

## Schedule 8 – Cost Risk Sharing

(clauses 11.5 and 28.17)

### 1. Interpretation

#### 1.1 Definitions

In this Schedule 8 (*Cost Risk Sharing*):

**Actual Outturn Cost** means the aggregate of all Allowable Costs.

**AIQS** means the Australian Institute of Quantity Surveyors.

**Allowable Costs** means:

- (a) all costs and expenses directly, reasonably and actually incurred and payable by OpCo, the D&C Contractor or a Significant Contractor to OpCo Contractors for the performance of the Delivery Activities with respect to the CRS Scope (other than the Contamination Scope Element) under and in accordance with Approved Subcontracts; and
- (b) with respect to the Contamination Scope Element, the Allowable Costs determined in accordance with clause 10,

but excluding:

- (c) any Excluded Costs; and
- (d) any amounts that are stated in this Schedule 8 (*Cost Risk Sharing*) to not be Allowable Costs,

in each case as certified by the CRS Estimator.

**Approved Subcontract** means:

- (a) the D&C Contract;
- (b) a Subcontract to which OpCo, the D&C Contractor or a Significant Contractor is a party; or
- (c) an amendment agreement with respect to a Subcontract to which OpCo, a D&C Contractor or a Significant Contractor is a party,

in the case of paragraphs (b) and (c), to the extent that it solely relates to the CRS Scope and is entered into in accordance with and satisfies the requirements in clause 9.2(a).

**Contamination Scope Element** means the OpCo's Activities that OpCo performs, or is required to perform, to comply with its obligations under this deed with respect to Contamination, excluding to the extent:

- (a) the relevant OpCo's Activities arise out of or in connection with any Contamination for which OpCo is responsible under clauses 11.5(a)(i)(C), 11.5(a)(ii)(B), 11.5(a)(ii)(C) or 11.5(a)(iii) of the Operative Provisions;
- (b) the relevant OpCo's Activities arise as a result of a failure by OpCo to comply with its obligations under the Project Deed or any other Project Agreement; or
- (c) the relevant Contamination is the subject matter of a Compensation Event under paragraphs (f) or (u) of that definition.

**Cost Plan** means the cost plan with respect to the CRS Scope prepared and approved by the CRS Estimator in accordance with clause 12, as updated in accordance with clause 12.

**Cost Breakdown (Initial)** means the document contained in Attachment 5.

**CRS Change Event** means a CRS Modification or a CRS Relief Event.

**CRS Change Amount** means, with respect to a CRS Change Event, the net incremental costs that would be recoverable by OpCo in accordance with this deed with respect to that CRS Change Event, excluding:

- (a) with respect to the Non CRS OpCo's Activities; and
- (b) prolongation or delay costs,

but for the fact that under this Schedule 8 (*Cost Risk Sharing*) OpCo bears the risk of funding of the Allowable Costs in excess of the Target Outturn Cost (Day 1 Funded). For the avoidance of doubt, whereas the Relevant Percentage is added to determine the Target Outturn Cost (Day 1 Funded) and the Target Outturn Cost (Completion), the Relevant Percentage is not added to determine any CRS Change Amount.

**CRS Estimator** means the independent person or persons engaged from time to time by OpCo in accordance with clause 11.1(a) to perform the role set out for the CRS Estimator in this Schedule 8 (*Cost Risk Sharing*).

**CRS Estimator Deed Poll** means a deed poll executed by the CRS Estimator in favour of the Principal in or substantially in the form of the deed poll in Attachment 3, with such amendments as OpCo and the Principal may agree (each, acting reasonably).

**CRS Modification** means a Modification with respect to the Delivery Activities with respect to the CRS Scope and includes a Significant CRS Modification.

**CRS Relief Event** means a Relief Event that affects the Delivery Activities with respect to the CRS Scope.

**CRS Scope** means those of the OpCo's Activities that are 'CRS Scope' in accordance with Attachment 1.

**CRS Scope Element** means any OpCo's Activity or OpCo's Activities specified as a "CRS Scope Element" in the Cost Plan, as adjusted with the approval of the Principal's Representative and OpCo's Representative (each, acting reasonably).

**CRS Scope Element Amount** means, with respect to any CRS Scope Element, the amount specified in the Cost Plan with respect to that CRS Scope Element, as adjusted in accordance with clause 7, and otherwise as adjusted with the approval of the Principal's Representative and OpCo's Representative (each, acting reasonably).

**CRS Scope Element Fix Date** means, with respect to any CRS Scope Element, 30 June 2024, as adjusted with the approval of the Principal's Representative and OpCo's Representative.

**Excluded Costs** means any Loss or other amount paid or payable (directly or indirectly) by OpCo or an OpCo Contractor (for the purposes of this definition, the **Tendering Subcontractor**):

- (a) with respect to design (except to the extent arising as a direct result of a TOC Adjustment Event, to the extent such costs are recoverable under the Operative Provisions and Schedule 6 (*Net Financial Impact*));
- (b) to a person other than an OpCo Contractor (including the Principal);
- (c) in the case of CRS Scope (other than the Contamination Scope Element), with respect to Subcontracts that are not Approved Subcontracts;
- (d) with respect to the correction of defective design work or the rectification of any Defect or any breach or other act or omission of OpCo, OpCo Contractors or their respective Associates under or in connection with this deed or a Subcontract;
- (e) for the reinstatement of any destruction, damage or loss occurring to the SSTOM Works for which OpCo bears the risk under this deed;
- (f) for the remediation of Contamination to the extent caused or contributed to by OpCo, OpCo Contractors or their respective Associates;
- (g) to the extent that OpCo or the Tendering Subcontractor:
  - (i) recovers insurance proceeds under any insurances; or
  - (ii) would have recovered under such insurances if OpCo or the Tendering Subcontractor had:
    - (A) effected and maintained the relevant insurances as required under this deed;
    - (B) complied with the relevant insurances;

- (C) submitted a claim where there was a legitimate entitlement to do so; and
  - (D) diligently pursued the claim;
- (h) the cost of:
  - (i) Professional Service Providers (except where approved by the Principal for defence of a dispute); and
  - (ii) third party designers and technical advisors (including architects, engineers or other design consultants), other than to the extent arising as a direct result of a TOC Adjustment Event,

incurred by OpCo or the Tendering Subcontractor arising out of or in connection with any Subcontract;
- (i) that is not properly incurred in respect to performing the CRS Scope;
- (j) that is attributable to the termination of a Subcontract and engagement of a replacement OpCo Contractor;
- (k) that is in the nature of liquidated damages;
- (l) that is a Pain Share Amount or Net Gain Share Amount or a pass through to an OpCo Contractor of any part of a Pain Share Amount or Net Gain Share Amount;
- (m) under any indemnity in this deed or a Subcontract;
- (n) which OpCo or the Tendering Subcontractor cannot substantiate on an arm's length or Open Book Basis;
- (o) with respect to:
  - (i) a Fixed Price Scope, all costs in excess of the agreed fixed lump sum price for that Fixed Price Scope (as varied pursuant to approved variations to the Subcontract under which the Fixed Price Scope will be self performed); and
  - (ii) a CRS Change Event, all costs in excess of the CRS Change Amount with respect to that CRS Change Event;
- (p) that is in the nature of prolongation or delay costs (other than arising as a direct result of:
  - (i) a TOC Adjustment Event; or
  - (ii) a Modification Order with respect to the Delivery Activities with respect to the CRS Scope where the requirements of clause 6.2(a)(iii) have been satisfied,

to the extent such costs are recoverable under the Operative Provisions and Schedule 6 (*Net Financial Impact*));
- (q) in connection with the procurement of Extra Land;
- (r) under the IDAR Panel Agreement;
- (s) in connection with its participation in the process of engaging and consulting with the Principal and other relevant stakeholders as part of undertaking OpCo's obligations under the SSTOM Specification, including section 7 of the General Specification;
- (t) all costs associated with the Stakeholder Engagement Plan;
- (u) with respect to the Contamination Scope Element, other than the amounts calculated in accordance with clause 10;
- (v) with respect to Non CRS Schedule OpCo's Activities;
- (w) with respect to any activities self performed by OpCo, the D&C Contractor or any of their Related Bodies Corporate, other than as permitted by clause 9.3;
- (x) that are in respect of or are in the nature of:
  - (i) Margin, Margin Elements, Offsite Overheads, On-Site Overheads or Preliminaries (each, as defined in Schedule 6 (*Net Financial Impact*));
  - (ii) finance costs, overheads or preliminaries; or

- (iii) any profit, margin or mark up of any kind, of OpCo or of the D&C Contractor, O&M Contractor or Significant Contractor, other than:
  - (iv) with respect to a TOC Adjustment Event, Margin and Preliminaries calculated in a manner consistent with Schedule 6 (*Net Financial Impact*);
  - (v) in the case of a Significant Contractor that self performs the Contamination Scope Element, Margin and Preliminaries with respect to the Contamination Scope Element to the extent reflected in clause 3.2 (*Reuse/Offsite Disposal Rates*) of Schedule 7 (*Schedule of Rates*) or as contemplated by clause 10(a)(ii); and
  - (vi) in the case of a Significant Contractor, Margin and Preliminaries with respect to any part of the CRS Scope (other than the Contamination Scope Element) that is being self performed by that Significant Contractor under an Approved Subcontract, calculated in a manner consistent with Schedule 6 (*Net Financial Impact*); or
- (y) that is expressed to be an Excluded Cost under this Schedule 8 (*Cost Risk Sharing*).

**Fixed Price Scope** has the meaning given in clause 5(d).

**Gain Share Amount** means ■■■ of the greater of:

- (a) the Target Outturn Cost (Completion) less the Actual Outturn Cost (each, as calculated on the Date of Completion); and
- (b) nil.

**Net Gain Share Amount** means:

- (a) where the Gain Share Amount is nil, nil; and
- (b) otherwise, the greater of:
  - (i) the Target Outturn Cost (Day 1 Funded) plus the CRS Change Amount with respect to TOC Adjustment Events less the Actual Outturn Cost; and
  - (ii) nil,
 less the Gain Share Amount.

**Net Pain Share Amount** means the Pain Share Amount less the Prepaid Pain Share Amount.

**Non CRS Schedule OpCo's Activities** means the OpCo's Activities excluding the Delivery Activities with respect to the CRS Scope. For the avoidance of doubt, it includes the Operations Activities with respect to the CRS Scope.

**Pain Share Amount** means ■■■ of the greater of:

- (a) the Actual Outturn Cost less the Target Outturn Cost (Completion) (each, as calculated on the Date of Completion); and
- (b) nil.

**Prepaid Pain Share Amount** means the Allowable Costs in excess of the sum of:

- (a) the Target Outturn Cost (Day 1 Funded); and
- (b) the CRS Change Amount with respect to TOC Adjustment Events, paid by OpCo prior to Completion (and not funded by the Principal under clause 3.2(a) or clause 3.2(b)) up to an amount not greater than ■■■ of the difference between:
- (c) the aggregate of the Allowable Costs as at the Date of Completion; and
- (d) the sum of:
  - (i) the Target Outturn Cost (Day 1 Funded); and
  - (ii) the CRS Change Amount with respect to TOC Adjustment Events.

For the avoidance of doubt, the Prepaid Pain Share Amount may be negative.

**Relevant Percentage** means:

- (a) on Financial Close, [REDACTED] and
- (b) on and after Financial Close:
  - (i) subject to sub-paragraph (ii), [REDACTED]; and
  - (ii) with respect to CRS Scope Element (other than the Contamination Scope Element) that did not become a Fixed Price Scope prior to its CRS Scope Element Fix Date, [REDACTED].

**RICS** means the Royal Institute of Chartered Surveyors.

**Self Performed Work** means the part of the CRS Scope to be performed by OpCo or the Core Contractor themselves or by any of their Related Bodies Corporate as approved by the Principal under clause 9.3.

**Significant CRS Modification** means a significant change, amendment or alteration to the CRS Scope or a significant change to the fundamental requirements of the CRS Scope (or a series of such changes, amendments or alterations of the same type with respect to the same subject matter), such as and including:

- (a) changes to overall total length of precinct roads are 10% greater than area set at Financial Close;
- (b) increases to the total precinct or corridor areas are 10% greater than area set at Financial Close; and
- (c) additional utilities connections for development (to that defined at Financial Close).

For the avoidance of doubt it does not include any difference between the volume or type of Contamination actually forming part of the Contamination Scope Element and that forecast, anticipated or assumed by OpCo as at Contract Close or Financial Close (but may include a significant difference that arises as a direct result of a Modification directed by the Principal in accordance with this deed, that is itself a Significant CRS Modification).

**Station Precinct Areas** means the areas as defined by the battery limits on the drawings in Part B of Attachment 1.

**Subcontract Packaging and Procurement Plan** means the plan of that name prepared with respect to the CRS Scope under and in accordance with Attachment 2 and approved by the Principal (acting reasonably).

**Target Outturn Cost** or **TOC** means the Target Outturn Cost (Bid) as adjusted in accordance with clause 7.

**Target Outturn Cost (Day 1 Funded)** means:

- (a) the Target Outturn Cost (Bid); plus
- (b) the Relevant Percentage (as at Financial Close) multiplied by the Target Outturn Cost (Bid).

**Target Outturn Cost (Bid)** means [REDACTED]

**TOC Adjustment Event** means:

- (a) a Significant CRS Modification; and
- (b) a Compensation Event, other than a Compensation Event of the type referred to in paragraphs (f), (i), (j), (q), (t) and (u) of that definition.

## 2. Core CRS obligations

OpCo must:

- (a) use its best endeavours to:
  - (i) provide the Principal with price certainty with respect to the CRS Scope as soon as reasonably practicable, and on a value for money basis; and
  - (ii) ensure that it achieves completion of the CRS Scope in accordance with the Cost Plan and so that the Actual Outturn Cost does not exceed the Target Outturn Cost; and
- (b) work together with the Principal in good faith on a co-operative and collaborative basis to anticipate, identify, consider, mitigate and resolve issues and potential issues that will or may adversely impact the achievement of the objectives in clause 2(a).

### 3. Funding of CRS

#### 3.1 As at Financial Close

The parties acknowledge and agree that:

- (a) OpCo has privately financed an amount equal to approximately [REDACTED] of the Target Outturn Cost (Day 1 Funded);
- (b) OpCo will recover this amount through the Service Payments and the Service Payments contain a sufficient allowance for the recovery of this amount and the cost of financing this amount;
- (c) OpCo will bear the risk of funding [REDACTED] of the Allowable Costs in excess of the Target Outturn Cost (Day 1 Funded) (other than, subject to Schedule 6 (*Net Financial Impacts*), the CRS Change Amounts with respect to TOC Adjustment Events); and
- (d) an amount equal to approximately [REDACTED] of the Target Outturn Cost (Day 1 Funded) forms part of the Capital Contribution and the Principal will fund this amount in accordance with clause 28.2 (*Capital Contribution*) of the Operative Provisions.

#### 3.2 When Actual Outturn Costs exceed Target Outturn Cost (Day 1 Funded)

- (a) If and from such time as the CRS Estimator has certified that the Actual Outturn Cost exceeds the Target Outturn Cost (Day 1 Funded), OpCo will be entitled (outside of the Capital Contribution regime) to submit a monthly progress claim with respect to [REDACTED] of any Allowable Costs (other than with respect to the CRS Change Amount for any TOC Adjustment Event) that exceed the Target Outturn Cost (Day 1 Funded) in accordance with clause 28.5 (*Payment claims for Service Payments and other amounts*) of the Operative Provisions.
- (b) With respect to the CRS Change Amount and delay or prolongation costs for a TOC Adjustment Event, OpCo will be entitled to be paid the CRS Change Amount and delay or prolongation costs in accordance with Schedule 6 (*Net Financial Impacts*) and clause 28 (*Payment provisions*) of the Operative Provisions.
- (c) The parties acknowledge and agree, for the purposes of clauses 7.1(a)(iv) and 7.1(b) (*If agreed*) of Schedule 6 (*Net Financial Impact*), that this Schedule 8 (*Cost Risk Sharing*) constitutes their agreement for the arrangements by which OpCo will be compensated by the Principal with respect to the Net Financial Impact of CRS Change Events.

### 4. CRS payments

#### 4.1 CRS payment obligations

- (a) This clause 4 will apply exclusively and only to the Delivery Activities with respect to the CRS Scope and will not apply to any other SSTOM Works or OpCo's Activities. OpCo must not claim Allowable Costs for, and is not entitled to payment of Allowable Costs, for any work, activity or thing which is not a Delivery Activity with respect to CRS Scope.
- (b) Subject to the terms of this Schedule 8 (*Cost Risk Sharing*):

- (i) OpCo will pay to the Principal the Net Gain Share Amount (if that amount is positive) on Completion, by way of offset as contemplated by clause 4.2(c) or as otherwise agreed by the parties under clause 4.2(c);
- (ii) OpCo will pay to the Principal the Net Pain Share Amount (if that amount is positive) on Completion, by way of offset as contemplated by clause 4.2(c) or as otherwise agreed by the parties under clause 4.2(c);
- (iii) the Principal will pay to OpCo the absolute value of the Net Gain Share Amount (if that amount is negative) in accordance with clause 4.2(d); and
- (iv) the Principal will pay to OpCo the absolute value of the Net Pain Share Amount (if that amount is negative) in accordance with clause 4.2(d).

## 4.2 Payment of Net Gain Share Amount and Net Pain Share Amount

- (a) As a condition precedent to Final Completion being achieved:
  - (i) OpCo must provide to the Principal and the CRS Estimator a certificate signed by two directors of OpCo, in the form of Part M of Schedule 34 (*Certificates*), certifying:
    - (A) the aggregate of the Allowable Costs as at the Date of Completion;
    - (B) the Target Outturn Cost (Completion);
    - (C) the Pain Share Amount and the Prepaid Pain Share Amount (if applicable); and
    - (D) the Net Gain Share Amount or the Net Pain Share Amount (each, as calculated at Completion) (as applicable),
 together with all documents and information necessary for the Principal to verify those certifications; and
  - (ii) the CRS Estimator must notify the Principal and OpCo that it accepts the amounts and calculations specified in the certificate provided by OpCo under clause 4.2(a).
- (b) Within 10 Business Days after receiving the certificate provided by OpCo under clause 4.2(a), the CRS Estimator will give OpCo written notice that:
  - (i) the CRS Estimator accepts the amounts and calculations specified in the certificate; or
  - (ii) the CRS Estimator does not accept any of the amounts and calculations specified in the certificate and the reasons for the CRS Estimator's determination, in which case OpCo must provide a new certificate that addresses the CRS Estimator's comments and clauses 4.2(a)(i) and 4.2(b) will reapply.
- (c) Where the certificate accepted by the CRS Estimator under clause 4.2(b) discloses:
  - (i) a positive Net Pain Share Amount; or
  - (ii) a positive Net Gain Share Amount,
 the Principal will offset to the fullest extent the Net Pain Share Amount or the Net Gain Share Amount (as applicable) payable to the Principal against the first Service Payment (and, to the extent necessary, the immediately following Service Payments) payable by the Principal to OpCo (unless the parties agree that the Net Pain Share Amount or Net Gain Share Amount is to be paid by OpCo in some other manner, including as a lump sum on Completion).
- (d) Where the certificate accepted by the CRS Estimator under clause 4.2(b) discloses:
  - (i) a negative Net Pain Share Amount; or
  - (ii) a negative Net Gain Share Amount,
 OpCo will be entitled to submit a claim for payment under clause 28.5 (*Payment claims for Service Payments and other amounts*) of the Operative Provisions for the absolute value of the relevant amount at the same time at which it submits its next claim for a Service Payment.

## 5. Fixing the price of the CRS Scope Elements

- (a) OpCo acknowledges that (all other things being equal) the Principal's preference is to obtain price certainty with respect to each CRS Scope Element (other than the Contamination Scope Element) as soon as reasonably practicable and where possible by its CRS Scope Element Fix Date on a value for money basis.
- (b) OpCo will diligently pursue the OpCo's Activities in a manner that will seek to enable it to, and otherwise use reasonable endeavours to, provide a fixed price lump sum price offer for all or as many as possible CRS Scope Elements (other than the Contamination Scope Element) as soon as reasonably practicable after Financial Close.
- (c) A CRS Scope Element may become Fixed Price Scope if, prior to its CRS Scope Element Fix Date, the Principal and OpCo have agreed:
  - (i) a fixed lump sum price with respect to the relevant CRS Scope Element; and
  - (ii) whether any positive difference between the fixed lump sum price and the relevant CRS Scope Element Amount will be borne by OpCo, the D&C Contractor or another OpCo Contractor or paid as an adjustment to the Capital Contribution (and, in such case, the timing of any additional Capital Contributions), an adjustment to the Service Payment or a combination of those things.
- (d) If the parties agree a fixed price for a CRS Scope Element in accordance with 5(c) prior to its CRS Scope Element Fix Date (such CRS Scope Elements being **Fixed Price Scope**), then:
  - (i) OpCo will only be entitled to be paid the Allowable Costs with respect to the Fixed Price Scope up to the applicable fixed lump sum price (as varied under the Approved Subcontract under which the Fixed Price Scope will be self performed by the relevant OpCo Contractor in accordance with this Schedule 8 (*Cost Risk Share*)). This fixed lump sum price (as varied under the Approved Subcontract under which the Fixed Price Scope will be self performed by the relevant OpCo Contractor in accordance with this Schedule 8 (*Cost Risk Share*)) will be included within the Actual Outturn Cost;
  - (ii) this deed will be amended solely to give effect to the terms agreed in clause 5(c); and
  - (iii) OpCo's obligations and, subject to clause 5(d)(i) and (ii), OpCo's rights under this deed (including with respect to the Fixed Price Scope) will otherwise be unaffected and will remain in full force and effect.
- (e) OpCo is not entitled to claim an adjustment to any CRS Scope Element Fix Date for any Modification, Relief Event, act, omission or other event or circumstance.

## 6. Entitlements to extensions of time and costs with respect to the CRS Scope, inclusions in Allowable Costs and adjustments to the Target Outturn Cost

### 6.1 No limitation on entitlements with respect to Non CRS Schedule OpCo's Activities, subject to exception

- (a) Subject to clause 6.1(b), this Schedule 8 (*Cost Risk Sharing*) will not limit OpCo's entitlement to an extension of time or to recover costs with respect to Modifications or Relief Events under and subject to Schedule 6 (*Net Financial Impacts*) and the Operative Provisions with respect to the Non CRS Schedule OpCo's Activities.
- (b) Notwithstanding anything in the Operative Provisions or Schedule 6 (*Net Financial Impacts*), OpCo will not be entitled to recover any amount with respect to any Modification to the Operations Activities with respect to the CRS Scope as a result of a CRS Modification or a CRS Relief Event, other than a TOC Adjustment Event or a Compensation Event under paragraph (j) of that definition.



## 6.2 Limitations on entitlements with respect to CRS Modifications and CRS Relief Events

Notwithstanding anything in the Operative Provisions or Schedule 6 (*Net Financial Impacts*), OpCo will not be entitled:

- (a) to an extension of time or to recover delay or prolongation costs with respect to any CRS Modifications or CRS Relief Events, other than (subject to and in accordance with the Operative Provisions and Schedule 6 (*Net Financial Impacts*)):
  - (i) TOC Adjustment Events;
  - (ii) a PFAS Time Event (but only with respect to an extension of time); or
  - (iii) a Modification Order with respect to the Delivery Activities with respect to the CRS Scope issued by the Principal after the later of:
    - (A) the completion of the Stage 3 Design for the relevant CRS Scope Element; and
    - (B) the CRS Scope Element Fix Date,
 where:
    - (C) as part of its Modification Impact Proposal submitted in accordance with clause 33.2(a) of the Operative Provisions, OpCo has notified the Principal of the relevant extension of time required to the Date for Completion; and
    - (D) the Principal has not instructed OpCo on or prior to the issue of the Modification Order that the affected CRS Scope Element (or part of the CRS Scope Element) may be treated as a Minor Defect for the purposes of this deed;
- (b) to recover any Excluded Costs with respect to a CRS Modification or a CRS Relief Event; or
- (c) to be reimbursed or paid on account of any Pain Share Amount incurred by OpCo under this Schedule 8 (*Cost Risk Sharing*) (irrespective of whether it represents part of the Net Financial Impact of a CRS Modification or CRS Relief Event).

## 6.3 Treatment of costs with respect to Modifications and Compensation Events

The parties acknowledge and agree that to the extent the net incremental costs which arise out of or in connection with:

- (a) any CRS Modification or CRS Relief Event are recoverable by OpCo under this deed (other than the net incremental costs referred to in clauses 6.3(b), 6.3(c) and 6.3(d)), they:
  - (i) will be included in Allowable Costs for the purposes of this Schedule 8 (*Cost Risk Sharing*); and
  - (ii) to the extent the CRS Modification or CRS Relief Event is a TOC Adjustment Event and subject to and in accordance with clause 7, may entitle OpCo to an adjustment to the Target Outturn Cost and a CRS Scope Element;
- (b) any Modification to the Non CRS Schedule OpCo's Activities are directly attributable to a CRS Modification or a CRS Relief Event and are recoverable by OpCo under this deed, they:
  - (i) will not be included in Allowable Costs for the purposes of this Schedule 8 (*Cost Risk Sharing*); and
  - (ii) will not entitle OpCo to an adjustment to the Target Outturn Cost or a CRS Scope Element;
- (c) any TOC Adjustment Event are prolongation or delay costs recoverable under the Operative Provisions and Schedule 6 (*Net Financial Impact*), they:
  - (i) will not be included in Allowable Costs for the purposes of this Schedule 8 (*Cost Risk Sharing*); and
  - (ii) will not entitle OpCo to an adjustment to the Target Outturn Cost or a CRS Scope Element; and

- (d) a Compensation Event of the type referred to in paragraphs (f) or (u) of that definition, they:
  - (i) may be recoverable under this deed (subject to and in accordance with the Operative Provisions and Schedule 6 (*Net Financial Impacts*));
  - (ii) will not be included in Allowable Costs for the purposes of this Schedule 8 (*Cost Risk Sharing*); and
  - (iii) will not entitle OpCo to an adjustment to the Target Outturn Cost or a CRS Scope Element.

## 7. Target Outturn Cost

- (a) The Target Outturn Cost as at the date of this deed will be the Target Outturn Cost (Bid).
- (b) Despite anything to the contrary in this Schedule 8 (*Cost Risk Sharing*), OpCo is not entitled to claim an adjustment to the Target Outturn Cost, any CRS Scope Element Amount or the fixed lump sum price for a Fixed Price Scope for:
  - (i) any Modification, Relief Event, act, omission or other event or circumstance, other than a TOC Adjustment Event; or
  - (ii) any TOC Adjustment Event, other than in accordance with this clause 7.
- (c) Subject to this clause 7, OpCo may claim an adjustment to the Target Outturn Cost, any applicable CRS Scope Element Amount and the fixed lump sum price of any applicable Fixed Price Scope to reflect the CRS Change Amount with respect to any TOC Adjustment Event, but only to the extent that either the CRS Change Amount:
  - (i) is or will be greater than [REDACTED] or
  - (ii) is or will be greater than [REDACTED] and, when added to the CRS Sub-Threshold Amounts for all previous TOC Adjustment Events for which an adjustment to the Target Outturn Cost has not occurred, is or will be greater than [REDACTED]. In this paragraph "**CRS Sub-Threshold Amounts**" means, for a CRS Change Amount, the lesser of:
    - (A) the CRS Change Amount for that TOC Adjustment Event; and
    - (B) [REDACTED]

For the avoidance of doubt, OpCo is not entitled to claim an adjustment to the Target Outturn Cost, any applicable CRS Scope Element Amount or the fixed lump sum price of any applicable Fixed Price Scope with respect to any time, cost or other impact on the Non CRS Schedule OpCo's Activities.

- (d) To claim an adjustment to the Target Outturn Cost, any applicable CRS Scope Element Amount or the fixed lump sum price of any applicable Fixed Price Scope with respect to a TOC Adjustment Event, OpCo must comply with the requirements of clauses 29.2 (*Claim for compensation*) and 29.3 (*Continuing Compensation Events*) of the Operative Provisions, mutatis mutandis.
- (e) It is a condition precedent to OpCo's entitlement to an adjustment to the Target Outturn Cost, any CRS Scope Element Amount or fixed lump sum price of any applicable Fixed Price Scope that:
  - (i) a TOC Adjustment Event has occurred which has caused or will cause:
    - (A) an increase in the Actual Outturn Costs or one or more of the CRS Scope Element Amounts; and
    - (B) the forecast Actual Outturn Cost (as at the Date of Completion) to be greater than the Target Outturn Cost (in each case, calculated as at the date of the claim);
  - (ii) where OpCo's claim is pursuant to clause 7(c)(ii), OpCo has provided all evidence and information to substantiate, to the satisfaction of the CRS Estimator, that the test in clause 7(c)(ii) has been satisfied; and

- (iii) OpCo has complied with the requirements of this clause 7.
- (f) If the conditions precedent in clause 7(e) have been satisfied, the Principal must increase the Target Outturn Cost, any applicable CRS Scope Element Amount and the fixed lump sum price of any applicable Fixed Price Scope by the amount referred to in clause 7(c).
- (g) Clauses 29.7 (*Mitigation*), 29.8 (*Non-compliance*), 29.9 (*OpCo conduct*) and 29.10 (*Limitation of liability*) of the Operative Provisions will apply, mutatis mutandis, to OpCo's entitlement to an adjustment to the Target Outturn Cost, any applicable CRS Scope Element Amount and any applicable Fixed Price Scope.
- (h) Where, in accordance with this deed, an amount is due and payable by OpCo to the Principal with respect to a CRS Modification (other than with respect to the Non CRS OpCo's Activities) (**CRS Saving**), the Target Outturn Cost, any applicable CRS Scope Element Amount and the fixed lump sum price of any applicable Fixed Price Scope will be reduced by an amount equal to the CRS Saving that is relevant to the particular item of CRS Scope Element Amount or particular Fixed Price Scope, as applicable.
- (i) OpCo must promptly notify the Principal when the CRS Sub-Threshold Amounts for all previous TOC Adjustment Events for which an adjustment to the Target Outturn Cost has not occurred, first exceeds:
  - (i) [REDACTED] and
  - (ii) [REDACTED]

## 8. Impacts on Non CRS Schedule OpCo's Activities

Where a CRS Modification occurs or is proposed to occur that will result in a Modification with respect to the Non CRS Schedule OpCo's Activities (**Non CRS Modification**), then OpCo must notify the Principal and may request that the Principal issue a Modification Impact Request with respect to that Non CRS Modification in accordance with clause 33.1 (*Modification Impact Request*) of the Operative Provisions, promptly and in any case no later than the date on which OpCo provides a Modification Impact Proposal with respect to the CRS Modification.

## 9. Approved Subcontracts

### 9.1 Application

This clause 9:

- (a) only applies to Subcontracts entered or to be entered into with respect to the Delivery Activities with respect to the CRS Scope (other than the Contamination Scope Element); and
- (b) does not limit any of OpCo's other obligations under this deed with respect to OpCo Contractors and Subcontracts.

### 9.2 Approved Subcontracts

- (a) A Subcontract will not be an Approved Subcontract unless:
  - (i) it has been tendered and awarded in accordance with this clause 9 and complies with the requirements of this clause 9; or
  - (ii) it is a Subcontract, the value of the works under which (when aggregated with the value of the works under each other Subcontract previously entered into by the same OpCo Contractor (or their Related Bodies Corporate)) will not exceed [REDACTED]
- (b) Within 60 Business Days of the commencement of the Delivery Phase, OpCo will prepare and submit to the Principal for approval a draft Subcontract Packaging and Procurement Plan for approval of the Principal (acting reasonably) which meets the requirements of this Schedule 8 (*Cost Risk Sharing*).
- (c) OpCo will (and will ensure that each OpCo Contractor tendering a Subcontract will):

- (i) only tender a Subcontract in accordance with the Subcontract Packaging and Procurement Plan (unless otherwise approved by the Principal (acting reasonably)), the NSW Government Procurement Guidelines (as relevant to OpCo or the OpCo Contractor) and all applicable Laws;
- (ii) before tendering a Subcontract:
  - (A) issue to the Principal's Representative for approval a document entitled "Subcontract Proposal" which includes:
    - (I) the CRS Scope to be the subject of the tender;
    - (II) the amount included for the relevant CRS Scope in the Cost Plan;
    - (III) how OpCo (or the OpCo Contractor) will ascertain the tender list for the relevant CRS Scope;
    - (IV) how OpCo will select the preferred tenderer including details of the evaluation criteria (with weightings) for the assessment of tenders; and
    - (V) the method of delivery for the relevant CRS Scope,
 each of which must be consistent with the approved Subcontract Packaging and Procurement Plan; and
  - (B) to the extent possible, recommend to the Principal's Representative at least three persons which in OpCo's (or the OpCo Contractor's) opinion (as applicable) are suitable for inclusion in the tender list for the relevant CRS Scope; and
- (iii) provide to the Principal copies of all Subcontract tender and contract documentation, including documentation received from tenderers.
- (d) OpCo will (and will ensure that each OpCo Contractor tendering a Subcontract will):
  - (i) examine and analyse all tenders received;
  - (ii) conduct post-tender negotiations with the tenderer(s), which must, if the Principal so requires, be held in the presence of the Principal;
  - (iii) notify the Principal which tenderer it proposes to enter into the relevant Subcontract with, which notification:
    - (A) must be accompanied by appropriate justification and any other information which the Principal may require; and
    - (B) will be deemed to include a warranty by OpCo that:
      - (I) the recommended tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted;
      - (II) OpCo knows of no reason why that tenderer's tender should not be accepted; and
      - (III) the tenderer's tender will provide value for money for the Principal;
  - (iv) not enter into a Subcontract unless the Principal has approved or is deemed to have approved the proposed tenderer and the terms of the proposed Subcontract;
  - (v) enter into a Subcontract with the approved tenderer on the basis of the subcontract price approved by the Principal if the Principal approves or is deemed to have approved OpCo's proposal to enter into the Subcontract with that tenderer; and
  - (vi) provide the Principal with a copy of the executed Subcontract.
- (e) The Principal may only withhold its approval of OpCo's or an OpCo Contractor's proposal to enter into a Subcontract with a tenderer within 10 Business Days after receiving OpCo's notification and all information required under clause 9.2(d)(iii) and only where:

- (i) the Subcontract price exceeds the amount allowed for the relevant work in the Cost Plan and the Principal considers (acting reasonably) that the proposal does not represent value for money;
  - (ii) the Principal considers (acting reasonably) that the relevant tender does not demonstrate that the proposed OpCo Contractor is appropriate to perform the relevant work; or
  - (iii) the proposed form of Subcontract does not comply with clause 61 (*Subcontracting*) of the Operative Provisions or any template form of Subcontract previously approved by the Principal.
- (f) If the Principal has not disapproved the proposed Subcontract within 10 Business Days after receiving the notification and all information required under clause 9.2(d)(iii), the Subcontract will be deemed to be approved by the Principal.
- (g) If the Principal has disapproved of OpCo's or an OpCo Contractor's proposal under clause 9.2(e) and the Principal so directs, OpCo must (and must ensure that the applicable OpCo Contractor will):
  - (i) subject to clause 9.2(h), accept the tender of another tenderer; or
  - (ii) require OpCo or the OpCo Contractor to seek alternative proposals (in which case clause 9.2(d) will re-apply).
- (h) If the Principal directs OpCo to accept the tender of a tenderer other than the tenderer proposed by OpCo or the applicable OpCo Contractor (**Principal Proposed Tenderer**) and OpCo (acting reasonably) considers that entry into the proposed Subcontract with the Principal Proposed Tenderer will prevent OpCo from being able to comply with any of its obligations (or any part of its obligations) under the deed (each such obligation, an **Affected Obligation**), then:
  - (i) OpCo must notify the Principal of the specific Affected Obligations and the reasons (in reasonable detail and with supporting information) why OpCo considers that the Affected Obligations will not be able to be complied with as a result of entry into the proposed Subcontract with the Principal Proposed Tenderer;
  - (ii) the Principal must, within 5 Business Days notify OpCo of whether and to what extent it has determined that the Affected Obligations will not be able to be complied with as a result of entry into the proposed Subcontract with the Principal Proposed Tenderer;
  - (iii) if the Principal determines or it is determined under clause 63 (*Dispute resolution*) that any Affected Obligations will not be able to be complied with (**Accepted Affected Obligations**), then the Principal will notify OpCo whether:
    - (A) it maintains its direction, in which case OpCo must accept the Principal Proposed Tenderer and OpCo will be relieved of complying with the Accepted Affected Obligations; or
    - (B) it withdraws its direction, in which case the Principal may require OpCo to seek alternative proposals (and clause 9.2(d) will re-apply).
- (i) OpCo will not, and will ensure that each OpCo Contractor tendering a Subcontract does not:
  - (i) where it may impact the rights or increase the liabilities or obligations of the Principal by more than [REDACTED] or prevent or delay the performance or completion of any OpCo's Activities in accordance with this deed, make or permit any amendment to, or replacement of or waiver of a provision of or the works or activities to be provided under;
  - (ii) terminate, surrender, rescind or accept repudiation of (or give the relevant OpCo Contractor an entitlement to terminate, surrender, rescind or accept repudiation of);
  - (iii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

- (iv) where it may impact the rights or increase the liabilities or obligations of the Principal by more than [REDACTED] or prevent or delay the performance or completion of any OpCo's Activities in accordance with this deed, enter into any agreement or arrangement which affects the operation or interpretation of or compromise or settle any Claim under,

a Subcontract without obtaining the Principal's prior consent (which consent must not be unreasonably withheld or delayed).

- (j) Compliance by OpCo with this clause 9.2 does not limit OpCo's obligations under clause 9.3.

### 9.3 Self perform work

OpCo must not itself, and must ensure that the Core Contractors and their Related Body Corporates do not, carry out any part of the CRS Scope unless written approval is received from the Principal's Representative (acting reasonably) that the relevant CRS Scope may be carried out as Self Performed Work.

## 10. Contamination Scope Element

- (a) The Allowable Costs with respect to the Contamination Scope Element are all costs and expenses certified by the CRS Estimator as directly, reasonably and actually incurred and payable by OpCo with respect to the performance of the Contamination Scope Element, calculated, in respect of month  $m$ :

- (i) as the sum of the product of quantities of each Waste Classification  $c$  (excavated and reused or disposed of outside the Construction Site or reused onsite) and the relevant Reuse/Offsite Disposal Rates according to the following formula:

$$A_m = \sum_c (Q_{c,m,a} \times R_{reuse-disposal,c})$$

Where:

$Q_{c,m,a}$  is the quantity in tonnes of material of Waste Classification  $c$  that is excavated and reused or disposed of outside the Construction Site in month  $m$  and/or the quantity in tonnes of material of Waste Classification  $c$  that is reused onsite in month  $m$

$R_{reuse-disposal,c}$  is the Reuse/Offsite Disposal Rate for Waste Classification  $c$  included in the Waste Classification table in clause 3.2 (*Reuse/Offsite Disposal Rates*) of Schedule 7 (*Schedule of Rates*);

or

- (ii) if no relevant Reuse/Offsite Disposal Rates are included in the Waste Classification table in clause 3.2 (*Reuse/Offsite Disposal Rates*) of Schedule 7 (*Schedule of Rates*), for any part of the Contamination Scope Element which is not the subject of 10(a)(i), on an Open Book Basis on the basis of any relevant market rates and prices as determined by the CRS Estimator.

- (b) If OpCo encounters Contamination or Waste for which it considers no relevant Reuse/Offsite Disposal Rates are included in the Waste Classification table in clause 3.2 (*Reuse/Offsite Disposal Rates*) of Schedule 7 (*Schedule of Rates*) and in respect of which it intends to claim Allowable Costs, it must issue a notice to the CRS Estimator (copying the Principal) setting out details of the relevant Contamination or Waste, and do all things reasonably necessary to enable the CRS Estimator to determine the classification of such Contamination or Waste.
- (c) The CRS Estimator must not certify as Allowable Costs with respect to the Contamination Scope Element for a given month, unless OpCo has given to the Principal's Representative and the CRS Estimator for that month:
  - (i) a tabulated register that clearly and accurately tracks and reports excavation quantities of Waste and that sets out a clear breakdown by Waste Classification of



- (v) not:
  - (A) engage or replace the CRS Estimator or enter into the CRS Estimator Deed; or
  - (B) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to the CRS Estimator Deed or the CRS Estimator Deed Poll,

without the prior written consent of the Principal's Representative (which consent must not be unreasonably withheld or delayed).

(b) OpCo must:

- (i) when tendering for the role of CRS Estimator (or replacement CRS Estimator), require (as a criterion in the tender documents); and
- (ii) unless the Principal's Representative otherwise agrees in writing (such agreement not to be unreasonably withheld or delayed), ensure that the CRS Estimator Deed (and any replacement CRS Estimator Deed) contains a warranty by the relevant CRS Estimator, and take reasonable steps to verify,

that the CRS Estimator and any replacement CRS Estimator (as applicable):

- (iii) have at least the following qualifications, experience and expertise:
    - (A) the CRS Estimator must at a minimum possess:
      - (I) Quality Management System 3rd party certified to AS/NZS ISO 9001; and
      - (II) experience with rail projects of a similar size and complexity to the Project; and
      - (III) the requisite experience and skill to perform the role of CRS Estimator in accordance with this Schedule 8 (*Cost Risk Sharing*);
    - (B) the personnel of the CRS Estimator or replacement CRS Estimator that are carrying out the role of the CRS Estimator must at a minimum possess the following qualifications, experience and expertise:
      - (I) demonstrated experience in the cost management, cost control, contract administration, assessment of Modifications and assessment of progress claims for a comparable scope of works as the CRS scope;
      - (II) 15 years' experience as a Quantity Surveyor or cost engineer;
      - (III) be an Associate of the AIQS or member of the RICS or equivalent; and
      - (IV) knowledge of standard methods of measurement, cost planning, cost control and administration and progress payments as defined by AIQS and or RICS guidelines; and
  - (iv) have effected professional indemnity insurance policies which are subject to the usual terms and conditions that apply to such a policy and which provide cover for at least [REDACTED] for one claim or in the aggregate during any one period of insurance.
- (c) OpCo must ensure that the CRS Estimator Deed (and any replacement CRS Estimator Deed) contains a clause that requires the person performing the role of the CRS Estimator to perform each of the activities required to be performed by the CRS Estimator under this Schedule 8 (*Cost Risk Sharing*).
- (d) OpCo must ensure that:
- (i) the CRS Estimator is not an employee of OpCo, the D&C Contractor, the Principal or any of their respective Associates, but the CRS Estimator may be employed by or be a consultant to an organisation which has been engaged by OpCo or the



- D&C Contractor to provide other services in connection with the SSTOM Works;  
and
- (ii) all advice and comments (including drafts and calculations) provided by the CRS Estimator to OpCo or the D&C Contractor are in writing and retained as a record.
- (e) OpCo must:
- (i) allow the CRS Estimator to attend design and procurement meetings;
  - (ii) allow access or procure access for the CRS Estimator to the Construction Site and all places at which the CRS Scope is being undertaken; and
  - (iii) provide the CRS Estimator with all information and documents as may be:
    - (A) necessary or reasonably required for the CRS Estimator to perform its role under this Schedule 8 (*Cost Risk Sharing*); or
    - (B) requested by the CRS Estimator or directed by the Principal's Representative.
- (f) OpCo must procure that the CRS Estimator executes the CRS Estimator Deed Poll (or, if applicable, implements in full the Approved CRS Estimator Action Plan) prior to the earlier of:
- (i) OpCo submitting its first claim under clause 3.2(a); and
  - (ii) subject to clause 11.1(g), 31 December 2023.
- (g) If OpCo has not procured the execution by the CRS Estimator by the date specified in 11.1(f)(ii) because it has been unable to engage a CRS Estimator in accordance with the requirements of this clause 11.1, then OpCo must prepare and submit to the Principal by no later than the date specified in clause 11.1(f)(ii) a draft plan demonstrating and providing evidence in reasonable detail:
- (i) why OpCo has been unable to engage the CRS Estimator in accordance with the requirements of this clause 11.1 and that it has used its best endeavours to do so;
  - (ii) whether or not OpCo reasonably considers it will be able to engage the CRS Estimator in accordance with the requirements of this clause 11.1, and
    - (A) if it will be able to, the actions and measures which OpCo will diligently pursue to engage the CRS Estimator and procure the execution by the CRS Estimator of the CRS Estimator Deed by the earliest possible date and the date by which these things will be done; or
    - (B) if it will not be able to, whether or not OpCo reasonably considers it would be able to engage the CRS Estimator if the requirements of this clause 11.1 were amended, and if OpCo reasonably considers that:
      - (I) it would be able to engage the CRS Estimator if the requirements of this clause 11.1 were amended, the amendments that it reasonably considers should be made; or
      - (II) it would not be able to engage the CRS Estimator even if the requirements of this clause 11.1 were amended, then OpCo's proposed alternative approach to the activities contemplated to be performed by a CRS Estimator under this Schedule 8 (*Cost Risk Sharing*),
- and:
- (III) that such amendments or alternative approach (as applicable) would not in any material respect undermine the accurate and proper administration of this Schedule 8 (*Cost Risk Sharing*); and
  - (IV) the actions and measures which OpCo will diligently pursue to engage the CRS Estimator and procure the execution by the CRS Estimator of the CRS Estimator Deed or to implement the proposed alternative approach (as applicable), by the earliest possible date and the date by which these things will be done,

**(Draft CRS Estimator Action Plan).**

- (h) Within 10 Business Days after receipt of the Draft CRS Estimator Action Plan, the Principal (acting reasonably) must either:
  - (i) approve the Draft CRS Estimator Action Plan by notifying OpCo; or
  - (ii) reject the Draft CRS Estimator Action Plan by notifying OpCo and providing reasons to OpCo for its rejection.
- (i) If the Principal approves a Draft CRS Estimator Action Plan pursuant to clause 11.1(h)(i) (the **Approved CRS Estimator Action Plan**), OpCo must comply with and implement the Approved CRS Estimator Action Plan.
- (j) If the Principal rejects a Draft CRS Estimator Action Plan pursuant to clause 11.1(h)(ii), OpCo, in consultation in good faith with the Principal, must amend the Draft CRS Estimator Action Plan to meet the Principal's reasonable requirements and submit the amended Draft CRS Estimator Action Plan to the Principal for its approval, in which case this clause 11.1(g), (h), (i) and (j) will apply to the amended Draft CRS Estimator Action Plan as if it were originally submitted under clause 11.1(g).

**11.2 Role**

- (a) The CRS Estimator will:
  - (i) assess and (if applicable) certify the costs and expenses that are claimed by OpCo to constitute Allowable Costs in accordance with this clause 11.2; and
  - (ii) on the Principal's request (a copy of which must be promptly provided to OpCo), determine in accordance with Attachment 1 whether any particular OpCo's Activities forms part of CRS Scope and, if the relevant OpCo's Activities forms part of the CRS Scope, which CRS Scope Element the OpCo's Activities form part of.
- (b) OpCo must submit to the Principal and the CRS Estimator:
  - (i) any claim that costs and expenses incurred during a month constitute Allowable Costs, together with all documents and information on an Open Book Basis necessary, by no later than the 15th Business Day of the following month; and
  - (ii) all documents and information on an Open Book Basis relevant to the CRS Estimator's determination under clause 11.2(a)(ii), as soon as reasonably practicable and in any case by no later than 5 Business Days after the date on which OpCo is provided with a copy of the Principal's request under clause 11.2(a)(ii).
- (c) When submitting a request under clause 11.2(a)(ii), the Principal must provide all documents and information on an Open Book Basis relevant to the CRS Estimator's determination under clause 11.2(a)(ii), as soon as reasonably practicable and in any case by no later than 5 Business Days after the date of the request.
- (d) OpCo must provide such additional documents and information as requested by the CRS Estimator as soon as reasonably practicable after that request is made.
- (e) The CRS Estimator will determine:
  - (i) any claim by OpCo under clause 11.2(b)(i) by 20 Business Days after the later of the date on which the claim for Allowable Costs is submitted under clause 11.2(b)(i) and the date on which OpCo provides the additional documents and information requested under clause 11.2(d); and
  - (ii) any request by the Principal under clause 11.2(a)(ii) by 10 Business Days after the latest of:
    - (A) the date on which OpCo has provided the documents and information required under clause 11.2(b)(ii);
    - (B) the date on which the Principal has provided the documents and information required under clause 11.2(c); and

- (C) the date on which OpCo provides the additional documents and information requested under clause 11.2(d).
- (f) The CRS Estimator will be obliged to make its determinations in accordance with this Schedule 8 (*Cost Risk Sharing*).
- (g) Where there is any ambiguity as to whether any OpCo's Activities is or is not CRS Scope, then the CRS Estimator may only and must determine that the relevant OpCo's Activities is CRS Scope where the relevant OpCo's Activities is more closely associated (than not) with the CRS Scope identified in Attachment 1.
- (h) If the CRS Estimator determines that:
  - (i) an OpCo's Activities does not form part of the CRS Scope but OpCo has submitted one or more claims under clause 11.2(b)(i) on the basis that the relevant OpCo's Activities forms part of the CRS Scope; or
  - (ii) an OpCo's Activities forms part of a CRS Scope Element but OpCo has submitted one or more claims under clause 11.2(b)(i) on the basis that the relevant OpCo's Activities forms part of another CRS Scope Element,
 (each, an **affected claim** and **scope error**, respectively) then:
  - (iii) OpCo must within 10 Business Days of the CRS Estimator's determination, re-submit each affected claim in a manner consistent with the CRS Estimator's determination together with a statement signed by OpCo's Representative certifying that each affected claim has been re-prepared and resubmitted to the CRS Estimator in a manner consistent with the CRS Estimator's determination; and
  - (iv) to the extent:
    - (A) an amount has been paid to OpCo that would not have been paid; or
    - (B) an amount has not been paid to the Principal that would have been paid, had the scope error not been made, that amount will be a debt due and payable by OpCo to the Principal.
- (i) In the absence of manifest error on the face of the determination notice, determinations of the CRS Estimator are final and binding on the parties. If either party believes that there is a manifest error on the face of the determination notice from the CRS Estimator and wishes to dispute a determination by the CRS Estimator under this Schedule 8 (*Cost Risk Sharing*), it must do so in accordance with clause 63 (*Dispute resolution*) of the Operative Provisions.

### 11.3 Not approval or evidence and no liability for acts

- (a) No certification or determination by the CRS Estimator will:
  - (i) constitute an approval by the Principal of OpCo's performance of its obligations under this deed;
  - (ii) be taken as an admission or evidence that the CRS Scope or any other matters certified or determined by the CRS Estimator comply with this deed; or
  - (iii) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the CRS Scope.
- (b) No act or omission of the CRS Estimator, including any actual or purported certification or determination or failure to provide or delay in providing any certification or determination by the CRS Estimator:
  - (i) is an act or omission by the Principal or its Associates (including a breach of contract) under or in connection with this deed; or
  - (ii) will give rise to any Liability from the Principal to OpCo.

## 12. Cost planning and control

### 12.1 General obligations

OpCo will:

- (a) within 90 Business Days of the commencement of the Delivery Phase, prepare and submit to the CRS Estimator for approval a cost plan which is prepared consistently with and in substance is not inconsistent with the Cost Breakdown (Initial). For the avoidance of doubt, this initial Cost Plan must not:
  - (i) amend any CRS Scope Element;
  - (ii) increase any CRS Scope Element Amount; or
  - (iii) amend the cost breakdown,
 from that contained in the Cost Breakdown (Initial) without the Principal's consent (which may be withheld in its absolute discretion);
- (b) institute a system of cost control, including monthly reports to the Principal setting out the cost to date, forecast cost to complete by month, forecast cost at Completion and any amounts received by OpCo or its Associates from the sale of material salvaged from the Site in performing the CRS Scope, each on an Open Book Basis;
- (c) submit the information referred to in clause 12.1(b) by the 15th day of each month and on the completion of each Design Stage with respect to the CRS Scope;
- (d) within 10 Business Days after the submission of information under clause 12.1(b) and in any case no less than once every month, review and, where approved by the CRS Estimator, amend the Cost Plan to take account of any item affecting or likely to affect any component of the Cost Plan;
- (e) without limiting clause 12.1(b), regularly review the Cost Plan (including as the preparation of the Design Documentation progresses) to:
  - (i) ensure that the cost of construction of the design is in accordance with the Cost Plan; and
  - (ii) advise the Principal how the design should or can be modified to ensure that the cost of construction of the design is in accordance with the Cost Plan;
- (f) advise the Principal as to the alternative steps available where:
  - (i) a tender for any part of the CRS Scope exceeds the amount included for that work in the Cost Plan;
  - (ii) Allowable Costs incurred in respect of any CRS Scope exceed the amount allowed for in the cash-flow which forms part of the Cost Plan or the forecast final Allowable Costs of the CRS Scope appears likely to exceed the total amount allowed for (including contingency) in the Cost Plan; or
  - (iii) no tenders are received for any part of the CRS Scope;
- (g) if requested at any time by the Principal, provide to the Principal (or any person authorised by the Principal) all information necessary to verify the Cost Plan; and
- (h) co-operate in respect of any audit of the information concerning the Cost Plan.

### 12.2 Update of Cost Plan

- (a) OpCo warrants that the Cost Plan will at all times be accurate in all material respects and fit for purpose.
- (b) OpCo must:
  - (i) promptly submit each updated Cost Plan to the Principal's Representative and the CRS Estimator;
  - (ii) not update the Cost Plan in a manner which makes the Principal's obligations under the Principal Project Agreements more onerous or increases any liability or

- potential liability, or reduces any right, of the Principal in connection with the SSTOM Works, Sydney Metro – Western Sydney Airport or the ETS;
- (iii) without limiting anything in this clause 12.2(b), not make any changes to the cost breakdown structure or cost codes without the approval of the Principal's Representative;
  - (iv) as part of each updated Cost Plan, provide to the Principal's Representative a monthly cost change report that identifies:
    - (A) all changes that have been made to the Cost Plan since it was previously approved by the CRS Estimator; and
    - (B) any transfers of scope or costs between cost codes in the Cost Plan since it was previously approved by the CRS Estimator and the reasons for the changes;
  - (v) ensure that the initial Cost Plan and any updated Cost Plan is consistent with the requirements of New Rules of Measurement NRM1 (Order of cost estimating and cost planning for capital building works) 3rd edition UK October 2021, NRM2 (Detailed measurement for building works) 2nd edition October 2021 and NRM3 (Order of cost estimating and cost planning for building maintenance works) 2nd edition October 2021 published by RICS (as applicable), and:
    - (A) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
    - (B) provide an equal or greater level of detail than,
 

the Cost Breakdown (Initial) and any version of the Cost Plan which has been certified by the CRS Estimator under clause 12.3(c)(ii); and
  - (vi) provide the Principal's Representative and CRS Estimator with all information and documents to verify the accuracy of the updated Cost Plan.

### 12.3 Review of Cost Plan

- (a) The Principal's Representative and the CRS Estimator will review each Cost Plan submitted under this Schedule 8 (*Cost Risk Sharing*).
- (b) The Principal's Representative may (but is not obliged to), within 15 Business Days of the date on which the Cost Plan is submitted to it, notify the CRS Estimator (with a copy to OpCo) of any non-compliances or potential non-compliances of that Cost Plan with the requirements of this Schedule 8 (*Cost Risk Sharing*) and this deed or any other observations.
- (c) The CRS Estimator must, taking into account any comments received from the Principal's Representative in accordance with clause 12.3(b), review the Cost Plan and determine whether the Cost Plan complies with the requirements of this Schedule 8 (*Cost Risk Sharing*) and this deed and either:
  - (i) if the CRS Estimator considers that the Cost Plan does not comply with the requirements of this Schedule 8 (*Cost Risk Sharing*) and this deed, notify OpCo of the non-compliances (with detailed reasons); or
  - (ii) if the CRS Estimator considers that the Cost Plan complies with the requirements of this Schedule 8 (*Cost Risk Sharing*) and this deed, certify the Cost Plan by providing to OpCo a certificate in the form of Part N of Schedule 34 (*Certificates*), within 20 Business Days following submission of the Cost Plan to the Principal's Representative and CRS Estimator.
- (d) If OpCo receives a notice in accordance with clause 12.3(c)(i) OpCo must submit a revised Cost Plan to the CRS Estimator whereupon the provisions of this clause 12.3 will reapply to the revised Cost Plan.
- (e) The CRS Estimator must, within 5 Business Days of:
  - (i) giving a notice under clause 12.3(c)(i), to the extent that the CRS Estimator did not include in its notice to OpCo any comments received from the Principal under

clause 12.3(b) regarding actual or potential non-compliances in OpCo's Cost Plan, provide the Principal with detailed written reasons of why it did not include such comments; and

- (ii) certifying a Cost Plan under clause 12.3(c)(ii), to the extent that the CRS Estimator received comments from the Principal under clause 12.3(b) regarding non-compliances in OpCo's Cost Plan, provide the Principal with detailed written reasons of why it certified the Cost Plan despite the Principal's comments.

### 13. Records

OpCo must keep proper books and accounts, including:

- (a) all records which show (on an Open Book Basis) how the Target Outturn Cost was calculated and how any TOC Adjustment Events were valued for the purposes of clauses 6 and 7;
- (b) all purchase orders, invoices, accounts, records and bank statements (to the extent they relate to the CRS Scope) showing all of the Allowable Costs reasonably and actually incurred in the performance of the CRS Scope;
- (c) any records required to be maintained for the purposes of clause 4; and
- (d) all other records in connection with the CRS Scope as would be expected of a prudent, experienced and competent person carrying out design, manufacture, supply, construction, installation, commissioning and repair work similar to the CRS Scope in Australia.

### 14. Termination of the Project Deed

Notwithstanding anything in Schedule 26 (*Termination Payments*) or this deed, where this deed is terminated before the Date of Completion:

- (a) OpCo is not entitled to receive, and must pay to the Principal such amount as is necessary to ensure that OpCo has not received and does not receive, an amount or amounts in respect of the CRS Scope (including by way of Capital Contributions prior to the Termination Date or in the circumstance where future Capital Contributions or Service Payments will be taken into account in determining the Termination Payment) in excess of the Allowable Costs incurred by it prior to the Termination Date;
- (b) OpCo will be entitled to be reimbursed for Allowable Costs:
  - (i) in the case of termination under clause 49.5 (Voluntary termination by the Principal), to the extent those Allowable Costs constitute "Subcontractor Breakage Costs"; and
  - (ii) in the case of termination under clause 49.6 (Termination for Force Majeure Event) or clause 49.8 (Termination for Uninsurable Risk), to the extent those Allowable Costs constitute "Force Majeure Subcontractor Breakage Costs",
 and in either case only to the extent consistent with clause 14(a).
- (c) The Net Pain Share Amount calculated as at the Termination Date will be a debt due and payable by OpCo to the Principal on the Termination Date.
- (d) OpCo will not be entitled to any forecast Gain Share Amount and will not be liable for any forecast Pain Share Amount.

## Attachment 1 – CRS Scope

### Part 1

The CRS Scope are the following SSTOM Works:

- (a) within the Station Precinct Areas, Particular Specification 02 – Built Environment clause 2.3, Stations Precincts, Street and Public Domain excluding:
  - (i) 2.3.1 General
    - (A) (c) (x) D. Advertising
    - (B) (d) "OpCo must provide CCTV coverage for Interchange Zones..."
  - (ii) 2.3.2.1 Design Capacity Requirements;
  - (iii) 2.3.3.2.1 Bicycles;
    - (A) (b) (i) Class 2 – enclosed bicycle parking lock-up areas;
    - (B) (e) "OpCo must ensure that all enclosed bicycle parking areas are accessible..."
    - (C) (f) "OpCo must ensure bicycle parking facilities are accessible"
    - (D) (i) "Where enclosed bicycle parking is located at a floor..."
    - (E) (j) "OpCo must ensure that enclosed bicycle parking facilities are legible ..."
    - (F) (k) "OpCo must ensure that enclosed bicycle parking facilities are incorporated..."
    - (G) (q) "OpCo must provide CCTV coverage for bicycle parking ..."
    - (H) (r) "OpCo must ensure that vertical surfaces of enclosed bicycle parking ..."
    - (I) (t) "OpCo must coordinate the design of the enclosed bicycle..."
    - (J) (w) "OpCo must ensure that enclosed bicycle parking facilities..."
  - (iv) 2.3.3.2.2 Buses;
    - (A) (h) (iv) "a dedicated bus driver facility containing lunchroom..."
    - (B) (h) (viii) "CCTV that..."
  - (v) 2.3.3.2.6 Commuter Carparking;
  - (vi) 2.3.3.2.7 Interchange Model Particular Requirements:
    - (A) (a) (iv) (D) "a dedicated bus driver facility..."
    - (B) (c) (vii) "a 200 space at-grade Car Park..."
    - (C) (c) (viii) "provision of the at-grade Car Park ...";
    - (D) (d) (vii) "a 300 space at grade Car Park"; and
  - (vii) 2.3.3.3.1 Station Plazas – General;
    - (A) (a) (xi) "fencing including..."
    - (B) (a) (xix) (B) "PA Systems..."
    - (C) (a) (xix) (C) "CCTV..."
    - (D) (c) (ii) "service building doors that do not directly open..."
  - (viii) 2.3.3.3.2 Station Plaza Particular Requirements;
    - (A) (a) (i) (E) "retail and precinct activation enabling infrastructure..."
  - (ix) 2.3.3.4.1 Public Domain – General;
    - (A) (a) (x) "fencing including..."

- (x) 2.3.4.11 Fencing, Handrails and Balustrades;
- (xi) 2.3.6 Operational Areas and Functions;
- (b) within the Station Precinct Areas, Particular Specification 02 – Built Environment clause 2.7.4 Adjacent Development Sites;
- (c) Contamination Scope Elements; and
- (d) only to the extent:
  - (i) not inconsistent with paragraphs (a) and (b); and
  - (ii) within the Station Precinct Areas,

the SSTOM Works identified in the column "CRS Scope shall, in addition to, or consistent with the requirements as defined by the referenced Particular Specification clause in this table, include the following:" in the Table in Part 3 of this Attachment 1,

but in any case will exclude the SSTOM Works identified in the column "The following SSTOM Works are not CRS Scope" in the Table in Part 3 of this Attachment 1.

In delivering the CRS Scope defined in (a) to (d), OpCo must comply with all other applicable requirements of this deed including the General Specification and Particular Specifications.



## Part 2 – Drawings

Station Precinct Areas will be defined by the boundary limits on the drawings as summarised in the following register. Each of the drawings listed in the register below are electronic files in the document titled '221212\_CRS\_ALL STATIONS\_FINAL' on a separate disc titled:

SSTOM PPP  
Exhibit 16 – Electronic files

Drawing Title	File No	Sheet	Drawing Number	Revision	Version
SYDNEY METRO WESTERN SYDNEY AIRPORT ST MARY'S LANDSCAPE GENERAL STM CRS PLAN 1	417348	1	SMWAEDS-PMD-STM- LA-DRG-CRS100020	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT ST MARY'S LANDSCAPE GENERAL STM CRS PLAN 2	417348	2	SMWAEDS-PMD-STM- LA-DRG-CRS100021	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT ST MARY'S LANDSCAPE GENERAL STM CRS PLAN 3	417348	3	SMWAEDS-PMD-STM- LA-DRG-CRS100022	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT ST MARY'S LANDSCAPE GENERAL STM CRS PLAN 4	417348	4	SMWAEDS-PMD-STM- LA-DRG-CRS100023	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT ST MARY'S LANDSCAPE GENERAL STM CRS PLAN 5	417348	5	SMWAEDS-PMD-STM- LA-DRG-CRS100024	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT ORCHARD HILLS LANDSCAPE GENERAL OHE CRS PLAN 1	417348	1	SMWAEDS-PMD-OHE- LA-DRG-CRS200020	0	.01
SYDNEY METRO WESTERN SYDNEY AIRPORT ORCHARD HILLS LANDSCAPE GENERAL OHE CRS PLAN 2	417348	2	SMWAEDS-PMD-OHE- LA-DRG-CRS200021	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT ORCHARD HILLS LANDSCAPE GENERAL OHE CRS PLAN 3	417348	3	SMWAEDS-PMD-OHE- LA-DRG-CRS200022	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT ORCHARD HILLS LANDSCAPE GENERAL OHE CRS PLAN 4	417348	4	SMWAEDS-PMD-OHE- LA-DRG-CRS200023	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT LUDDENHAM LANDSCAPE GENERAL LDN CRS PLAN 1	417348	1	SMWAEDS-PMD-LDN- LA-DRG-CRS300020	0	0.1
SYDNEY METRO WESTERN SYDNEY AIRPORT LUDDENHAM LANDSCAPE GENERAL LDN CRS PLAN 2	417348	2	SMWAEDS-PMD-LDN- LA-DRG-CRS300021	0	0.1
SYDNEY METRO WESTERN SYDNEY AIRPORT LUDDENHAM LANDSCAPE GENERAL LDN CRS PLAN 3	417348	3	SMWAEDS-PMD-LDN- LA-DRG-CRS300022	0	

Drawing Title	File No	Sheet	Drawing Number	Revision	Version
SYDNEY METRO WESTERN SYDNEY AIRPORT LUDDENHAM LANDSCAPE GENERAL LDN CRS PLAN 4	417348	4	SMWAEDS-PMD-LDN-LA-DRG-CRS300023	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT LUDDENHAM LANDSCAPE GENERAL LDN CRS PLAN 5	417348	5	SMWAEDS-PMD-LDN-LA-DRG-CRS300024	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT BUSINESS PARK LANDSCAPE GENERAL ABP CRS PLAN 1	417348	1	SMWAEDS-PMD-ABP-LA-DRG-CRS400020	0	0.1
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT BUSINESS PARK LANDSCAPE GENERAL ABP CRS PLAN 2	417348	2	SMWAEDS-PMD-ABP-LA-DRG-CRS400021	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT BUSINESS PARK LANDSCAPE GENERAL ABP CRS PLAN 3	417348	3	SMWAEDS-PMD-ABP-LA-DRG-CRS400022	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT BUSINESS PARK LANDSCAPE GENERAL ABP CRS PLAN 4	417348	4	SMWAEDS-PMD-ABP-LA-DRG-CRS400023	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT BUSINESS PARK LANDSCAPE GENERAL ABP CRS PLAN 5	417348	5	SMWAEDS-PMD-ABP-LA-DRG-CRS400024	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT TERMINAL LANDSCAPE GENERAL ATL CRS PLAN 1	417348	1	SMWAEDS-PMD-ATL-LA-DRG-CRS500020	0	0.1
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT TERMINAL LANDSCAPE GENERAL ATL CRS PLAN 2	417348	2	SMWAEDS-PMD-ATL-LA-DRG-CRS500021	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT TERMINAL LANDSCAPE GENERAL ATL CRS PLAN 3	417348	3	SMWAEDS-PMD-ATL-LA-DRG-CRS500022	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AIRPORT TERMINAL LANDSCAPE GENERAL ATL CRS PLAN 4	417348	4	SMWAEDS-PMD-ATL-LA-DRG-CRS500023	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AEROTROPOLIS LANDSCAPE GENERAL AEC CRS PLAN 1	417348	1	SMWAEDS-PMD-AEC-LA-DRG-CRS600020	0	0.1
SYDNEY METRO WESTERN SYDNEY AIRPORT AEROTROPOLIS	417348	2	SMWAEDS-PMD-AEC-LA-DRG-CRS600021	0	

Drawing Title	File No	Sheet	Drawing Number	Revision	Version
LANDSCAPE GENERAL AEC CRS PLAN 2					
SYDNEY METRO WESTERN SYDNEY AIRPORT AEROTROPOLIS LANDSCAPE GENERAL AEC CRS PLAN 3	417348	3	SMWAEDS-PMD-AEC- LA-DRG-CRS600022	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AEROTROPOLIS LANDSCAPE GENERAL AEC CRS PLAN 4	417348	4	SMWAEDS-PMD-AEC- LA-DRG-CRS600023	0	
SYDNEY METRO WESTERN SYDNEY AIRPORT AEROTROPOLIS LANDSCAPE GENERAL AEC CRS PLAN 5	417348	5	SMWAEDS-PMD-AEC- LA-DRG-CRS600024	0	

**Part 3 – Table showing CRS Requirements Delineation**

This Part 3 of Attachment 1 consists of the documentation listed below, which is included in electronic files on a separate disc titled

SSTOM PPP  
Exhibit 16 – Electronic files

Document	File Name
CRS Requirements Delineation	Schedule 8 - Draft Attachment 3A CRS Requirements Delineation - (221213 SM) Final
CRS Utilities Delineation Drawings	Schedule 8 - Cost Risk Sharing - Attachment 3B (draft) - CRS Utilities Delineation Drawings 221208

## Attachment 2 – Subcontract Packaging Procurement Plan

The Subcontract Packaging Procurement Plan must, as a minimum, include (in sufficient detail acceptable (acting reasonably) to the Principal's Representative):

- the proposed packages;
- the defined scope for each package;
- the budget and program for each package;
- the market engagement and procurement process;
- the form of Subcontract and key commercial terms;
- a probity plan;
- the prequalification and selection process;
- the nominated tender panel; and
- how OpCo will ensure the tendering of the package will comply with all applicable Laws and, to the extent relevant to OpCo or OpCo's Activities, the NSW Government Procurement Guidelines and NSW Government Policies.





























**Attachment 5 – Cost Breakdown (Initial)**

This Attachment 5 consists of the documentation listed below, which is included in electronic files on a separate disc titled:

SSTOM PPP  
Exhibit 16 – Electronic files:

Document	File Name
Cost Breakdown (Initial)	Cost Breakdown (Initial)