



Transport for NSW

# Design and Construction of Sydney Gateway Stage 3

Design and Construct Deed

Contract Number: 20.0000301737.2116



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- [REDACTED]
- 60. Not used

**Exhibits**

- Exhibit A** Scope of Works and Technical Criteria
- Exhibit B** Site Access Schedule
- Exhibit C** Contract Program
- Exhibit D** Confidentiality Deed Poll
- Exhibit E** SSI Approval
- Exhibit F** Major Development Plan
- Exhibit G** Third Party Interests
- Exhibit H** Third Party Agreements
- Exhibit I** Aboriginal Participation Plan
- Exhibit J** Chain of Responsibility Guideline
- Exhibit K** Not used
- Exhibit L** Codes and Standards
- Exhibit M** Certified AIP Plan
- Exhibit N** Insurance Policy Wording
- Exhibit O** Electronic Files
- Exhibit P** Information Documents
- Exhibit Q** Not used

**Exhibit R** Sydney Airport Service Works Land

**Exhibit S** Joint Venture Agreement

**Exhibit T** Deed of Appointment of Independent Verifier

**Exhibit U** Letters of Commitment

**Exhibit V** Register of Electronic Files

# Sydney Gateway - Stage 3

Deed made at **SYDNEY** on **28 OCTOBER 2020**

**Parties** **Transport for NSW (ABN 18 804 239 602)** of 20-44 Ennis Road, Milsons Point, NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (Principal)

and

**John Holland Pty Ltd (ABN 11 004 282 268)** of Level 5, 380 St Kilda Road, Melbourne VIC 3004

**Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187)** of 12 Electronics Street, Eight Mile Plains QLD 4113

(together, Contractor)

This deed provides

## 1. General obligations

### 1.1 General obligations (Principal and Contractor)

- (a) The Contractor:
  - (i) must investigate, design and construct the Project Works and Temporary Works in accordance with this deed;
  - (ii) warrants that the investigation, design and construction of the Project Works and Temporary Works will be fit for their intended purposes; and
  - (iii) subject to the express provisions of this deed, accepts responsibility for and the risk of all costs, damages, expenses, losses, liabilities or delays which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed.
- (b) The Principal must pay the Contractor the Project Contract Sum in accordance with this deed.

### 1.2 Start and progress

The Contractor must:

- (a) start to perform its obligations under this deed from the date of this deed; and
- (b) regularly and diligently progress the Contractor's Activities in accordance with this deed and ensure that Construction Completion is achieved by the Date for Construction Completion.

### 1.3 Co-operation

- (a) Each party must, without limiting any other obligations under this deed:
  - (i) do all it reasonably can to co-operate with the other party in all matters relating to this deed;
  - (ii) when requested, do all reasonable things necessary to avoid hindering the other party in the performance of that other party's obligations under this deed; and
  - (iii) promptly inform the other party of any fact, information or circumstance which comes to its attention and is reasonably likely to adversely affect:
    - A. the Date of Construction Completion, the Date of Final Completion or the Date of Opening Completion;

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- B. the cost of executing the Project Works, or Temporary Works; or
  - C. the quality of the Project Works, the Temporary Works, or any other works or services required to be performed under this deed.
- (b) Nothing in clause 1.3(a) changes or in any way affects the rights or obligations of either party under this deed, unless the parties agree in writing to change them.

**1.4 Not used**

**1.5 Not used**

**2. Roles and relationships**

**2.1 Role of Principal's Representative and Principal's Surveillance Officers**

- (a) The Principal:
  - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
  - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
  - (iii) must give written notice to the Contractor of all appointments under clauses 2.1(a)(i) and 2.1(a)(ii).
- (b) The Principal's Representative may:
  - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed (each a **Principal's Assistant Representative**) and the notice must specify:
    - A. the functions which the Principal's Assistant Representative may perform; and
    - B. whether the Principal's Assistant Representative can give any Direction to the Contractor pursuant to this deed;
  - (ii) revoke or vary any appointment under clause 2.1(b)(i) by written notice to the Contractor; and
  - (iii) continue to exercise a function under this deed despite appointing one or more **Principal's Assistant Representatives** to exercise the function under clause 2.1(b)(i), provided that only one person may exercise the same function in relation to the same issue at any one time.
- (c) The Principal's Representative may:
  - (i) by written notice to the Contractor appoint one or a number of officers to perform the functions identified in clause 2.1(d) (each a **Principal's Surveillance Officer**);
  - (ii) revoke or vary any appointment under clause 2.1(c)(i) by notice in writing to the Contractor; and
  - (iii) continue to exercise a function under this deed despite appointing a **Principal's Surveillance Officer** to exercise the function under clause 2.1(c)(i).
- (d) The functions of a **Principal's Surveillance Officer** may be all or any of the following:
  - (i) monitoring the Contractor's Activities, including:
    - A. product quality;
    - B. quality management and verification;
    - C. environmental management;
    - D. work health and safety;

- E. Chain of Responsibility Provisions compliance;
- F. control of traffic; and
- G. community relations;
- (ii) monitoring the Independent Verifier's surveillance of the Contractor's Activities; and
- (iii) reporting the findings of its monitoring activities under clauses 2.1(d)(i) and 2.1(d)(ii) from time to time to the Principal's Representative.
- (e) The Principal and the Contractor acknowledge and agree that:
  - (i) the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers act at all times as the agents of the Principal (and not as an independent certifier, assessor or valuer) and will act solely in the interests of the Principal;
  - (ii) subject to clause 2.1(e)(iii), a Principal's Surveillance Officer is not entitled to issue a Direction to the Contractor, and if a Principal's Surveillance Officer purports to do so:
    - A. the Contractor must not comply with and the Principal is not bound by, the purported Direction; and
    - B. the Principal will not be liable for any Claim arising out of or in connection with any such purported Direction; and
  - (iii) a Principal's Surveillance Officer is entitled to issue a Direction to the Contractor under clause 5.8(h) and the Contractor must comply with any Direction by a Principal's Surveillance Officer given or purported to be given under clause 5.8(h).
- (f) Without limiting clause 15.3(a), the Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of this deed. Only the Principal's Representative and, subject to the terms of any notice under clause 2.1(b)(i), the Principal's Assistant Representatives are authorised to give any Direction to the Contractor pursuant to this deed. The Contractor must not comply with, and the Principal is not bound by, any Direction purporting to be made or given by any person on behalf of the Principal, other than the Principal's Representative or a Principal's Assistant Representative with relevant authority, or a Principal's Surveillance Officer in the circumstances described in clause 2.1(e)(iii).

## 2.2 The Contractor's personnel

- (a) The Contractor must:
  - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
  - (ii) ensure that its personnel (including those referred to in clause 2.2(b)) carry out the Contractor's Activities in a manner that is courteous and co-operative and recognises the interests and needs of all stakeholders, including the local community.
- (b) The Contractor must:
  - (i) ensure the personnel specified in Schedule 19 (Contractor's Personnel) (including any replacements):
    - A. perform the roles specified in Schedule 19 (Contractor's Personnel); and
    - B. are available for consultation with the Principal's Representative when the Principal's Representative reasonably requires;
  - (ii) subject to clause 2.2(b)(iii), not replace the personnel referred to in clause 2.2(b)(i) (or where the personnel are employees of a Subcontractor, ensure they are not replaced) without the Principal's Representative's prior written approval; and

- (iii) if any of the personnel referred to in clause 2.2(b)(i):
  - A. die;
  - B. become seriously ill;
  - C. resign from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
  - D. become the subject of a direction under clause 2.2(c),  
replace them (or where they are personnel of a Subcontractor, ensure they are replaced) with personnel of at least equivalent experience, ability and expertise (including the experience, ability and expertise required by Schedule 19 (Contractor's Personnel)) approved by the Principal's Representative.
- (c) The Principal's Representative may, if he or she considers it reasonable to do so, by notice in writing direct the Contractor to remove any person from the Construction Site and any other areas where the Contractor's Activities are performed.
- (d) The Contractor must ensure that any person the subject of a direction under clause 2.2(c) is not again employed in the Contractor's Activities.
- (e) The Contractor must ensure that the Independent Verifier, the Quality Manager, the Environmental Representative and each of the Contractor's Subcontractors:
  - (i) do all they reasonably can to co-operate with and avoid hindering the Principal's Assistant Representatives and the Principal's Surveillance Officers; and
  - (ii) provide, on request, such information as the Principal's Representative, the Principal's Assistant Representative or a Principal's Surveillance Officer reasonably requires.
- (f) Where the Contractor requests the Principal's Representative's approval of a replacement pursuant to clause 2.2(b)(iii) the Principal's Representative must respond to the Contractor within 10 Business Days from the later of the date of the Contractor's request and the date any other information required by the Principal's Representative is submitted to the Principal's Representative.
- (g) The Contractor acknowledges that it provided the letters contained in Exhibit U (Letters of Commitment) as part of its Tender and agrees to comply with the commitments made in these letters.

## 2.3 Authorities

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) The Contractor acknowledges and agrees that, without limiting clause 2.3(a), anything that the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle the Contractor to make any Claim against the Principal.
- (c) The Contractor acknowledges and agrees that:
  - (i) there are many Authorities (other than the Principal) with jurisdiction over aspects of the Contractor's Activities, parts of the Construction Site and areas affected by the Contractor's Activities;
  - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities; and
  - (iii) it bears the full risk of all occurrences of the kind referred to in clause 2.3(c)(ii) and will have no Claim against the Principal arising out of or in any way in connection with such occurrences (including in circumstances where the

Principal may have become involved in matters relating to the Contractor's Activities with a relevant Authority).

(d)

[REDACTED]

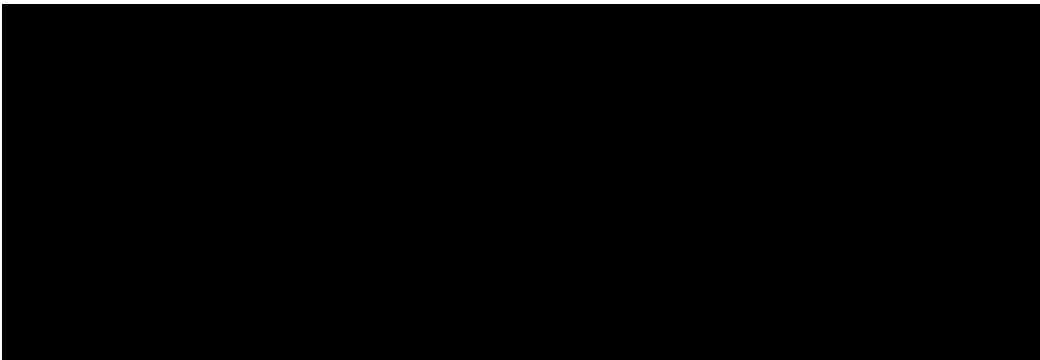
## 2.4 Independent Verifier

- (a) The Independent Verifier will be engaged jointly by the Principal, Sydney Airport and the Contractor, on the terms of the Deed of Appointment of Independent Verifier.
- (b) The Independent Verifier's role is to:
  - (i) independently verify in accordance with the Deed of Appointment of Independent Verifier that:
    - A. the Project Works; and
    - B. the Temporary Works,comply with the requirements of this deed;
  - (ii) make determinations on matters that this deed expressly requires be determined by the Independent Verifier; and
  - (iii) otherwise perform the functions and activities identified as such in this deed and the Deed of Appointment of Independent Verifier.
- (c) Without limiting the effect that the determinations of the Independent Verifier will have upon the rights and obligations of the parties under this deed, the Independent Verifier does not have any power to give any Directions to the Contractor.
- (d) The parties acknowledge and agree that the Independent Verifier is obliged to act independently of the Contractor, the Principal, Sydney Airport and any of their Subcontractors.
- (e) The Contractor must provide the Independent Verifier with all information and documents and allow the Independent Verifier:
  - (i) to attend design meetings, including the Project Design Group meetings;
  - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Independent Verifier must comply with the reasonable directions of the PC Contractor Entity given in its capacity as Principal Contractor; and
  - (iii) to insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release these and any other Hold Points in accordance with the SWTC,all as may be:
  - (iv) necessary or reasonably required by the Independent Verifier or the Principal's Representative, to allow the Independent Verifier to perform its obligations under this deed and the Deed of Appointment of Independent Verifier; or
  - (v) reasonably requested by the Independent Verifier or reasonably directed by the Principal's Representative.
- (f) Without limiting any other requirements of this deed, the Contractor must provide to the Principal's Representative a certificate or certificates (as the case may be) executed by the Independent Verifier in the form of:
  - (i) Schedule 14 (Independent Verifier's Certificate - Quality) every 3 months from the date of this deed up to the end of the last Defects Correction Period;
  - (ii) Schedule 16 (Independent Verifier's Certificate - Construction Completion) as a condition precedent to Construction Completion;



- (iii) Schedule 17 (Independent Verifier's Certificate - Nominated Defects) on request in connection with the rectification of particular Defects nominated by the Principal's Representative;
- (iv) Schedule 17A (Independent Verifier's Certificate As-Built documentation) [REDACTED]
- (v) Schedule 18 (Independent Verifier's Certificate - Final Completion) on the expiry of the last Defects Correction Period as a condition precedent to Final Completion.
- (g) Nothing that the Independent Verifier does or fails to do pursuant to the purported exercise of its functions and activities under this deed or the Deed of Appointment of Independent Verifier will entitle the Contractor to make any Claim against the Principal.
- (h) Not used
- (i) Not used.
- (j) Without limiting clauses 2.4(k) and 2.4(l), an act or omission (including negligence) of the Independent Verifier will not:
  - (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to Law; or
  - (ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to Law.
- (k) A certification or determination by the Independent Verifier will not:
  - (i) constitute an approval by the Principal of the Contractor's performance of its obligations under this deed;
  - (ii) be taken as an admission or evidence that the Project Works or any other matters certified or determined by the Independent Verifier comply with this deed; or
  - (iii) prejudice any rights or powers of the Principal or the Contractor under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects or to give Directions under clause 16.2.
- (l) No act or omission of the Independent Verifier, including any certification or determination by the Independent Verifier, whether or not such certification or determination:
  - (i) is final and binding;
  - (ii) contains a manifest error; or
  - (iii) is overturned in subsequent dispute resolution proceedings,
 will:
  - (iv) be deemed to be an act or omission by the Principal or the Contractor (including a breach of contract) under or in connection with this deed; or
  - (v) entitle the Contractor to make any Claim against the Principal.

(m)



## 2.5 Proof Engineer

- (a) The Contractor must engage one or more Proof Engineers at the Contractor's cost.
- (b) The Contractor:
  - (i) must obtain the Principal's approval to the identity of any Proof Engineer (including any replacement), each of whom must have the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed; and
  - (ii) warrants to the Principal that each Proof Engineer has:
    - A. at least the qualifications, experience and expertise described in Schedule 45 (Proof Engineer and Independent Checking Engineer Requirements); and
    - B. the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 2.5 and this deed.
- (c) Where the Contractor requests the Principal's approval to the identity of any Proof Engineer (including any replacement), the Principal's Representative must provide a response to the Contractor within 20 Business Days from the later of the date of the Contractor's request and the date any other information required by the Principal's Representative is submitted to the Principal's Representative.
- (d) A Proof Engineer's role is to:
  - (i) attend relevant Project Design Group meetings;
  - (ii) in respect of the relevant elements identified in Item 14 of Schedule 1 (Contract Information) of each of the Project Works and the Temporary Works:
    - A. undertake a full and independent assessment, without exchange of calculations or similar information, of all factors influencing the final integrity of those elements of the Project Works and associated Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;
    - B. provide to the Contractor, with copies to the Principal's Representative and the Independent Verifier, a comprehensive report on the assessment required under clause 2.5(d)(ii)A with conclusions and in accordance with the requirements set out in clause 2.5(d)(ii)A; and
    - C. independently certify that those Project Works and any associated Temporary Works:
      - 1) are adequate and suitable for their intended purpose; and
      - 2) comply with the SWTC,and issue the certification document referred to in clause 12.2(e)(iv); and
  - (iii) make determinations on matters this deed expressly requires be determined by the Proof Engineer.
- (e) The parties acknowledge and agree that:
  - (i) the Proof Engineer is obliged to act independently of the Contractor, the Principal and any of their Subcontractors;
  - (ii) the Proof Engineer must not be an employee of the Contractor, the Principal, the Independent Verifier or any of their Subcontractors; and
  - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer must be in writing and must be provided to the Contractor and the Principal's Representative.

- (f) The Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
  - (i) to attend design meetings; and
  - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the PC Contractor Entity given in its capacity as Principal Contractor,
 all as may be:
  - (iii) necessary or reasonably required by the Proof Engineer or the Principal's Representative, to allow the Proof Engineer to perform its obligations under this deed; and
  - (iv) requested by the Proof Engineer or directed by the Principal's Representative.
- (g) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against the Principal.

## 2.6 Environmental Representative

- (a) The Environmental Representative is to be engaged at the Contractor's cost on the terms of the Deed of Appointment of ER.
- (b) The Environmental Representative's role is to perform and fulfil the function of the "Environmental Representative" or "ER" as contemplated by the Planning Approval under s5.19 of the *Environmental Planning and Assessment Act 1979* (NSW) and in accordance with the Deed of Appointment of ER.
- (c) The parties acknowledge and agree that the Environmental Representative is obliged to act independently of the Contractor, the Principal and any of their Subcontractors.
- (d) The Contractor must provide the Environmental Representative with all information and documents and allow the Environmental Representative:
  - (i) to attend meetings; and
  - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Environmental Representative must comply with the reasonable directions of the PC Contractor Entity given in its capacity as Principal Contractor,
 all as may be:
  - (iii) necessary or reasonably required by the Environmental Representative or the Principal's Representative, to allow the Environmental Representative to perform its obligations under the Deed of Appointment of ER; or
  - (iv) requested by the Environmental Representative or directed by the Principal's Representative.
- (e) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions under the Deed of Appointment of ER will entitle the Contractor to make any Claim against the Principal.

## 2.7 Environmental Manager

- (a) In accordance with clause 2.2(b), the Contractor must ensure that there is an Environmental Manager who performs the role referred to in Schedule 19 (Contractor's Personnel).
- (b) The Contractor must provide to the Principal's Representative a certificate executed by the Environmental Manager in the form of Schedule 29 (Environmental Manager's Certificate) every 3 months from the date of this deed until the Date of Construction Completion.

## 2.8 Independent Checking Engineer

- (a) The Contractor must engage one or more Independent Checking Engineers, at the Contractor's cost.

- (b) The Contractor:
- (i) must obtain the Principal's approval to the identity of any Independent Checking Engineer (including any replacement), each of whom must have the requisite experience and skill to undertake the role of Independent Checking Engineer in accordance with this clause 2.8 and this deed; and
  - (ii) warrants to the Principal that each Independent Checking Engineer has:
    - A. at least the qualifications, experience and expertise described in Schedule 45 (Proof Engineer and Independent Checking Engineer Requirements); and
    - B. the requisite experience and skill to undertake the role of Independent Checking Engineer in accordance with this clause 2.8 and this deed.
- (c) Where the Contractor requests the Principal's approval to the identity of any Independent Checking Engineer (including any replacement), the Principal's Representative must provide a response to the Contractor within 20 Business Days from the later of the date of the Contractor's request and the date any other information required by the Principal's Representative is submitted to the Principal's Representative.
- (d) Each Independent Checking Engineer's role is to:
- (i) attend relevant Project Design Group meetings;
  - (ii) in respect of the relevant elements of each of the Category 2 Temporary Works Design Documentation:
    - A. undertake a check of those elements of the Category 2 Temporary Works by checking design calculations and drawings and reviewing the Design Documentation and construction methodology;
    - B. provide to the Contractor, with copies to the Principal's Representative and the Independent Verifier, a comprehensive report on the check required under clause with 2.8(d)(ii)A and in accordance with the requirements of the section of the SWTC identified in Item 37(a) of Schedule 1 (Contract Information); and
    - C. independently certify that those elements of the Category 2 Temporary Works:
      - 1) are adequate and suitable for their intended purpose; and
      - 2) comply with the SWTC,
 and issue the certification document referred to in clause 12.2(e)(v). The Independent Checking Engineer is not required to undertake a full independent assessment of all factors influencing the final integrity of those elements of the Category 2 Temporary Works.
- (e) The parties acknowledge and agree that:
- (i) each Independent Checking Engineer is obliged to act independently of the Contractor, the Principal and any of their Subcontractors;
  - (ii) each Independent Checking Engineer must not be an employee of the Contractor, the Principal, the Independent Verifier or any of their Subcontractors; and
  - (iii) all advice and comments (including drafts and calculations) provided by any Independent Checking Engineer must be in writing and must be made available to the Principal's Representative and, upon request, provided to the Contractor and the Principal's Representative.
- (f) The Contractor must provide each Independent Checking Engineer with all information and documents and allow each Independent Checking Engineer:
- (i) to attend design meetings; and
  - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that each Independent Checking Engineer must



comply with the reasonable directions of the PC Contractor Entity given in its capacity as Principal Contractor,

all as may be:

- (iii) necessary or reasonably required by each Independent Checking Engineer or the Principal's Representative to allow each Independent Checking Engineer to perform its obligations under this deed; and
  - (iv) requested by each Independent Checking Engineer or directed by the Principal's Representative.
- (g) Nothing that each Independent Checking Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against the Principal.

## 2.9 Subcontracts

- (a) Subject to clause 2.9(b), the Contractor may enter into Subcontracts for the performance of its obligations under this deed.
- (b) The Contractor must not enter into any Subcontract in respect of the categories of work set out in Schedule 23 (Principal's Subcontractor Pre-Qualification) (regardless of contract value), unless the Subcontractor is pre-qualified or registered to the appropriate level under the Principal's pre-qualification and registration procedures or clause 2.9(c) applies.
- (c) Unless the Principal's Representative otherwise approves in writing (which must not be unreasonably withheld or delayed), the Contractor must enter into subcontracts with:
  - (i) the Subcontractors specified in Item 15 of Schedule 1 (Contract Information) in respect of the relevant parts of the Contractor's Activities specified in Item 15 of Schedule 1 (Contract Information); and
  - (ii) the Proof Engineer specified in Item 9 of Schedule 1 (Contract Information) in respect of the role of Proof Engineer under clause 2.5 of this deed.
- (d) The Contractor's obligations under this deed are not lessened or otherwise affected by entering into Subcontracts or by any approval by the Principal or the Principal's Representative, and the Contractor is liable to the Principal for the acts and omissions of Subcontractors as if they were acts and omissions of the Contractor.
- (e) The Contractor must give the Principal's Representative details of each Subcontract, including the name of the Subcontractor and the goods or services being provided under the Subcontract. The Contractor must satisfy itself and warrant to the Principal that the proposed Subcontractor (whether a specified Subcontractor under Item 15 of Schedule 1 (Contract Information) or otherwise) has the necessary suitability, reliability, safety systems, expertise and financial standing to carry out the work to be subcontracted.
- (f) Without limiting clause 22.7(c), but subject to clause 2.9(g)(ii):
  - (i) the Contractor must include in every Subcontract:
    - A. which has a contract value of [REDACTED] or more:
      - 1) the provisions set out in Schedule 24 (Terms to be included in Subcontracts); and
      - 2) a requirement to implement a Subcontractors Proof of Payment Procedure if instructed by the Principal; and
    - B. regardless of the Subcontract value, provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions; and
  - (ii) if required by the Principal's Representative, the Contractor must, at no additional cost and to the reasonable satisfaction of the Principal, instruct a Subcontractor:
    - A. to implement a Subcontractors Proof of Payment Procedure; and

- B. submit the documents required by the Subcontractors Proof of Payment Procedure,  
as set out in Schedule 5A (Subcontractors Proof of Payment Process).
- (g) Where a Subcontractor is to carry out design work:
- (i) the Contractor must, within 5 Business Days of the engagement of the Subcontractor provide the Principal with a deed of covenant (duly stamped) executed by the Subcontractor in the form of Schedule 33 (Designer's Deed of Covenant); and
  - (ii) the Subcontract is not required to contain parts A and B of Schedule 24 (Terms to be included in Subcontracts) if no security is to be provided by the Subcontractor.
- (h) The Contractor agrees that if required by the Principal it will, at no additional cost and to the reasonable satisfaction of the Principal:
- (i) implement a Subcontractors Proof of Payment Procedure; and
  - (ii) submit the documents required by the Subcontractors Proof of Payment Procedure,  
as set out in Schedule 5A (Subcontractors Proof of Payment Process).
- (i) If required to implement a Subcontractors Proof of Payment Procedure, in addition to implementing the process set out in Schedule 5A (Subcontractors Proof of Payment Process), the Contractor acknowledges and agrees:
- (i) to pay, within 3 Business Days of receiving payment of a Progress Payment, all outstanding amounts due and payable to Subcontractors listed in the Contractor Statement and Supporting Statement for each of its payment claims;
  - (ii) within 5 Business Days of receiving payment of a Progress Payment to:
    - A. provide proof, to the satisfaction of the Principal, of payment of all outstanding amounts due and payable to Subcontractors; and
    - B. confirm that no monies due and payable remain outstanding to Subcontractors in respect of each payment claim;
  - (iii) that if it fails to provide the required proof of payment:
    - A. it will issue, no later than the 5th Business Day from receipt of payment from the Principal, an irrevocable payment direction in the form of an irrevocable authority in writing to the Principal in favour of each unpaid Subcontractor identified in the Contractor Statement and Supporting Statement; and
    - B. the Principal will be entitled to rely on any irrevocable payment directions as a reason for withholding an amount from the Contractor in the next month's Progress Payment; and
  - (iv) that if it fails to either provide the required proof of payment or issue an irrevocable payment direction as required by this clause 2.9 the Principal may have recourse to the unconditional undertakings provided under clause 8.
- (j) The Contractor must immediately inform the Principal and provide a copy of the relevant documents, if it receives:
- (i) a Contractor Statement and Supporting Statement from a Subcontractor with a payment claim that identifies as unpaid any subcontractor, supplier or consultant to a Subcontractor;
  - (ii) a payment withholding request (as defined in and served under the SOP Act); or
  - (iii) any other written advice received by the Contractor in relation to the non-payment of any subcontractor, supplier or consultant to a Subcontractor.
- (k) [REDACTED]

(l)

[REDACTED]

## 2.10 Separable Portions

(a) The interpretations of:

- (i) Contractor's Activities;
- (ii) Project Works;
- (iii) Temporary Works;
- (iv) Works;
- (v) Local Area Works;
- (vi) Property Works;
- (vii) Service Works;
- (viii) Construction Site;
- (ix) Temporary Works Areas;
- (x) Construction Completion;
- (xi) Opening Completion;
- (xii) Date for Construction Completion;
- (xiii) Date of Construction Completion;
- (xiv) Date of Opening Completion; and
- (xv) Defects Correction Period,

and clauses 3.1, 5, 6.1, 7.4, 7.5, 9.1 to 9.5, 10, 13.1 to 13.4, 15.1, 16, 17, Schedule 2 (D&C Payment Schedule), and the SWTC (including its appendices), will apply separately to each Separable Portion (including any Separable Portion determined under clause 2.10(b) and references therein to any of the terms in clauses 2.10(a)(i) to 2.10(a)(xv) above will mean so much of the Contractor's Activities, Project Works, Temporary Works, Works, Local Area Works, Property Works, Service Works, Construction Site, Temporary Works Areas, Construction Completion, Opening Completion, Date for Construction Completion, Date of Construction Completion, Date of Opening Completion and Defects Correction Period, as is comprised in, or associated with, the relevant Separable Portion.

(b) In addition to the Separable Portions identified in Item 12 of Schedule 1 (Contract Information), the Principal's Representative may at any time (including where a part of the Project Works or a Separable Portion has reached a stage equivalent to Construction Completion but the whole of the Project Works or another part of that Separable Portion (as applicable) has not reached Construction Completion) by written notice to the Contractor direct additional Separable Portions.

(c) A notice given by the Principal's Representative under clause 2.10(b) must, for each Separable Portion, include details of:

- (i) the parts of the Project Works and Temporary Works forming part of that Separable Portion;
- (ii) the Date for Construction Completion; and

- (iii) respective amounts of liquidated damages,  
all as determined by the Principal's Representative (acting reasonably).

### **3. Management and administration**

#### **3.1 Groups, start-up workshops and meetings**

- (a) The parties agree to establish groups and meetings (including start up workshops, Site meetings, Evaluation Meetings, the Project Control Group, the Project Design Group and the Management Review Group), attend meetings and do all associated things, in accordance with Schedule 40 (Workshops and Meetings).
- (b) The Contractor acknowledges that Sydney Airport may attend any workshops and meetings.
- (c) The Contractor must attend, where directed by the Principal's Representative, any Gateway Project Operations Group or Gateway Project Control Group meetings with Sydney Airport.
- (d) Without limiting any other provision of this deed, the Contractor must co-operate with and attend meetings with Sydney Airport and others at such times as may be reasonably required by the Principal's Representative.

#### **3.2 The Contractor's reporting obligations**

The Contractor must provide reports to the Principal and the Principal's Representative as required by the Contractor Documentation Schedule.

#### **3.3 Project Plans**

- (a) The Contractor must prepare the Project Plans specified in the Appendix to the SWTC identified in Item 37(b) of Schedule 1 (Contract Information).
- (b) Each Project Plan must:
  - (i) where an initial plan exists and is contained in the Appendices to the SWTC identified in Item 37(c) of Schedule 1 (Contract Information), be based upon that initial plan; and
  - (ii) whether or not an initial plan exists, be prepared and further developed in accordance with this clause 3.3 and clause 3.4 in respect of the Operations and Maintenance Plan and the section of the SWTC identified in Item 37(d) of Schedule 1 (Contract Information).
- (c) Each Project Plan (other than the Operations and Maintenance Plan in which case clause 3.4(b) applies) must be initially submitted to the Independent Verifier and the Principal's Representative within the time period specified in and containing the contents specified in the Appendix to the SWTC identified in Item 37(e) of Schedule 1 (Contract Information), for the initial submission.
- (d) The Principal's Representative may:
  - (i) review any Project Plan submitted under this clause 3.3; and
  - (ii) if he or she considers, acting reasonably, that the Project Plan submitted does not comply with this deed, notify the Contractor of that within 15 Business Days of the submission of the Project Plan giving reasons as to why the Project Plan submitted does not comply with this deed.
- (e) If the Contractor receives a notice under clause 3.3(d)(ii), the Contractor must promptly submit an amended Project Plan to the Independent Verifier and the Principal's Representative.
- (f) The Principal's Representative owes no duty to the Contractor to review any Project Plan or any draft submitted by the Contractor for errors, omissions or compliance with this deed.

- (g) No review of, comments on, rejection of or failure to reject any Project Plan or any draft of it or any other Direction by the Principal's Representative (including a direction under clause 3.3(j)) in respect of the Project Plans or any draft of it will lessen or otherwise affect:
  - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (h) The Contractor acknowledges and agrees that:
  - (i) an intended purpose of each Project Plan is for the Contractor to provide a detailed description of how the Contractor intends to carry out the Contractor's Activities in accordance with the requirements of this deed (and in relation to the Operations and Maintenance Plan and notwithstanding clause 3.4, how the Works should be maintained following Construction Completion) with respect to the subject matter of each Project Plan; and
  - (ii) it must undertake ongoing development, amendment and updating of the Project Plans throughout the duration of the Contractor's Activities and at least annually to take into account:
    - A. Variations;
    - B. changes in Law;
    - C. the commencement of new phases or stages of design and construction;
    - D. those events or circumstances expressly identified in the Appendix to the SWTC identified in Item 37(f) of Schedule 1 (Contract Information), for each Project Plan;
    - E. any other events or circumstances which may have any effect on the manner in which the Contractor carries out the Contractor's Activities;
    - F. any breach or potential breach of the warranty in clause 3.3(i);
    - G. requirements specified in the SWTC, including the Appendix to the SWTC identified in Item 37(g) of Schedule 1 (Contract Information); and
    - H. [REDACTED]

and promptly submit each further Project Plan to the Independent Verifier and the Principal's Representative as it is further developed, amended or updated.

- (i) The Contractor warrants that each Project Plan will be fit for its intended purpose.
- (j) Without limiting clause 16, if the Principal's Representative believes, acting reasonably, that any Project Plan does not comply with this deed, the Principal's Representative may by written notice direct the Contractor to further develop, update or amend the Project Plan specifying:
  - (i) the reasons why such amendment is required; and
  - (ii) the time within which a compliant Project Plan must be re-submitted,
 and the Contractor must:
  - (iii) further amend the Project Plan as directed by the Principal's Representative; and
  - (iv) submit the further amended Project Plan to the Independent Verifier and the Principal's Representative within the time specified under clause 3.3(j)(ii).
- (k) The Contractor must comply with each Project Plan (other than the Operations and Maintenance Plan) in respect of which no notice has been given under clause 3.3(d)(ii) or 3.3(j), but compliance will not in any way lessen or affect its liabilities or responsibilities or the Principal's rights whether under this deed or otherwise according to Law.



- (l) The Contractor must comply with the restrictions upon the carrying out of the Contractor's Activities specified in the Appendix to the SWTC identified in Item 37(h) of Schedule 1 (Contract Information).
- (m) To the extent they are relevant to maintenance of the Works after Construction Completion, all Project Plans must be incorporated into the Operations and Maintenance Plan.
- (n) The Independent Verifier must audit and review (including for any non-compliances with this deed) each revision of any Project Plan (other than the Quality Plan in which case clause 11.2(d) applies) submitted under this clause 3.3 within 10 Business Days of submission of that plan to the Independent Verifier.

### **3.4 Operations and Maintenance Plan**

- (a) As a condition precedent to Construction Completion, the Contractor must develop an Operations and Maintenance Plan, in accordance with the requirements of this deed (including the SWTC).
- (b) The Contractor must submit to the Independent Verifier and the Principal's Representative an initial draft of the Operations and Maintenance Plan containing the contents specified in the Appendix to the SWTC identified in Item 37(i) of Schedule 1 (Contract Information) and to a standard and detail no different in substance from the final draft (excluding the incorporation of the Project Plans required by clause 3.3(m)) but for minor details:
  - (i) no less than 120 Business Days prior to the Date for Construction Completion; or
  - (ii) if either:
    - A. the Principal's Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 120 Business Days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion provided that the Principal's Representative gives the Contractor 25 Business Days' notice of the required date for submission; or
    - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion will be earlier than the Date for Construction Completion, no less than 120 Business Days prior to the reasonably anticipated Date of Construction Completion.
- (c) The Contractor must submit to the Independent Verifier and the Principal's Representative a final draft of the Operations and Maintenance Plan (including incorporation of the Project Plans required by clause 3.3(m)):
  - (i) no less than 60 Business Days prior to the Date for Construction Completion; or
  - (ii) if either:
    - A. the Principal's Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 60 Business Days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion provided that the Principal's Representative gives the Contractor 25 Business Days' notice of the required date for submission; or
    - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion will be earlier than the Date for Construction Completion, no less than 60 Business Days prior to the reasonably anticipated Date of Construction Completion.
- (d) The Contractor must submit to the Independent Verifier and the Principal's Representative the final Operations and Maintenance Plan (including incorporation of the Project Plans required by clause 3.3(m)):
  - (i) no less than 20 Business Days prior to the Date for Construction Completion; or

- (ii) if the Principal's Representative reasonably anticipates that the Date of Construction Completion will be prior to the Date for Construction Completion, no less than 20 Business Days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion provided that the Principal's Representative gives the Contractor no less than 25 Business Days' notice of the required date for submission.
- (e) The Principal's Representative may:
  - (i) review the Operations and Maintenance Plan or any draft of it submitted under this clause 3.4; and
  - (ii) if he or she considers, acting reasonably, that the Operations and Maintenance Plan or any draft of it submitted under this clause 3.4 does not comply with this deed, within 15 Business Days of the submission, reject the Operations and Maintenance Plan or the draft specifying the reasons for rejection.
- (f) If the Operations and Maintenance Plan or any draft is rejected, the Contractor must promptly submit an amended Operations and Maintenance Plan to the Independent Verifier and the Principal's Representative that addresses the reasons for rejection.
- (g) The Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Operations and Maintenance Plan under clause 3.3(m), the purposes of the Operations and Maintenance Plan include for the Contractor to provide a detailed description of how the Works should be maintained after the Date of Construction Completion.
- (h) The Independent Verifier must audit and review (including for any non-compliances with this deed) each revision of the Operations and Maintenance Plan submitted under this clause 3.4 within 10 Business Days of submission of that plan to the Independent Verifier.

### **3.5 Control of traffic**

The Contractor:

- (a) is responsible for the control, direction and protection of all traffic in any way affected by the carrying out of the Contractor's Activities;
- (b) must manage that traffic to ensure:
  - (i) its continuous, safe and efficient movement;
  - (ii) the traffic carrying capacity of Local Roads is maintained; and
  - (iii) that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum; and
- (c) must comply with the directions of any relevant Authority and directions given by the Principal's Representative (acting reasonably), with respect to traffic management.

### **3.6 Community relations**

The Contractor:

- (a) acknowledges that the areas where the Contractor's Activities are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
  - (i) required by the SWTC;
  - (ii) contained in the Communication Management Plan; and
  - (iii) reasonably required by the Principal's Representative from time to time.

### **3.7 Aboriginal participation in construction**

- (a) The Contractor must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan in accordance with the APIC Policy.

- (b) The Minimum Aboriginal Participation Spend amount is stated in Item 16 of Schedule 1 (Contract Information).
- (c) The Contractor must prepare and submit to the Principal in accordance with the APIC Policy:
  - (i) at the frequency stated in Item 16 of Schedule 1 (Contract Information), its Aboriginal participation reporting data in the format required by the NSW Procurement Board (as defined in the APIC Policy), providing details of the implementation of the APIC Policy and achievement of targets; and
  - (ii) the final Aboriginal participation report, as a condition precedent to Construction Completion, describing and explaining:
    - A. how the Aboriginal Participation Plan has been implemented within the specified period;
    - B. what actual outcomes have been achieved;
    - C. whether the Minimum Aboriginal Participation Spend amount in the Aboriginal Participation Plan has been achieved; and
    - D. the allocation of any unspent amounts from the Minimum Aboriginal Participation Spend to Training Services NSW programs that focus on training for Aboriginal people or capacity building for Aboriginal-owned businesses.
- (d) Templates are, at the date of this deed, available at: <https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-procurement-policy/aboriginal-participation-construction-policy-apic>.
- (e) As a condition precedent to Construction Completion, the Contractor must demonstrate to the Principal that it has paid any unspent amounts of the Minimum Aboriginal Participation Spend to Training Services NSW programs that focus on training for Aboriginal people or capacity building for Aboriginal-owned businesses.

### **3.8 Complaints and notifications**

- (a) The Contractor must immediately notify the Principal's Representative in writing if any:
  - (i) Complaint is made or any proceedings are instituted or threatened;
  - (ii) letter of demand is issued; or
  - (iii) order or direction is made,
 by anyone (including any Authority or any landowner, lessee or licensee near the Construction Site) against the Contractor or any of its Subcontractors or their respective employees in respect of or associated with any aspect of the carrying out of the Contractor's Activities including:
  - (iv) Contamination arising out of, or in any way in connection with, the Contractor's Activities;
  - (v) the Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder) or any Law regarding the Environment;
  - (vi) the Contractor's use or occupation of the Construction Site or the Works;
  - (vii) the supply chain for the Contractor's Activities, including the bringing to and removal from the Construction Site items that require transport activities; or
  - (viii) loss or damage of the kind referred to in clauses 6.3(a)(ii) to 6.3(a)(iv).
- (b) The Contractor must (at its own cost):
  - (i) deal proactively with any Complaint, proceedings, letter of demand, order or direction referred to in clause 3.8(a);
  - (ii) take all measures to resolve those matters as soon as possible (including defending any proceedings); and

- (iii) keep a register of all Complaints, proceedings, letters of demand, orders and directions referred to in clause 3.8(a), which:
  - A. contains full details of:
    - 1) each Complaint, proceedings, letter of demand, order and direction; and
    - 2) the action taken by the Contractor with respect to each Complaint, proceedings, letter of demand, order and direction;
  - B. is promptly updated to take into account any developments with respect to any Complaint, proceedings, letter of demand, order or direction; and
  - C. may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.
- (c) The Contractor must notify anyone who may be adversely affected by the Contractor's Activities before the relevant work is carried out including notification of:
  - (i) the likely duration of that work; and
  - (ii) the name and contact details of the Community and Stakeholder Engagement Manager in case any person wishes to make a Complaint.

### **3.9 Media publications**

- (a) The Contractor must obtain the Principal's prior written consent to:
  - (i) any press release or advertisement it wishes to make or place concerning this deed, the Principal or the Contractor's Activities; and
  - (ii) the release for publication in any media of any information, publication, document or article concerning this deed, the Principal, the Project Works, the Temporary Works, the Sydney Airport Works, the Gateway or the Contractor's Activities.
- (b) The Contractor must promptly refer any media enquiries concerning this deed, the Principal or the Contractor's Activities to the Principal, for the Principal's prior written consent to any proposed response, which consent may be given or withheld, in the Principal's absolute discretion.
- (c) The Contractor must ensure that all of its Subcontractors comply with the requirements of this clause 3.9 and obtain the Principal's prior written consent (through the Contractor) before making or placing any press release or advertisement, responding to any media enquiries or publishing anything of the type referred to in this clause 3.9.

### **3.10 Notices**

- (a) Any notices contemplated by this deed or the Project Interface Deed must be in writing and:
  - (i) be sent through the PDCS and:
    - A. in the case of a notice from the Contractor, be addressed to the Principal's Representative; or
    - B. in the case of a notice from the Principal, be addressed to the Project Director; and
  - (ii) in the case of notices issued pursuant to clause 20 or 21 or the Project Interface Deed, a copy of the notice sent through the PDCS must be printed and delivered or posted by prepaid express post to the relevant address as set out in Items 17 to 19 of Schedule 1 (Contract Information) (as applicable) (in which case the deemed time of receipt for the notice will be the deemed time of receipt of the delivered or posted notice and not the time of receipt through the PDCS).
- (b) A notice issued pursuant to clause 3.10(a)(ii) must be a printed copy of the notice sent through the PDCS and in the event that a notice under clause 3.10(a)(ii) is not a printed copy, neither notice will constitute a valid notice.

- (c) A notice is taken to have been received in the case of:
  - (i) delivery by hand, on the day of delivery;
  - (ii) prepaid express post, on the second Business Day after the date of posting; and
  - (iii) delivery by a PDCS, when the sender receives the sent confirmation report generated by the PDCS,

provided that if the notice would be taken to have been received on a day which is not a Business Day or after 5pm on a Business Day, it is taken to be received at 9am on the next Business Day.
- (d) With respect to notices sent through the PDCS, an attachment to a notice will only form part of a notice if it is uploaded to the PDCS in:
  - (i) pdf format;
  - (ii) a format compatible with Microsoft Office; or
  - (iii) such other format as may be agreed between the parties in writing from time to time.

## **4. This deed**

### **4.1 Law of this deed**

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

### **4.2 Order of precedence**

- (a) The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this deed:
  - (i) the deed excluding the Schedules and Exhibits;
  - (ii) the Schedules; and
  - (iii) the Exhibits.
- (b) Not used.
- (c) The SWTC and the Environmental Documents are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in both.
- (d) If there is an ambiguity, discrepancy or inconsistency within or between any documents comprising this deed, the Environment Strategy or the Environmental Documents, the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless the Principal directs otherwise).

### **4.3 Ambiguous terms**

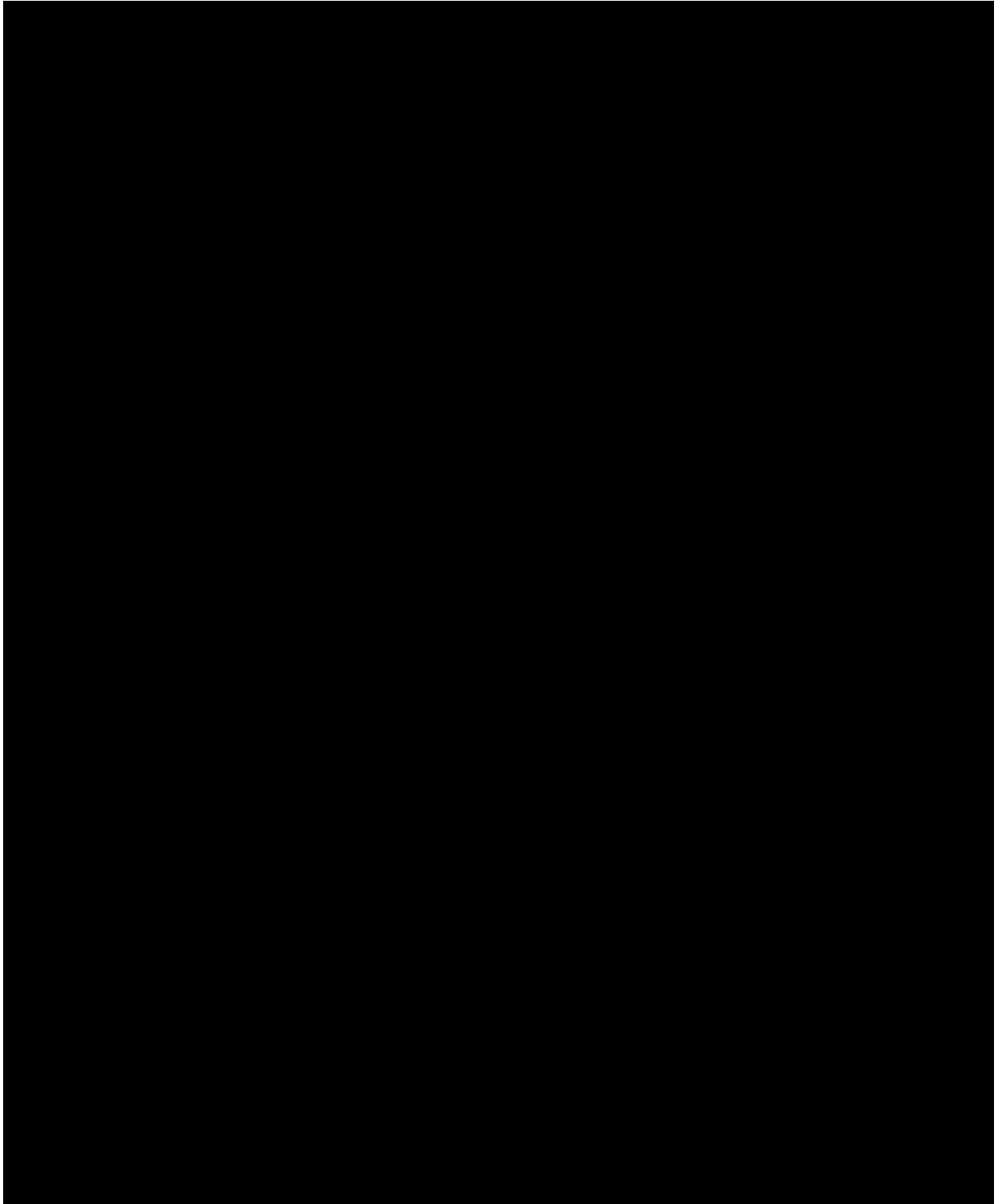
- (a) If the Principal's Representative considers, or the Contractor notifies the Principal's Representative in writing that the Contractor considers, that there is an ambiguity, discrepancy or inconsistency in this deed (including in any schedules or exhibits), the Principal's Representative must, subject to clause 4.2, direct the interpretation of this deed which the Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 4.3(a), is not required to state whether or not there is an ambiguity, inconsistency or discrepancy in respect of the terms of this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 4.3(a):
  - (i) does not in any way lessen or otherwise affect:
    - A. the Contractor's obligations under this deed or otherwise at Law; and
    - B. the Principal's rights against the Contractor, whether under this deed or otherwise according to Law;

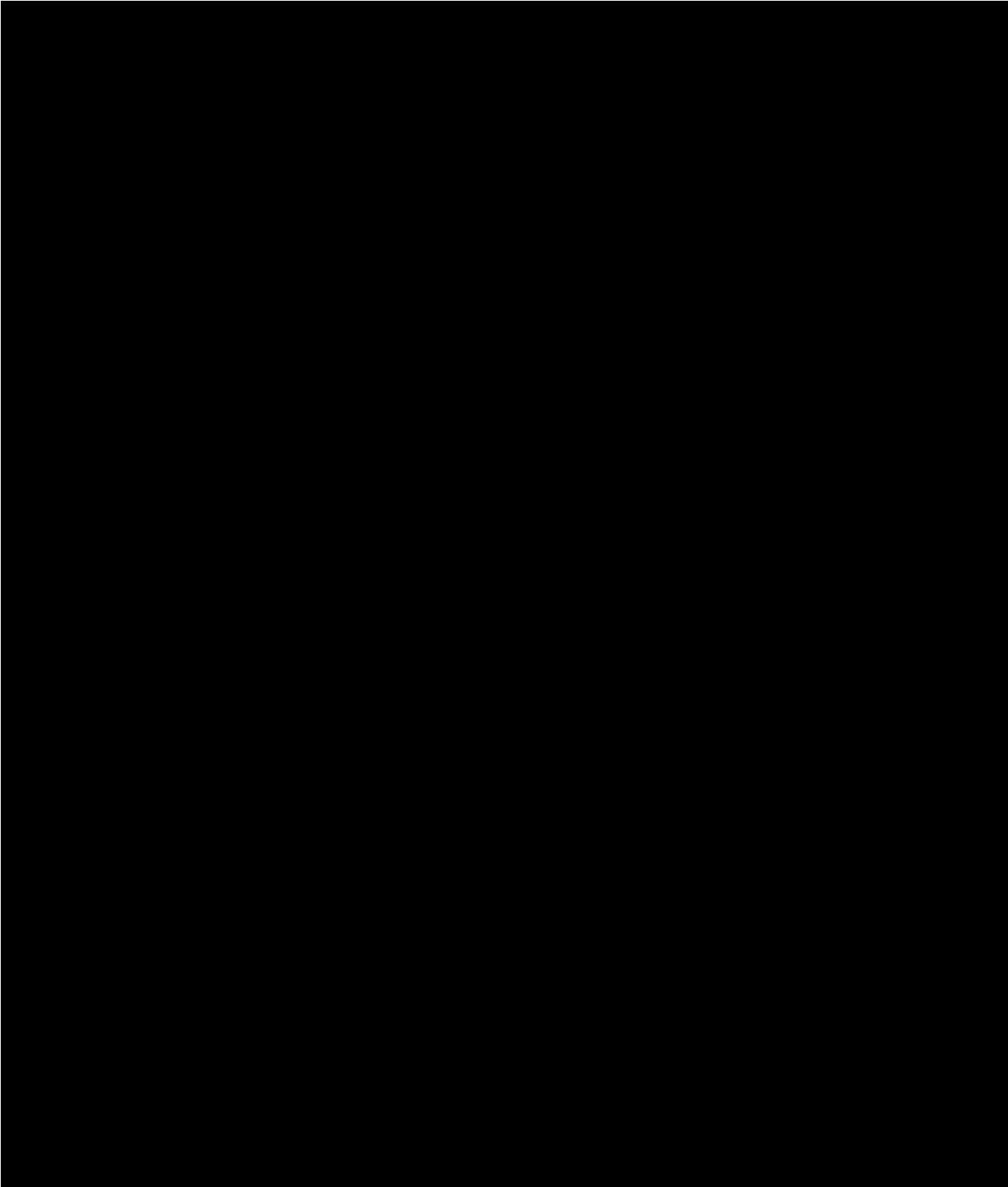


- (ii) will not give rise to any entitlement of the Contractor to make, nor will the Principal be liable upon, any Claim arising out of or in connection with the Contractor's compliance with the Principal's Representative's Direction; and
- (iii) must, in respect of a notice given by the Contractor under clause 4.3(a), be given within 20 Business Days of receipt of that notice.

#### **4.4 No assignment**

The Contractor must not assign or otherwise deal with any of its rights, interests or obligations under this deed without the prior written consent of the Principal.





**5. Legal and other requirements**

**5.1 Compliance with Law and other requirements**

- (a) Subject to clause 5.1(b)(ii), the Contractor must in carrying out the Contractor's Activities:
  - (i) comply with all applicable Law;
  - (ii) comply with, and provide the Principal's Representative with copies of, any requirement, notice, order or direction received from or given by any Authority, including any infringement notice, fine or penalty;

- (iii) give all notices and pay all fees and other amounts which are required to be paid for or in respect of the performance of its obligations;
- (iv) give the Principal's Representative copies of all notices, reports and submissions it gives to Authorities at the time it submits such notices, reports and submissions and responses from, and details of any consultations with, Authorities; and
- (v) give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it as soon as possible.

(b) The Contractor must:

- (i) obtain all Approvals (including under the Airport Building Regulations, *Airports (Environment Protection) Regulations 1997* (Cth) and the *Airports (Protection of Airspace) Regulations 1996* (Cth)) except for those specified in Schedule 41 (Approvals) which either:
  - A. were obtained by the Principal prior to the date of this deed; or
  - B. will be obtained by the Principal after the date of this deed if required;
- (ii) unless otherwise expressly specified in Schedule 28 (Environmental Documents), comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Approvals specified in Schedule 41 (Approvals) to comply with, carry out and fulfil; and
- (iii) as a condition precedent to Construction Completion, ensure that it has:
  - A. obtained all Approvals it is required to obtain under this deed;
  - B. complied with, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out and fulfil under this deed; and
  - C. without limiting clauses 5.1(b)(iii)A and 5.1(b)(iii)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including the obtaining of the approval of any person for anything) under this deed insofar as this is necessary,

including those Approvals which are required or must be satisfied for the purposes set out in paragraph (c) of the definition of "Approval" in clause 23.2.

(c) [REDACTED]

(i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. [REDACTED]

(iv) [REDACTED]

- (d) The Contractor acknowledges and agrees any documentation that is required to be submitted by the Contractor to:
- (i) a 'site auditor' as contemplated by the *Contaminated Land Management Act 1997* (NSW); or
  - (ii) an 'assessor' as contemplated by the *Airports (Environment Protection) Regulations 1997* (Cth),

will be deemed to be Approval Related Documentation for the purposes of this clause.

- (e) In respect of any documentation submitted:
- (i) by the Contractor to the Principal's Representative under clause 5.1(c), including whether or not the Principal's Representative reviews it for errors, omissions, compliance with this deed or suitability for submission to the relevant Authority and whether or not the Principal's Representative comments on it or engages in any act or omission in respect of it;
  - (ii) by the Contractor to an Authority following the process in clause 5.1(c); or
  - (iii) by the Principal (if the Principal's Representative agrees or elects to do so in his or her absolute discretion or is required to by Schedule 28 (Environmental Documents) of this deed) to an Authority following the process in clause 5.1(c),
- the:
- (iv) Principal's Representative owes no duty to the Contractor;
  - (v) Contractor's liabilities or responsibilities and the Principal's rights under this deed or otherwise will not be changed from what they otherwise would be; and
  - (vi) Contractor will not be entitled to make any Claim in respect of a delay by any relevant Authority in reviewing, considering, approving, requiring amendments to or rejecting any Approval Related Documentation submitted in accordance with clauses 5.1(e)(i) to 5.1(e)(iii).

(f) For the avoidance of doubt, the process in clause 5.1(c) is separate from, and does not in any way limit the operation of, any other review process set out in this deed, including the processes in clauses 3.3 or 12.2 to 12.3.

(g) [REDACTED]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

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## 5.2 Environmental requirements

- (a) The Contractor must carry out the Contractor's Activities:
  - (i) in an environmentally responsible manner so as to protect the Environment; and
  - (ii) subject to clause 5.1(b)(ii) and clause 5.2(b), in accordance with:
    - A. the Environmental Documents, the Environment Strategy, the Construction Environmental Management Plans and all relevant Law; and
    - B. all obligations, standards and requirements on the Contractor, as an Operator of an Undertaking (as defined in the *Airports (Environment Protection) Regulations 1997* (Cth)), and as otherwise imposed by the Airports Act.
- (b) Except as specified in Schedule 28 (Environmental Documents), and without limiting the Contractor's other obligations under this deed, the Contractor must comply with, carry out and fulfil the conditions and requirements of all Environmental Documents, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works or Contractor's Activities.
- (c) The Contractor must immediately notify the Principal in writing of any breach, potential breach, non-compliance or potential non-compliance with the conditions or requirements of any of the Environmental Documents, or any Environmental Law in the carrying out of the Contractor's Activities and of details of notices received by or proceedings commenced under any Environmental Law of which the Contractor becomes aware relating to a breach, potential breach, non-compliance or potential non-compliance with an Environmental Law.
- (d) Without limiting the Contractor's obligations under clauses 5.2(a) to 5.2(c), the Contractor must, in carrying out the Contractor's Activities do (and ensure that its employees, agents and Subcontractors do) all things necessary to prevent a breach of Environmental Laws.



- (e) The parties acknowledge and agree that if Sydney Airport considers that there has been or may have been a breach by the Contractor of its obligations under this clause 5.2, Sydney Airport may notify the Principal and the Airport Environment Officer of the alleged breach, and the Contractor must co-operate with the Principal, Sydney Airport and the Airport Environment Officer in any investigation or assessment of that alleged breach and must comply with any environmental remedial order made by the Airport Environment Officer.
- (f) To the extent not prohibited by Law the Contractor indemnifies the Principal against any cost, expense, loss or liability suffered or incurred by the Principal arising out of or in connection with a breach of this clause 5.2.
- (g) The Contractor must comply with the NSW Government *Environmental management guidelines - Construction procurement* (Edition 4 December 2019).

### 5.3 Legal challenge

- (a) If there is a legal challenge:
  - (i) in relation to the Works, including the assessment or determination of the Works, under the:
    - A. *Environmental Planning and Assessment Act 1979* (NSW);
    - B. *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
    - C. any other Law;
  - (ii) in relation to the Major Development Plan,
 

the Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:

    - (iii) ordered by a court or tribunal; or
    - (iv) directed by the Principal.
- (b) [REDACTED]
- (c) The Contractor's entitlement under [REDACTED] will be its only right to make any Claim for payment of money arising out of or in any way in connection with a court or tribunal order referred to in clause 5.3(a)(iii) or a direction by the Principal under clause 5.3(a)(iv).
- (d) Clause 5.3(b) does not apply to the extent that a legal challenge of the kind referred to in clause 5.3(a) is initiated or upheld or the Principal's direction under clause 5.3(a)(iv) is required as a result of, or in connection with, the Contractor's non-compliance with its obligations under this deed.
- (e) [REDACTED]

### 5.4 Crown building work

- (a) The Contractor must, in relation to any Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) Nothing in clause 5.4(a) will lessen or otherwise affect:
  - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

## 5.5 Skills Development and Training

- (a) The Contractor must comply with the NSW Government Procurement Guideline *Skills and Training in the Construction Industry* and the requirements of the section of the SWTC identified in Item 37(j) of Schedule 1 (Contract Information). The Guideline is attached to NSW Procurement Board Direction PBD 2017-05-*Construction training and skills development*, which is available for download from: <http://arp.nsw.gov.au/pbd-2017-05-construction-training-and-skills-development>.
- (b) The Contractor is required to meet the commitments made in the SWTC concerning skills development and training.
- (c) From the date of this deed until the Date of Construction Completion the Contractor must provide quarterly reports to the Principal's Representative (at the end of March, June, September and December) in the form set out in Schedule 46 (Apprenticeship and Traineeship - Quarterly Report), giving details of the apprentices and trainees engaged in the carrying out of the Contractor's Activities and demonstrating that the Contractor is meeting (or will meet at Construction Completion) the commitments made in this deed.

## 5.6 Industrial relations

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

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards, enterprise and project agreements and any relevant Laws, for all employees, are always observed in full; and
- (c) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities.

## 5.7 Site induction

Without limiting the Contractor's obligations under clause 5.1(b) to comply with the conditions and requirements of all Approvals, the Contractor must provide safety and environmental site induction for persons nominated by the Principal's Representative, and for all personnel directly or indirectly engaged by the Contractor and requiring access to:

- (a) the Construction Site; and
- (b) other areas where the Contractor's Activities are being performed.

## 5.8 Work health and safety

- (a) In this clause 5.8, "workplace", "construction project" and "construction work" have the same meanings assigned to those terms in the WHS Laws.
- (b) Without limiting the Contractor's obligations under any other provisions of this deed:
  - (i) to the extent that the Contractor's Activities include construction work, the Principal:
    - A. engages the PC Contractor Entity as the Principal Contractor under the WHS Laws in respect of all such construction work carried out by the Contractor under this deed; and
    - B. authorises the PC Contractor Entity to:
      - 1) have management and control of each workplace at which the Contractor's Activities are to be carried out; and
      - 2) discharge the duties of a Principal Contractor under the WHS Laws for the construction project; and
  - (ii) the PC Contractor Entity must exercise and fulfil the functions and obligations of the Principal Contractor under the WHS Laws.

- (c) The PC Contractor Entity's engagement and authorisation as Principal Contractor will continue:
- (i) until the Date of Construction Completion unless sooner revoked by the Principal; and
  - (ii) in respect of any rectification work under clause 16 that is construction work, during the period any such work is carried out.
- (d) Without limiting any other provision of this deed:
- (i) the Contractor must discharge all its obligations under the WHS Laws and under any plan or any other laws relating to work health and safety;
  - (ii) the PC Contractor Entity accepts its engagement as the Principal Contractor and agrees that it has sufficient authority to comply with its obligations as Principal Contractor;
  - (iii) the Contractor is responsible for all costs associated with the PC Contractor Entity performing the role of Principal Contractor;
  - (iv) the Contractor must comply with any direction on safety issued by a relevant Authority;
  - (v) the Contractor must immediately notify the Principal of any Notifiable Incident in connection with the Contractor's Activities and the Construction Site and provide the Principal with any information the Principal requires in relation to any Notifiable Incident;
  - (vi) the Contractor must provide to the Principal all notices and correspondence concerning work health and safety in connection with the Contractor's Activities as soon as reasonably practicable and within no more than 24 hours after the dispatch or receipt of any such notice or correspondence;
  - (vii) the PC Contractor Entity acknowledges that it has control and management of the area of the Construction Site;
  - (viii) to the extent not prohibited by Law, the Contractor indemnifies the Principal against any cost, damage, expense, loss or liability suffered or incurred by the Principal arising out of or in connection with:
    - A. the failure of the PC Contractor Entity to exercise or fulfil the functions and obligations of the Principal Contractor under the WHS Laws or under this clause, or any breach of this clause 5.8, except to the extent that the failure or breach is directly caused by an act, neglect, omission or default of the Principal or its servants, agents, employees or contractors (other than the Contractor or the Stage 1 Contractor); and
    - B. any work health and safety claims in connection with the Contractor's Activities and the Construction Site except to the extent that they are directly caused by an act, neglect, omission or default of the Principal or its servants, agents, employees or contractors (other than the Contractor or the Stage 1 Contractor);
  - (ix) the Contractor must itself comply, and ensure that all Subcontractors engaged by the Contractor in connection with the Contractor's Activities comply with their respective obligations under the WHS Laws;
  - (x) the Contractor must ensure that it carries out the Contractor's Activities in a manner which ensures that the Principal satisfies its obligations under the WHS Laws and does not obstruct the Principal in the performance of its obligations under WHS Laws;
  - (xi) the Contractor must ensure that it does not direct or allow a person to carry out work, or use plant or a substance at a workplace unless the person holds any necessary authorisation, licensing, prescribed qualifications or experience required by any Law;

- (xii) the Contractor must display signs that are clearly visible from outside the place of work identifying the PC Contractor Entity as the Principal Contractor and stating the contact telephone numbers of the Contractor (including an after-hours emergency telephone number) and the location of the Contractor's main site administration facilities for the construction project;
  - (xiii) the Contractor warrants that it will inform the Principal of any matter which the Principal must be aware of to ensure the health and safety of the Principal's workers in relation to the Contractor's Activities; and
  - (xiv) the Contractor must consult, co-operate and co-ordinate with the Principal in respect of the discharge of any of the Principal's work, health and safety obligations in connection with the construction project under the WHS Law.
- (e) If the Principal's Representative notifies the Contractor that:
- (i) work is to be carried out by other contractors engaged by the Principal on or about the Construction Site (**Other Contractor Work**); and
  - (ii) the PC Contractor Entity is the Principal Contractor in respect of the Other Contractor Work,
- then:
- (iii) the Other Contractor Work will form part of the same construction project as the Contractor's Activities; and
  - (iv) the PC Contractor Entity's engagement as Principal Contractor under clause 5.8(b) will include acting as Principal Contractor in respect of the Other Contractor Work.
- (f) The Principal may, at its sole discretion, notify the Contractor that it has terminated the PC Contractor Entity's engagement as Principal Contractor for all or part of the Contractor's Activities and advise the Contractor of the new Principal Contractor for the Contractor's Activities (or a part thereof). If the PC Contractor Entity's appointment and engagement as Principal Contractor is terminated for all or part of the Contractor's Activities, then the Contractor must comply with all requirements of the new Principal Contractor in executing the Contractor's Activities and its other obligations under this deed so as to enable the new Principal Contractor to meet its obligations under the WHS Laws.
- (g) Without limiting any other provision of this deed, the Contractor must:
- (i) carry out the Contractor's Activities safely so as to protect persons and property and the Environment;
  - (ii) have a corporate work health and safety management system which complies with the WHS Laws and is otherwise in accordance with the WHS Guidelines; and
  - (iii) at all times comply with its Project WHS Management Plan.
- (h) If any of the Principal's Representative, the Principal's Assistant Representative or the Principal's Surveillance Officer considers there is a risk of injury to people or damage to property or the Environment arising from the Contractor's Activities:
- (i) the Principal's Representative, the Principal's Assistant Representative or the Principal's Surveillance Officer (as the case may be) may direct the Contractor to change its manner of working or to cease working; and
  - (ii) the Contractor must, at its cost, comply with any direction given under clause 5.8(h)(i).

## 5.9 Safety audit

- (a) The Principal may itself, have a third party, or require the Contractor to, conduct audits from time to time of the Contractor's compliance with its health and safety obligations under:
- (i) this deed; and
  - (ii) all WHS Laws,

**(WHS Obligations).**

- (b) The Contractor must comply with all requirements of a party undertaking an audit under this clause, including giving reasonable access to all documents necessary to conduct the audit, and access to the Construction Site.
- (c) If the Contractor is required to conduct an audit under this clause, it must do so within the time reasonably required by the Principal and promptly report to the Principal in writing on the outcome of the audit.
- (d) Any corrective work or action which the audit identifies as necessary to rectify any non-compliance with the WHS Obligations must be undertaken by the Contractor at its expense and within a reasonable time, given the nature of the non-compliance.

## **5.10 Collusive arrangements**

- (a) The Contractor:
  - (i) warrants that:
    - A. prior to the close of Tenders; and
    - B. as at the date of this deed,the Contractor had no knowledge of the Tender price of any other Tenderer and had not directly or indirectly communicated the Contractor's Tender price to any other Tenderer;
  - (ii) warrants that, except as disclosed in the Tender and as agreed with the Principal in writing, the Contractor:
    - A. has not made any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:
      - 1) the Contractor will pay money to or confer any benefit on any of the unsuccessful Tenderers; or
      - 2) the Contractor will pay money to or confer any benefit on any trade or industry association (above the published standard fee) in respect of this deed;
    - B. has not made any allowance in the Contractor's Tender price on account of a contract, arrangement or understanding of a kind referred to in clause 5.10(a)(ii)A; and
    - C. will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 5.10(a)(ii)A; and
  - (iii) acknowledges that it is aware that the Principal entered this deed in reliance on the warranties in clauses 5.10(a)(i) and 5.10(a)(ii).
- (b) The Principal and the Contractor agree that if any matter warranted in clauses 5.10(a)(i) or 5.10(a)(ii) is found not to be true or not to be correct, in addition to any other rights that the Principal may have, the Contractor:
  - (i) will be in fundamental breach of this deed; and
  - (ii) without limiting the Principal's rights under clause 21.3, must pay to the Principal as liquidated damages the sum equivalent to that paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 5.10(a)(ii).

## **5.11 Long service leave levy**

The Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) (in this clause 5.11 the **Long Service**



**Payments Act**), at the times and in the amounts as are due and payable under the Long Service Payments Act, including:

- (i) before commencing any construction work under this deed; and
  - (ii) if the Long Service Corporation serves a notice under section 41 of the Long Service Payments Act requiring payment of an additional amount of long service levy, within the time specified in the notice; and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 5.11(a).

## **5.12 NSW Guidelines**

- (a) The NSW Guidelines apply to this Project. The NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).
- (b) In addition to terms defined in this deed, terms used in this clause 5.12 have the same meaning as is attributed to them in the NSW Guidelines.
- (c) The Contractor must at all times comply with, and meet any obligations imposed by the NSW Guidelines.
- (d) The Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (e) Where the Contractor engages a Subcontractor, the Contractor must ensure that the Subcontract imposes on the Subcontractor equivalent obligations to those in this clause 5.12, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (f) The Contractor must not appoint or engage another party in relation to the Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.
- (g) The Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities.
- (h) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the Contractor, including the Construction Site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the Contractor's Activities;
  - (v) have access to personnel; and
  - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines, by the Contractor, its Subcontractors and its related entities.
- (i) The Contractor agrees to comply, and will require its related entities to comply, with a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (j) The Contractor warrants that at the time of entering into this deed and the Project Interface Deed, neither it, nor any of its related entities, is subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (k) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.
- (l) Where a sanction is imposed:

- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
- (ii) the State of NSW (through its agencies, ministers and the CCU) is entitled to:
  - A. record and disclose details of noncompliance with the NSW Guidelines and the sanction; and
  - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.
- (m) The Contractor bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (n) Compliance with the NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities and any other obligation under this deed, or from liability for any Defect in the Project Works, or the Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (o) Where a change in this deed or the Contractor's Activities are proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the Contractor must immediately notify the Principal (or the Principal's Representative) of the change, or likely change and specify:
  - (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project WHS Management Plan),
 and the Principal will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice from the Contractor.

### **5.13 RMS Statement of Business Ethics**

The parties must comply with the RMS Statement of Business Ethics available at [https://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/business-ethics/business\\_ethics\\_statement.pdf](https://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/business-ethics/business_ethics_statement.pdf).

### **5.14 Incident control by the New South Wales Police Force and Australian Federal Police**

Despite any other provision of this deed, where the New South Wales Police Force or Australian Federal Police are controlling an incident, the Contractor:

- (a) must liaise with and obtain the approval of the New South Wales Police Force and Australian Federal Police (as applicable) in relation to any proposed closure to a lane or shoulder;
- (b) must not restrict, close, interfere with or obstruct the free flow of traffic on any lane or shoulder of the Works or a Local Road contrary to the instructions of the New South Wales Police Force or Australian Federal Police (as applicable); and
- (c) if permitted to restrict, close, interfere with or obstruct the free flow of traffic on any lane or shoulder of the Works or a Local Road, must act in accordance with any instructions of the New South Wales Police Force or Australian Federal Police (as applicable) including to suspend any of the Contractor's Activities and to re-open the lane or shoulder. Except to the extent that compliance with any instructions of the New South Wales Police Force or Australian Federal Police makes it impossible to do otherwise, this clause 5.14 does not relieve the Contractor from its obligations under this deed.

## 5.15 Road occupancy

- (a) Where any Contractor's Activities will or are likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of any Local Road, the Contractor must:
- (i) prepare and submit a traffic management plan for each stage of the Contractor's Activities (**Traffic and Transport Management Plan**) to the Sydney Coordination Office, the TMC and the Principal's Representative in accordance with Appendix C.5 of the SWTC; and
  - (ii) prepare and submit to the Sydney Coordination Office and the TMC applications for a Road Occupancy Licence (with a copy to the Principal's Representative) in accordance with the requirements of the TMC and Appendix C.4 of the SWTC.
- (b) The Contractor:
- (i) must comply with the directions of any relevant Authority (including the Sydney Coordination Office, the TMC and the Principal in its capacity as an Authority) and the Principal's Representative with respect to traffic management; and
  - (ii) acknowledges and agrees that the Sydney Coordination Office, the TMC and the Greater Sydney Division each exercise their own discretion in the exercise of delegated statutory functions and powers in connection with traffic management of the Principal and Sydney Airport, and that nothing that the Principal, the Sydney Coordination Office, TMC or the Greater Sydney Division do, fail to do or purport to do pursuant to such delegation of their statutory functions or powers (including a decision not to grant a Road Occupancy Licence or approve the Traffic and Transport Management Plan) will:
    - A. be considered as an act or omission of the Principal;
    - B. constitute an Act of Prevention; or
    - C. [REDACTED], entitle the Contractor to make any Claim.
- (c) The Contractor must not undertake any Contractor's Activities that have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of a Local Road:
- (i) without a Road Occupancy Licence;
  - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
  - (iii) otherwise than in accordance with the terms and conditions of a Road Occupancy Licence.
- (d) A breach of a term or condition of a Road Occupancy Licence will constitute a breach of this deed.
- (e) [REDACTED]
- [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]



- (iii) ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), the Road Transport Legislation and including the provisions of any Chain of Responsibility Management Plan which has been submitted to the Principal's Representative under this clause; and
  - (iv) invite and permit the Principal's Representative or its nominee to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.
- (b) The Contractor acknowledges that for the purposes of the Chain of Responsibility Provisions of the Heavy Vehicle National Law, its Subcontractors may hold a number of roles including as consignor, loader, unloader, loading manager, prime contractor, operator, scheduler and packer.
- (c) The Contractor must ensure that its personnel, and its Subcontractors and their personnel, are provided with adequate information, training, instruction and supervision in relation to any of their obligations and compliance with the Heavy Vehicle National Law, including:
- (i) induction training prior to the commencement of the Contractor's Activities; and
  - (ii) ongoing training in relation to their obligations and compliance with the Heavy Vehicle National Law.
- (d) Where the Contractor becomes aware of any suspected, alleged or actual breach by the Contractor or any Subcontractor or its employees or becomes aware of any regulatory or administrative warning or caution, any notice requiring information or production of documents, inspections, infringement notices, notices or legal proceedings issued in respect of any heavy vehicle used in performing the Contractor's Activities, the Contractor must:
- (i) promptly give the Principal's Representative a detailed written report of the matter and any steps taken or intended to be taken to respond to any such suspected, alleged or actual breach or to prevent any other similar suspected, alleged or actual breach from occurring; and
  - (ii) otherwise comply with Law and the relevant Project Plans (including the Project WHS Management Plan, the Chain of Responsibility Management Plan and the Communication Management Plan).
- (e) The Principal's Representative may, if it reasonably believes that the Contractor is not in compliance with, or the Contractor has not procured a Subcontractor's compliance with, its obligations under this clause or Schedule 51 (Heavy Vehicle National Law Requirements), by written notice direct the Contractor to show cause why the Contractor should not be directed to suspend any or all of the Contractor's Activities under this deed (including any activities carried out by any non-compliant Subcontractor) until such time as the Principal can be reasonably satisfied that any non-compliance has been remedied. Without limiting any other provision of this deed, the Principal may also, in its sole and absolute discretion:
- (i) require that the persons responsible for any breach of the Heavy Vehicle National Law are no longer engaged in the Contractor's Activities; and
  - (ii) report any suspected or alleged breach to any State or Territory road safety authority or authorised officer under the Heavy Vehicle National Law.
- (f) The Principal will have no liability to the Contractor in respect of an order by a court or direction by the Principal's Representative that the Contractor cease to perform its obligations under this deed as a result of a suspected, alleged or actual breach of this clause, Schedule 51 (Heavy Vehicle National Law Requirements) or the Heavy Vehicle National Law.
- (g) The Contractor is responsible for preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Construction Site, Extra Land or any other areas affected by the Contractor's Activities, including personal injury or death or loss or damage in connection with the Contractor's obligations under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site, Extra Land or any other areas affected by the Contractor's Activities of items that require transport activities or the movement on any road of any heavy vehicle whether loaded or not.



- (h) The Contractor must:
  - (i) keep and must ensure that any Subcontractors keep records of any steps taken in compliance with this clause, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan for at least 3 years after taking any such steps; and
  - (ii) have its compliance independently audited, and provide the Principal with an audit report in relation to the Contractor's compliance with this clause, the Heavy Vehicle National Law and any Chain of Responsibility Management Plan by no later than 30 June each year.
- (i) In this clause 5.17, "heavy vehicle", "transport activities", "consignor", "loader", "unloader", "loading manager", "prime contractor", "operator", "scheduler" and "packer" have the same meanings assigned to those terms in the Heavy Vehicle National Law.

### **5.18 Australian Industry Participation Plan (AIP Plan)**

- (a) If required by Item 21 of Schedule 1 (Contract Information), the Contractor must comply with and implement the Certified AIP Plan.
- (b) The Contractor must provide any information or reporting reasonably required by the Principal to assist the Principal in assessing the Contractor's compliance with the Certified AIP Plan and providing any reporting to the Australian Industry Participation Authority.

### **5.19 National Construction Code**

Where any part of the Contractor's Activities meets one or more of the classifications of buildings described in the National Construction Code, the Contractor must comply with the National Construction Code performance requirements in relation to materials whilst carrying out the Contractor's Activities to which the National Construction Code applies.

### **5.20 Safe and effective operations**

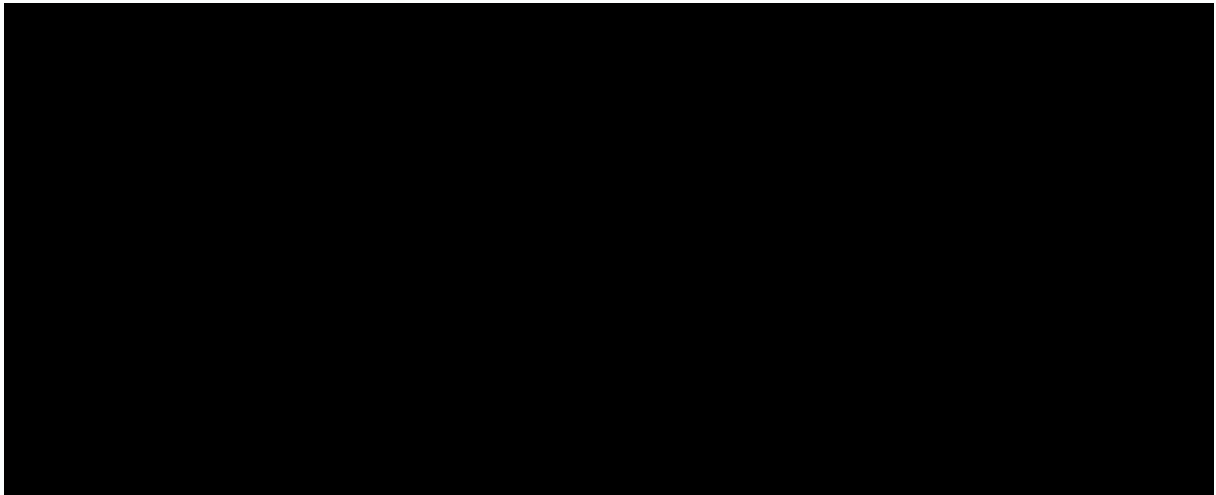
Without limiting any other clause in this deed, the Contractor must minimise any impact of the Contractor's Activities on the operation of aircraft, runways or aviation infrastructure and airspace on or about the Airport.

### **5.21 Builder's Side Deed**

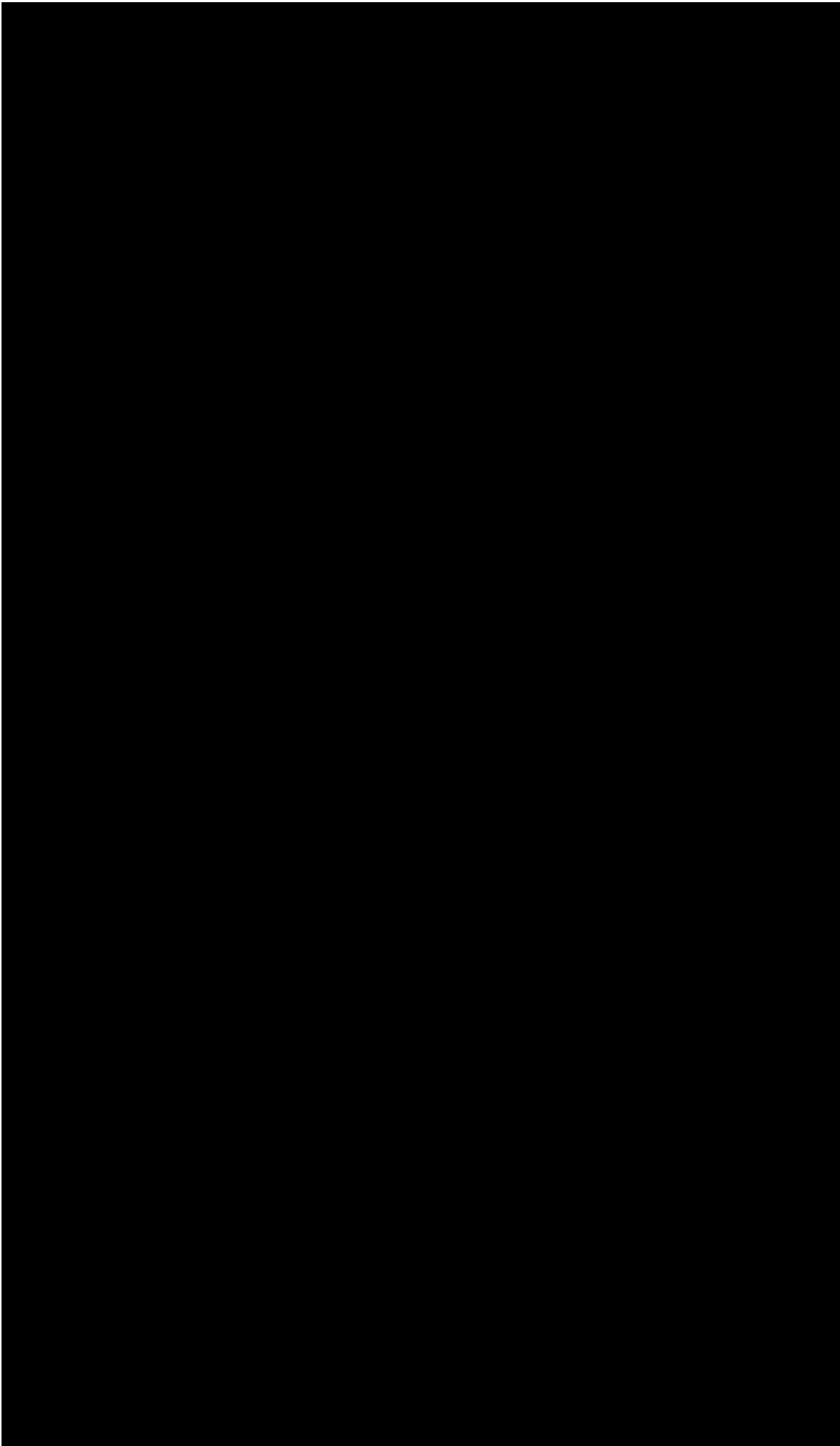
The Contractor must on or before the date of this deed, provide the Principal's Representative with an executed Builder's Side Deed in the form provided in Schedule 49 (Builder's Side Deed).

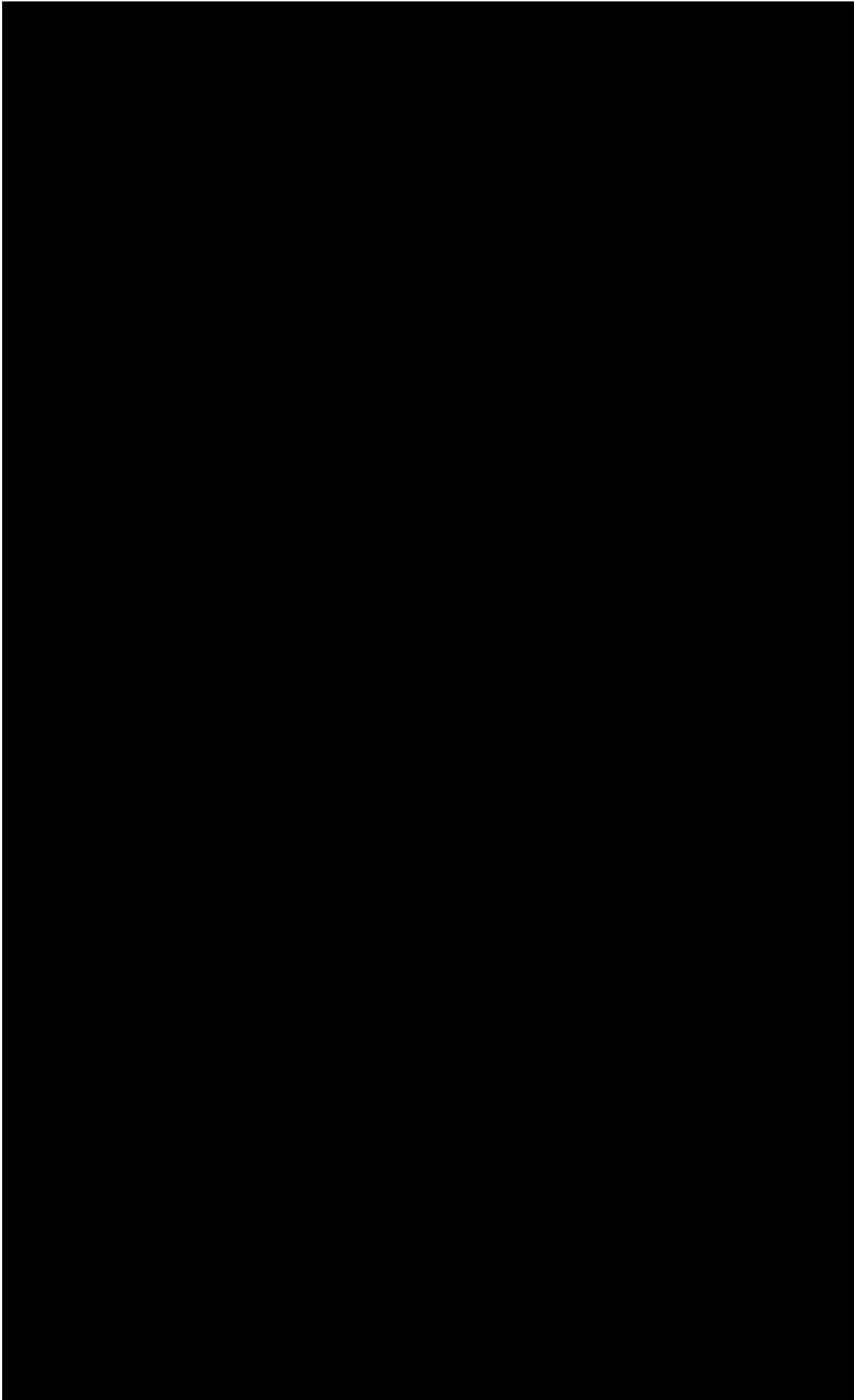
### **5.22 Third Party Agreements**

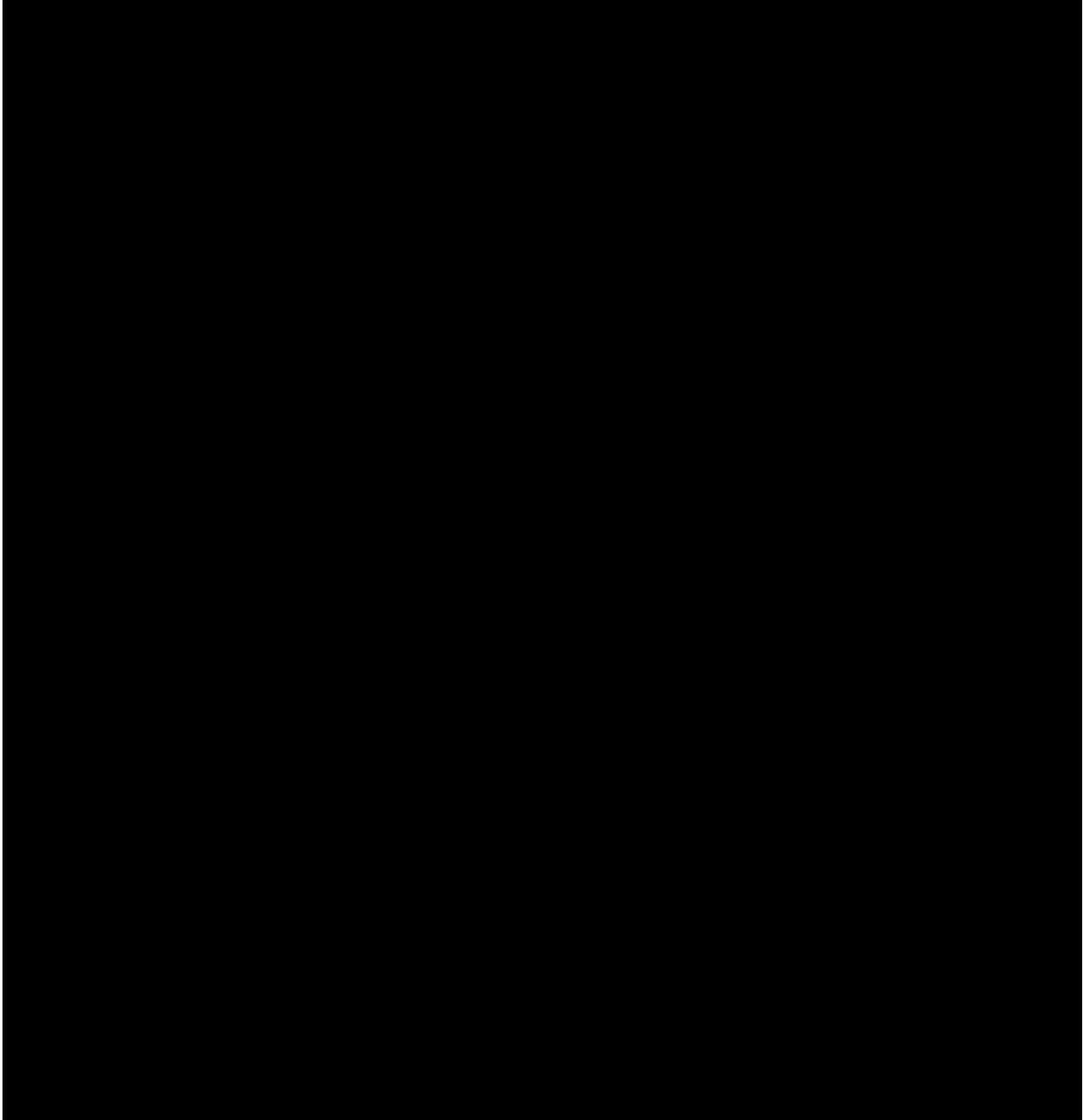
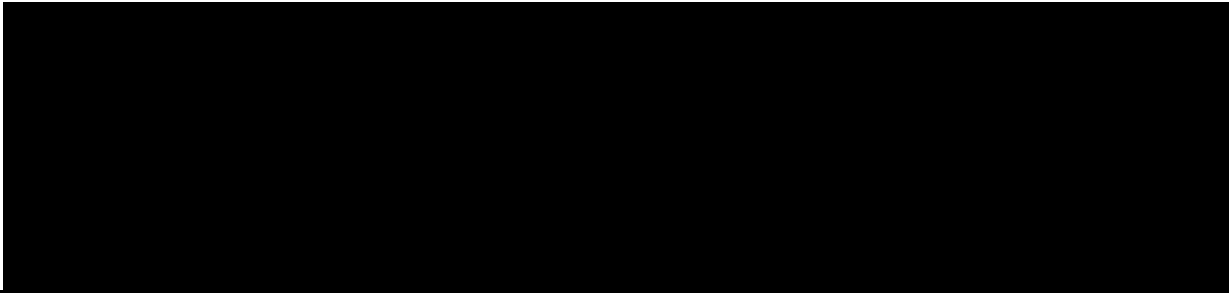
- (a) The Contractor:
  - (i) acknowledges that it has been given copies of the Third Party Agreements; and
  - (ii) must comply with its obligations in Schedule 50 (Requirements of Third Party Agreements) (as modified in accordance with this clause 5.22).







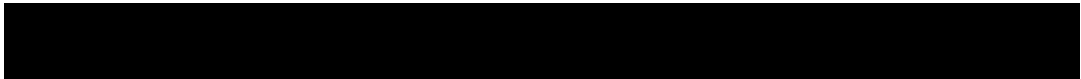


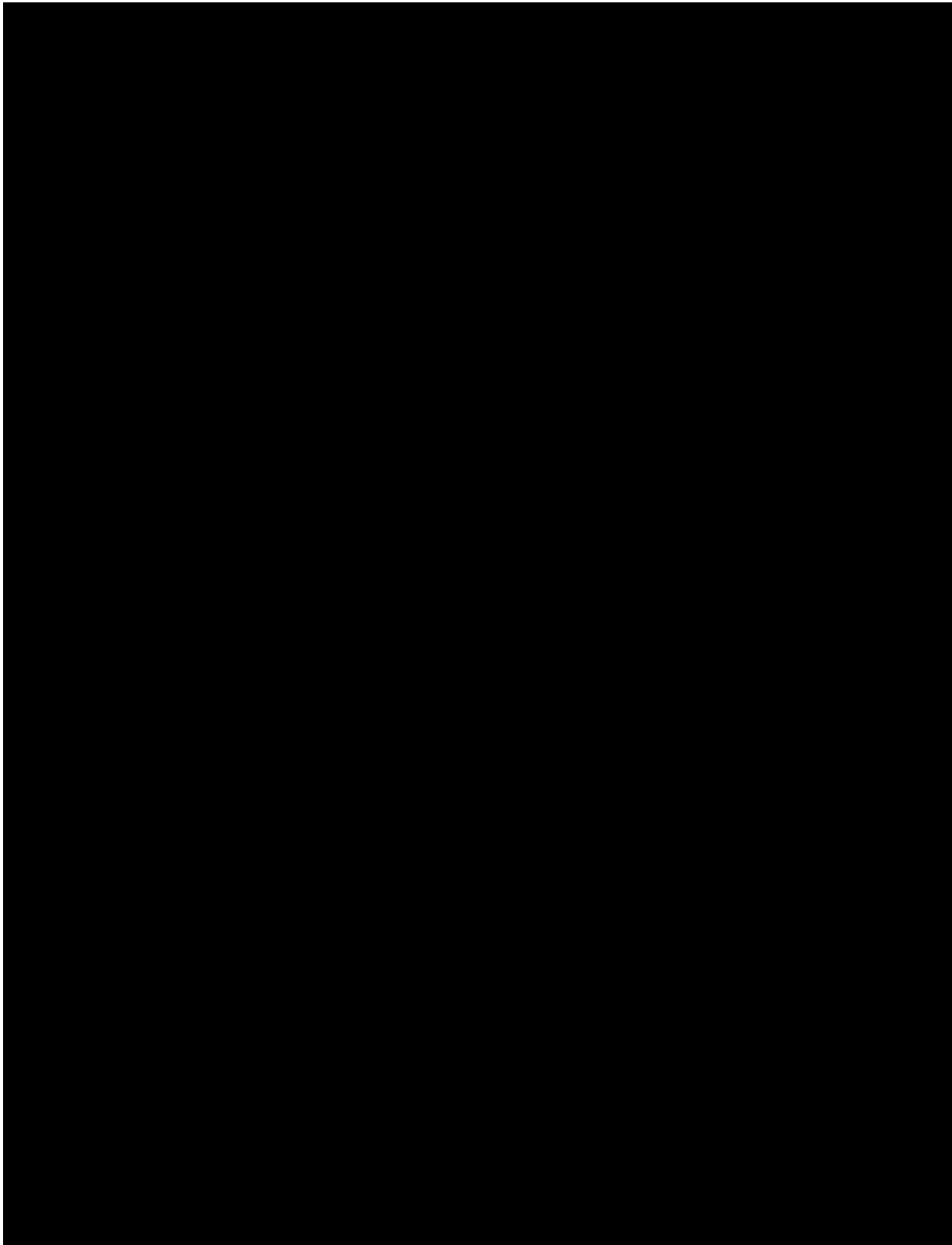


**5.24 NSW Government Supplier Code of Conduct**

The Contractor must comply with the NSW Government *Supplier Code of Conduct* which is available for download from:

[https://www.procurepoint.nsw.gov.au/system/files/documents/nsw\\_supplier\\_code\\_of\\_conduct\\_v1.1.pdf](https://www.procurepoint.nsw.gov.au/system/files/documents/nsw_supplier_code_of_conduct_v1.1.pdf).





**6. Care of people, property and the Environment**

**6.1 Risk and indemnity**

- (a) The Contractor is responsible for the care of, and bears the risk of, and indemnifies the Principal against, loss or damage to:
  - (i) the Project Works, the Temporary Works and any Extra Land, from the date of this deed; and

(ii) all other parts of the Construction Site, from the date on which access is granted under clause 9.1(a),

until:

(iii) in the case of each parcel of land within the Local Areas, the date on which the Principal's Representative has issued a written notice to the Contractor that the Contractor has completed the relevant part of the Local Area Works to which the land relates or for which it was provided, in accordance with clause 16.7(f)(i); or

(iv) in the case of the balance of the Construction Site and the Temporary Works Areas, the date in the notice given under clause 17.10(g)(i) or the Date of Opening Completion (whichever is the earlier).

(b) After the expiry of a period referred to in clauses 6.1(a)(iii) or 6.1(a)(iv), as relevant, the Contractor:

(i) remains responsible for the care of the Project Works and the Temporary Works, to the extent affected by; and

(ii) bears the risk of, and indemnifies the Principal against, any cost, expense, loss, liability or damage (including loss or damage to the Project Works and the Temporary Works) suffered or incurred by the Principal arising out of or in connection with,

the Contractor's Activities performed after the period referred to in clauses 6.1(a)(iii) or 6.1(a)(iv), including performing Variations, making good Defects, and removing any plant, goods or materials from the Construction Site or any other areas affected by the Contractor's Activities.

(c) [REDACTED]

## 6.2 Reduction of Contractor's liability

[REDACTED]

## 6.3 Responsibility for care

(a) The Contractor is responsible for:

(i) preventing personal injury or death, or loss or damage to the Project Works, the Temporary Works, the Construction Site or any other areas affected by the Contractor's Activities, including personal injury or death, or loss or damage in connection with the Contractor's obligation under the Chain of Responsibility Provisions in the course of bringing to and removing from the Construction Site items that require transport activities;

(ii) preventing loss or damage to adjoining and other properties and the Environment;

- (iii) repairing or making good loss or damage to the Project Works, the Temporary Works, the Environment and the Construction Site or any other areas affected by the Contractor's Activities; and
- (iv) except as provided under clause 6.3(b), bearing the cost of repairing, or making good, loss or damage referred to in clause 6.3(a)(iii) or to adjoining and other properties,

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

- (b) Where loss or damage referred to in clause 6.3(a)(iii) or clause 6.3(a)(iv) is caused or contributed to by an Excepted Risk, the Contractor must, if and to the extent directed by the Principal's Representative, repair or make good the loss or damage caused or contributed to by the Excepted Risk, which repair or making good will, to the extent caused by the Excepted Risk, be deemed to be a Variation under clause 15 and valued in accordance with clause 15.4.

## 6.4 The Principal's action

- (a) If urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately, the Principal may take the action, at the Contractor's cost with any penalty, fine, damage, expense, cost, loss or liability suffered or incurred by the Principal being recoverable, except to the extent prohibited by Law, as a debt due and payable from the Contractor to the Principal on demand.
- (b) If the Contractor fails to carry out any repair work or make good under clause 6.3(a)(iii), the Principal may carry out such work and all damage, expense, cost, loss and liability suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal on demand.
- (c) Clause 6.4(a) does not relieve the Contractor from any of its obligations under this deed.

## 6.5 Limitation of liability

- (a) Subject to clauses 6.5(b) and 6.6, the Contractor's total aggregate liability to:
  - (i) the Principal arising out of or in connection with the Contractor's Activities, this deed and the Project Interface Deed;
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]

whether in contract, tort (including negligence) or otherwise at law or in equity is limited to an amount which is equal to [REDACTED] of the Project Contract Sum (but without reducing the Project Contract Sum for any reductions under clause 16.5).
- (b) Clauses 6.5(a) and 6.6 do not limit the Contractor's liability:
  - (i) to the extent that it:
    - A. cannot be limited at Law;
    - B. arises out of or in connection with the Contractor's [REDACTED] fraud or criminal conduct; or
    - C. arises out of or in connection with the Contractor's abandonment of its obligations under this deed;
  - (ii) [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - (iv) to the extent that the Contractor has recovered from a third party in respect of the liability (including any Subcontractor and whether by way of indemnity or otherwise);



■ [REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED]  
■ [REDACTED]  
[REDACTED]

(vi) for breach of confidence or privacy or misuse of Personal Information; or

(vii) [REDACTED]

and amounts of any liability referred to in clauses 6.5(b)(i) to 6.5(b)(vii) will not be included in any calculation of the limit of the Contractor's total aggregate liability under clause 6.5(a).

(c) This clause 6.5 will survive termination of this deed.

## 6.6 Exclusion of indirect loss

(a) Subject to clause 6.5(b), the Contractor shall not be liable to the Principal for:

- (i) loss of business opportunity;
- (ii) loss of goodwill;
- (iii) loss of contracts;
- (iv) loss arising from business interruption;
- (v) loss of anticipated savings;
- (vi) the cost of capital or other financing costs;

[REDACTED]

incurred by the Principal or any third party, which loss or cost arises due to the performance of the Contractor's Activities or this deed (**Consequential Loss**).

(b) The Principal shall not be liable to the Contractor for:

- (i) loss of business opportunity;
- (ii) loss of goodwill;
- (iii) loss of contracts;
- (iv) loss arising from business interruption;
- (v) loss of anticipated savings;
- (vi) subject to clause 22.5, the cost of capital or other financing costs;

[REDACTED]

JOHN HOLLAND | [REDACTED]

[REDACTED]

incurred by the Contractor or any third party, arising out of or in connection with the performance of the Contractor's Activities or this deed.

(c) This clause 6.6 will survive termination of this deed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## 7. Insurance

### 7.1 Principal arranged insurance

(a) The Principal has effected an insurance policy or policies as referred to in Items 1 and 2 of Schedule 36 (Insurance Schedule), to cover the Principal, Sydney Airport, the Commonwealth (in respect of Item 1 only), the Contractor and all Subcontractors employed from time to time in relation to the Project Works and the Temporary Works for their respective rights, interests and liabilities with respect to:

- (i) **(contract works - material damage)** - liability for loss or damage referred to in clause 6.1(a); and
- (ii) **(third party liability)** - liabilities to third parties of the type set out in clause 6 and asbestos liability cover, as specified in Item 26 of Schedule 1 (Contract Information),

subject to the terms and conditions (including sums insured, limits of liability and exclusions) set out in the policy documents referred to in Exhibit N (Insurance Policy Wording).

(b) [REDACTED]

(c) The Principal may in its discretion have other insureds named or included in the policy or policies referred to in clause 7.1(a) [REDACTED] including the Commonwealth, Sydney Airport and any Authority or Third Party with an interest in the Project Works, the

Temporary Works, the Construction Site or any other areas affected by the Contractor's Activities.

- (d) The policy or policies referred to in:
  - (i) clause 7.1(a) will be maintained by the Principal until the Date of Final Completion; and

- (ii) [REDACTED]

- (e) Before the earlier of:
  - (i) 10 Business Days after the date of this deed; or
  - (ii) the Contractor commencing to carry out any part of the Project Works or Temporary Works,

the Contractor must contact the Principal's Insurer and must provide to the relevant person all details reasonably requested for the purpose of the insurances referred to in clause 7.1(a)

[REDACTED]

- (f) Full copies of the policy terms of the insurances effected under clause 7.1(a) [REDACTED] will be provided by the Principal.
- (g) If at any time the Project Contract Sum exceeds [REDACTED] of the limit of liability for contract works insurance (as referred to in the principal arranged contract works insurance in Exhibit N (Insurance Policy Wording)), the Principal will effect an increase in the limit of liability for contract works insurance to the full value of the Project Contract Sum.

## 7.2 Contractor's acknowledgement and obligations

The Contractor:

- (a) acknowledges and agrees that:
  - (i) it has reviewed and examined the proposed wording of the insurance policies which appear in Exhibit N (Insurance Policy Wording) and the actual insurance policies effected by the Principal pursuant to clause 7.1(a) [REDACTED] and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in clauses 6.1 and 6.3 and is aware that those insurance policies will not provide cover to the Contractor against all the risks assumed by the Contractor under clauses 6.1 and 6.3;
  - (ii) the obtaining of insurance by the Principal in accordance with clause 7.1 does not limit or otherwise affect the Contractor's obligations under this deed, including those under clauses 6.1 and 6.3; and
  - (iii) the policies of insurance referred to in clause 7.1(a) [REDACTED] have been obtained at the Principal's cost; and
- (b) is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a) and [REDACTED] and may effect insurance to cover the amount of that excess at its own cost.

## 7.3 Exclusions to Principal's insurance

The insurance cover under clause 7.1(a) [REDACTED] is subject to exclusions. These are set out in the actual insurance policies.

## 7.4 Reinstatement

- (a) If there is a claim for damage or destruction under the policy of insurance referred to in clause 7.1(a)(i) (as determined by the Principal's Representative, acting reasonably):
  - (i) all settlement amounts must be paid by the insurer directly to the Principal;

- (ii) the Principal may decide to have the Project Works reinstated, or may decide not to proceed with the Project Works, without creating any default by the Principal under this deed;
  - (iii) the Contractor must reinstate the Project Works and Temporary Works if instructed to by the Principal's Representative; and
  - (iv) except as otherwise provided in this deed, the Contractor may only make a Claim for payment for reinstatement of the Project Works and Temporary Works progressively as and when the Contractor reinstates, in accordance with this deed, the Project Works and Temporary Works and, [REDACTED], only up to the amount of any insurance settlement.
- (b) If, prior to the Date of Construction Completion, the Project Works or the Temporary Works are damaged or destroyed, the Contractor must:
- (i) make secure the Project Works, the Temporary Works and the parts of:
    - A. the Site;
    - B. (to the extent appropriate) the Local Areas; and
    - C. the Temporary Works Areas,
 which are still under the control of the Contractor in accordance with clauses 9.1 and 9.5;
  - (ii) notify:
    - A. appropriate Authorities, emergency services and the like; and
    - B. the insurers for assessment,
 and comply with their instructions; and
  - (iii) promptly consult with the Principal's Representative to agree on steps to be taken to ensure that, to the greatest extent possible, the Contractor continues to comply with its obligations under this deed.

## 7.5 Contractor's insurance

- (a) Before starting any work for or in connection with this deed, the Contractor must arrange and have in place insurance with an Approved Insurer (unless otherwise agreed by the Principal's Representative in writing) for the minimum amounts specified in Items 22, 23, 27, 29 and 30 of Schedule 1 (Contract Information), and pay all premiums for:
- (i) **(workers compensation)** - workers compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987* (NSW), as specified in Item 22 of Schedule 1 (Contract Information) and Item 5 of Schedule 36 (Insurance Schedule);
  - (ii) **(motor vehicle/third party property)** - either comprehensive motor vehicle insurance or third party property damage insurance, as specified in Item 23 of Schedule 1 (Contract Information) and Item 4 of Schedule 36 (Insurance Schedule);
  - (iii) **(plant and equipment insurance)** - a plant and equipment insurance policy as specified in Item 27 of Schedule 1 (Contract Information); and
  - (iv) **(Compulsory Third Party (CTP) insurance)** - a Compulsory Third Party (CTP) insurance policy as specified in Item 30 of Schedule 1 (Contract Information).
- (b) The Contractor must ensure that every Subcontractor:
- (i) is insured at all times for workers compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987* (NSW); and
  - (ii) if within a category stated in Item 25 of Schedule 1 (Contract Information), effects and maintains professional indemnity insurance:

- A. with levels of cover not less than; and
  - B. for the period,  
stated in Item 25 of Schedule 1 (Contract Information).
- (c) If any work for or in connection with this deed includes the use of waterborne craft of 12 or more metres in length, the Contractor must pay all premiums and insure under a marine liability policy and a marine protection and indemnity policy to cover the use of such craft, as specified in Item 29 of Schedule 1 (Contract Information).
- (d) [REDACTED]

**7.6 Contractor's insurance requirements**

- (a) The Contractor must ensure that in respect of each insurance required to be effected or taken out as required by this clause 7 it:
- (i) does not do or permit, or omit to do, anything which prejudices any insurance;
  - (ii) if necessary, rectifies anything which might prejudice any insurance;
  - (iii) immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled or if it becomes aware of any actual, threatened or likely claims under any of the insurances referred to in this clause 7 which could materially reduce the available limit of indemnity;
  - (iv) comply at all times with the terms of each insurance; and
  - (v) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.
- (b) The Contractor must ensure that in respect of each insurance required to be effected or taken out as required by this clause 7 by the Contractor or any Subcontractor it:
- (i) reinstates or causes to be reinstated an insurance policy if it lapses; and
  - (ii) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal.

**7.7 Period of insurance**

The Contractor must ensure that the insurances it is required to take out pursuant to this deed:

- (a) are (except for the insurance referred to in clause 7.5(c)) in force before starting any work for or in connection with this deed; and
- (b) are maintained, for the relevant periods of insurance stated in Items 22, 23, 25, 27, 29 and 30 of Schedule 1 (Contract Information).

**7.8 Evidence of polices**

Before the Contractor starts any work for or in connection with this deed and whenever requested in writing by the Principal or the Principal's Representative, the Contractor must supply proof that all insurance policies which the Contractor is required to effect and maintain under this deed (including insurance policies required to be taken out by Subcontractors) are current and, provide copies of the full terms of those insurances.

**7.9 The Principal may effect necessary insurance**

- (a) If the Contractor fails to comply with clauses 7.5 and 7.8, the Principal may effect and maintain that insurance and pay the necessary premiums.

- (b) The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due and payable by the Contractor to the Principal on demand.
- (c) The Contractor must provide all reasonable assistance to the Principal to allow it to exercise its rights under this clause 7.9, including by providing to the Principal's Insurer information required for the purposes of underwriting the relevant insurance.

## **7.10 Obligation to inform the Principal**

The Contractor must:

- (a) provide full particulars to:
  - (i) the Principal's Representative; and
  - (ii) the Principal's Insurer,
 of any:
  - (iii) occurrence of an event that may give rise to a claim under any policy of insurance effected under, or as required by, this deed; and
  - (iv) notice of any claim or subsequent proceeding or action and developments concerning the claim,

as soon as possible, and in any case no later than 2 Business Days after becoming aware of any such circumstance as referred to in clauses 7.10(a)(iii) and 7.10(a)(iv); and

- (b) take such steps as are necessary or appropriate to ensure that a Subcontractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor, take in relation to the Principal similar action to that which the Contractor is required to take under clauses 7.6 and 7.10(a).

## **7.11 Obligations not affected**

- (a) The requirements for insurance to be effected and maintained do not affect or limit the Contractor's liabilities (including indemnities given under clause 6) or other obligations under this deed.
- (b) The Principal must inform the Contractor in writing of any material claim or incident arising out of or in connection with the Project Works or the Temporary Works which may have an impact on the Contractor, and must keep the Contractor informed of subsequent developments regarding the claim.

## **7.12 Insurance claims procedure**

- (a) The Contractor must:
  - (i) not, without the consent of the insurer, make any admission, offer, promise or payment in connection with any occurrence or claim; and
  - (ii) promptly give all information and reasonable assistance to the Principal and the insurer as the Principal or the insurer, or its nominee, may require in the prosecution, defence or settlement of any occurrence or claim.
- (b) Nothing in this clause 7.12 prevents a party from taking immediate action to avoid loss of life or damage to property as contemplated by clauses 6.3 and 6.4 where that is reasonably necessary in the circumstances, and any such action will not prejudice the position of either party under the policies of insurance effected in respect of any loss or damage.

# **8. Security**

## **8.1 Unconditional undertakings and retention**

- (a) The Contractor must give the Principal, within 10 Business Days of the date of this deed, three unconditional undertakings as follows:
  - (i) one for █████ of the Project Contract Sum;



- (ii) one for [REDACTED] of the Project Contract Sum; and
- (iii) one for [REDACTED] of the Project Contract Sum,

each in the form of Schedule 6 (Unconditional Undertaking), or in a form otherwise approved by the Principal's Representative, and in favour of the Principal and which are, where required, duly stamped.

(b) The parties acknowledge that:

- (i) the Contractor is required to provide unconditional undertakings under clause 8.1 of the Stage 1 D&C Deed; and
- (ii) the Principal may have recourse to the unconditional undertakings provided under clause 8.1 of the Stage 1 D&C Deed as if they were unconditional undertakings provided pursuant to this deed.

(c) Without limiting clause 8.1(k), subject to its rights to have recourse to the unconditional undertakings, the Principal must:

- (i) within 20 Business Days after the later of the:
  - A. Date of Construction Completion; and
  - B. [REDACTED]

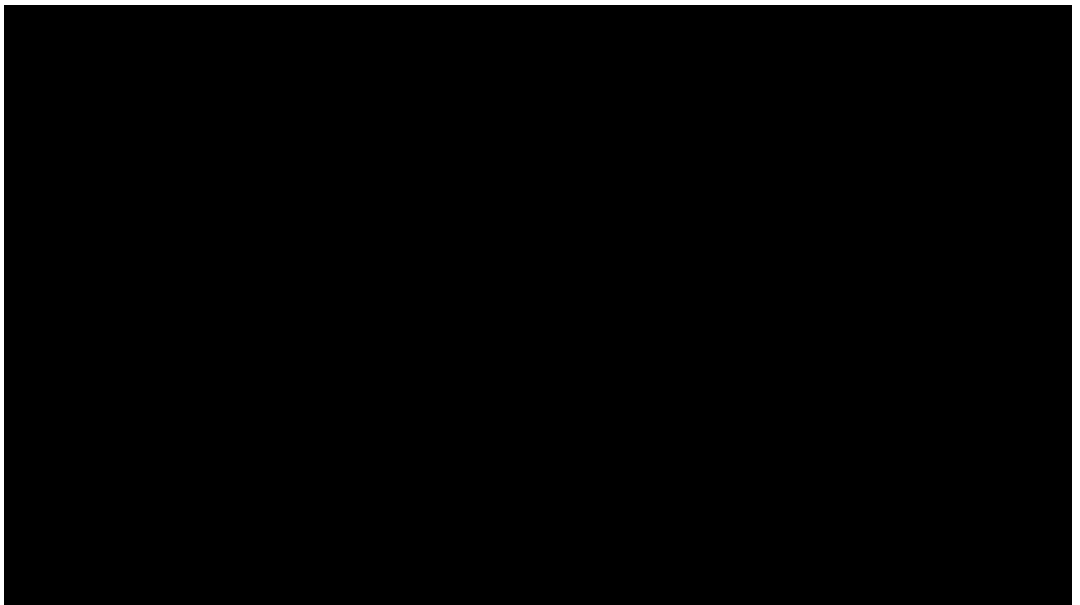
release the unconditional undertakings provided by the Contractor under clause 8.1(a)(i) (or the remaining proceeds if the undertaking has been converted into cash);

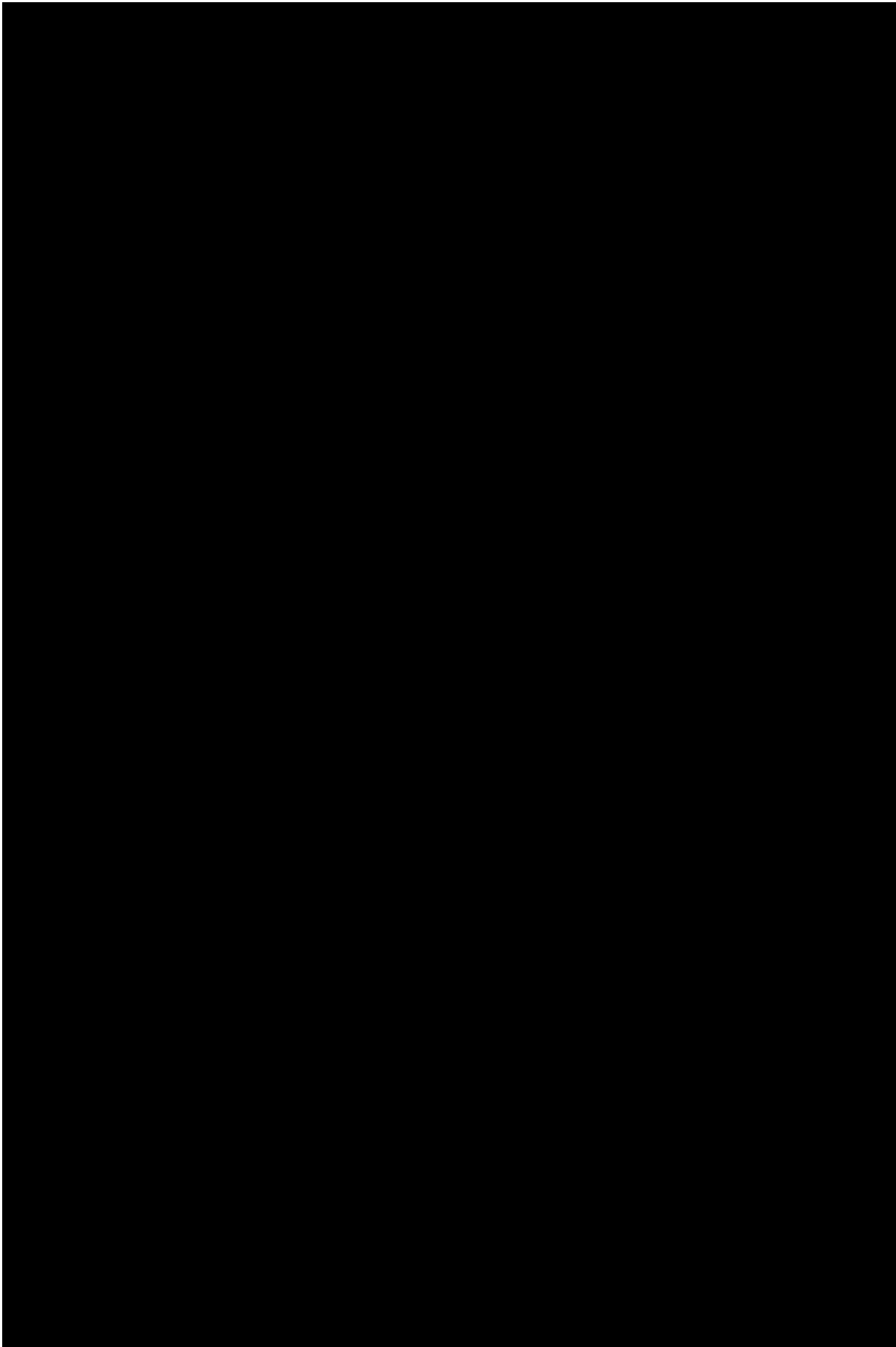
- (ii) within 20 Business Days after the first anniversary of the Date of Construction Completion, release the unconditional undertaking provided by the Contractor under clause 8.1(a)(ii) (or the remaining proceeds if the undertaking has been converted into cash); and

- (iii) subject to clause 8.1(d), within 20 Business Days after the later of:
  - A. when all relevant Defects have been corrected and all relevant Variations have been carried out (as applicable) (as determined by the Principal's Representative); and
  - B. the Date of Final Completion,

release the remaining unconditional undertaking provided by the Contractor under clause 8.1(a)(iii) (or the remaining proceeds if the undertaking has been converted into cash).

(d)





(h) The Principal:

- (i) may have recourse to any unconditional undertaking provided under this clause or under clause 8.1 of the Stage 1 D&C Deed at any time;
  - (ii) is not obliged to pay the Contractor interest on:
    - A. any unconditional undertaking; or
    - B. the proceeds of any unconditional undertaking if it is converted into cash; and
  - (iii) does not hold the proceeds referred to in clause 8.1(h)(ii) on trust for the Contractor.
- (i) Any unconditional undertaking provided under this clause 8.1 must be issued by a financial institution approved by the Principal.
- (j) The Contractor must not take any steps to injunct or otherwise restrain:
- (i) any issuer of any unconditional undertaking provided under this clause 8.1 or under clause 8.1 of the Stage 1 D&C Deed from paying the Principal pursuant to the unconditional undertaking;
  - (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 8.1 or under clause 8.1 of the Stage 1 D&C Deed or receiving payment under any such unconditional undertaking; or
  - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 8.1 or under clause 8.1 of the Stage 1 D&C Deed.

## 8.2 Parent company guarantee

- (a) Not used
- (b) Each person comprising the Contractor must within 10 Business Days of the date of this deed give the Principal a separate guarantee duly executed by its Parent Company Guarantor in favour of the Principal substantially in the form of Schedule 7 (Parent Company Guarantee) as agreed between the parties (with any changes to the Principal's satisfaction) and which is, where required, duly stamped.
- (c) If any Parent Company Guarantor is incorporated outside of Australia the Contractor must, within 10 Business Days of the date of this deed, provide a Legal Opinion supporting, and in respect of, the execution of the relevant guarantee required by clause 8.2(b).

## 8.3 Financial assessment

- (a) The Contractor warrants to the Principal that:
  - (i) the Contractor will, at all relevant times, have sufficient financial capacity to meet all of its obligations under this deed; and
  - (ii) the Parent Company Guarantor will, at all relevant times, have sufficient financial capacity to meet all of its obligations under the guarantee.

- (b) The Contractor must, as and when requested by the Principal's Representative from time to time, promptly, and in any event within the period stated in the Principal's Representative's request, provide the Principal's Representative with a copy of such evidence reasonably required by the Principal's Representative which demonstrates:
  - (i) the Contractor's financial capacity to meet all of its obligations under this deed; and
  - (ii) the Parent Company Guarantor's financial capacity to perform its obligations under the guarantee.
- (c) The Contractor must promptly notify the Principal's Representative of any material change in the Contractor's or the Parent Company Guarantor's financial standing which may affect, or may be likely to affect, their respective financial capacity to meet all of their obligations under this deed or the guarantee (as applicable).
- (d) The Contractor must assist and fully co-operate with, and procure that the Parent Company Guarantor assists and fully co-operates with, the requirements or requests of the Principal's Representative or its nominees in relation to any review of:
  - (i) any information provided by the Contractor or the Parent Company Guarantor under this clause; or
  - (ii) the Contractor's or the Parent Company Guarantor's financial capacity to meet their obligations under this deed or the guarantee (as applicable).

## **8.4 PPS Law**

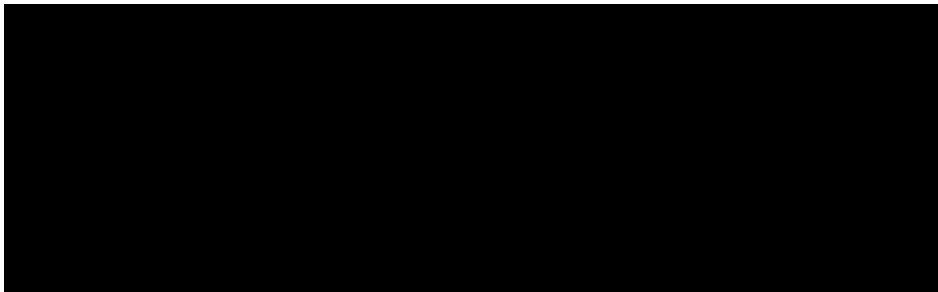
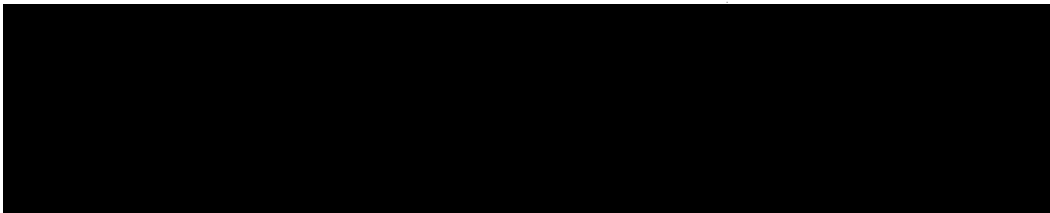
The Contractor agrees that the terms of this deed may constitute one or more Security Interests for the purposes of the PPSA and that:

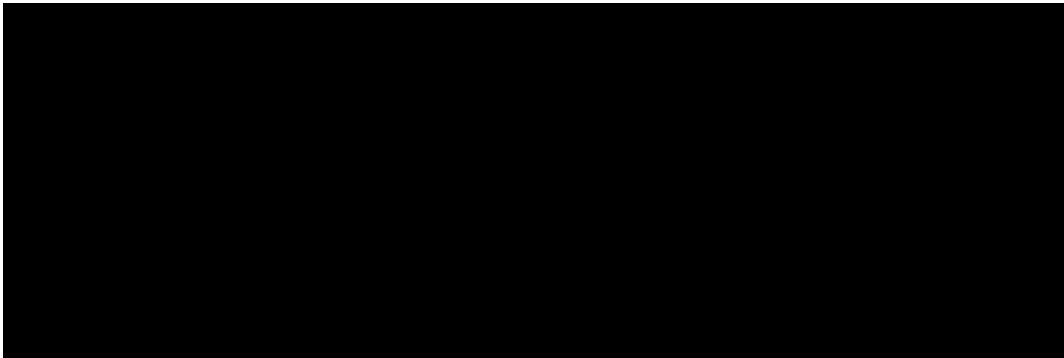
- (a) to perfect any such Security Interest the Principal may register one or more financing statement(s) on the Personal Property Securities Register;
- (b) the Contractor shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would otherwise have applied by virtue of section 116(2) of the PPSA;
- (d) the Contractor waives its right to receive notice of a verification statement under section 157 of the PPSA; and
- (e) the Contractor must, promptly on request by the Principal or the Principal's Representative, provide any such information and execute and deliver any such documents as the Principal may reasonably require to protect the Security Interests granted to the Principal by the Contractor under or in relation to this deed.

## **9. Access**

### **9.1 Access**

- (a) Subject to clauses 9.1(b) and 9.2, any provision of this deed affecting access (including the SWTC) and any provision of the Planning Approval or other Approval affecting access, the Principal must:
  - (i) give, or ensure the Contractor has, sufficient access to each area of the Site, Local Area Works Areas and the Temporary Works Areas:
    - A. by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Site, Local Area Works Areas or the Temporary Works Areas, then by the last day of that period); and
    - B. in accordance with the conditions of access as set out in the Site Access Schedule (if applicable); and

- (ii) thereafter continue to allow, or ensure that the Contractor is continued to be allowed, sufficient access to each area of the Site, Local Area Works Areas and the Temporary Works Areas or part thereof, to allow the Contractor to carry out the Contractor's Activities, in accordance with the conditions of access as set out in the Site Access Schedule (if applicable).
- (aa) The rights under clause 9.1(a) in respect of the areas of the Site, Local Area Works Areas and the Temporary Works Areas will expire upon:
  - (i) if an expiry date is specified in the Site Access Schedule, the date specified in the Site Access Schedule; or
  - (ii) if an expiry date is not specified in the Site Access Schedule, the Date of Construction Completion.
- (b) The Contractor acknowledges and agrees that:
  - (i) the Principal is not obliged to give the Contractor any type of access to any part of the Site, Local Area Works Areas and the Temporary Works Areas, until the Contractor has:
    - A. effected the insurances required under clauses 7.5;
    - B. complied with clause 7.8 with respect to each insurance;
    - C. in respect of any Local Area Works Area, provided to the Principal a copy of the written consent received from the relevant local government authorities, which consent is required for the performance of the Contractor's Activities; and
    - D. complied with clauses 8.1(a) and 8.2;
  - (ii) it may not be given exclusive access to the Site, Local Area Works Areas and the Temporary Works Areas;
  - (iii) the Principal may permit Other Contractors to perform work on the Site, Local Area Works Areas and the Temporary Works Areas, provided that the Principal will require such persons to comply with the reasonable directions of the PC Contractor Entity given in its capacity as Principal Contractor;
  - (iv) Authorities and Sydney Airport may perform work on the Site, Local Area Works Areas and the Temporary Works Areas, including in relation to Services;
  - (v) 
  - (vi) it may only use and occupy each part of the Site, Local Area Works Areas and the Temporary Works Areas in accordance with the terms of this deed and the Site Access Schedule and subject to the Constraints and Restrictions; and
  - (vii) it must comply with the Construction Licence Terms when accessing the Licensed Areas.
- (c) The Principal's obligations under this clause 9.1 will cease on the Date of Construction Completion.
- (d) 



(e) [Redacted]

(f) [Redacted]

**9.2 Constraints and Restrictions**

The Contractor must comply with the Constraints and Restrictions.

**9.3 Principal's access**

- (a) The Contractor must ensure that at all times the Principal's Representative, the Principal's Assistant Representatives, the Principal's Surveillance Officers, the Commonwealth (or its nominee), Sydney Airport (or its nominee) and any person authorised by the Principal (including visitors invited by the Principal) have safe and convenient access to:
  - (i) the Construction Site;
  - (ii) any other place where any part of the Contractor's Activities are being carried out;
  - (iii) the Contractor's Activities;
  - (iv) the Design Documentation; and
  - (v) any other documentation created for the purposes of the Contractor's Activities.
- (b) The Principal's Representative, the Principal's Assistant Representatives, the Principal's Surveillance Officers, Sydney Airport (or its nominee), the Commonwealth (or its nominee) and any other person authorised by the Principal that is given access pursuant to this clause must comply with the reasonable directions of the PC Contractor Entity given in its capacity as Principal Contractor.

(c) [Redacted]

**9.4 Principal's right to inspect**

- (a) The Principal, the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers may at any time inspect the Contractor's Activities.
- (b) Neither the Principal, the Principal's Representative, the Principal's Assistant Representatives nor the Principal's Surveillance Officers owe any duty to the Contractor to:
  - (i) inspect or otherwise review or monitor the Contractor's Activities or other actions or activities or lack of action; or
  - (ii) review, consider, identify or notify about any aspect of the Contractor's Activities or errors, omissions, compliance or non-compliance with the requirements of this deed (whether or not it does so).



- (c) No inspection, review or monitoring of the Contractor's Activities or of any construction by the Principal, the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers will in any way lessen or otherwise affect:
  - (i) the Contractor's obligations under this deed (including its obligations under clause 13.1(a)) or otherwise according to Law; or
  - (ii) the Principal's rights against the Contractor whether under this deed or otherwise according to Law.

## 9.5 Controlling access

At all times after being given access under clause 9.1 until:

- (a) in the case of the Local Areas, the date on which the Principal's Representative has issued a written notice to the Contractor that the Contractor has completed the relevant part of the Local Area Works to which the land relates or for which it was provided, in accordance with clause 16.7(f)(i) of this deed; or
- (b) in the case of the Site and the Temporary Works Areas, the earlier of the Date of Opening Completion or the Date of Construction Completion,

the Contractor must:

- (c) control access to, and ensure public safety on, the land described in clauses 9.5(a) and 9.5(b) (as relevant);
- (d) provide for the continuous safe passage of the public, Service providers and road users on existing roads and access ways affected by the Contractor's Activities in accordance with this deed, which passage must, unless otherwise consented to in writing by the Principal's Representative, be provided at a standard not less than that provided to the public, Service providers and road users prior to the commencement of the Contractor's Activities; and
- (e) subject to clauses 2.4(e)(ii), 2.5(f)(ii), 2.6(d)(ii), 9.1(b), 9.2 and 9.5(d) and any relevant Law, limit access to the land described in clauses 9.5(a) and 9.5(b) (as relevant) to its employees and Subcontractors.

## 9.6 Extra Land

(a) The Contractor must:

(i) at its own cost:

- A. identify any land (including areas within the Airport) in addition to the Site, the Local Area Works Areas and the Temporary Works Areas, that is necessary or which it may deem requisite or necessary for the execution of the Contractor's Activities including land required for the Local Area Works, Property Works and Service Works (**Extra Land**); and
- B. procure for itself the occupation or use of or relevant rights over any Extra Land;

(ii) prior to the occupation or use of, or exercise of relevant rights over, any Extra Land, give to the Principal's Representative a copy of the agreement which allows for the Contractor's occupation or use of, or exercise of relevant rights over, the Extra Land; and

(iii) as a condition precedent to Construction Completion, provide the Principal's Representative:

- A. a properly executed release on terms satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner and, where the owner is not the occupier, the occupier of, and from other persons having an interest in, the Extra Land that includes confirmation that the Extra Land has been rehabilitated to the satisfaction of the owner and, where the owner is not the occupier, the occupier of, or other persons having an interest in, the Extra Land; or

- B. if the Contractor demonstrates to the satisfaction of the Principal's Representative, acting reasonably, that the Contractor is unable to obtain a release under clause 9.6(a)(iii)A despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the Extra Land has failed or refused to execute such a release within 15 Business Days of it being provided by the Contractor to the owner, occupier or other person having an interest in the Extra Land following the proper completion of the work on that Extra Land.
- (b) The Contractor must ensure that:
- (i) subject to clause 13.2(a)(ii), the use; and
  - (ii) subject to clause 13.2(e), the rehabilitation,
- of Extra Land is to the satisfaction of the owner of the Extra Land, the lessee of the Extra Land, the Principal and all relevant Authorities.
- (c) The Contractor acknowledges that if additional areas owned or leased by Sydney Airport are required for the Contractor's Activities:
- (i) any such access is at the Contractor's risk and cost in accordance with clause 9.7;
  - (ii) the provision of access to such areas:
    - A. is subject to Sydney Airport's approval (in its absolute discretion and on terms determined by Sydney Airport); and
    - B. may require the approval of the Commonwealth pursuant to the Airports Act and such approval may be subject to the Commonwealth's requirements;
  - (iii) the Contractor must provide the Principal's Representative with copies of all notices, reports and other correspondence given or received by the Contractor requesting access from Sydney Airport under or in connection with this clause 9.6(c), promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the Contractor);
  - (iv) without limiting any of the Contractor's obligations under this deed or any conditions imposed by Sydney Airport or the Commonwealth, if the Contractor is granted access under this clause 9.6(c), it must:
    - A. not interfere with Sydney Airport, its employees or agents carrying out the operation, maintenance or development of the Airport;
    - B. use all reasonable endeavours to co-operate with Sydney Airport, its employees and agents, and Sydney Airport's Tenants within the Airport; and
    - C. if required by Sydney Airport, be accompanied by a representative of Sydney Airport at all times; and
  - (v) without limiting clause 13.1(c)(i) and the Constraints and Restrictions:
    - A. the Contractor must comply with all reasonable directions of Sydney Airport, its employees and agents, including in relation to site induction, work health and safety procedures, working hours, Sydney Airport's Tenants, industrial relations and all other access requirements, in accessing the Airport; and
    - B. the Contractor must comply with the safety, security and operational directions of Sydney Airport when accessing the Airside Areas of the Airport.

## 9.7 Risk of obtaining access to Extra Land

The Contractor acknowledges that:

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- (a) integration of the requirements for access to Extra Land is at the sole risk of the Contractor; and
- (b) the Principal will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
  - (i) identifying and obtaining access to Extra Land; or
  - (ii) subject to clause 13.2(b)(iv)A.2), any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain access to Extra Land.

## 9.8 Qantas Catering Bridge

The Contractor agrees that:

- (a) the Qantas Catering Bridge which is, at the date of this deed, located above Qantas Drive, will remain during and after the development of the Gateway; and
- (b) it must use all reasonable endeavours to ensure that the conduct of the Contractor's Activities does not materially adversely affect the use and function of the Qantas Catering Bridge.

## 9.9 Co-operation with Tenants

The Contractor must, as reasonably required by the Principal or Sydney Airport, meet with the Principal, Sydney Airport and any Tenants that will be affected by the Project Works or Temporary Works in order to explain the timing and nature of the Project Works and Temporary Works and any impacts on the relevant Tenants.

## 9.10 Third Party Interests

The parties acknowledge and agree that:

- (a) the access licences granted by the Principal to the Contractor in respect of the Site, Local Area Works Areas and the Temporary Works Areas pursuant to clause 9.1 are granted to the Contractor subject to the Third Party Interests which exist in relation to the relevant parts of the Site, Local Area Works Areas and the Temporary Works Areas and the Contractor must at all times comply with (and ensure that its employees, agents and Subcontractors comply with) such Third Party Interests; and
- (b) subject to this clause 9.10, the Contractor:
  - (i) must exercise its rights under this deed and conduct the Contractor's Activities so as not to cause the Principal or Sydney Airport to breach any of their obligations in relation to the Third Party Interests;
  - (ii) accepts all responsibilities and risks associated with the existence of the Third Party Interests and any effect which the Third Party Interests may have on the conduct of the Contractor's Activities; and
  - (iii) indemnifies the Principal, Sydney Airport and their respective employees and agents, from and against any claim, loss, cost, expense, damage or liability (including Claims) brought by the parties to the Third Party Interests against, suffered or incurred by the Principal, Sydney Airport or their respective employees and agents to the extent arising out of and in connection with the conduct of the Contractor's Activities. The parties acknowledge that the indemnity provided by the Contractor under this clause 9.10(b)(iii) is reduced to the extent that the relevant claim, loss, cost, expense, damage or liability was caused or contributed by the Principal, Sydney Airport or their respective employees and agents.

## 9.11 No Caveat

The Contractor must not place, or seek to place, any caveat on title on the Construction Site.

## 9.12 Handback

- (a) The Contractor must:

- (i) hand back each part of the Construction Site (excluding the Extra Land) to the Principal in the Handback Condition for that area as specified in the Site Access Schedule;
  - (ii) ensure as a condition precedent to Construction Completion that any damage caused to the Construction Site by the carrying out of the Contractor's Activities is repaired consistent with the relevant Handback Condition; and
  - (iii) provide the Principal and Sydney Airport with at least 10 Business Days' notice of its intention to hand back a part of the Construction Site.
- (b) The Contractor acknowledges that:
- (i) the Principal may receive a financial benefit if the Principal is able to hand back one or more Construction Compounds to Sydney Airport earlier than the Date for Construction Completion;
  - (ii) the Contractor must notify the Principal if it is able to hand back a Construction Compound earlier than the Date of Construction Completion; and
  - (iii) the parties may, but are not obliged to, agree that the Contractor will hand back a Construction Compound earlier than the Date of Construction Completion.

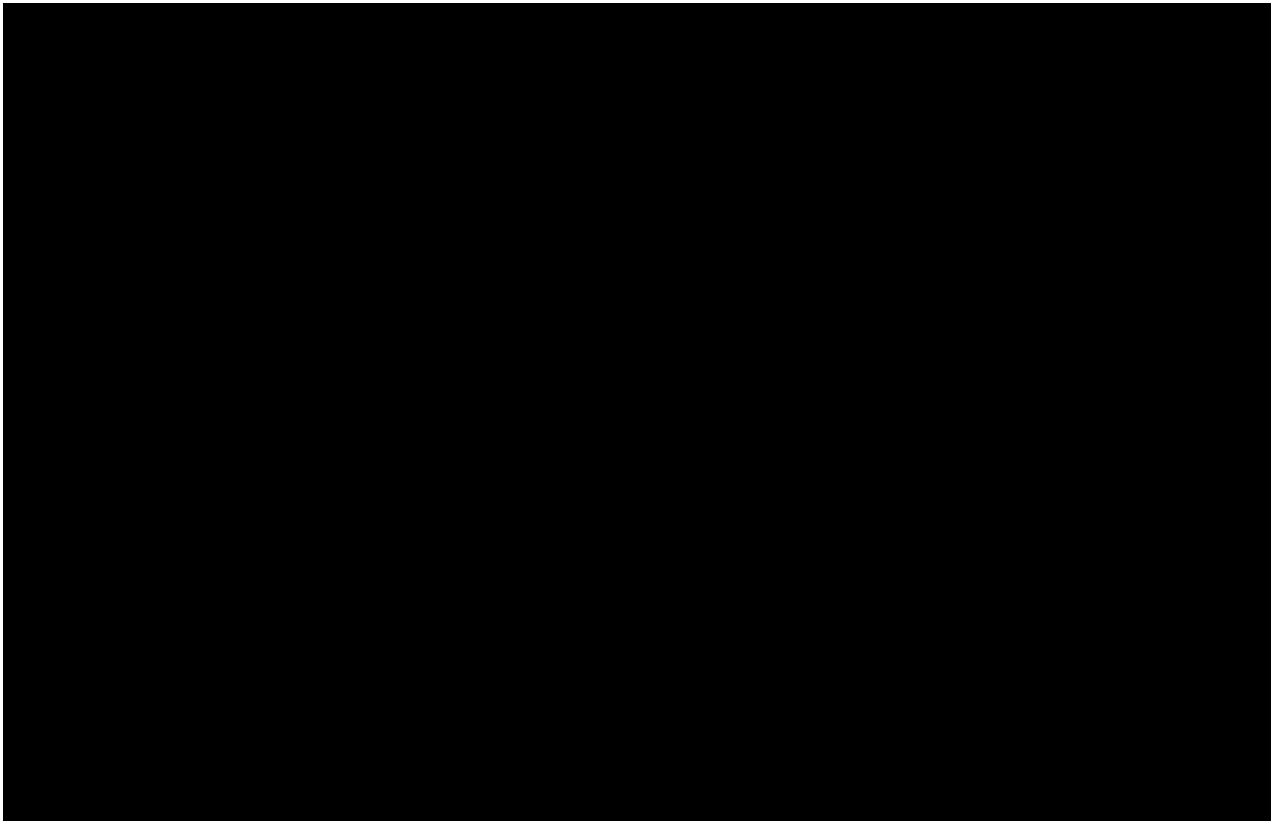
### **9.13 Site investigations on Licensed Areas**

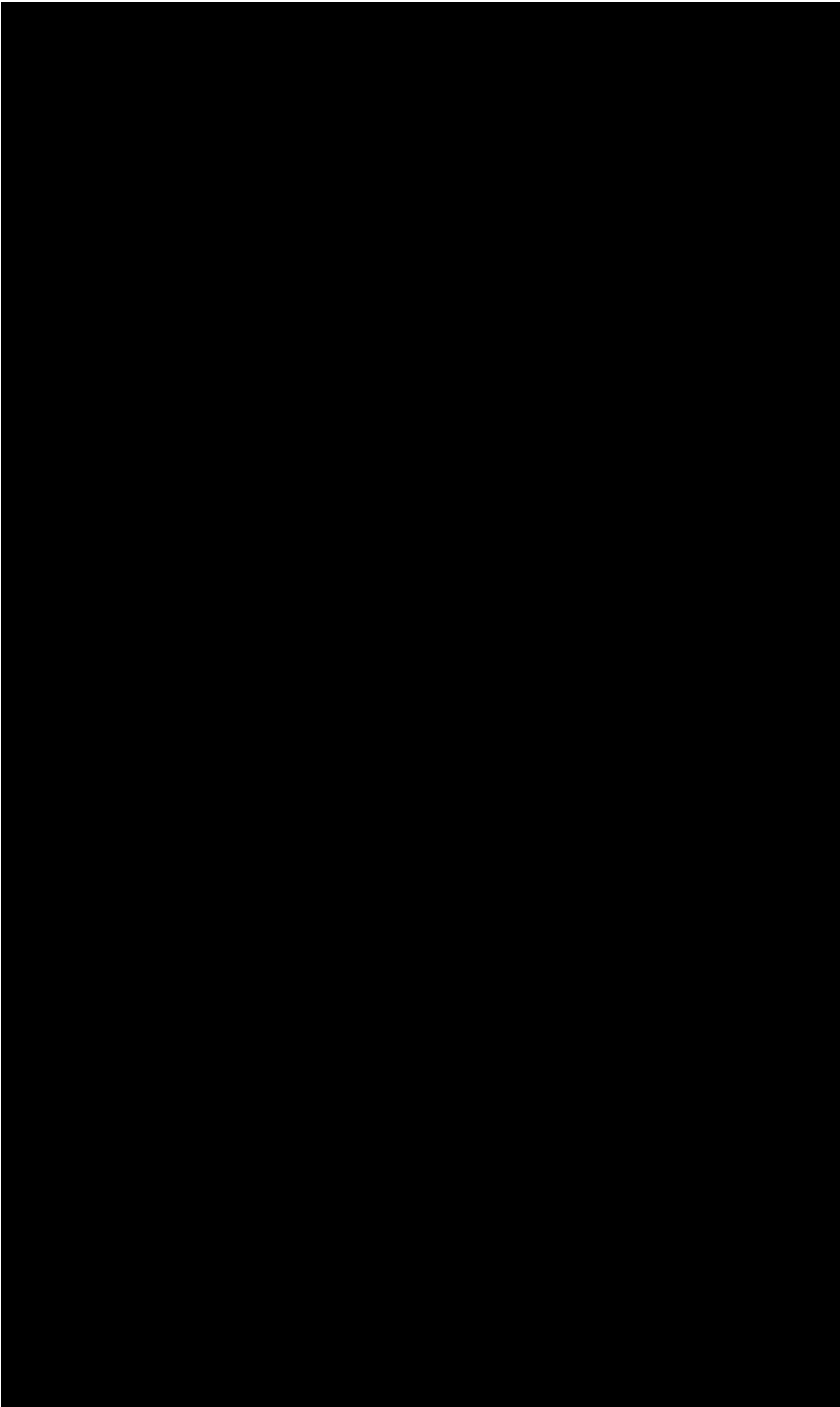
- (a) Without limiting clause 9.1, the Contractor may give the Principal's Representative notice that the Contractor requests access to a Licensed Area prior to the date set out in the Site Access Schedule for the purpose of carrying out site investigations (including surveys, hazardous material inspections and geotechnical investigations) detailing:
- (i) the Licensed Area that the Contractor proposes to access;
  - (ii) the type of access required and the site investigation that the Contractor intends to carry out on that Licensed Area;
  - (iii) the Contractor's preferred time and date for access, which must be at least 20 Business Days after the Contractor's request; and
  - (iv) the anticipated duration of the access and the works.
- (b) If the Contractor gives the Principal's Representative a notice under clause 9.13(a), the Principal may (but is not obliged to) provide the Contractor with the access requested by the Contractor (which may not be at the time, on the date or for the duration requested by the Contractor) provided that:
- (i) the Contractor complies with the directions and conditions of the Principal's Representative when accessing the relevant Licensed Area (which may include a condition that the Contractor provides a management plan in respect of that Licensed Area prior to accessing that Licensed Area);
  - (ii) the Contractor has obtained all relevant Approvals in respect of the relevant site investigation; and
  - (iii) the Contractor has:
    - A. effected the insurances required under clauses 7.5;
    - B. complied with clause 7.8 with respect to each insurance; and
    - C. complied with clauses 8.1(a) and 8.2; and
  - (iv) the Contractor first undertakes a condition survey of the Licensed Area and the infrastructure located on or under the Licensed Area in accordance with section 4.4.3 of the SWTC.
- (c) The Contractor acknowledges and agrees that:
- (i) the Contractor will not be given exclusive access to any Licensed Area under this clause 9.13;
  - (ii) clauses 9.1(b)(iii) to (vii) (inclusive), 9.2 and 9.10 will apply to the Contractor's access to any Licensed Area under this clause 9.13;

- (iii) in accessing any Licensed Area under this clause 9.13, the Contractor must:
  - A. not interfere with Sydney Airport or its employees or agents carrying out the operation, maintenance, development or management of the Airport;
  - B. co-operate with Sydney Airport and its tenants, employees and agents within the Airport;
  - C. other than as approved in writing by the Principal's Representative, not damage the Airport and must take all precautions to protect the Airport from damage by the Contractor's employees and agents;
  - D. comply with all directions of Sydney Airport and its employees and agents, including in relation to site induction, work health and safety, security and operational procedures, working hours, Sydney Airport's tenants, industrial relations and all other access requirements; and
  - E. if required by Sydney Airport or its employees or agents, be accompanied by a representative of Sydney Airport;
- (iv) without limiting any other requirements of this deed, the Contractor's access to any Licensed Area under this clause 9.13 will be at the Contractor's risk and cost; and
- (v) failure by the Principal to give the Contractor access to any Licensed Area under this clause 9.13 will not:
  - A. be a breach of this deed; or
  - B. entitle the Contractor to make any Claim against the Principal (including for an extension of time to the Date for Construction Completion under clause 17.5).

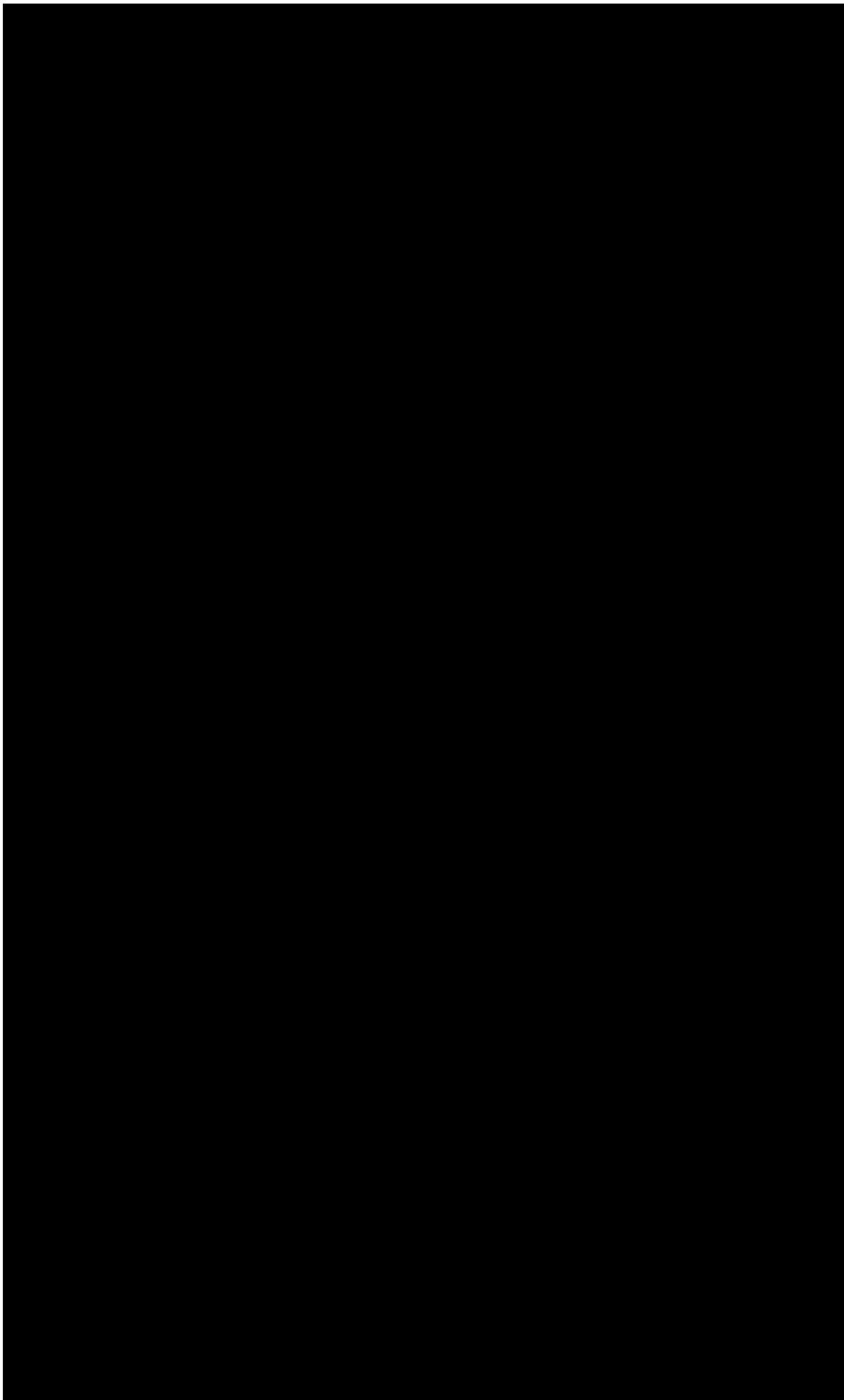
**9.14 Not used**

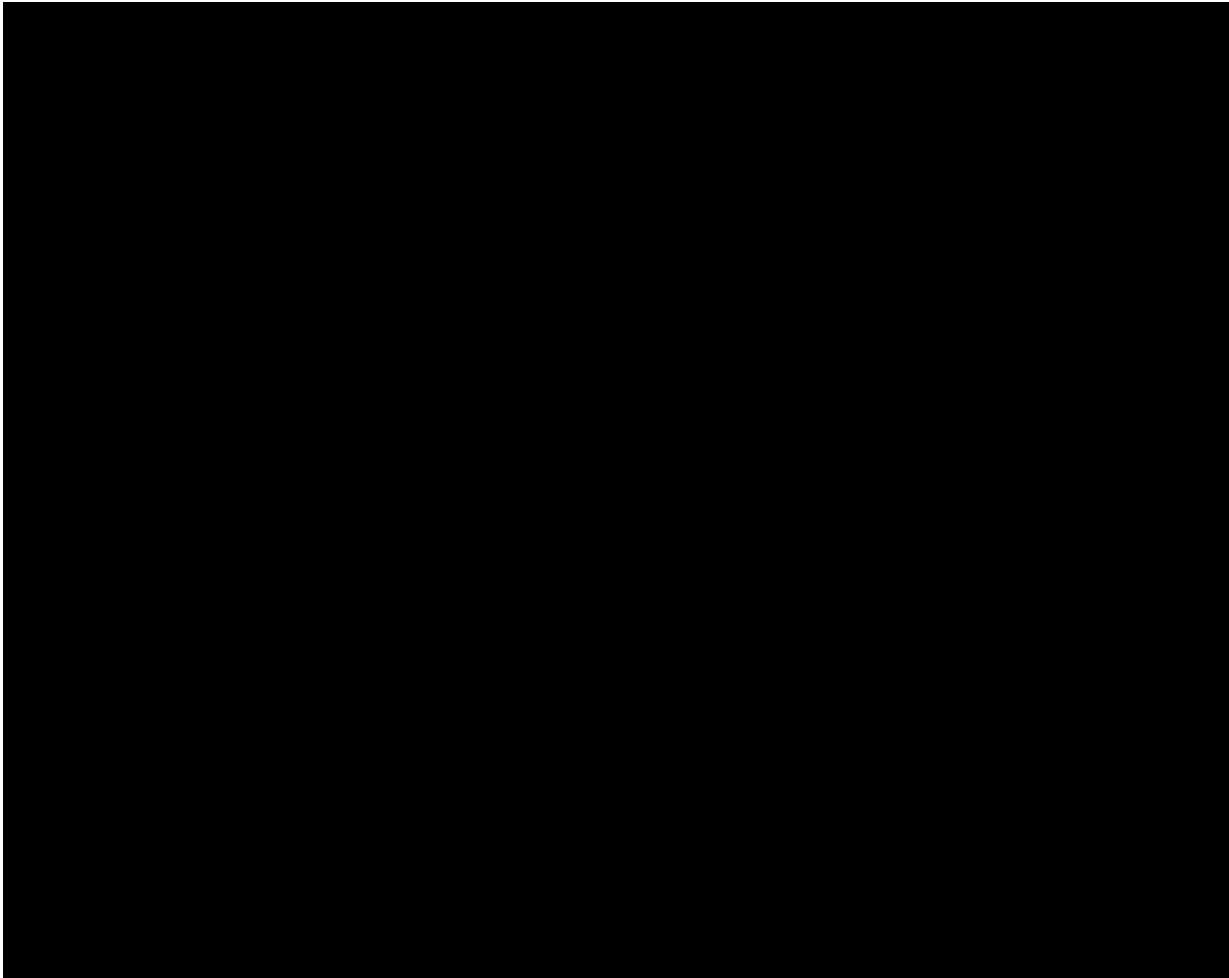
**10. The Site and Services**











## 10.2 Physical conditions

- (a) Without limiting clauses 10.2(d), 10.6, 17.5, 17.6 or 22.10 or Schedule 48 (Solid Waste), the Contractor warrants that, prior to the date of this deed, the Contractor:
  - (i) examined this deed, the Site and its surroundings, the Local Areas, the Temporary Works Areas and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the Contractor for the purpose of tendering;
  - (ii) examined, and relied solely on its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this deed;
  - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all the obligations of this deed and of all matters and things necessary for the due and proper performance and completion of the Contractor's Activities;
  - (iv) informed itself of:
    - A. all matters relevant to the employment of labour at the Site, the Local Areas and the Temporary Works Areas; and
    - B. all industrial matters relevant to the Site, the Local Areas, the Temporary Works Areas and the Contractor's Activities;
  - (v) had sufficient opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - A. relating to the subject matter of Information Documents; and
    - B. for design purposes and otherwise;
  - (vi) had sufficient opportunity to review and obtain, and obtained, all necessary legal, geotechnical and other technical advice in relation to this deed, the Information

Documents, the physical conditions and characteristics of the Construction Site, the Environment and their surroundings, as well as the risks, contingencies and other circumstances having an effect on its Tender, the cost of performing its obligations and its potential liabilities under this deed; and

(vii) had sufficient access to the Site, the Local Areas and the Temporary Works Areas, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.

(b) The Contractor is responsible for, and assumes the risk of all increased costs and any damage, expense, loss, liability, disruption or delay it suffers or incurs arising out of or in connection with the physical conditions and characteristics of the Construction Site, the Environment or their surroundings including:

- (i) the existence of any Contamination;
- (ii) the suitability or otherwise of any material on the Site, the Local Areas or the Temporary Works Areas, for use in the Contractor's Activities; and
- (iii) water, atmospheric and sub-surface conditions or characteristics including heritage and archaeological issues,

except to the extent that those physical conditions and characteristics are a Site Condition and, in respect of that Site Condition (but without limiting clause 10.6(i)), the Contractor has complied with clause 10.6.

(c) Prior to the date of this deed the Contractor signed the Confidentiality Deed Poll and provided this to the Principal after which the Principal provided the Information Documents to the Contractor. Without limiting clause 10.2(d) or the warranties or acknowledgements in the Confidentiality Deed Poll:

- (i) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
- (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, the Contractor acknowledges that:
  - A. the Information Document or part thereof does not form part of this deed and that clause 10.2(d) applies to the Information Document or part thereof; and
  - B. where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof; and
- (iii) the Principal will not be liable for any Claim by the Contractor arising out of or in any way in connection with:
  - A. the Information Documents; or
  - B. a failure by the Principal to provide any information to the Contractor.

(d) The Contractor:

- (i) warrants that, it did not in any way rely on:
  - A. any information, data, representation, statement or document made by, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
  - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,

for the purposes of entering into this deed and the Project Interface Deed;

- (ii) warrants that it enters into this deed and the Project Interface Deed based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) acknowledges that it is aware that the Principal has entered into this deed and the Project Interface Deed relying on the warranties, acknowledgements and agreements in clauses 10.2(d)(i) and 10.2(d)(ii) and in the Confidentiality Deed Poll and the tender form submitted by the Contractor as part of its Tender.
- (e) The Contractor releases and indemnifies the Principal from and against:
- (i) any Claim against the Principal by, or liability of the Principal to, any person; or
  - (ii) (without being limited by clause 10.2(e)(i)) any costs, losses, damages, expenses or liability suffered or incurred by the Principal,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance on, or use of, the Information Documents by the Contractor or any other person to whom the Information Documents are disclosed by or on behalf of the Contractor;
  - (iv) a failure by the Principal to provide any information to the Contractor; or
  - (v) the Information Documents being relied on or otherwise used in the preparation of any information or document.

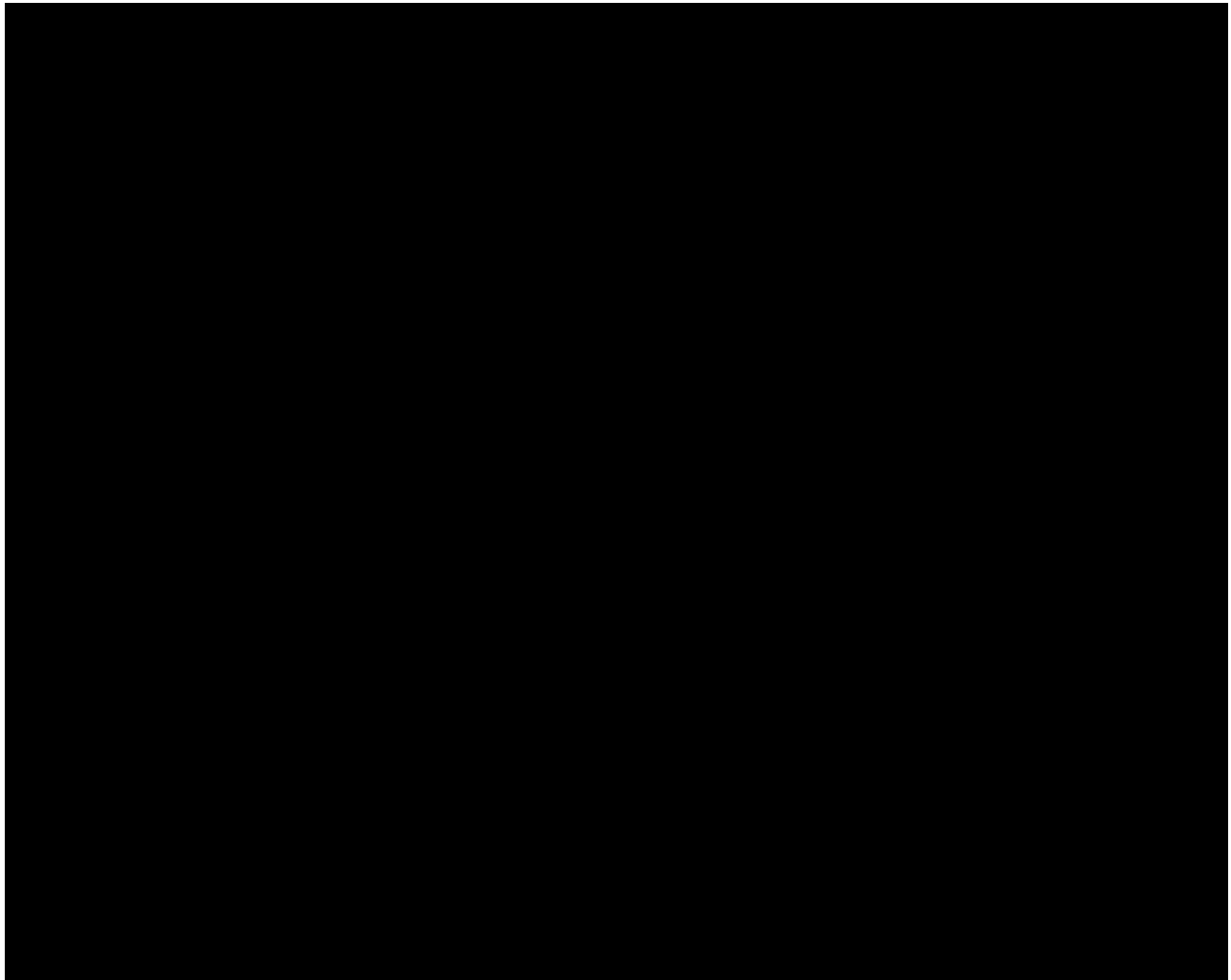
### **10.3 Conditions of Construction Site and structures**

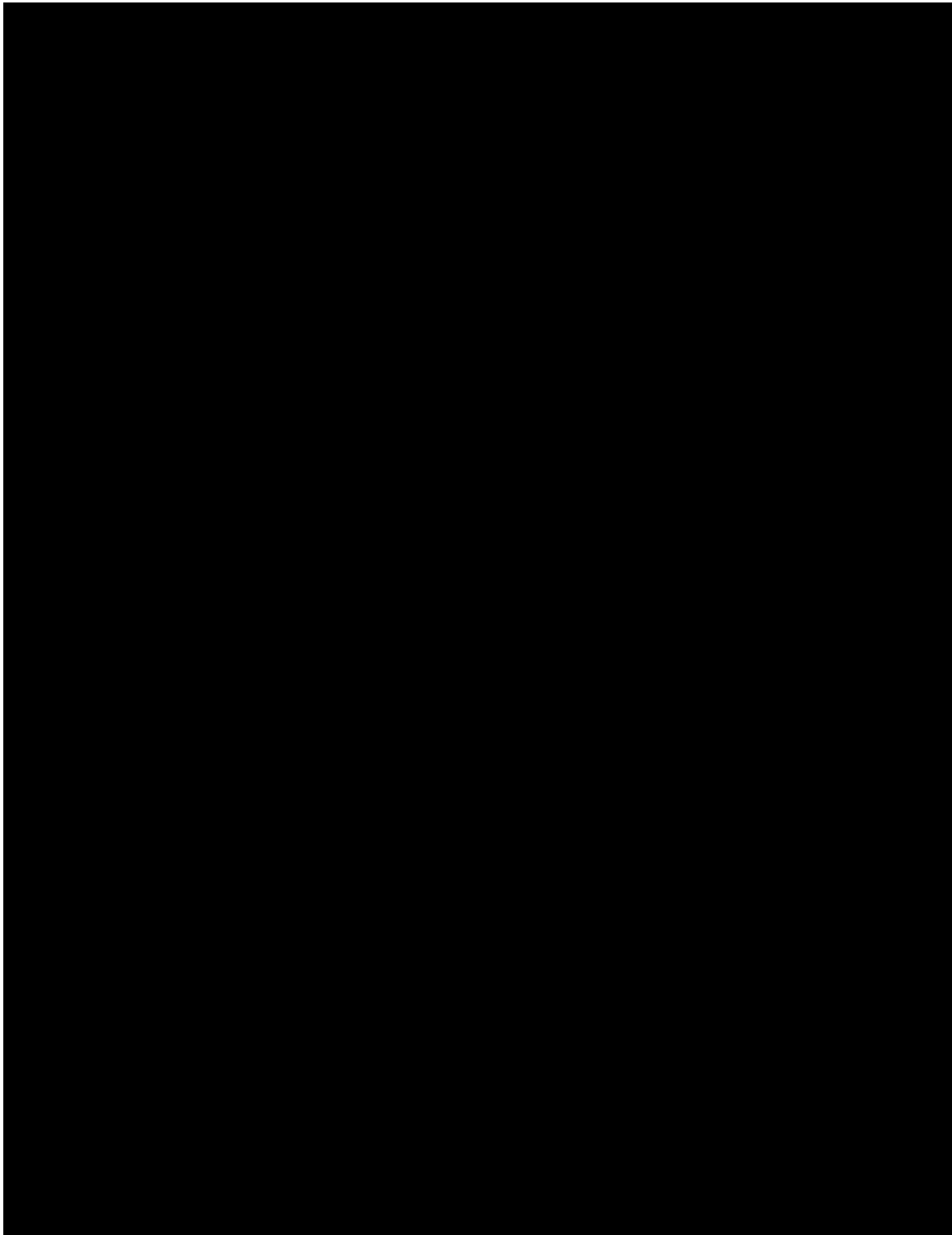
- (a) The Principal makes no representation and gives no warranty to the Contractor in respect of:
- (i) the condition of:
    - A. the Construction Site, the Environment or their surroundings; or
    - B. any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, the Environment or their surroundings;
  - (ii) the existence, location, condition or availability of Services in respect of the Construction Site; or
  - (iii) the feasibility or fitness for purpose of the Contractor's Concept Design, including in respect of the constructability of the Contractor's Concept Design having regard to the physical conditions and characteristics of the Site, the Local Areas and the Temporary Works Areas.
- (b) Without limiting clause 10.6 and Schedule 48 (Solid Waste), the Contractor must accept:
- (i) the Construction Site; and
  - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site,
- in their present condition subject to all defects including all sub-surface conditions.
- (c) The Contractor must investigate, design and construct the Project Works and Temporary Works in accordance with this deed, whatever may be the condition or characteristics (including all sub-surface conditions) of:
- (i) the Construction Site, the Environment or their surroundings; or
  - (ii) any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site, the Environment or their surroundings,
- and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the characteristics of any of the matters referred to in clauses 10.3(c)(i) or 10.3(c)(ii) above.

## 10.4 Things of value found

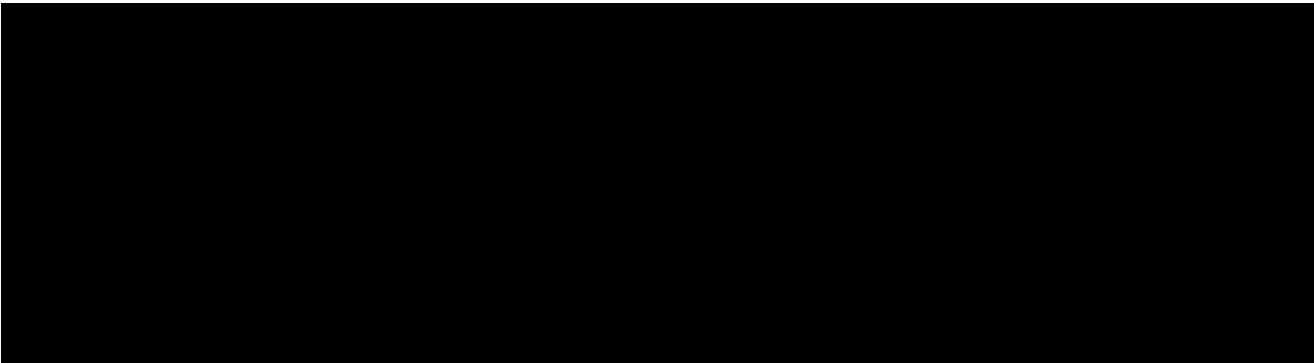
- (a) Any things of value or archaeological or special interest found on the Site, the Local Area Works Areas and the Temporary Works Areas are, as between the Contractor and the Principal, the property of the Principal, in order for the Principal to be able to return them to their rightful owner.
- (b) The Contractor must:
  - (i) at its cost:
    - A. immediately notify the Principal's Representative if any such thing is found; and
    - B. ensure that any such thing is protected and not disturbed; and
  - (ii) comply with all requirements of Authorities and directions of the Principal's Representative, the Principal's Representative acting reasonably, in relation to the thing.
- (c) The Principal will pay the Contractor the reasonable net extra Direct Costs incurred by the Contractor in complying with clauses 10.4(b)(i)B and 10.4(b)(ii), as stated by the Principal's Representative, provided that the Contractor's entitlements to Direct Costs pursuant to this clause 10.4(c) will be reduced to the extent that the Contractor has not taken all reasonable steps to mitigate those Direct Costs.
- (d) As a pre-condition to the Contractor submitting a Claim for Direct Costs pursuant to clause 10.4(c), the Contractor must have provided the Principal's Representative a detailed breakdown of that Claim between the T2/T3 Works and the Remaining Stage 3 Works.

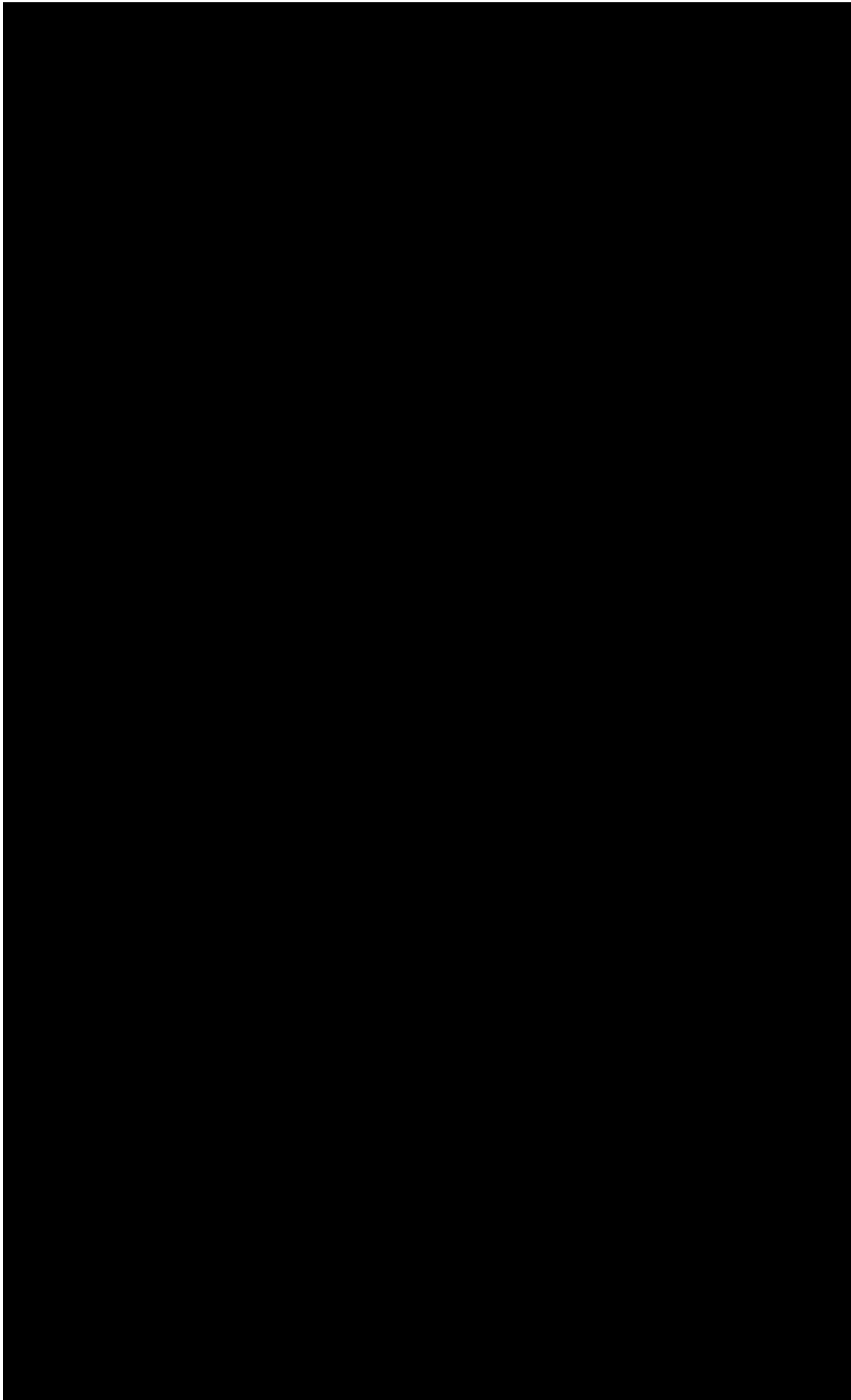
## 10.5 Contamination



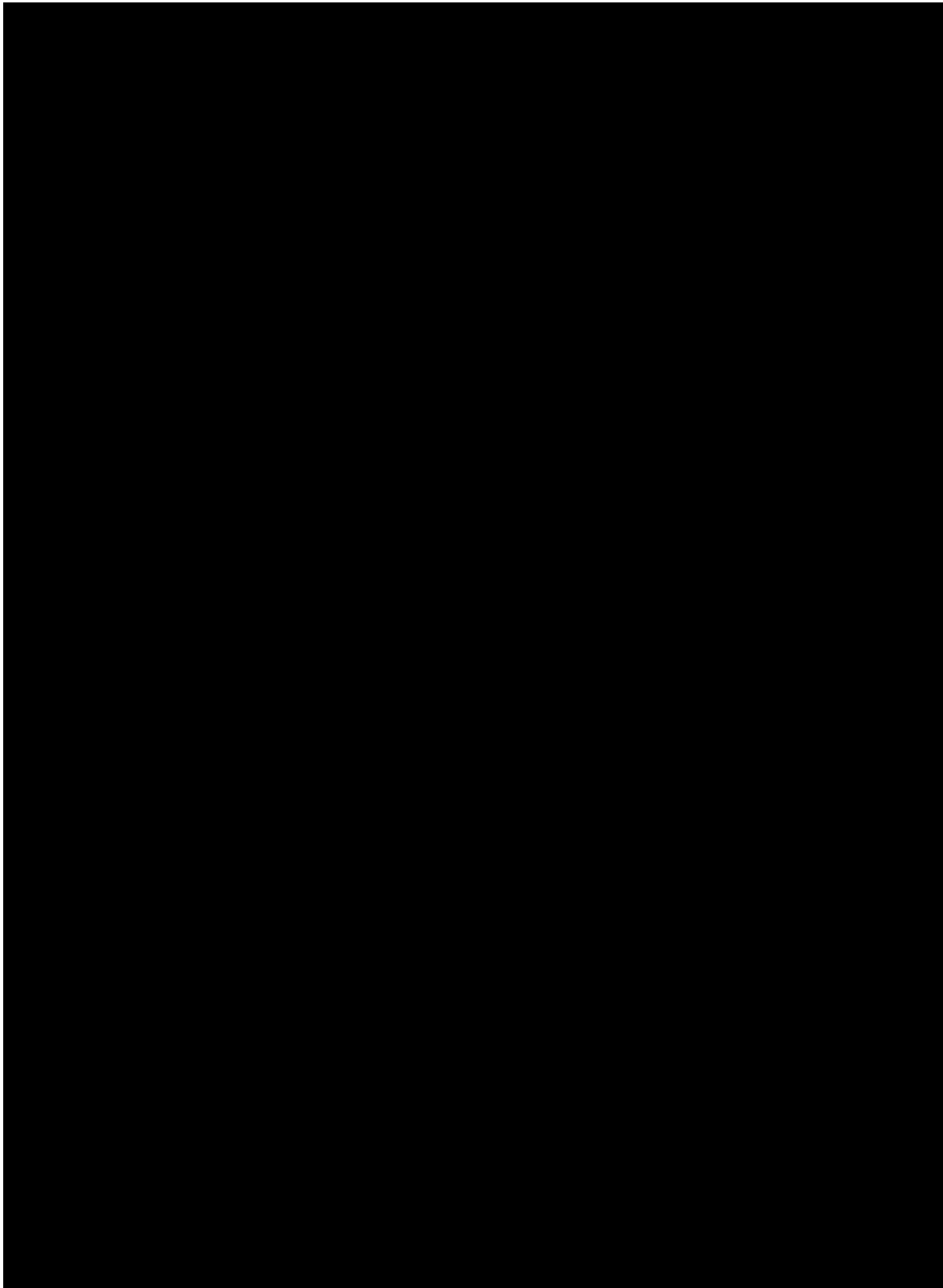


**10.6 Site Conditions**



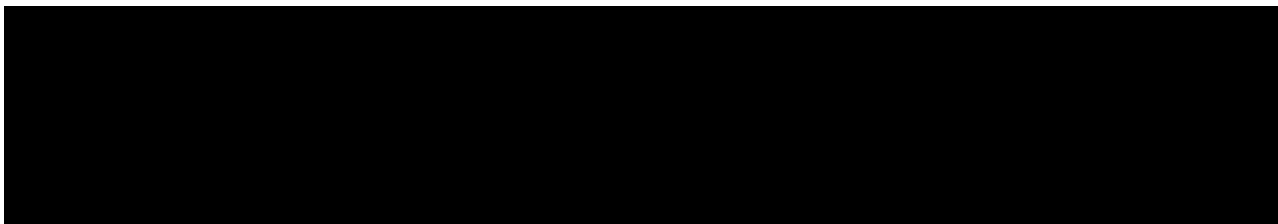


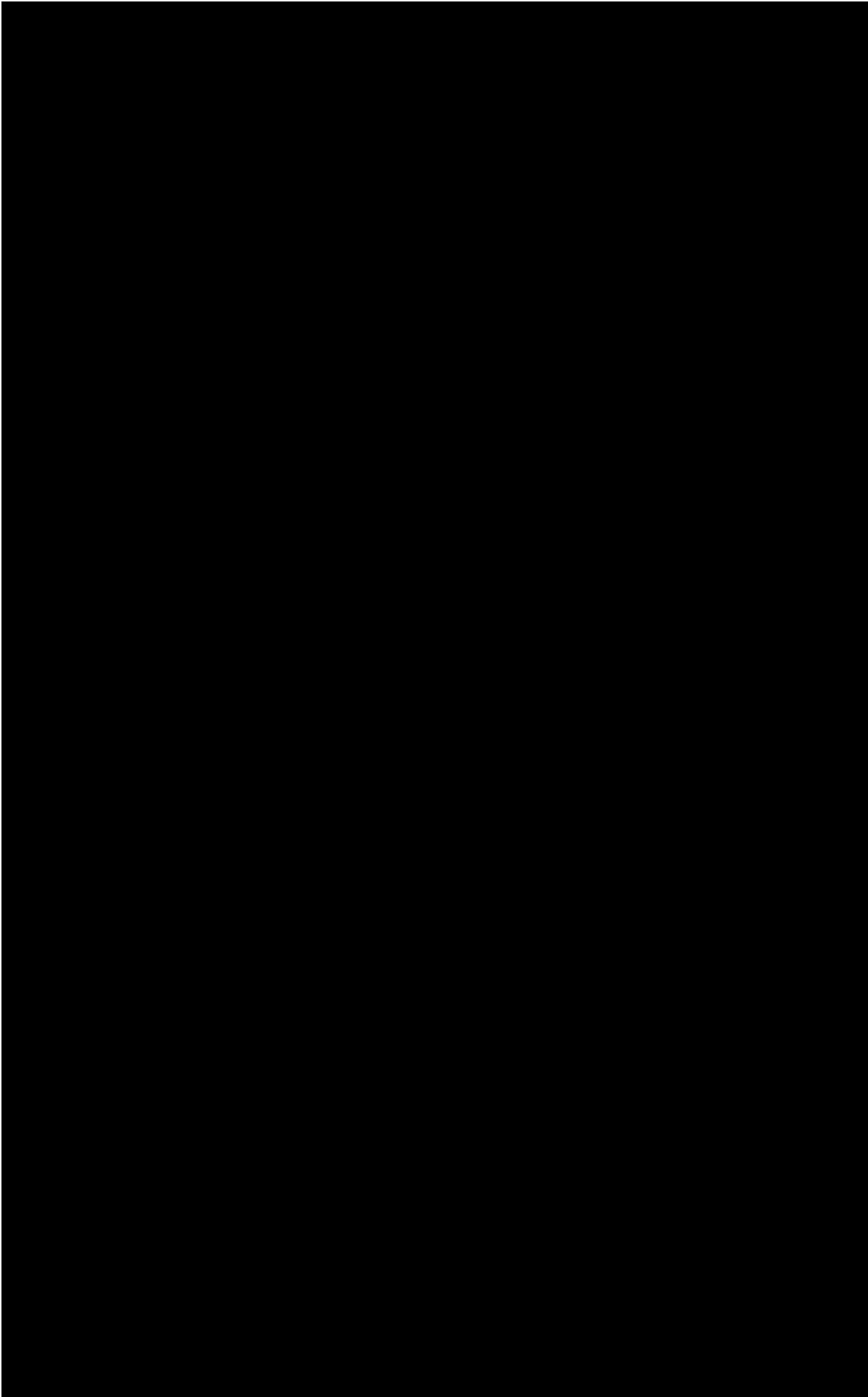


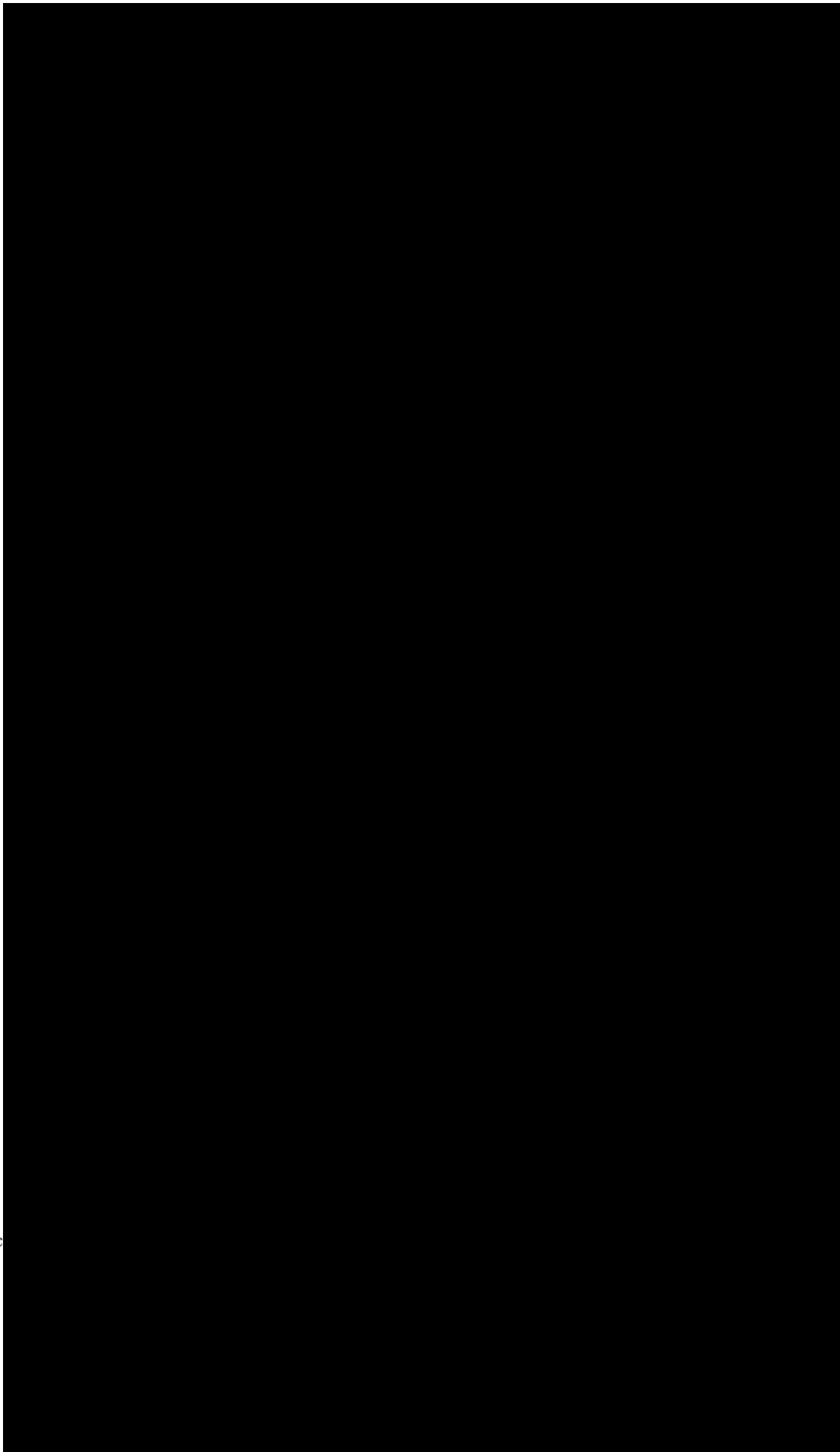


**10.7 Solid waste**

The Contractor must comply with the requirements set out in Schedule 48 (Solid Waste).

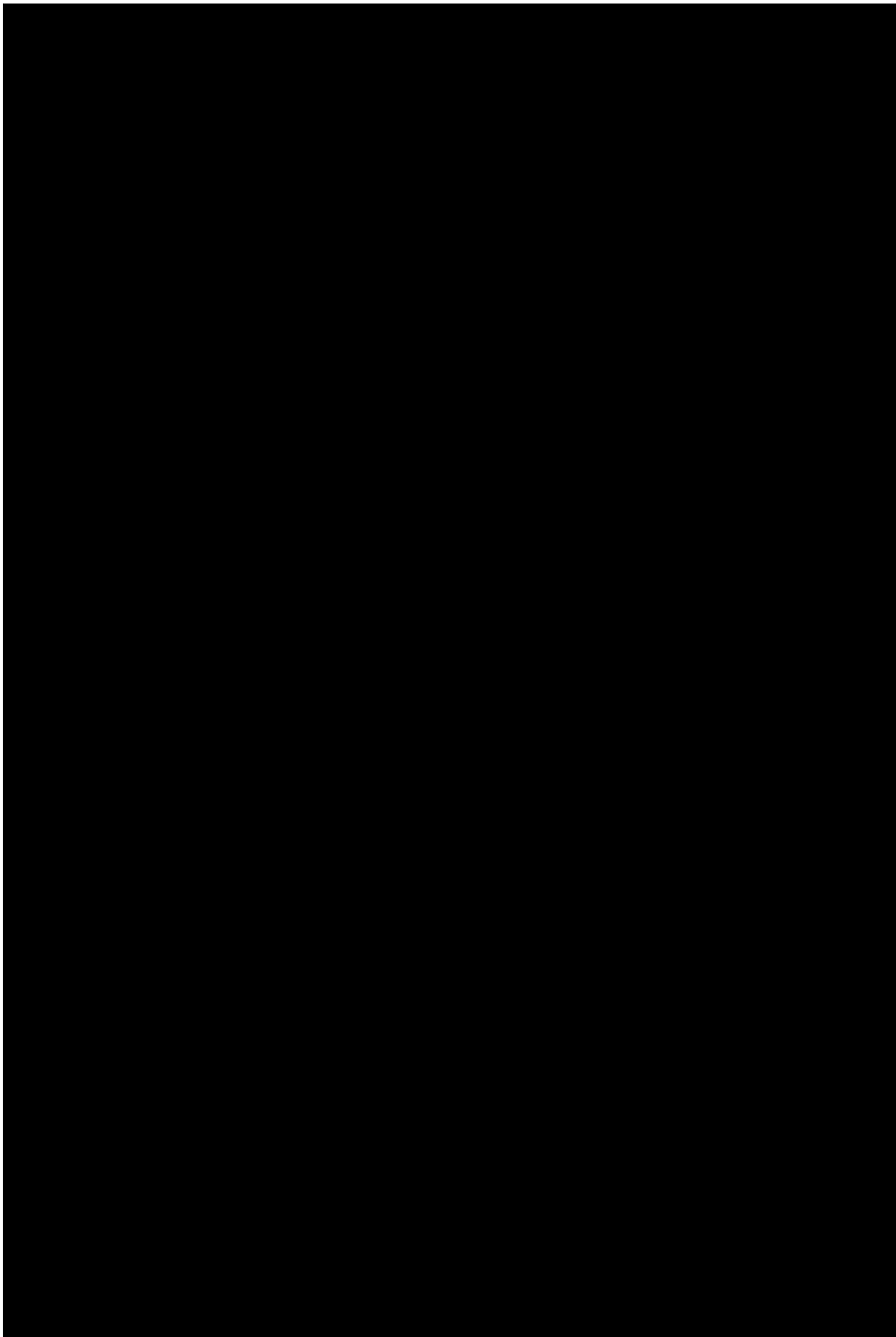


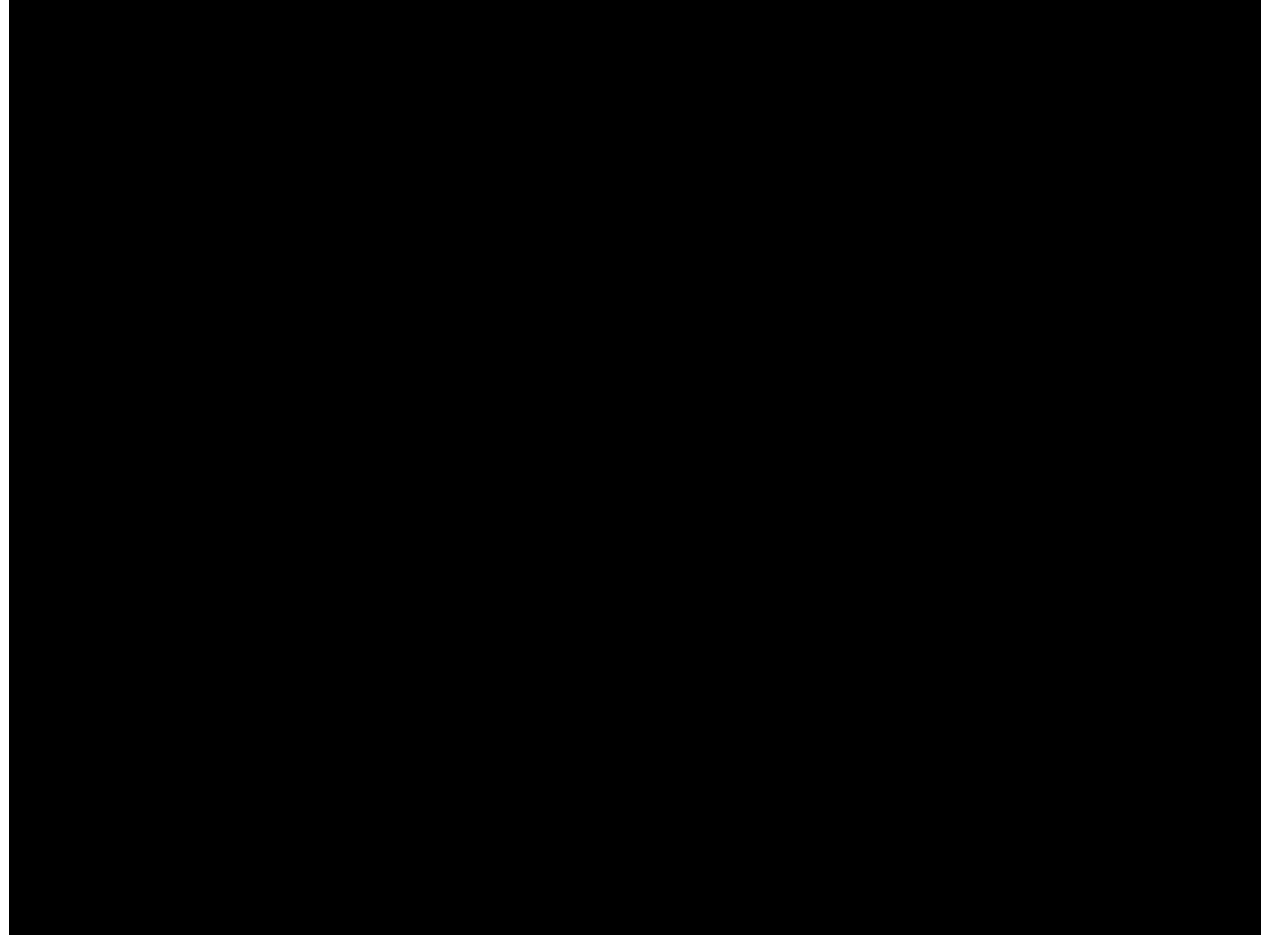
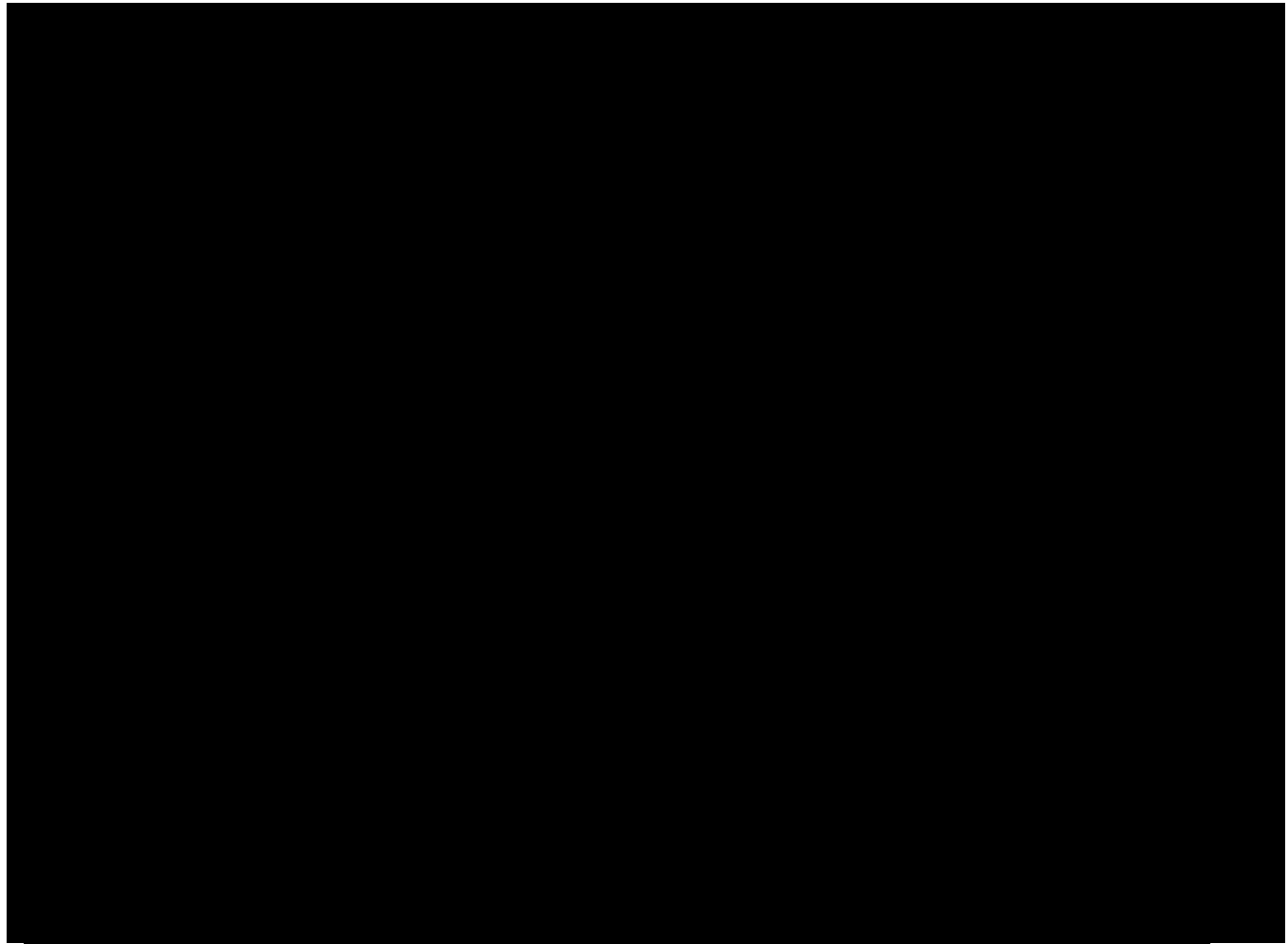


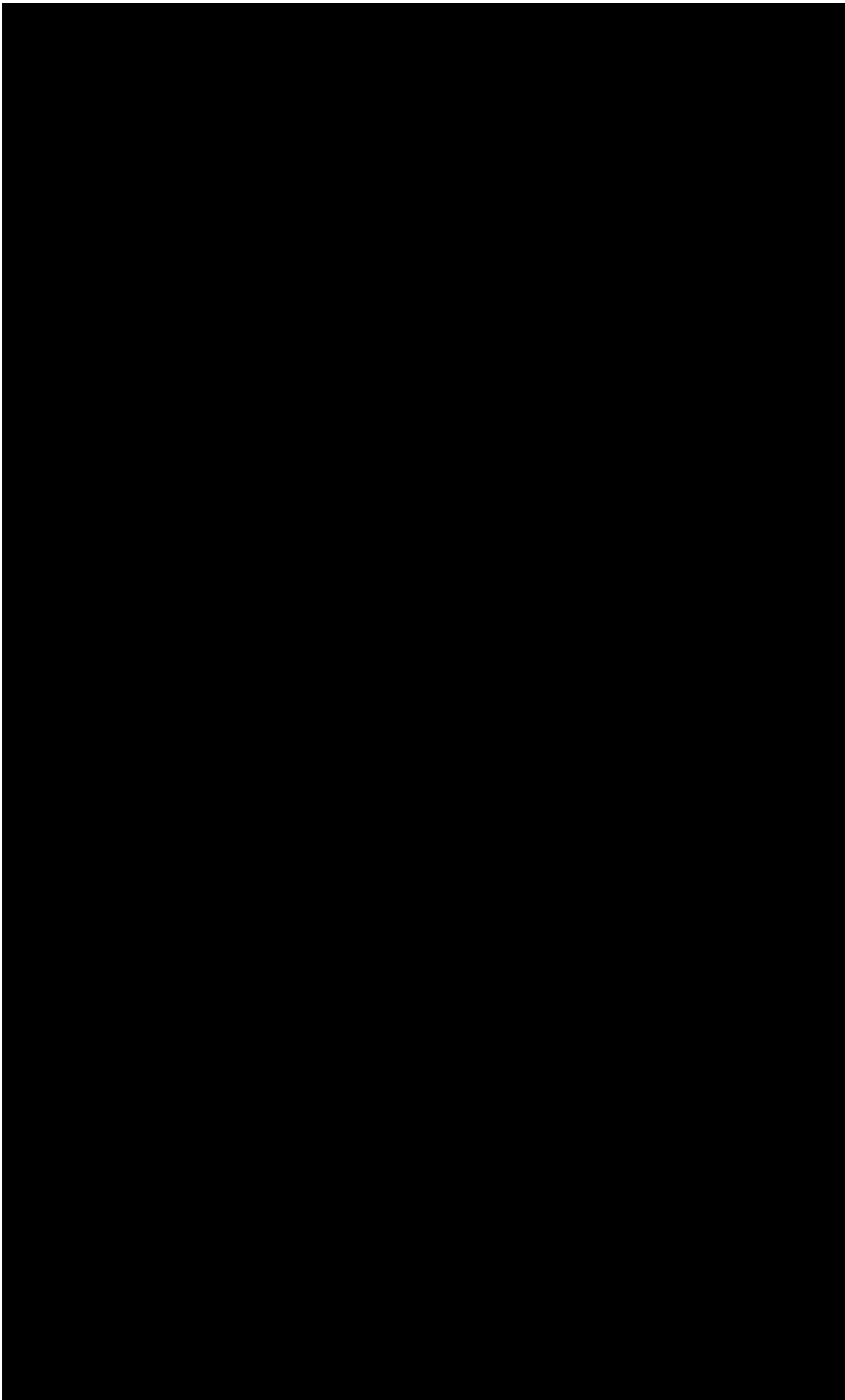


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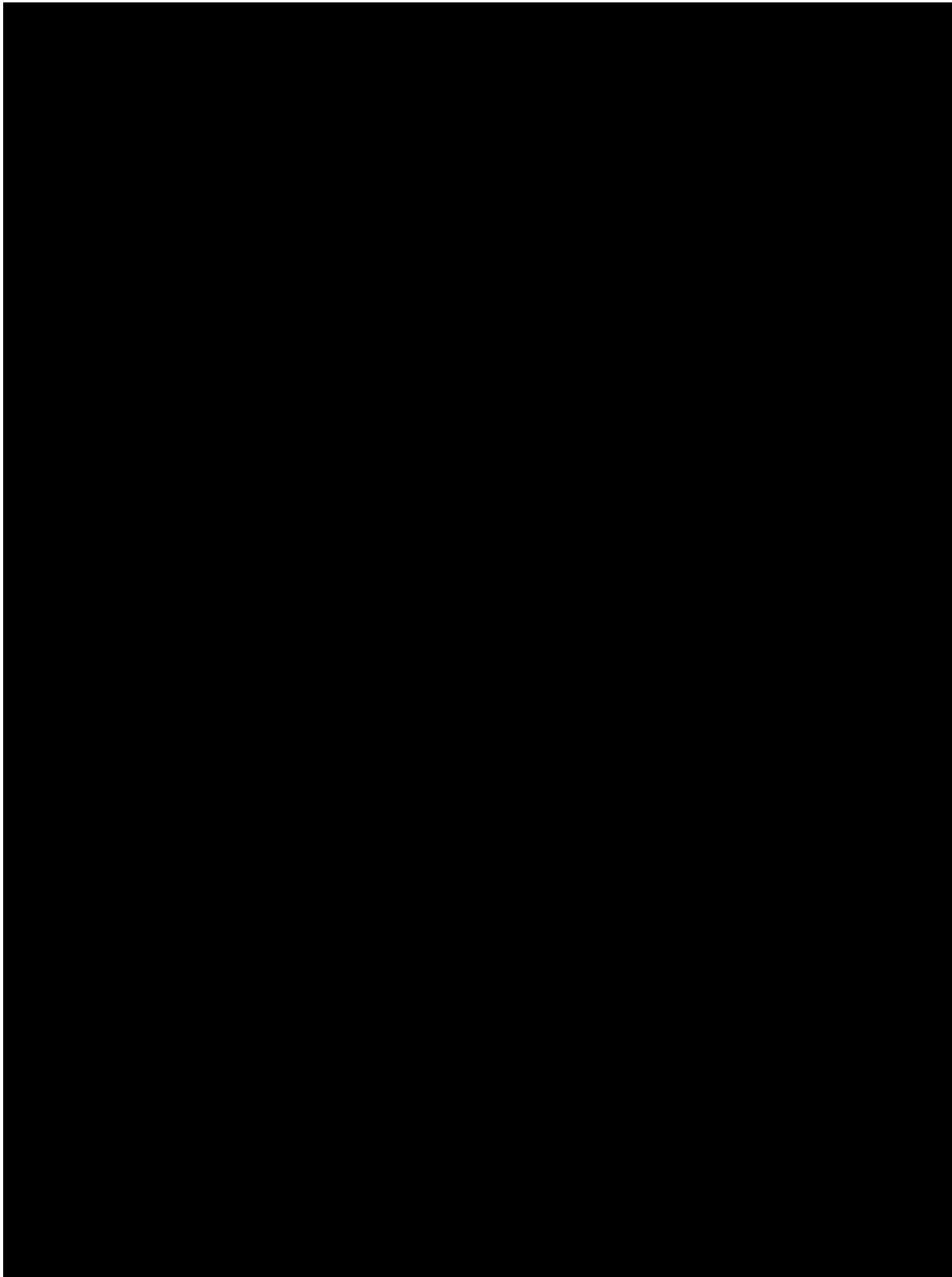
JOHN HOLLAND | IN WITNESS  
HEREOF











## **11. Quality**

### **11.1 Quality system**

- (a) The Contractor must implement a quality system for the management of all aspects of the Contractor's obligations under this deed and in accordance with the requirements of the section of the SWTC identified in Item 37(k) of Schedule 1 (Contract Information), the Quality Plan, and AS/NZS ISO 9001.

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- (b) The Contractor must develop and implement a Quality Plan in accordance with the Appendix to the SWTC identified in Item 37(l) of Schedule 1 (Contract Information).
- (c) The Contractor must not reduce the number of personnel, the minimum expertise of personnel or the scope of work or extent of surveillance included in the Quality Plan without the approval of the Principal's Representative.
- (d) The Contractor must comply with the NSW Government *Quality management guidelines - Construction procurement* (Edition 4 December 2019).

## 11.2 Quality management and verification

- (a) The Principal and the Contractor acknowledge that the design and construct project delivery method chosen for the Contractor's Activities:
  - (i) requires the Contractor to assume responsibility for all aspects of quality for the Contractor's Activities and for the durability of the Project Works;
  - (ii) allows the Independent Verifier to observe, monitor, audit and test all aspects of quality in the Contractor's Activities and the durability of the Project Works to verify compliance with the requirements of this deed;
  - (iii) requires the Independent Verifier by reviewing and assessing quality in the Contractor's Activities and the durability of the Project Works, to verify the Contractor's compliance with the requirements of this deed; and
  - (iv) allows the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers to monitor compliance of the Contractor's Activities with the requirements of this deed.
- (b) The Contractor must ensure a Quality Manager is engaged who must:
  - (i) independently certify the effectiveness and integrity of the Contractor's quality system in achieving conformity with the requirements of this deed;
  - (ii) report to the Principal's Representative, relevant Principal's Assistant Representatives, relevant Principal's Surveillance Officers and the Independent Verifier on quality issues in accordance with the requirements of this deed; and
  - (iii) have the requisite experience and ability described for the Quality Manager in Schedule 19 (Contractor's Personnel).
- (c) The Contractor must provide to the Principal's Representative a certificate executed by the Quality Manager in the form of:
  - (i) Schedule 9 (Quality Manager's Certificate - Quality) every 3 months from the date of this deed up to the end of the last Defects Correction Period;
  - (ii) Schedule 10 (Quality Manager's Certificate - Construction Completion / Final Completion) as a condition precedent to Construction Completion and as a condition precedent to Final Completion; and
  - (iii) Schedule 11 (Quality Manager's Certificate – Final Completion / Last Defects Correction Period) on the expiry of the last Defects Correction Period and as a condition precedent to Final Completion.
- (d) The Independent Verifier must audit and review (including for any non-compliances with this deed) each revision of the Quality Plan within 10 Business Days of submission of that plan to the Principal's Representative.

## 11.3 Hold Points and Witness Points

The Contractor must comply with the Hold Point and Witness Point:

- (a) procedures set out in the SWTC and the Quality Plan; and
- (b) requirements inserted in the Project Plans by the Independent Verifier.

## 11.4 Project quality non-conformity

- (a) The Contractor must comply with the procedure for non-conformities set out in the SWTC and the Quality Plan.
- (b) In addition to the procedure for non-conformities referred to in clause 11.4(a), and without limiting clause 16.2, if the Contractor has not complied with the SWTC, the Principal's Representative may give written notice to the Contractor of the Contractor's failure to comply and requiring compliance within a reasonable time.
- (c) If the Contractor does not comply with the notice referred to in clause 11.4(b), the Principal may employ others to carry out the direction.
- (d) The amount of any cost, damage, expense, loss or liability the Principal suffers or incurs in taking the action contemplated in clause 11.4(c) or as a result of the Contractor's failure to comply with clause 11.4(b) will be a debt due and payable from the Contractor to the Principal on demand.
- (e) Corrective actions implemented under the Contractor's quality system must comply with the requirements of this deed including the SWTC.
- (f) The Contractor must promptly issue all documents relating to quality non-conformities to the Principal's Representative.

## 11.5 Monitoring and audits by the Principal's Representative

- (a) The Contractor acknowledges that the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers may, at any time up to the Date of Final Completion, arrange monitoring and audits (including testing) to see if the Contractor is complying with this deed (including the Quality Plan, Construction Environmental Management Plans, Project WHS Management Plan and the Chain of Responsibility Management Plan).
- (b) The Contractor must:
  - (i) make arrangements to ensure that the Principal's Representative, the Principal's Assistant Representatives and the Principal's Surveillance Officers have access to all facilities, documentation, Records and personnel (including those of Subcontractors) that are needed by the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers for the carrying out of the monitoring and audits referred to in clause 11.5(a); and
  - (ii) ensure that the Quality Manager, the Environmental Manager, the Contractor's work health and safety management representative and the Contractor's personnel responsible for the Chain of Responsibility Provisions are available, as necessary, to discuss relevant details with the Principal's Representative, relevant Principal's Assistant Representatives and relevant Principal's Surveillance Officers during the above monitoring and audits.

## 11.6 Testing

- (a) The Contractor must carry out all tests required:
  - (i) by this deed; or
  - (ii) otherwise directed by the Principal's Representative.
- (b) The costs of a test directed by the Principal's Representative and not otherwise required by this deed will be borne by the Principal unless the test detects a Defect or is upon a Defect.
- (c) Where any test that is not otherwise required by this deed is directed by the Principal's Representative under clause 11.6(a)(ii), the Contractor must, as soon as practicable and before carrying out the relevant test, notify the Principal's Representative if the Contractor is, or should reasonably be, aware that carrying out the relevant test will, or is likely to, delay Construction Completion, giving details of the estimated delay and how Construction Completion and the Date of Construction Completion are likely to be affected (if at all).
- (d) Despite clause 17.4(b), the requirement to notify the Principal's Representative in accordance with clause 11.6(c) is a condition precedent to the Contractor's entitlement to

any extension of time in connection with a test directed by the Principal's Representative under clause 11.6(a)(ii).

## **11.7 No relief from obligations**

The Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 16) or otherwise according to Law nor will the rights of the Principal whether under this deed or otherwise according to Law be limited or otherwise affected by:

- (a) the implementation and compliance with any quality system or the Quality Plan;
- (b) compliance with any Hold Point and Witness Point procedures and requirements;
- (c) failure by the Principal, the Principal's Representative, the Principal's Assistant Representatives, the Principal's Surveillance Officers or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect whilst participating in any Hold Point or Witness Point procedure including where such failure is the result of a negligent act or omission; or
- (d) any monitoring or audit arranged by the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers, under clause 11.5 or discussions between the Quality Manager and the Principal's Representative, the Principal's Assistant Representatives or the Principal's Surveillance Officers, as contemplated under clause 11.5(b)(ii).

## **12. Design development and documentation**

### **12.1 The Contractor's design obligations**

The Contractor:

- (a) warrants to the Principal that:
  - (i) the Contractor remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed despite the Contractor's Concept Design (as further developed by the Contractor under this deed);
  - (ii) the Contractor has checked and carefully considered the SWTC and Environmental Documents and that:
    - A. the Contractor's Concept Design has been prepared by the Contractor and will be fit for its intended purpose;
    - B. it has satisfied itself that there are no ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
    - C. it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC (including in respect of the constructability of the Project Works) to enable the Contractor to carry out and fulfil its obligations under this deed; and
    - D. it has taken into consideration and made due allowance for the risks and costs associated with carrying out the Contractor's Activities and with assuming the obligations and potential liabilities imposed on it under this deed;
  - (iii) the Design Documentation will:
    - A. satisfy the requirements of the SWTC, the Third Party Agreements and the other requirements of this deed;
    - B. be as shown in, and in accordance with, the Contractor's Concept Design:
      - 1) subject to such changes as may be necessary to ensure compliance with this deed or may be necessitated by any of

- the factors referred to in clauses 12.1(e)(ii)A and 12.1(e)(ii)B; and
- 2) so as to meet the functional requirements and specifications contained in the Contractor's Concept Design (except to the extent that this deed requires functional requirements and specifications of a higher standard),
- unless otherwise agreed by the Principal (in its absolute discretion);
- C. be fit for its intended purpose;
- D. be prepared, certified, verified, completed and used in accordance with the requirements of this deed; and
- E. be in accordance with Law;
- (iv) construction will be carried out in accordance with the Design Documentation which the Contractor is entitled to use for construction purposes in accordance with clause 12.2(g);
- (v) construction carried out in accordance with the Design Documentation which the Contractor is entitled to use in accordance with clause 12.2(g) will satisfy the requirements of the SWTC and the other requirements of this deed;
- (vi) the Project Works will:
- A. be completed in accordance with, and satisfy the requirements of, this deed; and
- B. upon Construction Completion, be fit for their intended purposes; and
- (vii) in preparing the Design Documentation, if any change in accordance with clause 12.1(a)(iii)B and this deed is necessary from the Contractor's Concept Design, no change is to be made that would reduce the:
- A. durability;
- B. aesthetics and visible features;
- C. whole of life performance;
- D. user benefits; or
- E. functional performance,
- of any part of the Project Works or increase the user or maintenance costs of the Project Works;
- (b) agrees that in the preparation of the Design Documentation it must ensure that:
- (i) each Design Package for the Project Works and the Temporary Works is consistent with each other Design Package; and
- (ii) the Design Documentation for the Project Works submitted at each of the following design development stages:
- A. Developed Concept Design Stage;
- B. Substantial Detailed Design Stage; and
- C. Final Design Documentation Stage,
- for each discrete design element of the Project Works is consistent with the Design Documentation for the preceding design development stage;
- (c) agrees that the design and construction of the Project Works and Temporary Works in respect of the road functionality of Sydney Airport's interior road network and the existing active transport routes within the Airport (**Existing Functions**) must minimise the impact on the Existing Functions, to the extent reasonably practicable, having regard to the purpose, scope and timing of the Project Works and Temporary Works;

- (d) agrees that its obligations under, and the warranties given in, this clause 12.1 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design and construction of the Project Works and Temporary Works notwithstanding:
  - (i) any design work carried out by others prior to the date of this deed and incorporated in this deed; or
  - (ii) any Variation the subject of a Direction by the Principal's Representative,
 and that the development of the Design Documentation in accordance with clauses 12.1 to 12.3 does not amount to a Variation;
- (e) is responsible for, and assumes the risk of, and responsibility for, all increased costs and any damage, expense, loss, liability or delay that the Contractor or anyone claiming through the Contractor may suffer or incur arising out of or in connection with:
  - (i) the design of the Project Works and the Temporary Works in accordance with the Contractor's Concept Design and the construction of the Project Works and the Temporary Works in accordance with the Design Documentation, including costing more or taking longer than anticipated; and
  - (ii) any differences between the Project Works and the Temporary Works which the Contractor is required to design or construct (excluding for this purpose any differences which are the subject of a Variation Order issued under clause 15.2, or any approved Variation under clause 15.6(d)) and the Contractor's Concept Design including:
    - A. differences necessitated by the physical conditions (including sub-surface conditions) or characteristics of the Construction Site, the Environment or their surroundings, except to the extent that those physical conditions or characteristics are a Site Condition, and in respect of that Site Condition (but without limiting clause 10.6(i)), the Contractor has complied with clause 10.6; and
    - B. [REDACTED]

**12.2 Preparation of Design Documentation**

- (a) The Contractor must prepare, develop and complete all Design Documentation in accordance with this deed, the Design Plan and comply with its design obligations under the WHS Laws.



- (b) Throughout the preparation of the Design Documentation, the Contractor must give each Reviewer an opportunity to review, to comment on and to monitor the design performance of the Contractor, in accordance with clauses 12.2 to 12.3, the Contractor Documentation Schedule and the Third Party Agreements.
- (c) The Contractor must arrange regular meetings of the Project Design Group.
- (d) The Contractor must ensure that the Design Documentation, for the Substantial Detailed Design Stage, for each discrete design element of the Project Works, is verified by the Independent Verifier by providing a signed document in the form of Schedule 15 (Independent Verifier's Certificate - Design Documentation), which attaches a register of the Design Documentation the subject of the verification and by way of notation on each document.
- (e) The Contractor must ensure that the Design Documentation, for the Final Design Documentation Stage, for each discrete design element of the Project Works and the Temporary Works:
  - (i) is, other than in respect of Category 3 Temporary Works, verified by the Independent Verifier by providing a signed document in the form of Schedule 15 (Independent Verifier's Certificate – Design Documentation), which attaches a register of the Design Documentation the subject of the verification and by way of notation on each document;
  - (ii) where a Subcontractor has been involved in the preparation of the design, certified by the Subcontractor which prepared the design by providing a signed document in the form of Schedule 25 (Subcontractor's Certificate – Design Documentation);
  - (iii) is certified by the Contractor by providing a signed document in the form of Schedule 20 (Contractor's Certificate – Design Documentation);
  - (iv) certified by the Proof Engineer, in respect of the relevant elements identified in Item 14 of Schedule 1 (Contract Information) (including the Category 1 Temporary Works Design Documentation), by providing a signed document in the form of Schedule 27 (Proof Engineer's Certificate – Design Documentation);
  - (v) is certified by the Independent Checking Engineer, in respect of Category 2 Temporary Works Design Documentation, by providing a signed document in the form of Schedule 26 (Independent Checking Engineer's Certificate - Category 2 Temporary Works Design Documentation); and
  - (vi) in the case of any Design Documentation in respect of the Local Area Works, approved by each Authority with jurisdiction over those Local Area Works by providing a written notice from each Authority with jurisdiction over those Local Area Works that the Authority is satisfied with the Design Documentation, in accordance with the Contractor Documentation Schedule.
- (f) In considering any Design Documentation submitted under this clause the Principal's Representative and the Independent Verifier are entitled to consult with and take into account any views and requirements of any Reviewer and any relevant Authority.
- (g) Unless otherwise expressly agreed in writing by the Principal's Representative the Contractor must only use for construction purposes any parts of the Design Documentation that have been prepared for the Final Design Documentation Stage, including any Design Documentation for Temporary Works, and that:
  - (i) have been submitted to the Principal and the Independent Verifier in accordance with the Contractor Documentation Schedule;
  - (ii) comply with clause 12.2(e);
  - (iii) the Contractor is entitled to use for construction purposes pursuant to any Third Party Agreement (where applicable); and
  - (iv) the Contractor Documentation Schedule either states that the Contractor is entitled to proceed with the Contractor's Activities using or does not prevent the Contractor from proceeding to use.

- (h) Not used.
- (i) If so expressly agreed by the Principal's Representative under clause 12.2(g) the Contractor acknowledges and agrees that:
  - (i) any construction work undertaken by the Contractor using Design Documentation which has not been prepared, reviewed, certified, verified and not rejected in accordance with the Contractor Documentation Schedule will be at the sole risk of the Contractor, including all delays and costs that may be suffered or incurred, or re-work required to be performed, by the Contractor as a result;
  - (ii) it will not be entitled to make, nor will the Principal be liable on any Claim including any Claim for damages, costs, expenses or losses for any delay, disruption or interference arising out of or in connection with the carrying out of such construction work; and
  - (iii) for the avoidance of doubt, nothing in this clause 12.2(i) or clause 12.2(g) limits or otherwise qualifies the Contractor's obligation to have all Design Documentation prepared, reviewed, certified, verified and not rejected in accordance with the Contractor Documentation Schedule.
- (j) If the Contractor wishes to amend Design Documentation that has been prepared in accordance with the Contractor Documentation Schedule, any amendments must be made in accordance with the requirements of the Contractor Documentation Schedule.

### 12.3 No duty

The Contractor acknowledges and agrees that:

- (a) the Contractor is responsible for carrying out the design obligations under the WHS Laws;
- (b) neither the Principal, nor the Principal's Representative, has any design obligations in respect of the Project Works, the Temporary Works or the Design Documentation;
- (c) neither the Principal, the Principal's Representative nor any other Reviewer (each a **Relevant Party**) owes any duty to the Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the Contractor or make any comments regarding any Design Documentation (within any time frames contemplated in this deed or otherwise); and
- (d) neither:
  - (i) the Principal's, nor any Reviewer's participation in the Project Design Group;
  - (ii) any review or rejection of, or consultation or comments by, or any approval (including any approval of any non-compliance or approval subject to conditions) by, a Relevant Party, nor any failure by a Relevant Party regarding any Design Documentation or any other Direction by the Principal's Representative in respect of any Design Documentation; nor
  - (iii) the verification of any Design Documentation by the Independent Verifier, will lessen or otherwise affect:
    - (iv) the Contractor's warranties under clause 12.1 or any other of the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
    - (v) a Relevant Party's rights against the Contractor, whether under this deed or otherwise according to Law.

### 12.4 Ownership of Design Documentation

- (a) Ownership of, and all Intellectual Property Rights in, the Design Documentation vests in the Principal when each item of Design Documentation comes into existence. On request by the Principal, the Contractor must do all things necessary to perfect the vesting of such ownership and Intellectual Property Rights in the Principal.
- (b) The Contractor has an irrevocable licence to use the Design Documentation for performing the Contractor's Activities and performance of its obligations under this deed.

- (c) Subject to clause 12.4(g), the Contractor grants to the Principal and Sydney Airport a perpetual, irrevocable, royalty-free licence to use (including to sub-licence) any computer software (including both source code and object code versions) which is required by the Principal in order to obtain the full benefit of the Contractor's Activities but in which the Intellectual Property Rights are not owned by the Principal as a result of clause 12.4(a) (**Proprietary Software**).

This licence:

- (i) will permit the Principal and Sydney Airport to use the Proprietary Software for all purposes associated with the Contractor's Activities and the Works or the general performance by the Principal of its statutory functions; and
- (ii) will survive the termination of this deed on any basis.
- (d) The Contractor warrants that:
- (i) neither the Design Documentation, the Project Works (including any plant, equipment or material forming part of the Project Works) nor any method of working used by the Contractor in performing the Contractor's Activities will infringe any Intellectual Property Right or any moral right in an artistic work; and
- (ii) it has or will have sufficient interest in the Design Documentation and Proprietary Software to comply with its obligations under clauses 12.4(a) and 12.4(c).
- (e) The Contractor must indemnify the Principal and Sydney Airport against any claim, loss, cost, expense, damage or liability suffered or incurred by the Principal or Sydney Airport arising out of or in connection with Design Documentation, the Project Works (including any plant, equipment or materials forming part of the Project Works) or any method of working used by the Contractor in performing the Contractor's Activities infringing or allegedly infringing any Intellectual Property Rights or any author's moral rights.
- (f) The Contractor must ensure that it obtains irrevocable written consent, for the benefit of the Principal, Sydney Airport and the Contractor, from the author of any artistic work to be incorporated into, or used during the design or construction or maintenance of, the Project Works, including any necessary consents from its employees and any consultants engaged by it, to:
- (i) any non-attribution or false attribution of authorship of the artistic work; and
- (ii) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the artistic work or the Project Works.

The terms "artistic work" and "attribution" have the meanings in the *Copyright Act 1968* (Cth).

- (g) The licence in clause 12.4(c) will not extend to a part of the Proprietary Software that is not owned by the Contractor (**Third Party Rights**) if:
- (i) the Third Party Rights are generally commercially available on reasonably commercial terms; or
- (ii) the Contractor has:
- A. been unable (despite using its best endeavours) to procure from the relevant third party the right to grant the licence in clause 12.4(c) in respect of those Third Party Rights; and
- B. the Contractor has notified the Principal:
- 1) that it has been unable to procure the necessary licence rights for those Third Party Rights; and
- 2) as to the terms, if any, (including any cost) on which the Principal will be able to procure the required rights to use, reproduce and modify those Third Party Rights.

## 12.5 Reference Design

- (a) The Contractor acknowledges that prior to the date of this deed the Principal prepared the Reference Design, a copy of which was provided to the Contractor as an Information Document.
- (b) The Reference Design will not form part of this deed and is subject to the provisions of this deed and the Confidentiality Deed Poll concerning Information Documents.
- (c) The Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or reliance by the Contractor on, the Reference Design and the existence of the Reference Design will not limit any of the Contractor's obligations under this deed, including that the Contractor remains responsible for ensuring that the Project Works and the Temporary Works satisfy the requirements of this deed.

## 12.6 Delivery up of Design Documentation

- (a) If this deed is terminated by the Principal, the Contractor must immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not) then in existence to the Principal.
- (b) The Contractor must, if requested, provide evidence acceptable to the Principal's Representative that the Contractor is at all times able to comply with clause 12.6(a) in respect of any Foreign Sourced Design.

## 13. Construction

### 13.1 Construction

- (a) The Contractor must construct the Project Works and Temporary Works:
  - (i) in accordance with the requirements of this deed including:
    - A. the SWTC;
    - B. subject to clause 13.1(b) and section 3.6, Appendix C2 (Contractor Documentation Schedule) of the SWTC, any relevant Design Documentation which has:
      - 1) been verified by the Independent Verifier and, where relevant, the Proof Engineer and an Independent Checking Engineer and certified by the Subcontractor who prepared it and by the Contractor under clause 12.2(e);
      - 2) been submitted under clause 12.2; and
      - 3) not been rejected under clause 12.2 and the Contractor Documentation Schedule; and
    - C. any direction of the Principal's Representative given or purported to be given under a provision of this deed, including any Variation directed by the Principal's Representative by a Variation Order under clause 15.2;
  - (ii) in accordance with:
    - A. all Approvals and applicable Laws; and
    - B. the requirements of all relevant Authorities,and so as to meet, [REDACTED], the functional requirements and specifications contained in the SWTC;
  - (iii) with good workmanship and materials which are:
    - A. new (with respect to the Project Works) and free of Defects and other imperfections; and
    - B. of the quality specified in the SWTC;
  - (iv) [REDACTED]

A. [REDACTED]

- (b) If there is any ambiguity, discrepancy or inconsistency between this deed and any Design Documentation which has been verified and certified under clause 12.2(e), submitted under clause 12.2 and not rejected under the Contractor Documentation Schedule, then unless otherwise directed by the Principal's Representative, the requirements of this deed will prevail.
- (c) The Contractor agrees that:
  - (i) in undertaking the Contractor's Activities, the Contractor must comply with applicable safety and security procedures of Sydney Airport that apply in relation to the Airport; and
  - (ii) in undertaking the Contractor's Activities, the Contractor must use all reasonable endeavours to minimise the effects of the Contractor's Activities on Airport operations.

### 13.2 Property Works

- (a) Where any Property Works are required to be carried out on a Parcel, the Contractor must give a written notice to the owner or owners of the property (with a copy to the Principal's Representative) which:
  - (i) describes the Property Works to be carried out;
  - (ii) requests access for the purpose of carrying out the Property Works; and
  - (iii) specifies the intended date for commencement of the Property Works, not less than 10 Business Days prior to the day which the Contractor intends to commence the Property Works.
- (b) If the owner or owners of a property do not provide the Contractor with sufficient access to carry out the Property Works from either:
  - (i) the date notified in the notice under clause 13.2(a); or
  - (ii) such other date as may be agreed between the Contractor and the owner or owners,the Contractor must:
  - (iii) give the Principal's Representative a notice stating this; and
  - (iv) at the Principal's election, either:
    - A. not carry out the Property Works until the Principal's Representative gives the Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 13.2(a) will reapply and the Principal's Representative must either, in his or her absolute discretion:
      - 1) waive the requirement for the relevant Property Works to be completed for Construction Completion to be achieved, in which case those Property Works must otherwise be completed in accordance with this deed and within a reasonable time, and in any event, prior to the expiry of the relevant Defects Correction Period; or
      - 2) use the Principal's Representative's discretion under clauses 17.5(h) and 17.5(i) to extend the Date for Construction Completion to address any delay to Construction Completion caused by the owner or owners of a property failing to provide the Contractor with sufficient access; or

- B. if the Contractor demonstrates to the satisfaction of the Principal's Representative that:
- 1) the Contractor has used its best endeavours to obtain sufficient access to carry out the Property Works; and
  - 2) the Contractor will be delayed in achieving Construction Completion by the owner or owners of a property failing to provide access,
- not carry out the relevant Property Works at all, in which case the Principal's Representative must give a notice to the Contractor directing a Variation under clause 15.2(a) deleting the relevant Property Works, following which relevant adjustments must be made under clause 15.4.
- (c) On being given access to any property for the purpose of carrying out any Property Works, the Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Parcel.
- (d) The Contractor must:
- (i) carry out the Property Works with respect to each Parcel:
    - A. in accordance with the SWTC;
    - B. so that they are, [REDACTED], fit for their intended purpose; and
    - C. in accordance with Law; and
  - (ii) in carrying out the Property Works, use reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or on which, Property Works are being undertaken.
- (e) The Contractor must:
- (i) rehabilitate any part of a Parcel to the state it was in immediately prior to the Contractor obtaining access to the Parcel; and
  - (ii) otherwise repair any damage or degradation to any part of a Parcel arising out of or in any way in connection with the performance of its obligations under this clause 13.2,
- including using all reasonable endeavours to satisfy the reasonable requirements of the owner or owners of any part of a Parcel in relation to which, or on which, the Property Works were undertaken.
- (f) The completion of all Property Works under this clause 13.2 including all work under clause 13.2(e) is a condition precedent to Construction Completion.
- (g) The Contractor must, after completion of the Property Works with respect to a Parcel, including the work described in clause 13.2(e), and as a condition precedent to Construction Completion, provide to the Principal's Representative:
- (i) a deed in the form of Schedule 35 (Owner's Deed Poll), duly executed by the owner or owners of any part of the Parcel; or
  - (ii) if the Contractor demonstrates to the satisfaction of the Principal's Representative, acting reasonably, that the Contractor is unable to obtain a deed under clause 13.2(g)(i) despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner or owners have failed or refused to execute a deed in the form of Schedule 35 (Owner's Deed Poll) within 15 Business Days of it being provided by the Contractor to the owner or owners following the proper completion of the Property Works including the work described in clause 13.2(e).
- (h) The acceptance of a deed or statement provided by the Contractor under clause 13.2(g) by the Principal's Representative is not approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this clause 13.2.



- (i) The Contractor must indemnify the Principal against any liability to or claim by the owner or owners of any part of a Parcel where:
  - (i) such owner or owners have not duly signed a deed in the form of Schedule 35 (Owner's Deed Poll); and
  - (ii) the liability or claim arises out of or in connection with the Property Works, but the Contractor's liability shall be reduced proportionally to the extent that the liability to, or claim by, the owner or owners of any part of a Parcel arises out of an act or omission of the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Stage 1 Contractor, the Independent Verifier and the ER).
- (j) The section of the SWTC identified in Item 37(m) of Schedule 1 (Contract Information):
  - (i) is indicative only of the scope of those Property Works of the kind referred to in paragraph (b) of the definition of "Property Works" in clause 23.2; and
  - (ii) does not limit or otherwise affect the Contractor's obligations under this deed in relation to the Property Works.

### 13.3 Notice of accidents and incidents

Where the Contractor becomes aware of:

- (a) any accidents involving damage to persons or property occurring on or in the vicinity of the Construction Site or in the supply chain where the Chain of Responsibility Provisions apply; or
  - (b) any incidents affecting the Environment,
- the Contractor must:
- (c) promptly give the Principal's Representative a detailed written report of the accident or incident; and
  - (d) otherwise comply with Law, the Project WHS Management Plan, the Chain of Responsibility Management Plan, the Construction Environmental Management Plans and the Communication Management Plan.

### 13.4 Cleaning up

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

- (a) keep the Construction Site and any other areas affected by the Contractor's Activities clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Construction Site and any other areas affected by the Contractor's Activities; and
- (c) as a condition precedent to Construction Completion, remove all rubbish, surplus materials, plant, equipment, scaffolding, loose materials and Temporary Works from the Construction Site and any other areas affected by the Contractor's Activities except where the retention of any of these are required for the correction of Defects during the Defects Correction Periods and this is approved in writing by the Principal's Representative.

### 13.5 Work method

If:

- (a) this deed prescribes a particular work method or a work method is otherwise a part of this deed;
- (b) a work method is reviewed or approved (expressly or impliedly) by the Principal or the Principal's Representative; or
- (c) any work method that the Contractor adopts or proposes to adopt is impractical or impossible,

and the Contractor, with or without the approval of the Principal's Representative, uses another work method (**New Work Method**):



- (d) the Contractor is not entitled to make any Claim against the Principal arising out of or in any way in connection with the New Work Method; and
- (e) the New Work Method will not cause this deed to be frustrated.

### **13.6 Temporary Works Areas**

As a condition precedent to Construction Completion, the Contractor must reinstate all Temporary Works Areas and the Contractor must as a minimum:

- (a) rehabilitate all Temporary Works Areas to the state they were in immediately prior to the Contractor obtaining access to them; and
- (b) otherwise repair any damage or degradation to any part of a Temporary Works Area arising out of or in any way in connection with the performance of its obligations under this deed.

### **13.7 Notification of material issues**

Without limiting any other obligation under this deed, the Contractor must notify the Principal:

- (a) as soon as reasonably practicable after it becomes aware of any matter which materially affects, or may materially affect:
  - (i) the carrying out of the Project Works and Temporary Works in accordance with this deed; or
  - (ii) the Construction Site,  
including any issues in relation to industrial relations, work health and safety, and the environment; and
- (b) of the progress or resolution of such matters.

### **13.8 Stage 1 and Stage 3 Interface**

Without limiting any other obligations of the Contractor under this deed, the Contractor:

- (a) acknowledges and agrees that:
  - (i) the Gateway is being delivered in multiple stages, with the road project separated into two stages;
  - (ii) the purpose of the Project Works is that the Gateway will be, and will operate as, a single, integrated road asset; and
  - (iii) if there is an ambiguity, discrepancy or inconsistency within or between any documents comprising this deed (including the SWTC) or the Stage 1 D&C Deed (including its SWTC), the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence;
- (b) must:
  - (i) ensure that in carrying out and completing the Contractor's Activities, the Project Works properly interface and integrate with, and connect to the Stage 1 Project Works so as to enable the Project Works, when completed, to fully comply with the requirements of this deed;
  - (ii) ensure that any Project Plans, Contract Program, Subsidiary Contract Programs, Design Documentation and any other documentation submitted by the Contractor clearly show the interface between and integration of the Project Works and the Stage 1 Project Works and provide sufficient details of this interface and integration (including as requested by the Principal's Representative);
  - (iii) carry out the Contractor's Activities in a manner which ensures the safe and efficient integration and integrated operation of the Gateway;
  - (iv) ensure that that the design and construction of the Project Works and the Stage 1 Project Works is fully coordinated and integrated so as to achieve a seamless interoperability of Stage 1 and Stage 3;

- (v) coordinate the Project Works and the Stage 1 Project Works, including work sequencing, construction methods, safety and industrial relations matters;
  - (vi) carefully coordinate and interface the Contractor's Activities and the Stage 1 Contractor's Activities;
  - (vii) manage all community and stakeholder management in a coordinated and integrated manner for the Contractor's Activities and the Stage 1 Contractor's Activities;
  - (viii) ensure that traffic management is fully coordinated and sequenced between the Contractor's Activities and the Stage 1 Contractor's Activities;
  - (ix) comply with any Approvals in a seamless manner in relation to the Project Works and the Stage 1 Project Works;
  - (x) manage the Contractor's Activities and the Stage 1 Contractor's Activities in a fully coordinated and integrated manner on the basis that Stage 1 and Stage 3 form part of a single integrated project; and
  - (xi) do anything else reasonably required by the Principal's Representative in relation to the interface between Stage 1 and Stage 3 to ensure that Stage 1 and Stage 3 are carried out as an integrated project.
- (c) The Contractor accepts the risk of the interfaces between, and the integration of the Project Works and the Stage 1 Project Works and has allowed for this in its Project Contract Sum.

### **13.9 Cooperation with Other Contractors**

- (a) Without limiting clause 5.8(e), the Contractor must cooperate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Laws.
  - (b) Without limiting the Contractor's obligations under the Project Interface Deed, the Contractor:
    - (i) acknowledges that:
      - A. the Principal and others may engage Other Contractors to carry out Other Contractors' Activities upon or in the vicinity of the Construction Site at the same time as the Contractor;
      - B. the Contractor's Activities may interface with the Other Contractors' Activities;
      - C. Other Contractors may be executing work on parts of the Construction Site, or adjacent to the Construction Site, at the same time as the Contractor is performing the Contractor's Activities; and
      - D. Other Contractors may require the Contractor to provide information to them to coordinate the Other Contractors' Activities with the Contractor's Activities, and this must be provided in a timely manner by the Contractor;
    - (ii) must at all times:
      - A. permit Other Contractors to carry out the Other Contractors' Activities on the applicable parts of the Construction Site including any such person engaged by the Principal, a Third Party, Sydney Airport or an Authority or any adjacent property to the Construction Site:
        - 1) at the same time as the Contractor is performing the Contractor's Activities; and
        - 2) at the times agreed with the Other Contractor, or failing agreement at times determined by the Principal's Representative,
- and for this purpose ensure they have safe, clean and clear access to those parts of the Construction Site, or property adjacent to the Construction Site (to the extent that the Contractor has access to that

property and for the period of such access), required by them for the purpose of carrying out their work, subject to the Other Contractor complying with the Contractor's reasonable site access and work health and safety procedures;

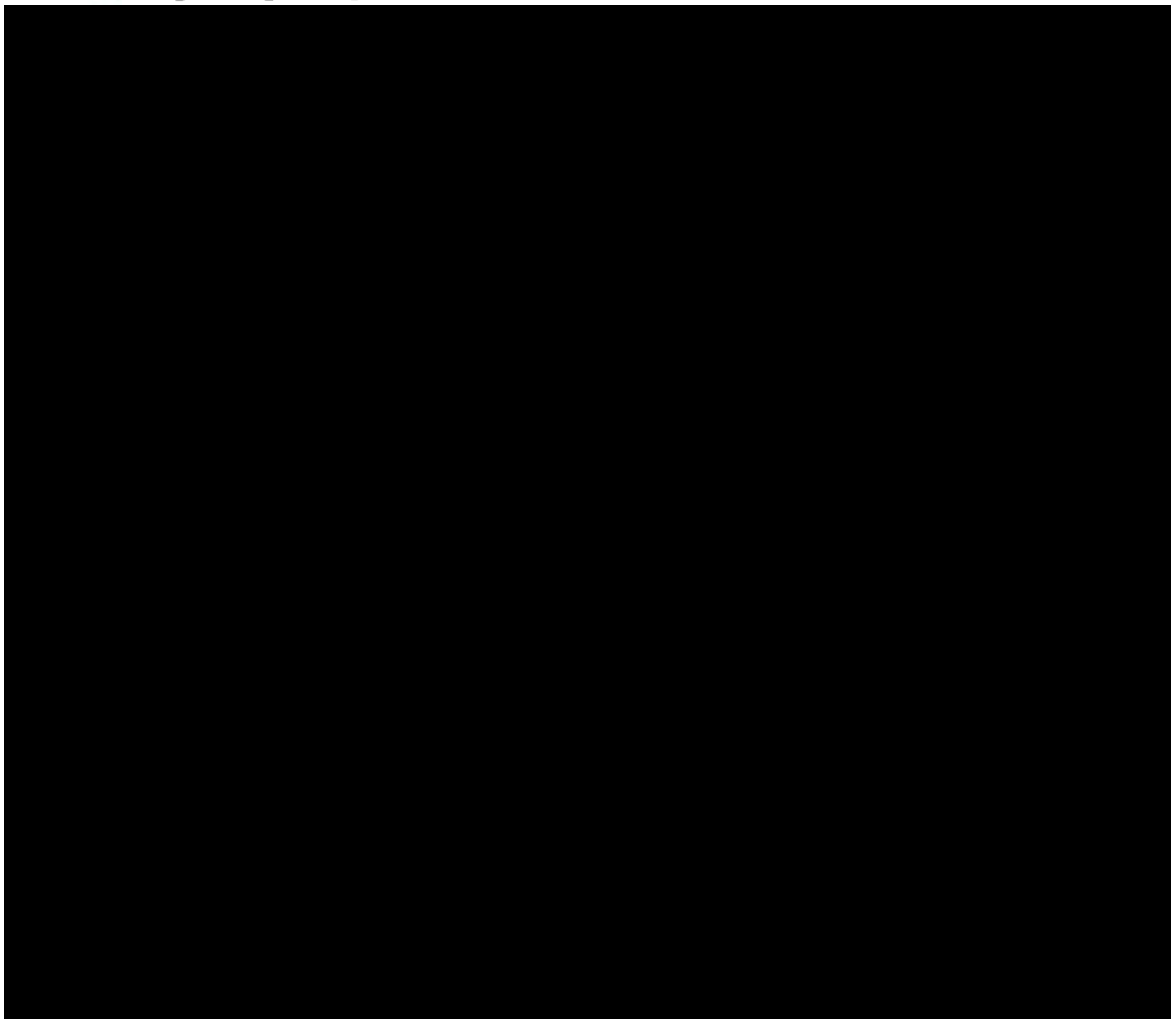
- B. take all reasonably necessary precautions to ensure that the Project Works, the Temporary Works, and the Construction Site are protected from accidental damage by the Other Contractor;
  - C. not damage the work performed by the Other Contractor or its plant and equipment except to the minimum extent necessary to perform the Contractor's Activities;
  - D. fully co-operate with Other Contractors, and do everything reasonably necessary to:
    - 1) facilitate the Other Contractors' Activities, including providing Other Contractors with such assistance as may be directed by the Principal's Representative;
    - 2) ensure the effective coordination of the Contractor's Activities with the Other Contractors' Activities; and
    - 3) coordinate traffic management and minimise disruptions to the movement of traffic;
  - E. carefully coordinate and interface the Contractor's Activities with the Other Contractors' Activities;
  - F. perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Other Contractors' Activities [REDACTED]  
[REDACTED]
  - G. be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods and safety with those affecting, and influenced by, Other Contractors' Activities; and
  - H. attend coordination meetings chaired by the Principal's Representative with Other Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues;
- (iii) must promptly advise the Principal's Representative if the Contractor becomes aware of any matter arising out of the Other Contractors' Activities that may have an adverse effect upon the Contractor's Activities or the safety of the public or any other persons; and
  - (iv) without limiting this clause, must indemnify the Principal from and against any claims against the Principal, or cost, damage, expense, loss or liability suffered or incurred by the Principal, arising out of or in any way in connection with a breach of this clause by the Contractor.

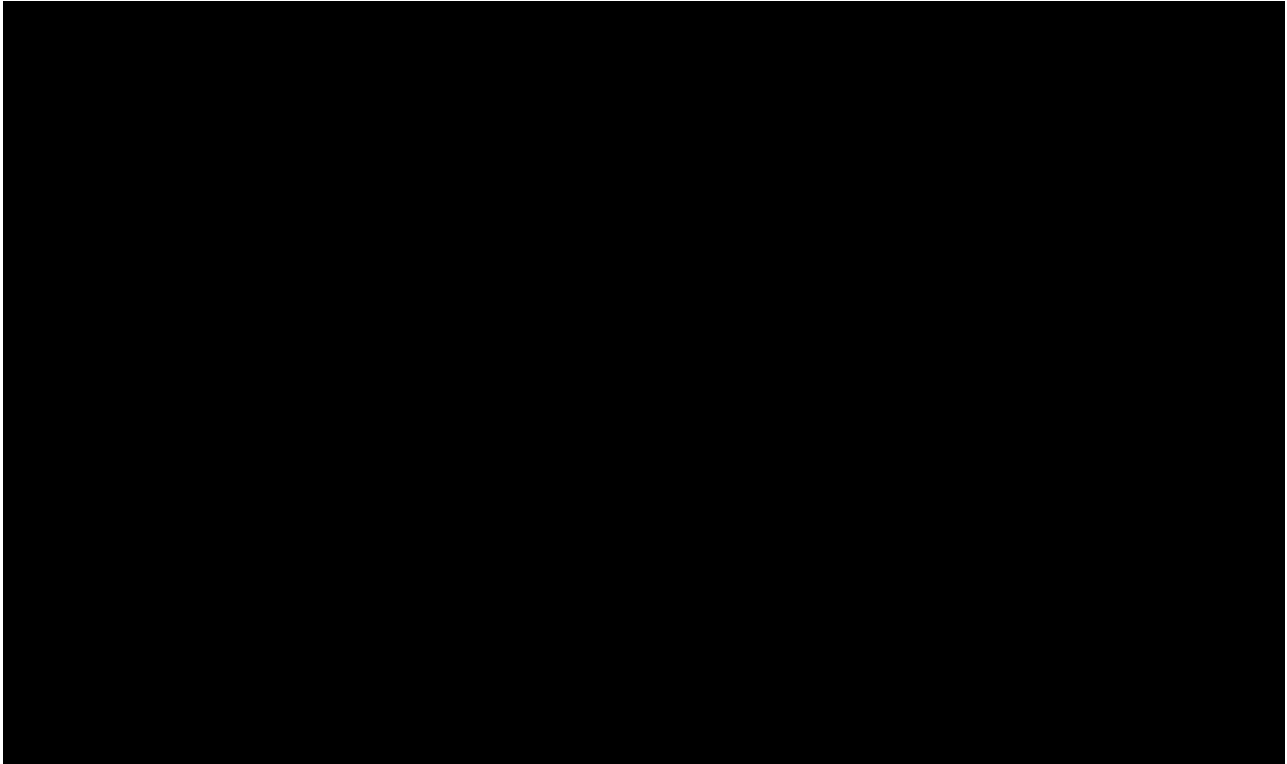
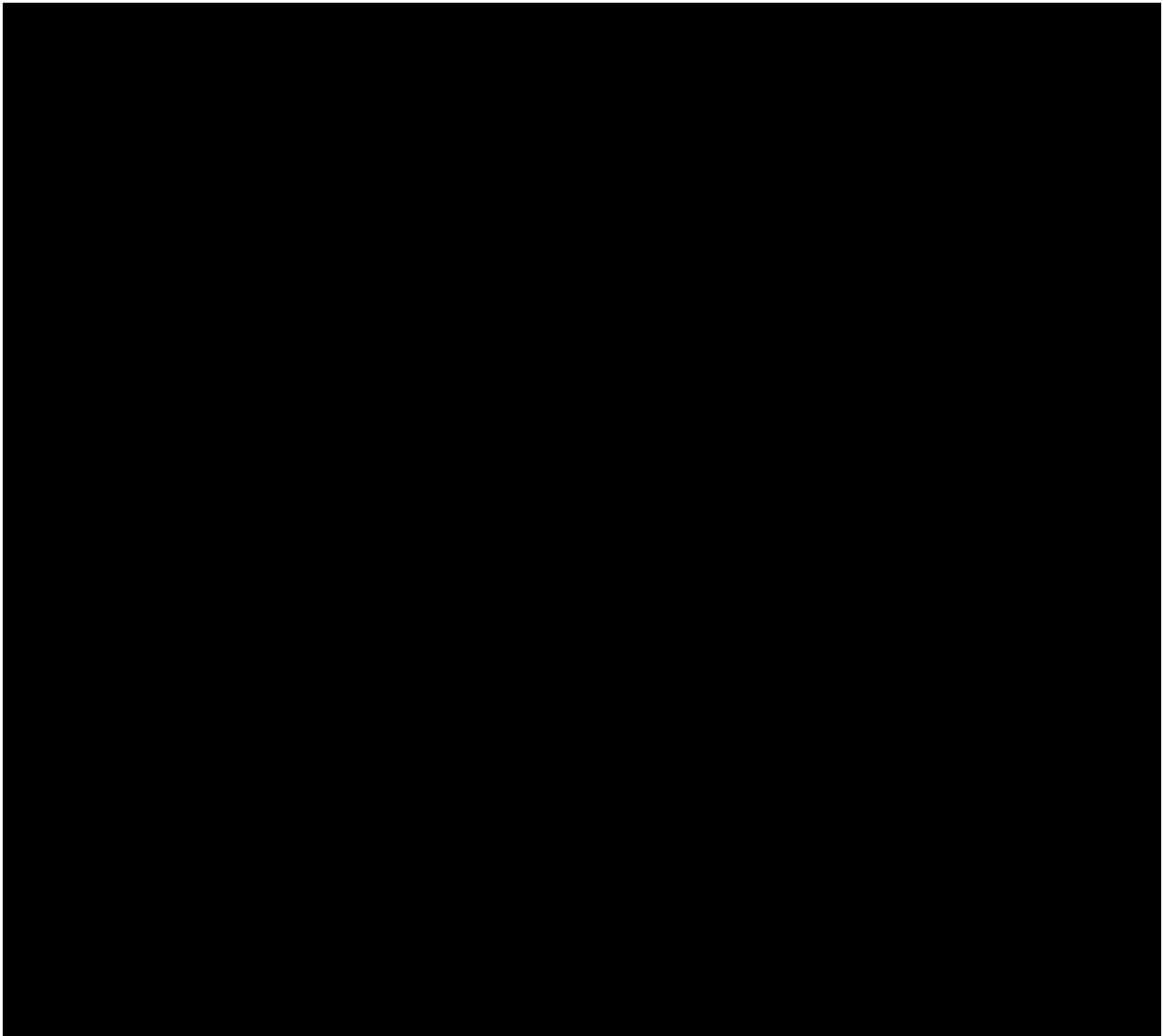
**13A. Not used**

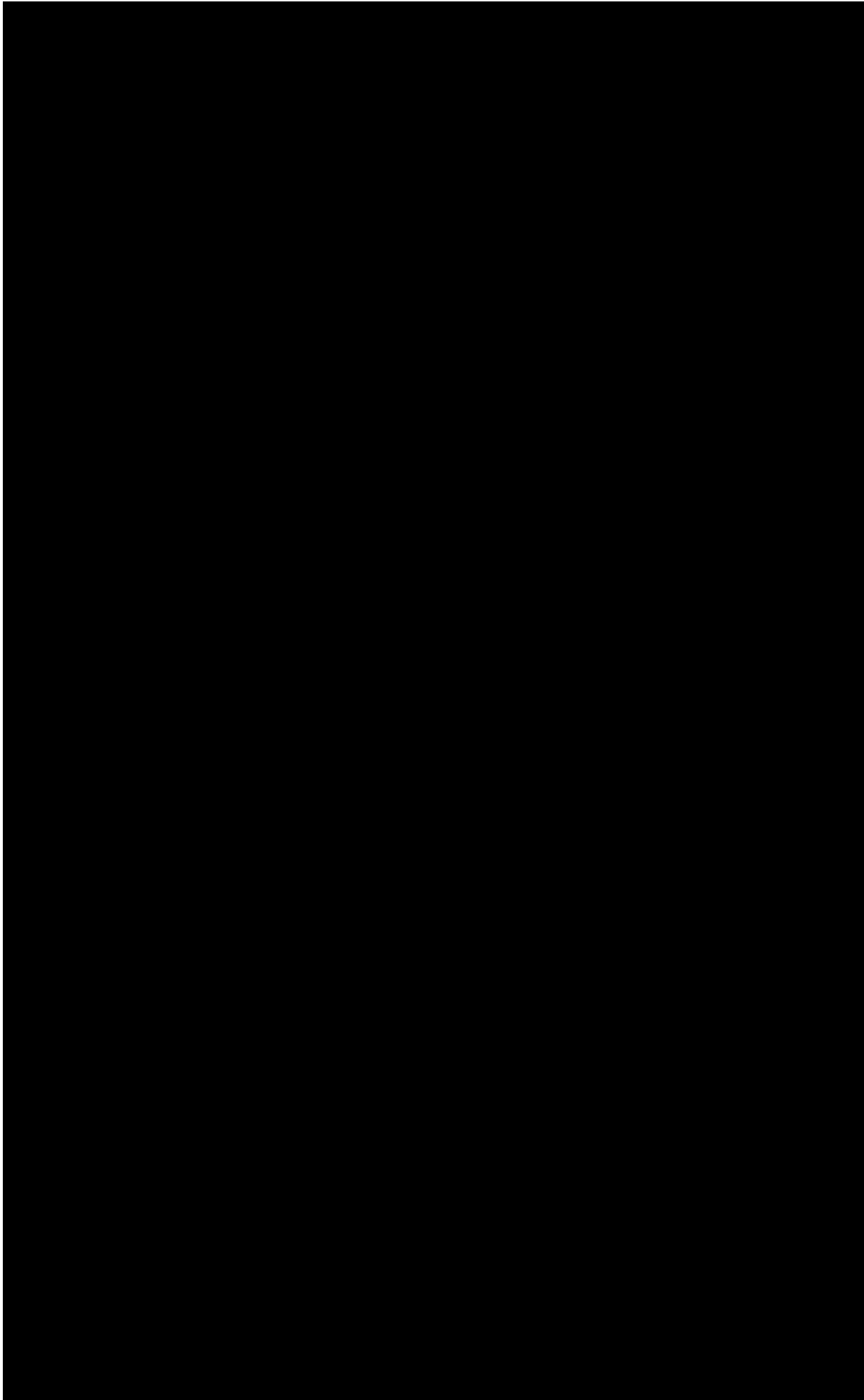


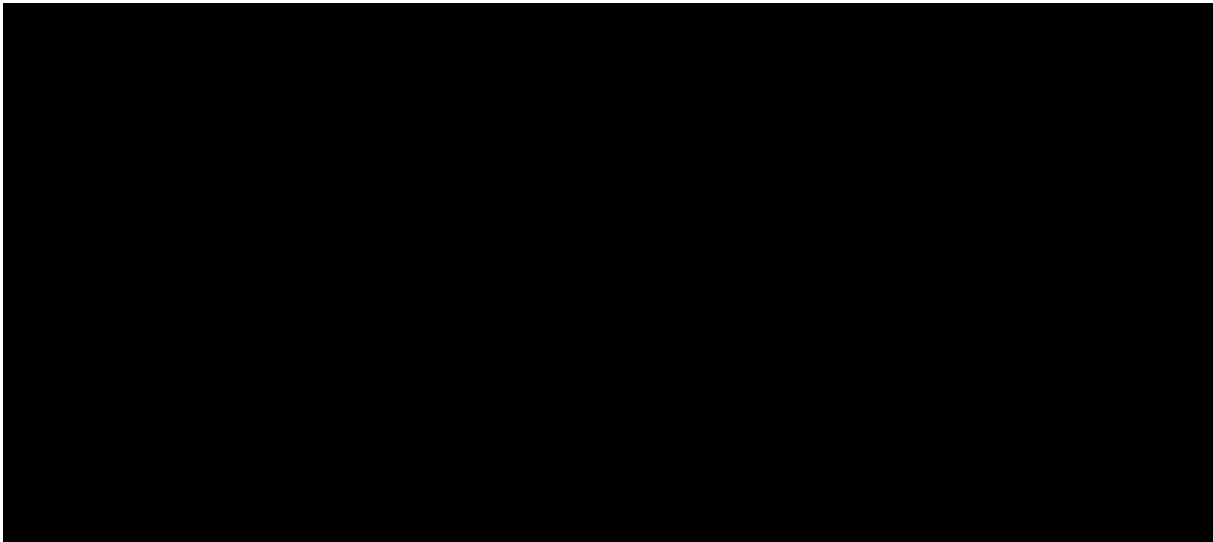
**13B. Not used**

**13C. Sydney Airport Service Works Land**










## 15. Variations

### 15.1 Proposed Variations

- (a) Within 10 Business Days of receipt of a notice in writing from the Principal's Representative titled "Variation Proposal Request" notifying the Contractor of a proposed Variation, the Contractor must, at its cost, provide the Principal's Representative with a written notice containing the following details:
  - (i) the effect which the Contractor anticipates the Variation will have on:
    - A. the Design Contract Sum and the D&C Payment Schedule and a detailed cost breakdown between the T2/T3 Works and the Remaining Stage 3 Works (supported by reasonable measurements or other evidence of costs) and including any costs the Contractor proposes to claim under clause 17.6 in respect of the proposed variation;
    - B. the Construction Contract Sum and the D&C Payment Schedule (supported by reasonable measurements or other evidence of costs and a detailed cost breakdown between the T2/T3 Works and the Remaining Stage 3 Works);
    - C. the Contract Program, the Subsidiary Contract Programs and the Date for Construction Completion (and a detailed breakdown on the effect on the T2/T3 Works and the Remaining Stage 3 Works);
    - D. the functionality or integrity of any of the elements of the Project Works or Temporary Works or the quality or performance standards required by this deed including specific details of:
      - 1) the elements of the Project Works or Temporary Works that will be affected;
      - 2) how and to what extent the functionality, integrity or aesthetics of those elements will be affected;
      - 3) the quality or performance standards affected and how and to what extent they will be affected; and
      - 4) any adverse effect which the Variation will have on the Contractor's ability to satisfy its obligations under this deed; and
    - E. 
  - (ii) any other information concerning the proposed Variation which the Principal's Representative requires including:



- A. sufficient details to allow the Principal to reconsider the need for the Variation; and
  - B. the net extra Direct Costs (and a detailed cost breakdown between the T2/T3 Works and the Remaining Stage 3 Works) that the Contractor anticipates would be incurred by it if a direction was given under clause 17.7 to compress the performance of the Contractor's Activities to overcome:
    - 1) any delay in achieving Construction Completion caused by the Variation; or
    - 2) part of any delay in achieving Construction Completion caused by the Variation as specified in the Variation Proposal Request.
- (b) The Principal will:
- (i) consider the details provided under clause 15.1(a)(i) and the information provided under clause 15.1(a)(ii); and
  - (ii) not be obliged to proceed with any proposed Variation the subject of a Variation Proposal Request.
- (c) The Principal's Representative may issue a Variation Proposal Request under clause 15.1(a) at any time up to Final Completion.
- (d) [REDACTED]

## 15.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a Variation Proposal Request under clause 15.1(a), the Principal's Representative may, by a written document titled "Variation Order", direct the Contractor to implement a Variation as specified in the Variation Order.
- (b) Where the Contractor has provided a notice under clause 15.1(a) with respect to the Variation Proposal Request, the Variation Order issued by the Principal's Representative will state whether any one or more of the following will be adjusted as set out in the Contractor's notice under clause 15.1(a):
  - (i) the Design Contract Sum and the D&C Payment Schedule;
  - (ii) the Construction Contract Sum and the D&C Payment Schedule;
  - (iii) the Date for Construction Completion;
  - (iv) [REDACTED]
- (c) Where the Contractor receives a Variation Order, it must perform its obligations under this deed in accordance with the Variation specified in the Variation Order.
- (d) The Principal's Representative may issue a Variation Order under this clause 15.2 at any time up to Final Completion.

## 15.3 Notice of Variation

- (a) If the Contractor believes any Direction of the Principal's Representative, other than the issuing of a Variation Order under clause 15.2, constitutes or involves a Variation it must:
  - (i) without delay and before complying with the Direction, and in any event within 5 Business Days of the Direction, give notice to the Principal's Representative:
    - A. that it considers the Direction constitutes or involves a Variation; and
    - B. which notice must state that it is a notice under this clause 15.3(a)(i); and

- (ii) within 10 Business Days of giving the notice under clause 15.3(a)(i), submit a written claim to the Principal's Representative which includes detailed particulars of why the Contractor believes the Direction constitutes or involves a Variation and all other details required by clause 19.2(b).
- (b) Despite the fact that the Contractor considers that a Direction by the Principal's Representative constitutes or involves a Variation, the Contractor must continue to perform its work in accordance with this deed including, unless otherwise directed, any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 15.3(a).

**15.4 Valuation**

Subject to clauses 15.3, 15.6(h), 15.7(c)(ii)A, 15.8(f), [REDACTED], 16.4 and 19, one or more of the following will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative:

- (a) the Design Contract Sum and the D&C Payment Schedule; and
  - (b) the Construction Contract Sum and the D&C Payment Schedule,
- in accordance with:
- (c) where a Variation Order under clause 15.2 specifies any adjustments under clause 15.2(b), those adjustments as specified in the Variation Order;
  - (d) where a Variation Order under clause 15.2 specifies any adjustments and conditions of adjustment that have been agreed in writing between the Principal and the Contractor in respect of the Variation specified in the Variation Order, those adjustments and conditions of adjustment as specified in the Variation Order; or
  - (e) otherwise for the Design Contract Sum and the Construction Contract Sum and the D&C Payment Schedule by the cost of the work and materials to be added or omitted as a result of the Variation, valued under clause 15.4(e)(i), clause 15.4(e)(ii) or clause 15.4(e)(iii), or a combination of them, as determined by the Principal's Representative (including as specified in a Variation Order):
    - (i) on the basis of the schedules of Contractor's rates or prices (if any) set out in the D&C Payment Schedule and [REDACTED]
    - (ii) where the Variation Order specifies that the Variation is to be carried out as Daywork, on the basis of the procedure set out in the D&C Payment Schedule; or
    - (iii) on the basis of a reasonable amount,

such value to be as stated by the Principal's Representative, including in each case the relevant margin stipulated in the D&C Payment Schedule. No other amounts are to be included in the Principal's Representative's valuation of the Variation.

[REDACTED]

**15.5 Omissions**

If the Principal's Representative directs a Variation omitting or deleting any work from the Contractor's Activities:

- (a) the Principal may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;
- (b) the Principal will not be liable for any Claim by the Contractor as a result of any work being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages another person or persons to carry out and execute the omitted or deleted work; and

- (c) except for work omitted or deleted by a direction by the Principal's Representative of a Pre-Agreed Variation made under clause 15.7(a) by the relevant date set out in section 1 of Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations), the work which has been omitted or deleted shall be valued in accordance with clause 15.4.

## 15.6 The Contractor may propose Variation

- (a) The Principal and the Contractor acknowledge that:
  - (i) the design and construct project delivery method chosen is intended, among other things, to allow the Contractor to identify project cost savings while maintaining or enhancing the quality of the Contractor's Activities; and
  - (ii) it is their intention that any cost savings should benefit the Principal and the Contractor equally.
- (b) The Contractor may propose a Variation by giving written notice to the Principal's Representative:
  - (i) with details of the proposed Variation; and
  - (ii) which notice must state that it is a notice under this clause 15.6(b).
- (c) On receiving a notice under clause 15.6(b), the Principal's Representative may give written notice to the Contractor requiring it to give the Principal's Representative:
  - (i) written details of:
    - A. the proposed Variation in addition to those details provided in accordance with clause 15.6(b);
    - B. the reason for the proposed Variation;
    - C. the effect of the proposed Variation on the Contractor's Activities;
    - D. the effect of the proposed Variation on the Contract Program, the Subsidiary Contract Programs and the Date for Construction Completion;
    - E. [REDACTED]
    - F. the cost effect of the proposed Variation including proposals for any cost savings arising from the Variation;
  - (ii) a written statement stating that the proposed Variation:
    - A. will not adversely affect the functionality, integrity or aesthetics of any of the elements of the Contractor's Activities or the performance standards required by this deed; and
    - B. will not adversely affect the quality standards required under this deed; and
  - (iii) any other information and supporting documentation the Principal's Representative requires.
- (d) The Principal's Representative:
  - (i) (in his or her absolute discretion) may, by notice in writing, approve or reject any Variation the Contractor proposes; and
  - (ii) will be under no obligation to approve any such Variation for the convenience of, or to assist, the Contractor.
- (e) Prior to giving any direction under this clause 15.6(d), the Principal's Representative may seek to negotiate with the Contractor over the level of cost savings arising from the proposed Variation. If the parties agree in writing on a different level of cost savings the Contractor's notice will be deemed to be amended by the inclusion of this different level of cost savings in place of the original cost savings notified by the Contractor.

- (f) If the Principal's Representative gives a direction under clause 15.6(d) approving the Variation, the Contractor must perform its obligations under this deed in accordance with the approved Variation.
- (g) With respect to any Variation the subject of a direction under clause 15.6(d), one or more of the following will be adjusted:
  - (i) the Design Contract Sum and the D&C Payment Schedule; and
  - (ii) the Construction Contract Sum and the D&C Payment Schedule,
 to reflect [REDACTED] of the cost savings notified by the Contractor under clause 15.6(c)(i)F (or such other amount as may be agreed between the Principal and the Contractor pursuant to clause 15.6(e) and prior to the Principal's Representative's direction under clause 15.6(d)).
- (h) The Contractor will:
  - (i) bear all costs:
    - A. associated with proposing a Variation under clause 15.6(b);
    - B. associated with providing any details, information, statements or documents under clause 15.6(c);
    - C. reasonably incurred by the Principal (or the Principal's Representative) in assessing the proposed Variation (such costs to be a debt due and payable from the Contractor to the Principal on demand); and
    - D. associated with carrying out the proposed Variation where it is approved by the Principal's Representative; and
  - (ii) unless otherwise agreed, not be entitled to make any Claim against the Principal arising out of or in connection with the Variation.

## 15.7 Pre-Agreed Variations

- (a) The Principal's Representative may, in his or her absolute discretion and without being under any obligation to do so, direct by way of Variation any Pre-Agreed Variation by giving written notice to the Contractor.
- (b) The Principal and the Contractor agree that if a notice pursuant to clause 15.7(a) is given in respect of a Pre-Agreed Variation by the relevant date specified in Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations), this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations) from the date the Contractor receives such notice.
- (c) Where the Principal's Representative directs a Pre-Agreed Variation by giving written notice to the Contractor by the relevant date referred to in clause 15.7(b), the Contractor, in respect of that Pre-Agreed Variation:
  - (i) must carry out its obligations under this deed as amended by clause 15.7(b); and
  - (ii) acknowledges and agrees that:
    - A. any adjustment of the components of the Project Contract Sum made pursuant to clause 15.7(b) will be full compensation for all costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the Project Contract Sum under clause 15.4; and
    - B. the Contractor is not entitled to make any Claim for:
      - 1) any acceleration to the carrying out of the Contractor's Activities which the Contractor must perform at any time in order to achieve Construction Completion by the Date for Construction Completion; or
      - 2) any extension of time for any delay to the carrying out of the Contractor's Activities,

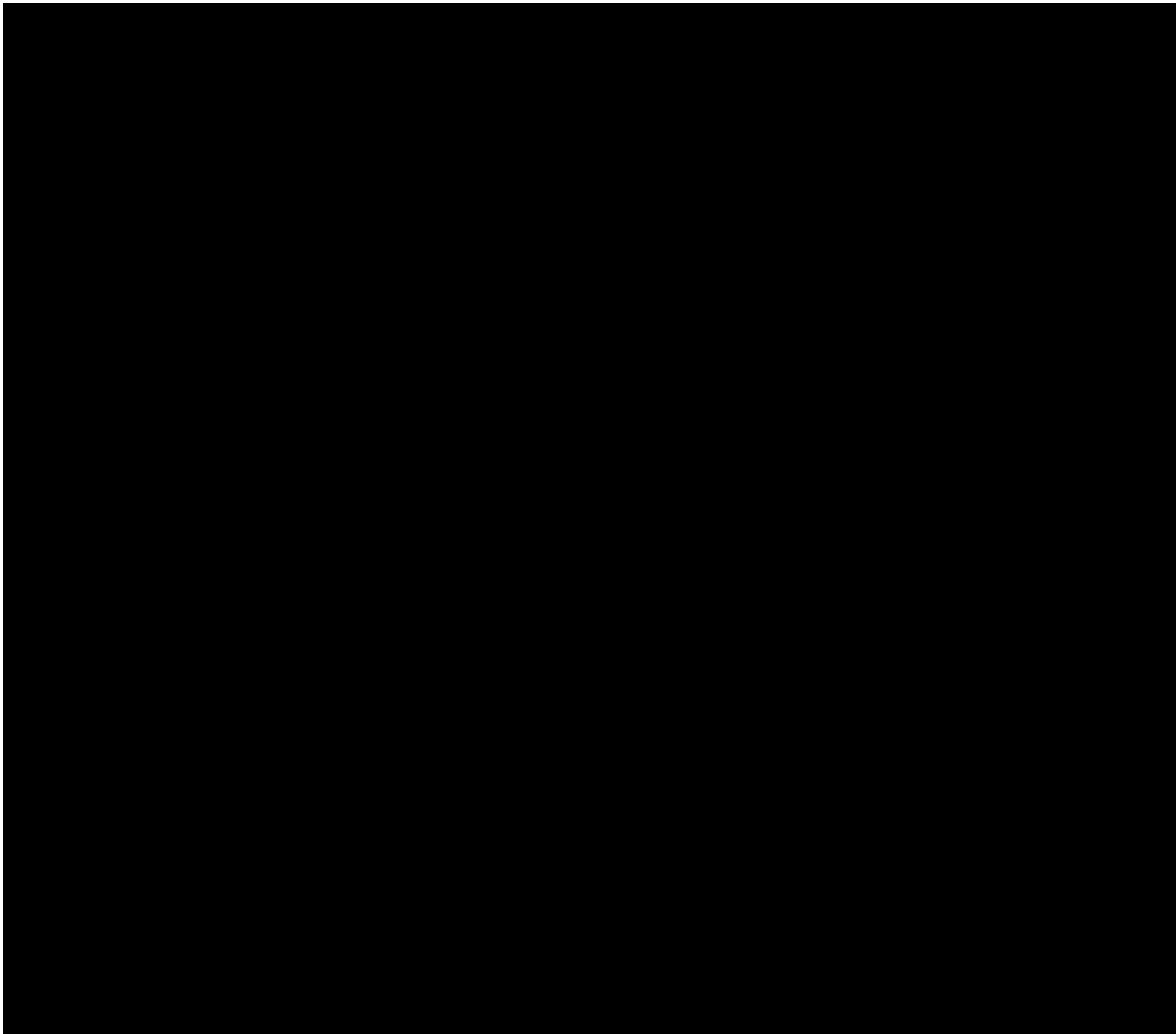
in connection with the issue of such a notice or the amendment of this deed pursuant to clause 15.7(b).

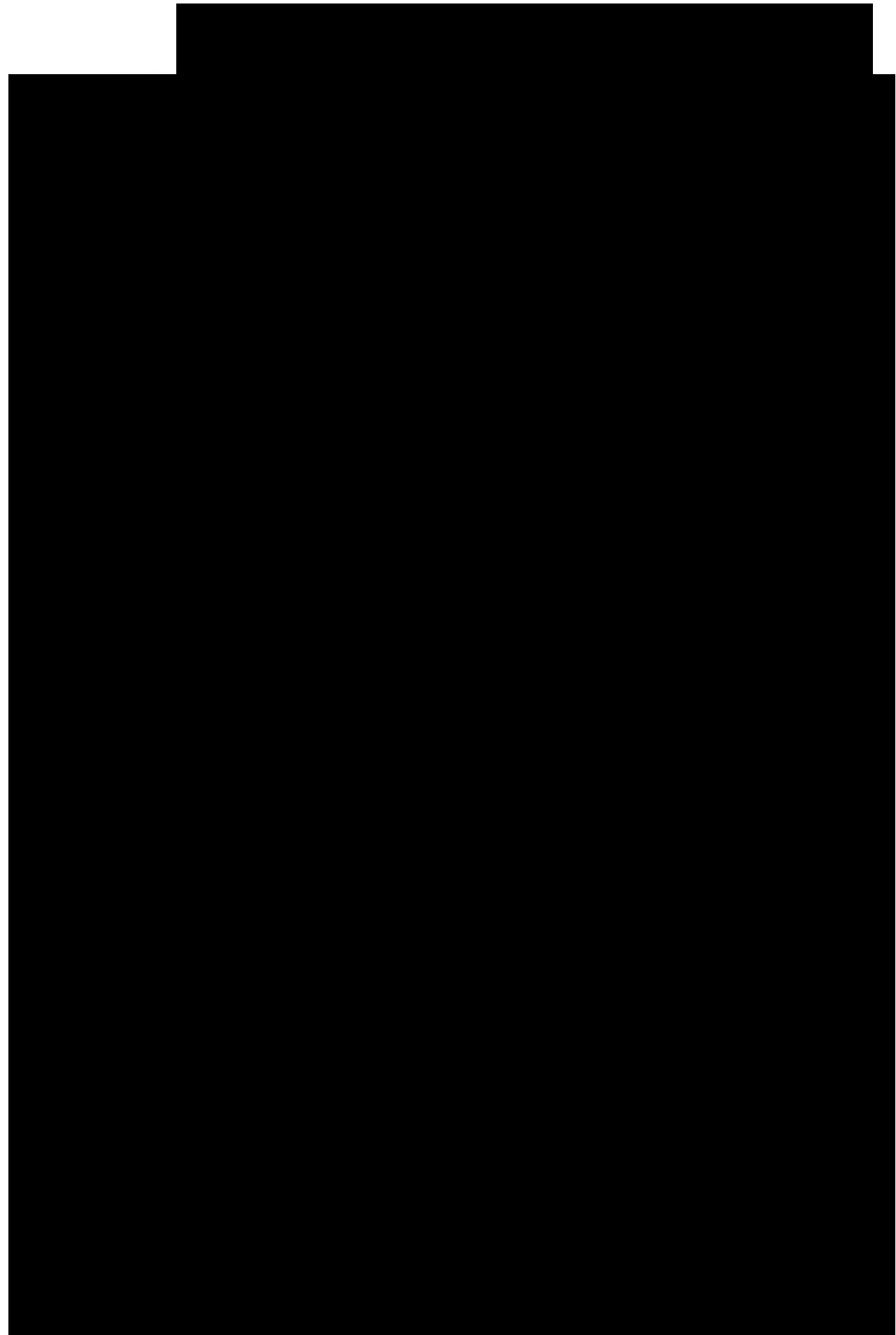
- (d) Nothing in this clause 15.7 prevents the Principal's Representative from:
- (i) issuing a Variation Proposal Request as referred to in clause 15.1(a); or
  - (ii) directing a Variation by issue of a Variation Order under clause 15.2(a),
- that involves the same (or similar) changes to the Project Works as a Pre-Agreed Variation after the relevant date for giving notice of the Pre-Agreed Variation specified in Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations).
- (e) If the Principal's Representative:
- (i) issues a Variation Proposal Request as referred to in clause 15.1(a); or
  - (ii) directs a Variation by issue of a Variation Order under clause 15.2(a),
- which involves the same or similar changes to the Project Works as are required by a Pre-Agreed Variation and which is issued or directed (as relevant) after the relevant date in Schedule 43 (D&C Deed Amendments due to Pre-Agreed Variations) for that Pre-Agreed Variation, the Principal and the Contractor agree that the Variation will be valued in accordance with clause 15.4.

## 15.8 Change in Law

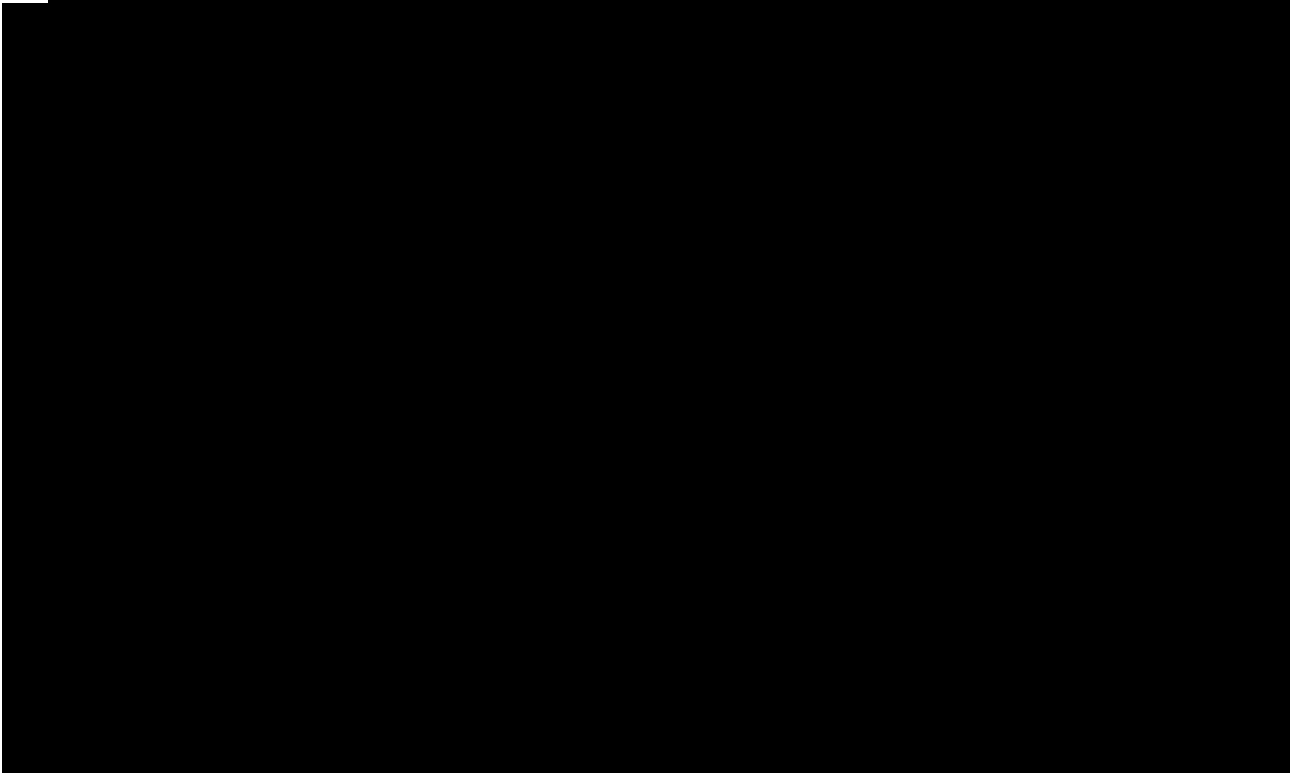
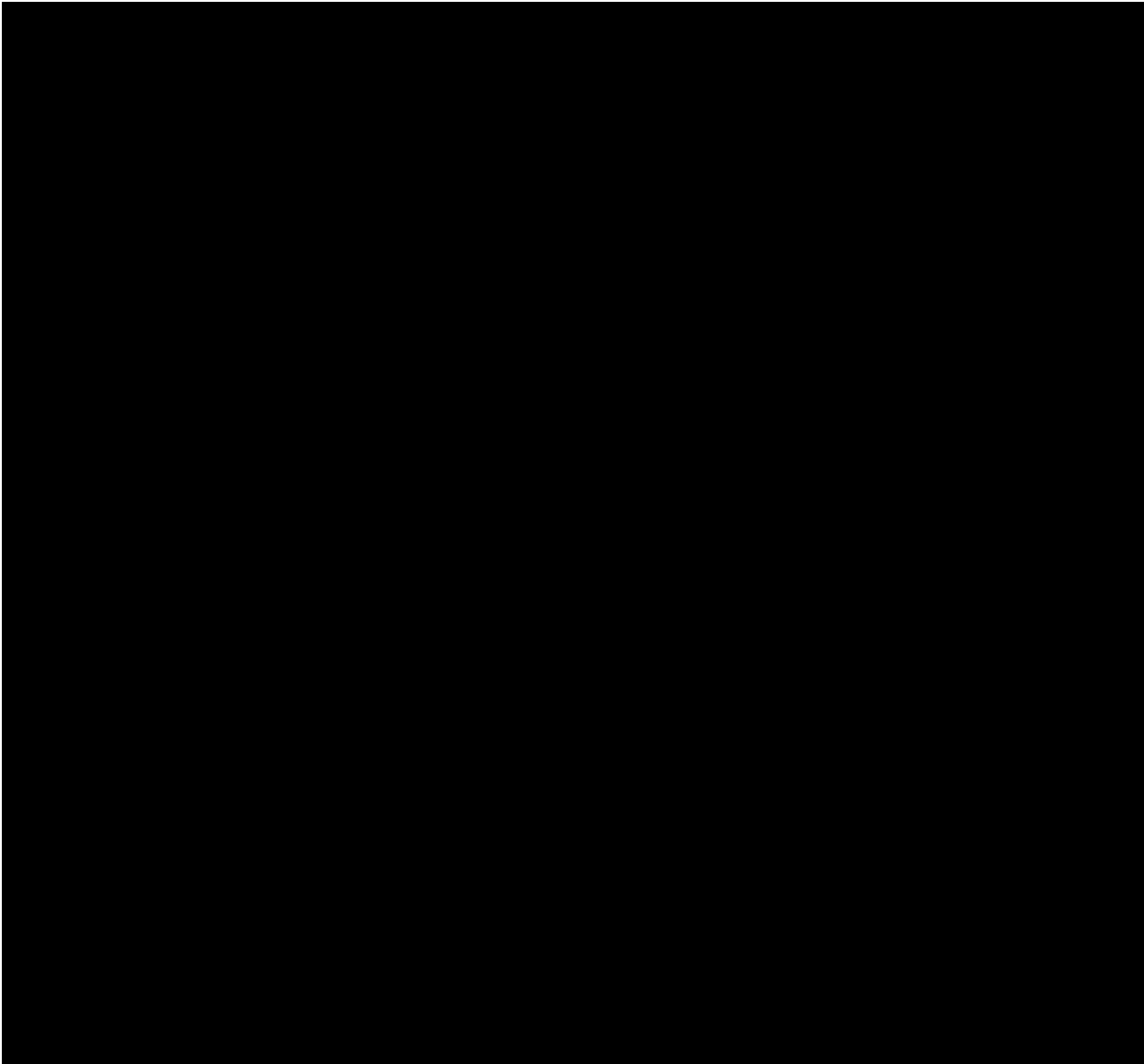
- (a) Subject to this clause 15.8 and clause 15.10, the Contractor will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, any changes in Law.
- (b) Where there is a Qualifying Change in Law and either party wishes to claim an increase or a decrease (as the case may be) to the Project Contract Sum on account of the Change in Law:
- (i) the party wishing to claim an increase or decrease must, within 10 Business Days after the later of the occurrence of the Qualifying Change in Law and when the party first became aware of (or ought reasonably to have first become aware of) the Qualifying Change in Law, give a written notice to the other party stating that this clause 15.8(b) applies and containing:
    - A. details of the Qualifying Change in Law; and
    - B. the party's estimate of the increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law including sufficient information to support the estimate and a detailed cost breakdown between the T2/T3 Works and the Remaining Stage 3 Works;
  - (ii) the Principal and the Contractor will meet within 20 Business Days of a notice being given under clause 15.8(b)(i) and will negotiate and endeavour to agree any increase or decrease (as the case may be) in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law and where agreement is reached as to the amount of the increase or decrease in costs:
    - A. in the case of a decrease, the relevant component or components of the Project Contract Sum will be decreased and if either:
      - 1) the Project Contract Sum has been paid in full; or
      - 2) the Project Contract Sum has not been paid in full but the amount of payment due from the Contractor to the Principal exceeds the Project Contract Sum less amounts paid under clause 18.4 on account of the Project Contract Sum,then the amount will be a debt due and payable from the Contractor to the Principal on demand; and
    - B. in the case of an increase, the relevant component or components of the Project Contract Sum will be increased;

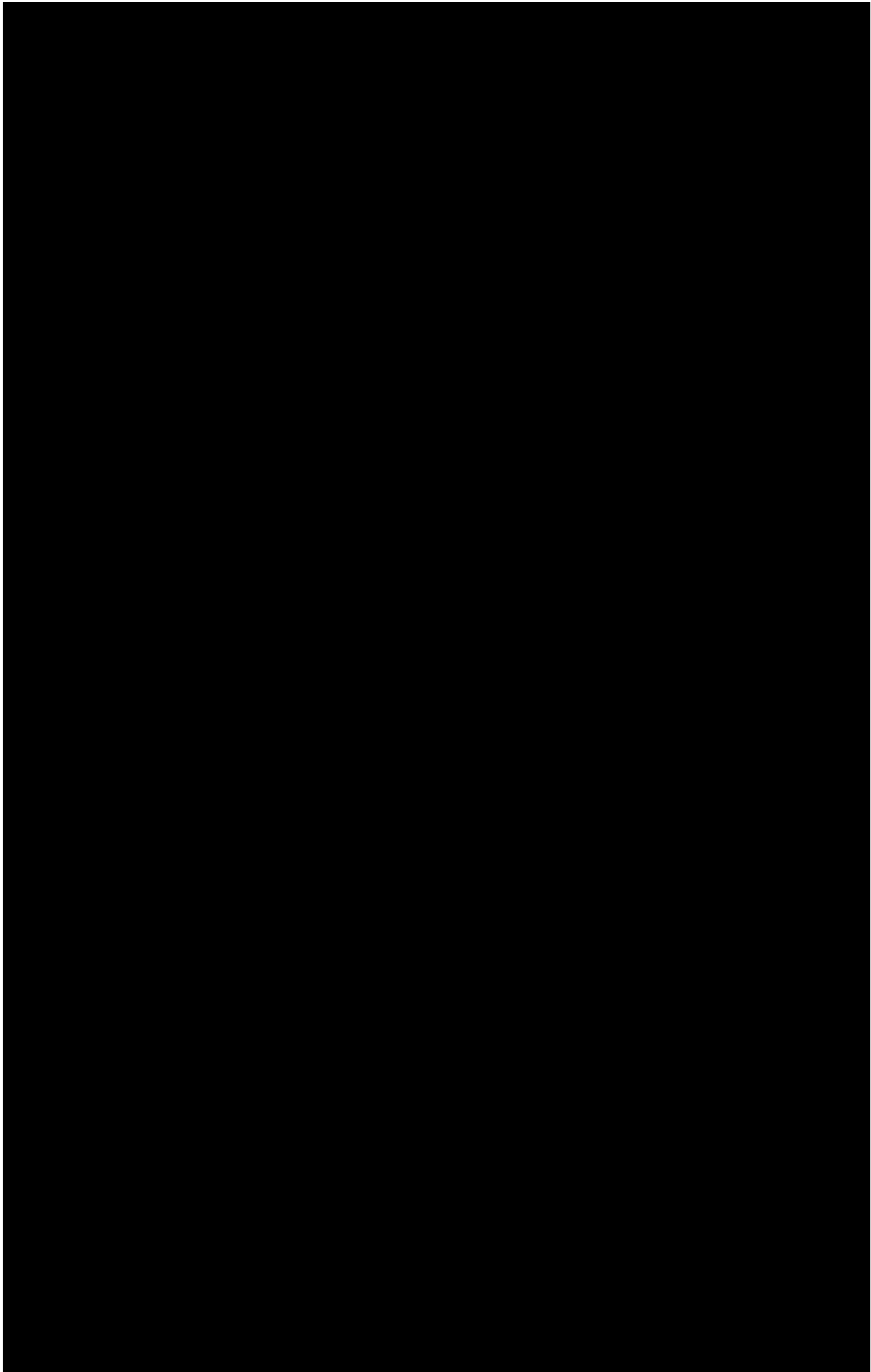
- (iii) if no agreement is reached within 20 Business Days (or such other period that the Principal and the Contractor agree on) of a notice being given under clause 15.8(b)(i):
  - A. in the case of a decrease in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law, the Project Contract Sum will be decreased by the amount of the decrease in the Contractor's costs, such amount to be as stated by the Principal's Representative; and
  - B. in the case of an increase in the Contractor's costs of carrying out the Contractor's Activities in compliance with the Qualifying Change in Law, the reasonable net extra Direct Costs on account of such Qualifying Change in Law will, subject to the Contractor having taken all reasonable steps to mitigate those increased Direct Costs, increase the relevant component or components of the Project Contract Sum, such amount to be as stated by the Principal's Representative and provided the Contractor has given the Principal's Representative a detailed breakdown of those Direct Costs between the T2/T3 Works and the Remaining Stage 3 Works.
- (c) The Contractor must comply with all changes in Law (including any Qualifying Change in Law and any [REDACTED]).
- (d) Subject to clause 15.8(e), the Contractor will have no Claim against the Principal arising out of or in any way in connection with:
  - (i) an Approval obtained or issued or which otherwise takes effect after the date of this deed; or
  - (ii) a change in an Approval after the date of this deed.

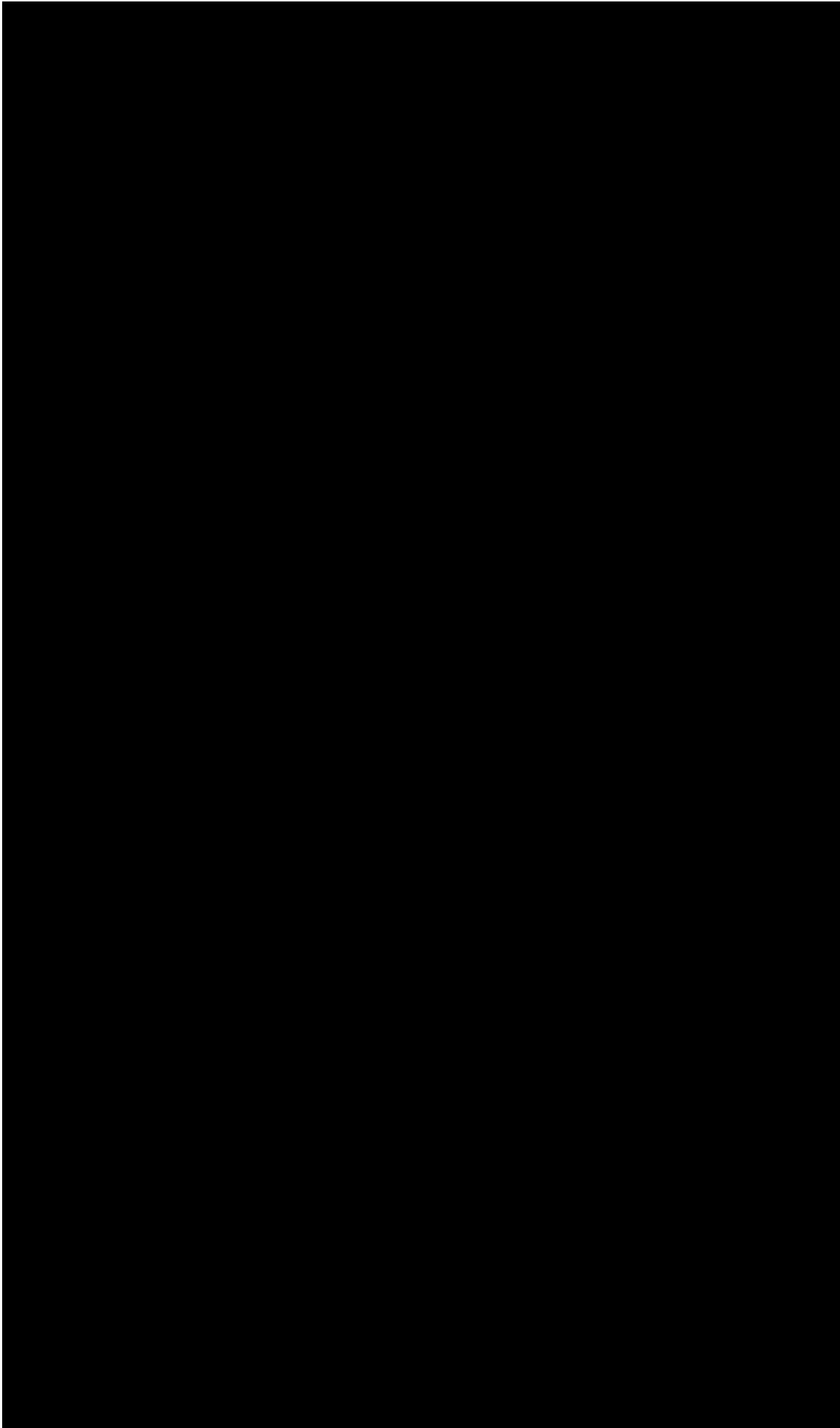


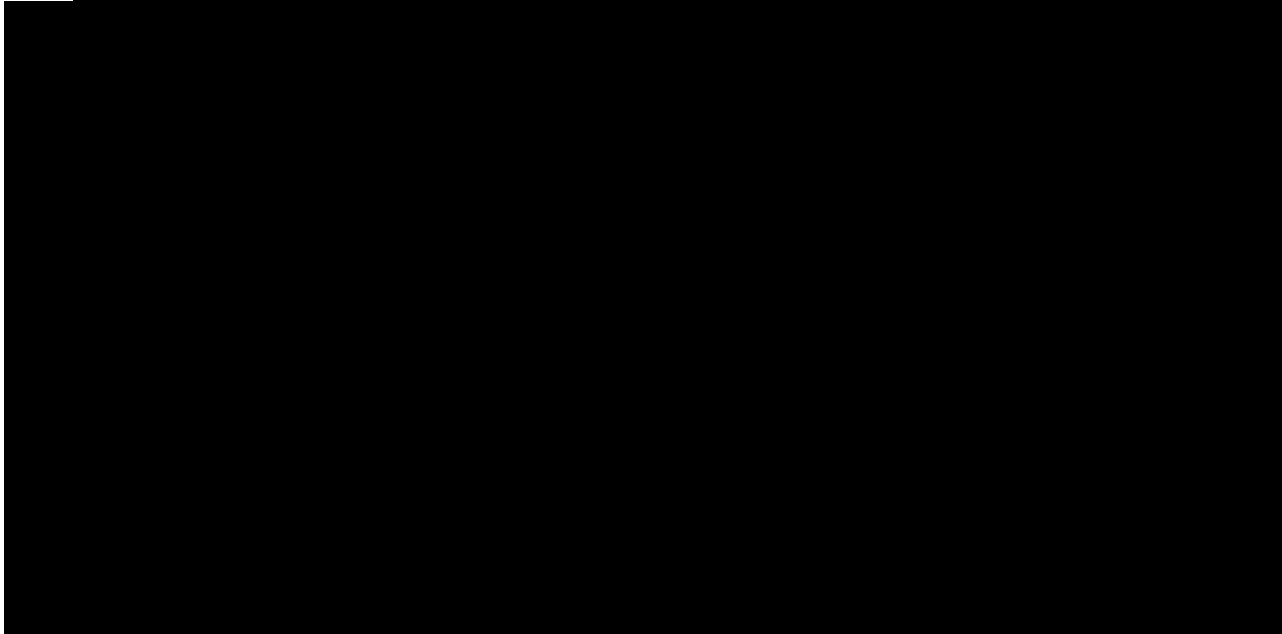
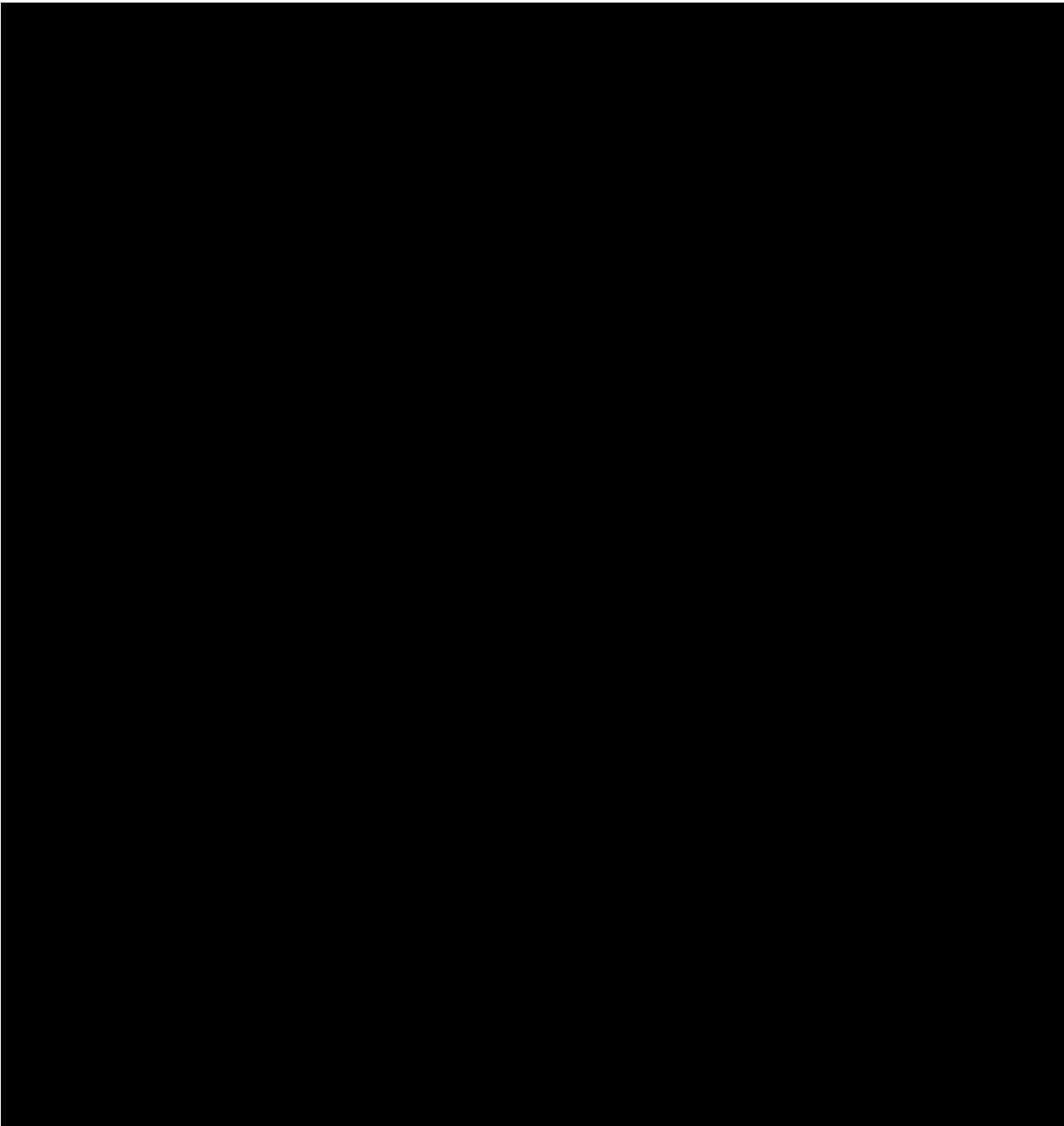


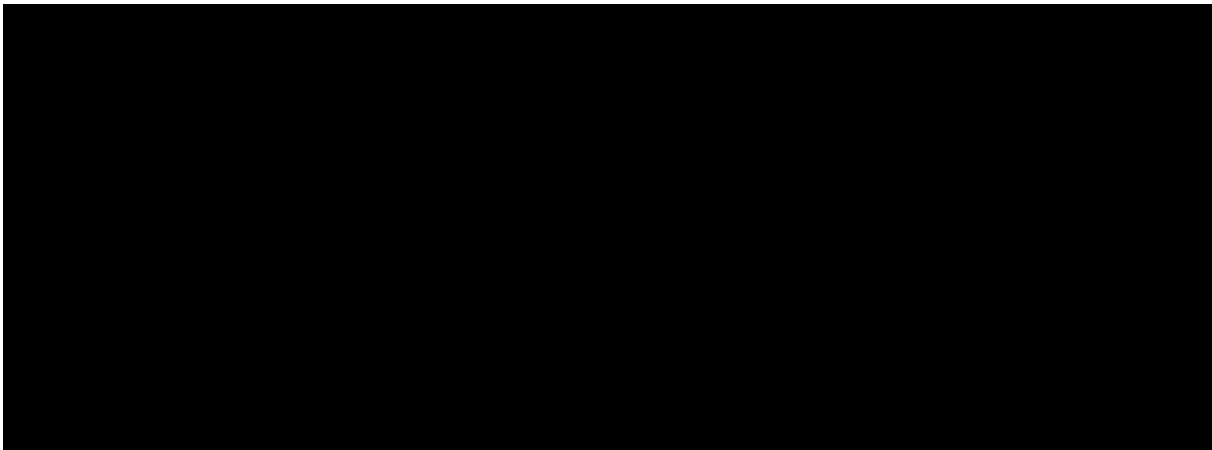








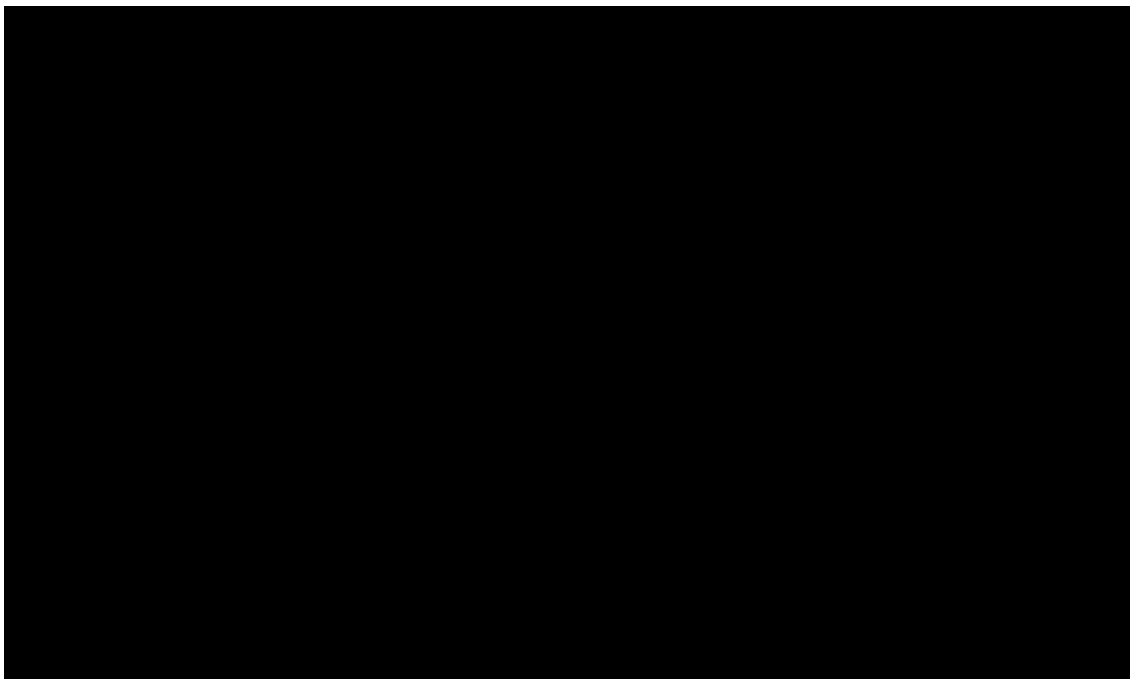




## **16. Defects**

### **16.1 Defects**

- (a) The Contractor must promptly give the Principal's Representative a detailed written report of:
  - (i) any Defect it detects; and
  - (ii) all action proposed to correct that Defect, including the estimated time required.



### **16.2 Principal's Representative's direction**

\_\_\_\_\_ the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 16.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give the Contractor one or more of the following directions specifying the Defect and:

- (a) requiring the Contractor to correct the Defect or any part of it and the direction may specify the time within which the rectification work must be carried out and other matters associated with the carrying out of the rectification work;
- (b) requiring the Contractor to carry out a Variation to overcome the Defect or any part of it and specifying the time within which this must be carried out and may specify other matters associated with the carrying out of the Variation; or

- (c) advising the Contractor that the Principal will accept the work or any part of it despite the Defect,

and the Contractor will only be entitled to receive an extension of time (if relevant) or to have any component of the Project Contract Sum adjusted for correcting the Defect (or the part of it) or for carrying out the Variation if:

- (d) it complies with clause 17.5 or clause 19 (as the case may be); and
- (e) the Defect (or the part of it) is something for which the Contractor is not responsible.

### **16.3 Correction of Defect or Variation**

If a direction is given under clause 16.2(a) or clause 16.2(b) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works or Temporary Works, the Contractor must correct the Defect (or the part of it) or carry out the Variation:

- (a) within any time period specified in the Principal's Representative's direction, which time must be reasonable; and
- (b) if during the Defects Correction Period applicable to the relevant part of the Project Works or Temporary Works:
  - (i) at times and in the manner agreed with the Principal's Representative;
  - (ii) in accordance with the requirements of any relevant Authority;
  - (iii) so as to minimise the impact on the use of the relevant part of the Project Works, the Temporary Works or the Airport;
  - (iv) in a manner which causes as little inconvenience as possible to users of the Project Works, Local Areas, a Service, the Airport or any access and the adjacent community; and
  - (v) where the Contractor proposes to perform any work which will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the Works or a Local Road the Contractor must apply for a Road Occupancy Licence under clause 5.15.

### **16.4 The Principal's correction of Defects**

- (a) If the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 16.1(a) which the Principal's Representative reasonably believes:
  - (i) involves an event serious enough to cause significant inconvenience and disruption to users of the Works, Local Areas, a Service, the Airport or any access or to the adjacent community; and
  - (ii) the Contractor will be unable to remedy the relevant Defect in the time required by the Principal's Representative to prevent the event, inconvenience or disruption described in clause 16.4(a)(i) occurring,then, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law:
  - (iii) the Principal may correct the Defect at the risk and cost of the Contractor; and
  - (iv) the Contractor must pay to the Principal the reasonable costs of the correction work incurred by the Principal, such amount to be as stated by the Principal's Representative.
- (b) Nothing in this clause 16.4 requires the Principal to inspect any part of the Project Works for Defects or to correct any Defect and the Contractor is not relieved from, and remains fully responsible for, its obligations under this deed.

### **16.5 Acceptance of work**

If a direction is given under clause 16.2(c) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the Contractor is responsible for the Defect (or the part of it), the relevant component of the Project Contract Sum will be reduced by the amount

which represents the reasonable cost of correcting the Defect (or the part of it), such amount to be as stated by the Principal's Representative.

## 16.6 Works

The Works have:

- (a) a Defects Correction Period which begins on the Date of Construction Completion and ends on the third anniversary of that date (**Initial Defects Correction Period**); and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) during the Defects Correction Period which begins on the date of the correction of the Defect or completion of the Variation,

[REDACTED]

## 16.7 Local Area Works

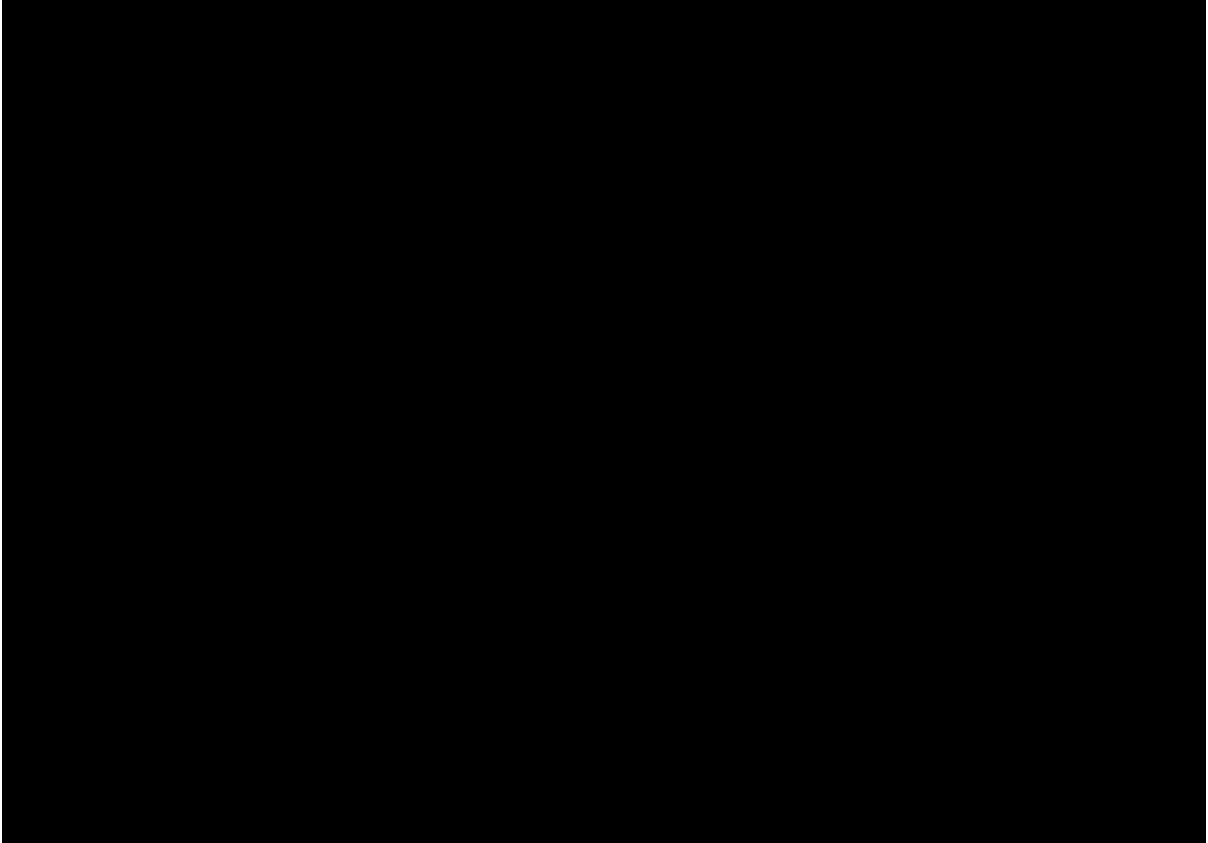
- (a) Each discrete part of the Local Area Works has:
  - (i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date notified under clause 16.7(f)(i)) (**Initial LAW Defects Correction Period**); and
  - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Local Area Works) during the Initial LAW Defects Correction Period, which begins on the date of the correction of the Defect or completion of the Variation,

[REDACTED]

- (b) The completion of the Local Area Works will be assessed on an area by area basis.
- (c) It is a condition precedent to the completion of any Local Area Works that the Contractor provides the Principal's Representative with a Site Audit Statement for the relevant Local Area Works, if requested by the Principal's Representative.
- (d) When the Contractor considers that each discrete part of the Local Area Works is complete, subject to clause 16.7(e), it must notify the Principal's Representative in writing and the Principal's Representative, the Project Director and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.
- (e) In the case of any Local Area Works in respect of the areas referred to in the sections of the SWTC identified in Item 37(n) of Schedule 1 (Contract Information), the Contractor must not give notice under clause 16.7(d) prior to the date which is 10 Business Days before the anticipated Date of Construction Completion.
- (f) Following the joint inspection under clause 16.7(d), the Principal's Representative must notify the Contractor in writing:
  - (i) if the discrete part is complete, of the date on which the Contractor has completed the discrete part of the Local Area Works in accordance with this deed, which subject to clause 16.7(g)(i), will be the relevant date for the purposes of clause 16.7(a)(i); or
  - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 16.7(d) will reapply).
- (g) Subject to clause 16.7(h), it is a condition precedent to:
  - (i) the commencement of the Defects Correction Period for a discrete part of the Local Area Works that the Contractor provide the Principal's Representative with a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; and



- (ii) Construction Completion that the written notices required under clause 16.7(g)(i) have been provided to the Principal's Representative for all discrete parts of the Local Area Works.

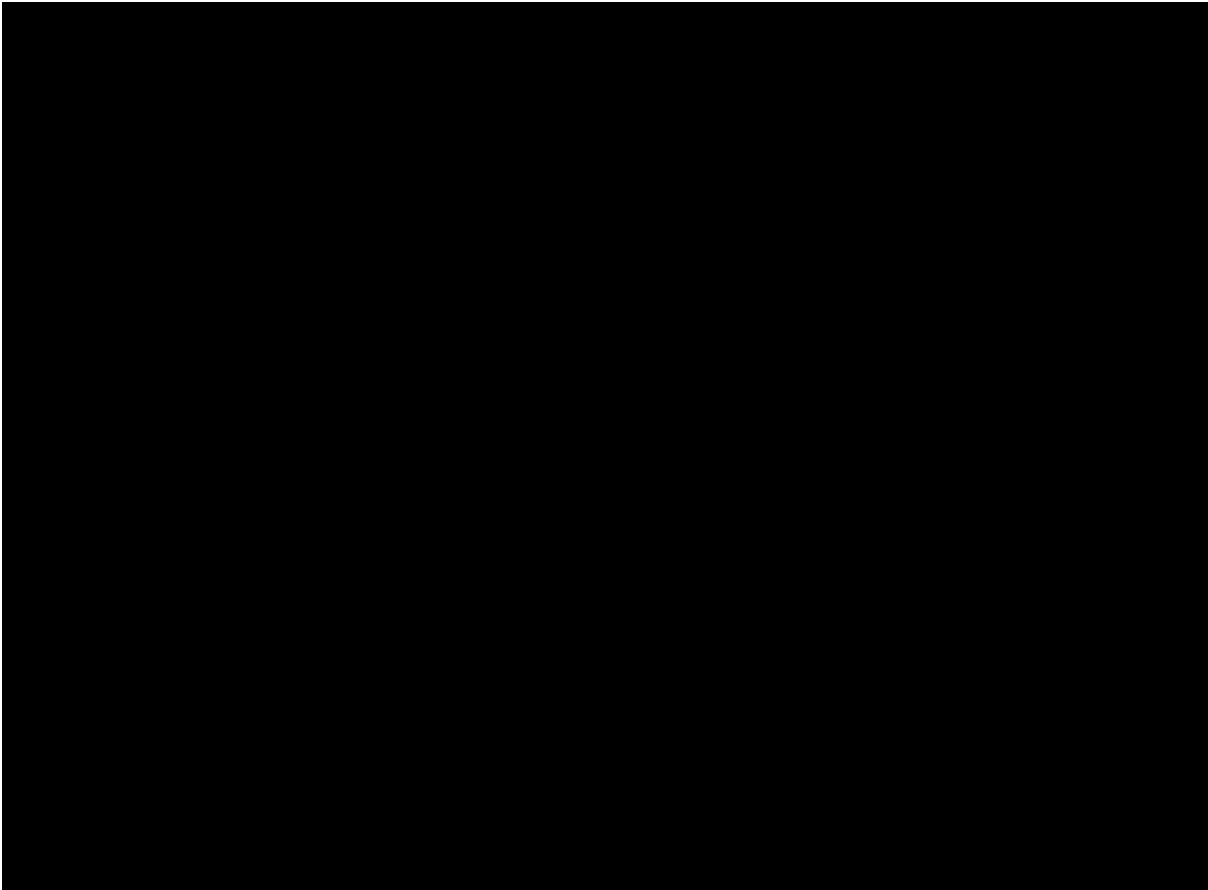


**16.8 Service Works**

- (a) Each discrete part of the Service Works has:
  - (i) a Defects Correction Period of 12 months, which begins when:
    - A. the relevant Authority that has jurisdiction in respect of the Service or, if applicable, the owner of the Service gives written notice that the work is complete; and
    - B. the Principal's Representative has been provided with a copy of the notice (**Initial SW Defects Correction Period**); and
  - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Service Works) during the Initial SW Defects Correction Period, which begins when:
    - A. the relevant Authority or, if applicable, the owner of the Service gives written notice that the Defect has been corrected or the Variation completed; and
    - B. the Principal's Representative has been provided with a copy of the notice,



- (b) Subject to clause 16.8(c), it is a condition precedent to Construction Completion, that:
  - (i) a written notice of the kind referred to in clause 16.8(a)(i) has been given for each discrete part of the Service Works; and
  - (ii) the Principal's Representative has been provided with a copy of each such notice.



### 16.9 Property Works

Each discrete part of the Property Works has:

- (a) a Defects Correction Period of 12 months, which begins on:
  - (i) the completion of the Property Works; and
  - (ii) submission by the Contractor of a deed or signed statement (as the case may be) to the Principal's Representative under clause 13.2(g),
 whichever is the later, (**Initial PW Defects Correction Period**); and
- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 16.2(a) or clause 16.2(b) (relating to the discrete part of the Property Works) during the Initial PW Defects Correction Period, which begins on the date of correction of the Defect or completion of the Variation,



### 16.10 Failure by the Contractor to comply with direction

- (a) Without limiting clause 22.9, if the Contractor does not comply with a direction referred to in clause 16.2(a) or clause 16.2(b), the Principal may employ others to carry out that direction.
- (b) The costs, losses, expenses, damages and liability suffered or incurred by the Principal in taking the action contemplated in clause 16.10(a) or as a result of the Contractor's failure to comply with clause 16.3 will be a debt due and payable from the Contractor to the Principal on demand.

### 16.11 Rights not affected

Neither the Principal's rights, nor the Contractor's liability, whether under this deed or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period, will be in any way affected or limited by:

- (a) the rights conferred on the Principal or the Principal's Representative by clause 16 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any direction of the Principal's Representative under clause 16.2 or act under clause 16.4.

## **16.12 Use of defective facilities**

The Contractor must not allow the use of any part of the Project Works or Temporary Works which the Contractor knows are defective or unsafe and which threaten the safety of members of the public.

## **17. Time and Completion**

### **17.1 The Contractor's programming obligations**

- (a) Within 20 Business Days of the date of this deed, the Contractor must prepare and submit to the Independent Verifier and the Principal's Representative Subsidiary Contract Programs for all activities to be undertaken in carrying out the Contractor's Activities (including procurement of goods and materials and any interdependencies between the Project Works and the Stage 1 Project Works).
- (b) The Subsidiary Contract Programs must be based upon, and be consistent with, the Contract Program.
- (c) The Contract Program and the Subsidiary Contract Programs must:
  - (i) comply with the requirements in the section of the Appendix to the SWTC identified in Item 37(o) of Schedule 1 (Contract Information); and
  - (ii) be in hard copy form and in an electronic form and include such detail as the Principal's Representative reasonably requires and be accurate, comprehensive and complete in all respects.
- (d) The requirements of clause 17.1(c) and the underlying program logic must be accessible and clearly shown in the electronic form of the Contract Program and all Subsidiary Contract Programs. The software used by the Contractor must be acceptable to the Principal's Representative.
- (e) The Contractor acknowledges that works in relation to the Port Botany Rail Line will be occurring concurrently with the Project Works and Temporary Works, and as such the Contract Program and Subsidiary Contract Programs must be developed having regard to the limitations such works will have on the undertaking of the Project Works and Temporary Works.
- (f) The Contract Program and all Subsidiary Contract Programs must be reviewed and updated as reasonably required by the Principal's Representative and in any event at least:
  - (i) on the 25th day of each month; and
  - (ii) within 10 Business Days of the granting of each extension of time under clause 17.5(e) and of each direction to compress the Contractor's Activities under clause 17.7,

to take into account the actual progress of the Contractor's Activities and the impact of each extension of time and direction to compress and must disclose the Contractor's proposed changes to activities, sub-activities and events from the previously provided Contract Program or Subsidiary Contract Program. These updated programs must be given to the Independent Verifier and the Principal's Representative with the reports required by the Contractor Documentation Schedule.

- (g) The Principal's Representative may reject a program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program within 10 Business Days of that program being given to the Principal's Representative if it does not comply with the requirements of clauses 17.1(b), 17.1(c), 17.1(d) or 17.1(e). If the Principal's Representative rejects a program submitted by the Contractor as a Contract Program or a Subsidiary Contract Program the Contractor must submit a corrected program within 5 Business Days. If the Principal's Representative raises no objection and the program

submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program complies with clauses 17.1(b), 17.1(c), 17.1(d) and 17.1(e) (as relevant), it becomes the Contract Program or Subsidiary Contract Program, as applicable.

- (h) A program submitted by the Contractor under this clause 17.1 as a Contract Program or a Subsidiary Contract Program that is rejected by the Principal's Representative is not a Contract Program or a Subsidiary Contract Program for the purposes of this deed.
- (i) Neither a Direction relating to, nor review of nor comment on, a program (including the Contract Program and any Subsidiary Contract Program) by the Principal or the Principal's Representative, nor the inclusion of the Contract Program as an exhibit to this deed, will:
  - (i) relieve the Contractor from or reduce its liabilities or obligations under this deed, especially (without limitation) the obligations under clause 17.3(a);
  - (ii) evidence or constitute an extension of time by the Principal's Representative or a Direction by the Principal's Representative to compress, accelerate, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
  - (iii) reduce the time for carrying out of the Principal or the Principal's Representative's obligations under this deed, including by obliging the Principal or the Principal's Representative to perform an obligation earlier than it was required to do so at the date of this deed.
- (j) Whether or not the Contractor chooses to compress or accelerate the carrying out of the Contractor's Activities:
  - (i) neither the Principal nor the Principal's Representative will be obliged to take or avoid taking any action to assist or enable the Contractor to achieve, Construction Completion by or before the Date for Construction Completion; and
  - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.
- (k) Where the Contractor chooses to compress or accelerate the carrying out of the Contractor's Activities:
  - (i) neither the Principal nor the Principal's Representative will be obliged to avoid inhibiting the Contractor from achieving Construction Completion by or before the Date for Construction Completion; and
  - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

## 17.2 Sequencing

- (a) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 17.2, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 17.2 unless the direction is in writing and expressly states that it is a direction under this clause 17.2.
- (b) If compliance with a written direction expressly stated to be pursuant to this clause 17.2 causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued under clause 15.4 except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this deed.
- (c) [REDACTED], the Contractor's costs of compliance under clause 17.2(b) shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 17.2.

## 17.3 Date for Construction Completion

- (a) The Contractor must achieve Construction Completion by the Date for Construction Completion.

- (b) The Contractor acknowledges:
  - (i) the importance of complying with its obligations under clause 17.3(a); and
  - (ii) that the Date for Construction Completion will only be extended as set out in clause 17.5.

#### **17.4 Risk and notice of delay**

- (a) Except as expressly provided for in clauses 17.5 [REDACTED] the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities (which, for the avoidance of doubt, includes the Contractor accepting the risk of all delays in, and disruption to, the carrying out of the Provisional Sum Work) and the performance of its obligations under this deed.
- (b) Except as provided under clause 11.6(d), within 5 Business Days of when the Contractor first became aware, or should reasonably have first become aware, that an event has caused or will or is likely to cause any delay, the Contractor must give the Principal's Representative written notice of the event and estimated delay, with details of the event and how Construction Completion and the Date of Construction Completion are likely to be affected (if at all).

#### **17.5 Extension of time**

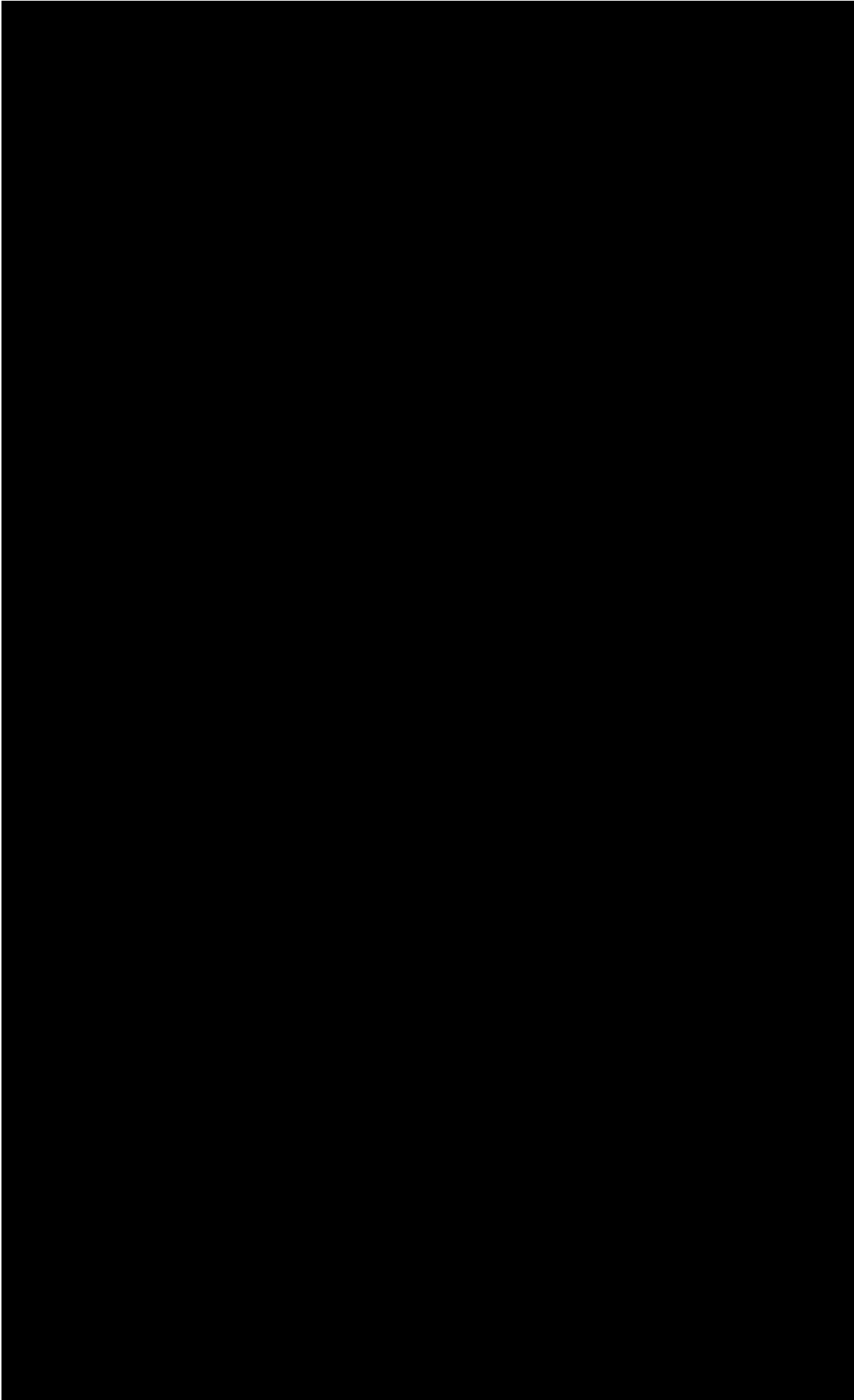
- (a) If the Contractor has been or will be delayed in achieving Construction Completion by an Excusable Cause of Delay, the Contractor may submit a claim for an extension to the Date for Construction Completion.
- (b) To claim an extension of time the Contractor must:
  - (i) within 14 days of the earlier of when the Contractor:
    - A. became aware; or
    - B. should reasonably have become aware,

of the Excusable Cause of Delay that has or will cause delay to achieving Construction Completion, submit a written claim to the Principal's Representative for an extension to the Date for Construction Completion, which:

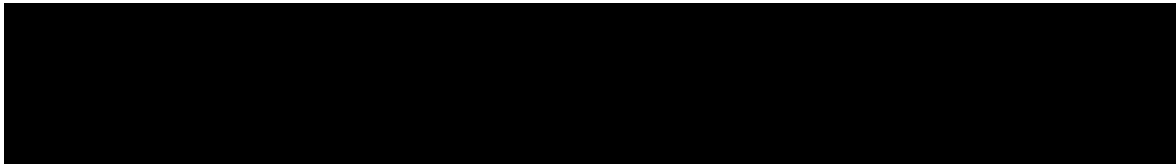
    - C. gives detailed particulars of the Excusable Cause of Delay and the events or circumstances giving rise to the delay and the period of the delay;
    - D. gives detailed particulars of any interdependencies and programming implications for the Stage 1 Project Works;
    - E. states the date on which the Excusable Cause of Delay giving rise to the delay first arose; and
    - F. states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the delay involves an activity that is critical to the maintenance of progress in the execution of the Contractor's Activities and that has or will actually delay the Contractor in achieving Construction Completion in the manner described in clause 17.5(c)(iii); and
  - (ii) if the delay continues beyond the period referred to in the particulars provided under clause 17.5(b)(i)F and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
    - A. every 14 days after the first written claim until 7 days after the end of the effects of the delay; and
    - B. containing the information required by clauses 17.5(b)(i)C, 17.5(b)(i)D and 17.5(b)(i)F.
- (c) Without limiting clauses 17.5(h) and 17.5(i), each of the following is a condition precedent to the Contractor's entitlement to an extension of time:


- (i) the Contractor must have given all notices and claims required by clauses 11.6(c), 17.4(b) and 17.5(b) in accordance with the requirements of those clauses, including within the time frames required by those clauses;
  - (ii) the Excusable Cause of Delay was beyond the reasonable control of the Contractor;
  - (iii) the Excusable Cause of Delay has or will actually delay the Contractor in achieving Construction Completion and the delay is evidenced by delay to an activity or activities on the critical path as identified on the Contract Program and any relevant Subsidiary Contract Program; and
  - (iv) the Principal's Representative has not given the Contractor a Direction under clause 17.7 to compress the Contractor's Activities in respect of the delay in question.
- (d) If the Contractor is also seeking an extension of time under the Stage 1 D&C Deed in respect of an Excusable Cause of Delay arising from the same circumstances as those in respect of which an extension of time is claimed under this deed, the Contractor must submit any notices and claims required by clauses 11.6(c), 17.4(b) and 17.5(b) at the same time under both this deed and the Stage 1 D&C Deed.
- (e) Subject to clause 10.1(i), if the conditions precedent in clause 17.5(c) have been satisfied, the Principal's Representative must extend the Date for Construction Completion by:
- (i) if the cause of delay is a Variation, a period consistent with the adjusted Date for Construction Completion notified in the relevant Variation Order under clause 15.2(b); or
  - (ii) otherwise, a reasonable period not exceeding the period of delay, as stated by the Principal's Representative,
- in either case having regard to any reduction in accordance with clauses 17.5(g) or 17.7(b).
- (f) The Principal's Representative must notify the Principal and the Contractor of the extension of time that has been granted within 28 days after the Contractor's last claim under clause 17.5(b).
- (g) The Contractor's entitlement to any extension to the Date for Construction Completion under clause 17.5(e)(i) or clause 17.5(e)(ii) will be reduced to the extent:
- (i) that the Contractor could have avoided or lessened the delay by taking reasonable steps to avoid or prevent the cause of the delay or to avoid or minimise the delay and its consequences; and
  - (ii) where more than one event causes delay and the cause of at least one of those delays is not an Excusable Cause of Delay, of any concurrency (regardless of which delay event commenced first or the time of commencement of the respective delay events).
- (h) The Principal's Representative may in his or her absolute discretion unilaterally extend the Date for Construction Completion by any period specified in a notice to the Contractor, whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under this clause 17.5.
- (i) The power to extend the Date for Construction Completion under clause 17.5(h):
- (i) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise his or her discretion under clauses 17.5(h) and 17.5(i) for the benefit of the Contractor; and
  - (ii) is not a Direction which can be the subject of a Dispute pursuant to clause 6 of the Project Interface Deed or in any other way opened up or reviewed by any other person (including any expert, arbitrator or court).

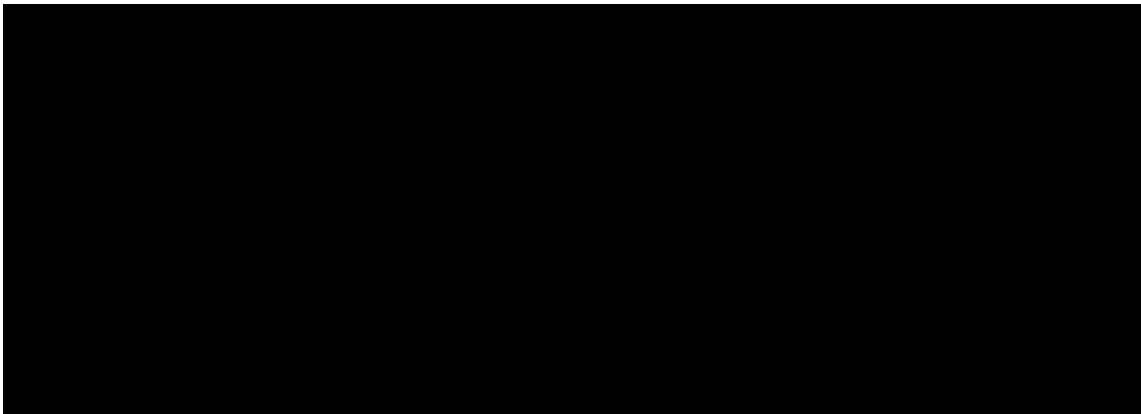
## 17.6 Delay costs









- (e) Without limiting any express entitlement of the Contractor under this deed to Claim Direct Costs or other costs, the delay costs that the Contractor is entitled to under clause 17.6(a):
  - (i) are the agreed damages which will be payable by the Principal where the Date for Construction Completion is extended due to a breach of this deed by the Principal; and
  - (ii) will be a limitation on the Principal's liability to the Contractor for any delay, disruption or interference which arises out of or in connection with any breach of this deed by the Principal or any other matters described in clause 17.6(a).
- (f) Subject to clauses 17.6(d) and 17.6(e), if the Principal's Representative has unilaterally extended the Date for Construction Completion under clause 17.5(h), the Principal's Representative may in his or her absolute discretion decide to pay delay costs to the Contractor for such amount as the Principal's Representative in his or her absolute discretion sees fit.
- (g) The power to pay delay costs to the Contractor under clause 17.6(f):
  - (i) may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise his or her discretion under clause 17.6(f) for the benefit of the Contractor;
  - (ii) 
  - (iii) is not a Direction which can be the subject of a Dispute pursuant to clause 6 of the Project Interface Deed or in any other way opened up or reviewed by any other person (including any arbitrator or court).
- (h) Without limiting any express entitlement of the Contractor under this deed to Claim Direct Costs or other costs, the Contractor will not be entitled to make, nor will the Principal be liable on any Claim including any Claim for damages, costs, expenses or losses for any delay, disruption or interference arising out of or in connection with the Contractor's Activities, other than for any amount which is paid or payable by the Principal under this clause 17.6.
- (i) The Contractor's entitlement to delay costs under clause 17.6(a) will be reduced to the extent of any concurrency, for any period when the Contractor is delayed by multiple causes, where at least one of those causes is not listed in clause 17.6(a) (regardless of which delay event commenced first or the time of commencement of the respective delay events).
- (j) The Principal shall not be obliged to pay any costs under this clause 17.6 which have already been included in the value of a Variation or any other payment (including a payment of Direct Costs) under this deed.
- (k) Not used





## 17.7 Compression

- (a) Subject to clause 17.7(b), the Principal's Representative may direct the Contractor to compress the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of any delay, which may include taking those measures necessary to achieve Construction Completion by the Date for Construction Completion, whether or not the cause of any delay entitles the Contractor to an extension of time to the Date for Construction Completion. The Principal's Representative may not give a direction under this clause 17.7(a) which requires the Contractor to compress the Contractor's Activities so as to achieve Construction Completion earlier than the Date for Construction Completion.
- (b) The Principal's Representative may only direct the Contractor to compress the Contractor's Activities under clause 17.7(a) to the extent that the compression is reasonably capable of being achieved or would be reasonably capable of being achieved by a prudent and competent contractor in the position of the Contractor.
- (c) If, following receipt of a claim under clause 17.5(b), the Principal's Representative gives the Contractor a direction to compress under clause 17.7(a):
  - (i) and the direction to compress only applies to part of the delay, the Contractor's entitlement to any extension of time to which it may otherwise have been entitled will be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome or minimise the delay, as stated by the Principal's Representative; and
  - (ii) the Principal's Representative may at any time by notice in writing withdraw the direction after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled to in respect of the claim, such entitlement to an extension of time to be reduced to the extent that any compression of the Contractor's Activities pursuant to the direction undertaken by the Contractor prior to the withdrawal of the direction has overcome or minimised the delay the subject of that claim, as stated by the Principal's Representative.
- (d) If the Principal's Representative gives a direction to the Contractor under clause 17.7(a):
  - (i) the Contractor must compress the performance of the Contractor's Activities to overcome and minimise the delay to the extent to which the direction requires the Contractor to overcome and minimise the delay;
  - (ii) to the extent that the Contractor would, but for the direction, have been entitled to an extension of time to the Date for Construction Completion for the cause of delay in respect of which the Contractor made a claim under clause 17.5(b), the Contractor will be entitled to be paid:

- A. if the direction relates to:
    - 1) all of the delay caused by a Variation; or
    - 2) part of any delay caused by a Variation as specified in the relevant Variation Proposal Request under clause 15.1, any amount notified by the Contractor under clause 15.1(a)(ii)B and approved by the Principal's Representative; or
  - B. otherwise, the reasonable net extra Direct Costs incurred by the Contractor (provided the Contractor has given the Principal's Representative a detailed breakdown of those Direct Costs between the T2/T3 Works and the Remaining Stage 3 Works) (which if the Principal's Representative gives a notice to withdraw the direction under clause 17.7(a), will be those reasonable net extra Direct Costs incurred prior to the giving of such notice) and directly attributable to compressing the performance of the Contractor's Activities as required by the Principal's Representative's direction under clause 17.7(a) (provided it has incurred them reasonably and has taken all steps reasonably practicable to mitigate them) as stated by the Principal's Representative; and
- (iii) the Contractor will have no Claim arising out of or in connection with the cause of delay or the delay or any direction under clause 17.7(a) (whether for an extension of time to the Date for Construction Completion which the Contractor might have had but for the direction or otherwise) except for its entitlements under clause 17.7(b) and clause 17.7(d)(ii).
- (e) The Principal's rights to liquidated damages under clause 17.9 for a failure by the Contractor to achieve Construction Completion by the Date for Construction Completion are not affected by the Principal's Representative giving the Contractor a Direction to compress under this clause 17.7.

## 17.8 Suspension

- (a) The Principal's Representative may direct the Contractor to suspend and subsequently to recommence performance of all or any of the Contractor's obligations under this deed.
- (b) The Contractor agrees that without limiting clause 17.8(a):
  - (i) despite the grant of any Approval by Sydney Airport, Sydney Airport by giving notice to the Principal retains the right to temporarily suspend the conduct of the Contractor's Activities if such action is in the reasonable opinion of Sydney Airport required:
    - A. to preserve the safe operation of aircraft, runways or aviation infrastructure from an immediate and significant risk of damage or harm; or
    - B. as a result of a breach of the Constraints and Restrictions by the Contractor, its employees, agents or Subcontractors; and
  - (ii) if Sydney Airport issues the Principal with a Suspension Notice in accordance with clause 17.8(b)(i), and the Principal notifies the Contractor of such suspension, while a Suspension Notice is in force the Contractor must not, and must ensure that its employees, agents or Subcontractors do not, carry out any part of the Contractor's Activities to which the Suspension Notice applies.
- (c) If the suspension under clauses 17.8(a) or 17.8(b) arises as a result of:
  - (i) the Contractor's failure to carry out its obligations under this deed, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
  - (ii) a cause other than the Contractor's failure to perform its obligations under this deed:

- A. a direction to suspend under this clause 17.8 will entitle the Contractor to:
  - 1) be paid by the Principal the reasonable net extra Direct Costs incurred by it as a result of the suspension as stated by the Principal's Representative and provided the Contractor has given the Principal's Representative a detailed breakdown of those Direct Costs between the T2/T3 Works and the Remaining Stage 3 Works; and
  - 2) an extension of time to the Date for Construction Completion and delay costs where it is otherwise so entitled under clauses 17.5 and 17.6;
- B. the Contractor must take all steps reasonably practicable to mitigate the net extra Direct Costs incurred by it as a result of the suspension; and
- C. the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this clause 17.8(c)(ii).

## **17.9 Liquidated damages for delay in reaching Construction Completion**

- (a) The Principal and the Contractor agree and acknowledge that the Principal as a statutory body representing the Crown, is pursuing a policy of upgrading the main roads of New South Wales for the purpose of:
  - (i) improving the efficiency of the New South Wales road network so that the costs of travelling (both in time and money) on New South Wales roads are reduced as well as the cost of freight transport in New South Wales; and
  - (ii) eliminating dangerous stretches of road in order to reduce damage to property and the number of fatalities and injuries caused by motor accidents.
- (b) The Contractor and the Principal acknowledge and agree that the Contractor's Activities represent a most important element of implementing the policy outlined in clause 17.9(a) and will generally improve travel times, reduce freight costs and improve the local environment whilst reducing accidents and accident costs.
- (c) The Contractor acknowledges and agrees that its failure to achieve Construction Completion by the Date for Construction Completion in accordance with this deed will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives on behalf of the Crown to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.
- (d) Therefore, the Contractor agrees that if it does not achieve Construction Completion by the Date for Construction Completion, it will pay the Principal:
  - (i) the amount specified in Item 35 of Schedule 1 (Contract Information) (which is exclusive of GST) for every day after the Date for Construction Completion up to and including:
    - A. the Date of Opening Completion (if any);
    - B. the Date of Construction Completion; or
    - C. the date that this deed is validly terminated,
 whichever first occurs; and
  - (ii) where Opening Completion has been achieved but Construction Completion has not, and the Principal's Representative issues a notice under clause 17.12, the amount specified in Item 36 of Schedule 1 (Contract Information) (which is exclusive of GST), for every day after the Date of Opening Completion (if any) up to and including:

- A. the Date of Construction Completion; or
  - B. the date that this deed is validly terminated,
- whichever first occurs.

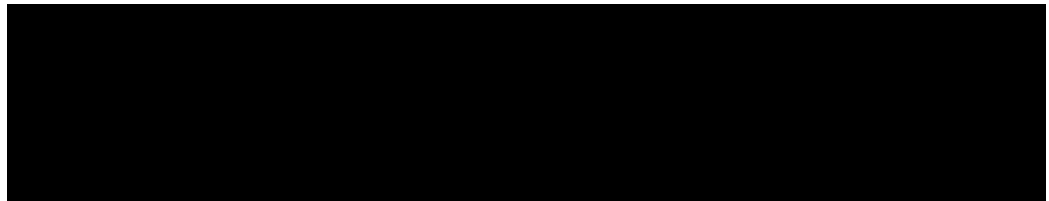
- (e) The liquidated damages provided by clause 17.9(d) are a genuine pre-estimate of the Principal's damages if Construction Completion occurs after the Date for Construction Completion and the Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by the Principal for both its own loss and for its failure to achieve its policy objectives on behalf of the Crown arising from the failure of the Contractor to achieve Construction Completion by the Date for Construction Completion.
- (f) The Principal and the Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (g) The Contractor agrees to pay the liquidated damages under clause 17.9(d) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (h) The Contractor entered into the obligation to pay the amounts specified in clause 17.9(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms.
- (i) The Contractor agrees to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed on a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts.
- (j) The Contractor agrees that if clause 17.9(d) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover common law damages as a result of the Contractor failing to achieve Construction Completion by the Date for Construction Completion, but the Contractor's liability for such damages (whether per day or in the aggregate) will not be any greater than the liability which it would have had if clause 17.9(d) had not been void, invalid or otherwise inoperative.
- (k) The Principal and the Contractor agree that the aggregate of the amount payable under clauses 17.9(d)(i) and 17.9(d)(ii) is limited to an amount equal to [REDACTED] of the Project Contract Sum (but without reducing the Project Contract Sum for any amounts deducted under clause 16.5).

## 17.10 Construction Completion

- (a) The Contractor must give the Principal's Representative and the Independent Verifier:
  - (i) 95 Business Days; and
  - (ii) 1 month,

written notice of the estimated Date of Construction Completion.

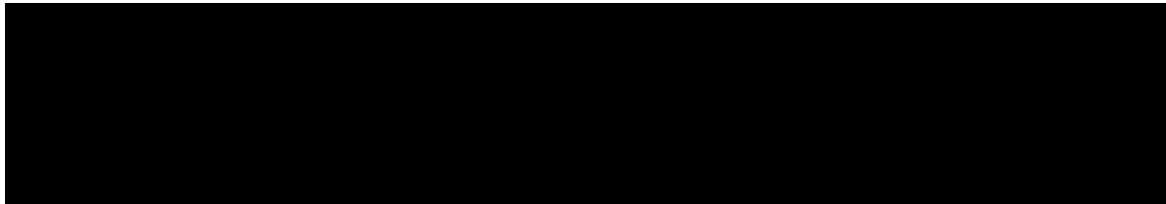
- (b) The Principal's Representative, the Project Director and the Independent Verifier must, within 10 Business Days of receipt of the notice referred to in clause 17.10(a)(ii), jointly inspect the Contractor's Activities at a mutually convenient time.
- (c) Following the joint inspection referred to in clause 17.10(b), the Principal's Representative must give the Contractor a notice either:
  - (i) containing a list of items which it believes must be completed before Construction Completion is achieved; or
  - (ii) stating that it believes the Contractor is so far from achieving Construction Completion that it is not practicable to issue a list as contemplated in clause 17.10(c)(i).
- (d) If, after the Contractor gives a notice referred to in clause 17.10(a), the estimated Date of Construction Completion changes, the Contractor must promptly notify the Principal's Representative and the Independent Verifier of the revised date.
- (e) When the Contractor considers it has achieved Construction Completion, the Contractor must notify the Principal's Representative and the Independent Verifier in writing.
- (f) The Principal's Representative, the Project Director and the Independent Verifier must, within 5 Business Days of receipt of the Contractor's notice referred to in clause 17.10(e), jointly inspect the Contractor's Activities at a mutually convenient time.
- (g) Following the joint inspection under clause 17.10(f) and in any event within 10 Business Days of receipt of a notice under clause 17.10(d), the Principal's Representative must state and notify the Contractor of:



- (ii) if Construction Completion has not been achieved:
  - A. the items, including any Defects, which remain to be completed before Construction Completion is achieved; or
  - B. that the Contractor is so far from achieving Construction Completion that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 17.10(g)(ii)A.
- (h) If the Principal's Representative issues a notice under clause 17.10(g)(ii) the Contractor must proceed with the Contractor's Activities and thereafter when it considers it has achieved Construction Completion it must give the Principal's Representative a further written notice to that effect under clause 17.10(d) after which clauses 17.10(f) and 17.10(g) will reapply.
- (i) The Contractor acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by clause 17.10 including representatives of Third Parties; and
  - (ii) Third Parties may provide comments to the Principal's Representative in relation to any non-compliance of the Contractor's Activities with this deed.
- (j) The Contractor:
  - (i) acknowledges that, at the date of this deed, it is anticipated that Construction Completion before the Date for Construction Completion will be of benefit to the Principal; and
  - (ii) must co-operate to ensure that any potential for early Opening Completion and Construction Completion is maximised in light of the Principal's total requirements for the development of the Gateway.

### **17.11 Part of the works or section**

- (a) If required by the Principal, the Contractor must:
  - (i) permit the Principal to use; or
  - (ii) permit the opening for the use of the public of, any parts of the Works and any Local Area, irrespective of whether Opening Completion or Construction Completion has been achieved.
- (b) Such use of a part of the Works or a Local Area prior to Opening Completion or Construction Completion under clause 17.11(a) will not relieve the Contractor of any of its responsibilities, obligations or liabilities under this deed, including its responsibility for the care of the Contractor's Activities under clauses 6.1 and 6.3.



- (d) [Redacted]

### **17.12 Opening Completion**

- (a) If Opening Completion has been achieved, the Principal's Representative may, in his or her absolute discretion, and even though Construction Completion has not been achieved, give a written notice to the Contractor stating that it proposes to open the Works to the public for the continuous passage of vehicles by a date stated in the notice being no less than 5 days after the date of the issue of the notice. The Principal will then have the right to open the Works for the use of the public from the date stated in the Principal's Representative's notice.
- (b) If the Principal's Representative gives any such notice, this will not limit or otherwise affect the obligations of the parties under this deed, including the obligation of the Contractor to achieve Construction Completion by the Date for Construction Completion.

### **17.13 Opening of the Works following Construction Completion**

If required by the Principal, the Contractor must open the Works to the public for the safe, efficient and continuous passage of vehicles within 1 day after the date of issue of a notice under clause 17.10(g)(i).

### **17.14 Warranties by others**

- (a) The Contractor must, as a condition precedent to Final Completion, obtain and provide the Principal with warranties from the Subcontractors supplying any plant or equipment for incorporation in the Project Works in favour of the Principal on the terms in Schedule 34 (Form of Warranty).
- (b) The provision of those warranties will not derogate from any rights which the Principal may have against the Contractor in respect of the subject matter of those warranties.

### **17.15 Final Completion**

- (a) The Contractor must give the Principal's Representative and the Independent Verifier two months' written notice of the estimated Date of Final Completion.
- (b) The Principal's Representative, the Project Director and the Independent Verifier must, within 15 Business Days of the notice referred to in clause 17.15(a), jointly inspect the Works at a mutually convenient time.

- (c) Following the joint inspection referred to in clause 17.15(b), the Principal's Representative must give the Contractor a list of items which must be completed before Final Completion is achieved.
- (d) When the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative and the Independent Verifier in writing and the Principal's Representative, the Project Director and the Independent Verifier must jointly inspect the Works at a mutually convenient time.
- (e) Following the joint inspection under clause 17.15(d) and in any event within 20 Business Days of receipt of a notice under clause 17.15(d), the Principal's Representative must state and notify the Contractor:
  - (i) if Final Completion has been achieved, of the date on which the Contractor achieved Final Completion; or
  - (ii) if Final Completion has not been achieved:
    - A. of the items which remain to be completed before Final Completion is achieved; or
    - B. that the Contractor is so far away from achieving Final Completion, it is not practicable to specify the items referred to in clause 17.15(e)(ii)A.
- (f) If the Principal's Representative issues a notice under clause 17.15(e)(ii)B, the Contractor must proceed with the Contractor's Activities and thereafter when it considers it has achieved Final Completion it must give the Principal's Representative further written notice to that effect under clause 17.15(d) after which clauses 17.15(e) and 17.15(f) will reapply.

## **17.16 Effect of notice of Construction Completion or Final Completion**

A notice issued under clause 17.10(g)(i) or 17.15(e)(i) will not:

- (a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this deed;
- (b) be taken as an admission or evidence that the Project Works comply with this deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative, including the right to correct any Defect that may have existed on the issue of a notice under clause 17.10(g)(i), whether or not the Defect was known to exist.

## **18. Payment**

### **18.1 Principal's payment obligation for design and construction**

- (a) Subject to clause 22.8 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor the Project Contract Sum in accordance with clause 18, the D&C Payment Schedule and Schedule 48 (Solid Waste) for the progressive completion of the Contractor's Activities.
- (b) Without limiting clause 18, the D&C Payment Schedule and Schedule 48 (Solid Waste) set out (amongst other things):
  - (i) those parts of the Contractor's Activities which must be completed before the Contractor may claim a progress payment with respect to that part;
  - (ii) the payment the Contractor may claim for each progress payment;
  - (iii) any limitations or other constraints on the Contractor's ability to make claims for payment; and
  - (iv) restrictions on the timing and sequencing of the Contractor's Activities with which the Contractor must comply.

## 18.1A Initial Payment

- (a) The Contractor may, no earlier than the earlier of the date that is 5 Business Days after the date of this deed and no later than the date it submits its first progress claim in accordance with clause 18.2, give the Principal a tax invoice (as defined in the GST law) for a single advance payment on account of the Project Contract Sum (**Initial Payment**), provided all of the following requirements have been satisfied:
- (i) the Initial Payment is no more than [REDACTED] of the Project Contract Sum at execution of this deed; and
  - (ii) the Contractor has established to the Principal's reasonable satisfaction that the Initial Payment will be used for the purposes of performing the Contractor's Activities.
- (b) Subject to this clause 18.1A(b), the Principal must pay the Initial Payment to the Contractor on the later of the date:
- (i) which is 10 Business Days after the Principal has received an invoice for the Initial Payment in compliance with clause 18.1A(a); and
  - (ii) on which:
    - A. all conditions set out in clauses 18.1A(a)(i) to 18.1A(a)(ii) have been satisfied; and
    - B. the Contractor demonstrates to the Principal's Representative that it has complied with clauses 5.21, 7.8, 8.1(a) and 8.2.
- (c) Notwithstanding any other provision of this deed, any Initial Payment paid to the Contractor will be progressively deducted from each Progress Payment which would otherwise be payable to the Contractor under this deed in respect of the Project Contract Sum. Each Progress Payment will be reduced by [REDACTED] until the Initial Payment paid has been fully deducted.
- (d) Not used
- (e) If this deed is terminated for any reason the Contractor must repay to the Principal any portion of the Initial Payment paid to the Contractor which, at the date of termination, has not been deducted from instalment amounts in accordance with clause 18.1A(c). Such portion of the Initial Payment will be a debt due and payable to the Principal 10 Business Days after written demand by the Principal.

## 18.2 Payment claims

- (a) The Contractor must give the Principal's Representative a progress claim, with respect to the Project Contract Sum, on the later to occur of:
- (i) the twenty-fifth day of each month; and
  - (ii) the date on which the last of the following occurs:
    - A. the Contractor demonstrates to the Principal's Representative that it has complied with clauses 2.9(f)(i)B, 2.9(h), 2.9(i), 2.9(j), 5.21, 8.1(a), and 8.2;
    - B. the Contractor demonstrates to the Principal's Representative that it has effected and is maintaining all insurances required to be effected by the Contractor under clause 7 and has complied with clause 7.8; and
    - C. the Contractor provides to the Principal's Representative a Contractor Statement and Supporting Statement;
      - 1) which is executed on or after the twenty-fifth day of the relevant month; and
      - 2) which has been duly executed by a representative of the Contractor who is in a position to know the facts declared.
    - D. not used



- (b) Without limiting clause 18.2(f), the Contractor agrees that the amount of a progress payment (for the purposes of section 9 of the SOP Act and this clause 18) will be calculated by reference to:
- (i) any relevant statement or certificate in relation to the Contractor's Activities by:
    - A. the Quality Manager in the form of Schedule 8 (Quality Manager's Certificate – Payment Claim); and
    - B. the Independent Verifier in the form of Schedule 13 (Independent Verifier's Certificate – Payment Claim); and
  - (ii) the Contractor's Activities that have been completed up to and including the date on which the Contractor Statement and Supporting Statement was executed.
- (c) For each claim made under clause 18.2(a) the Contractor must give the Principal's Representative (at the same time as the claim is made):
- (i) a statement in the format required by Schedule 4 (Progress Claim) (in an electronic format) showing the amount the Contractor claims and a detailed cost breakdown between the T2/T3 Works and the Remaining Stage 3 Works;
  - (ii) a statement by the Quality Manager in the form of Schedule 8 (Quality Manager's Certificate – Payment Claim) that the parts of the Contractor's Activities claimed for payment comply with the requirements of this deed;
  - (iii) evidence of the Contractor's compliance with any outstanding obligations under clause 2.5(a) and clause 5.4;
  - (iv) its forecast monthly cashflow projections for the following 18 month period in respect of the Project Contract Sum; and
  - (v) any other information that the Contractor must provide the Principal's Representative with under Schedule 48 (Solid Waste) in connection with the Waste Amounts.
- (d) For each claim made under clause 18.2(a) the Contractor must give the Principal's Representative within 5 Business Days after the claim is made, verification by the Independent Verifier in the form of Schedule 13 (Independent Verifier's Certificate – Payment Claim) that the parts of the Contractor's Activities claimed for payment comply with the requirements of this deed.
- (e) The Principal's Representative must, on behalf of the Principal, within 10 Business Days of receipt of the Contractor's claim under clause 18.2(a), issue to the Contractor and the Principal, a payment schedule:
- (i) identifying the payment claim to which it relates;
  - (ii) stating the amount of the payment that the Principal proposes to make to the Contractor or that is due from the Contractor to the Principal (**Progress Payment**), including details of the calculation of the Progress Payment, noting that if the Contractor has not provided the monthly Contract Program and all Subsidiary Contract Programs as required by clause 17.1(f)(i) the calculation of the Progress Payment may include a retention of [REDACTED]. This retention amount may be claimed in a subsequent progress claim once the Contractor has provided the documentation required by clause 17.1(f)(i) for the relevant month; and
  - (iii) if the Progress Payment is less than the amount claimed by the Contractor, setting out why the Progress Payment is less and, if the reason for the difference is that the Principal has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (f) In issuing a payment schedule the Principal's Representative may deduct from the amount which would otherwise be payable to the Contractor, any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including any amount which the Principal is entitled to set-off or withhold under clause 22.8.
- (g) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would

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

- (h) The Principal's Representative may at any time (but is not obliged to) issue a payment schedule to the Contractor as if a progress claim was made on the twenty-fifth day of a month.
- (i) The Contractor agrees with the Principal that a progress claim submitted to the Principal's Representative under this clause 18.2 is received by the Principal's Representative as agent for the Principal and that a payment schedule issued by the Principal's Representative under this clause 18.2 is issued by the Principal's Representative as agent for the Principal.

### **18.3 Payment on account**

A payment schedule issued under clause 18.2 is not:

- (a) evidence of the value of work but is only on account of the relevant component or components of the Project Contract Sum;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this deed.

Despite clause 19.6(a), the Principal's Representative may modify or amend any payment schedule issued under clause 18.2 (including any amount included in a Principal's Representative's Statement).

### **18.4 Due date for payment**

- (a) On the due date for payment of a Progress Payment payable to the Contractor, the Principal must pay the Progress Payment to the Contractor, subject to the Principal's rights to retain, deduct, withhold or set off payment of all or some of the progress amount under clauses 18.5, 18.6 and 22.8 and, in respect of a Progress Payment under clause 18, the D&C Payment Schedule. The due date for payment for the purposes of this clause 18.4(a) is the date that is 15 Business Days after the day on which the Contractor made the progress claim under clause 18.2(a).
- (b) On the due date for payment of a Progress Payment payable to the Principal, the Contractor shall pay the Progress Payment to the Principal. The due date for payment for the purposes of this clause 18.4(b) is 10 Business Days after the issue of a payment schedule under clause 18.2(e) or 18.2(h).

### **18.5 Payment of Subcontractors, workers compensation and payroll tax**

- (a) If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid shall be a debt due and payable from the Contractor to the Principal on demand.
- (b) Nothing in this clause 18.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), Schedule 2, Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

### **18.6 Unfixed goods and materials**

- (a) The value of unfixed goods and materials must not be included in a progress claim under clause 18.2(a) and the Principal's Representative will not be required to include this value in a payment schedule under clause 18.2(e) or 18.2(h), and the Principal is under no obligation to pay, and the Principal and the Contractor are under no obligation to authorise payment, for such value unless:
  - (i) the Contractor:

- A. has provided to the Principal at the same time as its progress claim under clause 18.2(a) an unconditional undertaking in the form of Schedule 6 (Unconditional Undertaking) in favour of the Principal and issued by a financial institution approved by the Principal equal to the payment claimed for the goods and materials; and
  - B. gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed goods and materials will vest in the Principal on payment and that no other person holds a Security Interest in the unfixed goods and materials;
- (ii) the goods and materials are listed in Item 6 of Schedule 1 (Contract Information);
  - (iii) the goods and materials are clearly marked as the property of the Principal and are on, or available for immediate delivery to, the Site, the Local Area Works Areas or the Temporary Works Areas; and
  - (iv) the goods and materials are properly stored in a place approved by the Principal's Representative.
- (b) On payment of a payment schedule under clause 18.2(e) or 18.2(h), which includes unfixed goods and materials, title in the unfixed goods and materials will vest in the Principal.
  - (c) The Contractor agrees that the Principal may, but is not obliged to, perfect, for the purposes of the PPS Law, any Security Interest it holds in unfixed goods and materials for which the Principal pays.

(d)

[REDACTED]

## 18.7 GST

- (a) Words or expressions used in this clause 18.7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this deed, unless specifically described in this deed as 'GST inclusive', does not include an amount on account of GST.
- (c) Despite any other provision in this deed, if a party (**Supplier**) makes a supply under or in connection with this deed on which GST is imposed (not being a supply the consideration for which is specifically described under this deed as 'GST inclusive'):
  - (i) the consideration payable or to be provided for that supply under this deed but for the application of this clause (**GST Exclusive Consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on the supply (**GST Amount**); and
  - (ii) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand (subject to clause 22.8 of this deed), at the same time as the GST Exclusive Consideration is payable or to be provided.
- (d) If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. For the purposes of this clause 18.7(d), the Contractor shall be deemed to be entitled to a full input tax credit in respect of such losses, costs or expenses, unless it can demonstrate to the Principal reasonable satisfaction that it is not so entitled.
- (e) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- (f) Except in relation to a supply for which the Principal will issue a recipient created tax invoice (**RCTI**) to the Contractor in accordance with clause 18.7(g), the Recipient need not make a payment of a GST Amount in respect of a taxable supply made under or in

connection with this deed unless the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.

- (g) The parties agree that, unless otherwise agreed in writing, the following will apply to all supplies made by the Contractor to the Principal under or in connection with this deed:
- (i) the Principal will issue to the Contractor a RCTI for each taxable supply made by the Contractor to the Principal under this deed;
  - (ii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal;
  - (iii) each party acknowledges and warrants that at the time of entering into this deed, it is registered for GST and will notify the other party if it ceases to be registered; and
  - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices pursuant to clause 18.7(f).
- (h) The Contractor will ensure that it has provided its ABN to the Principal prior to the earlier of the date on which the Principal is required to:
- (i) issue a payment schedule; or
  - (ii) make a payment to the Contractor.
- (i) The Contractor acknowledges and agrees that if the Principal has not been provided with the Contractor's ABN on or before the time the Principal is required to make a payment to the Contractor pursuant to this deed, then the Principal will withhold from the amounts due to the Contractor as required by section 12-190 of Schedule 1 to the *Tax Administration Act 1953* (Cth), unless the Contractor is able to establish to the reasonable satisfaction of the Principal that one of the exceptions outlined in that section applies.

## 18.8 Security of Payment Act

- (a) The Contractor must not at any time, without the written consent of the Principal, divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied on by the Principal or any details thereof in respect of an adjudication application made under Part 3 Division 2 of the SOP Act (in this paragraph, the **Information**). For the avoidance of doubt:
- (i) the Contractor's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where the Contractor is unable by requirement of Law to comply with its obligation in respect of Information;
  - (ii) despite the Contractor's obligation in respect of the Information, the Principal has a sole and unfettered discretion to divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person the Information;
  - (iii) the Principal may divulge or suffer or permit its Subcontractors, servants or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied on by the Contractor or any details thereof in respect of an adjudication application made under Part 3 Division 2 of the SOP Act; and
  - (iv) any Information which the Principal provides or relies on in respect of an adjudication application made under Part 3 Division 2 of the SOP Act is made without prejudice to the Principal's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.
- (b) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to the Contractor:

- (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 18.2; and
  - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal on demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (c) For the purposes of section 17(3) of the SOP Act the Contractor irrevocably chooses the Resolution Institute as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this deed.
- (d) If the Principal receives a payment withholding request from a Subcontractor under section 26A of the SOP Act, the Principal will be entitled to withhold the amount in the request from any payment due to the Contractor without any obligation on the Principal to consider whether the notice is valid and whether section 26B(2) of the SOP Act applies.

## **18.9 Price adjustment for Provisional Sum Work**

- (a) To the extent to which Provisional Sum Work is specified in Appendix B.41 of the SWTC as only to be carried out if instructed by the Principal:
- (i) the Contractor must not carry out any of the relevant Provisional Sum Work unless instructed to by the Principal or the Principal's Representative;
  - (ii) if and to the extent that the Principal or the Principal's Representative does not instruct the Contractor to carry out the relevant Provisional Sum Work, to the extent to which an amount is allowed for the relevant Provisional Sum Work in the D&C Payment Schedule, the Design Contract Sum and/or the Construction Contract Sum (as the case may be) must be adjusted to deduct the applicable amount allowed for the relevant Provisional Sum Work; and
  - (iii) if and to the extent that the Principal or the Principal's Representative instructs the Contractor to carry out the relevant Provisional Sum Work:
    - A. the Contractor must comply with the instruction; and
    - B. the Design Contract Sum and/or the Construction Contract Sum (as the case may be) must be adjusted as allowed for in clause 18.9(b).
- (b) To the extent to which Provisional Sum Work is included in the Design Contract Sum and/or the Construction Contract Sum, the Design Contract Sum and/or the Construction Contract Sum (as the case may be) will be adjusted for the item(s) of Provisional Sum Work by the difference between:
- (i) the applicable amount allowed for the item(s) of Provisional Sum Work in the D&C Payment Schedule; and
  - (ii) either:
    - A. an amount agreed between the Contractor and the Principal's Representative; or
    - B. if they fail to agree, an amount determined by the Principal's Representative for the actual, necessary and reasonable costs to be incurred by the Contractor in carrying out the Provisional Sum Work by reference to the Payment Constraints applicable to the Provisional Sum Work in the D&C Payment Schedule.
- (c) The Contractor must, promptly upon request, provide to the Principal's Representative a detailed breakdown, on a transparent and open book basis, of the actual costs incurred by the Contractor in carrying out the Provisional Sum Work.

## 18.10 Price Adjustment for Non-Contestable Work

The parties agree that:

- (a) the Construction Contract Sum contains allowances (**NC Provisional Amounts**) for the performance of non-contestable work in respect of Services by Authorities (**Non-Contestable Work**) as set out in the D&C Payment Schedule;
- (b) the Contractor must promptly give the Principal's Representative copies of any estimates or quotes received from Authorities for Non-Contestable Work;
- (c) the Construction Contract Sum will be adjusted by the difference between each NC Provisional Amount and the equivalent NC Actual Amount;
- (d) the Contractor must take all steps reasonably practicable to mitigate the NC Actual Amounts;
- (e) the Contractor acknowledges that:
  - (i) any Service Works that are not Non-Contestable Work are; and
  - (ii) any work that must be carried out to enable, or in connection with, the Non-Contestable Work but that is not carried out by the relevant Authority (or a contractor engaged by the Authority other than the Contractor) is, covered by the lump sum portions of the Project Contract Sum (including any Temporary Works and works described in Appendix B.40 of the SWTC as not being Non-Contestable Work); and
- (f) the Contractor must, promptly upon request, provide to the Principal's Representative a detailed breakdown, on a transparent and open book basis, of the NC Actual Amounts.

## 18.13 Audit rights

The Contractor acknowledges and agrees that:

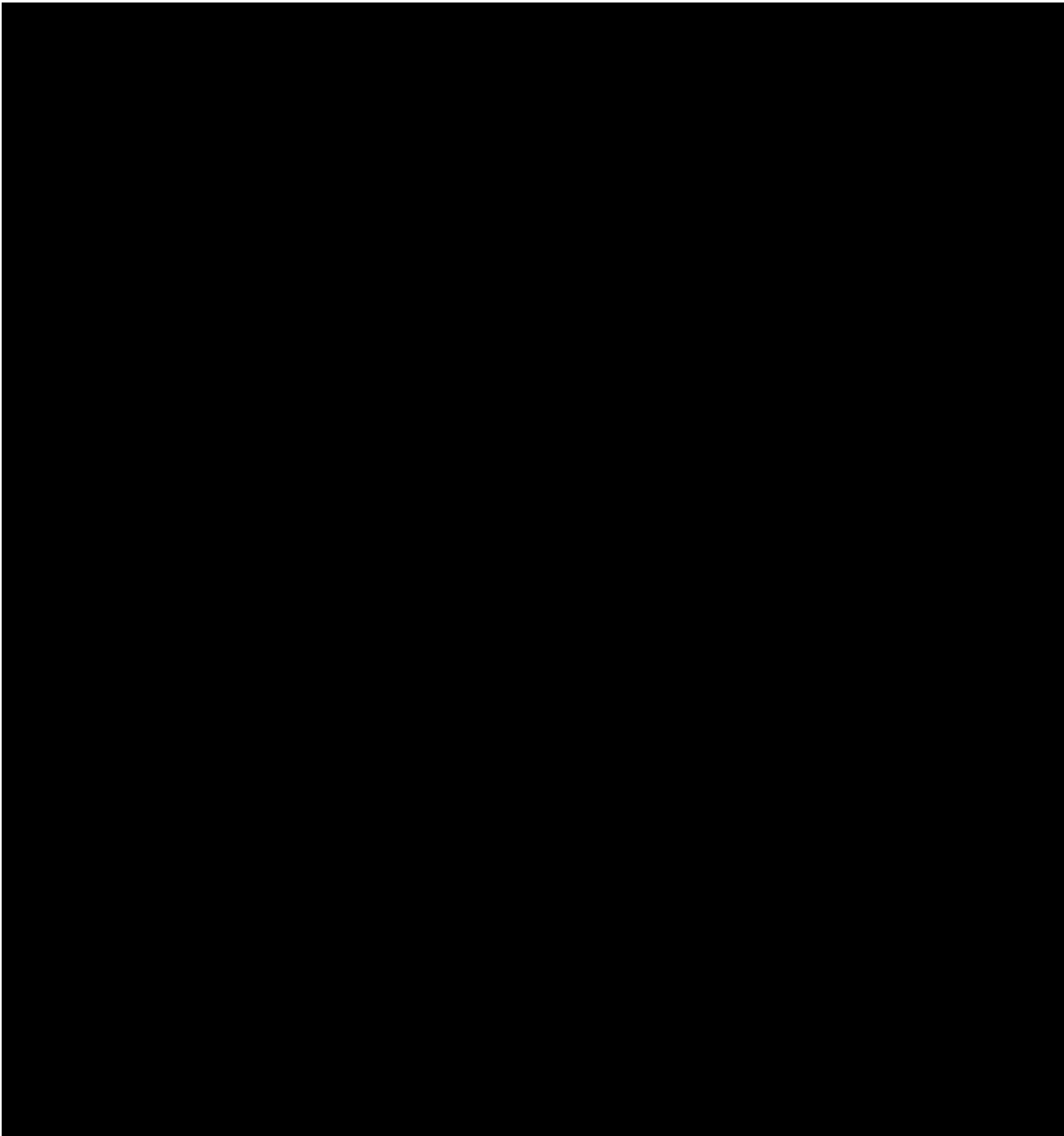
- (a) the Principal's Representative (or any other person nominated by the Principal's Representative) may on one Business Days' notice at any time carry out an audit of and copy the Contractor's documents, accounts and other records to the extent reasonably necessary to verify:
  - (i) the Contractor's performance of its obligations under this deed; and
  - (ii) that any amounts claimed by the Contractor for any Variations, Direct Costs or delay costs claimed under clause 17.6 or other additional cost entitlements have been properly calculated,except to the extent that the documents, accounts or records:
  - (iii) are subject to legal professional privilege; or
  - (iv) must not be disclosed in accordance with any Law.
- (b) Each party will bear its own costs incurred in complying with this clause 18.13 unless it is revealed, by the Principal exercising its rights under this clause 18.13, that:

- (i) the Contractor has committed a breach of its obligations under this deed; or
- (ii) there is a material discrepancy between the information that has been disclosed to the Principal by the Contractor under this deed and the results of any audit conducted under this clause 18.13,

in which case any costs incurred by the Principal in connection with the exercise of its rights under this clause 18.13 will be a debt due and payable by the Contractor to the Principal.

(c) The Contractor must:

- (i) provide the Principal's Representative, and any other person authorised by the Principal's Representative, with such assistance as they may reasonably require in connection with their inspection or audit, including making all relevant documents available; and
- (ii) supply to the Principal's Representative, and any other person authorised by the Principal's Representative, photocopies or electronic copies of information requested.



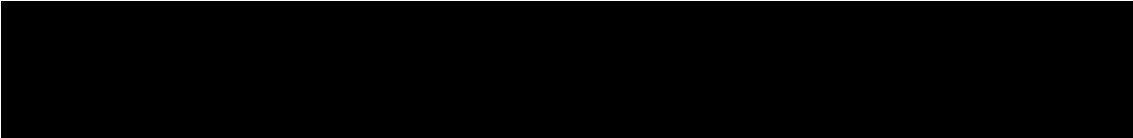




**19. Notification of claims**

**19.1 Notice of Claims**

Except for Claims:



- (d) for a Variation to which clause 15.3 applies;
- (e) with respect to a Qualifying Change in Law under clause 15.8;
- (f) [redacted]
- (g) [redacted]
- (h) [redacted]
- (i) for an extension of time under clause 17.5; or
- (j) for payment under clause 18 of any part of the original Project Contract Sum,

the Contractor must give the Principal's Representative the notices required by clause 19.2 if it wishes to make a Claim against the Principal in respect of any Direction of the Principal, the Principal's Representative, the Principal's Assistant Representatives with relevant authority or other act, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed or the Contractor's Activities including anything in respect of which:

- (k) the Contractor is otherwise given an express entitlement under this deed; or
- (l) this deed expressly provides that:
  - (i) costs are to be paid to the Contractor; or
  - (ii) the Project Contract Sum, Design Contract Sum or Construction Contract Sum will be increased or adjusted by an amount stated by the Principal's Representative.

**19.2 Prescribed notices**

The notices referred to in clause 19.1 are:

- (a) within 15 Business Days of the first occurrence of the Direction or other act, fact, matter or thing on which the proposed Claim will be based, a written notice by the Contractor that it proposes to make the Claim and the Direction or other act, fact, matter or thing on which the proposed Claim will be based (including particulars identifying if the Claim relates to the T2/T3 Works); and
- (b) within 20 Business Days of giving the notice under clause 19.2(a), a written notice by the Contractor which must include:



- (i) detailed particulars concerning the Direction or other act, fact, matter or thing on which the proposed Claim will be based (including particulars of how the Claim relates to the T2/T3 Works and the Remaining Stage 3 Works);
- (ii) the legal basis for the proposed Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
- (iii) the facts relied on in support of the proposed Claim in sufficient detail to permit verification; and
- (iv) details of the amount the Contractor proposes to claim and how it has been calculated.

**19.3 Continuing events**

If the Direction or act, fact, matter or thing on which the proposed Claim under clause 19.1 will be based, is continuing, or if the consequences of the Direction or act, fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 19.2(b) every 20 Business Days after the written notice under clause 19.2(b) was submitted or given, until after the Direction or act, fact, matter or thing on which the proposed Claim will be based has, or the consequences thereof have, ceased.

**19.4 Bar**

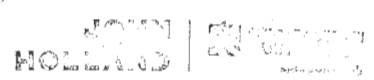
If the Contractor fails to comply with clauses 10.6, 15.3, 15.8(b)(i), 15.8(e), 17.5, 19.1 or 19.3, the Principal will not be liable for any Claim by the Contractor, arising out of or in any way in connection with, the relevant Direction or act, fact, matter or thing (as the case may be).

**19.5 Other provisions unaffected**

Nothing in clauses 19.1 to 19.4 will limit the operation or effect of any other provision of this deed which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

**19.6 Principal's Representative's Statements**

- (a) Without limiting the rights of the Principal's Representative under clause 18.3, either party may seek to have any Principal's Representative's Statement opened up, reviewed, decided and substituted pursuant to the dispute resolution provisions in clause 6 of the Project Interface Deed by giving a Notice of Dispute to the other party in accordance with the Dispute Resolution Procedure. If either party wishes to have a Principal's Representative's Statement opened up, reviewed, decided and substituted it must give the Notice of Dispute required under the Dispute Resolution Procedure within 15 Business Days of the date of receipt of the Principal's Representative's Statement.
- (b) Subject to clause 19.6(c) but without limiting the rights of the Principal's Representative under clause 18.3, each party acknowledges and agrees that its sole means of altering, redressing, replacing or overturning any Principal's Representative's Statement (except for typographical errors and errors of mathematical calculation) is by giving a Notice of Dispute in accordance with the Dispute Resolution Procedure.
- (c) Where the Contractor incurs additional cost arising out of a Principal's Representative's Statement and that Principal's Representative's Statement is subsequently altered, redressed, replaced or overturned pursuant to clause 6 of the Project Interface Deed, the Contractor will be entitled to be paid:
  - (i) where the Principal's Representative's Statement is one described in paragraphs (j), (cc), (dd), (ff), (ii) or (kk) of the definition of Principal's Representative's Statement [REDACTED]
  - (ii) interest calculated in accordance with clause 22.5(a),



by the Principal, but that entitlement will be the Contractor's sole remedy, and the Contractor will have no entitlement to, and the Principal will not be liable for, any Claim for any cost, loss, damage, expense, fine, penalty or liability suffered or incurred by the Contractor arising out of or in connection with that Principal's Representative's Statement or any action in response to it.

- (d) If neither party gives a Notice of Dispute in accordance with the Dispute Resolution Procedure within 15 Business Days of the date of receipt of a Principal's Representative's Statement, then, subject to clause 18.3:
  - (i) the Principal's Representative's Statement will be binding on the parties and will not thereafter be capable of being opened up or reviewed by any person, including any expert, arbitrator, court or tribunal, at the request of or on any application by either party; and
  - (ii) neither party will be liable for any Claim by the other party arising out of or in any way in connection with the relevant Principal's Representative's Statement (other than in accordance with the Principal's Representative's Statement).
- (e) [REDACTED]

## **20. Dispute avoidance and dispute resolution**

### **20.1 Dispute Avoidance Board Formation**

- (a) The Dispute Avoidance Board is formed by each of the three initial members of the Dispute Avoidance Board, the Principal and the Contractor entering into the DAB Agreement.
- (b) It is intended that the DAB Agreement will be signed by the parties on, or as soon as is reasonably practicable following, the date of this deed.
- (c) The Principal will:
  - (i) decide which of the two persons nominated in the Contractor's Tender as candidates for appointment as Dispute Avoidance Board members will be appointed to the Dispute Avoidance Board; and
  - (ii) nominate a second member in accordance with the criteria set out in Schedule 39 (Dispute Avoidance Board Agreement).
- (d) The parties must request the selected nominees to confer to nominate the third member of the Dispute Avoidance Board in accordance with the criteria set out in Schedule 39 (Dispute Avoidance Board Agreement), which third member is subject to the approval of the Principal and the Contractor.
- (e) If, within 21 days of the parties' request for the selected nominees to nominate the third member of the Dispute Avoidance Board, the third member has not been nominated and approved in accordance with clause 20.1(d), either party may request the Resolution Institute to select the third member in accordance with the criteria set out in Schedule 39 (Dispute Avoidance Board Agreement). This selection will be final and conclusive.
- (f) The role of the Dispute Avoidance Board will be to perform the functions and activities identified in the DAB Agreement (including Attachment 1).
- (g) The parties acknowledge and agree that the Dispute Avoidance Board must act honestly, impartially, without bias and independently of the Contractor and the Principal.
- (h) Nothing that the Dispute Avoidance Board does or fails to do pursuant to the purported exercise of its functions and activities under the DAB Agreement will entitle the Contractor to make any Claim against the Principal.

### **20.2 Replacement of DAB Member**

- (a) If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Principal will nominate a replacement member, who must be approved by the Contractor.

- (b) If, within 30 Business Days after a member declines to act or is unable to act on the Dispute Avoidance Board as contemplated by clause 20.2(a), a member has not been replaced by a person selected in accordance with clause 20.2(a), either party may request the Resolution Institute to select a replacement member. This selection will be final and conclusive.
- (c) Any selection made under clause 20.2(a) or 20.2(b) must be made in accordance with the criteria set out in Attachment 3 to Schedule 39 (Dispute Avoidance Board Agreement) and the Dispute Avoidance Board re-formed by the continuing and replacement members of the Dispute Avoidance Board, the Principal and the Contractor signing a replacement DAB Agreement in accordance with clause 14.3 of the DAB Agreement.

### **20.3 Termination of DAB**

- (a) The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by the Principal or the Contractor acting alone.
- (b) Unless otherwise agreed by both parties, the appointment of the Dispute Avoidance Board will terminate 1 month after the Date of Final Completion.

### **20.4 Dispute resolution**

Any dispute, difference or Claim arising out of, relating to, or in connection with this deed or the conduct of the parties in relation to this deed (including conduct before the date of this deed), or its subject matter (including any question regarding the existence, validity or termination of this deed), must be resolved in accordance with the Dispute Resolution Procedure which is set out in clause 6 of the Project Interface Deed.

### **20.5 Survive Termination**

Clause 20 will survive the termination of this deed.

## **21. Termination**

### **21.1 Notice of default**

The Principal may give a written notice to the Contractor under this clause 21.1 if the Contractor commits a substantial breach of this deed. A substantial breach includes if the Contractor:

- (a) does not commence to perform its obligations in accordance with the requirements of this deed;
- (b) does not progress the Contractor's Activities in accordance with clause 1.2;
- (c) does not comply with any Direction of the Principal's Representative made in accordance with this deed;
- (d) fails to implement or maintain a Subcontractors Proof of Payment Procedure in accordance with clause 2.9(h) or 2.9(i);
- (e) fails to comply with clause 4.4;
- (f) fails to comply with clause 5.8;
- (g) abandons the carrying out of the Contractor's Activities;
- (h) suspends the carrying out of the Contractor's Activities, other than pursuant to a Direction under clause 5.16 or 17.8(a) or an entitlement to do so under the SOP Act;
- (i) fails to obtain or maintain any Approvals for which it is responsible to obtain;
- (j) fails to provide unconditional undertakings as required under clause 8.1;
- (k) fails to provide a parent company guarantee from the Parent Company Guarantor as required under clause 8.2;
- (l) in respect of any insurance the Contractor is required to effect pursuant to clause 7:
  - (i) fails to provide evidence of the insurance as required under clause 7;
  - (ii) does not effect insurance that meets the requirements of clause 7; or

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- (iii) fails to maintain the insurance policy as required under clause 7;
- (m) breaches a term or condition of a Road Occupancy Licence;
- (n) would become liable to the Principal for liquidated damages or unliquidated damages under clause 17.9 for an amount exceeding the amount referred to in clause 17.9(k);
- (o) [REDACTED]
- (p) fails to comply with clause 8.3.

**21.2 Contents of notice**

The notice under clause 21.1 must state:

- (a) that it is a notice under clause 21.1;
- (b) the breach relied on;
- (c) that the Principal requires the Contractor to remedy the breach; and
- (d) the time and date by which the Contractor must remedy the breach, which shall not be less than [REDACTED] Business Days after the notice is given to the Contractor under clause 21.1 [REDACTED]

**21.3 Principal's rights**

Without limiting clause 21.10 [REDACTED], the Principal may by notice in writing to the Contractor:

- (a) terminate this deed; or
  - (b) exercise a Step-in Right,
- from the date stated in the notice if:
- (c) an Insolvency Event occurs to:
    - (i) the Contractor;
    - (ii) where the Contractor comprises more than one person, any one of those persons; or
    - (iii) the Parent Company Guarantor,
 which Insolvency Event will be a fundamental breach of this deed;
  - (d) the Contractor does not remedy a breach of this deed the subject of a notice under clause 21.1 within the time specified in the notice under clause 21.1;
  - (e) the Principal issues a termination notice under clause 21.3 of the Stage 1 D&C Deed (which, for the avoidance of doubt, will not constitute a termination for convenience by the Principal under clause 21.8);
  - (f) neither the Project Works nor the Temporary Works have commenced on any of the Licensed Areas by the Sunset Date, except to the extent that the failure to commence is directly caused by the Principal's breach of this deed, [REDACTED]
  - (g) the Contractor is in fundamental breach as contemplated in clause 5.10(b)(i);
  - (h) [REDACTED]

Any exercise of a Step-in Right does not in any way limit the exercise or the further exercise of the Principal's rights under clause 21.1 or 21.3.

## 21.4 Exercise of Step-in Rights by the Principal

- (a) If the Principal exercises a Step-in Right under clause 21.3(b), the Contractor must take all action the Principal believes necessary to ensure that the Principal is able to exercise the Step-in Right effectively and expeditiously, including:
  - (i) allowing the Principal to:
    - A. use materials, equipment and other things intended for the Contractor's Activities;
    - B. take possession of, and use, such of the Construction Plant and other things on or in the vicinity of the Construction Site as were used by the Contractor;
    - C. contract with the Subcontractors;
    - D. take possession of, and use, the Design Documents, without payment of compensation to the Contractor;
  - (ii) giving the Principal or its nominees access to the Construction Site and any other land on which the Contractor's Activities are being carried out; and
  - (iii) not doing anything to hinder, disrupt or prevent the Principal in exercising the Step-in Right.
- (b) On the Principal exercising a Step-in Right under clause 21.3(b), the Contractor's rights and obligations under the deed are suspended to the extent necessary to permit the Principal to exercise that Step-in Right.
- (c) If the Principal exercises a Step-in Right under clause 21.3(b), the Principal may cease to exercise that right at any time.
- (d) On the Principal ceasing to exercise a Step-in Right under clause 21.3(b):
  - (i) the Contractor must recommence performance of the obligations under the deed that were suspended;
  - (ii) the Principal must give reasonable assistance to the Contractor to ensure that the process of the Principal ceasing to exercise the Step-in Right and the Contractor recommencing to perform its obligations under the deed is effected as smoothly as possible; and
  - (iii) subject to clause 21.5, the Principal shall return any Construction Plant, Design Documents or other things used by the Principal in exercising the Step-in Right.
- (e) Except to the extent that the Contractor's obligations are suspended under clause 21.4(b), the exercise by the Principal of a Step-in Right (or the cessation of the exercise of a Step-in

Right) will not relieve the Contractor of its liabilities or responsibilities whether under the deed or otherwise according to Law.

## 21.5 Adjustment following exercise of Step-in Rights

- (a) This clause only applies if the Principal exercises a Step-in Right under clause 21.3(b).
- (b) The Principal's Representative must assess the cost incurred by the Principal arising out of or in connection with the exercise of a Step-in Right under clause 21.3(b) and must issue a certificate pursuant to this clause to the Principal and the Contractor by whichever is the earlier of:
  - (i) the Date of Construction Completion; or
  - (ii) the date the Principal ceases to exercise a Step-in Right under clause 21.4(b) certifying:
    - A. the amount of that cost, and setting out the calculations employed to arrive at that cost;
    - B. the amount which would otherwise have been paid to the Contractor if the Principal had not exercised its Step-in Right and the relevant work had been completed by the Contractor; and
    - C. the difference.
- (c) If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the Principal had not exercised the Step-in Right and the relevant work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal.
- (d) In assessing the cost incurred by the Principal within the meaning of this clause, the Principal's Representative must also include any loss, expense or damage which the Principal has suffered or incurred in connection with the circumstances that gave rise to the exercise of the Step-in Right under clause 21.3(b).
- (e) If the Contractor is indebted to the Principal in accordance with this clause, the Principal may retain Construction Plant or other things used by the Principal in exercising its Step-in Right until the debt is satisfied. If, after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.
- (f) The Principal will have no liability to the Contractor, and the Contractor will not be entitled to make any claim against the Principal, arising out of or in connection with the exercise by the Principal of a Step-in Right under clause 21.3(b).
- (g) [REDACTED] the Contractor:
  - (i) irrevocably appoints the Principal and the Principal's nominees from time to time, jointly and severally, as its attorney with full power and authority to enforce any right or perform any obligation of the Contractor for the purpose of exercising a Step-in Right under clause 21.3(b); and
  - (ii) agrees to ratify and confirm whatever action the attorney appointed by the Contractor under clause 21.5(g) takes in accordance with clauses 21.3 and 21.4.
- (h) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



## 21.6 Principal's entitlements after termination

After termination under clause 21.3(a):

- (a) the Principal will:
  - (i) be entitled to take over and use or have removed from the Construction Site or any area affected by the Contractor's Activities any Construction Plant and other things of the Contractor or Temporary Works;
  - (ii) to the extent permitted by law, not be obliged to make any further payments to the Contractor, including any money the subject of a progress claim under clause 18.2 or a payment schedule under clause 18.2;
  - (iii) be entitled to have recourse to any unconditional undertaking held under clause 8.1; and
  - (iv) be entitled to recover from the Contractor any losses, liabilities, expenses, costs and damages suffered or incurred by the Principal arising out of or in any way in connection with the breach, Insolvency Event or termination of this deed; and
- (b) property in all information, documents and Records relating to the Contractor's Activities will immediately vest in the Principal and the Contractor must:
  - (i) immediately hand over all information, documents and Records, except for one copy of such information, documents and Records which it may retain for use in connection with this deed; and
  - (ii) do all other things to enable the Principal to complete the design and construction of the Project Works and Temporary Works.

## 21.7 Repudiation by Principal

- (a) If the Principal repudiates this deed and the Contractor terminates this deed, then:
  - (i) the Principal's actions will be deemed to have been a lawful termination in accordance with clause 21.8 and the Contractor's sole rights in such circumstances will be those set out in clause 21.9; and
  - (ii) the Contractor:
    - A. will not be entitled to the payment of damages;
    - B. will not be entitled to any payment on a quantum meruit basis; and
    - C. waives all other rights it has to make a Claim in such circumstances.
- (b) This clause 21.7 will survive the termination of this deed.

## 21.8 Termination for convenience

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

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter either itself or by a third party complete the uncompleted part of the Contractor's Activities.

## 21.9 Consequences of termination for convenience

If the Principal terminates this deed under clause 21.8, without prejudice to any of the Principal other rights, entitlements or powers under this deed:

- (a) the Contractor will be entitled to payment of the following amounts:
  - (i) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the Contractor submitted a payment claim under clause 18.2 for work carried out to the date of termination;

- (ii) the cost of goods or materials or other items reasonably ordered by the Contractor for the Contractor's Activities and for which it is legally bound to pay provided that:
    - A. the value of the goods, materials and other items have not been previously paid or included in the amount payable under clause 21.9(a)(i); and
    - B. title in the goods or materials will vest in the Principal on payment;
  - (iii) the reasonable cost of removing from the Site, the Local Area Works Areas and the Temporary Works Areas and the Works all Construction Plant and other things used in the performance of the Contractor's obligations;
  - (iv) [REDACTED]
  - (v) costs reasonably incurred by the Contractor in the expectation of completing the Contractor's Activities and not included in any other payment by the Principal; and
  - (vi) [REDACTED]
- (b) property in all information, documents and Records relating to the Contractor's Activities will immediately vest in the Principal and the Contractor must:
- (i) take all steps reasonably possible to mitigate the costs referred to in clauses 21.9(a)(ii) to 21.9(a)(v); and
  - (ii) immediately hand over all information, documents and Records, except for one copy of such information, documents and Records, which it may retain for use in connection with this deed.

On payment of the amount payable under this clause 21.9 title in the goods and materials referred to in clause 21.9(a)(ii) will vest in the Principal.

The amount to which the Contractor is entitled under this clause 21.9 will be the maximum monetary compensation the Contractor is entitled to arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the Contractor for any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under this clause 21.9.

This clause 21.9 will survive the termination of this deed under clause 21.8.

## 21.10 Preservation of rights

Nothing in clause 21 or that the Principal does or fails to do pursuant to clause 21 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 22.8) which it may have where the Contractor breaches (including repudiates) this deed.

## 21.11 Consent of Sydney Airport

[REDACTED]

## 22. General

### 22.1 Cost

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this deed and the performance of its obligations in respect of this deed.



## 22.2 Taxes

Without limiting clauses 5.1 and 15.8, the Contractor must pay all Taxes which may be payable in respect of the Contractor's Activities, including any customs duty and primage applicable to imported materials, plant and equipment required for the Contractor's Activities.

## 22.3 Indemnities to survive

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

## 22.4 Variations

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

## 22.5 Interest

- (a) The Principal will pay simple interest at the Bank Bill Rate on any amount that is due and owing to the Contractor under this deed, but which is not paid when due.
- (b) This will be the Contractor's sole entitlement to interest or to damages for loss of use of, or the cost of borrowing, money.
- (c) The Contractor will pay simple interest at the Bank Bill Rate on any amount that is due and owing to the Principal under this deed, but which is not paid when due.

## 22.6 Confidentiality

- (a) Subject to clause 22.6(b), the Contractor must:
  - (i) keep confidential this deed, the Project Interface Deed and any information relating to the Contractor's Activities, the Stage 1 Contractor's Activities and any discussions concerning this deed and the Project Interface Deed; and
  - (ii) ensure that each of its officers, employees and Subcontractors complies with the terms of clause 22.6(a)(i).
- (b) The Contractor is not obliged to keep confidential any information:
  - (i) which is in the public domain through no default of the Contractor; or
  - (ii) the disclosure of which is:
    - A. required by Law;
    - B. given with the written consent of the Principal; or
    - C. given to a court in the course of proceedings to which the Contractor is a party or to a member of the Dispute Avoidance Board or an arbitrator appointed under this deed.
- (c) This clause 22.6 will survive the termination of this deed and the Project Interface Deed.
- (d) The Contractor must, within 5 Business Days of being requested by the Principal's Representative, deliver to the Principal's Representative a duly executed Confidentiality Undertaking.
- (e) The execution of a Confidentiality Undertaking under clause 22.6(d) will not limit the Contractor's obligations under this clause 22.6.

## 22.7 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this deed and the Project Interface Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

- (b) Without limiting the generality of clause 22.7(a) it is further agreed that the rights, obligations and liabilities of the Principal and the Contractor (including those relating to proportionate liability) are as specified in this deed and the Project Interface Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (c) The Contractor further agrees that:
  - (i) subject to clause 22.7(c)(ii), it will include in each Subcontract it enters into for the carrying out of the Contractor's Activities provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each Subcontract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise; and
  - (ii) it will require and ensure that each Subcontractor will include in any further contract that it enters into with others for the carrying out of the Contractor's Activities, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

## **22.8 Right of set-off**

- (a) The Principal may at any time deduct from moneys otherwise due to the Contractor:
  - (i) any debt or other moneys due from the Contractor to the Principal; or
  - (ii) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,
 whether under this deed, the Stage 1 D&C Deed or otherwise at Law.
- (b) This clause 22.8 will survive the termination of this deed.

## **22.9 The Principal may act**

- (a) If the Contractor fails to perform an obligation under this deed, then the Principal may take such action as may be necessary to remedy the failure by the Contractor and the Principal may for this purpose enter the Construction Site and any other land on which the Contractor's Activities are being carried out.
- (b) The costs, losses, expenses, damages and liability suffered or incurred by the Principal in so performing such an obligation will be a debt due and payable from the Contractor to the Principal on demand.

## **22.10 Non-reliance**

Without limiting clauses 10.2, 10.3 or 10.6 to 10.10, the Contractor:

- (a) warrants that it did not in any way rely on any information, representation, statement or documentation, whether forming part of this deed or not, made by or provided to the Contractor by the Principal or anyone on behalf of the Principal for the purposes of entering into this deed and the Project Interface Deed;
- (b) warrants that it enters into this deed and the Project Interface Deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into this deed and the Project Interface Deed relying on the warranties in clauses 22.10(a) and 22.10(b).

## **22.11 Entire agreement**

This deed, the Project Interface Deed and the Confidentiality Deed Poll embody the entire understanding of the parties and constitute the entire terms agreed on between the parties and supersede any prior agreement (whether in writing or not in writing) between the parties, in relation to the subject matter of this deed, the Project Interface Deed and the Confidentiality Deed Poll.

## 22.12 All work included

- (a) Except to the extent otherwise expressly provided in this deed, the Contractor warrants that it has allowed to, and must, without adjustment to any component of the Design Contract Sum or Construction Contract Sum, provide all services, work, labour, plant, equipment and materials necessary for the Contractor's Activities whether or not they are expressly mentioned in this deed or the Design Documentation prepared by the Contractor.
- (b) Such services, work, labour, plant, equipment and materials must be undertaken and provided by the Contractor at its own cost and will not constitute a Variation or otherwise entitle the Contractor to make a Claim.

## 22.13 Unlimited discretion

- (a) Except as expressly provided in this deed (including in clause 22.14), no procedural or substantive limitation or requirement (including any which may otherwise be implied by law) is intended to be imposed on the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 22.13(a):
  - (i) except as expressly provided in this deed (including in clause 22.14), neither the Principal nor the Principal's Representative will be:
    - A. constrained in the manner in which it exercises; or
    - B. under any obligation to exercise,any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement; and
  - (ii) any approval or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise.

## 22.14 Implied terms

Nothing in clause 22.13 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

## 22.15 Indemnity

- (a) The Contractor must indemnify the Principal against:
  - (i) any liability to or claim by any other person; and
  - (ii) all costs, losses, damages, expenses, liabilities, fines or penalties suffered or incurred by the Principal,caused by, arising out of, or in any way in connection with, the Contractor's breach of a term of this deed, but the Contractor's liability shall be reduced proportionally to the extent that the act or omission of the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Stage 1 Contractor, the Independent Verifier and the ER) contributed to the costs, losses, damages, expenses, liabilities, fines or penalties.
- (b) [REDACTED]
  - (i) [REDACTED]

(ii)

## **22.16 No partnership, joint venture or other fiduciary relationship**

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

## **22.17 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by the Principal under this deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

## **22.18 Provisions limiting or excluding liability**

Any provision of this deed which seeks to limit or exclude a liability of the Principal or the Contractor, is to be construed as doing so only to the extent permitted by Law.

## **22.19 Survivorship**

- (a) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed and any rights arising on termination shall survive, including any warranties, guarantees, licences or indemnities given under this deed.
- (b) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

## **22.20 Joint and several liability**

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

## **22.21 Joint Venture Agreement**

The Contractor must not amend the Joint Venture Agreement without the Principal's consent (not to be unreasonably withheld).

## **22.22 Severability**

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

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

## **22.23 Privacy**

If under this deed the Contractor is required to disclose Personal Information, the Contractor must:

- (a) if the disclosure is not authorised under the Privacy Acts, obtain the consent of the natural person to whom that Personal Information relates in relation to the Principal collection and

use of that Personal Information for the purposes of this deed or the purposes authorised by this deed;

- (b) ensure that the Personal Information disclosed is accurate; and
- (c) inform that natural person:
  - (i) that the Personal Information has been collected by or on behalf of the Principal; and
  - (ii) of any other matters required by the Privacy Acts.

## **22.24 Language is English**

- (a) It is agreed that the language of this deed is English and that:
  - (i) any document provided by the Contractor to the Principal under this deed, including the Design Documentation, is to be in English; and
  - (ii) any spoken communication (including any meeting) is to be in English.
- (b) If any document to be provided by the Contractor to the Principal is initially produced in a language other than English, the Contractor must ensure that:
  - (i) the document is translated by a National Accreditation Authority for Translators and Interpreters (NAATI) accredited translator;
  - (ii) the translated document is an accurate representation of the original source document, including ensuring that no information is lost or altered during the translation; and
  - (iii) evidence acceptable to the Principal's Representative that the requirements under clauses 22.24(b)(i) and 22.24(b)(ii) have been satisfied is provided with the document at the same time that the document is required to be provided.

## **22.25 Jurisdiction**

Subject to clause 6 of the Project Interface Deed, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to the 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 22.25(a).

## **22.26 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, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this deed may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this deed executed by it will not affect the validity of this deed.

## **23. Definitions and interpretation**

### **23.1 Interpretation and contra proferentum**

- (a) In this deed unless the context otherwise requires:
  - (i) the expression "person" includes an individual, body politic, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;



- (ii) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation";
- (iii) a reference to any party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking by way of novation;
- (iv) a reference to any Authority, institute, association or body is:
  - A. 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
  - B. if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (v) a reference to this deed or to any other deed, agreement, document, instrument, guideline or code of practice includes, respectively, this deed or such other deed, agreement, document, instrument, guideline or code of practice as amended, novated, supplemented, varied or replaced from time to time;
- (vi) a reference to any legislation or to any section or provision of it includes any statutory modification or re-enactment of it or any statutory provision substituted for it and all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under it;
- (vii) words importing the singular include the plural (and vice versa) and words denoting a given gender include all other genders;
- (viii) headings are for convenience only and do not affect the interpretation of this deed;
- (ix) a reference to a clause, Schedule or Exhibit is a reference to a clause, Schedule or Exhibit of or to this deed;
- (x) a reference to:
  - A. this deed includes all Schedules and the Exhibits referred to in Item 38(a) of Schedule 1 (Contract Information) and, subject to clause 17.1(e), the Contract Program; and
  - B. a reference to the SWTC includes all Appendices to the SWTC;
- (xi) 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;
- (xii) where under this deed:
  - A. a notice, certificate or direction is required to be given;
  - B. payment of money must be made;
  - C. an unconditional undertaking must be released; or
  - D. a default must be remedied,

within a stated number of days (not being stated as Business Days), then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;
- (xiii) for the purposes of:
  - A. clauses 12.2 to 12.3, any reference to "day"; and
  - B. clauses 17.5 and 17.6:
    - 1) any extension of time stated in days; or
    - 2) any reference to "day",

will exclude public holidays and include only those days which are stated in the most recent Subsidiary Contract Program submitted under clause 17.1(d) as working days;

- (xiv) for all purposes other than as set out in clauses 23.1(a)(xii) and 23.1(a)(xiii), "day" means calendar day;
- (xv) a reference to a "month" is a reference to a calendar month;
- (xvi) a reference to "\$" is to Australian currency;
- (xvii) any reference in this deed or in the Environmental Documents (or in any documents referred to in the Environmental Documents) to:
  - A. the "Project Environmental Plan", or "PEMP";
  - B. the "Construction Environmental Plan", or "CEMP";
  - C. the "Environmental Management Plan (Construction Stage)", or "EMP (Construction Stage)";
  - D. the "environmental management plan", "EMP" or "EMP(s)"; and
  - E. any other form of letters or words indicating an intention to refer to a plan relating to environmental management,

will be read as a reference to the Construction Environmental Management Plan;

- (xviii) for the avoidance of doubt, the Environmental Representative will perform the role and functions of the Environmental Representative or the ER under the Planning Approval and this deed, but all references to the Environmental Representative or ER in all other Environmental Documents and in the documents referred to in the documents comprising the Planning Approval or in the Environmental Documents, means the Environmental Manager; and
- (xix) a reference to 'fit for purpose', 'fit for the purpose', 'fit for its purpose', 'fit for their purpose', 'fitness for purpose', 'fit for the intended purpose', 'fit for its intended purpose', 'fit for their intended purpose', 'adequate and suitable for their intended purpose', 'effective and durable for its intended purpose' and 'used for their intended purpose' or similar expressions means [REDACTED].

- (b) In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party put forward or drafted this deed or any provision in it.

## 23.2 Definitions

In this deed, unless the context otherwise indicates:

**Aboriginal Participation Plan** means the plan contained in Exhibit I prepared by the Contractor for the purposes of the APIC Policy.

**Act of Prevention** means:

- (a) an act or omission (including breach of this deed) by the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Stage 1 Contractor, Sydney Airport, the Independent Verifier and the ER), but not including any act or omission that is a Reserved Act; and
- (b) subject to clauses 15.6 and 16.2, a Variation the subject of a Direction by the Principal's Representative.

**Additional Contractor Information** has the meaning in clause 10.6(d).

**Airport** means Sydney (Kingsford-Smith) Airport.

**Airport Building Controller** has the meaning set out in the Airports Act.

**Airport Building Regulations** means the *Airports (Building Control) Regulations 1996* (Cth).

**Airport Environment Officer** means the Airport Environment Officer for the Airport appointed as contemplated under the *Airports (Environment Protection) Regulations 1997* (Cth).

**Airport Law** means any Law of the Commonwealth or a State Law relating to the use, operation and maintenance of the Airport, including the Airports Act (but which excludes any Approval).

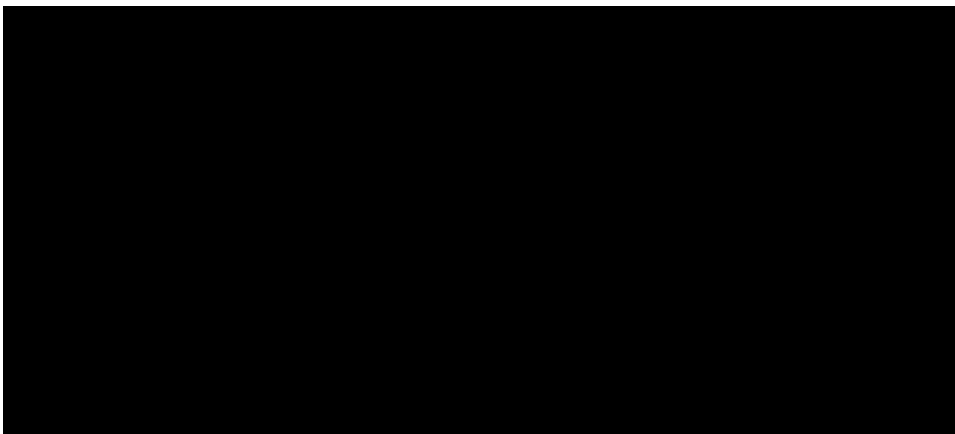
**Airport Lessee Company** has the meaning set out in the Airports Act.

**Airport Precinct Infrastructure Coordination & Operations Group** has the meaning given in section 1.8 of the SWTC.

**Airport Zone Substation** means the Sydney Airport substation located adjacent to Qantas Drive on the southern side, to the west of Lancastrian Road.

**Airports Act** means the *Airports Act 1996* (Cth) and any and all regulations under that Act (including the Airport Building Regulations).

**Airside Area** means the parts of the Airport grounds and buildings to which the non-travelling public does not have free access.



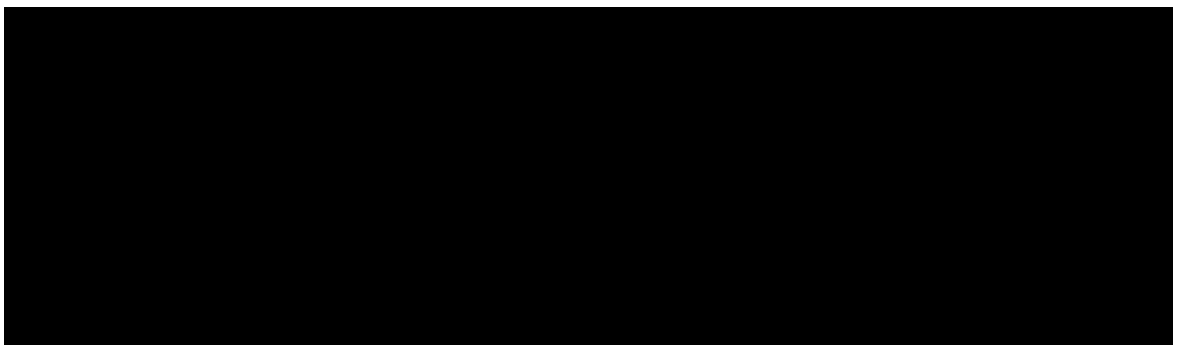
**APIC Policy** means the NSW Government Aboriginal Participation in Construction (APIC) Policy (June 2018) as amended or updated from time to time.

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

- (a) to perform or to enable the performance of the Contractor's Activities;
- (b) in connection with the Construction Site;
- (c) for the use and occupation of the Project Works including for the safe, efficient and continuous passage of vehicles after Construction Completion; or
- (d) otherwise to comply with Law,

but does not include:

- (e) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or
- (f) the exercise by the Principal of its rights under this deed.





[REDACTED]

**Approved Insurer** has the meaning given in Schedule 36 (Insurance Schedule) in the section titled "Definitions and Notes".

**ARTC** means Australian Rail Track Corporation Limited (ABN 75 081 455 754) of Ground Floor, ARTC Building, Sir Donald Bradman Drive, Mile End SA 5031.

[REDACTED]

[REDACTED]

**ARTC Works Deed** means the draft deed titled "Works Deed" between ARTC and the Principal set out in Exhibit H (Third Party Agreements) as updated in accordance with clause 5.22.

**Ausgrid** means the Trustee for Blue Op Partner Trust & Others trading as Ausgrid ABN 78 508 211 731.

**Authority** means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality, including the Airport Building Controller, the Airport Environment Officer and Sydney Airport in its capacity as Airport Lessee Company under Part 2 of the Airport Building Regulations and in its capacity as the airport operator company under the *Airports (Protection of Airspace) Regulations 1996 (Cth)*;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of, the Services, the Service Works, the Local Areas or the Local Area Works.

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

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

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average mid rate on the Reuters Monitor System Page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
  - (b) if no average mid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the Contractor and the Principal for Bank Bills having a tenor as described above.
- [REDACTED]

[REDACTED]

**Builder's Side Deed** means the deed between the Principal, the Contractor and Sydney Airport dated on or about the date of this deed and in the form set out in Schedule 49 (Builder's Side Deed).

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

**CASA** means the Civil Aviation Safety Authority.

**Category 1 Temporary Works** has the meaning given in in section 3 of the Contractor Documentation Schedule.

**Category 2 Temporary Works** has the meaning given in in section 3 of the Contractor Documentation Schedule.

**Category 3 Temporary Works** has the meaning given in in section 3 of the Contractor Documentation Schedule.

**Certified AIP Plan** means the Australian Industry Participation Plan drafted by the Principal, updated with the Contractor's details (where relevant) and certified by the relevant Authority, as set out in Exhibit M.

**Chain of Responsibility Guideline** means Exhibit J (Chain of Responsibility Guideline).

**Chain of Responsibility Management Plan** means the Chain of Responsibility Management Plan to be developed in accordance with Section 20 of Appendix C.1 of the SWTC.

**Chain of Responsibility Provisions** refers to any section of the Heavy Vehicle National Law under which the Contractor or its Subcontractors may be "a party in the Chain of Responsibility" (within the meaning given to the term "Chain of Responsibility" under the Heavy Vehicle National Law).

**Change in Airport Law** means (if it takes effect after the date of this deed):

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

compliance with which:

- (c) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Contractor's Activities or a delay to the Contractor achieving Construction Completion in accordance with clause 17.5(a),

but excludes a change in an existing Airport Law or a new Airport Law which, as at the date of this deed:

- (e) was published or of which public notice had been given (even as a possible change in an existing Airport Law or a possible new Airport Law); or
- (f) a party experienced and competent in the delivery of works and services similar to the Project Works and Temporary Works would have reasonably foreseen or anticipated,

in substantially the same form as the change in an existing Airport Law or new Airport Law eventuating after the date of this deed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

in substantially the same form as the change in an existing Code and Standard or new Code and Standard eventuating after the date of this deed.

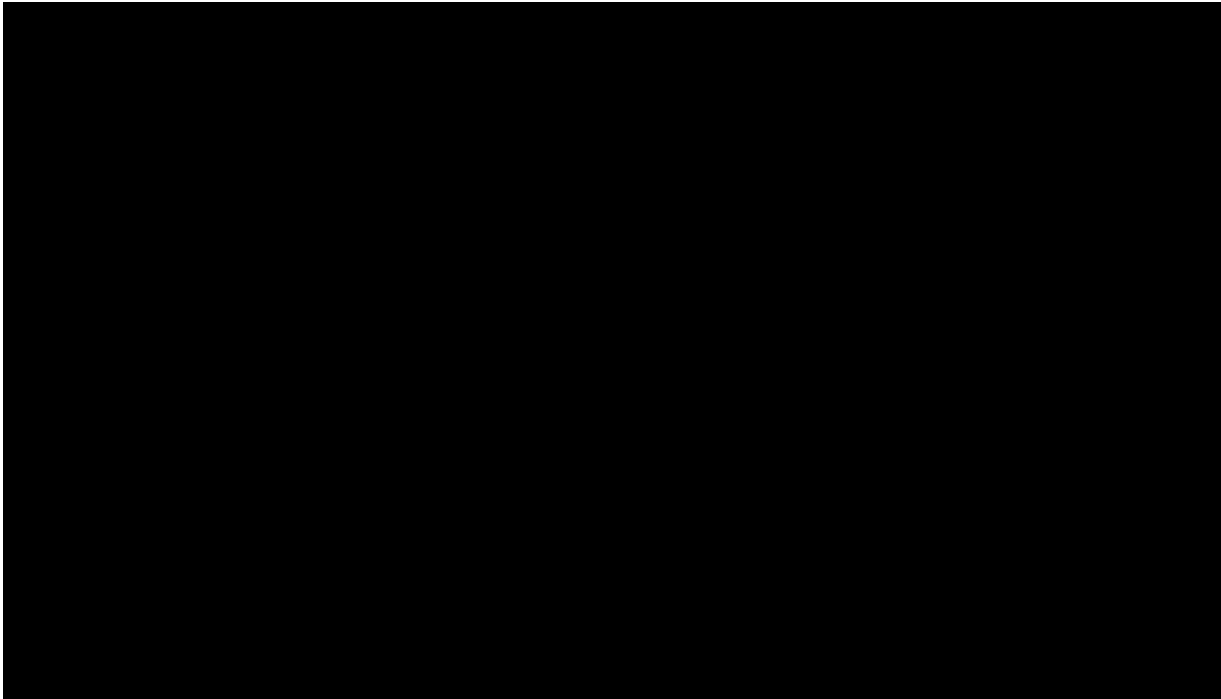
[REDACTED]

**Claim** includes any claim for an increase in the Design Contract Sum or the Construction Contract Sum, for payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, this deed;
- (b) arising out of, or in any way in connection with, any task, thing or relationship connected with the Contractor's Activities or either party's conduct prior to the date of this deed; or
- (c) otherwise at law or in equity including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution including restitution based on unjust enrichment.

[REDACTED]

[REDACTED]



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**Commonwealth** means the Commonwealth of Australia.

**Communication Management Plan** means the Project Plan referred to as the Communication Management Plan in the Appendix to the SWTC identified in Item 37(p) of Schedule 1 (Contract Information).

**Community and Stakeholder Engagement Manager** means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

**Complaint** includes, in addition to any meaning at Law, an expression of dissatisfaction, discontent, regret, pain, censure, resentment, grief, lament or fault-finding made by a complainant or their representative, either explicit or implied, verbally or in writing, which relates to:

- (a) a specific episode, occurrence or failure that has, or repeated episodes, occurrences or failures that have, resulted in an impact on any individual or group; or
- (b) the complaints handling process itself,

whether or not a response or resolution is explicitly or implicitly expected.

**Confidentiality Deed Poll** means the Confidentiality Deed Poll signed by the Contractor in favour of the Principal, a copy of which appears in the Exhibit referred to in Item 38(b) of Schedule 1 (Contract Information).

**Confidentiality Undertaking** means the confidentiality undertaking set out in Schedule 3 (Confidentiality Undertaking).

[REDACTED]

**Consequential Loss** has the meaning given in clause 6.6(a).

**Constraints and Restrictions** means the requirements contained in Sections 1- 6 and 9.4 of Appendix C.8 of the SWTC.

**Construction Completion** means the stage when:

[REDACTED]

- (b) without limiting paragraph (a):
  - (i) the Project Works are capable of being opened to the public for the continuous safe passage of vehicles; and
  - (ii) the Project Works are complete in accordance with:
    - A. the Design Documentation;
    - B. all Approvals and applicable Laws; and
    - C. all relevant Australian Standards and other applicable codes in relation to the Project Works;
- (c) the Contractor has:
  - (i) carried out and passed all tests which:
    - A. are required under this deed to be carried out and passed before Construction Completion; or
    - B. must necessarily be carried out and passed before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles;
  - (ii) obtained all Approvals that it is required under this deed to obtain before Construction Completion (including any certificate of compliance under Part 3 of the Airport Building Regulations) and provided such Approvals to the Principal's Representative;
  - (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Construction Completion;
  - (iv) not used
  - (v) not used
  - (vi) given to the Principal's Representative all documents and other information in respect of the design, construction, use, occupation, operation, maintenance and repair of the Project Works which:

- A. are required to be given to the Principal's Representative before Construction Completion; or
  - B. must necessarily be handed over before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles;
- (vii) executed a certificate in the form of Schedule 21 (Contractor's Certificate - Construction Completion) and provided it to the Principal's Representative;
- (viii) completed any works:
  - A. it is required to complete under the Third Party Agreements; or
  - B. that are to be handed over to Third Parties, in accordance with the Third Party Agreements;
- (ix) provided the Principal's Representative with any Site Audit Statements required by the Planning Approval; and
- (x) complied with clause 13A.8(a);
- (d) to the extent applicable, the Project Works comply with the requirements of the Third Party Agreements;
- (e) the Independent Verifier has executed a certificate in the form of Schedule 16 (Independent Verifier's Certificate - Construction Completion) and provided it to the Principal's Representative;
- (f) the Quality Manager has executed a certificate in the form of Schedule 10 (Quality Manager's Certificate - Construction Completion/Final Completion) and provided it to the Principal's Representative;
- (g) the Contractor has provided the final Operations and Maintenance Plan in accordance with clause 3.4, but not including the as-built documentation (including the as-built durability assessment reports, as-built drawings and as-built records) in accordance with the requirements of the deed, including section 3.8 of the Contractor Documentation Schedule; and
- (h) not used
- (i) not used
- (j) the Contractor has done everything else which it is required to do before Construction Completion.

**Construction Compliance Unit** has the meaning given in clause 5.12(d).

**Construction Compound** means the Licensed Areas identified as construction compounds in the 'Site Access Schedule (Stage 3 Airport Land)' (which forms part of the Site Access Schedule).

**Construction Contract Sum** means the sum specified in Item 2 of Schedule 1 (Contract Information), as adjusted in accordance with this deed.

**Construction Environmental Management Plans** means the Project Plans referred to as the Environmental Management Plans in the Appendix to of the SWTC identified in Item 37(q) of Schedule 1 (Contract Information).

**Construction Licence Terms** means the terms set out in Schedule 47 (Construction Licence Terms).

**Construction Management Plan** means the Project Plan referred to as the Construction Management Plan in the Appendix to the SWTC identified in Item 37(r) of Schedule 1 (Contract Information).

**Construction Manager** means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

**Construction Plant** means equipment, materials, plant and things used in the carrying out the Contractor's Activities but not forming part of the Project Works.



**Construction Site** means the Site, the Local Area Works Areas, the Temporary Works Areas and any Extra Land.

**Contamination:**

- (a) means any waste, Pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste, or any constituent of any such substance or waste in any water, soil or in the air including acid sulphate soils; and
- (b) without limiting paragraph (a), has the meaning given to "Contamination" in the *Contaminated Land Management Act 1997* (NSW).

**Contract Program** means the overall program for design and construction activities which is the Exhibit referred to in Item 38(c) of Schedule 1 (Contract Information) as updated in accordance with clause 17.1.

**Contractor** means the contractor specified in Item 1 of Schedule 1 (Contract Information).

**Contractor Documentation Schedule** means the Appendix to the SWTC identified in Item 37(t) of Schedule 1 (Contract Information).

**Contractor Statement and Supporting Statement** means a contractor statement and a supporting statement in the form set out in Schedule 5 (Contractor Statement and Supporting Statement).

**Contractor's Activities** means all things and tasks which the Contractor is, or may be, required to carry out or do under this deed to comply with its obligations under this deed to design and construct the Project Works and Temporary Works, whether that work is undertaken at the Site or at any other location.

**Contractor's Concept Design** means the concept design and concept urban design prepared by the Contractor and included in the Appendix to the SWTC identified in Item 37(s) of Schedule 1 (Contract Information).

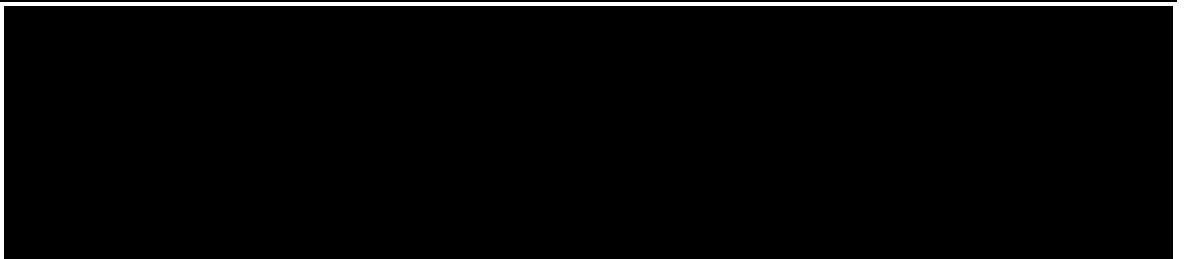
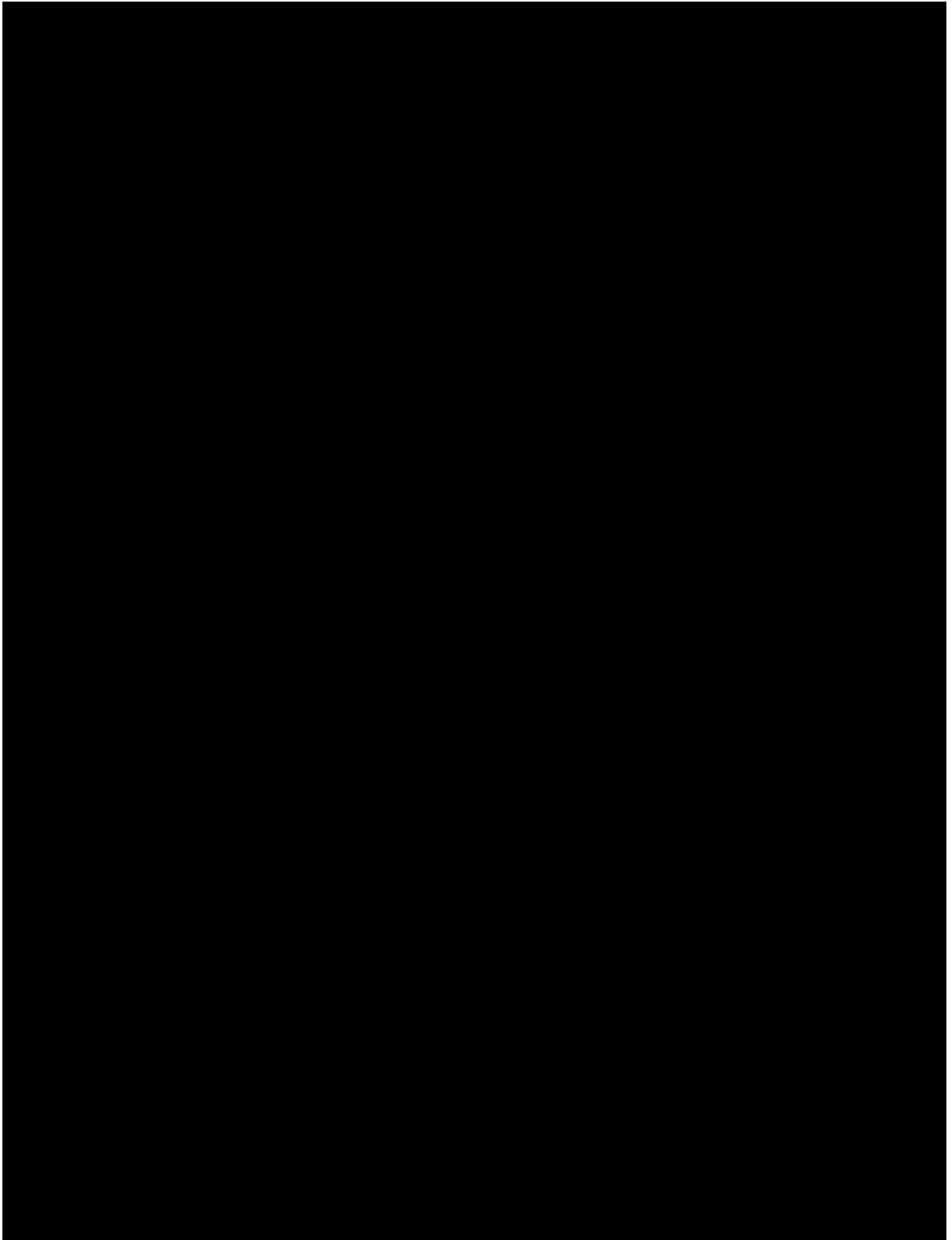
**Control** has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

[REDACTED]

[REDACTED]

[REDACTED]





[REDACTED]

[REDACTED]

**Crown Building Work** has the meaning in section 6.1 of the *Environmental Planning and Assessment Act 1979* (NSW).

**D&C Payment Schedule** means Schedule 2 (D&C Payment Schedule).

**DAB Agreement** means the agreement entered into between the Contractor, the Principal and each member of the Dispute Avoidance Board and substantially in the form of Schedule 39 (Dispute Avoidance Board Agreement).

**Date for Construction Completion** means:

- (a) as at the date of this deed, the date specified in Item 3 of Schedule 1 (Contract Information); or
- (b) where an extension of time for Construction Completion is granted by the Principal's Representative or allowed in any arbitration or litigation proceedings, the date resulting therefrom.

[REDACTED]

**Date of Construction Completion** means:

- (a) the date notified in accordance with clause 17.10(g)(i) as the date Construction Completion was achieved; or
- (b) where another date is determined in any arbitration or litigation proceedings as the date on which Construction Completion was achieved, that date.

**Date of Final Completion** means:

- (a) the date notified in accordance with clause 17.15(e)(i) as the date Final Completion was achieved; or
- (b) where another date is determined in any arbitration or litigation proceedings as the date on which Final Completion was achieved, that date.

**Date of Opening Completion** means the date (if any) notified in accordance with clause 17.12 as the date on which the Works are to be opened to the public for the continuous passage of vehicles.

**Daywork** means a Variation carried out by the Contractor which is valued on the basis of daily job time and cost records for workmen, constructional plant, materials, services and other costs as provided in the D&C Payment Schedule.

**Deed of Appointment of ER** means the deed entered into between the Contractor, the Principal and the Environmental Representative and substantially in the form of Schedule 30 (Deed of Appointment of ER).

**Deed of Appointment of Independent Verifier** means the deed to be entered into between the Contractor, the Principal, Sydney Airport and the Independent Verifier substantially in the form of Exhibit T (Deed of Appointment of Independent Verifier).

**Defect** means any:

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

that is not in accordance with the requirements of this deed, [REDACTED]

**Defects Correction Period** means a period referred to in clauses 16.6, 16.7(a), 16.8(a) or 16.9.

**Design Contract Sum** means the sum specified in Item 4 of Schedule 1 (Contract Information), as adjusted in accordance with this deed.

**Design Documentation** means all:

- (a) items, materials or documentation (including design standards, design reports, durability reports, specifications, models, samples, calculations, drawings, shop drawings, digital records and all other relevant data) in computer readable and written forms, or stored by any other means, which are required for the performance of the Contractor's Activities, or which the Contractor or any other person creates or develops in performing the Contractor's Activities (including the design of Temporary Works); and
- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Activities.

**Design Manager** means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

**Design Package** has the meaning given in section 3 of the Contractor Documentation Schedule.

**Design Plan** means the Project Plan referred to as the Design Plan in the Appendix to the Scope of the Works and Technical Criteria identified in Item 37(u) of Schedule 1 (Contract Information).

**Developed Concept Design Stage** is the design stage described in section 3 of the Contractor Documentation Schedule.

**Difference in Conditions** has the meaning given in clause 5.22(b)(iv).

**Direct Cost** means:

- (a) the amount of wages and allowances paid or payable by the Contractor at rates as agreed by the Contractor and the Principal's Representative or, if no agreement, at reasonable rates as stated by the Principal's Representative;
- (b) the labour on-costs paid or payable by the Contractor in accordance with any statute or award applicable to labour additional to the wages paid or payable;
- (c) the amount of hire charges in respect of constructional plant used on the work in accordance with such hiring rates and conditions as may be agreed by the Principal's Representative and the Contractor or, if no agreement, in accordance with reasonable rates and conditions as stated by the Principal's Representative;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Direction** means any certificate, decision, demand, determination, direction, instruction, order, rejection, request, requirement or a Principal's Representative's Statement.

**Discriminatory Change in Law** means (if it takes effect after the date of this deed):

- (a) a change in an existing State Law (other than a change in an Approval);



(b) a new State Law (other than a new Approval),  
which directly affects the interpretation or application of the first mentioned existing State Law, and  
which specifically and only affects Gateway and compliance with which:

- (c) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Contractor's Activities or a delay to the Contractor achieving Construction Completion in accordance with clause 17.5(a),

but excludes a change in an existing State Law or a new State Law which, as at the date of this deed:

- (e) was published or of which public notice had been given (even as a possible change in an existing State Law or a possible new State Law); or
- (f) a party experienced and competent in the delivery of works and services similar to the Project Works and Temporary Works would have reasonably foreseen or anticipated,

in substantially the same form as the change in an existing State Law or new State Law eventuating after the date of this deed.

**Dispute** has the meaning given in clause 6 of the Project Interface Deed.

**Dispute Avoidance Board** means the board consisting of the members nominated in accordance with clause 20.1 or their replacements referred to in clause 20.2.

**Dispute Resolution Procedure** means the procedure for resolving Disputes set out in clause 6 of the Project Interface Deed.

**Draft Third Party Agreement** has the meaning given in clause 5.22(b)(i).

**Easements** means the easements, restrictions on use, covenants, agreements, affectations, or other similar arrangements, together with any leases, sub-leases, licences and rights and privileges, to benefit or burden the Construction Site that are registered on title of the Construction Site (excluding any Extra Land) at the date of this deed.

**Environment** includes all aspects of the surroundings of human beings including:

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

**Environment Strategy** means the environment strategy (as defined in the Airports Act) for the Airport.

**Environmental Documents** means the Planning Approval and the Appendix to the SWTC identified in Item 37(v) of Schedule 1 (Contract Information).

**Environmental Laws** means any and all Laws relating to the protection of the Environment, and includes the *Airports (Environment Protection) Regulations 1997 (Cth)* and any Environmental Standards.

**Environmental Manager** means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

**Environmental Representative** or **ER** means the person specified in Item 5 of Schedule 1 (Contract Information) or such other person(s) as may be engaged by the Principal and the Contractor in accordance with a Deed of Appointment of ER.

**Environmental Standard** means all codes, standards, specifications, policies and guidelines relating to the protection of the Environment that must be complied with by Law and that are:

- (a) issued by the New South Wales Environment Protection Authority; or

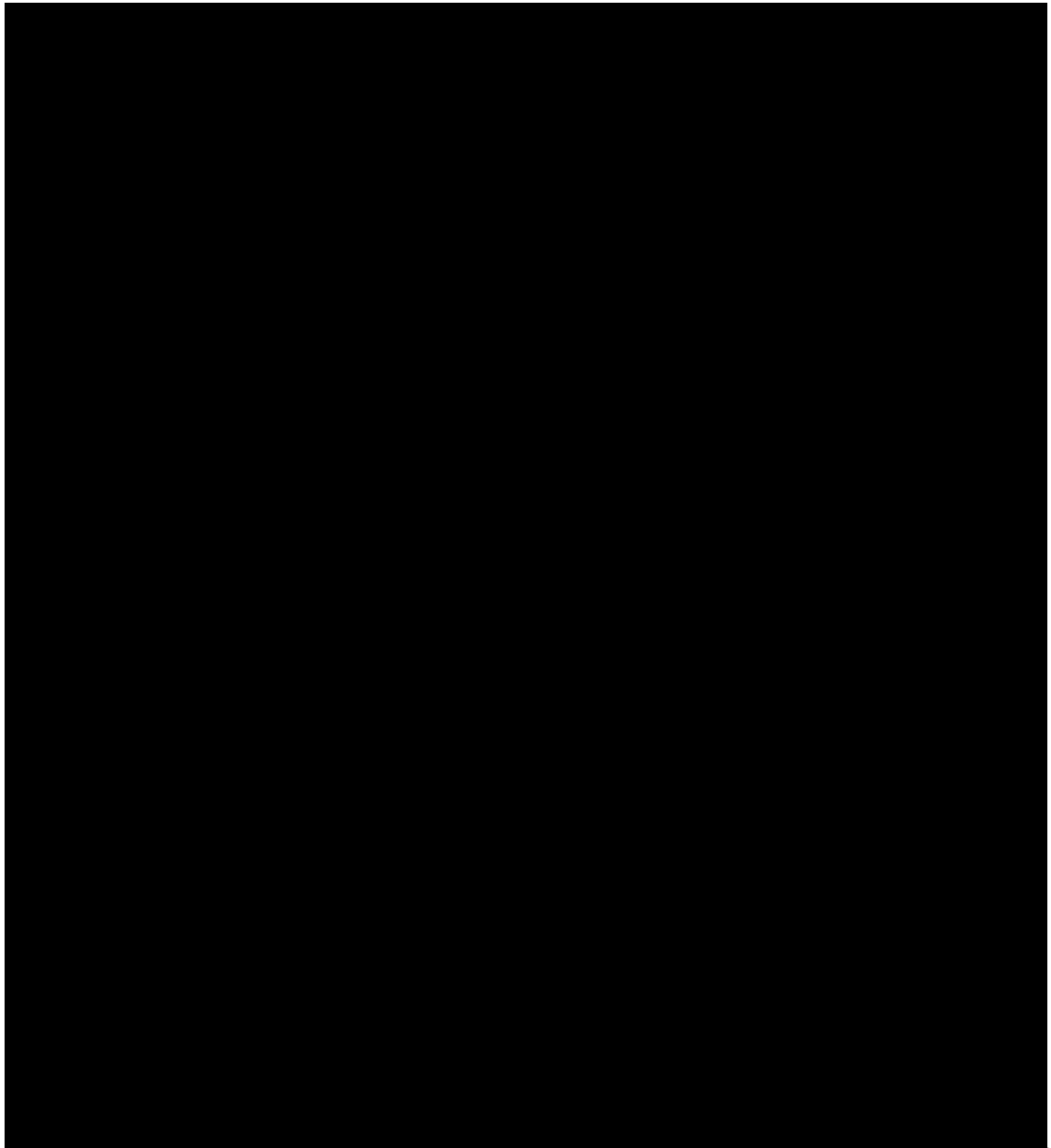
(b) issued by an Authority that regulate PFAS.

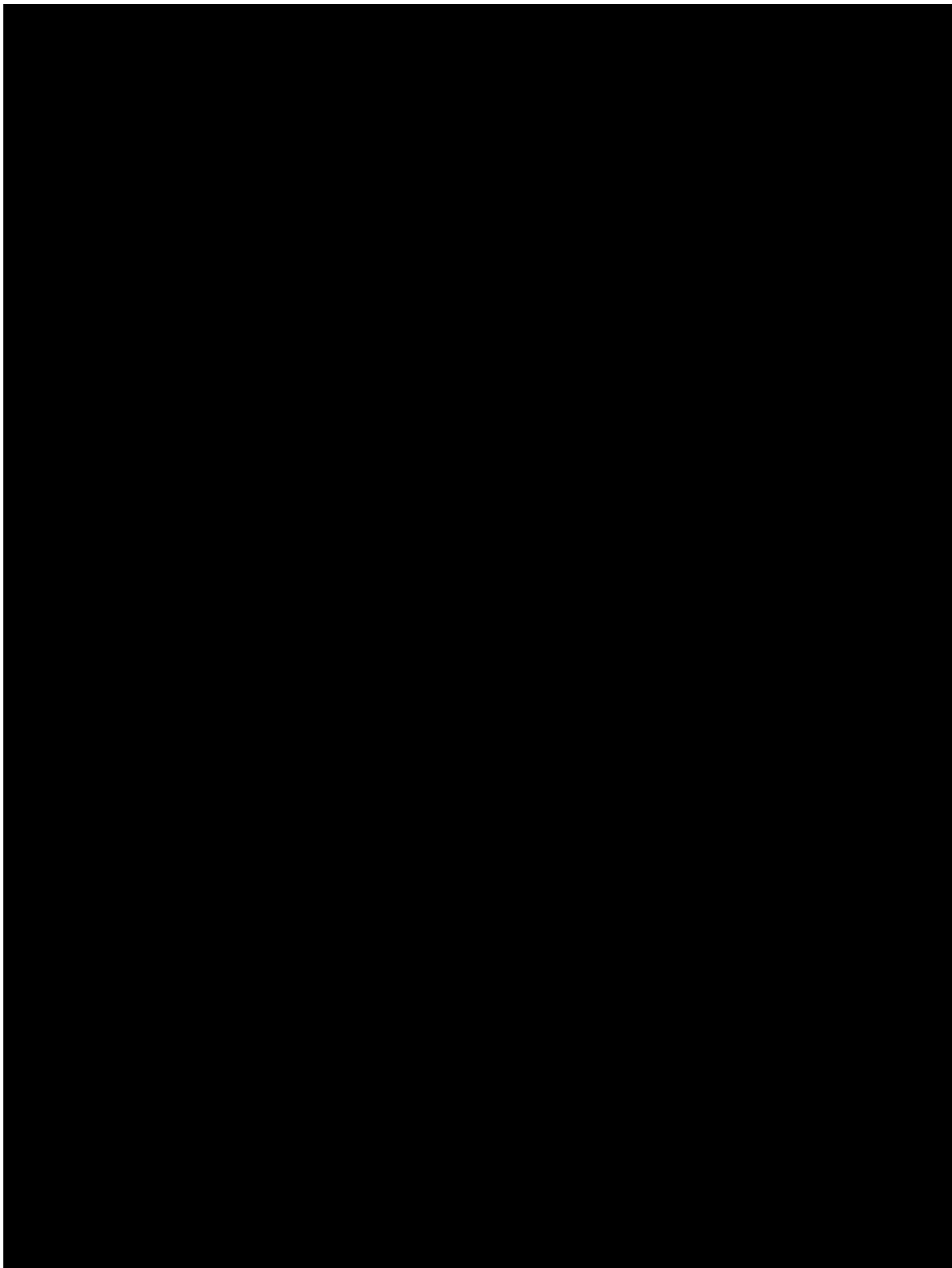
**Evaluation Meetings** has the meaning in clause 3(a) of Schedule 40 (Workshops and Meetings).

**Excepted Risks** means:

- (a) any act, neglect, default or omission of the Principal, the Principal's Representative, an Other Contractor, Sydney Airport, a Third Party or their employees, consultants, agents or contractors (but excluding the Stage 1 Contractor);
- (b) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents; or
- (d) any use of a part of the Works or a Local Area prior to Opening Completion or Construction Completion under clause 17.11(a) (but excluding such use by the Stage 1 Contractor).

**Excluded Scope** has the meaning given in clause 5.25(a).





**Existing Functions** has the meaning given in clause 12.1(c).

**Extra Land** has the meaning in clause 9.6(a)(i)A.

**Final Completion** means the stage when:

- (a) the last Defects Correction Period has expired;
- (b) the Contractor has:
  - (i) carried out and passed all tests which:
    - A. are required under this deed to be carried out and passed before Final Completion; or

- B. must necessarily be carried out and passed to verify that the Works are in the condition this deed requires them to be in at Final Completion;
- (ii) obtained all Approvals that it is required under this deed to obtain but which were not obtained before Construction Completion, and provided such Approvals to the Principal's Representative;
- (iii) complied with all performance requirements under this deed which must be certified, verified or otherwise achieved before Final Completion;
- (iv) given to the Principal's Representative all documents or other information in respect of the design, construction, use, occupation, maintenance and repair of the Works which are required to be handed over to the Principal before Final Completion; and
- (v) executed a certificate in the form of Schedule 22 (Contractor's Certificate - Final Completion) and provided it to the Principal's Representative;
- (c) the Quality Manager has executed a certificate in the form of Schedule 10 (Quality Manager's Certificate - Construction Completion/Final Completion) and provided it to the Principal's Representative;
- (d) the Quality Manager has executed a certificate in the form of Schedule 11 (Quality Manager's Certificate - Final Completion/Last Defects Correction Period) and provided it to the Principal's Representative;
- (e) the Independent Verifier has executed a certificate in the form of Schedule 18 (Independent Verifier's Certificate - Final Completion) and provided it to the Principal's Representative; and
- (f) the Contractor has done everything else which it is required to do before Final Completion.

**Final Design Documentation Stage** is the design stage described in section 3 of the Contractor Documentation Schedule.

**Force Majeure Event** means:

- (a) earthquake;
- (b) war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents,

but excludes any act of vandalism.

**Foreign Sourced Design** means any part of the Design Documentation that is prepared or developed at or from a location that is outside of Australia.

**Gateway** means the Sydney Gateway project, a motorway-grade road project connecting the St Peters Interchange to the Airport via Airport Drive and Qantas Drive, as further detailed in the SWTC.

**Gateway Project Control Group** means the group so entitled established under the Gateway Project Deed.

**Gateway Project Deed** means the deed titled Gateway Project Deed between Sydney Airport, Roads and Maritime Services (ABN 76 236 371 088) and Transport for NSW ABN 18 804 239 602 dated [REDACTED]

**Gateway Project Operations Group** means the group so entitled established under the Gateway Project Deed.

[REDACTED]



**Greater Sydney Division** means the operational division called Greater Sydney which forms part of Transport for NSW.

**GST, GST law** and other terms used in clause 18.7 have the same meanings assigned to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except GST law also includes any applicable rulings and any reference to GST payable by the Supplier includes GST payable by the representative member of any GST group of which the Supplier is a member.

**GST Amount** has the meaning in clause 18.7(c)(i).

**GST Exclusive Consideration** has the meaning in clause 18.7(c)(i).

**Handback Condition** means, in relation to each area of the Construction Site (excluding the Extra Land) identified in the Site Access Schedule, the condition in which the Contractor must hand back that area as set out in the Site Access Schedule.

[REDACTED]

**Heavy Vehicle National Law** means the:

- (a) *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) and as it applies through being adopted in other States and Territories, including through, *inter alia*, the *Heavy Vehicle National Law* (NSW) within the meaning of that term under the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW), as amended, reproduced or updated from time to time; and
- (b) regulations in force under the Schedule to the *Heavy Vehicle National Law 2012* (Qld) and as they apply through being adopted in other States and Territories, including through, *inter alia*, the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) as amended, reproduced or updated from time to time.

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release in accordance with the requirements of the SWTC.

[REDACTED]

**Independent Checking Engineer** means the person or persons as may be engaged from time to time by the Contractor to perform the role of the Independent Checking Engineer, as approved by the Principal.

**Independent Verifier** means the person specified in Item 10 of Schedule 1 (Contract Information) or such other person(s) as may be engaged by the Principal and the Contractor and Sydney Airport in accordance with the Deed of Appointment of Independent Verifier.

**Information Documents** means the following information, data, documents or material in any format or medium including any electronic form:

- (a) the documents specified in Exhibit P (Information Documents);
- (b) all other information or documents provided to the Contractor prior to, on or after the date of this deed and which were expressly stated to be Information Documents;
- (c) all other information or documents issued or made available by, or on behalf of, the Principal or the NSW Government to the Contractor prior to, on or after the date of this deed in connection with this deed, the Project Works, the Temporary Works, the Contractor's Activities or the Gateway, but that do not form part of this deed; and
- (d) any other information or document which is referred to or incorporated by reference in information or a document referred to in paragraphs (a), (b) or (c),

and includes any documents that are "Information Documents" pursuant to the Confidentiality Deed Poll, but does not include any information or document that is otherwise expressly stated to form part of this deed.

**Initial Defects Correction Period** has the meaning given in clause 16.6(a).

**Initial LAW Defects Correction Period** has the meaning given in clause 16.7(a)(i).

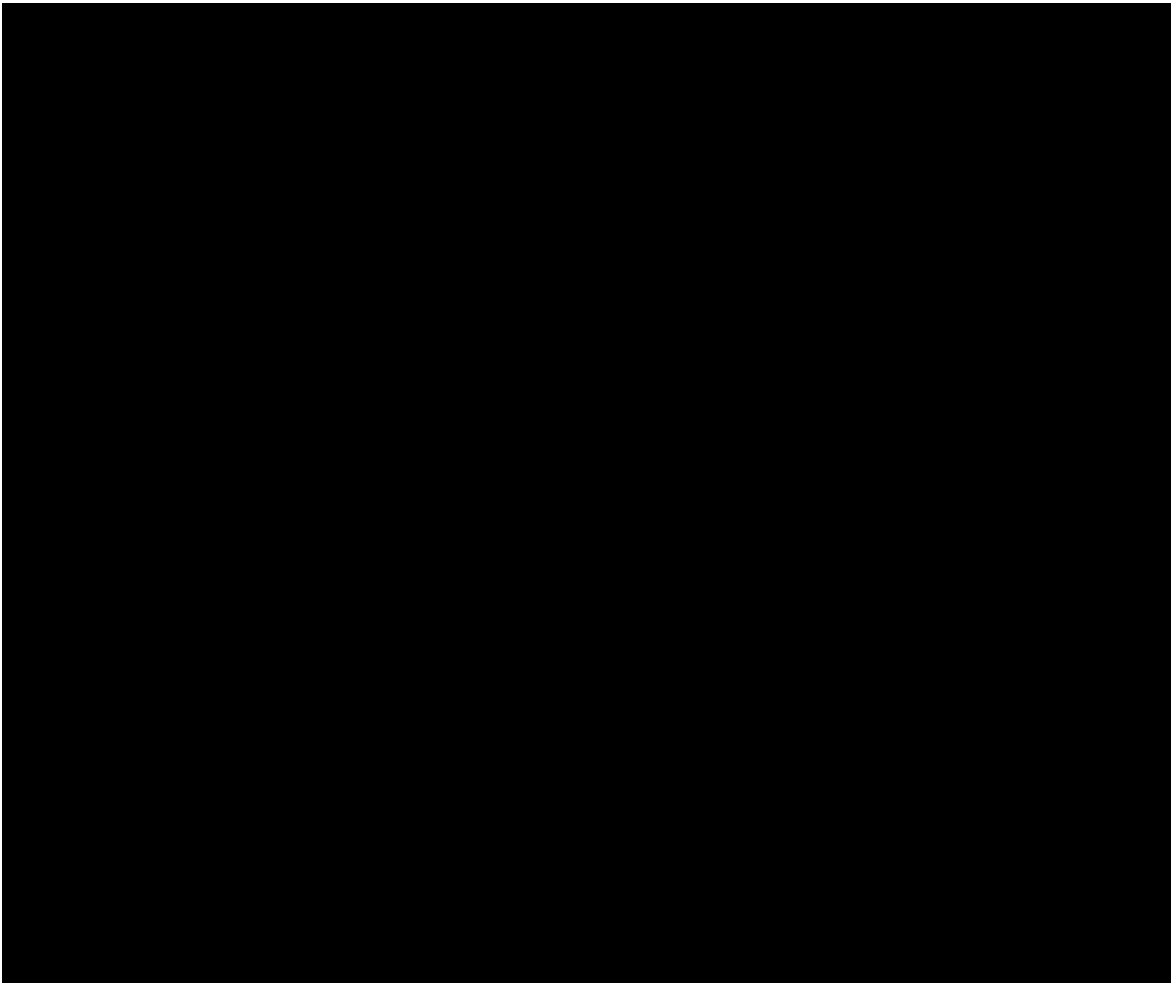
**Initial Payment** means the amount defined in clause 18.1A(b).

**Initial PW Defects Correction Period** has the meaning given in clause 16.9(a).

**Initial SW Defects Correction Period** has the meaning given in clause 16.8(a)(i).

**Insolvency Event** means:

- (a) a person informs the other party in writing, or its creditors generally, that the person is insolvent or is unable to proceed with its obligations under this deed for financial reasons;
- (b) execution is levied against a person by a creditor; or
- (c) in relation to a corporation any one of the following:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
  - (ii) the corporation entering a deed of company arrangement with creditors;
  - (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
  - (iv) an application is made to a court for the winding up of the corporation and not stayed within 10 Business Days;
  - (v) a winding up order is made in respect of the corporation;
  - (vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members voluntary winding-up); or
  - (vii) a mortgagee of any property of the corporation takes possession of that property.



**Intellectual Property Right** means any copyright, patent or registered or unregistered rights including design, circuit layouts, trade marks or name or other protected right.

[REDACTED]

[REDACTED]

**Issued for Construction Design Documentation or IFC Design**

**Documentation** is the design stage described in section 3 of the Contractor Documentation Schedule.

**Jemena** means SGSP (Australia) Assets Pty Ltd ABN 60 126 327 624.

**Joint Venture Agreement** means the deed entered into between John Holland Pty Ltd (ABN 11 004 282 268) and Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187), a copy of which is set out in Exhibit S (Joint Venture Agreement).

[REDACTED]

**Law** means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation (including ordinances, instruments, codes of practice, policy and statutory guidance);
- (b) common law;
- (c) Approvals (including any condition or requirement under them); and

[REDACTED]

**Legal Opinion** means a legal opinion from lawyers to a Parent Company Guarantor, authorised to practise in the place of incorporation of the Parent Company Guarantor, stating that the guarantee provided under clause 8.2(b) is binding and enforceable against the Parent Company Guarantor:

- (a) which states that it may be relied upon by the Principal; and
- (b) in a form reasonably satisfactory to the Principal.

**Licensed Area** means the parts of the Construction Site identified in the 'Site Access Schedule (Stage 3 Airport Land)' (which forms part of the Site Access Schedule).

**Local Areas** means all:

- (a) Local Roads; and
- (b) public spaces, parks, pedestrian ways, pedal cycle paths that:
  - (i) cross;
  - (ii) are adjacent to;
  - (iii) connect to;
  - (iv) are made redundant by; or

(v) are in any way affected by,  
the Works, Property Works, Service Works or Temporary Works.

**Local Area Works** means the construction, modification, reinstatement and improvement of Local Areas which the Contractor must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed, as specified in the sections of the SWTC identified in Item 37(w) of Schedule 1 (Contract Information) which, for the avoidance of doubt, does not include any works to be carried out on the Site.

**Local Area Works Areas** means the areas described as such in the Site Access Schedule.

**Local Roads** means all local roads, service roads, state highways, regional roads, main roads and any roads on land owned by the Commonwealth, including their associated road reserves, that:

- (a) cross;
- (b) are adjacent to;
- (c) intersect;
- (d) connect to;
- (e) are made redundant by;
- (f) become service roads as part of the road networks as a consequence of; or
- (g) are in any way affected by,

the Works, Property Works, Service Works or Temporary Works.

**Long Service Corporation** means the corporation established under the *Long Service Corporation Act 2010* (NSW).

**Long Service Payments Act** means the *Building and Construction Industry Long Service Payments Act 1986* (NSW).

**Major Development Plan** means the major development plan (as defined in the Airports Act) for the Gateway which is the Exhibit referred to in Item 38(d) of Schedule 1 (Contract Information).

[REDACTED]

**Management Review Group** means the group referred to in clause 5 of Schedule 40 (Workshops and Meetings).

[REDACTED]

[REDACTED]

**Minimum Aboriginal Participation Spend** means the amount identified in Item 16 of Schedule 1 (Contract Information). It represents [REDACTED] of the Project Contract Sum (excluding GST) at the date of this deed less allowable exclusions, in line with the APIC Policy goals.

Allowable exclusions are costs incurred by the Contractor over which it has little or no control. For example:

- (a) specialised capital equipment (for example tunnel exhaust fans, tunnel boring machines, batch plants); and
  - (b) imported materials;
- where no suitable Australian supplier exists in the market, and
- (c) value of existing and new non- contract/project specific assets apportioned to the contract/project, where they are used in delivery of the Project Works;
  - (d) property i.e. acquisitions, indirect leasing costs, extra land, adjustments; and
  - (e) non-construction related services,

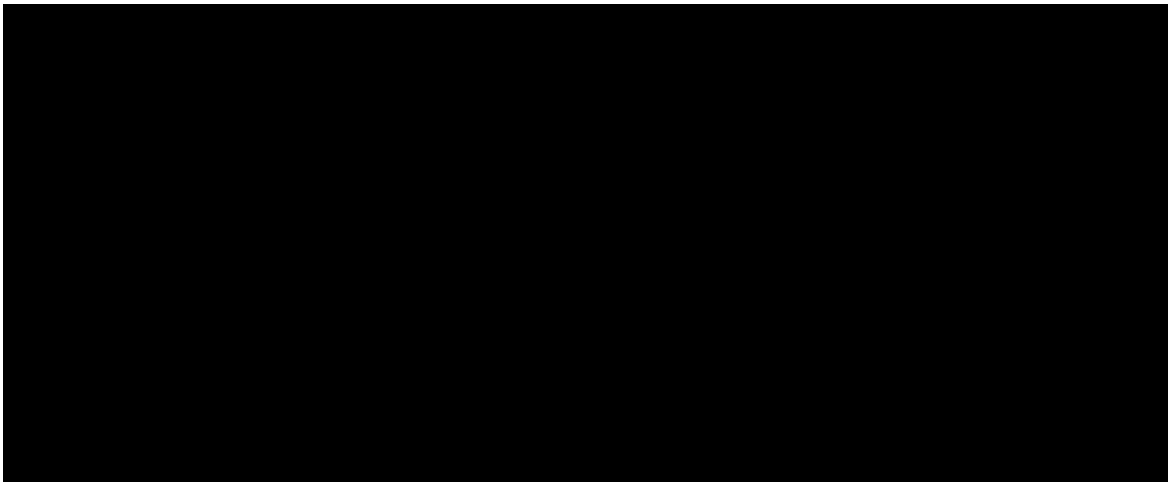
as agreed in writing by the Principal and the Contractor or if not agreed as directed by the Principal.

**National Construction Code** means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

**NC Actual Amounts** means the actual amounts properly payable by the Contractor to each Authority in respect of Non-Contestable Work:

- (a) as evidenced by invoices provided by the Contractor to the Principal's Representative and any other information reasonably required by the Principal's Representative; and
- (b) excluding any amounts payable as a result of or in connection with:
  - (i) Variations approved under clause 15.6(d) (unless otherwise agreed by the Principal's Representative in writing);
  - (ii) Defects;
  - (iii) a failure by the Contractor to manage the Non-Contestable Work in an efficient manner; or
  - (iv) a breach by the Contractor of this deed.

**NC Provisional Amounts** has the meaning given in clause 18.10(a).



**New Work Method** has the meaning given in clause 13.5.

**Non-Contestable Work** has the meaning given in clause 18.10.

**Notice of Dispute** has the meaning given in clause 6.2 of the Project Interface Deed.

**Notifiable Incident** has the meaning given under the WHS Laws.

**NSW Guidelines** means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement dated July 2013, updated in September 2017 and any practice direction current at the date of this deed.



[REDACTED]

**Opening Completion** means the stage when:

- (a) the Project Works are complete in accordance with this deed except for minor Defects which:
  - (i) do not prevent the Project Works from being reasonably capable of being used for their intended purpose;
  - (ii) can be corrected without prejudicing the convenient or intended use of the Project Works; and
  - (iii) the Contractor has reasonable grounds for not promptly rectifying;
- (b) without limiting paragraph (a), the Project Works are capable of being opened to the public for the safe, efficient and continuous passage of vehicles; and
- (c) the Contractor has carried out and passed all tests which must necessarily be carried out and passed before the Project Works are opened to the public for the safe, efficient and continuous passage of vehicles.

**Operations and Maintenance Plan** means the Project Plan referred to as the Operations and Maintenance Plan in the Appendix to the SWTC identified in Item 37(x) of Schedule 1 (Contract Information), as developed in accordance with clause 3.4, including the Project Plans incorporated into it as required by clause 3.3(m).

**Other Contractors** means any contractor, consultant, tradesperson, supplier or other person engaged to do work on or about the Construction Site including any such person engaged by the Principal, Sydney Airport, a Third Party or an Authority but excluding the Contractor, the Independent Verifier and the ER.

**Other Contractors' Activities** means any activities undertaken by an Other Contractor which interface with or affect, or are affected by, the Contractor's Activities, the Project Works or the Temporary Works.

[REDACTED]

[REDACTED]

**Parcel** means a parcel of land and property of which the Principal is not the registered proprietor and in relation to which, or on which, Property Works are to be undertaken.

**Parent Company Guarantor** means the person or persons specified in Item 7 of Schedule 1 (Contract Information) or any successor to such person pursuant to clause 4.6.

**Payment Constraints** has the meaning provided in the relevant section of the D&C Payment Schedule.

**PC Contractor Entity** means the person specified in Item 7A of Schedule 1 (Contract Information).

**PDCS** means the project document control system, being the electronic platform specified in Item 20 of Schedule 1 (Contract Information).

**Performance Evaluation Record Forms** means the forms set out in Schedule 32 (Performance Evaluation Record Forms).

**Personal Information** has the meaning given to that term in the Privacy Acts.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

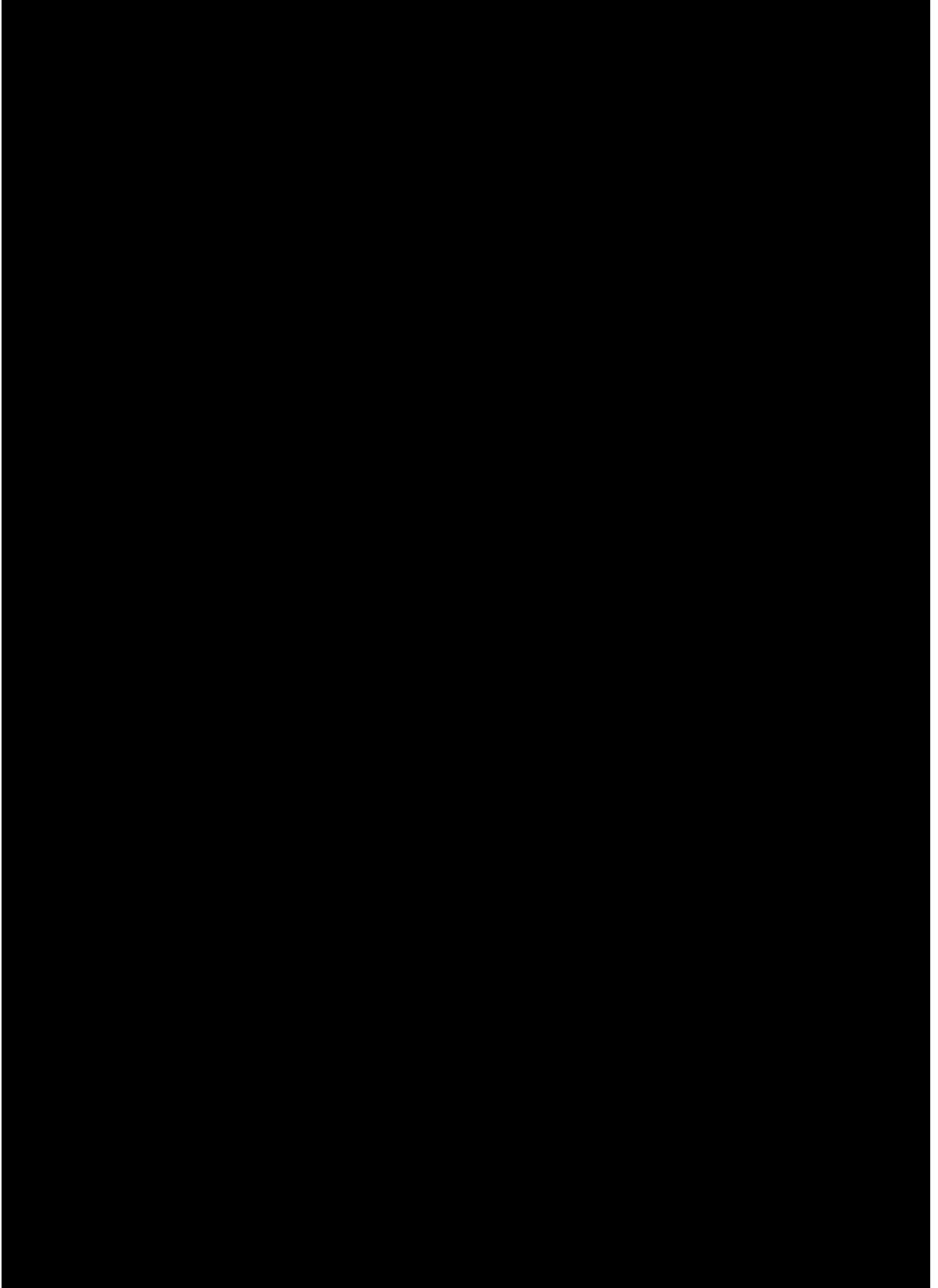


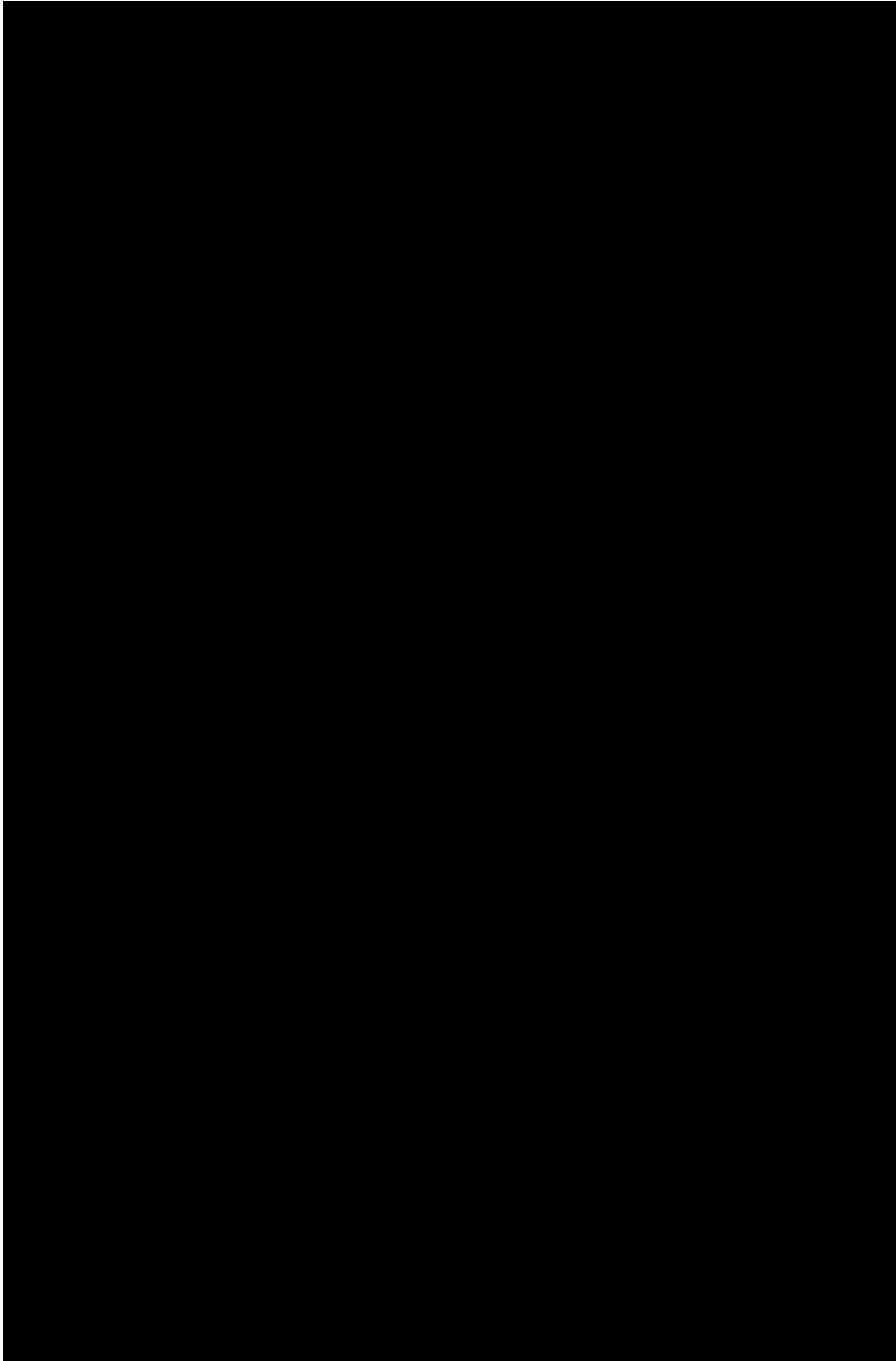


**Principal's Representative** means:

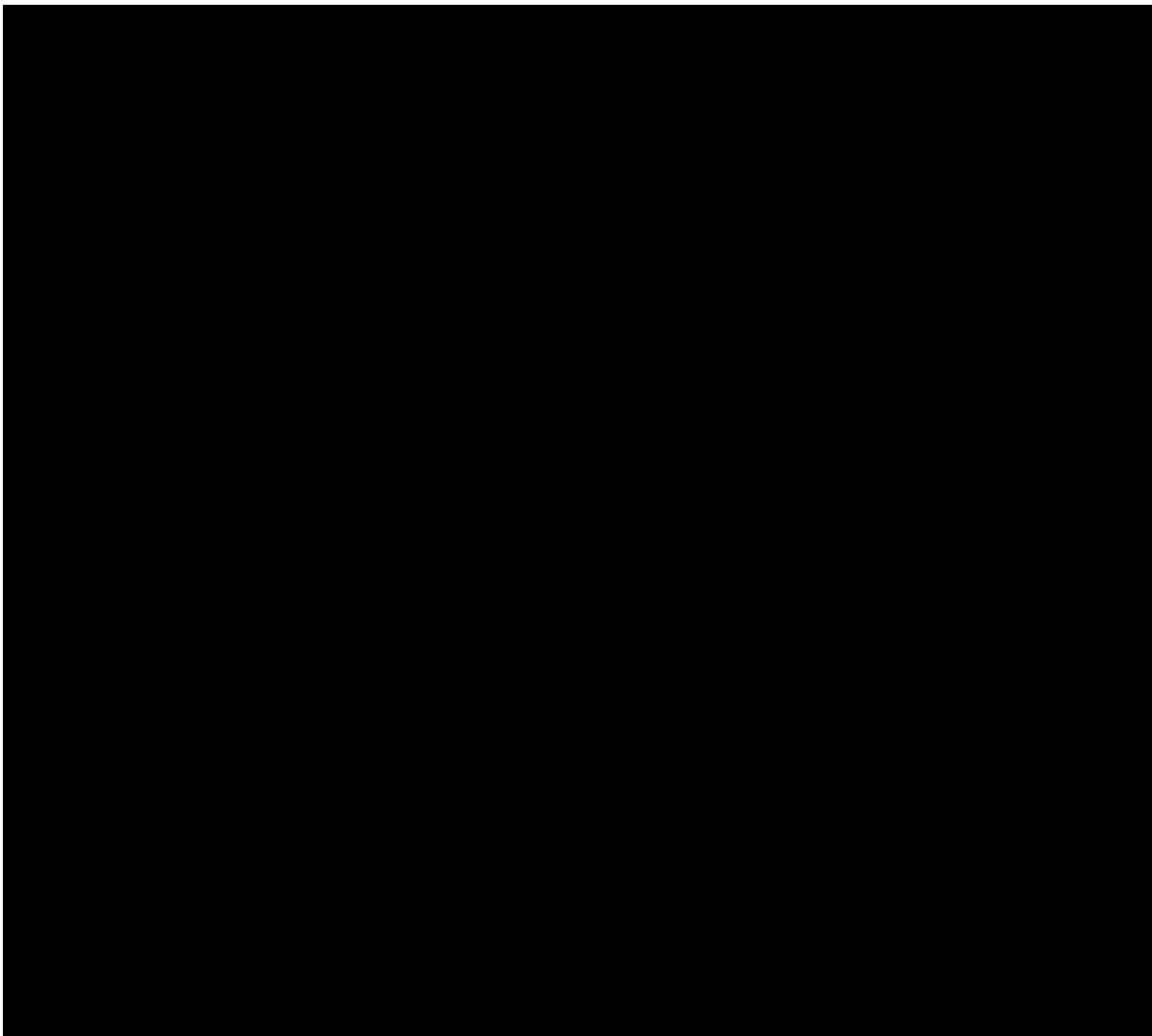
- (a) the person appointed by the Principal under clause 2.1(a)(i); or
- (b) any other person appointed from time to time by the Principal under clause 2.1(a)(ii).

**Principal's Representative's Statement** means any one of the following statements by the Principal's Representative:





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**Principal's Surveillance Officer** has the meaning in clause 2.1(c).

**Privacy Acts** means:

- (a) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (b) the *Health Records and Information Privacy Act 2002* (NSW).

**Progress Payment** has the meaning in clause 18.2(e)(ii).

**Project Contract Sum** means the sum of the following components:

- (a) the Design Contract Sum; and
- (b) the Construction Contract Sum.

**Project Control Group** means the group referred to in clause 4 of Schedule 40 (Workshops and Meetings).

**Project Design Group** means the group referred to in clause 6 of Schedule 40 (Workshops and Meetings).

**Project Director** means the person appointed to that position under clause 2.2(b) as at the date of this deed or any person appointed as a replacement under clause 2.2(b).

**Project Insurances** means any policy or policies of insurance that either party is obliged to obtain or cause to be obtained under clause 7 and Schedule 36 (Insurance Schedule).

**Project Interface Deed** means the deed between the Contractor, Stage 1 Contractor and the Principal titled 'Project Interface Deed' dated on or around the date of this deed.

**Project Plan** means any plan of the kind referred to in clause 3.3(a) as that plan may be updated, amended and further developed under clause 3.3.

**Project WHS Management Plan** means the Project Plan referred to as the Project WHS Management Plan in the Appendix to the SWTC identified in Item 37(y) of Schedule 1 (Contract Information).

**Project Works** means the physical works which the Contractor must design, construct, complete and hand over under this deed including the Works, Service Works, Property Works and Local Area Works, but excluding Temporary Works.

**Proof Engineer** means the person or persons specified in Item 9 of Schedule 1 (Contract Information) or such other person or persons as may be engaged from time to time by the Contractor to perform the role of Proof Engineer, as approved by the Principal.

**Property Works** means:

- (a) those works described or specified in the sections of the SWTC identified in Item 37(z) of Schedule 1 (Contract Information); and
- (b) all other works necessary to ensure that:
  - (i) the amenity of;
  - (ii) access to and egress from; or
  - (iii) the functionality of, any property (including any structure thereon) including such property located outside of the Site, the Local Areas and the Temporary Works Areas which is affected by the Contractor's Activities, is maintained to at least the standard that it was in immediately prior to the date of this deed including:
    - (iv) fencing work to separate the property located outside the Site from the property located within the Site, the Local Areas and the Temporary Works Areas;
    - (v) noise treatment;
    - (vi) construction of access;
    - (vii) construction of drainage; and
    - (viii) reinstatement and landscaping.

**Proprietary Software** has the meaning in clause 12.4(c).

[REDACTED]

**Provisional Sum Work** means that part of the Project Works and Temporary Works specified as Provisional Sum Work in the sections of the SWTC identified in Item 37(aa) of Schedule 1 (Contract Information).

[REDACTED]

**Qantas Catering Bridge** means the existing bridge over Qantas Drive identified on the Site Access Schedule Drawings.

[REDACTED]

**Qualifying Change in Law** means:

- (a) a Discriminatory Change in Law;
- (b) a Change in Airport Law; or
- (c) [REDACTED]

**Quality Manager** means the person appointed to that position under clause 2.2(b) as at the date of this deed and any person appointed as a replacement under clause 2.2(b).

**Quality Plan** means the Project Plan referred to as the Quality Plan in the Appendix to the SWTC identified in Item 37(bb) of Schedule 1 (Contract Information).

**Railway Corridor** has the meaning given in the ARTC Works Deed.

**RCTI** has the meaning in clause 18.7(f).

**Recipient** has the meaning in clause 18.7(c)(i).

**Records** include both electronic and physical versions of records, accounts, ledgers, payroll, correspondence, tenders, minutes of meetings, notes, reports, instructions, plans, drawings, invoices, dockets, receipts, vouchers and computer programs.

**Reference Design** means the reference design for the Project Works which was based on the Gateway Project Deed concept design and developed by the Principal and which is contained in the Information Documents.

**Relevant Party** has the meaning given in clause 12.3(c).

**Remaining Stage 3 Works** means the following packages of works which comprise Stage 3A and Stage 3D.

**Reserved Act** means an act or omission by the Principal, the Principal's Representative or another agent, contractor or consultant engaged by the Principal (but excluding the Stage 1 Contractor, Sydney Airport, the Independent Verifier and the ER) authorised or permitted under this deed, other than:

- (a) a direction by the Principal under clause 5.3(a)(iv), to the extent the relevant legal challenge is not initiated or upheld due to, or the direction is not attributable to, the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
- (b) a direction by the Principal's Representative under clause 5.16, to the extent the direction is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
- (c) tests directed by the Principal's Representative under clause 11.6(a)(ii) and not otherwise required by this deed, unless the test detects a Defect or is upon a Defect;
- (d) [REDACTED]

- (e) a direction by the Principal's Representative under clause 17.8(a) or 17.8(b)(ii), provided the direction is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission;
- (f) a requirement by the Principal for the Contractor:
  - (i) in accordance with clause 17.11(a)(i), to permit the Principal to use (other than use as contemplated by this deed); or
  - (ii) in accordance with clause 17.11(a)(ii), to permit the opening for the use of the public of,
    - any parts of:
      - (iii) the Works (irrespective of whether Opening Completion and/or Construction Completion has been achieved); or
      - (iv) any Local Area before the relevant part of the Local Area Works has been completed,

to the extent the requirement by the Principal is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission; or
- (g) opening required by the Principal, in accordance with clause 17.12(a), of the Works for the use of the public for continuous passage of vehicles after Opening Completion has been achieved to the extent that:
  - (i) the opening occurs before the Date for Construction Completion; and
  - (ii) the requirement by the Principal is not attributable to the Contractor's non-compliance with its obligations under this deed or other wrongful, negligent or unlawful act or omission.

**Reviewer** has the meaning given in the Contractor Documentation Schedule.

**Revised Allocation** has the meaning given in clause 5.22(b)(iii).

**Road Occupancy Licence** means a road occupancy licence issued by the TMC.

**Road Transport Legislation** has the meaning given to it by the definition in section 6 of the *Road Transport Act 2013* (NSW) and includes the regulations and statutory rules made under that Act (such as the Road Rules 2014).

[REDACTED]

**Scope of Works and Technical Criteria or SWTC** means the Exhibit referred to in Item 38(f) of Schedule 1 (Contract Information).

**Security Interest** means any 'security interest' as defined in the PPS Law.

**Separable Portion** means a part of the Project Works described in Item 12 of Schedule 1 (Contract Information) or as determined under clause 2.9(b).

**Service** means any service or item of infrastructure, including water, electricity, gas, ethane, fuel, telephone, existing drainage, sewerage, railway, stormwater, industrial waste disposal, street lighting, CCTV and electronic communications service.

**Service Works** means the construction, modification, protection, support or relocation of Services all of which are to be designed and constructed by the Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed.

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED] e [REDACTED]  
[REDACTED]

**Site** means the areas described as such in the Site Access Schedule.

**Site Access Schedule** means the Exhibit referred to in Item 38(g) of Schedule 1 (Contract Information).

**Site Access Schedule Drawings** means the drawings comprising part of the Site Access Schedule.

**Site Audit Statement** means a site audit statement:

- (a) prepared under Part 4 of the *Contaminated Land Management Act 1997* by a site auditor accredited in accordance with Part 4 of the *Contaminated Land Management Act 1997* and any regulations under that Act;
- (b) that certifies that an area of land is suitable, in its condition as at the date of the Site Audit Statement, to be used for its proposed use; and
- (c) that is an a form satisfactory to the Principal's Representative.

**Site Auditor** has the meaning in clause 5.1(i)(i).

**Site Condition** has the meaning in clause 10.6(a).

**Site Condition Notice** means a notice under and in accordance with clause 10.6(c).

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

[REDACTED]  
[REDACTED]  
[REDACTED] 1.

**Stage 1** comprises the following core elements of the Gateway:

- (a) Terminal 1 access;
- (b) Terminal 2/3 access;
- (c) New Airport Drive;
- (d) Primary Northern Access including West Bridge; and
- (e) Supplementary Northern Access.

**Stage 1 Contractor** means John Holland Pty Ltd (ABN 11 004 282 268) and Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187) in its capacity as contractor under the Stage 1 D&C Deed.

**Stage 1 Contractor's Activities** has the meaning given to the term 'Contractor's Activities' in the Stage 1 D&C Deed.

**Stage 1 D&C Deed** means the deed entitled "Design and Construct Deed Sydney Gateway - Stage 1" between the Stage 1 Contractor and the Principal dated on or about the date of this deed.

**Stage 1 Project Works** means the Project Works and the Temporary Works, each as defined in the Stage 1 D&C Deed.

**Stage 3** comprises Stage 3A, Stage 3B, Stage 3C and Stage 3D.

**Stage 3A** comprises the widening of Qantas Drive and Joyce Drive from the Stage 3D connection just East of the Qantas Jet Base building 217 (as identified in the SWTC) to just East of O'Riordan Street on Joyce Drive.

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**Stage 3B** comprises the ramp and viaduct works from Qantas Drive to the connection with Stage 3C in area outside the Sydney Airport boundary on Qantas Drive and O'Riordan Street, including:

- (a) Stage 3B ramp works which comprise the up-ramp section of the eastbound elevated road from Qantas Drive towards Robey Street; and
- (b) Stage 3B viaduct works which comprise an eastbound viaduct section from the bridge abutment at the east end of the up-ramp through where Sir Reginald Ansett Drive meets Qantas Drive and Joyce Drive.

**Stage 3C** comprises the ramp and viaduct works within the Sydney Airport boundary from the connection with the Stage 3B viaduct to the surface connection with Sir Reginald Ansett Drive, including:

- (a) any viaduct and ramp sections south of where Sir Reginald Ansett Drive meets Qantas Drive and Joyce Drive;
- (b) interface of the viaduct and ramp sections with the Terminal T2/T3 ground road network; and
- (c) the connection to the proposed ground transport interchange.

**Stage 3D** comprises the works required to link Stage 3A to Stage 1 being the widening of Qantas Drive from just east of Lancastrian Road to just east of the Qantas Jet Base building 217 (as identified in the SWTC).

**State Law** means legislation of the State of New South Wales including regulations and subordinate legislation (but which excludes any Approval).

**State Planning Approval** means the approval under s5.19 of the Environmental Planning and Assessment Act 1979 (NSW) issued by the Minister for Planning and Public Spaces dated 27 August 2020 in respect of the Gateway.

**Step-in Right** means the Principal's right to do (or have its nominee do) one or more of the following:

- (a) perform any or all of the tasks or activities which comprise the obligations of the Contractor under this deed; and
- (b) enforce the rights of the Contractor under any Subcontract or other agreement entered into by the Contractor in connection with Contractor's Activities.

**Subcontract** includes an agreement for the performance of works, an agreement for the supply of goods or services (including plant hire) or an agreement with a consultant (including a designer) or any of them.

**Subcontractor** includes a subcontractor, a supplier of goods or services (including plant hire) or a consultant (including a designer) or any of them.

**Subcontractors Proof of Payment Procedure** means the administrative procedure set out in clauses 2.9(h) and 2.9(i) by which:

- (a) the monthly process set out in Schedule 5A (Subcontractors Proof of Payment Process) is implemented;
- (b) the Contractor:
  - (i) provides proof to the Principal that it has paid Subcontractors; and
  - (ii) satisfies the Principal that subcontractors, suppliers and consultants to Subcontractors have been paid; and
- (c) as relevant:
  - (i) the Principal obtains an irrevocable payment direction in favour of each unpaid Subcontractor if the Contractor fails to provide proof of payment; or
  - (ii) where clause 2.9(f) applies, the Contractor obtains an irrevocable payment direction in favour of each unpaid subcontractor, supplier and consultant if a Subcontractor fails to provide proof of payment.

**Subsidiary Contract Program** means a program for all activities of the kind referred to in clause 17.1(a), which complies with clauses 17.1(b), 17.1(c) and 17.1(d), as updated under clause 17.1(e).

**Substantial Detailed Design Stage** is the design stage described in section 3 of the Contractor Documentation Schedule.

**Sunset Date** means the date listed in Item 13 of Schedule 1 (Contract Information).

**Supplier** has the meaning in clause 18.7(c).

**Suspension Notice** means a notice given by Sydney Airport to the Principal in accordance with the requirements of clause 17.8(b)(i) that requires any or all the Contractor's Activities to cease for a temporary period.

**SWTC** means the Scope of Works and Technical Criteria.

**Sydney Airport** means Sydney Airport Corporation Limited ABN 62 082 578M 809 of Nigel Love Building, 10 Arrivals Court, Sydney International Airport, NSW 2020.

[REDACTED]

**Sydney Airport Approvals** means any licence, permit, consent, approval, determination, certificate or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be):

- (a) to perform or to enable the performance of the Sydney Airport Works; or
- (b) otherwise to comply with Law relating to or associated with the Sydney Airport Works.

**Sydney Airport Works** means those works to the Airport and the improvements and infrastructure forming part of the Airport which are conducted by Sydney Airport and are required as a result of the development of the Gateway, including:

- (a) works on the Airport that are required to facilitate the undertaking of the Project Works or Temporary Works relating to:
  - (i) aviation and navigational aids and systems;
  - (ii) general and aviation lighting; and
  - (iii) security fencing; and
- (b) other works as notified to the Contractor as being within the scope of the works to be undertaken by Sydney Airport,

and including any works that are done for the purpose of constructing the Sydney Airport Works but that will not remain on or affixed to the Airport following the Gateway entering into operation associated with the works in paragraphs (a) and (b) above.

[REDACTED]

[REDACTED]

**Sydney Coordination Office** means the Sydney Coordination Office of TfNSW, which oversees traffic and transport during the transformation of the Sydney CBD and is a delivery office of TfNSW.

**Sydney Water Interface Deed** has the meaning given to that term in clause 3 of Schedule 50 (Requirements of Third Party Agreements).

**T2/T3 Works** means the packages of works that comprise Stage 3B and Stage 3C.

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

**Telstra** means Telstra Holdings Pty Ltd ABN 45 057 808 938.

**Telstra Stage 3 Works** means the package of work described as such in Appendix B.40 of the SWTC.

**Temporary Works** means any temporary physical structure, appliance or thing used or works done in the carrying out of the Contractor's Activities but which does not form part of the Project Works.

**Temporary Works Areas** means the areas described as such in the Site Access Schedule.

**Tenant** means any tenant, sub-tenant or lessee of Sydney Airport.

**Tender** means the response provided by a Tenderer to undertake the Contractor's Activities.

**Tenderer** means an entity which submits a tender for the Contractor's Activities.

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

**Third Party Agreement** means the agreements referred to in the Exhibit referred to in Item 38(h) of Schedule 1 (Contract Information) entered into or to be entered into by the Principal with the party referred to in that Exhibit (as amended pursuant to clause 5.22(b)).

**Third Party Interests** means:

- (a) any easements, covenants or affectations registered on the title of the Airport;
- (b) any Easements;
- (c) any statutory rights of utility providers or Authorities in relation to:
  - (i) any utility infrastructure installed as contemplated under or in accordance with statute or similar rights for the purposes of providing water, gas, fuel, electricity, sewerage, telephone, drainage, stormwater, and communications services to other persons (including users of the Airport);
  - (ii) the Sydney Water desalination pipeline covered by the Desalination Pipeline On-Airport Works Development Agreement between Sydney Airport and Sydney Water Corporation dated [REDACTED] and the Licence of Site for Pipeline in connection with Desalination Project Sydney (Kingsford-Smith) Airport between Sydney Airport and Sydney Water Corporation, dated [REDACTED] to the extent it traverses the Construction Site; and
  - (iii) the pipeline infrastructure which supplies the joint user hydrant installation covered by the sublease between Sydney Airport and Viva Energy Aviation Pty Ltd, including the pipeline infrastructure that is developed, installed or

constructed for, interconnects or directly provides services to or between the facilities located on the Airport or any aircraft on the Airport; and

- (d) those interests evidenced by the following agreements set out in the Exhibit referred to in Item 38(i) of Schedule 1 (Contractor Information):
- (i) the Licence of Site for Pipeline in connection with Desalination Project Sydney (Kingsford-Smith) Airport between Sydney Airport and Sydney Water Corporation, dated [REDACTED];
  - (ii) the Deed of Covenant and Variation - Licence of Site for pipeline in connection with Sydney Desalination Project Sydney (Kingsford-Smith) Airport between Sydney Airport and Sydney Desalination Plant Pty Limited dated [REDACTED];
  - (iii) the sublease commencing [REDACTED] between Sydney Airport and Viva Energy Aviation Pty Ltd in relation to the Joint User Hydrant Installation;
  - (iv) the lease between State Rail Authority of New South Wales and James Transport Co Pty Limited dated 31 May 1982 in relation to the Licensed Area 6A (James Siding) as described in the Site Access Schedule;
  - (v) the Rail Siding Agreement between James Transport Co Pty Limited and Lachlan Valley Rail Freight Pty Ltd dated 21 May 1999;
  - (vi) the Deed of Consent to Assignment of Lease and Siding Agreement between State Rail Authority of New South Wales, James Transport Co Pty Limited and Sydney Airport dated 29 October 1999;
  - (vii) the Deed between State Rail Authority of New South Wales and James Transport Co Pty Limited in relation to the Licensed Area 6A (James Siding) as described in the Site Access Schedule dated 29 October 1986;
  - (viii) the Ausgrid substation lease 5626557E dated 24 February 1999 between Energy Australia and Sydney Airport; and
  - (ix) Deed of Agreement for Sublease in relation to Connection Contract – Ausgrid Augmentation Works between Ausgrid and Sydney Airport, dated [REDACTED]

**Third Party Rights** has the meaning in clause 12.4(g).

**TMC** means the Transport Management Centre.

[REDACTED]

**Traffic and Transport Liaison Group** has the meaning given in section 2.4.2 of Appendix C.5 of the SWTC.

**Traffic and Transport Management Plan** has the meaning given in clause 5.15(a)(i).

**Traffic Management and Safety Plan** means the Project Plan referred to as the Traffic Management and Safety Plan in the Appendix to the SWTC identified in Item 37(cc) of Schedule 1 (Contract Information).

**Transport Management Centre** or **TMC** means the Transport for NSW Transport Management Centre, which forms part of the infrastructure and services division of Transport for NSW and includes, where relevant, the Sydney Coordination Office of TfNSW.

[REDACTED]

(a) [REDACTED]

(b) [REDACTED]

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**Variation** means any change to the Project Works, the Contractor's Activities or the Temporary Works, and includes additions, increases, decreases, omissions, deletions, demolition or removal to or from any of the Project Works, [REDACTED] or the Temporary Works.

**Variation Order** means a notice in writing issued under and in accordance with clause 15.2(a) from the Principal's Representative directing the Contractor to implement a Variation as specified in the notice.

**Variation Proposal Request** means a notice in writing issued under and in accordance with clause 15.1(a) from the Principal's Representative notifying the Contractor of a proposed Variation.

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

**WHS Guidelines** means the NSW Government Work Health and Safety Management Guidelines (6th edition) (December 2019).

**WHS Laws** means the:

- (a) *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulations 2017 (NSW); and
- (b) *Work Health and Safety Act 2011* (Cth) and Work Health and Safety Regulations 2011 (Cth).

**WHS Obligations** has the meaning given in clause 5.9(a).

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

**Witness Point** means a point in a work process for which the Contractor must give prior notice to the Principal's Representative to allow the Principal's Representative to attend and witness the point in the work process should it choose to do so.

**Workplace Relations Management Plan** is the Workplace Relations Management Plan contemplated by the NSW Guidelines and is the Project Plan referred to as the Workplace Relations Management Plan in the section and the Appendix of the SWTC identified in Item 37(dd) of Schedule 1 (Contract Information).

**Works** means the physical works, Services, materials and equipment within the Site which the Contractor must design, construct, complete and hand over to the Principal in accordance with this deed, excluding:

- (a) the Local Area Works;
- (b) the Property Works; and
- (c) the Service Works.
- (d) not used
- (e) not used

[REDACTED]



**EXECUTED** as a deed on **28 October 2020**



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

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

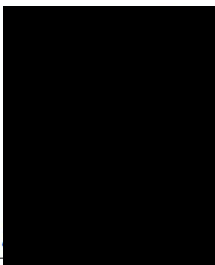
  
\_\_\_\_\_  
Signature of authorised delegate

  
\_\_\_\_\_  
Full name of Witness

  
\_\_\_\_\_  
Name of authorised delegate


**Signed, sealed and delivered** for and on behalf of  
**John Holland Pty Ltd (ABN 11 004 282 268)** by its  
attorney under a power of attorney dated   
 in the presence of:

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

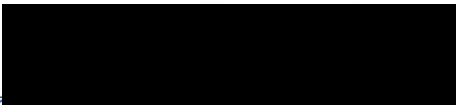
  
\_\_\_\_\_  
Signature of attorney who declares that the attorney  
has not received any notice of the revocation of the  
power of attorney


  
\_\_\_\_\_  
Name of witness in full

  
\_\_\_\_\_  
Name of attorney in full

**Signed, sealed and delivered** for and on behalf of  
**Seymour Whyte Constructions Pty Ltd (ABN 48**  
**105 493 187)** by its attorney under a power of attorney  
dated  in the presence of:

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

  
\_\_\_\_\_  
Signature of attorney who declares that the attorney  
has not received any notice of the revocation of the  
power of attorney

  
\_\_\_\_\_  
Name of witness in full

  
\_\_\_\_\_  
Name of attorney in full

