



Execution Version

Sydney Metro City & Southwest

Line-wide Works

Incentivised Target Cost Contract

Contract No: 2017/078 (also known as Contract No:
600)

Sydney Metro

ABN 12 354 063 515

and

CPB Contractors Pty Limited

ABN 98 000 893 667

and

UGL Engineering Pty Limited

ABN 96 096 365 972

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THIS DEED is made on

20 NOVEMBER

2018

BETWEEN:

- (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (2) **CPB Contractors Pty Limited** ABN 98 000 893 667 of Level 18, 177 Pacific Highway, North Sydney, NSW 2000; and

UGL Engineering Pty Limited ABN 96 096 365 972 of Level 8, 40 Miller Street, North Sydney NSW 2060,

(together, the **LW Contractor**).

RECITALS:

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

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed, unless the context otherwise indicates:

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

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

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

Accepted Interface Works Change means any change or variation to the Interface Works that does not:

- (a) prevent or delay the LW Contractor from complying with its obligations under this deed; or
- (b) affect any warranty provided by the LW Contractor under this deed; or

- (c) increase the LW Contractor's costs of carrying out the LW Contractor's Activities or cause the LW Contractor to incur any loss, in each case other than in a de minimis manner.

Accepted Interface Works Defect means a defect in the relevant portion of the Interface Works (other than an Interface Works Minor Defect) that the Principal has:

- (a) accepted; or
- (b) advised the relevant Interface Contractor that it will direct another Interface Contractor or another contractor to carry out a modification to overcome the defect.

Accessible means, in relation to:

- (a) a part of an Interface Site, the LW Contractor's access to that part of the Interface Site is capable of safe, clean and clear use; and
- (b) a part of the Construction Site, the LW Contractor's access to that part of the Construction Site that is capable of safe, clean and clear use.

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

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

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

Additional Track Possession or Power Isolation has the meaning given in clause 7.5(g).

Adjustment for Rise and Fall has the meaning given in Schedule F9.

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

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

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

Agreed Interface Works Defect means an Interface Works Defect, other than an Interface Works Minor Defect, or an Accepted Interface Works Defect, which can be corrected within the Known Defects Rectification Period after the relevant part of the Construction Site has been handed over to the LW Contractor.

Appointed Principal Contractor means CPB Contractors Pty Limited (ABN 98 000 893 667).

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

- (a) to carry out the LW Contractor's Activities;

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

and includes:

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

but does not include:

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

Approved Cure Plan has the meaning given in clause 19.2A(d).

Approved Interface Works Change means any Interface Works Change:

- (a) notified to the LW Contractor under clause 9A.2 and to which clause 9A.2(e) applies;
- (b) proposed by the LW Contractor and implemented by the Principal pursuant to clause 9A.3; or
- (c) deemed to be an Approved Interface Works Change pursuant to clauses 9A.6(c), 9A.6(e)(i) or 9A.6(f)(ii).

Approved Subcontract Agreement means:

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

ARTC means Australian Rail Track Corporation (ABN 75 081 455 751).

Artefact has the meaning given in clause 7.19(a).

ASA Authorisation means an authorisation issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation.

ASA Charter means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on www.asa.transport.nsw.gov.au.

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

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

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

Asset Management Information means the information required to be delivered by the LW Contractor as set out in Appendix F6 to the SWTC.

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

Associates means:

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

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

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

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

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

it is exercising statutory rights in relation to the Project Works or the LW Contractor's Activities.

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

Bank Bill Rate is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page BBSY (or any page which replaces that page) at about 12.00 pm (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if there is a manifest error in the calculation of the average bid rate under paragraph (a) or if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the LW Contractor and the Principal having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

Barangaroo Cooperation and Collaboration Accession Deed means an accession deed between the Principal, BDA, the Central Barangaroo Developer and the LW Contractor substantially in the form of Schedule 1 to the Barangaroo Cooperation and Collaboration Agreement.

Barangaroo Cooperation and Collaboration Agreement means the agreement between the Principal, BDA, the Central Barangaroo Developer and each party that subsequently accedes to the agreement substantially in the form of Schedule E10.

Barangaroo South Developer means Lendlease (Millers Point) Pty Limited ACN 127 727 502, or such other person appointed by BDA in relation to the Barangaroo South development.

Baseline Conditions means the indicative conditions of the Project Planning Approval (Sydenham to Bankstown) set out in Attachment 5 of Schedule E3.

Baseline Mitigation Measures means the indicative revised mitigation measures and performance outcomes set out in Attachment 6 of Schedule E3.

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

BDA means Barangaroo Delivery Authority a NSW Government agency constituted under the *Barangaroo Delivery Authority Act 2009* (NSW).

BDA Development Partners means each of the:

- (a) Central Barangaroo Developer;
- (b) Barangaroo South Developer; and
- (c) Crown Developer.

BMCS Contractor means the contractor that:

- (a) will be engaged by the Principal under a framework agreement; and

(b) is to be engaged as a Subcontractor by the LW Contractor in accordance with clause 11.19 for the provision of the BMCS Works.

BMCS DSI Contract means the form of contract to be entered into between the LW Contractor and the BMCS Contractor in respect of the BMCS Works, the form of which will be provided to the LW Contractor following execution of a framework contract by the Principal and the BMCS Contractor.

BMCS Works means those works described under PS.3 in Schedule C5.

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

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

Bulk Feeder Route [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

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

Cable Containment Schedule means the cable containment schedule set out in Annexure I of Appendix E of the SWTC.

Catalogue of Minor Modifications means the catalogue set out in Schedule F8 (Catalogue of Minor Modifications) containing the Catalogue Price for each Minor Modification, as updated from time to time in accordance with clause 10.12(c).

Catalogue Price means, in respect of a Minor Modification, the price listed in the Catalogue of Minor Modifications for the implementation of that Minor Modification.

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

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED].

Central Barangaroo Developer means Grocon (CB) Developments Pty Limited (ACN 614 118 642), or such other person appointed by BDA in relation to the "Central Barangaroo" development.

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

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

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

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

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

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

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

compliance with which:

- (c) has a direct effect on the LW Contractor carrying out the LW Contractor's Activities; and
- (d) directly results in an increase or decrease in the LW Contractor's costs of carrying out the LW Contractor's Activities, or a delay to the LW Contractor achieving Construction Completion of a Portion by the relevant Date for Construction Completion or achieving a Specified Milestone by the Date for Milestone Achievement in accordance with clause 14.7(c),

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

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

Change in Planning Approval means a change:

- (a) in:
 - (i) the Project Planning Approval (Chatswood to Sydenham) Project Planning Approval (Rapid Transit Rail Facility), each of which has been obtained by the Principal which is in existence as at the date of this deed; or
 - (ii) the Project Planning Approval (Sydenham to Bankstown) which occurs after the processes in clauses 6A.3 and 6A.4 have occurred;
- (b) which is not caused or contributed to by an act or omission of the LW Contractor; and
- (c) which occurs after the date of this deed.

City Stations means the railway stations at Crows Nest, Victoria Cross, Barangaroo, Martin Place, Pitt Street, Central, Waterloo and Sydenham, including:

- (a) the station building; and
- (b) any service facilities associated with the station.

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

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

Codes and Standards means:

- (a) the codes and standards specified in section 4.2 of the SWTC; and
- (b) the Code of Practice for Procurement (January 2005), NSW Government Policy on Aboriginal Participation in Construction (June 2018), NSW Code, NSW Guidelines, Environmental Management Systems Guidelines (3rd edition) (May 2014), WHS Guidelines, Training Management Guidelines (February 2009), Quality Management System Guidelines for Construction (August 2013), GREP and any other NSW Government guidelines and requirements specified or required by this deed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Commissioning has the meaning given to that term in the SWTC.

Commonwealth means the Commonwealth of Australia.

Compensable Contamination means Contamination in fill, soil, sediment and rock of a type for which a rate is specified in Schedule F2 but does not include any Contamination which:

- (a) is caused by the LW Contractor's Activities; or
- (b) arises out of or in connection with a failure by the LW Contractor to:
 - (i) implement environmental and safety management practices and procedures in accordance with Good Industry Practice; or
 - (ii) comply with any other requirement of this deed.

Completion means in respect of all Portions, the stage in the execution of the LW Contractor's Activities in respect of a Portion when:

- (a) Construction Completion has been achieved in respect of the Portion;
- (b) the LW Contractor has given to the Principal's Representative (with a copy to the Operator if required by the Principal) all Asset Management Information (including as-built drawings) which has not been rejected by the Principal's Representative under clause 8.15(c) relating to that Portion;
- (c) the LW Contractor has rectified:
 - (i) all Minor Defects and Agreed Defects that are listed in the Independent Certifier's Notice of Construction Completion; and
 - (ii) all Defects identified after Construction Completion (including any Defects identified in a Pre-Completion Notice);
- (d) the LW Contractor has completed all Post Construction Completion Activities;
- (e) the LW Contractor has carried out and passed all tests which are required under this deed to be carried out and passed prior to Completion being achieved;
- (f) the Operator has carried out and passed:
 - (i) in respect of Portion 2 and 3, the Final Performance Test for the Sydney Metro City Section (in accordance with Appendix 7 of the SWTC); and
 - (ii) in respect of Portion 4, the Final Performance Test for the Sydney Metro Southwest Section (in accordance with Appendix 7 of the SWTC);

- (g) the LW Contractor has obtained all Approvals that it is required under this deed to obtain prior to Completion being achieved and provided those Approvals to the Principal's Representative; and
- (h) the LW Contractor has done everything else which is stated to be a condition precedent to Completion of the Portion or which the LW Contractor is otherwise expressly required by this deed to do before Completion of the Portion.

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

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

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

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

Consequential Loss means any:

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

- (b) direct or indirect financing costs,

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

Construction Completion means the stage in the execution of the LW Contractor's Activities, excluding Post Construction Completion Activities, in respect of a Portion when:

- (a) the Portion is complete in accordance with this deed except for any:

- (i) Minor Defects;
- (ii) Accepted Defects; and
- (iii) Agreed Defects;

- (b) the LW Contractor has rectified all Mandatory Defects;

- (c) the LW Contractor has:

- (i) carried out and passed all tests that:

- (A) are required under this deed to be carried out and passed before the Portion reaches Construction Completion; or
- (B) must necessarily be carried out and passed before the Portion can be used for its intended purpose and to verify that the Portion is in the condition this deed requires it to be in at Construction Completion;

- (ii) obtained all Approvals that it is required under this deed to obtain before Construction Completion of the Portion and provided such Approvals to the Principal's Representative;

- (iii) obtained from the Independent Certifier a certificate in the form of Schedule B9 for all Design Stage 3 Design Documentation for that Portion, other than the Principal's Design Stage 3 Documents;

- (iv) given to the Principal's Representative (with a copy to the Operator or any other party as required by the Principal) all documents and information in respect of the design, construction, testing, Commissioning, completion, occupation, use and maintenance of the Portion which:
 - (A) are required by this deed to be given to the Principal's Representative before Construction Completion of the Portion; or
 - (B) must necessarily be handed over before the Portion can be used for its intended purpose,
 including copies of all documentation in accordance with the requirements of Appendix F6 of the SWTC;
- (v) executed a certificate in the form of Schedule B4 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
- (vi) provided the training required by the SWTC to the reasonable satisfaction of the Principal's Representative;
- (vii) removed all Construction Plant from the parts of the Construction Site and the Bulk Feeder Route that relate to the Portion, other than any Construction Plant necessary to facilitate the handover of the Portion to the Principal or which is required to be retained on the Construction Site or Bulk Feeder Route in accordance with clause 3.10(c) (where approved by the Principal's Representative in accordance with clause 3.10(d));
- (viii) in respect of any Extra Land occupied or used in connection with the Portion, provided the Principal's Representative with:
 - (A) properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
 - (B) statements under clause 7.13(a)(iii)(C);
- (ix) submitted to the Principal's Representative the survey certificate referred to in clause 7.26 with respect to the relevant Portion;
- (x) removed all rubbish, surplus materials (including construction materials), Construction Plant and Temporary Works from the relevant parts of the Construction Site, Bulk Feeder Route and Extra Land relevant to that Portion in accordance with clause 3.10 that it is required under this deed to be removed before Construction Completion;
- (xi) provided the Principal with all spare parts, consumables and special tools as required by the SWTC;
- (xii) submitted all information required to be submitted by it under the SWTC of sufficient quality to support the Gate 5 submission that permits the Principal to obtain a TNAC acceptance notice;
- (xiii) executed the Collateral Warranty Deed Poll; and
- (d) the LW Contractor has done everything else which is stated to be a condition precedent to Construction Completion of the Portion or which the LW Contractor is otherwise expressly required by this deed to do before Construction Completion of the Portion.

Construction Cost Element means that part of the Reimbursable Cost Element set out in Schedule F1 for performing the Construction Work.

Construction Environmental Management Plan means the plan which forms part of the Project Plan which is required to be provided and implemented by the LW Contractor pursuant to, and in accordance with, the SWTC and the Planning Approvals.

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

Construction Site means:

- (a) the lands and other places described in the Site Access Schedule; and
- (b) any other lands and places made available to the LW Contractor by the Principal for the purpose of this deed.

Construction Work means the Reimbursable Work and Provisional Sum Work but excluding Design Work and Preliminaries.

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

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

- (a) a substance (whether occurring naturally or otherwise) which is at a concentration above the concentration at which the substance (whether occurring naturally or otherwise) is normally present in, on or under land or water or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) a Hazardous Chemical.

Contract Documentation and Materials has the meaning given in clause 9.15(b).

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

- (a) the Reimbursable Costs;
- (b) the Management Fee; and
- (c) the amounts paid to the LW Contractor in respect of the Post Construction Completion Activities.

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

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

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

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

Crown Developer means Crown Sydney Property Pty Limited (ACN 166 326 861), or such other person notified to the LW Contractor in writing by the Principal's Representative.

CSM Contract means the contract titled "Sydney Metro City & South West Central Station Main Works Incentivised Target Cost Contract" between TfNSW and the CSM Contractor dated 6 March 2018.

CSM Contractor means the entity engaged under the CSM Contract to carry out the CSM Works.

CSM Works means the physical works to be designed and constructed by the CSM Contractor under the CSM Contract, being the Central Station works component of Sydney Metro City & Southwest including the metro box excavation, station structure and fitout, customer continuity works, services relocation and temporary decommissioning of platforms and reinstatement.

Date for Completion means:

- (a) in respect of:
 - (i) all Portions other than Portion 4, [REDACTED] or
 - (ii) Portion 4, [REDACTED] or
- (b) where an extension of time for Completion is granted by the Principal's Representative or allowed in any Expert's determination or arbitration or litigation proceedings, the date resulting therefrom.

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

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

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

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

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

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

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

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

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

Defect means any:

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

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

but does not include:

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

Defects Correction Period means the period referred to in clauses 12.6, 12.7(a), 12.8(a), 12.9(a) and 12.10(a).

Degree 2 Completion has the meaning given to it in Schedule A2.

Design Cost Element means that part of the Reimbursable Costs set out in Schedule F1 for performing the Design Work.

Design Development and Resolution means development of the Principal's Design Stage 1 Documents including:

- (a) development of Design Documentation as would be required in accordance with Good Industry Practice to achieve Design Stage 2 and Design Stage 3 including resolving any lack of co-ordination, ambiguity, discrepancy within or between documents;
- (b) development of solutions for the Design Exceptions; and
- (c) the resolution of any unresolved elements of the Principal Design Stage 1 Documents identified in the Principal's Design Stage 1 Documents.

Design Documentation means all:

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

Design Exceptions means those elements of the Principal's Design Stage 1 Documents that do not comply with the requirements of this deed as identified in Appendix H1 of the SWTC.

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

Design Stage 1 means stage 1 of the development of the Design Documentation as described in the SWTC.

Design Stage 2 means stage 2 of the development of the Design Documentation as described in the SWTC.

Design Stage 3 means stage 3 of the development of the Design Documentation as described in the SWTC.

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

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

Deviations within the Interface Works Tolerances means an aspect of the Interface Works that is not in accordance with the requirements of the relevant Interface Works Contract but that is within the Interface Works Tolerances.

Dispute means any dispute, difference, controversy or claim directly or indirectly based upon, arising out of, relating to or in connection with this deed or the LW Works, the LW Contractor's Activities, including any question regarding its validity, existence or termination.

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

Draft Third Party Agreement has the meaning given in clause 3.6(a)(iii)(A).

DS3 Required Date means each date specified alongside each Principal's Design Stage 3 Document description

Election Date means, in respect of a Pre-Agreed Modification, the relevant date specified as the "Election Date" in Schedule A3.

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c).

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

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

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

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

Equipment Schedule means the equipment schedule set out in Annexure H of Appendix E of the SWTC.

Error means a discrepancy, omission, mistake, lack of co-ordination, ambiguity or inconsistency between documents or between different parts of the same document.

Excepted Risk means:

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

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

Excluded Claim means any claim:

- (a) with respect to a Change in Law under clause 6.4;
- (b) for a Modification directed in accordance with clause 10.6 or a direction by the Principal's Representative to which clause 23.1 applies;
- (c) for an extension of time under clause 14.8; or
- (d) for payment under clause 15.

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

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

- (c) amounts incurred in respect of the LW Contractor proposing an Interface Works Change pursuant to clause 9A.3, including performing its obligations under clause 9A.3(c) and 9A.3(g);
- (d) subject to clause 18.1(e), amounts incurred in carrying out any replacement, making good or repair under clause 18.16 (including any excesses and deductibles under any insurances amounts which are recovered or but for the LW Contractor's failure to comply with the relevant insurance policy would have been reimbursed under insurance policies, and any amounts paid or payable by the LW Contractor to any Subcontractors);
- (e) any legal, expert or other consultants costs incurred by the LW Contractor arising out of or in connection with any Approved Subcontract Agreement other than as provided in clause 11.11;
- (f) other amounts not properly incurred in respect of the execution of the Reimbursable Work or which this deed provides are to be borne or paid by the LW Contractor or to be a debt due from the LW Contractor to the Principal or which are payable by the LW Contractor to the Principal under any indemnity;
- (g) costs which the LW Contractor cannot substantiate on an arm's length or Open Book Basis (as described in paragraph (a) of the definition of Open Book Basis);
- (h) any costs attributable to the termination of a Subcontractor and the engagement of a replacement subcontractor;
- (i) amounts in respect of which the Management Fee is paid or payable;
- (j) liquidated damages or if clause 16.6(d) is found for any reason to be void, invalid or otherwise inoperative, general damages to an amount not any greater than the liability for such damages (whether per day or in the aggregate) it would have had if that clause had not been void, invalid or otherwise inoperative;
- (k) amounts paid or payable under any indemnity in this deed;
- (l) amounts which are recovered or but for the LW Contractor's failure to comply with the relevant insurance policy would have been reimbursed under insurance policies;
- (m) amounts payable by the LW Contractor under clause 6 of the IDAR Panel Agreement; and
- (n) other amounts stated in any other provision of this deed:
 - (i) to not be "Reimbursable Costs";
 - (ii) for which the Principal is expressly stated to not be liable for; or
 - (iii) to be at the LW Contractor's cost.

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

Existing Operations means:

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

- (b) the businesses and operations undertaken by an Existing Operator, on or in the vicinity of the Construction Site or Bulk Feeder Route.

Existing Operator means:

- (a) ARTC;
- (b) BDA;
- (c) OpCo;
- (d) RailCorp;
- (e) Sydney Trains;
- (f) NSW Trains;
- (g) RMS;
- (h) Ausgrid;
- (i) Sydney Water;
- (j) Telstra;
- (k) local councils;
- (l) Jemena; or
- (m) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and the Utility Services) or undertakes any business or operation on or in the vicinity of the Construction Site or Bulk Feeder Route,

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

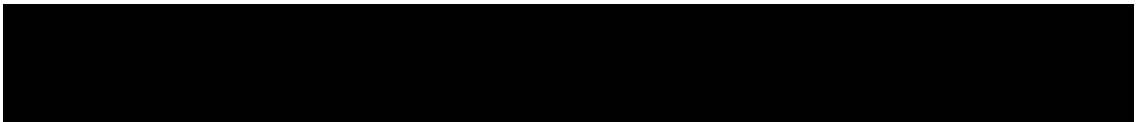
Expert means the person appointed to determine a Dispute pursuant to clause 20.5.

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

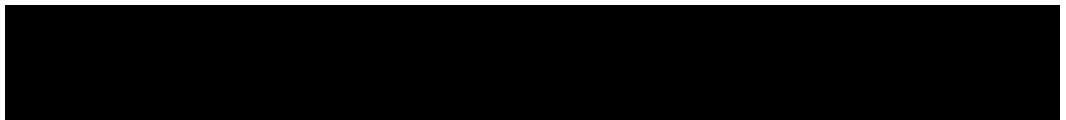
Extension Event means:

- (a) an act or omission of the Principal or the Principal's Representative after the date of this deed (including any breach of contract or Modification directed by the Principal's Representative), but excluding any act or omission of the Principal or the Principal's Representative authorised or permitted by this deed;
- (b) the cancellation by Sydney Trains of a Track Possession listed in Schedule E2 (as altered under clause 7.5(k)(i) (if applicable)) or a reduction in duration by Sydney Trains of a Specified Track Possession (as altered under clause 7.5(k)(i) (if applicable)) where such reduction has the same impact on the relevant LW Contractor's Activities planned for that Specified Track Possession as a cancellation:
 - (i) less than 12 weeks prior to the time at which it was planned to commence in accordance with Schedule E2; or

- (ii) with more than 12 weeks' notice prior to the time at which it was planned to commence in accordance with Schedule E2, but without the provision of an alternative Track Possession at a time the LW Contractor is reasonably able to utilise in substitution for the cancelled Track Possession or Specified Track Possession (as applicable);
- (c) compliance with any Change in Codes and Standards as described in clause 6.3;
- (d) compliance with any Change in Law as described in clause 6.4;
- (e) a Change in Planning Approval, but only where the change has a direct effect on the LW Contractor carrying out the LW Contractor's Activities and necessitates a Modification as described in clause 6.5;
- (f) a legal challenge to the assessment, determination or modification of a Planning Approval as described in clause 6.6(b);



- (h) a failure by the Principal to:
 - (i) provide access to the Construction Site in accordance with clause 7.1 (including failure to provide an Extended Track Possession, but not including cancellation of a Track Possession); or



- (i) compliance with:
 - (i) a direction given by the Principal's Representative in relation to an Artefact in accordance with clause 7.19(b)(iv); or
 - (ii) the requirements of Authorities in accordance with clause 7.19(b)(iii);
- (j) in respect of a NAC CCR Package:
 - (i) the Principal has not provided the LW Contractor with a notice under clause 9.10(b) within 10 Business Days of the Principal's Representative submitting the NAC CCR Package to the NAC under clause 9.10(a)(i)(B); or
 - (ii) the Principal's Representative has issued a notice under clause 9.10(b)(ii) or 9.10(b)(iii) and it is subsequently determined in accordance with the dispute resolution provisions under clause 20 that the NAC CCR Package submitted by the LW Contractor satisfied the NAC Requirements;
- (k) not used;
- (l) any Modification under clause 10;
- (m) suspension of the Project Works by the Principal unless the direction to suspend is as a result of the LW Contractor's failure to perform its obligations in accordance with this deed, as described in clause 14.13;
- (n) a Force Majeure Event;

- (o) a Native Title Claim;
- (p) compliance with a direction given by the Principal's Representative under clause 14.16(a), but only to the extent that clause 14.16(e) applies;

[REDACTED]

[REDACTED]

- (t) a failure by the Principal to provide the relevant Principal's Design Stage 3 Documents to the LW Contractor by the relevant DS3 Required Date.

Extra Land means the land referred to in clause 7.13.

Final Design Documentation means any Design Documentation which:

- (a) the LW Contractor is entitled to use for construction in accordance with clause 9.12; or
- (b) has been amended by a Modification directed or approved by the Principal's Representative in accordance with clause 10.

Final Inspection has the meaning given to that term in clause 12.14(a).

Final Third Party Works Inspection has the meaning given in clause 12.15.

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

Force Majeure Event means any of the following:

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

which:

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

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

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

General Conditions means the provisions of this deed, excluding the schedules.

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

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

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

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

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

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

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

Hand Back occurs in respect of a Track Possession when the LW Contractor provides Sydney Trains (or Sydney Trains provides the LW Contractor) with the relevant documentation required by the Network Rules and procedures and Sydney Trains possession management processes.

Hazardous Chemical has the meaning given in WHS Legislation.

IC Design Review Period means 20 Business Days after the date on which any Design Documentation for any Design Stage is submitted in accordance with clause 9.5(a).

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

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

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

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

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

and includes:

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

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

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

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

Independent Property Impact Assessment Panel means the independent property impact assessment panel established by the Principal for the purpose of Sydney Metro City & Southwest in accordance with the requirements of the Planning Approvals.

Independent Safety Advisor means the independent safety advisor appointed in accordance with clause 8.14(a), or any replacement notified to the LW Contractor by the Principal's Representative.

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

Information Documents means:

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

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

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

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

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this deed for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;

- (vi) a sequestration order or winding up order is made in respect of the corporation;
 - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
 - (viii) a mortgagee of any property of the corporation takes possession of that property; or
 - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets; or
- (e) any act which is done or event which is analogous or similar effect to any of the events in paragraphs (a) to (d).

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

Institution means:

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

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

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

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

Interface Works Asset Management Information means any "Asset Management Information", including any draft "Asset Management Information", submitted to the Principal by an Interface Contractor under an Interface Works Contract.

Interface Works Change means any change, modification or variation to the Interface Works after the date of this deed, including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them, but not including a change, modification or variation that the relevant Interface Contractor is entitled to make to the design of the relevant Interface Works under the relevant Interface Works Contract without the Principal's consent where following any such change, modification or variation, the Interface Works will continue to comply with the requirements of the relevant Interface Works Contract, as amended for any Approved Interface Works Change.

Interface Works Contract means the TSE Deed, the CSM Contract, the SSJ Contract, a Station Contract, the OTS Project Deed and the TSOM Contract.

Interface Works Defect means

- (a) any defect, deficiency, fault, error or omission in the relevant Interface Works; and
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the relevant Interface Works; or
 - (ii) other aspect of the Interface Works,

which is not in accordance with the requirements of the relevant Interface Works Contract, but does not include any Deviations within the Interface Works Tolerances or any Accepted Interface Works Defect.

Interface Works Design Documentation means all design documentation for the Interface Works.

Interface Works Known Defect means an Agreed Interface Works Defect, Accepted Interface Works Defect or Interface Works Minor Defect which is listed in an Interface Works Notice of Construction Completion.

Interface Works Minor Defect means a minor Interface Works Defect which does not prevent the relevant Interface Works from being fit for their intended purpose and which can be corrected:

- (a) after the relevant part of the Construction Site has been handed over to the LW Contractor; and
- (b) after the LW Contractor has completed its construction activities under this deed within the relevant part of the Construction Site.

Interface Works Notice of Construction Completion means a notice from the independent certifier under the relevant Interface Works Contract confirming that "Construction Completion" or "Substantial Completion" (each as defined in the relevant Interface Works Contract) of a portion has been achieved under the relevant Interface Works Contract, allowing that portion to be handed over to the Principal under the relevant Interface Works Contract.

Interface Works O&M Manuals means the operation and maintenance manuals for the relevant parts of the Tunnel Site and the Trackway Portions provided to the Principal under the relevant Interface Works Contract and then provided by the Principal to the LW Contractor.

Interface Works Portion means a portion of the TSE Works, CSM Works, SSJ Works or the works under a Station Contract Station Portion and to which access is to be provided to the LW Contractor.

Interface Works Tolerances means the permitted tolerances for certain aspects of the Interface Works, as set out in Annexure J of Appendix E of the SWTC (*Interface Requirements*).

Interim Access Period means the period:

- (a) commencing on the date which the Principal notifies the LW Contractor that a part of the Construction Site becomes Accessible in accordance with clause 7.9(a); and
- (b) ending on the earlier of:

- (i) commencement of the Construction Site licence for that part of the Construction Site; and
- (ii) as notified in writing by the Principal to the LW Contractor.

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

- (a) the LW Contractor's Activities, the Project Works or Sydney Metro City & Southwest; or
- (b) any activities of the Principal which are affected by the LW Contractor's Activities, the Project Works or Sydney Metro City & Southwest,

including ATSB, ONRSR and OTSI.

Jemena means Jemena Limited (ABN 95 052 167 405).

Known Defects Rectification Period means the period:

- (a) commencing on the date of Construction Completion (as defined in the relevant Interface Works Contract) for an Interface Portion to which the Interface Works Known Defect relates; and
- (b) ending on the date that is ■ days after the date in paragraph (a).

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

Latent Conditions has the meaning given in clause 7.15(a).

Law means:

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

Legal Opinion means a legal opinion:

- (a) from lawyers acceptable to the Principal, authorised to practice in the jurisdiction of incorporation of the Parent Company Guarantor, stating that the Parent Company Guarantee provided under clause 5.9 is legal, valid, binding and enforceable against that Parent Company Guarantor;
- (b) in favour of the Principal; and
- (c) which is in a form reasonably satisfactory to the Principal.

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

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);

- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Local Area Works means the modification, reinstatement and improvement of Local Areas which the LW Contractor must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed and the SWTC (including sections 2.4.2 of the SWTC) and including, to the extent relevant to such works, Modifications directed in accordance with this deed.

Local Areas means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) are adjacent to;
- (b) connect to;
- (c) intersect;
- (d) cross; or
- (e) are in any way affected by,

the Project Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

Loss means:

- (a) any cost, expense, fee, loss, damage, Liability, or other amount; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and includes Consequential Loss.

LW Contract means this deed.

LW Contract Documents means:

- (a) this deed;
- (b) the Independent Certifier Deed;
- (c) each LW Cooperation and Integration Deed;
- (d) the Barangaroo Cooperation and Collaboration Agreement;
- (e) the Barangaroo Cooperation and Collaboration Accession Deed;
- (f) the Deeds of Disclaimer;
- (g) the Parent Company Guarantee;

- (h) the SMCSW Master Interface Protocols Deed Poll;
- (i) the Collateral Warranty Deed Poll;
- (j) the interface agreement deed poll (to be executed by the LW Contractor in the form of Schedule A8); and
- (k) the LW Contractor deed poll (to be executed by the LW Contractor in the form of Schedule A9).

LW Contractor means the person named as the LW Contractor in Schedule A1.

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

LW Contractor's Activities means all things or tasks which the LW Contractor is, or may be, required to provide, carry out or do to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by the LW Contractor to another person, including:

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

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

LW Contractor's Program means the program prepared and provided by the LW Contractor on an Open Book Basis (as described in paragraph (b) of the definition of Open Book Basis) and in accordance with clause 14.2, as developed and updated in accordance with clause 14.2 from time to time.

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

LW Cooperation and Integration Deeds means:

- (a) each LW Interface Contractor Cooperation and Integration Deed;
- (b) each LW Interface D&C Contractor Cooperation and Integration Deed;
- (c) each LW OSD Contractor Cooperation and Integration Deed;
- (d) each LW OSD D&C Contractor Cooperation and Integration Deed;
- (e) the LW Martin Place Station Contractor Cooperation and Integration Deed;

- (f) the LW Martin Place OSD Contractor Cooperation and Integration Deed;
- (g) the LW CSM Contractor Cooperation and Integration Deed;
- (h) the LW SSJ Contractor Cooperation and Integration Deed;
- (i) the LW Operator Cooperation and Integration Deed;
- (j) the LW OpCo Cooperation and Integration Deed; and
- (k) the LW TSE Contractor Cooperation and Integration Deed.

LW CSM Contractor Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor and the CSM Contractor substantially in the form of Schedule A17B.

LW Interface Contractor Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor and an Interface Contractor (excluding an Interface Contractor for which there is a form of LW Cooperation and Integration Deed specific to that Interface Contractor) substantially in the form of Part A of Schedule A17.

LW Interface D&C Contractor Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor, an Interface Contractor (excluding an Interface Contractor for which there is a form of LW Cooperation and Integration Deed specific to that Interface Contractor) and the construction contractor appointed by the Interface Contractor to perform the works where the Interface Contractor is a developer only, substantially in the form of Part B of Schedule A17.

LW Martin Place OSD Contractor Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor and the overstated developer contractor in respect of Martin Place station, substantially in the form of Schedule A17C.

LW Martin Place Station Contractor Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor and the Martin Place Station Contractor substantially in the form of Schedule A17D.

LW Modifications Manager means the individual listed in Schedule A6 as the "LW Modifications Manager" or, subject to clause 13.4(b)(ii), any replacement appointed by the LW Contractor from time to time to replace that person.

LW OpCo Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor and OpCo substantially in the form of Schedule A18A.

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

LW OSD Contractor Cooperation and Integration Deed means each deed to be entered into between the Principal, the LW Contractor and an OSD Contractor substantially in the form of Part A of Schedule A17A.

LW OSD D&C Contractor Cooperation and Integration Deed means each deed to be entered into between the Principal, the LW Contractor, an OSD Contractor and the construction contractor appointed by the OSD Contractor to perform the works where the OSD Contractor is a developer only, substantially in the form of Part B of Schedule A17A.

LW SSJ Contractor Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor and the SSJ Contractor substantially in the form of Schedule A17E.

LW TSE Contractor Cooperation and Integration Deed means a deed to be entered into between the Principal, the LW Contractor and the TSE Contractor substantially in the form of Schedule A18B.

LW Works means the physical works which the LW Contractor must design, construct, complete and hand over to the Principal in accordance with this deed (including, to the extent relevant to such works, Modifications directed in accordance with this deed) but excluding the Third Party Works.

Management Fee means the amount equal to the Management Fee Percentage of the Reimbursable Costs.

Management Fee Element means the estimate of the Management Fee set out in Schedule F1 and included in the Target Cost, which is on account of profit and costs and expenses related to off-site business functions of the LW Contractor in respect of the Project Works, including the following:

- (a) safety and quality;
- (b) financial, legal, human resources and commercial support;
- (c) executive management;
- (d) corporate infrastructure and support;
- (e) corporate computer systems, software and support;
- (f) parent company fees;
- (g) corporate head office(s) running costs and payroll;
- (h) effecting and maintaining insurances (other than insurances required to be effected and maintained by the Principal in accordance with clause 18) and allowances for insurance deductibles and excesses;
- (i) attendance at meetings of the Management Review Group, the IDAR Panel and similar meetings (by the LW Contractor's non-site personnel); and
- (j) provision of security undertakings.

Management Fee Element Adjustment means an adjustment to the Management Fee Element in respect of a Management Fee Adjustment Event, as agreed by the parties or calculated in accordance with clause 4.3.

Management Fee Element Adjustment Event means any of the following:

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

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

[illegible]

(b) (7)(C), (b) (7)(D)

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

[REDACTED]
 [REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]

(i) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Management Fee Percentage means:

(a) [REDACTED]

(b) [REDACTED]

Management Review Group means the group comprising the persons specified in clause 13.20 who must perform the functions specified in clause 13.21.

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

Material Adverse Planning Effect means:

- (a) a delay of the type contemplated in clause 14.8(a)(ii)(B)(aa) arising from the requirements or conditions of the Project Planning Approval (Sydenham to Bankstown); or
- (b) a material adverse effect arising from the requirements or conditions of the Project Planning Approval (Sydenham to Bankstown) on:
 - (i) the ability of the LW Contractor to comply with its obligations under this deed;
 - (ii) the Principal's rights and/or obligations under this deed; or
 - (iii) the objectives for Sydney Metro City & Southwest as contemplated in this deed.

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

Milestone Performance Payment has the meaning given in table 2B of Schedule A2.

Milestone Performance Payment Milestone means the Milestones as set out in table 2B of Schedule A2.

Milestones means the milestones as set out under table 2A and table 2B in Schedule A2 and **Milestone** means any one of them.

Minor Defect means a Defect which:

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

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

Minor Modification means a Modification that is listed in the Catalogue of Minor Modifications.

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

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

Mitigation Measure means a measure, action, standard or precaution to mitigate the impact of the Project Works as specified in:

- (a) the Revised Environmental Mitigation Measures (Chatswood to Sydenham);
- (b) the Revised Environmental Mitigation Measures (Sydenham to Bankstown); and
- (c) the Mitigation Measures (Rapid Transit Rail Facility).

Mitigation Measures (Rapid Transit Facility) means the mitigation measures described in the Rapid Transit Rail Facility Response to Submissions Report dated October 2013 and located on the NSW Department of Planning and Environment's major project's website <http://www.majorprojects.planning.nsw.gov.au/>.

Modification means any change to the LW Contractor's Activities, the Project Works or the Temporary Works including:

- (a) any addition, reduction, increase to, decrease, omission or deletion from the Project Works, the Temporary Works or the LW Contractor's Activities;
- (b) any change to the character or quality, or demolition or removal, of any material or work;
- (c) any change to the levels, lines, positions or dimensions of any part of the Project Works or the Temporary Works;
- (d) changes to the Construction Site or any Construction Site access date or Site Access Expiry Date specified in this deed;
- (e) subject to clause 6.4, a Change in Law;
- (f) any design works, surveys or site investigations in respect of a potential or proposed modification referred to in paragraphs (a), (b) or (c); or
- (g) changes to any sequence, method or timing of construction other than any changes necessary for the LW Contractor to comply with its obligations under this deed,

but it excludes:

- (h) any Provisional Sum Work; and
- (i) any changes to the Project Works or the Temporary Works that are required as a result of the Principal's Representative instructing a Pre-Agreed Modification under clause 10.8(a).

Modification Approval means a notice titled "Modification Approval" issued by the Principal under clause 10.9(d)(i)(A).

Modification Order a notice titled "Modification Order" issued by the Principal under clause 10.6(a).

Modification Proposal means a proposal submitted by the LW Contractor under clause 10.4(c).

Modification Proposal Request means a notice titled "Modification Proposal Request" issued by the Principal under clause 10.4(a).

Modifications Working Group means the group referred to in clause 10.3.

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

NAC Assurance Plan means the Project Plan of that name.

NAC CCR Package means a package of documentation meeting the requirements set out in Annexure C of Appendix F1 of the SWTC.

NAC Required Actions has the meaning given in clause 9.10(b)(ii).

NAC Requirements means the requirements set out in Annexure D of Appendix F1 of the SWTC.

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

Network Assurance Committee or **NAC** means the network assurance committee established by the Principal to manage configuration changes for the Sydney Metro delivery office in accordance with the Configuration Management Framework.

Network Rules means the rules, systems and procedures relating to railway operations established or adopted by Sydney Trains in its capacity as a rail infrastructure manager to ensure the safety of its railway operations for the purposes of section 52(3)(c) and 52(4)(c) (Duties of rail transport operators) of the Rail Safety National Law which are available at <https://railsafe.org.au/> or as otherwise advised by the Principal.

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

Nominated Member has the meaning given to that term in clause 20.3(b).

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

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

Notice of Dispute means a notice given under clause 20.4.

Notice of Issue means a notice given under clause 20.3.

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

NSW Code has the meaning given in clause 8.12.

NSW Guidelines has the meaning given in clause 8.12.

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

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

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

OpCo means the party engaged by TfNSW to deliver the Sydney Metro Northwest project being NRT Pty Ltd ACN 166 610 313 whose registered office is at Level 29, 140 William Street, Melbourne, Victoria, 3000, in its personal capacity and in its capacity as trustee.

OpCo Temporary Areas means those parts of the Construction Site described in clause 2.2 of Part E of the Site Access Schedule.

Open Book Basis means the provision of both:

- (a) pricing, costing and all other relevant information to enable an assessment of actual costs and profit margins; and
- (b) programing and sequencing details and all other relevant information to enable an assessment of the programing and sequencing of activities,

unless the obligation is expressly limited to either paragraph (a) or (b) of this definition, in a clear, transparent and fully auditable manner.

Operator means:

- (a) the TSOM Contractor; or
- (b) any other entity that the Principal engages to operate and, if required by the Principal, maintain Sydney Metro City & Southwest or any part of it.

OSD Contractor means a contractor appointed by the Principal for any overstation development in respect of a SMCSW station.

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

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

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

OTS Project Works means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that OpCo must, in

accordance with the OTS Project Deed, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro Northwest, including equipment, systems (including all information and communications systems), hardware and software, stations, rolling stock, trackwork and support structures and the stabling yard and maintenance depot and control centre.

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

Outturn Cost means the Contract Price less amounts paid for Post Construction Completion Activities under clause 15.1(a)(ii)(B).

Parent Company Guarantee means the deed which appears in Schedule F4.

Parent Company Guarantor means the entity identified in Schedule A1.

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

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

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

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

Permitted Use means the investigation, design, construction, testing, Commissioning and completion of the LW Works, the carrying out of the LW Contractor's Activities and the performance by the LW Contractor of its other obligations under this deed.

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

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

but which is not a variation to the Subcontract works:

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

Planning Approval means each of:

- (a) the Project Planning Approval (Chatswood to Sydenham);

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

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

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

Portion 2 means the Project Works described as "Portion 2" in Schedule A2.

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

Portion 4 means the Project Works described as "Portion 4" in Schedule A2.

Post Construction Completion Activities means those LW Contractor's Activities to be performed by the LW Contractor after the Date of Construction Completion and prior to the Date of Completion as described in Schedule C6.

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

PPS Law means:

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

Pre-Agreed Modification means any of the pre-agreed modifications listed in Schedule A3.

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

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

Pre-Completion Notice means the notice issued under clause 16.4(e).

Preliminaries means the preliminaries to be provided by the LW Contractor prior to the Date of Construction Completion, being those tasks or matters specified in Schedule C3.

Preliminaries Cost Element means that part of the Reimbursable Cost Element set out in Schedule F1 for performing the Preliminaries.

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

Principal Supplied Items means the items listed in Schedule A16.

Principal's Approvals means those Authority Approvals specified in paragraphs 1.1 and 1.2 of Schedule E3 that 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 where required.

Principal's Design Review Period means 20 Business Days commencing on the date on which the Principal's Representative is provided with any Design Documentation under clause 9.5.

Principal's Design Re-Review Period means, where the LW Contractor is required to re-submit any Design Documentation in accordance with clause 9.9(e)(i) or clause 9.9(g):

- (a) 5 Business Days (if the LW Contractor has taken 5 Business Days or less to re-submit the Design Documentation); or
- (b) 10 Business Days (otherwise).

Principal's Design Stage 1 Documents means the documents set out Schedule C8.

Principal's Design Stage 3 Documents means the Design Stage 3 Documents (as described in Schedule C7) to be provided by the Principal to the LW Contractor.

Principal's Modifications Manager means any person appointed from time to time by the Principal and notified to the LW Contractor.

Principal's Representative means:

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

Prohibited Subcontractor means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in,

corrupt conduct as defined in the Independent Commission Against Corruption Act 1988 (NSW); or
- (b) any Subcontractor employing an employee in respect of whom paragraph (a)(i) or (a)(ii) apply.

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

Project Health and Safety Management Plan means the plan which forms part of the Project Plans which is required to be provided and implemented by the LW Contractor pursuant to the SWTC and which must:

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

Project Plan means each of the documents required to be provided and implemented by the LW Contractor pursuant to the SWTC and as developed, amended or updated from time to time in accordance with this deed.

Project Planning Approval (Chatswood to Sydenham) means:

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

as modified from time to time.

Project Planning Approval (Sydenham to Bankstown) means:

- (a) the approval in relation to the Project Planning Approval Application (Sydenham to Bankstown), once granted by the Minister for Planning under the EP&A Act; and
- (b) includes all:
 - (i) conditions to such approval; and
 - (ii) documents incorporated by reference,

as modified from time to time.

Project Planning Approval (Rapid Transit Rail Facility) means:

- (a) the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 29 July 2013, a copy of which is located on the NSW Department of Planning and Environment website <http://www.planning.nsw.gov.au>; and
- (b) includes all:
 - (i) conditions to such approval; and
 - (ii) documents incorporated by reference,

as modified from time to time.

Project Planning Approval Application (Sydenham to Bankstown) means the application for approval under Part 5.1 of the EP&A Act in respect of Sydney Metro City & Southwest (Sydenham to Bankstown) submitted by the Principal to the Minister for Planning as described in clause 6A.1.

Project Site means those parts of the Construction Site described in clause 2.1 of Part A, Part B, Part C and Part E (excluding the SMNW Operator Site) of the Site Access Schedule and the Temporary Areas.

Project Values means the values that will guide the delivery of Sydney Metro City & Southwest, being:

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

Project Works means the physical works which the LW Contractor must design, construct, complete and hand over under this deed (including, to the extent relevant to such works, Modifications directed in accordance with this deed), including the LW Works and the Third Party Works, but excluding Temporary Works.

Property Works means all works required to existing buildings and infrastructure or to and within properties arising out of the LW Contractor's Activities as described or specified in the SWTC, including in sections 2.4.3 of the SWTC (and including, to the extent relevant to such works, Modifications directed in accordance with this deed).

Proposed Accepted Interface Works Change has the meaning given in clause 9A.6(a).

Provisional Sum Adjustment has the meaning provided in clause 11.16(c).

Provisional Sum Estimate has the meaning provided in clause 11.16(c).

Provisional Sum Work means the work described in Schedule C5.

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

- (a) any illness or personal injury to, or death of, any person;
- (b) the loss or destruction of (whether total or partial) or damage to any real or personal property; or
- (c) loss of use of or access to any real or personal property where such loss of use or access is caused by the LW Contractor's wrongful act or omission or breach of this deed.

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

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

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

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

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

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

Rail Transport Operator has the meaning given to that term in the Rail Safety National Law.

Railway Operations has the meaning given to that term in the Rail Safety National Law.

Recognised Aboriginal Business has the same meaning given to it in the SWTC.

Recognised Aboriginal Business Subcontract means an agreement which is entered into between the LW Contractor and a Recognised Aboriginal Business.

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

Reimbursable Cost Element means the estimate of Reimbursable Costs set out in Schedule F1 and included in the Target Cost and comprised of the Design Cost Element, the Preliminaries Cost Element, the Construction Cost Element and the Provisional Sum Estimate. The Reimbursable Cost Element excludes amounts paid for the Post Construction Completion Activities.

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

Reimbursable Cost Element Adjustment Event means:

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(i) [REDACTED]

(j) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



(a) in respect of:

(B) otherwise, the sum ascertained by multiplying the number of hours the labour resource or Construction Plant is employed in the execution of the Self-Performed Reimbursable Work for any given period under this deed by:

(aa) the applicable rate in Schedule F2; or

(bb) where there is no applicable agreed rate in Schedule F2 or otherwise agreed between the parties in writing, a reasonable rate (which will exclude any margin for off-site overheads or profit) as determined by the Principal's Representative,

but excluding, in any event, all Excluded Costs;

(b) any amount agreed under clause 11.14(i);

(c) any amounts payable in respect of Provisional Sum Work; and

(d) any other amount stated in this deed to be "Reimbursable Costs",

less, in respect of any Defect which is the subject of an instruction under clause 12.2(a)(iii), the amount determined by the Principal's Representative pursuant to clause 12.4.

Reimbursable Work means the entirety of the LW Contractor's Activities other than the activities covered by the Management Fee Element, the Provisional Sum Work and the Post Construction Completion Activities.

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

[REDACTED]

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

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

Resolution Institute means the Resolution Institute, Australia.

Revised Environmental Mitigation Measures (Chatswood to Sydenham) means the revised environmental mitigation measures described in Chapter 11 of the Sydney Metro City & South West Chatswood to Sydenham Submissions and Preferred Infrastructure Report dated October 2016 and located on the NSW Department of Planning and Environment's major projects website <http://www.majorprojects.planning.nsw.gov.au/>.

Revised Environmental Mitigation Measures (Sydenham to Bankstown) means the Baseline Mitigation Measures or any revised environmental mitigation measures related to and described in the Preferred Infrastructure report in respect of the Project Planning Approval (Sydenham to Bankstown).

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

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

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

Room Schedule and Data Sheets means the room schedule and room data sheets set out in Annexure G of Appendix E of the SWTC.

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

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

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

Self-Performed Reimbursable Work means the part of the Reimbursable Work to be performed by the LW Contractor itself or a Related Body Corporate of the LW Contractor as described in Schedule F1.

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

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

Site Access Date means, in respect of a part of the Construction Site, the date specified as a "Site Access Date" for that part of the Construction Site in the Site Access Schedule.

Site Access Expiry Date means in respect of an area of the Construction Site identified in the Site Access Schedule, the date specified as the "Site Access Expiry Date" for that area, as may be extended in accordance with this deed.

Site Access Schedule means Schedule E1.

Site Conditions means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Construction Site, Bulk Feeder Route and any Extra Land or their surroundings including:

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Chemical or other spoil or Waste;
- (f) topography of the Construction Site, Bulk Feeder Route and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site, Bulk Feeder Route or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;

- (h) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected; and
- (i) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, windblown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions.

Site Interface Deed Poll means a deed poll in the form of Schedule A10.

SMCSW Master Interface Protocols Deed Poll means the deed poll substantially in the form of Schedule A23.

SMNW Operator Site has the meaning given in the LW OpCo Cooperation and Integration Deed.

SMNW Site Interface Deed Poll means a deed to be entered into between OpCo, the LW Contractor and the Principal substantially in the form set out in Schedule A18C.

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

Southwest Site has the meaning given in Schedule E1.

Specified Milestones means the Milestones set out in table 2A of Schedule A2 and **Specified Milestone** means any one of them as the context may require.

Specified Track Possession means each of the Track Possessions identified in Schedule E2 with an asterisk (*).

SSC Contractor means the entity selected by the Principal to design and construct certain physical works in connection with the upgrade and conversion to metro status of the existing railway line between Sydenham and Bankstown.

SSJ Contract means the contract entered into between TfNSW and the SSJ Contractor dated 20 September 2017 for the design and construction of the SSJ Works, as amended from time to time.

SSJ Contractor means:

- (a) John Holland Pty Ltd (ABN 11 004 282 268); and
- (b) Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000).

SSJ Works means the physical works to be designed and constructed by the SSJ Contractor under the SSJ Contract, being trackwork, changes to existing Sydney Trains signalling and train control system, changes to Sydney Trains existing overhead systems, civil works for Sydenham Station and associated electrical works and new concourse but excluding works for third parties and temporary works.

Statement of Business Ethics means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at: www.transport.nsw.gov.au.

Station Contract means each of the following:

- (a) the deed to be entered into between the Principal and the relevant Station Contractor for the design and construction of Crows Nest Station;

- (b) the deed to be entered into between the Principal and the relevant Station Contractor for the design and construction of Victoria Cross Station;
- (c) the deed to be entered into between the Principal and the relevant Station Contractor for the construction of Barangaroo Station;
- (d) the deed entered into between the Principal and the relevant Station Contractor for the construction of Martin Place Station;
- (e) the deed to be entered into between the Principal and the relevant Station Contractor for the design and construction of Pitt Street Station;
- (f) the deed to be entered into between the Principal and the Waterloo Station Contractor for the design and construction of Waterloo Station;
- (g) the CSM Contract; and
- (h) the SSJ Contract,

and together, the **Station Contracts**.

Station Contractor means each contractor (whether a single entity or a joint venture) which is a party to a Station Contract with the Principal and together, the **Station Contractors**.

Station General Arrangements means the general arrangement drawings in respect of each City Station set out in Annexures L to S of Appendix E of the SWTC.

Station Plant Rooms has the meaning given to "Plant Room" in the SWTC.

Station Site means those parts of the Construction Site described in Part D of the Site Access Schedule.

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

Subcontract Adjustment Event means an adjustment event under an Approved Subcontract Agreement which corresponds with:

- (a) a Management Fee Element Adjustment Event; or
- (b) a Reimbursable Cost Element Adjustment Event.

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

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

- (a) the Design Documentation, which the LW Contractor is entitled to use for tendering purposes under clause 13.11(k), relevant to the part of the Reimbursable Work to be subcontracted;
- (b) the conditions of the Subcontract which must, unless otherwise expressly directed in writing by the Principal's Representative, be on the terms approved by the Principal's Representative;
- (c) if the Principal's Representative so directs, a request for tender; and

- (d) any other documentation necessary for that part of the Reimbursable Work to be subcontracted.

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

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

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

SWTC means the Scope of Work and Technical Requirements for the Project Works described in Schedule C1.

Sydenham Junction Service Building Arrangement means the general arrangement drawings in respect of Sydenham Station service building set out in Annexure S of Appendix E of the SWTC.

Sydney Metro City & Southwest or SMCSW means the construction, maintenance and operation of the railway line from Chatswood to Bankstown, including:

- (a) the upgrade and conversion of the existing Bankstown line to metro standard, the stabling yard and maintenance depot at Marrickville, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure; and
- (b) the integration of Sydney Metro Northwest to form a single end to end metro system from Cudgegong Road to Bankstown.

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

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

Sydney Metro Principal Contractor Health and Safety Standard means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-PS-ST-221)" in the SWTC, as amended from time to time.

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

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

Sydney Trains Interface Works means:

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

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

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

Sydney Trains Transition Agreement means the Third Party Agreement titled "Sydney Metro City & Southwest –Transition Agreement – Foundation Infrastructure Works Contracts" (000-TPA-ST_RC-02) dated 7 November 2018 and the "Scope of Works and Access Schedule for the Line-Wide Works" between the Principal, RailCorp and Sydney Trains (as may be updated or replaced in accordance with clause 3.6).

Sydney Trains Works has the meaning given to the term "Sydney Trains Works" in the Sydney Trains Transition Agreement, including the physical works which the LW Contractor must design, construct, complete and handover to Sydney Trains in order to comply with its obligations under section 2.4.1 of the SWTC.

Sydney Water means Sydney Water Corporation (ABN 49 776 225 038).

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

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

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

Technical Management Plan means the plan of that name, as updated from time to time in accordance with SWTC Appendix F2.

Telstra means Telstra Corporation Limited (ABN 33 051 775 556).

Temporary Areas means the land described as the Temporary Areas in clause 2.2 of Part A of the Site Access Schedule.

Temporary Laydown Areas means the land described as the Temporary Laydown Areas in clause 2.3 of Part A of the Site Access Schedule.

Temporary Works means any temporary works required to be carried out or provided by the LW Contractor or a Subcontractor for the purpose of the execution of the LW Contractor's Activities (and including, to the extent relevant to such works, Modifications directed or approved in accordance with this deed), but not forming part of the Project Works.

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

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

TfNSW means Transport for NSW, an entity constituted as a body corporate by section 3C of the *Transport Administration Act 1988* (NSW) and all present and future iterations of that body corporate which continue in existence under the *Transport Administration Act*

1988 (NSW) or any other legislation or another entity appointed to undertake some or all of the functions of that body.

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

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

Third Party Agreement means:

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

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

Third Party Works means Sydney Trains Works, Local Area Works, Property Works and Utility Service Work.

TNAC has the meaning given in the TfNSW Configuration Management Plan.

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

Trackway Portion means the area described Table 6 of Part C of the Site Access Schedule.

Transitional Handover Services means activities required to be performed under the relevant Interface Works Contract in order for the relevant Interface Contractor to maintain the care and control of the Tunnel Site or Trackway Portion and any equipment located therein, including performing the role of "principal contractor" and generally complying with WHS Legislation, prior to the LW Contractor occupying the relevant part of the Tunnel Site or Trackway Portion.

TSE Contractor means:

- (a) John Holland Pty Ltd (ABN 11 004 282 268);
- (b) CPB Contractors Pty Ltd (ABN 98 000 893 667); and
- (c) Ghella Pty Ltd (ABN 85 142 392 461).

TSE Deed means the deed titled "Sydney Metro City & Southwest Tunnel and Station Excavation Works Design and Construction Deed" between the Principal and the TSE Contractor dated 22 June 2017, as amended from time to time.

TSE Handover Works has meaning given in the SWTC.

TSE Interface Works means the works identified on the drawings described in Annexure K of Appendix E of the SWTC.

TSE Land means each of:

- (a) Sub-Site F;
- (b) Sub-Site G;
- (c) Sub-Site H; and
- (d) Sub-Site I,

each as identified in Table 4 of the Site Access Schedule.

TSE Works means the physical works to be designed and constructed by the TSE Contractor under the TSE Deed, being the tunnels and station excavation component of Sydney Metro City & Southwest, including demolition and site preparation, tunnel boring and lining, cavern mining and lining, excavation of station shafts and, at Barangaroo only, the station structure, earthworks and drainage associated with the Sydney Metro Trains Facility (South) and tunnel portal structures at Sydenham and Chatswood.

TSOM Contract means a contract between the Principal and the TSOM Contractor for the provision of the TSOM Works and, if required by the Principal, the operation and maintenance of Sydney Metro City & Southwest.

TSOM Contractor means any entity that is engaged by the Principal to perform the TSOM Works and, if required by the Principal, the operation and maintenance of Sydney Metro City & Southwest.

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

Tunnel Site means the areas described in Table 5 of Part B of the Site Access Schedule.

Unexpected Finds Protocol means a plan for the identification, management, Remediation and disposal of Compensable Contamination which satisfies the requirements of clause 7.18(b).

Unforeseeable PA Conditions are requirements and conditions of:

- (a) the Project Planning Approval (Sydenham to Bankstown) which are not part of, or are different to, the Baseline Conditions; or
- (b) the Revised Environmental Mitigation Measures (Sydenham to Bankstown), which are not part of, or are different to the Baseline Mitigation Measures,

and which have a Material Adverse Planning Effect.

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

Urgent Defect means a Defect, which:

- (a) poses an actual or potential risk:

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

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

Utility Service Work means the construction, modification, or relocation of Utility Services to be designed and constructed by the LW Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in the SWTC, including in sections 2.4.4 of the SWTC (and including, to the extent relevant to such works, Modifications directed in accordance with this deed) but excluding the construction of any Utility Services that will form part of the LW Works.

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

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

WHS means work health and safety.

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

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

WHS Legislation means:

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

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

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed, and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (c) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) "includes" in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or Code and Standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) a reference to:
 - (i) this deed includes all schedules, exhibits (subject to clause 7.21), attachments and annexures to it, including the SWTC; and
 - (ii) a reference to the SWTC includes all appendices to the SWTC;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) for the purposes of clauses 14.10, 14.10(d), and 14.12:
 - (i) any extension of time [REDACTED]
[REDACTED] stated in days; or
 - (ii) any reference to "day",

will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent LW Contractor's Program submitted under clause 14.2 as working days;

- (m) for all purposes other than as set out in clause 1.2(l) or where otherwise designated as a Business Day, "day" means calendar day;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) a reference to a "month" is a reference to a calendar month;
- (q) a reference to "\$" or "dollar" is to Australian currency;
- (r) any reference to:

- (i) the Project Works;
- (ii) the Temporary Works;
- (iii) the LW Works;
- (iv) the Asset Management Information;
- (v) the SWTC;
- (vi) the Design Documentation; or
- (vii) any other document or thing,

or any part of any of them:

- (viii) being fit for its purpose or for its intended purpose; or
- (ix) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:

- (x) the Principal's intention that the Project Works will be used as an integral part of an operating rail system intended to provide frequent high speed mass transit services between Bankstown and Chatswood and which may:
 - (A) be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;
 - (B) be subject to continuous operation;
 - (C) be operated by either the State of New South Wales or by private operator(s) on its behalf;
 - (D) involve further development of rail stations, including station structures and fit out to the extent referred to in this deed;
 - (E) be upgraded, augmented, extended and expanded to the extent referred to in this deed;

- (F) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and
- (G) involve future construction and development of buildings and/or other infrastructure on, over or adjacent to railway stations to the extent referred to in this deed; and
- (xi) any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:
 - (A) this deed, including:
 - (aa) the objectives referred to in clause 2; and
 - (bb) the requirement that the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
 - (B) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Modification) any document provided by the Principal to the LW Contractor specifically in connection with the Modification (excluding any Information Documents);
- (s) any reference to the Project Works or any part of any of them being capable of remaining at all relevant times fit for their purpose or for their intended purpose will be read as being subject to the Principal, the Operator and their respective Associates operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information;
- (t) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (u) any obligation of the LW Contractor under this deed with respect to:
 - (i) Project Plans, will be read as an obligation with respect to the Initial Project Plans, or where a version has been submitted to the Principal's Representative, the version of the relevant Project Plans last submitted by the LW Contractor to the Principal's Representative under the SWTC; or
 - (ii) the Asset Management Information will be read as an obligation with respect to the version of the relevant Asset Management Information last submitted by the LW Contractor to the Principal's Representative under clause 8.15(a) which has not been rejected by the Principal's Representative under clause 8.15(c)(i);
- (v) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (w) on the basis that the Principal is notionally liable to pay GST under the GST Law, a reference in this deed to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement;
- (x) if a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST

which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled;

(y) where under this deed:

- (i) a direction is required to be given or must be complied with;
- (ii) payment of money must be made;
- (iii) an unconditional undertaking must be released; or
- (iv) a default must be remedied,

within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;

(z) a reference to an Other Contractor includes an Interface Contractor;

(aa) a reference to "direction" in the definition of "Claim" in clause 1.1 or in any of clauses 3.1(a)(vii), 13.1, 13.11(o), 20 and 23, will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Document;

(bb) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this deed or any part;

(cc) the word "subcontractor" will include subcontractors, suppliers, Designers and Subcontractors, and the word "subcontract" will include a contract with a subcontractor (including an Approved Subcontract Agreement);

(dd) where, in this deed, it is stated that the LW Contractor is not entitled to make any Claim against the Principal or words to this effect, then the LW Contractor releases absolutely the Principal from any Claim whatsoever and however arising (including in negligence) which the LW Contractor had or, but for this deed, might have had in connection with the subject matter for which this deed states that the LW Contractor has no entitlement to make a Claim;

(ee) nothing in, or contemplated by, this deed will be construed or interpreted as:

- (i) constituting a relationship between the Principal, or the NSW Government and the LW Contractor and any of its related companies, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (ii) imposing any general duty of good faith on the Principal to the LW Contractor in relation to or arising out of Sydney Metro City & Southwest, other than to comply with the obligations (if any) expressly stated to be assumed by the Principal under this deed on a good faith basis;

(ff) when the Principal 'may' exercise a right or remedy, the Principal has an absolute discretion whether or not to do so, and is not required to exercise the discretion in good faith or having regard to, or for the benefit of, the LW Contractor;

(gg) if the Principal is required to exercise best or reasonable endeavours, the LW Contractor acknowledges that:

- (i) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;

- (ii) the Principal cannot guarantee the relevant outcome; and
- (iii) the Principal, by undertaking to exercise reasonable endeavours, does not agree to:
 - (A) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (B) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of this deed if the Principal regards that exercise as not in the public interest;
 - (C) develop policy or legislate by reference only or predominantly to the interests of this deed;
 - (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of this deed; or
 - (E) act in any other way that the Principal regards as not in the public interest;
- (hh) the interpretations of:
 - (i) LW Contractor's Activities;
 - (ii) Project Works;
 - (iii) LW Works;
 - (iv) Temporary Works;
 - (v) Third Party Works;
 - (vi) Construction Site;
 - (vii) Project Site;
 - (viii) Temporary Laydown Areas;
 - (ix) Temporary Areas;
 - (x) Station Site;
 - (xi) OpCo Temporary Areas;
 - (xii) SMNW Operator Site;
 - (xiii) Southwest Site;
 - (xiv) Construction Completion;
 - (xv) Date for Construction Completion;
 - (xvi) Date of Construction Completion;
 - (xvii) Completion;
 - (xviii) Date for Completion;
 - (xix) Date of Completion; and

(xx) Defects Correction Period,

and clauses 7 to 7.13, 3.5, 3.10, 12, 14, 15.2, 18.1, 18.4, 18.5, 18.16, Schedules E1 and E2 and the SWTC will apply separately to each Portion (including any Portion determined under clause 16.5) and references therein to any of the terms in clauses 1.2(hh)(i) to 1.2(hh)(xx) (inclusive) will mean so much of the LW Contractor's Activities, LW Works, Project Works, Temporary Works, Third Party Works, Temporary Areas, Construction Site, Project Site, Temporary Laydown Areas, Station Site, OpCo Temporary Areas, SMNW Operator Site, Southwest Site, Construction Completion, Date for Construction Completion, Date of Construction Completion, Completion, Date for Completion, Date of Completion and Defects Correction Period as is comprised in, or associated with, the relevant Portion;

(ii) where, in this deed or in documents ancillary to this deed, reference is made to:

(i) Contract No: 2017/078; or

(ii) Contract No: 600,

any such reference will be a reference to this deed (including the SWTC and all other schedules).

1.3 **Ambiguous terms**

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

1.4 **Order of Precedence**

- (a) The documents which comprise this deed (including the SWTC and Principal's Design Stage 1 Documents) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
- (b) If (notwithstanding clause 1.4(a)) there is any Error in or between the various documents that comprise this deed then, except to the extent clause 9.2 applies:
 - (i) if the Error is between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (A) this deed (excluding the schedules);
 - (B) the SWTC;
 - (C) schedule A1 (Contract Particulars); and
 - (D) the remainder of the Schedules;
 - (ii) to the extent clause 1.4(b)(i) does not apply to or resolve the Error, the document, term or requirement which prescribes or requires the highest

standard of compliance consistent with complying with all Approvals will take precedence (unless the Principal's Representative directs otherwise).

- (c) To the extent that the LW Contractor is required pursuant to the deed to comply with a Project Plan, the terms of this deed including the schedules will have precedence over the Project Plan to the extent of any inconsistency, ambiguity or discrepancy, and a Project Plan cannot impose an obligation on the Principal to do something different to, or earlier than, required by this deed.
- (d) The Principal will have no Liability to the LW Contractor to the extent that a direction under clause 1.3(a) is consistent with the rules of construction in clause 1.4(b) and clause 1.4(c).
- (e) To the extent that a direction by the Principal's Representative under clause 1.3(a) is not consistent with the rules of construction in clause 1.4(b) and clause 1.4(c), that shall be a Reimbursable Cost Element Adjustment Event and a Management Fee Element Adjustment Event.

1.5 Deed Poll by LW Contractor

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

- (a) in the form set out in Schedule A8 in favour of Sydney Trains; and
- (b) in the form set out in Schedule A9 in favour of Sydney Trains and RailCorp.

1.6 Authorities

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under this deed.
- (c) The parties agree that clauses 1.6(a) and 1.6(b) are taken not to limit any Liability which the Principal would have had to the LW Contractor under this deed as a result of a breach by the Principal of a term of this deed, or a failure by the Principal to give access as required by clause 7.1(a), but for clauses 1.6(a) and 1.6(b) of this deed.

1.7 Sydney Metro Northwest Augmentation

- (a) The parties acknowledge that:
 - (i) the Principal and OpCo are parties to the OTS Project Deed under which OpCo must undertake the OTS Project Works and subsequently operate and maintain Sydney Metro Northwest;
 - (ii) the OTS Project Deed contains provisions pursuant to which the Principal and OpCo may seek to negotiate and agree an augmentation which includes

the design, construction, testing and commissioning of the TSOM Works and the subsequent operation and maintenance of the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest (**Sydney Metro Northwest Augmentation**); and

- (iii) the Principal and OpCo are currently negotiating a Sydney Metro Northwest Augmentation.
- (b) The Principal will notify the LW Contractor in writing of the outcome of any negotiations in relation to any Sydney Metro Northwest Augmentation.
- (c) If the Principal and OpCo do not agree to a Sydney Metro Northwest Augmentation, the Principal may procure the delivery of the TSOM Works by alternative means and engage an alternate operator to operate the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest. This deed therefore contemplates that:
 - (i) the TSOM Works may be carried out by the TSOM Contractor or another contractor; and
 - (ii) the operation and maintenance of the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest may be carried out by OpCo or an alternate operator.

1.8 **Electronic Files**

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

2. **OBJECTIVES AND PROJECT VALUES**

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

The Principal's objectives for Sydney Metro City & Southwest are to:

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

2.2 **Objectives for the LW Works**

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

- (a) ensure the LW Works are safe and de-risked through innovation and expertise in planning, design and delivery methodologies;
- (b) deliver the LW Works and perform the LW Contractor's Activities in a collaborative and cooperative manner to ensure the timely and effective delivery of Sydney Metro City & Southwest;
- (c) minimise impacts on the environment, including but not limited to noise and vibration, air quality, traffic and transport, heritage, waste, water and energy management and embodied environmental impacts;
- (d) maximise opportunities in relation to social sustainability, including workforce development and local procurement;
- (e) minimise disruption, delay and inconvenience to the affected public, road and public transport users, adjacent businesses, stakeholders and the community during the construction of the LW Works;
- (f) achieve a value-for-money outcome when viewed on the basis of effective risk management, certainty of delivery and whole-of-life cost; and
- (g) commence the LW Works in Q4 2018 and progressively hand over the completed Portions of the Project Works by the times and in accordance with the requirements set out in this deed; and
- (h) consider, meet and positively respond to the key challenges in the delivery of the LW Works including:
 - (i) managing all interfaces with Other Contractors and Other Contractor Work being delivered by the Principal;
 - (ii) systems integration of the LW Works with all Other Contractor Work in relation to Sydney Metro City & Southwest;
 - (iii) accommodation of changes to the construction program while ensuring overall Sydney Metro City & Southwest completion in accordance with this deed;
 - (iv) managing logistics and co-ordinating activities, including concurrent activities within the tunnels forming part of Sydney Metro City & Southwest;
 - (v) working safely effectively and efficiently within live operating rail environments;
 - (vi) providing suitably experienced, skilled and qualified resources to meet the program requirements; and
 - (vii) meeting resourcing requirements to deliver the LW Works on program.

2.3 **Achievement of the Project Values**

The parties:

- (a) acknowledge that:
 - (i) the LW Contractor's Activities form part of Sydney Metro City & Southwest; and

- (ii) adhering to and upholding the Project Values is of fundamental importance to the Principal; and
- (b) agree to:
 - (i) adhere to and uphold the Project Values; and
 - (ii) work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this deed.

3. **LW CONTRACTOR'S OBLIGATIONS**

3.1 **General**

- (a) The LW Contractor:
 - (i) must execute the LW Contractor's Activities, including the design, construction, supply, delivery, installation, integration, testing, Commissioning and hand-over of the Project Works and each Portion, in accordance with this deed;
 - (ii) warrants that it will use its best endeavours to ensure that it achieves Construction Completion and Completion of the Project Works in accordance with the Cost Plan and so that the Outturn Cost does not exceed the Target Cost;
 - (iii) warrants that it will ensure the Reimbursable Work and the Provisional Sum Work (if any), is performed:
 - (A) in a proper and workmanlike manner;
 - (B) so that it is fit for its intended purpose upon Construction Completion; and
 - (C) in compliance with clause 8.1;
 - (iv) warrants that the Temporary Works will at all relevant times be fit for their intended purposes;
 - (v) warrants that, subject to clause 9.2(e), the Project Works and each Portion will:
 - (A) upon Construction Completion, be fit for their intended purposes; and
 - (B) thereafter be capable of remaining at all relevant times fit for their intended purposes;
 - (vi) warrants that it will exercise a duty of the utmost good faith to the Principal in performing the following obligations under this deed:
 - (A) the preparation of the Subcontract Tender Documentation for the Reimbursable Work and in all post-tender communications (verbal or otherwise) with tenderers prior to the entry of an Approved Subcontract Agreement (where applicable);
 - (B) the administration of Approved Subcontract Agreements including all negotiations concerning Modifications and extensions of time; and
 - (C) in making Payment Claims under clause 15.2(b);

- (vii) must commence and progress the LW Contractor's Activities expeditiously and in accordance with any directions of the Principal and achieve:
 - (A) Construction Completion of each Portion by the relevant Date for Construction Completion; and
 - (B) Milestone Achievement of each Specified Milestone by the relevant Date for Milestone Achievement; and
 - (C) Completion of each Portion by the relevant Date for Completion;
- (viii) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the LW Contractor's Activities; and
- (ix) must liaise, cooperate and confer with others as directed by the Principal.
- (b) Without limiting the generality of the LW Contractor's obligations, the LW Contractor will be responsible for and accepts risk of any Loss, delays or disruptions which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed (and will control, coordinate, administer and direct) all activities necessary for the planning, design, commencement, construction, supply, delivery, installation, integration, testing, Commissioning, completion and handover of the Project Works including:
 - (i) the performance of the Design Work and the Preliminaries;
 - (ii) the engagement, supervision, control, coordination, performance and direction of all Subcontractors and the execution of the Construction Work;
 - (iii) obtaining access to all areas other than the Construction Site under clause 7.13;
 - (iv) the Site Conditions encountered including under clause 7.14;
 - (v) all information provided or not provided by the Principal about the Project Works, the Temporary Works, Sydney Metro City & Southwest and the Construction Site;
 - (vi) Contamination, but subject to the provisions of clause 7.16;
 - (vii) complying with Schedule E5 and clause 3.6;
 - (viii) complying with all Laws, Approvals and requirements of Authorities;
 - (ix) the existence, location, condition and availability of Utility Services in respect of the LW Contractor's Activities;
 - (x) industrial relations issues;
 - (xi) foreign exchange movements in any currencies adverse to the LW Contractor;
 - (xii) increases in the costs of materials, Construction Plant, Utility Services and labour required for the performance of the LW Contractor's Activities;
 - (xiii) damage to the LW Contractor's Activities, Project Works, Temporary Works, Construction Site, Bulk Feeder Route or any Extra Land under clause 18.1; and

(xiv) third party claims under clause 18.2.

3.2 Cooperation and coordination with Interface Contractors

(a) Without limiting the LW Contractor's obligations under each LW Cooperation and Integration Deed and the SMCSW Master Interface Protocols Deed Poll, the LW Contractor:

(i) acknowledges that:

- (A) the LW Contractor's Activities interface with the Interface Works;
- (B) Interface Contractors will be executing Interface Work on parts of the Construction Site, or Extra Land, or adjacent to the Construction Site or Extra Land, at the same time as the LW Contractor is performing the LW Contractor's Activities;
- (C) it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Project Works and Temporary Works with the Interface Work;
- (D) Interface Contractors may require the LW Contractor to provide design and work methodology information to them to coordinate the design or conduct of the Interface Work with the Project Works and Temporary Works, and this must be provided in a timely manner by the LW Contractor; and
- (E) any delay in the performance of the LW Contractor's Activities or in the LW Contractor providing information to, or cooperating and coordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the LW Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages; and

(ii) must at all times:

- (A) permit Interface Contractors to execute the Interface Work on the applicable parts of the Construction Site or Extra Land, or on any adjacent property to the Construction Site or Extra Land:
 - (aa) at the same time as the LW Contractor is performing the LW Contractor's Activities; and
 - (bb) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose ensure they have safe, clean and clear access to those parts of the Construction Site or Extra Land, or property adjacent to the Construction Site or Extra Land, required by them for the purpose of carrying out their work subject to, where the relevant Interface Contractor is carrying out Other Contractor Work on the Construction Site or Extra Land during any period in which the Appointed Principal Contractor has been engaged as principal contractor, the Interface Contractor executing a Site Interface Deed Poll in favour of the LW Contractor and the Appointed Principal Contractor;

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

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

- (iv) acknowledges that conditions similar to those in this clause 3.2(a) applying to the LW Contractor will apply to all Interface Contractors engaged by the Principal, whether working on the Construction Site or on any other site.
- (b) If, despite the LW Contractor having complied with all of its obligations under clause 3.2(a), the LW Contractor and any Interface Contractor fail to resolve any interface issue or dispute between them, the LW Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor (with a copy to the relevant Interface Contractor).
- (c) Upon receipt of the LW Contractor's notice under clause 3.2(b), the Principal's Representative must:
 - (i) convene a meeting between the LW Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative); and
 - (ii) work in good faith with the LW Contractor and the Interface Contractor to resolve the issues or dispute.
- (d) The LW Contractor:
 - (i) acknowledges and agrees:
 - (A) no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the LW Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of deed or Modification directed by the Principal's Representative);
 - (B) that except where the Principal's Representative directs a Modification in circumstances where the LW Contractor has fully complied with clause 3.2(a), the Principal will not be liable upon any Claim by the LW Contractor arising out of or in any way in connection with:
 - (aa) the Interface Contractors carrying out their work; or
 - (bb) any act or omission of an Interface Contractor;
 - (C) that the Interface Contractors will be principal contractor of parts of the Construction Site and will require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal;
 - (D) that the LW Contractor's Program will accommodate requirements for design iterations as part of the Interface Work and incorporate the requirements specified in respect of design in each LW Cooperation and Integration Deed (as applicable); and
 - (ii) warrants that as at the date of this deed, each element of the Target Cost and the LW Contractor's Program contain sufficient allowances for the assumption by the LW Contractor of the obligations and risks under clauses 3.2(a) and 3.2(d)(i), including the cost of all the design iterations required to accommodate Interface Work.
- (e) The parties acknowledge and agree that clause 3.2(d)(i)(B) is not intended to limit any entitlement the LW Contractor may have to make a Claim under clauses

7.1(g), 9A.12(c)(iii), 14.1(i), 14.16(e) and paragraph (h) of the definition of Extension Event.

3.2A SMCSW Master Interface Protocols Deed Poll

- (a) The LW Contractor must:
 - (i) within ■ Business Days of receipt of a request from the Principal, provide to the Principal the SMCSW Master Interface Protocols Deed Poll, duly executed by the LW Contractor in the number of counterparts required by the Principal; and
 - (ii) at all relevant times comply with the terms of the SMCSW Master Interface Protocols Deed Poll.
- (b) The Principal will procure that the Operator and each Interface Contractor nominated by the Principal (not including the TSE Contractor) executes a SMCSW Master Interface Protocols Deed Poll in substantially the same form as the SMCSW Master Interface Protocols Deed Poll.

3.3 Co-operation with Other Contractors

- (a) Without limiting or being limited by clauses 3.2, 7.2 and 8.7, the LW Contractor must:
 - (i) permit Other Contractors to carry out their work;
 - (ii) fully co-operate with Other Contractors;
 - (iii) carefully coordinate and interface the LW Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
 - (iv) carry out the LW Contractor's Activities so as to minimise any interfering with, disrupting or delaying the work of Other Contractors.
- (b) The Principal will procure that each of its Other Contractors that it directly engages to undertake work on part of the Project Site during any period in which the LW Contractor (or the Appointed Principal Contractor) has been engaged as principal contractor in respect of that part of the Project Site executes a Site Interface Deed Poll in favour of the LW Contractor the Appointed Principal Contractor, and the Principal and provide the LW Contractor with an executed copy of each such deed poll.

3.4 Cooperation and Integration Deeds

- (a) The LW Contractor must:
 - (i) within 5 Business Days of receipt of a request from the Principal, provide to the Principal:
 - (A) any LW Cooperation and Integration Deed; or
 - (B) the SMNW Site Interface Deed Poll,duly executed by the LW Contractor in the number of counterparts required by the Principal; and
 - (ii) at all relevant times comply with the terms of each LW Cooperation and Integration Deed and the SMNW Site Interface Deed Poll.

- (b) If the Principal makes a request under clause 3.4(a)(i) for the LW Contractor to execute:

- (i) a LW Cooperation and Integration Deed; or
- (ii) the SMNW Site Interface Deed Poll,

the Principal must, in respect of the documents contemplated in clauses 3.4(b)(i) and 3.4(b)(ii) above, within 20 Business Days of receiving the executed documents from the LW Contractor, itself execute, and must procure that the relevant Interface Contractor and OSD Contractor (if applicable) nominated by the Principal, executes the relevant document.

3.5 **Incident Management Reporting**

- (a) The LW Contractor must identify clear guidelines for responding to any Incident arising from the performance of the LW Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the SWTC.
- (b) Should an Incident occur which:
 - (i) is reportable under any relevant Law, the LW Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the SWTC; and
 - (ii) relates to rail safety, the LW Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Contamination, Pollution or other waste that arises during the performance of the LW Contractor's Activities, the LW Contractor must:
 - (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination, Pollution or other waste arising from the Incident;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
 - (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) If the LW Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this deed, immediately terminate this deed by written notice to the LW Contractor.
- (e) Without prejudice to the Principal's other rights under this deed, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the LW Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident.

- (f) If the Principal takes any action under clause 3.5(e) it will be entitled to recover its reasonable costs and expenses from the LW Contractor as a debt due from the LW Contractor to the Principal.
- (g) Without prejudice to the Principal's other rights under this deed, the Principal's Representative may issue a direction under clause 14.13 requiring the LW Contractor to suspend the carrying out of the whole or any part of the LW Contractor's Activities in the event:
 - (i) of any Incident involving:
 - (A) a significant spill of Contamination;
 - (B) any accident or release of Contamination which it believes may pose a danger to health, life or property; or
 - (C) any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
 - (ii) any safety Incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator) or damage to property.
- (h) Other than as specified in clause 14.13(b), the Principal will not be liable upon any Claim by the LW Contractor for any cost, expense, Loss, delay, disruption or penalty arising out of or in connection with:
 - (i) any suspension due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in clause 3.5(g); and
 - (ii) complying with a direction issued under clause 3.5(i), including complying with the steps which the Principal's Representative directs that the LW Contractor must take before the Principal's Representative will issue a direction to recommence the LW Contractor's Activities.
- (i) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.5(g), the LW Contractor may not recommence the LW Contractor's Activities in respect of the part of the LW Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the LW Contractor permitting the LW Contractor to recommence the LW Contractor's Activities affected by the notice to suspend.
- (j) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 3.5(g) the Principal's Representative may also direct the LW Contractor as to the steps which the LW Contractor must take before the Principal's Representative will issue a direction pursuant to clause 14.13 permitting the LW Contractor to recommence the LW Contractor's Activities affected by the notice to suspend.
- (k) If clause 3.5(j) applies, the LW Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the LW Contractor has complied with the requirements of the direction issued under clause 3.5(i) will the Principal's Representative issue a direction to the LW Contractor permitting the LW Contractor to recommence the LW Contractor's Activities affected by the notice to suspend.
- (l) The Principal may recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to

[illegible]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (i) must, following execution of the Barangaroo Cooperation and Collaboration Accession Deed, at all times comply with the terms of the Barangaroo Cooperation and Collaboration Agreement; and
- (ii) acknowledges that it has made allowance in the Target Cost for all delays and costs in respect of its obligations under the Barangaroo Cooperation and Collaboration Agreement and the LW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the performance of its obligations under the Barangaroo Cooperation and Collaboration Agreement.

3.7 **Commissioning**

The LW Contractor acknowledges that:

- (a) Commissioning is part of the LW Contractor's Activities; and
- (b) Commissioning must be completed in accordance with this deed.

3.8 **Existing Operations**

(a) The LW Contractor acknowledges that:

- (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the LW Contractor's Activities;
- (ii) the access ways to the Construction Site and Bulk Feeder Route are used by Existing Operators and other persons and will not be available exclusively to the LW Contractor; and
- (iii) in using these access ways the LW Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.

(b) The LW Contractor must coordinate its access to the Construction Site and Bulk Feeder Route with any other relevant party (including Existing Operators) that use the access ways to the Construction Site and Bulk Feeder Route.

(c) Without limiting any other obligations of the LW Contractor, the LW Contractor must:

- (i) to the extent reasonably possible in performing the LW Contractor's Activities, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or Bulk Feeder Route or the Existing Operations or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;
- (ii) comply with the Principal's reasonable directions in connection with:
 - (A) the Existing Operations (including access to and use of the Construction Site or Bulk Feeder Route); and
 - (B) workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any WHS Legislation;

- (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
- (iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Construction Site or Bulk Feeder Route;
- (v) ensure that in carrying out and completing the LW Contractor's Activities, the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed; and
- (vi) immediately:
 - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the LW Contractor's Activities; and
 - (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 3.8(c) are complied with.
- (d) Except to the extent expressly permitted by this deed, the LW Contractor must:
 - (i) not disrupt, interrupt or interfere in any way with the Existing Operations;
 - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the LW Contractor's Activities in accordance with this deed; and
 - (iii) program and coordinate the LW Contractor's Activities under this deed using design and construct best practices and so as to minimise the effect that the carrying out of the LW Contractor's Activities under this deed has on the Existing Operations.
- (e) The LW Contractor must ensure that its Subcontractors and any of the respective employees, agents, contractors or officers of the LW Contractor and its Subcontractors at all times comply with this clause 3.8.

3.9 **Project Plans**

The LW Contractor must:

- (a) develop the Project Plans as required by the SWTC;
- (b) ensure that the relevant Project Plans are consistent with the Initial Project Plans;
- (c) update the Project Plans as required by the SWTC or as directed by the Principal's Representative; and
- (d) comply with:
 - (i) the Project Plans; and

- (ii) to the extent the Project Plans are not finalised, the Initial Project Plans as if they were the Project Plans.

3.10 **Cleaning Up**

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

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

3.11 **Construction Plant and Materials Removal**

Except for the purpose of achieving Construction Completion of a Portion as contemplated by clause 3.10(d), the LW Contractor must not remove from the Construction Site, Bulk Feeder Route or the LW Contractor's Activities any:

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

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

3.12 **Principal Supplied Items**

- (a) The Principal will:
 - (i) make available the Principal Supplied Items to the LW Contractor:
 - (A) at its own cost;
 - (B) at the respective places referred to in Schedule A16; and
 - (C) by the respective dates referred to in Schedule A16; and
 - (ii) use its best endeavours to procure that the LW Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.

(b) The LW Contractor:

(i) agrees that, in respect of Principal Supplied Items, the:

(A) LW Contractor:

(aa) warrants that it has reviewed the SWTC and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the LW Contractor to satisfy the requirements of this deed;

(bb) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 14 if a Principal Supplied Item is not made available by the relevant date set out in Schedule A16; and

(cc) is not relieved from and remains liable for complying with, all of its obligations under this deed, despite the Principal making available the Principal Supplied Items; and

(B) *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under clause 3.12(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and

(ii) must:

(A) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule A16 to the Construction Site or Extra Land (as applicable); and

(B) as part of the LW Contractor's Activities, incorporate each Principal Supplied Item into the Project Works.

3.13 Collateral Warranty

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

4. CHANGES TO TARGET COST

4.1 Adjustments

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

(a) Reimbursable Cost Element Adjustments; and

(b) Management Fee Element Adjustments.

4.2 Reimbursable Cost Element Adjustments

[REDACTED]

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

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

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

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

4.3 Management Fee Adjustment

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

[REDACTED]
[REDACTED]

4.4 Principal's determinations

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

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

5. SECURITY

5.1 Unconditional Undertakings

- (a) The LW Contractor must give the Principal:
- (i) within 5 Business Days of the date of this deed [REDACTED] unconditional undertakings with a face value in aggregate equal to [REDACTED] of the Target Cost as at the date of this deed; and
 - (ii) each time the Target Cost increases by an amount equivalent to [REDACTED] of the Target Cost as at the date of this deed (**Target Cost Increase**), if the Principal issues a written request for an unconditional undertaking for the Target Cost Increase, within 10 Business Days of the issue of any request, an unconditional undertaking for [REDACTED] of the Target Cost Increase.

- (b) Without limiting clauses 5.3 and 5.6, the unconditional undertakings to be provided under this clause 5 are for the purpose of ensuring the due and proper performance by the LW Contractor of its obligations under this deed and to provide for the bearing of risk of financial burden during the time of any unresolved dispute or difference to be borne by the LW Contractor.

5.2 Requirements for unconditional undertakings

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

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

5.3 Recourse to unconditional undertakings

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

5.4 Release of unconditional undertakings

- (a) Subject to clause 5.4(b) and to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal must:
 - (i) within 20 Business Days after the Date of Construction Completion of Portion 1, release so much of the unconditional undertakings provided by the LW Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of [REDACTED] of the Target Cost as at the date of this deed;
 - (ii) within 20 Business Days after the Date of Construction Completion of Portion 2 release so much of the unconditional undertakings provided by the LW Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of [REDACTED] of the Target Cost as at the date of this deed;
 - (iii) within 20 Business Days after the Date of Completion of Portion 3 release so much of the unconditional undertakings provided by the LW Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of [REDACTED] of the Target Cost as at the date of this deed;
 - (iv) within 20 Business Days after the Date of Completion of Portion 4 release so much of the unconditional undertakings provided by the LW Contractor under clause 5.1 as may be then held by the Principal, so that it then holds unconditional undertakings to the value of [REDACTED] of the Target Cost as at the date of this deed; and
 - (v) within 50 Business Days after the expiry of the final Defects Correction Period in respect of the LW Works, as notified by the Principal's Representative, release the balance of the unconditional undertakings

provided by the LW Contractor under clause 5.1 as may be then held by the Principal.

- (b) Despite any other provision of this deed to the contrary, where this deed may otherwise require the Principal to release an unconditional undertaking or this deed is terminated by the Principal either pursuant to clause 19 or by reason of the LW Contractor repudiating this deed (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this deed to the extent of any claim which the Principal may have against the LW Contractor arising out of, or in any way in connection with, this deed or the LW Contractor's Activities whether for damages or otherwise.

5.5 **No injunction**

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

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

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

If the issuer of any unconditional undertaking provided under this deed ceases to have the Required Rating then the LW Contractor must:

- (a) promptly notify the Principal of that circumstance; and
- (b) within 15 Business Days of being requested to do so, procure the issue to the Principal of a replacement unconditional undertaking which must:
 - (i) be from an institution acceptable to the Principal which has the Required Rating;
 - (ii) have a face value equal to that of the unconditional undertaking being replaced;
 - (iii) comply in all respects with the requirements of this deed, including the requirements related to the Institution issuing the relevant unconditional undertaking,

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

5.7 **No interest**

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

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

5.8 No trust

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

5.9 Parent Company Guarantee

The LW Contractor must within 5 Business Days of the date of this deed:

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

6. LAW AND APPROVALS

6.1 Compliance with Law

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

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

6.2 Approvals

- (a) The LW Contractor must:
 - (i) obtain all Approvals required for the execution of the LW Contractor's Activities and occupation and use of the completed Portions (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for the Principal's Approvals.
 - (ii) comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the LW Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Approvals, including the Planning Approvals, to comply with, satisfy, carry out and fulfil, except for the conditions and

requirements of Approvals which are to be satisfied or fulfilled by the Principal as set out in Schedule E3;

(iii) in respect of any:

- (A) Approvals which are to be obtained by the Principal after the date of this deed (including the Project Planning Approval (Sydenham to Bankstown)); or
- (B) conditions and requirements of Approvals which are to be satisfied or fulfilled by the Principal as set out in Schedule E3,

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

(iv) for the purpose of obtaining all Approvals as required by clause 6.2(a)(i), prepare all associated studies and reports required because of the design of the Project Works or Temporary Works proposed by the LW Contractor; and

(v) as a condition precedent to Construction Completion of the Project Works or a Portion, 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;
- (C) without limiting clauses 6.2(a)(v)(A) and 6.2(a)(v)(B), complied with, carried out and fulfilled all conditions and requirements of the Planning Approvals which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this deed; and
- (D) unless it is included in Schedule E3 as an Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Project Works or the Portion, as designed and built, comply with the requirements of the Building Code of Australia to the extent applicable,

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

- (b) To the extent that the LW Contractor's Activities are such that they are performed on land which is subject to an EPL held by a person other than the LW Contractor, the LW Contractor must comply with the terms of that EPL.

6.3 Change in Codes and Standards

(a) Where there is a Change in Codes and Standards:

- (i) the LW Contractor must give a written notice to the Principal's Representative promptly after becoming aware of a proposed or future Change in Codes and Standards;

- (ii) notwithstanding clause 6.3(a)(i), the LW Contractor must give a written notice to the Principal's Representative within 20 Business Days of the LW Contractor first becoming aware (or when it ought reasonably to have first become aware) of the Change in Codes and Standards coming into effect containing:
 - (A) details of the Change in Codes and Standards or the proposed future Change in Codes and Standards, as the case may be; and
 - (B) an estimate of [REDACTED] for complying with the Change in Codes and Standards, including sufficient information to support the estimate; and
- (iii) if a notice is given by the LW Contractor which complies with clause 6.3(a)(ii), then:
 - (A) within 10 Business Days of the notice being given, the Principal's Representative will either:
 - (aa) direct the LW Contractor to disregard the Change in Codes and Standards (to the extent that to do so would not place the LW Contractor in breach of Law); or
 - (bb) direct the LW Contractor to comply with the Change in Codes and Standards and notify the LW Contractor that clause 4 will apply in respect of [REDACTED] (to the extent the Principal does not agree with the LW Contractor's estimate under clause 6.3(a)(ii)); and
 - (B) the LW Contractor may make a claim for an extension of time under clause 14.8 in respect of any delays the LW Contractor suffers in complying with the Change in Codes and Standards under clause 6.3(a)(iii)(A)(bb).
- (b) If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards, the LW Contractor must comply with the change and will not be entitled to make any Claim (other than for payment under clause 15) against the Principal arising out of or in any way in connection with the change.

6.4 **Change in Law**

Where there is a Change in Law:

- (a) if either party wishes this clause 6.4(a) to apply, then that party must, within 20 Business Days of the Change in Law, give a written notice to the other and the Principal's Representative stating that clause 6.4(a) applies and containing details of the Change in Law, including, where the notice is given by the LW Contractor:
 - (i) an estimate of [REDACTED] for complying with the Change in Law, including sufficient information to support the estimate; and
 - (ii) any effect it will have on the LW Contractor's Program;
- (b) if such a notice is given:

- (i) clause 4 will apply in respect of [REDACTED] (to the extent the Principal does not agree with the LW Contractor's estimate under clause 6.4(a)(i)); and
- (ii) the LW Contractor may make a claim for an extension of time under clause 14.8 in respect of any delays the LW Contractor suffers in complying with the Change in Law; and
- (c) the LW Contractor must comply with the Change in Law.

6.5 Changes to Planning Approval

- (a) If a Change in Planning Approval occurs which has a direct effect on the LW Contractor carrying out the LW Contractor's Activities and necessitates a Modification, the LW Contractor must within 10 Business Days of the date on which the LW Contractor becomes aware or ought reasonably to have become aware of the Change in Planning Approval taking effect, notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Planning Approval necessitates a Modification, together with an estimate of [REDACTED] for complying with the Change in Planning Approval, including sufficient information to support the estimate.
- (b) If the LW Contractor gives a notice under clause 6.5(a) and the Change in Planning Approval does necessitate a Modification the Principal's Representative will direct a Modification under clause 10.6(a) in respect of the Change in Planning Approval.
- (c) Other than as set out in clauses 6.5(a) and 6.5(b), the LW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim (other than for payment under clause 15) arising out of or in any way in connection with:
 - (i) any Change in Planning Approval;
 - (ii) a Planning Approval obtained or issued or which otherwise takes effect after the date of this deed;
 - (iii) a change in a Planning Approval after the date of this deed; or
 - (iv) any:
 - (A) assumptions the LW Contractor makes; or
 - (B) failure by the LW Contractor to adequately satisfy itself,
 as to what work methodologies and Temporary Works might be permissible under the Planning Approval.

6.6 Legal Challenge to Planning Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for a Planning Approval or a modification of a Planning Approval under:
 - (i) the *Environmental Planning and Assessment Act 1979* (NSW);
 - (ii) the *Protection of the Environment Operations Act 1997* (NSW);
 - (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or

(iv) any other Law,

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

(v) ordered or directed by an Authority;

(vi) ordered by a court or tribunal; or

(vii) directed by the Principal or the Principal's Representative.

(b) Subject to clause 6.6(c), the Principal will determine under clause 4 [REDACTED]
[REDACTED]
as a direct result of:

(i) an Authority order referred to in clause 6.6(a)(v);

(ii) a court order referred to in clause 6.6(a)(vi); or

(iii) a direction by the Principal or the Principal's Representative referred to in clause 6.6(a)(vii),

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

(c) Clause 6.6(b) does not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 6.6(a) is brought or upheld due to the LW Contractor's non-compliance with its obligations under this deed or any Planning Approval.

(d) The LW Contractor's entitlement under clause 6.6(b) will be its only right to payment arising out of or in any way in connection with an Authority order, court order or direction by the Principal or the Principal's Representative in accordance with clause 6.6(a)(v), 6.6(a)(vi) or 6.6(a)(vii).

6.7 Crown Building Work

(a) The LW Contractor must, in relation to any part of the Project Works that is 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) Any certification under clause 6.7(a) will not lessen or otherwise affect:

(i) the LW Contractor's other liabilities or responsibilities under this deed or otherwise according to law; or

(ii) the Principal's rights against the LW Contractor, whether under this deed or otherwise according to law.

6.8 Long Service Leave Levy

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

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

- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 6.8(a).

6A PROJECT PLANNING APPROVAL (SYDENHAM TO BANKSTOWN)

6A.1 Project Planning Approval Application (Sydenham to Bankstown)

- (a) The parties acknowledge and agree that:
 - (i) the Principal is the proponent under the EP&A Act in respect of the Project Planning Approval (Sydenham to Bankstown); and
 - (ii) as at the date of this deed, the Principal has submitted the Project Planning Approval Application (Sydenham to Bankstown) including all associated plans, specifications and environmental impact statement updates.
- (b) From the date of this deed, the LW Contractor must:
 - (i) following a request from the Principal, prepare any further documents, plans or reports required to be prepared in respect of the Project Planning Approval Application (Sydenham to Bankstown) process;
 - (ii) provide assistance to the Principal and its Associates in relation to the Project Planning Approval Application (Sydenham to Bankstown), including attending any relevant meeting as required by the Principal and providing any information available to the LW Contractor;
 - (iii) co-operate with the Principal in relation to the Project Planning Approval Application (Sydenham to Bankstown); and
 - (iv) assist the Principal in managing the Project Planning Approval Application (Sydenham to Bankstown) process, including:
 - (A) any consultation with the community and stakeholders required by the Project Planning Approval Application (Sydenham to Bankstown); and
 - (B) the public exhibition of the Project Planning Approval Application (Sydenham to Bankstown),

each in accordance with Good Industry Practice.
- (c) The LW Contractor must ensure that any document prepared in accordance with clause 6A(b)(i) will comply with the EP&A Act, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any other applicable legislation.
- (d) Except to the extent expressly stated otherwise in this clause 6A, the LW Contractor will not be entitled to make, and the Principal will not be liable for, any Claim arising out of or in any way in connection with the process set out in clause 6A. The parties acknowledge that this clause 6A does not limit the LW Contractor's right to make a Claim under clause 6.5 for a Change in Planning Approval in respect of the Project Planning Approval (Sydenham to Bankstown) or for payment under clause 15.
- (e) The parties acknowledge and agree that while the Baseline Conditions and Baseline Mitigation Measures constitute the considered estimation of the Principal of the conditions and requirements that may be imposed under the Project Planning Approval (Sydenham to Bankstown) and Revised Environmental Mitigation Measures (Sydenham to Bankstown), the terms of the Project Planning Approval

(Sydenham to Bankstown) and Revised Environmental Mitigation Measures (Sydenham to Bankstown) which the Minister for Planning may issue arise from the exercise of a statutory discretion in accordance with the terms of the EP&A Act.

- (f) The LW Contractor acknowledges that the Target Cost allows for compliance with the Baseline Conditions and Baseline Mitigation Measures.

6A.2 Issue of the Project Planning Approval (Sydenham to Bankstown)

- (a) The Principal will give notice to the LW Contractor within 2 Business Days of the Project Planning Approval (Sydenham to Bankstown) being issued by the Minister for Planning, together with a copy of the Approval.
- (b) Within 10 Business Days of the Project Planning Approval (Sydenham to Bankstown) being issued by the Minister for Planning, the Principal must give notice ("**PPA Notice**") to the LW Contractor:
 - (i) confirming that the Principal considers that there are no Unforeseeable PA Conditions; or
 - (ii) confirming that the Principal considers that there are Unforeseeable PA Conditions and that the Principal intends to exercise its rights to require a Modification, in which case clause 6A.3 will apply.

6A.3 Direction to Proceed

- (a) If:
 - (i) the Minister for Planning grants, or indicates that it will grant, the Project Planning Approval (Sydenham to Bankstown) subject to what the Principal considers to be an Unforeseeable PA Conditions; or
 - (ii) the Principal, acting reasonably and after having consulted with the LW Contractor, considers that a Modification is required to ensure that:
 - (A) the Project Planning Approval (Sydenham to Bankstown) is granted; or
 - (B) the Project Planning Approval (Sydenham to Bankstown) is granted without being subject to what the Principal considers to be an Unforeseeable PA Condition,

then the Principal may issue a Modification Proposal Request or Modification Order to the LW Contractor in accordance with clause 10 setting out the details of a proposed Modification to enable:

- (iii) the Project Planning Approval (Sydenham to Bankstown) to be granted;
 - (iv) the Project Planning Approval (Sydenham to Bankstown) to be granted without being subject to what the Principal considers to be an Unforeseeable PA Condition; or
 - (v) the LW Contractor to comply with what the Principal considers to be the Unforeseeable PA Condition.
- (b) If the Principal issues a Modification Proposal Request or a Modification Order pursuant to clause 6A.3(a), clause 10 will apply.

6A.4 Revised Schedule E3

Within 20 Business Days of the Principal's PPA Notice, the Principal will provide to the LW Contractor a revised version of Schedule E3 with such revisions as are reasonable and necessary to reflect the terms of the Project Planning Approval (Sydenham to Bankstown), with which the LW Contractor must comply, but without prejudice to clause 6A.3.

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

7.1 Access

- (a) The LW Contractor acknowledges and agrees that access to the Construction Site will be provided progressively to the LW Contractor as set out in the Site Access Schedule and such access is subject to the terms of this clause 7 and any other provision of this deed affecting access.
- (b) Subject to this clause 7 and any other provision of this deed affecting access, the Principal:
 - (i) grants the LW Contractor a non-exclusive licence to use and occupy, and to permit its Subcontractors (and each of their subcontractors in the contracting chain) to use and occupy, the Construction Site for the purpose of performing the LW Contractor's Activities in accordance with this deed including as set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and
 - (ii) must once access to a part of the Construction Site is provided to the LW Contractor, thereafter continue to allow, or ensure that the LW Contractor is continued to be allowed access to that part of the Construction Site in accordance with the Site Access Schedule.
- (c) The LW Contractor acknowledges that in general its access to the Construction Site is subject to:
 - (i) any conditions to access set out in the Site Access Schedule;
 - (ii) this clause 7; and
 - (iii) any other provision of this deed relating to access.
- (d) Without prejudice to the generality of clause 7.1(c), the LW Contractor acknowledges and agrees that the LW Contractor's access to:
 - (i) the Construction Site is also subject to:
 - (A) each LW Cooperation and Integration Deed;
 - (B) the terms of the Third Party Agreements;
 - (C) the appointment and obligations of the Appointed Principal Contractor under clause 8.7; and
 - (D) Schedule E2;
 - (ii) the Station Site, Temporary Laydown Areas, Southwest Site, SMNW Operator Site and OpCo Temporary Areas are also subject to:
 - (A) each LW Cooperation and Integration Deeds (as applicable);

- (B) the Station Site access provisions set out in clause 7.2;
 - (C) in the case of Barangaroo, clauses 3.6A and 3.6B;
 - (D) the terms of the Third Party Agreements; and
 - (E) Schedule E2.
- (e) The LW Contractor acknowledges and agrees that:
- (i) access to the Project Site or any part thereof will only confer on the LW Contractor a right to such management and control of the Project Site as is necessary to enable the LW Contractor to execute the LW Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor;
 - (ii) access to the Station Site, Temporary Laydown Areas, Southwest Site and SMNW Operator Site will not confer management and control of the Station Site, Temporary Laydown Areas, Southwest Site or SMNW Operator Site and the relevant Interface Contractor will have management and control of and be responsible as principal contractor at each part of the Station Site, Temporary Laydown Areas, Southwest Site and SMNW Operator Site;
 - (iii) the Principal is not obliged to give the LW Contractor access to a part of the Construction Site until the LW Contractor has:
 - (A) complied with clauses 5.1(a)(i) and 5.9 of this deed;
 - (B) submitted the Project Health and Safety Management Plan, the Construction Environmental Management Plan and the Construction and Site Management Plan, as required by the SWTC, to the Principal's Representative under clause 13.11 and the Principal's Representative has not rejected the proposed Construction Environmental Management Plan, Construction and Site Management Plan or Project Health and Safety Management Plan within 15 Business Days after such submission in accordance with clause 13.11(h);
 - (C) effected the insurance policies required under clauses 18.5, 18.6 (where required in accordance with clause 18.6), 18.7, 18.8 and 18.9; and
 - (D) complied with the preconditions set out in the Site Access Schedule relevant to that part of the Construction Site;
 - (iv) consistent with clauses 7.1(b), 7.1(c) and 7.1(d) the Principal is not obliged to provide, and the LW Contractor may not be given, exclusive access to or possession of any part of the Construction Site;
 - (v) the Principal is not obliged to carry out any work or provide any facilities to the LW Contractor which may be necessary to enable the LW Contractor to obtain access to any part of the Construction Site or carry out the LW Contractor's Activities;
 - (vi) the Principal, without limiting its obligations under clause 3.2, has engaged or may engage Other Contractors to work or operate upon or in the vicinity of the Construction Site and Extra Land at the same time as the LW Contractor; and

- (vii) it will cooperate with the Other Contractors and coordinate the LW Contractor's Activities with the work or operations of any Other Contractors in accordance with clauses 3.2, 3.3, 3.6A and 3.6B.
- (f) The Principal's obligations under clause 7.1(a) and 7.1(b) in respect of each part of the Construction Site will cease upon the earlier of:
 - (i) issue of a Notice of Construction Completion in respect of the last Portion occupying that part of the Construction Site; and
 - (ii) in the case of any area of the Construction Site for which a Site Access Expiry Date is specified in the Site Access Schedule, the relevant Site Access Expiry Date,

except to the extent provided for in clause 16.8 and to the extent required to allow the LW Contractor to comply with its obligations during the Defects Correction Periods.

- (g) Failure by the Principal to:
 - (i) grant a Construction Site licence as required by clause 7.1(b)(i); or
 - (ii) where a licence is granted in respect of the Station Site, the relevant part of the Station Site has not achieved Degree 2 Activities Completion (each as defined in Table 4 of Schedule A2) as specified in Schedule E1,

will not be a breach of this deed but will entitle the LW Contractor to:

- (iii) an extension of time to any relevant Date for Construction Completion under clause 14.8 if the requirements of that clause are satisfied; and
- (iv) [REDACTED] in accordance with clause 4.
- (h) The LW Contractor's entitlement under clause 7.1(g)(iv) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to grant a Construction Site licence as required by clause 7.1(b)(i).
- (i) The LW Contractor must:
 - (i) not use the Construction Site for any purpose other than the Permitted Use without the prior written consent of the Principal's Representative; and
 - (ii) comply with the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Construction Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW).

7.2 Access to Station Site, Temporary Laydown Areas, Southwest Site and SMNW Operator Site

- (a) The Principal acknowledges that the LW Contractor will require access to the Station Site, Temporary Laydown Areas, Southwest Site and SMNW Operator Site to perform the LW Works and achieve Construction Completion of the relevant Portion.

- (b) Without limiting the LW Contractor's rights or obligations under the SMCSW Master Interface Protocols Deed Poll, each LW Cooperation and Integration Deed or clauses 3.2, 3.3, 3.6A and 3.6B, the LW Contractor:
 - (i) acknowledges that:
 - (A) Interface Contractors will be executing work on parts of, or adjacent to, the Station Site, Temporary Laydown Areas, the Southwest Site and the SMNW Operator Site at the same time as the LW Contractor is performing the LW Works on parts of, or adjacent to, the Station Site, Temporary Laydown Areas, the Southwest Site and the SMNW Operator Site; and
 - (B) the Interface Contractor carrying out Interface Work on the relevant part of the Station Site, Temporary Laydown Areas, the Southwest Site and the SMNW Operator Site will be the principal contractor for that part of the Station Site, Temporary Laydown Areas, the Southwest Site and the SMNW Operator Site, as provided for in clause 8.7.
 - (ii) must fully co-operate with the Interface Contractors at Station Sites, Temporary Laydown Areas, the Southwest Site and the SMNW Operator Site and do everything reasonably necessary to:
 - (A) facilitate the execution of work by the Interface Contractors, including providing each Interface Contractor with such assistance as may be directed by the Principal's Representative; and
 - (B) ensure the effective coordination of the design and construction of the LW Works with the design and construction of the Interface Works;
 - (iii) must carefully coordinate and interface the LW Works with the Interface Works at Station Sites, Temporary Laydown Areas, the Southwest Site and the SMNW Operator Site and for this purpose provide the Interface Contractors with updates as to any changes to information previously provided to the Interface Contractors.
- (c) The Principal must procure that conditions that are substantially the same as those in this clause 7.2 and clause 3.2 applying to the LW Contractor will apply to the Interface Contractors engaged by the Principal working on the Station Sites.
- (d) Without limiting clause 7.4, the LW Contractor indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a breach of this clause 7.2 or clause 3.2.

7.3 **Disputes between the LW Contractor and Interface Contractors**

- (a) If, despite the LW Contractor having complied with all of its obligations under:
 - (i) clauses 7.1 and 7.2;
 - (ii) the SMCSW Master Interface Protocols Deed Poll; and
 - (iii) the relevant LW Cooperation and Integration Deeds,
 the LW Contractor and any Interface Contractor fail to resolve any interface issue or dispute between them, the LW Contractor must promptly give the Principal's

Representative written notice of any interface issue or dispute with any Interface Contractor (with a copy to the Interface Contractor).

- (b) Following receipt of the LW Contractor's notice under clause 7.3(a):
 - (i) the Principal's Representative must convene a meeting between the LW Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative);
 - (ii) the Principal's Representative must work in good faith with the LW Contractor and the relevant Interface Contractor to resolve the issue or dispute; and
 - (iii) the LW Contractor must work in good faith with the Principal's Representative and the relevant Interface Contractor to resolve the issues or dispute.

7.4 **No claims arising out of Interface Works**

The LW Contractor:

- (a) acknowledges and agrees that notwithstanding any other provision of this deed:
 - (i) no act or omission by an Interface Contractor during a period in which access to the Construction Site has been granted to the LW Contractor will, whether or not it causes any delay, disruption or interference to the LW Contractor's Activities, constitute an Extension Event, a [REDACTED] or direction by the Principal to carry out a Modification; and
 - (ii) the Principal will not be liable upon any Claim by the LW Contractor arising out of or in any way in connection with:
 - (A) any Interface Contractor carrying out the Interface Works during the period in which access to the Construction Site has been granted to the LW Contractor; or
 - (B) any act or omission of an Interface Contractor during the period in which access to the Construction Site has been granted to the LW Contractor; and
- (b) warrants that the LW Contractor's Program contains sufficient allowances for the assumption by the LW Contractor of the obligations and risks under clause 7.2 and this clause 7.4.

7.5 **Track Possessions and Extended Track Possessions**

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

- (ii) handback the current Extended Track Possession by the date so notified and in condition acceptable to the Principal.
- (d) If the LW Contractor fails to handback the current Extended Track Possession by the date notified to the Principal under clause 7.5(c)(i), the LW Contractor must reapply for an Extended Track Possession and clause 7.5(c) will apply.
- (e) The LW Contractor must:
 - (i) coordinate the LW Contractor's Activities with the calendar of available Track Possessions and Extended Track Possessions and make proper allowances in all programs for the calendar of available Track Possessions and Extended Track Possessions; and
 - (ii) set out in each version of the LW Contractor Program the Track Possessions and Extended Track Possessions that it proposes to utilise in carrying out the Project Works.
- (f) The LW Contractor acknowledges that it will not have exclusive access to any Track the subject of a Track Possession (including an Extended Track Possession) and must:
 - (i) without limiting clauses 3.2 or 3.3 coordinate its activities with whoever else is sharing the relevant Track Possession or Extended Track Possession; and
 - (ii) allow any relevant Rail Transport Agency and Other Contractors to pass through any track the subject of the relevant Track Possession or Extended Track Possession.
- (g) If the LW Contractor requires a Track Possession or power isolation in addition to the Track Possessions identified in clause 7.5(a) for the performance of the LW Contractor's Activities (**Additional Track Possession or Power Isolation**) and requires the Principal to liaise with the relevant Rail Transport Agency in this regard, it must provide no less than:
 - (i) 52 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or
 - (ii) 26 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight,

and identify whether a power isolation is required during the requested Additional Track Possession or Power Isolation.
- (h) Following receipt of a request for an Additional Track Possession or Power Isolation under clause 7.5(g), the Principal may assist the LW Contractor to obtain the requested Additional Track Possession or Power Isolation, but is under no obligation to do so and in no way guarantees that the requested Additional Track Possession or Power Isolation will be granted by any relevant Rail Transport Agency.
- (i) If an Additional Track Possession or Power Isolation is granted by a Rail Transport Agency, the LW Contractor must make the necessary arrangements for the Additional Track Possession or Power Isolation in accordance with the SWTC.
- (j) The LW Contractor must effectively and efficiently utilise each Track Possession and Extended Track Possession.
- (k) The LW Contractor acknowledges and agrees that:

- (i) the Principal or any relevant Rail Transport Agency may alter or cancel any Track Possession, Extended Track Possession, power isolation or Additional Track Possession or Power Isolation at any time; and
- (ii) its only remedy for:
 - (A) any failure by the Principal to procure a Track Possession, Extended Track Possession or power isolation referred to in clause 7.5(a); or
 - (B) cancellation of Additional Track Possession or Power Isolation once it has been obtained,

is set out in clauses 4 and 14.8.

7.6 **Indemnity for delays to rail services**

- (a) The LW Contractor must:
 - (i) Hand Back the relevant part of the Rail Corridor by the scheduled end of any Track Possession or Extended Track Possession;
 - (ii) not cause any delay to rail services;
 - (iii) in the event of an emergency, cease to occupy the relevant part of the Rail Corridor within a reasonable period of the emergency occurring; and
 - (iv) immediately notify Sydney Train's representative (with a copy to the Principal) if the LW Contractor anticipates it may be late in vacating the Rail Corridor.
- (b) Subject to clause 7.6(d), the LW Contractor must indemnify the Principal against all costs, expenses, losses or damages suffered or incurred by the Principal (including arising out of or in any way in connection with any claim by Sydney Trains or RailCorp against the Principal or any liability of the Principal to Sydney Trains or RailCorp) if:
 - (i) the LW Contractor is late in achieving Hand Back of the relevant part of the Rail Corridor that is the subject of a Track Possession or a Temporary Shutdown; or
 - (ii) there is a delay to rail services arising out of or in connection with the LW Contractor's Activities.

The maximum liability which the LW Contractor will have to the Principal pursuant to this clause 7.6(b) for each event described in paragraph (i) or (ii) (above) will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession or Extended Track Possession calculated by applying the following rates:

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

- (iv) [REDACTED] per hour or part thereof that elapses outside of Peak Hours:
 - (A) between the time that the relevant part of the Rail Corridor the subject of the Track Possession or Extended Track Possession was scheduled to end and the Hand Back of the Track Possession or Extended Track Possession; or
 - (B) while the delay to rail services arising out of or in connection with the LW Contractor's Activities is subsisting.
- (c) Clause 7.6(b) sets out the Principal's sole and exclusive remedy for loss as a result of an event described in clause 7.6(b)(i) or 7.6(b)(ii).
- (d) The LW Contractor's liability to indemnify the Principal under clause 7.6(b) will be reduced proportionally to the extent that any act or omission of the Principal, its Associates, Sydney Trains or RailCorp contributed to the costs, expenses, losses or damages.
- (e) A delay to the commencement of a Track Possession or Temporary Shutdown will not:
 - (i) affect the LW Contractor's liability to indemnify the Principal under clause 7.6(b); or
 - (ii) constitute an act or omission of the Principal, its Associates, Sydney Trains or RailCorp for the purposes of clause 7.6(d).

7.7 **Not Used**

7.8 **Early Access**

- (a) The Principal's Representative must give the LW Contractor:
 - (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,

prior notice to the estimated completion of an Interface Works Portion which is located on a part of the Construction Site.
- (b) If completion of an Interface Works Portion located on a part of the Construction Site occurs earlier than the relevant Site Access Date for that part of the Construction Site, the Principal's Representative may (but is not obliged to) give written notice directing the LW Contractor to accept access to the relevant part of the Construction Site from a specified date prior to the relevant Site Access Date. The Principal must act reasonably in determining the date specified in any such notice.
- (c) If the Principal's Representative provides notice pursuant to clause 7.8(b) for the part of the Construction Site on which the Interface Works Portion is located::
 - (i) the LW Contractor must accept the relevant part of the Construction Site from the date specified in the notice given by the Principal's Representative pursuant to clause 7.8(b); and

- (ii) the licence under clause 7.1(b)(i) will commence with respect to the relevant part of the Construction Site from the date specified in the Principal's Representative's notice.
- (d) The LW Contractor will be entitled to claim [REDACTED] in accordance with clause 4 in respect of each day during the period:
 - (i) commencing on the date the licence under clause 7.1(b)(i) will commence for the relevant part of the Construction Site pursuant to clause 7.8(c)(i); and
 - (ii) ending on the Site Access Date for the relevant part of the Construction Site,

such [REDACTED] to reflect the increased Reimbursable Costs of the LW Contractor as a result of it having to comply with its obligations under clause 7.12 in respect of the relevant part of the Construction Site.

7.9 Interim Access

- (a) The Principal will notify the LW Contractor when a part of the Construction Site is Accessible. Such notice must:
 - (i) set out the date on which the relevant part of the Construction Site is, or will be, Accessible;
 - (ii) state whether the Principal anticipates that the relevant part of the Construction Site will cease to be Accessible at any point following the date set out in paragraph (i); and
 - (iii) where paragraph (ii) applies, the minimum period for which the relevant part of the Construction Site will remain Accessible.
- (b) The Principal grants to the LW Contractor a non-exclusive licence to use and occupy, and to permit Subcontractors to use and occupy, that part of the Construction Site as notified by the Principal under clause 7.9(a) for the purpose of performing the LW Contractor's Activities during an Interim Access Period.
- (c) Without limiting the LW Contractor's rights or obligations under the SMCSW Master Interface Protocols Deed Poll and each LW Cooperation and Integration Deed:
 - (i) acknowledges that during an Interim Access Period:
 - (A) the LW Contractor's Activities interface with the Interface Works; and
 - (B) the Interface Contractors may be executing work on parts of, or adjacent to, the Construction Site, at the same time as the LW Contractor is performing the LW Contractor's Activities;
 - (ii) must at all times during an Interim Access Period:
 - (A) fully co-operate with the Interface Contractors;
 - (B) carefully coordinate and interface the LW Contractor's Activities with the Interface Works; and

- (C) perform the LW Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Works; and
- (iii) must promptly advise the Principal's Representative of all matters arising out of the LW Contractor's access to any part of the Construction Site during an Interim Access Period that may have an adverse effect upon the LW Contractor's Activities.

The LW Contractor agrees that, except where expressly provided under this deed, the LW Contractor will have no Claim or assert any right whatsoever against the Principal arising out of, or in relation to, the LW Contractor accessing any part of the Construction Site during an Interim Access Period.

7.10 Temporary Works

- (a) The LW Contractor must carry out all Temporary Works required to execute the LW Contractor's Activities so that the Temporary Works will be fit for their intended purpose.
- (b) The parties acknowledge and agree that each part of the TSE Handover Works will be deemed to be Temporary Works from the dates on which access to the part of the Construction Site in which the relevant TSE Handover Works are contained is granted to the LW Contractor under clause 7.2(b).

7.11 Property Works

- (a) The LW Contractor must:
 - (i) carry out the Property Works:
 - (A) in accordance with the SWTC; and
 - (B) so that they are fit for their intended purpose upon Construction Completion of the Portion of which the Property Works are a part;
 - (ii) after completion of the Property Works with respect to an Unowned Parcel, including the work described in clauses 7.11(d) and 7.11(e), provide to the Principal's Representative:
 - (A) a properly executed certificate in the form of Schedule B6 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Unowned Parcel, unless the Principal's Representative confirms such a certificate is not required;
 - (B) if the LW Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the LW Contractor to the effect that such owner or occupier, or other person having an interest in the Unowned Parcel, has failed or refused to execute such a release within 15 Business Days after it being provided by the LW Contractor to the owner, occupier or other person following completion of the work on the Unowned Parcel, including the work described in clause 7.11(d); and
 - (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in

connection with a claim by the owner or owners of any part of an Unowned Parcel where:

- (A) such owner or owners have not duly signed a certificate in the form of Schedule B6; and
 - (B) the claim or Loss arises out of or in any way in connection with the LW Contractor's Activities.
- (b) The acceptance of a certificate or statement provided by the LW Contractor under clause 7.11(a)(ii) by the Principal's Representative does not constitute approval by the Principal or the Principal's Representative of the LW Contractor's performance of its obligations under this clause 7.11.
- (c) Upon being given access to any property for the purpose of carrying out any Property Works, the LW Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.
- (d) The LW Contractor must:
- (i) rehabilitate any part of an Unowned Parcel to the state agreed with the owner of such Unowned Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the LW Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 7.11(d).
- (e) The following are conditions precedent to Construction Completion of a Portion:
- (i) completion of all Property Works under this clause 7.11 that form part of the Portion, including all relevant work under clause 7.11(d); and
 - (ii) provision of all certificates or statements (as the case may be) to the Principal's Representative as required under clause 7.11(a)(ii) in respect of Property Works that form part of the Portion.

7.12 Management and Control of the Project Site

At all times after:

- (a) being given access to the Project Site or a part of the Project Site under clause 7.1; or
- (b) obtaining access to the Bulk Feeder Route,

and before the Date of Completion of the Project Works or the last Portion to achieve Construction Completion, the LW Contractor:

- (c) without limiting any right of the Principal or the Principal's Representative under this deed, will be responsible for the management and control of the Project Site and Bulk Feeder Route;
- (d) must:
 - (i) control access to and the security of the Project Site and Bulk Feeder Route; and

- (ii) maintain the Project Site and Bulk Feeder Route or that part of the Project Site or Bulk Feeder Route,

except where the Principal's Representative advises otherwise;

- (e) must ensure public safety on and adjacent to the Project Site and Bulk Feeder Route or that part of the Project Site or Bulk Feeder Route;
- (f) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways, cycleways and Rail Tracks affected by the LW Contractor's Activities in accordance with this deed;
- (g) must, subject to clauses 7.1 and 7.22 and the SWTC, and any relevant Law, limit access to the Construction Site and Bulk Feeder Route to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Construction Site or Bulk Feeder Route as part of the LW Contractor's Activities; and
- (h) must not impede access or Utility Services to private property without the consent of the Principal's Representative and the relevant owner or occupier of that property.

7.13 Land in Addition to the Construction Site and Temporary Areas

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

liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the damage, expense, Loss, cost or liability.

- (b) The LW Contractor must, as a condition precedent to Construction Completion of any Portion where the LW Contractor has occupied or made use of a Temporary Area or OpCo Temporary Area in connection with that Portion, reinstate the Temporary Area or OpCo Temporary Area to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Area or OpCo Temporary Area:
 - (i) that are required by this deed (including the SWTC) to contain any LW Works; or
 - (ii) which this deed (including the SWTC) specifies need not be reinstated.

7.14 Condition of the Construction Site

- (a) Subject to clauses 7.15, 7.16, 7.19 and 7.20 the LW Contractor accepts:
 - (i) the Construction Site, Bulk Feeder Route and any Extra Land; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site, Bulk Feeder Route and any Extra Land;

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

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

arising out of, or in any way in connection with the Site Conditions or any other condition of the Construction Site encountered in performing the LW Contractors Activities.
- (b) Without limiting or otherwise affecting clauses 7.15, 7.16, 7.19 and 7.20, the Principal makes no representation and gives no warranty to the LW Contractor in respect of:
 - (i) the Site Conditions likely to be encountered during the execution of the LW Contractor's Activities or otherwise in respect of the condition of:
 - (A) the Construction Site, Extra Land or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land; or
 - (ii) the existence, location, condition or availability of any Utility Service on, under, above, adjacent to or related to the Construction Site or Extra Land,

in particular given that prior to the handover to the LW Contractor of the various parts of the Construction Site pursuant to clause 7.1, Interface Works will be carried out or will continue to be carried out on the Construction Site.
- (c) Subject to clauses 7.19(d) and 14.7, the LW Contractor accepts:

- (i) the Construction Site and any Extra Land; and
- (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site and any Extra Land,

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

- (iii) all Loss, delay or disruption it suffers or incurs; and
- (iv) any adverse effect on the Project Works or the Temporary Works,

arising out of, or in any way in connection with the Site Conditions encountered in performing the LW Contractor's Activities, in particular given that prior to the handover to the LW Contractor of the various parts of the Construction Site pursuant to clause 7.1, various Interface Works will be carried out or continue to be carried out on the Construction Site.

- (d) The LW Contractor must investigate, design and construct the Project Works and Temporary Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:

- (i) the Site Conditions encountered in performing the LW Contractor's Activities;

- (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:

- (A) the Construction Site or any Extra Land, 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 or any Extra Land, the Environment or their surroundings; and

- (iii) any assumptions, projections, estimates, contingencies or otherwise that the LW Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 7.14(d)(ii), in particular given that prior to the handover to the LW Contractor of the various parts of the Construction Site pursuant to clause 7.1, various Interface Works will be carried out or will continue to be carried out on the Construction Site.

- (e) Subject to clause 7.14(a) and without limiting clause 7.21(c), the LW Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, the LW Contractor:

- (i) examined, and relied solely upon its own assessment, skill, expertise and inquiries:

- (A) in respect of all information relevant to the risks, contingencies and other circumstances having an effect on the Contract Price; and
- (B) carefully checked and acquired actual knowledge of the contents of the documents which constitute this deed,

made available in writing by the Principal, or any other person on the Principal's behalf, to the LW Contractor for the purpose of submitting a proposal for the LW Contractor's Activities or entering this deed;

- (ii) satisfied itself that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of the LW Contractor's Activities and the LW Works;
 - (iii) informed itself of:
 - (A) the risks and contingencies and other circumstances which might have an effect on the execution of the LW Contractor's Activities and the LW Works or the cost of executing the LW Contractor's Activities;
 - (B) all matters relevant to the employment of labour at the Construction Site; and
 - (C) all industrial matters relevant to the Construction Site; and
 - (iv) was given the opportunity 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;
 - (v) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, each Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances which might have an effect on the performance of its obligations and its potential liabilities under this deed; and
 - (vi) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the LW Contractor.
- (f) Nothing in clauses 7.14 or 7.21 limits the operation of clauses 7.19(d), 9A.1 or 14.7.

7.15 Latent Conditions

- (a) Latent Conditions are adverse geotechnical conditions on, in or under the Construction Site which differ materially from the geotechnical conditions which could have been reasonably anticipated by a competent and experienced contractor at the date of this deed if that contractor had:
 - (i) examined all Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the LW Contractor on or before the date of this deed;
 - (ii) examined all information relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the LW Contractor's Activities; and
 - (iii) inspected the Construction Site and its surroundings,and which difference results in a material impact on the cost or time of performing the LW Contractor's Activities.

- (b) If during the execution of the LW Contractor's Activities, the LW Contractor becomes aware of a Latent Condition the LW Contractor must:
- (i) promptly; and
 - (ii) where possible before the physical conditions are disturbed,
- give written notice thereof to the Principal's Representative.
- (c) The LW Contractor must provide in that notice to the Principal's Representative a statement specifying:
- (i) the conditions encountered and in what respects the LW Contractor considers they constitute a Latent Condition;
 - (ii) the additional work and additional resources which the LW Contractor estimates to be necessary to deal with the Latent Condition;
 - (iii) the time the LW Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving, as relevant, Construction Completion (if any) as a result of dealing with the Latent Condition;
 - (iv) the LW Contractor's estimate of [REDACTED] required to reflect the cost of the measures necessary to deal with the Latent Condition, including sufficient information to support the estimate; and
 - (v) other details reasonably required by the Principal's Representative.
- (d) The LW Contractor acknowledges and agrees if a Latent Condition is encountered that:
- (i) has a direct effect on the LW Contractor carrying out the LW Contractor's Activities; and
 - (ii) directly results in an increase in the LW Contractor's costs of carrying out the LW Contractor's Activities,
- which a competent and experienced contractor could not have avoided or mitigated, clause 4 will apply in respect of [REDACTED] (to the extent the Principal does not agree with the LW Contractor's estimate under clause 7.15(c)(iv)).
- (e) In making a valuation pursuant to clause 7.15(d), regard will not be had to any LW Contractor's Activities or additional costs incurred more than 14 days before the date on which the LW Contractor gives the written notice required by clause 7.15(b).

7.16 Contamination

- (a) Subject to clause 7.16(c), the LW Contractor bears the risk of all Contamination:
- (i) on, in, over, under or about the Construction Site, Bulk Feeder Route or any Extra Land which is disturbed by or interfered with in the carrying out of the LW Contractor's Activities;
 - (ii) which migrates:

- (A) on to the Construction Site, Bulk Feeder Route or any Extra Land as a result of the LW Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined:
 - (aa) the Construction Site or Bulk Feeder Route and their surroundings;
 - (bb) any Extra Land and its surroundings; and
 - (cc) all Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the LW Contractor on, before or after the date of execution of this deed; or
 - (B) from the Construction Site, Bulk Feeder Route or any Extra Land as a result of the LW Contractor's Activities; or
 - (iii) which is caused by the LW Contractor or its Associates or otherwise arises out of or in connection with the LW Contractor's Activities.
- (b) To the extent clause 7.16(a)(i), 7.16(a)(ii) or 7.16(a)(iii) applies, the LW Contractor must undertake Remediation of any such Contamination:
 - (i) provided that, in respect of the Construction Site and the Bulk Feeder Route:
 - (A) in respect of clause 7.16(a)(i), the LW Contractor's risk and obligation to Remediate is limited to that part of such Contamination which is actually disturbed by or interfered with in the carrying out of the LW Contractor's Activities (and not to Remediate the entire mass of such Contamination or trace to the source of the Contamination, where that wider mass or source has not been disturbed or interfered with in the carrying out of the LW Contractor's Activities); and
 - (B) in respect of clause 7.16(a)(ii)(A), the LW Contractor is not required to trace to the source of such Contamination;
 - (ii) in accordance with Law, all guidelines made or approved by the EPA and any applicable Unexpected Finds Protocol submitted under clause 7.18 so that:
 - (A) the Construction Site, Bulk Feeder Route and any Extra Land is suitable for the performance of the LW Contractor's Activities and the further construction, operation and maintenance of Sydney Metro City & Southwest; and
 - (B) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro City & Southwest at the relevant parts of the Construction Site or Bulk Feeder Route where the Remediation is undertaken are minimised.
- (c) To the extent the Contamination on, adjacent to, in or under the parts of the Construction Site or Bulk Feeder Route is Compensable Contamination which results in a material impact on cost:
 - (i) the LW Contractor must promptly give written notice to the Principal's Representative specifying:

- (A) the LW Contractor's estimate, based on the rates specified for Compensable Contamination in Schedule F2, of the [REDACTED] required to reflect the measures necessary to deal with the Compensable Contamination;
 - (B) detailed particulars of the nature and extent of the Compensable Contamination encountered, including all field measurements and data obtained by the LW Contractor;
 - (C) copies of all laboratory data demonstrating that the concentrations of contaminants encountered constitute Compensable Contamination, accompanied by a waste classification certificate or letter from a suitably qualified person or company certifying those findings;
 - (D) detailed particulars (including all documentary evidence) of the method of handling, treatment, transport and disposal of the Compensable Contamination from the date the Compensable Contamination was encountered until disposal, including evidence that the Compensable Contamination:
 - (aa) was separated from other waste at the time of excavation; and
 - (bb) remains separated from all other waste during subsequent stockpiling, handling and transport,
 as required by clause 7.17(c) and showing sufficient detail to clearly demonstrate that the LW Contractor has taken all steps necessary to minimise the cost consequences of encountering and managing the Compensable Contamination;
 - (E) copies of all landfill dockets confirming the date, time, quantity and waste classification of the material disposed; and
 - (F) copies of documentation confirming that the landfill facility holds all relevant Approvals and licenses to receive the Compensable Contamination;
- (ii) clause 4 will apply in respect of the [REDACTED] to the extent that the Principal does not agree with the LW Contractor's estimate pursuant to clause 7.16(c)(i)(A); and
 - (iii) the LW Contractor will not be entitled to an extension of time to any relevant Date for Construction Completion, Date for Completion, Date for Milestone Achievement, [REDACTED] as a result of the discovery of Compensable Contamination.
- (d) Except to the extent prohibited by Law, the LW Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the LW Contractor to comply with any obligation under this deed in connection with Contamination.

7.17 Disposal of Contamination and Waste

- (a) The LW Contractor must:

- (i) remove from the Construction Site, Bulk Feeder Route and any Extra Land; and
 - (ii) dispose of,

any Contamination or Waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) The LW Contractor must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or Waste from the Construction Site, Bulk Feeder Route or Extra Land holds all relevant Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.
- (c) The LW Contractor must:
 - (i) sort all Contamination and Waste (including separating Compensable Contamination from clean material and any other type of Contamination or Waste);
 - (ii) not contaminate clean material by intermixing any Contamination or Waste; and
 - (iii) not intermix Compensable Contamination with clean material or any other type of Contamination or Waste.
- (d) The LW Contractor must ensure, and must ensure that its Associates ensure, that their respective employees, agents and contractors, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws and Approvals.
- (e) The LW Contractor must:
 - (i) keep complete, accurate and up to date records of all materials that are disposed of or otherwise removed from the Construction Site or any Extra Land (including all Contamination and other wastes) including classification certificates and tip dockets for all loads;
 - (ii) handle, stockpile and track all classes of Contamination and handle and stockpile Compensable Contamination in a manner that minimises volume and costs of Compensable Contamination; and
 - (iii) if requested, provide a copy of any such records to the Principal's Representative.
- (f) The LW Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the LW Contractor to comply with any obligation under this clause, provided that the LW Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal contributed to the claim or Loss.

7.18 Unexpected Finds Protocol

- (a) Prior to commencing any excavation work and subject to clause 7.18(e), the LW Contractor must prepare and submit to the Principal's Representative an Unexpected Finds Protocol to apply in the event that Compensable Contamination is encountered.
- (b) The Unexpected Finds Protocol must:
 - (i) describe the anticipated scope and location of all excavation works to be undertaken as part of the Project Works;
 - (ii) identify areas of the Construction Site or Bulk Feeder Route that the LW Contractor reasonably anticipates may contain Compensable Contamination, based on the LW Contractor's:
 - (A) examination of all Information Documents;
 - (B) examination of all information relevant to the risks, contingencies and other circumstances and obtainable by the making of reasonable enquiries with respect to the LW Contractor's Activities; and
 - (C) inspection and testing of the Construction Site and Bulk Feeder Route and their surroundings;
 - (iii) set out the LW Contractor's methodology for monitoring all excavation works at the Construction Site or Bulk Feeder Route for the presence of Compensable Contamination;
 - (iv) give detailed particulars of the potential indicators of Compensable Contamination that will trigger the implementation of the action plan contemplated in clause 7.18(b)(v);
 - (v) set out a detailed action plan to be implemented upon the identification of Compensable Contamination that includes:
 - (A) the methodology to be applied by the LW Contractor for the sampling and analysis of excavated materials to determine the contamination characteristics and appropriate management requirements of all materials;
 - (B) the methodology to be applied by the LW Contractor for the Remediation of Compensable Contamination, including (as required) the stabilisation, excavation, handling, stockpiling, segregation, transport and disposal of any Compensable Contamination to achieve compliance with the requirements of this deed and to mitigate the risks to human health and the Environment;
 - (C) a process for the collection of data and information necessary to allow the Principal to assess the LW Contractor's compliance with this deed, including the LW Contractor's compliance with the following:
 - (aa) the requirements for segregation of Compensable Contamination from other types of Contamination and Waste and the segregation of different classifications of Compensable Contamination under clause 7.17(c);
 - (bb) the requirements for handling, stockpiling and tracking of classes of Compensable Contamination prior to disposal at the

relevant landfill facility, including the tracking of stockpiles to ensure Compensable Contamination volumes and costs are minimised under clause 7.17(e); and

(cc) ensuring the landfill or other facility is appropriately licenced to accept the Compensable Contamination (prior to transport) under clause 7.17(b); and

(D) a description of the minimum data and documentation to be generated by the LW Contractor and provided to the Principal to support any claim for Compensable Contamination under clause 7.16(c); and

(c) The Principal's Representative may review the Unexpected Finds Protocol submitted under clause 7.18(a) and:

(i) confirm that the Unexpected Finds Protocol complies with this deed; or

(ii) if the Unexpected Finds Protocol submitted does not comply with this deed, notify the LW Contractor within 15 Business Days of the initial submission of the Unexpected Finds Protocol providing reasons for the non-compliance.

(d) If the LW Contractor receives a notice under clause 7.18(c)(i), the LW Contractor must promptly submit an amended Unexpected Finds Protocol, or relevant part of it, to Principal's Representative and the process in this clause 7.18 will reapply.

(e) The LW Contractor may not commence excavation works in any area of the Construction Site or Bulk Feeder Route unless and until the Unexpected Finds Protocol has been submitted to the Principal's Representative and it has been the subject of a notice under clause 7.18(c)(i).

(f) No review of, comments upon, notice in respect of the Unexpected Finds Protocol or any other act or omission of the Principal's Representative in relation to the Unexpected Finds Protocol will lessen or otherwise affect:

(i) the LW Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or

(ii) the Principal's rights against the LW Contractor, whether under this deed or otherwise according to Law.

(g) The LW Contractor must comply with the Unexpected Finds Protocol the subject of the notice under clause 7.18(c)(i) in undertaking Remediation of any Compensable Contamination.

7.19 **Artefacts**

(a) All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Construction Site or Bulk Feeder Route (all **Artefacts**) are, and will as between the LW Contractor and the Principal be and remain, the property of the Principal.

(b) The LW Contractor must:

(i) immediately notify the Principal's Representative if it discovers an Artefact;

(ii) ensure the Artefact is protected and not lost, removed, disturbed or damaged

- (iii) comply with all requirements of Authorities and Law in relation to the Artefact (noting compliance with Law is a contractual requirement and does not constitute a direction of the Principal); and
 - (iv) comply with any directions of the Principal's Representative in relation to the Artefact.
- (c) The LW Contractor acknowledges and agrees that compliance with clause 7.19(b)(iii) does not constitute a direction of the Principal's Representative for the purposes of clause 7.19(d).
- (d) Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 7.21(a) to 7.21(d):
- (i) the Principal will determine under clause 4 [REDACTED] as a result of the LW Contractor complying with the:
 - (A) requirements of Authorities in accordance with clause 7.19(b)(iii); or
 - (B) Principal's Representative's directions under clause 7.19(b)(iv); and
 - (ii) the LW Contractor may make a claim for an extension of time under clause 14.8 in respect of any delays the LW Contractor suffers in complying with:
 - (A) requirements of Authorities in accordance with clause 7.19(b)(iii); or
 - (B) the Principal's Representative's directions under clause 7.19(b)(iv).

7.20 Utility Services

- (a) The LW Contractor must:
- (i) investigate, relocate, remove, modify, support, protect, reinstate and provide all Utility Services necessary for the LW Contractor to comply with its obligations under this deed;
 - (ii) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the LW Contractor to comply with its obligations under this deed, including any such devices reasonably required by the Principal's Representative;
 - (iii) despite any other provision in this deed to the contrary, ensure that no Utility Services are:
 - (A) damaged or destroyed; or
 - (B) disconnected, disrupted, interfered with or interrupted during normal operating hours,

by reason of the performance of the LW Contractor's Activities, except, for the purposes of paragraph (B) only, to the extent such disruption, interruption or interference was a direct and unavoidable result of carrying out and completing the LW Contractor's Activities in accordance with this deed;
 - (iv) cooperate and coordinate with the owners of all Utility Services, and implement their requirements as part of the LW Contractor's Activities; and

- [illegible]

7.21

- (a) Whether or not any Information Documents or any part thereof form any schedule to this deed, the LW Contractor acknowledges that:

- (ii) where Information Documents or any part thereof form a schedule to this deed, they do so only for the purposes of identification of that document or part thereof.
- (b) Without limiting clause 7.21(c):
 - (i) the LW Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents, and the Information Documents do not form part of this deed; and
 - (ii) subject to clause 7.21(e), the Principal will not be liable upon any Claim by the LW Contractor arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the LW Contractor or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by the Principal to provide any other information, data or documents to the LW Contractor.
- (c) The LW Contractor:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to the LW 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 except to the extent that any such information, statement or document forms part of this deed;
 - (ii) warrants that it:
 - (A) enters into this deed based on its own investigations, interpretations, deductions, information and determinations;
 - (B) has examined and will continue to examine all other relevant information available on reasonable enquiry;
 - (C) has obtained and considered all necessary information relevant to the risks, contingencies and other circumstances having an effect on the LW Contractor's Activities;
 - (D) has satisfied itself as to the correctness and sufficiency of this deed having regard to the risks referred to in clause 7.21(c)(ii)(C); and
 - (E) has taken such professional advice as is appropriate for projects of the type contemplated by this deed; and

- (iii) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties, acknowledgements and agreements in clauses 7.21(c)(i) and 7.21(c)(ii).
- (d) Subject to clause 7.21(e), the LW Contractor irrevocably releases and indemnifies the Principal (and any of its officers, employees, consultants and agents) from and against:
 - (i) any claim against them by, or liability of them to, any person; or
 - (ii) (without being limited by clause 7.21(d)(i)) any costs, expenses, Losses, liabilities or damages suffered or incurred by them,
 arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of the Information Documents, as referred to in clauses 7.21(b) and 7.21(c)(i), to or by the LW Contractor or any other person to whom the Information Documents are disclosed by the LW Contractor or its Associates or a failure by the Principal to provide any information, data or documents to the LW Contractor (other than any information, data or documents which the Principal is required to provide to the LW Contractor by the terms of this deed);
 - (iv) any breach by the LW Contractor of this clause 7.21; or
 - (v) the Information Documents being relied upon or otherwise used by the LW Contractor or its Associates or any other person to whom the Information Documents are disclosed by the LW Contractor or its Associates in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).
- (e) The releases and indemnities under clause 7.21(d) benefit the Principal and its officers, employees, consultants and agents. The Principal may enforce each release and indemnity in its own right and on behalf of its officers, employees, consultants and agents.
- (f) The acknowledgements, warranties, releases and indemnities referred to in clauses 7.21(a) to 7.21(d) do not affect the LW Contractor's rights under clauses 7.15, 7.16 and 7.19.

7.22 **Principal's Right to Access and Inspect**

Subject to clause 7.24, the LW Contractor must:

- (a) without limiting clauses 7.12 and 7.13, minimise disruption or inconvenience to:
 - (i) the Principal, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Construction Site, Extra Land, Bulk Feeder Route or any other land or buildings above or adjacent to the Construction Site, Bulk Feeder Route or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Construction Site, Bulk Feeder Route or Extra Land, including any occupation or use of the Project Works, a Portion or a part thereof under clause 16.5;

- (ii) others having a right of access to the Construction Site, Bulk Feeder Route, Extra Land or any other land or buildings on or adjacent to the Construction Site or any Extra Land; and
 - (iii) the occupants of any land adjoining the Construction Site or Bulk Feeder Route or located in the vicinity of the Construction Site or Bulk Feeder Route.
- (b) at all times:
 - (i) give the Principal's Representative, the Principal, the Interface Contractors, and any person authorised by either the Principal's Representative or the Principal access to:
 - (A) the LW Works;
 - (B) the Construction Site, including where required, reasonable vehicular access through the Project Site; or
 - (C) any other areas where the LW Contractor's Activities are being carried out.
 - (ii) provide the Principal, the Principal's Representative, the Independent Certifier and any person authorised by either the Principal's Representative or the Principal with every reasonable facility necessary for the Inspection of the LW Contractor's Activities, including the LW Contractor's compliance with the Authority Approvals.

7.23 **Condition Surveys**

The LW Contractor must:

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

7.24 **Setting Out**

- (a) The LW Contractor must:
 - (i) set out the Project Works in accordance with the requirements of this deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the LW Contractor that are suitable for their purposes;

- (ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
 - (iii) for this purpose keep all survey marks in their true positions.
- (b) If the LW Contractor discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the LW Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the LW Contractor must at its cost rectify the error.

7.25 **LW Works to be constructed within Construction Site and Bulk Feeder Route**

The LW Contractor must ensure that the LW Works are constructed within the relevant boundaries of the Construction Site and Bulk Feeder Route.

7.26 **Survey**

- (a) The LW Contractor must, as a condition precedent to Construction Completion of the Project Works or any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:
- (i) for its review under clause 13.11 a Survey Plan for the Project Works or the relevant Portion that:
 - (A) has regard to the setback requirements in the Building Code of Australia;
 - (B) has regard to any stratum lots whether above or below ground;
 - (C) has regard to the survey control requirements of any relevant Rail Transport Agency;
 - (D) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
 - (E) shows all internal title boundaries;
 - (F) shows all easements; and
 - (G) shows the location of the Project Works and all Utility Services that the LW Contractor relocates, modifies, supports, protects or reinstates to the extent the LW Contractor relocated, modified, supported, protected or reinstated a Utility Service; and
 - (ii) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
 - (A) the whole of the Project Works or the Portion has been constructed within the relevant boundaries of the Construction Site or Bulk Feeder Route stipulated in this deed, except only for parts of the Project Works or Portion specifically required by this deed to be outside those boundaries;
 - (B) the elements of the Project Works or the Portion are in the positions and within the tolerances required by Law and this deed;

- (C) the survey information included in the configuration materials provided pursuant to the SWTC complies with the requirements of this deed; and
- (D) any other matter identified by the Principal's Representative, complies with the requirements of this deed.

7.27 **Principal not in Control**

The LW Contractor and Principal acknowledge that nothing in this deed including the right to inspect pursuant to clause 7.22 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

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

8. **COMPLIANCE**

8.1 **Quality of Work**

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

8.2 **Compliance with SWTC.**

The LW Contractor must comply with the requirements of the SWTC in accordance with this deed.

8.3 **Environmental Management**

The LW Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of the SWTC for so long as any LW Contractor's Activities are carried out;
- (b) as part of the Project Plans, document, implement and maintain a project-specific Construction Environmental Management Plan for the management of environmental matters in accordance with the SWTC;
- (c) carry out the LW Contractor's Activities in accordance with the Construction Environmental Management Plan;
- (d) supervise Subcontractor's activities and ensure that they are complying with all relevant Law, Approvals and SWTC in relation to environmental management on the Construction Site, Bulk Feeder Route and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles in the design and construction of the LW Works and the LW Contractor's Activities.

8.4 **Health and Safety Management**

- (a) The LW Contractor must:
 - (i) hold and maintain a health and safety management system for so long as any LW Contractor's Activities are carried out that complies with the WHS Guidelines and the SWTC;
 - (ii) as part of the Project Plans, develop, document and implement a contract specific Project Health and Safety Management Plan (including safe work method statements) in accordance with the WHS Guidelines and the SWTC;
 - (iii) carry out the LW Contractor's Activities in accordance with the Project Health and Safety Management Plan and safe work method statements;
 - (iv) comply with the requirements applicable to a "Safety Management Plan" set out in the Sydney Metro Principal Contractor Health and Safety Standard;
 - (v) create a safe working environment for ensuring the safety of all authorised personnel on the Construction Site, Bulk Feeder Route and Extra Land and that no unauthorised individual gains access to the Construction Site; and
 - (vi) supervise any Subcontractor's activities and ensure that they are complying with all relevant Law, Approvals and the SWTC in relation to the WHS management on the Construction Site, Bulk Feeder Route and Extra Land.
- (vii) The LW Contractor acknowledges and agrees that:
 - (A) the Principal will update the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the LW Contractor's Activities and the Sydney Metro City & Southwest; and
 - (B) notwithstanding any other provision of this deed, the LW Contractor will not be entitled to make, and the Principal will not be liable on, any Claim arising out of or in any way in connection with:
 - (aa) any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard; or
 - (bb) any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as being an obligation of the Principal or an Associate of the Principal).

8.5 **Safety**

- (a) The LW Contractor must ensure that the LW Contractor's Activities are carried out:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (b) If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the LW Contractor's Activities:

- (i) the Principal's Representative may direct the LW Contractor to change its manner of working or to cease working; and
 - (ii) the LW Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 8.5(b)(i).
- (c) The LW Contractor must:
 - (i) ensure that in carrying out the LW Contractor's Activities:
 - (A) it complies with all Law, including the WHS Legislation, RSNL, HVNL and other requirements of this deed for work health, safety, rail safety and rehabilitation management (including, but not limited to, those requirements set out in the WHS Guidelines);
 - (B) the LW Contractor, all Subcontractors, contractors or consultants engaged by the LW Contractor comply with the requirements referred to in this clause 8.5 and their respective obligations under the WHS Legislation and RSNL; and
 - (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to the same matter;
 - (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety, rail safety, chain of responsibility and rehabilitation matters arising out of, or in any way in connection with, the LW Contractor's Activities, unless otherwise directed by the Principal;
 - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (iv) provide the Principal's Representative with the written assurances obtained pursuant to clause 8.5(c)(i), together with written assurance(s) from the LW Contractor about the LW Contractor's ongoing compliance with the WHS Legislation;
 - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 13.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 8.5), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the LW Contractor's compliance with the WHS Legislation;
 - (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Project Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation;
 - (ix) ensure that the Appointed Principal Contractor complies with those parts of the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-

ST-221), as amended from time to time, that the Principal notifies the LW Contractor in writing that the Appointed Principal Contractor must comply with as if it was a principal contractor for the purposes of that standard; and

- (x) ensure its Subcontracts include provisions equivalent to the obligations of this clause 8.5.
- (d) Without limiting clause 22.12 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Project Works, the Environment, other property or the health or safety of people.
- (e) If the action taken by the Principal under clause 8.5(d) is action which the LW Contractor was required to take under this deed but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), Loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:
 - (i) taking the action contemplated in this clause 8.5(d); or
 - (ii) the LW Contractor's failure to take that action,

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

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

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

- (h) Without limiting the LW Contractor's obligations under any other clause of this deed, the LW Contractor must:
 - (i) ensure that, if any Law, including in the State or Territory in which the Project Works are situated or the Project Works are carried out (as the case may be), requires that:
 - (A) a person:
 - (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of subparagraph (i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the LW Contractor or Subcontractor (as the case may be) commences such work.

8.6 Rail Safety

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

- (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
 - (ii) must not do anything or fail to do anything that may cause the Principal to breach its obligations under the Rail Safety National Law;
 - (iii) carry out the LW Contractor's Activities so as not to put the Principal in breach of its obligations as a Rail Infrastructure Manager under the Rail Safety National Law and Rail Safety Regulations;
 - (iv) not do anything (or fail to do anything) which jeopardises the Principal's Accreditation; and
 - (v) without limiting clause 8.6(d), must ensure that the LW Contractor's Subcontractors engaged in or in connection with the LW Contractor's Activities, comply with clauses 8.6(d)(i) to 8.6(d)(iv).
- (e) In carrying out any part of the LW Contractor's Activities which require Accreditation as a Rolling Stock Operator, the LW Contractor must:
- (i) ensure that the LW Contractor, or one of its Subcontractors, holds the necessary Accreditation for that part of the LW Contractor's Activities; and
 - (ii) comply with the conditions of that Accreditation.
- (f) Without limiting or otherwise affecting any other provision under this deed, the LW Contractor must, and must ensure that its Subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the LW Contractor's Activities which require Accreditation as a Rolling Stock Operator.
- (g) The LW Contractor must liaise and cooperate with the Principal and any other Rail Transport Operator and provide any reasonable assistance and documentation to the Principal, or any other Rail Transport Operator, as such party may require in relation to safety matters.
- (h) Without limiting clause 8.6(g), the LW Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the LW Contractor under or in connection with the Rail Safety National Law and the Rail Safety Regulations:
- (i) relating to the LW Contractor's Activities or the Project Works; or
 - (ii) which may adversely affect the ability of the LW Contractor to perform the LW Contractor's Activities,
- promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the LW Contractor).
- (i) Without limiting clause 8.6(f), the LW Contractor must ensure that all persons engaged by the LW Contractor in or in connection with the LW Contractor's Activities:
- (i) are competent to carry out the work for which they are engaged for the purposes of section 52 of the Rail Safety National Law; and
 - (ii) comply with their obligations under the Rail Safety National Law (including under section 56 of the Rail Safety National Law).

- (j) The LW Contractor must and must ensure that its Subcontractors:
 - (i) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
 - (ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and
 - (iii) do not hinder or delay any Investigative Authority in carrying out its duties.
- (k) Compliance by the LW Contractor with its obligations under this clause 8.6 does not discharge the LW Contractor from complying with its other obligations under this deed and is not evidence of compliance by the LW Contractor with its other obligations under this deed.
- (l) To the extent not prohibited by Law, the LW Contractor must indemnify the Principal against any damage, expense, Loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the LW Contractor's failure to comply with this clause 8.6.

8.7 **Principal Contractor**

- (a) In this clause 8.7 the terms 'construction project', 'construction work', 'notifiable incident', 'place of work', 'person conducting a business or undertaking' (**PCBU**), 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (b) For the purpose of the WHS Legislation and this deed, the LW Works and any Other Contractor Work is taken to be part of the same construction project, except that any of the LW Contractor's Activities performed on a Station Site, Temporary Laydown Area, the Southwest Site and the SMNW Operator Site are deemed to be Other Contractor Work (as that term is defined in the relevant Interface Works Contract) and those LW Contractor's Activities are, for the purpose of the WHS Legislation, taken to be part of the 'construction project' (as defined under the WHS Legislation) performed under the relevant Interface Works Contract.
- (c) The Principal:
 - (i) engages the Appointed Principal Contractor as the principal contractor in respect of the construction work involved in the LW Contractor's Activities and all Other Contractor Work carried out on the Project Site and Bulk Feeder Route; and
 - (ii) authorises the Appointed Principal Contractor to have management and control over the Project Site and of each workplace at which the LW Contractor's Activities and the Other Contractor Work is to be carried out (including the Bulk Feeder Route) and to discharge the duties of a principal contractor under the WHS Legislation,

except for each Station Site, Temporary Laydown Areas, the Southwest Site and the SMNW Operator Site, where the relevant Interface Contractor will be principal contractor.
- (d) The Appointed Principal Contractor:
 - (i) accepts the engagement as principal contractor referred to in clause 8.7(c) and agrees to discharge all the duties imposed on a principal contractor by the WHS Legislation and this deed;

- (ii) must exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
 - (A) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
 - (B) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Project Site and Bulk Feeder Route.
- (e) The Appointed Principal Contractor's engagement and authorisation as principal contractor continues until the earlier of:
 - (i) the termination of this deed;
 - (ii) in respect of each Portion, the day after the Date of Construction Completion of the Portion; and
 - (iii) in respect of any area of the Project Site for a which a Site Access Expiry Date is specified in the Site Access Schedule, the date on which the LW Contractor vacates that area of the Project Site,

unless sooner revoked by the Principal.
- (f) To the extent not prohibited by law, the LW Contractor must indemnify the Principal from and against all claims against the Principal, or Loss (including reasonable legal fees) suffered or incurred by the Principal, arising out of or in any way in connection with any failure of:
 - (i) the Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of a principal contractor under the WHS Legislation that the Appointed Principal Contractor is required to discharge in accordance with this clause 8.7; or
 - (ii) the LW Contractor to otherwise comply with the WHS Legislation, Rail Safety National Law, Rail Safety National Regulations, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 8.4, 8.5 and 8.6.
- (g) Where the Principal is not otherwise able to validly engage the Appointed Principal Contractor as principal contractor pursuant to clause 8.7(c), the Appointed Principal Contractor must exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged as the principal contractor under the WHS Legislation so as to ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged. For this purpose the Principal authorises the Appointed Principal Contractor to exercise such authority of the Principal as is necessary to enable the LW Contractor to discharge the responsibilities imposed on a principal contractor under the WHS Legislation.
- (h) Without limiting anything else in this clause 8.7, the LW Contractor must, in respect of any construction work carried out on all or part of the Extra Land, ensure that the Appointed Principal Contractor discharges the duties of a principal contractor under the WHS Legislation in respect of such construction work.
- (i) Without limiting any other provision of this deed, the LW Contractor:
 - (i) must discharge all the obligations under the WHS Legislation and under any plan or any other laws relating to WHS;
 - (ii) accepts that it is a PCBU:

- (A) carrying out the construction work; and
 - (B) in respect of the LW Works,
- for the purposes of the WHS Legislation;
- (iii) is responsible for all costs associated with the performance of the role of principal contractor;
 - (iv) must comply with any direction on safety issued by a relevant Authority;
 - (v) must immediately notify the Principal of any notifiable incident in connection with the LW Works and/or the Construction Site or Bulk Feeder Route;
 - (vi) must provide to the Principal all notices and correspondence concerning WHS issued in connection with the Project Works within 5 Business Days after the dispatch and/or receipt of any such notice or correspondence;
 - (vii) acknowledges that the Appointed Principal Contractor has control and management of the Project Site and Bulk Feeder Route;
 - (viii) must itself comply, and ensure that all subcontractors engaged by the LW Contractor in connection with the LW Works, comply with their respective obligations under the WHS Legislation;
 - (ix) must ensure that it carries out the LW Works in a manner which ensures that the Principal satisfies its obligations under the WHS Legislation; and
 - (x) must display signs that are clearly visible from outside the place of work identifying the Appointed Principal Contractor as the principal contractor and stating the contact telephone numbers of the Appointed Principal Contractor and the LW Contractor (including an after-hours emergency telephone number of the Appointed Principal Contractor) and the location of the LW Contractor's main site administration facilities for the construction project.
- (j) The Principal may notify the LW Contractor and the Appointed Principal Contractor that it has terminated the Appointed Principal Contractor's engagement as principal contractor and advise the LW Contractor of the new principal contractor for the LW Works.
 - (k) If the Appointed Principal Contractor's appointment and engagement as principal contractor is terminated under clause 8.7(j), then the LW Contractor must (and must ensure that its officers, employees, contractors, subcontractors, and agents also):
 - (i) comply with all requirements of the new principal contractor in executing the Project Works and its other obligations under this deed so as to enable the new principal contractor to meet its obligations under the WHS Legislation; and
 - (ii) refrain from doing anything that may impede upon the new principal contractor from complying with its obligations under the WHS Legislation.

8.8 No Relief from Obligations

The LW Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 12 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 of, and compliance with, any management system or plan by the LW Contractor;
- (b) compliance with the Project Plans by the LW Contractor;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the LW Contractor proceeding past any hold point or witness point identified in the SWTC or otherwise directed by the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any hold point or witness point procedure, including where such a failure is the result of a negligent act or omission; or
- (e) any inspections arranged by the Principal's Representative under this deed or any related discussions between the LW Contractor's Representative and the Principal's Representative.

8.9 **Engineering Authorisation**

The LW Contractor represents and warrants that if it will carry out Asset Lifecycle Services, the person nominated in Schedule A1 is an AEO and has obtained ASA Authorisation to carry out the Asset Lifecycle Services.

8.10 **ASA Compliance**

- (a) Without limiting or otherwise restricting clauses 8.10(b) and 8.10(c), the LW Contractor must:
 - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the LW Contractor's Activities are carried out; and
 - (ii) comply (and must ensure that its Subcontractors and all personnel for which the LW Contractor is responsible comply) with the conditions of the applicable ASA Authorisation.
- (b) The LW Contractor must (and must ensure that its Subcontractors and all personnel for which the LW Contractor is responsible):
 - (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
 - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 8.9 and 8.10;
 - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
 - (iv) provide access to premises and resources as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
 - (v) comply with the directions, instructions and requirements issued by the ASA;
 - (vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

- (vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
- (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (c) The LW Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the performance of any of its obligations under this clause 8.10.

8.11 **Australian Government Requirements**

- (a) The LW Contractor:
 - (i) declares as at the date of this deed; and
 - (ii) must ensure during the term of this deed,

that, in relation to the Project Works, it and its Subcontractors, consultants and each related entity:

 - (iii) complies with, and acts consistently with, the Building Code;
 - (iv) meets the requirements of section 11 of the Building Code;
 - (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
 - (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIIP Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);
 - (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIIP Act);
 - (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
 - (x) complies with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code.
- (b) The LW Contractor acknowledges and agrees that compliance with the Building Code does not relieve the LW Contractor from any responsibility or obligation under this deed, or from liability for any Defect in the Project Works arising from compliance with the Building Code.
- (c) The LW Contractor must promptly:
 - (i) notify the ABCC of:

- (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the LW Contractor to rectify the breach; and
 - (B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 8.11(c)(i)(A); and
- (ii) give the Principal a copy of any notification given by the LW Contractor to the ABCC under clause 8.11(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) The LW Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
 - (i) for entry under section 72 of the BCIIP Act;
 - (ii) to interview any person under section 74 of the BCIIP Act;
 - (iii) to produce records or documents under sections 74 and 77 of the BCIIP Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) The LW Contractor must not enter into a Subcontract for any aspect of the Project Works unless:
 - (i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the LW Contractor agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
 - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 8.11.
- (f) The LW Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 8.11(e) promptly upon request.
- (g) The LW Contractor must maintain adequate records of the compliance with the Building Code by:
 - (i) the LW Contractor;
 - (ii) the Subcontractors;
 - (iii) the LW Contractor's consultants; and
 - (iv) any related entity of the LW Contractor.
- (h) For the purposes of this clause 8.11, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

8.12 NSW Code of Practice

(a) NSW Code and NSW Guidelines

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

(b) Primary Obligation

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

(c) Access and information

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

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

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

(d) Sanctions

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

(e) Compliance

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

- (C) what steps the LW Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Health and Safety Management Plan),

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

8.13 TfNSW's Statement of Business Ethics

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

8.14 Independent Advisers

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

- (b) Independent Estimator

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

- (c) Financial Auditor

- (i) The Principal will until the date of expiry of the final Defects Correction Period, engage a Financial Auditor to provide a quarterly report to the Principal's Representative in which the Financial Auditor provides the following:
 - (A) undertake financial assessments of the LW Contractor;
 - (B) certify that payments have been made to Subcontractors in accordance with requirements of this deed;
 - (C) reconcile the Project Bank Accounts; and

- (D) undertake sample audits, using a risk-based approach, of the costs claimed as reimbursable by the LW Contractor to confirm if were correctly incurred and are actual costs exclusive of margins, design and preliminaries related costs.
- (ii) The report provided under clause 8.14(c)(i) will be provided to the Principal's Representative.
- (d) The LW Contractor acknowledges that:
 - (i) the Independent Estimator and the Financial Auditor will require full access to all accounts, subcontracts and financial information for this deed;
 - (ii) it will cooperate in facilitating any functions of the Independent Estimator and the Financial Auditor including by making available all necessary accounts, subcontracts and financial information to the Principal's Representative, the Independent Estimator and the Financial Auditor to enable an audit to be conducted; and
 - (iii) the Principal is under no obligation to proceed on the basis of the advice and reports provided by the Independent Safety Advisor, the Independent Estimator or the Financial Auditor under this clause 8.14.

8.15 **Asset Management Information**

- (a) The LW Contractor must prepare and submit Asset Management Information for the relevant Portion in accordance with the requirements of Appendix F6 of the SWTC.
- (b) All Asset Management Information must comply with the requirements of this deed including the SWTC.
- (c) The Principal's Representative must, within 15 Business Days of the submission of the Asset Management Information for a Portion, either:
 - (i) reject the Asset Management Information for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Asset Management Information is required (together with reasons) and a time within which this must occur; or
 - (ii) advise in writing that the Asset Management Information is not rejected.
- (d) If the Asset Management Information for a Portion is rejected by the Principal's Representative, the LW Contractor must update and resubmit the Asset Management Information and clause 8.15(c) will re-apply.
- (e) The LW Contractor acknowledges and agrees that the Principal's Representative may make comments to the LW Contractor in respect of any Asset Management Information submitted under clause 8.15(a) or clause 8.15(d).
- (f) The Principal's Representative may:
 - (i) provide copies of any Asset Management Information to; and
 - (ii) seek comments in respect of any Asset Management Information, from, the Independent Certifier and any Interface Contractor.

- (g) The Principal's Representative owes no duty to the LW Contractor to review any Asset Management Information submitted by the LW Contractor for errors, omissions or compliance with this deed.
- (h) No review of, comments upon, non-rejection or rejection of any Asset Management Information by the Principal's Representative, nor any other direction by the Principal's Representative in respect of any Asset Management Information, will lessen or otherwise affect:
 - (i) the LW Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the LW Contractor, whether under this deed or otherwise according to Law.

9. **DESIGN, NETWORK ASSURANCE COMMITTEE AND COST PLANNING**

9.1 **Design obligations**

The LW Contractor must develop the design of the Project Works and Temporary Works (other than for the elements of the Project Works or Temporary Works included in the Principal's Design Stage 3 Documents) so that if the LW Works are constructed in accordance with the Final Design Documentation, the LW Works will comply with:

- (a) the SWTC;
- (b) any Modification;
- (c) the LW Contractor's fitness for purpose obligations in this deed; and
- (d) the other requirements of this deed.

9.2 **Principal's Design Stage 1 and Principal's Design Stage 3 Documents**

- (a) The LW Contractor acknowledges that:
 - (i) prior to the date of this deed the Principal:
 - (A) procured the Principal's Design Stage 1 Documents from a third party; and
 - (B) engaged a third party in order to procure the Principal's Design Stage 3 Documents;
 - (ii) the Principal will provide the relevant Principal's Design Stage 3 Documents to the LW Contractor;
 - (iii) the Principal's Design Stage 1 Documents:
 - (A) only contain a preliminary design which must be further developed by the LW Contractor; and
 - (B) must be interpreted subject to Appendix H1 of the SWTC.
- (b) If the Principal has not provided the LW Contractor with the relevant Principal's Design Stage 3 Documents to the LW Contractor by the relevant DS3 Required Date, the LW Contractor will be entitled to:

(i) an extension of time under clause 14.8 if the requirements of that clause are satisfied; and

(ii) [REDACTED]
[REDACTED] with clause 4,

in respect of the delay in providing the Principal's Design Stage 3 Documents.

(c) The LW Contractor must develop the Principal's Design Stage 1 Documents and carry out the Design Development and Resolution, at its cost, so that:

(i) the Project Works overcome the Design Exceptions having regard to clause 9.1 and Appendix H1 of the SWTC;

(ii) the capacity, functionality, quality, durability and operability of the Project Works comply with the highest standards of capacity, functionality, quality durability and operability depicted in the Planning Approvals, the SWTC and the Principal's Design Stage 1 Documents (other than the Design Exceptions).

(d) The Principal will have no Liability to the LW Contractor in relation to the Principal's Design Stage 1 Documents, or the obligation of the LW Contractor under clause on 9.2(c).

(e) Subject to clauses 9.2(a)(ii) and 9.2(c), the Principal acknowledges that if the LW Contractor:

(i) designs and constructs the Project Works in accordance with the Principal's Design Stage 1 Documents; and

(ii) constructs the relevant part of the Project Works in accordance with the Principal's Design Stage 3 Documents,

the Principal cannot assert that the Project Works are not fit for purpose.

(f) If the LW Contractor considers that:

(i) the Project Works or any part of the Project Works will not be fit for purpose if the Project Works are designed and constructed in accordance with the Principal's Design Stage 1 Documents; or

(ii) all or part of the Principal's Design Stage 3 Documents are not complete, correct, accurate, appropriate, suitable or adequate for purposes of the LW Contractor carrying out the LW Contractor's Activities,

then:

(iii) the LW Contractor must notify the Principal promptly after becoming aware of any of the issues contemplated in clauses 9.2(f)(i) and 9.2(f)(ii); and

(iv) the Principal will, within 15 Business Days of receiving the LW Contractor's notice under clause 9.2(f)(iii) either:

(A) direct a Modification by issuing a Modification Order to address (to the extent deemed necessary in the Principal's sole discretion) the issues raised in the LW Contractor's notice under clause 9.2(f)(iii); or

(B) notify the LW Contractor that it does not intend to issue a Modification Order under clause 9.2(f)(iv)(A), with reasons.

- (g) Subject to clause 9.2(e), if the Principal:
 - (i) issues a notice under clause 9.2(f)(iv)(B); or
 - (ii) does not issue a notice under clause 9.2(f)(iv)(A) or 9.2(f)(iv)(B) within the time period under clause 9.2(f)(iv),the LW Contractor must continue to perform its obligations as contemplated under this deed.

9.3 **Network Assurance Committee**

The LW Contractor must:

- (a) comply with the requirements of Appendix F1 of the SWTC in relation to the NAC assurance process; and
- (b) without limiting clause 9.3(a):
 - (i) submit to the Principal's Representative each NAC CCR Package in accordance with the NAC Assurance Plan; and
 - (ii) cooperate with and provide all reasonable assistance to the Principal and its Associates to facilitate the review of each NAC CCR Package.

9.4 **Design and SWTC Liability**

- (a) The Principal will have no Liability to the LW Contractor in relation to:
 - (i) the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC to carry out the LW Contractor's Activities; and
 - (ii) any omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and the Approvals.
- (b) Subject to clause 9.2(e), the Design Documentation prepared by or on behalf of the LW Contractor is required to:
 - (i) satisfy the requirements of the SWTC and the other requirements of this deed; and
 - (ii) be and remain at all relevant times fit for its intended purpose.
- (c) Subject to clause 10.6(a), the LW Contractor's obligations under and the warranties given in this deed will remain unaffected and it will bear and continue to bear full liability and responsibility for the construction, Commissioning, testing and completion of the LW Works notwithstanding any Modification directed by the Principal's Representative.

9.5 **Preparation and submission of Design Documentation**

- (a) The LW Contractor must:
 - (i) prepare the Design Documentation (in respect of the elements of the Project Works not included in the Principal's Design Stage 3 Documents only) in the following Design Stages:
 - (A) Design Stage 1 (in respect of the elements of the Project Works not included in the Principal's Design Stage 1 Documents);

- (B) Design Stage 2; and
 - (C) Design Stage 3,

or as otherwise contemplated by the Technical Management Plan;
- (ii) submit all Design Documentation (not including the Principal's Design Stage 3 Documents, Third Party Agreement Design Documentation and Design Documentation to the extent that it relates solely to Temporary Works) to the Principal's Representative:
 - (A) in accordance with the Technical Management Plan;
 - (B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Independent Certifier a reasonable opportunity to review the submitted Design Documentation; and
 - (C) in accordance with the requirements of the SWTC;
- (iii) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement (with a copy to the Principal's Representative) at the times required under the relevant Third Party Agreement;
- (iv) within 5 Business Days of a request by the Principal's Representative or the Independent Certifier, provide the Principal's Representative or the Independent Certifier with any Design Documentation to the extent it relates solely to Temporary Works;
- (v) ensure the Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the Independent Certifier and the Principal's Representative to determine whether:
 - (A) the Design Documentation complies with this deed; and
 - (B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed.
- (b) The Principal may, within 1 Business Day of receiving any Design Stage 3 Design Documentation from the LW Contractor, provide to the Independent Certifier the Design Stage 3 Design Documentation (if any) that the Principal requires to be reviewed and certified by the Independent Certifier.

9.6 **Third Party Works**

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

9.7 **Certification of Design Documentation**

- (a) All Design Documentation submitted pursuant to clause 9.5 for Design Stage 1 and Design Stage 2 must be accompanied by a certificate in the form of Schedule B1 from the LW Contractor certifying that the Design Documentation complies with all requirements of this deed including the SWTC.
- (b) All Design Documentation submitted pursuant to clause 9.5 for Design Stage 3 must be accompanied by a certificate in the form of Schedule B2:

- (i) from the LW Contractor certifying that the Design Documentation:
 - (A) complies with all requirements of this deed including the SWTC; and
 - (B) is suitable for construction; and
- (ii) from each Designer that prepared the Design Documentation certifying that the Design Documentation complies with all requirements of this deed including the SWTC.

9.8 **Explanation of Design Documentation**

The LW Contractor must, whenever it submits Design Documentation for Design Stage 1, Design Stage 2 or Design Stage 3 pursuant to clause 9.5:

- (a) deliver a design presentation workshop within 5 Business Days of its submission; and
- (b) if required by the Principal's Representative (or, in respect of Design Stage 3 only, the Independent Certifier), make available the appropriate design personnel to:
 - (i) explain the Design Documentation; and
 - (ii) provide such information regarding the Design Documentation as the Principal's Representative or the Independent Certifier reasonably requests.

9.9 **Review of Design Documentation**

- (a) **(Principal's Representative review – Design Stage 1 and Design Stage 2):**
The Principal's Representative must, within the Principal's Design Review Period:
 - (i) review the Design Documentation and, in so doing, will consider any non-compliances or potential non-compliances raised by any Authorities (including Sydney Trains); and
 - (ii) notify the LW Contractor of any actual non-compliance with the requirements of this deed (with detailed reasons).
- (b) **(Non-compliance of Design Stage 1 or Design Stage 2 Design Documentation):** If the Principal's Representative notifies the LW Contractor under clause 9.9(a)(ii) that any Design Stage 1 or Design Stage 2 Design Documentation contains an actual non-compliance with the requirements of this deed:
 - (i) the LW Contractor:
 - (A) must, at the same time or within 20 Business Days after receiving such notice, give the Principal's Representative a written response:
 - (aa) which explains how the LW Contractor will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved prior to submitting the Design Stage 3 Design Documentation; or
 - (bb) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative opinion, together with its reasons for doing so;

- (B) must, prior to submitting Design Stage 3 Design Documentation that relates to a Design Stage 2 Design Documentation actual non-compliance, give the Principal's Representative a written statement which explains how the non-compliance has been addressed; and
 - (C) is not obliged to respond to any comments received from the Principal's Representative regarding any potential non-compliance with the requirements of this deed or any other observation or comment which the Principal's Representative has on the Design Documentation which does not concern an actual non-compliance.
- (ii) Following the receipt of a notice under clause 9.9(b)(i)(A)(bb), the parties will meet in good faith to seek to resolve the disagreement.
- (c) **(Principal's Representative review – Design Stage 3):** The Principal's Representative must, within the Principal's Design Review Period:
 - (i) review the Design Stage 3 Design Documentation and, in so doing, will consider any non-compliances or potential non-compliances raised by any Authorities (including Sydney Trains);
 - (ii) either:
 - (A) reject a part or all of the Design Documentation (in writing, with detailed reasons, to the LW Contractor) if the Principal's Representative or, if applicable, the Independent Certifier, considers that the Design Documentation:
 - (aa) does not comply with the requirements of this deed (Minor Non-Compliances excepted); or
 - (bb) is not sufficiently complete to enable the Principal's Representative or, if applicable, the Independent Certifier, to form a view on whether it is compliant; or
 - (B) notify the LW Contractor in writing that the Design Documentation is not rejected, together with:
 - (aa) a list of:
 - (a) any non-compliances which the Principal's Representative and, if applicable, the Independent Certifier considers to be Minor Non-Compliances; and
 - (b) suggested actions that the LW Contractor may take to address those Minor Non-Compliances; and
 - (bb) in respect of any Design Stage 3 Design Documentation that was provided to the Independent Certifier under clause 9.5(b), a copy of the certificate issued by the Independent Certifier in the form of Schedule B9.
- (d) Not used.
- (e) **(Options following rejection of Design Documentation):** Without limiting the LW Contractor's ability to proceed with construction in accordance with clause 9.12, if any Design Stage 3 Design Documentation is rejected by the Principal's Representative under clause 9.9(c)(ii)(A), the LW Contractor must either:

- (i) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it to the Principal in accordance with clause 9.5, and the process in this clause 9.9 will be reapplied to the amended element of the Design Documentation, except that reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period; or
 - (ii) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion or, if applicable, the Independent Certifier's opinion that the Design Documentation does not comply with the requirements of this deed, together with its reasons for doing so.
- (f) **(Process following notice of disagreement):**
- (i) If the LW Contractor gives a notice under:
 - (A) clause 9.9(e)(ii) the Principal's Representative must, promptly after receipt of the notice:
 - (aa) consult with the Independent Certifier, where appropriate; and
 - (bb) determine and notify the parties as to whether or not the LW Contractor's notice satisfactorily addresses the Principal's Representative's or, if applicable, the Independent Certifier's concerns, together with its reasons for forming that opinion and:
 - (a) if the Principal's Representative or, if applicable, the Independent Certifier considers that the LW Contractor's notice satisfactorily addresses its concerns, it must provide as part of its notice:
 - (i) the notice under clause 9.9(c)(ii)(B); and
 - (ii) if applicable, a copy of the certificate issued by the Independent Certifier in the form of Schedule B9; or
 - (b) if the Principal's Representative does not consider that the LW Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet in good faith to seek to resolve the disagreement (whether by a Modification or otherwise) within 10 Business Days of the notice under clause 9.9(c)(ii)(A). If the disagreement is in relation to a non-compliance identified by the Independent Certifier, the Independent Certifier will also attend the relevant meeting.
 - (ii) If the parties are unable to resolve a disagreement contemplated under clause 9.9(f)(i)(A)(bb)(b) within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the LW Contractor may refer the disagreement for resolution in accordance with:
 - (A) clause 20; or
 - (B) if the dispute is in relation to:

(aa) whether or not the Independent Certifier has performed its services in accordance with the requirements of the Independent Certifier Deed; or

(bb) any non-compliance identified by the Independent Certifier, the Independent Certifier Deed.

(g) **(Resubmission of Design Documentation):** If:

- (i) the relevant parties reach resolution under clause 9.9(f)(ii) and the LW Contractor is required to resubmit any Design Documentation;
- (ii) it is determined in accordance with the dispute resolution provisions of this deed, or, if applicable, the Independent Certifier Deed, that the LW Contractor is required to resubmit any Design Documentation; or
- (iii) any Design Stage 3 Design Documentation is the subject of a direction by the Principal's Representative under clause 9.9(h),

then:

- (iv) the LW Contractor must promptly amend the relevant non-compliant element of the Design Documentation and re-submit the relevant element to the Principal's Representative in accordance with clause 9.5;
- (v) if applicable, the Principal's Representative will provide the re-submitted Design Documentation to the Independent Certifier; and
- (vi) the process in clause 9.9(c) will reapply to the amended element of the Design Documentation except that the reference to the Principal's Design Review Period under clause 9.9(c) will be deemed to be a reference to the Principal's Design Re-Review Period.

(h) **(Rectification of defective work)** If clause 9.9(g) applies, the LW Contractor must:

- (i) immediately cease construction of any work that is being carried out in accordance with the relevant non-compliant element(s) of the Design Documentation; and
- (ii) promptly rectify any such work at its cost so that it complies with the requirements of this deed.

(i) **(Principal's Direction):** The Principal's Representative may at any time (including after the Independent Certifier has certified the Design Documentation pursuant to clause 9.9(c)(ii)(B)(bb)) direct the LW Contractor to make amendments to the Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this deed and, if it does so, clause 9.9(g)(vi) will apply.

(j) **(Temporary Works):** The Independent Certifier is not required to certify any Design Documentation for Temporary Works.

(k) **(Modifications):** If the LW Contractor considers that any Design Documentation which is the subject of a direction by the Principal's Representative under clause 9.9(i) constitutes or involves a Modification, the LW Contractor must, if it wishes to make a Claim in relation to the matter, give a notice and submit a claim in accordance with, and otherwise comply with, clause 10.

- (l) **(Minor Non-Compliances):** If a notice provided by the Principal's Representative under clause 9.9(c)(ii)(B) lists any Minor Non-Compliances:
 - (i) **(Principal or Independent Certifier may suggest action)** the notice may suggest the action that could be taken by the LW Contractor to address the Minor Non-Compliance; and
 - (ii) **(LW Contractor must take action)** the LW Contractor must complete the suggested action, or take any other action the LW Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with this deed, within the timeframe (if any) specified in the Principal's Representative's notice and, in any event, as a pre-condition to Construction Completion of each relevant Portion.

9.10 **Network Assurance Committee**

- (a) **(Submission of NAC CCR Packages to the NAC)**
 - (i) **(Satisfaction of NAC threshold requirements)** Within 2 Business Days commencing on the date on which the Principal's Representative is provided with a NAC CCR Package by the LW Contractor under clause 9.3(b), the Principal's Representative must review the NAC CCR Package and either:
 - (A) **(Rejection by the Principal's Representative)** reject the NAC CCR Package (in writing, with reasons, to the LW Contractor) if the Principal's Representative reasonably considers that the NAC CCR Package is not sufficiently complete to enable the NAC to form a view on whether the NAC CCR Package satisfies the NAC Requirements; or
 - (B) **(Submission to NAC)** submit that NAC CCR Package to the NAC in accordance with Appendix F1 of the SWTC.
 - (ii) **(Rejected NAC CCR Package)** If the Principal's Representative rejects a NAC CCR Package under clause 9.10(a)(i)(A), the LW Contractor must promptly amend the NAC CCR Package and re-submit it to the Principal's Representative in accordance with clause 9.3(b) and this clause 9.10(a) will reapply.
- (b) **(NAC Assurance Review)** In respect of each NAC CCR Package submitted by the Principal's Representative to the NAC under clause 9.10(a)(i)(B), within 10 Business Days of submitting the NAC CCR Package to the NAC, the Principal's Representative must either:
 - (i) **(Acceptance)** give notice to the LW Contractor that the NAC CCR Package has been accepted;
 - (ii) **(Acceptance with conditions)** give notice to the LW Contractor setting out a list of actions which the LW Contractor must take in order for the NAC CCR Package to satisfy the NAC Requirements (**NAC Required Actions**); or
 - (iii) **(Rejection)** give notice to the LW Contractor that the NAC CCR has been rejected.
- (c) **(NAC Required Actions and Rejection)**
 - (i) If the Principal's Representative provides a notice under clause 9.10(b)(ii) or clause 9.10(b)(iii), the LW Contractor:

- (A) **(LW Contractor must take action)** must complete the NAC Required Actions (if applicable); and
 - (B) **(Notice of disagreement)** may provide the Principal's Representative with a notice stating that the NAC CCR Package satisfies the NAC Requirements and setting out any matters in relation to which it disagrees with the need to carry out any of the NAC Required Actions (if applicable), together with its reasons.
- (ii) **(Parties must meet)** If the LW Contractor gives a notice under clause 9.10(c)(i)(B), the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Modification or otherwise) within 10 Business Days of the notice under clause 9.10(c)(i)(B).
 - (iii) **(Referral to dispute resolution)** If the parties are unable to resolve a disagreement contemplated by clause 9.10(c)(i)(B) within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the LW Contractor may refer the disagreement for resolution in accordance with clause 20.
 - (iv) **(Re-submission)** If the Principal has issued a notice under clause 9.10(b)(iii), the LW Contractor must promptly amend the NAC CCR Package and re-submit it to the Principal's Representative and the process under clauses 9.10(a) and 9.10(b) will re-apply.

9.11 **Interface Contractors**

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

- (a) provide copies of such Design Documentation to; and
 - (b) seek comments from and take into account the views of,
- the tenderers for any Interface Works or any operation and maintenance services, including the Operator, OpCo and any Authority (including any Third Party).

9.12 **Design Documentation for construction**

Unless otherwise approved in writing by the Principal's Representative, the LW Contractor must only use for construction purposes:

- (a) the Principal's Design Stage 3 Documents;
- (b) Design Documentation (other than Design Documentation for Temporary Works which is not requested by the Principal's Representative under clause 9.5(a)(iv) and Third Party Agreement Design Documentation):
 - (i) that, if it is Design Documentation that relates to construction work that requires NAC Gate 3 approval, is either:
 - (A) the subject of a notice under clause 9.10(b)(i); or
 - (B) the subject of a notice under clause 9.10(b)(ii) and the LW Contractor has completed all NAC Required Actions set out in the notice or the notice permits the LW Contractor to proceed with construction provided that the NAC Required Actions are completed in due course; and

- (ii) that complies with the requirements of any relevant Approval (if applicable); and
- (iii) in respect of which:
 - (A) the Principal's Representative has issued the LW Contractor with a notice under clause 9.9(c)(ii); or
 - (B) at least 20 Business Days have passed from delivery of the Design Stage 3 Design Documentation in accordance with clause 9.5(a)(ii),
 whichever is the first to occur; or
- (c) Third Party Agreement Design Documentation that has satisfied the relevant requirements set out in the relevant Third Party Agreement.

9.13 **Amendments to Final Design Documentation**

- (a) Subject to clause 10, if the LW Contractor wishes to amend Final Design Documentation prior to the Date of Construction Completion of a Portion to which the Final Design Documentation relates:
 - (i) the LW Contractor must submit the amended Design Documentation to the Principal's Representative and the Independent Certifier together with:
 - (A) the certifications referred to in clause 9.7(b); and
 - (B) an explanation as to why it is seeking to amend the Final Design Documentation; and
 - (ii) clause 9.9 will apply as if the Design Documentation is Design Stage 3 Design Documentation.
- (b) The LW Contractor may, at its own risk, use the amended Final Design Documentation submitted in accordance with clause 9.13(a) for construction purposes prior to the expiry of the 20 Business Day period in clause 9.12(b)(iii)(B) if the amendment to the Final Design Documentation:
 - (i) is minor;
 - (ii) does not adversely impact the Project Works or the Temporary Works; and
 - (iii) is necessary to overcome an issue which:
 - (A) prevents or adversely affects the LW Contractor proceeding with construction; and
 - (B) has arisen or become evident since the Final Design Documentation was submitted to the Principal's Representative and the Independent Certifier; and
 - (iv) does not relate to Design Documentation which relates to a NAC CCR Package that has been the subject of notice under clause 9.10(b)(i) or 9.10(b)(ii).
- (c) The LW Contractor must submit any amended Final Design Documentation which is Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement at the same time that the LW Contractor submits

such amended Final Design Documentation to the Principal's Representative and the Independent Certifier under clause 9.13(a)(i).

9.14 No duty to review

The Principal and the LW Contractor acknowledge and agree that:

- (a) neither the Principal nor the Principal's Representative assume a duty or owe any duty to the LW Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the LW Contractor or make any comments regarding any Design Documentation; and
- (b) none of:
 - (i) any review or rejection of, or consultation or comments by the Principal, the Principal's Representative or the Independent Certifier, nor any failure by the Principal, the Principal's Representative or the Independent Certifier regarding, any Design Documentation or any other direction by the Principal's Representative in respect of any Design Documentation;
 - (ii) the non-rejection of any Design Documentation by the Principal's Representative under clause 9.9(c)(ii)(B); or
 - (iii) the certification of any Design Documentation by the Independent Certifier under clause 9.9(c)(ii)(B)(bb),will lessen or otherwise affect:
 - (iv) any of the LW Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (v) the Principal's rights against the LW Contractor, whether under this deed or otherwise according to Law.

9.15 Ownership of documentation

- (a) Documents (including Design Documentation) supplied by or on behalf of the LW Contractor will be the Principal's property.
- (b) The LW Contractor (irrevocably for all time and despite any termination of this deed for any reason):
 - (i) to the fullest extent permitted by law, assigns to the Principal all of the LW Contractor's right, title and interest in the Intellectual Property Rights in or relating to:
 - (A) the Design Documentation; and
 - (B) the materials, documents, images, photographs and software relevant to the LW Contractor's Activities (other than processes and methods of working),(collectively called the **Contract Documentation and Materials**) prepared or created by the LW Contractor for or in connection with the LW Contractor's Activities or the Project Works, which assignment is effective immediately from the time it is prepared or created; and
 - (ii) in respect of all other Intellectual Property Rights in or relating to:

- (A) the Contract Documentation and Materials; and
- (B) the Temporary Works and the processes and methods of working relevant to the LW Contractor's Activities (collectively called the **Contract Processes**),

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

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

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

(c) The LW Contractor:

- (i) warrants that the Principal's use of the Contract Documentation and Materials, or any other work provided by the LW Contractor under this deed, will not infringe any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction; and
- (ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act 1968* (Cth) or similar legislation in any jurisdiction in connection with the Project Works, the Temporary Works, the LW Contractor's Activities or the Contract Documentation and Materials.

(d) For the purposes of clause 9.15(c), the Principal's use of the Contract Documentation and Material includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation and Materials or part of the Project Works or Temporary Works to which the Contract Documentation and Materials or any other work provided by the LW Contractor under this deed relates:

- (i) with or without attribution of authorship;
- (ii) in any medium; and
- (iii) in any context and in any way it sees fit.

(e) The LW Contractor agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal or its licensees, assignees or successors and their licensees, or any other person authorised by it) as reasonably requested by the Principal to give full effect to the provisions of this deed and to:

- (i) allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned or licensed Intellectual Property Rights (as the case may be) or of any such adaptation); or
 - (ii) prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (f) The LW Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 9.15 if the LW Contractor fails to execute the document or do the relevant act or thing within 5 Business Days of a written request by the Principal's Representative.
- (g) The Principal grants to the LW Contractor a royalty free licence to use:
 - (i) the Principal's Design Stage 1 Documents;
 - (ii) the Principal's Design Stage 3 Documents;
 - (iii) the Intellectual Property Rights assigned to the Principal under clause 9.15(b)(i),solely to the extent necessary to enable the LW Contractor to perform the LW Contractor's Activities.
- (h) The LW Contractor warrants that:
 - (i) the:
 - (A) assignment to the Principal and any use of the Intellectual Property Rights assigned under this clause 9.15; and
 - (B) use of the Intellectual Property Rights licensed under this clause 9.15 pursuant to the terms of this deed,does not and will not infringe the Intellectual Property Rights of any party;
 - (ii) were it not for the assignments effected by this deed, the LW Contractor would be the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 9.15(b)(i); and
 - (iii) the LW Contractor is either:
 - (A) the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 9.15(b)(i); or
 - (B) able to grant the licence granted in clause 9.15(b)(ii).
- (i) Without limiting clause 9.15(h), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by it, of the Contract Documentation and Materials, the Contract Processes, the LW Contractor's Activities or the Project Works or any part of them, being disrupted, impaired or adversely affected, the LW Contractor must at its own expense and at the Principal's option:

- (i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by it the right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 9.15, in accordance with this deed; or
 - (ii) modify or replace the Contract Documentation and Materials, the Contract Processes, the LW Contractor's Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.15, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, the LW Contractor's Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 9.15 will:
 - (A) comply with the requirements of this deed; and
 - (B) not limit or otherwise affect the Principal's rights, or the LW Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.
- (j) The LW Contractor indemnifies, and agrees to keep indemnified, the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
- (i) a breach by the LW Contractor of any warranty set out in this clause 9.15; or
 - (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Contract Processes, the LW Contractor's Activities or the Project Works or any part of them.
- (k) The LW Contractor:
- (i) acknowledges that the Principal may provide the Operator or any Interface Contractor with copies of any documents (including Design Documentation) provided to the Principal or the Independent Certifier by or on behalf of the LW Contractor in any way in connection with this deed, the Project Works, the Temporary Works or the LW Contractor's Activities; and
 - (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation and Materials that the Operator or any Interface Contractor may reasonably require.

9.16 **Delivery up of Design Documentation**

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

- (a) the LW Contractor must:
 - (i) subject to clause 9.16(b), immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not and including any Design Documentation stored electronically) then in existence to the Principal; and
 - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Design Documentation; and

- (b) the LW Contractor and each Subcontractor may retain a copy of all such Design Documentation.

9.17 **Design Life**

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

9.18 **Value Engineering**

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

9.19 **Cost Planning**

The LW Contractor must:

- (a) plan the Project Works and LW Contractor's Activities in consultation with the Principal's Representative and provide estimates of and costings for the construction and Commissioning phase of the Project Works;
- (b) within 10 Business Days of the date of this deed (or any longer period agreed by the Principal's Representative in writing), prepare for the approval of the Principal's Representative a cost breakdown structure;
- (c) within 30 Business Days of the date of this deed (or any longer period agreed by the Principal's Representative in writing), prepare for the approval of the Principal's Representative a cost plan which meets the requirements of Part 1 of Schedule F7 and is not inconsistent with the Initial Cost Plan set out in Part 2 of Schedule F7. Once this cost plan is approved by the Principal's Representative it will be referred to as the **Cost Plan**;
- (d) institute a system of cost control (including monthly reports to the Principal setting out the cost to date, forecast cost to complete, forecast cost at completion and any amounts received by the LW Contractor from the sale of material salvaged from the Construction Site or Bulk Feeder Route in performing the LW Contractor's Activities) and, together with the Principal's Representative, review and, where

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

- (i) the tenders for any part of the Reimbursable Work which are to be performed by a subcontractor exceed the amount included for that work in the Cost Plan; or
 - (ii) the costs incurred in respect of any Reimbursable Work (including under any Approved Subcontract Agreement) exceed the amount allowed for the particular Reimbursable Work in the cash-flow which forms part of the Cost Plan or the forecast final costs of that Reimbursable Work appear likely to exceed the total amount allowed for that work (including the contingency) in the Cost Plan; or
 - (iii) no tenders are received for any part of the Reimbursable Work; and
- (e) if requested at any time by the Principal's Representative, the LW Contractor must provide to the Principal's Representative (or any person authorised by the Principal's Representative) all information necessary to corroborate the Cost Plan and must co-operate in respect of any audit of the information concerning the Cost Plan.

9.20 **Cost Control**

The LW Contractor must:

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

9A.1 Acceptance of the Interface Works

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The Principal must provide the LW Contractor with a copy of the relevant notice of Degree 2 Completion referred to in paragraph (b)(vi) above promptly after receiving the same from the relevant independent certifier.

9A.2 Principal initiated Interface Works Change

- (a) Without prejudice to clause 9A.6, the Principal's Representative may at any time issue to the LW Contractor written notice of an Interface Works Change proposed by the Principal or the relevant Interface Contractor under the relevant Interface Works Contract which may impact on the Project Works.
- (b) If the LW Contractor (acting reasonably) considers that the proposed Interface Works Change, if implemented:

- (i) would increase the LW Contractor's costs of performing the Project Works in accordance with this deed or would otherwise require a Modification to be implemented under this deed, the LW Contractor must issue to the Principal:

- (A) a proposal in accordance with clause 10.4(c) for the Modification that the LW Contractor considers would be required as a consequence of the proposed Interface Works Change, if the proposed Interface Works Change was implemented; and

- (B) a written notice detailing any modification to the proposed Interface Works Change that the LW Contractor considers would be required to avoid the need to implement a Modification; or

- (ii) would not require a Modification to be implemented under this deed, the LW Contractor must provide the Principal's Representative with written confirmation of this,

within 20 Business Days after receipt of the written notice referred to in clause 9A.2(a).

- (c) If the LW Contractor does not give the Principal:

- (i) a proposal and notice in accordance with clause 9A.2(b)(i); or
 - (ii) confirmation in accordance with clause 9A.2(b)(ii),

within 20 Business Days after receipt of the written notice referred to in clause 9A.2(a), the LW Contractor will be deemed to have given the Principal confirmation that the Interface Works Change will not require a Modification to be implemented under this deed in accordance with clause 9A.2(b)(ii) and clause 9A.2(e) will apply.

- (d) If the LW Contractor gives the Principal a proposal and written notice pursuant to clause 9A.2(b)(i), the Principal may:

- (i) if the Principal disagrees that the proposed Interface Works Change requires a Modification to be implemented under this deed, refer the matter for resolution in accordance with the dispute resolution procedure in clause 20; or
 - (ii) if the Principal agrees, or it is determined under the dispute resolution procedure in clause 20, that the proposed Interface Works Change would require a Modification to be implemented under this deed:

- (A) modify the proposed Interface Works Change, in which case this clause 9A.2 will reapply;
 - (B) proceed with the proposed Interface Works Change, in which case the Principal must make an election with respect to the proposal issued by the LW Contractor under 9A.2(b)(i)(A) to proceed with the proposed Interface Works Change, in which case the Modification to be agreed between the parties, or otherwise determined under the dispute resolution procedure pursuant to clause 20, will need to take into account the extent to which, if any, clause 9A.1(b) should be qualified as a result of the impact of the relevant Interface Works Change; or
 - (C) withdraw the proposed Interface Works Change.
- (e) If the LW Contractor gives the Principal a written confirmation under clause 9A.2(b)(ii) or it is determined under the dispute resolution procedure pursuant to clause 20 that a proposed Interface Works Change does not require a Modification to be implemented under this deed:
- (i) the Principal may proceed with the proposed Interface Works Change; and
 - (ii) the LW Contractor will be deemed to have confirmed that the relevant Interface Works will remain fit for the purpose of enabling the LW Contractor to comply with its obligations and exercise its rights under this deed (notwithstanding the implementation of the Interface Works Change).
- (f) The Principal must reimburse the LW Contractor as part of the Reimbursable Costs for all costs reasonably incurred by the LW Contractor in assessing each proposed Interface Works Change pursuant to this clause 9A.2 (to the extent that those Costs would not have been incurred by the LW Contractor had the Principal not proposed the Interface Works Change).

9A.3 LW Contractor initiated Interface Works Change

- (a) If the LW Contractor wishes to request the Principal to procure an Interface Works Change, it must give the Principal a written notice with full details of:
 - (i) the proposed Interface Works Change; and
 - (ii) the reason for the proposed Interface Works Change.
- (b) Upon receipt of a notice under clause 9A.3(a), the Principal will decide, acting in its absolute discretion, whether to procure the relevant Interface Contractor to carry out the Interface Works Change. The Principal may attach conditions in relation to any agreement to procure the Interface Works Change, such as agreement by the LW Contractor to meet all additional costs and/or Liabilities of the Principal in relation to the Interface Works Change.
- (c) If required by the Principal, the LW Contractor must attend meetings with the relevant Interface Contractor regarding the Interface Works Change and provide such further information regarding the Interface Works Change as may be required by the Principal or the relevant Interface Contractor.
- (d) The Principal must notify the LW Contractor within 25 Business Days (or such longer period as the Principal reasonably requires, having regard to the size and complexity of the proposed Interface Works Change) after receiving a notice from the LW Contractor under clause 9A.3(a) whether:

- (iii) it will direct the relevant Interface Contractor to carry out the Interface Works Change; or
 - (iv) it will not direct the relevant Interface Contractor to carry out the Interface Works Change.
- (e) Subject to clauses 9A.10, 9A.11, 9A.12 and 9A.13 the LW Contractor:
 - (i) will not be entitled to make any Claim against the Principal arising out of or in connection with:
 - (A) any Interface Works Change implemented by the Principal and an Interface Contractor pursuant to this clause 9A.3; or
 - (B) a refusal by the Principal under this clause 9A.3 to direct an Interface Contractor to carry out the Interface Works Change; and
 - (ii) agrees that the refusal by the Principal to direct an Interface Works Change requested by the LW Contractor will not affect the operation of clause 9A.1(b).
- (f) The LW Contractor warrants that if an Interface Works Change requested by the LW Contractor is implemented, if the relevant Interface Works are designed and constructed in accordance with the relevant Interface Works Change, clause 9A.1(b) shall continue to apply.
- (g) The LW Contractor must procure for the relevant Interface Contractor at the LW Contractor's cost, any rights over any Extra Land that the Interface Contractor requires in order to implement any Interface Works Change requested by the LW Contractor under this clause 9A.3.

9A.4 LW Contractor bears risks

The LW Contractor acknowledges and agrees that if the Principal directs an Interface Works Change requested by the LW Contractor pursuant to clause 9A.3, the LW Contractor will bear all risks associated with that Interface Works Change and will not be entitled to make any Claim against the Principal arising out of or in connection with such risks, including under clauses 9A.11, 9A.12, 14.7, 14.8 and 14.10.

9A.5 Interface Works Design Documentation

- (a) The Principal must provide the LW Contractor with a copy of all Interface Works Design Documentation submitted by the Interface Contractors to the Principal and which is relevant to the Project Works, promptly following receipt by the Principal.
- (b) The LW Contractor may:
 - (i) review the Interface Works Design Documentation provided to it pursuant to clause 9A.5(a); and
 - (ii) to the extent that the LW Contractor believes that contents of the Interface Works Design Documentation will adversely impact on its ability to comply with the requirements of this deed, provide written comments to the Principal within 10 Business Days after the date on which the LW Contractor received the Interface Works Design Documentation pursuant to clause 9A.5(a).

- (c) The Principal may:
 - (i) provide a copy of any written comments provided by the LW Contractor under clause 9A.5(b)(ii) to the relevant independent certifier and/or Interface Contractor; and
 - (ii) provide the LW Contractor with a copy of any comments the Principal receives from the relevant independent certifier and/or Interface Contractor in response to any comments made by the LW Contractor under clause 9A.5(b).

9A.6 Accepted Interface Works Change

- (a) The Principal may provide the LW Contractor with details of any Interface Works Change which may impact on the Project Works but which the Principal considers to be an Accepted Interface Works Change (**Proposed Accepted Interface Works Change**).
- (b) The LW Contractor may, within 10 Business Days (or such longer period as the Principal's Representative reasonably agrees, having regard to the size and complexity of the Interface Works Change) of receipt of a notice under clause 9A.6(a), provide the Principal's Representative with a written notice stating that it:
 - (i) agrees the Proposed Accepted Interface Works Change is an Accepted Interface Works Change; or
 - (ii) does not consider the Proposed Accepted Interface Works Change to be an Accepted Interface Works Change.
- (c) If the LW Contractor gives the Principal a notice in accordance with clause 9A.6(b)(i) then the Proposed Accepted Interface Works Change will be deemed to be an Approved Interface Works Change.
- (d) If the LW Contractor gives the Principal a notice in accordance with clause 9A.6(b)(ii), the Modifications Working Group must, at the next Modifications Working Group meeting (or as many additional meetings as agreed by the parties):
 - (i) discuss the Proposed Accepted Interface Works Change; and
 - (ii) use their reasonable endeavours to agree whether the Proposed Accepted Interface Works Change is an Accepted Interface Works Change.
- (e) If the Modifications Working Group:
 - (i) agrees that the Proposed Accepted Interface Works Change is an Accepted Interface Works Change, then the Proposed Accepted Interface Works Change will be deemed to be an Approved Interface Works Change; or
 - (ii) does not agree that the Proposed Accepted Interface Works Change is an Accepted Interface Works Change, then the Principal may issue a notice to the LW Contractor pursuant to clause 9A.2(a).
- (f) If a notice is not received by the Principal within the time specified in clause 9A.6(b)(ii):
 - (i) the LW Contractor is deemed to have accepted the Proposed Accepted Interface Works Change is an Accepted Interface Works Change; and

- (ii) the Proposed Accepted Interface Works Change will be deemed to be an Approved Interface Works Change.
- (g) If requested by the LW Contractor, the Principal must attend any meetings with the LW Contractor and the relevant Interface Contractor regarding the Proposed Accepted Interface Works Change and provide such further information as may be reasonably required by the LW Contractor.

9A.7 Interface Works Asset Management Information

- (a) The Principal must provide the LW Contractor with a copy of any Interface Works Asset Management Information submitted by the Interface Contractors to the Principal and which is relevant to the Project Works, promptly following receipt by the Principal.
- (b) The LW Contractor may, or if requested by the Principal must:
 - (i) review the Interface Works Asset Management Information provided to it pursuant to clause 9A.7(a); and
 - (ii) provide written comments within 5 Business Days after the date on which the LW Contractor received the Interface Works Asset Management Information pursuant to clause 9A.7(a).
- (c) The Principal may provide a copy of any written comments provided by the LW Contractor under clause 9A.7(b)(ii) to the relevant independent certifier and/or the applicable Interface Contractor.

9A.8 Inspection of Interface Works

- (a) If the LW Contractor wishes to inspect the Interface Works which impact on the Project Works, the LW Contractor must submit a written request to the Principal's Representative a minimum of 10 Business Days in advance of the date it wishes to carry out the inspection (or such other period of time as the Principal's Representative may agree).
- (b) The LW Contractor may only inspect the relevant Interface Works when accompanied by the Principal's Representative (or its nominee).
- (c) The Principal's Representative must facilitate all reasonable requests by the LW Contractor to inspect the Interface Works which impact on the Project Works.

9A.9 Interface Works Defects

If requested by the LW Contractor, the Principal must provide the LW Contractor with copies of:

- (a) all documents or other information in respect of the design, construction, occupation, use and maintenance of the Interface Works; and
- (b) any notices of Interface Works Defects relevant to the Project Works notified to the Principal by the Interface Contractors, or by the Principal to the Interface Contractors, that relate to a portion of the Interface Works to which access has been provided to the LW Contractor,

to the extent that any documentation is not provided directly to the LW Contractor by an Interface Contractor or the relevant independent certifier.

9A.10 Care and maintenance of Interface Works

- (a) Subject to clauses 9A.11, 9A.12 and 14.7, the LW Contractor is responsible for the care and maintenance of the Interface Works located within the Tunnel Site and Trackway Portions, in accordance with the relevant Interface Works O&M Manuals, copies of which will be provided to the LW Contractor by the Principal. The parties acknowledge that access to the Tunnel Site and Trackway Portions is given to the LW Contractor progressively pursuant to clause 7 and the LW Contractor is only responsible for the care and maintenance of the Interface Works located in a part of the relevant Tunnel Site and Trackway Portion from the date on which it was first granted access to that part of the Tunnel Site and Trackway Portion, until the date of Construction Completion of Portion 3.
- (b) If:
 - (i) the LW Contractor fails to occupy a part of the Tunnel Site or Trackway Portion from the date the LW Contractor has been granted access to that part of the Tunnel Site or Trackway Portions pursuant to clause 7 (**Relevant Date**); and
 - (ii) the Principal incurs a liability to an Interface Contractor in relation to Transitional Handover Services carried out by the Interface Contractor on that part of the Tunnel Site or Trackway Portion on or after the Relevant Date,

the LW Contractor must indemnify the Principal from and against such liability.

9A.11 Interface Works Known Defects

- (a) The LW Contractor:
 - (i) acknowledges that portions of the TSE Works and the Trackway Portions to which access is provided to the LW Contractor pursuant to clause 7.1 may contain Interface Works Known Defects;
 - (ii) without limiting clause 9A.10 or 9A.12, must accept control of the relevant portion of the TSE Works or the relevant Trackway Portion in accordance with this deed notwithstanding the presence of any Interface Works Known Defects;
 - (iii) must provide the relevant Interface Contractor (and any person authorised by the relevant Interface Contractor) with such access to the Construction Site as may be required by the relevant Interface Contractor in order to rectify the relevant Interface Works Known Defects; and
 - (iv) must promptly and in any event no later than 10 Business Days after the date on which the LW Contractor has been granted access to a portion of the TSE Works or a Trackway Portion, give written notice to the Principal if it reasonably considers that an Interface Works Known Defect (other than an Interface Works Minor Defect) has, or will have, an impact on the LW Contractor's ability to perform its obligations under this deed.
- (b) If the LW Contractor gives the Principal a notice under clause 9A.11(a)(iv) during the relevant Known Defects Rectification Period, the Principal's Representative must, within 10 Business Days or such longer period as the parties may agree (acting reasonably), issue a notice to the LW Contractor that contains one of the following:

- (i) an undertaking by the Principal to procure the rectification of the relevant Interface Works Defect by the relevant Interface Contractor;
 - (ii) a direction to the LW Contractor to carry out a Modification pursuant to clause 10 to modify the Project Works or the LW Contractor's Activities to accommodate the impact (if any) of the Interface Works Known Defect on the Project Works; or
 - (iii) a notification to the LW Contractor that the Principal does not consider the Interface Works Known Defect to have, or will have, an impact on the LW Contractor's ability to perform its obligations under this deed.
- (c) If there is any dispute between the LW Contractor and the Principal as to whether the Interface Works Known Defect has, or will have, an impact on the LW Contractor's ability to perform its obligations under this deed, the dispute resolution procedure set out in clause 20 will apply.
- (d) The LW Contractor agrees that, except where expressly provided under this deed, the LW Contractor will have no Claim or assert any right whatsoever against the Principal arising out of, or in relation to, any Interface Works Known Defects.

9A.12 Notification of Interface Works Defects

- (a) This clause 9A.12 does not apply to any Interface Works Known Defect in the TSE Works or Trackway Portions during the Known Defects Rectification Period for that Interface Works Known Defect, which is dealt with in clause 9A.11.
- (b) The LW Contractor must promptly give written notice to the Principal upon becoming aware of any matter it considers to be an Interface Works Defect in any TSE Works or Trackway Portions to which it has been given access.
- (c) If the LW Contractor gives the Principal a notice under clause 9A.12(b) in respect of an Interface Works Defect in any TSE Works or Trackway Portion located within a part of the Project Site in respect of which the LW Contractor has, at that time, management and control pursuant to clause 7.12, the Principal's Representative must, within 5 Business Days or such longer period as the parties may agree (acting reasonably), issue a notice to the LW Contractor that contains one of the following:
 - (i) an undertaking by the Principal to procure the rectification of the Interface Works Defect by the relevant Interface Contractor;
 - (ii) a direction to the LW Contractor to carry out a Modification pursuant to clause 10 to:
 - (A) rectify the Interface Works Defect; or
 - (B) modify the Project Works or the LW Contractor's Activities to accommodate the impact (if any) of the Interface Works Defect on the Project Works; or
 - (iii) a notification to the LW Contractor that the Principal does not consider the alleged defect to be an Interface Works Defect.
- (d) The LW Contractor must provide the Principal's Representative with any information reasonably requested in relation to the Interface Works Defect.
- (e) If there is any dispute between the LW Contractor and the Principal as to whether an alleged defect in the Interface Works referred to in clause 9A.12(c) constitutes

an Interface Works Defect, the dispute resolution procedure set out in clause 20 will apply.

- (f) If clause 9A.12(e) applies and it is determined that an alleged defect in the Interface Works referred to in clause 9A.12(c) constitutes an Interface Works Defect, the Principal must, within 5 Business Days after such determination, issue a notice pursuant to clauses 9A.12(c)(i) or 9A.12(c)(ii).

9A.13 Temporary Repairs

- (a) If an alleged Interface Works Defect the subject of a notice by the LW Contractor under clause 9A.12(b) will have an adverse effect on the safe performance of the LW Contractor's Activities, the LW Contractor may carry out any temporary repairs or other works it considers necessary (acting reasonably) to overcome the adverse effect (**Temporary Repairs**).
- (b) Before carrying out any Temporary Repairs, the LW Contractor must provide the Principal with:
 - (i) at least 24 hours' prior written notice (or such shorter period of notice as the Principal may agree);
 - (ii) the opportunity to inspect the alleged Interface Works Defect; and
 - (iii) a detailed report of the alleged Interface Works Defect (including photographs).
- (c) Within 3 Business Days after completing the Temporary Repairs (or within 10 Business Days after commencing the Temporary Repairs, if earlier), the LW Contractor must provide the Principal with a detailed report of the Temporary Repairs undertaken.
- (d) The LW Contractor must only carry out any Temporary Repairs that are strictly necessary to overcome the adverse effect referred to in clause 9A.13(a).

9A.14 Access by Interface Contractor

The LW Contractor must provide the Interface Contractor (and any person authorised by the Interface Contractor) with such access to the parts of the Project Site over which the LW Contractor has management and control pursuant to clause 7.12, as is required by the Interface Contractor in order to meet its obligations under the relevant Interface Works Contract and the relevant LW Cooperation and Integration Deed, including the rectification of:

- (a) any Interface Works Known Defects pursuant to clause 9A.11(b)(i); and
- (b) any Interface Works Defects pursuant to clause 9A.12(c),

subject to the Interface Contractor complying with the LW Contractor site access and work, health and safety procedures in accordance with the relevant LW Cooperation and Integration Deed and SMNW Site Interface Deed Poll.

9A.15 Claims

Subject to clauses 9A.2, 9A.11, 9A.12, 9A.13 and 14:

- (a) the Principal will not be liable upon any Claim by the LW Contractor arising out of or in any way in connection with:

- (i) an Interface Contractor carrying out any Interface Works; or
- (ii) any act or omission of an Interface Contractor,

other than a Claim by the LW Contractor arising out of or in connection with a breach by the Principal of its obligations under this clause 9A; and

- (b) the LW Contractor warrants that the Target Cost and the LW Contractor's Program contain sufficient allowances for the assumption by the LW Contractor of the obligations and risks under this clause 9A, including the cost of all the design iterations required to accommodate the Interface Works.

9A.16 TSE Handover Works

- (a) The Principal must, no later than 120 days before the date on which a portion of the TSE Works is proposed to be handed over to the LW Contractor:
 - (i) provide the LW Contractor with a list of the TSE Handover Works that the TSE Contractor has constructed on the Tunnel Site and TSE Land; and
 - (ii) provide the LW Contractor with a reasonable opportunity to inspect the TSE Handover Works.
- (b) The LW Contractor must, no later than 14 days after the date on which the Principal gives the LW Contractor the list referred to in clause 9A.16, give the Principal a written notice of the TSE Handover Works (if any) that the LW Contractor proposes be removed from the Tunnel Site and TSE Land by the TSE Contractor.
- (c) The Principal must procure the removal of the TSE Handover Works referred to in the LW Contractor's notice from the Tunnel Site and TSE Land prior to the date on which the LW Contractor is first given access to that part of the Tunnel Site or TSE Land pursuant to clause 7.1.
- (d) Without limiting clause 7.10(b), the LW Contractor bears all risks associated with any TSE Handover Works on or about the Tunnel Site and TSE Land (other than TSE Handover Works the subject of the LW Contractor's notice under clause 9A.16(b)) and will not be entitled to make any Claim against the Principal arising out of or in connection with such risks.

10. MODIFICATIONS

10.1 Purpose

Each party acknowledges and agrees that:

- (a) throughout the term of this deed, a number of changes to the requirements of this deed are likely to be required;
- (b) the purpose of this clause 10 is to facilitate and efficiently give effect to such changes by incorporating a number of processes for the implementation of change and structuring each process to minimise transaction time and cost; and
- (c) it must seek to give effect to the purpose stated in clause 10.1(b) in complying with its obligations under this clause 10.

10.2 Modifications Managers

- (a) The Principal has appointed the Principal's Modifications Manager to exercise the powers, duties, discretions and authorities vested in the Principal under this clause 10, except that only the Principal's Representative is empowered to issue a Modification Order, a Modification Approval or a notice under clause 10.8(a) instructing a Pre-Agreed Modification.
- (b) The LW Contractor has appointed the LW Modifications Manager to exercise the powers, duties, discretions and authorities vested in the LW Contractor under this clause 10. An instruction or direction given to the LW Modifications Manager under this clause 10 is deemed to be given to the LW Contractor.
- (c) The LW Modifications Manager and Principal's Modifications Manager must co-operate and collaborate to facilitate the meeting of all time periods and obligations under this clause 10 and, to the extent possible, to ensure that each party has early notification of the prospect of a Modification.
- (d) The LW Contractor must:
 - (i) ensure that the LW Modifications Manager is available for consultation with the Principal's Modifications Manager, as the Principal's Modifications Manager reasonably requires;
 - (ii) prepare and regularly update (at intervals no less than monthly) a running schedule of all Modifications that have been proposed or implemented; and
 - (iii) make available to the Principal, on request, any records relating to any Modification that has been proposed or implemented (including the running schedule referred to in clause 10.2(d)(ii)).

10.3 Modifications Working Group

- (a) The Modifications Working Group comprises the Principal's Modifications Manager, the LW Modifications Manager and any other persons agreed by the parties from time to time.
- (b) The purpose of the Modifications Working Group is to provide a collaborative forum to discuss the status of all Modifications that have been agreed, proposed or that either party is planning to propose and any issues in connection with any Modification or proposed Modification.
- (c) The Modifications Working Group must meet weekly during design development and fortnightly during construction, unless the parties otherwise agree.
- (d) The LW Modifications Manager must prepare and provide to each member of the Modifications Working Group:
 - (i) an agenda for each meeting of the Modifications Working Group, prepared in consultation with the Principal's Modifications Manager, no less than 48 hours prior to each meeting; and
 - (ii) minutes of each meeting within 48 hours after the meeting.
- (e) The LW Contractor:
 - (i) must procure the attendance at Modifications Working Group meetings of representatives of the LW Contractor or any Subcontractor that the Principal's Modifications Manager reasonably requires; and

- (ii) may, with the Principal's consent, have one or more representatives of the LW Contractor or any Subcontractor attend a Modifications Working Group meeting if the LW Contractor considers it appropriate given the nature of the Modification(s) to be discussed at the relevant meeting.
- (f) The Principal may, in its absolute discretion, invite any persons to attend a Modifications Working Group meeting that the Principal considers appropriate given the nature of the Modification(s) to be discussed at the relevant meeting.

10.4 **Proposed Modifications**

- (a) The Principal may at any time prior to the expiry of the final Defects Correction Period issue a Modification Proposal Request to the LW Contractor setting out details of a proposed Modification that the Principal is considering.
- (b) The LW Contractor must immediately take all action required under the relevant Subcontract in relation to each Subcontractor that would be involved in carrying out the proposed Modification.
- (c) As soon as practicable, and in any event within 10 Business Days of the receipt of a Modification Proposal Request (or such longer period as is agreed by the Principal's Modifications Manager (acting reasonably), having regard to the size and complexity of the proposed Modification and any consultation required with Interface Contractors in accordance with clause 10.11), the LW Contractor must provide the Principal's Modifications Manager with a Modification Proposal setting out:
 - (i) any proposed [REDACTED] to carry out the proposed Modification;
 - (ii) the effect (if any) that the proposed Modification will have on the LW Contractor's Program [REDACTED] any extension of time and the measures the LW Contractor proposes to take to avoid, mitigate or minimise the effect of the proposed Modification on the LW Contractor's Program);
 - (iii) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals or the LW Contractor's ability to comply with those Approvals;
 - (iv) the effect (if any) which the proposed Modification will have on the LW Contractor's ability to satisfy its obligations under this deed (including the LW Contractor's fitness for purpose obligations in this deed and any warranties given by the LW Contractor under this deed) or exercise its rights under this deed;
 - (v) the LW Contractor's view on the likely impact of the proposed Modification on any Interface Works, including whether the LW Contractor considers that an Interface Works Change will, or is likely to, be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification and if so, any change that could be made to the proposed Modification (including any change to the timing of the proposed Modification or to the manner in which the Modification is proposed to be implemented) to reduce or avoid the impact of the proposed Modification on the relevant Interface Works; and
 - (vi) any other information requested by the Principal in the Modification Proposal Request.

- (d) The Principal will not be obliged to proceed with any proposed Modification that is the subject of a Modification Proposal Request.

10.5 **Cost of preparing Modification Proposals**

- (a) Subject to clauses 10.5(b) and 10.5(c), the reasonable costs incurred by the LW Contractor in preparing a Modification Proposal will be Reimbursable Costs.
- (b) The LW Contractor must use reasonable endeavours to minimise the third party costs incurred by the LW Contractor in preparing Modification Proposals.
- (c) The LW Contractor's entitlement to reimbursement of the costs it incurs in preparing a Modification Proposal will be capped at [REDACTED] (or such higher amount as is approved beforehand by the Principal taking into account the scale and complexity of the Modification Proposal), subject to the LW Contractor providing evidence of the amounts claimed on Open Book Basis.

10.6 **Modification Orders**

- (a) Whether or not the Principal has issued a Modification Proposal Request under clause 10.4(a), the Principal's Representative may at any time prior to the expiry of the final Defects Correction Period direct the LW Contractor to carry out a Modification by issuing a written document titled "Modification Order" (**Modification Order**), in which the Principal's Representative will state:
 - (i) one of the following:
 - (A) the proposed [REDACTED] as set out in the LW Contractor's Modification Proposal (if any) are agreed and will be made; or
 - (B) the proposed [REDACTED] as set out in the LW Contractor's notice under clause 6.5(a) (if any) are agreed and will be made; or
 - (C) any [REDACTED] will:
 - (aa) subject to clause 10.6(a)(i)(C)(bb), be determined under clause 4; and
 - (bb) to the extent that the Modification includes a Minor Modification, be the applicable Catalogue Price for that Minor Modification; or
 - (ii) that the Modification must be implemented in accordance with clause 10.6(c); and
 - (iii) the extent to which the LW Contractor will be relieved of any of its obligations under this deed.
- (b) There is no limitation on the power of the Principal's Representative to direct a Modification, and no Modification or direction to carry out a Modification will invalidate this deed. Without prejudice to the generality of the foregoing, the parties acknowledge that in the future such Modification may include a direction from the Principal's Representative for a Modification to the Project Works if the Principal extends the Sydney Metro City & Southwest to include additional stations

beyond Bankstown station and that, depending on the scale and timing of this Modification, the Principal may choose to direct the Modification:

- (i) as additional Project Works and the Target Cost will be adjusted as part of the Modification; or
 - (ii) such that the additional Project Works are treated as a separate piece of work with their own target cost.
- (c) If the Principal directs the LW Contractor to implement a Modification by issuing a Modification Order:
- (i) the LW Contractor must promptly implement the Modification on the basis of the Modification Order irrespective of:
 - (A) the nature, extent or value of the work the subject of the Modification;
 - (B) the location or timing (including the impact on any Date for Milestone Achievement, Date for Construction Completion or Date for Completion) of the work involved in the Modification; or
 - (C) any Dispute related to the Modification; and
 - (ii) the LW Contractor will be relieved of its obligations under this deed to the extent specified in the Modification Order.
- (d) Subject to clause 10.6(e), the LW Contractor's entitlement (if any) to an extension of time arising out of or in connection with a Modification will be dealt with under clause 14.10.
- (e) The LW Contractor will not be entitled to claim an extension of time, whether under this deed or otherwise according to any Law, arising out of or in connection with a Minor Modification.
- (f) Without limiting clause 10.6(e), the Principal will have no Liability to the LW Contractor in relation to or arising out of a Minor Modification other than any [REDACTED] determined in accordance with clauses 10.6(a)(i)(C)(bb) or 10.6(a)(ii), as applicable.

10.7 Omissions

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

- (a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim by the LW Contractor arising out of or in any way in connection with any work being omitted or deleted from the LW Contractor's Activities; and
- (c) the adjustment to the amounts payable to the LW Contractor under this deed arising from the work that has been omitted or deleted will be valued in accordance with clause 4.

10.8 **Pre-Agreed Modifications**

- (a) The Principal's Representative may, in its absolute discretion and without being under any obligation to do so, instruct any Pre-Agreed Modification by giving written notice to the LW Contractor at any time prior to the relevant Election Date. Upon the issue of such a notice by the Principal's Representative this deed will be deemed to be amended as set out in Schedule A3 for the relevant Pre-Agreed Modification.
- (b) If the Principal's Representative instructs a Pre-Agreed Modification under this clause 10.8, such exercise will not (other than as set out in Schedule A3):
 - (i) relieve the LW Contractor from its liabilities or obligations (including those arising out of any warranties given under this deed);
 - (ii) limit or otherwise affect the Principal's rights against the LW Contractor or the LW Contractor's rights against the Principal (including those arising out of any warranties given under this deed); or
 - (iii) entitle the LW Contractor to an extension of time,whether under this deed or otherwise according to any Law.
- (c) The Principal will have no Liability to the LW Contractor in relation to or arising out of a Pre-Agreed Modification instructed by the Principal's Representative other than the [REDACTED] (if any) set out in Schedule A3 for the relevant Pre-Agreed Modification.
- (d) Nothing in this clause prevents the Principal's Representative from:
 - (i) issuing a "Modification Proposal Request" as referred to in clause 10.4(a); or
 - (ii) directing a Modification by issue of a Modification Order under clause 10.6,that involves the same (or similar) changes to the Project Works as a Pre-Agreed Modification after the relevant Election Date.

10.9 **LW Contractor may propose Modification**

- (a) The Principal and the LW Contractor acknowledge that:
 - (i) the project delivery method chosen is intended, among other things, to allow the LW Contractor to identify:
 - (A) Modifications which may enhance the quality of the LW Contractor's Activities; and
 - (B) Modifications which may permit project cost savings while maintaining or enhancing the quality of the LW Contractor's Activities; and
 - (ii) it is their intention that any cost savings arising from such a Modification should benefit the Principal and the LW Contractor equally.
- (b) The LW Contractor may propose a Modification by giving written notice to the Principal's Modifications Manager setting out:
 - (i) details of:

- (A) the proposed Modification;
 - (B) the reason for the proposed Modification;
 - (C) the time within, and the manner in which, the LW Contractor proposes to implement the proposed Modification;
 - (D) the effect (if any) of the proposed Modification on the LW Contractor's Activities, including the LW Contractor's Program and the Dates for Milestone Achievement, Dates for Construction Completion and/or Dates for Completion of the Portions;
 - (E) the cost effect of assessing and carrying out the proposed Modification, including:
 - (aa) any proposed [REDACTED] to carry out the proposed Modification; and
 - (bb) the effect the proposed Modification will have on operating and maintenance costs;
 - (F) the effect (if any) that the proposed Modification will have on any Interface Works, including whether an Interface Works Change will, or is likely to, be required to enable the proposed Modification to be implemented, or as a consequence of the proposed Modification; and
 - (G) the Value For Money for the Principal arising from the Modification, including:
 - (aa) the cost savings that the LW Contractor expects to arise from the Modification; and
 - (bb) an estimate of any amounts that will, or are likely to be, payable by the Principal to any Interface Contractor(s) under any contracts entered into between the Principal and an Interface Contractor in order to enable the proposed Modification to be implemented or as a consequence of the proposed Modification; and
- (ii) a written statement stating that the proposed Modification:
- (A) will not adversely affect:
 - (aa) the functional integrity of any of the elements of the LW Contractor's Activities; or
 - (bb) the satisfaction of:
 - (a) any performance standards required by this deed; or
 - (b) the LW Contractor's fitness for purpose obligations in this deed; and
 - (B) is consistent with and complies with the conditions and requirements of the Planning Approval.

- (c) On receiving a notice under clause 10.9(b), the Principal may give written notice to the LW Contractor requesting any other information and supporting documentation the Principal reasonably requires. The LW Contractor must provide the requested information or documentation within 10 Business Days of receiving the request.
- (d) The Principal's Representative:
 - (i) (in its absolute discretion) may either:
 - (A) approve (with or without conditions) the proposed Modification by issuing a Modification Approval to the LW Contractor;
 - (B) reject the proposed Modification; and
 - (ii) will be under no obligation to approve any such Modification for the convenience of, or to assist, the LW Contractor.
- (e) Prior to issuing a Modification Approval, the Principal may seek to negotiate with the LW Contractor in relation to the level of any proposed [REDACTED] to carry out the proposed Modification or any conditions that may be attached to the Modification Approval.
- (f) If the Principal issues a Modification Approval:
 - (i) without conditions, the LW Contractor must perform its obligations under this deed in accordance with the approved Modification; and
 - (ii) with conditions, the LW Contractor may either:
 - (A) proceed to implement the Modification on the basis set out in the Modification Approval; or
 - (B) withdraw the proposed Modification if the LW Contractor, acting reasonably, does not accept any of the conditions attached to the approval of the proposed Modification.
- (g) If the Principal's Representative approves a proposed Modification pursuant to a Modification Approval, the Principal will notify the LW Contractor that [REDACTED] (if any) will be:
 - (i) as set out in the LW Contractor's notice under clause 10.9(b); or
 - (ii) as agreed under clause 10.9(e); or
 - (iii) as determined under clause 4.
- (h) The LW Contractor will:
 - (i) bear all costs:
 - (A) associated with proposing a Modification under clause 10.9(b) and providing any information and supporting documentation requested under clause 10.9(c);
 - (B) bear all risks associated with carrying out a Modification proposed by the LW Contractor;

- (ii) unless otherwise agreed in writing by the Principal and except as provided for in clause 10.9(g):
 - (A) where a proposed Modification is approved by the Principal's Representative, bear all costs associated with assessing and carrying out the proposed Modification; and
 - (B) not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, a Modification proposed by the LW Contractor and the Principal will have no Liability to the LW Contractor in relation to or arising out of a Modification proposed by the LW Contractor.
- (i) The Principal will bear its own costs incurred in assessing a Modification proposed by the LW Contractor.
- (j) The Principal and the LW Contractor acknowledge that it is intended that each Interface Contractor and the Operator will bear their own costs in assessing the proposed Modification.

10.10 **LW Contractor's entitlements**

The Principal will have no Liability to the LW Contractor arising out of, or in any way in connection with, any Modification, except where:

- (a) the LW Contractor is directed to implement a Modification pursuant to a Modification Order;
- (b) the Modification is the subject of a Modification Approval;
- (c) the Principal issues a notice under clause 10.8(a) instructing a Pre-Agreed Modification; or
- (d) clause 23.1 applies.

10.11 **Consultation with Interface Contractors**

Without limiting clause 3.2, if the LW Contractor becomes aware that a Modification will, or is likely to, impact on any Interface Works or necessitate an Interface Works Change, and in any case prior to:

- (a) submitting a Modification Proposal in accordance with clause 10.4(c); or
- (b) proposing a Modification in accordance with clause 10.9(b),

the LW Contractor must:

- (c) notify the relevant Interface Contractor(s) of the proposed Modification; and
- (d) work closely and iteratively with the relevant Interface Contractor(s) in good faith regarding the scope and design of the proposed Modification (and, where applicable, the corresponding Interface Works Change) in order to remove or reduce the impact that the proposed Modification will or may have on the relevant Interface Works.

10.12 Modifications review

- (a) Three months prior to each anniversary of the date of execution of this deed, the Principal and the LW Contractor must meet to review the Modifications regime (**Modifications Review**).
- (b) Factors that may be addressed in a Modifications Review include:
 - (i) measures to improve the Modifications process set out in this clause 10;
 - (ii) revisions or updates to the Catalogue of Minor Modifications to include any Modification (or part or component of a Modification) that:
 - (A) is reasonably likely to be required during the remaining term of this deed; and
 - (B) either party considers (acting reasonably):
 - (aa) has a cost not exceeding [REDACTED] or as otherwise agreed by the parties from time to time;
 - (bb) will not cause delay to the LW Contractor's Activities or the Project Works (other than in a de minimis manner); and
 - (cc) will not materially and adversely affect the LW Contractor's ability to perform its obligations under this deed; and
 - (iii) any other factors that the Principal or the LW Contractor consider relevant.
- (c) Following each Modifications Review, the Catalogue of Minor Modifications will be updated and will apply from the relevant anniversary of the date of execution of this deed.

11. REIMBURSABLE WORK AND PROVISIONAL SUM WORK

11.1 Restrictions on Reimbursable Work

- (a) Subject to clause 11.14, Reimbursable Work must, unless otherwise agreed by the Principal's Representative in writing, be performed by Subcontractors under Approved Subcontract Agreements which will be made between the LW Contractor and Subcontractors in accordance with the procedure in this clause 11.
- (b) The LW Contractor must not enter into any Subcontract with a Prohibited Subcontractor.
- (c) The LW Contractor must ensure that all Subcontract Tender Documentation is prepared and all tender processes for Reimbursable Work are conducted:
 - (i) on terms which maximise Value for Money for the Principal; and
 - (ii) with the highest standards of probity, fairness and equal opportunity and in accordance with the Tendering Probity Plan.

11.2 Subcontract Proposal

- (a) The parties acknowledge and agree that:
 - (i) clauses 11.2(b), 11.3, 11.4, 11.5, 11.6, 11.7(a)-11.7(b) and 11.8 do not apply to Pre-Approved Subcontractors the subject of clause 11.17; and

- (ii) clauses 11.2(b), 11.3, 11.4, 11.5, 11.6, 11.7(a)-11.7(e) and 11.8 do not apply to the BMCS DSI Contract the subject of clause 11.19.

(b) The LW Contractor must:

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

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

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

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

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

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

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

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

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

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

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

- (G) the method of delivery for the work;

- (H) the proposed conditions of Subcontract which the LW Contractor proposes to use to enter into the Subcontract; and

- (I) the proposed date for calling of tenders and for tender responses;

- (iii) subject to paragraph (iv), for the purposes of paragraph (ii)(E), if the tender list is to be ascertained by an expression of interest process, do all things necessary to carry out the expression of interest process including:

- (A) preparing and arranging advertising;

- (B) preparing and distributing briefing documents;

- (C) evaluating responses from prospective tenderers; and

- (D) making a recommendation to the Principal's Representative for the purposes of clause 11.4;
- (iv) obtain the prior written approval of the Principal's Representative to all advertisements and briefing documents prior to requesting expressions of interest or invitations to tender; and
- (v) pay for all advertising (local, State, Territory and national) in respect of all expressions of interest or invitations to tender. The LW Contractor will not be entitled to payment or reimbursement of any such costs by the Principal (whether as Reimbursable Costs or otherwise).

11.3 Subcontract Tender Documentation

After the Principal's Representative has approved the Subcontract Proposal, the LW Contractor must:

- (a) prepare the Subcontract Tender Documentation and submit a copy of it to the Principal's Representative for approval at least 21 days before tenders are to be invited; and
- (b) subsequently amend the Subcontract Tender Documentation as required by the Principal's Representative.

11.4 Tendering

Regardless of whether or not a Subcontract Proposal is required under clause 11.3, the LW Contractor must:

- (a) subject to clause 11.4(c)(ii), recommend to the Principal's Representative at least three persons which in the LW Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
- (b) subject to clause 11.4(c)(ii), subsequently finalise the tender list in consultation with the Principal's Representative who may (in the Principal's Representative's absolute discretion, without the necessity to give reasons) remove or add any person from or to the tender list subject to the LW Contractor not making a reasonable objection to any person which the Principal's Representative may remove from or add to the tender list;
- (c) call tenders from:
 - (i) subject to clause 11.4(c)(ii), the persons in the tender list finalised with the Principal's Representative; or
 - (ii) for the persons, activities or items listed as trade packages in Schedule A21 - the relevant persons, service providers or suppliers listed in Schedule A21 only,

in sufficient time to avoid delays or disruption to the progress of the Project Works;
and
- (d) if so requested by the Principal's Representative, promptly provide a copy of each tender to the Principal's Representative.

11.5 Consideration of Tenders

The LW Contractor must:

- (a) examine and analyse all tenders received;
- (b) recommend to the Principal's Representative which tenderer, if any, should be accepted by the LW Contractor (which recommendation will be deemed to include a warranty by the LW Contractor that the recommended tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted, that the LW Contractor knows of no reason why that tenderer's tender should not be accepted and that the tenderer's tender will provide Value for Money for the Principal); and
- (c) submit together with any such recommendation:
 - (i) an evaluation report detailing the LW Contractor's assessment of tenders against the evaluation criteria;
 - (ii) a description of the work to be undertaken;
 - (iii) the time for commencement and completion of that work and confirmation that these times are in accordance with the LW Contractor's Program;
 - (iv) the proposed subcontract price (including any amount allowed for contingency) and the amounts tendered by other tenderers;
 - (v) any proposed amendments to the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 (if applicable);
 - (vi) the recommended tenderer's contact details;
 - (vii) if any Law in the State or Territory in which the Project Works are situated requires that a person be registered or licensed to carry out that part of the work, evidence to the satisfaction of the Principal's Representative that the recommended tenderer is so registered or licensed; and
 - (viii) any other details which may be required by the Principal's Representative, including the draft subcontract.

11.6 Post Tender Negotiations

If required by the Principal's Representative, the LW Contractor must conduct post-tender negotiations with the tenderers, which must, if the Principal's Representative so requires, be held in the presence of the Principal's Representative.

11.7 Subcontracts

- (a) The Principal's Representative will consider the recommended tenderer and (in its absolute discretion) may approve or disapprove the LW Contractor's recommendation.
- (b) If the Principal's Representative approves the LW Contractor's recommended tenderer, the LW Contractor must promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 (if applicable) with only such amendments as the Principal's Representative may have approved in writing; and
 - (ii) the subcontract price approved by the Principal's Representative;

- (c) The LW Contractor must:
- (i) ensure that each agreement entered into by the LW Contractor pursuant to clause 11.7(b) and each Pre-Approved Subcontract Agreement does not contain any provisions that may in any way hinder (or potentially hinder) the exercising of the Principal's rights under clauses 22.20 or 22.4(d);
 - (ii) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed Subcontract, together with all documentation relevant to that agreement;
 - (iii) ensure that each Subcontractor executes a Confidentiality Undertaking in the form of Schedule B7 and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor;
 - (iv) where a Subcontractor is to carry out Design Work or other professional services, unless not required by the Principal's Representative, procure that Subcontractor to execute a deed in the form of Schedule A11 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor; and
 - (v) procure that each Subcontractor:
 - (A) engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule A1; or
 - (B) in respect of the categories of work set out in Schedule A1 (regardless of subcontract price),

executes a deed in the form of Schedule A7 and provides this to the Principal's Representative within 7 days of being engaged by the LW Contractor.
- (d) The LW Contractor must in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW).
- (e) The LW Contractor must ensure that each Subcontract contains provisions which bind the Subcontractor to participate in any novation required by the Principal under clause 19.5(a)(iv)(A) at no cost to the Principal.
- (f) The LW Contractor must not cause, instruct, permit, request or consent to:
- (i) a variation or amendment to the Subcontract or the work under the Subcontract other than a Permitted Variation;
 - (ii) any increase in the amount payable to the Subcontractor under, or for the performance of, the Subcontract works other than the cost of Permitted Variations or in response to a Subcontract Adjustment Event; or
 - (iii) the termination of any Subcontract without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

11.8 Procedure on Disapproval

If the Principal's Representative disapproves the LW Contractor's recommended tenderer and the Principal's Representative directs the LW Contractor to accept the tender of another tenderer, the LW Contractor must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the Subcontract contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 11.3 (if applicable) with only such amendments as the Principal's Representative may have approved in writing; and
 - (ii) the subcontract price approved by the Principal's Representative; and
- (b) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed Subcontract including the Design Documentation relevant to that agreement.

11.9 Subcontractor Warranties

- (a) As a condition precedent to Construction Completion of a Portion, the LW Contractor must procure and provide the Principal with the warranties described in Schedule A4 or elsewhere in this deed:
 - (i) from the relevant Subcontractor undertaking or supplying the work or item the subject of the warranty;
 - (ii) in favour of, and directly enforceable by, the Principal, the Operator and any other entity nominated by the Principal's Representative from time to time against the relevant Subcontractor; and
 - (iii) in the form set out in Schedule A5.
- (b) No warranty from a Subcontractor will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the LW Contractor whether under this deed or otherwise.
- (c) If the LW Contractor is unable to or fails for any reason to provide any warranty from a Subcontractor required by this deed:
 - (i) the LW Contractor is deemed to have provided the Subcontractor warranty itself on like terms and is deemed to have satisfied the condition precedent for Construction Completion set out in clause 11.9(a);
 - (ii) the Principal will be entitled to elect to take an assignment of all the right, title and interest in the LW Contractor's rights against the Subcontractor in relation to the LW Contractor's Activities; and
 - (iii) for the purpose of paragraph 11.9(c)(ii), the LW Contractor irrevocably appoints the Principal as its lawful attorney to execute any instrument necessary to give effect to the assignment where the LW Contractor fails to execute the instrument within 5 Business Days of a written request to do so.
- (d) No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the LW Contractor whether under this deed or otherwise.

11.10 **Coordination of Subcontractors**

The LW Contractor must:

- (a) administer, supervise, inspect, coordinate and control the work of all Subcontractors engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, coordinate and control the Approved Subcontract Agreements and all Subcontractors engaged by it;
- (c) appoint a duly qualified person to exercise the functions of the LW Contractor's Representative under the Approved Subcontract Agreements and otherwise ensure the Approved Subcontract Agreements are administered in accordance with:
 - (i) the terms of the Approved Subcontract Agreements; and
 - (ii) the directions of the Principal's Representative; and
- (d) at all times coordinate the LW Contractor's Activities and ensure execution and completion of the Approved Subcontract Agreements in a proper and workmanlike manner according to:
 - (i) the Design Documentation which the LW Contractor is entitled to use for construction purposes under clause 13.11(k); and
 - (ii) the obligations of the respective Subcontractors.

11.11 **Disputes with Subcontractors**

If the LW Contractor has a dispute with a Subcontractor in respect of any aspect of the LW Contractor's Activities and either the LW Contractor or the Subcontractor pursues any court action, arbitration or adjudication application under the SOP Act, then:

- (a) the LW Contractor will be responsible for carriage of the dispute, provided it must:
 - (i) keep the Principal's Representative fully informed of all aspects of the dispute; and
 - (ii) act in accordance with the reasonable instructions of the Principal's Representative (including in respect of lodging any appeals against any decisions made in respect of the dispute);
- (b) subject to the Principal's Representative prior written approval (which may be given or withheld at the Principal's Representative's absolute discretion), any external legal, expert or consultants costs incurred by the LW Contractor arising out of the defence of any court action, arbitration or adjudication will form part of the Reimbursable Costs; and
- (c) the LW Contractor's own internal costs of administering the court action, arbitration or adjudication application will not form part of the Reimbursable Costs.

11.12 **Responsibility for Subcontractors**

- (a) The LW Contractor will:
 - (i) not be relieved from any of its liabilities or obligations under this deed; and

- (ii) remain responsible for all Subcontractors and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any Subcontractors default or otherwise fail to observe or comply with the requirements of the relevant Subcontract,

despite:

- (iii) subcontracting any part of the Reimbursable Work;
 - (iv) any comments upon, consent to or review, approval or disapproval of:
 - (A) a Subcontract Proposal under clause 11.2; or
 - (B) a tenderer recommended by the LW Contractor under clause 11.5(b), by the Principal or the Principal's Representative;
 - (v) the Principal listing the persons from whom tenders are to be obtained under clause 11.4(c)(ii) for the trade packages listed in Schedule A21;
 - (vi) any direction by the Principal's Representative under clause 11.8 to accept the tender of a tenderer other than that recommended by the LW Contractor; or
 - (vii) any other act or omission of the Principal or the Principal's Representative in connection with the subcontracting of any part of the Reimbursable Work.
- (b) Subject to clause 11.13 but otherwise without limitation, if the LW Contractor terminates an Approved Subcontract Agreement the LW Contractor must:
- (i) complete the work the subject of the terminated Approved Subcontract Agreement; and
 - (ii) bear the extra costs incurred by the LW Contractor in completing this work, and such costs will not form part of the Reimbursable Costs.

11.13 Subcontractor Insolvency

Where an Insolvency Event occurs in relation to a Subcontractor, the LW Contractor must:

- (a) promptly notify the Principal's Representative of this fact; and
- (b) if the LW Contractor terminates the Approved Subcontract Agreement:
 - (i) promptly notify the Principal's Representative of this; and
 - (ii) engage another person as Subcontractor in accordance with this clause 11 to complete the work the subject of the terminated Approved Subcontract Agreement.

11.14 Reimbursable Work by LW Contractor or Related Body Corporate

- (a) The LW Contractor must not commence any part of the Self-Performed Reimbursable Work until written approval is received from the Principal's Representative.
- (b) Prior to receiving approval from the Principal's Representative pursuant to clause 11.14(a) the LW Contractor must provide to the Principal's Representative the following particulars in writing:

- (i) a detailed scope of the proposed work to be undertaken as Self-Performed Reimbursable Work;
- (ii) a detailed methodology addressing the following:
 - (A) a description of the resource methodology that will be used to undertake the proposed works;
 - (B) details of how the LW Contractor will ensure that the quality of the proposed works complies with this deed and ensure compliance with ASA Requirements;
 - (C) a statement as to how the LW Contractor will ensure the proposed works are carried out in an efficient manner; and
 - (D) a description of the information and particulars the LW Contractor will provide to the Principal's Representative supporting any Payment Claim made by the LW Contractor for carrying out the proposed works;
- (iii) the fixed price or (where rates are agreed to apply to the work) estimate (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Cost Plan including details of the applicable rate or rates from the Schedule of Rates or if there are no applicable rate or rates, explaining why the rates in the Schedule of Rates do not apply and providing details of its proposed rate (which must be exclusive of any margin for overheads or profit);
- (iv) the cash flow for the proposed works;
- (v) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current LW Contractor's Program;
- (vi) the proposed project team to undertake the proposed works including all construction workers, managerial and technical personnel;
- (vii) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;
- (viii) the cost of any materials and equipment the LW Contractor intends to purchase as part of the Self-Performed Reimbursable Work for use in the proposed works; and
- (ix) the type and number of Construction Plant and the anticipated total hours/days the Construction Plant will be used to carry out the proposed works.
- (c) If required by the Principal's Representative the LW Contractor must provide further particulars prior to the Principal's Representative giving approval for the proposed works to commence.
- (d) In carrying out the Self-Performed Reimbursable Work the LW Contractor must:
 - (i) carry out the Self-Performed Reimbursable Work in an efficient manner;
 - (ii) carry out the Self-Performed Reimbursable Work so as to avoid interfering with, disrupting or delaying the work of Subcontractors and Other Contractors;

- (iii) not vary the work which is the subject of the Self-Performed Reimbursable Work unless the Principal's Representative has directed a Modification under clause 10.6 and that Modification relates directly to the work the subject of the Self-Performed Reimbursable Work; and
 - (iv) each day provide the Principal's Representative with details of all resources, labour and construction plant, used by the LW Contractor in the execution of the Self-Performed Reimbursable Work which identifies as a minimum:
 - (A) the part of the Self-Performed Reimbursable Work being performed by the LW Contractor as described in Schedule F2;
 - (B) the name of each person performing the work for each part of the Self-Performed Reimbursable Work with details of their labour category, the time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and
 - (C) details of the type of plant being used for each part of the Self-Performed Reimbursable Work and the number of hours being claimed.
- (e) The Principal's Representative may direct the manner in which the matters described in clause 11.14(d)(iv) are to be recorded.
- (f) The LW Contractor represents and warrants to the Principal that it holds and will continue to hold all relevant licences to legally execute the Self-Performed Reimbursable Work.
- (g) The Reimbursable Work (including Self-Performed Reimbursable Work) is to be undertaken on an Open Book Basis and may be subject to an independent third party audit as required by the Principal's Representative.
- (h) The LW Contractor must cooperate in facilitating any audit under clause 11.14(g) including by making available all necessary records and documents to the Principal's Representative and the auditor to enable an audit to be conducted of the amount properly incurred and payable pursuant to this clause 11.14.
- (i) The LW Contractor or a Related Body Corporate of the LW Contractor must not itself carry out any part of the Reimbursable Work other than the Self-Performed Reimbursable Work unless:
 - (i) the prior written approval of the Principal's Representative is obtained (which approval may be given or withheld in the Principal's Representative's absolute discretion and, if given, may be subject to conditions); and
 - (ii) the LW Contractor and the Principal's Representative agree upon a fixed price or rates, or a combination of a fixed price and rates, for the work prior to the LW Contractor or the Related Body Corporate of the LW Contractor commencing the work.
- (j) The Principal's Representative will not object to the LW Contractor performing the Reimbursable Work as Self-Performed Reimbursable Work provided that:
 - (i) in the Principal's Representative's opinion doing so represents Value for Money to the Principal, including:
 - (A) the LW Contractor following the procurement process in clause 11.2(b)(ii) for supply of items over [REDACTED]; and

- (B) the LW Contractor's price is consistent with the Schedule of Rates;
- (ii) the Principal is satisfied that the Self-Performed Reimbursable Work is to be undertaken on an Open Book Basis in accordance with clause 11.14(g).

11.15 Tendering Probity

- (a) The LW Contractor must:
 - (i) prepare the Tendering Probity Plan in accordance with clause 13.11;
 - (ii) carry out the tender processes for Reimbursable Work:
 - (A) so as to ensure the probity and competitiveness of the tender process; and
 - (B) in accordance with the Tendering Probity Plan; and
 - (iii) comply with any direction by the Principal's Representative concerning the probity and competitiveness of the tender processes for Reimbursable Work.
- (b) The LW Contractor will not be relieved from compliance with any of its deed obligations or from any of its liabilities whether under this deed or otherwise according to law as a result of any direction of the Principal's Representative or the Principal's probity auditor concerning the probity and competitiveness of the tender process for Reimbursable Work.

11.16 Provisional Sum Work

- (a) The LW Contractor must not proceed with any items of Provisional Sum Work unless the Principal's Representative has instructed the LW Contractor to proceed with that item of Provisional Sum Work.
- (b) Promptly following request from the Principal, the LW Contractor must prepare and submit to the Principal's Representative a price proposal for the relevant item of Provisional Sum Work which includes a reasonable cost breakdown for the price (**Provisional Sum Price Proposal**). The LW Contractor and the Principal will meet in good faith to seek to agree a price for any relevant item of Provisional Sum Work.
- (c) Following the LW Contractor's submission of a Provisional Sum Price Proposal, the Principal's Representative will adjust the Reimbursable Cost Element by the difference between:
 - (i) the amount allowed for the item of Provisional Sum Work in Schedule C5 (**Provisional Sum Estimate**); and
 - (ii) either:
 - (A) an amount agreed between the LW Contractor and the Principal's Representative; or
 - (B) if no agreement is reached within 20 Business Days (or such longer period as the parties may agree), an amount valued by the Principal's Representative in accordance with clause 4.2.

and:

- (iii) the difference will be added to or deducted from the Reimbursable Cost Element (**Provisional Sum Adjustment**); and
 - (iv) the Provisional Sum Adjustment will constitute a [REDACTED].
- (d) The provisions of clauses 11.1 to 11.15 will apply to Provisional Sum Work as if it was Reimbursable Work.

11.17 **Pre-Approved Subcontracts**

The LW Contractor must:

- (a) submit a copy of the terms on which it proposes to engage any Pre-Approved Subcontractor to the Principal's Representative for approval;
- (b) subsequently amend the proposed terms as required by the Principal's Representative; and
- (c) promptly enter into an agreement with a Pre-Approved Subcontractor on the basis of the terms approved by the Principal's Representative under clause 11.17(a).

11.18 **Recognised Aboriginal Business Subcontracts**

The LW Contractor must:

- (a) submit a copy of the terms of any Recognised Aboriginal Business Subcontract to the Principal's Representative for approval;
- (b) subsequently amend the proposed terms as required by the Principal's Representative; and
- (c) promptly enter into the Recognised Aboriginal Business Subcontract on the basis of the terms approved by the Principal's Representative under clause 11.18(a).

11.19 **BMCS Works**

- (a) Prior to the Principal entering into a framework contract with a BMCS Contractor, the Principal must notify the LW Contractor of the identity of the proposed BMCS Contractor or a shortlist of proposed BMCS Contractors (whichever is appropriate). The LW Contractor may provide Sydney Metro with written comments and recommendations in relation to the proposed BMCS Contractor or the shortlist. Sydney Metro may (but is not obliged to) take into account the LW Contractor's comments and recommendations in making a decision if they are provided prior to the Principal entering into a framework contract with the BMCS Contractor.
- (b) The LW Contractor acknowledges and agrees that:
 - (i) the Principal will enter into a framework contract with the BMCS Contractor under which the BMCS Contractor will be required to make a standing offer to enter into design, supply and install contracts with other contractors of the Principal for SMCSW, including the LW Contractor, on the terms and conditions of the BMCS DSI Contract;
 - (ii) in order to accept the offer made by the BMCS Contractor under the framework contract, the LW Contractor will be required, following notice from the Principal that it has entered into the framework contract with the BMCS Contractor, to issue a notice to the BMCS Contractor (**BMCS Design Order**) (with a copy to the Principal's Representative) that is:

- (A) signed by a representative of the LW Contractor who has full authority to enter into the BMCS DSI Contract on behalf of and to bind the LW Contractor; and
 - (B) in the form of, and contains all information required by the BMCS DSI Contract;
- (iii) upon issue of a valid BMCS Design Order to the BMCS Contractor in accordance with clause 11.19(b), the LW Contractor and the BMCS Contractor will be deemed to have entered into the BMCS DSI Contract, incorporating:
 - (A) the terms and conditions set out in the template form of BMCS DSI Contract; and
 - (B) the BMCS Design Order issued by the LW Contractor;
- (iv) if the BMCS Contractor notifies the LW Contractor that it considers a notice purported to be given by the LW Contractor under clause 11.19(b) does not comply with the requirements of clause 11.19(b), the LW Contractor must work directly and fully cooperate with the BMCS Contractor in good faith and do everything reasonably necessary to facilitate the issue of a valid BMCS Design Order; and
- (v) the LW Contractor is not entitled to make any Claim against the Principal arising out of or in connection with any delay or failure by the LW Contractor to issue a valid BMCS Design Order to the BMCS Contractor.
- (c) Unless otherwise agreed between the parties, the parties agree and acknowledge that the provisions of the BMCS DSI Contract are to be materially consistent with the "DSI Contract - Key Terms" set out in Schedule C10.

12. **DEFECTS, INSPECTION AND REPAIR**

12.1 **Defects**

- (a) The LW Contractor must promptly give the Principal's Representative and, if required by the Principal's Representative, the Operator and / or OpCo, a detailed written report of:
 - (i) any Defect it detects; and
 - (ii) all action proposed to correct that Defect, including the estimated time required.
- (b) The LW Contractor must correct all Defects arising prior to the expiry of the relevant Defects Correction Period whether or not the Principal's Representative, the Independent Certifier, or the Operator notifies the LW Contractor of them, including correcting any Defects in a Portion which existed at the time of issue of the Notice of Construction Completion (including any Minor Defects and Agreed Defects listed in the Notice of Construction Completion).
- (c) Without limiting any other obligation of the LW Contractor to correct Defects, the LW Contractor must:
 - (i) correct all Mandatory Defects as a pre-condition to the achievement of Construction Completion of the relevant Portion;

- (ii) use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion within thirty (30) days after the Date of Construction Completion of the relevant Portion;
 - (iii) correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion within ninety (90) days after the Date of Construction Completion; and
 - (iv) in respect of all Portions, correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion as a precondition to the achievement of Completion of the relevant Portion.
- (d) To the extent that the LW Contractor requires access to any part of the Project Site pursuant to this deed (including in order to rectify Defects) after the LW Contractor's engagement as the principal contractor has expired or been terminated, such access will be subject to the LW Contractor providing the Principal with a Site Interface Deed Poll in favour of the relevant principal contractors.

12.2 Principal's Representative's direction

- (a) If prior to or during the relevant Defects Correction Period, the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 12.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give the LW Contractor a direction specifying the Defect and doing one or more of the following:
- (i) requiring the LW Contractor to correct the Defect or a part of it and specifying the time within which this must occur;
 - (ii) requiring the LW Contractor to carry out a Modification to overcome the Defect or a part of it and specifying the time within which this must be carried out;
 - (iii) advising the LW Contractor that the Principal will accept the work or a part of it despite the Defect;
 - (iv) advising the LW Contractor that the Principal will direct an Interface Contractor to carry out a change or variation under its contract with the Principal (as applicable) to overcome the Defect or a part of the Defect; or
 - (v) in respect of any Defect:
 - (A) to which clause 12.3(b) applies; or
 - (B) subject to clause 12.2(c), discovered during a Defects Correction Period,
 advising the LW Contractor that an Interface Contractor or other contractor will correct (or has corrected) the Defect, or any part of it.
- (b) In determining the times at which the LW Contractor is required to correct a Defect or carry out a Modification for the purposes of this clause, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities:
- (i) which any Interface Contractor may be carrying out in discharge of its obligations under its contract with the Principal; or

- (ii) are being undertaken by the Existing Operator.
- (c) Unless the Principal's Representative considers that a Defect is an Urgent Defect (to which paragraph (a) of the definition of Urgent Defect applies) or the LW Contractor is in breach of clause 8.5, 8.6 or 8.7, the Principal's Representative may not direct an Interface Contractor or other contractor to rectify a Defect, or any part of a Defect, pursuant to clause 12.2(a)(v)(B), unless the Principal's Representative has first given the LW Contractor a direction under clause 12.2(a)(i) and the LW Contractor has:
 - (i) failed to comply with such direction; or
 - (ii) otherwise failed to comply with its obligations under clause 12.3(a).
- (d) Where the Principal's Representative considers that a Defect is an Urgent Defect (to which paragraph (a) of the definition of Urgent Defect applies) or the LW Contractor is in breach of clause 8.5, 8.6 or 8.7, the Principal's Representative may give the LW Contractor a direction under clause 12.2(a)(v)(B) whether or not a direction has first been given under clause 12.2(a)(i).

12.3 **Correction of Defect or Modification**

- (a) If a direction is given under clause 12.2(a)(i) or 12.2(a)(ii) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works (whether before or after Construction Completion), the LW Contractor must correct the Defect (or the part of it) or carry out the Modification (as the case may be):
 - (i) within the time specified in the Principal's Representative's direction;
 - (ii) at times notified by the Principal's Representative;
 - (iii) in accordance with the requirements of any relevant Authority;
 - (iv) so as to minimise the impact on the use of the relevant part of the Project Works;
 - (v) in a manner which causes as little inconvenience as possible to the activities:
 - (A) which any Interface Contractor may be carrying out in discharge of its obligations under its contract with the Principal; and
 - (B) of users of the Project Works or any access and the adjacent community;
 - (vi) at the LW Contractor's risk in respect of any restrictions on access;
 - (vii) if an Interface Contractor or the Operator, as applicable, has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing any Interface Works or operating and maintaining Sydney Metro City & Southwest, as applicable, in accordance with the requirements of the relevant Interface Contractor or the Operator, as applicable, in relation to access and site safety;
 - (viii) in accordance with its obligations under the relevant LW Cooperation and Integration Deed (as applicable); and

- (ix) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect; and
- (b) If the LW Contractor does not comply with clause 12.3(a), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the LW Contractor with respect to the Defect under this deed or otherwise at Law, give the LW Contractor a direction under clause 12.2(a)(v) and have the correction or Modification work carried out at the LW Contractor's expense, and the cost of the correction or Modification work incurred by the Principal will be a debt due from the LW Contractor to the Principal.

12.4 **Acceptance of work or rectification by others**

If a direction is given under clause 12.2(a)(iii) or 12.2(a)(v)(B) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the LW Contractor is responsible for the Defect (or the part of it), the amount which represents:

- (a) the diminution in value of the Project Works arising from the Defect (in respect of clause 12.2(a)(iii)); or
- (b) the reasonable cost of correcting the Defect (or the part of it) (in respect of clause 12.2(a)(v)),

as stated by the Principal's Representative will become a debt due and payable by the LW Contractor to the Principal.

12.5 **Modifications under other contracts to overcome Defects**

If a direction is given by the Principal's Representative under clause 12.2(a)(iv):

- (a) the LW Contractor indemnifies the Principal from and against any Loss suffered or incurred by the Principal arising out of or in connection with the change or variation directed by the Principal under the relevant Interface Works Contract or contract with the Operator or other contract (as applicable) to the extent necessary to overcome the Defect (or the part of it); and
- (b) clause 12.4 will not apply with respect to the Defect the subject of that direction.

12.6 **LW Works**

The LW Works (other than the Temporary Works) within a Portion have:

- (a) a Defects Correction Period as set out in Schedule A1; and
- (b) in respect of any work the subject of a direction under clause 12.2(a)(i) or 12.2(a)(ii) during the Defects Correction Period, a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Modification and continues for 12 months.

12.7 **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 12.7(d)(i)); and

- (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i) or 12.2(a)(ii) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Modification,

provided that no Defects Correction Period for any discrete part of the Local Area Works will extend beyond the date that is 24 months after the date notified under clause 12.7(d)(i) as the date on which the relevant part of the Local Area Works were completed.

- (b) The completion of the Local Area Works will be assessed on an area by area basis in accordance with clauses 12.7(c).
- (c) When the LW Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative in writing and the Principal's Representative, the LW Contractor's Representative and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.
- (d) 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 LW Contractor provide the Principal's Representative with:
 - (A) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete;
 - (B) if the LW Contractor is unable to obtain a notice required under clause 12.7(d)(i)(A) despite having used its best endeavours to do so, a statement from the LW Contractor to the effect that:
 - (aa) the discrete part of the Local Area Works is complete and the LW Contractor has notified the relevant Authority of this matter; and
 - (bb) the relevant Authority has failed or refused to provide the written notice required under clause 12.7(d)(i)(A) despite being given 15 Business Days to provide the notice requested by the LW Contractor; and
 - (ii) Construction Completion of a Portion that the written notices or statements required under clause 12.7(d)(i) have been provided to the Principal's Representative for all discrete parts of the Local Area Works that form part of that Portion.

12.8 Utility Service Work

- (a) Each discrete part of the Utility Service Work not handed over to the Principal has:
 - (i) a Defects Correction Period of 12 months, which begins when:
 - (A) the relevant Utility Service Authority which has jurisdiction in respect of the Utility Service gives written notice that the work is complete; or

(B) if the LW Contractor is unable to obtain a notice required under clause 12.8(a)(i)(A) despite having used its best endeavours to do so, a written statement from the LW Contractor to the effect that:

(aa) the discrete part of the Utility Service Work is complete and the LW Contractor has notified the relevant Utility Service Authority of this matter; and

(bb) the relevant Utility Service Authority has failed or refused to provide the written notice required under 12.8(a)(i)(A) despite being given 15 Business Days to provide the notice requested by the LW Contractor,

and the Principal's Representative has been provided with a copy of the notice or statement; and

(ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i) or 12.2(a)(ii) (relating to the discrete part of the Utility Service Work) during the Defects Correction Period, which begins:

(A) when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected or the Modification completed and the Principal's Representative has been provided with a copy of the notice; or

(B) if the relevant Utility Service Authority fails or refuses to give the notice required under clause 12.8(a)(ii)(A), when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Modification completed,

provided that no Defects Correction Period for any discrete part of the Utility Service Work will extend beyond the date that is 24 months after the date of the applicable notice or statement given under clause 12.8(a)(i).

(b) It is a condition precedent to Construction Completion of a Portion, that:

(i) a written notice of the kind referred to in clause 12.8(a)(i) has been given for each discrete part of the Utility Service Work that form part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or

(ii) the LW Contractor has:

(A) used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 12.8(a)(i)(A); and

(B) provided the Principal's Representative with a written statement of the kind referred to in clause 12.8(a)(i)(B).

12.9 Property Works

(a) Subject to clause 12.9(b), each discrete part of the Property Works has:

(i) a Defects Correction Period of 12 months, which begins upon:

(A) the completion of the Property Works; or

- (B) submission by the LW Contractor of a certificate or signed statement (as the case may be) to the Principal's Representative under clause 7.11(a)(ii),

whichever is the later; and

- (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i) or 12.2(a)(ii) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Modification.
- (b) No Defects Correction Period for any discrete part of the Property Works will extend beyond the date that is 24 months after the date of the applicable certificate or signed statement given under clause 7.11(a)(ii).

12.10 **Sydney Trains Works**

- (a) The Sydney Trains Works within a Portion have:
- (i) a Defects Correction Period of 12 months, which begins on the Date of Construction Completion of the relevant Portion; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 12.2(a)(i) or 12.2(a)(ii) (relating to the relevant Sydney Trains Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Modification,

provided that no Defects Correction Period for any relevant part of the Sydney Trains Works will extend beyond the date that is 24 months after the Date of Construction Completion of the relevant Portion.

- (b) It is a condition precedent to the commencement of the Defects Correction Period for any Sydney Trains Works that the LW Contractor provide the Principal's Representative with:
- (i) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete;
 - (ii) if the LW Contractor is unable to obtain a notice required under clause 12.10(b)(i) despite having used its best endeavours to do so, a statement from the LW Contractor to the effect that:
 - (A) the relevant Sydney Trains Works are complete and the LW Contractor has notified the relevant Authority of this matter; and
 - (B) the relevant Authority has failed or refused to provide the written notice required under clause 12.10(b)(i) despite being given 15 Business Days to provide the notice requested by the LW Contractor;
 - (iii) that Practical Completion (Sydney Trains Works and Sydney Trains Interim Works) for those Sydney Trains Works has been confirmed in accordance with the Sydney Trains Transition Agreement.

12.11 Failure by the LW Contractor to comply with direction

- (a) If the LW Contractor does not comply with a direction referred to in clause 12.2(a)(i) or 12.2(a)(ii), the Principal may employ others to carry out that direction.
- (b) The Loss suffered or incurred by the Principal arising out of or in connection with taking the action contemplated in clause 12.11(a) or as a result of the LW Contractor's failure to comply with clause 12.3(a) will be a debt due from the LW Contractor to the Principal.

12.12 Rights not affected

- (a) Neither the Principal's rights, nor the LW 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:
 - (i) the rights conferred upon the Principal or the Principal's Representative by this clause 12 or any other provision of this deed;
 - (ii) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
 - (iii) any direction of the Principal's Representative under clause 12.2.

12.13 Use of defective facilities

The LW Contractor must not allow the use of any part of the Project Works or Temporary Works which the LW Contractor knows is defective or unsafe and which threatens the health or safety of people.

12.14 Final inspections of Project Works

- (a) The LW Contractor, the Principal's Representative, the Operator and any person nominated by the Principal's Representative, will carry out a final inspection of the Project Works (other than the Third Party Works) 1 month before the end of the original Defects Correction Period in respect of the LW Works (**Final Inspection**).
- (b) Where the Operator is not involved in the Final Inspection:
 - (i) within 10 Business Days after the Final Inspection, the Principal's Representative may give the LW Contractor and the Operator written notice of any Defects which the Principal's Representative observed during the Final Inspection or of which they are otherwise aware; and
 - (ii) the Principal may give a notice under clause 12.2 in respect of any such Defect.
- (c) Where the Operator is involved in the Final Inspection, clause 5 of the LW Operator Cooperation and Integration Deed will apply in relation to the Final Inspection.

12.15 Final inspections of the Third Party Works

- (a) The LW Contractor, the Principal's Representative and applicable Authorities, will carry out a final inspection of the Third Party Works 3 months before the end of the original Defects Correction Period for the relevant Third Party Works (or at such other time specified by the relevant Third Party Agreement) (**Final Third Party Works Inspection**).

- (b) If the Principal's Representative or applicable Authority identifies any Defects during the Final Third Party Works Inspection, the Principal may give a notice under clause 12.2 in respect of such Defect.

13. **ADMINISTRATION**

13.1 **Principal's Representative**

- (a) The Principal must ensure that at all times until the date of expiry of the final Defects Correction Period in relation to the Project Works there is a Principal's Representative. The LW Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this deed as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.
- (b) A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this deed if exercised or made (or if it is not exercised or made) by the Principal's Representative:
 - (i) independently;
 - (ii) after consultation with the Principal and its advisers; or
 - (iii) as directed by the Principal.
- (c) Any control or influence exercised by the Principal over the Principal's Representative does not:
 - (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
 - (ii) entitle the LW Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.
- (d) The LW Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this deed.
- (e) Except where this deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (f) The Principal will not be liable upon any Claim by the LW Contractor arising out of or in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 20 or is unreasonable (other than in accordance with the corrected determination).
- (g) The LW Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a notice of dispute in accordance with clause 20.3.

13.2 **Replacement of the Principal's Representative**

- (a) The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the LW Contractor of that appointment.

- (b) Any substitute Principal's Representative appointed under this clause 13.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

13.3 **Delegation of Functions**

- (a) The Principal's Representative may:
 - (i) by written notice to the LW Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed;
 - (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) revoke any appointment under clause 13.3(a)(i) by notice in writing to the LW Contractor.
- (b) The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 13.3(a)(i).
- (c) All references in this deed to the Principal's Representative include a reference to an appointee appointed under clause 13.3(a)(i).

13.4 **LW Contractor's Personnel**

- (a) The LW Contractor must notify the Principal's Representative in writing of the name of the LW Contractor's Representative (who at the date of this deed is the relevant person listed in Schedule A6) and of any subsequent changes.
- (b) The LW Contractor must:
 - (i) employ the individuals nominated by the LW Contractor and listed in Schedule A6 (or, in respect of the Deputy Project Director, such individual as is approved by the Principal prior to the deadline for the Deputy Project Director's engagement in accordance with Schedule A6) in the positions specified in Schedule A6 or equivalent positions;
 - (ii) subject to clause 13.4(b)(iii), not replace the individuals referred to in clause 13.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld;
 - (iii) if any of the individuals referred to in clause 13.4(b)(i):
 - (A) dies;
 - (B) becomes unable to continue in their positions due to illness;
 - (C) resigns from the employment of the LW Contractor (other than to accept other employment with the LW Contractor or any "related body corporate" of the LW Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
 - (D) becomes the subject of a direction under clause 13.4(c),replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and
 - (iv) without limiting clauses 13.4(b)(i), 13.4(b)(ii) or 13.4(b)(iii), ensure that the:

(A) positions specified in Schedule A6 as full-time, dedicated positions are full-time, dedicated positions; and

(B) individuals who occupy the full-time, dedicated positions specified in Schedule A6 apply themselves fully to the position to the exclusion of all other work,

until the Date of Completion of the last Portion to achieve Completion or such earlier time as may be approved by the Principal's Representative.

(c) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the LW Contractor to remove any person (including a person referred to in clause 13.4(a) or clause 13.4(b)) from the Construction Site or Bulk Feeder Route and the LW Contractor's Activities.

(d) If the Principal's Representative issues a notice in accordance with clause 13.4(c), the LW Contractor must:

(i) then cease to engage that person in the LW Contractor's Activities and must appoint a replacement; and

(ii) ensure that any person the subject of a direction under clause 13.4(c) is not again employed in the LW Contractor's Activities or on the Construction Site or Bulk Feeder Route.

(e) Any direction under clause 13.4(c) will be deemed to have been given to the LW Contractor if given to the LW Contractor's Representative. Matters within the knowledge of the LW Contractor's Representative will be deemed to be within the knowledge of the LW Contractor.

13.5 Design development meetings

(a) The LW Contractor must hold regular meetings of its design team including the Designers (and in any event at Design Stage 1 and Design Stage 2 of each discrete design part or element in the LW Contractor's Activities).

(b) The LW Contractor must give reasonable notice to the Principal's Representative of those meetings and of any other meetings at which design issues are to be discussed to enable the Principal's Representative, its delegate and any representatives of any Other Contractor to attend. The Principal may request the LW Contractor to ensure the presence at the meeting of any relevant persons from any of the LW Contractor's Subcontractors involved in the design of any part of the Project Works.

(c) The LW Contractor must give the Principal's Representative:

(i) an agenda prepared in consultation with or as directed by the Principal's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and

(ii) minutes of each design meeting within 48 hours after each meeting.

(d) Neither party may rely on such agenda or minutes of meeting as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

13.6 **Site Meetings**

The LW Contractor must convene meetings on the Construction Site or such other place (or places) as the Principal's Representative may direct:

- (a) prior to the Date of Construction Completion of the Project Works or the last Portion to reach Construction Completion, weekly or at such longer intervals as may be directed in writing by the Principal's Representative; and
- (b) at monthly intervals after the Date of Construction Completion of the Project Works or the last Portion to reach Construction Completion until all Defects Correction Periods (including any extension under clauses 12.6(b), 12.8(a)(ii), 12.9(a)(ii) and 12.10(a)(ii)), have expired or at such other intervals as may otherwise be agreed between the parties.

13.7 **Environmental Representative**

The LW Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Environmental Representative as required by an Approval;
- (b) the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) will oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) will advise the Principal and the Principal's Representative on the LW Contractor's compliance with the Planning Approval; and
 - (iv) will have the authority and independence to:
 - (A) direct the LW Contractor as to; or
 - (B) advise the Principal's Representative to direct the LW Contractor as to,

reasonable steps the LW Contractor must take to avoid or minimise unintended or adverse environmental impacts so as to comply with the Planning Approval;
- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 13.7(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 13.7(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

13.8 **Acoustics Advisor**

The LW Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Acoustics Advisor as required by an Approval;

- (b) the Acoustics Advisor:
 - (i) is independent of the parties;
 - (ii) will oversee the implementation of all noise and vibration management plans and monitoring programs required under the Planning Approval, and will advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) will advise the Principal and the Principal's Representative on the LW Contractor's compliance with the Planning Approval; and
 - (iv) will have the authority and independence to:
 - (A) direct the LW Contractor as to; or
 - (B) advise the Principal's Representative to direct the LW Contractor as to,

reasonable steps the LW Contractor must take to avoid or minimise unintended or adverse noise and vibration impacts so as to comply with the Planning Approval;
- (c) it must comply with the directions of the Acoustics Advisor or the Principal's Representative as contemplated by clause 13.8(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Acoustics Advisor or the Principal's Representative as contemplated by clause 13.8(c) and none of the Principal, the Principal's Representative or the Acoustics Advisor will be liable upon any Claim arising out or in any way in connection with such directions.

13.9 Independent Certifier

- (a) The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) In certifying Design Documentation, the Independent Certifier is not required to act as an AEO.
- (c) The Independent Certifier is obliged to act independently of the Principal, the LW Contractor and the Subcontractors.
- (d) Both parties must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
 - (i) to attend meetings; and
 - (ii) access to all premises,as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.
- (e) All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.

- (f) The Principal's Representative may provide comments to the Independent Certifier in respect of the LW Contractor's Activities.

13.10 Industrial Relations

- (a) The LW Contractor must in carrying out the LW Contractor's Activities:
- (i) assume sole responsibility for and manage all aspects of industrial relations for the LW Contractor's Activities;
 - (ii) ensure all Subcontractors manage all aspects of the industrial relations with their employees appropriately;
 - (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the LW Contractor's Activities, are always observed in full;
 - (iv) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the LW Contractor's Activities and Other Contractors' activities;
 - (v) without limiting clauses 8.11 and 8.12, comply with all the requirements of the NSW Code and the NSW Guidelines;
 - (vi) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the LW Contractor as part of the Project Plans, in accordance with the SWTC and clause 13.11;
 - (vii) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft Workplace Relations Management Plan (if any) forming part of this deed;
 - (viii) not commence any work on the Construction Site, Bulk Feeder Route or Extra Land until the Workplace Relations Management Plan has been submitted to the Principal's Representative and the Principal's Representative has not rejected it under clause 13.11;
 - (ix) submit to the Principal's Representative, before beginning work on the Construction Site, Bulk Feeder Route or Extra Land, a statement detailing:
 - (A) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (B) the names of each award or enterprise agreement that is likely to cover the LW Contractor and Subcontractors involved in the LW Contractor's Activities; and
 - (C) the names of those responsible for coordinating industrial relations for the LW Contractor's Activities;
 - (x) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the LW Contractor's Activities;
 - (xi) before beginning work on the Construction Site, Bulk Feeder Route or Extra Land, submit a statement on the LW Contractor's letterhead and signed by an authorised person, attesting to the LW Contractor's compliance, in the

preceding twelve months, with all employment and legal obligations, including:

- (A) payment of remuneration to employees;
 - (B) annual leave provisions;
 - (C) Long Service Leave Payment Scheme registration;
 - (D) obligations to register workers under the *Building and Construction Industry Long Service Payments Act 1986* (NSW);
 - (E) workers' compensation insurance, including self-insurance arrangements;
 - (F) superannuation fund membership and contributions; and
 - (G) over-award payments such as redundancy fund contributions; and
- (xii) continue to provide during the LW Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the LW Contractor's Activities.
- (b) If the LW Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the LW Contractor under paragraph (a)(ix).
- (c) The industrial relations requirements contained in this deed, the NSW Code and the NSW Guidelines:
- (i) are in addition to, but are not in substitution for, any requirements of Law; and
 - (ii) do not limit the powers of the Principal or the liabilities and responsibilities of the LW Contractor.

13.11 Submission for review by the Principal's Representative

- (a) This clause 13.11 applies to all Documents except Design Documentation and Asset Management Information to the extent addressed in clause 9 and clause 8.15.
- (b) Without limiting clause 23.1, the LW Contractor must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in the SWTC or as otherwise required by the Principal's Representative.
- (c) Documents supplied to the LW Contractor:
 - (i) will remain the property of the Principal;
 - (ii) must be returned by the LW Contractor to the Principal on demand in writing; and
 - (iii) must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the LW Contractor's Activities.

- (d) The LW Contractor must keep all the LW Contractor's records relating to the LW Contractor's Activities in a secure and fire proof storage.
- (e) The LW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 13.11.
- (f) The LW Contractor must ensure that any Documents that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.
- (g) A Document will be deemed not to have been submitted unless and until:
 - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and
 - (ii) the LW Contractor has otherwise complied with this clause 13.11, in addition to any other requirement of this deed relating to the submission of that Document.
- (h) After the submission of a Document which satisfies the requirements of clause 13.11(g):
 - (i) the Principal's Representative may review the Document, or any resubmitted Document prepared and submitted by the LW Contractor; and
 - (ii) where submitted or resubmitted in accordance with a program which has not been rejected by the Principal's Representative, within 15 Business Days of submission by the LW Contractor of such Document or resubmitted Document:
 - (A) reject the Document if in its opinion the Document (or any part) does not comply with the requirements of this deed, stating the nature of the non-compliance;
 - (B) make comments on the Document; or
 - (C) notify the LW Contractor that it has no (or has no further) comments to make.
- (i) If any Document is:
 - (i) rejected or deemed to be rejected, the LW Contractor must submit an amended Document to the Principal's Representative within 10 Business Days of the date of such rejection or deemed rejection and this clause 13.11 will re-apply; or
 - (ii) not rejected and the Principal's Representative responds to the submission with comments, the LW Contractor must respond to the comments within 10 Business Days or such other period as may be directed by the Principal's Representative.

- (j) If the LW Contractor fails to respond to the Principal's Representative's comments within the relevant period set out in clause 13.11(i) in a manner satisfactory to the Principal's Representative the Document will be deemed to be rejected.
- (k) The LW Contractor must not:
 - (i) issue any Subcontract Tender Documentation to tenderers for; or
 - (ii) commence construction of,

any part of the Project Works to which any Document (other than the LW Contractor's Program) submitted to the Principal's Representative applies unless the Principal's Representative has had the period referred to in clause 13.11(h)(ii) to review the Document and has not rejected the Document or made any comments on the Document (except in the case where the LW Contractor has responded to the Principal's Representative's comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 13.11(i)), in which case the relevant Subcontract Tender Documentation will be deemed to be approved by the Principal's Representative provided the LW Contractor has provided the Principal's Representative 5 Business Days written notice prior to such deemed approval taking effect and the Principal's Representative has not commented on the Document or not rejected the Document within that time.
- (l) The LW Contractor must not amend for construction purposes any Document that has:
 - (i) been submitted to the Principal's Representative; and
 - (ii) not been rejected or not had comments made about it under clause 13.11(h)(ii),

unless the LW Contractor submits the proposed amendments to the Principal's Representative, in which case this clause 13.11 will re-apply.
- (m) The Principal's Representative does not assume or owe any duty of care or other responsibility to the LW Contractor to review, or in reviewing, a Document submitted by the LW Contractor, including for errors, omissions or non-compliance with this deed.
- (n) The LW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the LW Contractor of any errors, omissions or non-compliance with the requirements of this deed in any Document submitted.
- (o) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a Document prepared by the LW Contractor, or any other direction by the Principal's Representative in connection with the Document, will:
 - (i) constitute a direction to carry out a Modification pursuant to clause 10.6, unless it is in a written document titled Modification Order and describes the nature of the Modification in accordance with clause 10.6(a);
 - (ii) relieve the LW Contractor from or alter its liabilities or obligations, whether under this deed or otherwise according to any Law; or
 - (iii) limit or otherwise affect the Principal's rights against the LW Contractor, whether under this deed or otherwise according to any Law.

- (p) In considering any Document, the Principal's Representative may consult with and take into account any views or requirements of relevant persons, including any Authority.

13.12 **Work Method**

Whether or not this deed prescribes a particular work method or a work method is otherwise a part of this deed or reviewed or approved (expressly or impliedly) by the Principal's Representative, the fact that any work method that the LW Contractor adopts or proposes to adopt is impractical or impossible or that the LW Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the LW Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this deed to be frustrated.

13.13 **Exchange of Information between Government Agencies**

- (a) The LW Contractor authorises the Principal, its employees and agents to make information concerning the LW Contractor (including any information provided under clause 13.11) available to NSW Government departments or agencies. Such information may include any information provided by the LW Contractor to the Principal and any information relating to the LW Contractor's performance under this deed.
- (b) The LW Contractor acknowledges that any information about the LW Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW Government departments and agencies in considering whether to offer the LW Contractor future opportunities for NSW Government work.
- (c) The LW Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the LW Contractor's performance under this deed and that it will participate in the Principal's "LW Contractor Performance Reporting" process.

13.14 **Financial Assessment**

Without limiting or otherwise restricting clause 13.13, the LW Contractor acknowledges and agrees that:

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

13.15 **Employment of Aboriginal and Torres Strait Islander People**

The LW Contractor must:

- (a) provide employment opportunities to Aboriginal and Torres Strait Islander people in accordance with the NSW Government Policy on Aboriginal Participation in Construction (June 2018);
- (b) as part of the human resources input to and the documentation and implementation of the Workforce Development and Industry Participation Project Plans, address the employment of Aboriginal and Torres Strait Islander people and compliance with the NSW Government Policy on Aboriginal Participation in Construction (June 2018); and
- (c) provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative which record the performance of the LW Contractor in relation to Aboriginal and Torres Strait Islander participation.

13.16 **Waste Reduction and Purchasing Policy**

The LW Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the GREP;
- (b) address as part of the Construction Environmental Management Plan the measures to be taken to reduce wastage and increase the use of recycled materials in the areas of paper products, office consumables, vegetation and landscaping materials, and construction and demolition materials; and
- (c) provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative for the use by the Principal in complying with its GREP obligations to report performance.

13.17 **Training Management**

- (a) Subject to the express provisions of this deed, the LW Contractor must comply with the NSW Government "Training Management Guidelines" (February 2009).
- (b) Training management requirements specified in this deed and the NSW Government "Training Management Guidelines" may be in addition to, but are not in substitution for, any training obligations of the LW Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.
- (c) At least 14 days before starting work on the Construction Site the LW Contractor must document and submit a 'Project Training Management Plan' which complies with the NSW Government "Training Management Guidelines" (February 2009).
- (d) The LW Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in this deed.
- (e) The LW Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 13.17.

13.18 **National Greenhouse and Energy Reporting Act 2007 (Cth)**

The LW Contractor acknowledges and agrees that:

- (a) if any of the LW Contractor's Activities, or the activities of any of the LW Contractor's personnel, in connection with the LW Contractor's Activities (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER

Legislation, then, for the purposes of the NGER Legislation, the LW Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;

- (b) if, despite the operation of clause 13.18(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the LW Contractor, the LW Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the LW Contractor;
- (c) if the Principal requests it, the LW Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the LW Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time;
- (d) the LW Contractor must also provide to the Principal all Greenhouse Data and other information which the LW Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the LW Contractor provides that Greenhouse Data or other information to that other person;
- (e) the LW Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the LW Contractor to discharge its obligations under this clause 13.18, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);
- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 13.18 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 13.18 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the LW Contractor may have regarding the provision of Greenhouse Data to any Authority.

13.19 Early warning procedure and risk reporting

- (a) The LW Contractor must give early warning of a risk by notifying the Principal's Representative as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:

- (i) a delay to Construction Completion of any Portion;
 - (ii) a delay to the Completion of any Portion;
 - (iii) an adverse effect on the performance of the LW Contractor's Activities or the Project Works;
 - (iv) a Claim by the LW Contractor; or
 - (v) a party being in breach of any term of this deed.
- (b) The LW Contractor must provide to the Principal's Representative with real time access to the Risk Register or as otherwise directed by the Principal's Representative.
 - (c) The LW Contractor will attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's Representative. At risk management meetings, the parties agree to:
 - (i) review the current Risk Register;
 - (ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register, including what assistance the Principal may be able to provide to the LW Contractor. The LW Contractor must inform the Principal's Representative if it considers any such proposal or solution would give rise to a Modification or otherwise give rise to a Claim by the LW Contractor;
 - (iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and
 - (iv) remove from the Risk Register those risks which have been avoided or passed.
 - (d) A notification, record or action under this clause 13.19 will not relieve the LW Contractor from or alter its liabilities or obligations under this deed, including any and all notification obligations under this deed.

13.20 **Management Review Group**

- (a) The Management Review Group comprises no more than two representatives from each of the Principal and the LW Contractor. The representatives at the date of this deed are those persons identified in Schedule A1 as being part of the Management Review Group.
- (b) The Principal's Representative may direct the attendance at Management Review Group meetings of:
 - (i) representatives of any of the LW Contractor's Subcontractors which the Principal's Representative reasonably requires; and
 - (ii) any other person the Principal's Representative reasonably requires from time to time.
- (c) Each party acknowledges and agrees that its representatives on the Management Review Group have the authority to make decisions that bind that party.

13.21 Management Review Group functions

- (a) The role of the Management Review Group is to provide leadership, governance and oversight.
- (b) The functions of the Management Review Group include reviewing:
 - (i) the progress of the LW Contractor's Activities in relation to the LW Contractor's Program and the performance of the LW Contractor prior to the expiry of the final Defects Correction Period;
 - (ii) issues arising out of community relations and community concerns;
 - (iii) issues arising out of the quality of the LW Contractor's Activities;
 - (iv) matters arising from the Design Documentation, including any proposed design changes;
 - (v) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
 - (vi) the potential impact of design and construction outcomes on operation and maintenance requirements;
 - (vii) all notices issued by the LW Contractor referred to in clauses 23.1(a) and 23.2(c);
 - (viii) all claims issued by the LW Contractor in respect of Excluded Claims;
 - (ix) other unresolved matters arising between the parties that are not yet a Dispute;
 - (x) environmental issues;
 - (xi) safety issues; and
 - (xii) any other matters determined or directed by the Principal's Representative.
- (c) The Management Review Group will, in respect of potential Claims referred to in clause 13.21(b)(vii) and claims referred to in clause 13.21(b)(viii), seek to determine a resolution or process for resolution.
- (d) To be effective, a determination of the Management Review Group must be:
 - (i) a unanimous decision of all representatives;
 - (ii) in writing; and
 - (iii) confirmed in writing by the Principal's Representative and the LW Contractor's Representative.
- (e) If the Management Review Group makes a determination in accordance with clause 13.21(d), then:
 - (i) in respect of notices referred to in clause 13.21(b)(vii), clauses 23.1(b) and 23.2(d) do not apply; and

- (ii) in respect of a claim referred to in clause 13.21(b)(viii), the Principal's determination in respect of that claim in accordance with the Management Review Groups determination is not subject to Dispute.

13.22 Management Review Group meetings

- (a) The Management Review Group must meet:
 - (i) regularly in the frequency identified in Schedule A1 until the expiry of the final Defects Correction Period or such other regular period as the Principal and the LW Contractor agree in writing;
 - (ii) in accordance with this clause 13.22; and
 - (iii) at other times which the Principal's Representative or the LW Contractor requires.
- (b) The LW Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting of the Management Review Group no less than 48 hours prior to each meeting.
- (c) The agenda must include:
 - (i) the minutes of the most recent risk management meeting, together with the current Risk Register;
 - (ii) any issues referred to the Management Review Group by the Completion Steering Committee;
 - (iii) full details of all Excluded Claims issued by the LW Contractor in the period since the last meeting of the Management Review Group; and
 - (iv) the register of potential claims described in clause 23.4.
- (d) The Principal's Representative will be the chairperson for meetings of the Management Review Group.
- (e) The Principal's Representative must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting.

13.23 Completion Steering Committee

- (a) Within 3 months of the date of this deed, the parties must establish a Completion Steering Committee.
- (b) The Completion Steering Committee will consist of:
 - (i) the Principal's Representative;
 - (ii) the LW Contractor's Representative; and
 - (iii) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Steering Committee is to:

- (i) provide leadership on matters relating to Completion and handover of the Project Works;
 - (ii) approve processes and procedures prepared by the Completion Working Group;
 - (iii) consider issues referred to it by the Completion Working Group;
 - (iv) refer any significant issues to the Management Review Group for resolution; and
 - (v) such other roles and functions as may be agreed by the parties.
- (d) The Completion Steering Committee must meet:
- (i) at least once every 2 months; and
 - (ii) at such other times as the parties may agree,
- until the achievement of Completion of the last Portion.

13.24 **Completion Working Group**

- (a) Within 3 months of the date of this deed, the parties must establish a Completion Working Group.
- (b) The Completion Working Group will consist of:
 - (i) the Principal's Representative;
 - (ii) any nominees of the Principal's Representative;
 - (iii) the LW Contractor's Representative;
 - (iv) any nominees of the LW Contractor's Representative; and
 - (v) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Working Group is to:
 - (i) provide a collaborative forum through which the parties can:
 - (A) plan and agree procedures for completion and handover of the Project Works;
 - (B) plan and agree the process for the progressive submission of records and documentation required for Construction Completion and Completion of each Portion;
 - (C) monitor the status of activities and tasks that must be completed in order to achieve Construction Completion and Completion of each Portion;
 - (D) identify issues which may adversely impact upon the achievement of Construction Completion or Completion of any Portion by the applicable Date for Construction Completion or Date for Completion (as applicable); and

- (E) consider the Recovery Plans submitted by the LW Contractor to the Principal's Representative in accordance with clause 14.5(b)(ii) and provide feedback.
- (ii) report to the Completion Steering Committee on matters relating to completion and handover of the Project Works; and
- (iii) such other roles and functions as may be agreed by the parties.
- (d) The Completion Working Group must meet:
 - (i) at least once each month; and
 - (ii) at such other times as the parties may agree,
 until the achievement of Completion of the last Portion.

13.25 **Legal effect of meetings**

- (a) Subject to clause 13.25(b), the Management Review Group, the Completion Steering Committee and the Completion Working Group are consultative and advisory only and nothing which occurs during or as part of the process of a meeting, no resolution or communication at any meeting (nor minutes recording any resolution or communication) of any such group will:
 - (i) limit or otherwise affect the rights or obligations of either party under this deed, any Approved Subcontract Agreement or otherwise according to Law;
 - (ii) entitle a party to make any Claim against the other;
 - (iii) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to law;
 - (iv) prejudice a party's rights against the other whether under this deed or otherwise according to law; or
 - (v) be construed as or amount to a direction by the Principal or the Principal's Representative unless and until a separate direction is given to the LW Contractor in writing by the Principal's Representative.
- (b) A determination of the Management Review Group made in accordance with clause 13.21(d) will be binding on the parties.

13.26 **Quarterly whole of project reviews**

- (a) In each quarter in a calendar year at any time prior to the expiry of the final Defects Correction Period, the Principal may require that the LW Contractor attend and participate in one or more meetings with the Principal and its other contractors for Sydney Metro City & Southwest.
- (b) The purpose of the meetings in clause 13.26(a) is for the Principal, the LW Contractor and the Principal's other contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:
 - (i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;

- (ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;
 - (iii) improvements that can be implemented to save time, reduce cost or improve the quality of Sydney Metro City & Southwest or any part of Sydney Metro City & Southwest;
 - (iv) the manner in which any such solutions and improvements can be implemented; and
 - (v) any other matters that the Principal may require.
- (c) If the Principal requires the LW Contractor to attend and participate in any meeting contemplated by clause 13.26(a), the Principal's Representative must provide the LW Contractor with at least 10 Business Days prior written notice of any such meeting.
- (d) If the Principal's Representative provides the LW Contractor with a notice under clause 13.26(b), the LW Contractor must ensure that the following personnel attend and participate in the meeting:
- (i) the LW Contractor's Representative;
 - (ii) representatives of any of the LW Contractor's Subcontractors which the Principal's Representative reasonably requires; and
- any other person the Principal's Representative reasonably requires.

13.27 **Independent Property Impact Assessment Panel**

- (a) The LW Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for Sydney Metro City & Southwest in accordance with the requirements of the Planning Approval.
- (b) The LW Contractor must (at its cost):
- (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
 - (ii) permit the Independent Property Impact Assessment Panel to access the Construction Site and inspect the LW Contractor's Activities provided that the LW Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the LW Contractor's reasonable work health and safety procedures; and
 - (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that the LW Contractor is given reasonable prior written notice of any such meeting.

14. **TIME AND PROGRESS**

14.1 **Rate of Progress**

- (a) The LW Contractor must:
 - (i) start to perform its obligations under this deed from the date of this deed;
 - (ii) regularly and diligently progress the LW Contractor's Activities in accordance with this deed to ensure that:
 - (A) Construction Completion of each Portion is achieved by the relevant Date for Construction Completion for the Portion;
 - (B) Completion of each Portion is achieved by the relevant Date for Completion for the Portion; and
 - (C) Milestone Achievement of each Milestone is achieved as contemplated in clause 17.1.
- (b) Without limiting its rights under the SOP Act, the LW Contractor must not suspend the progress of the whole or any part of the LW Contractor's Activities except where directed by a court or by the Principal's Representative under clauses 6.6(a)(vi) or 14.13.
- (c) Without limiting clauses 14.1(d), 14.1(j) or clause 14.15, the LW Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the LW Contractor to carry out the LW Contractor's Activities in accordance with this deed.
- (d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this deed.
- (e) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 14.1, direct in what order and at what time the various stages or parts of the LW Contractor's Activities must be performed.
- (f) No direction by the Principal's Representative will constitute a direction under clause 14.1(e) unless the direction is in writing and expressly states that it is a direction under clause 14.1(e).
- (g) If the LW Contractor considers that compliance with a written direction expressly stated to be pursuant to this clause 14.1 will or is likely to require the LW Contractor to undertake more or less Reimbursable Work than otherwise would have been incurred, the LW Contractor must, as a condition precedent of any entitlement to make a Claim promptly, and within five (5) Business Days after first receipt of such direction and in any event before following the written direction, notify the Principal's Representative of such.
- (h) The LW Contractor will have no Claim against the Principal in relation to a written direction under this clause 14.1 if it does not comply with clause 14.1(g).
- (i) If the LW Contractor has complied with the conditions in clause 14.1(g), the difference in Reimbursable Work in complying with the direction under clause

14.1(e) will be dealt with as if it was a Modification except the LW Contractor will have no entitlement to a Modification where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the LW Contractor to comply with its obligations under this deed.

- (j) Other than as set out in clause 14.1(i), the LW 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 14.1.

14.2 **LW Contractor's Programming Obligations**

The LW Contractor must:

- (a) prepare and provide a LW Contractor's Program that complies with and includes the details required by this deed and any requirements of the Principal's Representative. The parties acknowledge and agree that:
 - (i) the LW Contractor's Initial Program is deemed to have been submitted to the Principal's Representative for review under clause 13.11 and not been rejected by the Principal's Representative; and
 - (ii) [REDACTED];
- (b) provide the Principal's Representative with an updated version of Schedule E7 along with each revised LW Contractor's Program to reflect the then current status of the LW Contractor's Activities;
- (c) submit the LW Contractor's Program to the Principal's Representative for its review in accordance with clause 14.2(a) within the earlier of:
 - (i) 40 Business Days of the date of this deed; or
 - (ii) any time required by the SWTC;
- (d) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the LW Contractor's Activities within 5 Business Days of receipt of such a direction;
- (e) update, revise and submit to the Principal's Representative an updated LW Contractor's Program:
 - (i) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative, the actual progress made by the LW Contractor, Modifications and any other changes to the LW Contractor's Activities but excluding claims for extensions of time which have been submitted by the LW Contractor to the extent that they have not been granted by the Principal's Representative;
 - (ii) to take account of any early access to any part of the Construction Site provided to the LW Contractor;
 - (iii) to take account of any Recovery Plan submitted by the LW Contractor; and
 - (iv) on a monthly basis or whenever directed to do so by the Principal's Representative;

- (f) prepare and provide for the Principal's Representative's information only, versions of all LW Contractor's Programs prepared in accordance with clause 14.2(e) that also allow for those claims for an extension of time that have been made by the LW Contractor in accordance with clause 14.8 but to which the Principal's Representative has not yet responded in accordance with clause 14.10;
- (g) within 3 months of the date of execution of this deed, convene a regular fortnightly meeting until the Date of Construction Completion of the last Portion to reach Construction Completion to discuss any and all programing and sequencing issues in relation to the LW Contractor's Activities and the LW Contractor's Program;
- (h) provide not less than 5 Business Days advance written notice of each meeting convened under clause 14.2(g) (including with such notice all information relevant to the meeting) to the Principal's Representative and all invitees who must include the LW Contractor's key Subcontractors;
- (i) ensure attendance by relevant representatives of the LW Contractor and its key Subcontractors at each meeting convened under clause 14.2(g);
- (j) comply with the requirements of the Principal's Representative and its other obligations under this deed in preparing and using programs, including the requirements in clause 13.11; and
- (k) not depart from the current version of the LW Contractor's Program that has been submitted to the Principal's Representative for review under clause 14.2(a) and not been rejected by the Principal's Representative within 15 Business Days, except to the extent agreed by the Principal's Representative.

14.3 LW Contractor not Relieved

Without limiting clauses 13.11 and 14.2, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the LW Contractor's Program) prepared by the LW Contractor, by the Principal's Representative in connection with the program, will:

- (a) relieve the LW Contractor from or alter its liabilities or obligations under this deed, including the obligation under clause 14.1;
- (b) evidence or constitute notification of a delay or the claiming of or the granting of an extension of time or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the LW Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable the LW Contractor to achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion, Completion of a Portion by the Date for Completion of the Portion or Milestone Achievement by the Date for Milestone Achievement.

14.4 Importance of Milestone Achievement, Construction Completion and Completion on Time

The LW Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 14.1 to enable the Operator, or any other party elected by the Principal, to carry out the work required under its contract with the Principal in order that operations of Sydney

Metro City & Southwest may commence, including so as to allow the Principal to pursue improved public transport in Sydney;

- (b) that a Date for Construction Completion of any Portion, Date for Completion of any Portion or a Date for Milestone Achievement of a Specified Milestone will only be extended in accordance with clause 14.10 or clause 14.12, or when so determined under clause 20; and
- (c) that a Date for Milestone Achievement of a Milestone other than a Specified Milestone will not be extended for any reason.

14.5 **Notice of Delay**

- (a) Except as expressly provided for in clause 14.10, the LW Contractor accepts the risk of all delays in, and disruption to, the carrying out of the LW Contractor's Activities and performance of its obligations under this deed both before and after any Date for Milestone Achievement, Date for Construction Completion or any Date for Completion (as applicable).
- (b) The LW Contractor must:
 - (i) within 5 Business Days after the LW Contractor first becoming aware (or when it ought reasonably to have first become aware) of the commencement of any delay, give the Principal's Representative written notice of:
 - (A) any delay to the carrying out of the LW Contractor's Activities;
 - (B) details of the cause;
 - (C) how any Date of Milestone Achievement in respect of a Specified Milestone, Date of Construction Completion or Date of Completion (as applicable) is likely to be affected (if at all); and
 - (ii) as soon as reasonably practicable, give the Principal's Representative the LW Contractor's Recovery Plan for recovery of the delay in accordance with clause 14.6.
- (c) If the Principal reasonably believes that the LW Contractor will be, or has been, delayed in achieving:
 - (i) Milestone Achievement by the Date for Milestone Achievement in respect of a Specified Milestone;
 - (ii) Construction Completion by the Date for Construction Completion; or
 - (iii) Completion by the Date for Completion,

then the Principal may give notice to that effect to the LW Contractor, and the LW Contractor must as soon as reasonably practicable give the Principal the LW Contractor's Recovery Plan for recovery of the delay in accordance with clause 14.6.

14.6 **Recovery Plan**

- (a) Each Recovery Plan which the LW Contractor must provide pursuant to clause 14.5 must:

- (i) describe the actions and measures which the LW Contractor will diligently pursue to remedy or mitigate all delay and to ensure the LW Contractor achieves Milestone Achievement of the Specified Milestone by the Date for Milestone Achievement or Construction Completion by the Date for Construction Completion or Completion by the Date for Completion; or
 - (ii) contain a proposed updated LW Contractor's Program.
- (b) Each Recovery Plan will be reviewed by:
 - (i) the Principal's Representative under clause 13.11; and
 - (ii) the Completion Working Group under clause 13.24.
- (c) The LW Contractor must implement and comply with its Recovery Plan subject to any comments on that plan provided by the Completion Working Group under clause 13.24 and compliance with the review procedures under clause 13.11.
- (d) The LW Contractor will not be relieved of any liability or responsibility under this deed or otherwise at law arising out of or in connection with:
 - (i) any comments given by the Completion Working Group or the Principal's Representative on review of the Recovery Plan; or
 - (ii) the implementation of any Recovery Plan in respect of which the Completion Working Group or the Principal's Representative has or has not given comments.
- (e) The LW Contractor may not make any Claim against the Principal arising out of or in connection with any comments by the Completion Working Group or the Principal's Representative on review of the Recovery Plan or any Loss suffered or incurred by the LW Contractor in preparing, or complying with, a Recovery Plan.

14.7 Entitlement to Claim Extension of Time

- (a) If the LW Contractor is, or will be, delayed on or prior to the Date for Construction Completion of a Portion, by reason of an Extension Event in a manner that will delay it from achieving Construction Completion of a Portion:
 - (i) by the Date for Construction Completion of the Portion, the LW Contractor may claim an extension of time to the relevant Date for Construction Completion; or
 - (ii) [REDACTED]
- (b) If the LW Contractor is, or will be, delayed after the Date for Construction Completion of a Portion, by an Extension Event under paragraphs (a), (b), (l) or (m) of the definition of Extension Event in a manner which will delay it in achieving Construction Completion of a Portion, the LW Contractor may claim an extension of time to the relevant Date for Construction Completion.
- (c) If the LW Contractor is, or will be, delayed on or prior to Date for Milestone Achievement in respect of a Specified Milestone, by reason of an Extension Event in a manner that will delay it from achieving the Specified Milestone:

- (i) by the Date for Milestone Achievement, the LW Contractor may claim an extension of time to the relevant Date for Milestone Achievement; or
 - (ii) [REDACTED]
- (d) If the LW Contractor is, or will be, delayed after the Date for Milestone Achievement in respect of a Specified Milestone, by an Extension Event under paragraphs (a), (b), (l) or (m) of the definition of Extension Event in a manner which will delay it from achieving the Specified Milestone, the LW Contractor may claim an extension of time to the relevant Date for Milestone Achievement.
 - (e) If the LW Contractor is, or will be, delayed on or prior to Date for Completion of a Portion, by reason of an Extension Event in a manner that will delay it from achieving Completion of a Portion by the Date for Completion, the LW Contractor may claim an extension of time to the relevant Date for Completion.
 - (f) If the LW Contractor is, or will be, delayed after the Date for Completion of a Portion, by an Extension Event under paragraphs (a), (b), (l) or (m) of the definition of Extension Event in a manner which will delay it from achieving Completion of a Portion, the LW Contractor may claim an extension of time to the relevant Date for Completion.

14.8 **Claim for Extension of Time**

- (a) To claim an extension of time the LW Contractor must:
 - (i) within 10 Business Days after first becoming aware (or when it ought reasonably to have first become aware) of the commencement of the delay, submit a written notice of its intention to claim for an extension to:
 - (A) the Date for Construction Completion of the Portion;
 - (B) [REDACTED];
 - (C) the Date for Completion of the Portion;
 - (D) the Date for Milestone Achievement of the Specified Milestone;
 - (E) [REDACTED];
- which:
- (F) gives details of the delay and the occurrence causing the delay; and
 - (G) states the number of days for which the extension of time is to be claimed;
- (ii) within 10 Business Days after the LW Contractor's notice issued under clause 14.8(a)(i), submit a written claim to the Principal's Representative for an extension to the relevant date, which:
 - (A) gives detailed particulars of the delay and the occurrence causing the delay; and

- (B) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that:
 - (aa) the delay involves an activity which is critical to the maintenance of progress in the execution of the LW Contractor's Activities and which will delay it in achieving the relevant date in the manner described in clause 14.9(a)(iii); and
 - (bb) the conditions precedent to an extension of time in clause 14.9 have been met; and
- (iii) if the effects of the delay continue after the date of the claim under clause 14.8(a)(ii) and the LW Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
 - (A) every 10 Business Days after the first written claim made under clause 14.8(a)(ii) (or such other period as notified by the Principal's Representative in writing), until 5 Business Days after the end of the effects of the delay; and
 - (B) containing the information required by clause 14.8(a)(ii) (except to the extent otherwise directed by the Principal's Representative).
- (b) The Principal's Representative may, within 10 Business Days after receiving the LW Contractor's claim or further claim for an extension of time, by written notice to the LW Contractor, request additional information in relation to the claim or further claim.
- (c) The LW Contractor must, within 10 Business Days after receiving a notice under clause 14.8(b), provide the Principal's Representative with the information requested.

14.9 Conditions Precedent to Extension of Time

- (a) Subject to clause 14.14(h), it is a condition precedent to the LW Contractor's entitlement to an extension of time:
 - (i) that the LW Contractor gives the notices and claims required by clauses 14.5(b) and 14.8(a) as required by those clauses;
 - (ii) that the cause of the delay is beyond the reasonable control of the LW Contractor; and
 - (iii) that the LW Contractor is actually, or will be, delayed in achieving:
 - (A) Construction Completion of a Portion:
 - (aa) on or prior to the Date for Construction Completion of a Portion, by reason of one or more Extension Events in the manner described in clause 14.7(a); or
 - (bb) after the Date for Construction Completion of a Portion, by an Extension Event under paragraph (a), (b), (l) or (m) of the definition of Extension Event; or
 - (B) Milestone Achievement of a Specified Milestone:

(aa) on or prior to the Date for Milestone Achievement of a Specified Milestone, by reason of one or more Extension Events in the manner described in clause 14.7(c);

(bb) after the Date for Milestone Achievement in respect of a Specified Milestone, by an Extension Event under paragraph (a), (b), (l) or (m) of the definition of Extension Event; or

(C) Completion:

(aa) on or prior to the Date for Completion of a Portion, by reason of one or more Extension Events in the manner described in clause 14.7(e); or

(bb) after the Date for Completion of a Portion, by an Extension Event under paragraph (a), (b), (l) or (m) of the definition of Extension Event; or

[REDACTED]

[REDACTED]
[REDACTED]

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

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

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

[REDACTED]

(b) If the LW Contractor fails to comply with the conditions precedent in clause 14.9(a):

(i) the Principal will not be liable upon any Claim by the LW Contractor; and

(ii) the LW Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

(c) The parties acknowledge that, in respect of each Portion or Specified Milestone, the aggregate of any extensions of time granted in respect of any one cause of delay in respect of that Portion or Specified Milestone cannot exceed the duration of the delay event.

14.10 Extension of Time

- (a) Subject to clauses 14.10(d) and 14.14, if the conditions precedent in clause 14.9(a) have been satisfied, the Principal's Representative must extend the relevant date by a reasonable period, such period to be stated by the Principal's Representative, and notified to the Principal and the LW Contractor within 15 Business Days after:
 - (i) the latest of the:
 - (A) LW Contractor's written claim under clause 14.8(a)(ii) or the final notice under clause 14.8(a)(iii) (if relevant), whichever is the later; and
 - (B) provision by the LW Contractor of any additional information regarding the claim required under clause 14.8; and
 - (C) date of the meeting of the Management Review Group at which the LW Contractor's written claim was considered by the Management Review Group; or
 - (ii) where the Principal's Representative has given the LW Contractor a direction to compress under clause 14.14 and subsequently issues a notice under clause 14.14 withdrawing the direction to compress given under clause 14.14, the date of issue of the notice withdrawing the compression.
- (b) A failure of the Principal's Representative to grant a reasonable extension of time to the relevant date or to grant an extension of time to the relevant date within the relevant 15 Business Day period will not cause an affected date to be set at large, but nothing in this clause 14.10 will prejudice any right of the LW Contractor to damages.
- (c) The parties agree that if the Management Review Group determines the LW Contractor's claim in accordance with clauses 13.21, the Principal's Representative will extend the relevant date as determined by the Management Review Group.
- (d) If the LW Contractor is granted an extension of time in accordance with this clause 14.10 in respect of the Date for Construction Completion of a Portion that is to be constructed (in whole or part) within one or more areas of the Construction Site identified in the Site Access Schedule, there will be a corresponding extension to the Site Access Expiry Dates for the relevant areas of the Construction Site but only to the extent that the LW Contractor still requires access to those areas of the Construction Site in order to carry out the LW Contractor's Activities.

14.11 Reduction in Extension of Time

In respect of each claim for an extension of time under clause 14.8(a), the LW Contractor's entitlement to an extension of time will be reduced by the extent to which the LW Contractor:

- (a) could have lessened or avoided the delay if it had taken all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay, including the expenditure of reasonable sums of money and taking reasonable steps to accommodate, resequence or re-schedule within the LW Contractor's Program the cause of delay and the LW Contractor's Activities affected by the delay;
- (b) contributed to the delay; or

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14.12 Unilateral Extensions

- (a) The Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the LW Contractor and the Principal, unilaterally extend the Date for Construction Completion of a Portion, Date for Completion of a Portion or a Date for Milestone Achievement by any period specified in a notice to the LW Contractor and the Principal. The power to extend the Date for Construction Completion of a Portion, Date for Completion of a Portion or a Date for Milestone Achievement under this clause 14.12:
- (i) may be exercised whether or not the LW Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Construction Completion, Date for Completion or Date for Milestone Achievement, or is entitled to be, or has been, granted an extension of time to any relevant Date for Construction Completion, Date for Completion or Date for Milestone Achievement under clause 14.8;
 - (ii) subject to clause 14.12(a)(iii), may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 14.12(a) for the benefit of the LW Contractor;
 - (iii) without limiting clause 13.1(a), may be exercised or not exercised (as the case may be) by the Principal's Representative in accordance with the directions of the Principal; and
 - (iv) is not a direction which can be the subject of a Dispute pursuant to clause 20 or in any other way opened up or reviewed by any other person (including the IDAR Panel or any arbitrator or court).
- (b) If the Principal's Representative gives the LW Contractor a direction to compress under clause 14.14 and the direction only applies to part of the delay, the LW Contractor's entitlement to any extension of time which it otherwise would have had if that direction had not been given will be reduced to the extent that the direction to compress requires the LW Contractor to compress to overcome the delay.
- (c) The Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the LW Contractor and the Principal, unilaterally extend any Site Access Expiry Date, by any period specified in a notice to the LW Contractor and the Principal.

14.13 Suspension

- (a) The Principal's Representative may direct the LW Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the LW Contractor's Activities.

- (b) If the suspension under this clause 14.13 arises in the circumstance set out in clause 3.5(g) then clauses 3.5(h) to 3.5(l) will apply, otherwise where it arises as a result of:
- (i) the LW Contractor's failure to carry out its obligations in accordance with this deed (including under clauses 8.9 or 8.10 or where the LW Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this deed or where any process, procedure, test method, calculation, analysis or report required by this deed has resulted in or will result in a non-conformance):
 - (A) the Reimbursable Costs will not include the costs incurred as a result of the suspension;
 - (B) there will be no [REDACTED] as a result of the suspension; and
 - (C) the LW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the LW Contractor's failure to perform its obligations in accordance with this deed:
 - (A) a direction to suspend under this clause 14.13 will entitle the LW Contractor to an extension of time to any relevant Date for Milestone Achievement, Date for Completion, Date for Construction Completion, [REDACTED] where it is otherwise so entitled under clause 14;
 - (B) to the extent a direction to suspend requires the LW Contractor to carry out more Reimbursable Work than the LW Contractor would otherwise have done as a result of complying with the direction to suspend, the LW Contractor may notify the Principal of its estimate of any [REDACTED] for complying with the direction, including sufficient information to support the estimate;
 - (C) if a notice is given under clause 14.13(b)(ii)(B), clause 4 will apply in respect of the [REDACTED] (to the extent the Principal does not agree with the LW Contractor's estimate under clause 14.13(b)(ii)(B)); and
 - (D) the LW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 14.13(b)(ii).

14.14 Compression

- (a) Subject to clause 14.14(d), if the LW Contractor makes a claim under clause 14.8, the Principal's Representative may direct the LW Contractor to compress the LW Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to:

- (i) achieve Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement, Construction Completion of a Portion by its Date for Construction Completion or Completion of a Portion by its Date for Completion; or
 - (ii) [REDACTED]
- (b) In addition to the Principal's Representative's rights under clause 14.14(a), the Principal's Representative will have the right to direct that the LW Contractor's Activities be compressed, including by means of overtime, additional crews, additional shifts, resequencing of the LW Contractor's Activities, or otherwise:
 - (i) whether or not the LW Contractor has made a claim under clause 14.8 or the LW Contractor's Activities are progressing without delay or in accordance with the LW Contractor's Program; and
 - (ii) [REDACTED].
- (c) Prior to carrying out any compression of the LW Contractor's Activities, the LW Contractor must provide a plan for such compression, including the methodology required for an effective and economical compression of the LW Contractor's Activities and, where the compression is pursuant to a direction under this clause 14.14, an estimate of [REDACTED] for complying with the direction, including sufficient information to support the estimate.
- (d) Clause 4 will apply in respect of [REDACTED] (to the extent the Principal does not agree with the LW Contractor's estimate under clause 14.14(c)). Where the Principal's Representative issues a direction to compress under this clause 14.14 and subsequently withdraws it under clause 14.14(f), the LW Contractor will be entitled to a [REDACTED] for the Reimbursable Costs incurred by the LW Contractor in complying with the Principal's Representative's direction to compress prior to the date of withdrawal, provided that the direction to withdraw was not caused or contributed to by the LW Contractor or its Associates.
- (e) Despite clause 14.14(a), the Principal's Representative may give such a direction whether or not the cause of delay for which the LW Contractor has made its claim under clause 14.8 entitles the LW Contractor to an extension of time to any relevant Date for Milestone Achievement, Date for Construction Completion, Date for Completion, [REDACTED].
- (f) The Principal's Representative may at any time by notice in writing withdraw any direction given by it under clause 14.14, after which the LW Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the LW Contractor made a claim under clause 14.8.
- (g) Any extension in accordance with clause 14.14(f) will be determined having regard to the effect which the compression of the LW Contractor's Activities taken by the LW Contractor prior to the withdrawal of the direction has had on mitigating the

delay which is the subject of the claim for an extension of time made by the LW Contractor under clause 14.8.

■ [REDACTED]

- (i) The LW Contractor will not be entitled to make any Claim, and releases and waives any entitlement it may have to a Claim, against the Principal in respect of any compression of the LW Contractor's Activities, except as provided for under this clause 14.14.

14.15 **Compression by LW Contractor**

If the LW Contractor chooses to compress the LW Contractor's Activities or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the LW Contractor to achieve Milestone Achievement before a Date for Milestone Achievement, Construction Completion of a Portion before the Date for Construction Completion of the Portion or Completion of a Portion before the Date for Completion of the Portion;
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the LW Contractor does so at its own cost and risk.

14.16 **Directions to Make Accessible or Defer Activities**

- (a) The Principal's Representative may, by notice in writing expressly referring to this clause 14.16(a), direct the LW Contractor:
 - (i) to defer performance of certain LW Contractor's Activities until after Milestone Achievement or Construction Completion of a Portion (**Deferred Activities**); or
 - (ii) to promptly make the Construction Site or a part of the Construction Site Accessible to an Interface Contractor to perform work even if Milestone Achievement or Construction Completion for that work space has not been reached (**Making Accessible**).
- (b) The LW Contractor must comply with a direction given under clause 14.16(a).
- (c) Except to the extent set out in clause 14.16(d) and 14.16(e), this clause 14.16 does not impact the LW Contractor's entitlement under this deed to an extension of time.
- (d) The Principal will have no Liability to the LW Contractor as a consequence of any Deferred Activities or Making Accessible except for the circumstances in clause 14.16(e).

- (e) A direction under clause 14.16(a) is a [REDACTED] (which adjustment will be determined in accordance with clause 4) to the extent that:
- (i) the need for Deferred Activities or Making Accessible is not related to, or a consequence of, any breach of the deed by the LW Contractor (for example, a failure to reach Milestone Achievement by a Date for Milestone Achievement); and
 - (ii) the direction for Deferred Activities or Making Accessible was not, in effect:
 - (A) a direction to the LW Contractor to perform the LW Contractor's Activities in accordance with this deed (other than this clause), or consistently with this deed; or
 - (B) related to rectification of a Defect.

15. PAYMENT

15.1 Principal's payment obligation for design and construction

- (a) Subject to clause 15.3(b) and to any other right to set-off that the Principal may have, the Principal will pay the LW Contractor in progressive payments as follows:
- (i) monthly instalments of the Reimbursable Costs, relating to the Reimbursable Work which has been carried out in the relevant month (distinguishing Reimbursable Costs relating to Provisional Sum Work); and
 - (ii) the:
 - (A) Management Fee will be paid simultaneously with the payment of any Reimbursable Costs in accordance with clause 15.1(a)(i);
 - (B) amounts to be paid for the Post Construction Completion Activities will be paid in accordance with the provisions of Schedule F1;
 - (C) KPI Incentive (if any) under Schedule F6 will be paid in monthly instalments in accordance with the provisions of Schedule F6;
 - (D) Milestone Performance Payments in respect of a Milestone Performance Payment Milestone (if any) under Schedule A2 will be paid in accordance with the provisions of Schedule F1;
 - (E) Cost Incentive (if any) under clause 15.11(a) can only be claimed with the Payment Claim made under clause 15.11; and
 - (F) [REDACTED] (if any) under Schedule A2 can only be claimed with the Payment Claim made under clause 15.11.
- (b) Schedules F1 and F6 set out (among other things):
- (i) those parts of the LW Contractor's Activities which must be completed before the LW Contractor may claim a progressive payment with respect to that part;
 - (ii) the payment the LW Contractor may claim for each progressive payment;
 - (iii) any limitations or other constraints on the LW Contractor's ability to make claims for payment; and

- (iv) the restrictions (if any) on the timing and sequencing of the LW Contractor's Activities with which the LW Contractor must comply.
- (c) Clause 15.2(k) sets out further payment constraints that are to apply.

15.2 **Payment Claims**

- (a) The LW Contractor must give the Principal's Representative a claim for payment on account of all amounts then payable by the Principal to the LW Contractor under this deed (**Payment Claim**) on the following dates:
 - (i) on the twenty-fifth day of each month (or if this day is not a Business Day, the next Business Day after this day); and
 - (ii) 30 Business Days after:
 - (A) the issue of a Notice of Completion for the last Portion to achieve Completion; and
 - (B) the expiry of the final Defects Correction Period.
- (b) For each claim made under clause 15.2(a) the LW Contractor must:
 - (i) give the Principal's Representative:
 - (A) a claim in a format required by the Principal's Representative (including electronic format) showing the amount the LW Contractor claims on account of:
 - (aa) the Reimbursable Costs (distinguishing Reimbursable Costs relating to Provisional Sum Work) payable to:
 - (a) Subcontractors; and
 - (b) the LW Contractor;
 - (bb) the Management Fee;
 - (cc) the KPI Incentive (if any);
 - (dd) the Cost Incentive (if any);
 - (ee) the [REDACTED] (if any);
 - (ff) Milestone Performance Payments (if any);
 - (gg) the amounts payable for the Post Construction Completion Activities; and
 - (hh) other amounts payable under this deed by the Principal to the LW Contractor; and
 - (B) where the Principal has given notice under clause 15.14(g)(iv), a valid tax invoice for any taxable supplies to which the payment relates; and
 - (ii) in the case of the payment claims issued after:
 - (A) the issue of a Notice of Completion for the last Portion to achieve Completion; and

- (B) the expiration of the final Defects Correction Period,
comply with clause 15.2(m).
- (c) Each claim for payment must set out or attach (to a standard directed by the Principal from time to time) sufficient details, calculations, supporting documentation and any other information required by the Principal in respect of all amounts claimed by the LW Contractor:
- (i) to enable the Principal's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the LW Contractor under this deed and by the LW Contractor to the Principal; and
 - (ii) including any such documentation or information which the Principal's Representative may by written notice from time to time require the LW Contractor to set out or attach, whether in relation to a specific payment or not.
- (d) The Principal's Representative must, on behalf of the Principal, within 10 Business Days of receipt of the LW Contractor's claim under clause 15.2(a), issue to the LW Contractor and the Principal, a payment schedule stating the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the LW Contractor under this deed and which the Principal proposes to pay to the LW Contractor or the amount which the Principal's Representative believes to be then payable by the LW Contractor to the Principal, including details of the calculation of the progress amount.
- (e) In issuing a payment schedule the Principal's Representative:
- (i) may deduct from the amount which would otherwise be payable to the LW 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 clauses 15.8; and
 - (ii) must if the payment schedule shows an amount less than the amount claimed by the LW Contractor in the progress claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (f) If the LW Contractor does not give the Principal's Representative a progress claim at a time required by clause 15.2(a), the Principal's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a progress claim was made at the time required.
- (g) A payment schedule issued under clause 15.2(d) or 15.2(f) will separately identify the sum of the amounts due on account of the:
- (i) the Reimbursable Costs payable to:
 - (A) Subcontractors; and
 - (B) the LW Contractor;
 - (ii) the Management Fee;
 - (iii) the KPI Incentive (if any);

- (iv) the Cost Incentive (if any);
 - (v) a [REDACTED] (if any);
 - (vi) a Milestone Performance Payment (if any); and
 - (vii) other amounts payable under this deed by the Principal to the LW Contractor.
- (h) Where the Principal has given notice under clause 15.14(g)(iv), if the amount set out in a payment schedule issued under clause 15.2(d) is different to the amount in the LW Contractor's progress claim or if the Principal's Representative issues a payment schedule under clause 15.2(f), the LW Contractor must, within 2 Business Days of receiving the payment schedule, issue a revised tax invoice or adjustment note (as the case may be) to the Principal to reflect the amount in the payment schedule.
- (i) Within 15 Business Days of the date of the LW Contractor's progress claim in accordance with clause 15.2(a) or within 5 Business Days of the issue of a payment schedule in accordance with clause 15.2(f):
- (i) where the payment schedule provides that an amount is payable by the Principal to the LW Contractor, but subject to clauses 15.6, 15.7, 15.8 and 1.1 and Schedules F2 and F6, the Principal must pay the LW Contractor the progress payment due to the LW Contractor as certified in the payment schedule; and
 - (ii) where the payment schedule provides that an amount is payable by the LW Contractor to the Principal, the LW Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (j) If the LW Contractor lodges a progress claim earlier than at the times specified under clause 15.2(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that progress claim earlier than it would have been obliged had the LW Contractor submitted the progress claim in accordance with this deed.
- (k) Despite any other provisions of this deed to the contrary, the amount of any progress claim to which the LW Contractor is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 15.2(d) as the amount payable to the LW Contractor arising out of or in any way in connection with this deed will:
- (i) not include the following amounts:
 - (A) any amount which this deed provides cannot be claimed or is not payable because of the failure by the LW Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);
 - (B) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
 - (C) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Schedules F2 and F6);

- (D) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
 - (E) any amount in respect of which the LW Contractor has failed to provide supporting information as required by this deed; or
 - (F) any amount for work which is not in accordance with this deed;
 - (ii) deduct the following amounts:
 - (A) any amounts which have become due from the LW Contractor to the Principal under this deed; and
 - (B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the progress claim, including under clauses 15.5, 15.6, 15.9 or 15.15(e);
 - (iii) in determining amounts to be excluded or deducted under clauses 15.2(k)(i) and 15.2(k)(ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and
 - (iv) be determined having regard to the amounts payable in accordance with Schedule F1.
- (l) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the LW 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.
- (m) The LW Contractor must include in the payment claim lodged by it after:
- (i) the issue of a Notice of Completion for the last Portion to achieve Completion; and
 - (ii) the expiration of the final Defects Correction Period,
- all Claims (excluding third party claims for death, injury or property damage of which the LW Contractor is unaware (and ought not reasonably have been aware)) that the LW Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the LW Contractor's Activities, the Project Works or this deed which occurred:
- (iii) in the case of the payment claim referred to in clause 15.2(m)(i), prior to the date of that payment claim; and
 - (iv) in the case of the payment claim referred to in clause 15.2(m)(ii), in the period between the date of the payment claim referred to in clause 15.2(m)(i) and the date of the payment claim.
- (n) The LW Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the LW Contractor's Activities, the Project Works or this deed that occurred prior to the date of submission of the relevant payment claim referred to in clauses 15.2(m)(i) or 15.2(m)(ii), except for any claim which:
- (i) has been included in the relevant payment claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 15.2(a); and

- (ii) has not been barred under another provision of this deed.
- (o) Where any part of a payment to be made by the Principal to the LW Contractor is in respect of work carried out by a Subcontractor, the Principal will pay that part of the payment into the Project Bank Account.
- (p) The LW Contractor may only make withdrawals from the Project Bank Account to pay the relevant Subcontractor for work carried out by that Subcontractor that forms part of the relevant Payment Claim.
- (q) Interest on amounts standing to the credit of the Project Bank Account will accrue for the benefit of the Principal.

15.3 **Effect of payment schedules and payments**

- (a) Neither the issue of a payment schedule under clause 15.2(d), nor the making of any payment pursuant to any such payment schedule, will:
 - (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
 - (ii) constitute evidence of the value of any work or an admission of liability or evidence that work has been executed or completed in accordance with this deed; or
 - (iii) prejudice the right of either party to dispute under clause 20 whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 20 or as otherwise agreed, of the amount properly due and payable, the Principal or the LW Contractor, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment schedule are payments on account only.

- (b) The Principal's Representative may at any time correct, modify or amend any payment schedule.

15.4 **Provision of documentation and other requirements**

- (a) The Principal is not obliged to pay the LW Contractor any more than ■■■ of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the LW Contractor has:
 - (i) provided the deeds poll required by clause 1.5;
 - (ii) provided the Principal with the unconditional undertakings and the Parent Company Guarantee (if any) required under clause 5;
 - (iii) provided the Principal's Representative with:
 - (A) a statutory declaration by the LW Contractor, or where the LW Contractor is a corporation, by a representative of the LW Contractor who is in a position to know the facts attested to, in the form of Schedule B5, made out not earlier than the date of the payment claim;

- (B) where clause 15.7(q) applies, the statement and the evidence (if any) required to be provided by the LW Contractor pursuant to that clause;
 - (C) the Asset Management Information and evidence of compliance with the reporting requirements and the sustainability reporting requirements in the SWTC; and
 - (iv) where the Principal has given notice under clause 15.14(g)(iv), provided the Principal's Representative with a tax invoice, revised tax invoice or adjustment note (as applicable) as required under clause 15.2(b)(i)(B) and clause 15.2(h);
 - (v) in relation to any unfixed plant and materials which the LW Contractor proposes to claim in a Payment Claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 15.6;
 - (vi) demonstrated to the Principal's Representative that it has effected and is maintaining, or has procured to be effected the insurances required to be effected by the LW Contractor under clause 18 and (if requested) provided supporting evidence of this to the Principal's Representative;
 - (vii) provided such evidence as the Principal's Representative may require that this deed has been properly executed by or on behalf of the LW Contractor and that the LW Contractor is bound under this deed;
 - (viii) subject to clauses 15.4(c), 15.4(d) and 15.4(e), in relation to each tenderer approved by the Principal's Representative pursuant to clause 11.7(a), evidence to the satisfaction of the Principal's Representative of the LW Contractor's compliance with clause 11.7 (including the provision of each of the agreements referred to in clause 11.7(a) having been duly stamped (if required by Law)); and
 - (ix) done everything else that it is required to do under this deed before being entitled to make a payment claim or receive payment.
- (b) The Principal is not obliged to pay the LW Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the LW Contractor has provided the updated LW Contractor's Program required by clause 14.2.
 - (c) In relation to the LW Contractor's first Payment Claim after the claim for the Initial Payment, to satisfy the evidentiary requirements of clause 15.4(a)(viii), the LW Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of this deed and the date of the first Payment Claim.
 - (d) In relation to the second Payment Claim after the claim for the Initial Payment, to satisfy the evidentiary requirements of clause 15.4(a)(viii), the LW Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of the Payment Claim referred to in clause 15.4(c) and the date of this second Payment Claim.
 - (e) In relation to each subsequent Payment Claim, to satisfy the evidentiary requirements of clause 15.4(a)(viii), the LW Contractor must provide evidence of each tenderer engaged pursuant to clause 11.7(a) since the date of the Payment Claim referred to in clause 15.4(d) and the date of that Payment Claim.

15.5 **Payment of Subcontractors, workers compensation and payroll tax**

- (a) If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the LW Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid will be a debt due from the LW Contractor to the Principal.
- (b) If the Principal receives notices of:
 - (i) the LW Contractor being placed under administration; or
 - (ii) the making of a winding up order in respect of the LW Contractor,the Principal will not make any payment to a worker or Subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.
- (c) If any moneys are shown as unpaid in the LW Contractor's statutory declaration under clause 15.4(a)(iii)(A), the Principal may withhold the moneys so shown until the LW Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (d) Nothing in this clause 15.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

15.6 **Unfixed Plant and Materials**

- (a) Subject to clause 15.6(b), the value of unfixed or off-site plant and materials must not be included in a Payment Claim.
- (b) The LW Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Project Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clauses 15.4(a) and/or 15.4(c) if:
 - (i) the LW Contractor provides evidence of:
 - (A) ownership of the plant or materials;
 - (B) identification and labelling of the plant and materials as the property of the Principal; and
 - (C) adequate and secure storage and protection;
 - (ii) security acceptable to the Principal in the form of the unconditional undertaking in Schedule F3 issued by an Institution approved by the Principal in an amount equal to the payment claimed for the unfixed plant and materials has been provided by the LW Contractor to the Principal;
 - (iii) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
 - (iv) the condition of the unfixed plant and materials has been confirmed in an inspection by the Principal's Representative; and

- (v) if the PPS Law applies, the LW Contractor has registered a Security Interest in the unfixed plant and materials in favour of the Principal in accordance with clause 22.17.
- (c) The only such unfixed plant or materials to be allowed for in a Payment Schedule are those that have become or (on payment) will become the property of the Principal. Upon a payment against a Payment Schedule that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest in the Principal.
- (d) The security provided in accordance with clause 15.6(b)(ii) will be released once the applicable unfixed plant and materials are incorporated into the Project Works and are fit for their intended purpose.

15.7 **SOP Act**

- (a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) The LW Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) In responding to the LW Contractor under the SOP Act, the Principal's Representative also acts as the agent of the Principal.
- (d) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify the LW Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

then a payment schedule issued by the Principal's Representative under this deed which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).

- (e) Without limiting paragraph (c), the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (f) For the purposes of this deed, the amount of the progress payment to which the LW Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 15.2 less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (g) The LW Contractor agrees that the date prescribed in clause 15.2(a) as the date on which the LW Contractor is entitled to make a progress claim is, for the purposes of the SOP Act (including section 8 of the SOP Act), the reference date.
- (h) Nothing in this deed will be construed to:
 - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a

breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or

- (ii) subject to paragraph (i), give to the LW Contractor rights under this deed which extend or are in addition to rights given to the LW Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (i) If the LW Contractor suspends the whole or part of the LW Contractor's Activities pursuant to the SOP Act, except to the extent (if any) expressly provided under the SOP Act and clause 15.7(h), the Principal will not be liable for and the LW Contractor is not entitled to Claim any Loss suffered or incurred by the LW Contractor as a result of the suspension.
- (j) The LW Contractor must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:
 - (i) a suspension by a Subcontractor of work which forms part of the LW Contractor's Activities pursuant to the SOP Act; or
 - (ii) a failure by the LW Contractor to comply with its obligations under paragraph (b).
- (k) The LW Contractor agrees that for the purposes of section 17(3) of the SOP Act:
 - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the LW Contractor's Activities is to be made; and
 - (ii) the LW Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (l) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the LW Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 15.2(d);
 - (ii) if it is subsequently determined pursuant to this deed that the LW Contractor was not entitled under this deed 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 LW Contractor to the Principal which the LW Contractor must pay to the Principal upon demand and in respect of which the LW Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the LW Contractor to the Principal upon demand and in respect of which the LW Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (iv) the Principal's Representative:
 - (A) is not bound by the adjudication determination;
 - (B) may reassess the value of the work that was valued by the adjudicator; and

- (C) may, if it disagrees with the adjudication determination, express its own valuation in any payment schedule.
- (m) Without limiting clause 15.8, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (n) If the Principal withholds from money otherwise due to the LW Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the LW Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the LW Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the LW Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the LW Contractor must be made.
- (o) The LW Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (p) Any amount paid by the Principal pursuant to section 26C of the SOP Act will, to the extent not already withheld, deducted or set-off under clause 15.8, be a debt due from the LW Contractor to the Principal.
- (q) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the LW Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the LW Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 15.7(n)(i) or 15.7(n)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

15.8 **Right of set-off**

- (a) The Principal's Representative may (on behalf of the Principal) in any payment schedule issued under clauses 15.2(d) or 15.2(f) withhold, set-off or deduct from the money which would otherwise be certified as payable to the LW Contractor or which would otherwise be due to the LW Contractor under this deed:
 - (i) any debt or other moneys due from the LW Contractor to the Principal (including any debt due from the LW Contractor to the Principal pursuant to

section 26C of the SOP Act or any amount due from the LW Contractor to the Principal as determined under clause 20);

- (ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act;
- (iii) any amount received by the LW Contractor from the sale of material salvaged from the Construction Site or Bulk Feeder Route in performing the LW Contractor's Activities;
- (iv) any amount that the Principal is entitled to withhold under clause 15.4;
- (v) any bona fide claim to money which the Principal may have against the LW Contractor whether for damages (including liquidated damages) or otherwise; or
- (vi) any other amount the Principal is entitled to withhold, set-off or deduct under this deed,

under or arising out of or in connection with this deed or the LW Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

- (b) This clause 15.8 will survive the termination of this deed.

15.9 **Interest**

- (a) The Principal will pay simple interest at the rate of [REDACTED] above the [REDACTED] on any:
 - (i) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 15.2(d), but which is not paid by the Principal within the time required by this deed;
 - (ii) damages; and
 - (iii) amount which is found after the resolution of a Dispute to be payable to the LW Contractor, and which has not been paid by the Principal,

from the date such amount was first due and payable until the date such amount is paid.

- (b) This will be the LW Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

15.10 **Title**

Title in all items forming part of the Project Works will pass progressively to the Principal on the earlier of payment for or delivery of such items to the Construction Site or Bulk Feeder Route. Risk in all such items remains with the LW Contractor in accordance with clause 18.

15.11 **Cost Incentive, KPI and [REDACTED]**

The LW Contractor will be entitled to claim the following payments:

- (a) in respect of the Cost Incentive, if the Outturn Cost is less than the Target Cost, an amount which is equal to the Share of Savings, as part of the Payment Claim made under clause 15.2(a);
- (b) in respect of the KPI Incentive, in accordance with Schedule F6; and
- (c) [REDACTED]

15.12 **Outturn Cost exceeds Target Cost**

- (a) If the Outturn Cost is greater than the Target Cost, the Share of Cost Overrun will be a debt due and payable by the LW Contractor to the Principal.
- (b) The Share of Cost Overrun is limited to an amount equal to [REDACTED] of the Target Cost.

15.13 **No claim by LW Contractor**

The Principal will not be liable upon any Claim by the LW Contractor arising out of or in connection with any act, omission or breach of contract by the Principal or the Principal's Representative, to the extent that this may have contributed to preventing the LW Contractor from maximising the amount it otherwise would have been entitled to under clause 15.11.

15.14 **GST**

- (a) Unless otherwise stated, all amounts set out in this deed are GST exclusive.
- (b) Subject to paragraphs (e) and (f), where any supply occurs under or in connection with this deed or the Project Works for which GST is not otherwise provided, the party making the supply (**Supplier**) will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (c) Reimbursable Costs payable by the LW Contractor to Subcontractors will not be reduced for any input tax credits and will be paid in full to the LW Contractor. In consideration of this, the LW Contractor is not entitled to any additional amount in respect of GST on those Reimbursable Costs.
- (d) Where an amount is payable to the Supplier for a supply under or in connection with this deed or the Project Works (other than on account of Reimbursable Costs payable by the LW Contractor to Subcontractors) which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (b).
- (e) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (f) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier will refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient will pay the deficiency to the Supplier.

- (g) The parties agree that unless and until otherwise agreed in writing, the following will apply to all taxable supplies made by the LW Contractor to the Principal under or in connection with this deed:
- (i) the Principal will issue to the LW Contractor a recipient created tax invoice (**RCTI**) for each taxable supply made by the LW Contractor to the Principal under this deed;
 - (ii) the Principal will issue to the LW Contractor a recipient created adjustment note for any adjustment event;
 - (iii) the LW Contractor will not issue a tax invoice or adjustment note in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the LW Contractor that it will no longer issue a RCTI or recipient created adjustment note for each taxable supply made by the LW Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs and recipient created adjustment notes in respect of such supplies and the LW Contractor will be required to issue tax invoices and adjustment notes to the Principal in respect of any such taxable supply.
- (h) Each party acknowledges and warrants that at the time of entering into this deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (i) In this clause 15.14:
- (i) **GST** means the tax payable on taxable supplies under the GST Legislation;
 - (ii) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation.

15.15 Initial payment

(a) **Principal's obligation to pay Initial Payment**

- (i) The Principal will pay to the LW Contractor the Initial Payment on the later of:
 - (A) 15 Business Days of the date of this deed; and
 - (B) provision by the LW Contractor of the Initial Payment Security.
- (ii) The LW Contractor must submit to the Principal a payment claim for the Initial Payment on the date of this deed reflecting the payment terms in clause 15.15(a).

(b) **Initial Payment Security**

- (i) Clause 5.6 applies to the Initial Payment Security except that references to the unconditional undertakings will be deemed to be references to the Initial Payment Security.

- (ii) The LW Contractor must ensure that the Initial Payment Security remains valid and enforceable until the date of its release in accordance with clause 15.15(d).

(c) **Recourse to the Initial Payment Security**

- (i) If this deed is terminated, for any reason, prior to [REDACTED], the LW Contractor must repay to the Principal the amount set out in Schedule A1.
- (ii) If the LW Contractor does not pay the amount contemplated in clause 15.15(c)(i) within 5 Business Days of the date of termination of this deed, the Principal may have recourse to the Initial Payment Security.

(d) **Release of Initial Payment Security**

Within 15 Business Days of the LW Contractor complying with clause 15.15(c), the Principal will release so much of the Initial Payment Security then held by the Principal.

(e) **Payment Claim Deductions**

The LW Contractor acknowledges and agrees that in respect of each of the sixth to the thirtieth Payment Claims issued after the Payment Claim for the Initial Payment, the Principal will be entitled to deduct from the amount which would otherwise be payable to the LW Contractor, an amount equal to [REDACTED] of the Initial Payment.

15.16 [REDACTED]

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[REDACTED]
[REDACTED]
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15.17 [REDACTED]

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15.20 Target Cost Adjustments for Rise and Fall

The Target Cost will be subject to Adjustment for Rise and Fall in accordance with the principles set out in Schedule F9.

16. CONSTRUCTION COMPLETION AND COMPLETION

16.1 Progressive Inspection and Testing

- (a) At any time prior to Construction Completion of a Portion, the Principal's Representative may direct that any materials or work forming part of the LW Contractor's Activities in respect of that Portion be tested. The LW Contractor must provide such assistance, documentation, records, personnel (including Subcontractors) and samples and make accessible such parts of the LW Contractor's Activities or Project Works as may be required. On completion of any test the LW Contractor must make good the LW Contractor's Activities or Project Works so that they fully comply with this deed.
- (b) The Principal's Representative may direct that any part of the LW Contractor's Activities or the Project Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.
- (c) The tests prescribed in this deed must be conducted by the LW Contractor as and when provided for in this deed, or may be conducted by the Principal's Representative or a person (that may include the LW Contractor or the Independent Certifier) nominated by the Principal's Representative.
- (d) Any testing required to be done by an independent authority must be carried out by an authority recognised by Joint Accreditation System of Australia and New Zealand (JAS-ANZ) (ABN 49 614 982 550) (or their successors or assigns).
- (e) Unless otherwise stated in this deed before conducting a test under this deed the Principal's Representative or the LW Contractor must give not less than 2 Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.
- (f) Without prejudice to any other rights or remedies under this deed, if the LW Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.
- (g) Each party must promptly make the results of tests available to the other and to the Principal's Representative.
- (h) Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing will be Reimbursable Costs unless:
 - (i) this deed provides that the LW Contractor must bear the costs;

- (ii) the test shows that the material or work is not in accordance with this deed;
 - (iii) the test is in respect of a part of the LW Contractor's Activities or the Project Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
 - (iv) the test is consequent upon a failure of the LW Contractor to comply with a requirement of this deed.
- (i) Where the extra costs are not to be borne by the Principal, they will be borne by the LW Contractor and will be a debt due from the LW Contractor to the Principal and paid by the LW Contractor to the Principal on demand.

16.2 Construction Completion

- (a) The LW Contractor must, in respect of each Portion, give the Principal's Representative:
- (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,
- written notice of the estimated Date of Construction Completion of the Portion.
- (b) The completion of the Sydney Trains Works will be assessed on an area by area basis in accordance with the procedure in the Sydney Trains Transition Agreement in relation to Practical Completion (Sydney Trains Works) (as defined in the Sydney Trains Transition Agreement).
- (c) Subject to clause 16.2(h), the Principal's Representative, the LW Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 16.2(a)(ii) jointly inspect the LW Contractor's Activities at a mutually convenient time.
- (d) Within 2 Business Days after the joint inspection referred to in clause 16.2(c), the Independent Certifier must give the LW Contractor and the Principal a notice either:
- (i) containing a list of items which it believes must be completed before Construction Completion of the Portion is achieved; or
 - (ii) stating that it believes the LW Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 16.2(d)(i).
- (e) When the LW Contractor considers it has achieved Construction Completion of the Portion, the LW Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B4. Thereafter, and subject to clause 16.2(h), the Principal's Representative, the LW Contractor's Representative, the Independent Certifier and, in respect of Sydney Trains Works only the representative of any relevant Authority, must jointly inspect the LW Contractor's Activities at a mutually convenient time.

- (f) Following the joint inspection under clause 16.2(e), the Independent Certifier must within 5 Business Days after receipt of a notice under clause 16.2(e), or of receipt of a notice under clause 16.2(g):
- (i) if Construction Completion of the Portion has been achieved:
 - (A) provide to the Principal's Representative and the LW Contractor a document signed by the Independent Certifier in the form in Schedule B10; and
 - (B) additionally if the relevant Portion includes Sydney Trains Project Works, provide to the Principal's Representative, Sydney Trains and RailCorp a notice in accordance with clause 31 of the Sydney Trains Transition Agreement with respect to the Sydney Trains Project Works;
 - (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the LW Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Construction Completion of the Portion; or
 - (B) that the LW Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the LW Contractor of the items which remain to be completed as contemplated by clause 16.2(f)(ii)(A).
- (g) If the Independent Certifier issues a notice under clause 16.2(f)(ii) the LW Contractor must proceed with the LW Contractor's Activities and thereafter when it considers it has achieved Construction Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 16.2(e) and 16.2(f) will reapply.
- (h) The LW Contractor acknowledges and agrees that:
- (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 16.2, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the LW Contractor) in relation to any non-compliance of the LW Contractor's Activities with this deed.
- (i) Without affecting the LW Contractor's obligation to achieve Construction Completion of each Portion by the relevant Date for Construction Completion of each Portion the parties acknowledge that:
- (i) no separate Date for Construction Completion of the Project Works is specified in this deed;
 - (ii) Construction Completion of the Project Works is achieved by achieving Construction Completion of all Portions;
 - (iii) Construction Completion of the Project Works will be taken to have occurred once Construction Completion of all Portions has occurred; and
 - (iv) the Date of Construction Completion of the Project Works will be taken to be the Date of Construction Completion of the last Portion to reach Construction Completion.

16.3 Unilateral Issue of Notice of Construction Completion

If at any time a notice required to be given by the LW Contractor to the Independent Certifier under either of clauses 16.2(d) or 16.2(f) is not given by the LW Contractor yet the Principal's Representative is of the opinion that Construction Completion of a Portion has been achieved, the Principal's Representative may direct the Independent Certifier to issue a Notice of Construction Completion under clause 16.2(f)(i)(A) for the Portion.

16.4 Completion

- (a) The LW Contractor must, in respect of each Portion, give the Principal's Representative:
 - (i) 6 months (other than in respect of Portion 3);
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,written notice of the estimated Date of Completion of the Portion.
- (b) Subject to clause 16.4(j), the Principal's Representative, the LW Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 16.4(a)(ii) jointly inspect the LW Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 16.4(b), the Independent Certifier must give the Principal and the LW Contractor a notice either:
 - (i) containing a list of items which it believes must be completed before Completion of the Portion is achieved; or
 - (ii) stating that it believes the LW Contractor is so far from achieving Completion of the Portion that it is not practicable to issue a list as contemplated in clause 16.4(c)(i).
- (d) Within 3 Business Days after receipt of the notice referred to in clause 16.4(a)(iii), the Independent Certifier must inspect the LW Contractor's Activities.
- (e) Within 2 Business Days after the inspection referred to in clause 16.4(d), the Independent Certifier must provide the LW Contractor with list of Defects (including Minor Defects and Agreed Defects) which the LW Contractor must rectify in order to achieve Completion of the Portion (**Pre-Completion Notice**).
- (f) The parties acknowledge and agree that the Defects identified in the Pre-Completion Notice are representative of the Defects that may be present at that period in time only and does not represent a complete list of all Defects that may prevent the LW Contractor from achieving Completion.
- (g) When the LW Contractor considers that it has achieved Completion of a Portion, the LW Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B3. Thereafter, and subject to clause 16.4(j), the Principal's Representative, the LW Contractor's Representative and the Independent Certifier must jointly inspect the LW Contractor's Activities at a mutually convenient time.

- (h) Following the joint inspection under clause 16.4(g), the Independent Certifier must, within 5 Business Days after receipt of a notice under clause 16.4(g) or a notice under clause 16.4(i):
 - (i) if Completion of the Portion has been achieved, provide to the Principal's Representative and the LW Contractor with a document signed by the Independent Certifier in the form in Schedule B11; or
 - (ii) if Completion of the Portion has not been achieved, issue a notice to the LW Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Completion of the Portion; or
 - (B) that the LW Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the LW Contractor of the items which remain to be completed as contemplated by clause 16.4(h)(ii)(A).
- (i) If the Independent Certifier issues a notice under clause 16.4(h)(ii), the LW Contractor must proceed with the LW Contractor's Activities and thereafter, when it considers that it has achieved Completion of the Portion, it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 16.4(g) and 16.4(h) will reapply.
- (j) The LW Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 16.4, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the LW Contractor) in relation to any non-compliance of the LW Contractor's Activities with this deed.
- (k) Without affecting the LW Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion, the parties acknowledge that:
 - (i) no separate Date for Completion of the Project Works is specified in this Contract;
 - (ii) Completion of the Project Works is achieved by achieving Completion of all the Portions;
 - (iii) Completion of the Project Works will be taken to have occurred once Completion of all Portions has occurred; and
 - (iv) the Date of Completion of the Project Works will be taken to be the Date of Completion of the last Portion to achieve Completion.

16.5 Part of the Project Works or a Portion

- (a) If part of a Portion has reached a stage equivalent to Construction Completion but another part of the Portion has not reached Construction Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may determine that the respective parts will be Portions.

- (b) Without limiting clause 16.5(a), the Principal may, after the LW Contractor is given written notice by the Principal's Representative, occupy or use any part of a Portion although the whole of the Portion has not reached Construction Completion.
- (c) If the Principal's Representative gives a notice under clause 16.5(b):
 - (i) the Principal must allow the LW Contractor reasonable access to the part of the Portion referred to in the notice and being occupied or used by the Principal, to enable the LW Contractor to bring the relevant Portion of which the area being occupied or used forms part to Construction Completion; and
 - (ii) this will not otherwise limit or affect the obligations of the parties under this deed, including the obligation of the LW Contractor to achieve Construction Completion of the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Construction Completion.
- (d) Without limiting clause 16.5, further Portions may be created by the Principal's Representative by issuing a written direction to the LW Contractor which clearly identifies for each Portion:
 - (i) the Project Works and Temporary Works;
 - (ii) the Date for Construction Completion; and
 - (iii) respective amounts of liquidated damages,
 all as determined by the Principal's Representative (acting reasonably).

16.6 Liquidated Damages for delay in reaching Construction Completion and Completion

- (a) The Principal and the LW Contractor agree and acknowledge that the Principal is pursuing a policy of building Sydney Metro City & Southwest and the Project Works for purposes that include achieving the objectives set out in clause 2.
- (b) The LW Contractor and the Principal acknowledge and agree that the LW Contractor's Activities represent a most important element of the building of Sydney Metro City & Southwest, as a major new public transport link which, together with Sydney Metro Northwest (and their integration), will service the needs of Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after the LW Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (c) The LW Contractor acknowledges and agrees that its failure to achieve Construction Completion of the Portions by the required Dates for Construction Completion will not only result in direct Losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The Loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.
- (d) The LW Contractor agrees that if it does not achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion, it must pay the Principal the applicable amount for that Portion set out in Schedule A2 (each of which is exclusive of GST) for every day after the Date for Construction Completion of the Portion up to and including:

- (i) the Date of Construction Completion of the applicable Portion; or
 - (ii) the date that this deed is validly terminated,
- whichever first occurs.

[REDACTED]

- (e) The parties agree that the liquidated damages provided for in clause 16.6(d):
 - (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the LW Contractor to achieve Construction Completion of the Portion by the Date for Construction Completion of the Portion and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the LW Contractor; and
 - (ii) will be recoverable by the Principal from the LW Contractor as a debt due and payable.
- (f) The Principal and the LW 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 LW Contractor agrees to pay the liquidated damages under clause 16.6(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 LW Contractor entered into the obligation to pay the amounts specified in clause 16.6(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the LW Contractor in accordance with its terms.
- (i) The LW Contractor agrees:
 - (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
 - (ii) that if this clause 16.6 (or any part of this clause 16.6) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Project Works) as a result of the LW Contractor failing to achieve Construction Completion of a relevant Portion by its Date for Construction Completion, but the LW Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.

- (j) The Principal's Representative, when issuing a payment schedule pursuant to clauses 15.2(d) and 15.2(e) after the after the Date for Construction Completion of a relevant Portion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 16.6(d) to the date of the payment schedule (despite Construction Completion of that Portion not having occurred).
- (k) The Principal and the LW Contractor agree that the aggregate of the amount payable under clauses, 16.6(d), 16.6(i)(ii), 17.4(c) and 17.4(h)(ii) is limited as set out in clause 21.1(b) and is a limitation on the LW Contractor's liability to the Principal for a failure to achieve Construction Completion of any Portion by the relevant Date for Construction Completion, and the Principal will not be entitled to make, nor will the LW Contractor be liable upon, any Claim in these circumstances other than for the amount for which the LW Contractor is liable under this clause 16.6 (including where applicable common law damages under clauses 16.6(i)(ii) and 17.4(h)(ii)). Nothing in this clause 16.6(k) in any way limits the LW Contractor's liability where this deed is terminated by the Principal under clause 19.3 or otherwise at Law.

16.7 Effect of Notice of Construction Completion or Notice of Completion

- (a) A Notice of Construction Completion or Notice of Completion (as applicable) will not:
 - (i) constitute approval by the Principal, the Independent Certifier or the Principal's Representative of the LW Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the Portion complies with the requirements of this deed; or
 - (iii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.
- (b) Without limiting clause 16.7(a), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Construction Completion or Notice of Completion is final and binding on the parties for the purposes only of establishing that Construction Completion or Completion of the relevant Portion has occurred.

16.8 Access following Construction Completion of a Portion

- (a) Where Construction Completion has been achieved in respect of a Portion but the LW Contractor still requires access to such Portion in order to continue the LW Contractor's Activities, the Principal must procure that the LW Contractor is provided with reasonable access to such Portion to enable the LW Contractor to continue the LW Contractor's Activities.
- (b) The occupation and use of such Portion by the Principal (and its nominees) will not limit or affect the responsibilities, obligations or liabilities of the LW Contractor including the obligation of the LW Contractor to achieve Construction Completion of any remaining Portion by the relevant Date for Construction Completion.

17. MILESTONE ACHIEVEMENT

17.1 Date for Milestone Achievement

The LW Contractor must, in respect of the Specified Milestones, reach Milestone Achievement of the relevant Specified Milestone by the Date for Milestone Achievement.

17.2 Milestone Achievement

- (a) The LW Contractor must, in respect of each Milestone, give the Principal's Representative:
- (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,
- written notice of the estimated Date of Milestone Achievement of the Milestone.
- (b) Subject to clause 17.2(g), the Principal's Representative, the LW Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the notice referred to in clause 17.2(a)(ii) jointly inspect the LW Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days after the joint inspection referred to in clause 17.2(b), the Independent Certifier must give the LW Contractor and the Principal a notice either:
- (i) containing a list of items which it believes must be completed before Milestone Achievement of the Milestone is reached; or
 - (ii) stating that it believes the LW Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to issue a list as contemplated in clause 17.2(c)(i).
- (d) When the LW Contractor considers it has achieved Milestone Achievement of the Milestone, the LW Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Part 1 of Schedule B12. Thereafter, and subject to clause 17.2(g), the Principal's Representative, the LW Contractor's Representative, the Independent Certifier and any other persons nominated by the Principal's Representative must jointly inspect the LW Contractor's Activities at a mutually convenient time.
- (e) Following the joint inspection under clause 17.2(d), the Independent Certifier must within 5 Business Days after receipt of a notice under clause 17.2(d), or of receipt of a notice under clause 17.2(f):
- (i) if Milestone Achievement of the Milestone has been reached, provide to the Principal's Representative and the LW Contractor a document signed by the Independent Certifier in the form in Part 2 of Schedule B12.
 - (ii) if Milestone Achievement of the Milestone has not been reached, issue a notice to the LW Contractor and the Principal in which it states:
 - (iii) the items which remain to be completed before Milestone Achievement of the Milestone; or
 - (iv) that the LW Contractor is so far from reaching Milestone Achievement of the Milestone that it is not practicable to notify the LW Contractor of the items which remain to be completed as contemplated by clause 17.2(e)(iii).
- (f) If the Independent Certifier issues a notice under clause 17.2(e)(iv) the LW Contractor must proceed with the LW Contractor's Activities and thereafter when it

considers it has reached Milestone Achievement of the Milestone it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 17.2(d) and 17.2(e) will reapply.

- (g) The LW Contractor acknowledges and agrees that:
- (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 17.2, including representatives of the Operator; and
 - (ii) the Principal's Representative or the Operator may provide comments to the Independent Certifier (with a copy to the LW Contractor) in relation to any non-compliance of the LW Contractor's Activities with this deed.

17.3 Unilateral Issue of Notice of Milestone Achievement

If at any time a notice required to be given by the LW Contractor to the Independent Certifier under either of clauses 17.2(c) or 17.2(e) is not given by the LW Contractor yet the Principal's Representative is of the opinion that Milestone Achievement of a Milestone has been reached, the Principal's Representative may direct the Independent Certifier to issue a Notice of Milestone Achievement under clause 17.2(e)(i) for the Milestone.

17.4 Liquidated Damages for delay in reaching Milestone Achievement in respect of a Specified Milestone

- (a) The Principal and the LW Contractor agree and acknowledge that the principles and objectives set out in clause 16.6(a) and 16.6(b) apply equally to the achievement of Milestones.
- (b) The LW Contractor acknowledges and agrees that its failure to reach Milestone Achievement of the Specified Milestones by the required Dates for Milestone Achievement in respect of the Specified Milestones will not only result in direct Losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The Loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.
- (c) The LW Contractor agrees that if it does not reach Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement of the Specified Milestone, it must pay the Principal the applicable amount for that Specified Milestone set out in Schedule A2 (each of which is exclusive of GST) for every day after the Date for Milestone Achievement of the Specified Milestone up to and including:
 - (i) the Date of Milestone Achievement of the applicable Specified Milestone; or
 - (ii) the date that this deed is validly terminated,whichever first occurs.

[REDACTED]

- (d) The parties agree that the liquidated damages provided for in clause 17.4(c):

- (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the LW Contractor to reach Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement of the Specified Milestone and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the LW Contractor; and
 - (ii) will be recoverable by the Principal from the LW Contractor as a debt due and payable.
- (e) The Principal and the LW 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.
- (f) The LW Contractor agrees to pay the liquidated damages under clause 17.4(c) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (g) The LW Contractor entered into the obligation to pay the amounts specified in clause 17.4(c) with the intention that it is a legally binding, valid and enforceable contractual provision against the LW Contractor in accordance with its terms.
- (h) The LW Contractor agrees:
 - (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
 - (ii) that if this clause 17.4 (or any part of this clause 17.4) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Project Works) as a result of the LW Contractor failing to reach Milestone Achievement of a Specified Milestone by the Date for Milestone Achievement of the Specified Milestone, but the LW Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (i) The Principal's Representative, when issuing a payment schedule pursuant to clauses 15.2(d) and 15.2(e) after the Date for Milestone Achievement of a relevant Specified Milestone, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 17.4(c) to the date of the payment schedule (despite Milestone Achievement of that Specified Milestone not having occurred).
- (j) The Principal and the LW Contractor agree that the aggregate of the amount payable under clauses 17.4(c) is limited as set out in clause 21.1(b) and is a limitation on the LW Contractor's liability to the Principal for a failure to achieve Milestone Achievement of Specified Milestones by the required Dates for Milestone Achievement.
- (k) The Principal will not be entitled to make, nor will the LW Contractor be liable upon, any Claim in these circumstances other than for the amount for which the LW

Contractor is liable under this clause 17.4 (including where applicable common law damages under clause 17.4(h)(ii)). Nothing in this clause 17.4(k) in any way limits the LW Contractor's liability where this deed is terminated by the Principal under clause 19.3 or otherwise at Law.

17.5 Effect of Notice of Milestone Achievement

- (a) A Notice of Milestone Achievement will not:
 - (i) constitute approval by the Principal, the Independent Certifier or the Principal's Representative of the LW Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the relevant Milestone complies with the requirements of this deed; or
 - (iii) prejudice any rights or powers of the Principal, the Independent Certifier or the Principal's Representative.
- (b) Without limiting clause 17.5(a), the parties agree that, in the absence of manifest error on the face of the certification, the Independent Certifier's certification as set out in a Notice of Milestone Achievement is final and binding on the parties for the purposes only of establishing that Milestone Achievement of the relevant Milestone has occurred.

17A POST CONSTRUCTION COMPLETION ACTIVITIES

The LW Contractor must:

- (a) perform the Post Construction Completion Activities from the Date of Construction Completion of the first Portion to achieve Construction Completion until the Date of Completion of the last Portion to achieve Completion; and
- (b) perform the Post Construction Completion Activities:
 - (i) in accordance with:
 - (A) the SWTC;
 - (B) any applicable Laws and Approvals; and
 - (C) Good Industry Practice; and
 - (ii) in an efficient and cooperative manner; and
- (c) allocate such resources and staff as is necessary to enable the due and proper performance of the Post Construction Completion Activities.

18. CARE OF THE PROJECT WORKS, RISKS AND INSURANCE

18.1 Responsibility for care of the Project Works

- (a) Subject to clause 18.1(d), the LW Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:
 - (i) the LW Contractor's Activities, the LW Works, the Bulk Feeder Route and any Extra Land, from the date of this deed; and

- (ii) the relevant parts of the Construction Site, from the date on which the Construction Site licence is granted under clause 7.1(b)(i),

up to and including the Date of Construction Completion for the relevant Portion.

- (b) After the time after which the LW Contractor ceases to be responsible under clause 18.1(a) for the care of a part of the Project Works or any other thing referred to in clause 18.1(a), subject to clause 18.1(d), the LW Contractor will bear the risk of any destruction, loss of or damage to that part of the Project Works or other thing, arising from:
 - (i) any act or omission of the LW Contractor during the Defects Correction Periods (including any extension under clauses 12.6(b), 12.10(a)(ii), 12.8(a)(ii) or 12.9(a)(ii)) or any other LW Contractor's Activities; or
 - (ii) any event which occurred while the LW Contractor was responsible for the care of the relevant part of the Project Works or other thing under clause 18.1(a) in connection with the LW Contractor's Activities.
- (c) Subject to clause 18.1(d), the LW Contractor must:
 - (i) in accordance with clause 18.16, (at its own cost) promptly make good destruction, loss or damage to anything caused during the period the LW Contractor is responsible for its care; and
 - (ii) indemnify the Principal against such destruction, loss or damage.
- (d) This clause 18.1 does not apply to the extent that any destruction, loss or damage for which the LW Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause results from an Excepted Risk.
- (e) Where any destruction, loss or damage arises to any extent from an Excepted Risk, the LW Contractor must where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage in which event such making good or repair will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Modification the subject of a direction by the Principal's Representative and clause 10 applies.

18.2 Indemnity by the LW Contractor

- (a) The LW Contractor must indemnify the Principal from and against:
 - (i) the loss of, loss of use of or access to (whether total or partial), or any destruction or damage to, any of the Principal's real or personal property (other than property referred to in clause 18.1 while the LW Contractor is responsible for its care);
 - (ii) any claim against the Principal or Liability the Principal may have to third parties in respect of or arising out of or in connection with:
 - (A) any illness, personal injury to, or death of, any person; or
 - (B) the loss of, loss of use of or access to (whether total or partial) or destruction or damage to any real or personal property,
- caused by, arising out of, or in any way in connection with, the LW Contractor's Activities, the Project Works or the Temporary Works or any failure by the LW Contractor to comply with its obligations under this deed; or

- (iii) any:
 - (A) Liability to or claim by any other person; or
 - (B) Loss suffered or incurred by the Principal,

arising out of, or in any way in connection with, the LW Contractor's breach of a term of this deed.
- (b) To the extent that the LW Contractor is required to indemnify the Principal from and against Consequential Loss due to loss of use or loss of access to real or personal property, the LW Contractor's liability for such Consequential Loss is limited to the extent that the LW Contractor:
 - (i) recovers its liability for such Consequential Loss under any insurance policy held by the Principal or an insurance policy required to be effected by the LW Contractor under this deed (as applicable); or
 - (ii) is indemnified or entitled to be indemnified for its liability for such Consequential Loss under an insurance policy required to be effected by the LW Contractor under this deed; or
 - (iii) would have recovered its liability or been indemnified or entitled to be indemnified for its liability (as applicable) for such Consequential Loss but for:
 - (A) the operation of any deductible or excess that the LW Contractor is required to bear under this deed; or
 - (B) any act or omission of the LW Contractor or its Associates including any failure by the LW Contractor to:
 - (aa) diligently pursue a claim under the relevant policy of insurance;
 - (bb) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
 - (cc) comply with its insurance obligations under this deed.
- (c) Where the LW Contractor indemnifies the Principal under this deed from and against any Liability, claim or Loss, the LW Contractor's liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal or its Associates contributed to the Liability, claim or Loss.
- (d) Clause 18.2(a) does not limit or otherwise affect the LW Contractor's other obligations under this deed or otherwise according to Law.
- (e) The LW Contractor is not relieved of any obligation to indemnify the Principal under this clause 18.2 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal pursuant to clause 18.3.

18.3 **Principal's insurance**

- (a) The Principal must effect and maintain insurances on the terms of the policies set out in Schedule F5.
- (b) Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the LW Contractor:

- (i) must satisfy itself of the nature and extent of the cover provided by these insurance policies;
- (ii) acknowledges that the Principal's insurances do not cover every risk to which the LW Contractor might be exposed and are subject to deductibles and limits and the LW Contractor may, if it chooses to do so, at its cost effect insurance for any risk or liability which is not covered by the Principal's insurances; and
- (iii) where the LW Contractor:
 - (A) bears the risk of the relevant destruction, loss or damage under clause 18.1, or is required to indemnify the Principal under clause 18.2, and makes a claim under any of these insurance policies in respect of the destruction, loss or damage or the event giving rise to the indemnity; or
 - (B) otherwise makes a claim under or in respect of any of these insurance policies,
 bear the cost of any excesses or deductibles in the insurance policies in Schedule F5 or any insurance taken out by the LW Contractor under clause 18.4, that may apply in those circumstances.

18.4 **LW Contractor's insurance obligations**

The LW Contractor must effect and maintain the following insurance:

- (a) workers compensation insurance referred to in clause 18.5;
- (b) asbestos liability insurance referred to in clause 18.6;
- (c) professional indemnity insurance referred to in clause 18.7;
- (d) Construction Plant insurance referred to in clause 18.8; and
- (e) motor vehicle insurance referred to in clause 18.9.

18.5 **Workers compensation insurance**

- (a) The LW Contractor must effect and maintain workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the maximum amount required by Law; and
 - (ii) in the name of the LW Contractor and (if legally possible) extended to indemnify the Principal for its statutory liability to persons employed by the LW Contractor.
- (b) The LW Contractor must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the maximum amount required by Law; and
 - (ii) in the name of the Subcontractor and (if legally possible) extended to indemnify the Principal and the LW Contractor for their statutory liability to persons employed by the Subcontractor.

Asbestos liability insurance

If the LW Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, the LW Contractor must effect and maintain (or cause to be effected and maintained) asbestos liability insurance which:

- (a) covers liability on an occurrence basis (and not a claims made basis) in respect of or in connection with the presence of asbestos and any work involving asbestos or asbestos decontamination that is caused by or arises out of or in connection with any act or omission of the LW Contractor or its Associates in connection with the carrying out of the LW Contractor's Activities; and
- (b) has a limit of indemnity of at least [REDACTED] for any one occurrence and in the aggregate.

[illegible]

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18.16 Reinstatement

If, prior to the time the LW Contractor ceases to be responsible under clause 18.1(a) for the care of a part of the Project Works or the Temporary Works or any other thing referred to in clause 18.1(a), any destruction, damage or loss occurs to the Project Works or the Temporary Works, the LW Contractor must:

- (a) make secure the LW Works and the parts of the Construction Site or Bulk Feeder Route which are still under the control of the LW Contractor in accordance with clause 7.12;
- (b) notify:
 - (i) appropriate Authorities, emergency services and the like; and
 - (ii) the insurers for assessment,and comply with their instructions; and
- (c) promptly consult with the Principal to agree on steps to be taken to ensure:
 - (i) the prompt repair or replacement of the destruction, loss or damage so that:
 - (A) it complies with the SWTC; and
 - (B) there is minimal disruption to the Project Works or the Temporary Works; and
 - (ii) that, to the greatest extent possible, the LW Contractor continues to comply with its obligations under this deed;
- (d) subject to clause 18.1(e), manage all repair and replacement activities so as to minimise the impact on the Project Works or the Temporary Works; and
- (e) keep the Principal's Representative fully informed of the progress of the repair and replacement activities.

18.17 **Application of insurance proceeds**

Where, prior to the Date of Construction Completion of the last Portion to achieve Construction Completion, the Project Works or the Temporary Works are damaged or destroyed, all insurance proceeds in respect of that damage or destruction that are payable under any insurances maintained by the Principal in accordance with clause 18.3 will be:

- (a) paid to the Principal;
- (b) paid by the Principal to the LW Contractor by progress payments under clause 15.2 as and when the LW Contractor reinstates the LW Works; and
- (c) subject to clause 18.1(e), the limit of the LW Contractor's entitlement to payment for reinstatement of the destruction, loss or damage.

18.18 **Damage to property**

- (a) Subject to clause 18.18(c), where any loss of or destruction or damage to real or personal property or the Environment (including any Utility Services but excluding the Project Works or the Temporary Works) occurs arising out of, or in any way in connection with, the carrying out by the LW Contractor of the LW Contractor's Activities or a failure by the LW Contractor to comply with its obligations under this deed, the LW Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) If the LW Contractor fails to carry out any repair work under clause 18.18(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal will be a debt due and payable from the LW Contractor to the Principal.
- (c) This clause 18.18 does not apply where the owner of the real or personal property does not agree to the LW Contractor carrying out the work under clause 18.18(a).
- (d) Nothing in this clause 18.18 limits the operation of the indemnity in clause 18.2(a).

18.19 **Risk of deductibles or excesses**

The LW Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 18 and any such amounts will not form part of the Reimbursable Costs.

19. **DEFAULT OR INSOLVENCY**

19.1 **LW Contractor's Default**

- (a) If the LW Contractor commits a breach of this deed referred to in clause 19.1(b), the Principal may give the LW Contractor a written notice.
- (b) The breaches by the LW Contractor to which this clause applies are:
 - (i) not commencing or not progressing the LW Contractor's Activities regularly and diligently in accordance with the requirements of this deed, in breach of clause 14.1;
 - (ii) suspension of work in breach of clause 14.1;
 - (iii) the LW Contractor fails to implement, comply with or otherwise diligently pursue a Recovery Plan in accordance with clause 14.6(c);

- (iv) failing to provide and maintain:
 - (A) the unconditional undertakings in accordance with clauses 5.1, 5.2 and 5.6; and
 - (B) the Parent Company Guarantees, in accordance with clause 5.9;
- (v) failing to insure or provide evidence of insurance, in breach of clause 18;
- (vi) failing to use the materials or standards of workmanship required by this deed, in breach of clause 8.1;
- (vii) not complying with any direction of the Principal's Representative made in accordance with this deed, in breach of clause 13.1(a);
- (viii) not complying with the requirements of this deed regarding the Project Plans in a material respect;
- (ix) not complying with its obligations under the SWTC with regard to the Project Plans;
- (x) not complying with its environmental obligations under this deed;
- (xi) not complying with its obligations under this deed regarding work health and safety;
- (xii) not complying with its obligations under clause 8.7;
- (xiii) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Approvals in breach of clause 6.2;
- (xiv) the failure to provide the deeds poll in accordance with clause 1.5;
- (xv) breach of the subcontracting obligations set out in each of clauses 11.3, 11.7 or 11.8;
- (xvi) failure to achieve Construction Completion of a Portion by the relevant Date for Construction Completion;
- (xvii) lack or breach of Accreditation (where it is obliged to obtain Accreditation), AEO status, ASA Authorisation, or threatened or actual suspension or revocation of Accreditation;
- (xviii) fraud of the LW Contractor in relation to Sydney Metro City & Southwest or an adverse Independent Commission Against Corruption (**ICAC**) finding is made against the LW Contractor;
- (xix) the Parent Company Guarantee becoming void or voidable; or
- (xx) any other failure to comply with a material obligation under this deed.

19.2 Contents of Notice and cure plan

A written notice under clause 19.1 must:

- (a) state that it is a notice under clause 19.1;
- (b) specify the alleged breach;

- (c) subject to clause 19.2A, require the LW Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and
- (d) subject to clause 19.2A, specify the time and date by which the LW Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

19.2A **Cure plan**

- (a) If a written notice under clause 19.2 specifies an alleged breach of clause 19.1(b)(xvi) the LW Contractor must provide a draft cure plan to the Principal within 10 Business Days.
- (b) Any draft cure plan provided by the LW Contractor must include:
 - (i) the measures that the LW Contractor considers necessary and proposes to take to achieve Construction Completion of the relevant Portion; and
 - (ii) the date by which the LW Contractor will achieve Construction Completion of the relevant Portion.
- (c) The Principal must notify the LW Contractor within 10 Business Days of receipt of a draft cure plan whether or not the Principal accepts or rejects the draft cure plan.
- (d) If the Principal accepts the draft cure plan the LW Contractor must implement and diligently pursue the cure plan as accepted (**Approved Cure Plan**).

19.3 **Rights of the Principal Following Notice**

Subject to clause 19.4, if:

- (a) by the time specified in a notice under clause 19.1, the LW Contractor fails to remedy the breach or make arrangements satisfactory to the Principal; or
- (b) the LW Contractor does not implement or diligently pursue an Approved Cure Plan or a draft cure plan is rejected by the Principal under 19.2A(c),

the Principal may, by notice in writing to the LW Contractor, forthwith:

- (c) take out of the hands of the LW Contractor the whole or part of the work remaining to be completed; or
- (d) terminate this deed.

19.4 **Immediate Termination or Take-Out**

If:

- (a) an Insolvency Event occurs:
 - (i) to the LW Contractor;
 - (ii) where the LW Contractor comprises more than one person, any one of those persons; or
 - (iii) to a person specified in Schedule A1;

- (b) the LW Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 3.5(d);
- (c) the aggregate liability of the LW Contractor to the Principal under or in connection with the LW Contract Documents is equal to or exceeds [REDACTED] of the Target Cost;
- (d) the aggregate liability of the LW Contractor to the Principal under or in connection with:
 - (i) [REDACTED]
 - (ii) clause 15.12(a) is equal to or exceeds the lesser of [REDACTED] of the Target Cost.
- (e) a Change in Control occurs in respect of an entity that comprises the LW Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 22.4(a)(i)); or
- (f) a Change in Control occurs in respect of a Parent Company Guarantor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 22.4(b)(i))

then, whether or not the LW Contractor is then in breach of this deed, the Principal may, without giving a notice under clause 19.1, exercise the right under clause 19.3(c) or 19.3(d).

19.5 **Principal's Rights After Take-Out or Termination**

- (a) If:
 - (i) the Principal:
 - (A) exercises its rights under clause 19.3(c); or
 - (B) terminates this deed under clauses 19.3(d), 19.4 or 19.9;
 - (ii) the LW Contractor repudiates this deed and the Principal otherwise terminates this deed; or
 - (iii) this deed is frustrated under the Law,
- then:
 - (iv) the LW Contractor:
 - (A) must novate to the Principal or the Principal's nominee those Subcontracts between the LW Contractor and its Subcontractors that the Principal directs by executing a deed of novation substantially in the form of Schedule A12;
 - (B) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the LW Contractor's attorney to:
 - (aa) execute, sign, seal and deliver all notices, deeds and documents; and
 - (bb) undertake actions in the name of the LW Contractor,

for the purposes referred to in clause 19.5(a)(iv)(A) when the LW Contractor fails to execute, sign, seal and deliver all notices, deeds and documents or undertake actions in the name of the LW Contractor within 5 Business Days of a written request to do so; and

- (C) must immediately handover to the Principal's Representative all copies of:
 - (aa) any documents provided by the Principal to the LW Contractor;
 - (bb) all Contract Documentation and Materials prepared by the LW Contractor to the date on which the Principal exercises its rights under clauses 19.3(c) or 19.3(d) (whether complete or not); and
 - (cc) any other documents or information in existence that is to be provided to the Principal under the terms of this deed; and
- (v) the Principal:
 - (A) will be entitled to require the LW Contractor to remove from the Construction Site, Bulk Feeder Route or any area affected by the Project Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Project Works;
 - (B) may complete that work;
 - (C) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Construction Site, Bulk Feeder Route or Extra Land as are owned by the LW Contractor and are reasonably required by the Principal to facilitate completion of the work; and
 - (D) must, if it takes possession of the items referred to in clause 19.5(a)(v)(C):
 - (aa) for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the LW Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 20; and
 - (bb) maintain the Construction Plant, Temporary Works or other things and, subject to clause 19.6, on completion of the work return to the LW Contractor the Construction Plant, Temporary Works and any things taken under clause 19.5(a)(v)(C) which are surplus.

(b) This clause 19.5 will survive the termination or frustration of this deed.

19.6 **Principal's Entitlements after Take-Out**

- (a) If the Principal exercises the right under clause 19.3(c), the LW Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the LW Contractor unless a payment becomes due to the LW Contractor under this clause 19.6.

- (b) When all of the work taken out of the hands of the LW Contractor under clause 19.3(c) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate to the LW Contractor certifying the amount.
- (c) If the cost incurred by the Principal is:
 - (i) greater than the amount that would have been paid to the LW Contractor if the LW Contractor had completed the work, the difference will be a debt due from the LW Contractor to the Principal; or
 - (ii) less than the amount that would have been paid to the LW Contractor if the LW Contractor had completed the work, the difference will be a debt due to the LW Contractor from the Principal.
- (d) Without limiting clause 19.6(c), if the Principal exercises the right under clause 19.3(c), the Principal will be entitled to recover from the LW Contractor any costs, expenses, Losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the LW Contractor is indebted to the Principal, the LW Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 19.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the LW Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the LW Contractor.

19.7 Principal's Rights after Termination

- (a) Subject to clause 19.11, if the Principal terminates this deed under clauses 19.3 or 19.4, or if the LW Contractor repudiates this deed and the Principal otherwise terminates this deed the Principal will:
 - (i) not be obliged to make any further payments to the LW Contractor, including any money that is the subject of a Payment Claim under clause 15.1(b) or a Payment Schedule under clause 15.3;
 - (ii) be absolutely entitled to call upon, convert and have recourse to and retain without limiting clause 5 the proceeds of any unconditional undertaking held under clause 5 or clause 15.15; and
 - (iii) be entitled to recover from the LW Contractor:
 - (A) any costs, expenses, Losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
 - (B) any amounts that have not been recovered by the Principal from the LW Contractor under schedule F1 in respect of Milestone Performance Payments.
- (b) This clause 19.7 survives the termination of this deed.

19.8 LW Contractor's Rights after Repudiation or Wrongful Termination

- (a) If the Principal:
 - (i) repudiates this deed and the LW Contractor terminates this deed; or

(ii) wrongfully:

- (A) exercises or attempts to exercise any right or power conferred on it by clauses 19.3, 19.4 or 19.9; or
- (B) determines or purports to determine this deed at common law,

then the:

(iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 19.9 and the LW Contractor's sole rights in such circumstances will be those set out in clause 19.10; and

(iv) LW Contractor:

- (A) will not be entitled to the payment of damages;
- (B) will not be entitled to any payment on a quantum meruit basis; and
- (C) waives all other rights it has to make a Claim in such circumstances.

(b) This clause 19.8 will survive the termination of this deed.

19.9 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 LW 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 LW Contractor; and
- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the LW Contractor's Activities or the Project Works either itself or by engaging other contractors.

19.10 Payment for Termination for Convenience

(a) If the Principal terminates this deed under clause 19.9, the LW Contractor:

- (i) will be entitled to payment of the following amounts as determined by the Principal's Representative (excluding all Excluded Costs):
 - (A) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the LW Contractor submitted a Payment Claim under clause 15.2 for work carried out to the date of termination;
 - (B) the cost of plant and materials reasonably ordered by the LW Contractor for the Project Works and for which it is legally bound to pay provided that:
 - (aa) the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (i)(A); and
 - (bb) title in the plant and materials vests in the Principal upon payment;

- (C) the reasonable cost of removing from the Construction Site or Bulk Feeder Route all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the LW Contractor's Activities that are not part of, or to be part of, the Project Works; and
- (D) the amount calculated by multiplying the percentage specified in Schedule A1 by the costs determined under sub-paragraphs (i)(B) and (i)(C), for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs (i)(B), and (i)(C); and
- (ii) must take all steps possible to mitigate the costs referred to in sub-paragraphs (i)(B), (i)(C) and (i)(D).
- (b) To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by it under clause 5 or clause 15.15 when the LW Contractor has complied with all its obligations under this clause.
- (c) The amount to which the LW Contractor is entitled under this clause 19.10 will be a limitation upon the Principal's liability to the LW Contractor arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the LW Contractor upon 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 19.10.
- (d) This clause 19.10 will survive the termination of this deed by the Principal under clause 19.9.

19.11 **Preservation of Rights**

Subject to clauses 19.8, nothing in this clause 19 or that the Principal does or fails to do pursuant to this clause 19 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 15.8) which it may have where the LW Contractor breaches (including repudiates) this deed.

19.12 **Termination by Frustration**

- (a) If under the law this deed is frustrated the Principal will:
 - (i) pay the LW Contractor the following amounts as determined by the Principal's Representative:
 - (A) an amount calculated in accordance with clause 19.10(a)(i)(A) for work carried out prior to the date of frustration;
 - (B) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 19.10(a)(i)(B); and
 - (C) the costs calculated in accordance with the terms of clause 19.10(a)(i)(C); and
 - (ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 5 when the LW Contractor has complied with its obligations under this clause.
- (b) The amount to which the LW Contractor is entitled under this clause 19.12 will be a limitation upon the Principal's liability to the LW Contractor arising out of, or in any way in connection with, the frustration of this deed and the Principal will not be

liable to the LW Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed other than for the amount payable under this clause 19.12.

- (c) Without limiting any other provision of this deed, this clause 19.12 will survive the frustration of this deed.

19.13 **Codification of LW Contractor's Entitlements**

This clause 19 is an exhaustive code of the LW Contractor's rights arising out of or in any way in connection with any termination and the LW Contractor:

- (a) cannot otherwise terminate, rescind or treat this deed as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this deed as repudiated, otherwise than in accordance with this clause 19.

20. **DISPUTE RESOLUTION**

20.1 **Disputes generally**

Any Dispute must be resolved in accordance with this clause 20.

20.2 **Independent Dispute Avoidance and Resolution Panel**

- (a) The IDAR Panel will be constituted under the IDAR Panel Agreement.
- (b) The LW Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.
- (c) Each party must:
 - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
 - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this deed; and
 - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the LW Contractor's Activities including providing all information it reasonably requests.

20.3 **Consultation**

- (a) Where a Dispute arises, the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute (**Notice of Issue**) from the dissatisfied party (**Party A**) to the IDAR Panel and the other party (**Party B**). The Notice of Issue must:
 - (i) provide brief particulars of the issues in Dispute; and
 - (ii) be issued within 10 Business Days after Party A first became aware of the fact, matter or thing on which the Dispute is based.
- (b) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel (**Nominated Member**) to review the Dispute. If:

- (i) the parties fail to reach such agreement within 2 Business Days; or
- (ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the Chair must nominate a replacement Nominated Member within a further 2 Business Days.

- (c) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.
- (d) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 20.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.
- (e) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting (**Consultation**) to facilitate genuine and good faith negotiations with a view to:
 - (i) resolving the Dispute; and
 - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) Each Consultation will be attended by:
 - (i) the Nominated Member;
 - (ii) the Principal's Representative;
 - (iii) the LW Contractor's Representative; and
 - (iv) other persons as agreed between the Principal's Representative and LW Contractor's Representative.
- (g) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree. The Nominated Member will advise the parties in writing when the Consultation process has concluded.
- (h) A failure to comply with clause 20.3(a)(ii) will be treated as a breach of this deed by the relevant party.

20.4 **Recommendation**

- (a) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:
 - (i) the formulation of the issues in Dispute;
 - (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 20.5; and
 - (iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 20.8,

(Recommendation).

- (b) Subject to clause 20.4(d), if the Dispute is not resolved within the later of:

- (i) 5 Business Days of the Recommendation; and
- (ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties (**Notice of Dispute**).

- (c) The Notice of Dispute must:

- (i) be in writing;
- (ii) state that it is a Notice of Dispute under this clause 20.4(c);
- (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
 - (A) references to any:
 - (aa) provisions of this deed; and
 - (bb) acts or omissions of any person,
 - (cc) relevant to the Dispute;
 - (B) the relief sought and the basis for claiming the relief sought; and
 - (C) copies of, or relevant extracts from, any documents in support of the claim.

- (d) If the Nominated Member makes a Recommendation:

- (i) under clause 20.4(a)(ii), the parties may accept the recommendation or clause 20.5(a) will apply; or
- (ii) under clause 20.4(a)(iii), that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 20.8, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 20.5 will apply.

20.5 Expert determination

- (a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A19.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Construction Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) The parties agree that, to the extent permitted by law:

- (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* NSW (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.
- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 20.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 20.

20.6 Notice of dissatisfaction

- (a) If:
- (i) either party is dissatisfied with a determination made by an Expert under clause 20.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties), then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,
- (Notice of Dissatisfaction).**
- (b) A Notice of Dissatisfaction issued under this clause 20.6 must:
- (i) state that it is given under this clause 20.6; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in 20.4(d)(ii), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 20.6.

20.7 Final and binding decision

- (a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 20.6, within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.
- (b) Once a determination of an Expert has become final and binding under clause 20.7(a), neither party will be entitled to challenge the determination on any basis.

20.8 Litigation or arbitration

Where this clause applies, the Principal (in its absolute discretion), may within 5 Business Days:

- (a) after issuing or receiving a Notice of Dissatisfaction; or
- (b) of reaching an agreement under clause 20.4(d)(ii),

(as applicable) issue a notice to the LW Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

20.9 **Arbitration rules**

- (a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The language of the arbitration will be English.
- (d) The parties agree:
 - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (A) the number of written submissions that will be permitted;
 - (B) where appropriate, the length of written submissions;
 - (C) the extent of document discovery permitted, if any;
 - (D) the consolidation of proceedings, when requested;
 - (E) the joinder of parties, when requested;
 - (F) the length of any hearing, if any; and
 - (G) the number of experts, if any, each party is permitted to appoint.
- (e) The parties agree that:
 - (i) subject to clause 20.12, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (ii) section 24 of the *International Arbitration Act* 1974 (Cth) will apply in an international arbitration context.
- (f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

- (g) Any award of the arbitral tribunal will be final and binding upon the parties.
- (h) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

20.10 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act* 2002 (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 20.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act* 2002 (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

20.11 Payments

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

20.12 LW Contractor to continue performing obligations

Despite the existence of any Dispute the LW Contractor must:

- (a) continue to perform the LW Contractor's Activities; and
- (b) perform its other obligations under this deed.

20.13 Urgent relief

Nothing in this clause 20 will prejudice:

- (a) the right of a party to seek urgent injunctive or declaratory relief from a court; or
- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, when enacted, or an equivalent provision under any Law.

20.14 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 20 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed;
- (c) the provisions of this clause 20 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under the LW Operator Cooperation and Integration Deed;

- (d) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the LW Operator Cooperation and Integration Deed; and
- (e) where the Dispute is a "Common Dispute", as that term is defined in clause 4 of Schedule E4, then this clause 20 will apply subject to the provisions of clause 4 of Schedule E4.

20.15 Survive termination

This clause 20 will survive termination of this deed.

21. LIABILITY

21.1 Limitation of Liability

[REDACTED]
 [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b) (7)(C), (b) (7)(D)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]

[REDACTED]
 [REDACTED]
 [REDACTED]

(b) (7)(C), (b) (7)(D)

[REDACTED]
 [REDACTED]
 [REDACTED]

[REDACTED]

(f) [REDACTED]

(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

21.2 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 21.2(a), the rights, obligations and liabilities of the Principal and the LW Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

21.3 LW Contractor not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the LW Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the LW Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the LW Contractor (whether in contract, tort or otherwise), the LW Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the LW Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

21.4 Subcontracts

The LW Contractor must:

- (a) in each Subcontract into which it enters for the carrying out of the LW Contractor's Activities include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

- (b) require each Subcontractor to include, in any further contract that it enters into with a third party for the carrying out of the LW Contractor's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

21.5 Insurance requirements

The LW Contractor must ensure that all policies of insurance covering third party liability which it is required by this deed to effect or maintain (including the policies set out in clauses 18.6, 18.7 and 18.9):

- (a) cover the LW Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
- (b) do not exclude any potential liability the LW Contractor may have to the Principal under or by reason of this deed.

21.6 Provisions Limiting or Excluding Liability

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

22. GENERAL

22.1 Notices generally

- (a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time, the Principal's Representative may notify the LW Contractor that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the LW Contractor to use the PDCS;
 - (iv) any requirements for specific notices (eg notices of Claims);
 - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and
 - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time, the Principal's Representative may notify the LW Contractor that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 22.1(d)(i).
- (d) Each Notice must:

- (i) before the date referred to in clause 22.1(b)(ii) or where clause 22.1(c) applies:
- (A) be in writing;
 - (B) be addressed:
 - (aa) in the case of a Notice from the LW Contractor, to the Principal's Representative and any additional person notified by the Principal in writing; or
 - (bb) in the case of a Notice from the Principal, to the LW Contractor's Representative; or
 - (C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
 - (D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

Principal

Name: Sydney Metro, a New South Wales Government agency

Address: Level 43, 680 George Street
Sydney NSW
2000

Email: [REDACTED]

For the attention of: the Principal's Representative and any additional person notified by the Principal in writing (any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to [REDACTED]).

LW Contractor

Name: Systems Connect

Address: To be notified

Email: [REDACTED]

For the attention of: [REDACTED], the LW Contractor's Representative

- (ii) from the commencement date for use of the PDCS referred to in clause 22.1(b)(ii) and other than where clause 22.1(c) applies:
- (A) be sent through the PDCS in accordance with the requirements set out in clause 22.1(f) and:

- (aa) in the case of a Notice from the LW Contractor, be addressed to the Principal's Representative and any additional person notified in accordance with clause 22.1(b)(v) and comply with any requirements notified in accordance with clause 22.1(b)(iv); or
 - (bb) in the case of a Notice from the Principal, be addressed to the LW Contractor's Representative; or
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 22.1(d)(i).
- (e) A communication is taken to be received by the addressee:
 - (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email):
 - (A) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
 - (B) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day,

provided that if the communication is received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.
- (f) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to paragraph 22.1(f)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) .pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (g) The LW Contractor must:

- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
- (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
- (iii) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
- (iv) advise the Principal's Representative of which personnel require access to the PDCS;
- (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
- (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 22.1(d)(ii)(B) to the Principal's Representative through the PDCS.

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

22.2 **Governing Law**

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

22.3 **No Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.
- (b) Any waiver or consent given by the Principal under this deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this deed; or
 - (ii) any other failure by the LW Contractor to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this deed or failure to comply with any other requirement of this deed.

22.4 **Assignment and Change in Control**

- (a) **Change in Control of an entity that comprises the LW Contractor**

- (i) Subject to the terms of this clause 22.4(a), the LW Contractor must ensure that there is no Change in Control of any entity that comprises the LW Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (ii) The LW Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the LW Contractor, and provide:
 - (A) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (B) all other information necessary for the Principal to determine whether to exercise its rights under clause 22.4(a)(iv), in relation to the Change in Control of the relevant entity that comprises the LW Contractor.
- (iii) The Principal's approval is not required for a Change in Control arising from:
 - (A) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (B) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the LW Contractor gives the Principal prior written notice of the transfer.
- (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the LW Contractor where the Principal is of the reasonable opinion that:
 - (A) the person or entity which will exercise Control of the LW Contractor or the relevant entity that comprises the LW Contractor:
 - (aa) is not solvent and reputable;
 - (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
 - (B) as a result of the Change in Control, the LW Contractor will no longer:
 - (aa) have sufficient expertise and ability; or
 - (bb) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the LW Contractor under this deed.
- (v) If a Change in Control of any entity that comprises the LW Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 22.4(a)(iii)), the LW Contractor acknowledges that the Principal may terminate this deed by notice in writing to the LW Contractor.

- (vi) The Principal's approval of a Change in Control of any entity that comprises the LW Contractor will not relieve the LW Contractor of any of its obligations under this deed.

(b) **Change in Control of a Parent Company Guarantor**

- (i) Subject to the terms of this clause 22.4(b), the LW Contractor must ensure that there is no Change in Control of a Parent Company Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (ii) The LW Contractor must notify the Principal in writing of any Change in Control of a Parent Company Guarantor, and provide:
 - (A) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (B) all other information necessary for the Principal to determine whether to exercise its rights under clause 22.4(b)(iv), in relation to the Change in Control of that Parent Company Guarantor.
- (iii) The Principal's approval is not required for a Change in Control arising from:
 - (A) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (B) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the LW Contractor gives the Principal prior written notice of the transfer.
- (iv) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a Parent Company Guarantor where the Principal is of the reasonable opinion that:
 - (A) the person or entity which will exercise Control of the relevant Parent Company Guarantor:
 - (aa) is not solvent and reputable;
 - (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
 - (B) as a result of the Change in Control, the relevant Parent Company Guarantor will no longer:
 - (aa) have sufficient expertise and ability; or
 - (bb) be of sufficiently high financial and commercial standing,to properly carry out the obligations of the Parent Company Guarantor under the relevant Parent Company Guarantee.

- (v) If a Change in Control of a Parent Company Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 22.4(b)(iii)), the LW Contractor acknowledges that the Principal may terminate this deed by notice in writing to the LW Contractor.
- (vi) The Principal's approval of a Change in Control of a Parent Company Guarantor will not relieve the LW Contractor of any of its obligations under this deed.

(c) **Assignment by the LW Contractor**

The LW Contractor cannot assign, transfer or novate any of its rights or liabilities under this deed without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.

(d) **Assignment and Novation by the Principal**

- (i) Without limiting clause 22.20, the Principal may:

- (A) assign, novate or otherwise transfer all or any part of its rights under this deed without the LW Contractor's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State; and
- (B) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the LW Contractor's prior written consent (which must not be unreasonably withheld or delayed),

and may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the LW Contractor.

- (ii) The LW Contractor agrees to such assignment, novation or transfer under clause 22.4(d)(i)(A) such that no further consent is required.

- (iii) In the case of a novation by the Principal under this clause:

- (A) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the LW Contractor against one another under this deed will cease;
- (B) the novated agreement will be on the same terms as this deed, such that the incoming party and the LW Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 22.4(d)(iii)(A), except that the incoming party replaces the Principal for all purposes under the agreement; and
- (C) the LW Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.

- (iv) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

22.5 Entire Agreement

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

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

22.6 Joint and Several Liability

- (a) The rights and obligations of the LW Contractor, if more than one person, under this deed, are joint and several.
- (b) Each person constituting the LW 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 and the Principal may proceed against any or all of them.

22.7 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.

22.8 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) Nothing in this clause 22.8 prevents any other provision of this deed, as a matter of interpretation also surviving the termination of this deed.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



22.9 Stamp Duty and Other Fees

The LW 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.

22.10 Taxes

Without limiting clause 6 but subject to clause 15.14, the LW Contractor must pay all Taxes that may be payable in respect of the LW Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the LW Contractor's Activities.

22.11 Confidentiality

- (a) Subject to clause 22.11(b), the LW Contractor must:
 - (i) keep confidential this deed, all Information Documents and any information relating to the LW Contractor's Activities and any discussions concerning this deed or any Information Documents;
 - (ii) not use the information referred to in sub paragraph (a)(i) except as necessary for the performance of the LW Contractor's Activities; and
 - (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).
- (b) The LW Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the LW Contractor; or
 - (ii) the disclosure of which is:
 - (A) required by Law;
 - (B) required by the ASX or a recognised stock exchange
 - (C) consented to in writing by the Principal; or
 - (D) given to a court in the course of proceedings to which the LW Contractor is a party.

The LW Contractor acknowledges and agrees that if any disclosure of information is required by the ASX or a recognised stock exchange under clause 22.11(b)(ii)(B), the LW Contractor must, where possible, first consult with, and endeavour to accommodate comments from, the Principal as to the contents of that announcement or statement and must use its best efforts to limit the release of any information.

- (c) Nothing in this clause 22.11 prevents the LW Contractor from sharing information referred to in clause 22.11(a)(i) with Related Bodies Corporate of the LW Contractor as necessary for the performance of the LW Contractor's Activities provided the LW Contractor ensures that such Related Bodies Corporate comply with the confidentiality obligations under this deed and the Confidentiality Undertaking.

- (d) The LW Contractor must:
 - (i) execute and submit to the Principal within 14 days of the date of this deed a Confidentiality Undertaking in the form of Schedule B7;
 - (ii) ensure that all employees of the LW Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor to the LW Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (e) The LW Contractor acknowledges that the Principal may disclose this deed (and information concerning the terms of this deed) under or in accordance with any one or more of the following:
 - (i) the Government Information (Public Access) Act 2009 (NSW);
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
 - (iii) any other Law.
- (f) The LW Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 22.11(e).

22.12 **Principal May Act**

- (a) The Principal may, either itself or by a third party, perform an obligation under this deed that the LW Contractor was obliged to perform but which it failed to perform.
- (b) The costs, Losses, liabilities, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the LW Contractor to the Principal.
- (c) Where the Principal or the Principal's Representative is entitled under this deed to exercise any right or power to:
 - (i) direct or instruct the LW Contractor to; or
 - (ii) itself step-in to,take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.
- (d) Where the Principal or the Principal's Representative does exercise any such right or power, the LW Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Project Works.

22.13 **Process Agent**

If the LW Contractor is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the LW Contractor must:

- (a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and

- (b) obtain the process agent's consent to the appointment.

22.14 **Variations**

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

22.15 **Prior Work**

The LW Contractor agrees that the work in connection with the LW Contractor's Activities carried out by the LW Contractor prior to the date of this deed will be deemed to be governed by the provisions of this deed and will be deemed to be part of the LW Contractor's Activities and any payments made to the LW Contractor by the Principal prior to the date of this deed in respect of the LW Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this deed.

22.16 **Counterparts**

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

22.17 **Personal Property Securities Act**

- (a) By signing this deed, the LW Contractor acknowledges and agrees that if this deed and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (**Security Interest**), the LW Contractor must do anything (including amending this deed or any other document, executing any new terms or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this deed.
- (b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the LW Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) The LW Contractor:
 - (i) acknowledges that the Security Interests created under or pursuant to this deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement (as defined under the PPS Act) without the prior written consent of the Principal.

- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The LW Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

22.18 **Vienna Convention**

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

22.19 **No Merger**

Terms contained in this deed which are capable of taking effect, or capable of continuing after Completion, will remain in full force and effect and will not merge on Completion.

22.20 **Transfer of Functions or Public Transport Agency Assets**

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to another entity, then other than as notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may, or may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets.
- (b) The LW Contractor acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The LW Contractor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by clause 22.20.
- (d) For the purposes of this clause 22.20:
 - (i) 'another entity' means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation; and

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

23. NOTIFICATION OF CLAIMS

23.1 Notice of Modification

If a direction by the Principal's Representative, other than a Modification Order under clause 10.6, constitutes or involves a Modification, the LW Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

- (a) within the time specified in Schedule A1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, as required under clause 23.3(a), that it considers the direction constitutes or involves a Modification;
- (b) within the time specified in Schedule A1, submit a written Claim to the Principal's Representative, which includes the details required by clause 23.3(b); and
- (c) continue to carry out the LW Contractor's Activities in accordance with this deed and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 23.1.

23.2 Notice of Other Claims

If the LW Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed, the LW Contractor's Activities or the Project Works, including anything in respect of which:

- (a) it is otherwise given an express entitlement under this deed; or
- (b) this deed expressly provides that:
 - (i) specified costs are to be added to any component of the Contract Price; or
 - (ii) any component of the Contract Price will be otherwise increased or adjusted,

as determined by the Principal's Representative, the LW Contractor must give the Principal's Representative:

- (c) the notice required by clause 23.3(a); and
- (d) a Claim in accordance with clause 23.3(c).

23.3 Prescribed Notices

- (a) Any written notice referred to in clauses 23.1(a) and 23.2(c) must:
 - (i) be provided not later than the time specified in Schedule A1 after the LW Contractor:
 - (A) receives the direction (in respect of a notice under clause 23.1(a)); or
 - (B) first becoming aware (or when it ought reasonably to have first become aware) of the alleged entitlement arising as a result of an

event, circumstance, act, omission, fact, matter or thing (in respect of a notice under clause 23.2(c)); and

- (ii) expressly specify:
 - (A) that the LW Contractor proposes to make a Claim; and
 - (B) the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 23.1(b) must include:
 - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this deed or other legal basis upon which the Claim is based; and
 - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 23.2(d) must:
 - (i) be provided not later than the time specified in Schedule A1; and
 - (ii) include:
 - (A) detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (B) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (D) details of the amount claimed and how it has been calculated.
- (d) Clauses 23.1(b) and 23.2(d) are subject to the provisions of clause 13.21(e).

23.4 **Register of potential claims**

The LW Contractor must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the LW Contractor under clauses 23.1(a) and 23.3(a) and provide a copy of this register to the Principal's Representative at least 3 Business Days in advance of each meeting of the Management Review Group. This register must be in a form acceptable to the Principal and must include, for each potential Claim, the claim number, a brief description, the date of the potential Claim, any agreed next steps and the status of such next steps.

23.5 **Submission of Claims**

- (a) Claims submitted by the LW Contractor under clauses 23.1(b) and 23.2(d) will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

- (b) If within 20 Business Days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 20th Business Day.

23.6 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the LW Contractor must continue to give the information required by clause 23.3(b) or 23.3(c) every 20 Business Days after the written Claim under clause 23.1(b) or 23.2(d) (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

23.7 Bar

If the LW Contractor fails to comply with clauses 6.1, 6.2, 6.3, 6.4, 6.5, 14.6, 23.1, 23.2, 23.3 or 23.6:

- (a) the Principal will not be liable upon any Claim by the LW Contractor; and
- (b) the LW Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

23.8 Other Provisions Unaffected

Nothing in clauses 23.1 to 23.7 will limit the operation or effect of any other provision of this deed that requires the LW Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

24. REPRESENTATIONS AND WARRANTIES

24.1 Principal representations and warranties

The Principal represents and warrants for the benefit of the LW Contractor that:

- (a) it is a NSW Government agency validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed (or will have them in full force and effect at the time the obligation is to be performed);
- (c) this deed constitutes a valid and legally binding obligation on it in accordance with its terms; and
- (d) the execution, delivery and performance of this deed does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

24.2 LW Contractor Representations and Warranties

The LW Contractor represents and warrants for the benefit of the Principal that:

- (a) is duly registered and remains in existence;

- (b) the execution, delivery and performance of this deed does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all action required to enter into this deed and to authorise the execution and delivery of this deed and the satisfaction of its obligations under it;
- (d) this deed constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (h) there has been no material change in the financial condition of the LW Contractor (since the date of its last audited accounts) which would prejudice the ability of the LW Contractor to perform its obligations under this deed;
- (i) the most recently published financial statements of the LW Contractor has been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the LW Contractor;
- (j) the LW Contractor is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with the LW Contractor; and
- (k) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this deed.

24.3 **Repetition of representation and warranties**

The representations and warranties contained in clauses 24.2(h), 24.2(i), 24.2(j) and 24.2(k) are made on the date of this deed. Each other representation and warranty contained in this clause 24:

- (a) is made on the date of this deed; and
 - (b) will be deemed to be repeated on each anniversary of the date of this deed,
- with reference to the facts and circumstances then subsisting.

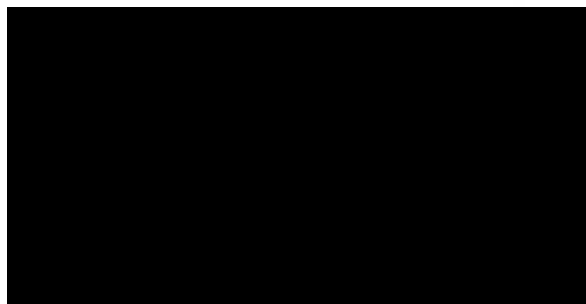
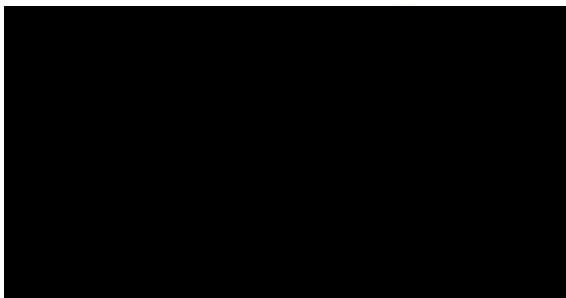
CONTRACT EXECUTION PAGE

DATED^{20th}..... day of NOVEMBER 2018.....

Executed and delivered as a Deed in Sydney

Principal

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



LW Contractor

