

Deed of release

Transport for NSW (ABN 18 804 239 602)
Principal

and

CPB Contractors Pty Limited (ABN 98 000 893 667)

Downer EDI Works Pty Ltd (ABN 66 008 709 608)
Contractor

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Liability limited by the Solicitors Scheme, approved under the Professional Standards Act 1994 (NSW) and by our Terms of Engagement

Contents

1. Definitions and interpretation..... 2

 1.1 Definitions 2

 1.2 Interpretation..... 4

2. Agreement 5

3. The Date for Portion Completion, the Date for Construction Completion and the Contract Sum 5

 3.1 The Date for Portion Completion and the Date for Construction Completion..... 5

 3.2 [REDACTED] 6

 3.3 Contract Sum..... 7

 3.4 [REDACTED] 9

 3.5 No entitlement other than for Contract Sum and Delay Costs 9

 3.6 Amended Schedule 1 Contract Particulars 9

4. Release..... 9

 4.1 [REDACTED] 9

 4.2 [REDACTED] 10

 4.3 Covenant not to sue 10

 4.4 [REDACTED] 10

 4.5 [REDACTED] 10

5. Warranty..... 11

6. Other Beneficiaries 12

7. Acknowledgment and affirmation of Contract..... 12

8. Inconsistencies 12

9. Further acts 12

10. Binding effect of this deed 13

11. Bar to proceedings 13

12. Costs 13

13. Disputes 13

14. General..... 13

 14.1 Governing law..... 13

 14.2 Jurisdiction..... 13

 14.3 Entire agreement 14

 14.4 Amendments..... 14

 14.5 Waiver..... 14

 14.6 Indemnities 14

 14.7 Counterparts..... 14

 14.8 Clauses incorporated into this deed 14

15. GST..... 15

Schedule 1 [REDACTED] 18

Schedule 2 [REDACTED] 19

Schedule 3 [REDACTED] 24

Deed of Release

Date

Parties

Transport for NSW, ABN 18 804 239 602, a NSW Government agency constituted under s 3C of the *Transport Administration Act 1988* (NSW) of Level 10, 130 George Street, Parramatta NSW 2150

(Principal)

and

CPB Contractors Pty Limited, ABN 98 000 893 667 of Level 18, 177 Pacific Hwy, North Sydney NSW 2060

Downer EDI Works Pty Ltd (ABN 66 008 709 608) of Level 2, T3, Trinita Business Park, 39 Delhi Road, North Ryde NSW 2113

(together, the **Contractor**)

Recitals

- A. On 19 December 2018, the Principal and the Contractor entered into the Contract pursuant to which the Contractor would design and construct the Infrastructure Works for the Parramatta Light Rail project (**Project**).
- B. Since the execution of the Contract, there have been a number of unresolved Claims and Disputes in relation to the Contract, the Project, the Infrastructure Works and the Contractor's Activities.
- C. Without any admission of liability, the Principal and the Contractor have agreed to settle all Disputes and resolve all Claims (including Claims that might be made after the Effective Date in connection with any fact, matter, circumstance, conduct, representation, act, omission or thing that might occur after the Effective Date, but subject to the exceptions in accordance with this deed) on the basis set out in this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed (including the Recitals):

- (a) any word, expression, reference or term used in this deed which is defined in the Contract and is not specifically defined in this deed shall, unless the context otherwise indicates, have in this deed the same meaning as in the Contract; and
- (b) each term set out below has the meaning given to it in this clause.

[REDACTED]

[REDACTED]

Claim means any action, suit, claim, demand, cause of action or notice, of any nature whatsoever, (whether at law, equity or statute) including:

- (a) in contract whether for breach or for an entitlement under a contract;
- (b) in tort for negligence, negligent misrepresentation or otherwise;
- (c) for contribution, reimbursement or indemnity;
- (d) for unjust enrichment, restitution or quantum meruit; and
- (e) under or for breach of statute including the Australian Consumer Law in Schedule 2 to the Competition and Consumer Act 2010 (Cth) or any equivalent State or Territory legislation,

whether for a Loss or a Remedy, and includes any "Claim" as that term is defined in the Contract.

Contract means the deed entitled "PLR Stage 1 Infrastructure Contract" between the parties dated 19 December 2018, as amended.

Covid-19 means the disease known as "coronavirus disease (COVID-19)" caused by the COVID-19 Virus.

Covid-19 Virus means the SARS-CoV-2 virus (or any future forms or strains of that virus).

Covid-19 Pandemic means the pandemic caused by the COVID-19 Virus.

Effective Date means:

- (a) if counterparts of this deed are not used, the date upon which all parties have signed the deed; or
- (b) if counterparts of this deed are signed, the date upon which the first counterpart is exchanged.

[REDACTED]

Loss means money, cost, expense, loss, damage, damages, interest, penalty, fine, delay, disruption or any other detriment of any kind whatsoever.

Related Body Corporate means, in relation to a body corporate, a body corporate which is related to it within the meaning of section 50 of the Corporations Act 2001 (Cth).

Related Person means in respect of the Principal or the Contractor, any past, present or future officer, employee, or agent, or Related Body Corporate of the Principal or Contractor, as the case may be.

Remedy means any entitlement, right (contractual, equitable or otherwise), damages, restitution, interest, compensation, contribution, indemnity, injunction, specific performance, extension of time or other legal, equitable or statutory remedy of any kind whatsoever.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Subcontractor means a subcontractor, sub-subcontractor and so on right down the contracting chain of the Contractor in performing the Contractor's Activities.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or through a party to this deed;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this

deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to this deed;

- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation;
- (k) a reference to \$ or dollar is a reference to Australian currency; and
- (l) no term or provision of this deed shall be construed against a party on the basis that the deed or the term or provision was put forward or drafted by that party.

2. Agreement

The parties enter into this deed in consideration of the promises contained in it.

3. The Date for Portion Completion, the Date for Construction Completion and the Contract Sum

3.1 The Date for Portion Completion and the Date for Construction Completion

The parties acknowledge and agree that, as at the Effective Date:

- (a) the Date for Construction Completion is:
 - (i) in respect of Section 1.1B of Portion 1A, 3 May 2022;
 - (ii) in respect of Section 1.3 of Portion 1B, 22 April 2022;
 - (iii) in respect of each of Sections 1.1 and 1.2 of Portion 1D, 23 December 2021;
 - (iv) in respect of Section 1.7 of Portion 1D, 31 August 2022;
 - (v) in respect of Section 3.1 of Portion 1D, 23 December 2021;
 - (vi) in respect of Section 3.2 of Portion 1D, 10 June 2022;
 - (vii) in respect of Section 2.1 of Portion 2, 12 December 2019;
 - (viii) in respect of Section 2.2 of Portion 2, 12 October 2021;
 - (ix) in respect of Section 2.3 of Portion 2, 1 August 2022;
 - (x) in respect of Section 2.4 of Portion 2, 10 June 2022;
 - (xi) in respect of Section 2.5 of Portion 2, 15 February 2022;
 - (xii) in respect of each of Sections 1.1A, 1.1C, 1.2 and 1.3 of Portion 1A, 30 September 2022;
 - (xiii) in respect of each of Sections 1.1, 1.2A, 1.2B and 1.2C of Portion 1B, 30 September 2022;
 - (xiv) in respect of each of Sections 1.3, 1.4, 1.5, 1.6, 1.8 and 2.0 of Portion 1D, 30 September 2022; and

- [REDACTED]

- [REDACTED]

- [REDACTED]

3.3 Contract Sum

(a) The parties acknowledge and agree that, as at the Effective Date:

(i) the Contract Sum is \$1,169,999,999 (exclusive of GST), and this amount includes the [REDACTED], all adjustments to the Contract Sum to which the Contractor is entitled under the Contract and the allowances referred to in this deed [REDACTED]

- [REDACTED]

- [REDACTED]

(b) The parties further acknowledge and agree that notwithstanding anything else (including anything in the Contract):

(i) on and from the Effective Date, the Contractor may continue to claim extensions of time in respect of Qualifying Causes of Delay (as amended by clause 3.2(b)) in accordance with the Contract (as amended), however:

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

3.4 [REDACTED]
[REDACTED]

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

3.5 No entitlement other than for Contract Sum and Delay Costs

The parties acknowledge and agree that notwithstanding anything else (including anything in the Contract) the Contractor is not, and will not be, entitled to payment of any:

- (a) Incentive; and
- (b) Utilities Share of Savings,

after the Effective Date.

3.6 Amended Schedule 1 Contract Particulars

On and from the Effective Date, the Liquidated Damages (clause 12.13 of the Contract) table as set out in Schedule 1 (Contract Particulars) of the Contract is deleted and replaced with the table set out in Schedule 3 of this deed.

4. Release

4.1 [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

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

[REDACTED]

■ [REDACTED]

■ [REDACTED]

4.2 [REDACTED]

[REDACTED]

[REDACTED]

4.3 Covenant not to sue

The Contractor agrees not to commence or maintain proceedings against the Principal or any Related Persons of the Principal in respect of the matters the subject of the release in clause 4.1.

4.4 [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

4.5 [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

5. Warranty

(a) The Contractor acknowledges, undertakes and warrants:

■ [REDACTED]

■ [REDACTED]

(iii) that it has taken independent legal advice as to the nature, effect and extent of this deed;

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

(vi) the Contractor is aware that the Principal is relying on the acknowledgements and warranties in this clause in executing this deed; and

■ [REDACTED]

■ [REDACTED]

6. Other Beneficiaries

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

7. Acknowledgment and affirmation of Contract

This deed is supplemental to the Contract and, except to the extent otherwise stated in this deed, the parties:

- (a) expressly ratify and confirm the terms and conditions of the Contract;
- (b) acknowledge, affirm and agree to perform their obligations under the Contract; and
- (c) acknowledge and agree that their respective rights and obligations under, or in connection with, the Contract are unaffected by this deed.

8. Inconsistencies

As and from the Effective Date, the Contract will be read and construed subject to the terms and conditions of this deed. To the extent that there is any inconsistency between the terms and conditions of the Contract and the terms and conditions of this deed, this deed will, to the extent of such inconsistency, prevail.

9. Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by any other party to give effect to this deed.

10. Binding effect of this deed

This deed binds the parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.

11. Bar to proceedings

This deed may be pleaded as a full and complete defence by the Principal, to any Claim commenced or continued by the Contractor or on its behalf in any forum whatsoever (including in any negotiation, mediation, conciliation, expert determination, adjudication, arbitration or litigation) in relation to any of the matters the subject of the release in clause 4.1 of this deed.

12. Costs

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed.

13. Disputes

- (a) If any dispute or difference arises between the parties in connection with this deed, then either party may, within 5 Business Days of the occurrence of the facts matters or circumstances giving rise to the dispute, give a dispute notice in writing to the other party.
- (b) The dispute notice given in accordance with clause 13(a) must comply with the requirements of clause 18.1(b) of the Contract.
- (c) If a notice is given in compliance with clauses 13(a) and 13(b), then that notice will be deemed to be a valid Notice of Dispute given in accordance with clause 18.1 of the Contract.
- (d) Despite the existence of a dispute between the parties, the Contractor must continue to perform its obligations under this deed.

14. General

14.1 Governing law

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

14.2 Jurisdiction

Subject to the Contract:

- (a) each party irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of New South Wales with respect to any legal action or proceedings that may be brought at any time relating in any way to this deed; and
- (b) each party irrevocably waives any objection it may now have or in the future may have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings has been brought in an inconvenient forum.

14.3 Entire agreement

To the extent permitted by law, this deed supersedes any prior written or other agreement of the parties in respect of the subject matter of this deed.

14.4 Amendments

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

14.5 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.

14.6 Indemnities

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

14.7 Counterparts

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

14.8 Clauses incorporated into this deed

The following clauses of the Contract are incorporated into this deed as if set out in full in this deed:

- (a) clause 1.3 (No bias against drafter);
- (b) clause 19.9 (Joint and several liability);
- (c) clause 19.10 (Severability);
- (d) clause 19.12 (Stamp duty and other fees);


- (e) clause 19.14 (Confidentiality) (but not clause 19.14(c));
- (f) clause 19.18 (No Partnership, joint venture or other fiduciary relationship);
- (g) clause 19.32 (Counterparts); and
- (h) clause 23.1 (Restrictions on assignment).

15. GST

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.
- (c) 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 15.
- (d) Any payment or reimbursement required to be made under this deed for 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.
- (e) If GST is payable in relation to a supply made by or through a party (Supplier) under this deed then:
 - (i) the Supplier must provide a valid tax invoice (that sets out the relevant GST payable and the basis on which the GST payable has been calculated) to the party that is required to provide consideration for that supply (**Recipient**), no later than the day on which the Recipient is required to provide consideration for that supply;
 - (ii) the Recipient must pay an additional amount to the Supplier equal to the amount of that GST, as set out on the relevant tax invoice provided by the Supplier; and
 - (iii) the additional amount is payable at the same time as other consideration is to be provided for the relevant supply. However, if the Supplier has not provided the relevant tax invoice by such time, the Recipient may, at its absolute discretion, defer payment of the additional amount until such tax invoice is provided.
- (f) If the GST payable in relation to a supply made by or through a party under this deed varies from the additional amount paid by the Recipient under paragraph (e)(ii) 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 (as the case may be).

Executed as a deed.

Signed, sealed and delivered for and on behalf of **Transport for NSW (ABN 18 804 239 602)** by its authorised delegate in the presence of:


Signature of witness

Elizabeth Stanning

Full name of witness



Signature of authorised delegate

Craig Paterson

Full name of authorised delegate


By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).

Executed by CPB Contractors Pty Limited (ABN 98 000 893 667) in accordance with section 127 of the Corporations Act 2001 (Cth):


Signature of director

Jason Spears

Full name of director who states that they are a director of CPB Contractors Pty Limited (ABN 98 000 893 667)


Signature of director

Colin Carrigan

Full name of director who states that they are a director of CPB Contractors Pty Limited (ABN 98 000 893 667)

Executed by Downer EDI Works Pty Ltd (ABN 66 008 709 608) in accordance with section 127 of the Corporations Act 2001 (Cth):

[Redacted signature]

Signature of director

Robert Regan

Full name of director who states that they are a director of Downer EDI Works Pty Ltd (ABN 66 008 709 608)

[Redacted signature]

Signature of director

Peter Lyons

Full name of director who states that they are a director of Downer EDI Works Pty Ltd (ABN 66 008 709 608)

Schedule 1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

■	[REDACTED]
■	[REDACTED]
■	[REDACTED]

Schedule 3 [Redacted]

