmental management on projects similar to the Project Works and Temporary Works;
  - (ii) have at least fifteen years' environmental management experience, with extensive experience in the preparation and implementation of environmental management systems and plans;
  - (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on environmental matters;
  - (iv) be experienced in regulatory liaison and consultation;
  - (v) be responsible for all environmental compliance matters associated with the Tunnelling Contractor Activities;
  - (vi) be responsible for an environmental management induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
  - (vii) be responsible for and have the authority to develop and implement the Construction Environmental Management Plan;
  - (viii) be given authority by the Tunnelling Contractor to act freely and independently, to require all reasonable steps to be taken to achieve environmental compliance, to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works, Temporary Works and the Tunnelling Contractor's Activities when any non-conformance with the environmental requirements of this deed is identified; and
  - (ix) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the

construction phase of the Project Works and Temporary Works with responsibilities limited to environmental management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Environmental Manager is [REDACTED]

**Sustainability Manager**

(a) The Sustainability Manager must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in sustainability management on projects similar to the Project Works and Temporary Works;
- (ii) have at least five years' sustainability management experience, with previous experience in the provision of sustainability advice on the design and construction of engineering;
- (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on sustainability matters;
- (iv) be responsible for a sustainability induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
- (v) be responsible for ensuring the Tunnelling Contractor's Activities meet the requirements of section 2.8 of the General Specification and section 3.4 of the Particular Specification; and
- (vi) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to sustainability management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Sustainability Manager is [REDACTED].

**Work Health and Safety Manager**

(a) The Work Health and Safety Manager must:

- (i) possess a bachelor's degree in health and safety or equivalent and have recent relevant work health and safety management experience on major infrastructure projects similar to the Project Works and Temporary Works;
- (ii) have "Chartered" status with the Safety Institute of Australia or international equivalent (e.g. ASSE, IOSH etc);
- (iii) have at least ten years' experience in work health and safety management on major infrastructure projects, with extensive experience in the preparation and implementation of work health and safety management systems and plans;
- (iv) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on work health and safety matters;
- (v) be responsible for a work health and safety induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;

- (vi) be responsible for and have the authority to develop and implement the Project Health & Safety Management Plan;
- (vii) be given authority by the Tunnelling Contractor to act freely and independently, to direct that all reasonable steps be taken where safety compliance is at risk and to stop the progress of the relevant part of the Project Works, the Temporary Works or the Tunnelling Contractor's Activities when any non-conformance with the work health and safety requirements of this deed is identified; and
- (viii) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to work health and safety management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Work Health and Safety Manager is [REDACTED]

**Traffic Manager**

(a) The Traffic Manager must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant work experience in a traffic management position on large projects similar to the Project Works and Temporary Works in a confined CBD environment;
- (ii) have a minimum of 10 years traffic management experience, with extensive experience in the preparation and implementation of construction traffic management plans and traffic control plans;
- (iii) have experience in regulatory liaison and consultation;
- (iv) be given authority by the Tunnelling Contractor to act freely and independently, to require all reasonable steps be taken to avoid or minimise adverse traffic impacts and to stop the progress of the relevant part of the Project Works, the Temporary Works or the Tunnelling Contractor's Activities when any non-conformity with the traffic management requirements of this deed is identified; and
- (v) be full-time on or around the Construction Site during the construction phase of the Tunnelling Contractor's Activities with responsibility for the management of traffic and must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities and be available at all times for matters regarding road occupancy licences.

(b) At the date of this deed, the Traffic Manager is [REDACTED]

**Workforce Development and Industry Participation Manager**

(a) The Workforce Development and Industry Participation Manager must:

- (i) be responsible for the overall delivery and reporting of all requirements of workforce development and industry participation;
- (ii) possess a degree, diploma or advanced diploma in adult education, vocational education, organisational development, education or human resources and a "Certificate IV" or equivalent in "Training and Assessment";

- (iii) possess the following skills, competencies and experience:
  - (A) demonstrated and appropriate learning and development work experience in a similar role within the rail or civil construction industry;
  - (B) demonstrable and significant experience dealing at a strategic level with stakeholders, including but not limited to education providers, registered training organisations, skill services organisations and procurement;
  - (C) excellent communication and leadership skills;
  - (D) experience in managing or delivering nationally accredited programs within recognised industry training packages;
  - (E) experience in delivering workforce development and industry participation within infrastructure or construction projects; and
  - (F) experience working with the implementation and delivery of Aboriginal participation programs; and
- (iv) be full-time on or around the Construction Site during the delivery of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Workforce Development and Industry Participation Manager is [REDACTED]

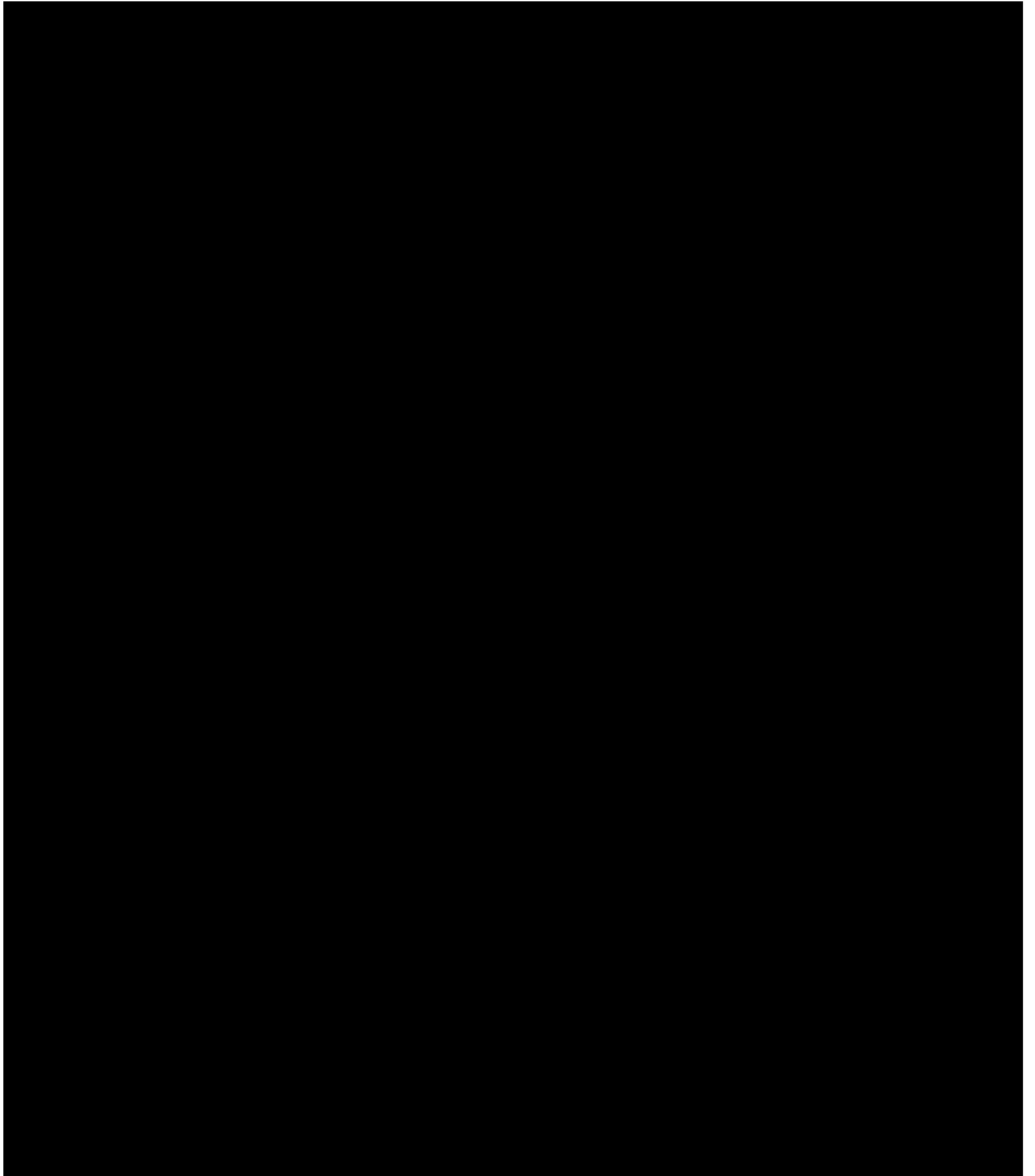
**Interface and Integration Manager**

- (a) The Interface and Integration Manager must:
  - (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in environmental management on projects similar to the Project Works and Temporary Works;
  - (ii) have at least 15 years' professional experience in a similar role within the rail industry or on other large, high profile, multi-package projects; and
  - (iii) have demonstrable and significant experience dealing at a senior level with third parties and/or interface contractors and the management of stakeholders and key interface risk on major infrastructure projects.
- (b) At the date of this deed, the Interface and Integration Manager is [REDACTED]

**SCHEDULE A10**

**Form of Independent Certifier Deed**

**(Clause 1.1 and 13.2)**































































































































































































































































































































































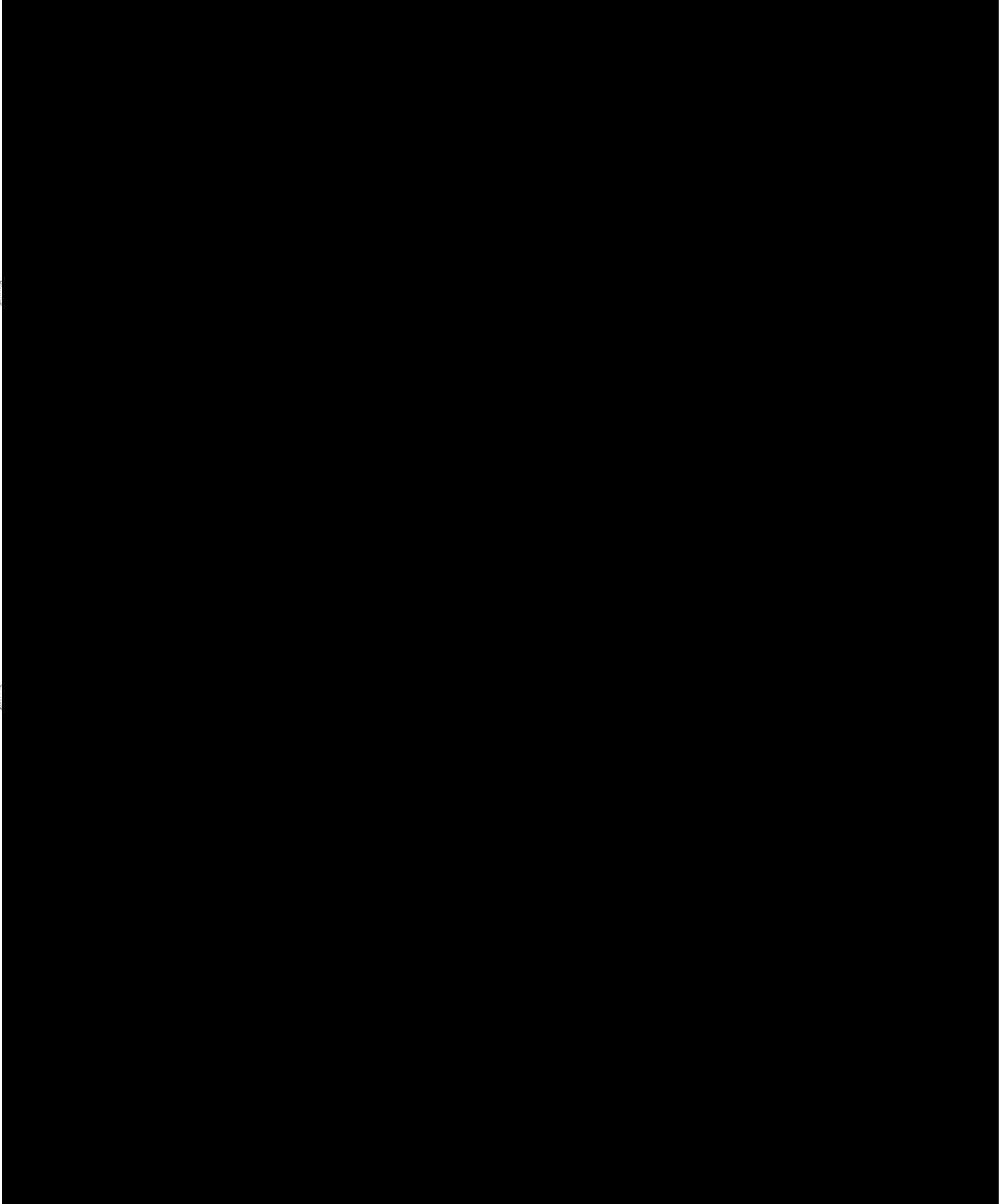






**SCHEDULE A11**

**Form of Master Interface Deed**





























































































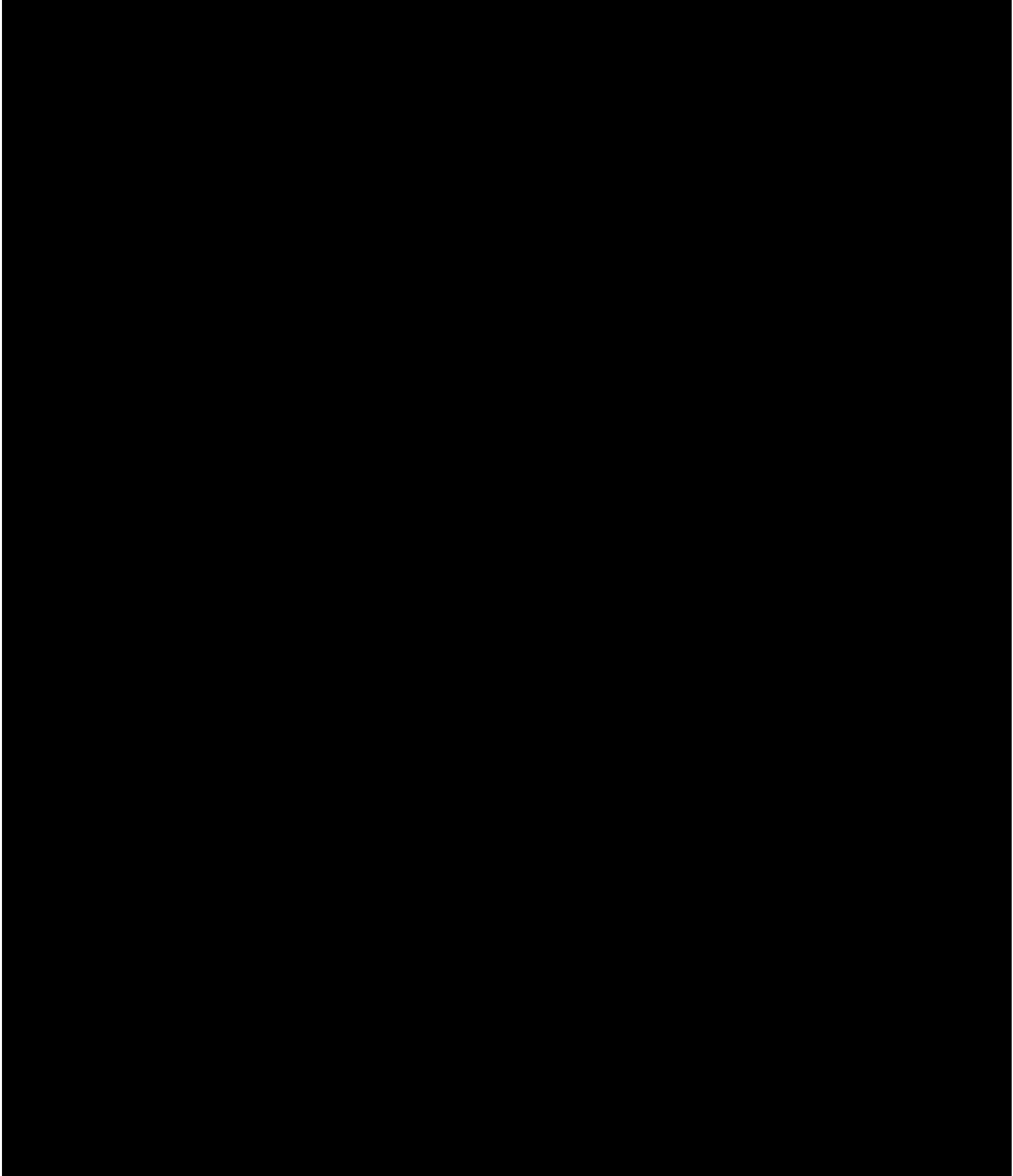






**SCHEDULE A12**

**Form of Collateral Warranty Deed Poll**







**SCHEDULE A13**

**NOT USED**



**SCHEDULE A14**

**Deed of Covenant**

**(Clause 5.1(c))**

**THIS DEED POLL** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20

**TO:** **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the Transport Administration Act 1988 (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Beneficiary**)

**BY:** [ ] (ABN [ ]) of [ ] (**Service Provider**)

**BACKGROUND**

- A. The Beneficiary has engaged [ ] (ABN [ ]) of [ ] (**Tunnelling Contractor**) to carry out certain works on its behalf under the "Sydney Metro West, Central Tunnelling Works Design and Construction Deed" (Contract No: [Insert]) dated [ ] (**Tunnelling Contract**).
- B. The Tunnelling Contractor has engaged the Service Provider under a deed dated [ ] (**Deed**) to carry out the [design work / technical professional services] specified in the Schedule for the purposes of its obligations under the Tunnelling Contract (**Works**).
- C. Under the Tunnelling Contract the Tunnelling Contractor is required to procure the Service Provider to execute this deed poll in favour of the Beneficiary.

**OPERATIVE**

**1. DUTY OF CARE**

The Service Provider warrants to the Beneficiary that in performing the Works [and in providing any certificate under clause 2(b)(i)(B) of Schedule A26]:

- (a) it will owe a duty of care to the Beneficiary;
- (b) it will exercise reasonable skill and care; and
- (c) it is aware that the Beneficiary will be relying upon the skill and judgement of the Service Provider in performing the Works.

**2. GOVERNING LAW AND JURISDICTION**

This deed poll will be governed by and construed in accordance with the laws of the State of New South Wales and the Service Provider hereby submits to the non-exclusive jurisdiction of the courts of that State 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.

**3. LIMITATION OF LIABILITY**

- (a) Subject to clause 3(b), the aggregate of the Service Provider's liability to the Beneficiary under this deed poll and the Service Provider's liability to the Tunnelling Contractor under the Deed will not exceed the liability that the Service Provider would have had under the Deed if the Deed had of named, in place of the Tunnelling Contractor, the Beneficiary and the Tunnelling Contractor jointly and severally.

- (b) Clause 3(a) does not limit the Service Provider's liability:
  - (i) in respect of any liability that:
    - (A) cannot be limited at Law; or
    - (B) is due to the Service Provider's fraud, wilful misconduct or criminal conduct; or
  - (ii) to the extent that (ignoring the application of clause 3(a)), the Service Provider is entitled to be indemnified for that liability under a policy of insurance required under the Deed or would have been entitled to be indemnified for that liability under a policy of insurance required under the Deed but for any act or omission of the Service Provider and, in each case, up to the maximum of the amount of the relevant insurance required under the Deed.

**SCHEDULE**

[INSERT DESCRIPTION OF DESIGN WORK / TECHNICAL PROFESSIONAL SERVICES]

**EXECUTED** as a deed poll.

**Executed by [Service Provider]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Signature of company secretary/other director

\_\_\_\_\_  
Full name of company secretary/other director

**SCHEDULE A15**  
**Significant Subcontractor Side Deed**  
**(Clause 5.2(e))**



# Sydney Metro West

## Significant Subcontractor Side Deed

Sydney Metro

ABN 12 354 063 515

and

**Name of Tunnelling Contractor]**

**Alt[ABN/ACN] [number]**

and

**Name of Significant Subcontractor]**

**Alt[ABN/ACN] [number]**

and

**Name of Significant Subcontractor Guarantor]**

**Alt[ABN/ACN] [number]**

THIS DEED is made on

20

**BETWEEN:**

- (1) **Sydney Metro** ABN 12 354 063 515, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**);
- (2) **[Name of Tunnelling Contractor]** [ABN] [number] of [address] (**Tunnelling Contractor**);
- (3) **[Name of Significant Subcontractor]** [ABN] [number] of [address] (the **Significant Subcontractor**); and
- (4) **[Name of Significant Subcontractor Guarantor]** [ABN] [number] of [address] (the **Significant Subcontractor Guarantor**).

**RECITALS:**

- (A) The Principal and the Tunnelling Contractor have entered into the Central Tunnelling Works D&C Deed for the design, construction, testing and commissioning of the Project Works.
- (B) The Tunnelling Contractor has subcontracted the Significant Subcontract Work to the Significant Subcontractor pursuant to the Significant Subcontract.
- (C) The Significant Subcontractor Guarantor has, pursuant to the Significant Subcontract Guarantee, guaranteed to the Tunnelling Contractor the performance of the Significant Subcontractor's obligations under the Significant Subcontract.
- (D) The parties have entered into this deed to set out the terms on which the Significant Subcontractor and Significant Subcontractor Guarantor will grant the Principal certain rights in relation to the Significant Subcontract and the Significant Subcontract Guarantee.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed:

**Approved Nominee** means a person nominated by the Principal as:

- (a) having legal capacity, power and authority to become a party to, and perform the obligations of the Tunnelling Contractor under, the Significant Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Tunnelling Contractor under the Significant Subcontract,

and approved by the Significant Subcontractor in accordance with clause 4.9.

**Assumption Notice** means the notice referred to in clause 4.1.

**Central Tunnelling Works D&C Deed** means the deed titled "Sydney Metro West, Central Tunnelling Works Design and Construction Deed" (Contract No: [insert]) between the Principal and the Tunnelling Contractor dated [insert].

**Default** means:

- (a) any breach by the Tunnelling Contractor of any of its obligations under the Significant Subcontract; or
- (b) any other event or circumstance,

which would entitle the Significant Subcontractor to terminate, rescind, accept the repudiation of, suspend the performance of any or all of the Significant Subcontractor's obligations under the Significant Subcontract.

**Default Notice** has the meaning given in clause 3.2(a).

**Effective Date** means the date of the Assumption Notice.

**Project Works** has the meaning given in the Central Tunnelling Works D&C Deed.

**Significant Subcontractor's Activities** means all things or tasks which the Significant Subcontractor is, or may be, required to provide, carry out or do to comply with its obligations under the Significant Subcontract (whether or not the performance of such things or tasks is subcontracted by the Significant Subcontractor to another person).

**Significant Subcontract** means the deed titled "[*insert*]" dated on or about the date of this deed between the Tunnelling Contractor and the Significant Subcontractor.

**Significant Subcontract Guarantee** means the deed of guarantee dated on or about the date of the Significant Subcontract from the Significant Subcontractor Guarantor in favour of the Tunnelling Contractor in respect of the obligations of the Significant Subcontractor under the Significant Subcontract and, if the Principal gives an Assumption Notice, the new guarantee entered into pursuant to clause 4.6.

**Significant Subcontract Work** means the physical works to be designed and constructed by the Significant Subcontractor under the Significant Subcontract.

**State** means the Crown in right of the State of New South Wales.

**Step-in Rights** has the meaning given in clause 3.1(a).

## 1.2 Rules for interpreting this deed

In this deed headings (including headings in parentheses in sub-clauses) are for convenience only and do not affect the interpretation of this deed and unless the context indicates a contrary intention:

- (a) "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;
- (b) a reference to a "party" to this deed or a "person" or "entity" includes that party's, person's or entity's executors, administrators, successors and permitted substitutes and assigns, including persons taking part by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (c) a reference to a "document", "contract" or "agreement" is to that document, contract or agreement as updated, varied, novated, ratified or replaced from time to time;
- (d) a reference to any "Authority", "institute", "association" or "body" is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed, replaced or restructured 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 is dissolved or ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (e) a reference to a "statute" includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to:
  - (i) a "part" or "schedule" is a reference to a part or schedule to or of this deed; and
  - (ii) this deed includes all schedules to it;
- (h) 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;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency; and
- (k) a time of day is a reference to Sydney time.

**1.3 Business Day**

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

**1.4 Inconsistency between this deed and the Significant Subcontract**

This deed prevails to the extent of any inconsistency between this deed and the Significant Subcontract.

**1.5 No bias against drafter**

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

**1.6 Aggregate liability**

Despite any other provision of the Significant Subcontract, this deed or the Significant Subcontract Guarantee:

- (a) the Significant Subcontractor's liability to the Tunnelling Contractor under or in connection with this deed is limited to the extent described in the Significant Subcontract;

- (b) nothing in this deed is intended to make or makes the Significant Subcontractor or the Significant Subcontractor Guarantor liable for the same loss twice for the same breach of an obligation;
- (c) neither the Significant Subcontractor nor the Significant Subcontractor Guarantor will have any greater obligations or liabilities to the Principal arising under or in connection with this deed than it would have had if the Principal had been named as principal under the Significant Subcontract; and
- (d) the liability of the Significant Subcontractor and the Significant Subcontractor Guarantor arising under or in connection with this deed will not exceed the difference between the maximum liability of the Significant Subcontractor under the Significant Subcontract and the liability incurred (from time to time) by the Significant Subcontractor and the Significant Subcontractor Guarantor to the Tunnelling Contractor under the Significant Subcontract.

**2. SIGNIFICANT SUBCONTRACTOR'S WARRANTY**

- (a) The Significant Subcontractor warrants to the Principal that:
  - (i) it will carry out its duties and obligations under the Significant Subcontract in accordance with the Significant Subcontract;
  - (ii) it will in performing its duties and obligations under the Significant Subcontract exercise the level of skill, care and diligence that would be reasonably expected of a qualified and experienced contractor performing the same or similar works and services to the Significant Subcontractor's Activities;
  - (iii) it will use materials, equipment and goods that are of the quality and standard specified in the Significant Subcontract or, if no quality or standard is specified in the Significant Subcontract, new and of merchantable quality and which are and will be capable of remaining at all relevant times fit for their intended purpose; and
  - (iv) without limiting the generality of the foregoing, it will carry out and complete the Significant Subcontract Work in accordance with the Significant Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of the Principal's other rights under this deed (including, without limitation, under clause 3 and clause 4), the Principal may only exercise its rights pursuant to this clause 2 upon:
  - (i) the Principal exercising its step-in rights under the Central Tunnelling Works D&C Deed;
  - (ii) the termination of the Central Tunnelling Works D&C Deed; or
  - (iii) the Tunnelling Contractor no longer being responsible for performing the Project Works substantially on the basis set out in the Central Tunnelling Works D&C Deed.

**3. PRINCIPAL'S RIGHT TO CURE DEFAULT EVENT**

**3.1 Principal's Step-in Rights**

- (a) On becoming aware of any Default, the Principal may (but is not obliged to) cure or remedy, or procure the cure or remedy of, that Default (**Step-in Rights**).

- (b) Clause 3.1(a) only applies where the Significant Subcontractor has given a Default Notice in accordance with clause 3.2(a).
- (c) Upon the Principal exercising any of its rights under this clause 3.1, the Tunnelling Contractor's obligations under the Significant Subcontract are suspended to the extent and for such period as the Tunnelling Contractor is prevented from performing such obligations by the Principal's exercise of its Step-in Rights.
- (d) If the Principal exercises its Step-in Rights, the Principal may, after giving reasonable notice to the Tunnelling Contractor, cease to exercise that right, and in any event, will cease to exercise the Step-in Rights once the relevant Default has been remedied.

### 3.2 **Restriction on right to terminate or suspend**

The Significant Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Significant Subcontract unless each of the following conditions have been satisfied:

- (a) the Significant Subcontractor has given to the Principal prior notice setting out details of the Default giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Significant Subcontract (**Default Notice**), together with the statements referred to in clause 3.3; and
- (b) either:
  - (i) if the Default is capable of cure or remedy within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor), that Default has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal;
  - (ii) if the Default is not one described in clause 3.2(b)(i) but is nevertheless capable of cure or remedy, the Principal has not within 20 Business Days after the date on which the Default Notice is given to the Principal notified the Significant Subcontractor that the Principal has elected to make arrangements to cure or remedy the Default. If notified, the Significant Subcontractor agrees:
    - (A) to use its best endeavours to reach an agreement with the Principal in respect of the arrangements to cure or remedy the Default; and
    - (B) not to exercise any of its rights in relation to the Default, including any right to terminate the Significant Subcontract, for as long as the Principal is diligently pursuing a cure or remediation for the Default;
  - (iii) if the Default is not reasonably capable of cure or remedy and the Default Notice contains a claim for reasonable compensation for the Default, the Principal (or another person on behalf of the Principal) has not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal;
  - (iv) if the Default is not capable of cure or remedy and the Default Notice does not contain a claim for reasonable compensation for the Default, the Principal does not commence and continue to perform the Tunnelling Contractor's obligations under the Significant Subcontract within 20 Business Days (or such

longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal; or

- (v) the Principal notifies the Significant Subcontractor in writing after receipt of the Default Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default.

The parties acknowledge and agree that a failure to pay money is a Default that is capable of cure or remedy.

### **3.3 Statements concerning Default**

As part of any Default Notice, the Significant Subcontractor must submit to the Principal statements of:

- (a) where the Default is a monetary default, the amount which must be paid to the Significant Subcontractor to remedy the Default; and
- (b) where the Default is of a non-monetary nature:
  - (i) the provisions of the Significant Subcontract alleged to have been breached or not fulfilled;
  - (ii) sufficient information to enable the Principal to identify the material facts, to the extent these are known to the Significant Subcontractor;
  - (iii) the steps required to cure or remedy the specified breaches or conditions not fulfilled if capable of cure or remedy; and
  - (iv) the time within which the specified steps can reasonably be expected to be taken.

### **3.4 Warranty of accuracy**

- (a) The Significant Subcontractor warrants to the Principal that statements submitted by it under clause 3.3 will be, so far as reasonably practicable, true, complete and accurate statements of the amounts to which the Significant Subcontractor considers itself entitled.
- (b) The Significant Subcontractor agrees that it will notify the Principal immediately upon becoming aware that any statements submitted by it under clause 3.3 are not true, complete and/or accurate and that it will, in any such notice, include details of the revised amounts to which the Significant Subcontractor considers itself entitled.

### **3.5 Disputes as to statements**

If the Principal disputes the amount of any claim or the existence of any Default referred to in a Default Notice:

- (a) the Principal must pay the amount not in dispute;
- (b) upon resolution of the dispute in accordance with this deed, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this deed, the Significant Subcontract and the Tunnelling Contract Documents.

**3.6 Verification**

The Principal may appoint a firm of independent chartered accountants or a firm of technical advisers to verify (at the cost of the Tunnelling Contractor) statements submitted by the Significant Subcontractor to the Principal pursuant to clause 3.3, and the Significant Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement as the Significant Subcontractor may reasonably request) permit that firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

**3.7 No liability**

- (a) The Tunnelling Contractor and the Significant Subcontractor acknowledge that, without limiting the liability of the Tunnelling Contractor (which continues to be responsible for the performance of its obligations under the Significant Subcontract), and without limiting the Principal's obligations under clause 4, the Principal will not be liable for any obligation or liability of the Tunnelling Contractor under the Significant Subcontract by reason only of the Principal performing the Tunnelling Contractor's obligations in accordance with the Significant Subcontract.
- (c) The Tunnelling Contractor and the Significant Subcontractor each release the Principal from any such liability.

**3.8 Tunnelling Contractor to compensate the Principal**

Any reasonable Loss suffered or incurred by the Principal arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due and payable from the Tunnelling Contractor to the Principal.

**3.9 No limitation on other rights**

The exercise (or failure to exercise) by the Principal of its rights under this clause 3 will not limit the Principal's rights against the Tunnelling Contractor under the Central Tunnelling Works D&C Deed or otherwise according to law.

**4. NOVATION OF SIGNIFICANT SUBCONTRACT AND SIGNIFICANT SUBCONTRACT GUARANTEE**

**4.1 Option**

If the Central Tunnelling Works D&C Deed is terminated, the Principal may exercise its rights under this clause 4 by giving a notice (**Assumption Notice**) to the Significant Subcontractor and Significant Subcontractor Guarantor.

**4.2 Novation of Significant Subcontract**

With effect from the Effective Date:

- (a) the Principal and the Tunnelling Contractor novate the Significant Subcontract so that the Principal (or, if applicable, the Approved Nominee) and the Significant Subcontractor are parties to a new contract on the same terms as the Significant Subcontract, as amended by this deed; and
- (b) any reference in the Significant Subcontract to the Tunnelling Contractor will be read as a reference to the Principal (or, if applicable, the Approved Nominee).

**4.3 Rights and obligations of the Principal and the Significant Subcontractor under the Significant Subcontract**

If the Principal gives an Assumption Notice then, subject to clause 4.7, with effect from the Effective Date:

- (a) the Principal (or, if applicable, the Approved Nominee):
  - (i) is entitled to all rights and benefits under the Significant Subcontract to which, but for this deed, the Tunnelling Contractor could have been entitled, at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the Significant Subcontract which, but for this deed, the Tunnelling Contractor would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Significant Subcontract by which, but for this deed, the Tunnelling Contractor would have been bound, at and after the Effective Date; and
- (b) the Significant Subcontractor:
  - (i) is entitled to all rights and benefits under the Significant Subcontract to which, but for this deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the Significant Subcontract which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Significant Subcontract by which, but for this deed, it would have been bound at and after the Effective Date,

as if the Principal (or, if applicable, the Approved Nominee) had originally been a party to the Significant Subcontract in place of the Tunnelling Contractor.

**4.4 Release by Significant Subcontractor**

Subject to clause 4.7, with effect from the Effective Date, the Significant Subcontractor releases the Tunnelling Contractor from all obligations and liability under or in respect of the Significant Subcontract to be performed or discharged at or after the Effective Date.

**4.5 Release by Tunnelling Contractor**

Subject to clause 4.7, with effect from the Effective Date, the Tunnelling Contractor releases the Significant Subcontractor from all obligations and liability under or in respect of the Significant Subcontract to be performed or discharged at or after the Effective Date.

**4.6 Novation of Significant Subcontract Guarantee**

If the Principal gives an Assumption Notice then, subject to clause 4.7, with effect from the Effective Date:

- (a) the Principal and the Significant Subcontractor Guarantor novate the Significant Subcontract Guarantee so that the Principal (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Significant Subcontract Guarantee;

- (b) any reference in the Significant Subcontract Guarantee to the Tunnelling Contractor will be read as a reference to the Principal (or, if applicable, the Approved Nominee); and
- (c) the Significant Subcontractor Guarantor will guarantee for the benefit of the Principal (or, if applicable, the Approved Nominee) all of the obligations of the Significant Subcontractor in accordance with the Significant Subcontract Guarantee.

#### 4.7 **Obligations and liability prior to the Effective Date**

Nothing in this deed releases:

- (a) the Tunnelling Contractor or the Significant Subcontractor from any obligation or liability under the Significant Subcontract; or
- (b) the Tunnelling Contractor, the Significant Subcontractor or the Significant Subcontractor Guarantor from any obligation or liability under the Significant Subcontract Guarantee,

arising or accruing before the Effective Date and the Principal (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this deed.

#### 4.8 **Amendments to the Significant Subcontract**

- (a) With effect from the Effective Date, the terms of the Significant Subcontract will be deemed to be amended as required to reflect the fact that the Central Tunnelling Works D&C Deed is at an end, and that the Significant Subcontract must operate independently of the Central Tunnelling Works D&C Deed, on the basis that:
  - (i) the rights and obligations that the Principal (or, if applicable, the Approved Nominee) will assume under the Significant Subcontract from the Effective Date will be equivalent to those that the Tunnelling Contractor would have had under the Significant Subcontract had the Central Tunnelling Works D&C Deed not been terminated;
  - (ii) the rights and obligations that the Significant Subcontractor will assume under the Significant Subcontract from the Effective Date will be equivalent to those that the Significant Subcontractor would have had under the Significant Subcontract had the Central Tunnelling Works D&C Deed not been terminated;
  - (iii) any provisions of the Central Tunnelling Works D&C Deed that are incorporated by reference into the Significant Subcontract prior to the Effective Date are incorporated in the Significant Subcontract from the Effective Date; and
  - (iv) without affecting the generality of this clause 4.8, clauses **[to be inserted]** of the Significant Subcontract will be deleted. **[Note: This clause will be completed as required to capture any applicable clauses of the Significant Subcontract.]**
- (b) If at or after the Effective Date, there is a dispute between the Principal (or, if applicable, the Approved Nominee) and the Significant Subcontractor as to how the terms of the Significant Subcontract are deemed to have been amended pursuant to clause 4.8, then upon either party serving a written notice to this effect on the other, the dispute will be determined as if clause 25 of the Central Tunnelling Works D&C Deed and the Dispute Procedure were incorporated in this deed but as if:
  - (i) references in those clauses to "the Tunnelling Contractor" were references to "the Significant Subcontractor";

- (ii) references to "the parties" were references to "the Principal and the Significant Subcontractor";
- (iii) references to a "party" were references to "the Principal" or "the Significant Subcontractor" (as appropriate);
- (iv) references in those clauses to "Dispute" were references to this dispute; and
- (v) the dispute had been appropriately referred to the IDAR Panel.

**4.9 Approved Nominee**

- (a) The Principal's nominee may be named as a party to the Significant Subcontract in substitution for the Tunnelling Contractor if the Principal's nominee is an Approved Nominee.
- (b) The Significant Subcontractor must:
  - (i) notify the Principal as to whether the Principal's nominee is an Approved Nominee, on or before the date falling 20 Business Days after the date of receipt of all information reasonably required by the Significant Subcontractor (including information as to the nominee's financial standing) to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision as to whether the Principal's nominee is an Approved Nominee; and
  - (iii) enter into a side deed with the Principal and the Approved Nominee on substantially the same terms as this deed.

**4.10 Unconditional undertakings**

***[Note: This clause will be amended as required to reflect the security arrangements under the relevant Significant Subcontract.]***

If the Principal gives an Assumption Notice then, as from the Effective Date, the Tunnelling Contractor must (with the support of the Significant Subcontractor to effect this provision) either:

- (a) procure the novation or assignment to the Principal (or, if applicable, the Approved Nominee) of any unconditional undertakings held by the Tunnelling Contractor under the Significant Subcontract prior to the Effective Date; or
- (b) procure the issue to the Principal (or, if applicable, the Approved Nominee) of replacement unconditional undertakings for the same undrawn value and on the same terms as the unconditional undertakings held by the Tunnelling Contractor under the Significant Subcontract immediately prior to the Effective Date.

**4.11 Other documents under the Significant Subcontract**

***[Note: This clause will be included as required in order to deal with the assignment or novation of relevant ancillary documents.]***

If the Principal gives an Assumption Notice then, as from the Effective Date, the Tunnelling Contractor must procure the novation or assignment to the Principal (or, if applicable, the Approved Nominee) of:

- (a) ***[Insert as required]***.



**5. AMENDMENTS TO SIGNIFICANT SUBCONTRACT AND SIGNIFICANT SUBCONTRACT GUARANTEE**

- (a) The Tunnelling Contractor and the Significant Subcontractor must not agree to or permit any modification, variation, waiver or amendment to the terms of the Significant Subcontract to the extent it may impact the rights or increase the liabilities or obligations of the Principal (including if the Principal were to subsequently exercise its rights under clause 4) without the prior consent of the Principal (which must not be unreasonably withheld or delayed).
- (b) The Tunnelling Contractor and the Significant Subcontractor Guarantor must not agree to or permit any modification, variation, waiver or amendment to the terms of the Significant Subcontract Guarantee to the extent it may impact the rights or increase the liabilities or obligations of the Principal (including if the Principal were to subsequently exercise its rights under clause 4) without the prior consent of the Principal (which must not be unreasonably withheld or delayed).

**6. RESTRICTION ON DEALINGS**

- (a) The Tunnelling Contractor and the Significant Subcontractor must not transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the Significant Subcontract without the prior consent of the Principal (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrance holder enters into a deed in which it agrees to be bound by the terms of this deed.
- (b) The Tunnelling Contractor and the Significant Subcontractor Guarantor must not transfer, assign, mortgage, charge, encumber or otherwise deal with their interest in the Significant Subcontract Guarantee without the prior consent of the Principal (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrance holder enters into a deed in which it agrees to be bound by the terms of this deed.

**7. ACKNOWLEDGEMENT BY TUNNELLING CONTRACTOR AND SIGNIFICANT SUBCONTRACTOR**

- (a) The Tunnelling Contractor and the Significant Subcontractor consent to the terms of this deed and will cooperate in the implementation of this deed.
- (b) The rights and benefits conferred upon the Principal by this deed are in addition to any other rights and remedies it may have against the Significant Subcontractor, including without prejudice to the generality of the foregoing, any remedies in negligence.

**8. GENERAL REPRESENTATIONS AND WARRANTIES**

The Significant Subcontractor makes the following representations and warranties to the Principal each of which is true and correct on the date of this deed:

- (a) it has power to enter into this deed and the Significant Subcontract and comply with its obligations under this deed and the Significant Subcontract;
- (b) this deed, the Significant Subcontract and the transactions under them do not contravene its constituent documents or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers or its directors to be exceeded;
- (c) it has in full force and effect the authorisations necessary for it to enter into this deed, the Significant Subcontract and the transactions under them;

- (d) its obligations under this deed and the Significant Subcontract are valid and binding and are enforceable against it in accordance with the terms of this deed and the Significant Subcontract;
- (e) it is not in breach of any law or obligation affecting it or its assets in a way which may result in a material adverse effect on the business or financial condition;
- (f) there is no pending or threatened proceeding affecting either it or any of its assets that would affect the validity or enforceability of this deed, the Significant Subcontract, the ability to fulfil its commitments under this deed or the Significant Subcontract in any material respect, or that could result in any material adverse change in the business or financial condition;
- (g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable; and
- (h) it will give all notices it is required to give under this deed as and when it is required to do so.

**9. AMENDMENT AND ASSIGNMENT**

**9.1 Amendment**

This deed may only be varied by a formal deed or agreement executed by or on behalf of each party.

**9.2 No assignment by the Significant Subcontractor**

The Significant Subcontractor and the Significant Subcontractor Guarantor must not assign, novate, mortgage, charge, transfer or otherwise deal with its rights, interest or benefits under this deed without the prior written consent of the Principal (which may be given or be withheld in the Principal's absolute discretion).

**9.3 Transfer of functions or Public Transport Agency assets**

- (a) The parties acknowledge that:
  - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
  - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
  - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good

faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.

- (c) The Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 9.3.
- (d) For the purposes of this clause 9.3 "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

**10. NOTICES**

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time, the Principal may notify the parties that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's notice will set out:
  - (i) the name of the relevant PDCS;
  - (ii) the commencement date for use of the PDCS;
  - (iii) any password, login details or similar information required for the parties to use the PDCS;
  - (iv) any requirements for specific notices (e.g. notices of claims);
  - (v) the name and contact details of any additional person which the Principal nominates for receipt of Notices under this deed; and
  - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time, the Principal may notify the parties that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's notice will state that such Notices will be given in accordance with clause 10(d).
- (d) Each Notice must:
  - (i) before the date referred to in clause 10(b)(ii) or where clause 10(c) applies:
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the Tunnelling Contractor, to the Principal, the Significant Subcontractor and the Significant Subcontractor Guarantor and any additional person notified by the Principal in writing;
      - (bb) in the case of a Notice from the Significant Subcontractor, to the Principal, the Tunnelling Contractor and the Significant Subcontractor Guarantor and any additional person notified by the Principal in writing;

- (cc) in the case of a Notice from the Significant Subcontractor Guarantor, to the Principal, the Tunnelling Contractor and the Significant Subcontractor and any additional person notified by the Principal in writing; or
- (dd) in the case of a Notice from the Principal, to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor;
- (C) comply with any requirements for specific notices (e.g. notices of claims) specified by the Principal in writing;
- (D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

**Principal**

Address: [insert]

Email: [insert]

Attention: [insert]

(any Notice in relation to a claim or a dispute must also be addressed to the Deputy General Counsel Sydney Metro and sent to [insert])

**Tunnelling Contractor**

Address: [insert]

Attention: [insert]

**Significant Subcontractor**

Address: [insert]

Attention: [insert]

**Significant Subcontractor Guarantor**

Address: [insert]

Attention: [insert]

- (ii) on and from the commencement date for use of the PDCS referred to in clause 10(b)(ii) (other than where clause 10(c) or clause 10(d)(i) applies):
  - (A) be sent through the PDCS in accordance with the requirements set out in clause 10(f):
    - (aa) in the case of a Notice from the Tunnelling Contractor, be addressed to the Principal, the Significant Subcontractor and the Significant Subcontractor Guarantor and any additional person

- notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv);
- (bb) in the case of a Notice from the Significant Subcontractor, be addressed to the Principal, the Tunnelling Contractor and the Significant Subcontractor Guarantor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv);
  - (cc) in the case of a Notice from the Significant Subcontractor Guarantor, be addressed to the Principal, the Significant Subcontractor and the Tunnelling Contractor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv); and
  - (dd) in the case of a Notice from the Principal, be addressed to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor; or
- (iii) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 10(d)(i).
- (e) A communication is taken to be received by the addressee:
- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
  - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
  - (iii) (in the case of international post) 7 Business Days after the date of posting;
  - (iv) (in the case of delivery by hand) on delivery; and
  - (v) (in the case of email sent to the Principal):
    - (A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
    - (B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.
- (f) 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 10(f)(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.
- (g) Each of the Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor must:
  - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
  - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
  - (iii) ensure all relevant personnel attend all necessary training required by the Principal;
  - (iv) advise the Principal of which personnel require access to the PDCS;
  - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
  - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 10(d)(iii) to the Principal through the PDCS.
- (h) The Principal has no liability for any Losses the Tunnelling Contractor, Significant Subcontractor or Significant Subcontractor Guarantor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and neither the Tunnelling Contractor, the Significant Subcontractor nor the Significant Subcontractor Guarantor will be entitled to make, and the Principal will not be liable upon, any claim against the Principal arising out of or in connection with such access to or use of the PDCS or any failure of the PDCS.

**11. GST**

- (a) **(Interpretation)**
  - (i) Except where the context suggests otherwise, terms used in this clause 11 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
  - (ii) 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 11.
  - (iii) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 11.
  - (iv) 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.
- (b) **(Reimbursements)** Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any

input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (c) **(Additional amount of GST payable)** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
  - (i) 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
  - (ii) 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 11(c)(i).
- (d) **(Variation of GST)**
  - (i) If the GST Amount recovered by the Supplier from the Recipient under clause 11(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
  - (ii) 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 within 20 Business Days after the Supplier becomes aware of the adjustment event.
- (e) **(No merger)** This clause 11 will not merge on completion or termination of this deed.

## 12. GENERAL

### 12.1 Governing Law and jurisdiction

- (a) This deed is governed by and must be constructed according to the Law in force in New South Wales.
- (b) Each party irrevocably and unconditionally 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 that may be brought at any time relating to this deed.

### 12.2 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 another breach of that term or of a breach of any other term of this deed.

**12.3 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.

**12.4 Consents**

A consent required under this deed 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 this deed expressly provides otherwise.

**12.5 No representations or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

**12.6 Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable Law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

**12.7 Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

**12.8 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

**12.9 Independent subcontractor**

The Significant Subcontractor is an independent contractor performing this deed. This deed does not create any agency, partnership, joint venture or other joint relationship between the parties.

**12.10 Joint and several liability**

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party, then unless otherwise specified in this deed:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and



- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

**12.11 Conflicts of interests**

- (a) The Significant Subcontractor warrants that, to the best of its knowledge having made diligent enquiries, no conflict of interest exists in the performance of its obligations and the Principal's best interests.
- (b) The Significant Subcontractor must use reasonable endeavours to prevent any actions or conditions which may conflict with the Principal's best interests. In the event that such a conflict arises, the Significant Subcontractor shall immediately notify the Principal and take such steps as the Principal reasonably requires to resolve or otherwise deal with the conflict.

**12.12 Third party rights**

No one other than a party to this deed shall have any right to enforce any of its terms.

**12.13 Survival**

- (a) Clause 1 (*Interpretation*), clause 4.8 (*Amendments to the Significant Subcontract*), clause 10 (*Notices*), clause 11 (*GST*) and clause 12 (*General*) and the representations and warranties given by the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor under this deed and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination and any rights arising on termination, survive the expiry or termination of this deed.
- (b) This deed survives the expiry or termination of any or all of the following documents:
  - (i) the Central Tunnelling Works D&C Deed; and
  - (ii) the Significant Subcontract.

**12.14 Costs of negotiating this deed**

Except as otherwise provided in this deed, each party agrees to pay its own costs of and incidental to the negotiation and execution of this deed.

**EXECUTED** as a deed.

**[Note: Execution blocks to be confirmed prior to execution.]**

**EXECUTED** by **[NAME OF TUNNELLING CONTRACTOR]** ABN **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **[NAME OF SIGNIFICANT SUBCONTRACTOR]** ABN **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **[NAME OF SIGNIFICANT SUBCONTRACTOR GUARANTOR]** ABN **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**SIGNED** for **SYDNEY METRO** ABN 12  
354 063 515 by its duly authorised  
delegate, in the presence of:

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**SCHEDULE A16**

**Nominated Subcontracts**

**(Clauses 1.1 and 5.4)**

The documents referred to in the "Form of Nominated Subcontract" column for items 1 to 4 in the table below are included in Schedule F1 as electronic files.

<b>Item</b>	<b>Nominated Subcontractor Work</b>	<b>Nominated Subcontractor</b>	<b>Form of Nominated Subcontract</b>
1.	Videography, filming and editing services		Professional Services Contract reference PSC No. 00013/11009
2.	Time lapse photos		Professional Services Contract reference PSC No. 00013/10454s
3.	3D animation and stills		Professional Services Contract reference PSC No. 0013/10221
4.	Photography services		Professional Services Contract reference PSC No. 00013/10882
5.	Archaeology consultant services		The form of Nominated Subcontract is to be agreed between the Tunnelling Contractor and the Archaeology Consultant.

**SCHEDULE A17**

**IDAR Panel Agreement**

**(Clauses 1.1 and 25)**

**This Agreement** is made at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2021  
between the following parties:

1. **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)  
  
and
2. **Members of the IDAR Panel** (collectively **Members**), namely:
  - (a) [*insert name of Chair*] of [*insert address of Chair*] (**Chair**);
  - (b) [*insert name of Member*] of [*insert address of Member*];
  - (c) [*insert name of Member*] of [*insert address of Member*]; and
  - (d) [*insert name of Member*] of [*insert address of Member*],  
and
3. (From each Accession Date) each person who accedes to this agreement under clause 4, being the person identified as the "Acceding Party" in an Accession Deed Poll (**Project Contractor**).

**RECITALS:**

- A. The Principal is procuring Sydney Metro West on behalf of the NSW government and the people of New South Wales. Sydney Metro West will involve multiple packages of works to be undertaken by contractors engaged by the Principal and by developers above or adjacent to the new Metro stations under separate contracts (**Project Contracts**).
- B. The Principal will progressively engage or enter into contracts with Project Contractors. As each Project Contract is entered into, the Project Contractor will execute an Accession Deed Poll substantially in the form set out in Schedule 1 and will thereby accede to the terms of this agreement.
- C. The Project Contracts provide for a dispute resolution process through the establishment and the operation of an IDAR Panel to assist in avoiding and resolving Disputes under the Project Contracts.
- D. The role of the IDAR Panel is to, among other things, encourage the Principal and the relevant Project Contractor to avoid Disputes and proactively resolve Disputes by providing a non-binding forum for the parties to establish their positions and narrow the issues in Dispute.
- E. The parties acknowledge the benefits of a project-wide IDAR Panel include an improvement in the quality of assessments and determinations as a result of the IDAR Panel's familiarity with complex interfaces across multiple integrated works packages.

- F. This agreement sets out the rights, obligations and duties of the Members, the Principal and (from each Accession Date) the Project Contractors in relation to the IDAR Panel and the Disputes (the **Agreement**).

**THIS AGREEMENT PROVIDES:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

**Accession Date** has the same meaning as given to the term "Effective Date" in the Accession Deed Poll, being the date from which each Project Contractor accedes to this Agreement.

**Accession Deed Poll** means the deed poll in substantially the same form as Schedule 1 (with relevant details duly completed) which is to be executed by each Project Contractor in accordance with clause 4.

**Continuing Parties** has the same meaning as given to the term "Continuing Parties" in the Accession Deed Poll, being those parties to the Agreement at the Accession Date, excluding the Principal.

**Fees and Disbursements Letter** means each of the following:

- (a) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement;
- (b) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert named of Member**] dated on or about the date of this agreement;
- (c) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement; and
- (d) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement.

**Members** means the [**insert number of Members**] individuals appointed to the IDAR Panel in accordance with this Agreement.

**Project Briefing** has the meaning given in clause 6.

**Project Contract** has the meaning given in Recital A.

**Project Meeting** means each of the meetings that a Member of the IDAR Panel or a representative of the IDAR Panel (as applicable) may attend in accordance with clause 7.

1.2 **Terms defined in the Project Contracts**

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project Contracts.

**1.3 Interpretation**

In this Agreement 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 Agreement 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 Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement 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 Agreement;
- (i) a reference to:
  - (i) a party or clause is a reference to a party or clause of or to this Agreement; 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 Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

**2. AGREEMENT TO PREVAIL**

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and a Project Contract the terms of this Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date the Principal and the Members sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 16.

**3. FORMATION OF THE IDAR PANEL**

The parties acknowledge that the IDAR Panel:

- (a) has been formed;
- (b) is constituted by the Members;
- (c) will be chaired by that Member designated as Chair or such other Member as the Principal nominates, by written notice to the Members and Project Contractors, from time to time; and
- (d) must perform its obligations and functions under the Project Contracts and this Agreement.

**4. ACCESSION BY PROJECT CONTRACTORS**

- (a) The Principal will ensure that each Project Contractor who enters into a Project Contract that contemplates the involvement of the IDAR Panel in the relevant dispute resolution process accedes to this Agreement.
- (b) The Project Contractors may accede to this Agreement by execution of an Accession Deed Poll without the Continuing Parties' prior approval.
- (c) Upon accession of any Project Contractor to this Agreement as referred to in clause 4(a), the rights and liabilities of the parties to this Agreement will be as set out in this Agreement as amended in accordance with the requirements of the Accession Deed Poll.
- (d) The Principal will provide the Members with a copy of the Accession Deed Poll duly executed by the Project Contractor.

**5. ROLE OF THE IDAR PANEL**

The parties acknowledge and agree that the role of the IDAR Panel is to:

- (a) provide specialised expertise in each Project Contract in order to assist the relevant parties in firstly, attempting to prevent, and if unable to prevent, encouraging the



parties to reach a resolution in determining Disputes under each Project Contract in a timely manner;

- (b) function as an objective, impartial and independent body at all times; and
- (c) utilise knowledge gained from Disputes across each Project Contract in its recommendations and determinations.

**6. PROJECT BRIEFINGS**

- (a) The Principal will:
  - (i) hold meetings with the Members for the purpose of the Principal providing a Sydney Metro West project briefing and update (**Project Briefing**); and
  - (ii) provide the Members at least 10 Business Days' notice to convene a Project Briefing.
- (b) The Members must attend the Project Briefings.
- (c) During the first Project Briefing, the IDAR Panel will establish procedures for the conduct of its routine site visits and other matters (excluding the rules governing the dispute resolution process as it relates to the IDAR Panel in each Project Contract) in accordance with the procedures included in Schedule 2 to this Agreement (unless otherwise agreed by the parties).

**7. PROJECT MEETINGS**

- (a) The Members may, by invitation of the Principal or the Project Contractor, attend a Management Review Group meeting but will not be members of the Management Review Group.
- (b) A representative of the IDAR Panel nominated by the Principal may attend each meeting of the Integration Coordination Group as a non-member observer, except for those meetings which the members of the Integration Coordination Group unanimously agree that the representative is not required to attend.

**7A. DISPUTE AVOIDANCE PROCESS**

- (a) The Members shall encourage the parties to avoid and minimise the incidence of Disputes by proactively identifying and notifying the parties of any Potential Matter which, based upon the Members' attendance at Project Briefings and Project Meetings and the Members' experience and expertise, they (individually or collectively) consider has the potential to give rise to a Dispute between the parties, provided that a Dispute has not arisen and a Notice of Issue has not been issued with respect to the Potential Matter under the Project Contract.
- (b) As soon as practicable after:
  - (i) a party has notified the IDAR Panel of a Potential Matter under the relevant provisions of the Project Contract; or
  - (ii) a Member has notified the parties of a Potential Matter under clause 7A(a),  
and provided that both parties have elected to proceed with the Dispute Avoidance Process under the Project Contract, in the case of a notice of a Potential Matter:
  - (iii) issued by a party, the Member nominated by the Chair in accordance with clause 9; or

- (iv) issued by a Member, the Member who issued the notice,

the relevant Member and the parties must meet as soon as reasonably practicable and as many times as the parties agree is necessary, in person or via any other agreed method, to discuss the Potential Matter with the aim of attempting to avoid a Dispute arising from or in connection with the Potential Matter.

- (c) During the meetings referred to in clause 7A(b):
  - (i) the parties must provide their understanding and position with respect to the Potential Matter;
  - (ii) the relevant Member must provide its understanding of the Potential Matter based upon the Members' attendance at Project Briefings and Project Meetings and the Members' experience and expertise;
  - (iii) at the request of either party, the relevant Member must provide their opinion, advice or recommended direction with respect to the future resolution of the Potential Matter, with any conditions or limitations that the Member considers reasonably necessary (with any such opinion, advice or recommendation to be non-binding unless agreed to in writing by the parties); and
  - (iv) the parties and the member may agree upon any additional steps to be taken in the Dispute Avoidance Process for that Potential Matter.
- (d) The Dispute Avoidance Process is purely consultative and advisory, and no advice, view, direction, statement or comment by the relevant Member as part of the Dispute Avoidance Process shall be binding on the parties unless and until it is incorporated into a written agreement between the parties for the purpose of avoiding the occurrence of a Dispute.
- (e) Unless otherwise agreed between the parties, the Member who participates in the Dispute Avoidance Process with respect to a Potential Matter shall be precluded from acting as a Nominated Member of the IDAR Panel in the resolution of any Dispute arising out of or in connection with the Potential Matter.

## **8. MEMBER'S OBLIGATIONS**

### **8.1 Impartiality**

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the IDAR Panel.

### **8.2 Independence**

Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 8 of this Agreement.

### **8.3 General Duties**

Each Member agrees to carry out his or her obligations as a Member of the IDAR Panel:

- (a) with due care and diligence;
- (b) in compliance with the Project Contracts and this Agreement; and
- (c) in compliance with all applicable Laws.

**9. SELECTION OF NOMINATED MEMBER**

- (a) Where a Dispute has been notified to the IDAR Panel by Notice of Issue under the relevant provisions of the Project Contract, and:
  - (i) the parties to the Dispute are unable to agree on a Nominated Member; or
  - (ii) a Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,the Chair must nominate a Nominated Member within a further 2 Business Days.
- (b) Where a Potential Matter has been notified to the IDAR Panel by a party in accordance with the Project Contract, the Chair must nominate a suitable Member within 2 Business Days to perform the role of the relevant Member in the Dispute Avoidance Process for that Potential Matter.
- (c) If a Member nominated under clause 9(a) or clause 9(b) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further Nominated Member, or relevant Member, within a further 2 Business Days.
- (d) The Chair may not nominate itself as the Nominated Member, but may nominate itself as the relevant Member for the Dispute Avoidance Process in respect of a Potential Matter.
- (e) If a replacement member appointed under clause 9(b) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 9(b) will be reapplied until there are no Members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.

**10. SELECTION OF EXPERT**

Where a Dispute is referred to expert determination by a Notice of Dispute under the relevant provisions of the Project Contract, the parties acknowledge and agree that:

- (a) unless otherwise agreed in writing by the parties, the expert determination shall be conducted by:
  - (i) a person agreed between the parties; or
  - (ii) if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of one party giving the other party a Notice of Dispute, by a person nominated by the Australian Centre for International Commercial Arbitration,who is not a Member and accepts appointment as Expert; and
- (b) the Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by the relevant Project Contract.

**11. COSTS AND FEES**

**11.1 Monthly retainer**

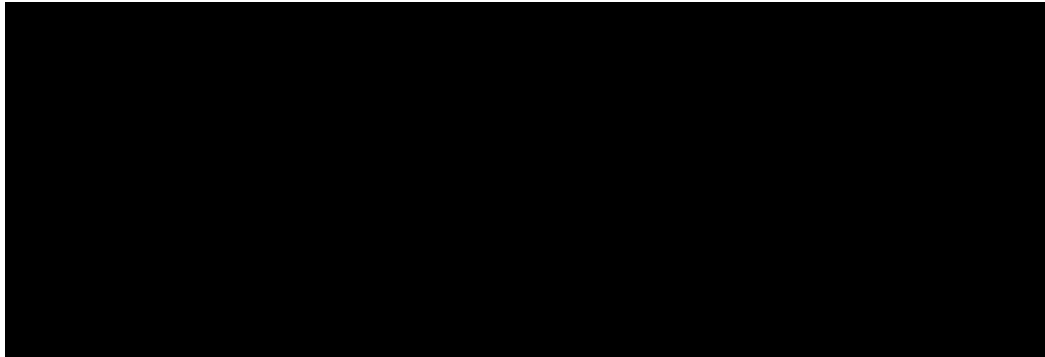
- (a) The Principal is liable for the payment of the Members' monthly retainer set out in the Fees and Disbursements Letter for each Member.

- (b) The Principal is liable for the payment of the Members' attendance at each Project Meeting as set out in the Fees and Disbursements Letter for each Member.

**11.2 Agreed rates for work and services**

With respect to each Dispute between the Principal and a Project Contractor:

- (a) the Principal and the relevant Project Contractor are jointly and severally liable for the payment of the Members' fees and disbursements (other than those in clause 11.1), calculated in accordance with the Fees and Disbursements Letter for each Member; and
- (b) the Principal and the relevant Project Contractor agree as between themselves that:



**11.3 Payment claims**

All claims for payment by the Members must be submitted and processed in accordance with the payment procedure set out in Schedule 4.

**12. THE PARTIES' COMMITMENTS AND RESPONSIBILITIES**

The Principal and each Project Contractor acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the IDAR Panel;
- (b) comply with the requests and directions of the IDAR Panel; and
- (c) except for its participation in the IDAR Panel's activities as provided in the Project Contracts and this Agreement, not solicit advice or consultation from the IDAR Panel or the Members on matters dealing with the resolution of Disputes which may compromise the IDAR Panel's integrity or compliance with this Agreement.

**13. CONFIDENTIALITY**

In relation to all confidential information disclosed to the IDAR Panel at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute in relation to which the confidential information was disclosed; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

**14. CONFLICT OF INTEREST**

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and each Project Contractor and the other Members.
- (b) The other Members will within 5 Business Days of notification under clause 14(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member will immediately resign from the IDAR Panel and a reappointment will occur pursuant to clause 17.3.

**15. LIABILITY AND INDEMNITY**

**15.1 Liability**

Each Member is not liable to either the Principal or a Project Contractor for any act or omission done in good faith and with due care and diligence.

**15.2 Indemnity**

The Principal and each Project Contractor each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in connection with this Agreement in good faith and with due care and diligence.

**15.3 Due Care and Diligence**

For the purpose of clauses 15.1 and 15.2, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

**16. TERMINATION OF AGREEMENT**

- (a) The Principal may terminate this Agreement by written notice to the Members and each Project Contractor.
- (b) Each Project Contractor's rights and obligations under this Agreement will terminate automatically upon termination of the Project Contractor's Project Contract, and the terms of this Agreement will be of no further force and effect.

**17. MEMBERS' TERMINATION**

**17.1 Resignation**

A Member may resign from the IDAR Panel by providing 30 Business Days' written notice to the other Members, the Principal and each Project Contractor.

**17.2 Termination**

A Member's appointment may be terminated at any time by the Principal.

**17.3 Re-Appointment**

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 14(b) or 17.1; or

- (b) the appointment of a Member is terminated by the Principal under clause 17.2;  
then:
- (c) a replacement Member will be appointed by the Principal; and
- (d) the parties, the Members and any new Member must enter into a replacement agreement substantially similar to this Agreement.

**18. GOVERNING LAW**

- (a) This Agreement will be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party 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 Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

**19. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal, the Project Contractors and the Members as that of partners, joint venturers or any other fiduciary relationship.

**20. NOTICES**

- (a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant address, sent by email in the form of a .pdf file as set out below (or to any new address or email address that a party notifies to the others).
  - (i) to the Principal: *[insert email address of Principal]*
  - (ii) to the Members: *[insert email address of Member]*  
*[insert emails address of Member]*  
*[insert email address of Member]*  
*[insert email address of Member]*
  - (iii) to a Project Contractor: To the address or email address set out in the relevant Accession Deed Poll.
- (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 email will be taken to have been received:
  - (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
  - (ii) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

**21. GIVING EFFECT TO THIS AGREEMENT**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

**22. SURVIVAL OF TERMS**

The parties agree that clauses 11 and 15 and this clause 22 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

**23. WAIVER OF RIGHTS**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

**24. OPERATION OF THIS AGREEMENT**

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

**25. AMENDMENT**

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

**26. COUNTERPARTS**

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

**27. ATTORNEYS**

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**EXECUTED** as an agreement.

**Executed by SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and position

**Signed by [insert name of Member]** in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

**Signed by [insert name of Member]** in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

**Signed by [insert name of Member]** in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature



\_\_\_\_\_  
Name of Witness in full

**Signed** by [*insert name of Member*] in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

SCHEDULE 1

Form of Accession Deed Poll

THIS DEED POLL is made on [2021]

BY: [Insert name] ABN [number] whose registered office is at [address] (**Acceding Party**)

IN FAVOUR OF: (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)  
and

(2) **Members of the IDAR Panel** (collectively **Members**), namely:

- (a) [*insert name of Member*] of [*insert address of Member*];
  - (b) [*insert name of Member*] of [*insert address of Member*];
  - (c) [*insert name of Member*] of [*insert address of Member*]; and
  - (d) [*insert name of Member*] of [*insert address of Member*]
- and

(3) each person who has acceded to the IDAR Panel Agreement,  
(together (2) and (3) being the **Continuing Parties**).

RECITALS:

- (A) This deed poll is supplemental to the agreement titled "IDAR Panel Agreement" between the Principal and the Continuing Parties dated [*insert*] as amended or acceded to from time to time (**IDAR Panel Agreement**).
- (B) The Principal and the Continuing Parties are each party to the IDAR Panel Agreement.
- (C) The Principal has entered into the [*insert name of relevant Project Contract*] with the Acceding Party.
- (D) Each of the Continuing Parties has acknowledged and agreed that the Acceding Party will accede to the IDAR Panel Agreement.
- (E) By this deed poll, the Acceding Party accedes to the IDAR Panel Agreement and the IDAR Panel Agreement is amended on the terms set out in this deed poll.

THE ACCEDING PARTY COVENANTS AS FOLLOWS:

1. INTERPRETATION

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the IDAR Panel Agreement. The following definitions apply in this deed poll:

**Effective Date** means the date of execution of this deed poll.

**[Insert name of relevant Project Contract]** means the contract entered into between the Principal and the Acceding Party titled **[insert title]** and dated **[insert date]**.

**2. PRIMARY COVENANTS**

- (a) The Acceding Party:
  - (i) confirms that it has been supplied with a copy of the IDAR Panel Agreement; and
  - (ii) covenants with each of the Principal and the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of its obligations under the IDAR Panel Agreement.
- (b) For the purposes of the IDAR Panel Agreement, the Acceding Party's representative is as set out below:

*[Insert details of Acceding Party's representative]*
- (c) For the purposes of clause 20 of the IDAR Panel Agreement, the Acceding Party's notice address details are as set out below:

Address:  
Email:  
For the attention of:
- (d) Clause 18 of the IDAR Panel Agreement applies to this deed poll.

**EXECUTED** as a deed poll.

**[Note: Appropriate execution block to be inserted by the Acceding Party prior to execution.]**

**SCHEDULE 2**

**IDAR Panel General Operating Procedures**

**1. General**

- 1.1 Each Project Contractor will furnish to each of the Members all documents necessary for the IDAR Panel to perform its functions, including copies of all Project Contract documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Members of Disputes and other matters.
- 1.2 The Members must make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.3 Communications between the parties and the IDAR Panel for the purpose of attempting to prevent or resolve Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under the relevant Project Contract.

**2. Frequency of regular meetings and site visits**

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the IDAR Panel properly informed of the project circumstances will generally be agreed between the IDAR Panel and the parties to each Project Contract.
- 2.2 In the case of a failure to agree between the IDAR Panel and the parties to a Project Contract, the Principal will schedule the meetings and visits as it sees fit.

**3. Agenda for regular meetings**

- 3.1 IDAR Panel meetings held for the purposes of briefing and updating the Members on performance and progress of the work under each Project Contract and issues or potential issues between the relevant parties will be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- 3.2 At the conclusion of the meeting, the IDAR Panel will generally inspect the Project Works and the Construction Site in the company of representatives of both parties to the relevant Project Contract. Any areas of the Project Works or Construction Site that are or may be the subject of any potential Dispute will be pointed out by the parties to the relevant Project Contract.

**4. Minutes of meetings**

- 4.1 The Chair will prepare minutes of the regular meetings of the IDAR Panel and these draft minutes will be circulated to the parties of the relevant Project Contract and the Members for comments, additions and corrections.
- 4.2 In accordance with clause 3.1 above, the minutes of IDAR Panel meetings held will be marked "in-confidence, without prejudice".
- 4.3 Minutes as amended will be adopted by the relevant parties and the Members at the next meeting.

**5. Communications**

- 5.1 All communications by the parties to the IDAR Panel outside the IDAR Panel meetings should be directed in writing to the Chair and copied to the other Members and to the other party of the relevant Project Contract. All communications by the Members to the parties should

be addressed to the Principal's Representative and the relevant Project Contractor's representative.

**6. Representation**

- 6.1 The parties must each ensure they are represented at IDAR Panel meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties must inform the Chair of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

**SCHEDULE 3**

**Not used**



**SCHEDULE 4**

**Payment procedure**

**1. Payment claims**

At the end of each month in which the Members perform services under this Agreement with respect to each Dispute between the Principal and a Project Contractor, each Member must submit to both the Principal and the relevant Project Contractor an account for payment on account of the Member's fees and disbursements:

- (a) setting out the value of the services performed in accordance with this Agreement during the relevant month;
- (b) calculated in accordance with the Fees and Disbursements Letter for that Member; and
- (c) in such form and with such details and supporting documentation as the Principal and the relevant Project Contractor may reasonably require (including details of the time expended by the Member in performing the services).

**2. Payment and notification of disputed amounts**

- (a) Within 20 Business Days after receipt of the account for the month (submitted in accordance with section 1 of this Schedule 4):
  - (i) the Principal must pay:
    - (A) the Member's monthly retainer set out in the Fees and Disbursements Letter for that Member; and
    - (B) the Member's attendance at each Project Meeting as set out in the Fees and Disbursements Letter for the Member; and
  - (ii) the Principal and the relevant Project Contractor must each pay each Member █████ of the amount claimed by each Member for services performed (other than those in (i) above) during the month which is not disputed.
- (b) If the Principal or the relevant Project Contractor disagrees with the amount included in an account submitted by a Member then, within 10 Business Days of receipt of the relevant Member's account, the Principal or the relevant Project Contractor (as applicable) must notify the relevant Member in writing of the reasons for any amount which is disputed (with a copy to the Principal and the relevant Project Contractor).
- (c) If the Principal, the relevant Project Contractor and the relevant Member do not resolve the matter within 10 Business Days after the issue of the Principal's or the relevant Project Contractor's written notice, the Principal and the relevant Project Contractor (acting reasonably) must jointly determine the dispute. Any determination by the Principal and the relevant Project Contractor in respect of the amount payable must be given effect to by the Principal, the relevant Project Contractor and the relevant Member unless and until it is reversed or overturned in any subsequent court proceedings.

**3. Goods and services tax**

- (a) A party must pay GST on a taxable supply made to it under this Agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.

- (b) Terms used in this section 3 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).



**FORM OF FEES AND DISBURSEMENTS LETTER**

[Date]

[Member details]

Dear [Member]

**Fees and Disbursements for IDAR Panel**

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [Member] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

<b>Item</b>	<b>Work scope/description</b>	<b>Fee arrangement</b>	<b>Fee (excl. GST)</b>
1.	Preparation for, and attendance at, one Project Briefing per month		
2.	[Preparation for, and attendance at Project Meetings]		
3.	All other work carried out in connection with this Agreement, other work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

**Payment terms**

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

**Counterparts**

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

**Acceptance**

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

**Executed** by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of [insert position]

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Name of [insert position]

**Signed** by [**Member**] in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Witness in full

**SCHEDULE A18**  
**Deed of Novation**  
**(Schedule A5)**

**Date:**

**Parties:** [ ] ABN [ ] of [ ]  
(Retiring Party)

[ ] ABN [ ] of [ ]  
(Continuing Party)

[ ] ABN [ ] of [ ]  
(Substitute Party)

**Recitals**

- (A) The Retiring Party and the Continuing Party are parties to the Contract.
- (B) The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- (C) The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

**THIS DEED PROVIDES**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Continuing Party Retained Liabilities** means the undischarged obligations and Liability of the Continuing Party arising prior to the Effective Date.

**Contract** means the agreement between the Retiring Party and the Continuing Party [described in Schedule 1 **or insert description here**].

**Contract Guarantees** means the guarantees or bonds 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/or, where required by the Contract, by a Related Entity of that party.

**Effective Date** means [the date of this deed or the date agreed by the parties from which the novation will be effective].

**GST** means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth.).

**Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

**Related Entity** has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

**Retiring Party Retained Liabilities** means the undischarged obligations and Liability of the Retiring Party arising prior to the Effective Date.

## 2. **INTERPRETATION**

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) and unless the context indicates a contrary intention:
  - (c) an obligation or a liability assumed by, or a right conferred on, 2 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 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;
  - (f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
  - (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (i) 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;
  - (j) 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;
  - (k) "includes" in any form is not a word of limitation; and
  - (l) a reference to "\$" or "dollar" is to Australian currency.

## 3. **NOVATION**

### 3.1 **Novation**

From the Effective Date:

- (a) the parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract; and

- (b) any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

**3.2 Assumptions of rights and obligations**

- (a) From the Effective Date the Substitute Party will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
- (b) From the Effective Date the Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

**3.3 Release by Continuing Party**

From the Effective Date:

- (a) the Continuing Party releases the Retiring Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, claim and demand it has, or but for this clause would have had against the Retiring Party under or in respect of the Contract,except for the Retiring Party Retained Liabilities,
- (b) subject to clause 3.3(c), this release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract; and
- (c) the Continuing Party releases the Substitute Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract,

in respect of the Retiring Party Retained Liabilities.

**3.4 Release by Retiring Party**

- (a) From the Effective Date 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 respect of the Contract,except for the Continuing Party Retained Liabilities.
- (b) Nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract from the Effective Date.

**3.5 Insurance**

From the Effective Date:

- (a) the Substitute Party must have in place insurances which replace the insurances required to be 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 Substitute Party is named in place of the Retiring Party as required by the Contract.

**3.6 Replacement of Guarantees**

From the Effective Date the Substitute Party must have in place guarantees which replace the Contract Guarantees on similar terms in favour of the Continuing Party.

**4. OVERRIDING EFFECT**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

**5. REPRESENTATIONS AND WARRANTIES**

**5.1 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.

**5.2 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.

**5.3 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.

**6. DUTIES, COSTS AND EXPENSES**

**6.1 Stamp Duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

**6.2 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.

**6.3 GST**

- (a) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (b) If GST is payable on a supply made under this deed by an entity (**Supplier**), the party providing the consideration for that supply must, in addition to any other amounts payable under any provision of this deed, pay an additional amount equal to the GST payable by the Supplier on that supply. The additional amount must be paid, and the Supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause 6.3 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999*.

**7. GENERAL**

**7.1 Governing Law**

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

**7.2 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 7.2(a).

**7.3 Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

**7.4 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.

**7.5 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.

**7.6 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.

**7.7 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.

**7.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.



**Schedule 1[if needed]**

**Contract**  
(clause 1.1)

.....  
.....



**Executed** as a deed.

**Executed by [Retiring Party and ABN]** by or  
in the presence of:

---

Signature of Director

---

Name of Director in full

|

---

Signature of Secretary/other Director

---

Name of Secretary/other Director in full

**Executed by [Continuing Party and ABN]**  
by or in the presence of:

---

Signature of Director

---

Name of Director in full

|

---

Signature of Secretary/other Director

---

Name of Secretary/other Director in full

**Executed by [Substitute Party and ABN] by  
or in the presence of:**



\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full



**SCHEDULE A19**

**Modification to the Expert Determination Rules**

**(Clause 25.5)**

Pursuant to Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (**Rules**), the parties agree to modify the application of the Rules as follows:

Modifications are underlined or ~~struck-out~~.

**RULE 1 Definitions**

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

"IDAR Panel Agreement" means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the Members, the Tunnelling Contractor and any other party that accedes to the agreement from time to time.

"Member" has the meaning given in the IDAR Panel Agreement.

"Relevant Proportionate Liability Legislation" means:

- (a) Part IV of the *Civil Liability Act 2002* (NSW);
- (b) Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) Part 1F of the *Civil Liability Act 2002* (WA);
- (e) the *Proportionate Liability Act 2005* (NT);
- (f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (h) Part 9A of the *Civil Liability Act 2002* (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Relevant Security of Payment Legislation" means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) the *Construction Contracts Act 2004* (WA);
- (e) the *Construction Contracts (Security of Payment) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (h) the *Building and Construction Industry Security of Payment Act 2009* (Tas); and

- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Tunnelling Contract" mean the deed titled "Sydney Metro West, Central Tunnelling Works Design and Construction Deed" (Contract No: [7]) between the Principal and the Tunnelling Contractor dated [insert].

**RULE 2 Appointment of the Expert**

1. Unless otherwise agreed in writing by the parties, the Process shall be conducted:
  - a. by a person agreed between the parties; or
  - b. if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of Party A giving Party B a Notice of Dispute, by a person nominated by the Australian Centre for International Commercial Arbitration (ACICA)Resolution Institute,

who is not a Member and accepts appointment as Expert.

2. Rule 2.2 is deleted in its entirety.
3. [no modification]
4. [no modification]
5. [no modification]

**RULE 3 Agreement to be bound**

1. [no modification]
2. Rule 3.2 is deleted in its entirety.

**RULE 5 Role of the Expert**

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the Tunnelling Contract, the requirements of procedural fairness and according to law.
2. [no modification]
3. [no modification]
4. (a)The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.
  - (b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.
  - (c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the parties immediately.
  - (d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c), unless the parties agree otherwise.

5. [no modification]

**RULE 9 Conduct of the Process**

1. [no modification]
2. [no modification]
3. ~~If The parties agree in writing (in the Agreement or otherwise),~~ that the procedure in Schedule B ~~shall~~ will apply.
4. The rules of evidence do not apply to the Process.

**RULE 10 The Expert's Determination**

1. ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9,~~ The Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the Tunnelling Contract.
2. [no modification]
3. ~~Subject to any rule of law or equity or written agreement of the parties to the contrary,~~ Unless otherwise agreed by the parties, the Expert's determination:
  - a. may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;
  - b. must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;
  - c. may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and
  - d. to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.
4. [no modification]

**RULE 12 Waiver of Right to Object**

Rule 12 is deleted in its entirety.

**RULE 14 Extension of Limitation Period**

Rule 14 is deleted in its entirety.

**SCHEDULE B**

1. The reference to "twenty one (21) days" is replaced by "ten Business Days".
2. The reference to "twenty one (21) days" is replaced by "twenty Business Days".
3. The reference to "twenty one (21) days" is replaced by "five Business Days".
4. [no modification]
5. [no modification]
6. [no modification]

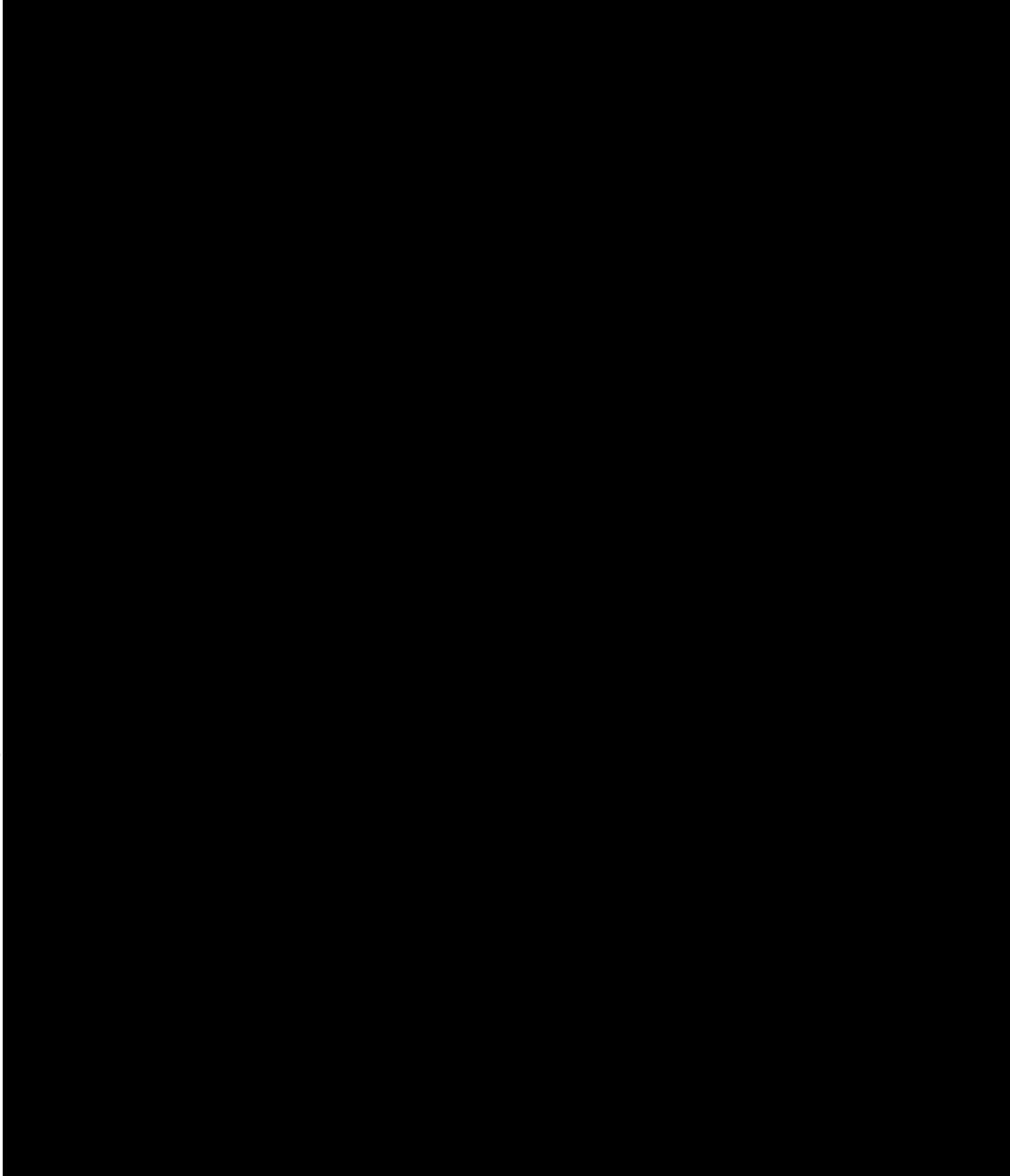
7. [no modification]
8. [no modification]



**SCHEDULE A20**

**Deed of Disclaimer**

**(Clauses 1.1, 12.8 and 12.9)**

































**SCHEDULE A21**

**Information Documents**

**(Clauses 1.1 and 12.9)**

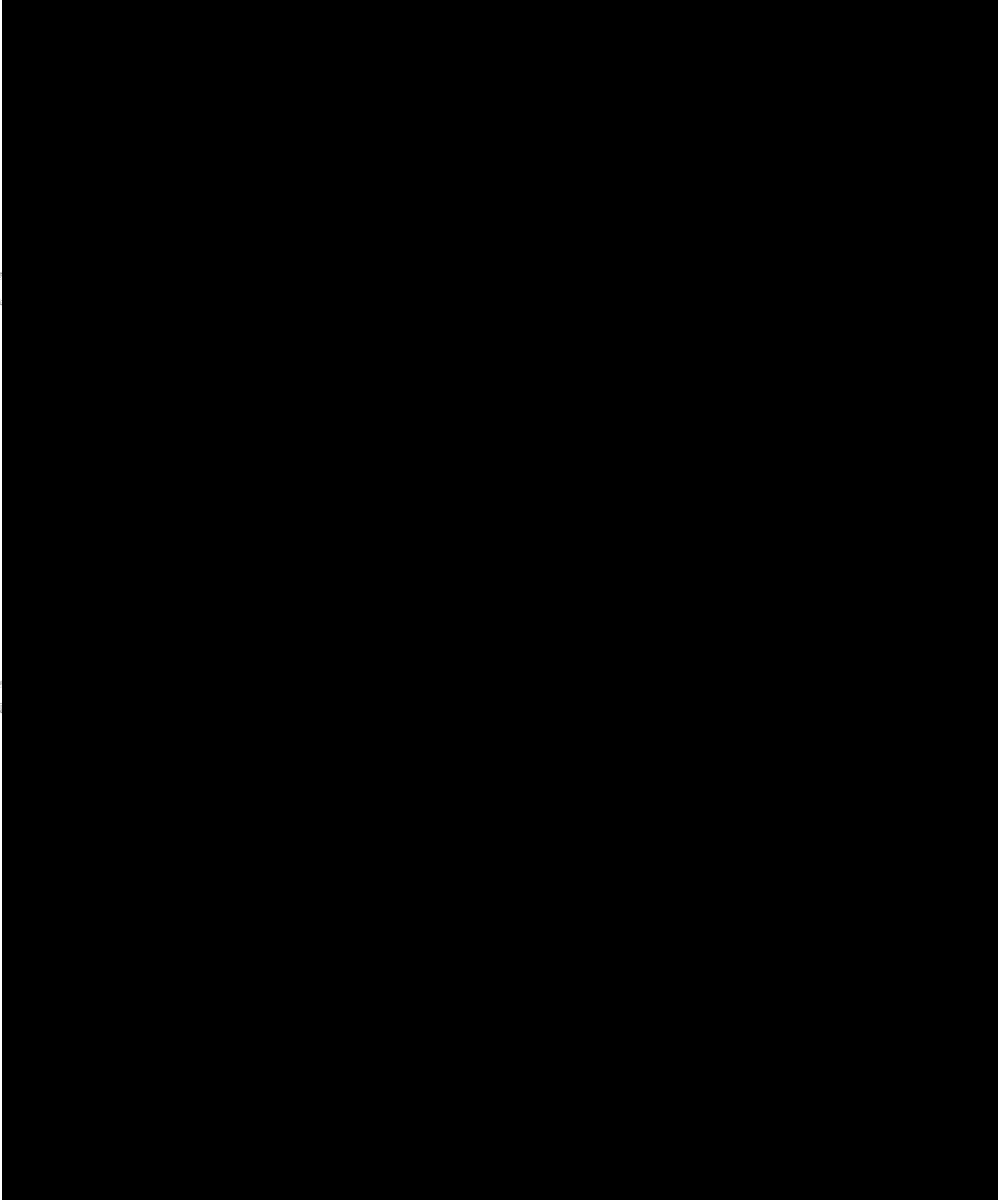
This Schedule A21 consists of the documents and information set out in the document entitled "Schedule A21 (Information Documents) Register", which is included in Schedule F1 as an electronic file.

The documents and information set out in the document entitled "Schedule A21 (Information Documents) Register" are Information Documents for the purposes of paragraph (a) of the definition of "Information Document", and are included in Schedule F1 as electronic files for reference only.

**SCHEDULE A22**

**Geotechnical Reports**

**(Clauses 1.1 and 12.10)**



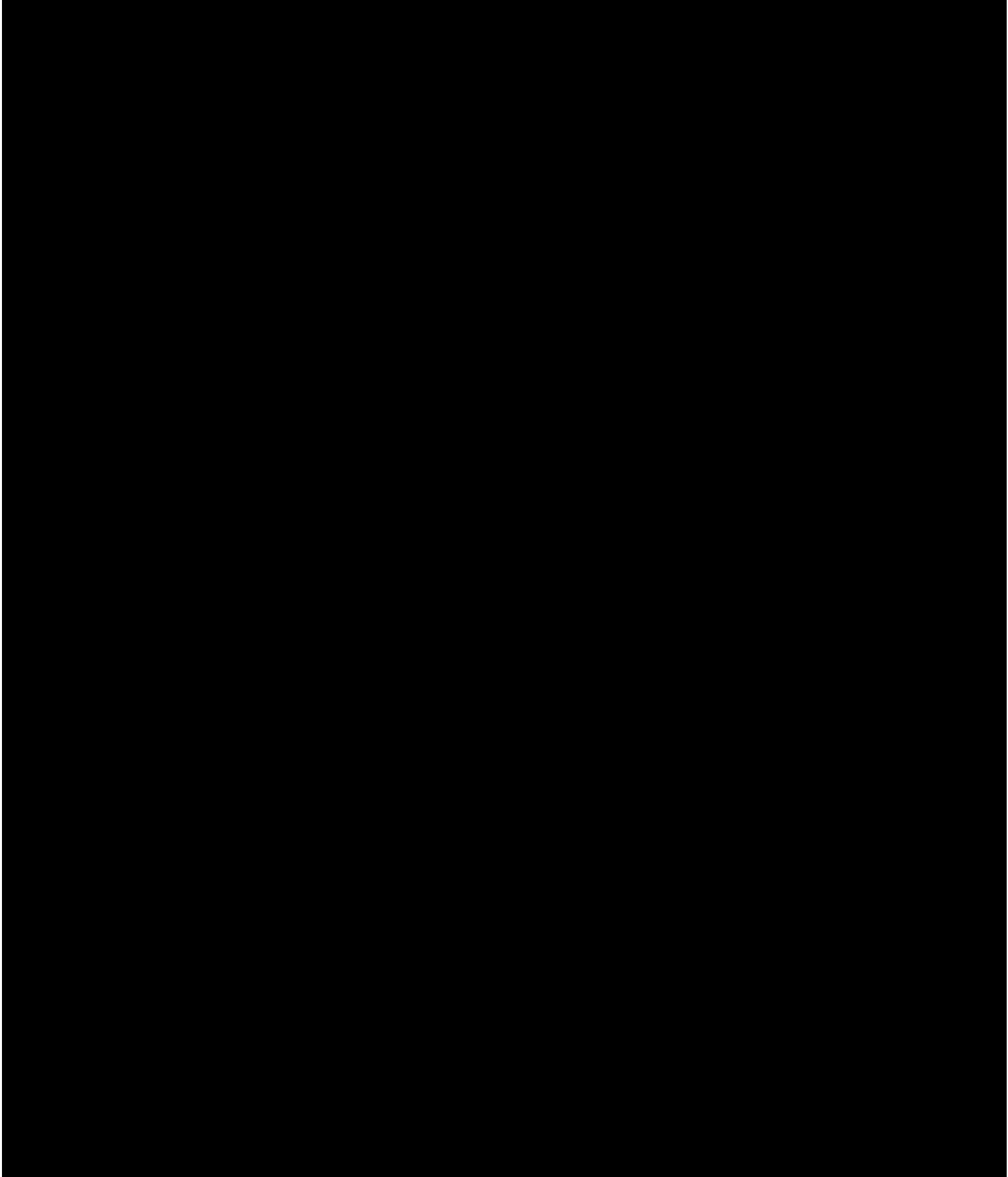




**SCHEDULE A23**

**Overall D&C Program**

**(Clauses 1.1 and 19.2)**



















































































































































































































**SCHEDULE A24**

**Proof Engineer Requirements**

**(Clauses 1.1 and 13.3)**

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

- (a) demonstrated experience in the design of temporary works similar to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification);
- (b) 12 years' experience (including 5 years' experience in the last 10 years) and proven ability in structural analysis and design of temporary works similar to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification);
- (c) Quality Management System 3rd party certified to AS/NZS ISO 9001;
- (d) range of suitable structural analysis and CAD software;
- (e) be a Chartered Engineer registered with the Institute of Engineers Australia, and with qualifications admitting to MIEAust and National Professional Engineers Register;
- (f) knowledge of Australian Standards applicable to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification); and
- (g) at least 5 years' experience in undertaking the checking of temporary works design as a proof engineer in the past 10 years.

**SCHEDULE A25**

**Special Events**

**(Clauses 1.1 and 4.9)**

<b>Expected Month / Event</b>	<b>Location</b>
<b>JANUARY</b>	
ATP Cup	Sydney Olympic Park
Movies in the Boulevard	Sydney Olympic Park
Annual Australia Day event	Sydney Olympic Park
Australia Day	Burwood, Five Dock
<b>FEBRUARY</b>	
Mardi Gras Fair Day	Various
NBL Semi Finals	Sydney Olympic Park
NSW Country Swimming Championships	Sydney Olympic Park
<b>MARCH</b>	
ICC Women's T20 World Cup	Sydney Olympic Park
Sydney Royal Easter Show	Sydney Olympic Park
<b>APRIL</b>	
Sydney Royal Easter Show	Sydney Olympic Park
ANZAC Day	Burwood, Five Dock Park
China Fun Lunar Carnival	Burwood
Easter in the Park	Burwood
<b>MAY</b>	
National Servicemen's Commemorative Service	Burwood
Heritage Festival	Balmain/Rozelle
<b>JUNE</b>	
World's Biggest Netball Clinic	Sydney Olympic Park
Cooks River Fun Run	Strathfield
<b>JULY</b>	
<b>AUGUST</b>	
Super Nova Comic Con & Gaming	Sydney Olympic Park
WWE Live (wrestling)	Sydney Olympic Park
Sandakan Remembrance Service	Burwood
Ferragosto (Italian Festival)	Five Dock
Iron Cove Bay Run	Haberfield/Iron Cove/Lilyfield
<b>SEPTEMBER</b>	
Strathfield Spring Festival	Strathfield
<b>OCTOBER</b>	
Spring Cycle	North Sydney-Sydney Olympic Park
NRL Grand Final	Sydney Olympic Park / SCG
General Practice Conference & Exhibition (GPCE)	Sydney Olympic Park
Spring Cycle	North Sydney-Sydney Olympic Park
Moon Festival Carnival	Burwood
Burwood Festival	Burwood
<b>NOVEMBER</b>	
Garage Sale Trail	Sydney wide (national event)
Classics at Callan Park	Callan Park/Iron Cove
Jazz in the Park	Gladstone Park Balmain (The Bays)
<b>DECEMBER</b>	



<b>Expected Month / Event</b>	<b>Location</b>
Soccer: W-League and A-League	Sydney Olympic Park
Christmas in the Square	Sydney Olympic Park
Carols in the Park	Burwood
Carols by Candlelight (Inner West Council)	Various locations – Rozelle/ Balmain/Ashfield/Leichhardt
<b>WEEKLY</b>	
Farmers Markets – Orange Grove Public School	Lilyfield
Balmain Markets – St Andrew Church	Balmain
Concord Oval - used by West Harbour Rugby Club and the Inter Lions Soccer Club and as the training ground and administration centre for the Wests Tigers.	Concord Oval (Burwood North)

**SCHEDULE A26**

**Procedure for submission and review of Design Documentation and Network Assurance Submissions**

**(Clauses 1.1, 13.3, 14, 16.1, 16.6 and 25.5)**

**1. PREPARATION AND SUBMISSION OF DESIGN DOCUMENTATION**

- (a) The Tunnelling Contractor must:
- (i) prepare the Design Documentation in the following three Design Stages:
    - (A) Design Stage 1;
    - (B) Design Stage 2; and
    - (C) Design Stage 3,or as otherwise contemplated by the Systems Engineering Management Plan;
  - (ii) ensure that the Design Documentation submitted at each Design Stage:
    - (A) enables the Principal's Representative and, if applicable the Independent Certifier, to confirm the matters contemplated by section 8 of the General Specification at each applicable Design Stage;
    - (B) includes a design report which contains the details, information and deliverables required by section 5 of the Particular Specification for each applicable Design Stage;
    - (C) references relevant clauses within this deed; and
    - (D) otherwise complies with the requirements of the Tunnelling Specification;
  - (iii) submit Design Documentation in design packages in accordance with the Tunnelling Specification and the Systems Engineering Management Plan;
  - (iv) as a precondition to submitting each design package deliver a design presentation workshop to the Principal's Representative, the Independent Certifier and the Principal's nominees, at least 5 Business Days prior to its submission;
  - (v) submit all Design Documentation (other than Third Party Agreement Design Documentation and Design Documentation for Temporary Works) to both the Principal's Representative and the Independent Certifier:
    - (A) in accordance with the Tunnelling Specification, the Systems Engineering Management Plan and the Tunnelling Contractor's Program; and
    - (B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and, if applicable, the Independent Certifier, a reasonable opportunity to review the submitted Design Documentation;

- (vi) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement (with a copy to the Principal's Representative) at the times required under the relevant Third Party Agreement;
  - (vii) submit all Design Documentation for Category 1, 2 and 3 Temporary Works (as defined in section 3.2.2 of the Particular Specification) to the Principal's Representative in accordance with the requirements of section 3.2 of the Particular Specification at Design Stage 3 or when it has otherwise reached the final stage of design development;
  - (viii) otherwise submit Design Documentation for Temporary Works (regardless of category) whenever requested by the Principal's Representative and within 5 Business Days of the Principal's Representative's request;
  - (ix) ensure the Design Stage 3 Design Documentation submitted is accurate, complete, co-ordinated with the other Design Documentation and at a level of detail which is sufficient to permit the Principal's Representative and, if applicable, the Independent Certifier to determine whether:
    - (A) the Design Documentation complies with this deed; and
    - (B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed; and
  - (x) provide any further information required by the Principal's Representative and the Independent Certifier in relation to the Design Documentation; and
  - (xi) submit any amendment to the Design Documentation to the Principal's Representative (in which case the requirements of this Schedule A26 will re-apply).
- (b) Within 1 Business Day of receiving any Design Stage 3 Design Documentation (other than Design Documentation for Temporary Works) from the Tunnelling Contractor, the Principal must provide to the Independent Certifier for review and certification the Design Stage 3 Design Documentation (other than Design Documentation for Temporary Works) to be reviewed and certified by the Independent Certifier.
- (c) The Principal's Representative may, at any time (including after the Principal's Representative has "not rejected" or the Independent Certifier has certified the Design Documentation pursuant to this Schedule A26), direct the Tunnelling Contractor to make amendments to any Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this deed and, if it does so, clause 5.3(c) of this Schedule A26 will apply.
- (d) All Design Documentation submitted by the Tunnelling Contractor must be in English and in metric units.

**2. CERTIFICATES TO BE PROVIDED BY THE TUNNELLING CONTRACTOR**

- (a) With all Design Documentation submitted for Design Stage 1 and Design Stage 2, the Tunnelling Contractor must deliver a certificate in the form of Schedule B3 from each of:
  - (i) the Tunnelling Contractor; and
  - (ii) the Subcontractor that prepared the Design Documentation.

- (b) With all Design Documentation submitted for Design Stage 3, the Tunnelling Contractor must:
  - (i) deliver a certificate in the form of Schedule B4 from each of:
    - (A) the Tunnelling Contractor; and
    - (B) the Subcontractors that prepared the Design Documentation;
  - (ii) where the Design Documentation relates to any Proof Engineered Temporary Works, be accompanied by a certificate in the form of Schedule B17 from the Proof Engineer; and
  - (iii) where the Design Documentation relates to any element of the Demolition Temporary Works, be accompanied by certificates:
    - (A) in the form of Schedule B25 from a Demolition Temporary Works Independent Checker; and
    - (B) in the form of Schedule B24 from a Demolition Structural Engineer.
- (c) The Tunnelling Contractor must procure and provide all certificates and approvals that are required by Schedules D5, Schedule D6 and Schedule D7.

**3. DISTRIBUTION OF DESIGN DOCUMENTATION**

- (a) The Principal may distribute, or require the Tunnelling Contractor to distribute, the whole or a part of the Design Documentation to third parties including Authorities and Interface Contractors.
- (b) The Principal and, if applicable, the Independent Certifier may, but are not obliged to:
  - (iv) consult with third parties in relation to the Design Documentation; and
  - (v) take into account the comments of third parties in relation to the Design Documentation when responding to the Tunnelling Contractor.
- (c) No comment or instruction from a third party in relation to the design is binding on the Principal, or will have any effect on the obligations of the Tunnelling Contractor under this deed (unless it is also a direction from the Principal's Representative).

**4. DESIGN STAGE 1 AND DESIGN STAGE 2 REVIEW**

**4.1 Principal's Representative review – Design Stage 1 and Design Stage 2**

The Principal's Representative must, within the Principal's Design Review Period, review any Design Stage 1 and Design Stage 2 Design Documentation submitted to it by the Tunnelling Contractor and notify the Tunnelling Contractor in writing of any non-compliance or potential non-compliance with the requirements of this deed with detailed reasons.

**4.2 Non-compliance of Design Stage 1 or Design Stage 2 Design Documentation**

If the Principal's Representative notifies the Tunnelling Contractor under clause 4.1 of this Schedule A26 that any Design Stage 1 or Design Stage 2 Design Documentation contains a non-compliance with the requirements of the deed:

- (a) the Tunnelling Contractor:

- (i) must within 20 Business Days after receiving such notice, give the Principal's Representative a written response:
  - (A) which explains how the Tunnelling Contractor will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved prior to submitting the Design Stage 2 or Design Stage 3 Design Documentation (as applicable); or
  - (B) setting out any matters in relation to which it disagrees with the Principal's Representative, together with its reasons for doing so;
- (ii) must, prior to or when it submits Design Stage 2 or Design Stage 3 Design Documentation (as applicable) that relates to a Design Stage 1 or Design Stage 2 Design Documentation non-compliance (as applicable), give the Principal's Representative a written statement which explains how the non-compliance has been addressed; and
- (iii) is not obliged to respond to any comments received from the Principal's Representative which do not concern a non-compliance; and
- (b) following receipt of a notice under clause 4.2(a)(i)(B) of this Schedule A26, the parties must meet and in good faith seek to resolve the disagreement.

**5. DESIGN STAGE 3 REVIEW**

**5.1 Review of Design Stage 3 Design Documentation**

- (a) The Principal's Representative must, within the Principal's Design Review Period, review the Design Stage 3 Design Documentation submitted to it by the Tunnelling Contractor and either:
  - (i) reject a part or all of the Design Stage 3 Design Documentation (in writing, with detailed reasons, to the Tunnelling Contractor) if the Principal's Representative or, if applicable, the Independent Certifier considers that the Design Stage 3 Design Documentation:
    - (A) does not comply with the requirements of this deed; or
    - (B) is not sufficiently complete to enable the Principal's Representative or, if applicable, the Independent Certifier to form a view on whether it is compliant; or
  - (ii) notify the Tunnelling Contractor in writing that the Design Stage 3 Design Documentation is not rejected, together with:
    - (A) a list of:
      - (aa) any non-compliances which the Principal's Representative and, if applicable, the Independent Certifier considers to be Minor Non-Compliances; and
      - (bb) suggested actions that the Tunnelling Contractor may take to address those Minor Non-Compliances; and
    - (B) in respect of any Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 1(b) of this Schedule A26, and subject to clause 5.1(b) of this Schedule A26, a copy of the certificate issued by the Independent Certificate in the form of Schedule B2 in accordance with the Independent Certifier Deed.

- (b) If, in respect of any Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 1(b) of this Schedule A26, the Independent Certifier has not issued to the Principal's Representative, prior to the Principal's Representative giving notice to the Tunnelling Contractor under clause 5.1(a) of this Schedule A26, either:
- (i) a notice rejecting a part or all of the Design Stage 3 Design Documentation;  
or
  - (ii) a certificate in the form of Schedule B2 in respect of the Design Stage 3 Design Documentation,
- in accordance with the Independent Certifier Deed, then the Principal's Representative must provide the Tunnelling Contractor with a copy of the Independent Certifier's notice or certificate (as applicable) promptly after receiving such notice or certificate (as applicable) from the Independent Certifier.
- (c) For the avoidance of doubt, it is acknowledged and agreed by the parties that the Independent Certifier is not required to review or certify any Design Stage 3 Design Documentation for Temporary Works.

## **5.2 Options following rejection of Design Stage 3 Design Documentation**

Without limiting the Tunnelling Contractor's ability to proceed with construction in accordance with clause 6 of this Schedule A26, if any Design Stage 3 Design Documentation is rejected by the Principal's Representative under clause 5.1(a)(i) of this Schedule A26, the Tunnelling Contractor must either:

- (a) promptly amend the relevant non-compliant element of the Design Stage 3 Design Documentation and re-submit it to the Principal's Representative in accordance with clause 1 of this Schedule A26 and the process in clause 5.1 of this Schedule A26 will be reapplied to the amended element of the Design Stage 3 Design Documentation, except that the reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period; or
- (b) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion or, if applicable, the Independent Certifier's opinion that the Design Stage 3 Design Documentation does not comply with the requirements of this deed together with its reasons for doing so.

## **5.3 Process following notice of disagreement**

- (a) If the Tunnelling Contractor gives a notice under clause 5.2(b) of this Schedule A26, the Principal's Representative may, promptly after receipt of the notice:
  - (i) consult with the Independent Certifier, where appropriate; and
  - (ii) determine and notify the parties as to whether or not the Tunnelling Contractor's notice satisfactorily addresses the Principal's Representative's or, if applicable, the Independent Certifier's concerns, together with its reasons for forming that opinion and:
    - (A) if the Principal's Representative, or, if applicable, the Independent Certifier considers that the Tunnelling Contractor's notice satisfactorily addresses its concerns, provide as part of its notice:
      - (aa) the notice under clause 5.1(a)(ii) of this Schedule A26; and

- (bb) if applicable, a copy of the certificate issued by the Independent Certifier in the form of Schedule B2 in accordance with the Independent Certifier Deed; or
  - (B) if the Principal's Representative does not consider that the Tunnelling Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of the notice under clause 5.2(b) of this Schedule A26. If the disagreement is in relation to a non-compliance identified by the Independent Certifier, the Independent Certifier will also attend the relevant meeting.
- (b) If the parties are unable to resolve a disagreement contemplated by clause 5.3(a)(ii)(B) of this Schedule A26 within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the Tunnelling Contractor may refer the disagreement for resolution in accordance with:
  - (i) the Dispute Procedure; or
  - (ii) if the dispute is in relation to any non-compliance identified by the Independent Certifier, the Independent Certifier Deed.
- (c) If:
  - (i) the relevant parties reach resolution under clause 5.3(b) of this Schedule A26 and the Tunnelling Contractor is required to resubmit any Design Stage 3 Design Documentation;
  - (ii) it is determined in accordance with the Dispute Procedure, or, if applicable, the Independent Certifier Deed that the Tunnelling Contractor is required to resubmit any Design Stage 3 Design Documentation; or
  - (iii) any Design Stage 3 Design Documentation is the subject of a direction by the Principal's Representative under clause 1(c) of this Schedule A26,then:
  - (iv) the Tunnelling Contractor must promptly amend and re-submit the relevant non-compliant element of the Design Stage 3 Design Documentation to the Principal's Representative in accordance with clause 1(a) of this Schedule A26;
  - (v) if applicable, the Principal's Representative will provide the re-submitted Design Stage 3 Design Documentation to the Independent Certifier; and
  - (vi) the process in clause 5.1 of this Schedule A26 will reapply to the amended element of the Design Stage 3 Design Documentation except that the reference to the Principal's Design Review Period under clause 5.1 of this Schedule A26 will be deemed to be a reference to the Principal's Design Re-Review Period.
- (d) If clause 5.3(c) of this Schedule A26 applies, the Tunnelling Contractor must:
  - (i) immediately cease construction of any work that is being carried out in accordance with the relevant non-compliant element(s) of the Design Stage 3 Design Documentation; and

- (iii) promptly rectify any such work at its cost so that it complies with the requirements of this deed.

**5.4 Resolution of Minor Non-Compliances**

If a notice provided by the Principal's Representative under clause 5.1(a)(ii) of this Schedule A26 lists any Minor Non-Compliances:

- (a) the notice may suggest the action that could be taken by the Tunnelling Contractor to address the Minor Non-Compliance; and
- (b) the Tunnelling Contractor must complete the suggested action, or take any other action the Tunnelling Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Stage 3 Design Documentation to comply with this deed, within the timeframe (if any) specified in the Principal's Representative's notice and, in any event, as a pre-condition to Substantial Completion of a Portion.

**6. USE OF DESIGN DOCUMENTATION FOR CONSTRUCTION**

- (a) The Tunnelling Contractor may use for construction purposes Design Stage 3 Design Documentation submitted to the Principal's Representative and, where applicable, the Independent Certifier under clause 1(a) of this Schedule A26 if the following conditions are met:

- (i) the Principal's Representative has issued the Tunnelling Contractor with:
  - (A) a notice under clause 5.1(a)(ii) of this Schedule A26; and
  - (B) in respect of any Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 1(b) of this Schedule A26 and subject to clause 2(b) of this Schedule A26, a copy of the certificate issued by the Independent Certificate in the form of Schedule B2,  
  
or 20 Business Days have passed from submission of the Design Stage 3 Design Documentation in accordance with clause 1(a) of this Schedule A26;
- (ii) the Design Documentation complies with the requirements of any relevant Approval (if applicable);
- (iii) for Design Documentation that relates to Proof Engineered Temporary Works, the Tunnelling Contractor has provided a certificate from the Proof Engineer in the form of Schedule B17 from the Proof Engineer; and
- (iv) for Design Documentation that relates to construction work that requires NAC Gate 3 approval (including Design Documentation for Category 1 Temporary Works (as defined in section 3.2.2 of the Particular Specification)):
  - (A) the Principal's Representative has given a notice under clause 8.2(a) of this Schedule A26; or
  - (B) the Principal's Representative has given a notice under clause 8.2(b) of this Schedule A26 and:
    - (aa) the Tunnelling Contractor has completed all NAC Required Actions set out in the notice; or



(bb) the notice permits the Tunnelling Contractor to proceed with construction provided that the NAC Required Actions are completed in due course.

- (b) The Tunnelling Contractor may use Third Party Agreement Design Documentation for construction purposes if the relevant requirements set out in the relevant Third Party Agreement have been satisfied.
- (c) This clause 6 of this Schedule A26 does not restrict the use for construction purposes of Design Documentation for Temporary Works which are Category 4 Temporary Works (as defined in section 3.2.2 of the Particular Specification).

**7. AMENDMENTS TO AFC DESIGN DOCUMENTATION**

(a) Subject to clause 7(b) of this Schedule A26 and clause 15 of the deed, if the Tunnelling Contractor wishes to amend any AFC Design Documentation prior to the Date of Substantial Completion of a Portion, then:

- (i) the Tunnelling Contractor must submit the amended Design Documentation to the Principal's Representative together with an explanation as to why it is seeking to amend the Final Design Documentation; and
- (ii) clauses 1 to 6 and clause 8 of this Schedule A26 will apply as if the Design Documentation is Design Stage 3 Design Documentation.

(b) The Tunnelling Contractor may, at its own risk, use the amended AFC Design Documentation submitted in accordance with clause 1(a) of this Schedule A26 for construction purposes prior to the expiry of the 20 Business Day period in clause 6(a)(i) of this Schedule A26 if the amendment to the Final Design Documentation:

- (i) is minor;
- (ii) does not adversely impact the Project Works or the Temporary Works; and
- (iii) is necessary to overcome an issue which:
  - (A) prevents or adversely affects the Tunnelling Contractor proceeding with construction; and
  - (B) has arisen or become evident since the AFC Design Documentation was submitted to the Principal's Representative; and
  - (C) the AFC Design Documentation does not relate to a NAS that has been the subject of a notice under clause 8.1(a) or clause 8.2(b) of this Schedule A26.

**8. NETWORK ASSURANCE SUBMISSIONS**

**8.1 Submission of NAS to the NAC**

- (a) The Tunnelling Contractor must:
  - (i) prepare each NAS required for the following NAC control gates:
    - (A) Gate 3 "For Construction";
    - (B) Gate 4 "Ready for Testing"; and
    - (C) Gate 5 "Asset Handover"; and

- (ii) submit each NAS to the Principal's Representative in accordance with the Tunnelling Specification and the Systems Engineering Management Plan.
- (b) Within 2 Business Days commencing on the date on which the Principal's Representative is provided with a NAS by the Tunnelling Contractor under clause 8.1(a) of this Schedule A26, the Principal's Representative must review the NAS and either:
  - (i) reject the NAS (in writing, with reasons, to the Tunnelling Contractor) if the Principal's Representative reasonably considers that the NAS is not sufficiently complete to enable the NAC to form a view on whether the NAS satisfies the NAC Requirements; or
  - (ii) submit that NAS to the NAC in accordance with section 3.2 of the General Specification.
- (c) If the Principal's Representative rejects a NAS under clause 8.1(b)(i) of this Schedule A26, the Tunnelling Contractor must promptly amend the NAS and re-submit it to the Principal's Representative in accordance with clause 8.1(a)(ii) of this Schedule A26 and clause 8.1(b) of this Schedule A26 will reapply.

## 8.2 **NAC Assurance Review**

In respect of each NAS submitted by the Principal's Representative to the NAC under clause 8.1(b)(ii) of this Schedule A26, within 10 Business Days of submitting the NAS to the NAC, the Principal's Representative must give notice to the Tunnelling Contractor:

- (a) that the NAS has been accepted;
- (b) that the NAS has been accepted subject to the satisfaction of a list of actions which the Tunnelling Contractor must take in order for the NAS to satisfy the NAC Requirements (**NAC Required Actions**); or
- (c) that the NAS has been deferred or rejected on the basis that it does not comply with the NAC Requirements.

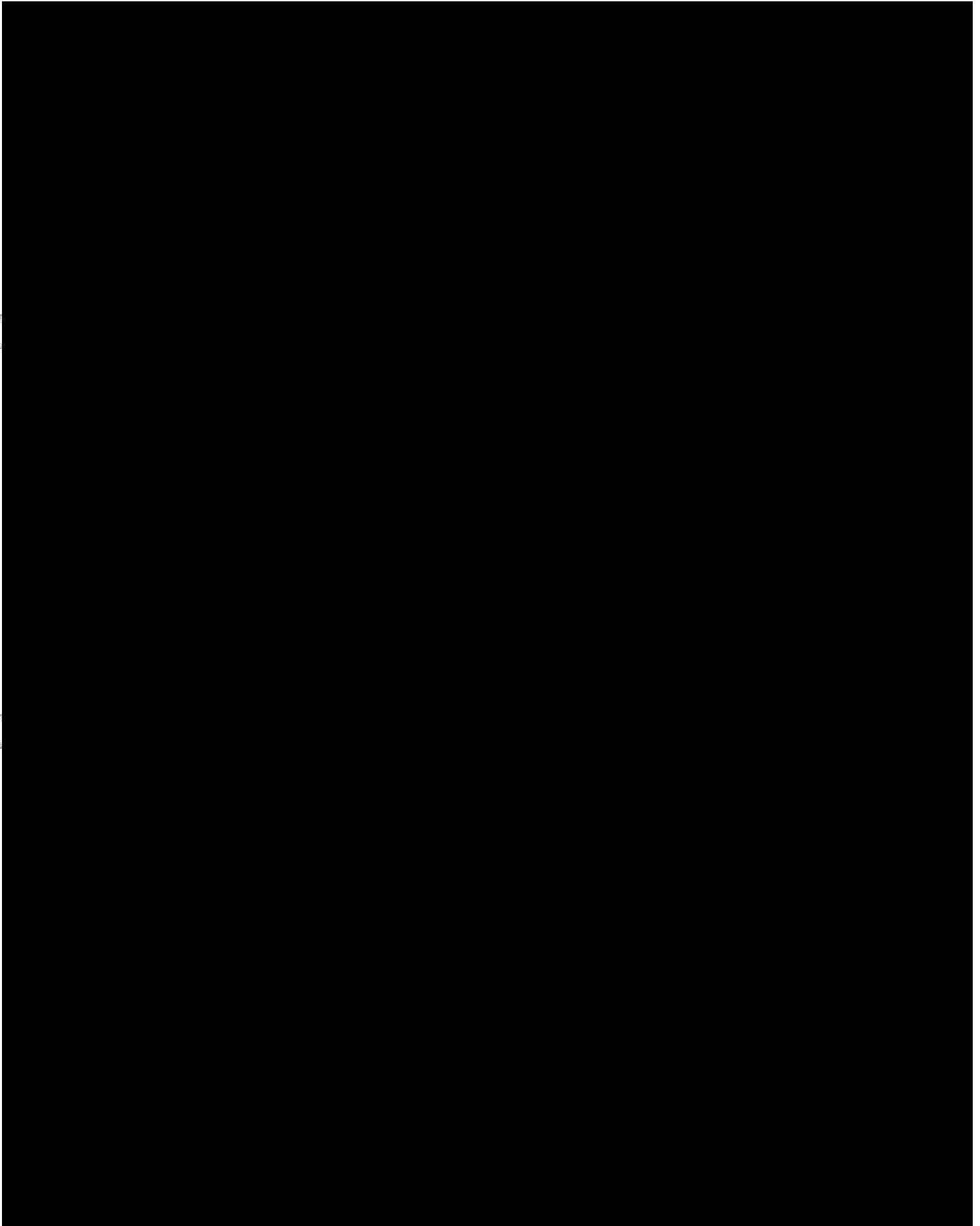
## 8.3 **NAC Required Actions and Deferral or Rejection**

- (a) If the Principal's Representative provides a notice under clause 8.2(b) or clause 8.2(c) of this Schedule A26, the Tunnelling Contractor:
  - (i) must complete the NAC Required Actions (if applicable);
  - (ii) if the notice is under clause 8.2(c) of this Schedule A26, must promptly amend and re-submit the NAS to the Principal's Representative and the process in clause 8.1 and clause 8.2 of this Schedule A26 will reapply; and
  - (iii) may provide the Principal's Representative with a notice which states that the NAS satisfies the NAC Requirements and disputes the need to carry out any of the NAC Required Actions (if applicable), together with its reasons.
- (b) If the Tunnelling Contractor gives a notice under clause 8.3(a)(iii) of this Schedule A26, the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of the notice under clause 8.3(a)(iii) of this Schedule A26.
- (c) If the parties are unable to resolve a disagreement contemplated by clause 8.3(a)(iii) of this Schedule A26 within 10 Business Days of first meeting in relation to the

disagreement, either the Principal or the Tunnelling Contractor may refer the disagreement for resolution in accordance with the Dispute Procedure.



**SCHEDULE A27**

























































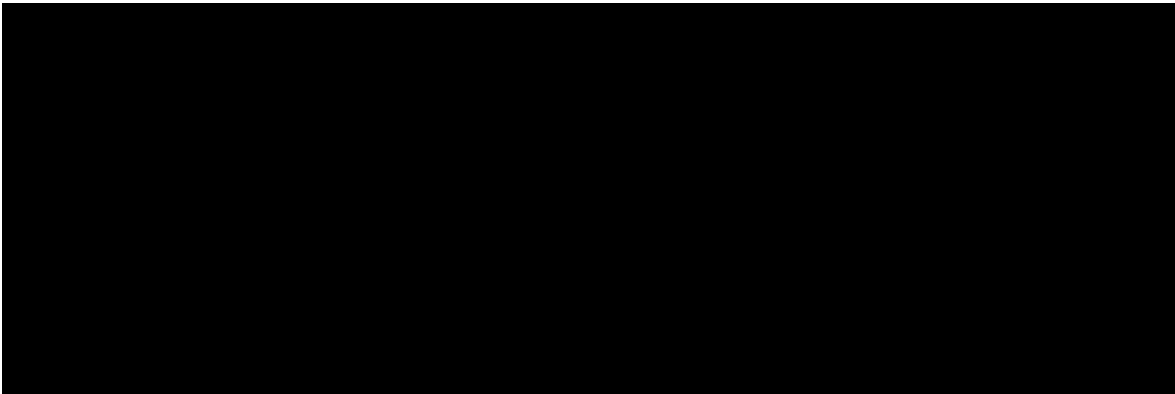


**SCHEDULE A28**

**Track Possessions**

**(Clauses 1.1, 16.18 and 16.19)**

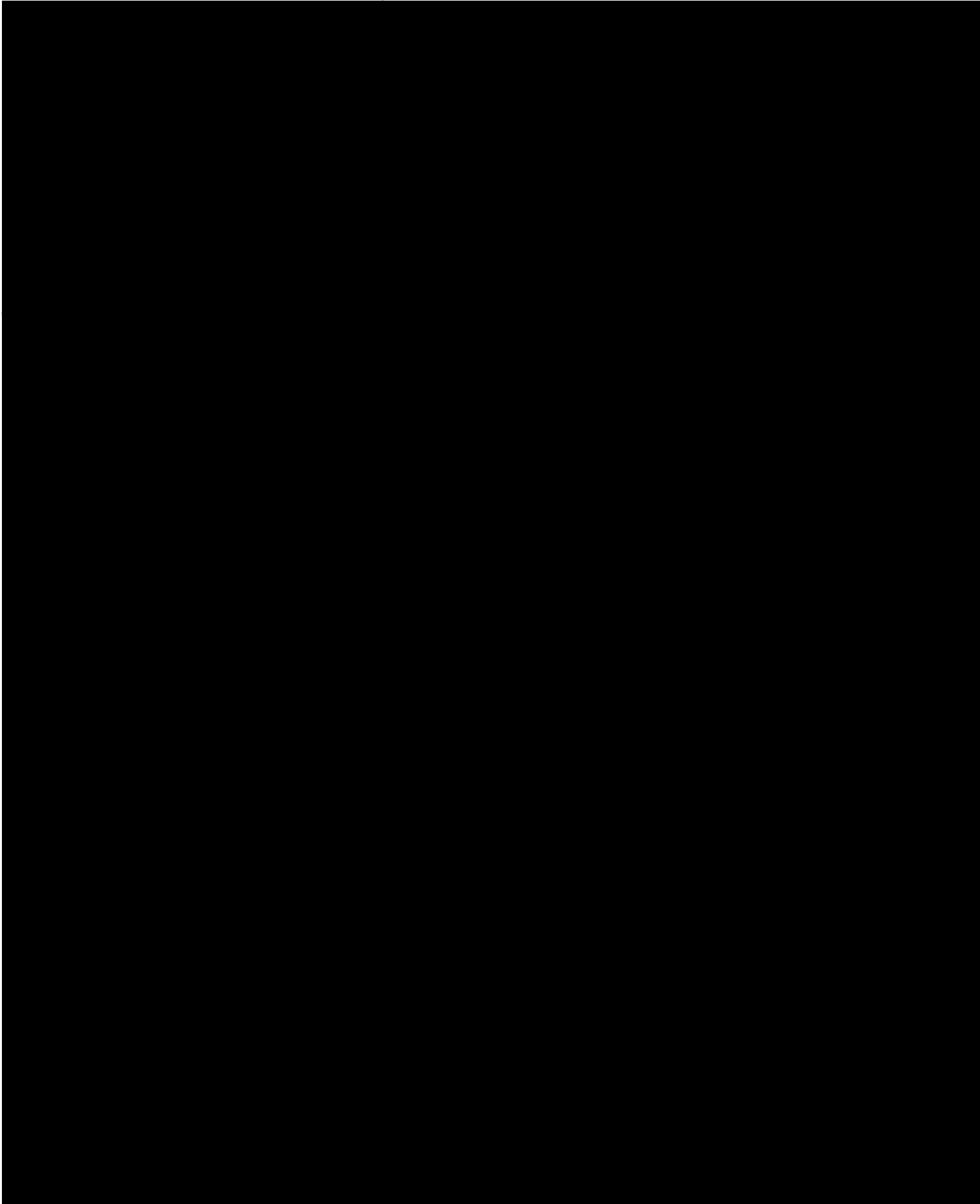
**TABLE 1 – CRITICAL TRACK POSSESSIONS**

A large black rectangular redaction box covering the content of Table 1.

**TABLE 2 – OTHER TRACK POSSESSIONS**

A large black rectangular redaction box covering the content of Table 2.

**SCHEDULE A29**





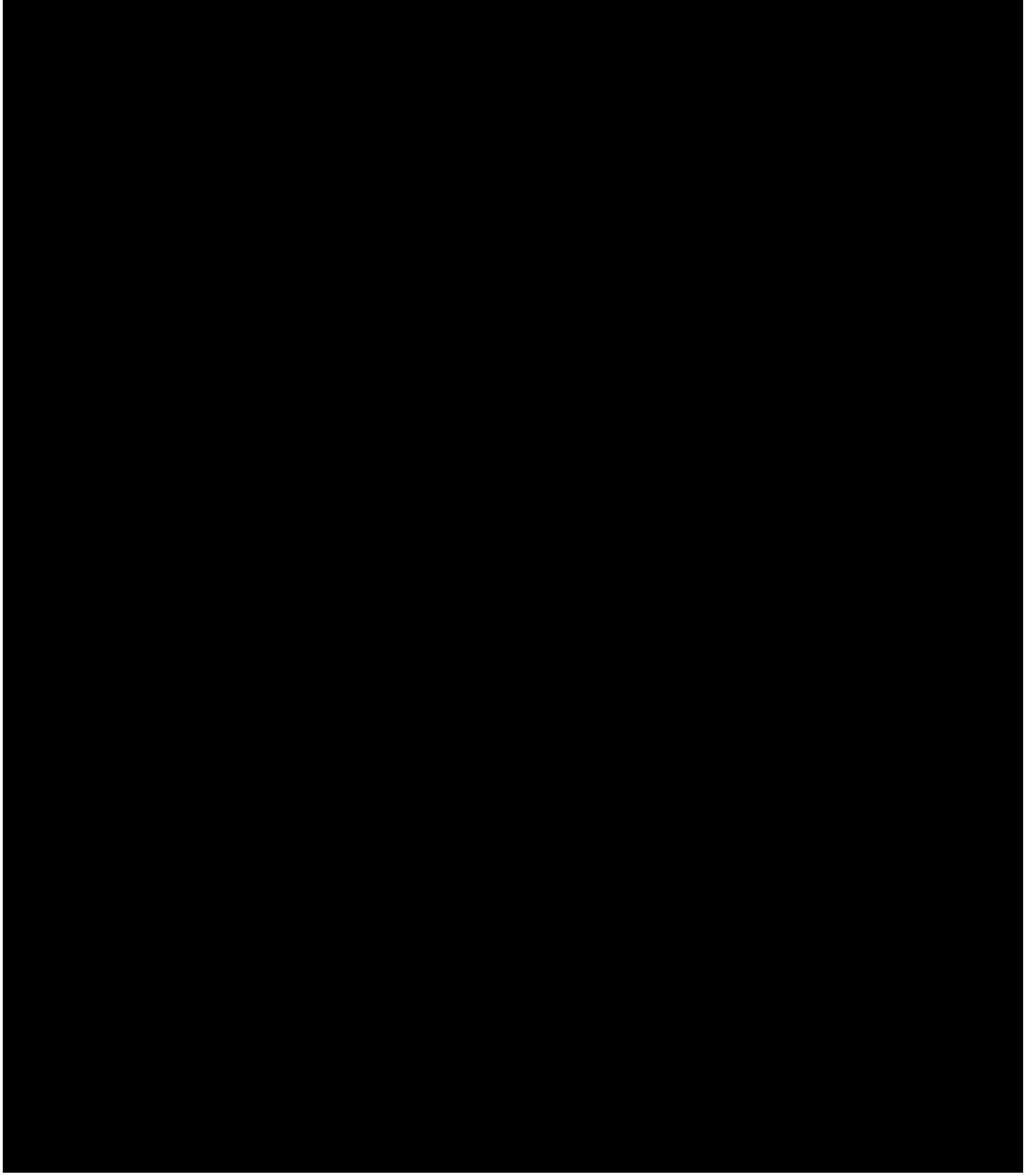




**SCHEDULE A30**

**Initial ECI Design**

**(Clauses 1.1 and 14.8)**































**SCHEDULE A31**

