



Transport  
for NSW



Execution Version

# Sydney Metro City & Southwest Tunnel and Station Excavation Works Design and Construction Deed

Contract No: 00013/11200

Transport for NSW

ABN 18 804 239 602

John Holland Pty Ltd

ABN 11 004 282 268

CPB Contractors Pty Ltd

ABN 98 000 893 667

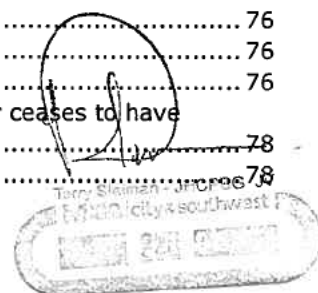
Ghella Pty Ltd

ABN 85 142 392 461

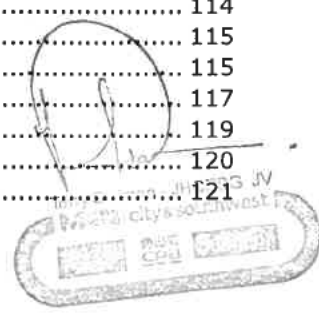


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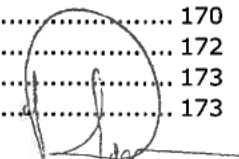
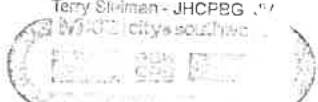
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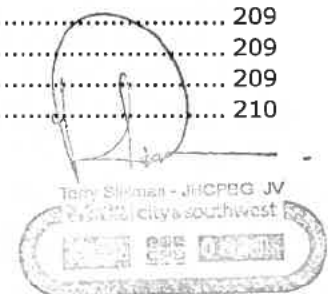
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THIS DEED is made on

22 JUNE

2017

**BETWEEN:**

- (1) **Transport for NSW** ABN 18 804 239 602, a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney New South Wales 2000 (the **Principal**); and
- (2) **John Holland Pty Ltd** ABN 11 004 282 268 of Level 3, 65 Pirrama Road, Pyrmont NSW 2009;  
**CPB Contractors Pty Ltd** ABN 98 000 893 667 of Level 18, 177 Pacific Highway, North Sydney NSW 2060; and  
**Ghella Pty Ltd** ABN 85 142 392 461 of Level 23, 111 Pacific Highway, North Sydney NSW 2060,  
(together the **TSE 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.
- (C) Following the completion of a tender process, the Principal selected the TSE Contractor as the successful tenderer for the delivery of the Project Works.
- (D) The Principal and the TSE Contractor now wish to enter into this deed to record the terms on which the Project Works will be designed, constructed, tested, commissioned and handed over by the TSE Contractor to the Principal.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this document.

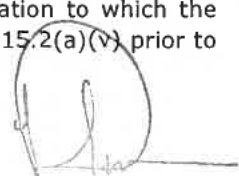

**329 Pitt Street** means the building contained in Lot 3 in Deposited Plan 1085830 and known as 329 Pitt Street, Sydney.

**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.

**Aboriginal Participation Plan** means the Project Plan referred to as the Aboriginal Participation Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Accepted Defect** means a Defect (other than a Minor Defect) in relation to which the Principal has issued a direction under clause 15.2(a)(iii), 15.2(a)(iv) or 15.2(a)(v) prior to the Date of Construction Completion of any Portion.

  
Terry Stewart - JHCPEB JV  
Sydney Metro City & Southwest  


**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 the same).

**Accredited Site Auditor** means a person who is accredited as a site auditor under the *Contaminated Land Management Act 1997* (NSW).

**Act of Prevention** means:

- (a) a breach of this deed by the Principal;
- (b) an act or omission by the Principal or its Associates and not being an act or omission:
  - (i) permitted or allowed by this deed including any Direction given by the Principal or the Principal's Representative (other than a matter referred to in paragraph (c)); or
  - (ii) which is within a timeframe permitted, or allowed by this deed (other than a matter referred to in paragraph (c)); or
  - (iii) to the extent the act or omission is caused or contributed to by a breach by the TSE Contractor of this deed or any negligent, or unlawful, act or omission of the TSE Contractor, or its Associates, including any breach, act or omission in connection with the TSE Contractor's obligations in respect of Interface Contractors; or
  - (iv) being the exercise by the Principal of any of its functions and powers pursuant to any Law; and
- (c) subject to clause 15.3(a)(ii), a Change the subject of a Direction by the Principal's Representative except where the Change is:
  - (i) approved under clause 13.6(d); or
  - (ii) in respect of an Adjustment Item and the Direction by the Principal's Representative is given on or before [REDACTED]

**Additional Third Party Agreement** has the meaning given in clause 10.16(a)(iii)(B).

**Adjoining Owner** means an entity identified in Schedule D7 or Schedule D7A as an "Adjoining Owner".

**Adjoining Property** means a property specified in Schedule D7 or Schedule D7A.

**Adjoining Property Access Licence** means a licence on the terms set out at clause 2 of the Pro-forma Adjoining Property Owner Agreement.

**Adjoining Property Easement** means an:

- (a) Easement for Crane Access;
- (b) Easement for Rock Anchors;
- (c) Easement for Scaffolding; or
- (d) Easement for Safety Structure.



Tony Stanton - JHCPBG JV  
[REDACTED]

**Adjoining Property Owner Agreement** means an agreement with an Adjoining Owner substantially in the form of the Pro-forma Adjoining Property Owner Agreement (or such other form as the Principal may agree with any Adjoining Owner).

**Adjustment Item** means an element of the Project Works identified as an "Adjustment Item" in the drawings contained in Appendix B.3 of the SWTC.

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

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

- (a) the Principal, the TSE Contractor and the Independent Certifier 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.

**Alternate Operator** means an entity other than OpCo2 that is engaged by the Principal to operate and, if required by the Principal, maintain Sydney Metro Northwest and Sydney Metro City & Southwest.

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

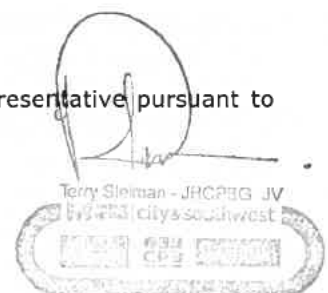
- (a) to perform the TSE Contractor's Activities;
- (b) in connection with the Construction Site and any Extra Land prior to the Portion Handover Date (but only to the extent required for the performance of the TSE Contractor's Activities);
- (c) for the use and occupation of:
  - (i) any Portion (both individually and in combination with any earlier completed Portions) after Construction Completion of the Portion;
  - (ii) the Project Works after Construction Completion of every Portion; or
- (d) for the use and occupation of:
  - (i) any Portion (both individually and in combination with any earlier completed Portions) after Completion of the Portion;
  - (ii) the Project Works after Completion of every Portion; or
- (e) otherwise to comply with Law,

and for the avoidance of doubt includes:

- (f) the Planning Approval; and
- (g) any Environment Protection Licence issued in relation to the TSE Contractor's Activities,

but does not include:

- (h) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or



(i) the exercise by the Principal of its rights under this deed.

**Archaeological Clearance Works** means the works described in section 2 of Appendix A.12 of the SWTC.

**Archaeological Investigation Period** means, in relation to an Artefact Risk Area, the period specified in Schedule D15 in the column headed "Archaeological Investigation Period".

**Artarmon Sub-station Riser** has the meaning given in section 2.8(xxii) of the SWTC.

**Artefact Risk Area** means an area of the Construction Site specified in Schedule D15 in the column headed "Artefact Risk Area".

**Artefacts** means any and all:

- (a) valuable minerals, fossils, or coins;
- (b) articles or objects of value or antiquity;
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest; and
- (d) artefacts, objects, things, deposits or material evidence that:
  - (i) relates to the settlement of the area that comprises New South Wales (not being Aboriginal settlement); and
  - (ii) is of State or local heritage significance,

found on or under the surface of the Construction Site.

**ASA or Asset Standards Authority** means the independent unit of that name established within TfNSW whose functions include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle.

**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 specified conditions of the authorisation.

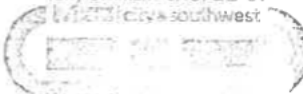
**ASA Charter** means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on [www.asa.transport.nsw.gov.au](http://www.asa.transport.nsw.gov.au).

**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 TSE Contractor's Activities which relate to the Asset Lifecycle of Transport Assets.

**Asset Management Information** means the information and documents relating to the operation and maintenance of the assets forming the Project Works and Handover Works as required by Appendix E.1 of the SWTC.

  
Terry Steiman - JHCPBG JV  
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**Asset Management Information Delivery Plan** means the Project Plan referred to as the Asset Management Information Delivery Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

**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 TSE Contractor and its Subcontractors;
  - (iv) any Follow-on Contractors and their respective subcontractors;
  - (v) OpCo2 and its subcontractors;
  - (vi) any Alternate Operator and its subcontractors;
  - (vii) the Early Works Contractors;
  - (viii) each Demolition Contractor; and
  - (ix) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (viii) above; and
- (b) in respect of the TSE Contractor, its Subcontractors, each entity that comprises the TSE Contractor, the TSE Contractor Guarantors and any of their respective employees, agents, contractors or officers (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).

**Authority** means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the TSE Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of Utility Services, the Utility Service Works, the Local Areas or the Local Area Works,

and, to avoid doubt, includes the Clean Energy Regulator.

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

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



- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if 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 TSE 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 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 D10.

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

**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.

**Barangaroo Station Works** has the meaning given in Schedule D14.

**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:

- (c) Central Barangaroo Developer;
- (d) Barangaroo South Developer; and
- (e) Crown Developer.

**BDA Public Domain** has the meaning given to the term 'public domain' in the *Barangaroo Delivery Authority Act 2009 (NSW)*.

**BIM** means any building information model prepared in relation to the Project Works or the TSE Contractor's Activities, as required by section 7.19 of the SWTC.

**Block 7** means the area described as "BDA Block 7" in the drawings referred to in Table 1 of the Site Access Schedule.

**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.

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



**Category A Demolition Works** means an element of the Demolition Works referred to in section 5.2(a)(i) of Schedule C1 of a Demolition Contract.

**Category B Demolition Works** means an element of the Demolition Works referred to in section 5.2(a)(ii) of Schedule C1 of a Demolition Contract.

**CCCC Guarantee** means the Parent Company Guarantee from China Communications Construction Company Limited in favour of the Principal.

**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.

**Certified Environmental Consultant** means an environmental consultant that holds current certification as:

- (a) a "Certified Practitioner: Site Assessment and Management" from Site Contamination Practitioners Australia; or
- (b) a "Certified Environmental Practitioner" in the "Contaminated Land Specialist" category from the Environment Institute of Australia and New Zealand.

**Chain of Responsibility Management Plan** means the Project Plan referred to as the Chain of Responsibility Management Plan in the Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

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

**Change** means any change or variation to the Project Works or the Temporary Works including:

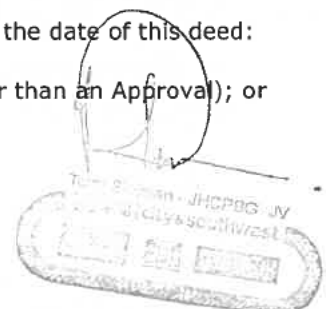
- (a) additions, increases, decreases, omissions, deletions, substitutions or alterations;
- (b) changes to the character or quality, or demolition or removal, of any material or work;
- (c) changes to the levels, lines, positions or dimensions of any part of the Project Works or the Temporary Works;
- (d) changes to any sequence, method or timing of construction specified in this deed other than changes in programming requirements necessary for the TSE Contractor to comply with its obligations under this deed; and
- (e) changes to the Construction Site.

**Change in Codes and Standards** means a change in the Codes and Standards or a change in any NSW Government Policy taking effect after the date of this deed.

**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 of an existing Law (other than an Approval); or
- (b) a new Law (other than an Approval),



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

- (c) in respect of Tax;
- (d) which was caused or contributed to by any act or omission of the TSE Contractor (but not to the extent that the relevant act or omission of the TSE Contractor was caused or contributed to by an act or omission of a Demolition Contractor); or
- (e) 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 of an existing Law or a possible new Law); or
  - (ii) a person experienced and competent in the delivery of works and services similar to the Project Works or the TSE Contractor's Activities would have reasonably foreseen or anticipated (but not to the extent that the Change in Law relates to the Demolition Works).

**Change Order** means a written document titled "Change Order" issued under clause 13.2(a).

**Change Proposal Request** means a written document titled "Change Proposal Request" issued under clause 13.1(a).

**City Stations** means the railway stations (or part thereof) at Crows Nest, Victoria Cross, Barangaroo, Martin Place, Pitt Street, Central, Waterloo and Sydenham that will form part of Sydney Metro City & Southwest.

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

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

**Clean Energy Regulator** means the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* (Cth).

**Codes and Standards** means the codes, standards, specifications and guidelines referred to in Appendix A.8 of the SWTC.

**Commonwealth** means the Commonwealth of Australia.

**Commonwealth Works** means any Commonwealth Funded Building Work (as that term is defined in the Building Code) that the TSE Contractor is required to carry out under this deed.

  
Terry Skelman - JHCPBG JV  
NSW STZ CitySouthwest  




**Community Communications Strategy** means the Project Plan referred to as the Community Communications Strategy – Tunnels and Station Excavation Works in Appendix E.6 of the SWTC, an initial version of which is included in Appendix E.7 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Compensable Contamination** means Contamination of a type for which a rate is specified in Part 7 of the Construction Payment Schedule but does not include any Contamination which:

- (a) is caused by the TSE Contractor's Activities; or
- (b) arises out of or in connection with a failure by the TSE 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 the stage in the execution of the TSE Contractor's Activities in respect of a Portion when:

- (a) Construction Completion has been achieved in respect of the Portion;
- (b) the TSE Contractor has executed a certificate in the form of Schedule B25 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
- (c) the TSE Contractor has given to the Principal's Representative (with a copy to any of OpCo2, an Alternate Operator or any Follow-on Contractor as required by the Principal) all:
  - (i) Asset Management Information certified by the Independent Certifier under clause 14.14(j)(ii)(B); and
  - (ii) as-built drawings certified by the Independent Certifier under clause 14.15(c)(ii),relating to the Portion; and
- (d) the TSE Contractor has corrected all Minor Defects and Agreed Defects that are listed in the Independent Certifier's Notice of Construction Completion.

**Completion Steering Committee** means the group referred to in clause 16.8.

**Completion Working Group** means the group referred to in clause 16.9.

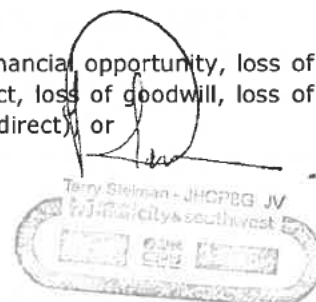
**Concept Design** means the concept design prepared by the TSE Contractor and included in Appendix A.11 of the SWTC.

**Condition Precedent** means a condition precedent set out in Schedule A0.

**Condition Precedent Deadline Date** means 30 June 2017 or such other date agreed between the parties.

**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 TSE Contractor's 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 TSE Contractor has rectified all Mandatory Defects;
- (c) the TSE Contractor has:
  - (i) carried out and passed all tests which:
    - (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) given to the Principal's Representative (with a copy to any of OpCo2, an Alternate Operator or any Follow-on Contractor as required by the Principal) all documents or other 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 E.5 of the SWTC but not including:
    - (A) Asset Management Information; and
    - (B) as-built drawings,unless directed by the Principal's Representative;
  - (iv) executed a certificate in the form of Schedule B1 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
  - (v) provided the training referred to in clause 14.16(a) to the reasonable satisfaction of the Principal's Representative; and



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- (vi) removed all Construction Plant from the parts of the Construction Site that relate to the Portion, other than:
  - (A) where the Principal's Representative has given a notice under clause 17.14(a) to carry out Transitional Handover Services in respect of the Portion, any Construction Plant required to carry out the Transitional Handover Services; and
  - (B) any Construction Plant necessary to facilitate the handover of the Portion to the Principal or retained on the Construction Site in accordance with clause 14.12(d) (where approved by the Principal's Representative in accordance with clause 14.12(d));
- (d) the Quality Manager has executed a certificate in the form of Schedule B14 for the Portion and provided it to the Principal's Representative;
- (e) the TSE Contractor has, in respect of any Extra Land occupied or used in connection with the Portion, provided the Principal's Representative with:
  - (i) 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
  - (ii) statements under clause 10.5(a)(ii)(B)(bb); and
- (f) the TSE Contractor has done everything else which is stated to be a condition precedent to Construction Completion of the Portion or which the TSE Contractor is otherwise expressly required by this deed to do before Construction Completion of the Portion, including any additional conditions precedent to Construction Completion specified in Schedule A1.

**Construction Contract Sum** means the sum of [REDACTED] as adjusted in accordance with this deed.

**Construction Environmental Management Plan** means the Project Plan referred to as the Construction Environmental Management Plan in Appendix E.6 of the SWTC and required by conditions C1 and C2 of the Project Planning Approval, an initial version of which is included in Appendix E.7 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Construction Heritage Management Plan** means the Construction Heritage Management Plan referred to in Appendix E.6 of the SWTC and required by condition C3 of the Project Planning Approval (which is a sub-plan to the Construction Environmental Management Plan), as updated from time to time in accordance with clause 9.4.

**Construction Manager** means the person appointed to that position under clause 16.2(b) as at the date of this deed or any person appointed as a replacement under clause 16.2(b).

**Construction Payment Schedule** means Schedule E2.

**Construction Plan** means the Project Plan referred to as the Construction Plan in Appendix E.6 of the SWTC, an initial version of which is included in Appendix E.7 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Construction Plant** means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, waterborne craft, appliances and things used in the carrying out of the TSE Contractor's Activities but not forming part of the Project Works.



**Construction Site** means the Project Site and the Temporary Areas.

**Construction Site Interface Work** has the meaning given in clause 6.2(a)(ii).

**Construction Traffic Management Plan** means the Construction Traffic Management Plan referred to in Appendix E.6 of the SWTC and required by condition C3 of the Project Planning Approval (which is a sub-plan to the Construction Environmental Management Plan), as updated from time to time in accordance with clause 9.4.

**Contaminated Future Development Site** means:

- (a) the areas of the Construction Site identified in Schedule D13; or
- (b) such other parts of the Construction Site as may be directed by the Principal's Representative.

**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 12.13(b).

**Control** has the meaning in the Corporations Act.

**Core Sample Location Difference** means a material difference between:

- (a) the actual location on the ground surface (including the seabed surface) at the time of core sampling, where a core sample which is the subject of a Geotechnical Report was taken; and
- (b) the location on the ground surface (including the seabed surface) represented in the Geotechnical Report as being the location where the relevant core sample was taken at the time of core sampling.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Corporate WHS Management System** has the meaning given in the WHS Management Systems and Auditing Guidelines.

**Cost Centre** means any cost centre specified in the Design Payment Schedule or the Construction Payment Schedule.

**Cost Item** means any cost item specified in the Design Payment Schedule or the Construction Payment Schedule.

**Costs** has the meaning given in section 2 of Schedule E10.

**Council Interface Agreements** means:

- (a) the North Sydney Council TSE Interface Agreement;
- (b) the Sydney City Council TSE Interface Agreement; and



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Sydney City Council

(c) the Willoughby Council TSE Interface Agreement,  
and each of which is a **Council Interface Agreement**.

**Council Interface Works** means:

- (a) North Sydney Council Interface Works;
- (b) Sydney City Council Interface Works; and
- (c) Willoughby Council Interface Works.

**Council Works** means:

- (a) North Sydney Council Works;
- (b) Sydney City Council Works; and
- (c) Willoughby Council Works.

**Cross City Tunnel Interface Agreement** means the Draft Third Party Agreement titled "Sydney Metro City & Southwest – Cross City Tunnel Interface Deed" between the Principal, RMS, Transurban CCT Nominees Pty Ltd in its own capacity and as trustee of the Transurban CCT Trust, Transurban CCT Pty Ltd and the State of NSW (as may be updated or replaced in accordance with clause 10.16).

**Cross City Tunnel Works** has the meaning given to the term "Works" in the Cross City Tunnel Interface Agreement.

**Crown Building Work** has the meaning given to that term in section 109R 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 TSE Contractor in writing by the Principal's Representative.

**CSM Contract** means the deed to be entered into between the Principal and the CSM Contractor for the design and construction of the CSM Works.

**CSM Contractor** means the entity selected by the Principal to design and construct the CSM Works.

**CSM Works** means 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.

**DAB Agreement** means the agreement which appears in schedule A14.

**Data** for the purposes of the definition of Emissions and Energy Data and clause 3.14(d)(i)(A), includes data, information, records and reports.

**Date for Completion** means, in respect of a Portion, the date that is 90 days after the Date of Construction Completion of the relevant Portion.

**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 A1; or

  
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Sydney Metro City & Southwest

- (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 Dispute Avoidance Board determination or arbitration or litigation proceedings, the date resulting therefrom.

**Date of Completion** means, in respect of a Portion:

- (a) the date notified in a Notice of Completion as the date Completion was achieved; or
- (b) where another date is determined in any Dispute Avoidance Board determination or arbitration or litigation proceedings as the date upon which Completion was achieved, that date.

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

- (a) the date notified in a Notice of Construction Completion as the date Construction Completion was achieved; or
- (b) where another date is determined in any Dispute Avoidance Board determination or arbitration or litigation proceedings as the date upon which Construction Completion was achieved, that date.

**Day 1 Clauses** means clauses 1, 1A, 2.3, 4, 5.1, 5.2, 10.8, 10.16(a)(iii), 10.20, 14.3(b), 18.1A, 20, 21.2, 21.3(a), 21.13(a), 23, 24, 26, 27, 28, 29 and 30 and any other clauses or schedules required to have commenced in order to give effect to those clauses.

**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 the deed of disclaimer signed by the TSE Contractor in favour of the Principal, a copy of which appears in Schedule A17.

**Defect** means:

- (a) any 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 the TSE Contractor's Activities,

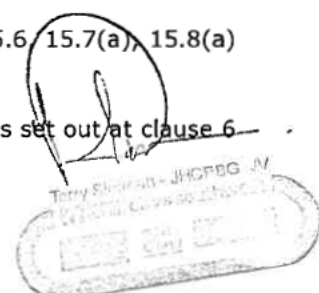
which is not in accordance with the requirements of this deed,

but does not include any damage caused to the Project Works after the Portion Handover Date other than damage that is caused or contributed to by the TSE Contractor or its Associates.

**Defective Early Works** has the meaning given in clause 14.2(c)(ii).

**Defects Correction Period** means a period referred to in clauses 15.6, 15.7(a), 15.8(a) or 15.9.

**Demolition and Construction Licence** means a licence on the terms set out at clause 6 of the Pro-forma Adjoining Property Owner Agreement.

  
Terry Sheehan - JHCPBG JV  
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**Demolition Contract** means a contract between the Principal and a Demolition Contractor contained in Schedule D11 and **Demolition Contracts** means any two or more of such contracts.

**Demolition Contract Deed of Novation** means a deed between the Principal, the TSE Contractor and a Demolition Contractor substantially in the form contained in Part 1 or Part 2 of Schedule A16 (as applicable).

**Demolition Contractor** means any of:

- (a) Delta Pty Ltd (ABN 67 007 069 794); and
- (b) Metropolitan Demolitions Pty Limited (ABN 67 099 769 052),

and **Demolition Contractors** means both such contractors.

**Demolition Works** means the works described in section 2.7 and Appendix A.4 of the SWTC.

**Design Contract Sum** means the sum of [REDACTED] as adjusted in accordance with this deed.

**Design Documentation** means all:

- (a) design documentation (including design standards, concrete mix designs, design reports (including the Flood Modelling Design Report), durability reports, specifications, models (including the Flood Model or the BIM or any part thereof), samples, prototypes, calculations, drawings, shop drawings, digital design records and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, which are required for the performance of the TSE Contractor's Activities, or which the TSE Contractor or any other person creates in performing the TSE Contractor's Activities (including the design of Temporary Works); and
- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the TSE Contractor's Activities.

**Design Life** has the meaning given in section 1.2 of the SWTC.

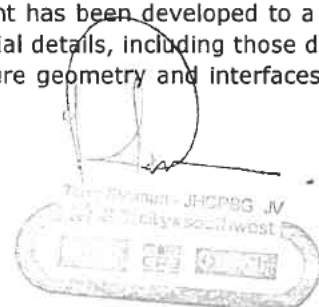
**Design Manager** means the person appointed to that position under clause 16.2(b) as at the date of this deed or any person appointed as a replacement under clause 16.2(b).

**Design Payment Schedule** means Schedule E1.

**Design Management Plan** means the Project Plan referred to as the Design Management Plan in Appendix E.6 of the SWTC, an initial version of which is included in Appendix E.7 of the SWTC, as updated from time to time in accordance with clause 9.4.

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

**Design Stage 1** or **Developed Concept Design Stage** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element or component has been developed to a fixed design concept in relation to general details and any special details, including those details associated with foundation conditions, tunnel and structure geometry and interfaces with adjacent land formations and infrastructure.



**Design Stage 2 or Substantial Detailed Design Stage** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element includes all the design standards, design reports, specifications, models, calculations and drawings and shop drawings, for the discrete design element or component, and is the stage at which the design analysis, design details and drawings demonstrate that the Design Documentation, when fully developed, will comply with and satisfy all the requirements of the TSE Contract.

**Design Stage 3 or Final Design Stage** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element is fully developed, including all design standards, design reports, specifications, models, calculations and drawings and shop drawings, for the discrete design element or component.

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

**Dispute** has the meaning given to that term in clause 23.1.

**Dispute Avoidance Board** means the board constituted under the DAB Agreement, referred to in clause 23.

**Draft Third Party Agreement** has the meaning given in clause 10.16(a)(iii)(C).

**Early Works** means the works or design services described in Appendix A.2 of the SWTC (excluding any Demolition Works which are performed under a Demolition Contract that has been novated under clause 14.3).

**Early Works Completion Date** means, in respect of a package of Early Works, the relevant date specified in the column titled "Early Works Completion Date – Latest Date" in section 2 of Appendix A.2 of the SWTC.

**Early Works Contractor** means any contractor engaged by the Principal to carry out any Early Works (but excludes any Demolition Contractor that is party to a Demolition Contract that has been novated under clause 14.3).

**Early Works Inspection** has the meaning given in clause 14.2(c)(i).

**Easement for Crane Access** means an easement for crane access in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

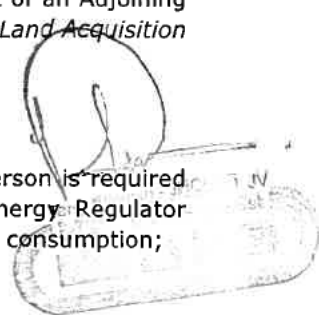
**Easement for Rock Anchors** means an easement for rock anchors in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Easement for Safety Structure** means an easement for the installation of a safety structure in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Easement for Scaffolding** means an easement for scaffolding in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Emissions and Energy Data** means:

- (a) any Data of the type that a registered corporation or any other person is required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;





- (b) any Data of the type that a registered corporation or any other person is entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) any other Data concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person is required by any other Law to keep or to provide to any Authority.

**Encumbrance** means a mortgage, charge, pledge, lien, security interest, lease, title retention, preferential right, trust arrangement, contractual right of set-off and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest.

**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).

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

**Environmental and Sustainability Management System** means an environmental and sustainability management system as described in section 7.3 of the SWTC.

**Environmental Documents** means the Planning Approval and Appendix A.12 of the SWTC.

**Environmental Manager** means the person appointed to that position under clause 16.2(b) as at the date of this deed or any person appointed as a replacement under clause 16.2(b).

**Environmental Notice** means any notice (including any notice of an intention to issue an order under the EP&A Act), order or request for information issued by an Authority in respect of a matter concerning the Environment.

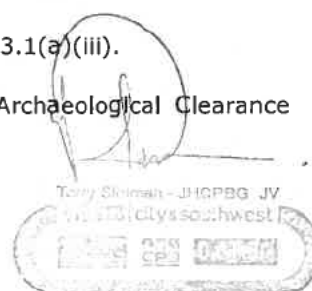
**Environmental Representative** or **ER** means Mike Woolley of Healthy Buildings International Pty Limited (ABN 39 003 270 693) appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to the TSE Contractor.

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

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

**Estimated Third Party Costs** has the meaning given in clause 13.1(a)(iii).

**Excavation and Salvage Works** means those parts of the Archaeological Clearance Works which comprise excavation and salvage.



**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 TSE Contractor or its Associates.

**Excluded Claim** means any Claim:

- (a) arising out of a Change in Law under clause 5.3(b);
- (b) for a Change directed by the Principal's Representative pursuant to clause 5.4(a)(ii)(B) arising out of a Change in Codes and Standards;
- (c) arising out of a change in the Planning Approval under clause 5.5(b);
- (d) arising out of a Core Sample Location Difference under clause 10.10(c);
- (e) for a Change to which clause 13.3 applies;
- (f) for a Change arising out of Defective Early Works under clause 14.2(g);
- (g) for an extension of time under clause 17.6; and
- (h) for payment under clause 18 of any part of the original Project Contract Sum.

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

**Excusable Cause of Delay** means:

- (a) an Act of Prevention;
- (b) subject to clauses 17.9(b) and 17.9(c), a direction by the Principal's Representative under clause 17.9(a) to suspend the TSE Contractor's Activities;
- (c) a Force Majeure Event;
- (d) a Change in Law;
- (e) [REDACTED]
  - (i) [REDACTED] a reduction in the permissible working hours or days or in the permissible noise and vibration limits permitted for the TSE Contractor's Activities which occurs in the circumstances set out in clauses 5.5(b), [REDACTED] (as applicable); or
  - (ii) [REDACTED]

  
Terry Shikhan - JHCPBG JV  
[REDACTED]

- (f) a court or tribunal order, or a direction by the Principal's Representative to the TSE Contractor, to suspend or cease performing its obligations under this deed as a result of a legal challenge as described in clause 5.6(a), except to the extent the legal challenge is initiated or upheld due to the TSE Contractor's negligent act or omission or non-compliance with its obligations under this deed;
- (g) a requirement for the TSE Contractor to Remediate any Contamination:
  - (i) on, in, over, under or around the Construction Site that is caused by the Principal (or its Associates) after the date of this deed; or
  - (ii) for which the TSE Contractor is not responsible under clause 10.13(a),  
in circumstances contemplated by clause 10.13(c);
- (h) a Native Title Claim resulting in the TSE Contractor being directed, ordered or required by the Principal's Representative, a court or tribunal or by Law to suspend or cease to perform the TSE Contractor's Activities (or to change the way it does so);
- (i) the discovery of an Artefact to the extent that the discovery of that Artefact results in the TSE Contractor being directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform the TSE Contractor's Activities [REDACTED]

■ [REDACTED]

■ [REDACTED]

for more than [REDACTED] days in aggregate for each discovery of an Artefact [REDACTED]

■ [REDACTED]

■ [REDACTED]

- (j) testing directed under clause 11.8(a)(ii) for which the TSE Contractor is entitled to be paid its costs pursuant to clause 11.8;
- (k) Defective Early Works, in the circumstances contemplated by clauses 14.2(g) and 14.2(i)(ii);

(l) [REDACTED]

(m) [REDACTED]



[Redacted]

(n) the suspension or revocation of the Principal's Accreditation (provided that such suspension or revocation is not caused or contributed to by an act or omission of the TSE Contractor or its Associates);

(o) a failure by an Early Works Contractor or the Principal to complete a package of Early Works by the applicable Early Works Completion Date (provided that a package of Early Works will not be taken to be incomplete due to the presence of Defective Early Works);

(p) [Redacted]

[Redacted]

[Redacted]

(q) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(r) [Redacted]

(s) [Redacted]

[Redacted]

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[Redacted]

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[Redacted]

(t) [Redacted]

(i) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(u) [Redacted]

(v) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

(w) [Redacted]

[Redacted]

[Redacted]

(x) [Redacted]



**Executive Negotiator** means:

- (a) for the TSE Contractor, the chairperson from time to time under the TSE Contractor JV Deed; or
  - (b) for the Principal, the Program Director of Sydney Metro,
- (or his or her delegate, who must not be part of the Management Review Group).

**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.

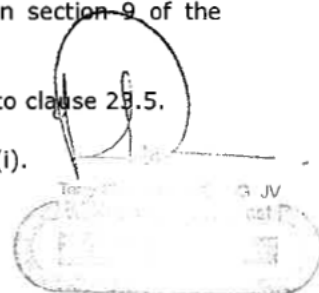
**Existing Operator** means:

- (a) RailCorp;
- (b) Sydney Trains;
- (c) NSW Trains;
- (d) NRT;
- (e) RMS;
- (f) Ausgrid;
- (g) Sydney Water;
- (h) Transurban;
- (i) Harbour City Ferries;
- (j) Viva Energy;
- (k) BDA;
- (l) the Central Barangaroo Developer;
- (m) the Barangaroo South Developer;
- (n) the Crown Developer; or
- (o) 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,

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

**Expert** means a person(s) appointed to determine a Dispute pursuant to clause 23.5.

**Extra Land** means the land and buildings referred to in clause 10.5(a)(i).



**Final Design Documentation** means any Design Documentation which:

- (a) the TSE Contractor is entitled to use for construction in accordance with clause 12.10(a); or
- (b) has been amended by a Change directed or approved by the Principal's Representative in accordance with clause 13.

**Final Design Documentation Stage** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element is fully developed, including all design standards, design reports, specifications, models, calculations and drawings and shop drawings, for the discrete design element or component.

**Final Inspection** has the meaning given in clause 15.14(a).

**Flood Model** means the flood model developed by the TSE Contractor in accordance with the requirements of section 7.22 of the SWTC.

**Flood Modelling Design Report** means a flood modelling design report that satisfies the requirements of section 7.22 of the SWTC (including the requirements of section 7.22 relating to design information that is required to inform the SSJ Contract).

**Follow-on Contract** means a contract between the Principal and a Follow-on Contractor for one or more of the design, construction, supply, installation, testing or commissioning of any Follow-on Works, including the Northern Corridor Brownfield Contract, the CSM Contract, the SSJ Contract, the SSC Contract and any Line Wide Contract.

**Follow-on Contractor** means any entity engaged by the Principal to perform one or more of the design, construction, supply, installation, testing or commissioning of any Follow-on Works on or adjacent to the Construction Site, including the Northern Corridor Brownfield Contractor, CSM Contractor, the SSJ Contractor, the SSC Contractor, any Line Wide Contractor and any Station Works Contractor.

**Follow-on Contractor Cooperation and Integration Deed** means a deed to be entered into between the Principal, the TSE Contractor and a Follow-on Contractor substantially in the form of Schedule A10.

**Follow-on Site Access Date** means, for each Portion, the date specified in the column headed "Follow-on Site Access Date" in section 3 of Schedule A1, as may be extended in accordance with this deed.

**Follow-on Works** means any works or the provision of any materials, plant, equipment, machinery or other infrastructure required for Sydney Metro City & Southwest, including the Northern Corridor Brownfield Works, the CSM Works, the SSJ Works, the SSC Works, any Line Wide Works, any Station Works and which may also include any element of the OTS2 Project Works.

**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) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within a Key Plant and Equipment Manufacturing Country;



- (d) an earthquake occurring within Australia or a Key Plant and Equipment Manufacturing Country;
- (e) 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 a Key Plant and Equipment Manufacturing Country; or
- (f) a fire or explosion resulting from an event referred to in:
  - (i) paragraphs (a) or (b) above occurring within Australia;
  - (ii) paragraph (c) above occurring within a Key Plant and Equipment Manufacturing Country; or
  - (iii) paragraphs (d) or (e) above in each case occurring within Australia or a Key Plant and Equipment Manufacturing Country,

which:

- (g) is beyond the reasonable control of the TSE Contractor and its Associates; and
- (h) prevents or delays the TSE Contractor from performing an obligation under the TSE Contract Documents, where that event or the consequence of that event does not arise from any act or omission of the TSE Contractor (including from any breach by the TSE Contractor of a term of a TSE Contract Document).

**Geotechnical Reports** means the Stage 1 Geotechnical Reports and the Stage 2 Geotechnical Reports.

**GHELLA Guarantee** means the Parent Company Guarantee from GHELLA S.p.A. in favour of the Principal.

**GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).

**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 TSE Contractor or its Associates in Australia, as the case may be, under the same or similar circumstances as the performance of the TSE Contractor's Activities and which includes compliance with all Laws relating to the Environment and all guidelines made or approved by the EPA.

**GST** has the same meaning as "GST" has in the GST Law.

**GST Law** has the same meaning as "GST law" has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Handover Works** means those works referred to as the "Handover Works" in the SWTC including in section 2.6, 3.17 and Appendix A.3 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

**Harbour Master** means a person appointed as the harbour master for Sydney Harbour by the Minister for Roads and Freight (or a person appointed to exercise functions of the harbour master for Sydney Harbour) under section 85 of the *Marine Safety Act 1998* (NSW).





**Hazardous Chemical** means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the Environment and includes any "Hazardous Chemical" as defined in the WHS Regulation.

**Hazardous Waste** has the meaning given in the Waste Classification Guidelines, Part 1: Classifying Waste (NSW EPA, 2014).

**Heavy Vehicle National Law** means the *Heavy Vehicle National Law (NSW) No. 42a* and all associated regulations.

**Hickson Road Works** means the Local Area Works to be carried out on or in the vicinity of Hickson Road.

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of a designated authority.

**IC Design Review Period** means:

- (a) in the case of Design Documents (as defined in the WAD) which include the installation, erection, alteration, operation or removal of traffic control lights on any road or road related area, the period specified in the WAD;
- (b) in the case of Design Documents (as defined in the WAD) which include the construction, erection, affixing, marking, repair, alteration or removal of a traffic control facility (as defined in Part 6 of the *Transport Administration Act 1988* (NSW)) or road work (as defined in the *Roads Act 1993* (NSW)), the period specified in the WAD; and
- (c) in any other case, 20 Business Days,

of the date on which any Design Documentation for any Design Stage is submitted in accordance with clause 12.4.

**IC Design Re-Review Period** means:

- (a) the number of Business Days taken by the TSE Contractor to re-submit the Design Documentation rejected under clause 12.8(b)(iii)(A), the Asset Management Information rejected under clause 14.14(j)(ii)(A) or the as-built drawings rejected under clause 14.15(c)(i) (as applicable), provided that:
  - (i) if the TSE Contractor has taken less than 5 Business Days to re-submit the Design Documentation, Asset Management Information or as-built drawings (as applicable), the period is 5 Business Days; or
  - (ii) if the TSE Contractor has taken more than 15 Business Days to re-submit the Design Documentation, Asset Management Information or as-built drawings (as applicable), the period is 15 Business Days; or
- (b) in the case of Third Party Agreement Design Documentation, the IC Design Review Period.

**Identified Utilities Register** means the register of Utility Services set out in Schedule D16.

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

- (a) any work health and safety, 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 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 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; or
  - (x) any incident defined in the Sydney Metro Principal Contractor Health and Safety Standard;
- (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, 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 APP Corporation Pty Limited (ABN 29 003 764 770) of Level 10, 111 Pacific Highway, North Sydney NSW 2060 or such other person(s) as may be engaged by the Principal, the TSE Contractor and, if it accedes to the Independent Certifier Deed, OpCo2 in accordance with the Independent Certifier Deed.

**Independent Certifier Deed** means the deed entered into between the TSE Contractor, the Principal, and the Independent Certifier and to which OpCo2 may accede, dated on or about the date of this deed and substantially in the form of Schedule A9.

**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 Project Planning Approval.

**Independent Temporary Works Checker** means a person appointed by a Demolition Contractor in accordance with section 5.3 of Schedule C1 to a Demolition Works Contract.

**Information Document** means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:

- (a) referred to in Schedule A18;



Tony Steimen - JHCPBG JV  
 24/01/2014 city's southwest

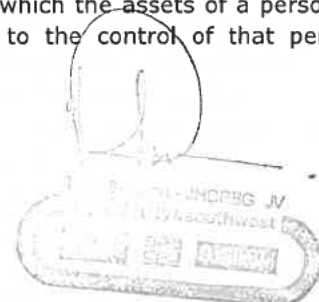
- (b) issued or made available by, or on behalf of, the Principal or the NSW Government to the TSE Contractor in connection with the Invitation for Expressions of Interest, Request for Tender, the Project Works, the TSE Contractor's Activities or Sydney Metro City & Southwest (including anything issued or made available through the Principal's website):
  - (i) which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document"; or
  - (ii) regardless of whether or not it was expressly classified or stated to be an "Information Document"; or
- (c) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

- (d) on, before or after the date of submission of the Tender (including any such information, data, document or material made available as part of the expression of interest phase); or
- (e) on, before or after the date of execution of this deed, other than any information, data, document or material which the Principal is obliged by the terms of this deed to provide to the TSE Contractor and the TSE Contractor is expressly obliged by the terms of this deed to rely on.

**Insolvency Event** means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
  - (ii) winding up or deregistering a person; or
  - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,



or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;

- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**Intellectual Property Right** means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, registered and registrable designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, technical data and know-how, trade marks and any other right in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

**Interface Contractor** means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or its Associates to do work on or adjacent to the Construction Site (including their respective subcontractors all the way down the contracting chain) including:

- (a) OpCo2;
- (b) any Follow-on Contractor;
- (c) any Alternate Operator;
- (d) the Early Works Contractors; and
- (e) any other contractor undertaking any work to rectify Defective Early Works as contemplated by clause 14.2(h),

but not including the TSE Contractor and its Subcontractors.

**Interface Management Plan** means the Project Plan referred to as the Interface Management Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Interface Work** means the work to be executed by Interface Contractors.

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

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

including ATSB, ONRSR and OTSI.



**John Holland** means John Holland Pty Ltd (ABN 11 004 282 268).

**Key Contaminated Area** means an area of the Construction Site described in Schedule D12.

**Key Plant and Equipment** means the key tunnelling plant and equipment and associated equipment identified and described as such in Cost Item 1.2 of Cost Centre 1 of the Construction Payment Schedule.

**Key Plant and Equipment Manufacturing Country** means [REDACTED]

**Key Plant and Equipment Amount** means the amount specified in Cost Item 1.2 of Cost Centre 1 of the Construction Payment Schedule.

**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).

**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:

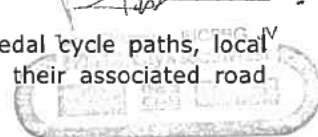
- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective 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.

**Line Wide Contract** means a deed to be entered into between the Principal (or OpCo2 or a Follow-on Contractor) and a Line Wide Contractor for the installation or construction of the Line Wide Works.

**Line Wide Contractor** means an entity selected by the Principal (or OpCo2 or a Follow-on Contractor) to design and construct any of the Line Wide Works.

**Line Wide Works** means the physical works to be designed, constructed, installed and/or commissioned by a Line Wide Contractor under a Line Wide Contract, being the line wide components of Sydney Metro City & Southwest and including work packages such as station control systems, lifts, escalators, tunnel ventilation, tracking including tunnel services, high voltage power supply, overhead line and traction supply, radio communications and platform screen doors.

**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.

**Local Area Works** means:

- (a) the modification, reinstatement and improvement of Local Areas which the TSE 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 2.3.3(c) and 5.2 and Appendix C.2 of the SWTC); and
- (b) the Hickson Road Works, the WAD Road Works, the Council Works and the Sydney Trains Works,

and including, to the extent relevant to such works, Changes directed in accordance with this deed.

**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, for the avoidance of doubt, includes Consequential Loss.

**Lump Sum Price Proposal** has the meaning given in clause 18.12(d).

**Major Australian Bank** means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

**Management Review Group** means the group referred to in clause 16.5.

**Mandatory Defect** means a Defect which has been notified by the Principal's Representative under clause 15.2(a)(i) at any time before the date that is 28 days prior to the estimated Date of Construction Completion specified in a notice given under clause 17.11(a)(iii) in respect of any relevant Portion but does not include an Accepted Defect, an Agreed Defect, or a Minor Defect that is not reasonably capable of correction within the 28 day period contemplated by this definition.

[REDACTED]

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**Materials** means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods, parts and other items incorporated or to be incorporated into the Project Works or the Temporary Works.

**Marrickville Earthworks and Drainage Works** has the meaning given to the term "Marrickville Earthworks and Drainage" in section 2.8(b)(xviii) of the SWTC.

**Minor Defect** means a Defect which:

- (a) is capable of being corrected:
  - (i) after the relevant part of the Construction Site has been handed over to the Principal; and
  - (ii) without causing delay or disruption to the construction activities that are to be performed by:
    - (A) OpCo2 under the OTS2 Project Deed;
    - (B) any Alternate Operator under its contract with the Principal; or
    - (C) a Follow-on Contractor under a Follow-on Contract,within the relevant part of the Construction Site; and
- (b) the Independent Certifier determines the TSE 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 Non-Compliance** means a minor error, minor omission or minor non-compliance:

- (a) which:
  - (i) does not:
    - (A) prevent the Project Works or the Temporary Works from being fit for their intended purpose;
    - (B) prevent the achievement of the performance requirements specified in the SWTC;
    - (C) affect the safety of the Project Works or the Temporary Works; or
    - (D) (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;
    - (E) (in the case of Third Party Agreement Design Documentation for the Sydney City Council Works and the Willoughby Council Works only) affect the safe use of the Sydney City Council Works and the Willoughby Council Works (as applicable); and
  - (ii) the Independent Certifier determines the TSE Contractor has reasonable grounds for not promptly correcting prior to the certification required to be obtained under this deed; or



(b) which the parties agree is a Minor Non-Compliance.

**Monitoring and Protection Plan** means the Project Plan referred to as the Monitoring and Protection Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Month 1 Payment** means [REDACTED] (exclusive of GST) which forms part of the Project Contract Sum.

**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.

**NGER Legislation** means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

**NSW Code** means the NSW Government Code of Practice for Procurement (January 2005) or any substitute for, or update to, such code as contemplated in the NSW Guidelines.

**NSW Government Policies** means the NSW Code, NSW Guidelines, WHS Management Systems and Auditing Guidelines, NSW Government Policy on Aboriginal Participation in Construction (May 2015, updated 1 August 2016), Environmental Management Systems Guidelines (3rd edition) (August 2013), Quality Management System Guidelines for Construction (August 2013), NSW Government Resource Efficiency Policy (GREP) and any other NSW Government guidelines and requirements specified or required by this deed.

**NSW Guidelines** means the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (July 2013) (as issued on 1 July 2013).

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

[REDACTED]

[REDACTED]

[REDACTED]

**Non-Proof Engineered Temporary Works** means all Temporary Works that are not Proof Engineered Temporary Works.

**North Sydney Council Interface Works** has the meaning given to the term "Works" in the North Sydney Council TSE Interface Agreement.

**North Sydney Council TSE Interface Agreement** means the Draft Third Party Agreement titled "Tunnel and Station Excavation Works (TSE) Interface Agreement (200-TPA-NSC)" between the Principal and North Sydney Council (as may be updated or replaced in accordance with clause 10.16).



Terry Sleiman - JHCFBG JV  
City of South West



**North Sydney Council Works** has the meaning given to the term "Council Works" in the North Sydney Council TSE Interface Agreement.

**Northern Corridor Brownfield Contract** means the deed between the Principal and the Northern Corridor Brownfield Contractor for the design and construction of the Northern Corridor Brownfield Works.

**Northern Corridor Brownfield Contractor** means the contractor engaged by the Principal to design and construct the Northern Corridor Brownfield Works, which as at the date of this deed is Laing O'Rourke Australia Construction Pty Ltd.

**Northern Corridor Brownfield Works** means the physical works to be designed and constructed by the Northern Corridor Brownfield Contractor under the Northern Corridor Brownfield Contract, being trackwork, changes to existing Sydney Trains signalling and train control system, changes to Sydney Trains existing overhead systems, and associated civil works within the northern corridor.

**Notice of Completion** means a notice in the form of Schedule B26 issued by the Independent Certifier pursuant to clause 17.11A(b)(i).

**Notice of Construction Completion** means a notice in the form of Schedule B17 issued by the Independent Certifier pursuant to clause 17.11(e)(i).

**Notice of Dissatisfaction** means a notice given under clause 23.6(a).

**NRT** means NRT Pty Ltd (ACN 166 610 313).

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

**OpCo2** means any entity that enters into the OTS2 Project Deed with the Principal.

**OSD Developer** means each contractor appointed by the Principal to undertake OSD Works in respect of an Over Station Development, irrespective of whether that contractor is also appointed by the Principal to undertake Station Works at the same location.

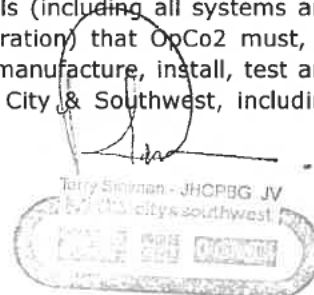
**OSD Works** the physical works to be designed and constructed by an OSD Developer for an Over Station Development.

**OTS Project Deed** means the deed titled "North West Rail Link Operations, Trains and Systems Project Deed" between the Principal and NRT 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 NRT 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.

**OTS2 Project Deed** means a deed between the Principal and OpCo2 for the provision of the OTS2 Project Works and the performance of various services, including in particular the operation and maintenance of Sydney Metro City & Southwest and Sydney Metro Northwest.

**OTS2 Project Works** means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that OpCo2 must, in accordance with the OTS2 Project Deed, 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, 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).

**Outstanding Defect Cost Amount** has the meaning given in clause 4.4(b).

**Outstanding Defect Undertaking** has the meaning given in clause 4.4(c)(i).

**Over Station Development Agreement** means an agreement between the Principal and an OSD Developer in respect of an Over Station Development.

**Over Station Developments** means the proposed works to design and construct over station developments at:

- (a) Chatswood Dive Site;
- (b) Crows Nest Station;
- (c) Victoria Cross Station;
- (d) Pitt Street Station North;
- (e) Pitt Street Station South;
- (f) Martin Place Station North;
- (g) Martin Place Station South;
- (h) Waterloo; and
- (i) Marrickville Dive Site,

that are intended, once complete, to fully integrate with Sydney Metro City & Southwest.

**Overall D&C Program** means the overall program for design and construction activities which is contained in Schedule A20, as updated in accordance with clause 17.2.

**Parent Company Guarantee** means a deed of guarantee and indemnity substantially in the form of Schedule E6.

**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 30.1(b).

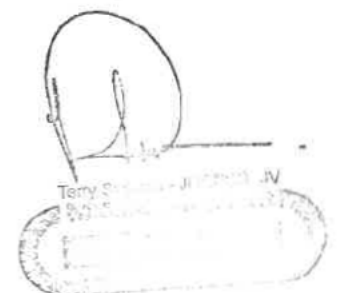
**Performance Incentive Payment** means the amount determined in accordance with the Performance Incentive Payment Schedule.

**Performance Incentive Payment Schedule** means Schedule E4.

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

**Planning Approval** means:

- (a) the Project Planning Approval; and



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- (b) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Project Planning Approval from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

**Planning Modification** means a modification to the Project Planning Approval under section 115ZI of the EP&A Act in relation to any one or more of:

- (a) the Marrickville Earthworks and Drainage Works;
- (b) the Victoria Cross Northern Shaft; or
- (c) the Artarmon Sub-station Riser,

and such other matters as the Principal may require.

**Planning Modification Application** means an application for a Planning Modification to be submitted by the Principal.

**Planning Modification Documents** has the meaning given in clause 5A.1(b)(i)(A).

**Portion** means a part of the Project Works and Handover Works described in the columns headed "Portion number" and "Description of Infrastructure in Portion" in section 3 of Schedule A1 or as directed by the Principal's Representative under clause 8.1.

**Portion Handover Date** means, in respect of a Portion, the later of:

- (a) the day after the Date of Construction Completion of the Portion; or
- (b) where the Principal's Representative gives written notice under clause 17.14(a) in respect of the Portion, the date notified in the corresponding notice given under clause 17.14(b) in respect of that Portion.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

**Practical Completion (Council Works)** has the meaning given to the term "Practical Completion" in the relevant Council Interface Agreement.

**Practical Completion (Sydney Trains Works)** has the meaning given to the term "Practical Completion" in the relevant Sydney Trains Interface Agreement.

**Practical Completion (WAD Road Works)** has the meaning given to the term "Practical Completion" in the WAD.

**Pre-Agreed Change** means any of the Changes listed in Schedule A2.

**Principal Insurance Policy** means a policy of insurance required under clause 21.3.

**Principal's Accreditation** means the Principal's accreditation under Part 3 of the Rail Safety National Law as a Rail Infrastructure Manager or such other accreditation obtained under any regime replacing Part 3 of the Rail Safety National Law.

**Principal's General Specifications** means the Principal's specifications as set out in Appendix A.9 of the SWTC.

**Principal's Representative** means:



- (a) the person appointed by the Principal under clause 16.1(a)(i); or
- (b) any other person appointed from time to time by the Principal under clause 16.1(a)(ii),

and includes any appointee under clause 16.1(b) or 16.1(d).

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

- (a) pursuant to clause 5.3(b)(iv)(B), the reasonable amount on account of the increase or decrease in the TSE Contractor's Costs that result directly from its compliance with a Change in Law;
- (b) pursuant to clause 5.5(b)(ii), the increased or decreased Costs reasonably incurred by the TSE Contractor as a result of the reduction in the permissible working hours or days or noise or vibration limits for the TSE Contractor's Activities or material change to the permitted Working Parameters for the TSE Contractor's Activities;
- (c) pursuant to clause 5A.4(c), the reasonable additional Costs that the TSE Contractor incurs in complying with its obligations under clause 5A.4;
- (d) pursuant to clause 5.11(b), the increased Costs reasonably incurred by the TSE Contractor which arise out of the imposition of such legal requirement contemplated by clause 5.11(b);
- (e) pursuant to clause 6.4(b), the reasonable additional Costs incurred by the TSE Contractor in complying with any updated or amended Sydney Metro Principal Contractor Health and Safety Standard in circumstances contemplated by clause 6.4(b);

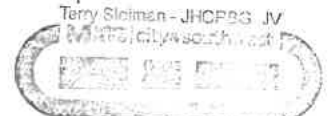
■ [REDACTED]

- (g) pursuant to clause 10.1(f)(ii), the reasonable Costs incurred by the TSE Contractor directly arising from the Principal's failure to give the TSE Contractor access as required by clause 10.1(a);
- (h) pursuant to clause 10.4(a)(v), the increased or decreased Costs reasonably incurred by the TSE Contractor as a direct result of the direction contemplated by clause 10.4(a)(v);

■ [REDACTED]

- (j) pursuant to clause 10.10(c), the extra Costs reasonably incurred by the TSE Contractor arising from a Core Sample Location Difference;
- (k) pursuant to clause 10.11(c), the reasonable Costs incurred by the TSE Contractor in complying with clause 10.11(b)(iii);

■ [REDACTED]

Terry Sleiman - JHCPBS JV  
 Metro City Southwest  


■ [REDACTED]

■ [REDACTED]

- (o) pursuant to clause 10.18(c)(ii)(A), the increased or decreased Costs reasonably incurred by the TSE Contractor as a direct result of the direction contemplated by clause 10.18(c)(ii)(A);
- (p) pursuant to clause 13.4(d)(ii), the amount stated pursuant to clause 13.4(d)(ii);
- (q) pursuant to clause 15.4(a), the amount which represents the cost of correcting the Defect;
- (r) pursuant to clause 17.6(e)(ii), the reasonable period for the extension to a Date for Construction Completion;
- (s) pursuant to clause 17.7(d), the reduction in an extension of time where the TSE Contractor has compressed the TSE Contractor's Activities prior to a direction to compress the TSE Contractor's Activities being withdrawn;

■ [REDACTED]

■ [REDACTED]

- (v) pursuant to clause 17.9(b)(ii)(A)(aa), the extra costs reasonably incurred by the TSE Contractor as a result of the suspension;
- (w) pursuant to clause 18.2(c), the progress amount due to the TSE Contractor;
- (x) pursuant to clause 18.12(b), the adjustment to the Project Contract Sum where the costs reasonably and properly incurred by the TSE Contractor in carrying out an item of Provisional Sum Work are more or less than the amount allowed for the item of Provisional Sum Work in Cost Centre 19;
- (y) pursuant to clause 18.12(e), the adjustment to the Project Contract Sum after the TSE Contractor has provided a Lump Sum Price Proposal; and
- (z) pursuant to clause 22.7, the amounts stated in respect of clauses 22.7(a) - 22.7(f).

**Pro-forma Adjoining Property Owner Agreement** means the pro-forma adjoining property owner agreement set out in Schedule D5A.

**Priority VE Items** means the following:

- (a) the alignment between the station designs and clear openings;
- (b) the lowering of the under harbour alignment and interface with rail design;
- (c) the cross passages size & potential for a reduced number of passages along the alignment;



- (d) the portal structure interface at the Marrickville dive site;
- (e) the stabling yard and bridge crossing interface at the Marrickville dive site;
- (f) the internal waler option for the small piles at Waterloo;
- (g) the TSE Contractor's design in respect of the Martin Place - Bligh Street adit;
- (h) the Victoria Cross Northern shaft and station cavern adit connection;
- (i) the portal structure and ramp interface at the Chatswood dive site; and
- (j) the early section of piled wall alignment in relation to the Northern corridor works.

**Pro-forma Adjoining Property Easement** means a:

- (a) Pro-forma Easement for Crane Access;
- (b) Pro-forma Easement for Rock Anchors;
- (c) Pro-forma Easement for Safety Structure; or
- (d) Pro-forma Easement for Scaffolding,

and **Pro-forma Adjoining Property Easements** means all such pro-forma easements.

**Pro-forma Easement for Crane Access** means the pro-forma easement terms set out in clause 2 of Schedule D5B.

**Pro-forma Easement for Rock Anchors** means the pro-forma easement terms set out in clause 1 of Schedule D5B.

**Pro-forma Easement for Safety Structure** means the pro-forma easement terms set out in clause 4 of Schedule D5B.

**Pro-forma Easement for Scaffolding** means the pro-forma easement terms set out in clause 3 of Schedule D5B.

**Program** means:

- (a) the Overall D&C Program; and
- (b) any program required by Appendix E.5 of the SWTC.

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

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

**Project Director** means the person appointed to that position under clause 16.2(b) as at the date of this deed or any person appointed as a replacement under clause 16.2(b).

**Project Health & Safety Management Plan** means the Project Plan of that name referred to in clause 6.3 and Appendix E.6 of the SWTC, an initial version of which is included in Appendix E.7 of the SWTC, as updated from time to time in accordance with clause 9.4.

Terry Simons - Director JV

**Project Management Plan** means the Project Plan referred to as the Project Management Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Project Plan** means any plan of the kind referred to in clause 9.1 as that plan may be updated, amended and further developed under clause 9.4.

**Project Planning Approval** means the approval granted by the Minister for Planning under section 115ZB of the EP&A Act dated 9 January 2017, a copy of which (as at the date of this deed) appears in Schedule D8, and includes all:

- (a) conditions to such approval; and
- (b) documents incorporated by reference,

as the approval may be modified from time to time.

**Project Site** means the land described as the Project Site in section 2 of the Site Access Schedule.

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

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

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

**Proof Engineer** means the person or persons engaged from time to time by the TSE Contractor in accordance with clause 11.3 to perform the role of the Proof Engineer.

**Proof Engineered Temporary Works** means those elements of the Temporary Works that:

- (a) pose a material risk:
  - (i) to the health or safety of any person; or
  - (ii) of causing loss of or damage to property; or
- (b) are used by members of the public during the TSE Contractor Activities (including Hickson Rd at the Barangaroo Construction Site, Hume Street Bridge and Clarke Lane Bridge),

but do not include Temporary Works that:



The image shows a handwritten signature in black ink over a circular official stamp. The stamp contains the text 'NSW GOVERNMENT' at the top, 'Sydney Metro City & Southwest' in the middle, and 'J. HOPKINS' at the bottom. The signature appears to be 'J. Hopkins'.

- (c) will be certified under existing legislation by suppliers for design and supply of materials, plant or equipment (including temporary site sheds, temporary building structures, gantry cranes, grout plants, batching plants, water treatment plants, Tunnel Boring Machines and formwork systems); or
- (d) consist of standard or proprietary materials, plant or equipment.

**Property Works** means all works required to existing buildings and infrastructure or to and within properties arising out of the TSE Contractor's Activities as described or specified in the SWTC, including in sections 2.3.3(b) and 5.1 and Appendix C.1 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

**Provisional Sum Work** means those parts of the TSE Contractor's Activities for which a provisional sum has been specified in the Design Payment Schedule or the Construction Payment Schedule.

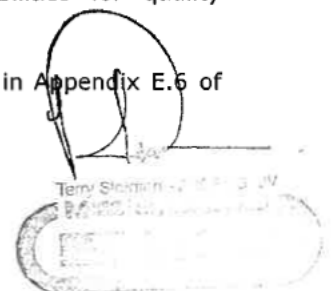
**Pure Economic Loss** means Consequential Loss other than Consequential Loss arising out of or in connection with:

- (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 to the extent such loss of use or access is caused by the TSE Contractor's wrongful act or omission or breach of this deed and the TSE Contractor:
  - (i) recovers its liability for that loss under a Principal Insurance Policy; or
  - (ii) is indemnified or entitled to be indemnified for its liability for that loss under a TSE Contractor Insurance Policy,
 or would have recovered or been indemnified or entitled to be indemnified (as applicable) for its liability for that loss but for:
  - (iii) the operation of any policy retention, deductible or excess that the TSE Contractor is required to bear under this deed; or
  - (iv) any act or omission of the TSE Contractor or its Associates including any failure by the TSE Contractor to:
    - (A) diligently pursue a claim under the relevant policy of insurance;
    - (B) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
    - (C) comply with its insurance obligations under this deed.

**Quality Manager** means the person appointed to that position under clause 16.2(b) as at the date of this deed and any person appointed as a replacement under clause 16.2(b).

**Quality Management System** means a corporate system that details the organisational structure, policies, procedures, practices, recourses and responsibilities for quality management.

**Quality Plan** means the Project Plan referred to as the Quality Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.





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

**Rail Infrastructure Manager** has the meaning given in the Rail Safety National Law.

**Rail Safety National Law** means the *Rail Safety National Law 2012 No. 82a* (NSW).

**Rail Safety Regulations** means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012 No. 82a* (NSW).

**Rail Transport Agency** means Transport for NSW (and each of its divisions), RailCorp, Sydney Trains and NSW Trains.

**Rail Transport Operator** has the meaning given in the Rail Safety National Law.

**Railway Operations** has the meaning given in the Rail Safety National Law.

**RCTI** has the meaning given in clause 19.6(a)(i).

**Reference Design** means the following prepared by the Principal for Sydney Metro City & Southwest:

- (a) Information Document reference number 01.02: "Section 02 - Reference Design extract - Underground Structures Report";
- (b) Information Document reference number 01.03: "Section 03 - Reference Design extract - Geotechnical Interpretive Report - Reference Design\_REV A; and
- (c) Information Document reference number 01.08: "Section 08 - Reference Design extract - Alignment and Cross Sections",

as provided to the TSE Contractor as an Information Document.

[REDACTED]

[REDACTED]

[REDACTED]

**Reliance Letters** means the reliance letters contained in Schedule D9.

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

**Remediation Action Plan** means a plan for the Remediation of Contamination which satisfies the requirements of clause 10.14A(b).

**Request for Tender** means the document titled "Request for Tender for the design and construction of the Tunnel and Station Excavation Works " dated 1 September 2016, being a request for tenders for the tunnel and stations excavation works component of Sydney Metro City & Southwest.

**Required Rating** means a credit 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 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 Allocation** has the meaning given in clause 10.16(a)(vii)(E).

Handwritten signature of Tony Staman. Below the signature is a circular stamp with the text "Tony Staman - JHCPRG JV" and "City&Southwest".



**Site Audit Statement** has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

**Site Conditions** means any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Construction Site 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 and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) 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, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions; and
- (k) any latent conditions.

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

**Special Event** means:

- (a) an event listed in Schedule A22 which recurs on an annual basis; and
- (b) any other major public event adjacent to or in the vicinity of any part of the Construction Site or any Extra Land that is:
  - (i) published on the website "<http://www.sydney.com/events>" (or any replacement website established by the NSW Government to provide the same or similar information regarding events in Sydney); or
  - (ii) notified to the TSE Contractor in writing by the Principal's Representative.

**SSC Contract** means the deed to be entered into between the Principal and the SSC Contractor for the design and construction of the SSC Works.



**SSC Contractor** means the entity selected by the Principal to design and construct the SSC Works.

**SSC Works** means the upgrade and conversion to metro status of the 13.4 kilometre existing rail line between Sydenham and Bankstown, including bridge and non-station civil works, station works including the modification of the 11 existing stations on the line to provide modern metro stations, electrical works, track and other rail infrastructure.

**SSJ Contract** means the deed to be entered into between the Principal and the SSJ Contractor for the design and construction of the SSJ Works.

**SSJ Contractor** means the entity selected by the Principal to design and construct the SSJ Works.

**SSJ Works** means 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 and associated entrances in each case to be carried out at or in the vicinity of Sydenham Station.

**Stage 1 Geotechnical Report** means a geotechnical report listed in section 1 of Schedule A19.

**Stage 2 Geotechnical Report** means a geotechnical report listed in section 2 of Schedule A19.

**Station Works** means any physical works to be designed and constructed for the City Stations (including any mechanical or electrical works component thereof), including excavation of remaining station shafts (to the extent not forming part of the Works), station structure and station fitout.

**Station Works Contractor** means an entity selected by the Principal to design and construct any Station Works, irrespective of whether or not that entity is also engaged by the Principal to undertake any Over Station Development at the same location.

**Subcontract** means a contract between the TSE Contractor and a Subcontractor and includes an agreement for supply of goods or services (including professional services and Construction Plant hire) or both.

**Subcontractor** means a subcontractor of the TSE Contractor and includes a supplier of goods or services (including professional services and Construction Plant hire) or both.

**Sustainability Manager** means the person appointed to that position under clause 16.2(b) as at the date of this deed or any person appointed as a replacement under clause 16.2(b).

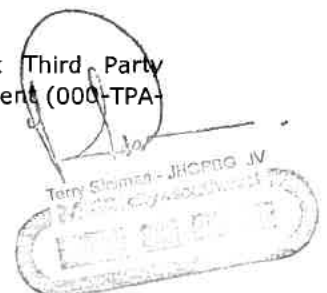
**Sustainability Plan** means the Project Plan referred to as the Sustainability Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

**SWTC or Scope of Works and Technical Criteria** means Schedule C1.

**Sydney City Council Interface Works** has the meaning given to the term "Works" in the Sydney City Council TSE Interface Agreement.

**Sydney City Council Project Works** has the meaning given to the term "Sydney Metro Works" in the Sydney City Council TSE Interface Agreement.

**Sydney City Council TSE Interface Agreement** means the Draft Third Party Agreement titled "Sydney Metro City & Southwest Council Interface Agreement (000-TPA-



COS)" between the Principal and Sydney City Council (as may be updated or replaced in accordance with clause 10.16).

**Sydney City Council Works** has the meaning given to the term "Council Works" in the Sydney City Council TSE Interface Agreement.

**Sydney Metro Australian Industry Participation Plan** means the "Australian Industry Participation Plan" (as defined in the *Australian Jobs Act 2013* (Cth)) developed by the Principal for Sydney Metro City & Southwest, as amended from time to time.

**Sydney Metro City & Southwest** means the railway line from Bankstown to Chatswood, including 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.

**Sydney Metro Northwest Augmentation** has the meaning given in clause 1.9(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 Appendix A.8 to the SWTC, as amended from time to time.

**Sydney Metro Northwest** 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 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 in the Sydney Trains Interface Agreement.

**Sydney Trains Interface Agreement** means the Draft Third Party Agreement titled "Sydney Metro City & Southwest Tunnels and Station Excavation (TSE) (200-TPA-ST-RC) Sydney Trains TSE Interface Agreement" between the Principal, RailCorp and Sydney Trains (as may be updated or replaced in accordance with clause 10.16).

**Sydney Trains Interface Works** means:

- (a) Sydney Trains Protection Zone Works; and
- (b) Sydney Trains Works.

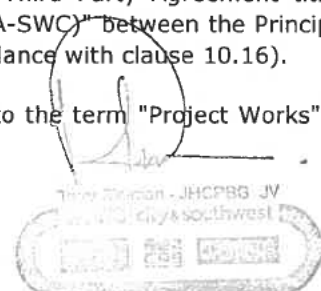
**Sydney Trains Protection Zone Works** has the meaning given to the term "TSE Protection Zone Works" in the Sydney Trains Interface Agreement.

**Sydney Trains Works** has the meaning given to the term "TSE Sydney Trains Works" in the Sydney Trains Interface Agreement.

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

**Sydney Water Interface Agreement** means the Draft Third Party Agreement titled "Sydney Metro Program SWC Interface Agreement (000-TPA-SWC)" between the Principal and Sydney Water (as may be updated or replaced in accordance with clause 10.16).

**Sydney Water Interface Works** has the meaning given to the term "Project Works" in the Sydney Water Interface Agreement.



**Taxes** means income, stamp, indirect or other taxes (including payroll tax), levies, imposts, deductions, charges (including any superannuation guarantee charge), duties (including import duty), workers compensation insurance premiums, 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.

**TBM** means a tunnel boring machines which form part of the Key Plant and Equipment described in Cost Item 1.2 of Cost Centre 1 of the Construction Payment Schedule.

**Temporary Areas** means the land described as the Temporary Areas in section 3 of the Site Access Schedule.

**Temporary Works** means any temporary physical works required for the purpose of the carrying out of the TSE Contractor's Activities but which does not form part of the Project Works including:

- (a) any such works specified in section 2.4 of the SWTC; and
- (b) the Handover Works,

and including, to the extent relevant to such works, Changes directed in accordance with this deed.

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

**Tender Form** means the document entitled Tender Form executed by the TSE Contractor as part of its Tender.

**Tenderer** means an entity which submits a Tender for the TSE Contractor's Activities in response to the Request for Tender.

**TfNSW** means Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

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

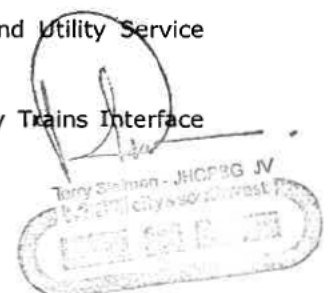
**Third Party Agreement** means:

- (a) an agreement referred to in Schedule D4 entered into or to be entered into by the Principal with the party referred to in Schedule D4, copies of which appear in Schedule D5;
- (b) any Draft Third Party Agreement or Additional Third Party Agreement which the TSE Contractor must comply with pursuant to clause 10.16; and
- (c) any Adjoining Property Owner Agreement entered into by the Principal pursuant to clause 10.16A.

**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 the Local Area Works, Property Works and Utility Service Works.

**Track Possession** has the meaning given to that term in the Sydney Trains Interface Agreement.



**Transgrid Interface Agreement** means the Draft Third Party Agreement titled "Sydney Metro City & Southwest TransGrid Interface Agreement (000-TPA-TRG)" between the Principal and the NSW Electricity Networks Operations Pty Limited in its personal capacity and as trustee for NSW Electricity Networks Operations Trust trading as TransGrid (ABN 70 250 995 390) (as may be updated or replaced in accordance with clause 10.16).

**Transgrid Interface Works** has the meaning given to the term "Works" in the Transgrid Interface Agreement.

**Transitional Handover Services** means, in respect of any Portion for which the Principal's Representative gives a notice under clause 17.14(a), the relevant activities set out in Schedule A3 required to be performed after the Portion achieves Construction Completion.

**Transitional Handover Services Payment Schedule** means Schedule E3.

**Transport Assets** has the meaning assigned to it in the ASA Charter.

**Transurban** means Transurban Limited (ABN 96 098 143 410).

**TSE Contract Documents** means:

- (a) this deed;
- (b) the Independent Certifier Deed;
- (c) the TSE-OTS2 Cooperation and Integration Deed;
- (d) all Follow-on Contractor Cooperation and Integration Deeds;
- (e) the Barangaroo Cooperation and Collaboration Agreement;
- (f) the Barangaroo Cooperation and Collaboration Accession Deed; and
- (g) the Deeds of Disclaimer.

**TSE Contractor Documentation Schedule** means Appendix E.5 of the SWTC.

**TSE Contractor Guarantor** means:

■ [REDACTED]

■ [REDACTED]

- (c) CIMIC Group Limited; and
- (d) GHELLA S.p.A.

**TSE Contractor Insurance Policy** means a policy of insurance required under clause 21.4.

**TSE Contractor JV Deed** means the deed which governs the unincorporated joint venture between John Holland Pty Ltd (ABN 11 004 282 268), CPB Contractors Pty Ltd (ABN 98 000 893 667) and Ghella Pty Ltd (ABN 85 142 392 461) established for the purposes of entering into this deed and delivering the Project Works which is dated on or about the date of this deed.



**TSE Contractor's Activities** means all things and tasks which the TSE Contractor is, or may be, required to carry out or do under this deed to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by the TSE Contractor to another person, including designing and constructing the Project Works and Temporary Works and carrying out any required Transitional Handover Services.

**TSE Contractor's Controlling Corporation** means John Holland in its capacity as a "controlling corporation" within the meaning of the NGER Legislation.

**TSE Contractor's Emissions and Energy Data** means any Emissions and Energy Data relating to any aspect of the TSE Contractor's Activities, or the activities of any Subcontractors engaged by the TSE Contractor, in connection with the TSE Contractor's Activities under this deed, including any such Emissions and Energy Data that:

- (a) the TSE Contractor is required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation under this deed;
- (b) the TSE Contractor or the TSE Contractor's Controlling Corporation is required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation at Law (including an obligation under the NGER Legislation); or
- (c) the TSE Contractor or the TSE Contractor's Controlling Corporation is entitled at any time to provide to the Clean Energy Regulator under the NGER Legislation concerning any greenhouse gas project.

**TSE-OTS2 Cooperation and Integration Deed** means a deed to be entered into between the Principal, the TSE Contractor and OpCo2 substantially in the form of Schedule A11.

**Truck Assumption** has the meaning given in clause 9.6(a).

**Unforeseeable Modification Requirements** has the meaning given in clause 5A.3.

**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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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**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 utilities, services or facilities in a rail, pedestrian or vehicular corridor, water, electricity, gas, ethane, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and electronic communications service.

**Utility Service Works** means the construction, modification, or relocation of Utility Services all of which are to be designed and constructed by the TSE 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 2.3.3(d) and 5.3 and Appendix C.3 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

**Validation Report** has the meaning given in the Office of Environment and Heritage Guidelines for Consultants Reporting on Contaminated Sites (2011).

**VE Objectives** has the meaning given in clause 13.12(a).

**Victoria Cross Northern Shaft** means the shaft excavation for the services facility and station entrance at Victoria Cross.

**WAD** means the Draft Third Party Agreement titled "Sydney Metro City & Southwest – Works Authorisation Deed" between the Principal and RMS (as may be updated or replaced in accordance with clause 10.16).

**WAD Project Works** has the meaning given to the term "Project Works" in the WAD.

**WAD Proof Engineer** has the meaning given to the term "Proof Engineer" in the WAD.

**WAD Road Works** has the meaning given to the term "Road Works" in the WAD.

**WAD Works** has the meaning given to the term "Works" in the WAD.

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

**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 Management Systems and Auditing Guidelines** means the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition) September 2013 (updated May 2014), or any document issued from time to time which amends or replaces this document.

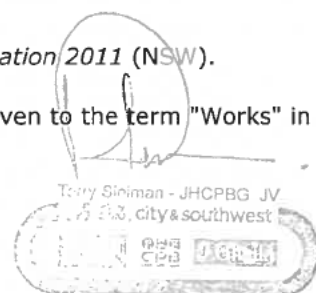
**WHS Act** means the *Work Health and Safety Act 2011* (NSW).

**WHS Legislation** means:

- (a) the WHS Act and the WHS Regulation; and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Project Works, the Temporary Works or the TSE Contractor's Activities.

**WHS Regulation** means the *Work Health and Safety Regulation 2011* (NSW).

**Willoughby Council Interface Works** has the meaning given to the term "Works" in the Willoughby Council TSE Interface Agreement.



**Willoughby Council Project Works** has the meaning given to the term "Sydney Metro Works" in the Willoughby Council TSE Interface Agreement.

**Willoughby Council TSE Interface Agreement** means the Draft Third Party Agreement titled "Tunnel and Station Excavation Works (TSE) Interface Agreement" between the Principal and Willoughby Council (as may be updated or replaced in accordance with clause 10.16).

**Willoughby Council Works** has the meaning given to the term "Council Works" in the Willoughby Council TSE Interface Agreement.

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

**Workforce Development and Industry Participation Plan** means the Project Plan referred to as the Workforce Development and Industry Participation Plan in Appendix E.6 of the SWTC, as updated from time to time in accordance with clause 9.4.

**Working Parameters** means:

- (a) the size or type of trucks;
- (b) number of truck movements per day; and
- (c) hours of haulage,

specified in the Construction Traffic Management Plan that has been:

- (d) submitted to the Principal's Representative and the Independent Certifier under clause 9.3(a) and not been the subject of a notice under clause 9.3(b)(ii); and
- (e) approved by all relevant Authorities.

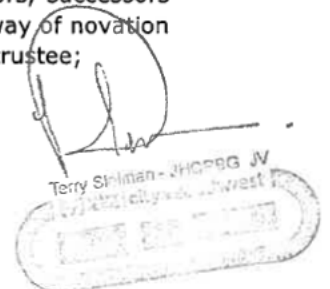
**Workplace Relations Management Plan** means the Project Plan of that name referred to in clause 27.6 and clause 10.13.3 of the Request for Tender, an initial version of which is included in Appendix E.7 of the SWTC, as updated from time to time in accordance with clause 9.4.

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

## 1.2 Interpretation

In this deed:

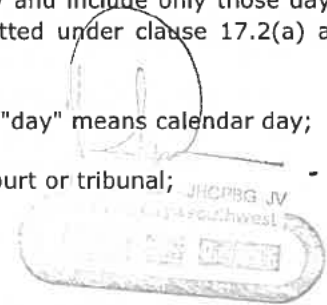
- (a) headings are for convenience only and do not affect the interpretation of this deed, and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint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



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- (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 10.8(b)(ii)), 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 17.6 and 17.8:
  - (i) any extension of time stated in days; or
  - (ii) any reference to "day",

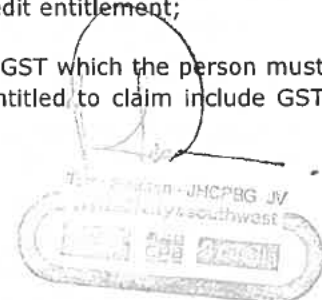
will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Program submitted under clause 17.2(a) as working days;
- (m) for all purposes other than as set out in clause 1.2(l), "day" means calendar day;
- (n) a reference to a court or tribunal 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) not used;
- (s) for the avoidance of doubt, the Environmental Representative will perform the functions of the Environmental Representative or the ER under the Planning Approval and this deed;
- (t) subject to clause 12.3(c), any reference to:
  - (i) the Project Works (including the Third Party Works);
  - (ii) the Temporary Works;
  - (iii) the Project Plans or the Asset Management Information;
  - (iv) the SWTC;
  - (v) the Design Documentation; or
  - (vi) any other document or thing,
 or any part of any of them:
  - (vii) being fit for its purpose or for its intended purpose; or
  - (viii) 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:
  - (ix) 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 fitout 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



- (x) any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:
  - (A) this deed, including:
    - (aa) the objectives referred to in clauses 2.2; 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 Change) any document provided by the Principal to the TSE Contractor specifically in connection with the Change (excluding any Information Documents);
- (u) subject to clause 12.3(c), 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, or to the TSE Contractor being liable or responsible for a Defect after Construction Completion, will be read as being subject to the Principal, OpCo2 (or, if applicable, any Alternate Operator), Follow-on Contractors 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 (as described in section 4.5 of Appendix E.1 to the SWTC);
- (v) 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;
- (w) any obligation of the TSE Contractor under this deed with respect to:
  - (i) a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by the TSE Contractor to the Principal's Representative under clause 9.3 in respect of which the Principal's Representative has not given a notice under clause 9.3(b)(ii); 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 TSE Contractor to the Principal's Representative under clause 14.14:
    - (A) which has not been rejected by the Independent Certifier under clause 14.14(j)(ii)(A); and
    - (B) in respect of which the Principal's Representative has not given a direction under clause 14.14(j)(iii);
- (x) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (y) 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;
- (z) 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; and

- (aa) a reference to a clause, schedule, annexure or exhibit of:
- (i) a Draft Third Party Agreement, must following provision of any final (and, where applicable, executed), version of any Draft Third Party Agreement;
  - (ii) a Pro-forma Adjoining Property Owner Agreement, must following provision of any executed Adjoining Property Owner Agreement with any Adjoining Owner; or
  - (iii) a Pro-forma Adjoining Property Easement, must following provision of any Adjoining Property Easement that has been compulsorily acquired by the Principal,

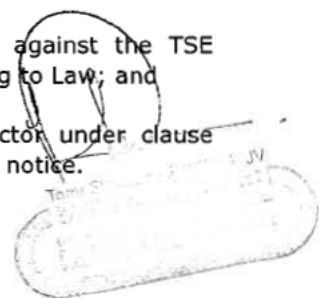
after the date of this deed, be read as a reference to the equivalent clause, schedule, annexure or exhibit of the final (and, where applicable, executed), version of any Draft Third Party Agreement, executed Adjoining Property Owner Agreement or compulsorily acquired Adjoining Property Easement, regardless of whether the numbering of the relevant clause, schedule, annexure or exhibit has changed.

### 1.3 **Contra proferentem**

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

### 1.4 **Ambiguous terms**

- (a) If the Principal's Representative considers, or if the TSE Contractor notifies the Principal's Representative in writing that it considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed (including in any exhibits), the Principal's Representative must, subject to clause 1.5, direct the interpretation of this deed which the TSE Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.4(a):
  - (i) will not relieve the TSE Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;
  - (ii) will not entitle the TSE Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
  - (iii) will not limit or otherwise affect the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law; and
  - (iv) must, in respect of a notice given by the TSE Contractor under clause 1.4(a), be given within 20 Business Days of receipt of that notice.



## 1.5 Order of precedence

The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:

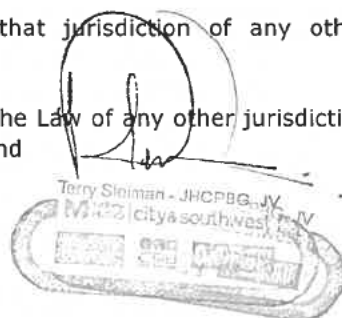
- (a) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
  - (i) this deed excluding the schedules and exhibits; and
  - (ii) the schedules and exhibits;
- (b) to the extent paragraph (a) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different codes, standards, specifications or guidelines with which the TSE Contractor must comply, the order of precedence set out in section 3.13 of the SWTC will apply;
- (c) to the extent paragraphs (a) and (b) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different parts of the SWTC and the Environmental Documents, the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless directed otherwise by the Principal's Representative);
- (d) to the extent paragraphs (a), (b) and (c) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between the documents comprising the Environmental Documents, the order of precedence in Part 1 of Schedule D3 will apply;
- (e) to the extent paragraphs (a), (b), (c) and (d) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the Project Works or the Temporary Works, the TSE Contractor must comply with the highest quality or standard specified or perform the more onerous obligation; and
- (f) to the extent paragraphs (a) to (e) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions.

The documents comprising this deed (including the SWTC and the Environmental 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.

## 1.6 Severability

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the Law of any jurisdiction (including the SOP Act), then:

- (a) that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and



- (b) the provision will be construed in a manner which:
  - (i) avoids the provision being void, illegal, invalid or unenforceable; and
  - (ii) subject to clause 1.6(b)(i), preserves to the maximum possible extent:
    - (A) the enforceability of the provision and the provisions of this deed; and
    - (B) the original effect and intent of this deed.

**1.7 Authorities**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
  - (i) the Principal to exercise any of its functions and powers pursuant to any Law; or
  - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.
- (b) The TSE Contractor acknowledges and agrees that, without limiting clause 1.7(a), anything which the Principal or the ASA does, fails to do or purports to do pursuant to their respective functions and powers either as an AEO or under any Law or under the ASA Charter will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed and will not entitle the TSE Contractor to make any Claim against the Principal.
- (c) The parties agree that clauses 1.7(a) and 1.7(b) are taken not to limit any liability which the Principal would have had to the TSE Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 1.7(a) and 1.7(b) of this deed.
- (d) The TSE Contractor acknowledges and agrees that:
  - (i) there are many Authorities (other than the Principal) with jurisdiction over aspects of the TSE Contractor's Activities, parts of the Construction Site and other areas affected by the TSE Contractor's Activities (including Extra Land);
  - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the TSE Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
  - (iii) except to the extent expressly stated otherwise in this deed, the TSE Contractor bears the full risk of all occurrences of the kind referred to in clause 1.7(d)(ii) and 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 such occurrences.

**1.8 Electronic files**

Where this deed (including the SWTC) refers to an electronic file on a separate disc which forms part of this deed, such electronic files are contained in the disc or discs included in Schedule F1.





## 1.9 Sydney Metro Northwest Augmentation

- (a) The parties acknowledge that:
- (i) the Principal and NRT are parties to the OTS Project Deed under which NRT 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 NRT may seek to negotiate and agree an augmentation which includes the design, construction, testing and commissioning of the OTS2 Project 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 NRT are currently negotiating a Sydney Metro Northwest Augmentation.
- (b) The Principal will notify the TSE Contractor in writing of the outcome of any negotiations in relation to any Sydney Metro Northwest Augmentation.
- (c) If the Principal and NRT do not agree to a Sydney Metro Northwest Augmentation, the Principal may procure the delivery of the OTS2 Project 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 OTS2 Project Works may be carried out by OpCo2 and/or one or more Follow-on Contractors; and
  - (ii) the operation and maintenance of the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest may be carried out by OpCo2 or an Alternate Operator.

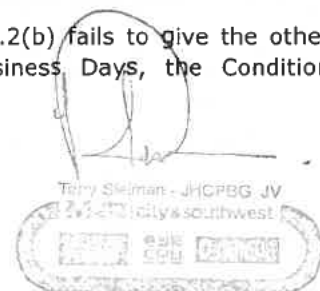
## 1A. CONDITIONS PRECEDENT

### 1A.1 Commencement of obligations

The rights and obligations of the parties under this deed will not commence unless and until each of the Conditions Precedent have been satisfied (or waived under clause 1A.3), except for those under the Day 1 Clauses which will commence on the date of this deed.

### 1A.2 Satisfaction of conditions precedent

- (a) The parties must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of the other party (or for the benefit of both parties) by the relevant Condition Precedent Deadline Date.
- (b) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.
- (c) The party receiving a notice given under clause 1A.2(b) must promptly notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (d) If the party receiving a notice given under clause 1A.2(b) fails to give the other party a notice under clause 1A.2(c) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.



- (e) Upon the satisfaction (or waiver under clause 1A.3) of all Conditions Precedent, the parties must promptly acknowledge in writing that all conditions precedent have been satisfied (or waived).

### 1A.3 **Waiver of conditions precedent**

A Condition Precedent is waived if, and only if:

- (a) where the Condition Precedent is included for the benefit of a particular party, that party gives notice of the waiver of the Condition Precedent to the other party; and
- (b) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.

### 1A.4 **Condition Precedent Deadline Date**

- (a) If a Condition Precedent has not been satisfied (or waived under clause 1A.3) by 5.00 pm on the relevant Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule A0 in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 1A.3) within the period specified in its notice (which must not be less than 2 Business Days).
- (b) If a party gives notice under clause 1A.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 1A.3) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (c) If this deed is terminated pursuant to this clause 1A.4:
  - (i) each of the other TSE Contract Documents will be taken to have terminated at the time this deed is terminated;
  - (ii) the Principal must return all unconditional undertakings provided by the TSE Contractor within 10 Business Days after the date of termination of this deed; and
  - (iii) no party will have any Claim against any other party under or in respect of the TSE Contract Documents or in respect of the reimbursement of costs or expenses or otherwise in connection with Sydney Metro City & Southwest, except for any Claim in relation to a breach of any Day 1 Clause.

## 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 transport system that is able to satisfy long-term demand;
- (c) grow public transport patronage and mode share;
- (d) support 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; and
- (h) implement a feasible solution recognising impacts, constraints and delivery risk.

## **2.2 Objectives for the Project Works, the Temporary Works and the TSE Contractor's Activities**

The Principal's objectives for the Project Works, the Temporary Works and the TSE Contractor's Activities are to:

- (a) ensure the Project Works and the Temporary Works are safe and de-risked through innovation and expertise in planning, design and delivery methodologies;
- (b) provide the tunnel infrastructure required for conveying passenger rolling stock over a 100-year Design Life between Chatswood and Marrickville;
- (c) deliver the Project Works and the Temporary Works and perform the TSE Contractor's Activities in a collaborative and cooperative manner to ensure the timely and effective delivery of Sydney Metro City & Southwest;
- (d) 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;
- (e) maximise opportunities in relation to social sustainability, including workforce development and local procurement;
- (f) 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 Project Works and the Temporary Works and the performance of the TSE Contractor's Activities;
- (g) achieve a value-for-money outcome when viewed on the basis of effective risk management, certainty of delivery and whole-of-life cost; and
- (h) commence tunnelling in 2018 and progressively hand over the completed Portions of the Project Works by the applicable Dates for Construction Completion and in accordance with the requirements of this deed (including the SWTC).

## **2.3 Achievement of the Project Values**

The parties:


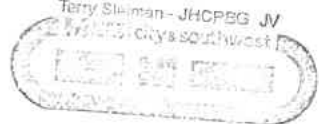
- (a) acknowledge that adherence to and upholding of the Project Values is of fundamental importance to the Principal; and
- (b) agree to:
  - (i) adhere to and uphold the Project Values; and
  - (ii) work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations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

3. **GENERAL OBLIGATIONS**

3.1 **General**

The TSE Contractor:



- (a) must carry out the TSE Contractor's Activities (including any Transitional Handover Services (if applicable)), including investigating, designing, constructing, commissioning and handing over the Project Works and the Handover Works, in accordance with this deed;
- (b) must comply with all reasonable Directions of the Principal's Representative;
- (c) warrants that the Project Works and the Handover Works will, upon Construction Completion:
  - (i) be fit for their intended purposes; and
  - (ii) be capable of remaining at all relevant times fit for their intended purpose;
- (d) warrants that the Temporary Works will be, and upon Construction Completion be capable of remaining at all relevant times, fit for their intended purposes; and
- (e) subject to the express provisions of this deed, accepts responsibility for and the 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, including the following risks:
  - (i) the performance and cost of all Subcontractors (including any Demolition Contractors that are engaged under Demolition Contracts that have been novated to the TSE Contractor under clause 14.3);
  - (ii) obtaining access to all areas other than the Construction Site under clause 10.5;
  - (iii) the Site Conditions encountered including under clause 10.7;
  - (iv) all information provided or not provided by the Principal about the Project Works, the Temporary Works, Sydney Metro City & Southwest and the Construction Site;
  - (v) Contamination under clause 10.13;
  - (vi) complying with Schedule D4 and clause 10.16;
  - (vii) complying with clause 10.17(a)(v);
  - (viii) congestion on approach roads to the Construction Site or any waterways used to access the Construction Site and any other difficulties with obtaining access to and from the Construction Site;
  - (ix) complying with all Laws, Approvals and requirements of Authorities;
  - (x) the existence, location, condition and availability of Utility Services in respect of the TSE Contractor's Activities;
  - (xi) reliance upon or the use of the Reference Design or the Concept Design;

  
Terry Sheehan - JHCPBG JV  
Sydney Metro City & Southwest  


- (xii) providing all Materials, Construction Plant, Utility Services and labour necessary for the TSE Contractor's Activities under clause 14.7;
- (xiii) industrial relations issues;
- (xiv) foreign exchange movements in any currencies adverse to the TSE Contractor;
- (xv) increases in the costs of Materials, Construction Plant, Utility Services and labour required for the performance of the TSE Contractor's Activities;
- (xvi) damage to the TSE Contractor's Activities, Project Works, Temporary Works, Construction Site or any Extra Land under clause 21.1; and
- (xvii) third party claims under clause 21.2.

### 3.2 Subcontracts

- (a) Subject to clauses 3.2(b) and 3.2(d), the TSE Contractor may enter into Subcontracts for the vicarious performance of its obligations under this deed.
- (b) The TSE Contractor must not enter into any Subcontract with a contract value over [REDACTED] or any Significant Subcontract with a person not listed in Schedule A5 unless it first obtains the written approval of the Principal's Representative (which must not be unreasonably withheld or delayed).
- (c) Any request by the TSE Contractor for approval to subcontract under clause 3.2(b) must be in writing and include such details as may be required by the Principal's Representative including details of the proposed Subcontract conditions and the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation), workforce development and training, environmental compliance (including any environmental and sustainability management system) and other performance management systems and proposed safe working procedures.
- (d) Unless the Principal's Representative otherwise approves in writing (which must not be unreasonably withheld or delayed), the TSE Contractor must:
  - (i) contract with the persons set out in Schedule A5 in respect of the Significant Subcontract Work;
  - (ii) not terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of) a Significant Subcontract;
  - (iii) not permit the novation, assignment or substitution of any party's right, obligation or interest in a Significant Subcontract; or
  - (iv) where it may impact the rights or increase the liabilities or obligations of the Principal, not:
    - (A) make or permit any amendment to, or replacement of or waiver of a provision of; or
    - (B) enter into any agreement or arrangement which affects the operation or interpretation of,
 a Significant Subcontract.

  
 Tony Sherman - JHGPBG JV  
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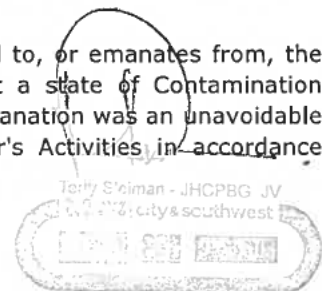
- (e) The TSE Contractor must:
  - (i) use its best endeavours to ensure that each Significant Subcontractor complies with the terms of its Significant Subcontract; and
  - (ii) notify the Principal of:
    - (A) any material breach of a Significant Subcontract; or
    - (B) any dispute which is notified as such under a Significant Subcontract, immediately upon becoming aware of such breach or dispute; and
  - (iii) keep the Principal informed of the status of any such breach or dispute.
- (f) The TSE Contractor must, if requested by the Principal, ensure that each Significant Subcontractor enters into a side deed with the Principal containing such terms as the Principal may reasonably require.
- (g) The TSE Contractor acknowledges that the Principal's Representative's approval referred to in clauses 3.2(b) and 3.2(d) may be:
  - (i) conditional or unconditional and if conditional will set out the relevant conditions;
  - (ii) withheld:
    - (A) on the grounds of safety including that the proposed Subcontractor has inadequate proposed working procedures or a poor safety history, with respect to which the Principal's Representative may have regard to the views of SafeWork NSW, ONRSR, or other work health and safety regulator or other relevant Authorities on the Subcontractor's compliance and approach to work health and safety; or
    - (B) on the basis that the Principal considers (acting reasonably) that the proposed Subcontractor does not have sufficient expertise and ability, or is not of sufficiently high financial and commercial standing, to properly carry out the obligations of the TSE Contractor which are being subcontracted to it.
- (h) The TSE Contractor agrees that:
  - (i) its obligations under this deed are not limited or otherwise affected by:
    - (A) the Principal's objection to, or failure to object to, any Subcontractor, the work to be performed by any Subcontractor or the terms of any Subcontract; or
    - (B) the TSE Contractor entering into Subcontracts for the performance of those obligations; and
  - (ii) it will be liable to the Principal for the acts, defaults and omissions of its Associates as if they were those of the TSE Contractor, and any matter within the control of any Subcontractor will be taken to be within the control of the TSE Contractor.
- (i) The TSE Contractor must give the Principal's Representative:

Handwritten signature of Tony Skinner and a circular stamp containing the text "Tony Skinner - JHCPBG JV" and other illegible details.

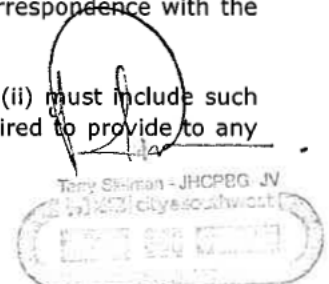
- (i) details of each Subcontract which has a contract value of [REDACTED] or more, including the name of the Subcontractor and the goods or services being provided under the Subcontract; and
  - (ii) a copy of each Subcontract with a contract value over [REDACTED] and each Significant Subcontract (provided that the TSE Contractor may redact commercially sensitive information relating to payment terms, payment amounts, schedules of rates and any specified retention amounts).
- (j) Without limiting clause 20.4, the TSE Contractor must (unless otherwise approved in writing by the Principal's Representative taking into account the nature and location of the Subcontract) ensure that each:
- (i) Significant Subcontract and every Subcontract which has a contract value of [REDACTED] or more includes the provisions set out in Schedule A4; and
  - (ii) Subcontract regardless of its value includes provisions expressly requiring the Subcontractor to comply with:
    - (A) the requirements of clauses 3.19 and 3.20; and
    - (B) the Chain of Responsibility Provisions,
 and includes a clause to the same effect as this clause 3.2(j) which is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative.
- (k) Where a Subcontractor is to carry out design work, the TSE Contractor must (unless otherwise approved in writing by the Principal's Representative), within 5 Business Days of the engagement by the TSE Contractor of the Subcontractor, provide the Principal with a deed of covenant (duly stamped) executed by the Subcontractor in the form of Schedule A13 (completed with all relevant particulars).
- (l) The TSE Contractor must, in respect of all Subcontracts in which it holds retention money from a Subcontractor, comply with the requirements of Part 2 of the *Building and Construction Industry Security of Payment Regulation 2008* (NSW).

### 3.3 Environmental requirements

- (a) The TSE Contractor must not use the Construction Site or any Extra Land, or allow its Associates to use the Construction Site or any Extra Land, so that:
- (i) any Hazardous Chemical is abandoned or dumped on the Construction Site or any Extra Land;
  - (ii) any Hazardous Chemical is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
  - (iii) any other substance is released from, deposited to, or emanates from, the Construction Site or any Extra Land such that a state of Contamination occurs except where such release, deposit or emanation was an unavoidable consequence of performing the TSE Contractor's Activities in accordance



- with Good Industry Practice and otherwise in accordance with the requirements of this deed.
- (b) The TSE Contractor must at all times carry out, and ensure that its Associates carry out, the TSE Contractor's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.
  - (c) The TSE Contractor must, without limiting clause 5.1 or clause 5.2 but subject to clause 5.2(a)(ii):
    - (i) comply with, and ensure that its Associates in performing the TSE Contractor's Activities comply with:
      - (A) all Laws relating to the Environment;
      - (B) all Environmental Notices; and
      - (C) the Construction Environmental Management Plan and the Sustainability Plan; and
    - (ii) obtain and comply with all requirements of, and ensure that its Associates in performing the TSE Contractor's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Construction Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.
  - (d) Unless otherwise specified in Schedule D3 and without limiting the TSE Contractor's other obligations under this deed, and insofar as they apply to the Project Works, Temporary Works or TSE Contractor's Activities the TSE Contractor must comply with, carry out and fulfil the conditions and requirements of all Environmental Documents, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works and TSE Contractor's Activities.
  - (e) The TSE Contractor must immediately notify the Principal in writing as soon as the TSE Contractor:
    - (i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law, Approval or Environmental Document regarding the Environment in the performance of the TSE Contractor's Activities;
    - (ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of the TSE Contractor in relation to the information, fact or circumstances); or
    - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the TSE Contractor must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.
  - (f) Any notice given by the TSE Contractor under clause 3.3(e)(ii) must include such details and other information as the Principal would be required to provide to any





relevant Authority pursuant to any Law relating to the Environment and must be in a format reasonably capable of provision to any such Authority.

- (g) The TSE 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 a failure by the TSE Contractor to comply with any obligation under this clause 3.3.

### 3.4 Utility Services

- (a) The TSE Contractor:
  - (i) must obtain and pay for any Utility Services and all connections for all Utility Services it needs to perform its obligations under this deed;
  - (ii) must investigate, protect, relocate, remove, modify, support, reinstate and provide for Utility Services necessary for the TSE Contractor to comply with its obligations under this deed;
  - (iii) must not, without the Principal's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the Project Works that are not necessary to allow the TSE Contractor to carry out the TSE Contractor's Activities;
  - (iv) must obtain the Principal's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services;
  - (v) must consult with and keep the Principal fully informed as to dealing with the Authorities and owners of Utility Services and comply fully with their requirements;
  - (vi) must ensure there are no unplanned disruptions to the Utility Services in carrying out the TSE Contractor's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the TSE Contractor's Activities;
  - (vii) must ensure that maintenance points for Utility Services are located within the Project Site in a location approved by the Principal's Representative in writing (such approval not to be unreasonably withheld or delayed);
  - (viii) except to the extent expressly provided otherwise by this deed, must contract for the provision of, acquire or otherwise procure or provide all Materials, Construction Plant and Utility Services (including electricity) required for the performance of its obligations under this deed; and
  - (ix) must, to the extent not prohibited by Law, indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in connection with:
    - (A) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:
      - (aa) a failure by the TSE Contractor to comply with any obligations under this deed; or



(bb) any act or omission of the TSE Contractor or its Associates; or

(B) a failure by the TSE Contractor to comply with any obligation under this deed with respect to Utility Services or the Utility Service Works including the TSE Contractor's obligations under the SWTC including sections 2.3.3(d), 5.3 and Appendix C.3.

(b) Subject to clauses 3.4(d) and 14.2, the TSE Contractor is responsible for, and assumes the risk of all additional work, increased costs and any other Loss, Liability, delay or disruption (including any delay in achieving Construction Completion and Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of the TSE Contractor's Activities.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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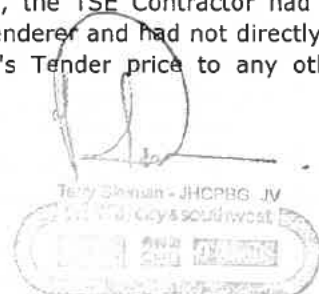
**3.5 Control of traffic**

The TSE Contractor:

- (a) is responsible for the control, direction and protection of all road, waterborne and pedestrian traffic, in any way affected by the carrying out of the TSE Contractor's Activities;
- (b) must, without limiting clauses 3.5(c) and 3.5(d), manage all such traffic to ensure:
  - (i) its continuous, safe and efficient movement;
  - (ii) the traffic carrying capacity of Local Areas is maintained; and
  - (iii) that any delays and disruptions to:
    - (A) road traffic and the movement of road traffic; and
    - (B) waterborne traffic and the movement of waterborne traffic, are minimised;
- (c) must at all times comply with the Construction Traffic Management Plan prepared in accordance with the Planning Approval and the requirements of the SWTC or any Third Party Agreement in respect of:
  - (i) road traffic management and safety; and
  - (ii) waterborne traffic management and safety; and
- (d) must comply with the directions of any relevant Authority and the Principal's Representative with respect to such management.

**3.6 Collusive arrangements**

- (a) The TSE Contractor:
  - (i) warrants that, prior to the close of Tenders, the TSE Contractor had no knowledge of the Tender price of any other Tenderer and had not directly or indirectly communicated the TSE Contractor's Tender price to any other Tenderer;



- (ii) warrants that except as disclosed in the Tender and as agreed with the Principal in writing, the TSE Contractor:
    - (A) has not made any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:
      - (aa) the TSE Contractor will pay money to or confer any benefit upon any of the unsuccessful Tenderers; or
      - (bb) the TSE Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard fee) in respect of this deed;
    - (B) has not made any allowance in the TSE Contractor's Tender price on account of a contract, arrangement or understanding of a kind referred to in clause 3.6(a)(ii)(A); and
    - (C) will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 3.6(a)(ii)(A); and
  - (iii) acknowledges that it is aware that the Principal entered this deed in reliance upon the warranties in clause 3.6(a)(i) and clause 3.6(a)(ii).
- (b) The Principal and the TSE Contractor agree that if any matter warranted in clause 3.6(a)(i) or 3.6(a)(ii) is found not to be true or not to be correct, in addition to any other rights that the Principal may have, the TSE Contractor:
- (i) will be in fundamental breach of this deed; and
  - (ii) without limiting the Principal's rights under clause 22.3, must pay to the Principal as liquidated damages the sum equivalent to that paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 3.6(a)(ii).

### 3.7 Community relations

The TSE Contractor:

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

### 3.8 Media events

- (a) The TSE Contractor must:
  - (i) permit the Principal and the NSW Government to hold media events on the Construction Site :



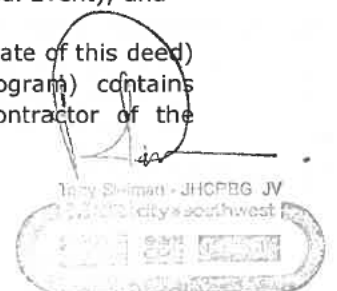
- (A) on or about the occurrence of each of the milestones specified in section 17(e) of Appendix E.2 of the SWTC; and
- (B) at such other times as may be reasonably requested by the Principal; and
- (ii) co-operate with the Principal and provide all reasonable assistance that the Principal may request in connection with any such media event.
- (b) Where the Principal holds a media event:
  - (i) on or about the occurrence of a milestone specified in section 17(e) of Appendix E.2 of the SWTC, the TSE Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with such media event; or
  - (ii) at any other time, the TSE Contractor may claim the reasonable additional Costs that it incurs in connection with any such media event but otherwise the TSE Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any such media event.

### 3.9 Special events

- (a) The TSE Contractor:
  - (i) acknowledges that Special Events may be held in areas that are adjacent to or in the vicinity of parts of the Construction Site and Extra Land;
  - (ii) must:
    - (A) perform the TSE Contractor's Activities so as to minimise any interference with or disruption to any Special Event (or the planning and preparation for any Special Event);
    - (B) co-operate with the Principal and all relevant Authorities and emergency services in relation to any Special Event (and the planning and preparation for any Special Event);
    - (C) coordinate the TSE Contractor's Activities with any Special Event (and the planning and preparation for any Special Event); and
    - (D) if requested by the Principal's Representative, attend any meeting relating to any Special Event (or the planning and preparation for any Special Event),

which is adjacent to or in the vicinity of any part of the Construction Site or any Extra Land.

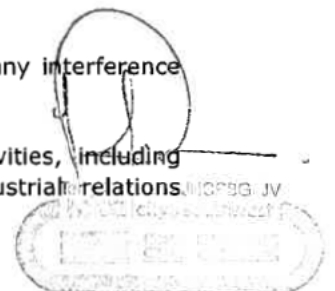
- (b) The TSE Contractor:
  - (i) acknowledges and agrees that the Principal will not be liable upon any Claim by the TSE Contractor arising out of or in any way in connection with any Special Event (or the planning and preparation for any Special Event); and
  - (ii) warrants that the original Project Contract Sum (as at the date of this deed) and that each Program (including the Overall D&C Program) contains sufficient allowances for the assumption by the TSE Contractor of the obligations and risks under this clause 3.9.



### 3.10 Cooperation and coordination with Interface Contractors

Without limiting the TSE Contractor's obligations under each Follow-on Contractor Cooperation and Integration Deed and the TSE-OTS2 Cooperation and Integration Deed, the TSE Contractor:

- (a) acknowledges that:
  - (i) the Interface Work forms part of Sydney Metro City & Southwest;
  - (ii) the TSE Contractor's Activities interface with the Interface Work;
  - (iii) Interface Contractors will be executing work on parts of the Construction Site, or adjacent to the Construction Site, at the same time as the TSE Contractor is performing the TSE Contractor's Activities;
  - (iv) Interface Contractors may require the TSE Contractor to provide information to them to coordinate the design of the Interface Work with the Project Works and the Temporary Works, and this must be provided in a timely manner by the TSE Contractor;
- (b) must at all times:
  - (i) permit Interface Contractors to execute the Interface Work on the applicable parts of the Construction Site or on any adjacent property to the Construction Site:
    - (A) at the same time as the TSE Contractor is performing the TSE Contractor's Activities; and
    - (B) 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 property adjacent to the Construction Site, required by them for the purpose of carrying out their work (subject to, where the relevant Interface Contractor is carrying out Construction Site Interface Work, the Interface Contractor executing a deed poll in favour of the TSE Contractor in the form set out in Schedule A12);
  - (ii) fully co-operate with Interface Contractors, and do everything reasonably necessary to:
    - (A) facilitate the execution of work by Interface Contractors, including providing Interface Contractors 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 Project Works and the Temporary Works with the design and construction of the Interface Work;
  - (iii) carefully coordinate and interface the TSE Contractor's Activities with the Interface Work;
  - (iv) perform the TSE Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
  - (v) be responsible for coordinating the TSE Contractor's Activities, including work sequencing, construction methods, safety and industrial relations.



matters with those affecting, and influenced by, Interface Contractors' personnel and work; and

- (vi) attend coordination meetings chaired by the Principal's Representative with Interface Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues;
- (c) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may have an adverse effect upon the TSE Contractor's Activities; and
- (d) without limiting clause 3.11, 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 a breach of this clause 3.10 by the TSE Contractor.

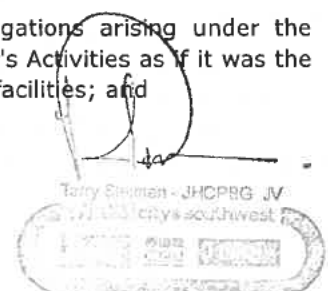
### 3.11 **No Claims arising out of Interface Work**

Subject to clauses 14.2(g) and 14.2(i), the TSE Contractor:

- (a) acknowledges and agrees that:
  - (i) no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the TSE Contractor's Activities, constitute an Act of Prevention; and
  - (ii) except where the Principal's Representative directs a Change in circumstances where the TSE Contractor has fully complied with clause 3.10, the Principal will not be liable upon any Claim by the TSE Contractor arising out of or in any way in connection with:
    - (A) the Interface Contractors carrying out Interface Work; or
    - (B) any act or omission of an Interface Contractor; and
- (b) warrants that the original Project Contract Sum (as at the date of this deed) and that each Program (including the Overall D&C Program) contains sufficient allowances for the assumption by the TSE Contractor of the obligations and risks under clause 3.10 and this clause 3.11, including the cost of all the design iterations required to accommodate Interface Work.

### 3.12 **Liability under the NGER Legislation**

- (a) Without limiting any other clause in this deed, the TSE Contractor acknowledges and agrees that, if the TSE Contractor's Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and the TSE Contractor will comply with any obligations arising in respect of the TSE Contractor's Activities under the NGER Legislation.
- (b) If, for the purpose of the NGER Legislation, the TSE Contractor is not taken to have operational control of the facility or facilities referred to in clause 3.12(a):
  - (i) the TSE Contractor must comply with any obligations arising under the NGER Legislation in respect of the TSE Contractor's Activities as if it was the person with operational control of such facility or facilities; and



- (ii) where section 11B(1) of the *National Greenhouse and Energy Reporting Act 2007* (Cth) applies, the TSE Contractor agrees that upon written request by the Principal the parties will, for the purposes of the NGER Legislation, jointly nominate the TSE Contractor as the person with operational control of such facility or facilities (with such nomination continuing until the completion of the TSE Contractor's Activities) and will do all things reasonably necessary to give effect to such nomination (including providing all relevant information and completing and executing all relevant documents and forms).
- (c) If, despite the operation of clauses 3.12(a) and 3.12(b), the Principal incurs, or but for this clause 3.12 would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the TSE Contractor's Activities, and the NGER Legislation provides:
  - (i) that such liability can be transferred by the Principal to the TSE Contractor; or
  - (ii) for a declaration or other mechanism by which the TSE Contractor can become the person with such liability under the NGER Legislation,

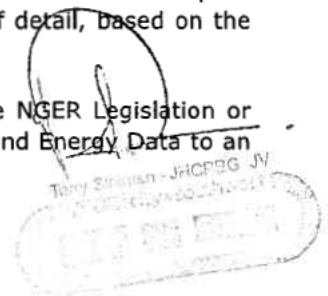
the TSE Contractor must, upon written request by the Principal, do all things reasonably necessary to achieve such outcome (including providing all relevant information and completing and executing all relevant documents and forms).

### 3.13 Provision of Emissions and Energy Data to the Principal

- (a) The TSE Contractor must provide the TSE Contractor's Emissions and Energy Data to the Principal's Representative:
  - (i) at such times as may be agreed by the Principal and the TSE Contractor, or, if no such agreement is reached within 10 Business Days of receiving written notice from the Principal indicating that it requires the TSE Contractor's Emissions and Energy Data to be provided; and
  - (ii) on each occasion that the TSE Contractor is required to provide the TSE Contractor's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.
- (b) The TSE Contractor acknowledges and agrees that the Principal may use the TSE Contractor's Emissions and Energy Data for any purpose as it sees fit.

### 3.14 Reporting Emissions and Energy Data

- (a) This clause 3.14 applies if, despite the operation of clause 3.12, the Principal incurs a liability under or in connection with the NGER Legislation as a result of or in connection with the TSE Contractor's Activities.
- (b) If the Principal notifies the TSE Contractor in writing that the TSE Contractor is required to provide TSE Contractor's Emissions and Energy Data to the Principal, then the TSE Contractor must:
  - (i) provide the TSE Contractor's Emissions and Energy Data to the Principal's Representative in the same manner, form and level of detail, based on the same methods and at the same times:
    - (A) as if the TSE Contractor was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;

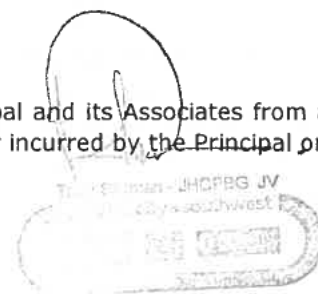




- (B) in accordance with the requirements or approvals of any Authority and any directions by the Principal's Representative; and
  - (C) without limiting clauses 3.14(b)(i)(A) or 3.14(b)(i)(B), as may be required to enable the Principal:
    - (aa) to discharge, as and when they fall due, any obligations that it may have to provide the TSE Contractor's Emissions and Energy Data to any Authority; and
    - (bb) to provide to the Clean Energy Regulator, any TSE Contractor's Emissions and Energy Data concerning any greenhouse gas project;
  - (ii) keep all such TSE Contractor's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 3.14(b)(i);
  - (iii) retain records of its activities that are the basis of its TSE Contractor's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
  - (iv) permit the TSE Contractor's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 3.14(b)(ii) and 3.14(b)(iii) and answering questions.
- (c) Without limiting clause 3.14(b), the TSE Contractor must assist the Principal to comply with the NGER Legislation in relation to any aspect of the TSE Contractor's Activities.
- (d) The TSE Contractor acknowledges and agrees that:
- (i) the TSE Contractor's Emissions and Energy Data is provided to the Principal:
    - (A) to discharge any obligations that the Principal may have to provide such Data to an Authority; and
    - (B) so that the Principal may provide to the Clean Energy Regulator any TSE Contractor's Emissions and Energy Data concerning any greenhouse gas project;
  - (ii) the Principal may provide or otherwise disclose the TSE Contractor's Emissions and Energy Data to any applicable Authority; and
  - (iii) nothing in this clause 3.14 is to be taken as meaning that the Principal has agreed to perform on behalf of the TSE Contractor, any obligation that the TSE Contractor itself may have under any Law regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

### 3.15 Indemnity

The TSE Contractor must at all times indemnify the Principal and its Associates from and against any claims against the Principal, or Loss suffered or incurred by the Principal or its Associates, arising out of or in connection with:



- (a) the TSE Contractor's breach of its obligations; and
  - (b) any inaccuracy or omission in information provided to the Principal,
- under clauses 3.12, 3.13 and 3.14.

**3.16 Sustainability**

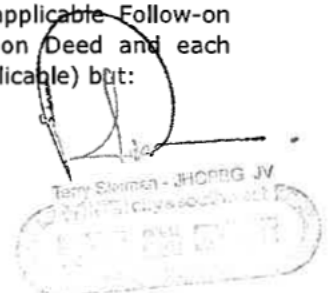
- (a) The TSE Contractor must comply with the requirements of and achieve the sustainability ratings set out in Appendix A.7 of the SWTC.
- (b) Without limiting 3.16(a), in order to achieve the ratings referred to in Appendix A.7 of the SWTC the TSE Contractor must:
  - (i) register with the Infrastructure Sustainability Council of Australia for the purposes of obtaining the ratings;
  - (ii) cooperate and liaise with the Infrastructure Sustainability Council of Australia as required; and
  - (iii) provide any documentation required by the Infrastructure Sustainability Council of Australia.

**3.17 Environmental and Sustainability Management System**

The TSE Contractor must implement an Environmental and Sustainability Management System in accordance with the applicable requirements of the SWTC, including section 7.3 of the SWTC.

**3.18 Cooperation and integration deeds**

- (a) The TSE Contractor must:
  - (i) within 5 Business Days of receipt of a request from the Principal, provide to the Principal:
    - (A) the TSE-OTS2 Cooperation and Integration Deed; or
    - (B) a Follow-on Contractor Cooperation and Integration Deed with any Follow-on Contractor nominated by the Principal,duly executed by the TSE Contractor in the number of counterparts required by the Principal;
  - (ii) at all relevant times comply with:
    - (A) the terms of the TSE-OTS2 Cooperation and Integration Deed and each Follow-on Contractor Cooperation and Integration Deed; and
    - (B) the Interface Management Plan; and
  - (iii) update the Interface Management Plan as required to reflect the interface between the TSE Contractor's Activities and the activities to be performed by each relevant Follow-on Contractor.
- (b) The Principal will relevantly request that OpCo2 and each applicable Follow-on Contractor execute the TSE-OTS2 Cooperation and Integration Deed and each Follow-on Contractor Cooperation and Integration Deed (as applicable) but:

  
Terry Stovner - JHOBG JV  
2017/08/08 10:00 AM  
A large circular stamp is partially visible, containing the name Terry Stovner and the initials JHOBG JV, along with a date and time stamp: 2017/08/08 10:00 AM.

- (i) does not represent or warrant that OpCo2 or any Follow-on Contractor will execute; and
- (ii) will not be liable upon any Claim (insofar as is permitted by Law) by the TSE Contractor arising out of or in any way in connection with OpCo2 or any Follow-on Contractor not executing,

the TSE-OTS2 Cooperation and Integration Deed or a Follow-on Contractor Cooperation and Integration Deed (as applicable).

**3.19 Australian Jobs Act**

The TSE Contractor must:

- (a) take reasonable steps to ensure that Australian companies have full, fair and reasonable opportunities to bid for the supply of key goods and services that the TSE Contractor requires in order to perform the TSE Contractor's Activities; and
- (b) without limiting clause 5.1, cooperate with the Principal in relation to:
  - (i) compliance with the requirements of the *Australian Jobs Act 2013* (Cth); and
  - (ii) the implementation of the Sydney Metro Australian Industry Participation Plan.

**3.20 Workforce development and industry participation**

(a) The TSE Contractor must:

- (i) comply with the requirements of Appendix E.3 of the SWTC; and
- (ii) achieve the "Workforce Development and Industry Participation Outputs" required by section 2.3 of Appendix E.3 of the SWTC.

(b) Without limiting clause 3.20(a), the TSE Contractor must:

- (i) at all times comply with the requirements of the Aboriginal Participation Plan and the Workforce Development & Industry Participation Plan that the TSE Contractor is permitted to use in accordance with clause 9.5;
- (ii) cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to the implementation of its workforce development and industry participation initiatives for Sydney Metro City & Southwest;
- (iii) attend and participate in working groups and forums established by the Principal in relation to its workforce development and industry participation initiatives for Sydney Metro City & Southwest;
- (iv) maintain records evidencing the TSE Contractor's compliance with the requirements of Appendix E.3 of the SWTC; and
- (v) make available all records maintained in accordance with clause 3.20(b)(iv) to the Principal or its nominees.

Terry Brennan - JHCPBG JV  
Sydney Metro City & Southwest

#### 4. SECURITY

##### 4.1 Unconditional undertakings

- (a) On or before the Condition Precedent Deadline Date the TSE Contractor must give the Principal:
- (i) an unconditional undertaking for ■■■ of the Project Contract Sum;
  - (ii) an unconditional undertaking for ■■■ of the Project Contract Sum; and
  - (iii) an unconditional undertaking for ■■■ of the Project Contract Sum.
- (b) The unconditional undertakings provided under clause 4.1(a) are provided for the purposes of the Project Works.

##### 4.2 Requirements for unconditional undertakings

Each unconditional undertaking provided under clause 4.1, 18.6 or 18.7 (and any replacement unconditional undertaking provided under clause 4.4 or 4.5) must be:

- (a) in the form of Schedule E5 (or such other form approved by the Principal);
- (b) in favour of the Principal;
- (c) provided by a bank company that:
  - (i) is regulated by the Australian Prudential Regulation Authority; and
  - (ii) at all times maintains the Required Rating; and
- (d) payable at an office of the issuer in Sydney (or such other place approved by the Principal).

##### 4.3 Recourse to unconditional undertakings

The Principal may have recourse to any unconditional undertaking provided under clause 4.1, 18.6 or 18.7 (and any replacement unconditional undertaking provided under clause 4.4 or 4.5) at any time.

##### 4.4 Release of unconditional undertakings

- (a) Subject to clause 4.4(d) 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 Completion of the last Portion to achieve Completion, release the unconditional undertaking provided by the TSE Contractor under clause 4.1(a)(i) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash);
  - (ii) subject to clause 4.4(b), within 20 Business Days of the date which is 18 months after the Date of Completion of the last Portion to achieve Completion, release the unconditional undertaking provided by the TSE Contractor under clause 4.1(a)(ii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash); and
  - (iii) subject to clause 4.4(b), within 20 Business Days after the later of:



- (A) [REDACTED] and
- (B) the receipt by the Principal's Representative of a certificate in the form of Schedule B8 executed by the Independent Certifier,

release the unconditional undertaking provided by the TSE Contractor under clause 4.1(a)(iii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash).

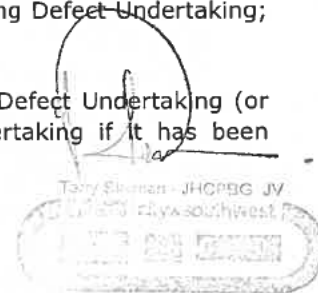
- (b) If, prior to:
  - (i) the date that is 18 months after the Date of Completion of the last Portion to achieve Completion; or
  - (ii) [REDACTED],the Principal has required the TSE Contractor:
  - (iii) to correct one or more Defects pursuant to clause 15.2(a)(i); or
  - (iv) to carry out one or more Changes to overcome one or more Defects pursuant to clause 15.2(a)(ii),

and the TSE Contractor has not corrected such Defects or carried out such Changes by:

- (v) the date specified in clause 4.4(a)(ii) for release of the unconditional undertaking referred to in clause 4.1(a)(ii); or
- (vi) the date specified in clause 4.4(a)(iii)(A) for release of the unconditional undertaking referred to in clause 4.1(a)(iii),

as applicable, the Principal's entitlement to such unconditional undertaking will, from the date specified in clause 4.4(a)(ii) or 4.4(a)(iii) (as applicable), be reduced to an amount which represents [REDACTED] of the reasonable cost of completing the rectification of the relevant Defects and carrying out the relevant Changes (as determined by the Principal's Representative) (**Outstanding Defect Cost Amount**). The Principal's entitlement to the unconditional undertaking referred to in clause 4.1(a)(ii) or 4.1(a)(iii) (as applicable) will cease 20 Business Days after all the relevant Defects have been corrected and all the relevant Changes have been carried out (as applicable) after which the Principal must release the unconditional undertaking to the TSE Contractor.

- (c) Where clause 4.4(b) applies:
  - (i) the TSE Contractor may by written notice to the Principal elect to exchange the unconditional undertaking referred to in clause 4.1(a)(ii) or clause 4.1(a)(iii) (as applicable) for an unconditional undertaking equal to the Outstanding Defect Cost Amount that satisfies the requirements of clause 4.2 (**Outstanding Defect Undertaking**);
  - (ii) within 20 Business Days of the TSE Contractor giving notice under clause 4.4(c)(i), the Principal must surrender the unconditional undertaking referred to in clause 4.1(a)(ii) or clause 4.1(a)(iii) (as applicable) to the TSE Contractor in exchange for the issue of an Outstanding Defect Undertaking; and
  - (iii) the Principal must release the relevant Outstanding Defect Undertaking (or the remaining proceeds of such unconditional undertaking if it has been



converted into cash) within 20 Business Days after all relevant Defects have been corrected and all relevant Changes have been carried out (as applicable).

- (d) Despite any other provision of this deed to the contrary, where this deed is terminated by the Principal either pursuant to clause 22 or by reason of the TSE Contractor repudiating this deed (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the termination of this deed to the extent of any claim which the Principal may have against the TSE Contractor arising out of, or in any way in connection with, this deed or the TSE Contractor's Activities whether for damages (including liquidated damages) or otherwise.

#### 4.5 **Replacement of unconditional undertakings where the issuer ceases to have the Required Rating**

- (a) If the issuer of any unconditional undertaking provided under this deed ceases to have the Required Rating and, at that time, another bank regulated by the Australian Prudential Regulation Authority acceptable to the Principal maintains the Required Rating, then the TSE Contractor must:
- (i) promptly notify the Principal of that circumstance; and
  - (ii) within 20 Business Days of being requested to do so, procure the issue to the Principal of a replacement unconditional undertaking which must have a face value equal to that of the unconditional undertaking being replaced and must satisfy the requirements of clause 4.2,

and the Principal must surrender the original unconditional undertaking to the TSE Contractor in exchange for the issue of the replacement unconditional undertaking.

- (b) If the issuer of any unconditional undertaking ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:
- (i) if the current issuer of the unconditional undertaking has a rating of less than the second highest rated Major Australian Bank, the TSE Contractor must procure the issue to the Principal of a replacement unconditional undertaking from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 4.2;
  - (ii) the TSE Contractor must monitor the credit rating of the issuer of the replacement unconditional undertaking and the credit rating of the Major Australian Banks and procure a replacement unconditional undertaking from an issuer which has the Required Rating within 15 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and
  - (iii) the Principal must surrender the original unconditional undertaking to the TSE Contractor in exchange for the replacement unconditional undertaking.

#### 4.6 **No injunction**

The TSE 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;



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

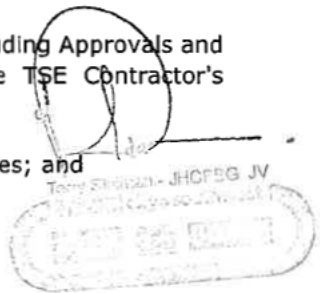
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**5. LAW AND APPROVALS**

**5.1 Compliance with Law**

Subject to clause 5.2(a)(i), the TSE Contractor must in carrying out the TSE Contractor's Activities:

- (a) comply with, and ensure that the Project Works and Temporary Works comply with, all applicable Law;
- (b) comply with and provide the Principal's Representative copies of any requirement, notice, order or direction, received from or given by any Authority including any infringement notice, fine or penalty given or made in respect of the TSE Contractor's Activities;
- (c) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this deed;
- (d) give the Principal's Representative at least 10 Business Days' prior written notice of any date on which the TSE Contractor will submit an application for an Approval (or for any change to an Approval), which notice must include details of the information the TSE Contractor will provide to the Authority and the date it will be provided;
- (e) give the Principal's Representative notices, reports and submissions it gives to Authorities in respect of the TSE Contractor's Activities at the time it submits such notices, reports and submissions together with responses from, and details of any consultations or other communications with, Authorities;
- (f) give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it in respect of the TSE Contractor's Activities as soon as possible;
- (g) at all times conform and comply with all NSW Government Policies; and

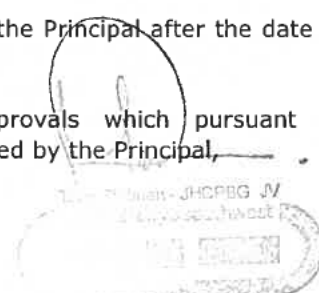
  
Tom Stinson - JHCPSG JV  
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- (h) not engage in any fraud, bribery or corruption.

## 5.2 Approvals

- (a) The TSE Contractor must:
  - (i) obtain all Approvals except for those specified in Schedule D2 which either:
    - (A) were obtained by the Principal prior to the date of this deed; or
    - (B) will be obtained by the Principal after the date of this deed if required;
  - (ii) unless otherwise expressly specified in Schedule D3, comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the TSE Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Approvals specified in Schedule D3 to comply with, satisfy, carry out and fulfil;
  - (iii) except to the extent prohibited by Law, 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 failure by the TSE Contractor to comply with its obligations under clauses 5.2(a)(i) or 5.2(a)(ii);
  - (iv) as a condition precedent to Construction Completion of any Portion, ensure that it has:
    - (A) obtained all Approvals it is required to obtain under this deed including those which are required for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1;
    - (B) complied with, satisfied, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out, satisfy and fulfil under this deed including those which must be satisfied for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Construction Completion); and
    - (C) without limiting clauses 5.2(a)(iv)(A) and 5.2(a)(iv)(B), complied with, carried out, satisfied and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, satisfy, carry out and fulfil (including the obtaining of the approval of any person for anything) under this deed insofar as this is necessary including for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Construction Completion); and
  - (v) in respect of any:
    - (A) Approvals which are to be obtained by the Principal after the date of this deed; or
    - (B) conditions and requirements of Approvals which pursuant to Schedule D3 are to be satisfied or fulfilled by the Principal,



without limiting the requirements of Schedule D3, provide the Principal with such reasonable assistance as may be required by the Principal to enable the Principal to obtain the Approvals or satisfy or fulfil the conditions and requirements.

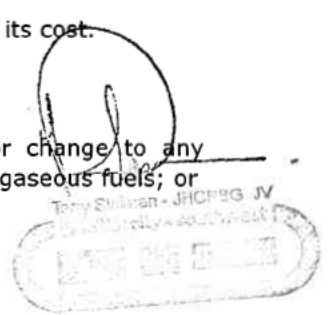
- (b) The Principal must comply with, satisfy, carry out and fulfil the conditions and requirements of those Approvals for which the Principal is stated to have responsibility to the extent specified in Schedule D3.
- (c) Without limiting clause 5.8 and Schedule D3, in respect of any submissions, surveys, investigations, reports, studies or other documents:
  - (i) required to be submitted by a term of the Planning Approval; or
  - (ii) proposed to be submitted by the TSE Contractor in support of any application to amend the Planning Approval,

the TSE Contractor:

- (iii) must prepare, carry out and provide to the Principal any submissions, surveys, investigations, reports, studies or other documents:
  - (A) requested by the Principal's Representative;
  - (B) to the standard directed by the Principal's Representative; and
  - (C) within the time directed by the Principal's Representative;
- (iv) must provide whatever other assistance and information the Principal's Representative reasonably requests within the time reasonably requested by the Principal's Representative; and
- (v) agrees that any act or omission (including delay or refusal) by the Principal or the relevant Authority in respect of an application to amend the Planning Approval does not constitute an Act of Prevention.

### 5.3 Change in Law

- (a) Where there is a Change in Law, the TSE Contractor must:
  - (i) within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Change in Law, give a written notice to the Principal and the Principal's Representative:
    - (A) containing details of the Change in Law; and
    - (B) where it believes that the Change in Law will cause a delay to the TSE Contractor's Activities that will entitle it to an extension of time pursuant to clause 17.6 (and without limiting its obligation to give any notices required by clause 17.6), such notice must be given within the time, and must contain the details, required by clause 17.5(b); and
  - (ii) subject to clause 5.3(b), comply with the Change in Law at its cost.
- (b) Where there is:
  - (i) a Change in Law comprising any amendment, repeal or change to any legislation imposing an effective carbon price on liquid and gaseous fuels; or



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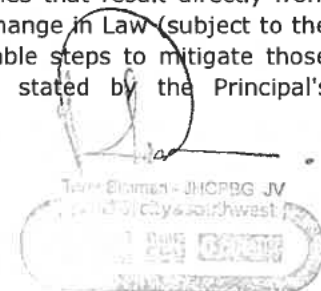
- (ii) any other Change in Law which:
  - (A) has a direct effect on the time, method or means by which the TSE Contractor carries out the TSE Contractor's Activities; and
  - (B) directly results in an increase or decrease in the TSE Contractor's costs of carrying out the TSE Contractor's Activities,

and either the Principal or the TSE Contractor wishes to claim an increase or decrease to the Project Contract Sum on account of the Change in Law:

- (iii) the party wishing to claim the increase or decrease must:
  - (A) if the party is the TSE Contractor, give a written notice to the Principal's Representative within 15 Business Days of the notice provided under clause 5.3(a)(i); or
  - (B) if the party claiming the increase or decrease is the Principal, give a written notice to the TSE Contractor,

which:

- (C) states that the party is claiming an increase or decrease to the Project Contract Sum on account of a Change in Law;
  - (D) contains details of the Change in Law; and
  - (E) sets out that party's estimate of the increase or decrease (as the case may be) in the TSE Contractor's Costs of carrying out the TSE Contractor's Activities that result directly from complying with the Change in Law, including sufficient information to support the estimate;
- (iv) if a party serves a notice under clause 5.3(b)(iii):
    - (A) the Principal and the TSE Contractor must meet within 20 Business Days of a notice being given under clause 5.3(b)(iii) and will negotiate and endeavour to agree to any increase or decrease to the Project Contract Sum (as the case may be) on account of the increase or decrease in the TSE Contractor's Costs of carrying out the TSE Contractor's Activities that result directly from the TSE Contractor's complying with the Change in Law and, where agreement is reached as to the amount of the increase or decrease to the Project Contract Sum, the relevant component or components of the Project Contract Sum will be so increased or decreased (as appropriate); and
    - (B) if the Principal and the TSE Contractor cannot reach agreement as to any increase or decrease to the Project Contract Sum (as the case may be) within 20 Business Days (or such other period as may be approved by the Principal or Principal's Representative) of a notice being given under clause 5.3(b)(iii), the Project Contract Sum will be increased or decreased (as appropriate) by a reasonable amount on account of the increase or decrease in the TSE Contractor's Costs of carrying out the TSE Contractor's Activities that result directly from the TSE Contractor complying with the Change in Law (subject to the TSE Contractor having taken all reasonable steps to mitigate those increased Costs), by such amount as stated by the Principal's Representative.



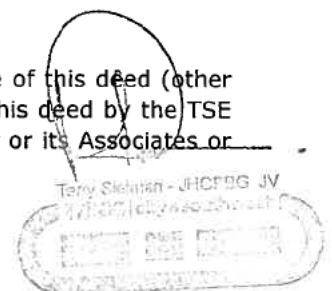
- (c) The TSE Contractor must comply with all Changes in Law.

**5.4 Change in Codes and Standards**

- (a) Where there is a Change in Codes and Standards:
  - (i) the TSE Contractor must give a written notice to the Principal's Representative within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Change in Codes and Standards containing:
    - (A) details of the Change in Codes and Standards; and
    - (B) an estimate of the TSE Contractor's increased or decreased Costs of complying with that Change in Codes and Standards, including sufficient information to support the estimate; and
  - (ii) if a notice is given by the TSE Contractor which complies with clause 5.4(a), then within 10 Business Days of the notice being given, the Principal's Representative will either:
    - (A) direct the TSE Contractor to disregard the Change in Codes and Standards; or
    - (B) direct a Change under clause 13.2(a) in respect of the Change in Codes and Standards after which, subject to clause 5.4(c), the relevant adjustments will be made under clause 13.4.
- (b) If the Principal's Representative gives a notice under clause 5.4(a)(ii)(A), the TSE Contractor will not be regarded as being in breach of this deed to the extent that it disregarded the relevant Change in Codes and Standards.
- (c) Subject to clauses 5.4(d) and 12.3(c), if the Principal gives a notice under clause 5.4(a)(ii)(B), the TSE Contractor will not be entitled to any increase in the Project Contract Sum:
  - (i) except to the extent that the relevant Design Documentation, before such notice under clause 5.4(a)(ii)(B), complied, or would have complied, with the requirements of this deed, including any requirement that the Design Documentation be fit for its intended purpose (or any similar reference); or
  - (ii) to the extent that, notwithstanding the Change in Codes and Standards, the TSE Contractor would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that the Project Works and the Temporary Works be fit for their intended purpose (or any similar reference).
- (d) Clause 5.4(c)(i) will not disentitle the TSE Contractor to an increase in the Project Contract Sum where the relevant non-compliance in the Design Documentation is a minor non-compliance that is capable of correction without the need for any significant redesign of the relevant part of the Project Works or the Temporary Works.

**5.5 Changes to Planning Approval**

- (a) Where a change in the Planning Approval occurs after the date of this deed (other than a change arising from or in connection with a breach of this deed by the TSE Contractor or a wrongful act or omission of the TSE Contractor or its Associates or



a change made in response to a request by the TSE Contractor) which necessitates a Change to the Project Works or the Temporary Works or a reduction in the working hours or days or noise or vibration limits permitted for the TSE Contractor's Activities as at the date of this deed or a change to the permitted Working Parameters for the TSE Contractor's Activities, the TSE Contractor must, within 20 Business Days of the date on which the TSE Contractor becomes aware or ought reasonably to have first become aware of the change taking effect, notify the Principal's Representative in writing with detailed particulars of the reason why the change necessitates a Change to the Project Works or the Temporary Works, a reduction in the permissible working hours or days or noise or vibration limits for the TSE Contractor's Activities or a change to the permitted Working Parameters for the TSE Contractor's Activities.

- (b) If the TSE Contractor gives a notice under clause 5.5(a) and the change necessitates a Change to the Project Works or the Temporary Works, a reduction in the permissible working hours or days or noise or vibration limits for the TSE Contractor's Activities or a change to the permitted Working Parameters for the TSE Contractor's Activities:
- (i) in the case where the change necessitates a Change to the Project Works or the Temporary Works, the Principal's Representative will direct a Change under clause 13.2(a) after which relevant adjustments will be made under clause 13.4; and
  - (ii) in the case where the change necessitates a reduction in the permissible working hours or days or noise or vibration limits for the TSE Contractor's Activities or a change to the permitted Working Parameters for the TSE Contractor's Activities, the Project Contract Sum will, subject to clause 20.6 be adjusted for the increased or decreased Costs reasonably incurred by the TSE Contractor arising out of the reduction in the permissible working hours or days or noise or vibration limits for the TSE Contractor's Activities or change to the permitted Working Parameters for the TSE Contractor's Activities, as stated by the Principal's Representative.
- (c) Except to the extent expressly stated otherwise in this clause 5.5, the TSE 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 a change in the Planning Approval.
- (d) The TSE Contractor:
- (i) acknowledges that:
    - (A) only the Principal can apply for modification to the Planning Approval;
    - (B) the Principal may, in its absolute discretion, refuse to seek such modification or discontinue or withdraw or change an application for such modification at any time; and
    - (C) the Principal need not apply for any modification to the Planning Approval on behalf of the TSE Contractor unless the TSE Contractor first submits its proposal for modification to the Principal's Representative for its review and the Principal's Representative consents to the modification, which consent it may give or withhold in its absolute discretion;
  - (ii) must not seek to modify or apply for any modification to the Planning Approval other than via the Principal; and



- (iii) must pay the Principal all fees, costs and expenses arising out of, or in any way in connection with, such modification.

#### 5.6 Legal challenge

- (a) If there is a legal challenge in relation to the assessment or determination of, or otherwise in relation to, Sydney Metro City & Southwest under the:
  - (i) EP&A Act;
  - (ii) *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*; or
  - (iii) any other Law,the TSE Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:
  - (iv) ordered by a court or tribunal; or
  - (v) directed by the Principal's Representative.
- (b) Subject to clauses 5.6(c) and 20.6, the Principal must pay the TSE Contractor the reasonable additional Costs incurred by the TSE Contractor arising directly as a result of a court or tribunal order referred to in clause 5.6(a)(iv) or direction by the Principal's Representative referred to in clause 5.6(a)(v).
- (c) Clause 5.6(b) does not apply to the extent that a legal challenge of the kind referred to in clause 5.6(a) is initiated or upheld due to the TSE Contractor's non-compliance with its obligations under this deed.

#### 5.7 Environment Protection Licence

The TSE Contractor must:

- (a) obtain an Environment Protection Licence in respect of the TSE Contractor's Activities for each Portion from the date on which the TSE Contractor is given access to that part of the Construction Site to which the Portion relates (or any part thereof) pursuant to clause 10.1;
- (b) hold an Environment Protection Licence in respect of the TSE Contractor's Activities for each Portion until the Portion Handover Date for that Portion; and
- (c) ensure that:
  - (i) from each Portion Handover Date, the TSE Contractor's Environment Protection Licence is varied so as to exclude that part of the Construction Site to which the Portion relates; and
  - (ii) the TSE Contractor's Environment Protection Licence is surrendered on and from the Portion Handover Date for the last Portion to be handed over by the TSE Contractor,

so as to allow OpCo2, an Alternate Operator and/or any applicable Follow-on Contractor to obtain an Environment Protection Licence for the relevant part of the Construction Site.



5.8 **Crown Building Work**

- (a) The TSE Contractor must, in relation to any part of the Project Works or Temporary Works that is Crown Building Work (as defined in section 109R of the EP&A Act), certify (on behalf of the Principal) as required by section 109R of the EP&A Act.
- (b) Any certification under clause 5.8(a) will not lessen or otherwise affect:
  - (i) the TSE Contractor's other liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law.

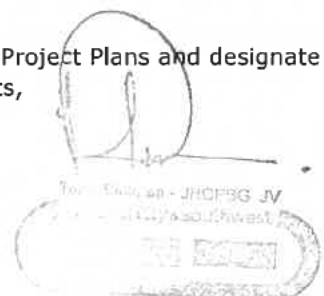
5.9 **Long service levy**

Before commencing any construction work under this deed, the TSE Contractor must:

- (a) pay (or procure payment) to the Long Service Corporation or that body's agent all amounts due and payable for the long service levy in respect of the TSE 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 5.9(a).

5.10 **Environmental Representative**

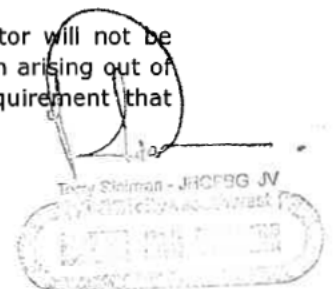
- (a) The TSE Contractor acknowledges that:
  - (i) the Environmental Representative is required to discharge certain functions as identified in the Planning Approval;
  - (ii) the Principal has appointed the Environmental Representative as required by the Planning Approval; and
  - (iii) the Environmental Representative:
    - (A) is independent of the parties;
    - (B) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval; and
    - (C) shall advise the Principal and the Principal's Representative on the TSE Contractor's compliance with the Planning Approval.
- (b) The TSE Contractor must provide the Environmental Representative with all information and documents and allow the Environmental Representative:
  - (i) to attend meetings;
  - (ii) access to such premises; and
  - (iii) to insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points,all as may be:



- (iv) necessary or reasonably required by the Environmental Representative or the Principal's Representative to allow the Environmental Representative to perform its functions in connection with this deed; or
  - (v) lawfully requested by the Environmental Representative or directed by the Principal's Representative.
- (c) The TSE Contractor must comply with the lawful requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Planning Approval.
- (d) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle the TSE Contractor to make any Claim against the Principal.

**5.11 Rock breaking and other noise generating activities**

- (a) The TSE Contractor must plan and execute rock breaking and other noise generating activities likely to result in internal noise levels greater than  $L_{eq(15 \text{ minute})}$  60 dB(A) at any receiver so as to mitigate the impact on those receivers, including:
- (i) for example, by considering whether rock hammering may be undertaken in continuous blocks not exceeding [REDACTED] each with a minimum respite from those activities and works of not less than [REDACTED] between each block, or otherwise as permitted by the Environment Protection Licence;
  - (ii) undertaking the TSE Contractor's Activities in accordance with Good Industry Practice;
  - (iii) carrying out noisier works on Saturday mornings as appropriate;
  - (iv) consulting with Sensitive Receivers to understand and make reasonable attempts to schedule rock breaking and other noise generating activities likely to result in internal noise levels greater than  $L_{eq(15 \text{ minute})}$  60 dB(A) at any receiver to reduce the impacts on them; and
  - (v) implementing the alternative methods to rock hammering and blasting for excavation set out in the report Alternative Construction Methods to Rock Hammering and Blasting (SMCSTSE-JCG-TPW-EN-RPT-097229-02) prepared in accordance with condition E35 of the Project Planning Approval.
- (b) If the EPA or the Secretary of the Department of Planning and Environment imposes a legal requirement (other than a legal requirement that is imposed due to or in connection with a breach of this deed by the TSE Contractor (including a failure to comply with its obligations under clause 5.11(a)) or a wrongful act or omission of the TSE Contractor or its Associates) or refuses an approval under condition E34 of the Project Planning Approval that prevents the TSE Contractor from being able to carry out rock breaking or other noise generating activities for [REDACTED], then the Project Contract Sum will, subject to clause 20.6, be adjusted for the increased Costs reasonably incurred by the TSE Contractor which arise out of the imposition of such legal requirement or refusal to grant approval, as stated by the Principal's Representative.
- (c) Except to the extent provided in clause 5.11(b), the TSE 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 imposition of a legal requirement that



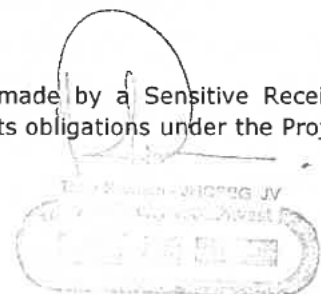


prevents the TSE Contractor from carrying out rock breaking or other noise generating activities at the times specified in clause 5.11(b).

#### 5.12 Relocations and mitigation measures

- (a) The TSE Contractor must carry out all parts of the TSE Contractor's Activities that may impact upon Sensitive Receivers:
  - (i) in accordance with:
    - (A) Good Industry Practice;
    - (B) Law, the Environmental Documents, all guidelines made or approved by the EPA; and
    - (C) the "Construction Noise and Vibration Impact Statements" prepared and updated in accordance with conditions E33 and E35 of the Project Planning Approval; and
  - (ii) in a manner that adopts all reasonable and feasible measures to minimise the impact of construction noise and vibration on Sensitive Receivers.
- (b) If the TSE Contractor or the Principal receives a request from a Sensitive Receiver:
  - (i) to be relocated; or
  - (ii) for any other mitigation measures to be implemented to limit construction noise and vibration impacts including at property treatments,

the party that receives the request must immediately notify the other party in writing.
- (c) If a party issues a notice to the other party under clause 5.12(b), the parties must promptly meet to consider and assess:
  - (i) the request from the Sensitive Receiver; and
  - (ii) the reasons for the request (including whether the request has been made due to or in connection with any non-compliance by the TSE Contractor with the requirements of the Project Planning Approval or any breach of this deed by the TSE Contractor (including a breach of clause 5.12(a))).
- (d) If a request referred to in clause 5.12(b) is made by a Sensitive Receiver due to or in connection with a non-compliance by the TSE Contractor with the requirements of the Project Planning Approval or any breach of this deed by the TSE Contractor (including a breach of clause 5.12(a)), the TSE Contractor must:
  - (i) promptly remedy such non-compliance or breach and notify the Principal's Representative in writing once the non-compliance or breach has been remedied; and
  - (ii) contact the relevant Sensitive Receiver to confirm whether relocation or implementation of other mitigation measures is still required.
- (e) If:
  - (i) a request referred to in clause 5.12(b) is made by a Sensitive Receiver where the TSE Contractor is complying with its obligations under the Project



Planning Approval and not otherwise due to or in connection with a breach of this deed by the TSE Contractor; or

- (ii) relocation or implementation of other mitigation measures is still required by a Sensitive Receiver after the TSE Contractor has remedied a non-compliance or breach in accordance with clause 5.12(d),

then:

- (iii) the parties must work together in a cooperative manner to consider and assess such request or requirement and the extent to which relocation or implementation of other mitigation measures is required; and
  - (iv) the Principal will negotiate with the relevant Sensitive Receiver in relation to its relocation or the implementation of other mitigation measures including at property treatments; and
  - (v) the TSE Contractor must provide the Principal with such assistance as the Principal may reasonably require in connection with any negotiations with Sensitive Receivers (including providing any relevant available documentation or information or attending any required meeting).
- (f) If the Principal agrees with any Sensitive Receiver to relocate the Sensitive Receiver or implement other mitigation measures:
- (i) the Principal must promptly notify the TSE Contractor in writing; and
  - (ii) the TSE Contractor must:
    - (A) provide such assistance as the Principal may reasonably require in connection with the relocation;
    - (B) implement any mitigation measures described in the Principal's written notice including at property treatments; and
    - (C) subject to clause 18.12, bear the cost of the relocation or implementation of other mitigation measures.
- (g) If the TSE Contractor fails to comply with its obligations under clause 5.12(d), the Principal may relocate the Sensitive Receiver or implement such other mitigation measures as the Principal considers appropriate at the TSE Contractor's expense, and the cost of the correction or Change work incurred by the Principal will be a debt due from the TSE Contractor to the Principal.
- (h) The TSE Contractor will not be required to pay compensation to any Sensitive Receiver due to the impact of construction noise and vibration on any Sensitive Receiver unless the payment of such compensation is required by law due to or in connection with any non-compliance by the TSE Contractor with the requirements of the Project Planning Approval or any breach of this deed by the TSE Contractor (including a breach of clause 5.12(a)).

## 5A. PLANNING MODIFICATIONS

### 5A.1 Planning Modifications

- (a) The parties acknowledge and agree that:
  - (i) a Planning Modification is required for the construction of:



Handwritten signature and official stamp of Tony Robinson-JHONG JV, a Joint Venture. The stamp includes the name 'Tony Robinson-JHONG JV' and 'Joint Venture'.

- (A) the Marrickville Earthworks and Drainage Works;
  - (B) the Victoria Cross Northern Shaft; and
  - (C) the Artarmon Sub-station Riser;
- (ii) the Principal may submit one or more Planning Modifications in respect of the works contemplated by clause 5A.1(a)(i) at the Principal's discretion;
- (iii) the Principal will:
  - (A) be the proponent under the EP&A Act in respect of each Planning Modification;
  - (B) subject to clause 5A.1(b), prepare each Planning Modification Application; and
  - (C) submit the Planning Modification Applications in respect of:
    - (aa) the Marrickville Earthworks and Drainage Works;
    - (bb) the Victoria Cross Northern Shaft; and
    - (cc) the Artarmon Sub-station Riser,  
to the Minister for Planning.
- (b) The TSE Contractor must:
  - (i) if requested by the Principal:
    - (A) prepare, or assist with the preparation of, any documents, plans, drawings or reports that are required to be prepared in respect of each Planning Modification Application process (**Planning Modification Documents**) within a reasonable period of the Principal's written request;
    - (B) provide such assistance to the Principal and its Associates in relation to the preparation of each Planning Modification Application as the Principal may require (acting reasonably), including attending any relevant meetings and providing any relevant information; and
    - (C) provide such assistance to the Principal and its Associates in relation to the process for obtaining each Planning Modification as the Principal may require (acting reasonably), including in connection with:
      - (aa) any consultation with the community and stakeholders required by any Planning Modification Application process; and
      - (bb) the public exhibition of each Planning Modification Application; and
  - (ii) generally co-operate with the Principal and its Associates in relation to each Planning Modification Application.
- (c) The TSE Contractor must, to the extent that it:
  - (i) prepares any Planning Modification Document:



- (A) prepare each Planning Modification Document in accordance with Good Industry Practice; and
- (B) ensure that each Planning Modification Document will comply with the EP&A Act and any other applicable legislation; and
- (ii) assists with the preparation of any Planning Modification Document, provide such assistance in accordance with Good Industry Practice.
- (d) Except to the extent expressly stated otherwise in this clause 5A or clause 17, the TSE 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:
  - (i) any Planning Modification; or
  - (ii) any Unforeseeable Modifications Requirements.
- (e) The parties acknowledge and agree that the terms of any Planning Modification 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.

**5A.2 Issue of the Planning Modification and notice to proceed with construction**

- (a) Within 5 Business Days of any Planning Modification being determined by the Minister for Planning the Principal's Representative must provide the TSE Contractor with a copy of the notice of determination of the Planning Modification.
- (b) Following the determination of each Planning Modification by the Minister for Planning the Principal's Representative must provide the TSE Contractor with either written notice:
  - (i) to proceed with the construction of any of the Marrickville Earthworks and Drainage Works, the Victoria Cross Northern Shaft or the Artarmon Sub-station Riser (as applicable); or
  - (ii) confirming that the Principal will omit the construction of the Marrickville Earthworks and Drainage Works, the Victoria Cross Northern Shaft or the Artarmon Sub-station Riser (as applicable), and any design or other activities related to such works that have not yet been carried out, pursuant to clause 13.2(a).
- (c) The TSE Contractor must not commence construction of the Marrickville Earthworks and Drainage Works, the Victoria Cross Northern Shaft or the Artarmon Sub-station Riser (as applicable) unless and until the Principal's Representative issues a notice under clause 5A.2(b)(i) in respect of the relevant work.

**5A.3 Unforeseeable Modification Requirements**

For the purposes of this deed, an **Unforeseeable Modification Requirement** of the Planning Modification is a condition or requirement of the Planning Modification which will require or will result in:

- (a) a change to:
  - (i) the requirements of the SWTC;;
  - (ii) the TSE Contractor's Activities; or
  - (iii) the TSE Contractor's design,



for or relating to any of the Marrickville Earthworks and Drainage Works, the Victoria Cross Northern Shaft or the Artarmon Sub-station Riser (as applicable) or any other affected part of the Project Works or the Temporary Works;

- (b) a change to the TSE Contractor's Program which delays or is likely to delay an activity on the critical path contained and shown in the TSE Contractor's Program such that it gives rise to, or is likely to give rise to, a delay to the achievement of Construction Completion of any Portion; or
- (c) payment by or imposition of fees, contributions or levies on the TSE Contractor (other than fees, contributions or levies which would otherwise be payable as at the date of this deed),

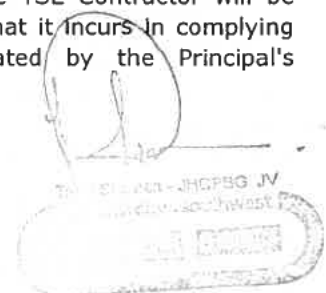
and which individually or in aggregate will require the TSE Contractor to incur additional cost in order to carry out the TSE Contractor's Activities in accordance with the requirements of this deed.

#### 5A.4 Contesting the Planning Modification

- (a) If the Minister for Planning:
  - (i) determines to refuse part or all of any Planning Modification; or
  - (ii) grants, or indicates that it will grant, any Planning Modification subject to conditions or requirements which:
    - (A) are Unforeseeable Modification Requirements; or
    - (B) the Principal wishes to challenge,

the Principal may notify the TSE Contractor if the Principal intends to contest the determination or imposition of that condition or requirement.

- (b) If the Principal notifies the TSE Contractor that it intends to contest the refusal to grant part or all of any Planning Modification or imposition of a condition or requirement, the TSE Contractor must:
  - (i) if requested by the Principal:
    - (A) prepare, or assist with the preparation of, any documents and submissions that are required by the Principal (acting reasonably) to be prepared for contesting the determination or imposition of the relevant condition or requirement; and
    - (B) provide such assistance to the Principal and its Associates in relation to contesting the determination or imposition of the relevant condition or requirement as the Principal may require (acting reasonably), including by attending any relevant meeting as required by the Principal and providing any information available to the Principal or its Associates; and
  - (ii) generally co-operate with the Principal and its Associates in relation to the contesting of the determination or the relevant condition or requirement.
- (c) If the Principal issues a request under clause 5A.4, the TSE Contractor will be entitled to payment of the reasonable additional Costs that it incurs in complying with its obligations under this clause 5A.4 as stated by the Principal's Representative.



## 5A.5 Change due to Unforeseeable Modification Requirements

- (a) Without limiting clauses 5A.2, if:
  - (i) the Minister for Planning grants, or indicates that it will grant, a Planning Modification subject to an Unforeseeable Modification Requirement; or
  - (ii) the Principal, after having consulted with the TSE Contractor, considers that a Change to the Marrickville Earthworks and Drainage Works, the Victoria Cross Northern Shaft, the Artarmon Sub-station Riser or any other part of the Project Works or the Temporary Works is required to ensure that:
    - (A) the Planning Modification is granted; or
    - (B) the Planning Modification is granted without being subject to an Unforeseeable Modification Requirement,

the Principal may issue a Change Proposal Request to the TSE Contractor in accordance with clause 13.1 which will include details of a proposed change to, as relevant:

- (iii) ensure that the Planning Modification is granted; or
  - (iv) enable the TSE Contractor to comply with the Unforeseeable Modification Requirement,
- in which case clause 13 will apply to the proposed Change.
- (b) If the Principal issues a "Change Proposal Request" pursuant to clause 5A.5(a) in respect of any of the Marrickville Earthworks and Drainage Works, the Victoria Cross Northern Shaft, the Artarmon Sub-station Riser (as applicable), the Principal will not be entitled to withdraw the "Change Proposal Request" under 13.1(b) and must subsequently issue a "Change Order" under clause 13.2(a) unless the Principal exercises its rights under clause 13.2(a) to omit any of the Marrickville Earthworks and Drainage Works, the Victoria Cross Northern Shaft, the Artarmon Sub-station Riser (as applicable).

## 6. WORK HEALTH AND SAFETY

### 6.1 General requirements

- (a) The TSE Contractor must carry out the TSE Contractor's Activities:
  - (i) safely and in a manner that does not put the health or safety of persons at risk; and
  - (ii) in a manner that protects property.
- (b) If the Principal's Representative considers there is a risk to the health or safety of people or damage to property arising from the TSE Contractor's Activities:
  - (i) the Principal's Representative may direct the TSE Contractor to change its manner of working or to cease working; and
  - (ii) the TSE Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 6.1(b)(i).
- (c) The TSE Contractor must:

- (i) ensure that in carrying out the TSE Contractor's Activities under this deed:
    - (A) it complies with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice, Australian standards and other requirements of this deed for work health, safety and rehabilitation management;
    - (B) all Subcontractors, contractors or consultants engaged by the TSE Contractor, comply with their respective obligations under all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management; and
    - (C) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
  - (ii) have a Corporate WHS Management System which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Management Systems and Auditing Guidelines;
  - (iii) notify the Principal's Representative in accordance with the Sydney Metro Principal Contractor Health and Safety Standard of all work health and safety Incidents and notify the Principal's Representative within 12 hours of any other work health and safety matter arising out of, or in any way in connection with, the TSE Contractor's Activities;
  - (iv) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation;
  - (v) provide the Principal's Representative with the written assurances referred to in clause 6.1(c)(iv), together with written assurances from the TSE Contractor about the TSE Contractor's ongoing compliance with the WHS Legislation;
  - (vi) provide the Principal's Representative with a written report of all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, clauses 6.1 and 6.2) or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the TSE Contractor's compliance with the WHS Legislation;
  - (vii) consult, cooperate and coordinate with all Interface Contractors and the Principal to ensure that all parties are able to comply with their respective obligations 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, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law or other Law concerning work health and safety; and
  - (ix) ensure that each Subcontract includes provisions equivalent to clauses 6.1 and 6.2(d).
- (d) The TSE Contractor must provide strong safety leadership and continuously promote safety as a core value.

- (e) The TSE Contractor must comply with the Sydney Metro Principal Contractor Health and Safety Standard.

## 6.2 Principal contractor

- (a) In this clause 6.2, the terms "principal contractor", "workplace", "construction project" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed, subject to clause 6.2(c)(ii):

- (i) the TSE Contractor's Activities; and
- (ii) any work carried out on the Construction Site by an Interface Contractor during any period in which the TSE Contractor has been engaged as principal contractor in respect of the Construction Site (**Construction Site Interface Work**),

is taken to be the same "construction project".

- (b) Without limiting the TSE Contractor's obligations under any other provision of this deed:

- (i) to the extent that the TSE Contractor's Activities or any Construction Site Interface Work includes construction work, the Principal:

- (A) engages John Holland as the principal contractor in respect of the TSE Contractor's Activities and the Construction Site Interface Work;

- (B) authorises John Holland to have management and control of each workplace at which the TSE Contractor's Activities and the Construction Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;

- (C) must give the TSE Contractor prior notice of any Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences; and

- (D) must provide the TSE Contractor with an executed deed poll in favour of the TSE Contractor in the form set out in Schedule A12 from each Interface Contractor undertaking Construction Site Interface Work; and

- (ii) John Holland accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation and this deed.

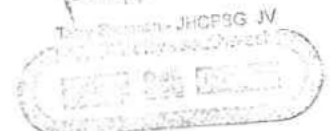
- (c) John Holland's engagement and authorisation as a principal contractor will continue:

- (i) subject to clause 6.2(c)(ii), until the earlier of:

- (A) the termination of this deed; and

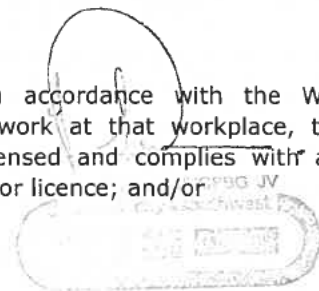
- (B) in respect of each Portion, the Portion Handover Date;

- (C) in respect of any area of the Construction Site for which a Site Access Expiry Date is specified in Table 7 of the Site Access Schedule, subject to clause 6.2(ca), the date on which the TSE Contractor vacates that area of the Construction Site; and





- (D) in respect of each discrete part of the Local Area Works, the point in time when the relevant discrete part of the Local Area Works has been determined by the Independent Certifier to have been completed in accordance with clause 15.7(d),
  - (unless sooner revoked by the Principal); and
- (ii) during the period that any rectification work which is construction work is carried out under clause 15.1 unless:
  - (A) OpCo2 has possession of the relevant part of the Construction Site at the time the rectification work is carried out, in which case:
    - (aa) the TSE Contractor's engagement and authorisation as principal contractor under clause 6.2(b) will end immediately before any such construction work commences;
    - (bb) OpCo2 or its nominated subcontractor will be the principal contractor for any construction project that the construction work comprises; and
    - (cc) clause 15.3(a)(i)(G) and the relevant provisions of the TSE-OTS2 Cooperation and Integration Deed will apply to such a construction project; or
  - (B) a Follow-on Contractor has possession of the relevant part of the Construction Site at the time the rectification work is carried out, in which case:
    - (aa) the TSE Contractor's engagement and authorisation as principal contractor under clause 6.2(b) will end immediately before any such construction work commences;
    - (bb) the relevant Follow-on Contractor or its nominated entity will be the principal contractor for any construction project that the construction work comprises; and
    - (cc) clause 15.3(a)(i)(G) and the relevant provisions of the applicable Follow-on Contractor Cooperation and Integration Deed will apply to such a construction project.
- (ca) In respect of area SA-O1 (as described in the Site Access Schedule) only, John Holland's engagement as principal contractor will cease on the first Site Access Expiry Date for that area specified in Table 7 of the Site Access Schedule but recommence on the date that the TSE Contractor is subsequently provided with access to area SA-O1 in accordance with clause 10.1(m).
- (d) The TSE Contractor must:
  - (i) ensure that if any Law, including in the State or Territory in which the Project Works are situated or the TSE Contractor's Activities 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 work or use plant or substance at a workplace unless the requirements of clause 6.2(d)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
  - (iii) if requested by the Principal 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 before the TSE Contractor or a Subcontractor (as the case may be) commences such work.
- (e) The TSE Contractor must, in carrying out the TSE Contractor's Activities, ensure that John Holland exercises and fulfils all of the functions and obligations of a principal contractor under the WHS Legislation so as to:
- (i) ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged; and
  - (ii) enable the Principal to satisfy its obligations under the WHS Legislation in connection with the Construction Site.
- (f) If the engagement of John Holland as principal contractor under this clause 6.2 is not effective for any reason, the TSE Contractor agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under clause 6.2(b).
- (g) To the extent not prohibited by Law, the TSE 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 of:
- (i) John Holland to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation; or
  - (ii) the TSE Contractor to otherwise comply with the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law or other Law concerning work health and safety or clauses 6.1 and 6.2.

### 6.3 Project Health & Safety Management Plan

- (a) The TSE Contractor acknowledges that preparation of the Project Health & Safety Management Plan in accordance with clause 9 is a condition precedent to the Principal's obligations under clause 10.1.
- (b) Without limiting any requirement of the WHS Legislation or this deed, the Project Health & Safety Management Plan must:

Terry Stanton-Jones  
Director  
John Holland Construction Pty Ltd

- (i) set out in adequate detail the policies and procedures the TSE Contractor will implement to manage the TSE Contractor's Activities from a work health and safety perspective;
  - (ii) describe how the TSE Contractor proposes to ensure that the TSE Contractor's Activities are performed consistently with:
    - (A) the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety; and
    - (B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management;
  - (iii) address the matters specified in:
    - (A) the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety; and
    - (B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management;
  - (iv) comply with the requirements applicable to a "Safety Management Plan set out in the Sydney Metro Principal Contractor Health and Safety Standard; and
  - (v) comply with the requirements applicable to a "Project Safety Plan" or "Project WHS Management Plan" set out in the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Management Systems and Auditing Guidelines.
- (c) Without limiting clause 9, the TSE Contractor must:
- (i) continue to correct any defects in or omissions from the Project Health & Safety Management Plan (whether identified by the Principal's Representative or the TSE Contractor); and
  - (ii) regularly review and, as necessary, revise the Project Health & Safety Management Plan in accordance with:
    - (A) the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety;
    - (B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management; and
    - (C) the Sydney Metro Principal Contractor Health and Safety Standard,
 and submit an amended draft of its Project Health & Safety Management Plan to the Principal's Representative, after which clause 9 will reapply (to the extent applicable).
- (d) The TSE Contractor must document and maintain detailed records of inspections or audits undertaken as part of the Project Health & Safety Management Plan.



- (e) The TSE Contractor must carry out the TSE Contractor's Activities in accordance with, and otherwise implement, the latest Project Health & Safety Management Plan.

**6.4 No Claims in relation to the Sydney Metro Principal Contractor Health and Safety Standard**

- (a) The TSE Contractor acknowledges and agrees that:
  - (i) the Principal will update and amend the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the TSE Contractor's Activities and Sydney Metro City & Southwest;
  - (ii) subject to clause 6.4(b), the TSE 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:
    - (A) any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard except to the extent that such update or amendment:
      - (aa) has a material impact on the TSE Contractor's Activities; and
      - (bb) was not required due to an act or omission of the TSE Contractor; or
    - (B) any other 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 the obligation of the Principal or an Associate of the Principal).
- (b) Where an update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard:
  - (i) has a material impact on the TSE Contractor's Activities; and
  - (ii) was not required due to an act or omission of the TSE Contractor,the Principal will pay the TSE Contractor the reasonable additional Costs incurred by the TSE Contractor in complying with the update or amendment, as stated by the Principal's Representative.

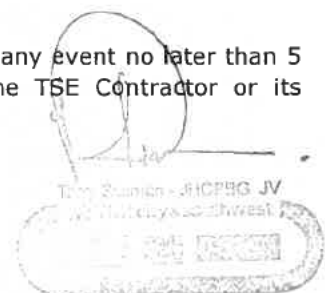
**6.5 Rail safety**

- (a) Without limiting clause 5.1, the TSE Contractor must comply with the Rail Safety National Law and Rail Safety Regulations.
- (b) The TSE 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 or the Rail Safety Regulations.
- (c) The TSE Contractor acknowledges that:
  - (i) the TSE Contractor's Activities and the Project Works are being undertaken for the purpose of constructing a railway;



- (ii) to the extent that the TSE Contractor's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law it carries out those TSE Contractor's Activities for and on behalf of the Principal under the Principal's Accreditation.
- (d) The TSE Contractor must:
  - (i) carry out the TSE 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;
  - (ii) comply with all reasonable requirements of the Principal in relation to compliance with the Principal's Accreditation; and
  - (iii) not do anything (or fail to do anything) which jeopardises the Principal's Accreditation.
- (e) The TSE Contractor must ensure that its Associates engaged in or in connection with the TSE Contractor's Activities comply with the same obligations as are imposed upon the TSE Contractor under clauses 6.5(a) to (c) as if they had been imposed upon the Associate.
- (f) The TSE Contractor acknowledges that:
  - (i) the Principal holds accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
  - (ii) to the extent that, in carrying out the TSE Contractor's Activities, the TSE Contractor carries out any Railway Operations for which accreditation is required under the Rail Safety National Law and which are not permitted by the Principal's Accreditation, the TSE Contractor must obtain any necessary accreditation or other Approval required to enable it to comply with all applicable Law.
- (g) The TSE Contractor acknowledges that OpCo2 or an Alternate Operator will be reliant upon information and documentation received from the TSE Contractor to obtain or extend its accreditation under the Rail Safety National Law.
- (h) The TSE Contractor must liaise and cooperate with the Principal, OpCo2, any Alternate Operator and any other Rail Transport Operator and provide any reasonable assistance and documentation the Principal, OpCo2, any Alternate Operator or any other Rail Transport Operator may require in relation to safety matters, including in relation to OpCo2 or any Alternate Operator obtaining or extending its accreditation under the Rail Safety National Law.
- (i) Without limiting clause 6.5(h), the TSE Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the TSE Contractor or its Associates under or in connection with the Rail Safety National Law and the Rail Safety Regulations:
  - (i) relating to the TSE Contractor's Activities or the Project Works; or
  - (ii) which may adversely affect the ability of the TSE Contractor or its Associates to perform the TSE Contractor's Activities,

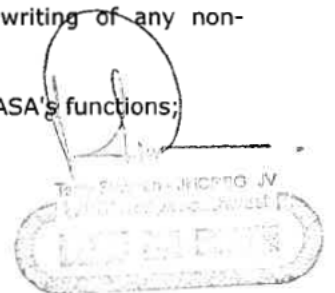
promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the TSE Contractor or its Associates).



- (j) Without limiting clause 5.1, the TSE Contractor must ensure that all persons engaged by the TSE Contractor (or by any Associate of the TSE Contractor) in or in connection with the TSE 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).
- (k) The TSE Contractor must and must ensure that its Associates:
  - (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) not hinder or delay any Investigative Authority in carrying out its duties.
- (l) Compliance by the TSE Contractor with its obligations under this clause 6.5:
  - (i) does not discharge or excuse the TSE Contractor from complying with its other obligations under this deed; and
  - (ii) is not evidence of compliance by the TSE Contractor with its other obligations under this deed.

**7. ENGINEERING AUTHORISATION AND ASA COMPLIANCE**

- (a) The TSE Contractor represents and warrants that the TSE Contractor (or an entity that comprises the TSE Contractor) is an AEO and has obtained ASA Authorisation to carry out the Asset Lifecycle Services.
- (b) Without limiting or otherwise restricting clauses 7(c) and 7(d), the TSE Contractor must:
  - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the TSE Contractor's Activities are carried out; and
  - (ii) comply (and must ensure that its Subcontractors and all personnel for which the TSE Contractor is responsible comply) with the conditions of the ASA Authorisation held by the TSE Contractor (or the relevant entity that comprises the TSE Contractor).
- (c) The TSE Contractor must (and must ensure that its Subcontractors and all personnel for which the TSE 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 this clause 7;
  - (iii) cooperate fully with the ASA in the performance of the ASA's functions;



- (iv) provide access to premises and resources as 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 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.
- (d) The TSE 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 7.

## 8. PORTIONS

### 8.1 Principal's Representative may direct Portions

- (a) In addition to the Portions identified in Schedule A1, the Principal's Representative may at any time (including where part of a Portion has reached a stage equivalent to Construction Completion but another part of that Portion has not reached Construction Completion) by written notice to the TSE Contractor direct additional Portions.
- (b) Any notice given by the Principal's Representative under clause 8.1(a) must, for each Portion, include details of:
  - (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).

### 8.2 Interpretation of Portions

The interpretations of:

- (a) TSE Contractor's Activities;
- (b) Project Works;
- (c) Temporary Works;
- (d) Works;
- (e) Handover Works;
- (f) Third Party Works;



- (g) Local Area Works;
- (h) Property Works;
- (i) Utility Service Works;
- (j) Project Site;
- (k) Construction Site;
- (l) Temporary Areas;
- (m) Construction Completion;
- (n) Date for Construction Completion;
- (o) Date of Construction Completion;
- (p) Completion;
- (q) Date for Completion;
- (r) Date of Completion; and
- (s) Defects Correction Period,

and clauses 10.1 to 10.5, 12.3(a)(x), 13.1(a)(ii), 14.9, 14.12, 14.14, 14.15, 15, 17, 18.2, 21.1, 21.4, 21.5 and 21.18, Schedules E1 and E2 and the SWTC (including its appendices) will apply separately to each Portion (including any Portion determined under clause 8.1) and references therein to any of the terms in paragraphs (a) - (p) above will mean so much of the TSE Contractor's Activities, Project Works, Temporary Works, Works, Handover Works, Third Party Works, Local Area Works, Property Works, Utility Service Works, Project Site, Construction Site, Temporary Areas, 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.

## 9. PROJECT PLANS

### 9.1 General

- (a) The TSE Contractor must prepare the Project Plans including as specified in Appendix E.6 of the SWTC.
- (b) Each Project Plan must:
  - (i) where an initial plan exists for the relevant Project Plan and is contained in Appendix E.7 of the SWTC, be based upon that initial plan;
  - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this clause 9 and section 7.17 of the SWTC; and
  - (iii) contain any relevant contents required under this deed, including as specified in Appendix E.6 of the SWTC.

### 9.2 Warranties in relation to Project Plans

The TSE Contractor:

Handwritten signature of Tony Simman. Below the signature is a circular stamp with the text "Tony Simman - JHCPRG JV" and "2023/03/28 10:00 AM".



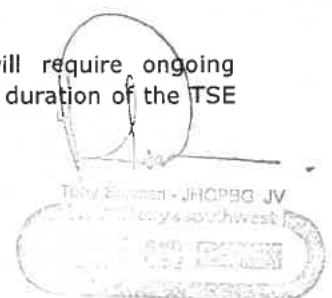
- (a) acknowledges and agrees that an intended purpose of each Project Plan is for the TSE Contractor to provide a detailed description of how the TSE Contractor intends to carry out the TSE Contractor's Activities in accordance with the requirements of this deed with respect to the subject matter of each Project Plan; and
- (b) warrants that each Project Plan will be fit for its intended purpose and that compliance by it with the Project Plans will enable it to fulfil its various obligations under this deed.

### 9.3 Review of Project Plans

- (a) Each Project Plan must be initially submitted to the Independent Certifier and the Principal's Representative within any relevant time period specified in this deed (including as specified in Appendix E.6 of the SWTC).
- (b) The Principal's Representative may:
  - (i) review any Project Plan submitted under this clause 9.3; and
  - (ii) if the Project Plan submitted does not comply with this deed, notify the TSE Contractor within 15 Business Days of the initial submission of the Project Plan providing reasons for the non-compliance.
- (c) If the TSE Contractor receives a notice under clause 9.3(b)(ii), the TSE Contractor must promptly submit an amended Project Plan, or relevant part or component of it, to the Independent Certifier and the Principal's Representative and the process in this clause 9.3 will reapply, except that the review period in clause 9.3(b)(ii) will be:
  - (i) 10 Business Days where the resubmitted plan is the Project Health & Safety Management Plan (or a sub-plan of the Project Health & Safety Management Plan); or
  - (ii) 2 Business Days where the resubmitted plan is the Construction Environmental Management Plan (or a sub-plan of the Construction Environmental Management Plan), but only where the resubmitted plan is undergoing parallel review by the Department of Planning and Environment.
- (d) The Principal's Representative owes no duty to the TSE Contractor to review any Project Plan submitted by the TSE Contractor for errors, omissions or compliance with this deed.
- (e) No review of, comments upon, notice in respect of any Project Plan or any other act or omission of the Principal's Representative (including a direction under clause 9.4(b)) about any Project Plan will lessen or otherwise affect:
  - (i) the TSE Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law.

### 9.4 Update of Project Plans

- (a) The TSE Contractor:
  - (i) acknowledges and agrees that the Project Plans will require ongoing development, amendment and updating throughout the duration of the TSE Contractor's Activities to take into account:



- (A) Changes;
  - (B) Changes in Law;
  - (C) the commencement of new phases or stages of design and construction as shown in the Programs;
  - (D) those events or circumstances expressly identified for each Project Plan including as specified in Appendix E.6 of the SWTC;
  - (E) any direction given by the Principal's Representative under clause 8.1(a); and
  - (F) any other events or circumstances which occur or come into existence and which have, or may have, any effect on the manner in which the TSE Contractor carries out the TSE Contractor's Activities; and
- (ii) must continue to develop and promptly amend or update the Project Plans:
- (A) to take into account:
    - (aa) the circumstances and events referred to in clause 9.4(a)(i) as those circumstances and events occur or come into existence; and
    - (bb) any breach or potential breach of the warranties referred to in clause 9.2(b); and
  - (B) as otherwise specified in the SWTC, including Appendix E.6 of the SWTC,

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

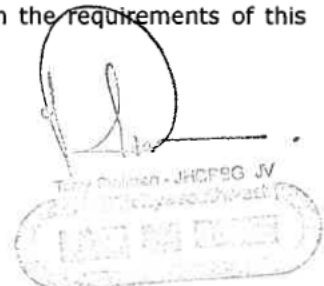
- (b) Without limiting clause 15, if the Principal's Representative believes that:
- (i) any Project Plan does not comply with the requirements of this deed; or
  - (ii) the TSE Contractor has not further developed, updated or amended any Project Plan in accordance with the requirements of clause 9.4(a)(ii),

the Principal's Representative may by written notice direct the TSE Contractor to further develop, update or amend the Project Plan so that the Project Plan will comply with the requirements of this deed, specifying:

- (iii) the reasons why such development, updating or amending is required; and
- (iv) the time within which such development, updating or amending must occur,

and the TSE Contractor must:

- (v) further develop, update or amend the Project Plan as directed by the Principal's Representative so that it complies with the requirements of this deed; and



- (vi) submit the further developed, updated or amended Project Plan to the Independent Certifier and the Principal's Representative within the time specified under clause 9.4(b)(iv).

**9.5 Implementation and compliance**

- (a) The TSE Contractor:
  - (i) must comply with each Project Plan which has been submitted to the Principal's Representative under clause 9.3 and in respect of which the Principal's Representative has not given a notice under clause 9.3(b)(ii); and
  - (ii) agrees that compliance by it with any Project Plan will not in any way lessen or affect:
    - (A) its liabilities or responsibilities under this deed or otherwise according to Law; or
    - (B) the Principal's rights against it, whether under this deed or otherwise according to Law.
- (b) The TSE Contractor must comply with the restrictions upon the carrying out of the TSE Contractor's Activities specified in Appendix E.6 of the SWTC.
- (c) The TSE Contractor must not decrease or otherwise reduce the scope of any Project Plan, or the scope of work or level of effort or expertise required by a Project Plan, or the number of personnel or extent of surveillance required, including any initial Project Plan and any revision of a Project Plan, without the prior written approval of the Principal's Representative (which must not be unreasonably withheld).
- (d) To the extent they are relevant to the operation or maintenance of the Project Works or the Handover Works, all relevant components of the Project Plans must be incorporated into the Asset Management Information.

**9.6 Construction Traffic Management Plan assumptions**

- (a) The parties acknowledge and agree that:
  - (i) the Project Contract Sum is based upon; and
  - (ii) the TSE Contractor will prepare and submit its Construction Traffic Management Plan for approval under and in accordance with the requirements of the Planning Approval based upon,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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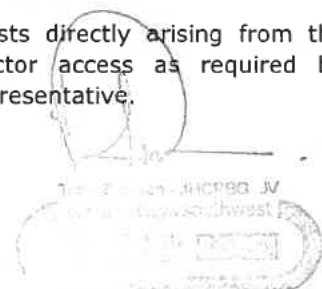
**10. LOCATION OF THE PROJECT WORKS**

**10.1 Access**

- (a) Subject to clauses 10.1(c) and 10.1(d) and any other provision of this deed affecting access, the Principal must:
  - (i) give, or ensure the TSE Contractor has, access to each area of the Construction Site specified in the Site Access Schedule by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and
  - (ii) subject to clause 10.1(e), thereafter continue to allow, or ensure that the TSE Contractor is continued to be allowed, access to each such area of the Construction Site.
- (b) The TSE Contractor acknowledges and agrees that access to the Construction Site or any part thereof will confer on the TSE Contractor a right to such management and control as is necessary to enable:

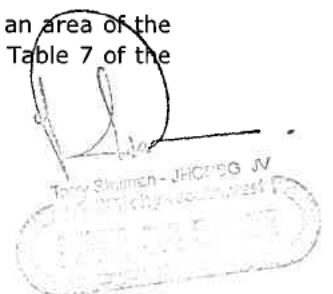


- (i) the TSE Contractor to execute the TSE Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation; and
  - (ii) John Holland to discharge its responsibilities as principal contractor.
- (c) The Principal is not obliged to give the TSE Contractor access to any area of the Construction Site in accordance with clause 10.1(a), until the TSE Contractor has:
- (i) complied with clauses 4.1(a) and 4.9;
  - (ii) submitted the Project Health & Safety Management Plan to the Principal's Representative and the Principal's Representative has had 15 Business Days to review the Project Health & Safety Management Plan and has not rejected the Project Health & Safety Management Plan;
  - (iii) effected the insurances required under clauses 21.5, 21.6 (where required in accordance with clause 21.6), 21.7, 21.8, 21.9, 21.10, 21.11 and 21.12; and
  - (iv) complied with clause 21.14(a)(i) with respect to each insurance.
- (d) The TSE Contractor acknowledges and agrees that:
- (i) it may not be given exclusive access to the Construction Site;
  - (ii) the Principal may, without limiting its obligations under clause 3.10, engage Interface Contractors to perform Construction Site Interface Work on the Construction Site;
  - (iii) it will cooperate with the Interface Contractors and coordinate the TSE Contractor's Activities with the Construction Site Interface Work in accordance with clause 3.10; and
  - (iv) access to the Construction Site or any part thereof will be subject to the TSE Contractor's compliance with clause 10.1(h).
- (e) The Principal's obligation to give access under this clause 10.1 in respect of the parts of the Construction Site identified in Schedule A1 in the column headed "Part of Construction Site" will cease upon the earlier of:
- (i) in the case of any area of the Construction Site for which a Site Access Expiry Date is specified in Table 7 of the Site Access Schedule and only to the extent that the TSE Contractor has not provided notice under clause 10.1(l), the relevant Site Access Expiry Date; or
  - (ii) otherwise, relevant Portion Handover Date.
- (f) Failure by the Principal to give access as required by clause 10.1(a) will not be a breach of this deed but will entitle the TSE Contractor to:
- (i) an extension of time to any relevant Date for Construction Completion under clause 17 if the requirements of that clause are satisfied; and
  - (ii) be paid by the Principal any reasonable Costs directly arising from the Principal's failure to give the TSE Contractor access as required by clause 10.1(a), as stated by the Principal's Representative.



- (g) The TSE Contractor's entitlement under clause 10.1(f)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clause 10.1(a).
- (h) The TSE 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:
    - (A) any access conditions that apply to an area of the Construction Site as specified in the Site Access Schedule;
    - (B) 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).
- (i) The TSE Contractor must ensure that at all times the Principal's Representative, any person authorised by the Principal (including OpCo2, any Alternate Operator, any Follow-on Contractor, visitors invited by the Principal and other contractors and consultants who are to perform work on the Construction Site) and the Independent Certifier have safe, convenient and unimpeded access to:
  - (i) the Construction Site and any other areas affected by the TSE Contractor's Activities (with such access rights to commence immediately after the TSE Contractor is given access under clause 10.1(a));
  - (ii) the Project Works and the Temporary Works;
  - (iii) any other place where any part of the TSE Contractor's Activities is being carried out (including Extra Land);
  - (iv) the TSE Contractor's Activities;
  - (v) the Design Documentation; and
  - (vi) any other documentation created for the purposes of the TSE Contractor's Activities.
- (j) The TSE Contractor must provide the Principal, the Principal's Representative and the Independent Certifier with every reasonable facility necessary for the inspection of the TSE Contractor's Activities.
- (k) When accessing any area or thing referred to in clause 10.1(i), the Principal must:
  - (i) comply with; and
  - (ii) use best endeavours to ensure that any persons authorised by it to access that area or thing comply with,
 

the TSE Contractor's reasonable occupational, health, environmental and safety requirements.
- (l) Subject to clause 10.1(m), if the TSE Contractor requires access to an area of the Construction Site for which a Site Access Expiry Date is specified in Table 7 of the

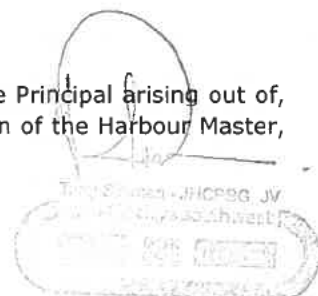


Site Access Schedule after the applicable Site Access Expiry Date in order to carry out the TSE Contractors Activities, the TSE Contractor must:

- (i) notify the Principal's Representative in writing:
  - (A) as soon as practicable; and
  - (B) in any event no less than 30 Business Days, prior to the applicable Site Access Expiry Date:
  - (C) that the TSE Contractor requires access to that area of the Construction Site after the Site Access Expiry Date; and
  - (D) of the date on which the TSE Contractor will vacate that area of Construction Site;
- (ii) notify the Principal's Representative at least every 20 Business Days after the TSE Contractor has first given notice under clause 10.1(l)(i) of any change to the date on which the TSE Contractor will vacate that area of the Construction Site until the TSE Contractor vacates that area of the Construction Site;
- (iii) use its best endeavours to vacate that area of the Construction Site as soon as practicable after the Site Access Expiry Date; and
- (iv) immediately notify the Principal's Representative after the TSE Contractor has vacated the relevant area of the Construction Site.
- (m) Clause 10.1(l) does not apply in respect of area SA-O1 (as described in the Site Access Schedule), and the TSE Contractor must vacate this area on the first Site Access Expiry Date for that area specified in Table 7 of the Site Access Schedule. The Principal must subsequently provide the TSE Contractor with access to area SA-O1 (as described in the Site Access Schedule) by the second date for access specified for area SA-O1 (as described in the Site Access Schedule) in Table 6 of the Site Access Schedule.

## 10.2 Access to the harbour

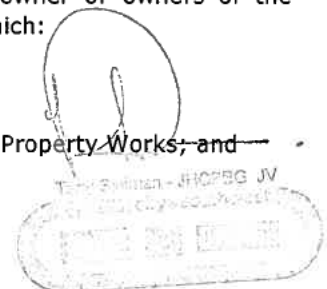
- (a) The TSE Contractor must:
  - (i) obtain all rights of access to Sydney Harbour necessary to carry out the TSE Contractor's Activities from the Harbour Master, RMS and any other relevant Authority;
  - (ii) comply with any direction which may be given by the Harbour Master, RMS and any other relevant Authority; and
  - (iii) navigate in accordance with:
    - (A) the *Marine Safety Act 1998 (NSW)*; and
    - (B) the *Marine Safety Regulation 2016 (NSW)*.
- (b) The TSE Contractor acknowledges and agrees that:
  - (i) it will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with any act or omission of the Harbour Master, RMS or any other relevant Authority; and



- (ii) no act or omission of the Harbour Master, RMS or any other relevant Authority will in any way lessen or otherwise affect:
  - (A) the TSE Contractor's obligations under this deed or otherwise according to law; or
  - (B) the Principal's rights against the TSE Contractor whether under this deed or otherwise according to law.

**10.3 Property Works**

- (a) The TSE 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;
  - (ii) after completion of the Property Works with respect to an Unowned Parcel, including the work described in clause 10.3(f), provide to the Principal's Representative:
    - (A) a certificate in the form of Schedule B19, duly executed by the owner or owners of any part of the Unowned Parcel; or
    - (B) a statement signed by the TSE Contractor to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule B19 within 15 Business Days of it being provided by the TSE Contractor to the owner or owners following completion of the Property Works including the work described in clause 10.3(f); 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 B19; and
    - (B) the claim or Loss arises out of or in any way in connection with a wrongful act or omission of the TSE Contractor or its Associates in connection with the Property Works or a failure by the TSE Contractor to comply with its obligations under this deed relating to the Property Works.
- (b) The acceptance of a certificate or statement provided by the TSE Contractor under clause 10.3(a)(ii) by the Principal's Representative is not approval by the Principal or the Principal's Representative of the TSE Contractor's performance of its obligations under this clause 10.3.
- (c) Where any Property Works are required to be carried out on an Unowned Parcel, the TSE Contractor must give a written notice to the owner or owners of the property (with a copy to the Principal's Representative) which:
  - (i) describes the Property Works to be carried out;
  - (ii) requests access for the purpose of carrying out the Property Works; and

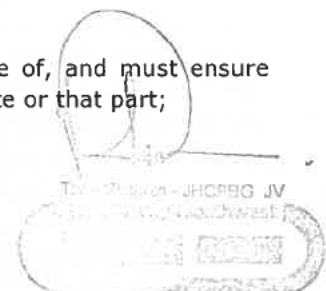




- (iii) specifies the intended date for commencement of the Property Works,  
not less than 10 Business Days prior to the day which the TSE Contractor intends to commence the Property Works.
- (d) If the owner or owners of a property do not provide the TSE Contractor with sufficient access to carry out the Property Works from either:
  - (i) the date notified in the notice under clause 10.3(c); or
  - (ii) such other date as may be agreed between the TSE Contractor and the owner or owners,
 the TSE Contractor must:
  - (iii) give the Principal's Representative a notice stating this; and
  - (iv) not carry out the Property Works until the Principal's Representative gives the TSE Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 10.3(c) will reapply.
- (e) Upon being given access to any property for the purpose of carrying out any Property Works, the TSE 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.
- (f) The TSE 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 TSE 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 10.3.
- (g) The following are conditions precedent to Construction Completion of a Portion:
  - (i) completion of all Property Works under this clause 10.3 that form part of the Portion, including all relevant work under clause 10.3(f); and
  - (ii) provision of all certificates or statements (as the case may be) to the Principal's Representative as required under clause 10.3(a)(ii) in respect of Property Works that form part of the Portion.

#### 10.4 Control of Construction Site

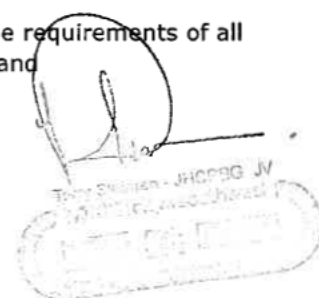
- (a) At all times after being given access to the Construction Site or a part of the Construction Site under clause 10.1 until the relevant Portion Handover Date, the TSE Contractor must:
  - (i) without limiting any right of the Principal or the Principal's Representative under this deed, be responsible for the management and control of the Construction Site;
  - (ii) control access to, and the security and maintenance of, and must ensure public safety on, and adjacent to, the Construction Site or that part;



- (iii) provide for the continuous safe passage of the public and road users on existing public spaces, parks, footpaths, pedestrian ways, pedal cycle paths, roads and other access ways affected by the TSE Contractor's Activities in accordance with this deed;
  - (iv) minimise delay or disruption to the movement of the public and all road users; and
  - (v) comply with all directions of any relevant Authority and Directions of the Principal's Representative with respect to the management of such access, safe passage and movement at all times (provided that where any such direction of an Authority or the Principal's Representative necessitates a reduction in the permissible working hours or days for the TSE Contractor's Activities or a change to the Working Parameters permitted for the TSE Contractor's Activities, this will entitle the TSE Contractor to claim an extension of time to any relevant Date for Construction Completion under clause 17 to the extent of any adverse impact on the TSE Contractor and the Project Contract Sum will, subject to clause 20.6, be adjusted for the increased or decreased Costs reasonably incurred by the TSE Contractor as a direct result of the direction of an Authority or the Principal's Representative, as stated by the Principal's Representative, but not where such direction of an Authority or the Principal's Representative is given in connection with a Special Event or due to the occurrence of a safety, environmental or traffic incident (regardless of whether or not such incident is in any way connected to the TSE Contractor's Activities)).
- (b) The TSE Contractor and the Principal acknowledge that nothing in this deed including the right to inspect pursuant to clause 14.6 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:
- (i) the Principal has any management or control over the TSE Contractor's Activities or the Construction Site or Extra Land; or
  - (ii) the Principal has any responsibility for any act or omission by the TSE Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Approvals, Third Party Agreements, Adjoining Property Easements or this deed.

#### 10.5 Extra Land

- (a) The TSE Contractor must:
- (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Construction Site, which is necessary or which it requires for the execution of the TSE Contractor's Activities (which may include additional land or buildings required for the Third Party Works, the underpinning of any structure or for the insertion of rock bolts); and
  - (ii) as a condition precedent to Construction Completion of any Portion in which the TSE Contractor has had to procure occupation or use of or relevant rights over any Extra Land:
    - (A) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
    - (B) provide to the Principal's Representative:



- (aa) a properly executed release on terms satisfactory to the Principal's Representative from all claims from the owner or occupier of, and from any other person having an interest in the Extra Land; or
  - (bb) if the TSE Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the TSE 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 of it being provided by the TSE Contractor to the owner, occupier or other person following completion of the work on the Extra Land; 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 occupier of any part of the Extra Land where:
- (A) such owner or occupier has not executed such a release; and
  - (B) the claim or Loss arises out of or in connection with the TSE Contractor's Activities.
- (b) The TSE Contractor acknowledges that:
- (i) integration of the requirements for access to Extra Land is at the sole risk of the TSE Contractor; and
  - (ii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the TSE Contractor arising out of or in any way in connection with:
    - (A) identifying and obtaining access to Extra Land; or
    - (B) any delay, additional costs or other effects on the TSE Contractor's Activities related to the ability of the TSE Contractor or its Subcontractors to obtain access to Extra Land or approval to use Extra Land.

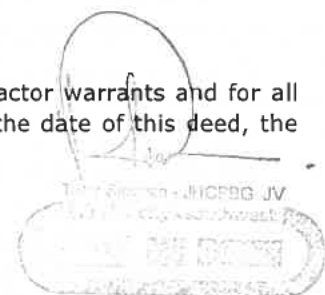
#### 10.6 Temporary Areas

The TSE Contractor must, as a condition precedent to Construction Completion of any Portion where the TSE Contractor has occupied or made use of a Temporary Area in connection with that Portion, reinstate the 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:

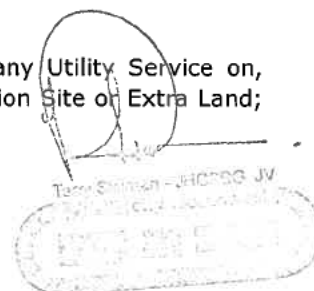
- (a) that are required by this deed (including the SWTC) to contain any Handover Works; or
- (b) which this deed (including the SWTC) specifies need not be reinstated (including where the TSE Contractor is required to demolish buildings on the Temporary Area).

#### 10.7 Physical conditions

- (a) Without limiting clauses 10.8(c) or 30.10, the TSE Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, the TSE Contractor:



- (i) examined this deed, the Construction Site and its surroundings, the 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 TSE Contractor during the tender period;
  - (ii) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this deed;
  - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of the TSE Contractor's Activities;
  - (iv) informed itself of:
    - (A) all matters relevant to the employment of labour at the Construction Site; and
    - (B) all industrial matters relevant to the Construction Site; and
  - (v) was given the opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - (A) relating to the subject matter of Information Documents; and
    - (B) for design purposes and otherwise;
  - (vi) had 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 having an effect on its Tender, the performance of its obligations and its potential liabilities under this deed; and
  - (vii) 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 TSE Contractor.
- (b) Without limiting or otherwise affecting clauses 10.7(c), 10.7(d) and 10.8, the Principal makes no representation and gives no warranty to the TSE Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the TSE Contractor's Activities or otherwise in respect of the condition of:
    - (A) the Construction Site, Extra Land or their surroundings;
    - (B) any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land;
  - (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; or



- (iii) the condition or characteristics of any Adjoining Property.
- (c) Subject to clauses 10.10(c), 10.11(c), 10.13(c), 14.2 and 17.6, the TSE Contractor accepts:
  - (i) the Construction Site and any Extra Land;
  - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site and any Extra Land; and
  - (iii) all Adjoining Properties;in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:
  - (iv) all Loss, delay or disruption it suffers or incurs; and
  - (v) 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 TSE Contractor's Activities.
- (d) The TSE 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 TSE 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;
    - (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; or
    - (C) any Adjoining Property; and
  - (iii) any assumptions, projections, estimates, contingencies or otherwise that the TSE 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 10.7(d)(ii).
- (e) Nothing in clauses 10.7 or 10.8 limits the operation of clauses 10.7A, 10.10(c), 10.11(c), 10.13(c), 14.2 or 17.6.

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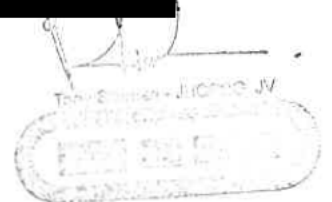
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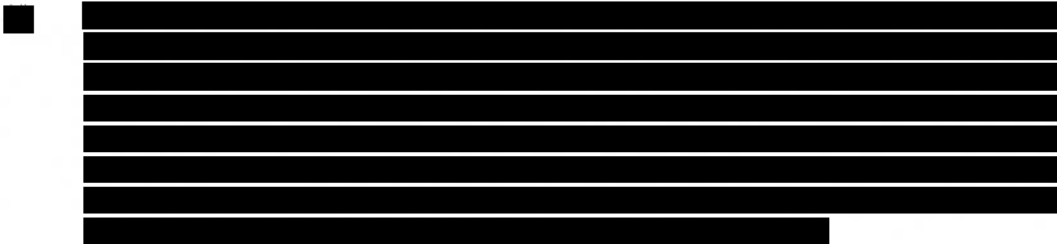
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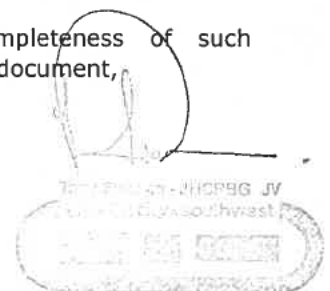
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**10.8 Information Documents**

- (a) Prior to the date of this deed the TSE Contractor signed each Deed of Disclaimer and provided them to the Principal in respect of Information Documents provided by the Principal to the TSE Contractor.
- (b) Without limiting or otherwise affecting clause 10.8(c) or the warranties or acknowledgements in any Deed of Disclaimer:
  - (i) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
  - (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, the TSE Contractor acknowledges that:
    - (A) the Information Document or part thereof does not form part of this deed and that clause 10.8(c) applies to the Information Document or part thereof; and
    - (B) where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof;
  - (iii) insofar as is permitted by Law, the Principal will not be liable upon any Claim by the TSE 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 TSE Contractor or any other person to whom the Information Documents are disclosed; or
    - (B) a failure by the Principal to provide any information to the TSE Contractor.
- (c) The TSE Contractor:
  - (i) subject to clause 10.9, warrants that it did not in any way rely upon:
    - (A) any information, data, representation, statement or document made by, or provided to the TSE 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,



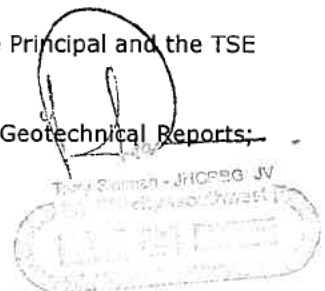
for the purposes of entering into this deed or carrying out the TSE Contractor's Activities but nothing in this subclause will limit or otherwise affect the TSE Contractor's obligations under this deed;

- (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:
  - (A) the warranties, acknowledgements and agreements in clauses 10.8(c)(i) and 10.8(c)(ii); and
  - (B) the warranties and acknowledgements in the Deeds of Disclaimer and the Tender Form submitted by the TSE Contractor as part of its Tender.
- (d) Subject to clause 10.10(c), the TSE Contractor releases and indemnifies the Principal from and against:
  - (i) any Claim against the Principal by, or Liability of the Principal to, any person; or
  - (ii) (without being limited by clause 10.8(d)(i)) any Loss suffered or incurred by the Principal,  
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 to or by the TSE Contractor or any other person to whom the Information Documents are disclosed by the TSE Contractor;
    - (iv) any breach by the TSE Contractor of this clause 10.8; or
    - (v) the Information Documents being relied upon or otherwise used by the TSE Contractor or its Associates in the preparation of any information or document, including any Information Document which is misleading or deceptive or false or misleading (within the meaning of those terms in sections 18 and 29 (respectively) of the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)), or any equivalent provision of State or Territory legislation.
- (e) Subject to clause 10.10(c), the TSE Contractor releases the Principal from any Claim against the Principal by, or Liability of the Principal to, the TSE Contractor, arising out of or in any way in connection with a failure by the Principal to provide any information to the TSE Contractor (except to the extent the Principal is expressly required to provide such information under this deed).

#### 10.9 Stage 2 Geotechnical Reports

The parties acknowledge and agree that:

- (a) prior to the date of this deed the Principal procured:
  - (i) the Stage 2 Geotechnical Reports for the benefit of the Principal and the TSE Contractor; and
  - (ii) the Reliance Letters from the authors of the Stage 2 Geotechnical Reports; and





- (b) while the TSE Contractor may rely on each Stage 2 Geotechnical Report to the extent provided by the Reliance Letters, subject to clause 10.10 the TSE Contractor is not entitled to make any Claim against the Principal (and the Principal will not be liable upon any Claim by the TSE Contractor) arising out of or in connection with any Stage 2 Geotechnical Report or the accuracy of any information contained within any Stage 2 Geotechnical Report.

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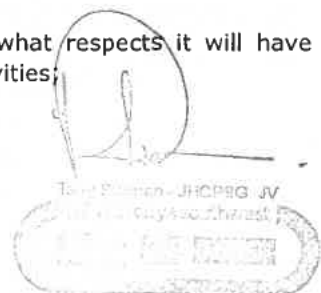
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**10.10 Notice of Core Sample Location Difference**

- (a) If, during the execution of the TSE Contractor's Activities, the TSE Contractor becomes aware of a Core Sample Location Difference, it must immediately give the Principal's Representative notice in writing.
- (b) Within 10 Business Days of giving a notice under clause 10.10(a), the TSE Contractor must give the Principal's Representative a written statement of:
- (i) the Core Sample Location Difference and in what respects it will have a material impact upon the TSE Contractor's Activities;



- (ii) the additional work and resources which the TSE Contractor estimates to be necessary to deal with the Core Sample Location Difference;
  - (iii) the time the TSE Contractor anticipates will be required to deal with the Core Sample Location Difference and the expected delay in achieving Construction Completion;
  - (iv) the TSE Contractor's estimate of the cost of the measures necessary to deal with the Core Sample Location Difference; and
  - (v) other details reasonably required by the Principal's Representative.
- (c) If the Core Sample Location Difference causes the TSE Contractor to:
- (i) carry out additional work;
  - (ii) use additional Construction Plant; or
  - (iii) incur extra cost (excluding the costs of any delay or disruption arising out of or in any way in connection with the Core Sample Location Difference or the additional work required to deal with the Core Sample Location Difference),

which a competent and experienced contractor having done those things it is deemed to have done by clause 10.7(a) could not have avoided or mitigated, and could not reasonably have anticipated at the date of this deed, the Principal will pay the TSE Contractor any extra Costs reasonably incurred by the TSE Contractor after the date the TSE Contractor gives the written notice required by clause 10.10(a) for carrying out such work, as stated by the Principal's Representative.

- (d) The TSE Contractor must take all reasonable steps to mitigate any extra costs incurred by it as a result of the Core Sample Location Difference.

**10.10A Archaeological Clearance Works**

- (a) The TSE Contractor must:
  - (i) perform Archaeological Clearance Works at each Artefact Risk Area in accordance with the requirements of:
    - (A) section 2 of Appendix A.12 of the SWTC;
    - (B) the Construction Heritage Management Plan; and
    - (C) all applicable Laws and guidelines relating to heritage and conservation;
  - (ii) not commence performance of Archaeological Clearance Works at any Artefact Risk Area until:
    - (A) the Construction Heritage Management Plan has been submitted to the Principal's Representative and the Independent Certifier under clause 9.3(a) and not been the subject of a notice under clause 9.3(b)(ii); and
    - (B) any required approvals have been obtained from the Secretary of the NSW Department of Planning and Environment in accordance with the requirements of the Project Planning Approval; and



- (iii) use best endeavours to carry out and complete the Excavation and Salvage Works in each Artefact Risk Area within the applicable Archaeological Investigation Period.
- (b) The Excavation and Salvage Works at an Artefact Risk Area will be taken to be complete when:
- (i) the TSE Contractor has satisfied the requirements of section 2 of Appendix A.12 of the SWTC; and
  - (ii) the TSE Contractor has provided the Principal's Representative with a certificate in the form of Schedule B22,
- in relation to the relevant Artefact Risk Area.
- (c) The TSE Contractor may not commence bulk excavation work at an Artefact Risk Area (or any part of an Artefact Risk Area) unless and until:
- (i) the requirements of clause 10.10A(b) have been satisfied for the applicable Artefact Risk Area; or
  - (ii) the Principal's Representative has otherwise given the TSE Contractor written permission to do so subject to such conditions as the Principal's Representative may specify.

#### 10.11 Artefacts

- (a) As between the Principal and the TSE Contractor, any Artefacts are the property of the Principal.
- (b) The TSE Contractor must:
- (i) at its cost immediately notify the Principal's Representative if any Artefact is found;
  - (ii) at its cost ensure that the Artefact is managed in accordance with the Construction Heritage Management Plan;
  - (iii) comply with all requirements of Authorities and Directions of the Principal's Representative in relation to the Artefact; and
  - (iv) continue to perform the TSE Contractor's Activities except to the extent otherwise:
    - (A) directed by the Principal's Representative;
    - (B) ordered by a court or tribunal; or
    - (C) required by Law.
- (c) The Principal will pay the TSE Contractor the reasonable additional Costs incurred by the TSE Contractor in complying with the requirements of clause 10.11(b)(iii) as stated by the Principal's Representative provided that this clause 10.11(c) does not apply with respect to any Artefact discovered at an Artefact Risk Area during performance of Archaeological Clearance Works.

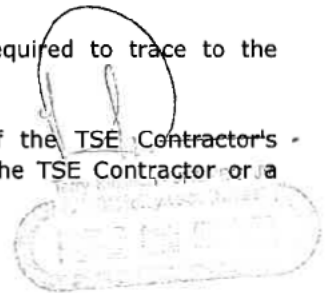


#### 10.12 Site induction

- (a) Without limiting the TSE Contractor's obligations under clause 5.2 to comply with the conditions and requirements of all Approvals, the TSE Contractor must:
  - (i) provide safety and environmental site induction for persons nominated by the Principal's Representative on the Construction Site and for all personnel directly or indirectly engaged by the TSE Contractor and requiring access to the Construction Site, any Extra Land and other areas where the TSE Contractor's Activities are being performed; and
  - (ii) ensure such persons satisfactorily complete such site induction before such persons are given such access or commence such work.
- (b) The induction must:
  - (i) comply with all applicable Law, Project Plans and the Principal's procedures, policies and rules; and
  - (ii) otherwise be in accordance with the requirements of this deed.
- (c) The TSE Contractor must keep and maintain comprehensive and detailed induction records and provide the Principal's Representative or its nominee, upon request, with access to such records.

#### 10.13 Contamination

- (a) In addition to the requirements of the Environmental Documents and without limiting clause 10.7 (but subject to clause 10.13(c) and 10.13(d)), the TSE Contractor bears the risk of all Contamination:
  - (i) on, in, over, under or about the Construction Site to the extent it is actually disturbed by or interfered with in the carrying out of the TSE Contractor's Activities provided that the TSE 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 TSE 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 TSE Contractor's Activities);
  - (ii) which migrates:
    - (A) on to the Construction Site as a result of the TSE Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined:
      - (aa) the Construction Site and its surroundings; and
      - (bb) 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 TSE Contractor during the tender period,  
  
provided that the TSE Contractor is not required to trace to the source of such Contamination; or
    - (B) from the Construction Site as a result of the TSE Contractor's Activities due to a breach of this deed by the TSE Contractor or a



negligent or unlawful act or omission of the TSE Contractor or its Associates,

and the TSE Contractor shall not otherwise be required to Remediate Contamination which migrates on to or from the Construction Site except to the extent the TSE Contractor is required to Remediate any migrating Contamination pursuant to clause 10.13(c);

- (iii) on, in, over, under or about any Extra Land or which migrates onto or from any Extra Land as a result of the TSE Contractor's Activities; or
- (iv) to the extent it otherwise arises out of or in connection with the TSE Contractor's Activities, provided that this clause 13.10(a)(iv) shall not operate to expand the TSE Contractor's risk in respect of Contamination of the types dealt with in paragraphs (i), (ii) or (iii).

(b) To the extent the TSE Contractor bears the risk of Contamination under clause 10.13(a)(i), 10.13(a)(ii), 10.13(a)(iii) or 10.13(a)(iv), the TSE Contractor must undertake Remediation of any such Contamination in accordance with Law, the Environmental Documents, all guidelines made or approved by the EPA and any applicable Remediation Action Plan submitted under clause 10.14A which has not been the subject of a notice under clause 10.14A(d)(ii) so that:

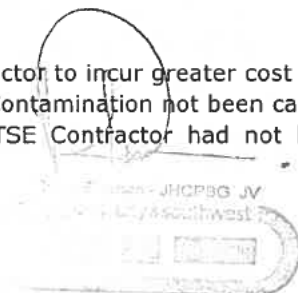
- (i) in respect of Contamination on, in, over, under or about the Construction Site:
  - (A) the Construction Site is suitable for the performance of the TSE Contractor's Activities and the further construction, operation and maintenance of Sydney Metro City & Southwest; and
  - (B) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro City & Southwest at the relevant parts of the Construction Site where the Remediation is undertaken are minimised; and
- (ii) in respect of Contamination on, in, over, under or about any land outside the Construction Site (including any Extra Land), so that the relevant land is returned to the state that it would have been if unaffected by the TSE Contractor's Activities (unless otherwise agreed with the relevant third party).

(c) If:

- (i) Contamination on, in, over, under or about the Construction Site is caused by the Principal (or its Associates) after the date of this deed and such Contamination is disturbed by or interfered with in the carrying out of the TSE Contractor's Activities, clause 10.13(b) will apply; or
- (ii) the TSE Contractor is otherwise required by Law, an Authority or this deed to undertake Remediation of Contamination for which the TSE Contractor is not responsible under clause 10.13(a), the TSE Contractor must comply with its obligations at Law, under the Environmental Documents and all guidelines made or approved by the EPA in respect of any such requirement,

however:

- (iii) where such compliance causes the TSE Contractor to incur greater cost than otherwise would have been incurred had the Contamination not been caused by the Principal (or its Associates) or the TSE Contractor had not been



required by Law, an Authority or this deed to Remediate such Contamination (as applicable), the difference will be dealt with and valued as if it were a Change except that clauses 10.13(d) and 10.13(e) will apply in the case of any Compensable Contamination that is required to be Remediated as part of any such Change; and

- (iv) the TSE Contractor will be entitled to an extension of time to any relevant Date for Construction Completion under clause 17 if the requirements of that clause are satisfied.

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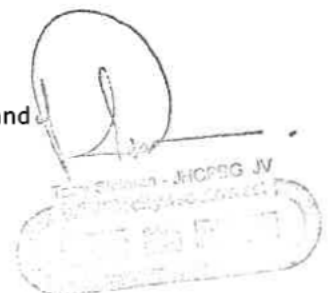
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- (f) Except to the extent prohibited by Law, the TSE Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the TSE Contractor to comply with any obligation under this deed in connection with Contamination.

**10.14 Disposal of Contamination and Waste**

- (a) The TSE Contractor must:

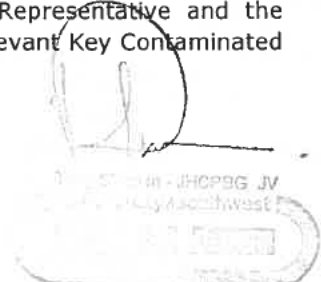
- (i) remove from the Construction Site and any Extra Land; and



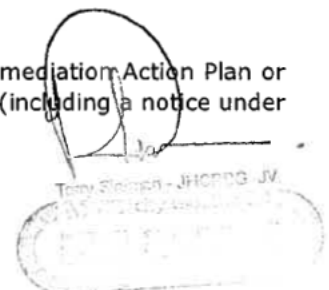
- (ii) dispose of,
  - any Contamination or Waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) The TSE Contractor must:
  - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or Waste from the Construction Site 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 TSE Contractor must:
  - (i) without limiting clause 10.13(b), sort all Contamination and Waste (including separating Compensable Contamination from clean material and any other type of Contamination or Waste) unless it is not feasible to do so having regard to space constraints at relevant parts of the Construction Site;
  - (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 TSE 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 TSE 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; and
  - (ii) if requested, provide a copy of any such records to the Principal's Representative.
- (f) The TSE 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 TSE Contractor to comply with any obligation under this clause, provided that the TSE 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.

**10.14A Remediation Action Plans**

- (a) Prior to commencing Remediation of any Key Contaminated Area, the TSE Contractor must prepare and submit to the Principal's Representative and the Independent Certifier a Remediation Action Plan for the relevant Key Contaminated Area.
- (b) Each Remediation Action Plan must:



- (i) relate to the footprint of the bulk excavation and the level of detail captured in each Remediation Action Plan should be commensurate with the nature and extent of Compensable Contamination at each Key Contaminated Area;
  - (ii) describe the manner in which the TSE Contractor will Remediate the relevant Key Contaminated Area in accordance with the requirements of this deed (including the SWTC); and
  - (iii) be prepared:
    - (A) in consultation with an Accredited Site Auditor;
    - (B) using Good Industry Practice; and
    - (C) in accordance with the requirements of Law, the Environmental Documents, all guidelines made or approved by the EPA and any other requirements of this deed;
  - (iv) be reviewed and approved by a Certified Environmental Consultant; and
  - (v) be reviewed and endorsed by an Accredited Site Auditor as being suitable for Remediation of the relevant Key Contaminated Area.
- (c) The TSE Contractor must submit to the Principal's Representative and the Independent Certifier all versions (including drafts) of each Remediation Action Plan that are submitted to the Accredited Site Auditor at the same time as they are submitted to the Accredited Site Auditor. Such submissions will not be taken to be formal submissions under clause 10.14A(a) and the period under clause 10.14(d)(ii) will not commence until the TSE Contractor formally submits to the Principal's Representative and the Independent Certifier a Remediation Action Plan which satisfies the requirements of clauses 10.14A(b)(iv) and 10.14A(b)(v).
- (d) The Principal's Representative may:
- (i) review any Remediation Action Plan submitted under clause 10.14A(a); and
  - (ii) if the Remediation Action Plan submitted does not comply with this deed, notify the TSE Contractor within 5 Business Days of the initial submission of the Remediation Action Plan providing reasons for the non-compliance.
- (e) If the TSE Contractor receives a notice under clause 10.14(d)(ii), the TSE Contractor must promptly submit an amended Remediation Action Plan, or relevant part or component of it, to the Independent Certifier and the Principal's Representative and the process in this clause 10.14A will reapply, except the review period for the resubmitted Remediation Action Plan, or relevant part or component, will be 2 Business Days.
- (f) The TSE Contractor may not commence Remediation of Contamination in any Key Contaminated Area unless and until the Remediation Action Plan for the relevant Key Contaminated Area has been submitted to the Principal's Representative and has not been the subject of a notice under clause 10.14A(d)(ii).
- (g) The Principal's Representative owes no duty to the TSE Contractor to review any Remediation Action Plan submitted by the TSE Contractor for errors, omissions or compliance with this deed.
- (h) No review of, comments upon, notice in respect of any Remediation Action Plan or any other act or omission of the Principal's Representative (including a notice under



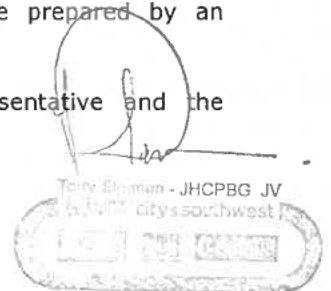


clause 10.14A(d)(ii)) in relation to any Remediation Action Plan will lessen or otherwise affect:

- (i) the TSE Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
- (ii) the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law.

**10.14B Site audit and validation requirements**

- (a) The TSE Contractor must engage an Accredited Site Auditor to perform those parts of the TSE Contractor's Activities that are required to be performed by an Accredited Site Auditor under Law, the Environmental Documents, any guidelines made or approved by the EPA and the terms of this deed.
- (b) Without limiting clause 10.14B(a), the TSE Contractor must ensure that an Accredited Site Auditor:
  - (i) reviews and comments on and endorses the Remediation Action Plans prepared by the TSE Contractor under clause 10.14A;
  - (ii) reviews all information and data generated through the Remediation process for each Key Contaminated Area; and
  - (iii) prepares interim site audit advice at key milestones throughout the Remediation process for each Key Contaminated Area and submits such interim site audit advice to the Principal's Representative and the Independent Certifier.
- (c) The TSE Contractor must submit a Validation Report, Site Audit Statement and Site Audit Report to the Principal's Representative and the Independent Certifier following completion of the Remediation of each Key Contaminated Area. The submission of these documents to the Principal's Representative and the Independent Certifier is a condition precedent to Construction Completion of any Portion that contains a Key Contaminated Area.
- (d) Each Validation Report, Site Audit Statement and Site Audit Report must relate to the footprint of the bulk excavation, be prepared using Good Industry Practice and in accordance with the requirements of Law, the Environmental Documents, all guidelines made or approved by the EPA and any other requirements of this deed. Additionally each:
  - (i) Site Audit Statement must contain a level of detail commensurate with the nature and extent of Compensable Contamination at each Key Contaminated Area;
  - (ii) Validation Report must be reviewed and approved by a Certified Environmental Consultant in consultation with an Accredited Site Auditor; and
  - (iii) Site Audit Statement and Site Audit Report must be prepared by an Accredited Site Auditor.
- (e) The TSE Contractor must submit to the Principal's Representative and the Independent Certifier all versions (including drafts) of:



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- (i) each Validation Report that is submitted to either of the Certified Environmental Consultant and the Accredited Site Auditor at the same time as it is submitted to either of them; and
- (ii) each Site Audit Statement and Site Audit Report that is submitted to the TSE Contractor by the Accredited Site Auditor immediately following receipt from the Accredited Site Auditor.

Such submissions will not be taken to be formal submissions under clause 10.14B(c) and the period under clause 10.14(f)(ii) will not commence until the TSE Contractor formally submits to the Principal's Representative and the Independent Certifier:

- (iii) a Validation Report which satisfies the requirements of clause 10.14(d)(i); or
- (iv) a Site Audit Statement or Site Audit Report (as applicable) which satisfies the requirements of clause 10.14(d)(ii).

(f) The Principal's Representative may:

- (i) review any Validation Report, Site Audit Statement and Site Audit Report submitted under clause 10.14B(c); and
- (ii) if the Validation Report, Site Audit Statement or Site Audit Report submitted does not comply with this deed, notify the TSE Contractor within 5 Business Days of the initial submission of the Validation Report, Site Audit Statement or Site Audit Report (as applicable) providing reasons for the non-compliance.

(g) If the TSE Contractor receives a notice under clause 10.14B(f)(ii), the TSE Contractor must promptly submit an amended Validation Report, Site Audit Statement or Site Audit Report (as applicable), or relevant part or component of it, to the Principal's Representative and the Independent Certifier and the process in this clause 10.14B will reapply, except the review period for the resubmitted Validation Report, Site Audit Statement or Site Audit Report (as applicable), or relevant part or component, will be 2 Business Days.

(h) The Principal's Representative may:

- (i) provide copies of any interim site audit advice, Validation Report, Site Audit Statement and Site Audit Report (or any draft thereof) to; and
- (ii) seek comments in respect of any interim site audit advice, Validation Report, Site Audit Statement and Site Audit Report (or any draft thereof), from,

any Interface Contractor or any Authority.

(i) No review of, comments upon, notice with respect to (including a notice under clause 10.14B(f)(ii)) or any other act or omission of the Principal's Representative in relation to any Validation Report, Site Audit Statement and Site Audit Report will lessen or otherwise affect:

- (i) the TSE Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
- (ii) the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law.

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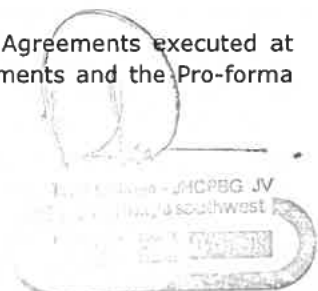
- (j) Nothing in this clause 10.14B in any way limits the TSE Contractor's obligations under clauses 5.1 and 5.2 or any other clause of this deed.

**10.15 Remediation of Contaminated Future Development Sites**

- (a) The TSE Contractor acknowledges that following completion of the Project Works the Principal intends to sell, lease, develop or otherwise use the Contaminated Future Development Sites.
- (b) At any time prior to the date that is 9 months prior to the then current Date for Construction Completion of the Portion within which the relevant Contaminated Future Development Site is situated, the Principal's Representative may direct the TSE Contractor to undertake Remediation of a Contaminated Future Development Site as a Change.
- (c) If the Principal's Representative directs a Change under clause 10.15(b), the TSE Contractor must undertake Remediation of the relevant Contaminated Future Development Site:
- (i) in accordance with Law, the Environmental Documents and all guidelines made or approved by the EPA;
  - (ii) so that the Contaminated Future Development Site is suitable for the purpose of residential, commercial or mixed use development (as directed by the Principal); and
  - (iii) otherwise in accordance with the Change directed by the Principal's Representative.

**10.16 Third Party Agreements**

- (a) The parties acknowledge and agree that:
- (i) the Principal has entered or will enter into the Third Party Agreements;
  - (ii) the TSE Contractor must comply with its obligations in Schedule D4 (as modified in accordance with this clause 10.16 and Schedule D4C);
  - (iii) as at the date of this deed:
    - (A) the Principal has entered into the Adjoining Property Owner Agreements set out in clause 10(a)(i) of Schedule D4;
    - (B) the Principal has not entered into an Adjoining Property Owner Agreement with an Adjoining Owner referred to in Schedule D7 and Schedule D7A;
    - (C) the terms of the Third Party Agreements identified in Schedule D4 as "Draft" have not been finalised between the Principal and the relevant Third Party (each a **Draft Third Party Agreement**); and
    - (D) there may be additional Third Party Agreements which the Principal may, in its absolute discretion, enter into (each an **Additional Third Party Agreement**);
  - (iv) the TSE Contractor has reviewed the Third Party Agreements executed at the date of this deed, the Draft Third Party Agreements and the Pro-forma Adjoining Property Owner Agreement;



■ [REDACTED]

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(vii) following:

- (A) execution of any Adjoining Property Owner Agreement;
- (B) finalisation of any Draft Third Party Agreement; or
- (C) the execution of any Additional Third Party Agreement,

after the date of this deed, the Principal must promptly give the TSE Contractor:

- (D) a copy of the executed Adjoining Property Owner Agreement, final (and, where applicable, executed) version of the Draft Third Party Agreement or the Additional Third Party Agreement (as applicable); and

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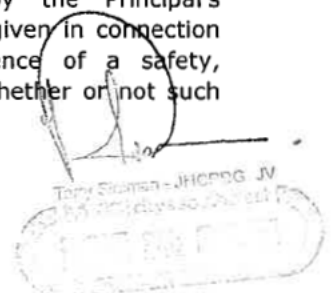
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**10.18 Existing Operations**

- (a) The TSE Contractor acknowledges that:
  - (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the TSE Contractor's Activities;
  - (ii) the access ways to the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the TSE Contractor; and
  - (iii) in using these access ways the TSE Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The TSE Contractor bears the risk of:
  - (i) coordinating its access to the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site; and
  - (ii) any delay and disruption to the TSE Contractor's Activities that arise from any Existing Operations on or in the vicinity of the Construction Site.
- (c) Without limiting any other obligations of the TSE Contractor, the TSE Contractor must:
  - (i) minimise interference with the free movement of traffic (vehicular, waterborne, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations and not (except as an unavoidable consequence of performing the TSE Contractor's obligations in accordance with this deed) block or impair access to any premises, carparks, roadways, waterways, 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 directions in connection with:
    - (A) the Existing Operations (including access to and use of the Construction Site) (provided that where such direction necessitates a reduction in the permissible working hours or days for the TSE Contractor's Activities or a change to the Working Parameters permitted for the TSE Contractor's Activities, this will entitle the TSE Contractor to claim an extension of time to any relevant Date for Construction Completion under clause 17 to the extent of any adverse impact on the TSE Contractor and the Project Contract Sum will, subject to clause 20.6, be adjusted for the increased or decreased Costs reasonably incurred by the TSE Contractor as a direct result of the direction, as stated by the Principal's Representative, but not where such direction is given in connection with a Special Event or due to the occurrence of a safety, environmental or traffic incident (regardless of whether or not such

  
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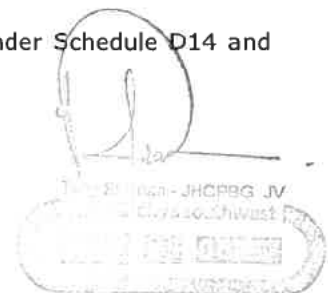
incident is in any way connected to the TSE Contractor's Activities));  
and

- (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 Law relating to workplace health and safety;
- (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;
- (v) ensure that in carrying out and completing the TSE Contractor's Activities, the Project Works and Handover Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works and Handover 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 TSE 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 10.18(c) are complied with.
- (d) The TSE Contractor must:
  - (i) minimise disruption, interruption, interference, nuisance and inconvenience to the Existing Operations; and
  - (ii) program and coordinate the TSE 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 TSE Contractor's Activities under this deed has on the Existing Operations.
- (e) The TSE Contractor must ensure that its Associates at all times comply with this clause 10.17(a).

#### 10.19 **Barangaroo Delivery Authority Interface**

The TSE Contractor and the Principal acknowledge and agree that:

- (a) there is a physical and operational interface between the Project Works, the Temporary Works and the TSE Contractor's Activities and the activities to be undertaken by BDA and the BDA Development Partners; and
- (b) they must each comply with their respective obligations under Schedule D14 and Schedule D14A.



**10.20 Barangaroo Cooperation and Collaboration Agreement**

- (a) The TSE Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the Barangaroo Cooperation and Collaboration Accession Deed in the number of counterparts required by the Principal and return the executed counterparts to the Principal. The Principal will execute, and procure that the relevant counterparties execute, the Barangaroo Cooperation and Collaboration Accession Deed in the same form that is executed by the TSE Contractor.
- (b) The TSE Contractor:
  - (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 Project Contract Sum for all delays and costs in respect of its obligations under the Barangaroo Cooperation and Collaboration Agreement and the TSE 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.

**10.21 Flood modelling**

The TSE Contractor must:

- (a) undertake flood modelling in accordance with the requirements of section 7.22 of the SWTC; and
- (b) provide the Principal's Representative with the Flood Model and the Flood Modelling Design Report (each of which have been certified by the Independent Certifier in accordance with clause 12.8(b)(iii)(B)) by no later than [REDACTED].

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]



[REDACTED]

- [REDACTED]
- [REDACTED]
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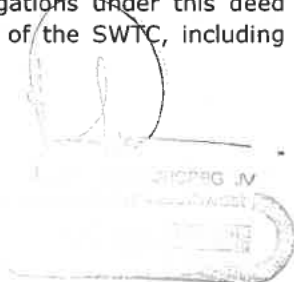
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**11. QUALITY**

**11.1 Quality Management System**

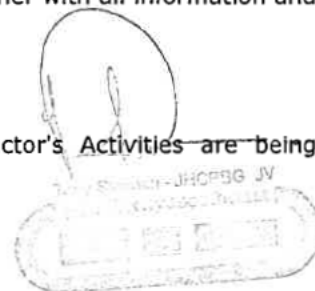
(a) The TSE Contractor must implement a Quality Management System for the management of all aspects of the TSE Contractor's obligations under this deed including in accordance with the applicable requirements of the SWTC, including section 7.1.1 of the SWTC and the Quality Plan.



- (b) The TSE Contractor must develop and implement a Quality Plan in accordance with this deed including the SWTC, including section 7.1.1 and Appendix E.6 of the SWTC.

## 11.2 Independent Certifier

- (a) The Independent Certifier is to be engaged on the terms of the Independent Certifier Deed.
- (b) The Independent Certifier's role is to, amongst other things:
  - (i) without limiting the rights or obligations of the parties under this deed, independently certify in accordance with the Independent Certifier Deed that the Project Works comply with the requirements of this deed; and
  - (ii) make determinations on matters that this deed expressly requires be determined by the Independent Certifier under clauses 12.8, 15.7(d) and 17.11(e).
- (c) Without limiting the effect which the determinations of the Independent Certifier will have upon the rights and obligations of the parties under this deed, the Independent Certifier does not have any power to give any Directions to the TSE Contractor.
- (d) The Independent Certifier is obliged to act independently of the TSE Contractor, the Principal and any of their Associates, and is not an employee, agent, contractor or consultant of the Principal or the TSE Contractor.
- (e) The parties acknowledge that:
  - (i) the Independent Certifier has been engaged by the parties prior to the Principal electing whether to engage OpCo2 in relation to the OTS2 Project Works;
  - (ii) the Principal intends that if it engages OpCo2, OpCo2 will accede to the Independent Certifier Deed;
  - (iii) the Independent Certifier is obliged to act independently of OpCo2;
  - (iv) the Independent Certifier may be engaged by OpCo2 in relation to the OTS2 Project Works but will demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to act independently of OpCo2;
  - (v) the TSE Contractor may not make any Claim against the Principal arising out of or in any way in connection with the Independent Certifier being engaged by OpCo2 in relation to the OTS2 Project Works; and
  - (vi) neither party may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence because it is engaged by OpCo2 in relation to the OTS2 Project Works.
- (f) The TSE Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
  - (i) to attend design meetings;
  - (ii) access to all premises where the TSE Contractor's Activities are being carried out; and



- (iii) to insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points,

all as may be:

- (iv) necessary or reasonably required by the Independent Certifier or the Principal's Representative, to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed; or
  - (v) requested by the Independent Certifier or (subject to clause 11.2(h)) reasonably directed by the Principal's Representative.
- (g) The Principal's Representative may provide comments to the Independent Certifier in respect of the TSE Contractor's Activities (with a copy to the TSE Contractor).
  - (h) The Principal's Representative may direct the insertion of additional Witness Points in the Project Plans but may not direct the insertion of additional Hold Points in the Project Plans (except as permitted in accordance with any Principal's General Specification).
  - (i) If the Principal becomes liable to the Independent Certifier for any additional costs pursuant to section 4 or 5 of Schedule 2 of the Independent Certifier Deed and such additional costs arose out of or in connection with a Change initiated by the TSE Contractor under the TSE Contract, re-certification of a Design Documentation package due to non-compliances with the this deed, delay to the progress of the Works to the extent the TSE Contractor is responsible, or as a result of Defects for which the TSE Contractor is responsible, such costs will be a debt due and payable by the TSE Contractor to the Principal.

### 11.3 Proof Engineer

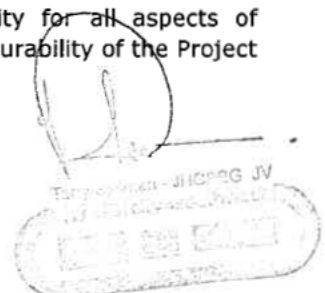
- (a) The TSE Contractor must:
  - (i) engage the Proof Engineer at the TSE Contractor's cost; and
  - (ii) must not replace the Proof Engineer without the prior written consent of the Principal (which must not be unreasonably withheld or delayed).
- (b) The TSE Contractor warrants that the Proof Engineer and any replacement Proof Engineer has:
  - (i) at least the qualifications, experience and expertise described in Schedule A21; and
  - (ii) the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 11.3 and the other requirements of this deed.
- (c) The Proof Engineer's role is to, amongst other things:
  - (i) in respect of the Proof Engineered Temporary Works:
    - (A) undertake a full and independent assessment, without exchange of calculations or similar information, of the Proof Engineered Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;



- (B) provide to the TSE Contractor, with copies to the Principal's Representative and the Independent Certifier, a comprehensive report on the assessment required under clause 11.3(c)(i)(A); and
- (C) independently certify that the Proof Engineered Temporary Works:
  - (aa) are adequate and suitable for their intended purpose; and
  - (bb) comply with the requirements of this deed (including the SWTC),
 and issue the certification required by clause 12.6(b)(ii).
- (d) The parties acknowledge and agree that:
  - (i) the Proof Engineer is obliged to act independently of the TSE Contractor, the Principal and any of their Associates;
  - (ii) the Proof Engineer must not be an employee of the TSE Contractor, the Principal, the Independent Certifier or any of their Associates; and
  - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer to the TSE Contractor must be in writing and must be made available to the Principal's Representative and the Independent Certifier, upon request.
- (e) The TSE Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
  - (i) to attend design meetings; and
  - (ii) access to the Construction Site and all places at which the TSE Contractor's Activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the TSE Contractor given in relation to work health and safety,
 all as may be:
  - (iii) necessary or reasonably required by the Proof Engineer or the Principal's Representative, to allow the Proof Engineer to perform its role under this deed; and
  - (iv) requested by the Proof Engineer or directed by the Principal's Representative.
- (f) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the TSE Contractor to make any Claim against the Principal.

**11.4 Quality management, verification and certification**

- (a) The Principal and the TSE Contractor acknowledge that the design and construct project delivery method chosen for the Project Works and the Temporary Works:
  - (i) requires the TSE Contractor to assume responsibility for all aspects of quality for the TSE Contractor's Activities and for the durability of the Project Works and the Temporary Works;





- (ii) allows the Independent Certifier to observe, monitor, audit and test all aspects of quality in the TSE Contractor's Activities and the durability of the Project Works and the Temporary Works to certify compliance with the requirements of this deed;
  - (iii) requires the Independent Certifier by reviewing and assessing quality in the TSE Contractor's Activities and the durability of the Project Works and the Temporary Works, to certify the TSE Contractor's compliance with the requirements of this deed; and
  - (iv) allows the Principal's Representative to monitor compliance of the TSE Contractor's Activities with the requirements of this deed.
- (b) The TSE Contractor must ensure a Quality Manager is engaged who must:
- (i) independently certify the effectiveness and integrity of the TSE Contractor's quality system in achieving conformance with the requirements of this deed;
  - (ii) report to the Principal's Representative and the Independent Certifier on quality issues in accordance with the requirements of this deed; and
  - (iii) have the requisite experience and ability described for the Quality Manager in Schedule A8.
- (c) The TSE Contractor must provide to the Principal's Representative a certificate executed by the Quality Manager in the form of:
- (i) Schedule B12 within 3 months of the date of this deed;
  - (ii) Schedule B13 every 3 months from the date of this deed until the Date of Construction Completion of the last Portion to achieve Construction Completion;
  - (iii) Schedule B14 as a condition precedent to Construction Completion of any relevant Portion; and
  - (iv) Schedule B15 upon the expiry of the last Defects Correction Period.
- (d) The TSE Contractor must provide to the Principal's Representative a certificate executed by the Independent Certifier in the form of:
- (i) Schedule B6 within 3 months of the date of this deed;
  - (ii) Schedule B7 every 3 months from the date of this deed until the Date of Construction Completion of the last Portion to achieve Construction Completion; and
  - (iii) Schedule B8 upon the expiry of the last Defects Correction Period.
- (e) The Independent Certifier must audit and review each revision of the Quality Plan within 10 Business Days of submission of that plan to the Principal's Representative.
- (f) The TSE Contractor must provide to the Principal's Representative a certificate executed by the Environmental Manager in the form of Schedule B5 every 3 months from the date of this deed until the Date of Construction Completion of the last Portion to achieve Construction Completion.



**11.5 Hold Points and Witness Points**

The TSE Contractor must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SWTC and the Quality Plan or inserted in Project Plans or other applicable documents by the Independent Certifier pursuant to clause 11.2(f)(iii) or the Environmental Representative pursuant to clause 5.10(b)(iii).

**11.6 Project quality non-conformance**

- (a) The TSE Contractor must comply with the procedure for non-conformances set out in the SWTC and the Quality Plan. Further to the provisions of clause 8.3(b) of AS/NZS ISO 9001-2008 and without limiting clause 15.4, the use, release or acceptance of nonconforming work can only be given by the Principal's Representative, in its absolute discretion and without being under any obligation to do so.
- (b) In addition to the procedure for non-conformances referred to in clause 11.6(a), and without limiting clause 15.3, if the TSE Contractor has not complied with this deed including the SWTC, the Principal's Representative may give written notice to the TSE Contractor of the TSE Contractor's failure to comply and requiring compliance within a reasonable time specified in the notice.
- (c) If the TSE Contractor does not comply with the notice referred to in clause 11.6(b), the Principal may, subject to clause 30.9(b), employ others to carry out the direction.
- (d) The amount of any Loss the Principal suffers or incurs in taking action contemplated in clause 11.6(c) or as a result of the TSE Contractor's failure to comply with clause 11.6(b) will be a debt due from the TSE Contractor to the Principal.
- (e) Corrective actions implemented under the TSE Contractor's quality system must comply with the requirements of this deed including the SWTC.
- (f) The TSE Contractor must promptly issue all documents relating to quality non-conformances to the Principal's Representative.

**11.7 Monitoring and audits by the Principal's Representative**

- (a) The TSE Contractor acknowledges that the Principal's Representative may, at any time up to the Date of Construction Completion of the last Portion to achieve Construction Completion, arrange monitoring and audits (including testing) to see if the TSE Contractor is complying with this deed (including the Quality Plan, Construction Environmental Management Plan, Project Health & Safety Management Plan, Chain of Responsibility Management Plan and the other Project Plans).
- (b) The TSE Contractor must:
  - (i) make arrangements to ensure that the Principal's Representative (and its nominee) has access to all facilities, documentation, records and personnel (including those of Subcontractors) that are needed by the Principal's Representative for the carrying out of the monitoring and audits referred to in clause 11.7(a); and
  - (ii) ensure that the Quality Manager, the Environmental Manager, the TSE Contractor's work health and safety representatives and the Contractor's personnel responsible for the Chain of Responsibility Provisions are



Terry Sleiman - JHCPBG JV  
Principal's Representative

available, as necessary, to discuss details of quality matters with the Principal's Representative during the above monitoring and audits.

#### 11.8 Testing

- (a) The TSE Contractor must carry out all tests required:
  - (i) by this deed; or
  - (ii) otherwise directed by the Principal's Representative.
- (b) The reasonable additional Costs connected with a test which is directed by the Principal's Representative and which is not otherwise required by this deed will be borne by the Principal unless the test detects a Defect or is upon a Defect (in which case all such costs will be borne by the TSE Contractor).

#### 11.9 No relief from obligations

The TSE Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 15) 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:

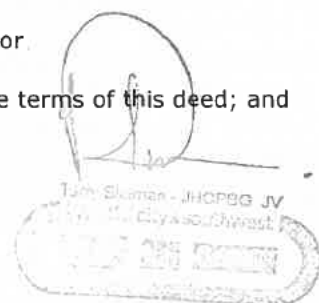
- (a) the implementation of, and compliance with, any quality system or the Quality Plan by the TSE Contractor;
- (b) compliance with any Hold Point and Witness Point procedures;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the TSE Contractor proceeding past any Hold Point or Witness Point or as 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 whilst participating in any Hold Point or Witness Point procedure including where such failure is the result of a negligent act or omission; or
- (e) any monitoring or audit arranged by the Principal's Representative under clause 11.7 or any discussions between the Quality Manager and the Principal's Representative as contemplated under clause 11.7(b)(ii).

### 12. DESIGN AND DESIGN DOCUMENTATION

#### 12.1 Design obligations

The TSE Contractor must design the Project Works and the Temporary Works in accordance with:

- (a) the SWTC;
- (b) any Change:
  - (i) directed by the Principal by a Change Order; or
  - (ii) otherwise approved by the Principal under the terms of this deed; and
- (c) the other requirements of this deed.



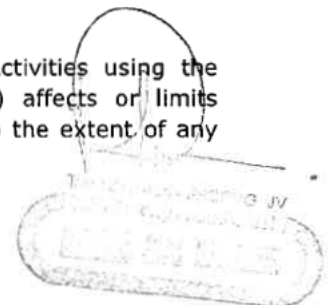
## 12.2 Concept Design

- (a) The TSE Contractor acknowledges that prior to the date of this deed it prepared the Concept Design. The TSE Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the TSE Contractor's use of, or the reliance upon, the Concept Design in performing the TSE Contractor's Activities and that such use and reliance will not limit any of its obligations under this deed.
- (b) The TSE Contractor is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
  - (i) the design and construction of the Project Works and the Temporary Works using the Concept Design costing more than the Project Contract Sum or taking longer than anticipated; and
  - (ii) any differences between the Project Works and the Temporary Works which the TSE Contractor is required to design and construct (ignoring for this purpose any differences which are the subject of a Change Order) and the Concept Design including:
    - (A) differences necessitated by any Site Conditions encountered; and
    - (B) differences required to ensure that:
      - (aa) the Project Works and the Temporary Works satisfy the requirements of this deed;
      - (bb) upon Construction Completion the Project Works are, and will be capable of remaining at all relevant times, fit for their intended purposes; and
      - (cc) the Temporary Works will be, and upon Construction Completion will be capable of remaining at all relevant times, fit for their intended purposes,

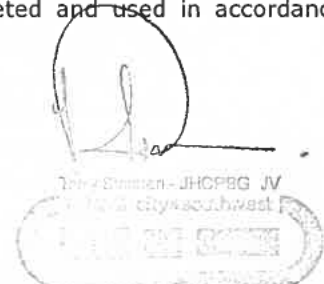
and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the TSE Contractor may have made in relation to any of the matters set out in clauses 12.1(b)(i) and 12.1(b)(ii) above.

## 12.3 Design warranties

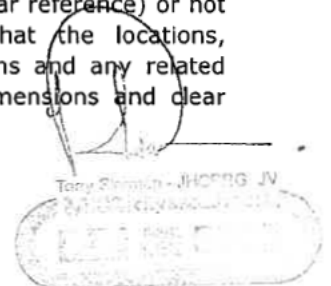
- (a) The TSE Contractor warrants to the Principal that:
  - (i) the Concept Design has been prepared by the TSE Contractor;
  - (ii) it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed despite the Concept Design;
  - (iii) if the Project Works and the Temporary Works are designed and constructed using the Concept Design, the Project Works and the Temporary Works will satisfy the requirements of this deed but nothing in this clause 12.3(a)(iii) affects or limits clauses 12.2(a) or 12.2(b), which will prevail to the extent of any inconsistency;
  - (iv) it will carry out and complete the TSE Contractor's Activities using the Concept Design but nothing in this clause 12.3(a)(iv) affects or limits clauses 12.2(a), 12.2(b) or 12.3(c), which will prevail to the extent of any inconsistency;



- (v) it will not make any adjustments to the Concept Design that will reduce the:
  - (A) durability;
  - (B) whole of life performance;
  - (C) environment and sustainability performance;
  - (D) functional performance; or
  - (E) safety,
 of any part of the Project Works, or increase the whole of life costs associated with any part of the Project Works;
  
- (vi) it has checked, examined, analysed and carefully considered the SWTC and Environmental Documents and that:
  - (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC;
  - (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
  - (C) the SWTC is proper, adequate and fit for its intended purpose including for the purpose of enabling the TSE Contractor to carry out the TSE Contractor's Activities in accordance with, and to ensure that the Project Works and the Temporary Works comply with, this deed including the other warranties in this clause 12.3;
  - (D) it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the Independent Certifier or the Principal's Representative in accordance with this deed;
  - (E) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the TSE Contractor of, or reliance upon, the SWTC; and
  - (F) the use of, or reliance upon, the SWTC does not affect any of its obligations under this deed or entitle the TSE Contractor to make any Claim against the Principal arising out of or in any way in connection with the SWTC;
  
- (vii) the Design Documentation will:
  - (A) satisfy the requirements of the SWTC and the other requirements of this deed;
  - (B) be and will remain at all relevant times fit for its intended purpose; and
  - (C) be prepared, certified, verified, completed and used in accordance with the requirements of this deed;



- (viii) construction will be carried out in accordance with the Design Documentation which the TSE Contractor is entitled to use for construction purposes in accordance with clause 12.10(a);
  - (ix) construction carried out in accordance with the Design Documentation which the TSE Contractor is entitled to use in accordance with clause 12.10 will satisfy the requirements of this deed; and
  - (x) each Portion (both individually and in combination with any earlier completed Portions), the Project Works as a whole and the Handover Works, will:
    - (A) be completed in accordance with, and satisfy the requirements of, this deed;
    - (B) upon Construction Completion, be fit for their intended purposes; and
    - (C) thereafter be capable of remaining at all relevant times fit for their intended purposes.
- (b) The TSE Contractor agrees that its obligations under, and the warranties given in, clauses 12.2 and 12.3 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:
- (i) any design work carried out by others prior to the date of this deed and incorporated in this deed;
  - (ii) subject to clause 13.2(f), any Change the subject of a Direction by the Principal's Representative; or
  - (iii) the termination (for any reason) of this deed.
- (c) Despite any provision to the contrary in this deed, the TSE Contractor will not be regarded as being in breach of any obligation under this deed in respect of or relating to any requirement that:
- (i) the alignment, locations, dimensions and clear openings for the Project Works (including the Third Party Works) and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the alignment, locations, dimensions and clear openings of the Project Works (including the Third Party Works) and any related Design Documentation complies with the alignment, locations, dimensions and clear openings documented in Appendix B.1 of the SWTC;
  - (ii) the Works and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the TSE Contractor has relied on the load cases specified in Appendix B.2 of the SWTC for the purpose of designing the Works;
  - (iii) the Adjustment Items and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the locations, dimensions and clear openings of the Adjustment Items and any related Design Documentation complies with the locations, dimensions and clear



openings documented in any drawings or specifications issued by the Principal under clause 13.10; or

- (iv) the cross passage spacings and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect by reason alone that the harbour crossing and Central Business District (CBD) cross passage spacings and any related Design Documentation comply with drawing number NWRLSTR-PBA-SHC-TU-DWG-930065 – Cross Passage Location Schedule contained in Appendix B1 of the SWTC.

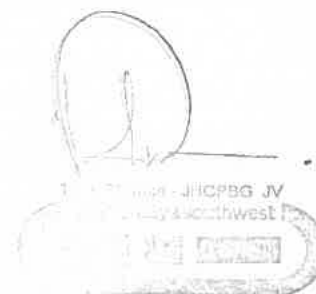
#### 12.4 Preparation and submission of Design Documentation

The TSE Contractor must:

- (a) prepare the Design Documentation in the following three Design Stages:
  - (i) Design Stage 1;
  - (iii) Design Stage 2; and
  - (iv) Design Stage 3,or as otherwise contemplated by the Design Management Plan;
- (b) submit all Design Documentation (not including Design Documentation to the extent that it relates solely to Temporary Works, Demolition Works or Handover Works) to the Independent Certifier and the Principal's Representative:
  - (i) in accordance with the Design Management Plan;
  - (ii) 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
  - (iii) in accordance with the requirements of the SWTC;
- (c) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement at the same time that the TSE Contractor submits such Design Documentation to the Principal's Representative and the Independent Certifier under this deed;
- (d) 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, Demolition Works or Handover Works; and
- (e) 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:
  - (i) the Design Documentation complies with this deed; and
  - (ii) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed.

#### 12.5 Third Party Works

Design Documentation that:



- (a) must be provided under or in connection with any Third Party Agreement must comply with the requirements of the relevant Third Party Agreement; and
- (b) relates to WAD Road Works must, where required by the WAD, be accompanied by a certificate from the WAD Proof Engineer in the form contained in Schedule 8 of the WAD.

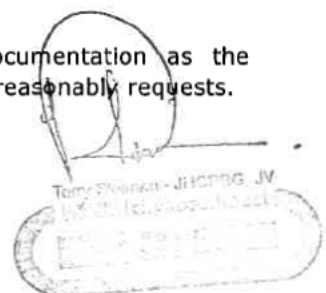
**12.6 Certification of Design Documentation**

- (a) All Design Documentation submitted pursuant to clause 12.4 for Design Stage 1 and Design Stage 2 must be accompanied by a certificate in the form of Schedule B3 from the TSE Contractor certifying that the Design Documentation complies with all requirements of this deed including the SWTC.
- (b) All Design Documentation submitted pursuant to clause 12.4 for Design Stage 3 must:
  - (i) be accompanied by a certificate in the form of Schedule B4:
    - (A) from the TSE Contractor certifying that the Design Documentation:
      - (aa) complies with all requirements of this deed including the SWTC; and
      - (bb) is suitable for construction; and
    - (B) from the Subcontractor which prepared the Design Documentation certifying that the Design Documentation complies with all requirements of this deed including the SWTC;
  - (ii) where the Design Documentation relates to any Proof Engineered Temporary Works (not including any Demolition Works), be accompanied by a certificate in the form of Schedule B20 from the Proof Engineer; and
  - (iii) where the Design Documentation relates to any element of the Demolition Works which is a Category A Demolition Works or a Category B Demolition Works, be accompanied by a certificate in the form of Schedule B21 from the TSE Contractor which attaches a certificate in the form of Schedule B1 to the relevant Demolition Contract that has been provided by the Demolition Contractor and the Independent Temporary Works Checker in respect of the design documentation for such element of the Demolition Works under the relevant Demolition Contract.

**12.7 Explanation of Design Documentation**

The TSE Contractor must:

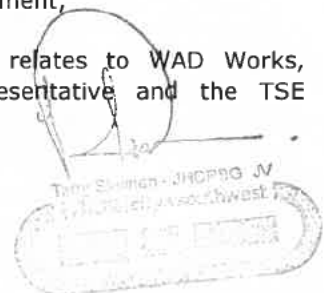
- (a) deliver up to 10 design presentation workshops of four hours each at times reasonably requested by the Principal's Representative ; and
- (b) whenever required by the Principal's Representative or the Independent Certifier, make available the appropriate design personnel to:
  - (i) explain the Design Documentation; and
  - (ii) provide such information regarding the Design Documentation as the Principal's Representative or the Independent Certifier reasonably requests.





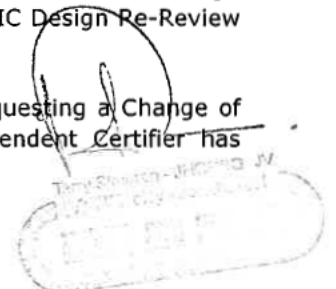
## 12.8 Review of Design Documentation

- (a) **(Principal's Representative review):** The Principal's Representative may (but is not obliged to), within 15 Business Days of the date on which any Design Documentation for any Design Stage is submitted to it in accordance with clause 12.4, review the Design Documentation and notify the Independent Certifier in writing (with a copy to the TSE Contractor) of any non-compliances or potential non-compliances in respect of the Design Documentation.
- (b) **(Independent Certifier review):** The Independent Certifier must, within the IC Design Review Period:
- (i) review the Design Documentation and, in so doing, must consider any non-compliances or potential non-compliances raised by the Principal's Representative under clause 12.8(a) or by any Authorities (including Sydney Trains, RMS, North Sydney Council, Sydney City Council and Willoughby Council);
  - (ii) in respect of Design Stage 1 or Design Stage 2, notify the TSE Contractor of any actual non-compliance with the requirements of this deed (with detailed reasons). The Independent Certifier may also notify the TSE Contractor of any potential non-compliance with the requirements of this deed (with detailed reasons) or any other observation or comment which the Independent Certifier has on the Design Documentation; and
  - (iii) in respect of Design Stage 3, determine whether or not the Design Documentation complies with the requirements of this deed and either:
    - (A) reject the Design Documentation (with detailed reasons) (not including Design Documentation for the Temporary Works, the Handover Works or the Demolition Works) if 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 Independent Certifier to form a view on whether it is compliant; or
    - (B) if the Independent Certifier considers that the Design Documentation complies with the requirements of this deed, certify the Design Documentation (not including Design Documentation for the Temporary Works, the Handover Works or the Demolition Works) by:
      - (aa) including a notation on each document forming part of the Design Documentation;
      - (bb) providing to the Principal's Representative, the TSE Contractor and, if required by the Principal's Representative, OpCo2, a certificate in the form of Schedule B2;
      - (cc) where the Design Documentation relates to Sydney Trains Interface Works, providing to the Principal's Representative and the TSE Contractor a certificate in the form of Schedule 4 of the Sydney Trains Interface Agreement;
      - (dd) where the Design Documentation relates to WAD Works, providing to the Principal's Representative and the TSE



Contractor a certificate in the form of Schedule 3 of the WAD;  
and

- (ee) where the Design Documentation relates to Cross City Tunnel Works, providing to the Principal's Representative and the TSE Contractor a certificate in the form of Schedule 3 of the Cross City Tunnel Interface Agreement; and
  - (ff) where the Design Documentation relates to Sydney City Council Interface Works or Willoughby Council Interface Works, providing to the Principal's Representative and the TSE Contractor a certificate in the form of Schedule 3 of the Sydney City Council TSE Interface Agreement or the Willoughby Council TSE Interface Agreement.
- (c) **(Principal Direction):** the Principal's Representative may at any time (including after the Independent Certifier has certified the Design Documentation pursuant to clause 12.8(b)(iii)(B) or 12.8(g)(ii)(A)) direct the TSE 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, clauses 12.8(h) and 12.8(i) will apply.
- (d) **(Temporary Works, Handover Works and Demolition Works):** the Independent Certifier is not required to certify any Design Documentation for Temporary Works, Handover Works or the Demolition Works.
- (e) **(Non-compliance of Stage 1 or Stage 2 Design Documentation):** If the Independent Certifier notifies the TSE Contractor under clause 12.8(b)(ii) that any Design Stage 1 or Design Stage 2 Design Documentation contains an actual non-compliance with the requirements of this deed, the TSE Contractor:
- (i) must give the Independent Certifier (with a copy to the Principal's Representative) a written statement which explains how the non-compliance has been or will be addressed; and
  - (ii) may, notwithstanding clause 12.8(e)(i), proceed with the preparation and submission of the Design Stage 2 or Design Stage 3 Design Documentation (as applicable).
- (ea) **(Observations, Comments and Potential Non Compliances of Stage 1, Stage 2 or Stage 3 Design Documentation):** The TSE Contractor is not obliged to respond to any comments received from the Independent Certifier regarding any potential non-compliance with the requirements of this deed or any other observation or comment which the Independent Certifier has on the Design Documentation at Design Stage 1, Design Stage 2 or Design Stage 3 which does not concern an actual non-compliance.
- (f) **(Rejection of Design Documentation):** If any Design Documentation is rejected by the Independent Certifier under clause 12.8(b)(iii)(A), the TSE Contractor must:
- (i) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it in accordance with clause 12.4, in which case the process in this clause 12.8 will be reapplied to the amended element of the Design Documentation except that reference to the IC Design Review Period will be deemed to be a reference to the IC Design Re-Review Period;
  - (ii) provide the Principal's Representative with a notice requesting a Change of the requirements of this deed with which the Independent Certifier has



stated that the Design Documentation is non-compliant, setting out any applicable details required by clause 13.6 (and such notice will be deemed to be a notice given under clause 13.6); or

- (iii) provide the Principal's Representative and the Independent Certifier with a notice setting out any matters in relation to which it disagrees with the Independent Certifier's opinion, together with its reasons for doing so,

but the TSE Contractor may commence or continue construction of those elements of the Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed.

- (g) **(Response by Principal or Independent Certifier):** If the TSE Contractor gives a notice under:

- (i) clause 12.8(f)(ii), the Principal's Representative may approve or reject the requested Change in accordance with clause 13.6(d) and:

- (A) if the Principal's Representative approves the requested Change, the process in clause 12.8(b) will reapply as if the relevant non-compliant element of the Design Documentation had been resubmitted to the Independent Certifier; or

- (B) if the Principal's Representative rejects the request, clause 12.8(h)(i) will apply; or

- (ii) clause 12.8(f)(iii), the Independent Certifier must, within 10 Business Days after receipt of the notice, determine and notify the parties as to whether or not the notice satisfactorily addresses the Independent Certifier's concerns together with its reasons for forming that opinion and:

- (A) if the Independent Certifier considers that the TSE Contractor's notice satisfactorily addresses the Independent Certifier's concerns, the Independent Certifier must provide the certification under clause 12.8(b)(iii)(B) as part of its notice; or

- (B) if the Independent Certifier considers that the notice does not satisfactorily address the Independent Certifier's concerns, clause 12.8(h)(ii) will apply.

- (h) **(Resubmission of Design Documentation):** If:

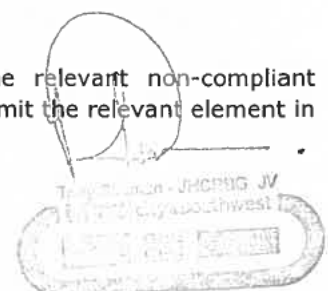
- (i) the Principal's Representative rejects the TSE Contractor's request under clause 12.8(f)(ii);

- (ii) the Independent Certifier notifies the parties under clause 12.8(g)(ii)(B) that it does not consider that the TSE Contractor's notice satisfactorily addresses the Independent Certifier's concerns; or

- (iii) any Design Documentation is the subject of a direction by the Principal's Representative under clause 12.8(c);

then:

- (iv) the TSE Contractor must promptly amend the relevant non-compliant element of the Design Documentation and re-submit the relevant element in accordance with clause 12.4; and

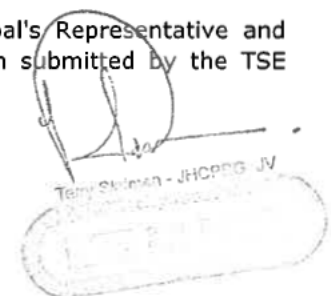


- (v) the process in this clause 12.8 will be reapplied to the amended element of the Design Documentation except that reference to the IC Design Review Period will be deemed to be a reference to the IC Design Re-Review Period.
- (i) **(Changes):** If the TSE Contractor considers that any Design Documentation which is the subject of a direction by the Principal's Representative under clause 12.8(c) constitutes or involves a Change, the TSE 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 13.3.
- (j) **(Minor Non-Compliances):** If the certificate provided by the Independent Certifier pursuant to clause 12.8(b)(iii)(B)(bb) lists any Minor Non-Compliances:
  - (i) the Independent Certifier may, in the certificate, recommend the action that could be taken by the TSE Contractor to address the Minor Non-Compliance; and
  - (ii) the TSE Contractor must complete the recommended action, or take any other action the TSE 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 by the Independent Certifier and, in any event, as a pre-condition to Construction Completion of each relevant Portion.
- (k) **(Independent Certifier response to the Principal):** The Independent Certifier must, within 5 Business Days after:
  - (i) providing a notice to the TSE Contractor under clause 12.8(b)(ii) in respect of Design Stage 1 or Design Stage 2 Design Documentation, to the extent that the Independent Certifier did not include in its notice to the TSE Contractor any comments received from the Principal's Representative under clause 12.8(a), provide the Principal's Representative with detailed written reasons of why it did not include such comments;
  - (ii) rejecting Design Stage 3 Design Documentation under clause 12.8(b)(iii)(A), to the extent that the Independent Certifier did not include in its notice to the TSE Contractor any comments received from the Principal's Representative under clause 12.8(a) regarding non-compliances in the TSE Contractor's Design Stage 3 Design Documentation, provide the Principal's Representative with detailed written reasons of why it did not include such comments; and
  - (iii) certifying Design Stage 3 Design Documentation under clause 12.8(b)(iii)(B), to the extent that the Independent Certifier received comments from the Principal's Representative under clause 12.8(a) regarding non-compliances in the TSE Contractor's Design Stage 3 Design Documentation, provide the Principal's Representative with detailed written reasons of why it certified the Design Stage 3 Design Documentation despite the comments received from the Principal's Representative.

## 12.9 Interface Contractors

The TSE Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may, in respect of Design Documentation submitted by the TSE Contractor at Design Stage 1, 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,



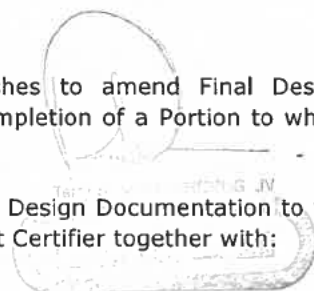
the tenderers for any Interface Works or any operation and maintenance services, any Interface Contractor and any Authority (including Sydney Trains, RMS, North Sydney Council, Sydney City Council and Willoughby Council).

#### 12.10 Design Documentation for construction

- (a) Subject to clauses 12.8(e), 12.10(c) and 12.10(d), unless otherwise approved in writing by the Principal's Representative, the TSE Contractor must only use for construction purposes any Design Documentation (not including any Design Documentation to the extent it relates solely to Temporary Works) unless it has been:
  - (i) submitted to the Principal's Representative and the Independent Certifier under clause 12.4;
  - (ii) certified in accordance with clause 12.6(b) (which certifications must be provided in respect of any relevant categories of Temporary Works to the extent required by clause 12.6(b)); and
  - (iii) certified by the Independent Certifier under 12.8(b)(iii)(B) or 12.8(g)(ii)(A).
- (b) The TSE Contractor must give the Principal's Representative one electronic copy, of:
  - (i) all Design Documentation which, pursuant to clause 12.10(a), the TSE Contractor is entitled to use for construction purposes, in accordance with the requirements of the SWTC; and
  - (ii) surveys and work as executed Design Documentation in accordance with the requirements of the SWTC.
- (c) If the Independent Certifier does not, in respect of Design Stage 3 Design Documentation that is not Third Party Agreement Design Documentation, either certify or reject the Design Documentation within the IC Design Review Period referred to in clause 12.8(b), the TSE Contractor may use the Design Documentation for construction purposes at the TSE Contractor's own risk.
- (d) If the TSE Contractor exercises its right under clause 12.10(c) and the Independent Certifier subsequently rejects the Design Documentation, then (unless otherwise approved in writing by the Principal):
  - (i) the TSE Contractor must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the Design Documentation, but the TSE Contractor may commence or continue construction in accordance with any element of the Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed; and
  - (ii) clauses 12.8(e) to 12.8(h) will apply in relation to the non-compliant element of the Design Documentation.

#### 12.11 Amendments to Final Design Documentation

- (a) Subject to clause 13, if the TSE 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 TSE Contractor must submit the amended Design Documentation to the Principal's Representative and the Independent Certifier together with:

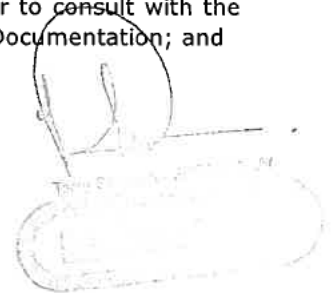


- (A) the certifications referred to in clause 12.6(b); and
  - (B) an explanation as to why it is seeking to amend the Final Design Documentation; and
- (ii) clause 12.8 will apply as if the Design Documentation is Design Stage 3 Design Documentation.
- (b) The TSE Contractor may, at its own risk, use the amended Final Design Documentation (that is not Third Party Agreement Design Documentation) submitted in accordance with clause 12.11(a) for construction purposes prior to certification by the Independent Certifier under clause 12.8(b)(iii)(B) if, and only 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:
    - (C) prevents or adversely affects the TSE Contractor proceeding with construction; and
    - (D) has arisen or become evident since the Final Design Documentation was submitted to the Independent Certifier.
- (c) If the TSE Contractor exercises its right under clause 12.11(b) and the Independent Certifier subsequently rejects the amended Final Design Documentation in accordance with clause 12.8(b)(iii)(A), then (unless otherwise approved in writing by the Principal's Representative):
- (i) the TSE Contractor must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the amended Final Design Documentation, but the TSE Contractor may commence or continue construction in accordance with any element of the amended Final Design Documentation that the Independent Certifier has not identified as being non-compliant with this deed; and
  - (ii) clause 12.8(f) to 12.8(h) will reapply in relation to the non-compliant element of the amended Final Design Documentation.
- (d) The TSE 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 TSE Contractor submits such amended Final Design Documentation to the Principal's Representative and the Independent Certifier under clause 12.11(a)(i).

**12.12 No duty to review**

The Principal and the TSE Contractor acknowledge and agree that:

- (a) neither the Principal nor the Principal's Representative assume a duty or owe any duty to the TSE Contractor to review the Design Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the TSE Contractor or make any comments regarding any Design Documentation; and
- (b) neither:



- (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; nor
- (ii) the certification of any Design Documentation by the Independent Certifier under clause 12.8(b)(iii)(B),

will lessen or otherwise affect:

- (iii) the TSE Contractor's warranties under clause 12.3 or any other of its liabilities or responsibilities under this deed or otherwise according to Law; or
- (iv) the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law.

#### 12.13 Ownership of documentation

- (a) Documents (including Design Documentation) supplied by or on behalf of the TSE Contractor will be the Principal's property.
- (b) The TSE 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 TSE 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 TSE Contractor's Activities (other than processes and methods of working),

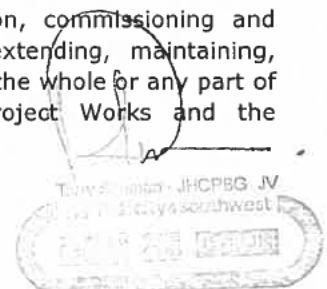
(collectively called the **Contract Documentation and Materials**) prepared or created by the TSE Contractor for or in connection with the TSE Contractor's Activities, the Project Works or the Handover Works (other than the Temporary Works), which assignment is effective immediately from the time it 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 (other than the Handover Works) and the processes and methods of working relevant to the TSE 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 TSE Contractor's Activities or the Project Works and the Temporary Works;



- (D) any purpose associated with further development of the Construction Site; 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 TSE Contractor:

- (i) warrants that the Principal's use of the Contract Documentation and Materials, or any other work provided by the TSE 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 TSE Contractor's Activities or the Contract Documentation and Materials.

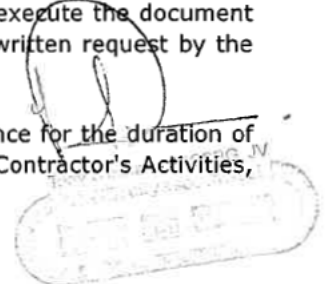
(d) For the purposes of clause 12.13(c), the Principal's use of the Contract Documentation and Material includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or Material or part of the Project Works or Temporary Works to which the Contract Documentation or Material or any other work provided by the TSE 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 TSE 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 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 to prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.

(f) The TSE 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 12.13 if the TSE 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.

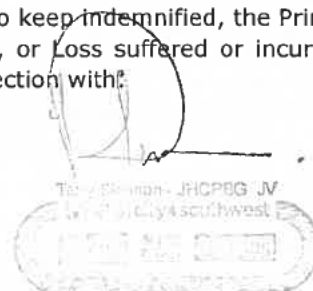
(g) The Principal grants to the TSE Contractor a royalty free licence for the duration of this deed to use, only for the purpose of executing the TSE Contractor's Activities,





the Principal's Intellectual Property Rights in respect of which the Principal has absolute title under clause 12.13(b)(i).

- (h) The TSE Contractor warrants that:
- (i) the:
    - (A) assignment to the Principal and any use of the Intellectual Property Rights assigned under this clause 12.13; and
    - (B) use of the Intellectual Property Rights licensed under this clause 12.13 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 TSE Contractor would be the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 12.13(b)(i); and
  - (iii) the TSE Contractor is either:
    - (A) the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 12.13(b)(i); or
    - (B) able to grant the licence granted in clause 12.13(b)(ii).
- (i) Without limiting clause 12.13(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 TSE Contractor's Activities or the Project Works or any part of them, being disrupted, impaired or adversely affected, the TSE 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 12.13, in accordance with this deed; or
  - (ii) modify or replace the Contract Documentation and Materials, the Contract Processes, the TSE 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 12.13, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, the TSE 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 12.13 will:
    - (A) comply with the requirements of this deed; and
    - (B) not limit or otherwise affect the Principal's rights, or the TSE Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.
- (j) The TSE 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:





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

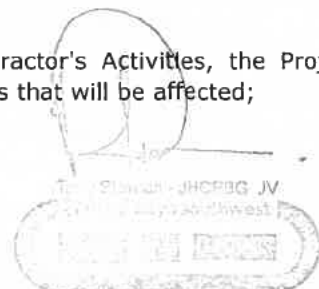
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13. **CHANGES**

13.1 **Proposed Changes**

(a) The Principal's Representative may at any time issue to the TSE Contractor a written document titled "Change Proposal Request" notifying the TSE Contractor of a proposed Change that the Principal is considering (**Change Proposal Request**). Within 10 Business Days of receipt of a Change Proposal Request (or such longer period as the Principal's Representative may direct), the TSE Contractor must, at its cost, provide the Principal's Representative with a written notice containing the following details:

- (i) the effect which the TSE Contractor anticipates the Change will have on:
  - (A) the Design Contract Sum and the Design Payment Schedule;
  - (B) the Construction Contract Sum and the Construction Payment Schedule and any potential impacts on the costs of maintaining and using the Project Works and the Handover Works;
  - (C) each Program and the TSE Contractor achieving Construction Completion and Completion (as applicable) of each Portion by the relevant Date for Construction Completion or Date for Completion (as applicable) and if the proposed Change would entitle the TSE Contractor to an extension of time, the amount of its entitlement under clause 17.6 arising from that extension of time;
  - (D) the performance of the TSE Contractor's Activities, the Project Works and the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and
  - (E) the functionality or integrity of the elements of the TSE Contractor's Activities, the Project Works and the Temporary Works and the quality or performance standards required by this deed, including specific details of:
    - (aa) the elements of the TSE Contractor's Activities, the Project Works and the Temporary Works that will be affected;



- (bb) how and to what extent the functionality or integrity of those elements will be affected;
  - (cc) the quality or performance standards affected and how and to what extent they will be affected; and
  - (dd) any adverse effect which the Change will have on the TSE Contractor's ability to satisfy its obligations under this deed (including any warranties the TSE Contractor is required to give under this deed); and
- (ii) any other information concerning the proposed Change which the Principal's Representative reasonably requires including:
- (A) sufficient details to allow the Principal to reconsider the need for the Change;
  - (B) the direct net costs that the TSE Contractor anticipates would be incurred by it if a direction was given under clause 17.7 to compress the performance of the TSE Contractor's Activities to overcome part or all of any delay in achieving Construction Completion of a relevant Portion by the relevant Date for Construction Completion caused by the Change specified in the Change Proposal Request; and
  - (C) whether any land in addition to the Construction Site is required to implement the Change; and

(iii) [REDACTED]

- (b) The Principal will not be obliged to proceed with any proposed Change the subject of a Change Proposal Request.
- (c) Except as directed in a Change Order, the TSE Contractor will not be entitled to vary or change the Project Works or the Temporary Works.

(d) [REDACTED]

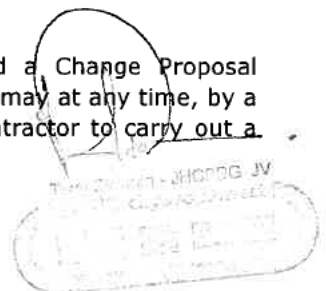
[REDACTED]

[REDACTED]

[REDACTED]

**13.2 Change Orders**

- (a) Whether or not the Principal's Representative has issued a Change Proposal Request under clause 13.1(a), the Principal's Representative may at any time, by a written document titled "Change Order", direct the TSE Contractor to carry out a Change as specified in the Change Order.

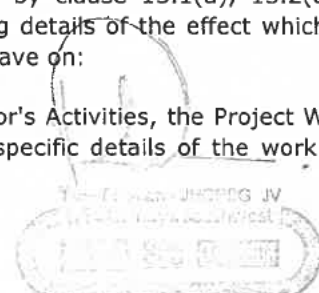


The Principal's Representative will in the Change Order state one of the following:

- (i) where the TSE Contractor has provided a notice under clause 13.1(a) with respect to the Change, whether any one or more of the following will be adjusted as set out in the TSE Contractor's notice under clause 13.1(a):
  - (A) the Design Contract Sum and the Design Payment Schedule;
  - (B) the Construction Contract Sum and the Construction Payment Schedule; and
  - (C) a relevant Date for Construction Completion; or
- (ii) where the Principal's Representative's notice under 13.2(a)(i) states that the Principal's Representative does not agree with the TSE Contractor's notice under clause 13.1(a), or where no Change Proposal Request has been issued under clause 13.1, that any adjustment to:
  - (A) the Design Contract Sum and the Design Payment Schedule; and
  - (B) the Construction Contract Sum and the Construction Payment Schedule,

will be made under clause 13.4(d).

- (b) Where the TSE Contractor receives a Change Order, it must perform its obligations under this deed in accordance with the Change specified in the Change Order.
- (c) There is no limitation on the power of the Principal's Representative to direct a Change, and no Change or direction to carry out a Change will invalidate this deed.
- (d) Where the TSE Contractor receives a Change Order but the Principal's Representative has not issued a Change Proposal Request under clause 13.1(a), the TSE Contractor may, within 10 Business Days of receipt of the Change Order (or such longer period as the Principal's Representative may direct), provide the Principal's Representative with a notice setting out the details specified in clause 13.1(a)(i)(C), 13.1(a)(i)(D) and 13.1(a)(i)(E).
- (e) Without limiting clause 15, the Principal's Representative may issue a Change Order at any time up to Construction Completion of the last Portion to reach Construction Completion.
- (f) If:
  - (i) the Principal's Representative issues a Change Order or directs a Change under any other provision of this deed;
  - (ii) the relevant Change Order or Change did not arise from any wrongful act or omission of the TSE Contractor or any of its Associates or any breach of this deed by the TSE Contractor; and
  - (iii) the TSE Contractor has provided the Principal's Representative with written notice under and within the time required by clause 13.1(a), 13.2(d) or 13.3(a) (whichever is applicable), containing details of the effect which the TSE Contractor anticipates the Change will have on:
    - (A) the performance of the TSE Contractor's Activities, the Project Works or the Temporary Works (including specific details of the work that



will be affected and how and to what extent it will be affected);  
and/or

- (B) the functionality or integrity of any of the elements of the TSE Contractor's Activities, the Project Works or the Temporary Works or the quality or performance standards required by this deed, including specific details of:
  - (aa) the elements of the TSE Contractor's Activities, the Project Works or the Temporary Works that will be affected;
  - (bb) how and to what extent the functionality or integrity of those elements will be affected;
  - (cc) the quality or performance standards affected and how and to what extent they will be affected; and
  - (dd) any adverse effect which the Change will have on the TSE Contractor's ability to satisfy its obligations under this deed,

then the liability of the TSE Contractor under this deed will be reduced to the extent that any such liability arises as a result of:

- (iv) the matters notified by the TSE Contractor in the relevant written notice under clause 13.1(a), 13.2(d) or 13.3(a); and
- (v) the actual adverse effect which the Change has upon:
  - (A) the performance of the TSE Contractor's Activities, the Project Works or the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and/or
  - (B) the functionality or integrity of any of the elements of the TSE Contractor's Activities, the Project Works or the Temporary Works or the quality or performance standards required by this deed, including specific details of:
    - (aa) the elements of the TSE Contractor's Activities, the Project Works or the Temporary Works that will be affected;
    - (bb) how and to what extent the functionality or integrity of those elements will be affected;
    - (cc) the quality or performance standards affected and how and to what extent they will be affected; and
    - (dd) any adverse effect which the Change will have on the TSE Contractor's ability to satisfy its obligations under this deed.
- (g) If the TSE Contractor fails to notify the Principal's Representative under clause 13.1(a), 13.2(d) or 13.3(a) of any adverse effect of a Change on:
  - (i) the performance of the TSE Contractor's Activities, the Project Works or the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and/or



- (ii) the functionality or integrity of any of the elements of the TSE Contractor's Activities, the Project Works or the Temporary Works or the quality or performance standards required by this deed, including specific details of:
  - (A) the elements of the TSE Contractor's Activities, the Project Works or the Temporary Works that will be affected;
  - (B) how and to what extent the functionality or integrity of those elements will be affected;
  - (C) the quality or performance standards affected and how and to what extent they will be affected; and
  - (D) any adverse effect which the Change will have on the TSE Contractor's ability to satisfy its obligations under this deed,
 then:
- (iii) the TSE Contractor will be deemed to have warranted to the Principal that the Change does not have any such adverse effect and the Change will not limit or otherwise affect the TSE Contractor's obligations under this deed; and
- (iv) the relevant Change will not be taken to limit or otherwise affect the TSE Contractor's obligations under this deed.

**13.3 Notice of Change**

- (a) If the TSE Contractor believes any Direction of the Principal's Representative, other than the issuing of a Change Order, constitutes or involves a Change it must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the Direction:
  - (i) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with, the Direction, give notice to the Principal's Representative that sets out:
    - (A) that it considers the Direction constitutes or involves a Change;
    - (B) details of the relevant Direction;
    - (C) details of why it considers the Direction constitutes or involves a Change; and
    - (D) that the TSE Contractor proposes to make a Claim in connection with the Direction; and
  - (ii) subject to clause 29.3, within 20 Business Days of giving the notice under clause 13.3(a)(i) (or such longer period as the Principal's Representative may direct), submit a written Claim to the Principal's Representative which includes detailed particulars of:
    - (A) why the TSE Contractor believes the Direction constitutes or involves a Change;
    - (B) the details specified in clause 13.1(a)(i);



- (C) the Direction, including the date or dates of the Direction and any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
  - (D) the provisions of this deed or other legal basis upon which the Claim is based; and
  - (E) the amount claimed and how it has been calculated,
- failing which the TSE Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Principal's Representative's Direction.
- (b) Despite the fact that the TSE Contractor considers that a Direction by the Principal's Representative constitutes or involves a Change, the TSE Contractor must continue to carry out the TSE Contractor's Activities in accordance with this deed including any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 13.3(a).
  - (c) If the TSE Contractor issues a notice under clause 13.3(a)(i) or a Claim under clause 13.3(a)(ii), the Principal may:
    - (i) confirm that the Direction constitutes or involves a Change, or entitles the TSE Contractor to make a Claim, by the giving of a notice under this clause 13.3(c)(i);
    - (ii) deny that the Direction constitutes or involves a Change, or entitles the TSE Contractor to make a Claim, by the giving of a notice under this clause 13.3(c)(ii), in which case the TSE Contractor:
      - (A) may within 10 Business Days of the receipt of the notice issue a notice of dispute under clause 23.3; and
      - (B) unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
    - (iii) withdraw the Direction by giving a notice under this clause 13.3(c)(iii).
  - (d) If within 20 Business Days after first receipt of the notice under clause 13.3(a)(i), the Principal's Representative has not taken any action under clause 13.3(c), the Principal's Representative will be deemed to have given a notice under 13.3(c)(ii).

**13.4 Valuation**

Subject to clauses 13.3, 13.6(h), 13.7(c)(ii)(A), 15.3 and 29, one or more of the following will, to the extent required by this deed, be adjusted for all Changes which have been the subject of a Direction by the Principal's Representative:

- (a) the Design Contract Sum and the Design Payment Schedule; and
  - (b) the Construction Contract Sum and the Construction Payment Schedule;
- by:
- (c) to the extent that clause 13.2(a)(i) applies, the agreed amount specified in the Change Order; or

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- (d) to the extent clause 13.2(a)(ii) applies or where this deed contemplates that any additional work will be treated as a Change:
- (i) the net cost of the work (including Materials) to be added and/or omitted as a result of the Change, valued:
    - (A) where the Change relates to the Remediation of the Contaminated Future Development Sites, on the basis of the applicable rates and prices set out in Part 8 of the Construction Payment Schedule;
    - (B) where the Change relates to the Adjustment Items, on the basis of the applicable rates and prices set out in Part 5 of the Construction Payment Schedule;
    - (C) where the Change relates to the removal of any Handover Works, on the basis of any applicable rates and prices set out in Part 4 of the Construction Payment Schedule;
    - (D) where applicable, on the basis of the schedule of prices and daywork rates set out in the Design Payment Schedule and the Construction Payment Schedule and where relevant, on the basis of any other appropriate data including, where work is directed to be carried out (or, if applicable, omitted or deleted) by a direction given by the Principal's Representative under clause 13.7(a) after the relevant date set out in Schedule A2 and to the extent it is reasonable to use it in respect of a Pre-Agreed Change, the details in Schedule A2 relevant to that Pre-Agreed Change; or
    - (E) otherwise on the basis of a reasonable amount which will include a margin for overheads and profit in accordance with the Design Payment Schedule and the Construction Payment Schedule,valued in accordance with Schedule E10, with such value to be as stated by the Principal's Representative; and
  - (ii) if the Change will delay or disrupt the TSE Contractor in carrying out the TSE Contractor's Activities, any increased Costs which will be reasonably incurred by the TSE Contractor due to the delay or disruption that the Change will cause in the carrying out of the TSE Contractor's Activities, such amount to be as stated by the Principal's Representative,

provided however that where the Principal's Representative has issued a Change Proposal Request, the TSE Contractor's entitlement under this clause will not exceed any amount set out in the TSE Contractor's notice under clause 13.1(a).

### 13.5 Omissions

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

- (a) the Principal may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;
- (b) the Principal will not (other than pursuant to this clause 13 and clause 17.6) be liable upon any Claim (insofar as is permitted by Law) by the TSE Contractor as a result of any work being omitted or deleted from the TSE Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages another person or persons to carry out and execute the omitted or deleted work; and



- (c) except for work omitted or deleted by a direction by the Principal's Representative made under clause 13.7(a) by the relevant date set out in Schedule A2, the work which has been omitted or deleted shall be valued in accordance with clause 13.4.

**13.6 TSE Contractor may propose Change**

- (a) The Principal and the TSE Contractor acknowledge that:
  - (i) the design and construct project delivery method chosen is intended, among other things, to allow the TSE Contractor to identify:
    - (A) Changes which may enhance the quality of the TSE Contractor's Activities; and
    - (B) Changes which may permit project cost savings while maintaining or enhancing the quality of the TSE Contractor's Activities;
  - (ii) they have committed to the value engineering process described in clause 13.12; and
  - (iii) it is their intention that any cost savings should benefit the Principal and the TSE Contractor equally.
- (b) The TSE Contractor may propose a Change by giving written notice to the Principal's Representative with details of the proposed Change.
- (c) On receiving a notice under clause 13.6(b), the Principal's Representative may give written notice to the TSE Contractor requiring it to give the Principal's Representative:
  - (i) details of:
    - (A) the proposed Change in addition to those provided in accordance with clause 13.6(b);
    - (B) the reason for the proposed Change;
    - (C) the effect of the proposed Change on the TSE Contractor's Activities;
    - (D) the effect of the proposed Change on the Program and the Dates for Construction Completion of the Portions; and
    - (E) the cost effect of assessing and carrying out the proposed Change, including:
      - (aa) where the proposed Change will involve additional costs, any increased costs;
      - (bb) where the proposed Change will lead to cost savings, proposals for any cost savings arising from the Change; and
      - (cc) the effect the proposed Change will have on operating and maintenance costs;
  - (ii) a written statement stating that the proposed Change:
    - (A) will not adversely affect the functional integrity of any of the elements of the TSE Contractor's Activities and the performance standards required by this deed;



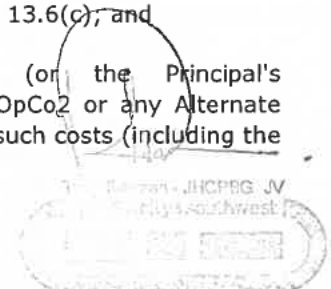
- (B) will not adversely affect the quality standards required under this deed; and
  - (C) is consistent with and complies with the conditions and requirements of the Planning Approval and the other Environmental Documents; and
  - (iii) any other information and supporting documentation the Principal's Representative reasonably requires.
- (d) Subject to clause 13.6(e), the Principal's Representative:
- (i) (in its absolute discretion) may, by notice in writing, approve or reject any Change the TSE Contractor proposes; and
  - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the TSE Contractor.

Prior to giving any direction under this clause 13.6(d), the Principal's Representative may seek to negotiate with the TSE Contractor over the level of cost increase or savings arising from the proposed Change. If the parties agree in writing upon a different level of cost increase or savings, the TSE Contractor's notice will be deemed to be amended by the inclusion of this different level of cost increase or savings in place of the original cost increase or savings notified by the TSE Contractor.

- (e) If a Change proposed by the TSE Contractor relates solely to Non-Proof Engineered Temporary Works (not including the Handover Works), the Principal's Representative will not unreasonably withhold its approval to any such proposed Change.
- (f) If the Principal's Representative gives a direction under clause 13.6(d) approving a Change proposed by the TSE Contractor, the TSE Contractor must perform its obligations under this deed in accordance with the approved Change.
- (g) With respect to any Change approved by the Principal's Representative pursuant to a direction under clause 13.6(d), the Project Contract Sum will be:
  - (i) if the Change gives rise to a cost increase, increased by the cost increase notified by the TSE Contractor under clause 13.6(c)(i)(E); or
  - (ii) if the Change gives rise to cost savings, decreased by [REDACTED] of the cost savings notified by the TSE Contractor under clause 13.6(c)(i)(E),

or such other increased or decreased amount (as appropriate) as may be agreed between the Principal and the TSE Contractor pursuant to clause 13.6(d) and prior to the Principal's Representative's direction under clause 13.6(d).

- (h) The TSE Contractor will:
  - (i) bear all costs:
    - (A) associated with proposing a Change under clause 13.6(b);
    - (B) associated with providing details under clause 13.6(c), and
    - (C) reasonably incurred by the Principal (or the Principal's Representative), any Follow-on Contractor, OpCo2 or any Alternate Operator in assessing the proposed Change (such costs including the

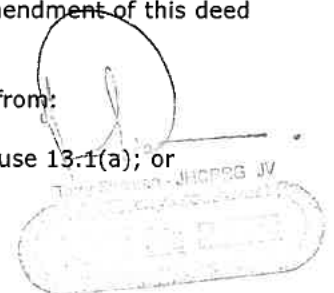


costs of any Follow-on Contractor, OpCo2 or any Alternate Operator) to be a debt due from the TSE Contractor to the Principal); and

- (ii) unless otherwise agreed and except as provided for in clause 13.6(g)(i):
  - (A) where a proposed Change is approved by the Principal's Representative, bear all costs associated with assessing and carrying out the proposed Change; and
  - (B) not be entitled to make any Claim against the Principal arising out of or in connection with the Change.

### 13.7 Pre-Agreed Changes

- (a) The Principal's Representative may, in its absolute discretion and without being under any obligation to do so, direct by way of Change any Pre-Agreed Change by giving written notice to the TSE Contractor.
  - (b) The Principal and the TSE Contractor agree that if a notice pursuant to clause 13.7(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule A2, this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in Schedule A2 from the date the TSE Contractor receives such notice.
  - (c) Where the Principal's Representative directs a Pre-Agreed Change by giving written notice to the TSE Contractor by the relevant date referred to in clause 13.7(b), the TSE Contractor, in respect of that Pre-Agreed Change:
    - (i) must carry out its obligations under this deed as amended by clause 13.7(b); and
    - (ii) acknowledges that:
      - (A) any adjustment of the components of the Project Contract Sum made pursuant to clause 13.7(b) will be full compensation for any Loss or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the Project Contract Sum under clause 13.4; and
      - (B) the TSE Contractor is not entitled to make any Claim for:
        - (aa) any acceleration, compression, re-ordering or re-sequencing to the TSE Contractor's Activities which the TSE Contractor must perform at any time in order to achieve Construction Completion of any relevant Portion by its applicable Date for Construction Completion or Completion of any relevant Portion by its applicable Date for Completion; or
        - (bb) any extension of time for any delay to the carrying out of the TSE Contractor's Activities,
- in connection with the issue of such a notice or the amendment of this deed pursuant to clause 13.7(b).
- (d) Nothing in this clause prevents the Principal's Representative from:
    - (i) issuing a Change Proposal Request as referred to in clause 13.1(a); or



(ii) directing a Change by issue of a Change Order,

that involves the same (or similar) changes to the Project Works as a Pre-Agreed Change after the relevant date for giving notice of the Pre-Agreed Change specified in Schedule A2.

(e) If the Principal's Representative:

(i) issues a Change Proposal Request as referred to in clause 13.1(a); or

(ii) directs a Change by issue of a Change Order,

which involves the same or similar changes to the Project Works as are required by a Pre-Agreed Change and which is issued or directed (as relevant) after the relevant date in Schedule A2 for that Pre-Agreed Change, the Principal and the TSE Contractor agree that the Change will be valued in accordance with the process in clauses 13.1, 13.2 and 13.4.

### 13.8 TSE Contractor's entitlements

This clause 13 is an exhaustive code of the TSE Contractor's rights in any way in connection with any Change. The TSE Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 13 otherwise than in accordance with the terms of this deed.

### 13.9 Approvals for Changes

(a) Subject to clause 13.9(b), the TSE Contractor must apply for and obtain all:

(i) necessary amendments or modifications to any existing Approval; and

(ii) new Approvals that may be,

required for the execution of a Change.

(b) Where the amendment or modification to any Approval required for the execution of the Change relates to any Approval specified in Schedule D2, the TSE Contractor must:

(i) carry out and provide to the Principal all surveys, investigations, reports, studies:

(A) requested by the Principal's Representative;

(B) to the standard directed by the Principal's Representative; and

(C) within the time directed by the Principal's Representative; and

(ii) provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Approval.

(c) The TSE Contractor must implement the Change once the Approvals referred to in this clause 13.9 have been amended, modified, or granted to permit the Change to be implemented.

### 13.10 Adjustment Items

(a) The parties acknowledge that:



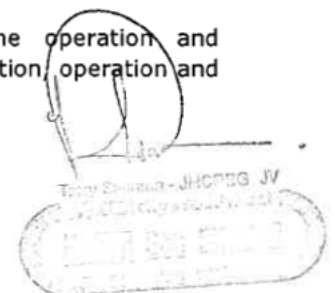
- (i) at the date of this deed the scope of work relating to the Adjustment Items has not been fully defined; and
  - (ii) following the date of this deed the Principal will issue revised drawings and specifications (which will include the details specified in Schedule C2) for the Adjustment Items as a Change.
- (b) If the Principal's Representative directs a Change under clause 13.2(a) in relation any Adjustment Item:
- (i) the Change will be valued using the applicable rates and prices set out in Part 5 of the Construction Payment Schedule; and
  - (ii) if any such Change is directed on or before 31 January 2018, the TSE Contractor is not entitled to make any Claim for:
    - (A) any acceleration, compression, re-ordering or re-sequencing to the TSE Contractor's Activities which the TSE Contractor must perform at any time in order to achieve Construction Completion of any relevant Portion by its applicable Date for Construction Completion or Completion of any relevant Portion by its applicable Date for Completion; or
    - (B) any extension of time for any delay to the carrying out of the TSE Contractor's Activities,
 in connection with such Change.

**13.11 Changes in respect of Handover Works**

The Principal may not issue a Change Proposal Request or a Change Order which requires the TSE Contractor to remove any Handover Works that form part of any Portion after the date which is 60 days prior to the Date for Construction Completion of the relevant Portion.

**13.12 Value engineering**

- (a) During the first three months following the date on which each of the Conditions Precedent have been satisfied (or waived under clause 1A.3), the TSE Contractor must participate in a value engineering process with the Principal, including a series of up to six value engineering workshops of up to 4 hours each at times reasonably requested by the Principal's Representative, to identify measures which will, if adopted, achieve one or more of the following objectives:
- (i) accelerate Construction Completion of a Portion;
  - (ii) reduce the cost to the Principal of the Project Works or the Temporary Works;
  - (iii) improve the efficiency or value to the Principal of the completed Project Works;
  - (iv) minimise the interface risks in relation to the Project Works, in particular as between the TSE Contractor and any Interface Contractors;
  - (v) reduce the whole of life costs associated with the operation and maintenance of the Project Works or the further construction, operation and maintenance of Sydney Metro City & Southwest; or



- (vi) otherwise be of benefit to the Principal or the Sydney Metro City & Southwest project,

(together the **VE Objectives**).

The TSE Contractor must ensure that any relevant personnel reasonably requested by the Principal attend and participate in the value engineering workshops and any other meetings or forums connected with the process. As a minimum, such personnel will include the TSE Contractor's Design Manager and Construction Manager and key personnel from any Significant Subcontractor that is undertaking the design of any part of the Project Works or the Temporary Works.

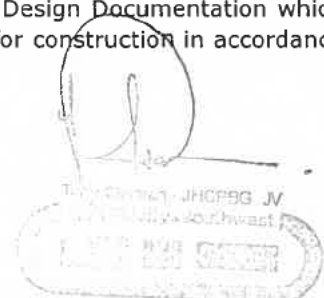
Each party shall bear its own costs of participating in such value engineering process.

- (b) During the first six weeks of the value engineering process referred to in clause 13.12(a) the parties will give priority to the Priority VE Items and thereafter will progress the Secondary VE Matters. The parties may agree to include other value engineering matters and move matters between Priority VE Items and Secondary VE Items.
- (c) Following the three month process referred to in clause 13.12(a) the TSE Contractor must, during the course of performing the TSE Contractor's Activities, consider the extent to which further measures may be adopted in order to achieve the VE Objectives.
- (d) If:
  - (i) through the value engineering process described in clause 13.12(a), the parties agree on a solution to achieve one or more of the VE Objectives then this shall be treated as a TSE Contractor proposed Change under clause 13.6 and the Principal's Representative may give a written notice to the TSE Contractor under clause 13.6(c) and clauses 13.6(d) to 13.6(h) will thereafter apply; or
  - (ii) the TSE Contractor identifies further measures which may be adopted in order to achieve one or more of the VE Objectives pursuant to clause 13.12(b) then the TSE Contractor may propose this as a Change pursuant to clause 13.6(b) and clauses 13.6(c) to 13.6(h) will thereafter apply.
- (e) This clause 13.12 is without prejudice to the Principal's rights under any other provisions of this clause 13.

## 14. CONSTRUCTION

### 14.1 Construction

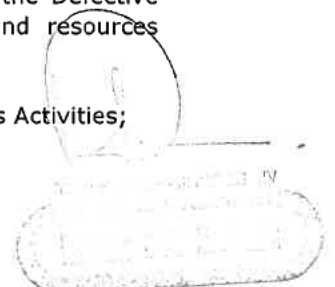
- (a) The TSE Contractor must construct the Project Works and the Temporary Works:
  - (i) in accordance with the requirements of this deed including:
    - (A) the SWTC;
    - (B) subject to clause 14.1(c), any relevant Design Documentation which it the TSE Contractor is entitled to use for construction in accordance with clause 12.10(a); and



- (C) any Direction of the Principal's Representative given or purported to be given under a provision of this deed, including any Change directed by the Principal's Representative by a Change Order; and
- (ii) using good workmanship and Materials which are:
  - (A) free of Defects and other imperfections; and
  - (B) of the quality specified in the SWTC; and
- (iii) so that, upon Construction Completion, they are and will be capable of remaining at all relevant times fit for their intended purposes.
- (b) The TSE Contractor warrants that each Portion will upon Construction Completion:
  - (i) be fit for its intended purpose; and
  - (ii) be capable of remaining, at all relevant times, fit for its intended purpose.
- (c) If there is any ambiguity, discrepancy or inconsistency between this deed on the one hand or any Design Documentation which the TSE Contractor is entitled to use for construction under clause 12.10(a) on the other hand, then unless otherwise directed by the Principal's Representative, the requirements of this deed will prevail.

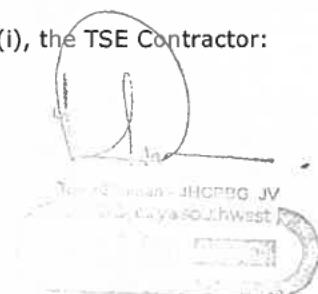
**14.2 Early Works**

- (a) The TSE Contractor acknowledges that the Principal has entered into one or more contracts for the Early Works.
- (b) This clause 14.2 applies irrespective of whether these Early Works are completed prior to or subsequent to the TSE Contractor commencing the TSE Contractor's Activities on the Construction Site.
- (c) The TSE Contractor must:
  - (i) at the times specified in clause 14.2(d), carry out a detailed and proper visual inspection of the Early Works (or a part thereof) (**Early Works Inspection**); and
  - (ii) if, as a result of the Early Works Inspection, it considers that the Early Works (or the relevant part thereof) have not been carried out in accordance with Appendix A.2 of the SWTC (**Defective Early Works**), notify the Principal in writing forthwith and in any event within 10 Business Days of carrying out the Early Works Inspection, giving full details of:
    - (A) the manner in which the Defective Early Works have not been carried out in accordance with Appendix A.2 of the SWTC, together with information supporting this connection;
    - (B) the effect of the Defective Early Works on the TSE Contractor's Activities, the Project Works or the Temporary Works;
    - (C) the estimated additional Cost (if any) of dealing with the Defective Early Works encountered and the additional work and resources involved;
    - (D) the delay (if any) to the progress of the TSE Contractor's Activities;





- (E) the TSE Contractor's proposed methodology for dealing with or rectifying the Defective Early Works; and
  - (F) any other relevant matters.
- (d) The TSE Contractor must carry out the Early Works Inspections immediately upon completion of the relevant Early Works and in any event within 5 Business Days after the TSE Contractor being given access to the relevant part of the Construction Site upon which the Early Works are located.
- (e) The TSE Contractor must provide the Principal's Representative with any information reasonably required by the Principal in relation to the Defective Early Works.
- (f) Unless the Principal's Representative gives a direction under clause 14.2(h)(i), the TSE Contractor is solely responsible for dealing with and rectifying the Defective Early Works in a manner so as to minimise any delay and extra costs.
- (g) Where the TSE Contractor carried out the Early Works Inspection within the time required by clause 14.2(d) and:
- (i) has given a notice:
    - (A) under clause 14.2(c)(ii); and
    - (B) within the time required by clause 14.2(c)(ii); or
  - (ii) the TSE Contractor subsequently encounters Defective Early Works which could not reasonably have been anticipated by an experienced and competent contractor that had carried out an Early Works Inspection in accordance with clause 14.2(c),
- any work performed by the TSE Contractor in dealing with or overcoming the Defective Early Works will be treated as a Change (as if the Principal had issued a Change Order), for which the TSE Contractor is entitled to claim:
- (iii) its reasonable additional Costs of giving effect to the Change (valued in accordance with clause 13.4); and
  - (iv) an extension of time under clause 17 in respect of any delay in achieving Construction Completion (as a result of the Defective Early Works and their rectification).
- Other than set out above the TSE 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 any such work or the Defective Early Works.
- (h) The Principal may require any Defective Early Works to be rectified by the Early Works Contractor or another Interface Contractor, in which case the Principal will:
- (i) promptly notify the TSE Contractor; and
  - (ii) procure the Early Works Contractor or other Interface Contractor (as applicable) to rectify the Defective Early Works expeditiously.
- (i) Where the Principal gives a notice under clause 14.2(h)(i), the TSE Contractor:



- (i) must cooperate with the Early Works Contractor or other Interface Contractor (as applicable) so that that contractor may rectify the Defective Early Works;
- (ii) where the TSE Contractor has:
  - (A) carried out the Early Works Inspection within the time required by clause 14.2(d); and
  - (B) given a notice under clause 14.2(c)(ii) within the time required by clause 14.2(c)(ii),

will be entitled to make a claim for an extension of time under clause 17 in respect of any delay in achieving Construction Completion as a result of the Defective Early Works and their rectification;
- (iii) other than as set out in clause 14.2(i)(ii), 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 Defective Early Works or their rectification; and
- (iv) upon the completion of the rectification by the Early Works Contractor or another Interface Contractor, the process in this clause 14.2 will reapply in relation to the relevant Early Works which have been rectified.
- (j) The parties acknowledge and agree that this clause 14.2 only applies to Early Works which are physical works and not to any Early Works which comprise the provision by the Principal of approved designs to the TSE Contractor.

**14.3 Demolition Works**

- (a) The TSE Contractor acknowledges and agrees that:
  - (i) prior to the date of this deed the Principal:
    - (A) entered into the Demolition Contracts so that certain Demolition Works can commence prior to the date of this deed and to assist the TSE Contractor achieve Construction Completion of each Portion by the Date for Construction Completion for each Portion; and
    - (B) may have directed one or more of the Demolition Contractors to commence performance of all or part of the Demolition Works;
  - (ii) the Demolition Works form part of the TSE Contractor's Activities; and
  - (iii) subject to the terms of each Demolition Contract Deed of Novation, the TSE Contractor will bear the risk of and responsibility for the Demolition Works as if it had been party to the Demolition Contracts from the date of their execution.
- (b) On or before the Condition Precedent Deadline Date:
  - (i) the TSE Contractor must enter into each Demolition Contract Deed of Novation substantially in the form of Part 1 and Part 2 of Schedule A16 (as applicable) in respect of the Demolition Contracts; and
  - (ii) the Principal will execute, and procure that each Demolition Contractor executes, a Demolition Contract Deed of Novation in the same form that is executed by the TSE Contractor.

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- (c) Subject to the terms of each Demolition Contract Deed of Novation, the novation of the Demolition Contracts will not in any way:
- (i) relieve the TSE Contractor from its obligations and liabilities under this deed;
  - (ii) limit or otherwise affect any warranty provided by the TSE Contractor under this deed;
  - (iii) limit or otherwise affect the Principal's rights against the TSE Contractor (including those arising out of any warranties given under this deed); or
  - (iv) entitle the TSE Contractor to make any Claim,
- whether under this deed or otherwise according to any Law.

#### 14.4 Performance of TSE Contractor's Activities

- (a) Without limiting clause 14.1, in performing the TSE Contractor's Activities, the TSE Contractor must:
- (i) keep the Construction Site clean and tidy and regularly remove from any place where the TSE Contractor's Activities are being performed any waste or surplus material (including Materials) arising from such performance;
  - (ii) in respect of Construction Plant used in performing the TSE Contractor's Activities:
    - (A) use any Construction Plant which this deed prescribes or otherwise requires the TSE Contractor to use including any Construction Plant referred to in a Project Plan;
    - (B) ensure such Construction Plant complies with, and is maintained by the TSE Contractor in accordance with, all relevant Laws;
    - (C) not remove Key Plant and Equipment from the Construction Site without the Principal's Representative's prior written consent;
    - (D) provide the Principal's Representative, upon request, written details of the name and address of the owner of such Construction Plant (where such owner is not the TSE Contractor) held or used by the TSE Contractor under an agreement with the owner of the Construction Plant;
  - (iii) act in a timely and expeditious manner;
  - (iv) once it has commenced any construction activities on the Construction Site, regularly and diligently proceed with the construction of the Project Works and take all steps reasonably available to it (including re-sequencing and re-scheduling the commencement of other TSE Contractor's Activities) to minimise any disruption to, impact of the performance of the TSE Contractor's Activities on, or compromising the safety of other users of:
    - (A) the Existing Operations;
    - (B) Local Areas; or
    - (C) Utility Services;



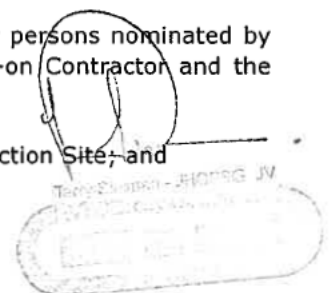
- (v) give priority to the safety of persons, vehicles or waterborne craft using the Existing Operations or otherwise affected by the performance of the TSE Contractor's Activities;
  - (vi) without limiting clause 3.5, coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles, waterborne craft and traffic) or operations of Authorities;
  - (vii) do all things and take all measures necessary to protect people and property; and
  - (viii) minimise nuisance, noise, vibration and disturbance and comply with the requirements of Authorities.
- (b) Without limiting clause 14.1, the TSE Contractor warrants that it will perform the TSE Contractor's Activities using the workmanship and Materials required by this deed and which are fit for their intended purposes.
  - (c) The TSE Contractor must take all reasonable precautions to avoid obstruction and damage to any property (including the property of the Principal) and Utility Services arising out of the performance of the TSE Contractor's Activities.
  - (d) The TSE Contractor must not commence construction of the WAD Works, the Sydney Trains Interface Works, the Cross City Tunnel Works, the Council Interface Works, Sydney Water Interface Works or the Transgrid Interface Works until all relevant preconditions to commencement of those works in the WAD, the Sydney Trains Interface Agreement, the Cross City Tunnel Interface Agreement, the Council Interface Agreements, the Sydney Water Interface Agreement and the Transgrid Interface Agreement have respectively been satisfied.

**14.5 Setting out**

- (a) The TSE 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 TSE 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 TSE Contractor discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the TSE Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the TSE Contractor must at its cost rectify the error.

**14.6 Principal's right to inspect and seek comments**

- (a) The Principal, the Principal's Representative (and any other persons nominated by the Principal), OpCo2, any Alternate Operator, any Follow-on Contractor and the Independent Certifier may at any time:
  - (i) inspect the TSE Contractor's Activities on the Construction Site; and



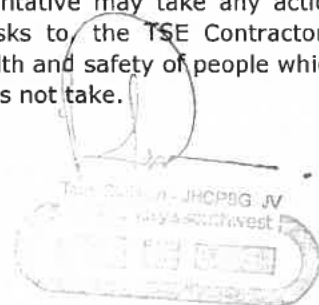
- (ii) seek comments from others in respect of the TSE Contractor's Activities, and the Principal, the Principal's Representatives, any Follow-on Contractor, any Alternate Operator and OpCo2 may at any time provide comments to the Independent Certifier in respect of the TSE Contractor's Activities (with a copy to the TSE Contractor).
- (b) A Follow-on Contractor, any Alternate Operator or OpCo2 may only inspect the TSE Contractor's Activities on the Construction Site when accompanied by a representative of the Principal or the Independent Certifier.
- (c) Neither the Principal, the Principal's Representative, any Follow-on Contractor, any Alternate Operator, OpCo2 nor any of the persons nominated by the Principal pursuant to clause 14.6(a) above, owes any duty to the TSE Contractor to:
  - (i) inspect the TSE Contractor's Activities; or
  - (ii) review any construction or repair for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (d) No inspection or review of the TSE Contractor's Activities or of any construction or repair by the Principal, the Principal's Representative, any Follow-on Contractor, any Alternate Operator, OpCo2 or any person nominated by the Principal pursuant to clause 14.6(a) above will in any way lessen or otherwise affect:
  - (i) the TSE Contractor's obligations under this deed (including its obligations under clause 14.1(a)) or otherwise according to Law; or
  - (ii) the Principal's rights against the TSE Contractor whether under this deed or otherwise according to Law.

**14.7 All work included**

- (a) Subject to any express term of this deed to the contrary, the TSE Contractor must, without adjustment to any component of the Design Contract Sum or the Construction Contract Sum, provide all services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work necessary for the TSE Contractor's Activities whether or not they are:
  - (i) expressly mentioned in this deed or the Design Documentation prepared by the TSE Contractor which the TSE Contractor is entitled to use for construction purposes under clause 12.10(a); or
  - (ii) anticipated by the TSE Contractor.
- (b) Such services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work form part of the TSE Contractor's Activities and must be undertaken and provided by the TSE Contractor at its own cost and will not constitute a Change or otherwise entitle the TSE Contractor to make a Claim against the Principal.

**14.8 The Principal's action**

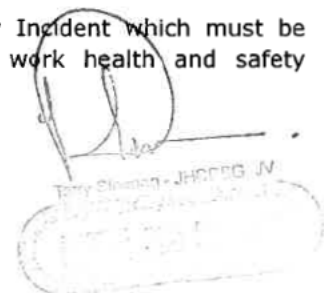
- (a) Without limiting clause 30.9, the Principal's Representative may take any action necessary to protect, or to prevent or minimise risks to, the TSE Contractor's Activities, the Environment, other property or the health and safety of people which the TSE Contractor must take under this deed but does not take.



- (b) The amount of any Loss the Principal suffers or incurs arising out of or in connection with:
- (i) taking the action contemplated in clause 14.8(a); or
  - (ii) the TSE Contractor's failure to take that action,
- will, except to the extent prohibited by Law, be a debt due from the TSE Contractor to the Principal.

**14.9 Incident management**

- (a) The TSE Contractor must identify clear guidelines for responding to any Incident arising from the performance of the TSE Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.
- (b) Should an Incident occur which is reportable under any relevant Law, the TSE Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative.
- (c) In relation to any environmental or safety Incident involving Contamination or Waste that arises during the performance of the TSE Contractor's Activities, the TSE Contractor must:
- (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination or 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) Without prejudice to the Principal's other rights under this deed, if the Principal's Representative forms the view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the TSE 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. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the TSE Contractor as a debt due from the TSE Contractor to the Principal.
- (e) Without prejudice to the Principal's other rights under this deed, the Principal's Representative may issue an immediate stop work order in the event of any Incident, or the imminent risk of any Incident, involving:
- (i) a significant spill of Contamination;
  - (ii) any actual damage to the Environment or a significant risk of harm to the Environment; or
  - (iii) 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.



- (f) The Principal will not be liable upon any Claim by the TSE Contractor for any Loss arising out of or in connection with any work stoppage due to a stop work order or for the failure by the Principal's Representative to issue a stop work order.
- (g) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any stop work order in relation to the TSE Contractor's, its agents' or its Subcontractors' acts or omissions in performing the TSE Contractor's Activities as a debt due from the TSE Contractor to the Principal.

#### 14.10 Instructions from Authorities

Notwithstanding any other provision of this deed, the TSE Contractor:

- (a) must not restrict, close, interfere with or obstruct the free flow of the public in public spaces, parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, or waterborne craft on any waterway, including Local Areas, contrary to the instructions of the New South Wales Police Service or any other Authority; and
- (b) in restricting, closing, interfering with or obstructing the free flow of the public in public spaces or parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, or waterborne craft on any waterway, including Local Areas, must act in accordance with any instructions of the New South Wales Police Service or any other Authority including to cease any of the TSE Contractor's Activities and to re-open the public space, park, pedestrian way, pedal cycle path, lane or shoulder.

#### 14.11 Survey

The TSE Contractor must, as a condition precedent to Construction Completion of each Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative a survey certificate (within the meaning of that term in the *Surveying and Spatial Information Regulation 2012* (NSW)) signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) who is approved by the Principal's Representative stating that:

- (a) the whole of the Portion is within the relevant boundaries of the Project Site stipulated in this deed, except only for parts of the Portion specifically required by this deed to be outside those boundaries (including any Handover Works which this deed specifically states may be left in a Temporary Area at Construction Completion);
- (b) the elements of the Portion are in the positions and within the tolerances required by this deed;
- (c) the survey information included in the Asset Management Information provided by the TSE Contractor pursuant to clause 14.14 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.

#### 14.12 Cleaning up

Without limiting clause 14.4, in carrying out the TSE Contractor's Activities, the TSE Contractor must:



- (a) keep the Construction Site, Extra Land and the Project Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material (including Materials) from the Construction Site and Extra Land;
- (c) prior to vacating any area of the Construction Site for which a Site Access Expiry Date is specified in Table 7 of the Site Access Schedule remove all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works from the relevant parts of the Construction Site.
- (d) as a condition precedent to Construction Completion of a Portion, remove all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works (other than the Handover Works) from the relevant parts of the Construction Site and Extra Land relevant to that 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.

#### 14.13 Work methods

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 or the Principal's Representative, the fact that any work method that the TSE Contractor adopts or proposes to adopt is impractical or impossible or that the TSE Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the TSE 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.

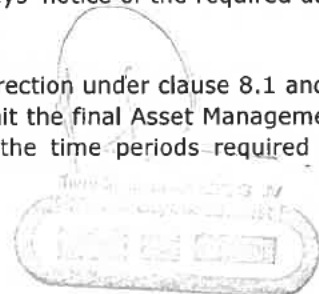
#### 14.14 Asset Management Information

- (a) The TSE Contractor must develop and implement an Asset Management Information Delivery Plan in accordance with this deed, including the SWTC (including Appendix E.6 of the SWTC).
- (b) As a condition precedent to Completion of each Portion, the TSE Contractor must develop the Asset Management Information for that Portion.
- (c) Each set of Asset Management Information must contain the contents required by the SWTC.
- (d) The TSE Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier an initial draft of the Asset Management Information for the Portion which is not intended to differ in substance from the final draft (including the initial submission of the Asset Management Information but excluding the incorporation of the other Project Plans required by clause 9.5(d)) but for minor details:
  - (i) no less than 180 days prior to the Date for Completion of the Portion;
  - (ii) if either:
    - (A) the Principal's Representative reasonably anticipates that the Date of Completion of the Portion will be prior to the applicable Date for



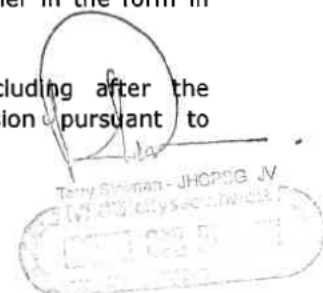
Completion, no less than 180 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the TSE Contractor 35 days' notice of the required date for submission; or

- (B) it is otherwise reasonably apparent that the anticipated Date of Completion of the Portion will be earlier than the applicable Date for Completion, no less than 180 days prior to the reasonably anticipated Date of Completion of the Portion; or
  - (iii) if the Principal's Representative has given a direction under clause 8.1 and it is not possible for the TSE Contractor to submit an initial draft of the Asset Management Information for the Portion within either of the time periods required by clauses 14.14(d)(i) or 14.14(d)(ii), within such other reasonable period of time directed by the Principal's Representative.
- (e) The TSE Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier a final draft of the Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 9.5(d)):
- (i) no less than 90 days prior to the Date for Completion of the Portion; or
  - (ii) if either:
    - (A) the Principal's Representative reasonably anticipates that the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 90 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the TSE Contractor 35 days' notice of the required date for submission; or
    - (B) it is otherwise reasonably apparent that the anticipated Date of Completion of the Portion will be earlier than the applicable Date for Completion, no less than 90 days prior to the reasonably anticipated Date of Completion of the Portion; or
  - (iii) if the Principal's Representative has given a direction under clause 8.1 and it is not possible for the TSE Contractor to submit a final draft of the Asset Management Information for the Portion within either of the time periods required by clauses 14.14(e)(i) or 14.14(e)(ii), within such other reasonable period of time directed by the Principal's Representative.
- (f) The TSE Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier the final Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 9.5(d)):
- (i) no less than 30 days prior to the Date for Completion of the Portion;
  - (ii) if the Principal's Representative reasonably anticipates that the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 30 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the TSE Contractor 35 days' notice of the required date for submission; or
  - (iii) if the Principal's Representative has given a direction under clause 8.1 and it is not possible for the TSE Contractor to submit the final Asset Management Information for the Portion within either of the time periods required by



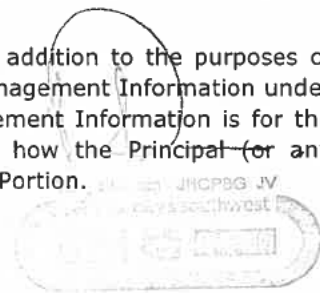
clauses 14.14(f)(i) or 14.14(f)(ii), within such other reasonable period of time directed by the Principal's Representative.

- (g) The TSE Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may review any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 14.14(d), 14.14(e), 14.14(f), 14.14(k) or 14.14(q).
- (h) The Principal's Representative may:
- (i) provide copies of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 14.14(d), 14.14(e), 14.14(f), 14.14(k) or 14.14(q) to; and
  - (ii) seek comments in respect of any Asset Management Information, or any draft of any Asset Management Information, from,
- any Follow-on Contractor, OpCo2 or any Alternate Operator.
- (i) The TSE Contractor acknowledges and agrees that:
- (i) the Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the TSE Contractor; and
  - (ii) the Principal's Representative may (but is not obliged to) make comments (with a copy to the TSE Contractor) to the Independent Certifier,
- in respect of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 14.14(d), 14.14(e), 14.14(f), 14.14(k) or 14.14(q).
- (j) The Principal and the TSE Contractor acknowledge and agree that:
- (i) the Independent Certifier may, within 15 Business Days of the submission of a set of Asset Management Information or a draft thereof, reject the Asset Management Information or the draft for a failure to comply with the requirements of this deed;
  - (ii) the Independent Certifier must, within 15 Business Days of the submission of the final set of Asset Management Information under clause 14.14(f) (**Final Submission**), either:
    - (A) reject the Final Submission for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Final Submission is required (together with reasons) and a time within which this must occur; or
    - (B) certify the Final Submission by:
      - (aa) including a notation on the Final Submission; and
      - (bb) providing to the Principal's Representative, the TSE Contractor and, if required by the Principal's Representative, OpCo2 a document signed by the Independent Certifier in the form in Schedule B10; and
  - (iii) the Principal's Representative may at any time (including after the Independent Certifier has certified a Final Submission pursuant to



clause 14.14(j)(ii)(B)) direct the TSE Contractor to make amendments to the Asset Management Information.

- (k) If a set of Asset Management Information or any draft is rejected or if the Principal's Representative directs the TSE Contractor to amend a set of Asset Management Information under clause 14.14(j), clause 14.14(q) shall apply except that the reference to "15 Business Days" will be deemed to be a reference to the IC Design Re-Review Period.
- (l) Where any Asset Management Information that is relevant to more than one Portion has previously been:
- (i) submitted by the TSE Contractor for another Portion under clause 14.14(d), 14.14(e) or 14.14(f), or
  - (ii) certified by the Independent Certifier pursuant to clause 14.14(j)(ii)(B),
- the TSE Contractor will not be required to re-submit such Asset Management Information for subsequent Portions provided that:
- (iii) for each subsequent Portion the TSE Contractor clearly identifies that the relevant Asset Management Information has already been submitted for a previous Portion; and
  - (iv) the relevant Asset Management Information:
    - (A) is still current and has not been amended by the TSE Contractor;
    - (B) does not require amendment to:
      - (aa) reflect the impact of any Change directed by the Principal's Representative; or
      - (bb) otherwise comply with the requirements of this deed; and
    - (C) has not been the subject of a direction given by the Principal's Representative under clause 14.14(j)(iii).
- (m) The Principal's Representative owes no duty to the TSE Contractor to review any Asset Management Information or any draft submitted by the TSE Contractor for errors, omissions or compliance with this deed.
- (n) No review of, comments upon or rejection of any Asset Management Information or any draft by the Principal's Representative or the Independent Certifier, nor any other Direction by the Principal's Representative (including a direction under clause 14.14(q)) in respect of any Asset Management Information or any draft, will lessen or otherwise affect:
- (i) the TSE Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law.
- (o) The TSE Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Asset Management Information under clause 9.5(d), a purpose of each set of Asset Management Information is for the TSE Contractor to provide a detailed description of how the Principal (or any nominee of the Principal) should maintain the relevant Portion.

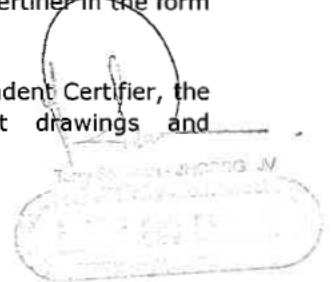


- (p) The TSE Contractor warrants that each set of Asset Management Information will be fit for its intended purpose, including for the purpose of enabling the Principal (or any nominee of the Principal) to maintain the relevant Portion.
- (q) Without limiting clause 15, where a draft of a set of Asset Management Information is rejected by the Independent Certifier or the Principal's Representative directs the TSE Contractor to amend a set of Asset Management Information under clause 14.14(j), the TSE Contractor must:
  - (i) further develop, update or amend the Asset Management Information to address the matters raised by the rejection by the Independent Certifier under clause 14.14(j) or the Principal's Representative direction under clause 14.14(j)(iii) (as applicable); and
  - (ii) submit the further developed, updated or amended Asset Management Information to the Principal's Representative and the Independent Certifier within the time specified under clause 14.14(j)(ii)(A),

and the process in clauses 14.14(g) to 14.14(q) will be reapplied to the further developed, updated or amended Asset Management Information.

**14.15 As-built drawings**

- (a) As a condition precedent to Completion of each Portion, the TSE Contractor must prepare and submit as-built drawings for the relevant Portion.
- (b) All as-built drawings must:
  - (i) comply with the requirements of this deed including the SWTC; and
  - (ii) be accompanied by a certificate in the form of Schedule B23 from:
    - (A) the TSE Contractor; and
    - (B) if prepared by a Subcontractor, the Subcontractor,
 certifying that the as-built drawings comply with all requirements of this deed including the SWTC.
- (c) The Principal and the TSE Contractor acknowledge and agree that the Independent Certifier must, within 15 Business Days of the submission of the as-built drawings for a Portion, either:
  - (i) reject the as-built drawings for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the as-built drawings (together with reasons) and a time within which this must occur; or
  - (ii) certify the as-built drawings by:
    - (A) including a notation on the as-built drawings; and
    - (B) providing to the Principal's Representative, the TSE Contractor and, if required by the Principal's Representative, OpCo2 or any Alternate Operator, a document signed by the Independent Certifier in the form in Schedule B24.
- (d) If the as-built drawings for a Portion are rejected by the Independent Certifier, the TSE Contractor must update and resubmit the as-built drawings and

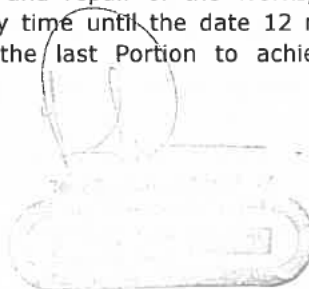


clause 14.15(c) shall re-apply except that the reference to "15 Business Days" will be deemed to be a reference to the IC Design Re-Review Period.

- (e) The TSE Contractor acknowledges and agrees that:
- (i) the Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the TSE Contractor; and
  - (ii) the Principal's Representative may (but is not obliged to) make comments (with a copy to the TSE Contractor) to the Independent Certifier,
- in respect of any as-built drawings submitted under clause 14.15(a) or clause 14.15(d).
- (f) The Principal's Representative may:
- (i) provide copies of any as-built drawings to; and
  - (ii) seek comments in respect of any as-built drawings, from,
- any Interface Contractor.
- (g) The Principal's Representative owes no duty to the TSE Contractor to review any as-built drawings submitted by the TSE Contractor for errors, omissions or compliance with this deed.
- (h) No review of, comments upon or rejection of any as-built drawings by the Principal's Representative or the Independent Certifier, nor any other Direction by the Principal's Representative in respect of any as-built drawings, will lessen or otherwise affect:
- (i) the TSE Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the TSE Contractor, whether under this deed or otherwise according to Law.

#### 14.16 Training

- (a) For each Portion, during the final 3 months prior to the Date for Construction Completion of the Portion or such earlier date reasonably specified by the Principal's Representative, the TSE Contractor must train personnel as nominated by the Principal's Representative (which may include personnel of any Follow-on Contractor, OpCo2 or any Alternate Operator) in all aspects of the maintenance of the Works, the Temporary Works and the Handover Works comprised in that Portion to a level of competency that will allow those personnel to operate, manage and maintain those Works, Temporary Works and Handover Works after the Date of Construction Completion of the Portion.
- (b) The TSE Contractor must ensure that it has competent and experienced personnel available to consult with the Principal (and any nominee of the Principal) on any aspect of the operation, maintenance and repair of the Works, the Temporary Works and the Handover Works at any time until the date 12 months after the Date of Construction Completion of the last Portion to achieve Construction Completion.



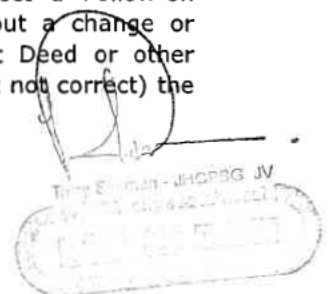
**15. DEFECTS, INSPECTION AND REPAIR**

**15.1 Defects**

- (a) The TSE Contractor must promptly give the Principal's Representative and the Independent Certifier and, if required by the Principal's Representative, OpCo2, any Follow-on Contractor or any Alternate Operator, 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 TSE Contractor must correct all Defects arising prior to the expiry of the Defects Correction Period whether or not the Principal's Representative, the Independent Certifier, OpCo2, any Follow-on Contractor or any Alternate Operator notifies the TSE 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 TSE Contractor to correct Defects, the TSE 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 of the Date of Construction Completion of the relevant Portion; and
  - (iii) correct all Minor Defects and Agreed Defects identified in a Notice of Construction Completion as a pre-condition to the achievement of Completion of the relevant Portion.

**15.2 Principal's Representative's Direction**

- (a) If prior to or during the applicable Defects Correction Period the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 15.1(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 TSE Contractor a direction specifying the Defect and doing one or more of the following:
  - (i) requiring the TSE Contractor to correct the Defect or a part of it and specifying the time within which this must occur;
  - (ii) requiring the TSE Contractor to carry out a Change to overcome the Defect or a part of it and specifying the time within which this must be carried out;
  - (iii) advising the TSE Contractor that the Principal will accept the work or a part of it despite the Defect;
  - (iv) advising the TSE Contractor that the Principal will direct a Follow-on Contractor, OpCo2 or any Alternate Operator to carry out a change or variation under its Follow-on Contract, the OTS2 Project Deed or other contract with the Principal (as applicable) to overcome (but not correct) the Defect or a part of the Defect; or



- (v) in respect of any Defect:
  - (A) to which clause 15.3(b) applies; or
  - (B) subject to clause 15.2(c), discovered during a Defects Correction Period,

advising the TSE 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 TSE Contractor is required to correct a Defect or carry out a Change for the purposes of this clause 15.2, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities which:
  - (i) any Follow-on Contractor may be carrying out in discharge of its obligations under its relevant Follow-on Contract;
  - (ii) OpCo2 may be carrying out in discharge of its obligations under the OTS2 Project Deed; or
  - (iii) any Alternate Operator may be carrying out in discharge of its obligations under its contract with the Principal.

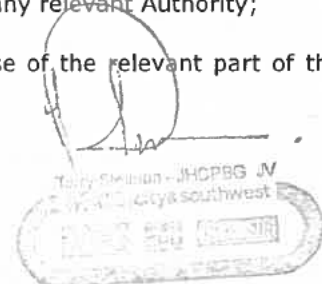
■ [REDACTED]

- (i) [REDACTED]

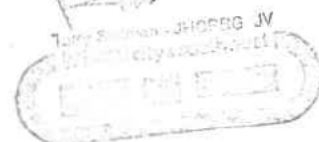
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### 15.3 Correction of Defect or Change

- (a) If a direction is given under clause 15.2(a)(i) or 15.2(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 TSE Contractor:
  - (i) must correct the Defect (or the part of it) or carry out the Change (as the case may be):
    - (A) within the time specified in the Principal's Representative's direction;
    - (B) at times notified by the Principal's Representative;
    - (C) in accordance with the requirements of any relevant Authority;
    - (D) so as to minimise the impact on the use of the relevant part of the Project Works;



- (E) in a manner which causes as little inconvenience as possible to:
    - (aa) the activities which:
      - (a) any Follow-on Contractor may be carrying out in discharge of its obligations under its relevant Follow-on Contract;
      - (b) OpCo2 may be carrying out in discharge of its obligations under the OTS2 Project Deed; or
      - (c) any Alternate Operator may be carrying out in discharge of its obligations under its contract with the Principal; and
    - (bb) users of the Works, a Local Area, a Utility Service or any access and the adjacent community; and
  - (F) at the TSE Contractor's risk in respect of any restrictions on access;
  - (G) if a Follow-on Contractor, OpCo2 or any Alternate Operator, as applicable, has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing any Follow-on Works or the OTS2 Project Works or operating and maintaining Sydney Metro City & Southwest, as applicable, in accordance with the requirements of the relevant Follow-on Contractor, OpCo2 or Alternate Operator, as applicable, in relation to access and site safety;
  - (H) in accordance with its obligations under the:
    - (aa) relevant Follow-on Contractor Cooperation and Integration Deed; or
    - (bb) TSE-OTS2 Cooperation and Integration Deed, as applicable; and
  - (I) 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
- (ii) will only be entitled to receive an extension of time (if relevant) or to have any component of the Project Contract Sum adjusted for correcting the Defect (or the part of it) or for carrying out the Change if:
- (A) it complies with clause 17.6 or clause 29 (as the case may be); and
  - (B) the Defect (or the part of it) is something for which the TSE Contractor is not responsible.
- (b) If the TSE Contractor does not comply with clause 15.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the TSE Contractor with respect to the Defect under this deed or otherwise at Law, give the TSE Contractor a direction under clause 15.2(a)(v) and have the correction or Change work carried out at the TSE Contractor's expense, and the cost of the correction or Change work incurred by the Principal will be a debt due from the TSE Contractor to the Principal.





**15.4 Acceptance of work or rectification by others**

(a) Subject to clause 15.4(b), if a direction is given under clause 15.2(a)(iii) or 15.2(a)(v)(B) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the TSE Contractor is responsible for the Defect (or the part of it), the Project Contract Sum will be reduced by the amount which represents the reasonable cost of correcting the Defect (or the part of it), such amount to be as stated by the Principal's Representative.

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

**15.5 Changes under other contracts to overcome Defects**

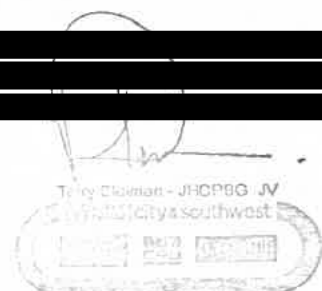
If a direction is given by the Principal's Representative under clause 15.2(a)(iv) then:

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

the TSE Contractor must indemnify the Principal from and against any Liability that the Principal suffers or incurs arising out of or in connection with the change or variation directed by the Principal under the relevant Follow-on Contract, the OTS2 Project Deed or other contract (as applicable) to the extent necessary to overcome the Defect (or the part of it) and clause 15.4 will not apply.

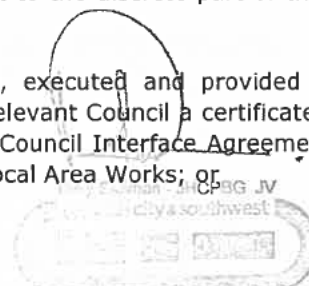
**15.5A Responsibility for Defects**

- [Redacted]





- (i) in accordance with clauses 15.7(c) and 15.7(d);
  - (ii) in the case of the Hickson Road Works, in accordance with clause 12 of Schedule D14;
  - (iii) in the case of the WAD Road Works, in accordance with the procedures in the WAD in relation to Practical Completion (WAD Road Works);
  - (iv) in the case of the Council Works, in accordance with the procedure in the relevant Council Interface Agreement in relation to Practical Completion (Council Works); or
  - (v) in the case of the Sydney Trains Works, in accordance with the procedure in the Sydney Trains Interface Agreement in relation to Practical Completion (Sydney Trains Works).
- (c) When the TSE Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative and the Independent Certifier in writing and the Principal's Representative, the Independent Certifier, the Project Director and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time within 10 Business Days of the TSE Contractor's notification (or such longer period specified in any Third Party Agreement).
- (d) Following the joint inspection under clause 15.7(c) and subject to clause 15.7(e), the Principal and the TSE Contractor acknowledge that the Independent Certifier will determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the requirements of any relevant Third Party Agreement (if applicable) and will notify the TSE Contractor and the Principal in writing and within 5 Business Days of the date of the inspection (or such longer period permitted under any relevant Third Party Agreement):
- (i) if the discrete part is complete, of the date on which the TSE Contractor has completed the discrete part of the Local Area Works in accordance with this deed, which subject to clause 15.7(f)(i), will be the relevant date for the purposes of clause 15.7(a)(i); or
  - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 15.7(c) and this clause 15.7(d) will reapply).
- (e) Each discrete part of the Local Area Works will not be regarded as complete unless the Independent Certifier has:
- (i) executed and provided to the Principal's Representative a certificate in the form of Schedule B9 with respect to the discrete part of the Local Area Works; and
  - (ii) additionally:
    - (A) in the case of the WAD Road Works, executed and provided to the Principal's Representative and RMS a certificate in the form of Schedule 3 to the WAD with respect to the discrete part of the Local Area Works;
    - (B) in the case of any Council Works, executed and provided to the Principal's Representative and the relevant Council a certificate in the form of Schedule 4 to the relevant Council Interface Agreement with respect to the discrete part of the Local Area Works; or



- (C) in the case of any Sydney Trains Works, executed and provided to the Principal's Representative, Sydney Trains and RailCorp a certificate in the form of Schedule 5 to the Sydney Trains Interface Agreement with respect to the discrete part of the Sydney Trains Works.
- (f) 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 TSE 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 TSE Contractor is unable to obtain a notice required under clause 15.7(f)(i)(A) despite having used its best endeavours to do so, a statement from the TSE Contractor to the effect that:
      - (aa) the discrete part of the Local Area Works is complete and the TSE 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 15.7(f)(i)(A) despite being given 15 Business Days to provide the notice requested by the TSE Contractor;
    - (C) to the extent that the discrete part of the Local Area Works constitutes WAD Road Works, the Independent Certifier has executed and provided to the Principal's Representative and RMS a certificate in the form of Schedule 3 to the WAD with respect to the discrete part of the Local Area Works;
    - (D) to the extent that the discrete part of the Local Area Works constitutes Council Works, the Independent Certifier has executed and provided to the Principal's Representative and the relevant Council a certificate in the form of Schedule 4 to the relevant Council Interface Agreement with respect to the discrete part of the Local Area Works;
    - (E) to the extent that the discrete part of the Local Area Works constitutes Sydney Trains Works, the Independent Certifier has executed and provided to the Principal's Representative, Sydney Trains and RailCorp a certificate in the form of Schedule 5 to the Sydney Trains Interface Agreement with respect to the discrete part of the Local Area Works; and
  - (ii) Construction Completion of a Portion that the written notices or statements required under clause 15.7(f)(i) have been provided to the Principal's Representative for all discrete parts of the Local Area Works that form part of that Portion.

**15.8 Utility Service Works**

- (a) Each discrete part of the Utility Service Works 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 TSE Contractor is unable to obtain a notice required under clause 15.8(a)(i)(A) despite having used its best endeavours to do so, a written statement from the TSE Contractor to the effect that:
  - (aa) the discrete part of the Utility Service Works is complete and the TSE 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 15.8(a)(i)(A) despite being given 15 Business Days to provide the notice requested by the TSE 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 15.2(a)(i) or 15.2(a)(ii) (relating to the discrete part of the Utility Service Works) 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 Change 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 15.8(a)(ii)(A), when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Change completed,

provided that no Defects Correction Period for any discrete part of the Utility Service Works will extend beyond the date that is 24 months after the date of the applicable notice or statement given under clause 15.8(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 15.8(a)(i) has been given for each discrete part of the Utility Service Works that form part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or
  - (ii) the TSE 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 15.8(a)(i)(A); and
    - (B) provided the Principal's Representative with a written statement of the kind referred to in clause 15.8(a)(i)(B).

**15.9 Property Works**

- (a) Subject to clause 15.9(b), each discrete part of the Property Works has:

Handwritten signature of Tony Sumner and a circular stamp containing the text: Tony Sumner - JHCPBG JV, City of South West.

- (i) a Defects Correction Period of 12 months, which begins upon:
  - (A) the completion of the Property Works; or
  - (B) submission by the TSE Contractor of a certificate or signed statement (as the case may be) to the Principal's Representative under clause 10.3(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 15.2(a)(i) or 15.2(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 Change
- (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 10.3(a)(ii).

**15.10 Failure by the TSE Contractor to comply with Direction**

- (a) Without limiting clause 30.9, if the TSE Contractor does not comply with a direction referred to in clause 15.2(a)(i) or 15.2(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 15.10(a) or as a result of the TSE Contractor's failure to comply with clause 15.3(a)(i) will be a debt due from the TSE Contractor to the Principal.

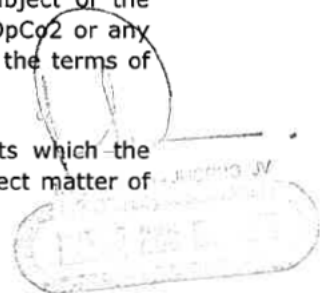
**15.11 Rights not affected**

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

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 15 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any direction of the Principal's Representative under clause 15.2.

**15.12 Warranties by others**

- (a) The TSE Contractor must, as a condition precedent to Construction Completion of the last Portion to reach Construction Completion, procure and provide each of the Principal and OpCo2 or any Alternate Operator (as required by the Principal's Representative), with all warranties required by Schedule A6, from the relevant Subcontractors undertaking or supplying the work or items the subject of the warranty. These warranties must be in favour of the Principal and OpCo2 or any Alternate Operator (as required by the Principal's Representative) on the terms of the deed in Schedule A7.
- (b) The provision of those warranties will not derogate from any rights which the Principal may have against the TSE Contractor in respect of the subject matter of those warranties.



**15.13 Use of defective facilities**

The TSE Contractor must not allow the use of any part of the Project Works or Temporary Works which the TSE Contractor knows is defective or unsafe and which threatens the health or safety of people.

**15.14 Final inspections of Project Works (other than Third Party Works)**

- (a) The TSE Contractor, the Principal's Representative, the Independent Certifier and either OpCo2 or any Alternate Operator, will carry out a final inspection of the Project Works (other than the Third Party Works) 6 months before the end of the Defects Correction Period (**Final Inspection**).
- (b) Where OpCo2 is not involved in the Final Inspection:
  - (i) within 5 Business Days of the Final Inspection, the Principal's Representative and the Alternate Operator may give the Independent Certifier written notice of any Defects which they observed during the Final Inspection or of which they are otherwise aware;
  - (ii) within 10 Business Days of the Final Inspection, the Independent Certifier must give the Principal's Representative and the Alternate Operator a list of Defects (taking into account any notice received from the Principal's Representative or Alternate Operator under clause 15.14(b)(i)); and
  - (iii) if the Independent Certifier notifies the parties of any Defects pursuant to clause 15.14(b)(ii), the Principal may give a notice under clause 15.2 in respect of such Defect.
- (c) Where OpCo2 is involved in the Final Inspection, clause 5 of the TSE-OTS2 Cooperation and Integration Deed will apply in relation to the Final Inspection.

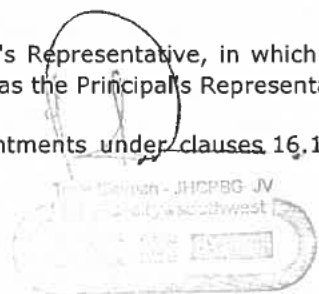
**15.15 Final inspections of Third Party Works**

- (a) The TSE Contractor, the Principal's Representative, the Independent Certifier and applicable Authorities, will carry out a final inspection of the Third Party Works 3 months before the end of the Defects Correction Period for the relevant Third Party Works (or at such other time specified by any relevant Third Party Agreement) (**Final Third Party Works Inspection**).
- (b) If the Principal's Representative, Independent Certifier or applicable Authority identifies any Defects during the Final Third Party Works Inspection, the Principal may give a notice under clause 15.2 in respect of such Defect.

**16. ADMINISTRATION OF THE PROJECT WORKS**

**16.1 Principal's Representative**

- (a) The Principal:
  - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
  - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
  - (iii) must give written notice of all appointments under clauses 16.1(a)(i) and 16.1(a)(ii) to the TSE Contractor.



- (b) The Principal's Representative may:
- (i) by written notice to the TSE 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 16.1(b)(i) by notice in writing to the TSE Contractor.
- (c) The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 16.1(b).
- (d) An appointee of the Principal's Representative under clause 16.1(b) may:
- (i) by written notice to the TSE Contractor appoint persons to exercise any of the appointee'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 16.1(d)(i) by notice in writing to the TSE Contractor.
- (e) The Principal and the TSE Contractor acknowledge and agree that the Principal's Representative acts at all times as the servant or agent of the Principal and is subject to the directions of the Principal and will act solely in the interests of the Principal.
- (f) The parties acknowledge that any Principal's Representative Statement is an interim position only and that, without limiting the rights of the Principal's Representative under clause 18.3, either party may seek to have any Principal's Representative Statement opened up, reviewed, decided and substituted pursuant to the dispute resolution provisions in clause 23 by giving a notice of Dispute to the other party in accordance with clause 23.3. If the TSE Contractor wishes to have a Principal's Representative Statement opened up, reviewed, decided and substituted it must give the notice of Dispute required under clause 23.3 within 20 Business Days of the date of receipt of the Principal's Representative Statement.

The Principal will not be liable upon any Claim by the TSE Contractor arising out of or in connection with any Principal's Representative Statement in circumstances where it is incorrect, subsequently overturned pursuant to clause 23, is unreasonable or has been made in accordance with the directions of the Principal (and not independently). The TSE Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any Principal's Representative Statement is by giving a notice of Dispute in accordance with clause 23.3.

If the TSE Contractor does not give such a notice under clause 23.3 within the time required under this clause 16.1(f), then, subject to clause 18.3:

- (i) the Principal's Representative Statement will be binding upon the TSE Contractor and will not thereafter be capable of being opened up or reviewed by any person, including the Dispute Avoidance Board or any arbitrator or court, at the request of or upon any application by the TSE Contractor; and



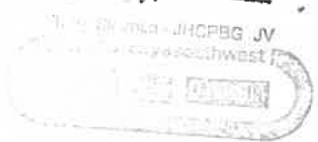


- (ii) the Principal will not be liable upon any Claim by the TSE Contractor arising out of or in any way in connection with the relevant Principal's Representative Statement, other than in accordance with the Principal's Representative Statement.
- (g) The TSE Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of this deed. Only the Principal's Representative or an appointee of the Principal's Representative under clause 16.1(b) is authorised to give any Direction to the TSE Contractor pursuant to this deed. The TSE Contractor must not comply with any Direction purporting to be made or given by any person on behalf of the Principal, other than the Principal's Representative or an appointee of the Principal's Representative under clause 16.1(b).

**16.2 TSE Contractor's personnel**

- (a) The TSE Contractor must:
  - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
  - (ii) ensure that its personnel (including those referred to in clause 16.2(b)) as a team carry out the TSE Contractor's Activities in a manner that is courteous and co-operative and recognises the interests and needs of the local community.
- (b) The TSE Contractor must:
  - (i) employ those personnel specified in Schedule A8 (or where the personnel are employees of a Subcontractor or subsubcontractor, the TSE Contractor must ensure they are so employed) in the positions and for the periods specified in Schedule A8;
  - (ii) subject to clause 16.2(b)(iii), not replace the personnel referred to in clause 16.2(b)(i) (or where the personnel are employees of a Subcontractor or subsubcontractor, the TSE Contractor must ensure they are not replaced) without the Principal's Representative's prior written approval; and
  - (iii) if any of the personnel referred to in clause 16.2(b)(i):
    - (A) dies;
    - (B) becomes seriously ill;
    - (C) resigns from the employment of the TSE Contractor or resigns from the employment of a Subcontractor or a sub-subcontractor (as applicable); or
    - (D) becomes the subject of a direction under clause 16.2(e),

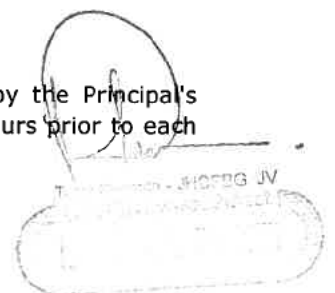
replace them (or where they are employees of a Subcontractor or subsubcontractor, the TSE Contractor must use best endeavours to ensure they are replaced) with personnel of at least equivalent experience, ability, competency and expertise (including in addition to the experience, ability and expertise required by Schedule A8, the same level of experience set out in the curriculum vitae which appear in the SWTC of the relevant person being replaced) approved by the Principal's Representative (with such approval not to be unreasonably withheld).



- (c) The personnel referred to in clause 16.2(b) (including any replacements) must:
  - (i) have the qualifications, skills and experience specified in Schedule A8 (except to the extent the Principal's Representative, in its absolute discretion, elects to waive any such requirements by written notice to the TSE Contractor);
  - (ii) carry out the functions and be given the authorities and responsibilities specified for them in this deed;
  - (iii) be physically based in Australia; and
  - (iv) be available for consultation with the Principal's Representative when the Principal's Representative reasonably requires.
- (d) As required by Schedule A8 TSE Contractor must ensure that the person appointed to the position of "Project Director" (including any replacement):
  - (i) at all times has the authority to act on behalf of and to bind the TSE Contractor in respect of the TSE Contractor's Activities;
  - (ii) has full authority to promptly execute directions of the Principal or the Principal's Representative and to promptly make decisions in relation to the TSE Contractor's Activities; and
  - (iii) without limiting clause 16.2(d)(i) or 16.2(d)(ii), has delegated authority to bind the TSE Contractor in relation to any matter relating to the TSE Contractor's Activities which has a financial impact of [REDACTED] or less without the need to obtain any additional internal or corporate approvals from the TSE Contractor or any entity that comprises the TSE Contractor.
- (e) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the TSE Contractor to remove any person (including a person referred to in clause 16.2(b)) from the Construction Site or the TSE Contractor's Activities.
- (f) The TSE Contractor must ensure that any person the subject of a direction under clause 16.2(e) is not again employed in the TSE Contractor's Activities, or on the Construction Site.

**16.3 Design development meetings**

- (a) The TSE Contractor must hold regular meetings of its design team including its designers and the Independent Certifier and, where relevant, the Proof Engineer (and in any event at Design Stage 1 and Design Stage 2 of each discrete design part or element in the TSE Contractor's Activities).
- (b) The TSE 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 a Follow-on Contractor, OpCo2 or any Alternate Operator to attend. The Principal may request the TSE Contractor to ensure the presence at the meeting of any relevant persons from any of the TSE Contractor's Subcontractors involved in the design of any part of the Project Works.
- (c) The TSE 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.

The TSE Contractor agrees that no such agenda or minutes of meeting shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

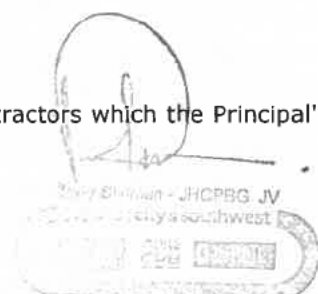
#### 16.4 Project Site meetings

- (a) The TSE Contractor must convene meetings on the Construction Site, or such other place or places as the Principal's Representative may direct, at weekly intervals (or such longer period as may be required by the Principal's Representative) prior to the Date of Construction Completion of the last Portion to achieve Construction Completion.
- (b) The meetings referred to in clause 16.4(a) will be attended by:
  - (i) the Project Director (or his or her delegate);
  - (ii) the Principal's Representative (or its delegate); and
  - (iii) any other person required by the Principal's Representative (including any Subcontractor or a representative of any Follow-on Contractor, OpCo2 or any Alternate Operator).
- (c) The TSE Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting under clause 16.4(a) no less than 48 hours prior to each meeting.
- (d) The role of chairperson for meetings under clause 16.4(a) will be held by the Principal's Representative (or its delegate).
- (e) The chairperson of a meeting under clause 16.4(a) must give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting may not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.
- (f) The purpose of the meetings under clause 16.4(a) includes the review of (at least) the matters set out in the reports referred to in clause 16.8 and any other matter as required by the Principal's Representative.

#### 16.5 Management Review Group

The Management Review Group comprises:

- (a) the Principal's Representative;
- (b) any nominees of the Principal's Representative;
- (c) the Project Director;
- (d) any nominees of the Project Director;
- (e) representatives of any of the TSE Contractor's Subcontractors which the Principal's Representative reasonably requires; and



- (f) any other person the Principal's Representative reasonably requires from time to time.

**16.6 Management Review Group functions**

Management Review Group functions include reviewing:

- (a) the progress of the TSE Contractor's Activities in relation to the Program and the performance of the TSE Contractor;
- (b) issues arising out of community relations and community concerns;
- (c) issues arising out of the quality of the TSE Contractor's Activities;
- (d) matters arising from the Design Documentation, including any proposed design changes;
- (e) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
- (f) potential impact of design and construction outcomes on operation and maintenance requirements;
- (g) environmental issues (including sustainability issues);
- (h) issues arising out of the interface with any Follow-on Contractor, OpCo2 or any Alternate Operator;
- (i) issues arising out of the subject of the Third Party Agreements;
- (j) issues arising out of the subject of the Adjoining Property Easements;
- (k) safety issues;
- (l) workforce development and training issues;
- (m) issues in connection with the Chain of Responsibility Provisions;
- (n) potential Claims that the parties have agreed to temporarily waive the requirements of clause 29.2(b) or clauses 13.3(a)(ii) and 13.3(c) (as applicable);
- (o) risks included on the Risk Register and the actions that are being taken to avoid or mitigate such risks; and
- (p) any other matters determined or directed by the Principal's Representative.

**16.7 Management Review Group meetings**

- (a) The Management Review Group must meet:
  - (i) on a regular monthly basis prior to Completion of the last Portion to achieve Completion or such other regular period as the Principal and the TSE Contractor agree in writing;
  - (ii) in accordance with this clause 16.7; and
  - (iii) at other times which the Principal's Representative or the TSE Contractor requires.



- (b) The TSE 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 role of chairperson for meetings of the Management Review Group will alternate between the Project Director and the Principal's Representative with the Principal's Representative to chair the first such meeting.
- (d) The chairperson of a meeting of the Management Review Group must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 5 Business Days after the meeting.
- (e) The members of the Dispute Avoidance Board may, by invitation of either party, attend a Management Review Group meeting but will not be members of the Management Review Group.

**16.8 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 TSE Contractor's Project Director;
  - (iii) the Independent Certifier's Project Director; and
  - (iv) 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 and the Handover Works;
  - (ii) approve processes and procedures prepared by the Completion Working Group;
  - (iii) consider issues referred to it by the Completion Working Group; and
  - (iv) 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.

**16.9 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 comprise:
  - (i) the Principal's Representative;

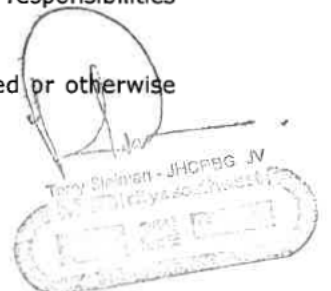


- (ii) any nominees of the Principal's Representative;
  - (iii) the Project Director;
  - (iv) any nominees of the Project Director; and
  - (v) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Working Group is to:
- (i) provide a collaborative forum through which the parties can:
    - (A) plan and agree procedures for completion and handover of the Project Works and the Handover 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; and
    - (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);
  - (ii) report to the Completion Steering Committee on matters relating to completion and handover of the Project Works and the Handover 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.

**16.10 No legal effect**

The Management Review Group, the Completion Steering Committee and the Completion Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:

- (a) affect the rights or obligations of either party under the TSE Contract Documents;
- (b) entitle a party to make any Claim against the other;
- (c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to law;
- (d) prejudice a party's rights against the other whether under this deed or otherwise according to law; or
- (e) be construed as a Direction by a party to do or not do anything.



**16.11 TSE Contractor's reporting obligations**

- (a) The TSE Contractor must provide reports to the Principal and the Principal's Representative as required by the TSE Contractor Documentation Schedule or as otherwise reasonably requested by the Principal's Representative.
- (b) The Principal may provide any such reports and any Program to any Interface Contractor.

**16.12 Minimise disruption and complaints and notifications**

- (a) The TSE Contractor must, in carrying out the TSE Contractor's Activities, minimise:
  - (i) interference with the passage of people, vehicles, waterborne craft, traffic; and
  - (ii) disturbance to the occupants of the Adjoining Properties and of any other land adjoining the Construction Site or located in the vicinity of the Construction Site.

- (b) The TSE Contractor must immediately notify the Principal in writing if any:

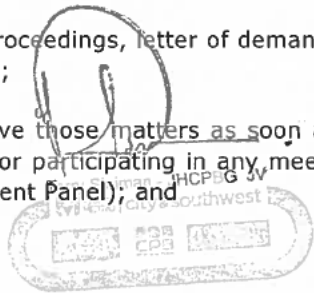
- (i) complaint is made or any proceedings are instituted or threatened;
- (ii) letter of demand is issued; or
- (iii) order or direction is made,

by anyone (including any Authority or any landowner, lessee or licensee on or near the Construction Site or any Extra Land) against the TSE Contractor or any of its Associates in respect of any aspect of the carrying out of the TSE Contractor's Activities, including:

- (iv) Contamination, noise or vibration arising out of, or in any way in connection with, the TSE Contractor's Activities;
- (v) the TSE Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder), any Project Plan, any Third Party Agreement, any Adjoining Property Easement or any Law regarding the Environment;
- (vi) the TSE Contractor's use or occupation of the Construction Site or any Extra Land;
- (vii) the supply chain for the TSE Contractor's Activities, including the bringing to and removal from the Construction Site or any Extra Land of items that require transport services; or
- (viii) loss or damage of the kind referred to in clause 21.20.

- (c) Without limiting the TSE Contractor's obligations under section 10 of Appendix E.2 of the SWTC, the TSE Contractor must (at its own cost):

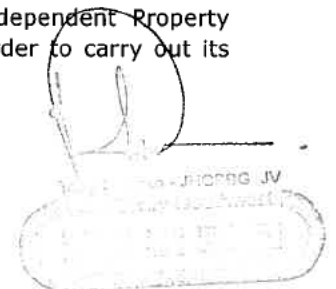
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 16.12(b);
- (ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings or participating in any meeting of the Independent Property Impact Assessment Panel); and



- (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in clause 16.12(b), which:
  - (A) contains full details of:
    - (aa) each complaint, proceedings, letter of demand, order and direction; and
    - (bb) the action taken by the TSE Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
  - (B) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
  - (C) may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.
- (d) Where the TSE Contractor receives a notification or complaint which relates to damage to any Adjoining Property or any other land or property adjoining the Construction Site or located in the vicinity of the Construction Site which arises out of or in connection with the TSE Contractor's Activities, the TSE Contractor must:
  - (i) respond to the notification or complaint within 24 hours;
  - (ii) visit the relevant property to inspect the damage that is the subject of the notification or complaint within 5 Business Days of receipt of the notification or complaint; and
  - (iii) where the cost of repairing such damage is less than or equal to [REDACTED] complete the repair of such damage within 10 Business Days (or such longer period permitted by the Principal's Representative) of the inspection referred to in clause 16.12(d)(ii).
- (e) The TSE Contractor must notify anyone who may be adversely affected by the TSE Contractor's Activities before the relevant work is carried out including notification of:
  - (i) the likely duration of that work; and
  - (ii) Sydney Metro City & Southwest 24 hour telephone number, postal address and email address, established by the Principal in case any person wishes to make a complaint.

**16.13 Independent Property Impact Assessment Panel**

- (a) The TSE 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 Project Planning Approval.
- (b) The TSE 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 TSE Contractor's Activities provided that the TSE Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the TSE 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 TSE Contractor is given reasonable prior written notice of any such meeting.

**16.14 Media requests**

The TSE Contractor must not issue any information, publication, document or article for publication concerning the TSE Contractor's Activities in any media without the prior written approval of the Principal's Representative. In granting approval, the Principal's Representative may make such approval subject to any conditions which it may determine.

If the TSE Contractor receives a direct request from the media for comment in respect of any aspect of the TSE Contractor's Activities, it must promptly provide details of such request to the Principal's Representative.

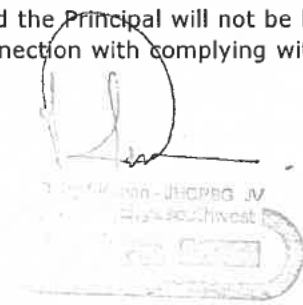
**16.15 Industrial relations**

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

- (a) assume sole responsibility for and manage all aspects of industrial relations for the TSE Contractor's Activities;
- (b) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the TSE Contractor's Activities; and
- (c) without limiting clause 5.1, comply with the Construction Plan, the Workplace Relations Management Plan, the NSW Code and the NSW Guidelines.

**16.16 Document management and transmission**

- (a) Without limiting clause 30.1, the TSE 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.
- (b) Documents supplied to the TSE Contractor will remain the property of the Principal and must be returned by the TSE Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the TSE Contractor's Activities.
- (c) The TSE Contractor must keep all the TSE Contractor's records relating to the TSE Contractor's Activities in a secure and fire proof storage.
- (d) The TSE 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 16.16.



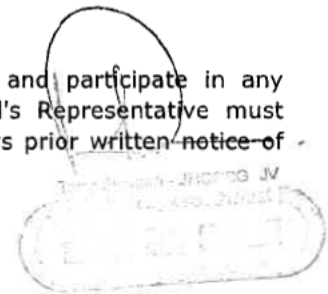
- (e) The TSE Contractor must ensure that any Contract Documentation and Materials that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
  - (i) permit access to or use of a computer system by a third person not authorised 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.

**16.17 Exchange of Information between Government agencies**

- (a) The TSE Contractor authorises the Principal, its employees and agents to make information concerning the TSE Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the TSE Contractor to the Principal and any information relating to the TSE Contractor's performance under this deed.
- (b) The TSE Contractor acknowledges that any information about the TSE Contractor from any source, including but not limited to 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 TSE Contractor future opportunities for NSW government work.
- (c) The TSE Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the TSE Contractor's performance under this deed and that it will participate in the Principal's Contractor Performance Reporting process.

**16.18 Quarterly whole of project reviews**

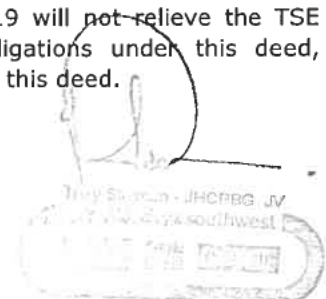
- (a) In each quarter in a calendar year at any time prior to the expiry of the last Defects Correction Period, the Principal may require that the TSE Contractor attend and participate in one or more meetings with the Principal and its other contractors for Sydney Metro City & Southwest. The purpose of these meetings is for the Principal, the TSE 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.
- (b) If the Principal requires the TSE Contractor to attend and participate in any meeting contemplated by clause 16.18(a), the Principal's Representative must provide the TSE Contractor with at least 10 Business Days prior written notice of any such meeting.



- (c) If the Principal's Representative provides the TSE Contractor with a notice under clause 16.18(b), the TSE Contractor must ensure that the following personnel attend and participate in the meeting:
  - (i) the TSE Contractor's Project Director;
  - (ii) representatives of any of the TSE Contractor's Subcontractors which the Principal's Representative reasonably requires; and
  - (iii) any other person directed by the Principal's Representative.

**16.19 Early Warning**

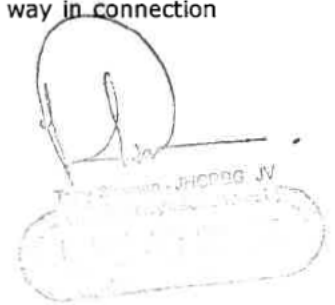
- (a) The TSE Contractor must give early warning by notifying the Principal's Representative as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:
  - (i) a delay to Construction Completion of any Portion;
  - (ii) a delay to Completion of any Portion;
  - (iii) an adverse effect on the performance of the TSE Contractor's Activities or the Project Works;
  - (iv) a party being in breach of any term of this deed; or
  - (v) a Claim by the TSE Contractor (including all Claims under clause 17.8(d)).
- (b) At the same time as it gives an early warning notification under clause 16.19(a), the TSE Contractor will enter the risk the subject of the early warning notification on the Risk Register (which will include a description of the risk and the actions which are to be taken to avoid or mitigate the risk).
- (c) The TSE Contractor must provide the Principal with real time access to the Risk Register or as otherwise directed by the Principal's Representative.
- (d) The TSE Contractor must 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 and the TSE Contractor must inform the Principal's Representative if it considers any such proposal or solution would give rise to a Change or otherwise give rise to a Claim by the TSE 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.
- (e) A notification, record or action under this clause 16.19 will not relieve the TSE Contractor from or alter its rights, liabilities or obligations under this deed, including any and all other notification obligations under this deed.



17. **TIME AND COMPLETION**

17.1 **Start and progress**

- (a) The TSE Contractor must:
  - (i) start to perform its obligations under this deed from the date of this deed; and
  - (ii) regularly and diligently progress the TSE Contractor's Activities in accordance with this deed to ensure that:
    - (A) Construction Completion of each Portion is achieved by the Date for Construction Completion for the Portion; and
    - (B) Completion of each Portion is achieved by the Date for Completion for the Portion.
- (b) Without limiting its rights under the SOP Act, the TSE Contractor must not suspend the progress of the whole or any part of the TSE Contractor's Activities except where directed by a court or by the Principal's Representative under clauses 5.6(a)(v) or 17.9.
- (c) Without limiting the subsequent paragraphs of this clause 17.1 or clause 17.2(d), the TSE Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the TSE Contractor to carry out the TSE 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 17.1, direct in what order and at what time the various stages or parts of the TSE Contractor's Activities must be performed. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 17.1 unless the direction is in writing and expressly states that it is a direction under this clause 17.1.
- (f) If compliance with a written direction expressly stated to be pursuant to this clause 17.1 causes the TSE Contractor to incur more or less Cost than otherwise would have been incurred or delays the TSE Contractor's Activities, this will be treated as a Change except where:
  - (i) the direction was necessary because of, or arose out of or in any way in connection with, a failure by the TSE Contractor to comply with its obligations under this deed; or
  - (ii) the direction was given under clause 17.7(g).
- (g) Such costs shall be the TSE Contractor's sole monetary entitlement, and the TSE Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim for payment of money, arising out of or in any way in connection with any direction pursuant to this clause 17.1.



A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "JHCDDG JV" and other illegible characters. The signature appears to be a stylized name, possibly "JHCDDG JV".

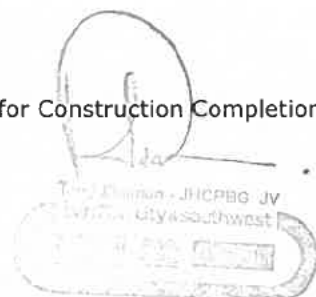
## 17.2 TSE Contractor's programming obligations

- (a) The TSE Contractor must prepare the Programs required by Appendix E.5 of the SWTC which must:
  - (i) be based upon the Overall D&C Program; and
  - (ii) contain the details required by Appendix E.5 of the SWTC.
- (b) The TSE Contractor must:
  - (i) update each Program and report against it in accordance with the TSE Contractor Documentation Schedule and Appendix E.5 of the SWTC;
  - (ii) provide the reports and updated programs listed in sections 1 and 2 of Appendix E.5 of the SWTC; and
  - (iii) give the Independent Certifier and the Principal's Representative the reports required by the TSE Contractor Documentation Schedule and Appendix E.5 of the SWTC in an electronic form approved by the Principal.
- (c) No submission of or Direction relating to, or review of or comment upon, a Program (including the Overall D&C Program) prepared by the TSE Contractor, by the Principal or the Principal's Representative in connection with the Program, nor the inclusion of the Overall D&C Program as a schedule to this deed, will:
  - (i) relieve the TSE Contractor from or alter its liabilities or obligations under this deed, especially (without limitation) the obligations under clause 17.3;
  - (ii) evidence or constitute notification of a delay or the claiming of or the granting of, an extension of time to any Date for Construction Completion, or a Direction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the TSE Contractor's Activities; or
  - (iii) affect the time for 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 TSE Contractor to achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion or Completion of a Portion by the Date for Completion of the Portion.
- (d) If the TSE Contractor chooses to compress the TSE Contractor's Activities or otherwise accelerate progress:
  - (i) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the TSE Contractor to achieve 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; and
  - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

## 17.3 Dates for Construction Completion and Completion

The TSE Contractor must achieve:

- (a) Construction Completion of each Portion by the Date for Construction Completion of the relevant Portion; and



- (b) Completion of each Portion by the Date for Completion of the relevant Portion.

#### 17.4 Importance of Completion on time

The TSE Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 17.3 to enable:
  - (i) Follow-on Contractors to carry out and complete the Follow-on Works within the time required by their respective Follow-on Contracts; and
  - (ii) either:
    - (A) OpCo2 to carry out the work required under the OTS2 Project Deed in order that operations of Sydney Metro City & Southwest may commence; or
    - (B) any Alternate Operator to operate and maintain Sydney Metro City & Southwest,including so as to allow the Principal to pursue improved public transport in Sydney;
- (b) the Date for Construction Completion of any Portion will only be extended as set out in clause 17.6; and
- (c) the Date for Completion of any Portion will not be extended for any reason.

#### 17.5 Risk and notice of delay

- (a) Except as expressly provided for in clause 17.6, the TSE Contractor accepts the risk of all delays in, and disruption to, the carrying out of the TSE Contractor's Activities and performance of its obligations under this deed both before and after any Date for Construction Completion or any Date for Completion (as applicable) of a Portion.
- (b) The TSE Contractor must within 5 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of any delay or likely delay to the carrying out of the TSE Contractor's Activities, details of the cause and how the Date of Construction Completion or Date of Completion (as applicable) of each Portion is likely to be affected (if at all).

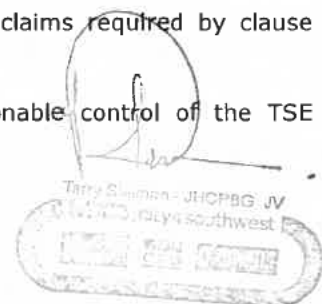
#### 17.6 Extension of time

- (a) If the TSE Contractor is or will be delayed:
  - (i) on or prior to the Date for Construction Completion of a Portion, by an Excusable Cause of Delay in a manner which will delay it in achieving Construction Completion of the Portion; or
  - (ii) after the Date for Construction Completion of a Portion, by an Excusable Cause of Delay under paragraph (a), (b), (c), (d), (e), (g), (j), (l), (n), (p), (q), (r) or (s) of that definition in a manner which will delay it in achieving Construction Completion of the Portion,

the TSE Contractor may claim an extension of time.



- (b) To claim an extension of time the TSE Contractor must:
- (i) within 10 Business Days of first becoming aware of (or when it ought reasonably to have first become aware of) the commencement of the occurrence causing the delay submit a written notice of its intention to claim for an extension to the Date for Construction Completion of the Portion, which:
    - (A) gives details of the delay and the occurrence causing the delay; and
    - (B) states the number of days for which the extension of time is intended to be claimed;
  - (ii) within 10 Business Days of the TSE Contractor's notice issued under clause 17.6(b)(i) submit a written claim to the Principal's Representative for an extension to the Date for Construction Completion of the Portion, 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 TSE Contractor's Activities and which will delay it in achieving Construction Completion of the Portion in the manner described in clause 17.6(c)(iii); and
      - (bb) the conditions precedent to any extension of time in clause 17.6(c) have been satisfied; and
  - (iii) if the effects of the delay continue for more than 20 Business Days from the date of the TSE Contractor's notice under clause 17.6(b)(i) and the TSE 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 17.6(b)(ii) until 5 Business Days after the end of the effects of the delay; and
    - (B) containing the information required by clause 17.6(b)(ii).
- The Principal's Representative may, within 10 Business Days of receiving the TSE Contractor's claim or further claim for an extension of time for Construction Completion, by written notice to the TSE Contractor, request additional information in relation to the claim or further claim. The TSE Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.
- (c) Subject to clause 17.6(h), it is a condition precedent to the TSE Contractor's entitlement to an extension of time that:
- (i) the TSE Contractor must give the notices and claims required by clause 17.6(b);
  - (ii) the cause of the delay was beyond the reasonable control of the TSE Contractor;



- (iii) the TSE Contractor is actually, or will be, delayed in achieving Construction Completion:
  - (A) on or prior to the Date for Construction Completion of a Portion, by an Excusable Cause of Delay; or
  - (B) after the Date for Construction Completion, by an Excusable Cause of Delay under paragraph (a), (b), (c), (d), (e), (g), (j), (l), (n), (p), (q), (r) or (s) of that definition; and
- (iv) the TSE Contractor must not have been given a direction to compress under clause 17.7 with respect to the whole of the delay the subject of the claim under clause 17.6(b).
- (d) If the TSE Contractor fails to comply with the conditions precedent in clause 17.6(c):
  - (i) the Principal will not be liable upon any Claim by the TSE Contractor; and
  - (ii) the TSE 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.
- (e) Subject to clauses 17.6(f), and 17.7, if the conditions precedent in clause 17.6(c) have been satisfied, the Principal's Representative must extend the Date for Construction Completion of a Portion by:
  - (i) if the cause of delay is a Change, any period stated by the Principal's Representative in a Change Order; or
  - (ii) otherwise, a reasonable period, such period to be as stated by the Principal's Representative and notified to the Principal and the TSE Contractor within 15 Business Days after:
    - (A) the latest of the:
      - (aa) TSE Contractor's last claim under clause 17.6(b); or
      - (bb) provision by the TSE Contractor of any additional information requested by the Principal's Representative under clause 17.6(b); or
    - (B) where the Principal's Representative has given the TSE Contractor a direction to compress under clause 17.7 and subsequently issues a notice under clause 17.7 withdrawing the direction to compress given under clause 17.7, the date of issue of the notice withdrawing the compression.

A failure of the Principal's Representative to grant a reasonable extension of time to the Date for Construction Completion or to grant an extension of time to the Date for Construction Completion within the relevant 15 Business Day period will not cause the Date for Construction Completion to be set at large, but nothing in this paragraph will prejudice any right of the TSE Contractor to damages.





- (f) In respect of each claim for an extension of time under clause 17.6(b), the TSE Contractor's entitlement to an extension of time will be reduced by the extent to which the TSE Contractor:
  - (i) 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 or re-schedule within the Overall D&C Program (or any other relevant Program) the cause of delay and the TSE Contractor's Activities affected by the delay; or
  - (ii) contributed to the delay.
- (g) The Principal's Representative may in its absolute discretion for any reason and at any time, from time to time, by notice in writing to the TSE Contractor and the Principal unilaterally extend the Date for Construction Completion of a Portion by any period specified in a notice to the TSE Contractor and the Principal. The power to extend the Date for Construction Completion of a Portion under this clause 17.6(g):
  - (i) may be exercised whether or not the TSE Contractor has made, or is entitled to make, a claim for an extension of time to any Date for Construction Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Construction Completion, under this clause 17.6;
  - (ii) subject to clause 17.6(g)(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 17.6(g) for the benefit of the TSE Contractor;
  - (iii) without limiting clause 16.1(e), 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 23 or in any other way opened up or reviewed by any other person (including the Dispute Avoidance Board or any arbitrator or court).
- (h) [REDACTED]
- (i) If the TSE Contractor is granted an extension of time in accordance with this clause 17.6 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 Table 7 of 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 TSE Contractor still requires access to those areas of the Construction Site in order to carry out the TSE Contractor's Activities. This clause 17.6(i) does not apply in relation to the first expiry date specified for area SA-O1 (as described in the Site Access Schedule).
- (j) [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**17.7 Compression**

- (a) If the TSE Contractor gives the Principal's Representative a claim under clause 17.6(b), the Principal's Representative may direct:
  - (i) the TSE Contractor to compress the performance of the TSE 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 achieve Construction Completion of a relevant Portion by its Date for Construction Completion; and
  - (ii) that prior to commencing any such compression, the TSE Contractor must give the Principal's Representative an estimate of the Costs of taking all such necessary measures.
- (b) The Principal's Representative may give a direction under clause 17.7(a) whether or not the cause of delay for which the TSE Contractor has made its claim under clause 17.6(b) entitles the TSE Contractor to an extension of time to the relevant Date for Construction Completion.
- (c) The Principal's Representative may not give a direction under clause 17.7(a) which requires the TSE Contractor to compress the TSE Contractor's Activities so as to achieve Construction Completion of a relevant Portion earlier than its Date for Construction Completion.
- (d) The Principal's Representative may at any time by notice in writing withdraw any direction given by it under clause 17.7(a), after which the TSE Contractor will be entitled to any extension of time to which it may have otherwise been entitled to in respect of the cause of delay in respect of which the TSE Contractor made a claim under clause 17.6(b), such extension of time to be reduced to the extent that the compression of the TSE Contractor's Activities taken by the TSE Contractor prior to the withdrawal of the direction has mitigated the delay which is the subject of the



claim for an extension of time made by the TSE Contractor under clause 17.6(b), as stated by the Principal's Representative.

(e) If the Principal's Representative gives a direction to the TSE Contractor under clause 17.7(a):

(i) [REDACTED]

(ii) to the extent that the TSE Contractor would, but for the direction, have been entitled to an extension of time to the Date for Construction Completion of a Portion for the cause of delay in respect of which the TSE Contractor made a claim under clause 17.6(b), the TSE Contractor will to the extent that it would have been entitled to an extension of time be entitled to be paid:

(A) if the direction relates to:

(aa) all of the delay caused by a Change; or

(bb) part of any delay caused by a Change as specified in the relevant Change Proposal Request under clause 13.1,

any amount notified by the TSE Contractor under clause 13.1(a)(ii)(B) where that amount is approved by the Principal's Representative; or

(B) otherwise the lesser of:

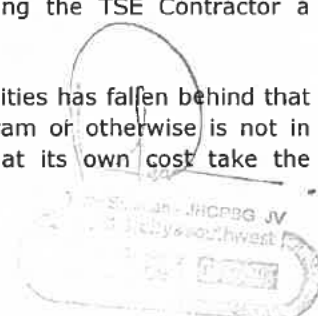
(aa) the direct net extra Costs reasonably incurred by the TSE Contractor (which if the Principal's Representative gives a notice to withdraw the direction under clause 17.7(a), will be those direct net extra Costs reasonably incurred prior to the giving of such notice) and directly attributable to compressing the performance of the TSE Contractor's Activities as required by the Principal's Representative's direction under clause 17.7(a), together with a margin on account of profit and offsite overheads at the relevant rate set out in Schedule E2; and

(bb) the cost estimate (if any) provided by the TSE Contractor pursuant to clause 17.7(a)(ii); and

(iii) subject to clause 17.6(h), the TSE Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the cause of delay and any direction under clause 17.7(a), whether for an extension of time to the Date for Construction Completion of a Portion which the TSE Contractor might have had but for the direction or otherwise, other than the amount it is entitled to under clause 17.7(e)(ii).

(f) The Principal's rights to liquidated damages, and the TSE Contractor's indemnity, under clause 17.10(d) for a failure by the TSE Contractor to achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion will not be affected by the Principal's Representative giving the TSE Contractor a Direction to compress under this clause 17.7.

(g) If at any time the progress of the TSE Contractor's Activities has fallen behind that shown in the Overall D&C Program or any other Program or otherwise is not in accordance with this deed, the TSE Contractor must at its own cost take the





[Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

■ [Redacted]

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[Redacted]

■ [Redacted]

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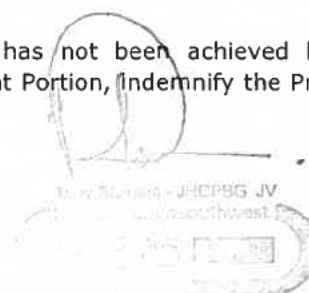




- (aa) be paid by the Principal the extra Costs reasonably incurred by the TSE Contractor as a result of the suspension, as stated by the Principal's Representative; and
- (bb) an extension of time to the Date for Construction Completion of any Portion, where it is otherwise so entitled under clause 17.6;
- (B) the TSE Contractor must take all reasonable steps possible to mitigate the extra Costs incurred by it and any delay in achieving Construction Completion of any Portion as a result of the suspension.
- (c) The TSE Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under clause 17.9(b)(ii).

**17.10 Liquidated damages and Indemnity for delay in reaching Construction Completion**

- (a) The Principal and the TSE 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 clauses 2.1 and 2.2.
- (b) The TSE Contractor and the Principal acknowledge and agree that the TSE Contractor's Activities represents 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 TSE Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (c) The TSE 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 TSE Contractor agrees that if it does not achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion, it must:
  - (i) pay the Principal the applicable amount for that Portion set out in Schedule A1 (each of which is exclusive of GST) for every day after the Date for Construction Completion of the Portion up to and including:
    - (A) the Date of Construction Completion of the applicable Portion; or
    - (B) the date that this deed is validly terminated,
 whichever first occurs; and
  - (ii) if Construction Completion of a Portion has not been achieved by the relevant Follow-on Site Access Date for that Portion, Indemnify the Principal from and against:



■ [REDACTED]

■ [REDACTED]

[REDACTED]

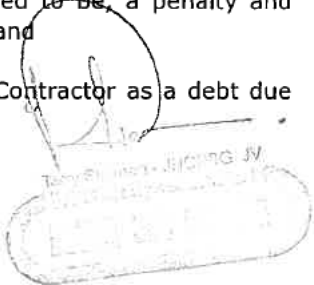
[REDACTED]

to the extent such amounts would not have been incurred but for the failure to achieve Construction Completion of the Portion by the Follow-on Site Access Date for that Portion up to an aggregate of [REDACTED] for every day after the later of:

- (C) the Date for Construction Completion of the applicable Portion; and
  - (D) the relevant Follow-on Site Access Date for the Portion,
- up to and including:
- (E) the Date of Construction Completion of the applicable Portion; or
  - (F) the date that this deed is validity terminated,
- whichever first occurs.

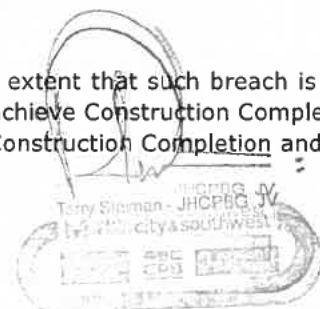
The TSE Contractor's total aggregate liability under clause 17.10(d)(ii) in respect of any day for which the TSE Contractor must indemnify the Principal in respect of more than one Portion is [REDACTED] per day.

- (e) The parties agree that the liquidated damages provided for in clause 17.10(d)(i):
  - (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the TSE 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 TSE Contractor; and
  - (ii) will be recoverable by the Principal from the TSE Contractor as a debt due and payable.





- (f) The Principal and the TSE 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 TSE Contractor agrees to pay the liquidated damages, and indemnify the Principal, under clause 17.10(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 TSE Contractor entered into the obligation to pay the amounts specified in clause 17.10(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the TSE Contractor in accordance with its terms.
- (i) The TSE 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 17.10 (or any part of this clause 17.10) 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 Works) as a result of the TSE Contractor failing to achieve Construction Completion of a relevant Portion by its Date for Construction Completion, but the TSE 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 clause 18.2(c) or 18.2(d) 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 17.10(d)(i) or under the indemnity in clause 17.10(d)(ii) to the date of the payment schedule (despite Construction Completion of that Portion not having occurred).
- (k) The Principal and the TSE Contractor agree that the aggregate of the amount payable under clauses 17.10(d)(i), 17.10(d)(ii) and 17.10(i)(ii) is:
  - (i) limited as set out in clause 20.1(b); and
  - (ii) a limitation on the TSE Contractor's liability to the Principal for:
    - (A) a failure to achieve Construction Completion of any Portion by the relevant Date for Construction Completion;
    - (B) breach of clause 17.1(a)(ii)(A);
    - (C) breach of clause 3.10 but only to the extent that such breach is due to a failure by the TSE Contractor to achieve Construction Completion of a Portion by the relevant Date for Construction Completion and not in any other circumstances; or

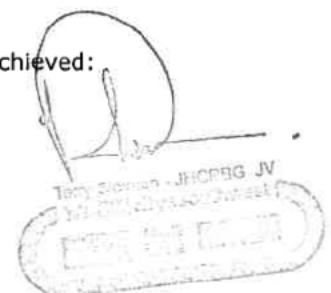


- (D) a claim for indemnification under clause 21.2 but only to the extent that such claim is due to a failure by the TSE Contractor to achieve Construction Completion of a Portion by the relevant Date for Construction Completion and not in any other circumstances,

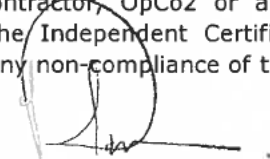
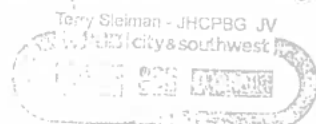
and the Principal will not be entitled to make, nor will the TSE Contractor be liable upon, any Claim in these circumstances other than for the amount for which the TSE Contractor is liable under this clause 17.10 (including where applicable common law damages under clause 17.10(i)(ii)). Nothing in this clause 17.10(k) in any way limits the TSE Contractor's liability where this deed is terminated by the Principal under clause 22 (including pursuant to clause 22.3(a)(ix)) or otherwise at Law.

#### 17.11 Construction Completion

- (a) The TSE 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) Subject to clause 17.11(g), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the notice referred to in clause 17.11(a)(ii) jointly inspect the TSE Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days of the joint inspection referred to in clause 17.11(b), the Independent Certifier must give the TSE 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 TSE Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 17.11(c)(i).
- (d) When the TSE Contractor considers it has achieved Construction Completion of the Portion, the TSE 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 B1. Thereafter, and subject to clause 17.11(g), the Principal's Representative, the Project Director and the Independent Certifier must jointly inspect the TSE Contractor's Activities at a mutually convenient time.
- (e) Following the joint inspection under clause 17.11(d), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 17.11(d), or of receipt of a notice under clause 17.11(f):
  - (i) if Construction Completion of the Portion has been achieved:



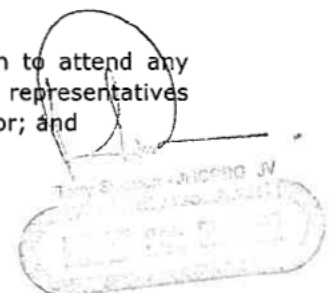
- (A) provide to the Principal's Representative and the TSE Contractor a document signed by the Independent Certifier in the form in Schedule B17; and
- (B) additionally:
  - (aa) if the relevant Portion includes WAD Project Works, provide to the Principal's Representative and RMS a certificate in the form of Schedule 6 to the WAD with respect to the WAD Project Works;
  - (bb) if the relevant Portion includes any Sydney City Council Project Works or Willoughby Council Project Works, provide to the Principal's Representative and the relevant Council a certificate in the form of Schedule 6 to the Sydney City Council TSE Interface Agreement or the Willoughby Council TSE Interface Agreement (as applicable);
  - (cc) if the relevant Portion includes any Cross City Tunnel Works, provide to the Principal's Representative, RMS, the Principal and the Asset Owner (as defined in the Cross City Tunnel Interface Agreement) a certificate in the form of Schedule 6 to the Cross City Tunnel Interface Agreement with respect to the Cross City Tunnel Works; or
  - (dd) if the relevant Portion includes any Sydney Trains Protection Zone Works, provide to the Principal's Representative, Sydney Trains and RailCorp a certificate in the form of Schedule 6 to the Sydney Trains Interface Agreement with respect to the Sydney Trains Protection Zone Works;
- (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the TSE 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 TSE Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify the TSE Contractor of the items which remain to be completed as contemplated by clause 17.11(e)(ii)(A).
- (f) If the Independent Certifier issues a notice under clause 17.11(e)(ii) the TSE Contractor must proceed with the TSE 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 17.11(d) and 17.11(e) will reapply.
- (g) The TSE 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 17.11, including representatives of any Follow-on Contractor, OpCo2 or any Alternate Operator; and
  - (ii) the Principal's Representative, any Follow-on Contractor, OpCo2 or any Alternate Operator may provide comments to the Independent Certifier (with a copy to the TSE Contractor) in relation to any non-compliance of the TSE Contractor's Activities with this deed.

  
 Terry Sleiman - JHCPBG JV  
 City & Southwest  


- (h) Without affecting the TSE 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.

**17.11A Completion**

- (a) When the TSE Contractor considers it has achieved Completion of the Portion, the TSE 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 B25. Thereafter, and subject to clause 17.11A(d), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the TSE Contractor's written notice, jointly inspect the TSE Contractor's Activities at a mutually convenient time.
- (b) Following the joint inspection under clause 17.11A(a), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 17.11A(a), or of receipt of a notice under clause 17.11A(c):
  - (i) if Completion of the Portion has been achieved, provide to the Principal's Representative and the TSE Contractor a document signed by the Independent Certifier in the form in Schedule B26; or
  - (ii) if Completion of the Portion has not been achieved, issue a notice to the TSE 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 TSE Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the TSE Contractor of the items which remain to be completed as contemplated by clause 17.11A(b)(ii)(A).
- (c) If the Independent Certifier issues a notice under clause 17.11A(b)(ii) the TSE Contractor must proceed with the TSE Contractor's Activities and thereafter when it considers 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 17.11A(a) and 17.11A(b) will reapply.
- (d) The TSE 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 17.11A, including representatives of any Follow-on Contractor, OpCo2 or any Alternate Operator; and



- (ii) the Principal's Representative, any Follow-on Contractor, OpCo2 or any Alternate Operator may provide comments to the Independent Certifier (with a copy to the TSE Contractor) in relation to any non-compliance of the TSE Contractor's Activities with this deed.
- (e) Without affecting the TSE Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion the parties acknowledge that:
  - (i) no separate Date for Completion of the Project Works is specified in this deed;
  - (ii) Completion of the Project Works is achieved by achieving Completion of all 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 reach Completion.

**17.12 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 or the Principal's Representative of the TSE Contractor's performance of its obligations under this deed;
  - (ii) be taken as an admission or evidence that the Project Works or the Handover Works comply with this deed; or
  - (iii) prejudice any rights or powers of the Principal or the Principal's Representative.
- (b) Without limiting clause 17.12(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 (as applicable) of the relevant Portion has occurred. No other determination of the Independent Certifier will be final and binding on the parties.

**17.13 Access following Construction Completion of a Portion**

- (a) Following Construction Completion of each Portion, the Principal must procure that each Follow-on Contractor and OpCo2 or any Alternate Operator provides the TSE Contractor with such access to the Construction Site as may be reasonably required by the TSE Contractor in order to rectify any Minor Defects and Agreed Defects identified in a Notice of Construction Completion, subject to the TSE Contractor complying with:
  - (i) the requirements of:
    - (A) each Follow-on Contractor Cooperation and Integration Deed;
    - (B) the TSE-OTS2 Cooperation and Integration Deed; or

Handwritten signature of Tony Curran. Below the signature is a circular stamp with the text: "Tony Curran - JRCPEB JV", "WA State Electricity South West", and "2014".

- (ii) where the deeds referred to in clauses 17.13(a)(i)(A) and 17.13(a)(i)(B) have not been executed, the site access and work, health and safety procedures of each Follow-on Contractor and OpCo2 or any Alternate Operator.
- (b) Where Construction Completion has been achieved in respect of a Portion that has been the subject of a notice under clause 8.1(a) but the TSE Contractor still requires access to such Portion in order to continue the TSE Contractor's Activities, the Principal must procure that the TSE Contractor is provided with reasonable access to such Portion to enable the TSE Contractor to continue the TSE Contractor's Activities, however, 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 TSE Contractor including the obligation of the TSE Contractor to achieve Construction Completion of any remaining Portion by the relevant Date for Construction Completion.

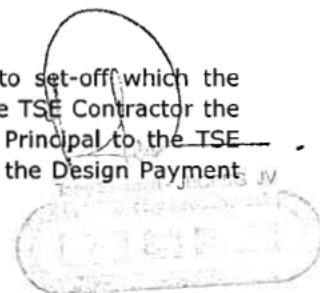
#### 17.14 Transitional Handover Services and handover

- (a) The Principal's Representative may give written notice to the TSE Contractor at least 5 Business Days before the TSE Contractor's estimated Date of Construction Completion of a Portion (which has been notified in accordance with clause 17.11(a)) that Transitional Handover Services must be carried out in respect of the Portion. If the Principal's Representative gives such a notice in respect of a Portion:
  - (i) the TSE Contractor must carry out the Transitional Handover Services in respect of the Portion from the relevant Date of Construction Completion until the date specified in a notice given by the Principal pursuant to clause 17.14(b); and
  - (ii) the TSE Contractor is entitled to be paid for the Transitional Handover Services in respect of the Portion in accordance with the Transitional Handover Services Payment Schedule.
- (b) At any time after issuing a notice under clause 17.14(a) in respect of a Portion, the Principal's Representative may give further written notice to the TSE Contractor that the TSE Contractor is to cease performance of the Transitional Handover Services in respect of the Portion on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the TSE Contractor receives the further notice.
- (c) On the Portion Handover Date, the TSE Contractor must:
  - (i) hand control of the Portion to the Principal; and
  - (ii) provide the Principal with all spare parts, consumables and special tools as required by the SWTC.
- (d) On the Portion Handover Date, there must not be any Encumbrances over the Handover Works.

### 18. PAYMENT

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

- (a) Subject to clauses 18.9 and 23.15 and to any other right to set-off which the Principal may have under this deed, the Principal must pay the TSE Contractor the Project Contract Sum and any other amount payable by the Principal to the TSE Contractor under this deed in accordance with this clause 18, the Design Payment.



Schedule, the Construction Payment Schedule, the Performance Incentive Payment Schedule and the Transitional Handover Services Payment Schedule for the progressive completion of the TSE Contractor's Activities.

- (b) The Design Payment Schedule, the Construction Payment Schedule, the Performance Incentive Payment Schedule and the Transitional Handover Services Payment Schedule may set out (among other things):
- (i) those parts of the TSE Contractor's Activities which must be completed before the TSE Contractor may claim a progress payment with respect to that part;
  - (ii) the payment the TSE Contractor may claim for each progress payment;
  - (iii) any limitations or other constraints on the TSE Contractor's ability to make claims for payment; and
  - (iv) the restrictions (if any) on the timing and sequencing of the TSE Contractor's Activities with which the TSE Contractor must comply.

In addition to the Design Payment Schedule, the Construction Payment Schedule, the Performance Incentive Payment Schedule and the Transitional Handover Payment Schedule, clause 18.2(i) sets out further payment constraints that are to apply.

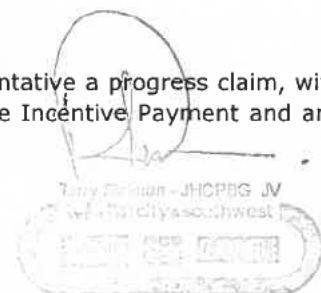
- (c) The Month 1 Payment, Design Contract Sum, the Construction Contract Sum, the Performance Incentive Payment and the rates set out in the Transitional Handover Services Payment Schedule are not subject to rise and fall.

#### 18.1A Month 1 Payment

- (a) The TSE Contractor may give the Principal's Representative a progress claim under clause 18.2(a) in respect of the Month 1 Payment on the date of this deed.
- (b) Following submission of its progress claim in respect of the Month 1 Payment and as a condition precedent to the Principal's obligation to make any payment pursuant to clause 18.2(g), the TSE Contractor must provide evidence satisfactory to the Principal's Representative that the TSE Contractor has complied with its obligations under:
- (i) clause 4.1;
  - (ii) clause 4.9(a);
  - (iii) clause 18.6(a)(i);
  - (iv) 18.6(a)(iii); and
  - (v) clause 21.4 (subject to clause 21.13).
- (c) The Principal is not required to make any payment to the TSE Contractor in respect of the Month 1 Payment unless and until each of the Conditions Precedent have been satisfied (or waived under clause 1A.3).

#### 18.2 Payment claims

- (a) The TSE Contractor must give the Principal's Representative a progress claim, with respect to the Project Contract Sum, the Performance Incentive Payment and any



other amount payable by the Principal to the TSE Contractor under this deed (including any amounts payable under clause 17.14(a)(ii)):

- (i) in respect of the Month 1 Payment only, the date specified in clause 18.1A(a);
  - (ii) 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
  - (iii) thirty (30) Business Days after:
    - (A) the issue of a Notice of Completion for the last Portion to reach Completion; and
    - (B) the expiry of the last Defects Correction Period.
- (b) For each claim made under clause 18.2(a) the TSE 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 TSE Contractor claims; and
    - (B) where the Principal has given notice under clause 19.6(a)(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 reach Completion; and
    - (B) the expiration of the last Defects Correction Period,comply with clause 18.2(k).
- (c) The Principal's Representative must, on behalf of the Principal, within 10 Business Days of receipt of the TSE Contractor's claim under clause 18.2(a), issue to the TSE 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 TSE Contractor under this deed and which the Principal proposes to pay to the TSE Contractor or the amount which the Principal's Representative believes to be then payable by the TSE Contractor to the Principal, including details of the calculation of the progress amount.

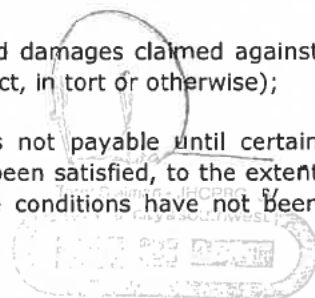
In issuing a payment schedule the Principal's Representative:

- (i) may deduct from the amount which would otherwise be payable to the TSE Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including any amount which the Principal is entitled to set-off or withhold under clause 18.9; and
- (ii) must if the payment schedule shows an amount less than the amount claimed by the TSE 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.





- (d) If the TSE Contractor does not give the Principal's Representative a progress claim at a time required by clause 18.2(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.
- (e) A payment schedule issued under clause 18.2(c) or 18.2(d) will separately identify the sum of the amounts due on account of the Month 1 Payment, the Design Contract Sum, the Construction Contract Sum, the Performance Incentive Payment and any other amount payable by the Principal to the TSE Contractor or by the TSE Contractor to the Principal under this deed.
- (f) Where the Principal has given notice under clause 19.6(a)(iv), if the amount set out in a payment schedule issued under clause 18.2(c) is different to the amount in the TSE Contractor's progress claim or if the Principal's Representative issues a payment schedule under clause 18.2(d), the TSE 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.
- (g) Within 15 Business Days of the date of the TSE Contractor's progress claim in accordance with clause 18.2(a) or within 5 Business Days of the issue of a payment schedule in accordance with clause 18.2(d):
  - (i) where the payment schedule provides that an amount is payable by the Principal to the TSE Contractor, but subject to clauses 18.4, 18.5, 18.6, 18.7 and 23.15 and the Design Payment Schedule, the Construction Payment Schedule and the Performance Incentive Payment Schedule, the Principal must pay the TSE Contractor the progress payment due to the TSE Contractor as certified in the payment schedule; and
  - (ii) where the payment schedule provides that an amount is payable by the TSE Contractor to the Principal, the TSE Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (h) If the TSE Contractor lodges a progress claim earlier than at the times specified under clause 18.2(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 TSE Contractor submitted the progress claim in accordance with this deed.
- (i) Despite any other provisions of this deed to the contrary, the amount of any progress claim to which the TSE 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 18.2(c) as the amount payable to the TSE 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 TSE 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



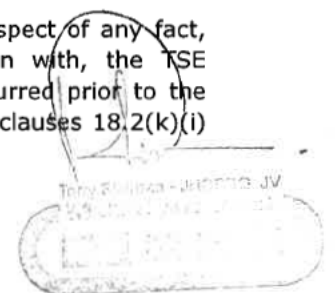
satisfied (including any events identified in the Design Payment Schedule, the Construction Payment Schedule or the Performance Incentive Payment Schedule);

- (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 TSE 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 TSE 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 18.4, 18.5 or 18.9;
- (iii) in determining amounts to be excluded or deducted under clauses 18.2(i)(i) and 18.2(i)(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 Project Contract Sum (with additions or deductions, if any, provided for by this deed).
- (j) 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 TSE 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.
- (k) The TSE Contractor must include in the payment claim lodged by it after:
- (i) the issue of a Notice of Completion for the last Portion to reach Completion; and
  - (ii) the expiration of the last Defects Correction Period,

all Claims that the TSE 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 TSE Contractor's Activities, the Project Works or this deed which occurred:

- (iii) in the case of the payment claim referred to in clause 18.2(k)(i), prior to the date of that payment claim; and
- (iv) in the case of the payment claim referred to in clause 18.2(k)(ii), in the period between the date of the payment claim referred to in clause 18.2(k)(i) and the date of the payment claim.

The TSE 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 TSE 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 18.2(k)(i) or 18.2(k)(ii), except for any claim which:



(v) 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 18.2(a); and

(vi) has not been barred under another provision of this deed.

### 18.3 Effect of payment schedules and payments

Neither the issue of a payment schedule under clause 18.2(c), nor the making of any payment pursuant to any such payment schedule, will:

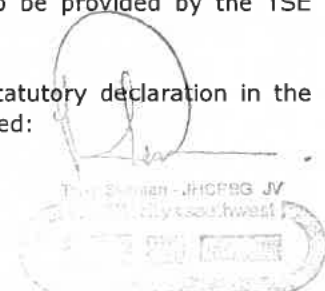
- (a) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
- (b) constitute evidence of the value of any work or an admission of liability or evidence that work has been executed or completed in accordance with this deed; or
- (c) prejudice the right of either party to dispute under clause 23 whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 23 or as otherwise agreed, of the amount properly due and payable, the Principal or the TSE 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.

Notwithstanding clause 16.1(f), the Principal's Representative may at any time correct, modify or amend any payment schedule (including any amount included in a Principal's Representative Statement).

### 18.4 Provision of documentation and other requirements

- (a) Subject to clause 18.4(c), the Principal is not obliged to pay the TSE Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the TSE Contractor has:
  - (i) effected and is maintaining all insurances that the TSE Contractor is required to effect and maintain under clause 21 and has complied with clause 21.14;
  - (ii) complied with clauses 3.2(k), 4.1(a) and 4.9;
  - (iii) complied with its obligations under clause 3.18(a)(i);
  - (iv) provided a statement by the Quality Manager in the form of Schedule B16 that the parts of the TSE Contractor's Activities in respect of which any payment is claimed comply with the requirements of this deed;
  - (v) provided certification by the Independent Certifier in the form of Schedule B11 that the parts of the TSE Contractor's Activities in respect of which any payment is claimed comply with the requirements of this deed;
  - (vi) where clause 18.8(q) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by the TSE Contractor pursuant to that clause;
  - (vii) provided the Principal's Representative with a statutory declaration in the form of Schedule B18 which has been duly executed:



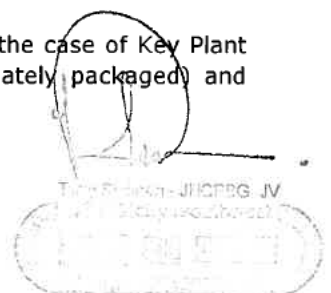
- (A) by a representative of the TSE Contractor who is in a position to know the facts declared; and
- (B) on the date the relevant payment claim was issued; and
- (viii) where the Principal has given notice under clause 19.6(a)(iv), provided the Principal's Representative with a tax invoice, revised tax invoice or adjustment note (as applicable) as required under clause 18.2(b)(i)(B) and clause 18.2(f).
- (b) The Principal is not obliged to pay the TSE Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the TSE Contractor has provided updated Programs each month as required by the TSE Contractor Documentation Schedule and Appendix E.5 of the SWTC.
- (c) This clause 18.4 does not apply in relation to a claim for payment in respect of the Month 1 Payment.

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

- (a) If a worker or a Subcontractor, obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials (including Materials) supplied for, or work performed with respect to, the TSE 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 shall be a debt due from the TSE Contractor to the Principal.
- (b) If the Principal receives notices of:
  - (i) the TSE Contractor being placed under administration; or
  - (ii) the making of a winding up order in respect of the TSE 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) Nothing in this clause 18.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987 (NSW)*, section 18(6) of schedule 2 of the *Payroll Tax Act 2007 (NSW)* and section 127(5) of the *Industrial Relations Act 1996 (NSW)*.

**18.6 Payment for Key Plant and Equipment**

- (a) The Principal is not under any obligation to pay any amount as an advance payment in accordance with this clause 18.6 unless the following conditions precedent have been satisfied:
  - (i) the TSE Contractor has delivered to the Principal [REDACTED] unconditional undertakings each for an amount [REDACTED] of the Key Plant and Equipment Amount that comply with the requirements of clause 4.2;
  - (ii) the Key Plant and Equipment is properly stored (or in the case of Key Plant and Equipment being transported to Australia, adequately packaged) and adequately protected and insured;



(iii) the TSE Contractor has granted a first ranking charge over each item of Key Plant and Equipment in favour of the Principal on such terms and conditions as are reasonably required by the Principal; and

(iv) the TSE Contractor has done all other things required by clause 18.6(e).

(b) [REDACTED]

(c) The TSE Contractor acknowledges and agrees that each charge to be provided under clause 18.6(a)(iii) of this deed will secure the obligations of the TSE Contractor under this deed.

(d) The TSE Contractor warrants that:

(i) there are no Encumbrances over the Key Plant and Equipment (other than the Security Interests in favour of the Principal that are created by the terms of this deed); and

(ii) it will not create, purport to or attempt to create, or permit to exist any Encumbrance over the Key Plant and Equipment.

These warranties are given by the TSE Contractor at the time that the Key Plant and Equipment is delivered to the Construction Site and will be repeated each day thereafter until the charges are released in accordance with clause 18.6(f).

(e) The TSE Contractor must do all things the Principal considers reasonably necessary to ensure that the Principal's Security Interests in the Key Plant and Equipment are enforceable, perfected, effective and take priority over all other Security Interests, including executing and procuring any relevant secured parties execute a deed of priority to give the Principal's Security Interest first ranking priority over the Key Plant and Equipment.

(f) Promptly after:

(i) the TSE Contractor notifies the Principal in writing that an item of Key Plant and Equipment is no longer required and will not further be used by the TSE Contractor in carrying out the TSE Contractor's Activities; and

(ii) the Principal's Representative is satisfied that the item of Key Plant and Equipment is no longer required and will not further be used by the TSE Contractor in carrying out the TSE Contractor's Activities,

the Principal must:

(iii) release the relevant charge in relation to that item of Key Plant and Equipment; and

(iv) take all steps reasonably required in order to remove, from the PPS Register, any registration(s) by the Principal of the Security Interest(s) provided for by this clause 18.6 in respect of that item of Key Plant and Equipment.

(g) The Principal's entitlement to the unconditional undertakings provided under clause 18.6(a)(i) will:

(i) be reduced by [REDACTED] on the date which is 20 Business Days after the date on which the first TBM commences tunnelling;



- (ii) be reduced by [REDACTED] on the date which is 20 Business Days after the date on which the second TBM commences tunnelling;
- (iii) be reduced by [REDACTED] on the date which is 20 Business Days after the date on which the third TBM commences tunnelling;
- (iv) be reduced by [REDACTED] on the date which is 20 Business Days after the date on which the fourth TBM commences tunnelling; and
- (v) cease on the date which is 20 Business Days after the date on which the fifth TBM commences tunnelling.

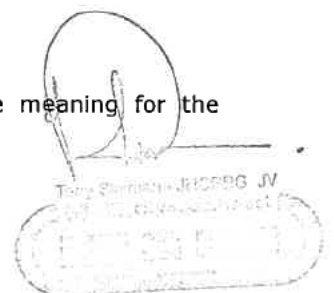
**18.7 Payment for unfixed Materials**

- (a) The value of unfixed Materials intended for incorporation in the Project Works but not yet incorporated are not to be included in a payment schedule under clause 18.2(c) and the Principal is under no obligation to pay for such Materials unless the following conditions precedent have been satisfied:
  - (i) the TSE Contractor:
    - (A) has provided to the Principal at the same time as its progress claim under clause 18.2(a) an unconditional undertaking that complies with the requirements of clause 4.2, for an amount equal to the payment claimed for the Materials; and
    - (B) gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed Materials will vest in the Principal upon payment;
  - (ii) the Materials are clearly marked as the property of the Principal and are on the Project Site or Temporary Areas or available for immediate delivery to the Project Site or Temporary Areas; and
  - (iii) the Materials are properly stored in a place approved by the Principal's Representative; and
  - (iv) there is evidence (in a form satisfactory to the Principal) that the TSE Contractor has registered a Security Interest in favour of the Principal in the unfixed Materials.
- (b) Upon payment of a payment schedule which includes an amount in respect of unfixed Materials, title in the unfixed Materials will vest in the Principal.
- (c) If the TSE Contractor provides an unconditional undertaking for payment for unfixed Materials, the Principal must release the unconditional undertaking to the TSE Contractor within 5 Business Days of those Materials:
  - (i) being incorporated into the Project Works; and
  - (ii) complying with the requirements of this deed.

[REDACTED]

**18.8 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 TSE 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 TSE 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 TSE 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 clause 18.8(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 TSE Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 18.2 less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (g) The TSE Contractor agrees that:
  - (i) the date prescribed by clause 18.2(a) as the date on which the TSE 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; and
  - (ii) a progress claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no liability to make a payment of any amount in respect of a progress claim unless the amount has been included in a payment schedule issued by the Principal's Representative in accordance with clause 18.2(c) or 18.2(d).
- (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 clause 18.8(i), give to the TSE Contractor rights under this deed which extend or are in addition to rights given to the TSE Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (i) If the TSE Contractor suspends the whole or part of the TSE Contractor's Activities pursuant to the SOP Act:

  
 Tony Stent - JHCPBG JV  
 1111 City of the Southwest  


- (i) the suspension will be an Act of Prevention for the purposes of this deed; and
  - (ii) except to the extent (if any) expressly provided under the SOP Act and clause 18.8(h), the Principal will not be liable for and the TSE Contractor is not entitled to Claim any Loss suffered or incurred by the TSE Contractor as a result of the suspension.
- (j) The TSE 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 TSE Contractor's Activities pursuant to the SOP Act; or
  - (ii) a failure by the TSE Contractor to comply with its obligations under clause 18.8(b).
- (k) The TSE 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 TSE Contractor's Activities is to be made; and
  - (ii) the TSE 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 TSE Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 18.2(c);
  - (ii) if it is subsequently determined pursuant to this deed that the TSE 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 TSE Contractor to the Principal which the TSE Contractor must pay to the Principal upon demand and in respect of which the TSE 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 TSE Contractor to the Principal upon demand and in respect of which the TSE 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.



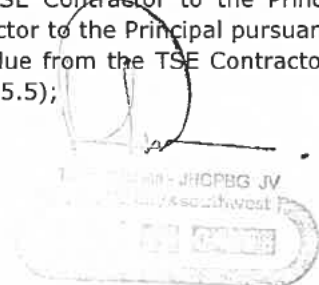


- (m) Without limiting clause 18.9, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (n) If the Principal withholds from money otherwise due to the TSE 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 TSE Contractor from the Principal; and
  - (ii) the period during which the Principal retains money due to the TSE 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 TSE Contractor has been unpaid; and
    - (B) the date by which payment of money owed by the Principal to the TSE Contractor must be made.
- (o) The TSE 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 be a debt due from the TSE 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 TSE 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 TSE Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 18.8(n)(i) or 18.8(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).

#### 18.9 Right of set-off

- (a) The Principal's Representative may (on behalf of the Principal) in any payment schedule issued under clauses 18.2(c) or 18.2(d) withhold, set-off or deduct from the money which would otherwise be certified as payable to the TSE Contractor or which would otherwise be due to the TSE Contractor under this deed:
  - (i) any debt or other moneys due from the TSE Contractor to the Principal (including any debt due from the TSE Contractor to the Principal pursuant to section 26C of the SOP Act or any amount due from the TSE Contractor to the Principal under clauses 15.3(b), 15.4 or 15.5);



- (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 that the Principal is entitled to withhold under clause 18.4; or
- (iv) subject to clause 18.9(b), any bona fide claim to money which the Principal may have against the TSE Contractor whether for damages (including liquidated damages) or otherwise,

under or arising out of or in connection with this deed or the TSE 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.

■ [REDACTED]

- (c) This clause 18.9 will survive the termination of this deed.

**18.10 Interest**

The Principal will pay simple interest at the rate of 1% above the Bank Bill Rate on any:

- (a) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 18.2(c), but which is not paid by the Principal within the time required by this deed;
- (b) damages;
- (c) amount which is agreed by the parties or determined to have been wrongfully withheld, set-off or deducted by the Principal pursuant to clause 18.9(a)(iv); and
- (d) amount which is found after the resolution of a Dispute to be payable to the TSE 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.

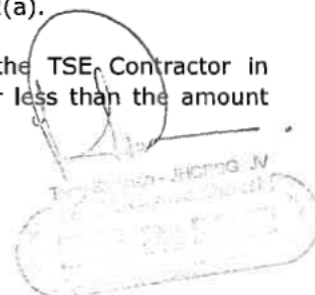
This will be the TSE Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

**18.11 Title**

Title in all items forming part of the Project Works and the Handover Works will pass progressively to the Principal on the earlier of payment for, or delivery of, such items to the Construction Site. Risk in all such items remains with the TSE Contractor in accordance with clause 21.

**18.12 Provisional Sum Work**

- (a) The TSE Contractor must proceed with all items of Provisional Sum Work unless the Principal's Representative directs the TSE Contractor to omit or vary the item of Provisional Sum Work by way of a Change under clause 13.2(a).
- (b) Where the Costs reasonably and properly incurred by the TSE Contractor in carrying out an item of Provisional Sum Work are more or less than the amount



allowed for the item of Provisional Sum Work in Cost Centre 19, the Project Contract Sum will be adjusted by the difference between:

- (i) the amount allowed for the item of Provisional Sum Work in Cost Centre 19; and
- (ii) either:
  - (A) an amount agreed between the TSE Contractor and the Principal's Representative; or
  - (B) if they fail to agree, an amount valued by the Principal's Representative in accordance with Schedule E10 having regard to any cost estimate provided by the TSE Contractor, relevant rates and prices included in the Design Payment Schedule or the Construction Payment Schedule and any other relevant market rates and prices,

and the difference will be added to or deducted from the Project Contract Sum.

- (c) Where the Principal's Representative directs a Change under clause 13.2(a) omitting an item of Provisional Sum Work prior to commencement of the relevant item of Provisional Sum Work (but not thereafter):
  - (i) the Project Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Cost Centre 19; and
  - (ii) the Principal may thereafter either carry out the Provisional Sum Work itself or employ or engage any other person or persons to carry out the item of Provisional Sum Work.
- (d) If the Principal provides the TSE Contractor with such further information as is reasonably required for the TSE Contractor to provide a fixed lump sum price for any relevant item of Provisional Sum Work, the TSE Contractor must promptly submit to the Principal's Representative a fixed lump sum price proposal for the relevant item of Provisional Sum Work which includes a reasonable cost breakdown for the lump sum price (**Lump Sum Price Proposal**).
- (e) Following the TSE Contractor's submission of a Lump Sum Price Proposal, the Principal's Representative will adjust the Project Contract Sum by the difference between:
  - (i) the amount allowed for the item of Provisional Sum Work in Cost Centre 19; and
  - (ii) either:
    - (A) an amount agreed between the TSE Contractor and the Principal's Representative; or
    - (B) if they fail to agree, an amount valued by the Principal's Representative in accordance with Schedule E10 having regard to the Lump Sum Price Proposal, relevant rates and prices included in the Design Payment Schedule or the Construction Payment Schedule and any other relevant market rates and prices,

and the difference will be added to or deducted from the Project Contract Sum and thereafter clauses 18.12(b) and 18.12(c) will not apply.



## 19. GST

### 19.1 Interpretation

- (a) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 19.
- (b) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 19.

### 19.2 GST payable

- (a) If GST is or will be payable in relation to a supply made by a party (the **Supplier**) under or in connection with this deed, then the party who is the recipient of the supply (the **Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable on the supply (**GST Amount**) at the same time as any other consideration is to be first provided for that supply.
- (b) Subject to clause 19.6, the Supplier must provide a tax invoice to the Recipient for the supply no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 19.2(a).

### 19.3 Adjustments

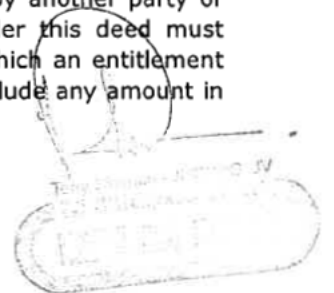
- (a) If the GST Amount payable in relation to a supply made under or in connection with this deed varies from the GST Amount paid by the Recipient under clause 19.2(a), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient subject to the issue of an adjustment note (except where the Recipient is required to issue a recipient created adjustment note).
- (b) If an adjustment event occurs in relation to a supply made under or in connection with this deed, the Supplier must give the Recipient an adjustment note as soon as reasonably practicable after the Supplier becomes aware of the adjustment event, but no later than 28 days after the adjustment event.

### 19.4 Non-monetary consideration

- (a) To the extent that the consideration provided for a taxable supply to which clause 19.2(a) applies is a taxable supply made by the Recipient to the Supplier in the same tax period (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 19.2(a) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) Subject to clause 19.6, the Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 19.2(a).

### 19.5 Reimbursements

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this deed must exclude the amount of GST referable to the cost to the extent to which an entitlement arises to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.





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■ [REDACTED]

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**20.2 Exclusion of proportionate liability scheme**

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.

Without limiting the above, the rights, obligations and liabilities of the Principal and the TSE 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.

**20.3 TSE Contractor not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) the TSE 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 TSE 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 TSE Contractor (whether in contract, tort or otherwise), the TSE Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the TSE Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

**20.4 Subcontracts**

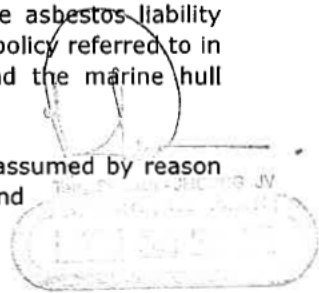
The TSE Contractor must:

- (a) in each Subcontract into which it enters for the carrying out of the TSE 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 TSE 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.

**20.5 Insurance requirements**

The TSE 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 asbestos liability insurance policy referred to in clause 21.6, the professional indemnity policy referred to in clause 21.7, the motor vehicle policy referred to in clause 21.9 and the marine hull insurance policy referred to in clause 21.11):

- (a) cover the TSE Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 of the *Civil Liability Act 2002* (NSW); and







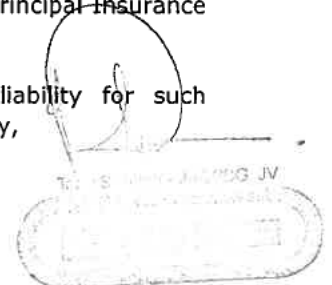
- (i) in accordance with clause 21.18, (at its own cost) promptly make good destruction, loss or damage to anything caused during the period the TSE Contractor is responsible for its care; and
  - (ii) indemnify the Principal against such destruction, loss or damage.
- (d) This clause 21.1 does not apply to the extent that any destruction, loss or damage for which the TSE 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 TSE 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 Change the subject of a direction by the Principal's Representative and clause 13 applies.

**21.2 Indemnity by the TSE Contractor**

- (a) The TSE 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 21.1 while the TSE 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 TSE Contractor's Activities, the Project Works or the Temporary Works or any failure by the TSE 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 TSE Contractor's breach of a term of this deed,
- (b) To the extent that the TSE Contractor is required to indemnify the Principal from and against any Consequential Loss due to loss of use or access to real or personal property, the TSE Contractor's liability for such Consequential Loss is limited to the extent the TSE Contractor:
- (i) recovers its liability for such Consequential Loss under a Principal Insurance Policy; or
  - (ii) is indemnified or entitled to be indemnified for its liability for such Consequential Loss under a TSE Contractor Insurance Policy,



or would have recovered or been indemnified or entitled to be indemnified (as applicable) for its liability for such Consequential Loss but for:

- (iii) the operation of any policy retention, deductible or excess that the TSE Contractor is required to bear under the terms of this deed;
- (iv) any act or omission of the TSE Contractor or its Associates including any failure by the TSE Contractor to:
  - (A) diligently pursue a claim under the relevant policy of insurance;
  - (B) comply with the terms of the relevant policy of insurance (including pre-contractual duties of disclosure); or
  - (C) comply with its insurance obligations under this deed.

(c) Where the TSE Contractor indemnifies the Principal under this deed from and against any Liability, claim or Loss, the TSE 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.

(ba) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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- (d) Clause 21.2(a) does not limit or otherwise affect the TSE Contractor's other obligations under this deed or otherwise according to Law.
- (e) The TSE Contractor is not relieved of any obligation to indemnify the Principal under this Clause 21.2 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal pursuant to clause 21.3.
- (f) The parties acknowledge and agree that this clause 21.2 is not intended to operate to allow any insurer to deny indemnity or to limit or reduce its liability to indemnify the TSE Contractor for a Liability, claim or Loss otherwise insured.

**21.3 Principal's insurance**

- (a) The Principal must within 20 Business Days of the date of this deed, effect and thereafter maintain:
  - (i) contract works (material damage) insurance; and
  - (ii) public and products liability insurance,
 on the terms of the policies set out in Schedule E7.
- (b) Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the TSE Contractor must:
  - (i) satisfy itself of the nature and extent of the cover provided by these insurance policies;
  - (ii) acknowledge that the Principal's insurances do not cover every risk to which the TSE Contractor might be exposed and are subject to deductibles and limits and the TSE 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 TSE Contractor:
    - (A) bears the risk of the relevant destruction, loss or damage under clause 21.1, or is required to indemnify the Principal under clause 21.2, 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,
 and such claim was not caused by the Principal, bear the cost of any excesses or deductibles in the insurance policies in Schedule E7 or any insurance taken out by the TSE Contractor under clause 21.4, that may apply in those circumstances.

**21.4 TSE Contractor's insurance obligations**

The TSE Contractor must effect and maintain the following insurance:

- (a) workers compensation insurance referred to in clause 21.5;
- (b) asbestos liability insurance referred to in clause 21.6;
- (c) professional indemnity insurance referred to in clause 21.7;

A handwritten signature in blue ink is written over a circular stamp. The stamp contains the text "JAMES J. JONES JR." and "ATTORNEY AT LAW" around the perimeter. The signature appears to be "James J. Jones Jr.".

- (d) Construction Plant insurance referred to in clause 21.8;
- (e) motor vehicle insurance referred to in clause 21.9;
- (f) marine transit insurance referred to in clause 21.10;
- (g) marine hull insurance referred to in clause 21.11; and
- (h) marine liability insurance referred to in clause 21.12.

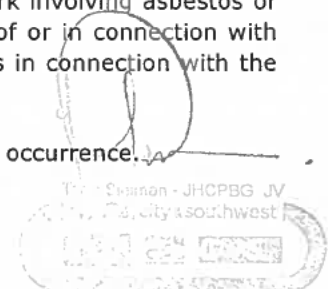
**21.5 Workers compensation insurance**

- (a) The TSE Contractor must effect and maintain workers compensation insurance (unless the TSE Contractor is a licenced self-insurer under the relevant statutory scheme) which covers workers in accordance with any statute relating to workers or accident compensation:
  - (i) for the amount required by Law; and
  - (ii) in the name of the TSE Contractor and, where permissible under the relevant statutory scheme, extended to indemnify the Principal for its statutory liability to persons employed or deemed employed by the TSE Contractor.
- (b) The parties acknowledge and agree that John Holland will to the extent permitted by Law, self-insure in relation to workers compensation insurance. The TSE Contractor:
  - (i) warrants that John Holland is licensed to self-insure under the Comcare Scheme; and
  - (ii) must at any time, upon request by the Principal, provide the Principal with evidence of John Holland's licence to self-insure under the Comcare Scheme.
- (c) The TSE 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 amount required by Law; and
  - (ii) in the name of the Subcontractor and (where permissible under the relevant statutory scheme) extended to indemnify the Principal and the TSE Contractor for their statutory liability to persons employed or deemed employed by the Subcontractor.

**21.6 Asbestos liability insurance**

If the TSE Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, the TSE 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 TSE Contractor or its Associates in connection with the carrying out of the TSE Contractor's Activities; and
- (b) has a limit of indemnity of at least \$20,000,000 for any one occurrence.





21.11 Marine hull insurance

[REDACTED]

21.12 Marine liability insurance

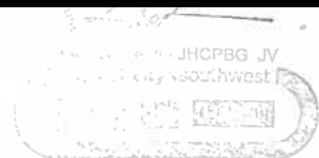
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21.13 Periods of insurance

[REDACTED]

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  - [REDACTED]
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■ [REDACTED]

■ [REDACTED]

21.14 Evidence of policies

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■ [REDACTED]

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21.15 Provisions in policies

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■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED], 21.11 an [REDACTED]  
insureds an [REDACTED]





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21.16 Premiums

■ [REDACTED]

■ [REDACTED] and an [REDACTED]

  
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- (B) there is minimal disruption to the Project Works or the Temporary Works; and
- (ii) that, to the greatest extent possible, the TSE Contractor continues to comply with its obligations under this deed;
- (d) subject to clause 21.1(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.

**21.19 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 21.3 will be:

- (a) paid to the Principal;
- (b) paid by the Principal to the TSE Contractor by progress payments under clause 18.2 as and when the TSE Contractor reinstates the Project Works and the Temporary Works; and
- (c) subject to clause 21.1(e), the limit of the TSE Contractor's entitlement to payment for reinstatement of the destruction, loss or damage.

**21.20 Damage to property**

- (a) Subject to clause 21.20(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 TSE Contractor of the TSE Contractor's Activities or a failure by the TSE Contractor to comply with its obligations under this deed, the TSE Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) If the TSE Contractor fails to carry out any repair work under clause 21.20(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 TSE Contractor to the Principal.
- (c) This clause 21.20 does not apply where the owner of the real or personal property does not agree to the TSE Contractor carrying out the work under clause 21.20(a).
- (d) Nothing in this clause 21.20 limits the operation of the indemnity in clause 21.2(a).

**21.21 Risk of deductibles or excesses**

Without limiting clause 21.3, the TSE Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under an insurance policy which the TSE Contractor is required to effect under this clause 21.



Terry Sheehan - JHCPBG JV  
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## 22. TERMINATION BY THE PRINCIPAL

### 22.1 Notice of default

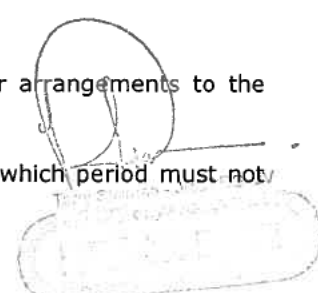
The Principal may give a written notice to the TSE Contractor if the TSE Contractor is in breach of this deed in that it:

- (a) does not commence to perform its obligations in accordance with the requirements of this deed;
- (b) does not progress the TSE Contractor's Activities in accordance with clause 17.1;
- (c) suspends the TSE Contractor's Activities (except to the extent required by this deed or permitted by Law);
- (d) fails to provide any unconditional undertaking in accordance with clause 4.1;
- (e) fails to provide any guarantee in accordance with clause 4.9;
- (f) fails to effect and maintain any insurances required to be effected and maintained by the TSE Contractor, or fails to provide evidence of such insurances, in accordance with clause 21;
- (g) commits a material breach of clause 5.1, 5.2 or 5.3;
- (h) commits a material breach of clause 6.5;
- (i) fails to comply with its obligations under the Independent Certifier Deed and this results in the termination of the Independent Certifier Deed;
- (j) does not comply with any Direction of the Principal's Representative made in accordance with this deed;
- (k) knowingly provides a statutory declaration or documentary evidence which contains a statement that is untrue;
- (l) fails to pay a sum of money due and owing to the Principal in accordance with the TSE Contract and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment; or
- (m) is otherwise in breach of a material or substantial term of, or obligation under, this deed.

### 22.2 Contents of notice

The notice under clause 22.1 must state:

- (a) that it is a notice under clause 22.1;
- (b) the breach relied upon; and
- (c) that the Principal requires the TSE Contractor to:
  - (i) remedy the breach or overcome its effects; or
  - (ii) where the breach cannot be remedied, make other arrangements to the satisfaction of the Principal,within a reasonable period of time specified in the notice (which period must not be less than 15 Business Days from the date of the notice).



22.3 **Termination by the Principal for insolvency or breach**

- (a) Subject to clause 22.8, the Principal may terminate this deed by notice in writing to the TSE Contractor from the date stated in the notice if:
- (i) an Insolvency Event occurs in relation to:
    - (A) the TSE Contractor; or
    - (B) where the TSE Contractor comprises more than one person, any one of those persons; or
    - (C) any TSE Contractor Guarantor,whether or not the TSE Contractor is then in breach of this deed;
  - (ii) the TSE Contractor does not remedy a breach of this deed the subject of a notice under clause 22.1 or overcome its effects within the period of time specified in the notice under clause 22.1;
  - (iii) where a breach of this deed the subject of a notice under clause 22.1 cannot be remedied, the TSE Contractor has not made other arrangements to the satisfaction of the Principal;
  - (iv) the TSE Contractor is in fundamental breach as contemplated in clause 3.6(b)(i);
  - (v) the TSE Contractor is in breach of:
    - (A) clause 4.9(c)(i);
    - (B) clause 7; or
    - (C) clause 28.2;
  - (vi) a Change in Control occurs in respect of an entity that comprises the TSE Contractor without the prior written consent of the Principal (other than a Change in Control permitted under clause 24.2(c));
  - (vii) a Change in Control occurs in respect of a TSE Contractor Guarantor without the prior written consent of the Principal (other than a Change in Control permitted under clause 24.3(c));
  - (viii) the aggregate liability of the TSE Contractor to the Principal under or in connection with the TSE Contract Documents is equal to or exceeds [REDACTED] of the Project Contract Sum;
  - (ix) the aggregate liability of the TSE Contractor to the Principal under or in connection with any one or more of clauses 17.10(d)(i), 17.10(d)(ii) and 17.10(i)(ii) is equal to or exceeds [REDACTED] of the Project Contract Sum; or

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



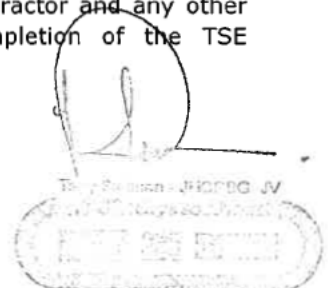
■ [REDACTED]

■ [REDACTED]

- (b) Notwithstanding clause 22.3(a)(i), the Principal may not terminate this deed pursuant to clause 22.3(a)(i)(A) or 22.3(a)(i)(B) where:
  - (i) the TSE Contractor comprises more than one person and an Insolvency Event occurs to one, but not all, of those persons; and
  - (ii) the TSE Contractor demonstrates (and continues to demonstrate) to the satisfaction of the Principal that it is still able to carry out the TSE Contractor's Activities in a manner which will enable it to comply with its obligations under the deed.
- (c) Notwithstanding clause 22.3(a)(i), the Principal may not terminate this deed pursuant to clause 22.3(a)(i)(C), clause 22.3(a)(v)(A) or clause 22.3(a)(x) where the TSE Contractor demonstrates (and continues to demonstrate) to the satisfaction of the Principal that the remaining TSE Contractor Guarantors are of sufficient commercial and financial standing to perform the obligations of the TSE Contractor Guarantor under their respective Parent Company Guarantees.

22.4 **The Principal's entitlements after termination**

- (a) If the Principal terminates this deed under clause 22.3, the Principal:
  - (i) may without payment of compensation to the TSE Contractor:
    - (A) take possession of, and use (and permit others to use), the Key Plant and Equipment, the Construction Plant, Materials, Utility Services, the Temporary Works and other things on or in the vicinity of the Construction Site and Extra Land as were used by the TSE Contractor (and, for this purpose, the TSE Contractor must ensure that the Principal has access to the Extra Land in which the Principal has no interest);
    - (B) contract with such of the Subcontractors; and
    - (C) take possession of, and use (and permit others to use), such of the Design Documentation and other information in the possession of the TSE Contractor,  
  
as are reasonably required by the Principal to facilitate completion of the TSE Contractor's Activities (as the case may be) remaining to be completed under this deed as at the date of termination (**Remaining Work**);
  - (ii) may engage third parties to carry out and complete the whole or any part of the Remaining Work;
  - (iii) may exclude from the Construction Site the TSE Contractor and any other person concerned with the carrying out and completion of the TSE Contractor's Activities;

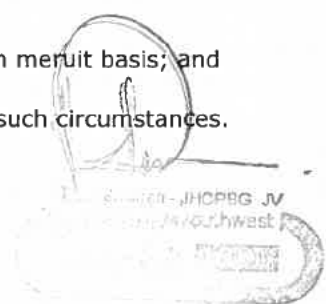


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- (iv) will, subject to clause 20, be entitled to recover from the TSE Contractor any Loss suffered or incurred by the Principal arising out of or in any way in connection with the breach, Insolvency Event or termination of this deed and until the Principal's rights in this regard are satisfied, the Principal will not be obliged to make any further payments to the TSE Contractor, including any money the subject of a progress claim under clause 18.2(a) or a payment schedule under clause 18.2(c) or 18.2(d); and
  - (v) will be entitled to have recourse to any unconditional undertaking held under clause 4.1, 18.6 or 18.7.
- (b) If the Principal takes possession of Construction Plant and Materials, the Principal must maintain them in good working order and, subject to paragraph (c), on completion of the Remaining Work, the Principal shall return the Construction Plant and Materials that are surplus.
  - (c) If the TSE Contractor is indebted to the Principal, the TSE Contractor grants to the Principal a lien over the Key Plant and Equipment, Construction Plant, Temporary Works or other things taken under clause 22.4(a)(i)(A) such that the Principal may retain that property until the debt is met. If after reasonable notice, the TSE Contractor fails to pay the debt, the Principal may sell the Key Plant and Equipment, 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 TSE Contractor.
  - (d) The TSE Contractor must do all things (including executing all documents) reasonably required by the Principal to enable the Principal to lawfully register any Security Interest in the Construction Plant or other things taken under paragraph (a) so as to ensure the Principal's rights under this clause 22.4 are not adversely affected.

**22.5 TSE Contractor's rights after repudiation or wrongful termination**

- (a) If the Principal:
  - (i) repudiates this deed and the TSE Contractor terminates this deed; or
  - (ii) wrongfully:
    - (A) exercises or attempts to exercise any right or power conferred on it by clause 22.3; 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 22.6 and the TSE Contractor's sole rights in such circumstances will be those set out in clause 22.7; and
  - (iv) the TSE 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 22.5 will survive the termination of this deed.



## 22.6 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 TSE 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 TSE Contractor; and
- (b) thereafter either itself or by a third party complete the uncompleted part of the TSE Contractor's Activities.

## 22.7 Cost

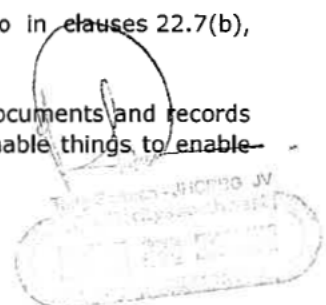
If the Principal terminates this deed under clause 22.6, without prejudice to any of the Principal's other rights, entitlements or powers under this deed (including its right of set-off under clause 18.9), the TSE Contractor will be entitled to payment of the following amounts:

- (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 TSE Contractor submitted a payment claim under clause 18.2 for work carried out to the date of termination;
- (b) the cost of Materials or other items reasonably ordered by the TSE Contractor for the TSE Contractor's Activities and for which it is legally bound to pay provided that:
  - (i) the value of the Materials and other items have not been previously paid or included in the amount payable under clause 22.7(a); and
  - (ii) title in the Materials will vest in the Principal upon payment;
- (c) the reasonable cost of making the Project Site safe and removing from the Project Site and the Temporary Areas all Construction Plant, Materials and Temporary Works and other things used in the performance of the TSE Contractor's obligations;
- (d) the reasonable costs incurred by the TSE Contractor as a result of terminating Subcontracts;
- (e) where termination occurs prior to Construction Completion of the last Portion to achieve Construction Completion, [REDACTED] of the unpaid balance (if any) of the Construction Contract Sum (after taking into account the amount payable under clause 22.7(a)) as that balance stands at the date of termination; and
- (f) the costs reasonably incurred by the TSE Contractor in the expectation of completing the whole of the TSE Contractor's Activities and not included in any other payment by the Principal,

such amounts to be as stated by the Principal's Representative.

The TSE Contractor must:

- (g) take all reasonable steps to mitigate the costs referred to in clauses 22.7(b), 22.7(c), 22.7(d) and 22.7(f); and
- (h) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other reasonable things to enable





the Principal to complete the design and construction of the Project Works and the Temporary Works.

The TSE Contractor and each of its Subcontractors may retain one copy of the information, documents and records referred to in clause 22.7(h).

To the extent it has not had recourse to them, the Principal will, subject to clause 4.4(c), return the unconditional undertakings then held by it under clauses 4.1, 18.6 or 18.7 when the TSE Contractor has complied with its obligations under this clause.

Upon payment of the amount payable under this clause 22.7 title in the Materials referred to in clause 22.7(b) will vest in the Principal.

The amount to which the TSE Contractor is entitled under this clause 22.7 will be a limitation upon the Principal's liability to the TSE 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 TSE 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 22.7.

This clause 22.7 will survive the termination of the deed under clause 22.6.

#### 22.8 **Preservation of rights**

Nothing in this clause 22 or that the Principal does or fails to do pursuant to this clause 22 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 18.9) which it may have, including where the TSE Contractor breaches (including repudiates) this deed.

#### 22.9 **Termination by Frustration**

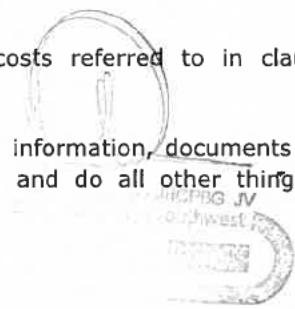
If under the Law this deed is frustrated:

(a) the Principal will:

- (i) pay the TSE Contractor the following amounts as determined by the Principal's Representative:
  - (A) an amount calculated in accordance with clause 22.7(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, clause 22.7(b); and
  - (C) the costs calculated in accordance with the terms of clauses 22.7(c) and 22.7(f); and
- (ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 4.1, 18.6 or 18.7 (or the remaining proceeds of the unconditional undertakings if they have been converted into cash) when the TSE Contractor has complied with its obligations under this clause; and

(b) the TSE Contractor must:

- (i) take all reasonable steps to mitigate the costs referred to in clauses 22.9(a)(i)(B) - (C); and
- (ii) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other things to



enable the Principal to complete the design and construction of the Project Works and the Temporary Works.

- (c) Upon payment of the amount payable under this clause 22.9, title in the Materials the subject of the costs payable in respect of clause 22.9(a)(i)(B) will vest in the Principal.
- (d) The amount to which the TSE Contractor is entitled under this clause 22.9 will be a limitation upon the Principal's liability to the TSE 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 TSE 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 22.9.
- (e) Without limiting any other provision of this deed, this clause 22.9 will survive the frustration of this deed.

#### 22.10 **Codification of TSE Contractor's entitlements**

This clause 22 is an exhaustive code of the TSE Contractor's rights arising out of or in any way in connection with any termination and the TSE 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 22.

### 23. **DISPUTE RESOLUTION**

#### 23.1 **Disputes generally**

Subject to clause 23.18, any dispute, difference, controversy or Claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with this deed (including any questions relating to the existence, validity or termination of this deed), the Project Works, the Temporary Works, the TSE Contractor's Activities, a Principal's Representative Statement or either party's conduct before the date of this deed, must be resolved in accordance with this clause 23.

#### 23.2 **Dispute Avoidance Board's advisory function**

- (a) The Dispute Avoidance Board will be constituted under the DAB Agreement.
- (ab) The parties must promptly after the date of this deed execute the DAB Agreement with each proposed member of the Dispute Avoidance Board.
- (b) In performing its functions the Dispute Avoidance Board must comply with this deed and the DAB Agreement.
- (c) Each party must:
  - (i) attend meetings with the Dispute Avoidance Board as required pursuant to the DAB Agreement; and
  - (ii) provide all reasonable assistance to the Dispute Avoidance Board in fulfilling its advisory function including providing all information it reasonably requests.



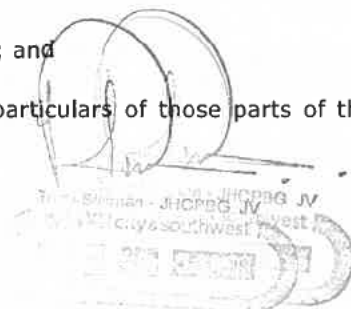
- (d) Either party may refer any unresolved matters that are not yet subject to a Notice of Dispute to the Dispute Avoidance Board for its opinion. Any such referrals must be made in writing to the chairperson of the Dispute Avoidance Board and a copy simultaneously provided to the other party.
- (e) For the purposes of enabling it to fulfil its functions the Dispute Avoidance Board will:
  - (i) keep itself informed as to the progress of the Project Works and in particular any issues affecting the successful progression of the Project Works; and
  - (ii) attend any Management Review Group meetings which it is requested to attend by either party.

### 23.3 Notice of Dispute

- (a) Where a Dispute arises either party may, within the time required by clause 23.3(b), give the other party written notice of the Dispute (**Notice of Dispute**). The Notice of Dispute must:
  - (i) specify the Dispute;
  - (ii) provide particulars of the party's reasons for being dissatisfied; and
  - (iii) set out the position which the party believes is correct.
- (b) Without limiting clause 29, the Notice of Dispute must be given to the other party:
  - (i) (in the case where the Dispute is in respect of a Principal's Representative Statement) within the time period required by clause 16.1(f); or
  - (ii) (otherwise) at any time after the Dispute has arisen.

### 23.4 Executive negotiation

- (a) Where a Notice of Dispute is given under clause 23.3, the Dispute must be referred to the Executive Negotiators and the Executive Negotiators must, within 5 Business Days after the date on which the Notice of Dispute was given under clause 23.3, meet and negotiate with a view to resolving the Dispute.
- (b) Subject to clause 23.4(d), if the Executive Negotiators have not resolved the Dispute within 20 Business Days after the date on which the Notice of Dispute was given under clause 23.3 (or such longer period of time as the Executive Negotiators or the parties may have agreed in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute, either party may by giving notice to the other party in accordance with clause 23.4(c) require that those parts of the Dispute that remain unresolved be referred to expert determination.
- (c) A notice under clause 23.4(b) must:
  - (i) be given within 20 Business Days after the expiry of the 20 Business Day period referred to in clause 23.4(b);
  - (ii) state that it is a notice under clause 23.4(b); and
  - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute that remain unresolved.



- (d) Where a Notice of Dispute is given under clause 23.3 after the Date of Completion of the last Portion, this clause 23.4 will still apply, but if the Dispute is not resolved within 20 Business Days after the date on which the Notice of Dispute was given under clause 23.3:
  - (i) the Dispute will not be referred to expert determination;
  - (ii) clauses 23.5 to 23.9 will not apply; and
  - (iii) whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the dispute, the Dispute will be determined in accordance with clause 23.10.

**23.5 Expert determination**

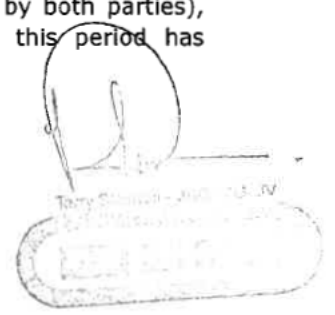
- (a) Any Dispute which is referred to expert determination by a notice under clause 23.4(b) will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A23.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Construction Site and 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 30 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 23.5. 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 in an amicable settlement or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 23.

**23.6 Notice of dissatisfaction**

- (a) If:
  - (i) either party is dissatisfied with a determination made by an Expert under clause 23.5, 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 30 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 of dissatisfaction to the other party,

**(Notice of Dissatisfaction).**

- (b) A Notice of Dissatisfaction issued under this clause 23.6 must:



- (i) state that it is given under this clause 23.6; and
  - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 23.4(d), 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 23.6.

**23.7 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 23.6, 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 23.7(a), neither party will be entitled to challenge the determination on any basis.

**23.8 Failure to comply with an Expert's decision**

If a party fails to comply with any final and binding decision of the Expert, then the other party may, without prejudice to any other rights it may have, give a notice to the other party requiring the failure itself to be determined as a Dispute in accordance with clause 23.9. In these circumstances clauses 23.2 - 23.7 will not apply to this Dispute.

**23.9 Amicable settlement**

Where a Notice of Dissatisfaction has been given under clause 23.6, or where a notice has been given under clause 23.8, both parties must attempt to settle the Dispute amicably before the commencement of any further proceedings. However, unless both parties agree otherwise, if no amicable settlement has been reached within 15 Business Days after the day on which the Notice of Dissatisfaction or the notice under clause 23.8 was given, the Dispute will be determined in accordance with clause 23.10 whether or not the parties have met and attempted to settle the dispute amicably.

**23.10 Litigation or arbitration**

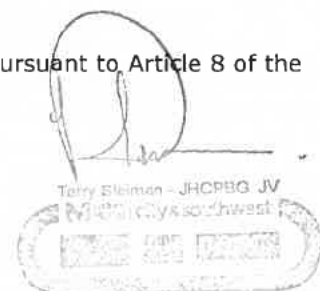
Where this clause applies, the Principal in its absolute discretion may within 15 Business Days after the expiry of:

- (a) the 15 Business Day period referred to in clause 23.9; or
- (b) the 20 Business Day period referred to in clause 23.4(d),

(as applicable) issue a notice to the TSE 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 15 Business Day period, the Dispute will be referred to arbitration.

**23.11 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 number of arbitrators will be agreed or determined pursuant to Article 8 of the ACICA Arbitration Rules.

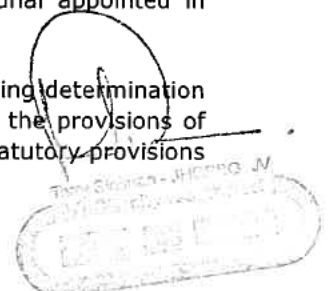


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- (d) The language of the arbitration will be English.
- (e) The parties further agree to the following general principles relating to the procedure of the arbitration:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) that any arbitration conducted pursuant to this clause shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
  - (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.
- (f) The parties agree that:
  - (i) subject to clause 23.12, 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.
- (g) 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.
- (h) Any award of the arbitral tribunal will be final and binding upon the parties.
- (i) This arbitration agreement is governed by and must be construed according to the Law applying in New South Wales.

**23.12 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 23.
- (b) The arbitral tribunal 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 the arbitral tribunal.

### 23.13 Replacement of Dispute Avoidance Board member

- (a) If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:
  - (i) if that member is the chairperson, the remaining two members will appoint a replacement member; and
  - (ii) if that member is not the chairperson:
    - (A) if the parties have previously agreed upon one or more reserve members for the Dispute Avoidance Board, and one or more such members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Avoidance Board; or
    - (B) if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
- (b) If, within 30 Business Days of a member declining to act or being unable to act on the Dispute Avoidance Board, the member has not been replaced by a person appointed in accordance with clause 23.13(a), either party may request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.
- (c) The parties, the remaining members and the new member must enter into a replacement Dispute Avoidance Board agreement on substantially the same terms as the DAB Agreement.

### 23.14 Termination of Dispute Avoidance Board

- (a) The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by the Principal or the TSE Contractor acting alone.
- (b) Unless otherwise agreed by both parties, the DAB Agreement will terminate upon the Date of Completion of the last portion to achieve Completion.

### 23.15 Payments

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

### 23.16 TSE Contractor to continue performing obligations

Despite the existence of any Dispute the TSE Contractor must:

- (a) continue to perform the TSE Contractor's Activities; and
- (b) perform its other obligations under this deed.



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**23.17 Urgent relief**

Nothing in this clause 23 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

**23.18 Dispute under related contracts**

The parties acknowledge and agree that:

- (a) the provisions of this clause 23 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under the provisions of the TSE-OTS2 Cooperation and Integration Deed;
- (b) the parties shall be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the TSE-OTS2 Cooperation and Integration Deed; and
- (c) where the Dispute is a Common Dispute, as that term is defined in clause 9 of Schedule D4, then this clause 23 will apply subject to the provisions of clause 9 of Schedule D4.

**23.19 Survive termination**

This clause 23 will survive termination of this deed.

**24. RESTRICTIONS AND CHANGE IN CONTROL**

**24.1 Restrictions relating to the TSE Contractor JV Deed**

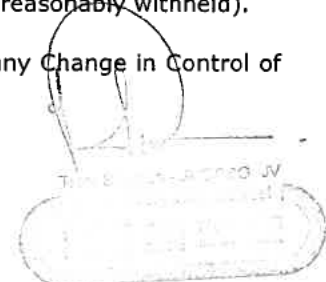
The TSE Contractor must not:

- (a) terminate, surrender, rescind or accept the repudiation of;
- (b) permit the novation, assignment, transfer or substitution of the whole or part of any party's right, obligation or interest in; or
- (c) where it may impact the rights or increase the liabilities or obligations of the Principal or may adversely affect the TSE Contractor's ability to perform the TSE Contractor's Activities:
  - (i) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to; or
  - (ii) enter into any agreement or arrangement which affects the operation or interpretation of,

the TSE Contractor JV Deed without the Principal's written consent (which consent will not be unreasonably withheld or delayed).

**24.2 Change in control of an entity that comprises the TSE Contractor**

- (a) Subject to the terms of this clause 24.2, the TSE Contractor must ensure that there is no Change in Control of any entity that comprises the TSE Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The TSE Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the TSE Contractor, and provide:

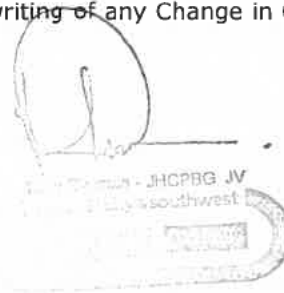




- (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
  - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 24.2(d), in relation to the Change in Control of the relevant entity that comprises the TSE Contractor.
- (c) The Principal's approval is not required for a Change in Control arising from:
- (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (ii) 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 TSE Contractor gives the Principal prior written notice of the transfer.
- (d) 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 TSE Contractor where the Principal is of the reasonable opinion that:
- (i) the person or entity which will exercise Control of the TSE Contractor or the relevant entity that comprises the TSE Contractor:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
  - (ii) as a result of the Change in Control, the TSE Contractor will no longer:
    - (A) have sufficient expertise and ability; or
    - (B) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the TSE Contractor under this deed.
- (e) If a Change in Control of any entity that comprises the TSE Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 24.2(c)), the TSE Contractor acknowledges that the Principal may terminate this deed by notice in writing to the TSE Contractor.
- (f) The Principal's approval of a Change in Control of any entity that comprises the TSE Contractor will not relieve the TSE Contractor of any of its obligations under this deed.

**24.3 Change in control of a TSE Contractor Guarantor**

- (a) Subject to the terms of this clause 24.3, the TSE Contractor must ensure that there is no Change in Control of a TSE Contractor Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The TSE Contractor must notify the Principal in writing of any Change in Control of a TSE Contractor Guarantor, and provide:



- (i) 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
  - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 24.3(d), in relation to the Change in Control of that TSE Contractor Guarantor.
- (c) The Principal's approval is not required for a Change in Control arising from:
- (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (ii) 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 TSE Contractor gives the Principal prior written notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a TSE Contractor Guarantor where the Principal is of the reasonable opinion that:
- (i) the person or entity which will exercise Control of the relevant TSE Contractor Guarantor:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro City & Southwest; or
  - (ii) as a result of the Change in Control, the relevant TSE Contractor Guarantor will no longer:
    - (A) have sufficient expertise and ability; or
    - (B) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the TSE Contractor Guarantor under the relevant Parent Company Guarantee.
- (e) If a Change in Control of a TSE Contractor Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 24.3(c)), the TSE Contractor acknowledges that the Principal may terminate this deed by notice in writing to the TSE Contractor.
- (f) The Principal's approval of a Change in Control of a TSE Contractor Guarantor will not relieve the TSE Contractor of any of its obligations under this deed.

**25. FINANCIAL REPORTING AND NOTIFICATIONS**

**25.1 Financial reporting**

- (a) Not later than 4 months after the end of each financial year, the TSE Contractor must give the Principal audited financial statements for the previous financial year for:
  - (i) each entity that comprises the TSE Contractor; and

- (ii) each TSE Contractor Guarantor.
- (b) Each of the documents to be provided to the Principal in accordance with this clause 25.1 must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.
- (c) The TSE Contractor must prepare (or procure the preparation of) the accounts and financial statements required under this clause 25.1 in compliance with all applicable laws and, without limitation, in accordance with the accounting principles generally accepted in Australia or the place of incorporation of the relevant entity and consistently applied.
- (d) The TSE Contractor is not required to provide any documents under this clause 25.1 following the achievement of Construction Completion of the last Portion.

**25.2 Events having a material adverse impact on financial standing**

Subject to the requirements of all applicable laws and the listing rules of any recognised stock exchange, the TSE Contractor must notify the Principal as soon as the TSE Contractor becomes aware of any fact, matter or thing which has or may have a material adverse effect upon the financial standing of any entity that comprises the TSE Contractor or any TSE Contractor Guarantor, including:

- (a) a downgrade in any applicable credit rating;
- (b) a short term share price decrease of greater than [REDACTED];
- (c) a significant loss suffered or incurred on a project or under a contract; or
- (d) a significant fine or financial penalty.

**26. TRANSPORT FOR NSW STATEMENT OF BUSINESS ETHICS**

- (a) The TSE Contractor must at all times comply with the Transport for NSW Statement of Business Ethics, a copy of which is available at [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).
- (b) Prior to the engagement of any Subcontractor by the TSE Contractor, the TSE Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Transport for NSW Statement of Business Ethics.

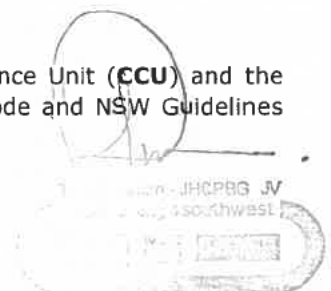
**27. NSW CODE OF PRACTICE**

**27.1 NSW Code and NSW Guidelines**

In addition to terms defined in this deed, terms used in this clause 27 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

**27.2 Primary Obligation**

- (a) The TSE Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (b) The TSE Contractor must notify the Construction Compliance Unit (**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.

- (c) Where the TSE Contractor engages a Subcontractor, the TSE Contractor must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 27, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The TSE Contractor must not appoint or engage another party in relation to the TSE Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

### 27.3 Access and information

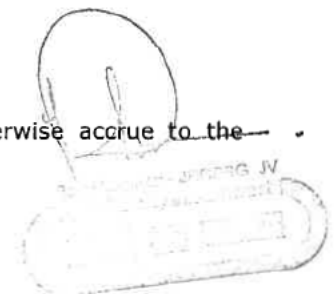
- (a) The TSE Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (b) The TSE Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the TSE Contractor, including but not limited to the Construction Site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the TSE Contractor's Activities;
  - (v) have access to personnel; and
  - (vi) interview any person;

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by the TSE Contractor, its Subcontractors and related entities.

- (c) The TSE Contractor, and its related entities, must agree to, and comply with, any 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.

### 27.4 Sanctions

- (a) The TSE 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.
- (b) If the TSE 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.
- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and



- (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
  - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
  - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the TSE Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

#### 27.5 Compliance

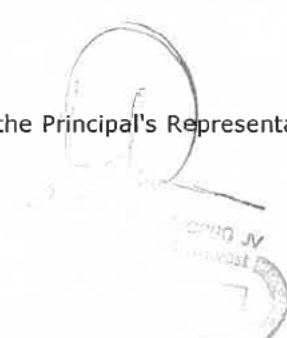
- (a) The TSE Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The TSE Contractor is not entitled to make, and the Principal and the State of NSW will not be liable upon, any Claim against the Principal or the State of NSW arising out of or in any way in connection with the TSE Contractor's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the TSE Contractor from responsibility to perform the TSE Contractor's Activities or any other obligation under this deed, or from liability for any Defect in the Project Works or Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a Change is proposed, and that Change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the TSE Contractor must immediately notify the Principal (or nominee) of the Change, or likely Change and specify:
  - (i) the circumstances of the proposed Change;
  - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Change;
  - (iii) what steps the TSE Contractor proposes to take to mitigate any adverse impact of the Change (including any amendments it proposes to the Workplace Relations Management Plan or the Project Health & Safety Management Plan),

and the Principal will direct the TSE Contractor as to the course it must adopt within 10 Business Days of receiving notice.

#### 27.6 Workplace Relations Management Plan

The TSE Contractor must:

- (a) prepare a Workplace Relations Management Plan which complies with the requirements of:
  - (i) section 6 of the NSW Guidelines; and
  - (ii) part 6 of the Building Code; and
- (b) submit the Workplace Relations Management Plan to the Principal's Representative for review in accordance with clause 9.3.



28. **AUSTRALIAN GOVERNMENT REQUIREMENTS**

28.1 **Building Code**

(a) The TSE Contractor:

- (i) declares as at the date of this deed; and
- (ii) must ensure during the term of this deed,

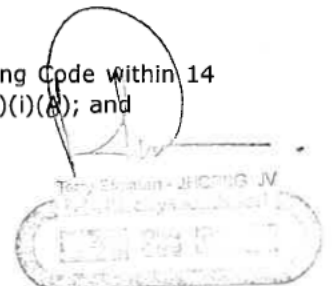
that, in relation to the Commonwealth Works, it and its Subcontractors, consultants and each related entity:

- (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 TSE Contractor acknowledges and agrees that compliance with the Building Code does not relieve the TSE Contractor from any responsibility or obligation under this deed, or from liability for any Defect in Commonwealth Works arising from compliance with the Building Code.

(c) The TSE 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 TSE 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 28.1(c)(i)(A); and

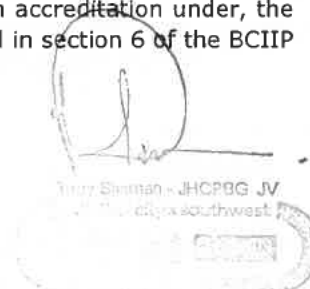


- (ii) give the Principal a copy of any notification given by the TSE Contractor to the ABCC under clause 28.1(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) The TSE 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 TSE Contractor must not enter into a Subcontract for any aspect of the Commonwealth Works unless:
  - (i) the Subcontractor has submitted a Declaration of Compliance; and
  - (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 28.1.
- (f) The TSE Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 28.1(e) promptly upon request.
- (g) The TSE Contractor must maintain adequate records of the compliance with the Building Code by:
  - (i) the TSE Contractor;
  - (ii) the Subcontractors;
  - (iii) the TSE Contractor's consultants; and
  - (iv) any related entity of the TSE Contractor.
- (h) For the purposes of this clause 28.1, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

## 28.2 **WHS Accreditation**

The TSE Contractor:

- (a) represents and warrants to the Principal that the TSE Contractor is accredited under the WHS Accreditation Scheme;
- (b) must comply with all of the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIP Act) is carried out; and



- (c) must ensure that all Subcontracts with Subcontractors carrying out work or providing services on the Construction Site impose obligations on those Subcontractors that enable the TSE Contractor to comply with its obligations under this clause 28.2.

**29. NOTIFICATION OF CLAIMS**

**29.1 Notice of other claims**

If the TSE Contractor wishes to make a Claim (other than an Excluded Claim) against the Principal in respect of any Direction of the Principal or the Principal's Representative or 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 TSE Contractor's Activities or the Project Works, including anything in respect of which:

- (a) the TSE Contractor is otherwise given an express entitlement under this deed; or
- (b) this deed expressly provides that:
  - (i) costs are to be paid to the TSE Contractor, or
  - (ii) the Project Contract Sum, the Design Contract Sum or the Construction Contract Sum will be increased or adjusted,

by an amount stated by the Principal's Representative,

the TSE Contractor must give the Principal's Representative the notice required by clause 29.2(a) and a Claim in accordance with clause 29.2(b).

**29.2 Prescribed notices**

- (a) Any written notice referred to in clause 29.1 must:
  - (i) be provided not later than 15 Business Days after the later of:
    - (A) the first occurrence of; or
    - (B) when the TSE Contractor first became aware of, or ought reasonably to have first become aware of,

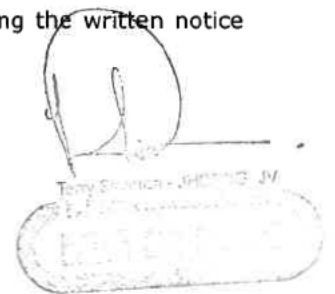
the Direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and

- (ii) expressly specify:
  - (A) that the TSE 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) Subject to clause 29.3, any written Claim referred to in clause 29.1 must:

- (i) be provided not later than 20 Business Days after giving the written notice under clause 29.2(a); and

- (ii) include:



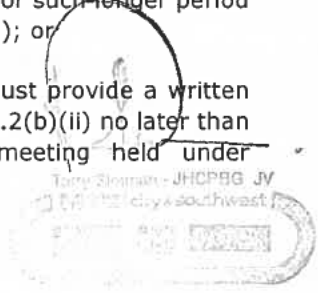
A handwritten signature in blue ink is written over a circular stamp. The stamp contains the text "TERRY STANLEY - DIRECTOR" and "TSE CONTRACTORS".



- (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.

**29.3 Temporary waiver of notification requirements**

- (a) Within 5 Business Days after receipt of a written notice referred to in clause 29.2(a) or 13.3(a)(i) (as applicable), the Principal's Representative may notify the TSE Contractor in writing that the Principal wishes to temporarily waive the requirements of clause 29.2(b) or clauses 13.3(a)(ii) and 13.3(c) (as applicable) in relation to the proposed Claim that is the subject of the TSE Contractor's notice.
- (b) If the Principal's Representative issues a notice under clause 29.3(a), the parties must within 2 Business Days (or such longer period agreed between the parties) meet to discuss the proposed Claim and seek to agree:
  - (i) the period for which the requirements of clause 29.2(b) or clauses 13.3(a)(ii) and 13.3(c) (as applicable) will not apply in relation to the proposed Claim; and
  - (ii) the next steps (if any) that the parties wish to take in relation to the proposed Claim.
- (c) If, at a meeting under clause 29.3(b), the parties agree a period for which the requirements of clause 29.2(b) or clauses 13.3(a)(ii) and 13.3(c) (as applicable) will not apply, the Principal's Representative will promptly confirm such period by notice in writing to the TSE Contractor.
- (d) A meeting under clause 29.3(b) may be held in person, by phone, by video conference or by any other means of instantaneous communication agreed between the parties.
- (e) Where the Principal's Representative has given a written notice under clause 29.3(a):
  - (i) in response to a notice from the TSE Contractor referred to in clause 29.2(a), if the parties:
    - (A) agree a period for which the requirements of clause 29.2(b) will not apply, the TSE Contractor must provide a written Claim including the details required by clause 29.2(b)(ii) no later than 20 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 29.3(c) (or such longer period as the parties may subsequently agree in writing); or
    - (B) fail to agree such period, the TSE Contractor must provide a written Claim including the details required by clause 29.2(b)(ii) no later than 20 Business Days after the date of the meeting held under clause 29.3(b); or



- (ii) in response to a notice from the TSE Contractor referred to in clause 13.3(a)(i), if the parties:
  - (A) agree a period for which the requirements of clauses 13.3(a)(ii) and 13.3(c) will not apply, the TSE Contractor must provide a written Claim under clause 13.3(a)(ii) no later than 10 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 29.3(c) (or such longer period as the parties may subsequently agree in writing) and the parties may thereafter exercise their respective rights under clause 13.3(c); or
  - (B) fail to agree such period, the TSE Contractor must provide a written Claim under clause 13.3(a)(ii) no later than 10 Business Days after the date of the meeting held under clause 29.3(b) and the parties may thereafter exercise their respective rights under clause 13.3(c).
- (f) The TSE Contractor must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Principal under clause 29.3(c) 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, the date of the Principal's notice under clause 29.3(a), the date of the meeting under clause 29.3(b), the expiry date of the period notified under clause 29.3(c), any agreed next steps and the status of such next steps.
- (g) A notice under clause 29.3(a) does not constitute acceptance that the relevant notice given under clause 29.2(a) or 13.3(a)(i) (as applicable) is valid and does not prejudice in any way the Principal's rights under clause 29.5 in respect of any notice under clause 29.2(a) or 13.3(a)(i) (as applicable).

#### 29.4 Continuing events

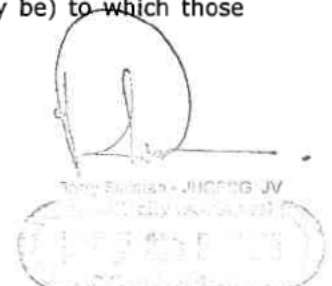
If the Direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim referred to in clause 29.1 is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact matter or thing are continuing, the TSE Contractor must continue to give the information required by clause 29.2(b) every 20 Business Days after the written Claim under clause 29.2(b) was submitted or given, until after the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

#### 29.5 Bar

If the TSE Contractor fails to comply with clauses 5.1, 5.2, 5.3, 5.4, 5.5, 10.9, 13.3, 14.2, 17.6, 29.1, 29.2 or 29.4:

- (a) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the TSE Contractor; and
- (b) the TSE Contractor will be 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.



29.6 **Other provisions unaffected**

Nothing in clauses 29.1 to 29.5 will limit the operation or effect of any other provision of this deed which requires the TSE Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

30. **GENERAL**

30.1 **Notices**

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time the Principal's Representative may notify the TSE 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 TSE Contractor to use the PDCS; and
  - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (ba) At any time and from time to time the Principal's Representative may notify the TSE 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 30.1(c)(i) and must be given 10 Business Days prior to the implementation of any such change to the notice arrangements.
- (c) Each Notice must:
  - (i) before the date referred to in clause 30.1(b)(ii):
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the TSE Contractor, to the Principal's Representative; or
      - (bb) in the case of a Notice from the Principal, to the Project Director;
    - (C) 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
    - (D) 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):
      - (aa) to the Principal:

The image shows a handwritten signature in black ink over a circular stamp. The stamp contains the text "TSE Contractor JHCPBC JV" and "2017/12/11 10:11:50 AM". There are also some smaller, less legible markings within the stamp.

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

Attention: Mr Tim Parker

Any Notice in relation to a Claim or a Dispute must also be addressed to the Deputy General Counsel – Sydney Metro and sent to [Catrina.Cresswell@transport.nsw.gov.au](mailto:Catrina.Cresswell@transport.nsw.gov.au))

(bb) to the Principal's Representative:

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

Attention: Mr Alan Morris

Any Notice in relation to a Claim or a Dispute must also be addressed to the Deputy General Counsel – Sydney Metro and sent to [Catrina.Cresswell@transport.nsw.gov.au](mailto:Catrina.Cresswell@transport.nsw.gov.au))

(cc) to the TSE Contractor:

Name: CPBJHG JV

Address: Level 9, 50 Bridge Street  
Sydney NSW 2000

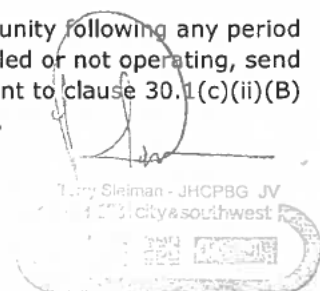
Email: [REDACTED]

Attention: Mr Terry Sleiman, Project Director

- (ii) on and from the commencement date for use of the PDCS referred to in clause 30.1(b)(ii) and other than where clause 30.1(ba) applies:
  - (A) be sent through the PDCS in accordance with the requirements set out in clause 30.1(e) and:
    - (aa) in the case of a Notice from the TSE Contractor, be addressed to the Principal's Representative; or
    - (bb) in the case of a Notice from the Principal, be addressed to the Project Director; or
  - (B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 30.1(c)(i).
- (d) Subject to clause 30.1(d)(v), 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;

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- (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;
  - (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,
- (e) 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 30.1(e)(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.
- (f) The TSE Contractor warrants that it will:
- (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) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the TSE Contractor from time to time;
  - (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
  - (v) advise the Principal's Representatives of which personnel require access to the PDCS;
  - (vi) 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
  - (vii) 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 30.1(c)(ii)(B) to the Principal's Representative through the PDCS.



- (g) If the TSE Contractor is an unincorporated joint venture and one of the joint venturers is, a foreign company (as defined in the Corporations Act), the TSE Contractor must:
  - (i) 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
  - (ii) obtain the process agent's consent to the appointment.
- (h) The Principal has no liability for any Losses the TSE 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 TSE 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 TSE Contractor's access to or use of the PDCS or any failure of the PDCS.
- (i) Wherever this deed requires the TSE Contractor to provide any documents, notices or other communications to an Interface Contractor, the TSE Contractor must address such communications to the relevant Interface Contractor (as applicable):
  - (i) at the address notified to the TSE Contractor by the Principal; or
  - (ii) if required by the Principal, by way of the PDCS.

**30.2 Governing Law and Jurisdiction**

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Where the Principal issues a notice under clause 23.10 referring a Dispute to litigation or where clause 23.17 applies, each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 30.2(b)(i).

**30.3 Cost**

- (a) Subject to clause 30.3(b), a party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.
- (b) The TSE Contractor must:
  - (i) pay all stamp duties and any related fines and penalties and any other fees payable in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and
  - (ii) indemnify the Principal against any liability arising from failure to comply with clause 30.3(b)(i).

A handwritten signature in black ink is written over a circular stamp. The stamp contains the text "TSE Contractor - HCPBG JV" and "2017-01-11 10:00:00".

- (c) The TSE Contractor is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

**30.4 Taxes**

- (a) Without limiting clauses 5.1, 5.2 or 5.3 , the TSE Contractor must pay all Taxes which may be payable in respect of the TSE Contractor's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.
- (b) The TSE Contractor indemnifies the Principal against, and must pay on demand the amount of, all Losses, liabilities and Taxes incurred as a result of the TSE Contractor, any subcontractor or any person engaged by the TSE Contractor or any subcontractor being deemed to be an employee of the Principal (including but not limited to payroll taxes, fringe benefits taxes, superannuation guarantee charge liabilities, and any related interest or penalties).

**30.5 Indemnities to survive**

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

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

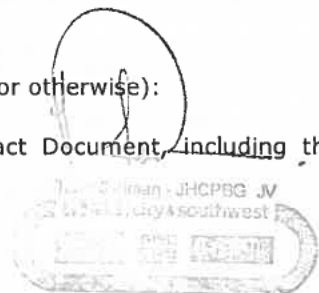
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**30.6 Variations**

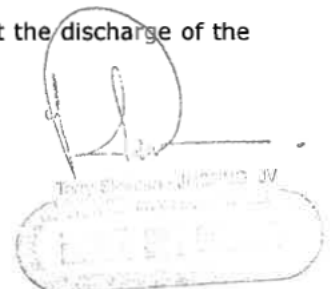
Subject to clause 13.7, this deed may only be varied by a deed executed by or on behalf of both the Principal and the TSE Contractor.

**30.7 Permitted disclosure**

- (a) The Principal may publish or disclose (on the internet or otherwise):
  - (i) the terms and conditions of any TSE Contract Document, including this deed; and



- (ii) any document or information arising under, out of or in connection with any TSE Contract Document, including this deed, or relating to the performance of any TSE Contract Document, including this deed.
- (b) The TSE Contractor acknowledges and agrees that disclosures regarding the Project Works by the Principal, the State of New South Wales or any Authority may be required:
- (i) under the GIPA Act or any similar or replacement legislation; or
  - (ii) to satisfy the disclosure requirements of the Auditor General or to satisfy the requirements of Parliamentary accountability,
- (Public Disclosure Obligations).**
- (c) The TSE Contractor must, at its own cost and expense, use all reasonable endeavours to assist the Principal, the State of New South Wales or an Authority in meeting its Public Disclosure Obligations.
- (d) Subject to clause 30.7(e), the TSE Contractor must:
- (i) keep confidential the TSE Contract Documents and any information relating to the Project Works, the TSE Contractor's Activities and any discussions concerning the TSE Contract Documents; and
  - (ii) ensure that each of its Associates comply with the terms of clause 30.7(d)(i).
- (e) The TSE Contractor is not obliged to keep confidential any information:
- (i) which is in the public domain through no default of the TSE Contractor; or
  - (ii) the disclosure of which is:
    - (A) required by Law;
    - (B) given with the written consent of the Principal; or
    - (C) given to a court in the course of proceedings to which the TSE Contractor is a party.
- (f) The parties acknowledge that:
- (i) the Principal will notify the TSE Contractor of any proposed disclosure of the TSE Contract Documents by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
  - (ii) following notification by the Principal in accordance with clause 30.7(f)(i), the Principal will take reasonable steps to consult with the TSE Contractor before disclosing any part of the TSE Contract Documents that the TSE Contractor considers to be commercial-in-confidence (as defined in the GIPA Act); and
  - (iii) nothing in this clause 30.7 will limit or otherwise affect the discharge of the Principal 's obligations under the GIPA Act.





**30.8 Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

**30.9 The Principal may act**

- (a) If the TSE Contractor fails to perform an obligation under this deed, then, subject to clause 30.9(b), the Principal may take such action as may be necessary to remedy the failure by the TSE Contractor and the Principal may for this purpose enter the Construction Site, any Extra Land and any other land upon which the TSE Contractor's Activities are being carried out.
- (b) Except where the Principal is taking action in the circumstances referred to in clause 14.8, the Principal may only take action as referred to in clause 11.6(c) or clause 30.9(a) where the Principal's Representative has given the TSE Contractor 5 Business Days' prior written notice of the TSE Contractor's failure to perform an obligation under this deed and that the Principal intends to take action to remedy the failure.
- (c) The Loss suffered or incurred by the Principal in so performing such an obligation of the TSE Contractor will be a debt due and payable from the TSE Contractor to the Principal.
- (d) 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 TSE Contractor to; or
  - (ii) itself step in to,take any action or omit to take any action, it is not obliged to exercise that power or issue that Direction or instruction and it may do so in its absolute discretion.
- (e) Where the Principal or the Principal's Representative does exercise any such right or power, the TSE Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the TSE Contractor's Activities, the Project Works and the Temporary Works.

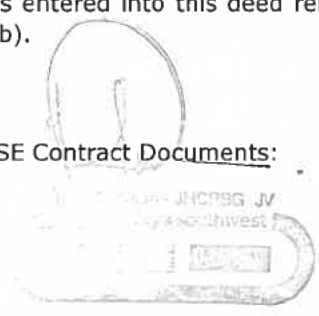
**30.10 Non reliance**

Without limiting clauses 10.7 and 10.8, the TSE Contractor:

- (a) warrants that it did not in any way rely upon any information, representation, statement or documentation, whether forming part of this deed or not, made by or provided to the TSE Contractor by the Principal or anyone on behalf of the Principal for the purposes of entering into this deed;
- (b) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties in clauses 30.10(a) and 30.10(b).

**30.11 Entire agreement**

To the extent permitted by Law, this deed and the other TSE Contract Documents:



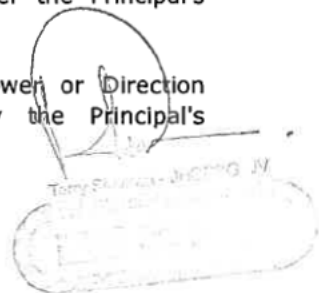
- (a) embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties; and
  - (b) supersede any prior written or other agreement of the parties,
- in relation to the subject matter of this deed.

**30.12 Counterparts**

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

**30.13 Unlimited discretion**

- (a) Except as expressly otherwise provided in this deed (including in clause 30.13(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 30.13(a):
  - (i) except as expressly provided in this deed (including in clause 30.13(c)), neither the Principal nor the Principal's Representative will be:
    - (A) constrained in the manner in which it exercises; or
    - (B) under any obligation to exercise,any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement;
  - (ii) any approval or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise;
  - (iii) a Direction (including an absolute or sole discretion) or power 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 whether it is exercised or made:
    - (A) independently;
    - (B) after consultation with the Principal and its advisers; or
    - (C) as directed by the Principal;
  - (iv) any control or influence exercised by the Principal over the Principal's Representative does not:
    - (A) affect the valid and proper exercise of any power or Direction (including an absolute or sole discretion) by the Principal's Representative; or



Tom S. Smith-Jones N.

- (B) entitle the TSE Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the Direction (including an absolute or sole discretion) or power; and
- (v) subject to any express provision in this deed to the contrary, a provision of this deed which says that the Principal or the Principal's Representative may do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing.
- (c) Nothing in this clause 30.13 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

**30.14 Joint and several liability**

- (a) The obligations of the TSE Contractor, if more than one person, under this deed, are joint and several and each person constituting the TSE 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 one or all of them.
- (b) The rights of the TSE Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the TSE Contractor (and not severally or jointly and severally).
- (c) Any payment by the Principal under this deed to any account nominated in writing by the TSE Contractor, or failing such nomination, to any one or more persons constituting the TSE Contractor, will be deemed to be payment to all persons constituting the TSE Contractor.
- (d) The TSE Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the TSE Contractor.

**30.15 Assignment**

- (a) The Principal may:
  - (i) assign, novate or otherwise transfer all or any part of its rights under this deed without the TSE 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
  - (ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the TSE 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 TSE Contractor.

- (b) The TSE Contractor must not assign, novate or otherwise transfer any of its rights, interests, liabilities or obligations under this deed without the prior written consent of the Principal.

**30.16 No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of either the Principal or the TSE Contractor to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or
- (b) constituting the relationship between the Principal on one hand and the TSE Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

**30.17 Waiver**

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

- (iii) another breach of that term or of a breach of any other term of this deed; or
- (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

**30.18 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law or reasonably requested by the other party or parties to give effect to this deed.

**30.19 Provisions limiting or excluding liability**

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

**30.20 Survival of certain provisions**

- (a) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed and any rights arising on termination shall survive, including any caps on or exclusions of liability, warranties, guarantees, licences or indemnities given under this deed.



- (b) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

30.21 **PPS Act**

The TSE Contractor acknowledges and agrees that:

- (a) if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with this deed or any transaction contemplated by this deed, the Principal may at the TSE Contractor's expense take all steps that the Principal considers advisable to:
- (i) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest (relevant personal property); and
  - (ii) better secure the Principal's position in respect of the relevant personal property under the PPS Act;
- (b) it will do all things reasonably necessary to assist the Principal to take the steps described in paragraph (a);
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in the relevant personal property;
- (d) if, and only if, the Principal is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the TSE Contractor and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
- (e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this deed, the amount or performance obligation secured by the Principal's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;
- (f) it must immediately notify the Principal if the TSE Contractor becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to relevant personal property; and
- (g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in relevant personal property.

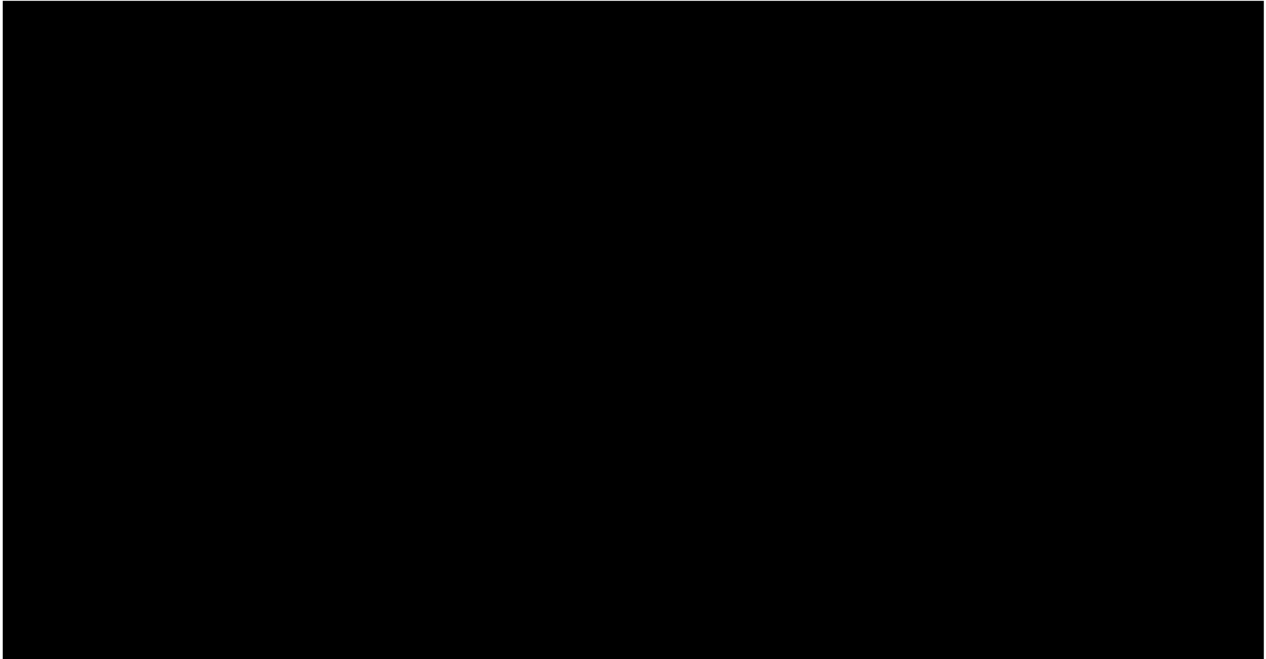
For the purposes of this clause 30.21, registration, secured party, verification statement, financing statement, personal property and financing change statement each have the meaning given to those terms in the PPS Act.



JHCP98 JV  
By Northwest



**Signed, sealed and delivered** for and on behalf of **CPB Contractors Pty Ltd (ABN 98 000 893 667)** by its Attorneys under a Power of Attorney dated 20 June 2017 (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:



**Executed by Ghella Pty Ltd (ABN 85 142 392 461)** in accordance with section 127 of the *Corporations Act 2011* (Cth) :

