



Waterloo Integrated Station Development Station Delivery Deed

Contract No: 503

Sydney Metro

ABN 12 354 063 515

and

John Holland Pty Limited

ABN 11 004 282 268

The Contract Sum under this deed is [REDACTED]

Warnings required under the *Home Building Act 1989* (NSW):

The total amount payable under this deed may be varied in accordance with the provisions listed in clause 1 of Schedule A30 (*Home Building Act Requirements*).

There is a cooling off period in respect of this deed. The Principal may rescind this deed at any time within 5 clear Business Days of receiving a signed copy of this deed by providing written notice to the WL Contractor that complies with the requirements of section 7BA of the *Home Building Act 1989* (NSW).

**JOHN
HOLLAND**

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THIS DEED is made on 4 November 2019

BETWEEN:

- (1) **Sydney Metro** ABN 12 354 063 515, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (2) the entity referred to in item 1 of the Reference Schedule (**WL 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) Following completion of a request for tenders process, the Principal selected:
 - (1) the WL Contractor as the successful tenderer for the delivery of the Project Works; and
 - (2) not used.
- (C) The Principal and the WL Contractor now wish to enter into this deed to set out the terms on which the WL Contractor will:
 - (1) design, construct, test, commission and complete the Project Works and otherwise carry out the WL Contractor's Activities;
 - (2) interface and co-ordinate the WL Contractor's Activities with the activities of the Interface Contractors and the WL Developer's Activities; and
 - (3) hand over the Project Works to the Principal.
- (D) The Principal and the WL Developer will separately enter into the MQD PDA in respect of the Metro Quarter Development.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context or express provisions of this deed otherwise require, capitalised words and phrases used in this deed have the meanings given to them in Schedule A2 (*Definitions*).

1.2 Interpretation

In this deed headings (including headings in parentheses in sub-clauses) are for convenience only and do not affect the interpretation of this deed and unless the context indicates a contrary intention:

- (a) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) a reference to a "party" to this deed or a "person" or "entity" includes that party's, person's or entity's executors, administrators, successors and permitted substitutes

and assigns, including persons taking part by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

- (c) a reference to a "document", "contract", "deed" or "agreement" is to that document, contract, deed or agreement as updated, varied, novated, ratified or replaced from time to time;
- (d) a reference to any "Authority", "institute", "association" or "body" is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed, replaced or restructured 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, restructured 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 is dissolved or ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (e) 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;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to:
 - (i) a "part" or a "schedule" is a reference to a part or schedule to or of this deed;
 - (ii) this deed includes all schedules to it; and
 - (iii) the SWTC includes all appendices to the SWTC;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) 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;
- (l) anything (including an amount) is a reference to the whole and each part of it and the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (m) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (n) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (o) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled;
- (p) references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled;
- (q) a time of day is a reference to Sydney time;
- (r) words in parentheses after a cross reference to a clause must not be used in the interpretation of this deed; and
- (s) any reference to the Principal's intention and objectives for the Project Works under this deed including under clause 2.3(e) and clause 2 must be read subject to, and are limited by, the requirements of the SWTC.

1.3 Order of precedence

- (a) The documents which comprise this deed (other than the WL Contractor's Tender Design) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
- (b) If there is any Error in or between the various documents that comprise this deed then, except to the extent clause 4.2 (*Principal's Design Stage 1 Documents*) and clause 4.3 (*WL Contractor's Tender Design*) apply:
 - (i) if the Error is between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (A) the General Conditions; and
 - (B) the schedules;
 - (ii) the requirements in the SWTC are minimum requirements, including technical, operational and performance requirements, for the Project Works, Temporary Works and WL Contractor's Activities which the WL Contractor must satisfy to fulfil its obligations under this deed;
 - (iii) if more than one requirement applies in respect of any part of the Project Works, the Temporary Works or the WL Contractor's Activities then all requirements must be satisfied;
 - (iv) to the extent clause 1.3(b)(i) to clause 1.3(b)(iii) (inclusive) do not apply or resolve the Error, the document, term or requirement which prescribes or requires the greatest level of service or the highest standard of compliance, consistent with (at a minimum) complying with all Approvals, will take precedence (unless the Principal's Representative directs otherwise); and

- (v) to the extent clause 1.3(b)(i) to clause 1.3(b)(iv) (inclusive) do not apply or resolve the Error and the Error is between figured and scaled dimensions, figured dimensions will prevail over the scaled dimensions.
- (c) To the extent that the WL Contractor is required to comply with a Project Plan, the terms of this deed will have precedence over the Project Plan to the extent of any Error. A Project Plan cannot impose an obligation on the Principal to do something different to, or earlier than, what is required by this deed.
- (d) Where the WL Contractor considers that there is an Error in or between the provisions of this deed, it must promptly notify the Principal's Representative in writing, who must give the WL Contractor a direction as to the interpretation to be followed.

1.4 No bias against drafter

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.5 Business Day

If the day on or by which anything must be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.6 Authorities

- (a) **(No fettering of discretion)** The WL Station Contract Documents will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Public Transport Agency to exercise any of their respective 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) **(No act or omission)** Without limiting clause 1.6(a), anything the Principal, any other Public Transport Agency or the ASA does, or fails to do or purports to do, pursuant to their respective functions and powers either as an AEO or an Authority or under any Law or pursuant to the ASA Charter, will be deemed not to be an act or omission by the Principal, the Public Transport Agency or the ASA under this deed (including a breach of contract) and the Principal will have no Liability to the WL Contractor in relation thereto.
- (c) **(Breach by the Principal)** Clause 1.6(a) and clause 1.6(b) do not limit any Liability which the Principal would have had to the WL Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clause 1.6(a) and clause 1.6(b).
- (d) **(Exercise of statutory functions)** The WL Contractor acknowledges that:
 - (i) Authorities (other than the Principal) that have jurisdiction over aspects of the WL Contractor's Activities, parts of the Construction Site and other areas affected by the WL Contractor's Activities (including Extra Land) may, from time to time, exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the WL Contractor's Activities or the Project Works generally; and

**JOHN
HOLLAND**

- (ii) except to the extent expressly stated otherwise in this deed, the WL Contractor bears the risk of all occurrences of the kind referred to in clause 1.6(d)(i), and the Principal will have no Liability to the WL Contractor arising out of or in any way in connection with such occurrences.

1.7 **Best or reasonable endeavours**

If the Principal is required under the terms of this deed to exercise best or reasonable endeavours:

- (a) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) the Principal is not obliged to expend any money or make any payment to the WL Contractor or any other person;
- (c) the Principal cannot ensure the relevant outcome; and
- (d) the Principal does not agree to:
 - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the WL Station Contract Documents if the Principal regards that exercise as not in the public interest;
 - (iii) develop policy or legislate by reference only or predominantly to the objectives and expected outcomes of the WL Station Contract Documents;
 - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the WL Station Contract Documents; or
 - (v) act in any other way that the Principal regards as not in the public interest.

1.8 **Principal's rights do not affect risk allocation**

- (a) **(Monitoring performance)** The Principal has various rights under this deed which are designed to give the Principal the ability to monitor the performance of the WL Contractor's obligations under the WL Station Contract Documents. Those rights include:
 - (i) the right to review Project Plans, Design Documentation, Asset Management Information, the WL Contractor's Program, Progress Reports and other documents which the WL Contractor must submit to the Principal or the Principal's Representative pursuant to this deed (**WL Contractor Submissions**); and
 - (ii) rights to inspect, monitor, audit and test the Project Works.
- (b) **(No relief)** Neither the exercise of, nor the failure to exercise, such rights will:
 - (i) relieve the WL Contractor from, or alter or affect, the WL Contractor's Liabilities, obligations or responsibilities;

- (ii) prejudice or limit the Principal's rights against the WL Contractor; or
- (iii) preclude the Principal from subsequently asserting that the WL Contractor has not fulfilled its obligations,

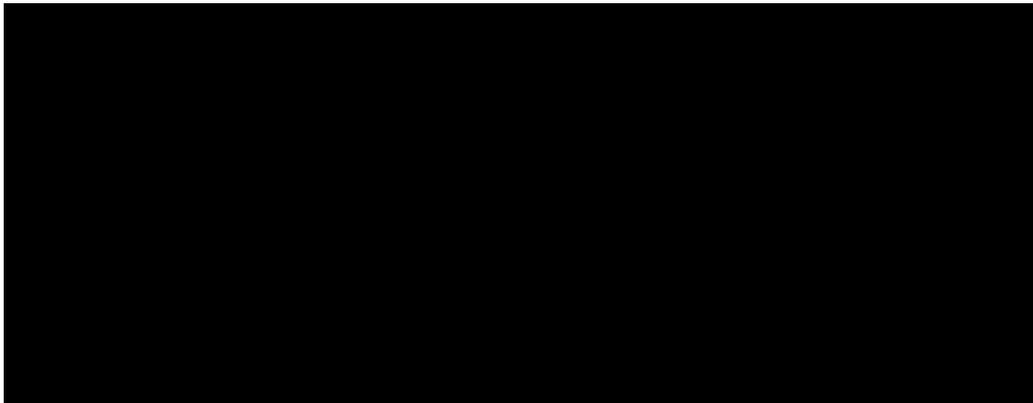
whether under this deed or otherwise according to Law.

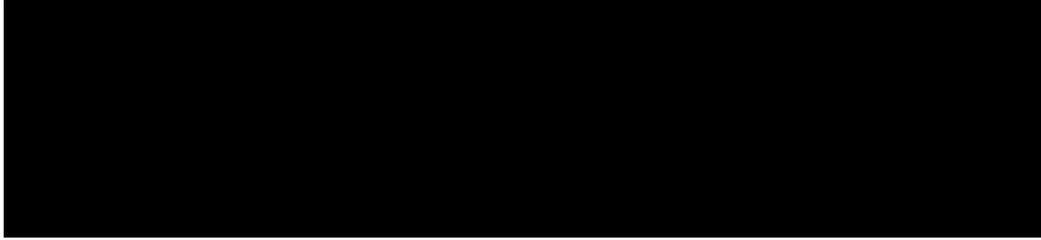
- (c) **(No assumption of risk)** Unless otherwise expressly provided for in this deed:
 - (i) acceptance of any certificate, statement, assessment, report or plan provided by the WL Contractor to the Principal's Representative is not approval by the Principal or the Principal's Representative of the WL Contractor's performance of its obligations under this deed;
 - (ii) neither the Principal nor the Principal's Representative is obliged to review, assumes or owes any duty of care to the WL Contractor to review, or if it does review, in reviewing any WL Contractor Submissions for errors, omissions or compliance with this deed or any Law;
 - (iii) no review of, comments on, consent to, information supplied to or notice in respect of, or any failure to review, provide information, comment on, consent to or give any notice in respect of any WL Contractor Submissions will:
 - (A) relieve the WL Contractor from, or alter or affect, the WL Contractor's Liabilities, obligations, warranties or responsibilities or prejudice or limit the Principal's rights against the WL Contractor whether under this deed or otherwise according to Law;
 - (B) constitute an instruction to accelerate, disrupt, prolong or vary any of the Project Works; or
 - (C) affect the time for the performance of the WL Contractor's obligations;
 - (iv) the WL Contractor will not be relieved from compliance with any of its obligations under this deed or from any of its Liabilities as a result of:
 - (A) compliance with any Project Plan;
 - (B) any audits or other monitoring by the Principal of the WL Contractor's compliance with any Project Plan;
 - (C) any failure by the Principal, or anyone acting on behalf of the Principal, to detect any non-compliance including where any failure arises from any negligence on the part of the Principal or anyone acting on behalf of the Principal; or
 - (D) any consent provided by the Principal or any failure or refusal by the Principal to provide consent;
 - (v) neither the Principal nor the Principal's Representative assumes or owes any duty of care to the WL Contractor to inspect, or if it does so inspect, in inspecting, the performance of the obligations of the WL Contractor or the Project Works for errors, omissions or compliance with the requirements of this deed;

- (vi) any inspection of such matters (or lack of inspection) by or on behalf of the Principal will not in any way:
 - (A) relieve the WL Contractor from, or alter or affect, the WL Contractor's Liabilities, obligations, warranties or responsibilities; or
 - (B) prejudice or limit the Principal's rights against the WL Contractor, whether under this deed or otherwise according to Law; and
- (vii) the WL Contractor is relying on its own skill and judgment, and that of the WL Contractor's Associates, in relation to all aspects of the WL Contractor Submissions, the WL Contractor's Activities, the Project Works and Temporary Works and is not relying on the skill or judgment of the Principal or any of the Principal's Associates.
- (d) **(No Liability)** The Principal will have no Liability to the WL Contractor and is released from any Loss incurred or suffered by the WL Contractor or its Associates because of any defect or omission in, or any issue arising out of any WL Contractor Submissions.

1.9 **Electronic files**

- (a) Where this deed refers to:
 - (i) an electronic file on a separate disc or other electronic storage device which forms part of this deed; or
 - (ii) a document being included or contained in Schedule F1 (*Electronic files*) (or similar),those electronic files are listed in the list of electronic files contained in Schedule F1 (*Electronic files*).
- (b) The parties acknowledge and agree that:
 - (i) Schedule F1 (*Electronic files*) contains:
 - (A) a list of electronic files (**List**); and
 - (B) an electronic storage device comprising copies of all of the electronic files on the List (**Device**);





2. **GENERAL OBLIGATIONS**

2.1 **Objectives and Project Values**

- (a) **(Objectives)** Each party will, subject to and in accordance with this deed, perform its obligations under this deed having regard to the achievement of:
 - (i) the Sydney Metro City & Southwest Strategic Objectives;
 - (ii) the Waterloo ISD Objectives; and
 - (iii) the Principal's Vision Statement.
- (b) **(Project Values)** Each party will adhere to and uphold the Project Values and work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this deed.
- (c) **(Principal's rights not affected)** The obligations under clause 2.1(b) will not affect clause 1.7 (*Best or reasonable endeavours*) or the exercise of a right or discretion under this deed by the Principal or the Principal's Representative.

2.2 **Design and construction of Project Works**

The WL Contractor must perform the WL Contractor's Activities in accordance with the SWTC, Good Industry Practice and this deed and so that:

- (a) the Project Works, when constructed in accordance with the Final Design Documentation, will, in the case of:
 - (i) the Trackway Portion, upon Substantial Completion; and
 - (ii) each Non-Trackway Portion, upon Completion,satisfy the Project Requirements and will at all relevant times thereafter be capable of satisfying the Project Requirements (subject to the Principal and the Operator operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information);
- (b) the WL Contractor reaches each Significant Completion by the relevant Significant Date;
- (c) at Milestone Achievement, the relevant WL Contractor's Activities and the Project Works are sufficiently developed to allow all relevant Interface Contractors to perform their respective Interface Works without disruption and delay caused by the WL Contractor;
- (d) at Substantial Completion of the Trackway Portion and Completion of each Non-Trackway Portion, that Portion satisfies the Project Requirements; and

- (e) the Third Party Works are also carried out in accordance with the WL Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).

2.3 Project Requirements

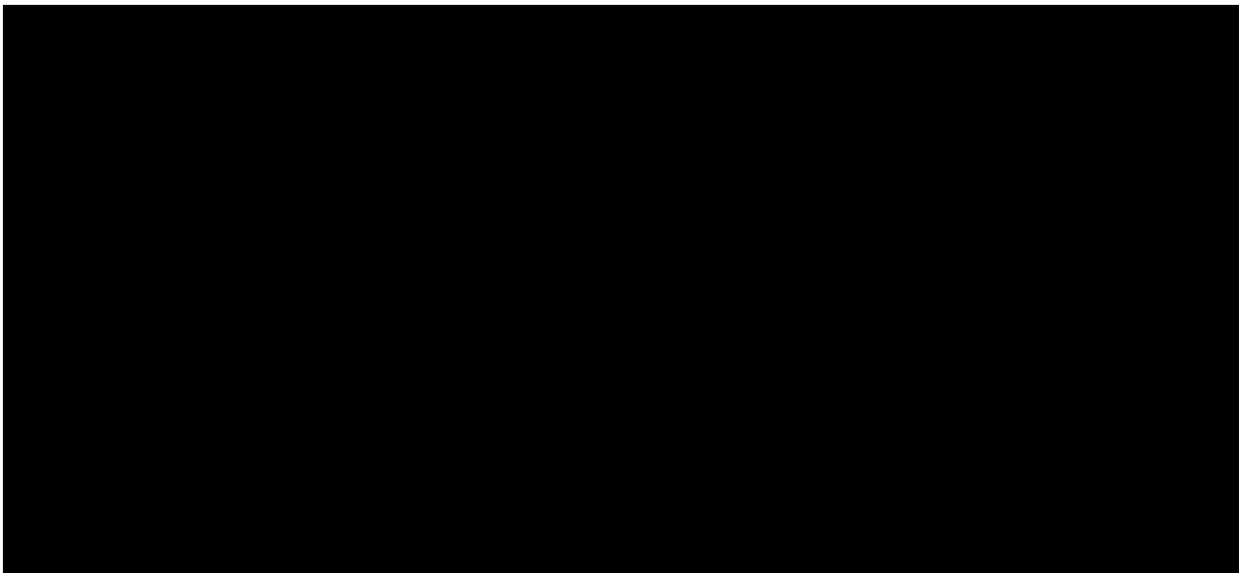
The Project Requirements are:

- (a) **(Part of an operating and integrated rail system)** Project Works which:
 - (i) are an integral part of an operating and integrated rail system which provides frequent high speed mass transit services between Chatswood and Bankstown; and
 - (ii) are capable of:
 - (A) accommodating various rolling stock, railway track, rail systems and related equipment;
 - (B) continuous operation;
 - (C) operation by either the State of New South Wales or private operator(s) on its behalf;
 - (D) expansion, further development, upgrade, augmentation and extension to the extent described in this deed;
 - (E) connection to and/or integration with other transport infrastructure to the extent referred to in this deed; and
 - (F) accommodating future construction and development of buildings, over station developments and/or other infrastructure (including the MQD) on, over, under or adjacent to the Project Works and Waterloo Station to the extent referred to in this deed;
- (b) **(Temporary Works which are fit for purpose)** Temporary Works which at all relevant times are fit for their intended purpose;
- (c) **(Project works which are fit for purpose)** Project Works which:
 - (i) in the case of:
 - (A) the Trackway Portion, upon Substantial Completion; and
 - (B) each Non-Trackway Portion, upon Completion,are fit for their intended purpose; and
 - (ii) at all relevant times thereafter are capable of remaining fit for their intended purpose (subject to the Principal and the Operator operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information); and
- (d) **(Other requirements)** WL Contractor's Activities, Project Works and Temporary Works which, in whole and in part:

- (i) comply with the SWTC;
 - (ii) subject to clause 4.2(b), comply with the Principal's Design Stage 1 Documents;
 - (iii) comply with Law; and
 - (iv) are integrated with the MQD and, to the extent referred to in a WL Station Contract Document, the TSE Works, the LW Works, the TSOM Works and all other Interface Work.
- (e) **(Interpretation)** In this deed, subject to clause 1.2(s), any reference to the Project Works, the Temporary Works or the Design Documentation, or any part of any of them, being fit for their purpose, intended purpose or having an intended use, will be read as referring to the purpose, intended purpose or intended use stated in, contemplated by or which can reasonably be inferred from this deed.

2.4 **Quality of work**

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



2.6 **Principal's Statement of Business Ethics**

- (a) **(Compliance)** The WL Contractor must at all times comply with the Principal's "Statement of Business Ethics", a copy of which is available at www.transport.nsw.gov.au (**Principal's Statement of Business Ethics**).
- (b) **(Subcontractor acknowledgement)** Prior to the engagement of any Subcontractor by the WL Contractor, the WL Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Principal's Statement of Business Ethics.

2.7 **Workforce development and industry participation**

The WL Contractor must:

- (a) ensure that workforce development is addressed throughout the performance of the WL Contractor's Activities;
- (b) comply with the workforce development requirements set out in Appendix F4 of the SWTC; and
- (c) 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.

3. **SECURITY**

3.1 **Unconditional undertakings**

- (a) **(Provision)** The WL Contractor must:
 - (i) on the date of this deed, give to, or procure and provide to, the Principal [REDACTED] unconditional undertakings which in aggregate are equal to [REDACTED] and
 - (ii) as a pre-condition to commencement of work on the Construction Site, give to, or procure and provide to, the Principal [REDACTED] further unconditional undertakings which in aggregate are equal to [REDACTED]
- (b) **(Purpose)** Without limiting clause 3.1(d), the unconditional undertakings to be provided under this clause 3.1 are for the purpose of ensuring the due and proper performance by the WL Contractor of its obligations under this deed and so that the risk of financial burden during the time of any unresolved Dispute or difference is borne by the WL Contractor.
- (c) **(Requirements)** Each unconditional undertaking provided under this deed must be in favour of the Principal and in the form of Schedule E5 (*Form of unconditional undertaking*) (or such other form approved by the Principal) and must:
 - (i) be provided by a bank or insurer that:
 - (A) is subject to prudential oversight by the Australian Prudential Regulation Authority; and
 - (B) at all times maintains the Required Rating;
 - (ii) be payable at an office of the issuer in Sydney (or such other place approved by the Principal);
 - (iii) not have an expiry date; and
 - (iv) where required by Law, be duly stamped at the Cost of the WL Contractor.
- (d) **(Recourse)** The Principal may have recourse to any Security at any time.
- (e) **(No injunction)** The WL Contractor must not take any steps to injunct or otherwise restrain:

- (i) any issuer of any Security from paying the Principal pursuant to the Security;
 - (ii) the Principal from having recourse to any Security or receiving payment under any Security; or
 - (iii) the Principal using the money received under any Security.
- (f) **(No interest)** The Principal is not obliged to pay the WL Contractor interest on Security or the proceeds of any Security.
- (g) **(No trust)** The Principal will not hold the proceeds of any Security on trust for the WL Contractor.

3.2 **Release of unconditional undertakings**

- (a) **(Release)** Subject to clause 3.1(d), clause 3.2(b) and clause 32.7(a)(iv)(F), the Principal must:
- (i) within [REDACTED] after the Date of Completion of the last Portion to reach Completion, release so much of the Security so that the Principal then holds one or more unconditional undertakings equal to [REDACTED] of the Contract Sum;
 - (ii) within [REDACTED] of the date which is 18 months after the Date of Completion of the last Portion to achieve Completion, but subject to the WL Contractor providing the Principal with evidence of its compliance with clause 6.13 (*Sustainability*), release so much of the Security so that the Principal then holds one or more unconditional undertakings equal to [REDACTED] of the Contract Sum;
 - (iii) within [REDACTED] after expiry of the original Defects Correction Period of the last Portion to achieve Completion, release so much of the Security so that the Principal then holds one or more unconditional undertakings for [REDACTED] of the reasonable cost determined by the Principal's Representative of correcting any Defects in the Project Works which:
 - (A) have not been rectified at that date; or
 - (B) are the subject of an extended Defects Correction Period under clause 27.1(b)(i)(B) or clause 27.1(b)(ii)(B); and
 - (iv) release the remainder of the Security, if the Final Certificate provides that:
 - (A) no moneys are due by the WL Contractor to the Principal, [REDACTED] of the date of the Final Certificate; or
 - (B) moneys are due from the WL Contractor to the Principal, [REDACTED] of the date that the WL Contractor pays the Principal the moneys due under the Final Certificate.
- (b) **(Claim on termination)** Where this deed is terminated by the Principal by reason of the WL Contractor repudiating this deed or the WL Contractor's default, the Principal may continue to hold the Security to the extent of any Claim which the Principal may have against the WL Contractor arising out of, or in any way in connection with this deed.

3.3 Replacement of unconditional undertakings – Required Rating

If the issuer of any unconditional undertaking provided under this deed ceases to:

- (a) be subject to prudential oversight by the Australian Prudential Regulation Authority; or
- (b) have the Required Rating,

the WL Contractor must:

- (c) promptly notify the Principal of that circumstance; and
- (d) within 15 Business Days of being requested to do so, procure the issue to the Principal of a replacement unconditional undertaking which must:
 - (i) have a face value equal to that of the unconditional undertaking being replaced; and
 - (ii) comply in all respects with the requirements of clause 3.1(c),

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

3.4 Parent Company Guarantee

On or before the date of this deed, the WL Contractor must give the Principal a duly executed Parent Company Guarantee from each WL Contractor Guarantor and must ensure that, in relation to each Parent Company Guarantee, all stampings, registrations and filings required by:

- (a) Law (or by the law of any foreign jurisdiction); or
- (b) the Principal to ensure that it is able to expatriate from any foreign jurisdiction any amounts that may be payable under a Parent Company Guarantee,

have been completed in the form and substance satisfactory to the Principal (in its absolute discretion).

4. DESIGN AND DESIGN DOCUMENTATION

4.1 Design obligations

The WL Contractor must develop the design of the Project Works and the Temporary Works so that, if the Project Works are constructed in accordance with the Final Design Documentation, the Project Works will comply with:

- (a) the Project Requirements;
- (b) any Modification;
- (c) this deed; and
- (d) to the extent that they are Third Party Works, the WL Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).

- (e) **(WL Contractor to continue performing obligations)** Subject to clause 4.2(c), if the Principal:
 - (i) issues a notice under clause 4.2(d)(ii)(B); or
 - (ii) does not issue a notice under clause 4.2(d)(ii)(A) or clause 4.2(d)(ii)(B) within the time period under clause 4.2(d)(ii),

the WL Contractor must continue to perform its obligations as contemplated under this deed.

4.3 **WL Contractor's Tender Design**

- (a) **(Incorporation into design)** The WL Contractor must incorporate the WL Contractor's Tender Design into the design for the Project Works and the Temporary Works.
- (b) **(Warranty that Tender Design complies with deed)** The WL Contractor:
 - (i) warrants that the WL Contractor's Tender Design complies with the Project Requirements and the deed;
 - (ii) remains responsible for ensuring that the Project Works and the Temporary Works satisfy the Project Requirements and the other requirements of this deed despite the WL Contractor's Tender Design; and
 - (iii) bears all risks associated with the use of, or reliance upon, the WL Contractor's Tender Design in performing its obligations or exercising its rights under this deed and such use and reliance will not limit or otherwise reduce any of the WL Contractor's obligations under this deed.
- (c) **(No Liability)** The Principal will have no Liability to the WL Contractor arising out of or in connection with the WL Contractor's Tender Design.

4.4 **Warranties**

- (a) **(No Liability)** The Principal will have no Liability to the WL Contractor in relation to:
 - (i) the appropriateness, suitability and adequacy of the SWTC for carrying out the WL Contractor's Activities and satisfying its obligations under this deed;
 - (ii) any Error in or between the SWTC and the Planning Approval; or
 - (iii) the Principal's Design Stage 1 Documents.
- (b) **(Warranties unaffected)** Subject to clause 2.2(a)(iii) of the Modification Procedure, the WL Contractor's obligations under, and the warranties given in, this deed will remain unaffected and the WL Contractor will bear and continue to bear full liability and responsibility for the construction, commissioning, testing and completion of the Project Works notwithstanding any Modification.

4.5 **Preparation and submission of Design Documentation**

- (a) **(Submission of Design Documentation)** The WL Contractor must:
 - (i) prepare the Design Documentation in accordance with the SWTC;

- (ii) submit all Design Documentation (other than design for Temporary Works and Third Party Agreement Design Documentation) when it has reached Design Stage 2 and Design Stage 3 to the Principal's Representative:
 - (A) in accordance with the SWTC, the Technical Management Plan and the WL Contractor's Program; and
 - (B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and, if applicable, the Independent Certifier a reasonable opportunity to review the submitted Design Documentation;
 - (iii) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement (with a copy to the Principal's Representative) at the times required under the relevant Third Party Agreement;
 - (iv) if requested by the Principal's Representative, provide the Principal's Representative with any Design Documentation for Temporary Works within 5 Business Days of being requested to do so, for the Principal's Representative's information only;
 - (v) ensure the Design Stage 3 Design Documentation submitted is accurate, complete, co-ordinated with the other Design Documentation and at a level of detail which is sufficient to permit the Principal's Representative and, if applicable, the Independent Certifier to determine whether:
 - (A) the Design Documentation complies with this deed; and
 - (B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed;
 - (vi) provide any further information required by the Principal's Representative and the Independent Certifier; and
 - (vii) submit any amendment to the Design Stage 2 Design Documentation or Design Stage 3 Design Documentation to the Principal's Representative (in which case this clause 4.5 and clauses 4.6 (*Certificates to be provided by the WL Contractor*) to 4.10 (*Design Documentation for construction*) will re-apply), however this regime does not restrict the WL Contractor's ability to proceed to Design Stage 3 Design Documentation or construction in accordance with clause 4.10 (*Design Documentation for construction*) (as the case may be).
- (b) **(Independent Certifier review at Design Stage 2)** The Principal must, within 1 Business Day of receiving from the WL Contractor any package of Design Stage 2 Design Documentation that is specified in Schedule C5 (*Design Documentation to be reviewed by the Independent Certifier at Design Stage 2*), provide that Design Stage 2 Design Documentation to the Independent Certifier for review.
- (c) **(Independent Certifier review at Design Stage 3)** Within 1 Business Day of receiving any Design Stage 3 Design Documentation from the WL Contractor, the Principal:

- (i) must provide to the Independent Certifier for review and certification any package of Design Stage 3 Design Documentation that is specified in Schedule C5 (*Design Documentation to be reviewed by the Independent Certifier at Design Stage 2*); and
- (ii) may provide to the Independent Certifier any additional Design Stage 3 Design Documentation (if any) that the Principal requires to be reviewed and certified by the Independent Certifier.

4.6 **Certificates to be provided by the WL Contractor**

(a) (**Design Stage 2 Certificates**) With all Design Documentation submitted pursuant to clause 4.5 (*Preparation and submission of Design Documentation*) for Design Stage 2, the WL Contractor must deliver a certificate in the form of Schedule B2 (*WL Contractor's Certificate – Design (Design Stage 2)*) from each of:

- (i) the WL Contractor, certifying that the Design Documentation complies with all requirements of this deed including the SWTC; and
- (ii) [REDACTED]

(b) (**Design Stage 3 Certificates**) With all Design Documentation submitted pursuant to clause 4.5 (*Preparation and submission of Design Documentation*) for Design Stage 3, the WL Contractor must deliver a certificate in the form of Schedule B3 (*WL Contractor's and Subcontractor's Certificate – Design (Design Stage 3)*) from each of:

- (i) the WL Contractor certifying that the Design Documentation:
 - (A) complies with all requirements of this deed; and
 - (B) is suitable for construction; and
- (ii) [REDACTED]

4.7 **Not used**

4.8 **Distribution of Design Documentation**

- (a) (**Principal may distribute**) The Principal may distribute, or require the WL Contractor to distribute, the whole or a part of the Design Documentation to third parties including Authorities, Interface Contractors and the Design Review Panel.
- (b) (**Comments by third parties**) The Principal may, but is not obliged to, take into account the comments of third parties in relation to the Design Documentation when responding to the WL Contractor.
- (c) (**No effect on obligations**) No comment or instruction from a third party in relation to the design is binding on the Principal, or will have any effect on the obligations of the WL Contractor under this deed (unless it is also a direction from the Principal's Representative).

4.9 Review of Design Documentation

- (a) **(Review process)** All Design Documentation submitted by the WL Contractor under clause 4.5 (*Preparation and submission of Design Documentation*) (other than Design Documentation relating to Temporary Works which is requested by the Principal's Representative under clause 4.5(a)(iv) and Third Party Agreement Design Documentation) will be reviewed in accordance with the process set out in Schedule A10 (*Design review procedure and Network Assurance Committee*).
- (b) **(Cooperation)** The WL Contractor must cooperate with the Principal's Representative and, if applicable, the Independent Certifier to procure the review of the Design Documentation.
- (c) **(Third Party Agreements)** The WL Contractor must:
 - (i) comply with the WL Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*); and
 - (ii) cooperate with the Third Parties to procure any certification and approvals required pursuant to clause 4.9(c)(i).
- (d) **(Comments by Authorities)** When reviewing any Design Documentation the Principal's Representative and, if applicable, the Independent Certifier may take into account any comments on the Design Documentation that have been provided by any relevant Authority.
- (e) **(Principal's Direction)** The Principal's Representative may, at any time (including after the Principal's Representative has "not rejected" or the Independent Certifier has certified the Design Documentation pursuant to Schedule A10 (*Design review procedure and Network Assurance Committee*)), direct the WL Contractor to make amendments to any Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this deed and, if it does so, clause 2.3(c) of Schedule A10 (*Design review procedure and Network Assurance Committee*) will apply.
- (f) If the Principal's Representative issues a direction under clause 4.9(e), the following provisions will apply:
 - (i) if the Principal's direction relates to Design Stage 3 Design Documentation, the WL Contractor will only be required to submit or re-submit (as applicable) amended Design Stage 3 Design Documentation; and
 - (ii) clause 4.9(f)(i) will not apply if the Principal's direction relates to a NAC CCR Package.

4.9A Network Assurance Committee

The WL Contractor must:

- (a) comply with the requirements of Appendix F1 of the SWTC in relation to the NAC assurance process; and
- (b) without limiting clause 4.9A(a):

- (i) submit to the Principal's Representative each NAC CCR Package in accordance with the Technical Management Plan; and
- (ii) cooperate with and provide all reasonable assistance to the Principal and its Associates to facilitate the review of each NAC CCR Package in accordance with the process set out in clause 3 of Schedule A10 (*Design review procedure and Network Assurance Committee*).

4.10 Design Documentation for construction

- (a) The WL Contractor may use for construction purposes Design Stage 3 Design Documentation submitted to the Principal's Representative under clause 4.5(a)(ii) if the following conditions are met:
 - (i) the Principal's Representative has issued the WL Contractor with a notice under clause 2.1 of Schedule A10 (*Design review procedure and Network Assurance Committee*) or 20 Business Days have passed from submission of the Design Stage 3 Design Documentation in accordance with clause 4.5(a)(ii);
 - (ii) the Design Documentation complies with the requirements of any relevant Approval (if applicable); and
 - (iii) for Design Documentation that relates to construction work that requires NAC Gate 3 approval:
 - (A) the Principal's Representative has given a notice under clause 3.2(a) of Schedule A10 (*Design review procedure and Network Assurance Committee*); or
 - (B) the Principal's Representative has given a notice under clause 3.2(b) of Schedule A10 (*Design review procedure and Network Assurance Committee*) and:
 - (aa) the WL Contractor has completed all NAC Required Actions set out in the notice; or
 - (bb) the notice permits the WL Contractor to proceed with construction provided that the NAC Required Actions are completed in due course.
- (b) The WL Contractor may use Third Party Agreement Design Documentation for construction purposes if the relevant requirements set out in the relevant Third Party Agreement have been satisfied.
- (c) This clause 4.10 does not restrict the use for construction purposes of Design Documentation for Temporary Works.

4.11 Amendments to Final Design Documentation

- (a) Subject to clause 4.11(b) and clause 20 (*Modifications*), if the WL Contractor wishes to amend any Final Design Documentation relating to:
 - (i) the Trackway Portion, prior to the Date of Substantial Completion; or
 - (ii) the Non-Trackway Portion, prior to the Date of Completion,

then:

- (iii) the WL Contractor must submit the amended Design Documentation to the Principal's Representative together with an explanation as to why it is seeking to amend the Final Design Documentation; and
 - (iv) clause 4.5 (*Preparation and submission of Design Documentation*) to clause 4.10 (*Design Documentation for construction*) and Schedule A10 (*Design review procedure and Network Assurance Committee*) will apply as if the Design Documentation is Design Stage 3 Design Documentation.
- (b) The WL Contractor may, at its own risk, use the amended Final Design Documentation submitted in accordance with clause 4.11(a) for construction purposes prior to the expiry of the 20 Business Day period in clause 4.10(a)(i) if:
- (i) the amendment to the Final Design Documentation:
 - (A) is minor;
 - (B) does not adversely impact the Project Works or the Temporary Works; and
 - (C) is necessary to overcome an issue which:
 - (aa) prevents or adversely affects the WL Contractor proceeding with construction; and
 - (bb) has arisen or become evident since the Final Design Documentation was submitted to the Principal's Representative; and
 - (ii) the Final Design Documentation does not relate to a NAC CCR Package that has been the subject of a notice under clause 3.2(a) or clause 3.2(b) of Schedule A10 (*Design review procedure and Network Assurance Committee*).

5. **CONSTRUCTION**

5.1 **Construction obligations**

- (a) The WL Contractor must construct the Project Works and the Temporary Works:
- (i) in accordance with:
 - (A) all Approvals;
 - (B) the Final Design Documentation; and
 - (C) all other requirements of this deed; and
 - (ii) so that:
 - (A) at Completion for the Non-Trackway Portion or Substantial Completion for the Trackway Portion, the Project Works; and
 - (B) at all relevant times, the Temporary Works,

will:

- (C) satisfy the Project Requirements; and
 - (D) comply with all applicable Laws.
- (b) The WL Contractor must ensure that the WL Works are constructed within the boundaries of the Project Site.

5.2 Commencement of construction

- (a) **(No commencement on Construction Site)** In addition to the requirements in clause 4.10 (*Design Documentation for construction*), the WL Contractor must not commence any work on the Construction Site until:
- (i) the WL Contractor has complied with clauses 3.1(a)(i), 3.1(a)(ii) and 3.4 (*Parent Company Guarantee*);
 - (ii) each Project Plan that is required by Appendix F2 of the SWTC to be in place prior to the commencement of construction has been submitted to the Principal's Representative and has not been rejected by the Principal's Representative under Section 2.2 of Appendix F2 of the SWTC; and
 - (iii) all Hold Points required to be released prior to commencement of work on the Construction Site have been released in accordance with the requirements of this deed, including the Quality Plan.
- (b) **(No commencement of Third Party Works)** The WL Contractor must not commence construction of any Third Party Works or the WL Contractor's Activities which interface with Third Parties until the relevant preconditions to commencement of that work in the relevant Third Party Agreement have been satisfied (or waived by the relevant Third Party).

5.3 Property Works

- (a) **(Property Works)** The WL Contractor must carry out the Property Works:
- (i) in accordance with the requirements of this deed; and
 - (ii) in a manner which minimises inconvenience and disruption to the Landowners of the Unowned Property Works Lands.
- (b) **(WL Contractor to rehabilitate)** The WL Contractor must:
- (i) rehabilitate any part of Unowned Property Works Lands to the state agreed between the WL Contractor and the Landowners of such Unowned Property Works Lands prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the WL Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to any part of the Unowned Property Works Lands which arises out of or in any way in connection with the performance of its obligations under this clause 5.3.
- (c) **(Fit for purpose)** For the purposes of clause 2.3(c) and clause 5.3(b), any element of the Property Works located on Unowned Property Works Lands will be treated as fit for their intended purpose if the Property Works have been performed

in the manner agreed with the Landowners of such Unowned Property Works Lands.

- (d) **(Completion)** When each discrete part of the Property Works is completed, the WL Contractor must provide the Principal's Representative with:
- (i) a certificate in the form of Schedule B13 (*Landowner's Certificate*), duly executed by the relevant Landowner; or
 - (ii) if the Landowner has failed or refused to sign a certificate in the form of Schedule B13 (*Landowner's Certificate*) within 15 Business Days after it was provided by the WL Contractor to the relevant Landowner:
 - (A) copies of all correspondence between the WL Contractor and the Landowner relating to the certificate referred to in clause 5.3(d)(i); and
 - (B) evidence satisfactory to the Principal's Representative that the relevant part of the Property Works is complete and satisfies the requirements of this deed.
- (e) **(Indemnity)** The WL Contractor must indemnify the Principal from and against any Claims, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a Claim by the Landowners of any Unowned Property Works Lands where:
- (i) such Landowners have not duly signed a certificate in the form of Schedule B13 (*Landowner's Certificate*); and
 - (ii) the Claim or Loss arises out of or in any way in connection with a wrongful act or omission of the WL Contractor or its Associates in connection with the Property Works or a failure by the WL Contractor to comply with its obligations under this deed relating to Property Works.

5.4 **Utility Services**

- (a) **(Utility Service Works)** The WL Contractor must carry out all Utility Service Works in accordance with the requirements of this deed and, where applicable, the WL Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).
- (b) **(Risk)** The WL Contractor bears the risk of the existence, location, condition and availability of all Utility Services (in so far as they affect the WL Contractor's Activities) and must investigate, protect, relocate, remove, modify, disconnect, support, reinstate and provide for all Utility Services necessary for it to perform the WL Contractor's Activities and otherwise comply with its obligations under the WL Station Contract Documents.
- (c) **(Payment)** The WL Contractor must obtain, pay for and contract for the provision of all Utility Services that it requires to perform the WL Contractor's Activities.
- (d) **(Cooperation)** The WL Contractor must cooperate and co-ordinate (and ensure that its Associates cooperate and co-ordinate) with the owners of all Utility Services, and implement their requirements as part of the WL Contractor's Activities and must consult with and keep the Principal fully informed as to the WL

Contractor's or its Associates' dealings with the Authorities providing the Utility Services.

- (e) **(Disruption)** The WL Contractor must ensure that, as a consequence of or in relation to the performance of the WL Contractor's Activities:
 - (i) there are no unplanned disruptions to the Utility Services;
 - (ii) any planned disruptions to the Utility Services are minimised; and
 - (iii) otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted.
- (f) **(Completion)** When each discrete part of the Utility Services Works are completed, the WL Contractor must provide the Principal's Representative with:
 - (i) written notice from the relevant Authority with jurisdiction over the affected Utility Service confirming that the relevant part of the Utility Service Works is complete; or
 - (ii) if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the WL Contractor:
 - (A) copies of all correspondence between the WL Contractor and the Authority relating to the notice referred to in clause 5.4(f)(i); and
 - (B) evidence satisfactory to the Principal's Representative (acting reasonably) that the relevant part of the Utility Service Works is complete and satisfies the requirements of this deed and, where applicable, the WL Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).

5.5 Local Area Works

- (a) **(Local Area Works)** The WL Contractor must carry out all Local Area Works in accordance with the requirements of this deed and, where applicable, the WL Contractor's obligations in Schedule D4 (*Requirements of Third Party Agreements*), Schedule D7 (*Requirements of Adjoining Property Owner Agreements*) and Schedule D8 (*Requirements of Adjoining Property Easements*).
- (b) **(Joint inspection)** When the WL Contractor considers that a discrete part of the Local Area Works [REDACTED] is complete, it must notify the Principal's Representative in writing and the Principal's Representative, the WL Contractor and a representative of the Authority with jurisdiction over the relevant part of the Local Area Works will jointly inspect the relevant part of the Local Area Works at a mutually convenient time.
- (c) **(Completion)** When each discrete part of the Local Area Works [REDACTED] are completed, the WL Contractor must provide the Principal's Representative with:
 - (i) written notice from the relevant Authority with jurisdiction over the relevant part of the Local Area Works stating that the Authority is satisfied that the relevant part of the Local Area Works is complete; or

- (ii) if the relevant Authority has failed or refuses to provide such notice within 15 Business Days after it was requested by the WL Contractor:
 - (A) a statement from the WL Contractor that the relevant Authority has failed to or refused to provide such notice; and
 - (B) copies of all correspondence between the WL Contractor and the Authority relating to the notice referred to in clause 5.5(c)(i).

(d) [REDACTED]

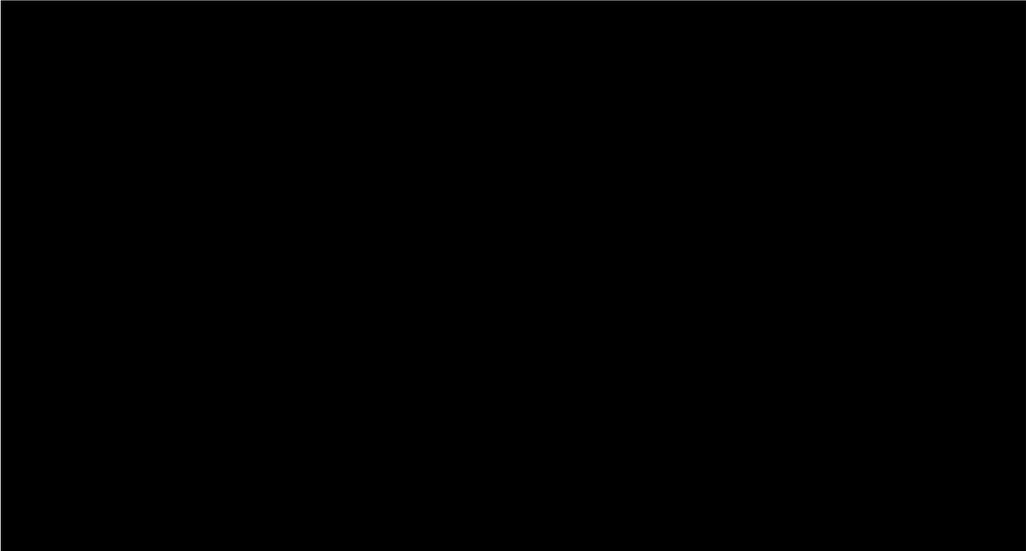
5.6 **Artefacts**

- (a) **(Property of the Principal)** As between the Principal and the WL Contractor, any Artefacts found on, in or under the surface of the Construction Site are and will remain the property of the Principal.
- (b) **(Discovery)** The WL Contractor must, upon the discovery of an Artefact:
 - (i) notify the Principal within 2 Business Days;
 - (ii) ensure that the Artefact is managed in accordance with the requirements of the Planning Approval and comply with all Laws and the Directions of Authorities and the Principal relating to the discovery and handling of the Artefact; and
 - (iii) continue to perform the WL Contractor's Activities, except to the extent otherwise directed by the Principal's Representative or an Authority, ordered by a court or tribunal or required by Law.

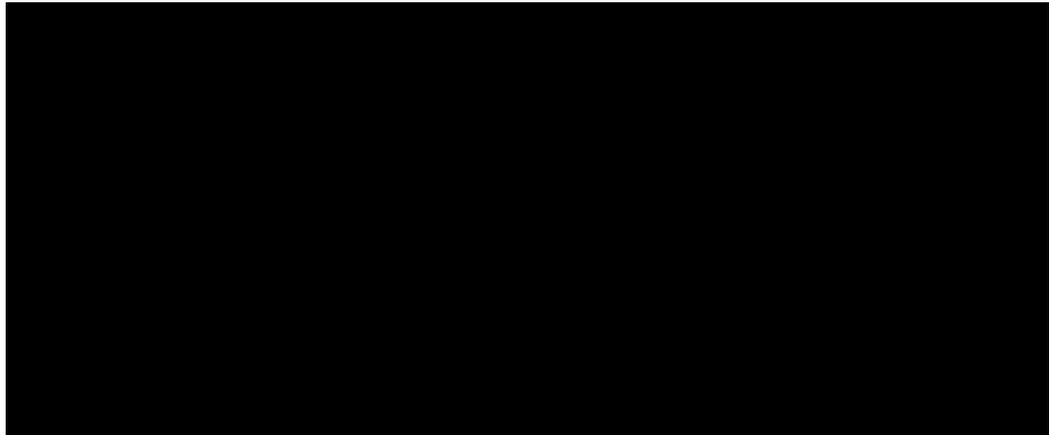
5.7 **Contamination**

- (a) **(Risk)** In addition to the requirements of the Planning Approval (but subject to clauses 5.7(b), 5.7(d) and 5.7(f) [REDACTED] the WL Contractor bears the risk of all Contamination:
 - (i) on, in, over, under or about the Construction Site to the extent it is disturbed by or interfered with in the carrying out of the WL Contractor's Activities;
 - (ii) which migrates:
 - (A) onto the Construction Site as a result of the WL Contractor's Activities and which could have been reasonably anticipated by a competent and experienced contractor that had examined the Construction Site and its surroundings and all Information Documents provided by the Principal to the WL Contractor prior to the date of this deed; or
 - (B) from the Construction Site as a result of the WL Contractor's Activities;

- (iii) which is ground water ingressing onto the Construction Site other than as a result of a TSE Defect;
 - (iv) on, in, over, under or about any Extra Land or migrating onto or from any Extra Land; and
 - (v) which otherwise arises out of or in connection with the WL Contractor's Activities, provided that this clause 5.7(a)(v) will not operate to expand the WL Contractor's risk in respect of Contamination of the types dealt with in clauses 5.7(a)(i), 5.7(a)(ii), 5.7(a)(iii) or 5.7(a)(iv).
- (b) **(No obligation to trace to source)** To the extent that Contamination:
- (i) on, in, over, under or about the Construction Site is disturbed by or interfered with in the carrying out of the WL Contractor's Activities, the WL Contractor is:
 - (A) required to Remediate only those parts of such Contamination that are actually disturbed by or interfered with in the carrying out of the WL Contractor's Activities; and
 - (B) is not required 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 by or interfered with in the carrying out of the WL Contractor's Activities; or
 - (ii) migrates onto the Construction Site as a result of the WL Contractor's Activities, the WL Contractor is not required to trace to the source of such Contamination where such source is outside the Construction Site.
- (c) **(No Liability)** Except to the extent set out in clauses 5.7(d) and 5.7(f), the Principal will have no Liability to the WL Contractor in relation to Remediating or overcoming Contamination.
- (d) **(TSE Contamination)** [REDACTED] to the extent that Contamination on the Construction Site is Contamination which the TSE Contractor is required to remediate under the TSE Contract, it will be treated as a TSE Defect under clause 15.7 (*TSE Defects*).
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (e) **(Remediation)** Without limiting clause 5.7(a) and 5.7(f), and except to the extent clause 5.7(d) applies, the WL Contractor must undertake Remediation of any Contamination on the Construction Site and the Extra Land in accordance with and to the extent required by Law, the Planning Approval and all guidelines made or approved by the EPA so that in respect of Contamination on, in, over, under or about:
- (i) the Construction Site:
 - (A) the Construction Site is suitable for the performance of the WL 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) any land outside the Construction Site, the relevant land is returned to the state that it would have been in if unaffected by the WL Contractor's Activities (unless otherwise agreed with the relevant third party).
- (f)
- 

- (g) **(Hazardous Chemicals)** The WL Contractor must ensure that:
- (i) Hazardous Chemicals are:
 - (A) handled in a manner that will not cause or create an Environmental Hazard; and
 - (B) not abandoned or dumped on the Construction Site or Extra Land; and
 - (ii) no other substance is released from, deposited to, or emanates from, the Construction Site or Extra Land such that a state of Contamination occurs.
- (h) **(Indemnity and release)** The WL Contractor:
- (i) must indemnify the Principal from and against any Claim against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any Contamination that arises out of or in connection with any:
 - (A) breach of this deed by the WL Contractor; or
 - (B) negligent act or omission of the WL Contractor or its Associates; and
 - (ii) releases the Principal from and against any Claim arising out of or in any way in connection with any Contamination for which the WL Contractor is responsible under this deed.



5.8 **Prevention of disturbance and interference**

The WL Contractor must, in performing the WL Contractor's Activities:

- (a) (**minimise nuisance**) minimise nuisance and unreasonable noise, dust, vibration and disturbances except to the extent such nuisance, noise, dust, vibration or disturbance is permitted by Law;
- (b) (**take precautions**) take all reasonable precautions to avoid obstruction of and damage to any property (including the property of the Principal) and Utility Services;
- (c) (**no interference**) not restrict, close, interfere with or obstruct the free flow of people and vehicles, access to any premises, car parks, roads, pedestrian ways, public spaces, parks, bicycle paths or facilities, or traffic on any lane or shoulder of the existing road network, or the operations or activities carried out on, adjacent to or in the vicinity of the Construction Site (including Local Areas):
 - (i) unless and to the extent it is necessary for the performance of the WL Contractor's Activities; and
 - (ii) without first obtaining the consent of all relevant Authorities and, to the extent it impacts on the Principal or the Waterloo Station (including the use and occupation of the Waterloo Station), without first obtaining the consent in writing of the Principal's Representative;
- (d) (**instructions of Authorities**) comply with the instructions of all relevant Authorities in relation to any restriction, closure, interference or obstruction contemplated by clause 5.8(c). For the purpose of this clause 5.8(d) only, the definition of Authority excludes the Principal; and
- (e) (**co-ordinate**) program and co-ordinate the WL Contractor's Activities in accordance with Good Industry Practice and take all steps reasonably available to the WL Contractor (including re-sequencing and re-scheduling) to minimise the effect of the WL Contractor's Activities on the occupants and users of land adjoining, or in the vicinity of, the Construction Site and any Extra Land (including Existing Operators and Landowners of Adjoining Property).

5.9 **Responding to notifications and complaints regarding property damage**

Where the WL Contractor receives a notification or complaint relating 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 WL Contractor's Activities, the WL Contractor must:

- (a) respond to the notification or complaint within 24 hours;
- (b) visit the relevant property to inspect the damage within 5 Business Days of receipt of the notification or complaint; and
- (c) where the cost of repairing such damage is less than or equal to [REDACTED] repair such damage within 10 Business Days (or such longer period permitted by the Principal's Representative) of the inspection referred to in clause 5.9(b), and in any case as soon as reasonably possible.

5.10 **Not Used**

6. **SAFETY AND ENVIRONMENT**

6.1 **Care of people, property and the Environment**

The WL Contractor must carry out the WL Contractor's Activities in a manner that:

- (a) does not put the health or safety of persons at risk and prevents injury or death;
- (b) protects and prevents damage to property and the Environment; and
- (c) protects and prevents damage to:
 - (i) the Project Works, the Temporary Works and the WL Contractor's Activities; and
 - (ii) any Interface Work on or in the vicinity of the Construction Site.

6.2 **Work health and safety**

The WL Contractor must:

- (a) **(WHS Legislation)** in carrying out the WL Contractor's Activities, comply, and must ensure that its Subcontractors comply, with the WHS Legislation and other applicable Laws (including the Chain of Responsibility Provisions), Codes and Standards and Australian Standards relating to work health and safety;
- (b) **(notify)** notify the Principal's Representative in accordance with the Sydney Metro Principal Contractor Health and Safety Standard of all work health and safety Incidents;
- (c) **(assurances to the Principal)** following commencement of construction on the Construction Site and at the end of March, June, September and December of each year, provide the Principal's Representative with written assurances from:
 - (i) the WL Contractor about the WL Contractor's ongoing compliance; and
 - (ii) all Significant Subcontractors about each Significant Subcontractor's ongoing compliance,

with all applicable Laws, Codes and Standards and Australian Standards and other requirements of this deed for work health and safety and rehabilitation management;

- (d) (**report**) provide the Principal's Representative with written reports on any work health and safety and rehabilitation matters connected with the WL Contractor's Activities as the Principal's Representative may require from time to time;
- (e) (**cooperate**) consult, cooperate and co-ordinate its activities with the Interface Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (f) (**duties**) carry out the WL Contractor's duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable Laws; and
- (g) (**safety leadership**) provide strong safety leadership and continuously promote safety as a core value.

6.3 Principal contractor

- (a) (**Definitions**) In clause 6.2 (*Work health and safety*), this clause 6.3 and clause 6.5 (*Sydney Metro Principal Contractor Health and Safety Standard*), the terms "principal contractor", "workplace", "construction work" and "construction project" have the meaning given to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (i) the construction work involved in the WL Contractor's Activities; and
- (ii) any construction work carried out on the Construction Site by the WL Developer under the MQD PDA any Interface Contractor, the Principal or any other person which is performed during any period in which the Appointed Principal Contractor has been engaged as principal contractor (**Construction Site Interface Work**),

are taken to be part of the same "construction project".

- (b) (**Engagement as principal contractor**) Subject to clause 9.2(g), the parties acknowledge and agree that from the date on which the WL Contractor is given access to a part of the Construction Site in accordance with this deed:

- (i) to the extent that the WL Contractor's Activities or any Construction Site Interface Work includes construction work, the Principal:
 - (A) engages the Appointed Principal Contractor as the principal contractor in respect of the WL Contractor's Activities and the Construction Site Interface Work;
 - (B) authorises the Appointed Principal Contractor to have management and control of each workplace at which the WL Contractor's Activities and the Construction Site Interface Work are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
 - (C) must give the Appointed Principal Contractor prior notice of any Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences (other than the WL Developer); and
 - (D) must provide the Appointed Principal Contractor and the WL Contractor with executed deed polls in favour of the Appointed

Principal Contractor in the form set out in Schedule A18 (*Site Interface Deed Poll*) from each Interface Contractor engaged by the Principal undertaking Construction Site Interface Work (other than the WL Developer); and

- (ii) the Appointed Principal Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and this deed.
- (c) **(Period of engagement)** The Appointed Principal Contractor's engagement and authorisation as a principal contractor will continue until:
 - (i) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed;
 - (ii) in respect of the Trackway Portion, the earlier of:
 - (A) the termination of this deed; and
 - (B) the Date of Substantial Completion of the Trackway Portion;
 - (iii) in respect of each Non-Trackway Portion, the earlier of:
 - (A) the termination of this deed; and
 - (B) the Date of Completion of the relevant Portion; and
 - (iv) in respect of any area of the Construction Site which has a Site Access Expiry Date, the date on which the WL Contractor vacates that area of the Construction Site.
- (d) Not used.

6.4 Authorisations and licences

If requested by the Principal or required by the WHS Legislation, the WL Contractor must 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 reasonable satisfaction of the Principal before the WL Contractor or a Subcontractor (as the case may be) commences work.

6.5 Sydney Metro Principal Contractor Health and Safety Standard

- (a) **(Comply)** The WL Contractor must comply with those parts of the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, that the Principal notifies the WL Contractor in writing that it must comply with as if it was a principal contractor for the purposes of that standard.
- (b) **(Update to standard)** The Principal may update the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the WL Contractor's Activities and Sydney Metro City & Southwest.
- (c) [REDACTED]
[REDACTED]
[REDACTED] the Principal will have no Liability to the WL Contractor arising out of or in any way in connection with any act or omission of

the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as being an obligation of the Principal or an Associate of the Principal).

- (d) (**Change in Codes and Standards**) If the Principal updates the Sydney Metro Principal Contractor Health and Safety Standard this will be treated as a Change in Codes and Standards to which clause 7.3 (*Change in Codes and Standards*) applies except where such update is made by the Principal because of a:
- (i) change to the WHS Legislation or any other Law, code of practice or Australian Standard relating to work health or safety; or
 - (ii) breach of this deed by the WL Contractor or a wrongful act or omission of the WL Contractor or its Associates.

6.6 WHS Accreditation Scheme

The WL Contractor:

- (a) (**WL Contractor accredited**) represents and warrants that it is accredited under the WHS Accreditation Scheme; and
- (b) (**compliance**) must comply with the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIIP Act) is carried out.

6.7 Incident management

- (a) (**Establishment of procedures**) The WL Contractor must, within 20 Business Days of the date of this deed, identify clear guidelines for responding to any Incident and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.
- (b) (**Reporting of Incidents**) If an Incident occurs, the WL Contractor must immediately report the Incident to the Principal's Representative and to any Authority required by Law.
- (c) (**WL Contractor must take action**) Without limiting clause 5.7 (*Contamination*) and clause 7.1 (*Compliance with Laws*), in relation to any environmental or safety Incident involving Contamination or waste, the WL Contractor must, at its own Cost:
 - (i) promptly take all appropriate action to manage and dispose of all Contamination or waste arising from the Incident; and
 - (ii) 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) (**Principal's rights**) Without prejudice to the Principal's other rights under this deed, if an Incident occurs (or there is an imminent risk of an Incident occurring), the Principal may (but is not obliged to):
 - (i) (**Principal may take action**) take such actions as it deems necessary to overcome and alleviate the cause and consequences of the Incident if the Principal considers that the WL 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; or

- (ii) **(stop work order)** issue an immediate stop work order if the Incident involves:
 - (A) a significant spill of Contamination;
 - (B) any accident or release of Contamination which it believes may pose a danger to health, life or property;
 - (C) any actual damage to the Environment or a significant risk of harm to the Environment; or
 - (D) 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.
- (e) **(Recommendement)** If the Principal issues a stop work order under clause 6.7(d)(ii):
 - (i) the WL Contractor may not recommence the part of the WL Contractor's Activities to which the stop work order relates until the Principal issues a notice to the WL Contractor permitting the WL Contractor to recommence the WL Contractor's Activities affected by the stop work order; and
 - (ii) the Principal may direct the WL Contractor as to the steps which the WL Contractor must take before the Principal will issue a direction permitting the WL Contractor to recommence the WL Contractor's Activities affected by the stop work order.
- (f) **(No Liability)** The Principal will have no Liability to the WL Contractor for any Loss arising out of or in connection with any suspension of the WL Contractor's Activities due to:
 - (i) action taken under clause 6.7(d)(i);
 - (ii) a stop work order issued under clause 6.7(d)(ii); or
 - (iii) any failure by the Principal's Representative to take action or issue a stop work order.
- (g) **(Principal may recover costs)** The reasonable Costs and expenses incurred by the Principal in relation to action taken by it under clause 6.7(d) or which the Principal's Representative otherwise deems necessary to avoid issuing any stop work order will be a debt due and payable from the WL Contractor to the Principal.

6.8 Rail Safety

- (a) **(Compliance)** Without limiting any other clause in this deed, the WL Contractor must:
 - (i) comply, and ensure that its Associates comply, with the Principal's reasonable requirements in relation to rail safety; and

- (ii) not do anything, and ensure that its Associates do not do anything, that would interfere with or compromise the safe operation of Sydney Metro City & Southwest.
- (b) **(For and on behalf of the Principal)** The WL Contractor acknowledges that:
- (i) the WL Contractor's Activities and the Project Works are being undertaken for the purpose of constructing a railway;
 - (ii) the Principal holds Accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
 - (iii) to the extent that the WL Contractor's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law, it carries out such of the WL Contractor's Activities for and on behalf of the Principal under the Principal's Accreditation.
- (c) **(Principal's Accreditation)** In carrying out any part of the Project Works and Temporary Works which require Accreditation as a Rail Infrastructure Manager, the WL Contractor:
- (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
 - (ii) must not do, or fail to do anything which jeopardises the Principal's Accreditation; and
 - (iii) must ensure that its Subcontractors engaged in or in connection with the Project Works or Temporary Works, comply with the WL Contractor's obligations under this clause 6.8 as if those obligations had been imposed directly upon those Subcontractors.
- (d) **(Cooperation and assistance)** The WL Contractor must liaise and cooperate with the Principal, the Operator and any other Public Transport Agency and provide any reasonable assistance and documentation that the Principal, the Operator or any other Public Transport Agency may require in relation to safety matters, the Principal's Accreditation and its obligations under the Rail Safety National Law and Rail Safety Regulations, including in relation to the Operator obtaining or extending its accreditation under the Rail Safety National Law.
- (e) **(Activities not permitted under the Principal's Accreditation)** To the extent that, in carrying out the WL Contractor's Activities, the WL 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 WL Contractor must hold and comply with the necessary accreditation or other Approval required to enable it to comply with all applicable Laws.

6.9 **Engineering Authorisation and ASA compliance**

The WL Contractor must at all times comply with the requirements of section 3.2 of the SWTC in relation to Engineering Authorisation and ASA compliance.

6.10 **Cleaning up**

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

- (a) **(clean and tidy)** keep the Construction Site, Extra Land and the Project Works and Temporary Works clean and tidy and free of refuse;
- (b) **(removal of rubbish)** regularly remove rubbish, litter, graffiti and surplus material (including Construction Materials) from the Construction Site and Extra Land; and
- (c) **(final clean up)** as a condition precedent to Substantial Completion of the Trackway Portion and Completion of each Non-Trackway Portion, remove all rubbish, surplus materials (including Construction Materials), Construction Plant and Temporary 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.

6.11 NGER Legislation

The WL Contractor must at all times comply with the requirements of section 3.7 of the SWTC main body in relation to the NGER Legislation.

6.12 Asset Management Information

- (a) The WL Contractor must prepare and submit the Asset Management Information for the relevant Portion in accordance with the requirements of this deed.
- (b) The Asset Management Information must comply with the requirements of Appendix F6 of the SWTC.
- (c) The Principal's Representative must, within 15 Business Days of the submission of the Asset Management Information for a Portion, either:
 - (i) reject the Asset Management Information for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Asset Management Information is required (together with reasons) and a time within which this must occur; or
 - (ii) advise in writing that the Asset Management Information is not rejected.
- (d) If the Asset Management Information for a Portion is rejected by the Principal's Representative, the WL Contractor must update and resubmit the Asset Management Information and clause 6.12(c) will re-apply except that the reference to "15 Business Days" will be deemed to be a reference to:
 - (i) 5 Business Days (if the WL Contractor has taken 5 Business Days or less to re-submit the Asset Management Information); or
 - (ii) 10 Business Days (otherwise).
- (e) The WL Contractor acknowledges and agrees that the Principal's Representative may make comments to the WL Contractor in respect of any Asset Management Information submitted under clause 6.12(a) or clause 6.12(d).
- (f) The Principal's Representative may:
 - (i) provide copies of any Asset Management Information to; and
 - (ii) seek comments in respect of any Asset Management Information from,

the Independent Certifier and any Interface Contractor.

6.13 **Sustainability**

Without limiting the sustainability requirements set out in the SWTC and the requirements set out in paragraphs (b)(ii)(R) and (b)(ii)(RA) of the definition of "Completion", the WL Contractor must achieve from the Green Building Council of Australia (**GBCA**) a verified "As Built" rating of at least 5 stars for the WL Works no later than 6 months after Completion of the last Portion to achieve Completion.

7. **LAW AND APPROVALS**

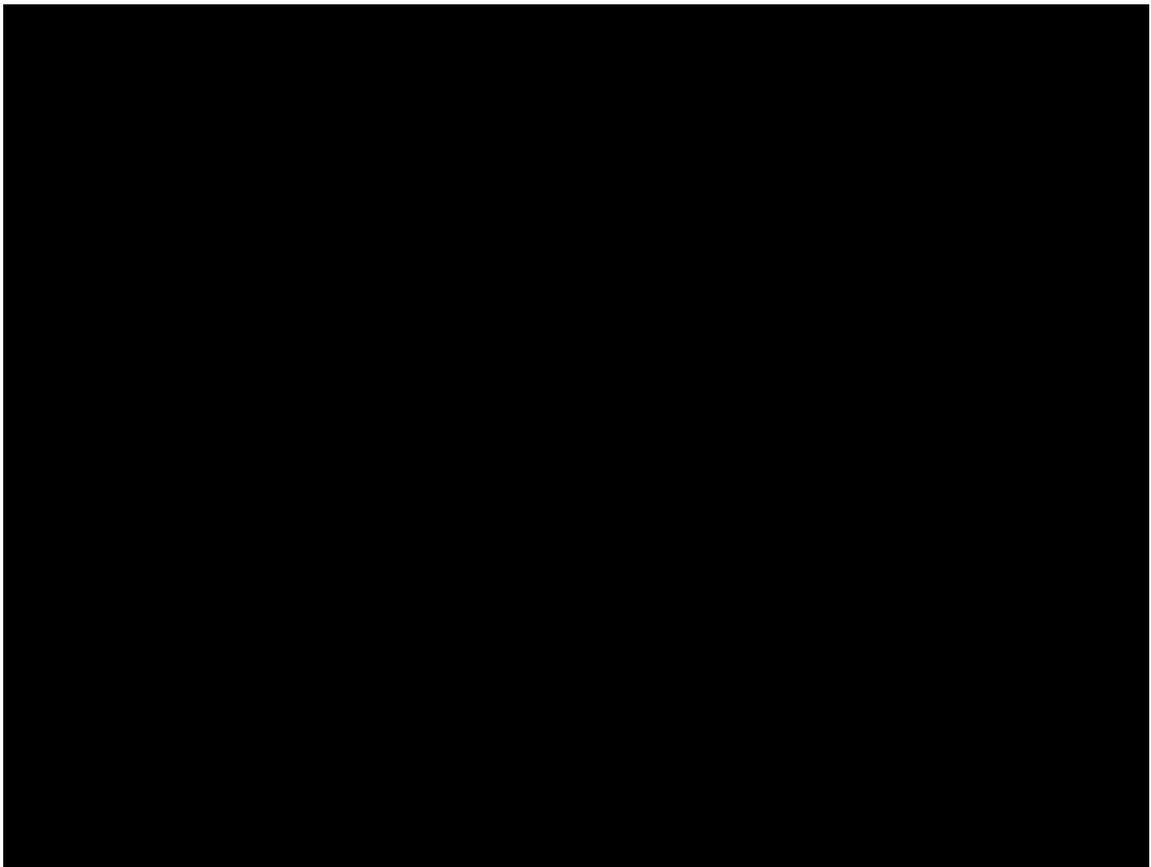
7.1 **Compliance with Laws**

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

- (a) (**compliance**) comply (and ensure that its Associates comply) with, and ensure that the Project Works and the Temporary Works comply with, all applicable Laws (including any Change in Law and any Environmental Notices arising out of or in connection with the carrying out of the WL Contractor's Activities);
- (b) (**not put the Principal in breach**) not do, or fail to do (and ensure that its Associates do not do, or fail to do), anything that may cause the Principal to be in breach of any Law;
- (c) (**notices and fees**) give all notices and pay all fees, charges, bonds and other amounts which it is required to pay in respect of the performance of the WL Contractor's obligations under this deed;
- (d) (**notify**) notify the Principal in writing as soon as practicable after the WL Contractor:
 - (i) becomes aware of any non-compliance with the requirements of any Law in connection with the WL Contractor's Activities or the Construction Site;
 - (ii) becomes aware of any information, fact or circumstance in any way connected with the WL Contractor's Activities or the Construction Site where:
 - (A) 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 (without limiting any other obligation of the WL Contractor in relation to the information, fact or circumstance); and
 - (B) the WL Contractor is aware of that notification obligation of the Principal; or
 - (iii) notifies any Authority of any matter pursuant to any Law which is in any way connected with the WL Contractor's Activities or the Construction Site, in which case the WL Contractor must give the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification;
- (e) (**copies to the Principal**) give the Principal's Representative copies of:

- (i) all notices that the WL Contractor (or its Associates) gives to any Authority at the time or before it submits such notices to an Authority;
 - (ii) all documents (including Approvals and other notices) that any Authority issues to the WL Contractor (or its Associates); and
 - (iii) any other material communications between the WL Contractor (or its Associates) and an Authority,
- in connection with the Project Works or the WL Contractor's Activities; and
- (f) at all times conform and comply with, and ensure that the Project Works and the Temporary Works conform and comply with:
 - (i) **(Codes and Standards)** all Codes and Standards; and
 - (ii) **(Prescribed Legislative Requirements)** each of the Prescribed Legislative Requirements.

7.2 **Change in Law**



- (b) **(Details of Change)** If there is a Change in Law, each written notice the WL Contractor must give under clause 37.3(b) and clause 37.3(c) must include:
 - (i) details of the Change in Law;
 - (ii) in respect of a Change in Law described in:

- (A) clause 7.2(a)(i), the effect the Change in Law will have on the Project Works; and

■ [REDACTED]
[REDACTED]

- (iii) the costs and expenses likely to be incurred in the change to the Project Works [REDACTED] as a consequence of the Change in Law which are in addition to those which would have been incurred had the Change in Law not occurred; and

- (iv) other information reasonably required by the Principal's Representative.

7.3 Change in Codes and Standards

- (a) **(Details of Change)** Where there is a Change in Codes and Standards:

- (i) the WL Contractor must give a written notice to the Principal's Representative within 20 Business Days after the date on which it first becomes aware of (or 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 WL 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 WL Contractor which complies with clause 7.3(a)(i), then within 10 Business Days after the date of the notice, the Principal's Representative must either:

- (A) direct the WL Contractor to disregard the Change in Codes and Standards; or
- (B) direct the WL Contractor to comply with the Change in Codes and Standards.

- (b) **(No breach)** If the Principal's Representative gives a notice under clause 7.3(a)(ii)(A), the WL Contractor will not be regarded as being in breach of this deed to the extent that it disregards the relevant Change in Codes and Standards.

7.4 Approvals

The WL Contractor must:

- (a) **(obtain and maintain)** obtain and maintain all Approvals required to perform the WL Contractor's Activities, except for the Principal Approvals;
- (b) **(comply with conditions)** except to the extent otherwise expressly specified in Schedule D3 (*Approvals and Planning Approval conditions*), comply with, carry out and fulfil the conditions and requirements of all Approvals, including those conditions and requirements which the Principal is, under the terms of the Approvals, required to comply with, carry out or fulfil;

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- (c) **(comply with requirements)** comply (and ensure that its Associates comply) with the requirements of the Planning Approval set out in Schedule D2 (*Requirements of Approvals*);
- (d) **(prepare submissions)** for the purpose of obtaining any Approvals, prepare all associated studies and reports and other submissions; and
- (e) **(provide assistance)** provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to:
 - (i) obtain any Principal Approvals; or
 - (ii) subject to clause 7.4(b), satisfy or fulfil the conditions and requirements of Approvals which Schedule D3 (*Approvals and Planning Approval conditions*) provides must be satisfied or fulfilled by the Principal.

7.5 **Modifications to EP&A Act Approvals**

Notwithstanding clause 7.2 (*Change in Law*), if:

- (a) any further environmental impact assessment is required under Part 4 or Division 5.1 of the EP&A Act (or their equivalents) in connection with the WL Contractor's Activities;
- (b) the Principal determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or its equivalent) in connection with the WL Contractor's Activities;
- (c) an Approval is modified and/or amended under the EP&A Act; or
- (d) a new Approval is issued under the EP&A Act in respect of the WL Contractor's Activities, either in substitution for or replacement of a Planning Approval or otherwise or any such new Approval is modified under the EP&A Act,

arising out of or in connection with:

- (e) a Modification requested by the WL Contractor; or
- (f) any failure by the WL Contractor to comply with its obligations under this deed or any other WL Station Contract Document,

then the Principal will have no Liability to the WL Contractor in relation to any such events and any actions or additional work arising out of or in connection with any such events, irrespective of who is required to, or does, carry out any such assessment.

7.6 **Legal challenge to Planning Approvals**

If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for a Planning Approval or a modification of a Planning Approval, the WL Contractor must continue to perform the WL Contractor's Activities unless, as a result of that legal challenge, proceedings or action, it is otherwise:

- (a) ordered by a court or tribunal;
- (b) ordered or directed by an Authority; or
- (c) directed by the Principal or the Principal's Representative.

7.7 **Crown Building Work**

- (a) The WL Contractor must, in relation to any part of the Project Works or Temporary Works that is Crown Building Work (as defined in section 6.1 of the EP&A Act), certify (on behalf of the Principal) those works as required by section 6.28 of the EP&A Act.
- (b) Any certification under clause 7.7(a) will not lessen or otherwise affect:
 - (i) the WL Contractor's other Liabilities, obligations or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the WL Contractor, whether under this deed or otherwise according to Law.

7.8 **Long service leave levy**

Before commencing construction of the Project Works or the Temporary Works, the WL Contractor must:

- (a) pay (or ensure that Subcontractors pay) to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the document evidencing payment of the levy.

7.9 **Home Building Act**

- (a) (**Warranty**) Without limiting clause 7 (*Law and Approvals*), the WL Contractor:
 - (i) warrants that it holds all required licences under the Home Building Act authorising it to carry out Home Building Work; and
 - (ii) must comply with the requirements set out in section 2 of Schedule A30 (*Home Building Act Requirements*).
- (b) (**Indemnity**) The WL 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:
 - (i) the Home Building Act for alleged or actual Liability for a breach of statutory warranties implied under the Home Building Act in relation to the Residential SDD Works or any alleged or actual Liability on the part of the Principal under the Home Building Act in respect of the Residential SDD Works; and
 - (ii) breach by the WL Contractor of the warranty in clause 7.9(a).
- (c) (**Acknowledgement**) The parties acknowledge and agree that:
 - (i) prior to signing this deed the WL Contractor provided the Principal with a copy of the Home Building Regulation Checklist; and
 - (ii) the Principal has signed the Home Building Regulation Checklist and has provided a signed copy of the Home Building Regulation Checklist to the WL Contractor.

8. GOVERNANCE AND ADMINISTRATION

8.1 Principal's Representative

- (a) The Principal's Representative will carry out all of its functions under this deed as the agent of the Principal (and not as an independent certifier, assessor or valuer).
- (b) The WL Contractor must comply with all Directions given by the Principal's Representative in accordance with this deed.

8.2 Appointees of the Principal's Representative

- (a) **(Principal appointees)** The Principal's Representative:
 - (i) may by written notice to the WL Contractor, appoint persons to exercise any of the functions of the Principal's Representative under this deed;
 - (ii) must not appoint more than one person to exercise a specific function at any one time;
 - (iii) may vary or revoke any appointment under clause 8.2(a)(i) by written notice to the WL Contractor; and
 - (iv) may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 8.2(a)(i) (provided that any Directions of the Principal's Representative take precedence over those of any other representatives to the extent of any inconsistency).
- (b) **(References include appointees)** All references in this deed to the Principal's Representative include a reference to an appointee under clause 8.2(a)(i).

8.3 WL Contractor's Representative

- (a) **(Appointment)** The WL Contractor must ensure that at all times from the date of this deed to the issue of the Final Certificate there is a WL Contractor's Representative.
- (b) **(Communications in English)** All communications by the WL Contractor's Representative must be in the English language.
- (c) **(Authority)** The WL Contractor's Representative, and any replacement, at all times has or will have authority to act on behalf of the WL Contractor in respect of this deed.

8.4 WL Contractor's acknowledgement

- (a) **(WL Contractor is bound)** Any notice, consent, approval or other communication given or sighted by the WL Contractor's Representative or any WL Contractor's Representative's delegate will bind the WL Contractor.
- (b) **(Knowledge of the WL Contractor)** All matters within the knowledge of the WL Contractor's Representative or any WL Contractor's Representative's delegate will be deemed to be within the knowledge of the WL Contractor.
- (c) **(Directions deemed to be given to the WL Contractor)** Any Directions given by the Principal's Representative, or by a delegate appointed under clause 8.2(a) on behalf of the Principal's Representative, to any WL Contractor's Representative

or WL Contractor's Representative's delegate will be deemed to have been given to the WL Contractor.

8.5 Release in favour of Principal's Representative

- (a) **(No Liability for representative)** Neither the Principal's Representative nor any delegates will have any Liability to the WL Contractor in relation to or in connection with this deed.
- (b) **(No reliance for the Principal/WL Contractor)** Nothing in clause 8.5(a) releases:
 - (i) the Principal from any Liability it would otherwise have to the WL Contractor arising out of the conduct of the Principal's Representative and any of the Principal's Representative's delegates; or
 - (ii) the WL Contractor from any Liability it would otherwise have to the Principal arising out of the conduct of the WL Contractor's Representative and any of the WL Contractor's Representative's delegates.

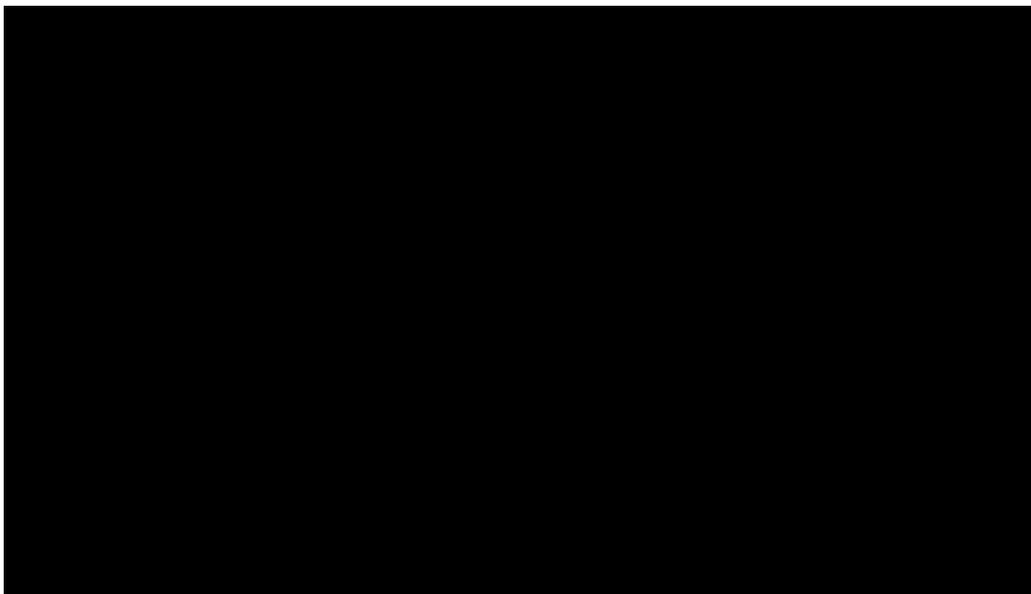
8.6 Personnel

- (a) **(Skilled and experienced personnel)** The WL Contractor must provide competent, qualified, experienced and skilled personnel to perform the WL Contractor's obligations under this deed.
- (b) **(Engagement of personnel)** The WL Contractor must:
 - (i) employ the personnel specified in Schedule A29 (*Personnel*) in the positions specified in Schedule A29 (*Personnel*);
 - (ii) ensure that the personnel specified in Schedule A29 (*Personnel*) (or their approved replacements) at all times have and maintain the qualifications, skills and experience required by Schedule A29 (*Personnel*);
 - (iii) if any of the personnel referred to in clause 8.6(b)(ii):
 - (A) die;
 - (B) become unable to continue in the position due to illness;
 - (C) resign from the employment of or are promoted to a new position within the WL Contractor;
 - (D) become the subject of a direction under clause 8.6(d),replace them with personnel of at least equivalent ability and expertise as well as the qualifications, skills and experience required by Schedule A29 (*Personnel*) who must be approved in writing by the Principal's Representative (acting reasonably) before they are appointed.
- (c) **(Availability)** The personnel specified in Schedule A29 (*Personnel*) (or their approved replacements) must be available for consultation with the Principal's Representative whenever the Principal's Representative reasonably requires.
- (d) **(Removal)** The Principal's Representative may, in its absolute discretion and without having to give reasons, direct the WL Contractor to remove any person from the performance of the WL Contractor's Activities and the WL Contractor must

ensure that any person the subject of such a direction is not again involved in the performance of the WL Contractor's Activities. Where the person the subject of a direction under this clause 8.6(d) is a person specified in Schedule A29 (*Personnel*) (or their approved replacement), the WL Contractor must provide a replacement that has the qualifications, skills and experience required by Schedule A29 (*Personnel*).

8.7 **Independent Certifier**

- (a) **(Independent Certifier Deed)** The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) **(Not an AEO)** In certifying Design Stage 3 Design Documentation, the Independent Certifier is not required to act as an AEO.
- (c) **(Independent)** The Independent Certifier is obliged to act independently of the Principal, the WL Contractor and their respective Associates.
- (d) **(Provision of information)** The Principal and the WL Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier to attend meetings (including any Project Control Group meetings) and access all premises as may be:
 - (i) necessary or reasonably required for the Independent Certifier to perform its obligations under the Independent Certifier Deed; or
 - (ii) requested by the Independent Certifier or directed by the Principal's Representative.
- (e) **(Copy all information to other party)** All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (f) **(Principal may provide comments)** The Principal's Representative may provide comments to the Independent Certifier in respect of the WL Contractor's Activities.
- (g)



(h)

8.8 **Effect of Independent Certifier decisions**

- (a) **(Not approval or evidence)** No certification or determination by the Independent Certifier will:
 - (i) constitute an approval by the Principal of the WL Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the Project Works or Temporary Works or any other matters certified or determined by the Independent Certifier comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the Project Works.
- (b) **(No liability for acts)** No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier:
 - (i) is an act or omission by the Principal (including a breach of contract) under or in connection with the WL Station Contract Documents; or
 - (ii) without limiting clause 8.8(a), will give rise to any Liability of the Principal to the WL Contractor.

8.9 **Proof Engineer (Fire)**

- (a) **(Engagement)** The WL Contractor must:
 - (i) engage the Proof Engineer (Fire) at the WL Contractor's cost to perform the Proof Engineer Services (Fire); and
 - (ii) must not replace the Proof Engineer (Fire) without the prior written consent of the Principal (which must not be unreasonably withheld or delayed).
- (b) **(Skill, qualifications and experience)** The WL Contractor warrants that the Proof Engineer (Fire) and any replacement Proof Engineer (Fire) has:
 - (i) at least the qualifications, experience and expertise described in Appendix B6 of the SWTC; and
 - (ii) the requisite experience and skill to perform the Proof Engineer Services (Fire).
- (c) **(Independence)** The WL Contractor must ensure that:
 - (i) the Proof Engineer (Fire) is obliged to act independently of the WL Contractor, the Principal and any of their respective Associates;
 - (ii) the Proof Engineer (Fire) is not an employee of the WL Contractor, the Principal, the Independent Certifier or any of their respective Associates; and
 - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer (Fire) to the WL Contractor are in writing and are made available to the Principal's Representative and the Independent Certifier upon request.

- (d) (**Provision of information**) The WL Contractor must provide the Proof Engineer (Fire) with all information and documents and allow the Proof Engineer (Fire) to:
- (i) attend design meetings; and
 - (ii) access all premises (including all places at which the WL Contractor's Activities are being undertaken),
as may be:
 - (iii) necessary or reasonably required for the Proof Engineer (Fire) to perform its role under this deed; and
 - (iv) requested by the Proof Engineer (Fire) or directed by the Principal's Representative.
- (e) (**No Claim**) Nothing that the Proof Engineer (Fire) does or fails to do pursuant to the purported exercise of its functions will give rise to any Liability from the Principal to the WL Contractor.

8.10 **Not used**

8.11 **Governance groups**

- (a) (**Establishment of governance groups**) The WL Contractor must establish, and comply with the requirements in respect of, the Project Control Group and Technical Working Groups contemplated in Schedule B1 (*Governance groups*).
- (b) (**Effect of governance groups**) The Project Control Group and each Technical Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:
- (i) affect the rights or obligations of any party under the WL Station Contract Documents;
 - (ii) give rise to any Liability from the Principal to the WL Contractor or from the WL Contractor to the Principal;
 - (iii) relieve a party from, or alter or affect, a party's Liabilities or responsibilities whether under this deed or otherwise according to Law;
 - (iv) prejudice a party's rights against the other whether under this deed or otherwise according to Law; or
 - (v) be construed as a Direction by a party to do or not do anything.

8.12 **Attendance at meetings**

If required by the Principal's Representative, the WL Contractor must procure that representatives of the WL Contractor attend any meeting, forum or working group that is contemplated by or established in connection with this deed.

8.13 **Exchange of information between government agencies**

- (a) (**Authorisation**) The WL Contractor authorises the Principal and its Associates to make information concerning the WL Contractor available to NSW government departments or agencies. Such information may include any information provided

by the WL Contractor to the Principal and any information relating to the WL Contractor's performance under this deed.

- (b) (**Future opportunities**) The WL Contractor acknowledges that any information about the WL Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the WL Contractor or any Related Entity of the WL Contractor future opportunities for NSW government work.

8.14 Industrial relations

The WL Contractor:

- (a) bears the risk of and is solely responsible for the management of all aspects of industrial relations connected with the WL Contractor's Activities; and
- (b) must keep the Principal fully and promptly informed of all industrial relations problems or issues which materially affect, or are likely to materially affect, the carrying out of the WL Contractor's Activities.

8.15 Reports

The WL Contractor must provide reports to the Principal's Representative in accordance with and at the times required by Appendix F2 of the SWTC.

9. ACCESS AND CONSTRUCTION SITE

9.1 Rights to land

- (a) (**Principal's obligation**) The Principal:
 - (i) grants to the WL Contractor, and the WL Contractor accepts the grant of, a licence to access the Construction Site in accordance with clause 9.2 (*Early access to the Construction Site*) to clause 9.7 (*Principal's right of entry to Construction Site*) (inclusive); and
 - (ii) will give the WL Contractor rights to Adjoining Properties in accordance with clause 9.8 (*Adjoining Properties*).
- (b) (**Extra Land**) The WL Contractor must, at its own Cost and risk, procure for itself all rights over any land or buildings in addition to the rights described in clause 9.1(a) which are necessary or which the WL Contractor requires to exercise any right or perform any obligation under this deed (which may include land or buildings required for the Third Party Works including Unowned Property Works Lands).

9.2 Early access to the Construction Site

- (a) (**Option to grant early access**) The Principal may, but is not obliged to, grant the WL Contractor access prior to the Site Access Date to the whole or part of the TSE Site by granting either:
 - (i) if TSE Construction Completion has been reached, a Construction Licence; or

- (ii) if TSE Construction Completion has not been reached, but the TSE Contractor has consented to the WL Contractor accessing the Construction Site, an Interim Access Licence.
- (b) **(Purpose of early access)** The purpose of granting early access to the TSE Site under this clause 9.2 is to allow the WL Contractor to commence the WL Contractor's Activities early so as to mitigate any delays the WL Contractor may incur in reaching a Significant Completion and, subject to clause 9.2(g), the WL Contractor must use that access to the TSE Site to commence the WL Contractor's Activities and optimise the additional time.
- (c) **(Effect of early access)** Grant of a Construction Licence or Interim Access Licence given under clause 9.2(a) or deemed to be given under clause 9.2(f):
 - (i) will be taken into account when making an assessment under clause 21.7(b)(vi) of Claims by the WL Contractor for extensions of time; and
 - (ii) except to the extent set out in clause 9.2(c)(i), will not affect any Significant Dates.
- (d) **(Notice)** The Principal may give the WL Contractor one or more written notices of the date or dates (**TSE Site Access Date**) on which a part of the TSE Site will be Accessible from a specified date that is prior to the Site Access Date. Any such notice must:
 - (i) specify whether a Construction Licence or Interim Access Licence will be granted; and
 - (ii) be given at least 3 months prior to the date on which the relevant part of the TSE Site will be Accessible.
- (e) [REDACTED] If the Principal gives the WL Contractor a notice under clause 9.2(d) with respect to a part of the TSE Site, and the WL Contractor is not given access to that part of the TSE Site on the date specified in the notice, [REDACTED]
- (f) **(Deemed TSE Site Access Date)** If a TSE Site Access Date is:
 - (i) after the Early Site Access Date, the WL Contractor will be deemed to have taken a Construction Licence or Interim Access Licence to that part of the TSE Site on the TSE Site Access Date; or
 - (ii) prior to the Early Site Access Date, the WL Contractor will be deemed to have taken a Construction Licence or Interim Access Licence to that part of the TSE Site on the earlier to occur of:
 - (A) the date on which the WL Contractor (by notice in writing to the Principal) accepts early access to the TSE Site; and
 - (B) the Early Site Access Date.
- (g) **(No grant or deemed grant prior to the Early Site Access Date)** Where the Principal gives the WL Contractor a notice under clause 9.2(d) stating that a part of the TSE Site will be Accessible from a specified date, the WL Contractor will not be required to take, or be deemed to have taken, a Construction Licence or Interim

Access Licence in respect of that part of the TSE Site where the date specified in the notice is prior to the Early Site Access Date.

- (h) **(Interface with TSE Contractor)** Without limiting the WL Contractor's obligations under the TSE Cooperation and Integration Deed, to the extent that the WL Contractor uses or accesses the Accessible part of the TSE Site pursuant to an Interim Access Licence, the WL Contractor:
- (i) acknowledges that during an Interim Access Period:
 - (A) the WL Contractor's Activities interface with the TSE Works;
 - (B) the TSE Contractor may be executing work on parts of the TSE Site at the same time as the WL Contractor is performing the WL Contractor's Activities; and
 - (C) the TSE Contractor will be engaged as principal contractor in respect of the TSE Site;
 - (ii) must at all times:
 - (A) fully cooperate with the TSE Contractor;
 - (B) carefully co-ordinate and interface the WL Contractor's Activities with the TSE Works;
 - (C) perform the WL Contractor's Activities so as to minimise any interference with or disruption or delay to the TSE Works; and
 - (D) attend co-ordination meetings as required in accordance with the TSE Cooperation and Integration Deed;
 - (iii) must promptly advise the Principal's Representative of all matters arising out of the WL Contractor's access to any part of the TSE Site that may have an adverse effect upon the WL Contractor's Activities; and
 - (iv) must, if requested by the Principal's Representative, execute a deed poll in favour of the TSE Contractor in the form of Schedule A12 to the TSE Contract.
- (i) **(No Liability)** The Principal will have no Liability to the WL Contractor as a consequence of access by the WL Contractor to any part of the TSE Site during an Interim Access Period.

9.3 Access to the Construction Site on or after the Site Access Date

- (a) **(Principal to give access)** Provided that the WL Contractor has complied with clause 9.4 (*Period and terms of Construction Licence and Interim Access Licence*) and clause 9.5 (*Conditions precedent to access to the Construction Site*), the Principal must:
- (i) give the WL Contractor access to each part of the Construction Site by no later than the relevant Site Access Date; and
 - (ii) subject to clause 9.3(d), thereafter continue to allow the WL Contractor to access the Construction Site on the terms of this deed.

- (b) (**Delay**) Delay in providing access to the relevant part of the Construction Site will not be a breach of this deed [REDACTED]
- (c) (**Notice**) The Principal's Representative must give the WL Contractor written notice of the estimated TSE Date of Construction Completion 6 months, 3 months, 1 month and 1 week prior to the estimated TSE Date of Construction Completion.
- (d) (**Site Access Expiry Date**) The WL Contractor acknowledges that:
 - (i) the Site Access Expiry Dates in respect of the Temporary Areas identified in section 4 of the Site Access Schedule are fixed and will not be extended for any reason; and
 - (ii) the WL Contractor must vacate those parts of the Construction Site on the relevant Site Access Expiry Dates.
- (e) (**Sequence of work**) The WL Contractor must arrange the sequence of work so that the WL Contractor's Activities which must be performed on the parts of the Construction Site referred to in clause 9.3(d)(i) are completed prior to the relevant Site Access Expiry Dates.

9.4 Period and terms of Construction Licence and Interim Access Licence

- (a) (**Period of Interim Access Licence**) Each Interim Access Licence commences on the date access to the TSE Site is given, or deemed to be given under clause 9.2(f), and expires on the earlier of:
 - (i) the Site Access Date for the corresponding part of the Construction Site; and
 - (ii) termination of this deed.
- (b) (**Period of Construction Licence**) The Construction Licence commences, in respect of each part of the Construction Site, on the date access is given, or deemed to be given under clause 9.2(f) (**Construction Licence Commencement Date**), for that part of the Construction Site and terminates on the earlier of:
 - (i) if a Site Access Expiry Date is specified for the relevant part of the Construction Site, the Site Access Expiry Date;
 - (ii) the relevant Portion Handover Date; and
 - (iii) the date of termination of this deed.
- (c) (**Terms of access**) The Construction Licence and each Interim Access Licence:
 - (i) are non-exclusive licences to the WL Contractor;
 - (ii) are personal in nature;
 - (iii) do not create any entitlement or interest in the Construction Site or the TSE Site;
 - (iv) are granted to the WL Contractor solely for the purpose of carrying out the WL Contractor's Activities and performing its other obligations under the WL Station Contract Documents and permitting the WL Developer to carry out the WL Developer's Activities;

- (v) are subject to the WL Contractor complying with the terms of clauses 6.2 (*Work health and safety*) and 9.5 (*Conditions precedent to access to the Construction Site*) of this deed; and
- (vi) are subject to the rights of the Principal and its Associates to access the Construction Site pursuant to clause 9.7 (*Principal's right of entry to Construction Site*).

9.5 Conditions precedent to access to the Construction Site

The Principal is not obliged to give the WL Contractor access to any area of the Construction Site until:

- (a) the WL Contractor has:
 - (i) provided the Principal with a Fire and Life Safety Report in a form acceptable to the Principal (acting reasonably);
 - (ii) complied with clause 3.1(a) and clause 3.4 (*Parent Company Guarantee*);
 - (iii) effected the insurance policies required by clause 30.6 (*WL Contractor's Insurance obligations*); and
 - (iv) complied with any other restrictions on access in the SWTC; and
- (b) the Project Health and Safety Management Plan has been submitted to the Principal's Representative and has not been rejected by the Principal's Representative within the review period specified by Appendix F2 of the SWTC.

9.6 Access to the Construction Site

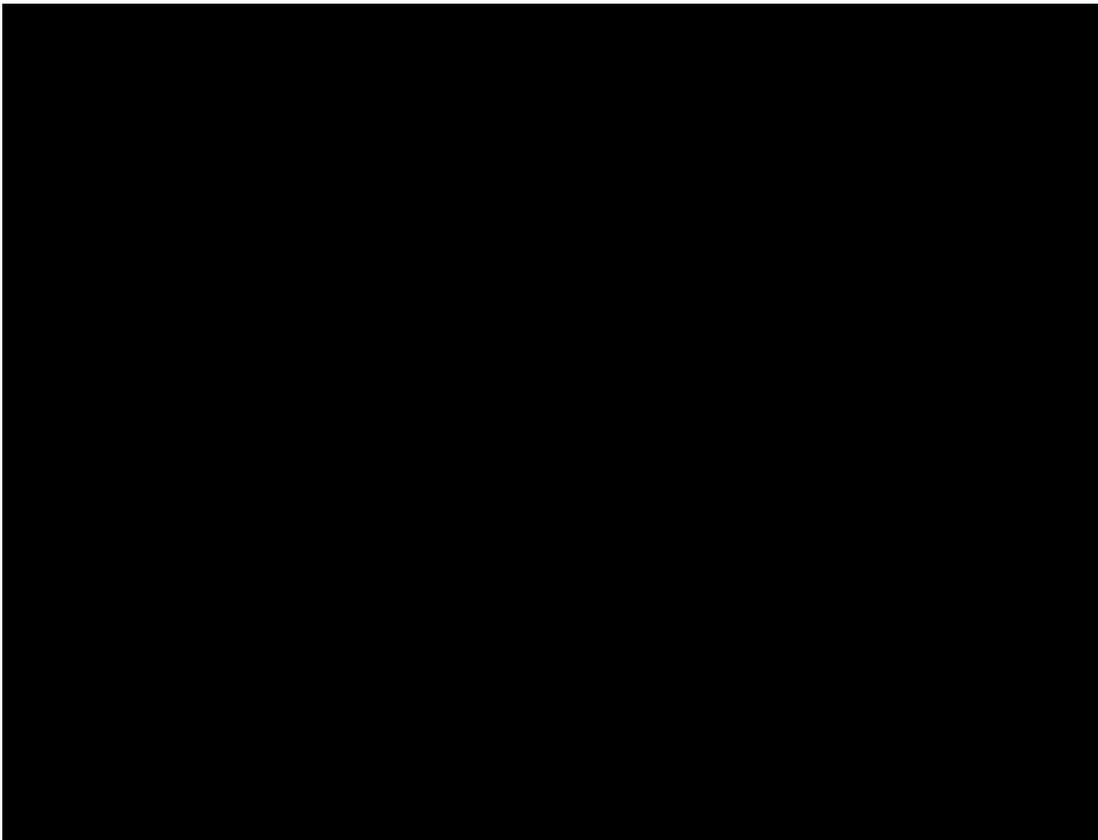
- (a) The WL Contractor:
 - (i) must access the Construction Site only at the points of entry and exit and using the routes for ingress and egress set out in the Planning Approval;
 - (ii) acknowledges that the Principal has not secured rights of access over the routes for ingress and egress set out in the Planning Approval; and
 - (iii) except as expressly provided for in this deed, is responsible, at its own Cost and risk, for obtaining access to and from, and securing rights of ingress to and egress from, the Construction Site and the Extra Land to perform the WL Contractor's Activities.
- (b) **(No Liability)** Except to the extent expressly set out in [REDACTED] the Principal will have no Liability to the WL Contractor in connection with routes for ingress and egress, or failure to gain or delay in gaining ingress to or egress from the Construction Site.

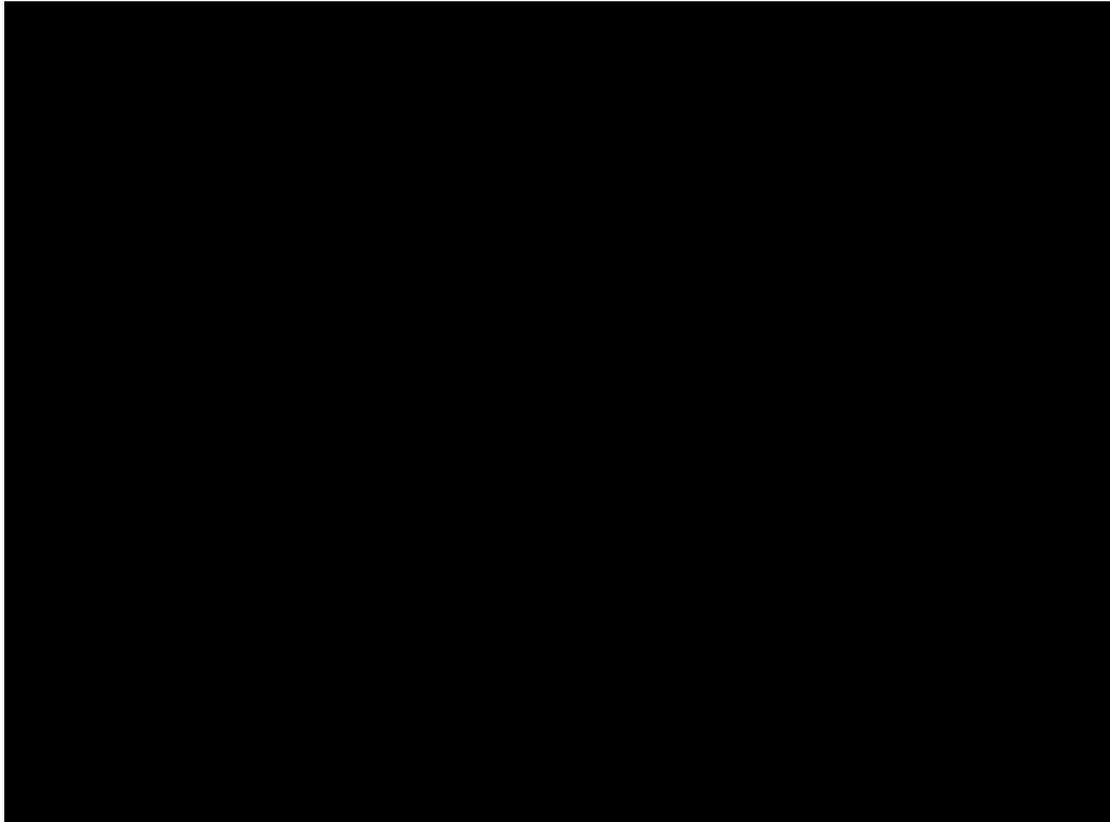
9.7 Principal's right of entry to Construction Site

- (a) **(Principal's rights)** Without limiting any other rights of the Principal to access the Construction Site, the Principal (and any person authorised by the Principal including any Interface Contractor) may, at any time after the Construction Licence Commencement Date, enter the Construction Site and any other premises where the WL Contractor's Activities are being carried out, for:
 - (i) in the case of the Principal, the purpose of:

- (A) observing or inspecting the WL Contractor's Activities or the WL Developer's Activities;
 - (B) monitoring compliance by the WL Contractor or the WL Developer with their respective obligations under any of the WL Station Contract Documents or the WL MQD Contract Documents and any Project Plan;
 - (C) exercising any right or performing any obligation which the Principal has under any Principal WL Station Contract Document or under any Principal WL MQD Contract Document; or
 - (D) any other purpose connected with Sydney Metro City & Southwest; or
- (ii) in the case of an Interface Contractor, carrying out Interface Work.
- (b) **(WL Contractor's assistance)** The WL Contractor must:
- (i) co-ordinate the WL Contractor's Activities so they do not interfere with the exercise by the Principal of its rights of entry; and
 - (ii) provide the Principal with every reasonable facility and other assistance necessary for any inspection by the Principal, including providing access to any relevant systems, registers, manuals, Records, plans, programs and information.

9.8 **Adjoining Properties**





9.9 **Extra Land**

- (a) **(Release)** The WL Contractor must as a condition precedent to Completion:
 - (i) rehabilitate Extra Land in accordance with the requirements of all relevant Authorities and Landowners; and
 - (ii) give the Principal's Representative:
 - (A) a properly executed release on terms satisfactory to the Principal's Representative (acting reasonably) releasing the Principal from all Liability to the Landowners of Extra Land; or
 - (B) if the WL Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the WL Contractor to the effect that the Landowners have failed or refused to execute such a release within 15 Business Days after it being provided by the WL Contractor to the Landowners together with copies of all correspondence with the Authorities and Landowner and evidence that the WL Contractor has complied with the requirements of the relevant Authorities and Landowners of the Extra Land.
- (b) **(No Liability)** The Principal will have no Liability to the WL Contractor in connection with the WL Contractor's obligations under clause 9.1(b) and clause 9.9(a), including any failure to procure Extra Land or any obstruction to or delay in obtaining access to Extra Land.
- (c) **(Indemnity)** The WL 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 Claim by a Landowner of any part of the Extra Land where:

- (i) such Landowner has not duly signed a release in favour of the Principal in accordance with clause 9.9(a)(ii)(A); and
- (ii) the Claim or Loss arises out of or in any way in connection with the WL Contractor's Activities.

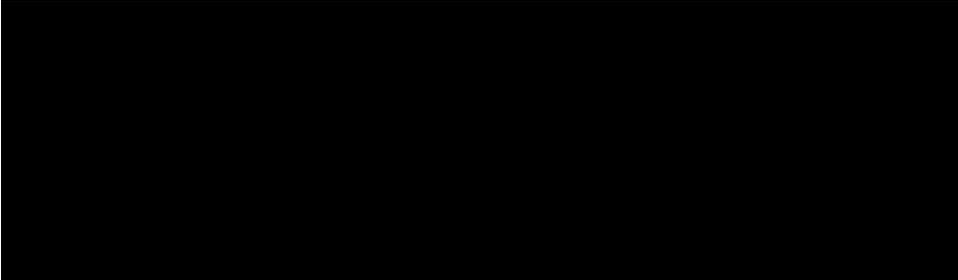
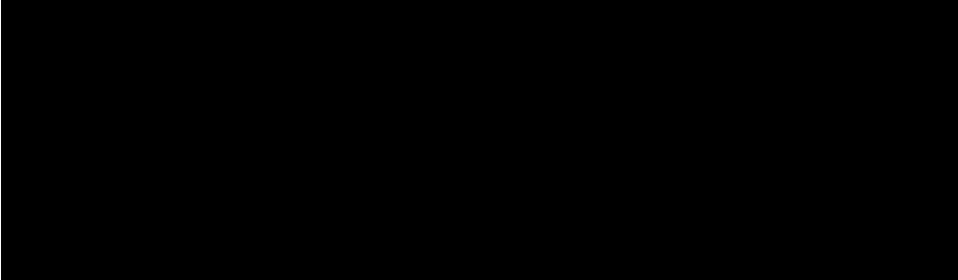
9.10 Existing Operations

- (a) **(Existing Operators)** The WL Contractor acknowledges that:
 - (i) Existing Operators and other persons must continue their Existing Operations during the course of the carrying out of the WL Contractor's Activities; and
 - (ii) the routes of ingress to and egress from the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the WL Contractor.
- (b) **(Risk)** The WL Contractor bears the risk of co-ordinating its access to and from the Construction Site with any other relevant persons (including Existing Operators) that use the routes for ingress to and egress from the Construction Site and any delay and disruption to the WL Contractor's Activities which arises from any Existing Operations.
- (c) Not used.
- (d) **(Interface)** The WL Contractor must ensure that the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works, when completed, to fully comply with the requirements of this deed.
- (e) **(Making good)** The WL Contractor must immediately:
 - (i) 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 WL Contractor's Activities; and
 - (ii) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 9.10 are complied with.
- (f) **(No Liability)** Without limiting the WL Contractor's rights pursuant to clause 37 (*Notification of Claims*), the Principal will have no Liability to the WL Contractor in relation to the WL Contractor's obligations under this clause 9.10 or any act, omission or requirement of an Existing Operator.
- (g) **(Associates)** The WL Contractor must ensure that its Associates at all times comply with this clause 9.10.

9.11 Encumbrances

- (a) **(Compliance)** The WL Contractor must, at its cost, comply with the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the Construction Site as recorded in the register maintained by LRS under the *Real Property Act 1900* (NSW).

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- (b) **(Principal may create)** The Principal may, at any time and from time to time, after first consulting with the WL Contractor, create or permit the creation on the title to the Construction Site:
 - (i) any Encumbrance necessary, in the opinion of the Principal, to enable the construction, operation and/or maintenance and repair of Sydney Metro City & Southwest (including the Waterloo Station);
 - (ii) any Encumbrance required by an Authority (other than the Principal); and
 - (iii) any Encumbrance as contemplated in the ISD Subdivision Documents.
 - (c) **(Principal's Representative to provide notice)** The Principal's Representative must promptly provide the WL Contractor with written notice of any proposed Encumbrance to be created in accordance with clause 9.11(b), and its proposed terms.
 - (d) **(WL Contractor's Costs)** Subject to clause 9.11(f), if the Principal creates, or permits the creation of, any Encumbrance pursuant to clause 9.11(b) which:
 - (i) prevents the WL Contractor from complying with its obligations or exercising its rights under this deed or increases the WL Contractor's costs of performing the Project Works in accordance with this deed, the WL Contractor will be entitled to be paid by the Principal the net incremental costs (excluding finance costs) reasonably incurred by the WL Contractor; or
 - (ii) 
 - (iii) 
- as a direct result of the existence of the Encumbrance, except where the relevant Encumbrance:
- (iv) 
 - (v) relates to the grant of a licence to an Interface Contractor as contemplated by clause 12.3(a)(iv) (*Cooperation and co-ordination with Interface Contractors*);
 - (vi) is expressly contemplated by the ISD Subdivision Documents;

- (vii) is required by reason of any change by the WL Contractor to the design of the Project Works or the Temporary Works; and/or
- (viii) was known to the WL Contractor on the date of this deed or otherwise should reasonably have been anticipated or contemplated by the WL Contractor on the date of this deed having regard to the activities required to enable the construction and/or operation of Sydney Metro City & Southwest (including Waterloo Station).
- (e) **(WL Contractor to provide evidence)** The WL Contractor must provide to the Principal or procure that the WL Developer provides such evidence of the extra costs claimed pursuant to clause 9.11(d) as may be reasonably required by the Principal to substantiate the costs claimed.
- (f) **(Sole remedy)** The costs payable to the WL Contractor and the WL Developer under or as contemplated by clause 9.11(d) will be the WL Contractor's sole remedy in relation to any Encumbrance created, or permitted to be created, by the Principal pursuant to clause 9.11(b).
- (g) **(No obligation to pay licence fees or rents)** The parties agree that the WL Contractor will not be liable to pay licence fees or rents to the Principal or any third party for any access or occupation right in respect of the Construction Site.
- (h) **(Easement for support of the Waterloo Station)** Without limiting any other provision of this deed, the Principal may create and register on title an easement burdening any relevant part of the Principal's Land to provide a right of support to Waterloo Station or any part of Waterloo Station, such easement to be substantially on the same terms as the easement for support as set out in the Draft Section 88B Instrument.
- (i) **(Principal and WL Contractor must meet)** After the date of this deed, if the Principal proposes to create, or permit the creation of Encumbrances pursuant to clause 9.11(b):
 - (i) to burden or affect the Impacted Areas; or
 - (ii) which will adversely impact the value of the Impacted Areas on the Valuation Date (as that term is defined in clause 4.2A of Schedule A7 (*Modification Procedure*) of the MQD PDA),

the Principal must meet with the WL Contractor to discuss the proposed Encumbrance, the terms of the proposed Encumbrance and the estimated decrease in value likely to be caused by the proposed Encumbrance, within 10 Business Days of receipt of a notice served under clause 9.11(c), before creating or permitting the creation of Encumbrances in accordance with clause 9.11(b), unless it is a licence or right of occupation granted by the Principal to an Interface Contractor in accordance with clause 12.3(a)(iv) (*Cooperation and co-ordination with Interface Contractors*).

10. PHYSICAL CONDITIONS

10.1 Acceptance of site

- (a) **(Acceptance of site)** Subject to clause 5.7 (*Contamination*), clause 15.7 (*TSE Defects*), clause 21.6 (*Extensions of time*) and clause 21.9 (*Risk of delay and disruption and resultant increased Costs*), the WL Contractor accepts:

- (i) the Construction Site [REDACTED] the Adjoining Properties and the Extra Land; and
- (ii) any structures or other things on, above or adjacent to, or under the surface of, the Adjoining Properties, the Construction Site [REDACTED] and the Extra Land,

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

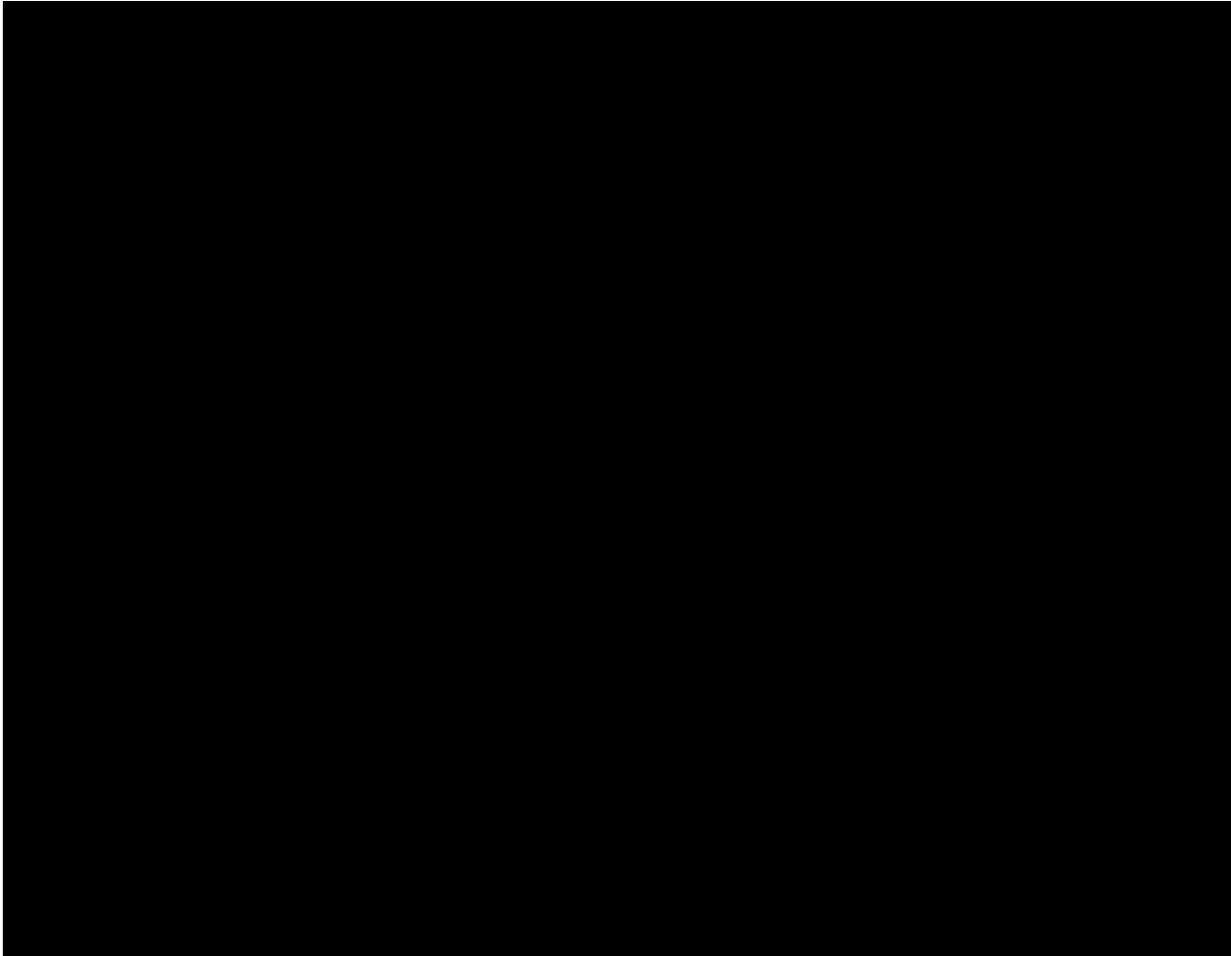
- (iii) all Loss, delay or disruption it suffers or incurs; and
- (iv) any adverse effect on the Project Works, the Temporary Works or the WL Contractor's Activities,

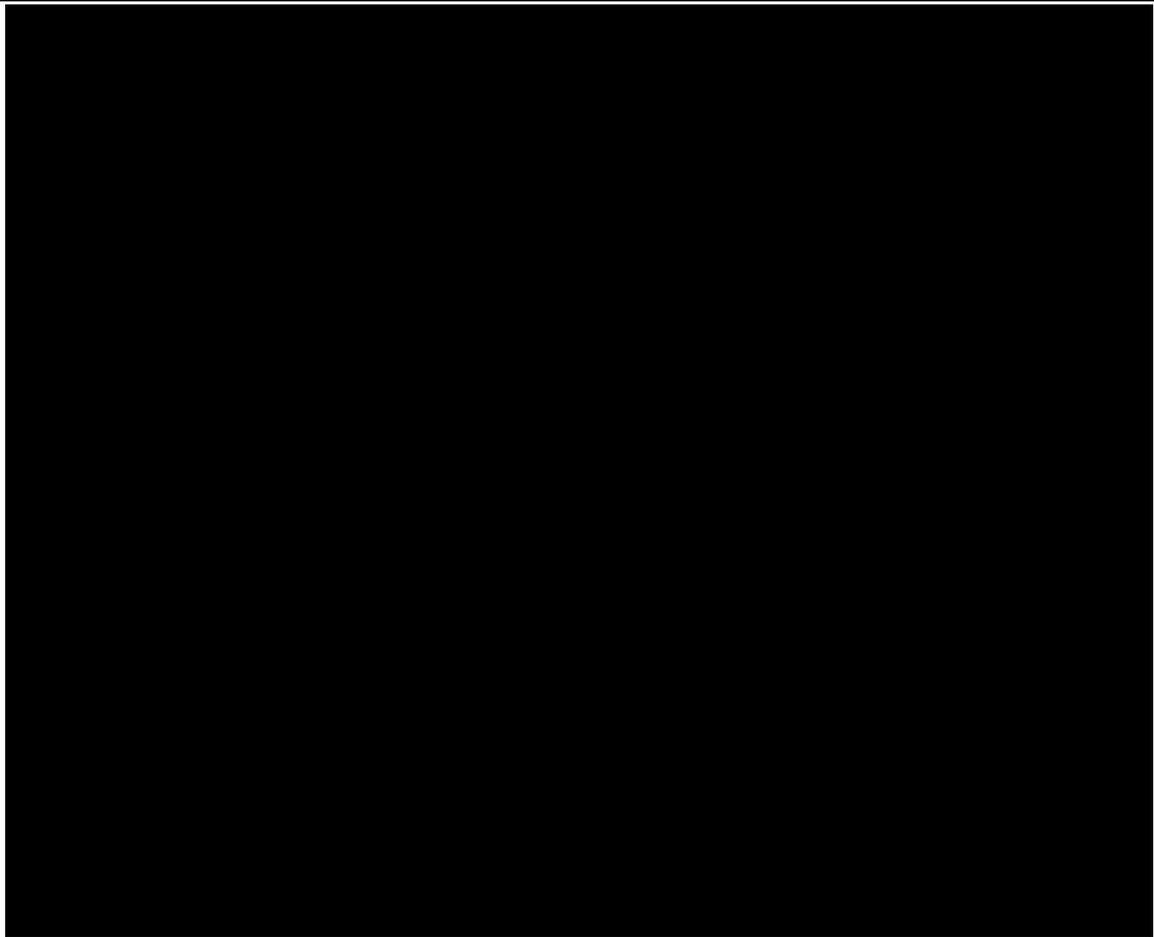
arising out of, or in any way in connection with, any defects or Site Conditions encountered in performing the WL Contractor's Activities and releases the Principal from all Claims and Liabilities in connection with such matters.

- (b) (**Examination and investigation**) Subject to clause 5.7 (*Contamination*), the WL Contractor warrants that, prior to the date of this deed, the WL Contractor:

- (i) examined this deed, the WL Station Contract Documents, the WL MQD Contract Documents, the TSE Contract, the Construction Site, any Extra Land and its surroundings and any other information that was made available in writing by the Principal or any other person on the Principal's behalf, to the WL Contractor or its Associates during the tender period;
- (ii) informed itself of all matters relevant to the employment of labour and all industrial matters on the Construction Site;
- (iii) was given the opportunity prior to entering into this deed to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - (A) relating to the subject matter of the Information Documents;
 - (B) in connection with the TSE Contract; and
 - (C) for design purposes and otherwise;
- (iv) had sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, the WL Station Contract Documents, the TSE Contract, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender and the performance of its obligations and its potential Liabilities under the WL Station Contract Documents;
- (v) had sufficient access to the Construction Site and its surroundings, 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 regarding the acceptance of risk in relation to Site Conditions, whether or not to enter into the WL Station Contract Documents and assume the obligations and potential risks and Liabilities which they impose on the WL Contractor; and

- (vi) 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 the WL Station Contract Documents and of all matters and things necessary for the due and proper performance and completion of the WL Contractor's Activities.
- (c) **(No representation or warranty)** The Principal makes no representation and gives no warranty to the WL Contractor or its Associates in respect of:
 - (i) the Site Conditions which may be encountered during the execution of the WL Contractor's Activities or otherwise in respect of the condition of:
 - (A) the Construction Site, the Extra Land or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Construction Site or the Extra Land;
 - (ii) the adequacy or suitability of the Construction Site or the Extra Land for the WL Contractor's Activities;
 - (iii) the existence, location, condition or availability of Utility Services on, under, above, adjacent to or related to the Construction Site or the Extra Land; or
 - (iv) the condition or characteristics of any Adjoining Property.





10.2 **Information Documents**

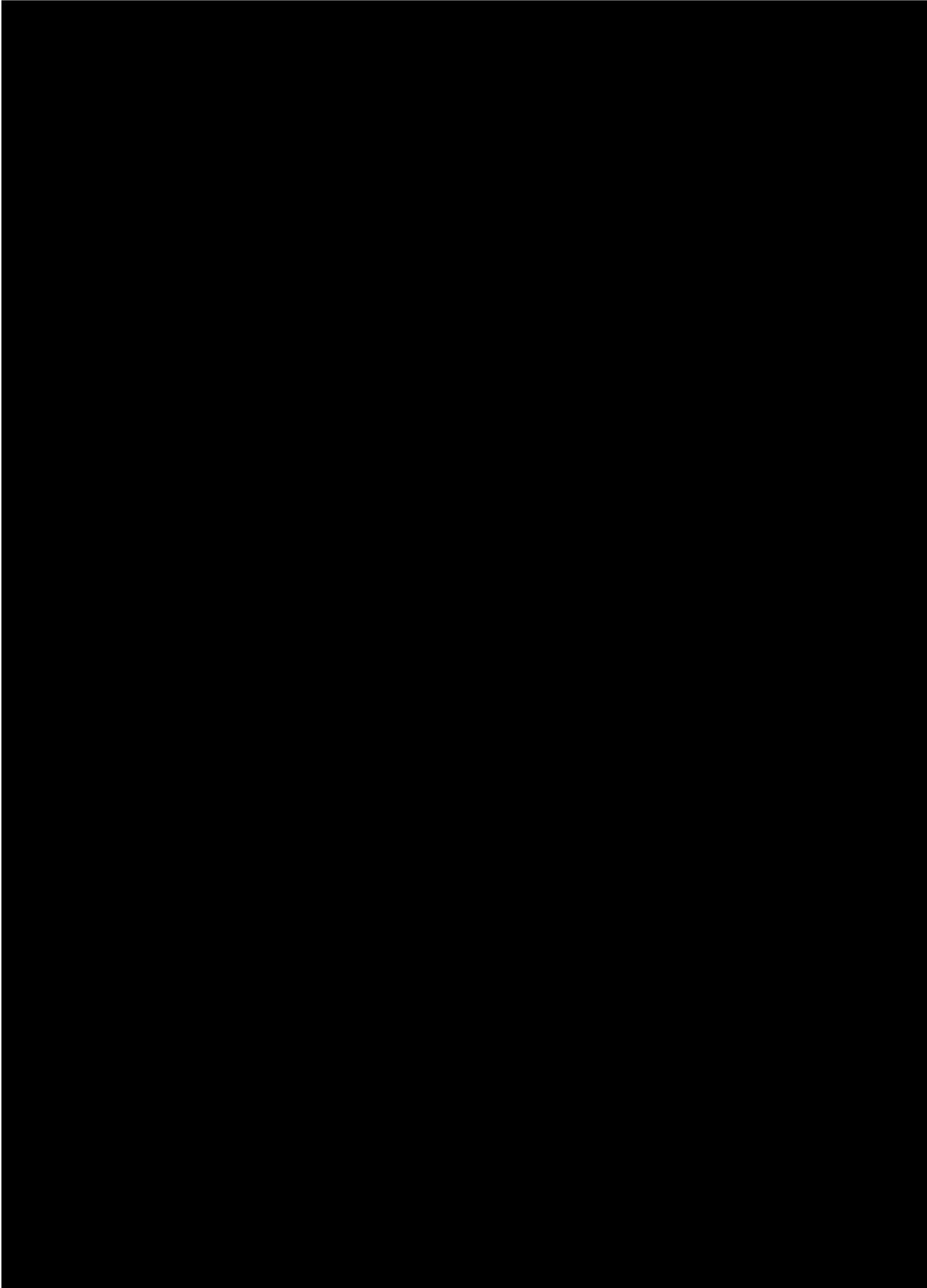
- (a) **(No warranty)** Without limiting clause 10.2(b):
 - (i) the WL Contractor acknowledges that the Information Documents may be inaccurate, inadequate, incomplete or unsuitable;

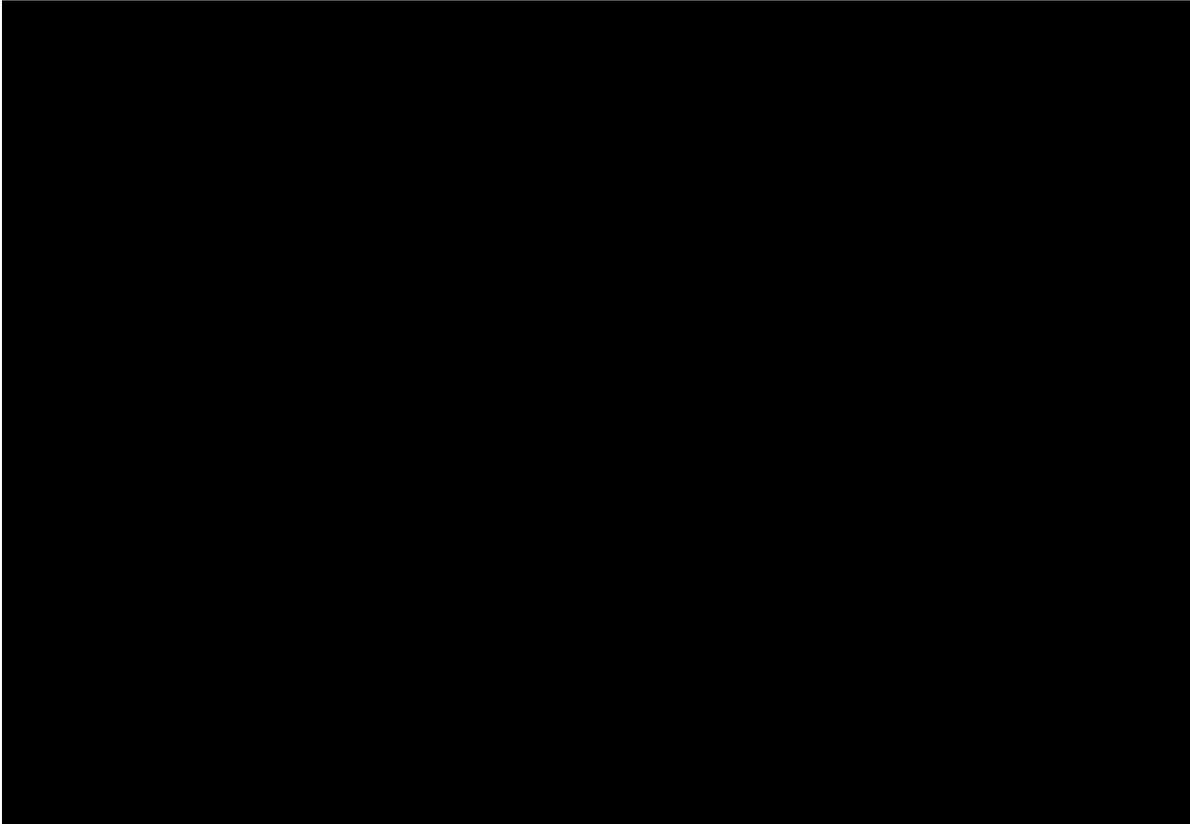
- (ii) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, completeness or suitability of the Information Documents;
 - (iii) the WL Contractor acknowledges that where an Information Document or any part thereof is included in a schedule to this deed, it is included only for the purposes of identification of that document or part thereof (unless it is expressly stated in the document that it forms part of this deed); and
 - (iv) the Principal will have no Liability to the WL Contractor or its Associates 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 WL Contractor or its Associates or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by the Principal to provide any information to the WL Contractor or its Associates, except where such failure is a breach of this deed (for which the WL Contractor's only remedy will be a claim for breach of contract).
- (b) **(No reliance)** The WL Contractor:
- (i) warrants that it did not in any way rely upon:
 - (A) any Information Document or any other information, data, representation, statement or document made, or provided to the WL Contractor or its Associates, 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 Document or other information, data, representation, statement or document,for the purposes of entering into this deed or carrying out the WL Contractor's Activities;
 - (ii) warrants that it enters into the WL Station Contract Documents 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 clause 10.2(b)(i) and clause 10.2(b)(ii); and
 - (B) the agreements and acknowledgements in the WL Contractor's Tender.
- (c) **(Release and indemnity)** The WL Contractor releases and indemnifies the Principal from and against:

- (i) any Claim against the Principal by, or Liability of the Principal to, any person; or
- (ii) (without being limited by clause 10.2(c)(i)) any Loss incurred by the Principal,

arising out of or in any way in connection with:

- (iii) the provision of, or the purported reliance on, or use of, the Information Documents to or by the WL Contractor or its Associates or any other person to whom the Information Documents are disclosed by the WL Contractor, or a failure by the Principal to provide any information to the WL Contractor or its Associates;
- (iv) any breach by the WL Contractor of this clause 10.2 (*Information Documents*); or
- (v) the Information Documents being relied upon or otherwise used by the WL Contractor or its Associates, or by any other person to whom the Information Documents are disclosed by the WL Contractor, in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and 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).





12. INTERFACE WITH INTERFACE CONTRACTORS

12.1 Master Interface Protocols Deed Poll

- (a) The WL Contractor must:
 - (i) within [REDACTED] after receipt of a request from the Principal's Representative, provide to the Principal the Master Interface Protocols Deed Poll, duly executed by the WL Contractor; and
 - (ii) at all relevant times comply with the terms of the Master Interface Protocols Deed Poll.
- (b) The Principal will procure that the Operator and each Interface Contractor nominated by the Principal (not including the TSE Contractor) executes a Master Interface Protocols Deed Poll.

12.2 Cooperation and Integration Deeds

- (a) The WL Contractor must:
 - (i) within 5 Business Days after receipt of a request from the Principal's Representative, provide to the Principal:
 - (A) the TSE Cooperation and Integration Deed;
 - (B) the Operator Cooperation and Integration Deed; and
 - (C) each Interface Contractor Cooperation and Integration Deed with any Interface Contractor nominated by the Principal,

each duly executed by the WL Contractor in the number of counterparts required by the Principal; and

- (ii) at all relevant times comply with the terms of the Project Cooperation and Integration Deeds.
- (b) If the Principal makes a request under clause 12.2(a)(i) for the WL Contractor to execute:
- (i) a TSE Cooperation and Integration Deed to which the TSE Contractor will be party;
 - (ii) an Operator Cooperation and Integration Deed to which the Operator will be party; or
 - (iii) an Interface Contractor Cooperation and Integration Deed to which any Interface Contractor nominated by the Principal will be party,

the Principal must, within 20 Business Days of receiving the executed documents from the WL Contractor, itself execute, and procure that the TSE Contractor, the Operator or the relevant Interface Contractor nominated by the Principal (as applicable), executes the relevant document.

- (c) **(SWTC)** The Principal must comply with its obligations in section 1.1(i) of Appendix E1 (*Interface Management*) of the SWTC.

12.3 Cooperation and co-ordination with Interface Contractors

Without limiting the WL Contractor's obligations under the Project Cooperation and Integration Deeds, the WL Contractor:

- (a) **(WL Contractor acknowledgement)** acknowledges that:
- (i) the Interface Work forms part of Sydney Metro City & Southwest;
 - (ii) the WL Contractor's Activities interface with the Interface Work;
 - (iii) Interface Contractors will be executing work on parts of the Construction Site or Extra Land, or adjacent to the Construction Site or Extra Land, at the same time as the WL Contractor is performing the WL Contractor's Activities;
 - (iv) the Principal may grant the Interface Contractors a non-exclusive licence to use and occupy the Construction Site to carry out the Interface Works;
 - (v) without limiting clause 4.1 (*Design obligations*), the WL Contractor will require certain design and work methodology from Interface Contractors to co-ordinate the design of the Project Works and Temporary Work with the Interface Work;
 - (vi) Interface Contractors will require the WL Contractor to provide design and work methodology information to them to co-ordinate the design of the Interface Works with the Project Works and the Temporary Works, and this must be provided in a timely manner by the WL Contractor; and
 - (vii) any delay in the performance of the WL Contractor's Activities or in the WL Contractor providing information to, or cooperating and co-ordinating with, any Interface Contractor may adversely impact upon, delay or disrupt any

one or more Interface Contractors or the WL Contractor's Activities in a way which may lead to the Principal and Interface Contractors suffering or incurring Loss;

- (b) **(cooperation with Interface Contractors)** must at all times:
- (i) permit the Interface Contractors (if the WL Contractor's consent or authority is required) to execute the Interface Work on the applicable parts of the Construction Site or Extra Land or on any property adjacent to or in the vicinity of the Construction Site or Extra Land:
 - (A) at the same time as the WL Contractor is performing the WL Contractor's Activities; and
 - (B) at the times agreed with the relevant Interface Contractor, or failing agreement, at the times determined by the Principal's Representative [REDACTED]

and for this purpose ensure that those parts of the Construction Site or Extra Land, or property adjacent to or in the vicinity of the Construction Site or Extra Land, required by that Interface Contractor for the purpose of carrying out their work are Accessible subject to, where the relevant Interface Contractor is carrying out Construction Site Interface Work, the Interface Contractor engaged by the Principal for such Construction Site Interface Works executing a deed poll in favour of the Appointed Principal Contractor in the form of Schedule A18 (Site Interface Deed Poll);

 - (ii) protect the Project Works, Temporary Works and other improvements on the Construction Site or Extra Land from damage by Interface Contractors and allow goods and equipment supplied by Interface Contractors to be received and stored on the Construction Site;
 - (iii) fully cooperate with the Interface Contractors, and do everything reasonably necessary to:
 - (A) facilitate the execution of work by the Interface Contractors, including providing each Interface Contractor with such assistance as may be directed by the Principal's Representative [REDACTED]
 - (B) without limiting clause 6.3 (*Principal contractor*), ensure the effective co-ordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the Interface Work;
 - (iv) carefully co-ordinate and interface the WL Contractor's Activities with the Interface Work, and for this purpose:
 - (A) make proper allowance in all programs for the Interface Work;
 - (B) review all programs provided by Interface Contractors and confirm that they adequately allow for the WL Contractor's Activities and the interfaces between the Interface Work and the WL Contractor's Activities;

- (C) monitor the progress of the Interface Work;
 - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement or progress of the WL Contractor's Activities or the achievement of any Significant Completion; and
 - (E) provide the Interface Contractors with sufficient information about the current and expected WL Contractor's Activities to assist them to co-ordinate the Interface Work with the WL Contractor's Activities;
- (v) cooperate, meet with, liaise and share information so that the WL Contractor and the relevant Interface Contractor each comply with the provisions of the relevant Environment Protection Licence (if applicable);
 - (vi) perform the WL Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
 - (vii) be responsible for co-ordinating the WL Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the Interface Contractors' personnel and Interface Work, including providing to the Principal's Representative copies of work method statements for those parts of the Project Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement. The Principal's Representative, the WL Contractor's Representative and the relevant Interface Contractor's representative may agree in writing to a shorter time period for the provision of work method statements;
 - (viii) work directly with Interface Contractors where required to complete the design of the Project Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Project Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Works so that they are acceptable to the Principal and otherwise comply with this deed, including the SWTC;
 - (ix) attend interface co-ordination meetings chaired by the Principal's Representative with Interface Contractors and others every 10 Business Days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
 - (x) when information is required from an Interface Contractor, provide reasonable written notice to that Interface Contractor requesting that information and specifying the date by which such information is required, which must be:
 - (A) as soon as reasonably practicable but in any event at least 10 days after the date of the notice; or
 - (B) if a longer period for the provision of information is required by the SWTC, the date that period expires,with a copy to the Principal's Representative;

- (xi) ensure that any written notice given under clause 12.3(b)(x) provides the Interface Contractor with the longest possible time for the provision of the information requested having regard to the circumstances;
- (xii) when any information is requested by the Interface Contractors relating to the WL Contractor's Activities, the Project Works or the Temporary Works, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Project Works, Temporary Works or the WL Contractor's Activities:
 - (A) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within a reasonable time requested by the Interface Contractor; and
 - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate; and
- (xiii) use its best endeavours to resolve any problems, and work closely and iteratively with the Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
 - (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, the Interface Contractors;
 - (D) the compatibility of the Project Works and Temporary Works with the Interface Work;
 - (E) co-ordination in accordance with this clause 12.3(b); and
 - (F) technical issues with the information provided to, or received from, Interface Contractors;
- (c) (**notice of changes**) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to the design or construction of the Project Works or the Temporary Works or otherwise have an adverse effect upon the WL Contractor's Activities; and
- (d) (**similar clauses**) acknowledges that the Principal will ensure that conditions similar to those in this clause 12.3 applying to the WL Contractor will apply to all the Interface Contractors engaged by the Principal that are working on the Construction Site.

12.4 Disputes between the WL Contractor and Interface Contractors

- (a) (**Notice of Dispute**) If, despite the WL Contractor having complied with all of its obligations in clause 12.3(b), the WL Contractor and any Interface Contractor fail to resolve any interface issue or dispute between them, the WL Contractor must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor (with a copy to the Interface Contractor).
- (b) (**Meeting**) Following receipt of the WL Contractor's notice under clause 12.4(a):

- (i) the Principal's Representative must promptly convene a meeting between the WL Contractor, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative);
- (ii) the Principal's Representative must work in good faith with the WL Contractor and the Interface Contractor to resolve the issues or dispute; and
- (iii) the WL Contractor must work in good faith with the Principal's Representative and the Interface Contractor to resolve the issues or dispute.

12.5 **No Claims arising out of Interface Work**

The WL Contractor:

- (a) **(WL Contractor acknowledgement)** acknowledges and agrees that:
 - (i) the Interface Contractors will require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal;
 - (ii) [REDACTED] no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the WL Contractor's Activities, constitute an Excusable Cause of Delay or direction by the Principal to carry out a Modification;
 - (iii) [REDACTED] the Principal will have no Liability to the WL Contractor arising out of or in any way in connection with:
 - (A) any Interface Contractor carrying out Interface Work; or
 - (B) any act or omission of an Interface Contractor; and
 - (iv) the WL Contractor's Program will accommodate requirements for design iterations as part of the Interface Work and incorporate the requirements specified in clause 3.2(a) and clause 3.2(b) of the Interface Contractor Cooperation and Integration Deed; and
- (b) **(sufficient allowance)** warrants that the Contract Sum and the WL Contractor's Program contains sufficient allowances for the assumption by the WL Contractor of the obligations and risks under clause 12.3 (*Cooperation and co-ordination with Interface Contractors*) and this clause 12.5, including the cost of all the design iterations required to accommodate Interface Work.

12.6 **Temporary Work and Construction Plant**

- (a) **(Own arrangements)** The WL Contractor must make its own arrangements with Interface Contractors in relation to Construction Plant and Temporary Work left on the Construction Site.

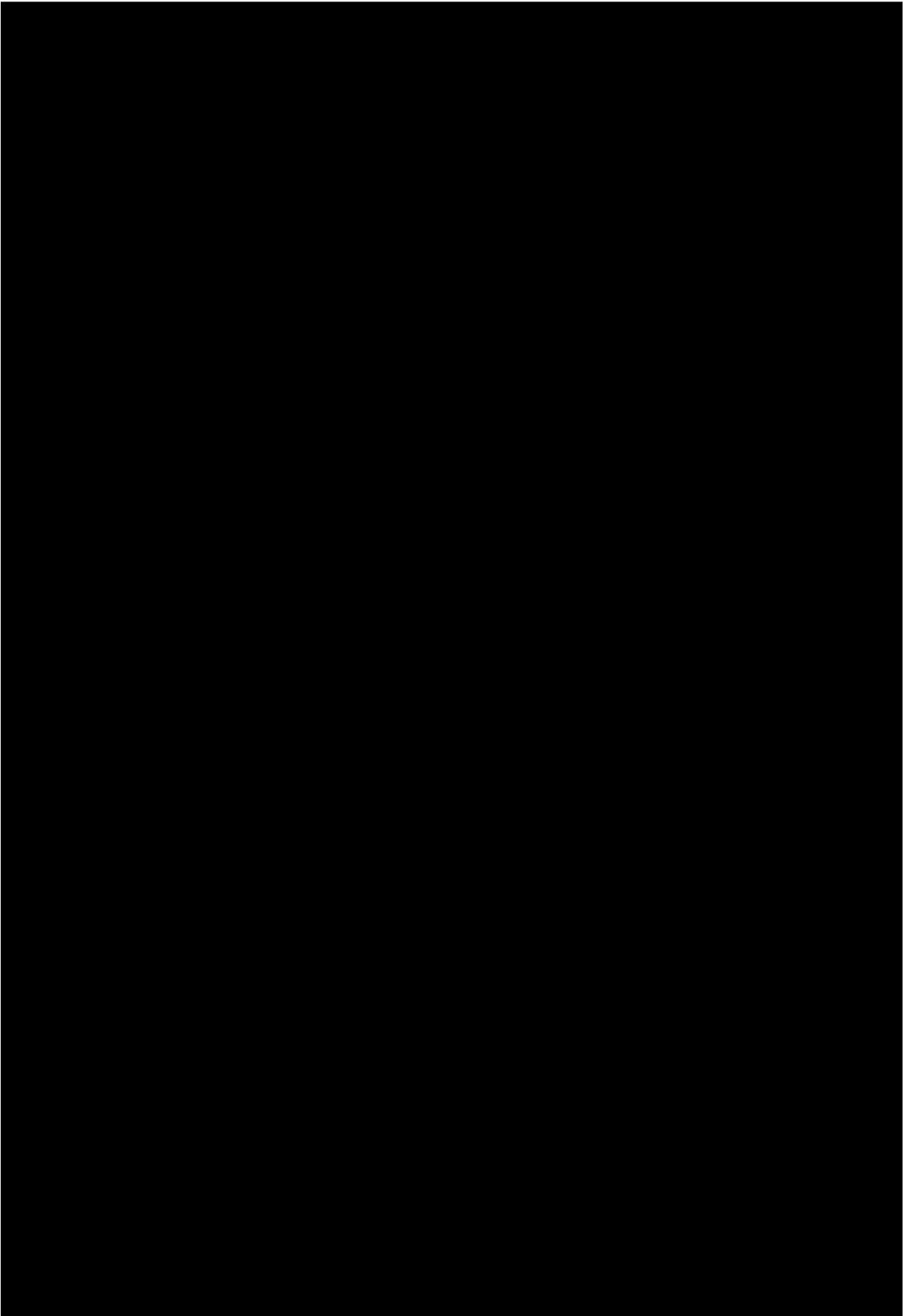
- (b) **(No Liability)** The Principal will have no Liability to the WL Contractor for Temporary Work or Construction Plant left on the Construction Site by an Interface Contractor or the WL Contractor for use by an Interface Contractor.

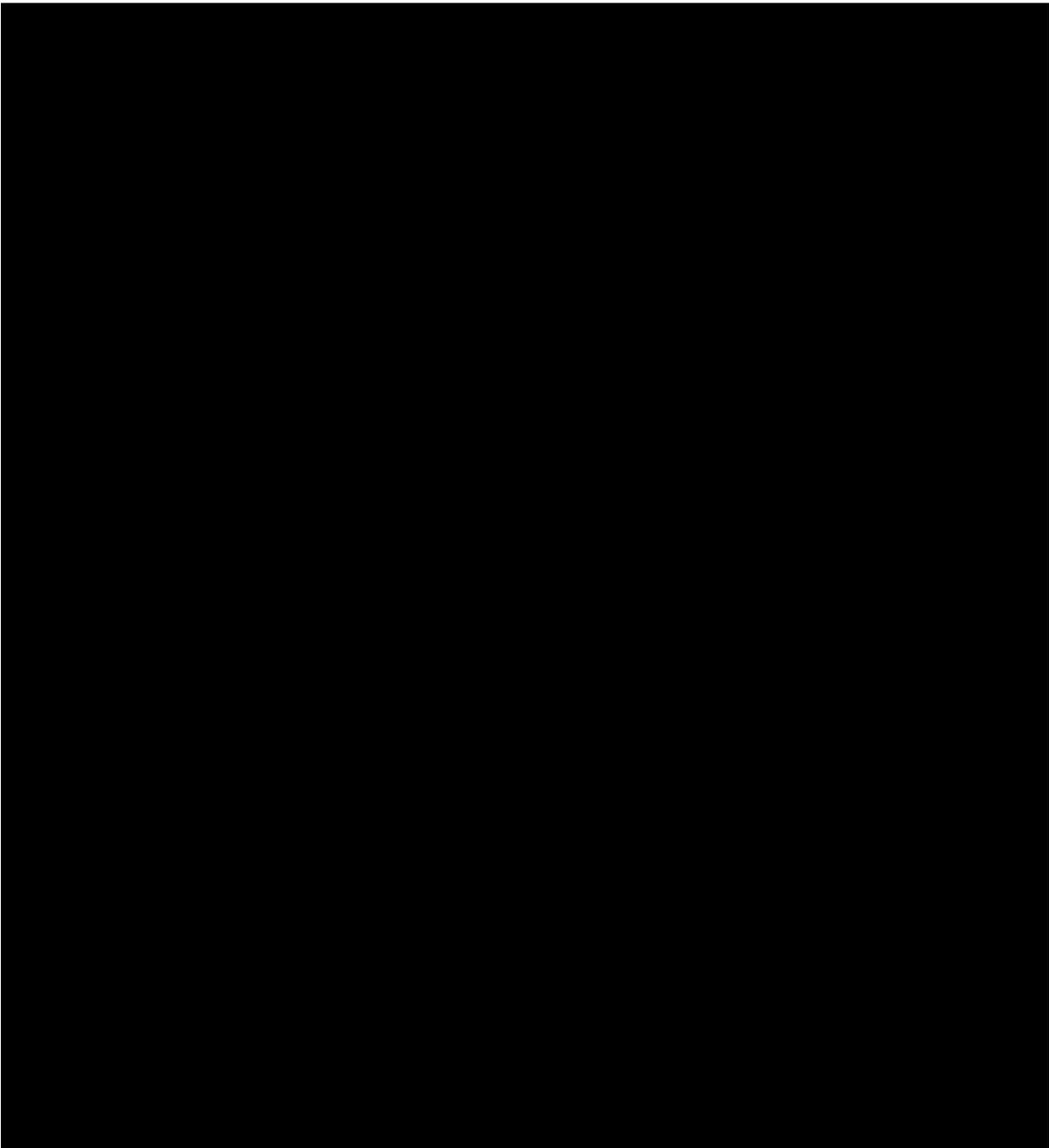
12.7 **Collateral Warranty Deed Poll**

The WL Contractor must, within 5 Business Days of receipt of a request from the Principal

[REDACTED]

[REDACTED]





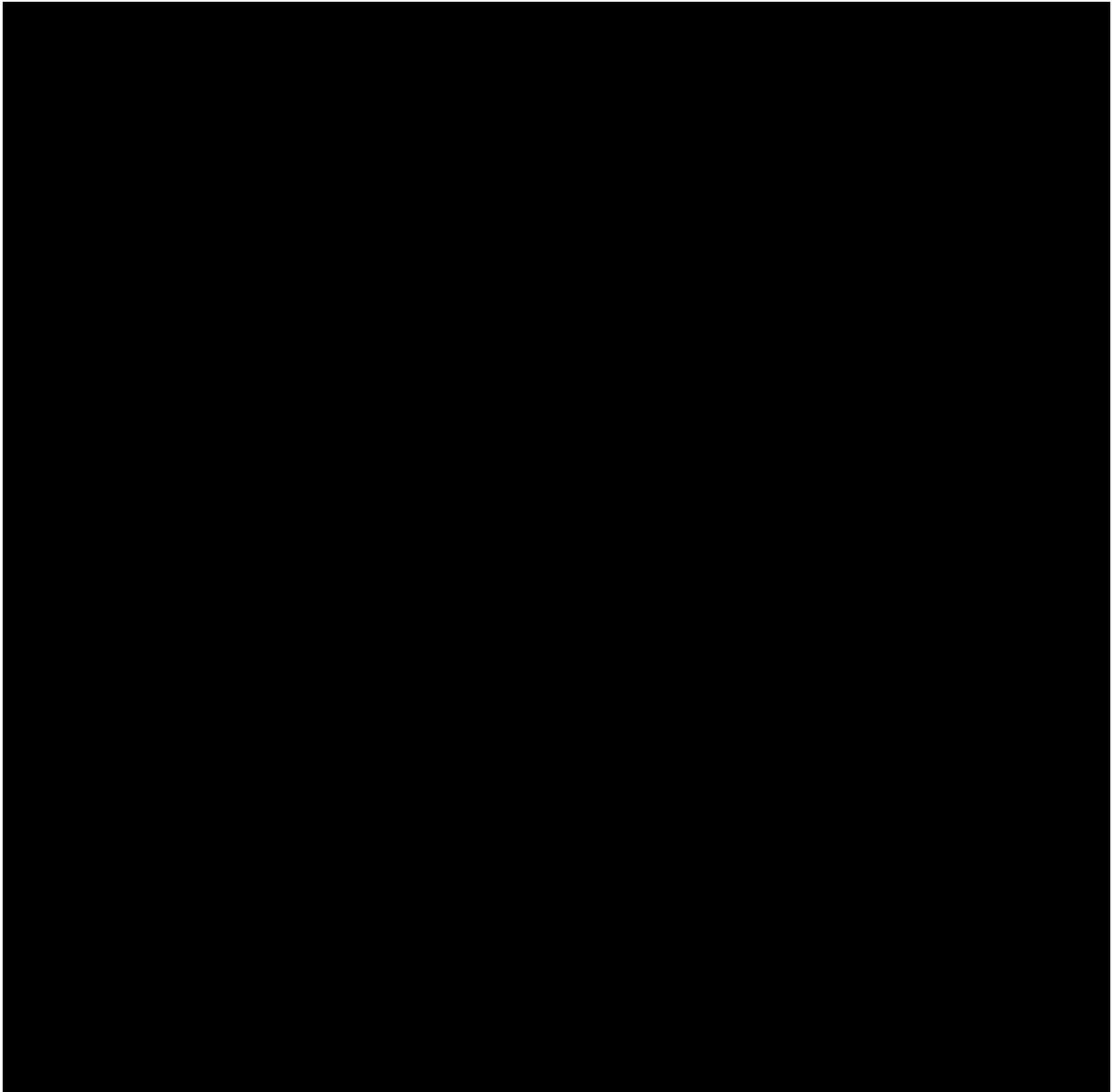
14. INTERFACE WITH THE METRO QUARTER DEVELOPMENT

14.1 Acknowledgements regarding MQD interface

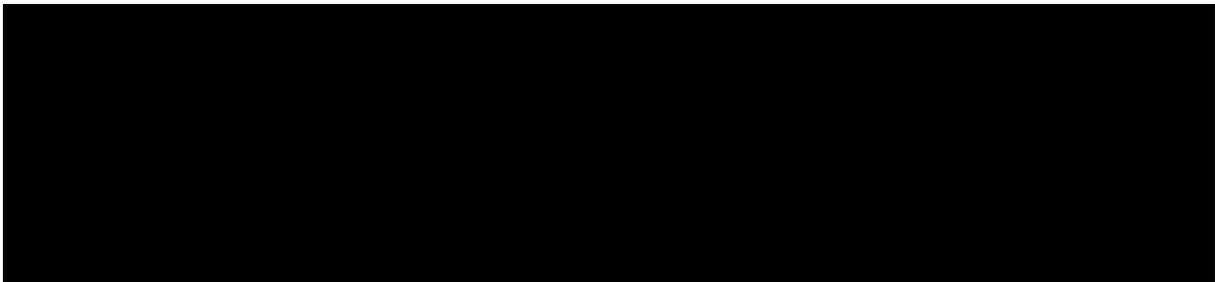
The parties acknowledge that:

- (a) the Principal and the WL Developer will be parties to the MQD PDA;
- (b) the WL Developer may carry out the WL Developer's Activities on the Construction Site pursuant to the MQD PDA, including prior to the Date of Completion of the last Portion to achieve Completion; and

- (c) to the extent that the WL Contractor requires access to or a right to occupy or use the MQD Construction Site, the WL Contractor must procure that access or right for itself from the WL Developer.



15. TSE CONTRACT



15.2 TSE Works Design Documentation

- (a) **(WL Contractor comments on TSE Design Documentation)** The Principal must provide the WL Contractor with a copy of all design documentation for the TSE Works (**TSE Works Design Documentation**) submitted by the TSE Contractor to the Principal, promptly following receipt by the Principal to the extent that it is not already included in the TSE Works Baseline Requirements.
- (b) **(WL Contractor review)** The WL Contractor must review the TSE Works Design Documentation provided to it pursuant to clause 15.2(a) and provide written comments to the Principal within 10 Business Days after the date on which the WL Contractor received the TSE Works Design Documentation, setting out details of any difference between the TSE Works Design Documentation and the requirements of the TSE Works Baseline Requirements.
- (c) **(Principal provides comments)** The Principal must:
 - (i) promptly provide a copy of any written comments provided by the WL Contractor under clause 15.2(b) to the TSE Independent Certifier and the TSE Contractor; and
 - (ii) provide the WL Contractor with a copy of any comments the Principal receives from the TSE Contractor or TSE Independent Certifier (as applicable) in response to any comments made by the WL Contractor under clause 15.2(b) promptly and in any event no later than 10 Business Days after receipt.

15.3 TSE Works Information

- (a) **(Asset Management Information)** The Principal must provide the WL Contractor with a copy of any TSE Works Asset Management Information submitted by the TSE Contractor to the Principal promptly following receipt by the Principal. The WL Contractor may or, if requested by the Principal, must, review the TSE Works Asset Management Information and, (if applicable) provide written comments to the Principal within 5 Business Days after the date on which the WL Contractor received the TSE Works Asset Management Information. The Principal may provide a copy of any written comments provided by the WL Contractor to the TSE Independent Certifier and the TSE Contractor.
- (b) **(TSE Works documentation)** If requested by the WL Contractor, (and only to the extent that any documentation is not provided directly to the WL Contractor by the TSE Contractor or the TSE Independent Certifier) the Principal must provide the WL Contractor with copies of:
 - (i) all documents or other information in respect of the design, construction, occupation, use and maintenance of the TSE Works which the TSE Contractor must give the Principal as a condition precedent to TSE Construction Completion;
 - (ii) any correspondence with, or certificates issued by, the TSE Independent Certifier in relation to the TSE Works (excluding any confidential commercial information regarding the TSE Contractor);
 - (iii) any notices of TSE Defects notified to the Principal by the TSE Contractor, or by the Principal to the TSE Contractor, after TSE Construction Completion; and

- (iv) any documents the Principal is entitled to, and actually does, receive from the TSE Contractor in relation to the quality of the TSE Works.

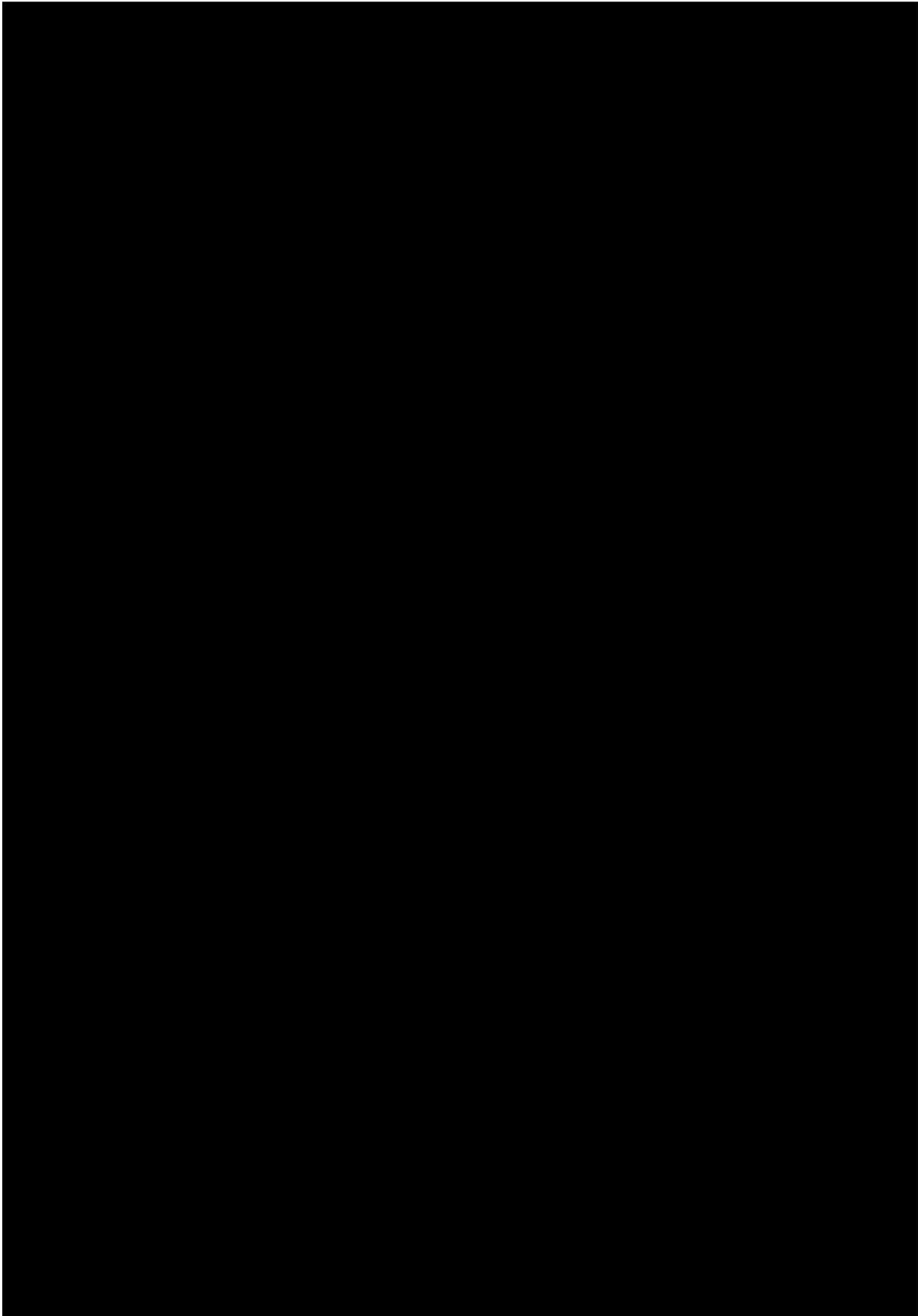
15.4 Inspection of TSE Works

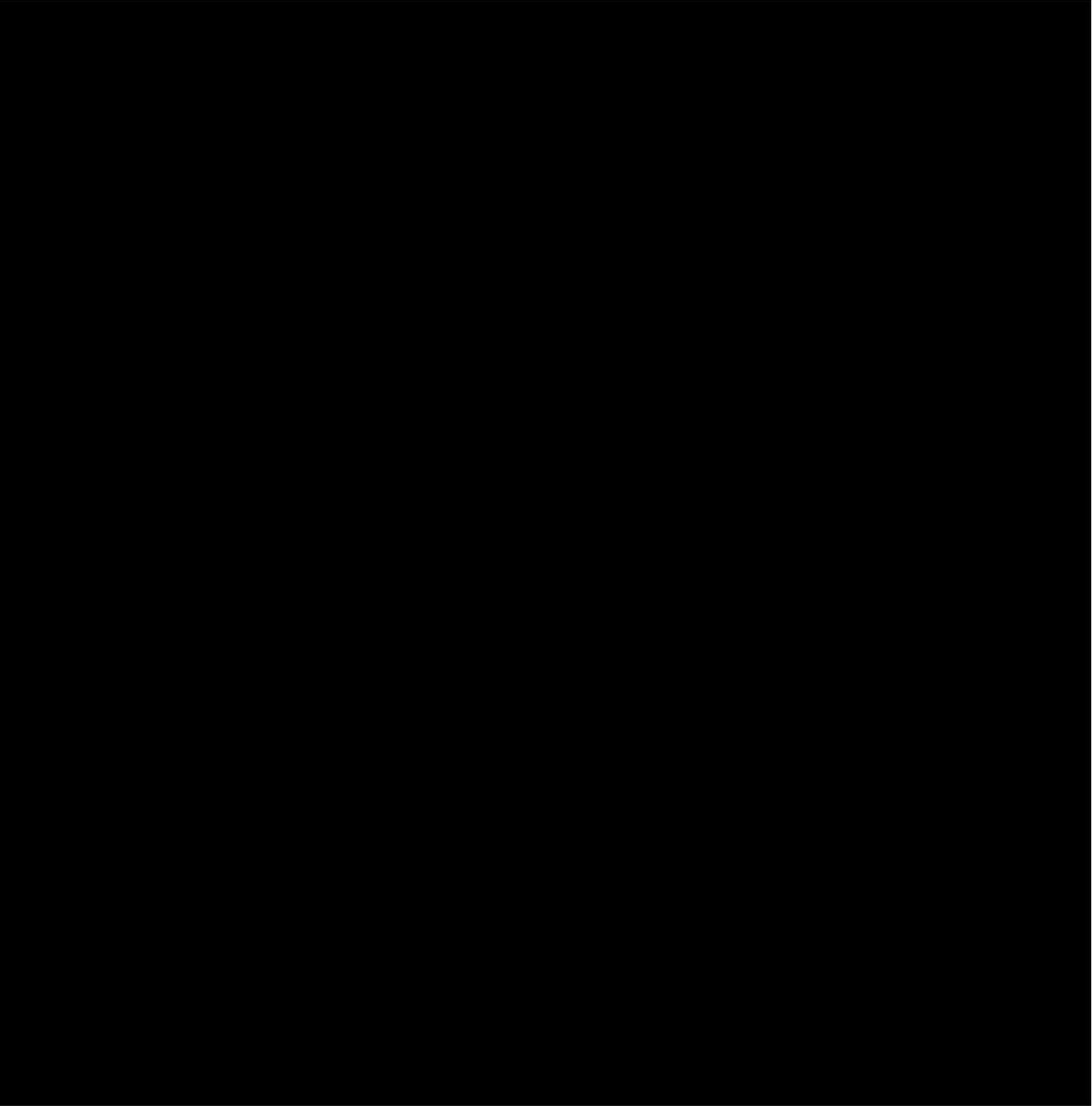
- (a) **(Inspection request)** If the WL Contractor wishes to inspect the TSE Works, the WL Contractor must submit a written request to the Principal's Representative a minimum of 10 Business Days in advance of the date it wishes to carry out the inspection (or such other period of time as the Principal's Representative may agree). The Principal's Representative may attend any inspection by the WL Contractor of the TSE Works.
- (b) **(The Principal to facilitate)** The Principal's Representative must:
 - (i) facilitate all reasonable requests by the WL Contractor to inspect the TSE Works; and
 - (ii) notify the WL Contractor of, and provide the WL Contractor with a reasonable opportunity to attend, all joint inspections of the TSE Works carried out in accordance with clause 17.11 of the TSE Contract.
- (c) **(WL Contractor comment)** If the WL Contractor believes that the TSE Works are not in accordance with the TSE Works Baseline Requirements, the WL Contractor must provide written comments to the Principal:
 - (i) in the case of an inspection carried out in accordance with clause 17.11 of the TSE Contract, within 1 Business Day after the date of the relevant inspection; and
 - (ii) in the case of any other inspection under this clause 15.4, within 5 Business Days after the date of the relevant inspection,

and the Principal must provide a copy of any such comments to the TSE Independent Certifier and the TSE Contractor and provide the WL Contractor with a copy of any comments the Principal receives from the TSE Independent Certifier in response to any comments made by the WL Contractor under this clause 15.4(c) promptly and in any event no later than 10 Business Days after receipt.

15.5 Care and maintenance of TSE Works

- (a) **(WL Contractor responsibility)** Subject to clause 15.6 (*TSE Known Defects*), clause 15.7 (*TSE Defects*), clause 21.6 (*Extensions of time*), clause 21.9 (*Risk of delay and disruption and resultant increased Costs*) and clause 30.1 (*Responsibility for care of WL Contractor's Activities*), the WL Contractor is responsible for the care and maintenance of any parts of the TSE Works located within the Construction Site for the period from the Construction Licence Commencement Date for that part of the Construction Site until the Date of Completion of the relevant Portion (or the Date of Substantial Completion in relation to the Trackway Portion) in accordance with the TSE Works O&M Manuals.
- (b) **(Indemnity)** The WL Contractor indemnifies the Principal from and against any Loss that the Principal suffers or incurs as a consequence of the WL Contractor failing to carry out its obligations under clause 15.5(a).





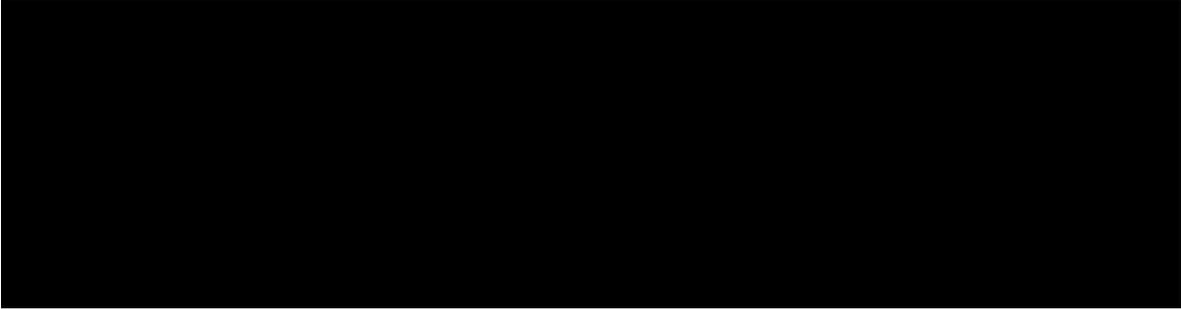
15.9 **Access by TSE Contractor**

The WL Contractor must provide the TSE Contractor (and any person authorised by the TSE Contractor) with such access to the Construction Site as is required by the TSE Contractor in order to meet its obligations under the TSE Contract and the TSE Cooperation and Integration Deed, including the rectification of:

- (a) any TSE Known Defects pursuant to clause 15.6(a)(ii); and
- (b) any TSE Defects pursuant to clause 15.7 (*TSE Defects*),

subject to the TSE Contractor complying with the WL Contractor's site access and work, health and safety procedures in accordance with the TSE Cooperation and Integration Deed.





15.11 **TSE Handover Works**

- (a) (**List of Handover Works**) The Principal must, no later than 90 days before the TSE Date for Construction Completion, provide the WL Contractor with a list of the Handover Works that the TSE Contractor has constructed on the Construction Site and provide the WL Contractor with a reasonable opportunity to inspect the Handover Works.
- (b) (**Removal of Optional Handover Works**) The WL Contractor must, no later than 14 days after the date on which the Principal gives the WL Contractor the list referred to in clause 15.11(a), give the Principal a written notice of the Optional Handover Works (if any) that the WL Contractor requires to be removed from the Construction Site after TSE Construction Completion and the Principal must procure the removal of the Optional Handover Works referred to in the WL Contractor's notice from the Construction Site prior to the Construction Licence Commencement Date.
- (c) (**Operation and maintenance of Handover Works**) The WL Contractor must operate and maintain the Handover Works (other than Optional Handover Works the subject of the WL Contractor's notice under clause 15.11(b)).



16. **RECORDS AND ACCESS TO RECORDS**

16.1 **Records**

- (a) (**Keeping Records**) The WL Contractor must make and keep, and must ensure all Subcontractors make and keep, accurate records of the work under this deed, whether in writing or stored on any other medium whatsoever (**Records**), including:
 - (i) the Contract Documentation and Materials and any other documents referred to in this deed;
 - (ii) design calculations of the Design Documentation (including designs certified but subsequently superseded or varied) or used in connection with WL Contractor's Activities, the Project Works or the Temporary Works;

- (iii) records as to progress of the work including diary records of daily tasks, complete photographic records and manning and equipment records;
 - (iv) quality system documents and records;
 - (v) results of the examination and testing of any work;
 - (vi) records evidencing or related to compliance with Law;
 - (vii) time records, all cost records relating in any way to delays, Contract Sum Adjustment Events and any work the remuneration for which is based on actual cost, loss or damage;
 - (viii) all consultant's reports and opinions obtained by the WL Contractor in relation to the matters referred to in this clause; and
 - (ix) all necessary supporting correspondence, internal memoranda, minutes, technical and other documents, invoices, records and related financial statements.
- (b) **(Right to inspect Records)** The Principal, the Principal's Representative, the Independent Certifier or any nominee of them may, at any time, inspect and make copies of the whole or part of any Record, may conduct an audit of the Records and the work under this deed (other than Records relating generally to the financial conduct of the WL Contractor's whole business and board minutes unless the WL Contractor is expressly required to make such Records available to the Principal under this deed) and may access the premises of the WL Contractor or its Subcontractors to have access to the Records.
- (c) **(Records not in writing)** If a Record is stored on a medium other than in writing, the WL Contractor must make available immediately upon request such facilities as may be necessary to enable a legible reproduction of the Record to be produced to the Principal or the Principal's Representative and where a Record is in electronic format, the WL Contractor must provide the Principal with a non-exclusive licence to use the software necessary to view and, where relevant, analyse, the information.
- (d) **(No right to refuse inspection)** The WL Contractor is not entitled to refuse inspection of any Record to which the Principal has the right to inspect pursuant to clause 16.1(b) on any basis except legal professional privilege. If a Record is confidential, the WL Contractor may refuse inspection of the Record until the person who is conducting the inspection has executed an undertaking to keep the information confidential.
- (e) **(Cooperation)** The WL Contractor must cooperate with the Principal, the Principal's Representative, the Independent Certifier or any of their respective nominees when they are conducting an inspection. Cooperation will include the explanation of all filing and costing systems and the extraction of requested categories of documentation from files upon request.
- (f) **(Maintenance and destruction of records)**
- (i) The WL Contractor must keep the Principal informed as to where the Records are being maintained, which must be in Australia.

- (ii) Design Documentation actually used in construction, as-built drawings and commissioning information must be handed to the Principal at Final Completion.
- (iii) The remaining Records may only be destroyed after the last to occur of:
 - (A) seven (7) years after Final Completion;
 - (B) the expiry of the Defects Correction Period; or
 - (C) seven (7) years after the termination of this deed.

16.2 Access to third parties' information

The WL Contractor must:

- (a) ensure that the Principal (and any person authorised by the Principal) has direct access to any information, documents or material:
 - (i) that is maintained by a third party (including the WL Contractor's Associates); and
 - (ii) which the Principal is entitled to have access to, or have copies of, from the WL Contractor under this deed;
- (b) ensure that any contractual arrangements between the WL Contractor or Subcontractors and any third parties acknowledge the Principal's right of access under clause 16.2(a); and
- (c) give the Principal on demand written evidence (including copies of any contractual arrangements referred to in clause 16.2(b)) showing compliance by the WL Contractor with its obligations under clause 16.2(b).

16.3 ASIC and ASX notices

The WL Contractor must give the Principal, as soon as practicable, copies of all notices and other documents relevant to the WL Contractor's Activities or the ability of the WL Contractor to perform its obligations under any WL Station Contract Document given or received by the WL Contractor to or from the Australian Securities and Investments Commission, the ASX Limited or any other recognised stock exchange (to the extent applicable).

17. SUBCONTRACTING

17.1 Subcontracting by the WL Contractor

- (a) Subject to this clause 17, the WL Contractor may enter into Subcontracts for the performance of the WL Contractor's Activities or any part of them.
- (b) The WL Contractor will be liable to the Principal for the acts and omissions of Subcontractors in connection with the WL Contractor's Activities as if such acts or omissions were acts or omissions of the WL Contractor.
- (c) The WL Contractor must, where a Lead Designer is to carry out design work or other professional services, procure that the Lead Designer execute a deed in the form of Schedule A23 (*Designer Deed of Covenant*) and provide this to the Principal's Representative within 5 Business Days of the engagement of that Lead Designer.

- (d) Subcontracting by the WL Contractor of any obligation under the WL Station Contract Documents will not relieve the WL Contractor of, or otherwise affect, any obligation or Liability it has to the Principal under the WL Station Contract Documents.

17.2 Significant Subcontracts

- (a) **(Principal consent required)** The WL Contractor must not:
 - (i) other than with a Subcontractor named in Schedule A5 (*Significant Subcontractors and Significant Subcontract Work*) (with respect to the corresponding "Significant Subcontract Work" listed in Schedule A5 (*Significant Subcontractors and Significant Subcontract Work*) for that Subcontractor), enter into;
 - (ii) where it may impact the rights or increase the Liabilities or obligations of the Principal:
 - (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;
 - (iii) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of); or
 - (iv) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in,

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

- (b) **(Qualifications)** The WL Contractor must:
 - (i) use its best endeavours to ensure that each Significant Subcontractor:
 - (A) is solvent and reputable;
 - (B) does not have any interest or duty which conflicts in a material way with the interests of the Principal and is not involved in any business or activity which is incompatible with, or inappropriate in relation to, the WL Contractor's Activities; and
 - (C) has sufficient expertise and ability, and is of sufficiently high financial and commercial standing, to properly carry out the obligations of the WL Contractor which are being subcontracted to it; and
 - (ii) immediately upon becoming aware that a Significant Subcontractor does not satisfy the requirements of clause 17.2(b)(i), use its best endeavours to cause:
 - (A) the Significant Subcontractor to do whatever is necessary to promptly satisfy the requirements of clause 17.2(b)(i); or

- (B) subject to clause 17.2(a), the relevant Significant Subcontract to be terminated.
- (c) **(Monitoring of Significant Subcontracts)** The WL Contractor must:
 - (i) use its best endeavours to ensure that each Significant Subcontractor complies with the terms of its Significant Subcontract; and
 - (ii) immediately notify and thereafter keep the Principal informed of:
 - (A) any material breach of a Significant Subcontract; or
 - (B) any dispute which is notified as such under a Significant Subcontract.
- (d) **(Copy)** The WL Contractor must provide the Principal with a copy of each Significant Subcontract (subject to removal, exclusion or redaction of any "commercial-in-confidence provisions" as that term is defined in the GIPA Act).
- (e) Not used.
- (f) **(Significant Subcontractor direct deed)** If required by the Principal, the WL Contractor must procure that a Significant Subcontractor and (if applicable) a parent company acceptable to the Principal's Representative enters into a side deed with the Principal in a form reasonably required by the Principal.

17.3 Provisions to be included in Subcontracts

- (a) Subject to clause 17.3(b), the WL Contractor must (unless otherwise approved in writing by the Principal's Representative having regard to the nature and location of the Subcontractor) ensure that:
 - (i) **(Subcontract requirements)** each Subcontract that it enters into in connection with the WL Contractor's Activities, regardless of its value, includes the provisions required by section 1 of Schedule A6 (*Subcontract requirements*); and
 - (ii) **(Significant Subcontract requirements)** without limiting clause 17.3(a)(i), each Significant Subcontract that it enters into in connection with the WL Contractor's Activities includes the provisions required by section 2 of Schedule A6 (*Subcontract requirements*).
- (b) In respect of the Lead Designers, the WL Contractor is only required to ensure that each Significant Subcontract that it enters into includes the provisions required by sections 1(a), 1(b), 2(c) and 2(e) of Schedule A6 (*Subcontract requirements*).

17.4 Nominated Subcontractors

- (a) **(Nominated Subcontractor)** The WL Contractor must:
 - (i) enter into the Nominated Subcontracts with the Nominated Subcontractors; and
 - (ii) ensure that Nominated Subcontract Work is carried out by the Nominated Subcontractors pursuant to the relevant Nominated Subcontract.
- (b) **(Liability)** The WL Contractor will:

- (i) be liable to the Principal for the acts and omissions of the Nominated Subcontractors in connection with the WL Contractor's Activities as if such acts or omissions were acts or omissions of the WL Contractor; and
 - (ii) not used.
- (c) **(No Liability)** The Principal will have no Liability to the WL Contractor arising out of or in connection with any Nominated Subcontractor or Nominated Subcontract Work including the management and interface with Nominated Subcontractors other than any [REDACTED] for Provisional Sum Work.
- (d) **(Significant Subcontract provisions)** The provisions of clause 17.2(a), clause 17.2(b)(ii), clause 17.2(c) and clause 17.2(d) apply as if each Nominated Subcontract is a Significant Subcontract.

17.5 **Subcontractor direct warranties**

- (a) Prior to Completion of the last Portion to reach Completion, the WL Contractor must procure from each of the Subcontractors engaged by the WL Contractor in relation to each item listed in Schedule A7 (*Subcontractor warranties*), in favour of the relevant beneficiaries in Schedule A7 (*Subcontractor warranties*), a duly executed deed in the form in Schedule A22 (*Form of Subcontractor warranties*).
- (b) Provision of a warranty pursuant to clause 17.5(a) does not impact or derogate from the rights of the Principal against the WL Contractor.

17.6 **Not used**

18. **PROJECT PLANS**

18.1 **General**

The WL Contractor must:

- (a) develop, update and submit all Project Plans to the Principal's Representative in accordance with the requirements of Appendix F2 of the SWTC; and
- (b) implement and comply with all Project Plans that have not been rejected by the Principal's Representative under section 2.2 of Appendix F2 of the SWTC.

18.2 **Warranties in relation to Project Plans**

The WL Contractor:

- (a) must, in each Project Plan, include a detailed description of how the WL Contractor intends to carry out the WL 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 at all relevant times be fit for its purpose and that compliance with each Project Plan will enable the WL Contractor to comply with its obligations under this deed.

19. **PORTIONS**

19.1 **Principal's Representative may direct Portions**

- (a) **(Additional Portions)** In addition to the Portions identified in section 3 of Schedule A3 (*Portions and Milestones*), the Principal's Representative may (in its absolute discretion), at any time and from time to time, by written notice to the WL Contractor direct additional Portions under this clause 19.1.
- (b) **(Notice details)** The notice by the Principal's Representative pursuant to clause 19.1(a) must set out that part of the Project Works which will become an additional Portion and include details of:
 - (i) the Project Works and Temporary Works;
 - (ii) the Date for Substantial Completion;
 - (iii) the Date for Completion; and
 - (iv) respective amounts of liquidated damages,as determined by the Principal's Representative (acting reasonably).
- (c) [REDACTED] An additional Portion directed under clause 19.1(a) before the Date for Substantial Completion of the relevant existing Portion will be a [REDACTED]
- (d) **(No Liability after Substantial Completion)** The Principal will have no Liability to the WL Contractor in relation to an additional Portion directed under clause 19.1(a) after the Date for Substantial Completion of the relevant existing Portion.
- (e) **(Principal Contractor)** If the Principal elects to direct any additional Portions pursuant to clause 19.1(a), the Principal must have regard to the obligations of the Appointed Principal Contractor in relation to the WHS Legislation.

19.2 **Interpretation of Portions**

The interpretations of:

- (a) **(definitions)** the WL Contractor's Activities, Project Works, Temporary Works, WL Works, Third Party Works, Local Area Works, Utility Service Works, Property Works, Project Site, Construction Site, Temporary Areas, Substantial Completion, Date for Substantial Completion, Date of Substantial Completion, Completion, Date for Completion, Date of Completion, Significant Date, Significant Completion and Defects Correction Period;
- (b) **(specific clauses)** clause 9.1 (*Rights to land*) to clause 9.5 (*Conditions precedent to access to the Construction Site*) (inclusive), clause 9.9 (*Extra Land*), clause 6.7 (*Incident Management*), clause 6.10 (*Cleaning up*), clause 6.12 (*Asset Management Information*), clause 21 (*Time*), clause 23 (*Milestone Achievement, Substantial Completion and Completion*), clause 26 (*Post-completion arrangements*), clause 27 (*Defects rectification*), clause 28.3 (*Payment claims*), clause 30.1 (*Responsibility for care of the WL Contractor's Activities*), clause 30.6 (*WL Contractor's Insurance obligations*) and clause 30.11 (*Reinstatement*); and
- (c) **(SWTC)** the SWTC (including its appendices),

will apply separately to each Portion (including any Portion determined under clause 19.1 (*Principal's Representative may direct Portions*)) and references therein to any of the terms in clause 19.2(a) will mean so much of the WL Contractor's Activities, Project Works, Temporary Works, WL Works, Third Party Works, Local Area Works, Property Works, Utility Service Works, Project Site, Construction Site or Temporary Areas as is comprised in, or associated with, the relevant Portion.

19.3 Portion handover requirements

On the Portion Handover Date, the WL Contractor must:

- (a) hand control of the relevant Project Works to the Principal; and
- (b) provide the Principal with all spare parts, consumables and special tools as required by the SWTC.

20. MODIFICATIONS

- (a) The Principal may:
 - (i) at any time propose a Modification or require the WL Contractor to carry out a Modification in accordance with clause 2 of the Modification Procedure; and
 - (ii) exercise a Pre-Agreed Modification in accordance with clause 3 of the Modification Procedure.
- (b) The WL Contractor may propose a Modification in accordance with clause 4 of the Modification Procedure.
- (c) Subject to clause 37.3(a), the WL Contractor must comply with Directions of the Principal's Representative even if the WL Contractor considers the Direction to be a Direction to perform a Modification.

21. TIME

21.1 Completion of the works

- (a) The WL Contractor must:
 - (i) commence performance of the WL Contractor's Activities on the date of this deed;
 - (ii) not depart from the WL Contractor's Program without reasonable cause;
 - (iii) diligently perform and progress the WL Contractor's Activities with due expedition and without delay; and
 - (iv) not suspend the performance of all or any part of the WL Contractor's Activities except where the suspension is pursuant to clause 21.4 (*Suspension*) or allowed by Law.
- (b) While the WL Contractor may achieve a Significant Completion before the Significant Date, the Principal has no responsibility or duty of care to do, or refrain from doing, anything to enable the WL Contractor to achieve that result.

21.2 Dates for Milestone Achievement, Substantial Completion and Completion

The WL Contractor must:

- (a) achieve Milestone Achievement of each Milestone by the Date for Milestone Achievement of that Milestone;
- (b) achieve Substantial Completion of each Portion by the Date for Substantial Completion of that Portion; and
- (c) achieve Completion of each Portion by the Date for Completion of that Portion.

21.3 Importance of Milestone Achievement, Substantial Completion and Completion on time

The WL Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 21.2 (*Dates for Milestone Achievement, Substantial Completion and Completion*) to enable Interface Contractors to carry out and complete the activities of the Interface Contractors within the time required by their respective Interface Contracts, including so as to enable the Principal to pursue improved public transport in Sydney; and
- (b) that the Date for Substantial Completion or Date for Completion of any Portion or Date for Milestone Achievement of any Milestone will only be extended in accordance with clause 21.8 (*Determination of extension of time claim*).

21.4 Suspension

- (a) (**Direction by the Principal**) The Principal's Representative may direct the WL Contractor to suspend the progress of the WL Contractor's Activities or any part of them for such time or times as the Principal may think fit.
- (b) (**No Liability**) The Principal will have no Liability to the WL Contractor to the extent that the reason for the suspension directed under clause 21.4(a) was caused or contributed to by an act, default, or omission of the WL Contractor or its Associates other than an act of the WL Contractor or its Associates which is permitted by, and is in accordance with, this deed.

21.5 WL Contractor's Program

- (a) (**WL Contractor's Initial Program**) The WL Contractor's Initial Program is contained in Schedule D17 (*WL Contractor's Initial Program*).
- (b) (**WL Contractor submission**) The WL Contractor must, within 60 Business Days of the date of this deed, submit to the Principal's Representative an update to the WL Contractor's Initial Program in the native file format. The native file format is required to be compatible with Oracle Primavera Release 16 (or any subsequent upgraded version if permitted by the Principal's Representative) which shows the items and detail specified in Appendix F2 of the SWTC.
- (c) (**Updated program**) The WL Contractor must submit to the Principal's Representative an updated WL Contractor's Program in the native file format. The native file format is required to be compatible with Oracle Primavera Release 16 (or any subsequent upgraded version if permitted by the Principal's Representative), which shows the items and detail specified in Appendix F2 of the SWTC and any

other details which the Principal's Representative may reasonably direct, as at the date of program generation:

- (i) on the first Business Day of each calendar month; and
- (ii) within 10 Business Days of:
 - (A) an extension of time being granted pursuant to clause 21.6 (*Extensions of time*);
 - (B) a direction given under clause 22.1 (*Directions to change sequence of work or Accelerate*);
 - (C) the logic to complete the Project Works significantly changing; or
 - (D) any event that impacts Milestone Achievement of a Milestone or Substantial Completion or Completion of a Portion.
- (d) **(Principal comments)** The Principal's Representative may at any time comment on the WL Contractor's Program or identify the respects in which it is not satisfactory and the WL Contractor must respond to those comments within 10 Business Days.

21.5A **Recovery Plan**

- (a) **(Principal's notice)** At any time after the Relevant Date, but subject to clause 21.5A(ba), if the Principal reasonably believes that the WL Contractor will be, or has been, delayed in achieving one or more of the following:
 - (i) Milestone Achievement of one or more Milestones by the date that is two weeks after the relevant Date for Milestone Achievement;
 - (ii) Substantial Completion of one or more Portions by the relevant Date for Substantial Completion; and/or
 - (iii) Completion of one or more Portions by the relevant Date for Completion,then the Principal's Representative may give notice to that effect to the WL Contractor.
- (aa) **(Extensions of time)** If the Principal issues a notice pursuant to clause 21.5A(a), the Principal must have regard to any claims for an extension of time which have been submitted by the WL Contractor but not yet determined by the Principal pursuant to clause 21.8 (*Determination of extension of time claim*).
- (b) **(Provision of Recovery Plan)** The WL Contractor must, as soon as reasonably practicable after receiving a notice from the Principal's Representative under clause 21.5A(a), give the Principal a Recovery Plan for recovery of the delay to the relevant Significant Dates.
- (ba) **(Frequency of Principal's notices)** The Principal's Representative may not give a subsequent notice to the WL Contractor under clause 21.5A(a) in respect of:
 - (i) the same Milestone or Milestones;
 - (ii) Substantial Completion of the same Portion or Portions; or

(iii) Completion of the same Portion or Portions,

until [REDACTED] have elapsed from the date of the Principal's Representative's first notice under clause 21.5A(a).

(c) **(Requirements for Recovery Plans)** Each Recovery Plan which the WL Contractor provides under clause 21.5A(b) or clause 21.5A(ea) must:

(i) describe the actions and measures which the WL Contractor will diligently pursue to remedy or mitigate all delay and to ensure the WL Contractor achieves (as applicable):

(A) Milestone Achievement of the relevant Milestone(s) by the relevant Date for Milestone Achievement;

(B) Substantial Completion of the relevant Portion(s) by the relevant Date for Substantial Completion; and

(C) Completion of the relevant Portion(s) by the relevant Date for Completion; and

(ii) contain a proposed updated WL Contractor's Program.

(d) **(Principal review of Recovery Plan)** The Principal may review each Recovery Plan provided by the WL Contractor under clause 21.5A(b) or clause 21.5A(ea) and provide comments to the WL Contractor.

(e) **(Compliance with Recovery Plan)** The WL Contractor must comply with and diligently pursue the Recovery Plan, taking into account any comments on that plan provided by the Principal under clause 21.5A(d).

(ea) **(Update to Recovery Plan)** After the Principal has reviewed and provided comments on a Recovery Plan under clause 21.5A(d), if the Principal reasonably believes that:

(i) there has been a change in circumstances or an additional delay event has occurred which is likely to render the actions and measures set out in the Recovery Plan redundant, ineffective or insufficient to remedy or mitigate the delay; or

(ii) without limiting clause 21.5A(ea)(i), the WL Contractor will be, or has been, delayed in achieving Milestone Achievement of any additional Milestone(s) or Substantial Completion or Completion of any additional Portion(s) to those set out in the Principal's Representative's first notice under clause 21.5A(a) unless a notice under clause 21.5A(a) has been provided in the previous six month period in respect of such additional Milestone(s) or Substantial Completion or Completion of such additional Portion(s),

then the Principal's Representative may give notice to that effect to the WL Contractor and the WL Contractor must, as soon as reasonably practicable thereafter, give the Principal an updated Recovery Plan for recovery of the delay in accordance with clause 21.5A(c).

(f) **(No relief)** The WL Contractor will not be relieved of any liability or responsibility under this deed or otherwise at law as a result of:

- (i) any comments that the Principal provides or fails to provide in relation to any Recovery Plan; or
 - (ii) the implementation of any Recovery Plan in respect of which the Principal has or has not given comments.
- (g) **(No Liability)** The Principal will have no Liability to the WL Contractor arising out of or in any way in connection with the preparation of, or compliance with, any Recovery Plan.
- (h) In this clause 21.5A, "**Relevant Date**" means the later of:
- (i) the date being [REDACTED] after the WL Contractor has been granted access to the Construction Site;
 - (ii) the Construction Licence Commencement Date; and

[REDACTED] [REDACTED]

21.5B **Notice of delay**

If the WL Contractor becomes aware of the commencement of any delay to the carrying out of the WL Contractor's Activities then, without limiting clause 21.6(a)(ii), the WL Contractor must give the Principal's Representative written notice of the delay, including details of the cause.

21.6 **Extensions of time**

- (a) **(Entitlement)** The WL Contractor is entitled to an extension of time to a Significant Date only if:
- (i) the WL Contractor is or will be delayed in achieving a Significant Completion by an Excusable Cause of Delay; and
 - (ii) the WL Contractor submits an initial written notice to the Principal's Representative promptly upon becoming aware of the delay (and in any event within 10 Business Days after the WL Contractor became aware or ought reasonably to have become aware of the cause of delay) containing:
 - (A) details of the Excusable Cause of Delay;
 - (B) details of the likely delay; and
 - (C) a description of all actions and measures which the WL Contractor has taken and will be taking to preclude the cause of the delay and to avoid or minimise the consequences of the delay.
- (b) **(Written Claim)** To claim an extension of time, the WL Contractor must:
- (i) submit a written claim to the Principal's Representative within 10 Business Days after the WL Contractor's initial notice issued under clause 21.6(a)(ii):
 - (A) specifying:
 - (aa) the number of days claimed;
 - (bb) details of the Excusable Cause of Delay and why the Excusable Cause of Delay actually caused or will cause a delay in

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- achieving a Significant Completion, including a statement of the facts and the provisions of this deed on which the claim is based;
- (cc) detailed evidence in satisfaction of the requirements of this clause 21.6;
 - (dd) critical path analysis in the same format as the WL Contractor's Program for the period of the delay; and
 - (ee) if early access to the Construction Site was given, or deemed to be given under clause 9.2(f), detailed particulars of how the WL Contractor has used Accessible parts of the TSE Site to mitigate the delay;
- (B) attaching an updated WL Contractor's Program which complies with the requirements of clause 21.5(c);
- (ii) in the case of ongoing delay for which the WL 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 15 Business Days after the first written claim provided under clause 21.6(b)(i); and
 - (B) within 10 Business Days after the cessation of the Excusable Cause of Delay,
- containing the information required by clause 21.6(b)(i).
- (c) The Principal's Representative may request additional information reasonably required to assess the WL Contractor's claim for an extension of time and the WL Contractor must promptly provide such information.

21.7 Limiting factors

- (a) **(No entitlement)** The WL Contractor is not entitled to any extension of time (and the Principal has no Liability to the WL Contractor):
- (i) if the WL Contractor fails to deliver notices in the form and within the time required by clause 21.6(a)(ii), clause 21.6(b)(i) and clause 21.6(b)(ii) (if relevant); and
 - (ii) if the WL Contractor fails to comply with clause 21.5B.
- (b) **(Reduction of entitlement)** The WL Contractor's entitlement to an extension of time will be reduced to the extent that:
- (i) not used;
 - (ii) a delay caused by an Excusable Cause of Delay and a delay caused other than by an Excusable Cause of Delay occur at the same time and the WL Contractor would have been delayed even if the Excusable Cause of Delay had not occurred;
 - (iii) the WL Contractor or any of its Associates caused or contributed to the delay;

- (iv) the WL Contractor failed to comply with:
 - (A) a Project Cooperation and Integration Deed; or
 - (B) its obligations under this deed in connection with the Interface Contractors,and such failure caused or contributed to the delay the subject of the WL Contractor's claim;
 - (v) the WL Contractor has been given a direction to Accelerate under clause 22.1(a)(ii) to overcome the whole or part of any delay;
 - (vi) the delay was or would have been reduced had the WL Contractor or any of its Associates taken all reasonable steps (including, but not limited to, those actions and measures set out in the notice given by the WL Contractor pursuant to clause 21.6(c)) to preclude the cause of the delay and to avoid or minimise the consequences of the delay:
 - (A) other than applying additional resources to make up the time lost; but
 - (B) including by performing the WL Contractor's Activities on the TSE Site after early access was given under clause 9.2(a) or deemed to be given under clause 9.2(f), where relevant to the cause of delay the subject of the WL Contractor's claim, to the extent that such mitigation was reasonably practicable at the time early access was granted; or
 - (vii) the delay is caused or contributed to by a failure of the WL Contractor to comply with its obligations under a WL Station Contract Document or is caused or contributed to by an act or omission of the WL Developer or the WL Developer's Associates;
 - (viii) not used; or
 - (ix) the WL Contractor fails to comply with clause 21.6(c).
- (c) For the avoidance of doubt, the mere existence of a delay in relation to the MQD Works (as defined in the MQD PDA) does not in and of itself constitute an act or omission of the WL Developer or the WL Developer's Associates for the purpose of clause 21.7(b)(vii) unless such delay was caused or contributed to by a particular act or omission (which is not permitted under the MQD PDA) of the WL Developer or a WL Developer's Associate.

21.8 Determination of extension of time claim

- (a) **(Principal's determination)** The Principal's Representative must determine the reasonable extension of time to which the WL Contractor is entitled either:
 - (i) within 20 Business Days after receiving a claim which complies with clause 21.6(b); or
 - (ii) in the case of an ongoing delay, within 20 Business Days after receiving a claim which complies with:
 - (A) clause 21.6(b)(i);

(B) clause 21.6(b)(ii)(A); or

(C) clause 21.6(b)(ii)(B),

by giving the WL Contractor:

(iii) written notice of the determination which includes the extension of time granted and the adjusted Significant Date, with reasons where the extension of time granted is for a shorter period of time than that claimed by the WL Contractor; or

(iv) if no extension is granted, written notice of that decision, with reasons.

(b) (**Principal's discretion to extend**) The Principal may, in the Principal's absolute discretion, extend a Significant Date at any time, and for any reason, by giving written notice to the WL Contractor regardless of whether:

(i) the WL Contractor has claimed or is entitled to an extension of time under this deed; or

(ii) the Principal's Representative has previously either rejected any claim or failed to make a determination under clause 21.8(a).

(c) (**Not for the benefit of WL Contractor**) The Principal is not required to exercise the discretion under clause 21.8(b) for the benefit of the WL Contractor.

(d) (**No impact on Contract Sum Adjustment Event**) The Principal's exercise of its discretion under clause 21.8(b) does not limit the WL Contractor's right to claim a Contract Sum Adjustment Event where, but for the exercise of the discretion, the WL Contractor would have been entitled to an extension of time for a Compensation Event.

(e) (**Principal may take into account**) In determining a claim for an extension of time, the Principal is not obliged to, but may in its sole discretion, take into account:

(i) the latest accepted version of the WL Contractor's Program at the time of the relevant extension of time claim; and

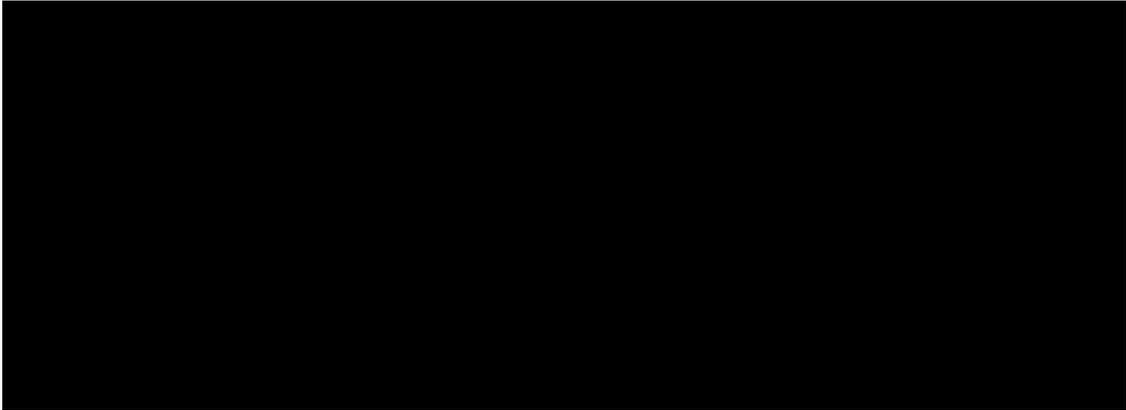
(ii) any other information available to the Principal's Representative at the time the determination is required to be made, including information regarding the progress of the WL Contractor's Activities up to the time the determination is required to be made.

(f) (**Time not at large**) A failure by the Principal's Representative to grant an extension of time in accordance with this clause 21.8 will not cause time to be set at large, but does not affect the right of the WL Contractor to claim damages.

21.9 Risk of delay and disruption and resultant increased Costs

(a) (**Risk of delay**) Subject to clause 21.9(b), clause 21.9(c) and clause 21.9(d), the WL Contractor accepts the risk of all increased Costs resulting from delay or disruption in the performance of the WL Contractor's Activities and the performance of its other obligations under this deed, and the Principal will have no Liability to the WL Contractor for additional Costs arising out of or in any way in connection with such delay or disruption (including for damages for breach of contract).

- (b) [REDACTED] If the WL Contractor has been granted an extension of time to a Significant Date for [REDACTED]
- (c) **(Maximum amount)** The amount valued for [REDACTED] in clause 21.9(b) will not exceed the relevant amount per day specified in Schedule E7 (*Delay cost caps*) for the period of the delay.



21.10 **Reduction in time**

Where

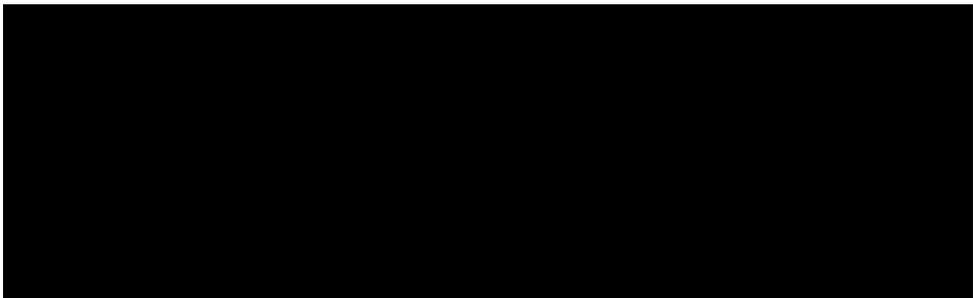
- (a) a Modification is directed; and
- (b) the Principal's Representative, acting reasonably and having consulted with the WL Contractor, considers that the Modification is likely to result in a reduction of the time required to achieve a Significant Completion,

the Principal's Representative may direct the WL Contractor that the Significant Date be brought forward to a date reasonably directed by the Principal's Representative.

21.11 **Delay Liquidated Damages**

- (a) **(Delay Liquidated Damages)** If the WL Contractor fails to achieve a Significant Completion by the relevant Significant Date, the WL Contractor is liable to the Principal for Delay Liquidated Damages for every day after the Significant Date, up to and including the earlier of:
- (i) the Date of Significant Completion;
 - (ii) the Principal taking the relevant work out of the WL Contractor's hands in accordance with clause 32; or
 - (iii) termination of this deed.
- (b) **(Debt due)** The Delay Liquidated Damages payable pursuant to clause 21.11(a) accrue as a debt due from the WL Contractor to the Principal from each Significant Date.
- (c) **(Provisional assessment)** The Principal's Representative, when issuing a payment schedule pursuant to clause 28.3(d)(i) or clause 28.3(d)(ii), may include as an amount due from the WL Contractor to the Principal, an assessment of the amount which has then accrued under clause 21.11(a) and clause 21.11(b) to the date of the payment schedule.

- (d) **(Damages where unenforceable)** If the Principal's entitlement to, and the WL Contractor's liability for, Delay Liquidated Damages under this clause 21.11 is or becomes void, voidable or unenforceable for any reason or there is no amount specified for Delay Liquidated Damages, the Principal will be entitled to recover from the WL Contractor the Loss incurred or suffered by the Principal arising out of or in connection with the WL Contractor's failure to achieve each Significant Completion by the relevant Date for Significant Completion but the WL Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the WL Contractor would have had if the clause had not been void, voidable or otherwise unenforceable.
- (e) **(WL Contractor acknowledgement)** The WL Contractor acknowledges that:
- (i) the WL Contractor's Activities represent an important element of the building of Sydney Metro City & Southwest as a major new public transport link which will service the needs of Sydney;
 - (ii) Sydney Metro City & Southwest is complex and involves interaction with third parties, Interface Contractors and stakeholders to whom the Principal has contractual and policy commitments;
 - (iii) delay in achieving Significant Dates will result in the Principal being exposed to liability to third parties, Interface Contractors and stakeholders;
 - (iv) Losses suffered by the Principal as a consequence of delay are not capable of easy or precise calculation; and
 - (v) the amount of Delay Liquidated Damages is reasonable.
- (f) **(Daily cap on liability)** Where, on any day, the WL Contractor is liable for Delay Liquidated Damages in respect of more than one Significant Completion, the WL Contractor's liability to the Principal on that day will not exceed [REDACTED] per day.
- (g) **(Sole and exclusive monetary remedy)** The Principal and the WL Contractor agree that the aggregate of the amount payable under this clause 21.11 is:
- (i) limited as set out in clause 31.1(b); and
 - (ii) a limitation on the WL Contractor's liability to the Principal for:
 - (A) a failure to achieve a Significant Completion by the relevant Significant Date;



and the Principal will not be entitled to make, nor will the WL Contractor be liable upon, any Claim in these circumstances other than for the amount for which the WL Contractor is liable under this clause 21.11 (including where applicable common law damages under clause 21.11(d)). Nothing in this clause 21.11 in any way limits

the WL Contractor's liability where this deed is terminated by the Principal under clause 32.3 (*Rights of the Principal following Default Notice*) or clause 32.5 (*Immediate termination or take out*) or otherwise at Law.

22. **DIRECTIONS TO CHANGE SEQUENCING AND ACCELERATE**

22.1 **Directions to change sequence of work or Accelerate**

- (a) (**Direction**) The Principal's Representative may, by notice in writing expressly referring to this clause 22.1(a), direct the WL Contractor:
- (i) in what order and at what time stages or parts of the WL Contractor's Activities must be performed (**Resequencing**);
 - (ii) to complete the WL Contractor's Activities in advance of the dates for completion of those activities shown on the WL Contractor's Program, including to achieve a Significant Completion prior to a relevant Significant Date or to overcome or minimise the extent and effects of any delay (**Acceleration**);
 - (iii) to defer performance of any part of the WL Contractor's Activities until after Milestone Achievement or Substantial Completion and specify a reasonable time period within which such part of the WL Contractor's Activities must subsequently be performed (**Deferred Activities**); or
 - (iv) to promptly make a work space ready for an Interface Contractor to perform work even if Milestone Achievement or Substantial Completion for that work space has not been reached (**Making Accessible**).
- (b) (**Principal may request details of impact**) The Principal's Representative may request that, prior to implementing any direction given under clause 22.1(a), the WL Contractor provide details of the estimated:
- (i) Increased Costs (if any) or Savings (if any);
 - (ii) impact on the WL Contractor's Program; and
 - (iii) impact on any Significant Date (if any),
- arising from the direction and the WL Contractor must provide such details within 10 Business Days of the Principal's Representative's request.
- (c) (**May include an earlier date**) To the extent that clause 22.4(b) applies, a direction under clause 22.1(a) may specify revised Significant Dates as a consequence of the Resequencing, Acceleration, Deferred Activities or Making Accessible. Those revised Significant Dates may be earlier than the then current Significant Dates.
- (d) (**Notice of Modification**) Where the WL Contractor considers that a direction given under clause 22.1(a) constitutes a Modification, the WL Contractor must give the Principal's Representative notice under and in accordance with clause 37.3(a).
- (e) (**Principal may withdraw**) The Principal's Representative may, at any time, by notice in writing to the WL Contractor withdraw a direction given under clause 22.1(a) provided that, if the WL Contractor has taken steps to comply with

such direction, the withdrawal will be treated as a new direction given under clause 22.1(a) to which clause 22.1(d) also applies.

22.2 **Requirement to comply**

- (a) **(Deferred Activities or Making Accessible)** The WL Contractor must comply with a direction given under clause 22.1(a)(iii) and clause 22.1(a)(iv).
- (b) **(Acceleration or Resequencing)** The WL Contractor must comply with a direction given under clause 22.1(a)(i) and clause 22.1(a)(ii) except to the extent:
 - (i) it is not reasonably possible or safe for the WL Contractor to perform the proposed Acceleration or Resequencing; and
 - (ii) the WL Contractor, in a notice required under clause 37.3(a), gives a detailed explanation of the reasons why it is not reasonably possible or safe for the WL Contractor to perform the proposed Acceleration or Resequencing.

22.3 **Adjustment to Significant Dates**

- (a) **(Adjustment to Significant Dates)** If a direction has been given under clause 22.1(a), the Principal's Representative will adjust the affected Significant Dates to:
 - (i) if a Modification Order has been issued by the Principal's Representative, the earlier dates identified in the Modification Order; or
 - (ii) if clause 22.3(a)(i) does not apply, and:
 - (A) the WL Contractor has delivered a notice under clause 22.2(b)(ii), earlier dates determined by the Principal's Representative, having regard to what is reasonably achievable; or
 - (B) the WL Contractor has not delivered a notice under clause 22.2(b)(ii), the earlier dates identified in the direction given by the Principal's Representative under clause 22.1(a).
- (b) **(Rights to EOT)** Except to the extent set out in clause 22.4 (*WL Contractor entitlements*) and clause 21.7 (*Limiting factors*), this clause 22 does not impact the WL Contractor's entitlement under this deed to an extension of time.

22.4 **WL Contractor entitlements**

- (a) **(No Liability)** The Principal will have no Liability to the WL Contractor as a consequence of any Acceleration, Resequencing, Deferred Activities or Making Accessible except in the circumstances described in clause 22.4(b).
- (b) [REDACTED] A Direction under clause 22.1(a) [REDACTED]
[REDACTED]
[REDACTED] to the extent that:
 - (i) either:
 - (A) the Principal's Representative has delivered a Modification Order in relation to Acceleration, Resequencing, Deferred Activities or Making Accessible; or

- (B) the WL Contractor has given notice under and in accordance with clause 37 (*Notification of claims*) in relation to a Direction for Acceleration, Resequencing, Deferred Activities or Making Accessible;
- (ii) the need for Acceleration, Resequencing, Deferred Activities or Making Accessible is not related to, or a consequence of, any breach of the deed by the WL Contractor (for example, a failure to reach Milestone Achievement by the Date for Milestone Achievement); and
- (i) the direction for Acceleration, Resequencing, Deferred Activities or Making Accessible was not, in effect:
 - (A) a direction to the WL Contractor to perform the WL Contractor's Activities in accordance with this deed (other than this clause), or consistently with this deed;
 - (B) a direction to the WL Contractor to take corrective action to rectify any non-compliance with the requirements of this deed; or
 - (C) related to rectification of a Defect.

23. **MILESTONE ACHIEVEMENT, SUBSTANTIAL COMPLETION AND COMPLETION**

23.1 **Milestone Achievement, Substantial Completion and Completion**

- (a) (**Notice of Significant Date**) The WL Contractor must give the Principal's Representative written notice of the estimated date on which each Significant Completion will be achieved 6 months, 3 months, 1 month and 1 week prior to each such estimated date.
- (b) (**Joint inspection**) Subject to clause 23.1(g), within 5 Business Days after receipt of the notice referred to in clause 23.1(a) which is 3 months prior to each relevant Significant Date, the Principal's Representative, the WL Contractor's Representative and the Independent Certifier must jointly inspect the WL Contractor's Activities comprised in the relevant Milestone or Portion at a mutually convenient time.
- (c) (**Independent Certifier notice**) Within 2 Business Days after any joint inspection referred to in clause 23.1(b), the Independent Certifier must give the Principal and the WL Contractor a notice either:
 - (i) containing a list of items which it believes must be completed before a Significant Completion can be achieved; or
 - (ii) stating that it believes the WL Contractor is so far from achieving a Significant Completion that it is not practicable to issue a list as contemplated in clause 23.1(c)(i).
- (d) (**WL Contractor certificate**) When the WL Contractor considers it has achieved a Significant Completion, the WL Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the appropriate form in Schedule B6 (*WL Contractor's Certificate - Milestone Achievement*), Schedule B7 (*WL Contractor's Certificate - Substantial Completion*) or Schedule B8 (*WL Contractor's Certificate - Completion*).
- (e) (**Completion joint inspection**) The Principal's Representative, the WL Contractor's Representative and the Independent Certifier must, within 5 Business Days after receipt of the WL Contractor's written notice referred to in clause

23.1(d), jointly inspect the WL Contractor's Activities comprised in the relevant Portion at a mutually convenient time.

- (f) **(Independent Certifier decision)** Within 5 Business Days after the joint inspection under clause 23.1(e), the Independent Certifier must:
- (i) if a Significant Completion has been achieved, provide to the Principal's Representative and the WL Contractor, a certificate signed by the Independent Certifier in the appropriate form in Schedule B9 (*Notice of Milestone Achievement*), Schedule B10 (*Notice of Substantial Completion*) or Schedule B11 (*Notice of Completion*); or
 - (ii) if a Significant Completion has not been achieved, issue a notice to the Principal and the WL Contractor which states:
 - (A) the items which remain to be completed before the Significant Completion can be achieved; or
 - (B) that the WL Contractor is so far from achieving the Significant Completion that it is not practicable to notify the WL Contractor of the items which remain to be completed (in which case clause 23.1(d), clause 23.1(e) and clause 23.1(f) will re-apply).
- (g) **(Attendance at inspection)**
- (i) The Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 23.1, including representatives of any Interface Contractor.
 - (ii) The Principal's Representative and any Interface Contractor may provide comments to the Independent Certifier (with a copy to the WL Contractor) in relation to any non-compliance of the WL Contractor's Activities with this deed.
- (h) **(Effect of Notices of Significant Completion)** In the absence of manifest error on the face of the certification, the Independent Certifier's certification set out in a Notice of Significant Completion is final and binding on the parties only for the purpose of establishing that the relevant Significant Completion has occurred.

23.2 Subdivision requirements

The WL Contractor must, on or before the Date of Completion of the last Portion to reach Completion, procure the Subdivision of the Principal's Land in accordance with Schedule D12 (*Subdivision requirements*).

23.3 Access for Interface Contractors following Milestone Achievement

Without limiting clause 12.3 (*Cooperation and co-ordination with Interface Contractors*), the WL Contractor must give Interface Contractors access to the Project Works comprised in a Milestone from the Date of Milestone Achievement of that Milestone.

23.4 Final Completion

- (a) When the WL Contractor considers that Final Completion has been reached, it must give the Principal's Representative notice in writing and deliver a final payment claim which complies with the requirements of clause 28.3(i).

- (b) If the Principal's Representative considers that Final Completion has been reached, it will issue a Final Certificate with the payment schedule issued pursuant to clause 28.3(d).
- (c) The Final Certificate is without prejudice to any of the Principal's rights under this deed and is not evidence of accord and satisfaction of the WL Contractor's Activities or the Project Works.

24. **TESTING AND COMMISSIONING**

24.1 **General**

The WL Contractor must test and commission the WL Contractor's Activities, the Project Works and the Temporary Works in accordance with:

- (a) Appendix F7 of the SWTC;
- (b) the Testing and Commissioning Plan; and
- (c) the other requirements of this deed.

24.2 **Testing**

- (a) (**Direction**) At any time prior to the issue of the Final Certificate, the Principal's Representative may direct that any materials and work forming any part of the WL Contractor's Activities, Project Works or Temporary Works must be Tested. On receipt of such direction, the WL Contractor must promptly prepare and make available for Testing the material or work specified in such direction and give the Principal prompt notice that it is available.
- (b) (**Works may not be covered up**) Where this deed provides or where the Principal directs that a part of the materials or works may not be covered up or made inaccessible without the prior approval of the Principal, the WL Contractor must comply. If the WL Contractor breaches this clause, the cost incurred by the Principal in uncovering that part of the material or work shall be a debt due from the WL Contractor to the Principal.
- (c) (**Person conducting Test**) Tests will be conducted by the person nominated in this deed or pursuant to a direction given under clause 24.2(a) or, if no nomination is made, by the Principal's Representative or a third party nominated by the Principal. The Principal's Representative may direct the WL Contractor to perform the Tests.
- (d) (**Notice of Test**) Before conducting a Test, the party conducting the Test must give reasonable written notice to the other and (as applicable) the Independent Certifier of the time, date and place of the Test. If the notice has been given:
 - (i) by the Principal, the Test may nevertheless proceed even if the WL Contractor does not attend; or
 - (ii) by the WL Contractor, the Test may proceed only if the Principal:
 - (A) attends (by its authorised representatives); or
 - (B) has given its consent in writing that the Test should proceed in its absence.

- (e) [REDACTED] If a Test to be conducted by the WL Contractor is delayed by the Principal, then, provided the notice given by the WL Contractor under clause 24.2(d) was reasonable, [REDACTED]
- (f) (**Results of Tests**) Results of Tests must be made available promptly by the person who conducted the Test to the other party. If results of the Tests show that the material or work does not comply with this deed:
 - (i) the costs incurred by the Principal in conducting the Tests and any further Tests required subsequently to establish compliance with this deed shall be a debt due from the WL Contractor to the Principal; and
 - (ii) the Principal will have no Liability to the WL Contractor in relation to or arising out of the Test.
- (g) [REDACTED] If the Principal directs the WL Contractor to carry out Testing in addition to the Testing required by this deed and if the material or work Tested is found to comply with this deed, [REDACTED]

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Assignment and ownership

- (a) (**Ownership of Documentation**) All Documentation will be the Principal's property.
- (b) (**Assignment or transfer to the Principal**) By this deed, the WL Contractor assigns or transfers to the Principal all of its right, title and interest, including all IPRs in or to:
 - (i) the Documentation; and
 - (ii) the Materials, images, photographs and software (other than processes and methods of working),

(collectively called the **Contract Documentation and Materials**) created by or on behalf of the WL Contractor for or in connection with the WL Contractor's Activities or the Project Works (other than the Temporary Works), so that such right, title and interest throughout the world vests in the Principal immediately and automatically on creation.
- (c) (**Licence for the Principal**) The WL Contractor grants, and will procure from any applicable third party the grant of, an irrevocable, perpetual, non-exclusive, royalty free, fully assignable licence (including the right to sub-license) to use all IPRs:
 - (i) to the extent not assigned under clause 25.1(b), the Contract Documentation and Materials;
 - (ii) to the Temporary Works, the Construction Material and Construction Plant and the processes and methods of working relevant to the WL Contractor's Activities (collectively called the **Contract Processes**);
 - (iii) for 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 WL Contractor's Activities or the Project Works and the Temporary Works;

- (iv) for any purpose associated with further development of the Construction Site; and
- (v) for 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.

- (d) **(Principal's rights)** For the purposes of clause 25.1(c), the Principal's use of the Contract Documentation and Materials and the Contract Processes includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation and Materials or the Contract Processes or part of the Project Works or Temporary Works to which the Contract Documentation and Materials or the Contract Processes or any other work provided by the WL 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) **(WL Contractor obligations)** Without limiting clause 40.5 (*Further acts and documents*), the WL Contractor agrees to, and will procure any applicable third party to, do such things as reasonably requested by the Principal to assist the Principal and its licensees, assignees and successors and their licensees, and any other person authorised by it (each an **Authorised User**) to obtain, perfect, enforce or defend its (or their) interest in the IPRs assigned or licensed (as applicable) to the Principal under this deed.
- (f) **(Principal's licence to WL Contractor)** The Principal grants to the WL Contractor a royalty free licence (including the right to sublicense) to use:
 - (i) the Principal's IPRs in the Principal's Design Stage 1 Documents and the Concept SSD Design Documentation (as defined in the MQD PDA); and
 - (ii) the IPRs assigned to the Principal under clause 25.1(b),solely to the extent necessary to enable the WL Contractor and its Associates to perform the WL Contractor's Activities and the MQD.
- (g) **(No infringement of third party rights)** The WL Contractor represents and warrants that:
 - (i) neither the grant of the rights granted to the Principal under this deed, nor their use by the Principal or any Authorised User infringes or will infringe the rights, including the IPRs or Moral Rights, of or duties owed to any third party; and
 - (ii) the IPRs assigned or licensed to the Principal under this deed are complete and they are the only IPRs necessary or desirable to enable the Project Requirements to be satisfied and to enable the Principal, and any Authorised User, to fully enjoy and exercise all rights granted to it under this deed.

- (h) **(Impairment of rights)** Without limiting clause 25.1(g), where an IPR Claim is made against the Principal or an Authorised User, the WL Contractor must at its own expense and at the Principal's option:
 - (i) procure for the benefit of the Principal and its Authorised Users the right to continue to use and exercise the rights granted to the Principal under this deed in accordance with this deed; or
 - (ii) modify or replace any relevant Contract Documentation and Materials so that the IPR Claim can no longer be made.

25.2 Delivery up of Contract Documentation and Materials

If this deed is terminated for any reason:

- (a) the WL Contractor must:
 - (i) immediately deliver the original and all copies of all Contract Documentation and Materials (whether complete or not) to the Principal; and
 - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation and Materials; and
- (b) the WL Contractor may retain a copy of the Contract Documentation and Materials.

26. POST-COMPLETION ARRANGEMENTS

26.1 Access following expiry or termination of the Construction Licence

To the extent the WL Contractor requires access to any part of the Construction Site after the Construction Licence in respect of that part of the Construction Site has terminated pursuant to clause 9.4(b) (including in order to rectify Defects) any such access is subject to the WL Contractor:

- (a) complying with:
 - (i) the requirements of the applicable Project Cooperation and Integration Deeds; or
 - (ii) where the WL Contractor has not entered into a Project Cooperation and Integration Deed with the relevant Interface Contractor, the reasonable site access and work, health and safety procedures of that Interface Contractor.
- (b) executing and complying with a deed poll substantially in the form of Schedule A18 (*Site Interface Deed Poll*) in favour of the relevant principal contractor for the site.

26.2 Post Completion Activities

- (a) **(Notice of activities)** The Principal's Representative may give written notice to the WL Contractor at least 5 Business Days before the WL Contractor's estimated Date of Completion of the last Portion to reach Completion (which has been notified in accordance with clause 23.1(a)) that Post Completion Activities must be carried out after Completion of that Portion.
- (b) **(WL Contractor carries out activities)** If the Principal's Representative gives the WL Contractor a notice under clause 26.2(a):

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- (i) the WL Contractor must continue to carry out the Post Completion Activities until the date specified in a notice given by the Principal pursuant to clause 26.2(c); and
 - (ii) the WL Contractor is entitled to be paid for the Post Completion Activities carried out by the WL Contractor in accordance with the rates set out in section 2 of Schedule E4 (*Valuation mechanism*).
- (c) **(Cease performance)** At any time after issuing a notice under clause 26.2(a), the Principal's Representative may give further written notice to the WL Contractor that the WL Contractor is to cease performance of the Post Completion Activities on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the WL Contractor receives the notice under this clause 26.2(c).

27. **DEFECTS RECTIFICATION**

27.1 **Defects Correction Periods**

There is a separate Defects Correction Period for the WL Works and each discrete part of the Third Party Works which:

- (a) **(commencement)** commences:
 - (ia) in the case of the physical works forming part of the Lifts and Escalators Works, in accordance with the L&E DSI Contract;
 - (i) in the case of the WL Works, excluding the works referred to in clause 27.1(a)(ia), forming part of:
 - (A) the Trackway Portion, on the Date of Substantial Completion; and
 - (B) each other Portion, on the Date of Completion of that Portion; and
 - (ii) in the case of each discrete part of the Third Party Works, when the relevant part of the Third Party Works is complete, as determined under clause 5.3(d), clause 5.4(f) or clause 5.5(c) (as applicable); and
- (b) **(expiry)** expires on:
 - (ia) in the case of the physical works forming part of the Lifts and Escalators Works, in accordance with the L&E DSI Contract;
 - (i) in the case of the WL Works, excluding the works referred to in clause 27.1(b)(ia), on the later to occur of:
 - (A) [REDACTED]; and
 - (B) in respect of rectification work, [REDACTED] after the date of completion of the rectification work for each Defect notified under clause 27.4(a);
 - [REDACTED]
 - (ii) in the case of each discrete part of the Third Party Works, the later to occur of:

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- (A) [REDACTED] after the relevant part of the Third Party Works is complete, as determined under clause 5.3(d), clause 5.4(f) or clause 5.5(c) (as applicable); and
- (B) in respect of rectification work, [REDACTED] after the date of completion of the rectification work for each Defect notified under clause 27.4(a),

[REDACTED]

27.2 Defects

If during the Defects Correction Period, any Defect is found in the Project Works (whether or not it is the subject of a notice under clause 27.4(a)), the WL Contractor must promptly repair, replace or otherwise make good such Defect and any damage to the Project Works to the extent caused by the Defect:

- (a) at such times as the Principal's Representative reasonably requires;
- (b) so as to minimise the impact on the use of the relevant part of the Project Works;
- (c) in a manner which causes as little inconvenience as possible to:
 - (i) the activities of any Interface Contractor; or
 - (ii) users of the Project Works, Local Areas, Utility Services (or any access to them) and the adjacent community;
- (d) subject to clause 27.6 (*Access to remedy Defects*), at the WL Contractor's risk in respect of any restrictions on access;
- (e) if an Interface Contractor has taken possession of the relevant part of the Construction Site, in accordance with the reasonable requirements of the relevant Interface Contractor in relation to access and site safety;
- (f) in accordance with its obligations under the Project Cooperation and Integration Deeds; and
- (g) 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.

27.3 Minor Defects and Agreed Defects

The WL Contractor must:

- (a) (**best endeavours to correct within 30 days**) following each Significant Completion, use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Significant Completion within 30 days after the achievement of each relevant Significant Completion; and
- (b) (**within 90 days**) ensure that all Minor Defects and Agreed Defects identified in:

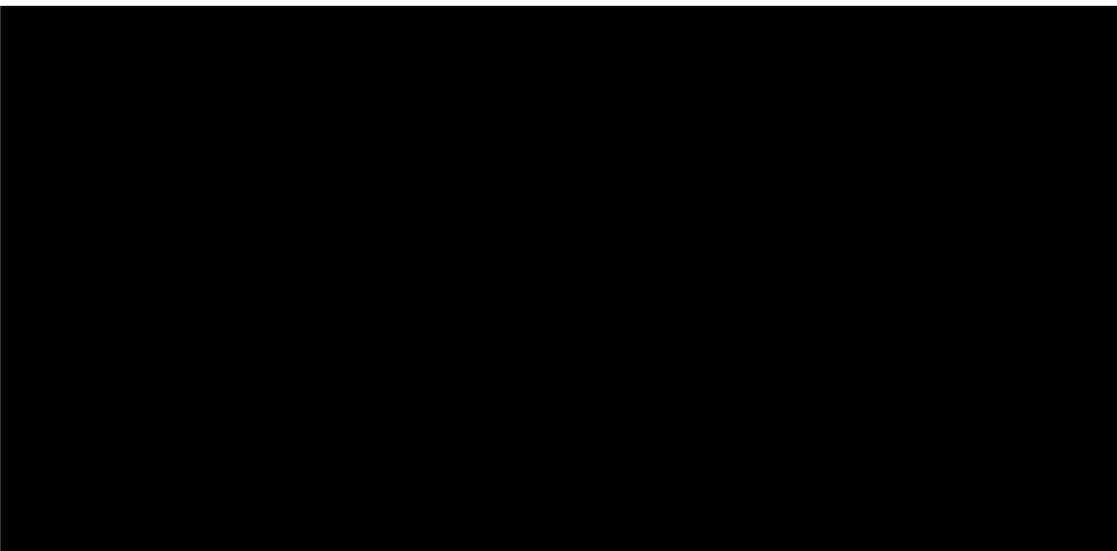
- (i) a Notice of Substantial Completion for the Trackway Portion are corrected within 90 days after the Date of Substantial Completion of the Trackway Portion; or
- (ii) a Notice of Completion for any Non-Trackway Portion are corrected within 90 days after the Date of Completion of the relevant Portion.

27.4 **Notice of Defect**

- (a) **(Notice)** At any time prior to the expiry of the Defects Correction Period, the Principal's Representative may give the WL Contractor notice identifying a Defect and requiring the WL Contractor to rectify the Defect (or part of it) and specifying the time within which this must occur.
- (b) **(Disagreement regarding existence of Defect)** If the WL Contractor does not agree that the fault identified in a notice under clause 27.4(a) is a Defect, then the WL Contractor must, before commencing rectification work, deliver a notice to the Principal's Representative which complies with clause 37.3(a).
- (c) **(Rectification)** The WL Contractor must promptly, at its cost, rectify the Defect, and the damage caused by the Defect.

27.5 **Acceptance of a Defect**

- (a) **(Principal's Notice)** Subject to clause 27.5(c), at any time prior to the rectification of a Defect, the Principal may [REDACTED] by notice in writing from the Principal's Representative to the WL Contractor, accept a Defect if:
 - (i) the Principal's Representative has given notice under clause 27.4(a) and the WL Contractor has failed to rectify the Defect within the time specified in such notice; or
 - (ii) the Defect is of such a nature that the time required to rectify the Defect would materially delay or disrupt the further construction, testing, commissioning or operation of Sydney Metro City & Southwest.

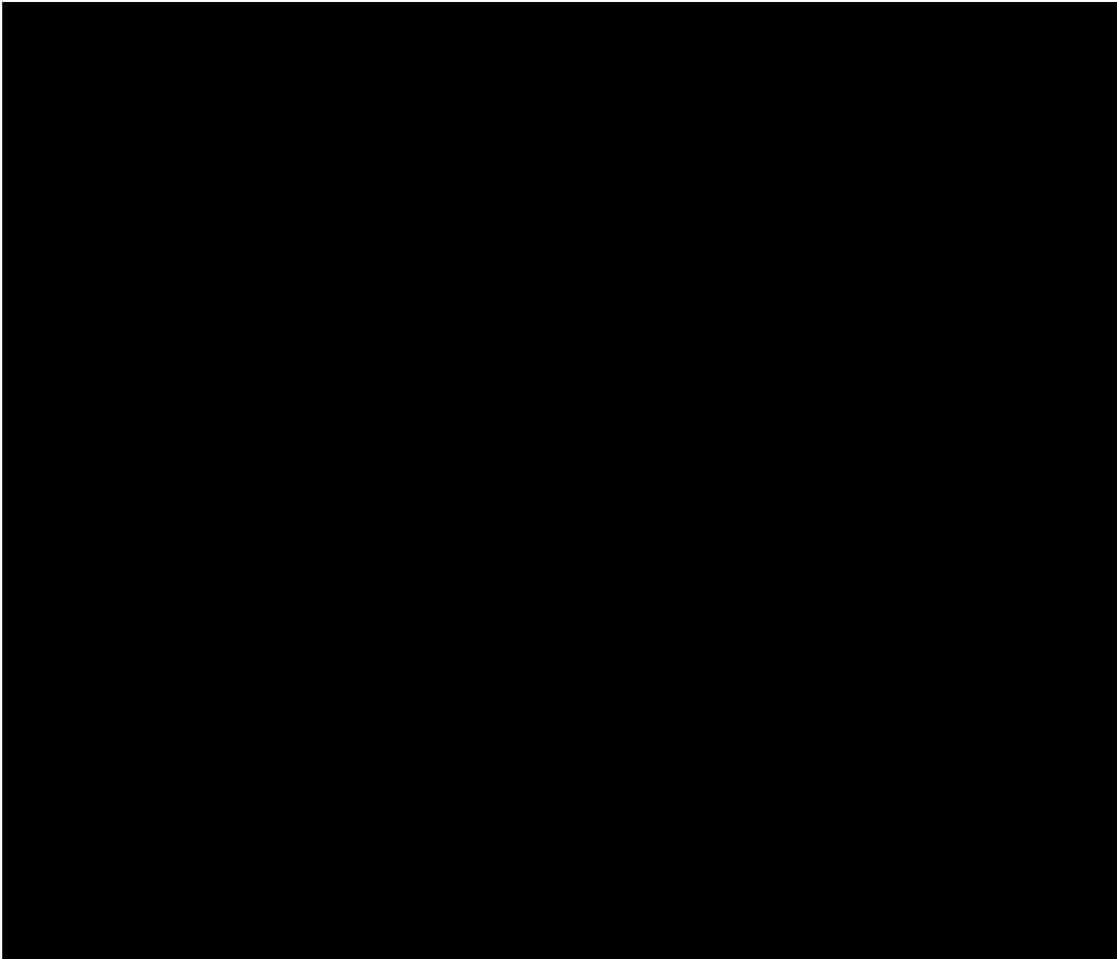


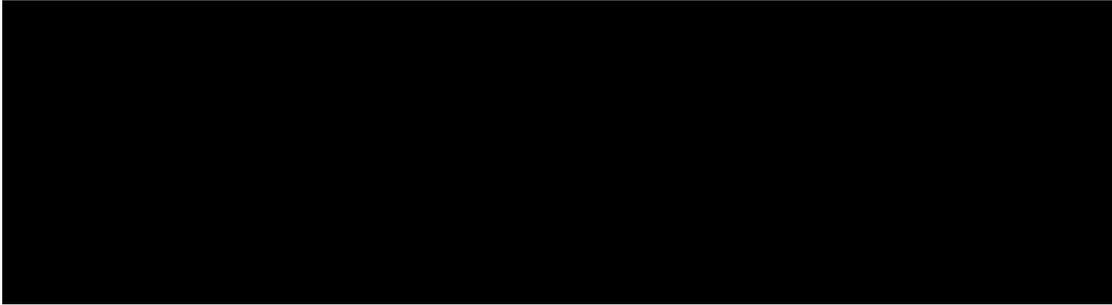
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(b) **(Loss is a debt due)**

- (i) If a notice is delivered under clause 27.5(a)(i), the Loss reasonably suffered and likely to be suffered by the Principal as a consequence of the Defect, assessed by the Principal's Representative, will be a debt due and payable from the WL Contractor to the Principal including:
 - (A) the additional maintenance and operating costs which will be incurred by the Principal as a result of the Defect;
 - (B) costs which the Principal reasonably incurs to overcome the impact of the Defect;
 - (C) if relevant and not double counting, the cost to rectify the Defect at some time in the future (including by an Interface Contractor); and
 - (D) a reasonable amount for reduction in design life.





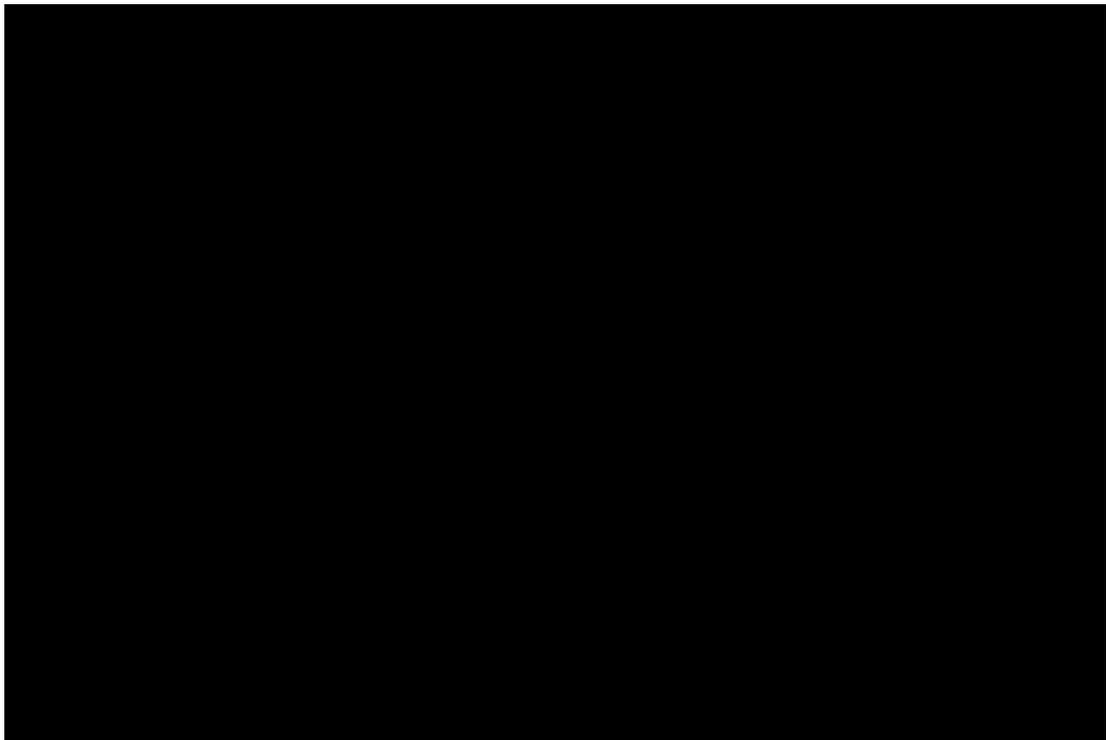
27.6 **Access to remedy Defects**

After the Construction Licence in respect of a part of the Construction Site has expired or terminated pursuant to clause 9.4(b), the Principal will procure such access to the relevant part of the Construction Site (other than any part of the Construction Site which is no longer owned by the Principal) as is reasonably necessary for the WL Contractor to correct any Defect having regard to clause 27.2 (*Defects*) and subject to the WL Contractor complying with the requirements of clause 26.1 (*Access following expiry or termination of the Construction Licence*).

27.7 **Failure to rectify Defect**

- (a) **(WL Contractor failure)** If the WL Contractor fails to rectify a Defect within the time specified in a notice given under clause 27.4(a), the Principal's Representative may have the Defect and the damage caused by it rectified by itself or others (which may include an Interface Contractor).
- (b) **(Principal's costs)** The costs of rectification which are suffered or incurred by the Principal as a consequence of exercising its rights under clause 27.7(a) or 27.8(a) will be a debt due and payable from the WL Contractor to the Principal.

27.8 **Interface Contractors**



27.9 **Rights not affected**

The rights of the Principal under this clause 27 are not exhaustive and are in addition to any other rights the Principal may have at Law.

28. **PAYMENT**

28.1 **Contract Sum**

The Principal must pay the Contract Sum and any other amount payable by the Principal to the WL Contractor under this deed in accordance with this clause 28, the Contract Sum Schedule, the Performance Incentive Payment Schedule [REDACTED]

28.2 **Contract Sum Adjustment Events**

- (a) The Principal's Representative will value Contract Sum Adjustment Events in accordance with [REDACTED] and, in the case of a Contract Sum Adjustment Event in respect of [REDACTED]
- (b) A valuation under clause 28.2(a) by the Principal's Representative for a Contract Sum Adjustment Event will be added to or deducted from the Contract Sum as the case may be.

28.3 **Payment claims**

- (a) **(WL Contractor progress claims)** The WL Contractor may give the Principal's Representative a progress claim with respect to the Contract Sum and other amounts payable by the Principal to the WL Contractor under this deed:
 - (i) on the 25th day of each month;
 - (ii) 30 Business Days after the issue of the Notice of Completion for the last Portion to achieve Completion; and
 - (iii) together with a notice of Final Completion under clause 23.4(a).
- (b) **(Format of progress claims)** For each progress claim made under clause 28.3(a), the WL Contractor must:
 - (i) give the Principal's Representative a claim in a format required by the Principal's Representative (including electronic format) showing the amount claimed by the WL Contractor and identifying the works, services Construction Materials and Construction Plant to which the progress claim relates; and
 - (ii) in the case of the progress claims issued after the issue of the Notice of Completion for the last Portion to achieve Completion and with a notice of Final Completion under clause 23.4(a), comply with clause 28.3(i).
- (c) **(Supporting information)** Each progress claim made under clause 28.3(a) must set out or be accompanied by:
 - (i) all details, calculations, supporting documentation and other information required to substantiate the amounts claimed; and

- (ii) such other documentation or information as the Principal's Representative may require from time to time.
- (d) **(Principal's payment schedule)**
- (i) The Principal's Representative must, within 10 Business Days after receipt of the WL Contractor's claim under clause 28.3(a), issue to the WL 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 WL Contractor under this deed or the amount which the Principal's Representative believes to be then payable by the WL Contractor to the Principal, including details of the calculation of the progress amount. In issuing a payment schedule the Principal's Representative:
 - (A) may deduct from the amount which would otherwise be payable to the WL Contractor any amount which the Principal is entitled to retain, deduct, withhold, apply in satisfaction or set-off under this deed, including under clause 28.5 (*Provision of documentation and other requirements*), clause 28.6 (*Payment of Subcontractors, workers compensation and payroll tax*), clause 28.7 (*Payment for unfixed Construction Materials*), clause 28.9 (*Right of set-off*) and clause 28.12 (*Initial Payment*); and
 - (B) must, if the payment schedule shows an amount less than the amount claimed by the WL 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, applied in satisfaction or set-off payment for any reason, the reason for the retention, deduction, withholding, application or setting-off of payment.
 - (ii) If the WL Contractor does not give the Principal's Representative a progress claim at a time required by clause 28.3(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.
 - (iii) A payment schedule issued under clause 28.3(d)(i) or clause 28.3(d)(ii) will separately identify the sum of the amounts due on account of the Contract Sum, and any other amounts payable under the deed by the Principal to the WL Contractor.
 - (iv) If the amount set out in a payment schedule issued under clause 28.3(d)(i) is different to the amount in the WL Contractor's progress claim or if the Principal's Representative issues a payment schedule under clause 28.3(d)(ii), the Principal will issue a recipient created tax invoice or adjustment note (as the case may be) to the WL Contractor to reflect the amount in the payment schedule.
- (e) **(Principal's payment)** Within the earlier of 15 Business Days after the date of the WL Contractor's progress claim in accordance with clause 28.3(a) or within 5 Business Days after the issue of a payment schedule in accordance with clause 28.3(d)(i) or clause 28.3(d)(ii):
- (i) where the payment schedule provides that an amount is payable by the Principal to the WL Contractor, the Principal must pay the WL Contractor the

progress payment due to the WL Contractor as certified in the payment schedule; and

- (ii) where the payment schedule provides that an amount is payable by the WL Contractor to the Principal, the WL Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (f) **(Early progress claim)** If the WL Contractor lodges a progress claim earlier than at the times specified under clause 28.3(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 WL Contractor submitted the progress claim in accordance with this deed.
- (g) **(Amounts)** Despite any other provisions of this deed to the contrary, the amount of any progress claim to which the WL 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 28.3(d)(i) or clause 28.3(d)(ii) as the amount payable to the WL Contractor arising out of or in any way in connection with this deed will:
- (i) not include the following amounts:
 - (A) any Milestone Performance Payment unless the relevant part of the WL Contractor's Activities to which the Milestone Performance Payment relates has been completed to the satisfaction of the Principal's Representative (acting reasonably);
 - (B) any amount which this deed provides cannot be claimed or is not payable because of the failure by the WL Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);
 - (C) any amount which represents damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
 - (D) 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 those conditions set out in clause 28.5(a));
 - (E) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
 - (F) any amount in respect of which the WL Contractor has failed to provide supporting information as required by this deed;
 - (G) subject to the terms of this deed, any amount for work which has not yet been performed or for goods or services which have not yet been supplied; or
 - (H) 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 WL Contractor to the Principal under this deed; and

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- (B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold, apply or set-off;
- (iii) in determining amounts to be excluded or deducted under clause 28.3(g)(i) and clause 28.3(g)(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 Contract Sum.
- (h) **(No prejudice to the Principal)** 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, or apply in satisfaction of, the amount which would otherwise be payable to the WL Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold, apply or set-off any amount under this deed.
- (i) **(Post Completion and final payment claims)** The WL Contractor must include in each of the payment claims lodged by it in accordance with clause 28.3(a)(ii) and clause 28.3(a)(iii) all Claims for amounts which the WL Contractor considers it is entitled to be paid in any way arising out of, or in any way in connection with, this deed, the WL Contractor's Activities, the Project Works or the Temporary Works.
- (j) **(Release)** Except to the extent that it is claimed in the relevant payment claim, the WL Contractor releases the Principal from any Liability in respect of any fact, matter or thing arising out of, or connected in any way with, this deed, the WL Contractor's Activities, the Project Works or the Temporary Works that:
 - (i) in the case of the payment claim issued in accordance with clause 28.3(a)(ii), occurred prior to Completion of the last Portion to reach Completion; and
 - (ii) in the case of the payment claim issued with the Notice of Final Completion under clause 28.3(a)(iii) occurred at all.

28.4 Effect of payment schedules and payments

- (a) **(On account)** Any payments made by the Principal pursuant to a payment schedule and payment of the Initial Payment 1 and/or Initial Payment 2 under clause 28.12 (*Initial Payment*) are payments on account only.
- (b) **(No approval)** Neither the issue of a payment schedule under clause 28.3(d)(i) or clause 28.3(d)(ii), nor the making of any payment pursuant to any such payment schedule, will:
 - (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
 - (ii) constitute evidence of the value of any work or an admission of Liability or evidence that work has been executed or completed in accordance with this deed; or
 - (iii) prejudice the right of either party to dispute under the Dispute Procedure whether any amount certified as payable in a payment schedule is the amount properly due and payable under this deed.
- (c) **(Correction of error)** The Principal's Representative may at any time correct any error in a payment schedule.

28.5 **Provision of documentation and other requirements**

- (a) The value of the construction work carried out by the WL Contractor, and the amount of the progress payment to which the WL Contractor is entitled, will be:
- (i) **(No more than [REDACTED])** no more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the WL Contractor has:
 - (A) effected and is maintaining all Insurances that the WL Contractor is required to effect and maintain under clause 30.6 (*WL Contractor's Insurance obligations*);
 - (B) complied with clause 3.1 (*Unconditional undertakings*) and clause 3.4 (*Parent Company Guarantee*);
 - (C) where clause 28.8(o) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by the WL Contractor pursuant to that clause;
 - (D) provided the Principal's Representative with a statutory declaration in the form of Schedule B15 (*Statutory declaration*) which has been duly executed:
 - (aa) by a representative of the WL Contractor who is in a position to know the facts declared; and
 - (bb) on the date the relevant payment claim was issued;
 - (E) in relation to any unfixed plant and materials which the WL Contractor proposes to claim in a payment claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 28.7 (*Payment for unfixed Construction Materials*); and
 - (F) done everything else that it is required to do under this deed before being entitled to make a payment claim or receive payment; and
 - (ii) **(No more than [REDACTED])** no more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the WL Contractor has complied with its obligations under clause 21.5 (*WL Contractor's Program*) and provided all information required by section 4.2.3 of Appendix F2 of the SWTC.
- (b) **(Payment of withheld amount)** Any amount withheld by the Principal under clause 28.5(a) must be paid within 10 Business Days after the WL Contractor has complied with the relevant obligation.

28.6 **Payment of Subcontractors, workers compensation and payroll tax**

- (a) **(Court order)** 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 Construction Materials) supplied for, or work performed with respect to, the WL Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the

order to the worker or Subcontractor, and the amount paid will be a debt due and payable from the WL Contractor to the Principal.

- (b) **(Notices)** If the Principal receives notices of:
- (i) the WL Contractor being placed under administration; or
 - (ii) the making of a winding up order in respect of the WL 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) **(Non-payment of amount)** If any moneys are shown as unpaid in the WL Contractor's statutory declaration under clause 28.5(a)(i)(D), the Principal may withhold the moneys so shown until the WL Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (d) Not used.
- (e) **(Pay amounts to Subcontractors)** If a Subcontractor has become entitled to suspend work under a Subcontract in accordance with the SOP Act because of a failure by the WL Contractor or any Subcontractor to pay moneys due and payable to that Subcontractor, the Principal may pay to the Subcontractor the amount owing to the Subcontractor in connection with that work, and the amount paid by the Principal will be a debt due and payable by the WL Contractor to the Principal. Where practicable, the Principal will provide prior written notice to the WL Contractor prior to paying the relevant Subcontractor.
- (f) **(Payment of other amount to Subcontractors)** Notwithstanding clause 28.6(e), if any amount is:
- (i) certified as payable; or
 - (ii) otherwise due and payable (and not disputed amounts),
- to a Subcontractor under a Subcontract, and the WL Contractor or the relevant Subcontractor does not pay such amount to that Subcontractor in accordance with that Subcontract, then the Principal may pay such amount to that Subcontractor provided it has given the WL Contractor 10 Business Days' notice of its intention to do so, and the amount paid by the Principal to that Subcontractor will be a debt due and payable by the WL Contractor to the Principal.
- (g) **(Preservation of rights)** Nothing in this clause 28.6 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).

28.7 **Payment for unfixed Construction Materials**

- (a) **(Not included in payment schedule)** The value of unfixed Construction Materials intended for incorporation in the Project Works but not yet incorporated must not be included in a progress claim under clause 28.3(a) and the Principal is under no obligation to pay for such Construction Materials unless:
- (i) the WL Contractor:

- (A) has provided to the Principal at the same time as its progress claim under clause 28.3(a) an unconditional undertaking that complies with the requirements of clause 3.1(c) for an amount equal to the payment claimed for the Construction Materials; and
 - (B) gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed Construction Materials will vest in the Principal upon payment;
 - (ii) the Construction Materials are clearly marked as the property of the Principal;
 - (iii) the Construction Materials are properly stored in a place approved by the Principal's Representative (not to be unreasonably withheld); and
 - (iv) there is evidence (in a form satisfactory to the Principal) that the WL Contractor has registered a Security Interest in favour of the Principal in the unfixed Construction Materials.
- (b) **(Title vests on payment)** Upon payment against a payment schedule which includes an amount in respect of unfixed Construction Materials, title in the unfixed Construction Materials will vest in the Principal.
- (c) **(Release of unconditional undertaking)** If the WL Contractor provides an unconditional undertaking for payment for unfixed Construction Materials, the Principal must release the unconditional undertaking to the WL Contractor within 5 Business Days after those Construction Materials:
- (i) are incorporated into the Project Works; and
 - (ii) comply with the requirements of this deed.

28.8 **SOP Act**

- (a) **(Definitions)** Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) **(Communication)** The WL 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) **(Principal's agent)** In responding to the WL Contractor under the SOP Act, the Principal's Representative acts as the agent of the Principal and 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).
- (d) **(Payment schedule)** 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 WL 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) **(Amount of progress payment)** For the purposes of this deed, the amount of the progress payment to which the WL Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 28.3 (*Payment claims*) less any amount the Principal may elect to retain, deduct, withhold, apply or set off in accordance with this deed.
- (f) **(No Liability to pay progress claim)** The WL Contractor agrees that:
 - (i) the dates prescribed by clause 28.3(a) as the dates on which the WL Contractor is entitled to make a progress claim is, for the purposes of the SOP Act (including section 8(1B) of the SOP Act), the date for the serving of a payment claim; 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 28.3(d)(i) or clause 28.3(d)(ii).
- (g) **(No breach of this deed)** 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 28.8(g)(i), give to the WL Contractor rights under this deed which extend or are in addition to rights given to the WL Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (h) **(No right to claim for suspension)** If the WL Contractor suspends the whole or part of the WL Contractor's Activities pursuant to the SOP Act then, except to the extent (if any) expressly provided under the SOP Act, the Principal will not be liable for and the Principal has no Liability to the WL Contractor for any Loss suffered or incurred by the WL Contractor as a result of the suspension.
- (i) **(WL Contractor indemnity)** The WL Contractor indemnifies and must keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of a suspension by a Subcontractor of work which forms part of the WL Contractor's Activities pursuant to the SOP Act unless and except to the extent that the suspension is due to non-payment by the Principal of an amount that is due and payable under this deed.
- (j) **(Authorised nominating authority)** The WL 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 WL Contractor's Activities is to be made; and
 - (ii) the WL 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).

- (k) **(Adjudication)** If an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the WL Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 28.3(d)(i) or clause 28.3(d)(ii);
 - (ii) if it is subsequently determined pursuant to this deed that the WL 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 WL Contractor to the Principal which the WL Contractor must pay to the Principal upon demand and in respect of which the WL 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 WL Contractor to the Principal upon demand and in respect of which the WL Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (iv) not used.
- (l) **(Withholding)** Without limiting clause 28.9 (*Right of set-off*), 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. If the Principal withholds from money otherwise due to the WL 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 WL Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the WL 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 WL Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the WL Contractor must be made.
- (m) **(No proceedings)** The WL 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.
- (n) **(Debt due)** Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the WL Contractor to the Principal.
- (o) **(WL Contractor payment)** 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 WL 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 WL Contractor must so notify the Principal within 5 Business Days after the occurrence of the event in clause 28.8(l)(i) or clause 28.8(l)(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).

28.9 Right of set-off

- (a) (**Amounts set-off**) The Principal may withhold, set-off or deduct from the money which would otherwise be payable to the WL Contractor or which would otherwise be due to the WL Contractor under this deed:

- (i) any debt or other moneys due from the WL Contractor to the Principal;
- (ii) any bona fide claim to money which the Principal may have against the WL Contractor, whether for damages (including liquidated damages) or otherwise; or
- (iii) any other amount the Principal is entitled to withhold, set-off or deduct under this deed,

under or arising out of or in connection with this deed or the WL Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

- (b) (**Survival**) This clause 28.9 will survive the termination of this deed.

28.10 Provisional sums

- (a) (**Performance of Provisional Sum Work**) Subject to clause 28.10(g), the WL Contractor may not proceed with any item of Provisional Sum Work unless the WL Contractor has provided the Principal's Representative with a fixed lump sum price proposal for the relevant item of Provisional Sum Work (**Lump Sum Price Proposal**).

- (b) (**Lump Sum Price Proposal**) Each Lump Sum Price Proposal submitted by the WL Contractor under clause 28.10(a) must be prepared:

- (i) on an Open Book Basis (as defined in Schedule A8 (*Modification Procedure*)); and
- (ii) in accordance with the requirements of clause 28.10(e) and clause 28.10(f).

- (c) (**Valuation by the Principal's Representative**) Within 20 Business Days of receiving the WL Contractor's Lump Sum Price Proposal (or within such longer period agreed by the parties) the Principal's Representative will adjust the Contract Sum by the difference between:

- (i) the amount allowed for the relevant item of Provisional Sum Work in the Contract Sum Schedule; and
- (ii) either:

- (A) a fixed amount agreed between the Principal's Representative and the WL Contractor (which may or may not be the amount specified in the Lump Sum Price Proposal); or
- (B) if the parties fail to agree upon such amount within 20 Business Days from the date on which the WL Contractor submitted its Lump Sum Price Proposal (or within such longer period agreed by the parties), a fixed amount determined by the Principal's Representative in accordance with Schedule E4 (*Valuation mechanism*),

as the amount that will be payable in respect of the relevant item of Provisional Sum Work.

- (d) (**Referral to dispute resolution**) If the WL Contractor disagrees with any determination of the Principal's Representative under clause 28.10(c)(ii)(B), the WL Contractor may refer the matter for resolution in accordance with the Dispute Procedure.
- (e) (**Minimise cost**) The WL Contractor must minimise the cost of undertaking Provisional Sum Work.
- (f) (**No Liability**) The Principal will have no Liability to the WL Contractor for the following work even if it is related to Provisional Sum Work:
 - (i) any amounts incurred by the WL Contractor in relation to the Provisional Sum Work in addition to the amounts payable pursuant to a subcontract for Provisional Sum Work (including for supervision, management and attendance, and provision of Construction Plant which is used by or accessed by the subcontractor performing Provisional Sum Work);
 - (ii) any amount payable by the WL Contractor to the subcontractor performing Provisional Sum Work as a consequence of a breach of the subcontract for Provisional Sum Work:
 - (A) by the WL Contractor; or
 - (B) resulting from an act or omission of the WL Contractor;
 - (iii) design costs incurred incorporating Provisional Sum Work into the design;
 - (iv) costs incurred by the WL Contractor and other subcontractors interfacing with the subcontractor performing Provisional Sum Work;
 - (v) the extra costs incurred by a subcontractor performing Provisional Sum Work as a result of:
 - (A) a delay for which an extension of time was granted under the Nominated Subcontract; or
 - (B) a direction by the WL Contractor to compress the performance of the relevant subcontractor's activities as the result of a cause of delay for which the relevant Subcontractor would otherwise have been entitled to an extension of time,

except to the extent that such costs arise as the result of a delay for which the WL Contractor is granted an extension of time under this deed;

- (vi) the acceleration costs incurred by the subcontractor performing Provisional Sum Work in order to perform any work earlier than required under the subcontract for Provisional Sum Work, except to the extent that such acceleration is required as the result of a Modification in relation to which the Principal has a Liability to the WL Contractor under this deed;
 - (vii) any increase in the contract sum of a subcontract for the performance of Provisional Sum Work as the result of a change, modification or variation directed by the WL Contractor under that subcontract, except to the extent that such change was required as the result of a Modification for which the Principal has a Liability to the WL Contractor under this deed; and
 - (viii) those things which Schedule E8 (Provisional Sum Work) provides the Principal shall have no Liability for.
- (g) **(Call-off Services)** In the case of any item of Provisional Sum Work that is also a Call-off Service, the WL Contractor:
- (i) must carry out such services when directed by the Principal's Representative under this deed;
 - (ii) will, subject to clause 28.10(g)(iii) and clause 28.10(h), be paid for the performance of such services in accordance with the relevant rates set out in section 2 of Schedule E4 (*Valuation mechanism*); and
 - (iii) will be entitled to claim payment under clause 28.3 (*Payment claims*) in respect of such services only once the aggregate amount payable in respect of the relevant category of Call-off Service has exceeded the provisional sum allowed for that Call-off Service in Schedule E8 (*Provisional Sum Work*).
- (h) [REDACTED] Where the aggregate amount payable by the Principal under this deed in respect of any Call-off Service:
- (i) has exceeded in total the provisional sum allowed for that Call-off Service in the Contract Sum Schedule, [REDACTED]; or
 - (ii) is in total less than the relevant provisional sum allowed in the Contract Sum Schedule, the difference will be deducted from the Contract Sum and will be a debt due and payable from the WL Contractor to the Principal.

28.11 Performance Incentive Payments

The WL Contractor will be entitled to claim Performance Incentive Payments in accordance with the Performance Incentive Payment Schedule.

28.12 Initial Payment

(a) **(Principal's obligation to pay Initial Payment)**

- (i) The Principal will pay to the WL Contractor Initial Payment 1 on the latest of:
 - (A) 15 Business Days of the date of this deed;
 - (B) receipt by the Principal of the Initial Payment Security 1;

- (C) receipt by the Principal of the unconditional undertaking in accordance with clause 3.1(a)(i);
 - (D) receipt by the Principal of the Parent Company Guarantee in accordance with clause 3.4 (*Parent Company Guarantee*); and
 - (E) not used.
- (ia) The Principal will pay to the WL Contractor Initial Payment 2 on the latest of:
- (A) 15 Business Days of the date of this deed; and
 - (B) receipt by the Principal of the Initial Payment Security 2; and
 - (C) receipt by the Principal of a copy of each Significant Subcontract entered into between the WL Contractor and a Lead Designer in accordance with clause 17.2(d).
- (ii) The WL Contractor must submit to the Principal a payment claim in accordance with clause 28.3 (*Payment claims*) for the Initial Payment 1 and Initial Payment 2 on the date of this deed.

(ab) **(Acknowledgement)**

The parties acknowledge and agree that:

- (i) Initial Payment 1 and Initial Payment 2:
- (A) are advance payments that are intended to assist the WL Contractor with its cash-flow during the early stages of the WL Contractor's Activities;
 - (B) are made on an on-account basis;
 - (C) may be applied by the Principal in satisfaction of the Contract Sum and any other amount owed by the Principal to the WL Contractor under this deed; and
- (ii) the payment of Initial Payment 1 and Initial Payment 2 or the application of any part of Initial Payment 1 and Initial Payment 2 by the Principal in accordance clause 28.12(ab)(i)(C) will not:
- (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 the Dispute Procedure whether any amount certified as payable in a payment schedule is the amount properly due and payable under this deed.

- (b) **(Initial Payment Security)** The WL Contractor must ensure that the Initial Payment Securities remain valid and enforceable until the relevant date of release in accordance with clause 28.12(d) and clause 28.12(e).
- (c) **(Recourse to the Initial Payment Security)**
- (i) If this deed is terminated, for any reason, prior to the date falling [REDACTED] after the date of payment by the Principal of:
- (A) Initial Payment 1 in accordance with clause 28.12(a)(i); or
- (B) Initial Payment 2 in accordance with clause 28.12(a)(ia),
- then the WL Contractor must repay to the Principal the amount set out in item 10 of the Reference Schedule.
- (ii) If the WL Contractor does not pay the amount contemplated in clause 28.12(c)(i) within 5 Business Days of the date of termination of this deed, the Principal may have recourse to the Initial Payment Securities.
- (d) **(Release of Initial Payment Security 1)** Within 15 Business Days of the earlier of:
- (i) the date falling [REDACTED]; and
- (ii) the WL Contractor complying with clause 28.12(c)(i),
- the Principal will release so much of the Initial Payment Security 1 then held by the Principal.
- (e) **(Release of Initial Payment Security 2)** Within 15 Business Days of the earlier of:
- (i) the date falling [REDACTED]; and
- (ii) the WL Contractor complying with clause 28.12(c)(i),
- the Principal will release so much of the Initial Payment Security 2 then held by the Principal.

28.13 Interest

If any moneys due to either party remain unpaid after the date upon which they should have been paid, interest will be payable at the rate of [REDACTED] above the Bank Bill Rate from the date upon which the moneys should have been paid to and including the date upon which the moneys are paid.

28.14 Title

Title in all items forming part of the Project Works will pass progressively to the Principal on the earlier of payment for, or incorporation of, such items to the Construction Site. Risk in all such items remains with the WL Contractor in accordance with clause 30 (*Care of the Project Works, risks and insurance*).

28.15 **Payments**

The Principal may withhold payment of any part of the Contract Sum which is the subject of a payment claim under clause 28.3(a) but not included in a payment schedule issued pursuant to clause 28.3(d)(i) or clause 28.3(d)(ii).

29. **GST**

29.1 **Payment of GST**

- (a) **(Amounts exclusive of GST)** Unless otherwise expressly stated, all amounts payable under or in connection with this deed are stated exclusive of GST.
- (b) **(If payable)** If GST is or will be payable on a supply made under or in connection with this deed:
 - (i) the consideration otherwise provided for that supply under this deed is increased by the amount of that GST; and
 - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 5 Business Days after receiving a written demand from the supplier.

29.2 **Later adjustment to price or GST**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 5 Business Days' written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply but only to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation,

and, in either case, must issue an adjustment note reflecting the adjustment event in relation to the supply to the recipient within 20 Business Days after the adjustment event.

29.3 **Tax invoice/adjustment note**

Subject to clause 29.4 (*Recipient created tax invoice/recipient created adjustment note*), the right of the supplier to recover from the recipient any amount in respect of GST under this deed on a supply is subject to the issuing of a tax invoice or adjustment note to the recipient.

29.4 **Recipient created tax invoice/recipient created adjustment note**

- (a) **(Issue of tax invoice)** The parties agree that the Principal will issue a tax invoice or adjustment note (as appropriate) for all taxable supplies made by the WL Contractor to the Principal under or in connection with a WL Station Contract Document within 28 days of the making, or determining the value, of the relevant supply.
- (b) **(WL Contractor's obligations)** The WL Contractor:

- (i) warrants to the Principal that at the time of:
 - (A) entering into each WL Station Contract Document to which it is a party;
 - (B) each supply occurring or being deemed to have occurred under a WL Station Contract Document; and
 - (C) each tax invoice or adjustment note being issued by the Principal to the WL Contractor under a WL Station Contract Document,the WL Contractor will be registered for GST;
 - (ii) indemnifies the Principal against any loss resulting from the WL Contractor not being so registered;
 - (iii) must produce written evidence satisfactory to the Principal of that registration if the Principal requests it;
 - (iv) must notify the Principal within 5 Business Days if the WL Contractor ceases to be registered for GST; and
 - (v) agrees that the WL Contractor will not issue a tax invoice or adjustment note for supplies it makes under or in connection with a WL Station Contract Document in respect of which the Principal must issue a tax invoice or adjustment note.
- (c) **(Principal's obligations)** The Principal:
- (i) warrants to the WL Contractor that at the time of entering into each WL Station Contract Document of which it is a party the Principal is registered for GST; and
 - (ii) must notify the WL Contractor within 5 Business Days if the Principal ceases to be registered for GST.

29.5 **Indemnities and reimbursement**

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 or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

30. **CARE OF THE PROJECT WORKS, RISKS AND INSURANCE**

30.1 **Responsibility for care of the WL Contractor's Activities**

- (a) **(Care of the work)** Subject to clause 30.1(d), the WL Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:
 - (i) the WL Contractor's Activities, the Project Works, the Temporary Works, the Construction Plant, the Construction Materials and any Extra Land, from the date of this deed; and

- (ii) each part of the Construction Site (including any improvements on the Construction Site), from the relevant Construction Licence Commencement Date,

up to and including:

- (iii) to the extent the relevant WL Contractor's Activities, the Project Works, the Temporary Works, the Construction Site, any Extra Land, Construction Plant or Construction Materials relate to the Trackway Portion and not to any Non-Trackway Portion, the Date of Substantial Completion of the Trackway Portion; and

- (iv) except to the extent set out in clause 30.1(a)(iii), the Date of Completion of the relevant Portion.

- (b) **(Risk after Completion)** After the time referred to in clause 30.1(a), subject to clause 30.1(d), the WL Contractor will bear the risk of any destruction, loss of or damage to the WL Contractor's Activities, the Project Works, the Temporary Works, the Construction Site, any Extra Land, Construction Plant, Construction Materials and Waterloo Station arising from:

- (i) any act or omission of the WL Contractor or its Associates during the Defects Correction Period (including any extension to a Defects Correction Period under clause 27 (*Defects Rectification*)) or any other WL Contractor's Activities; or

- (ii) any event which occurred while the WL Contractor was responsible for the care of the relevant part of the WL Contractor's Activities, the Project Works, the Temporary Works, the Construction Site, any Extra Land, Construction Plant, Construction Materials and Waterloo Station in connection with the WL Contractor's Activities.

- (c) **(Reinstatement)** Subject to clause 30.1(d), the WL Contractor must:

- (i) in accordance with clause 30.11 (*Reinstatement*), (at its own Cost) promptly make good any destruction, loss or damage for which the WL Contractor bears the risk under this clause 30; and

- (ii) indemnify the Principal against Loss resulting from such destruction, loss or damage.

- (d) **(Excepted Risk)**

- (i) This clause 30.1 does not apply to the extent that any destruction, loss or damage:

- (A) for which the WL Contractor would otherwise have been responsible or bears the risk; or

- (B) in respect of which the WL Contractor is obliged to indemnify the Principal against under clause 30.1(c)(ii),

results from an Excepted Risk.

- (ii) Where any destruction, loss or damage arises to any extent from an Excepted Risk:

- (A) the WL Contractor must, where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage; and
- (B) the destruction, loss or damage (where a direction to repair or make good is not given) or that making good or repair (where a direction to repair or make good is given) will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Modification Order given by the Principal and clause 2.2 of the Modification Procedure will apply.

30.2 Indemnity from WL Contractor

- (a) **(WL Contractor indemnifies)** The WL Contractor indemnifies each State Indemnified Party from and against:
 - (i) any Loss incurred or suffered by a State Indemnified Party in respect of:
 - (A) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any State Indemnified Party's real or personal property (other than property referred to in clause 30.1 while the WL Contractor is responsible for its care); or
 - (B) any Claim against a State Indemnified Party (including by another State Indemnified Party) or Liability a State Indemnified Party may have to third parties in respect of or arising out of or in connection with:
 - (aa) any illness, personal injury to, or death of, any person; or
 - (bb) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property, caused by, arising out of, or in any way in connection with the WL Contractor's Activities;
 - (ii) any Loss incurred or suffered by a State Indemnified Party, or any Claim made by or Liability to any other person, arising out of or in any way in connection with:
 - (A) any breach of, or failure to comply with, the terms of any WL Station Contract Document by the WL Contractor or any other non-compliance by the WL Contractor or its Associates with any WL Station Contract Document;
 - (B) any fraudulent act or omission by the WL Contractor or any of its Associates;
 - (C) any failure by the Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation; or
 - (D) any IPR Claim; and
 - (iii) any Environmental Liabilities arising out of or in connection with any:
 - (A) a breach of this deed by the WL Contractor; or

- (B) wrongful or reckless act or omission of the WL Contractor or its Associates.



30.3 **Obligations not affected**

- (a) **(No affect)** Clause 30.2 (*Indemnity from WL Contractor*) does not limit or otherwise affect the WL Contractor's other obligations under this deed or otherwise according to Law.



30.5 **Principal's Insurance**

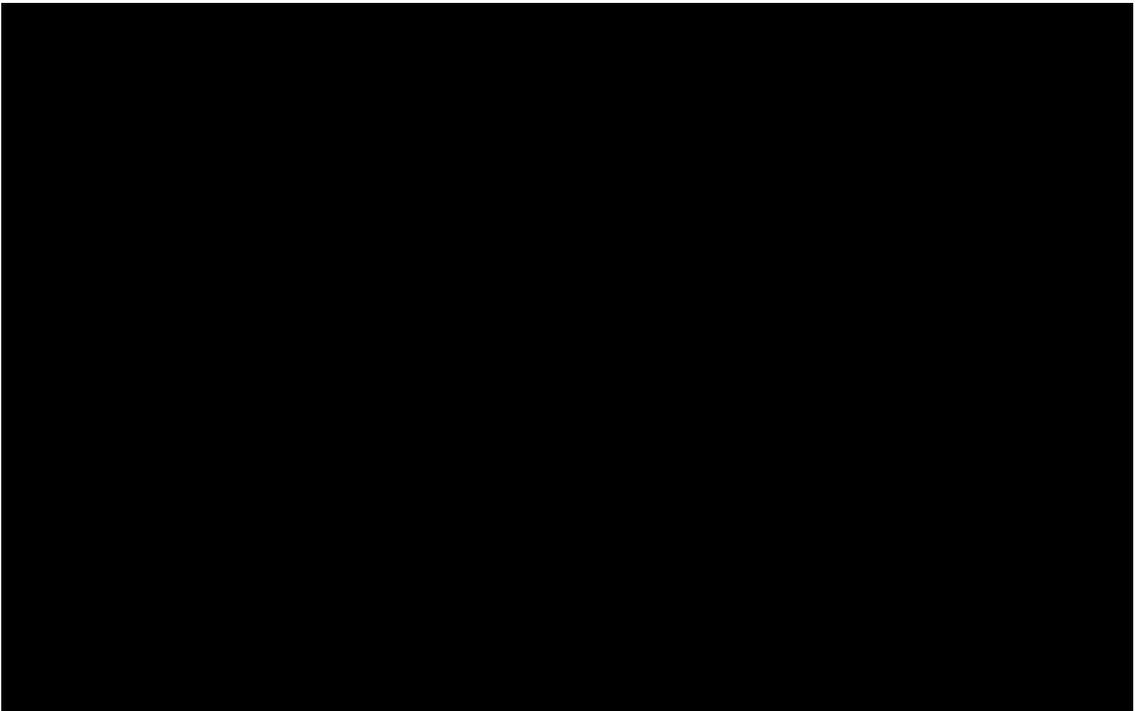
- (a) **(Contract works and public liability)** The Principal must, within 2 Business Days after the date of this deed, effect and thereafter maintain:
 - (i) contract works (material damage) insurance; and
 - (ii) public and products liability insurance,including for the benefit of the WL Contractor on the terms of the policies set out in Schedule A13 (*Insurance policies*).
- (b) **(WL Contractor acknowledgement)** The Principal's Insurances are subject to the exclusions, conditions, deductibles and excesses noted on the Principal's Insurance policies and the WL Contractor acknowledges and agrees that:

- (i) it has satisfied itself of the nature and extent of the cover provided by the Principal's Insurances; and
- (ii) the Principal's Insurances do not cover every risk to which the WL Contractor or its Associates may be exposed and are subject to deductibles and limits and the WL Contractor may, at its cost, elect to effect insurance for any risk or liability which is not covered by the Principal's Insurances.

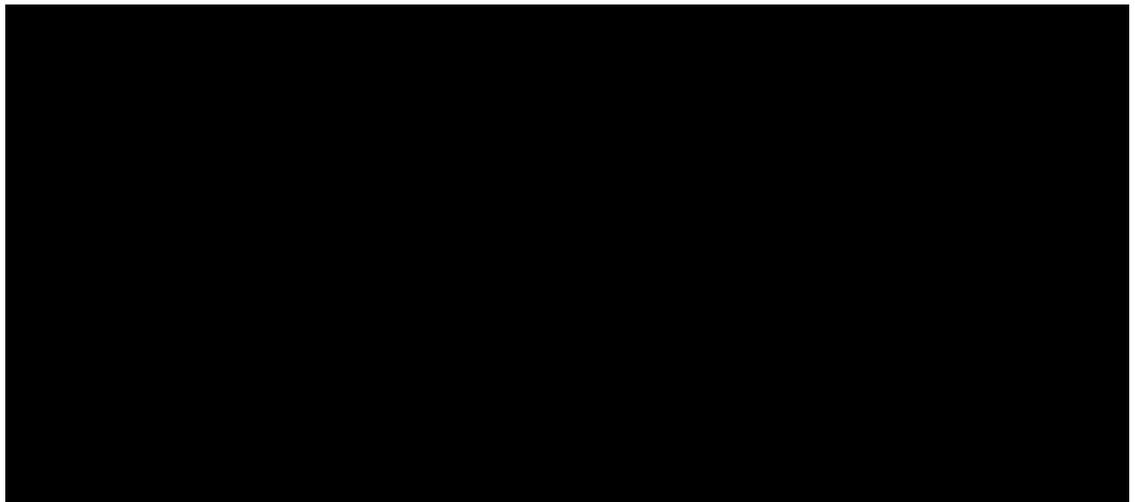
30.6 WL Contractor's Insurance obligations

The WL Contractor must effect and maintain, or cause to be effected and maintained, the Insurances required by Schedule A12 (*WL Contractor Insurance requirements*).

30.7 Periods of Insurance

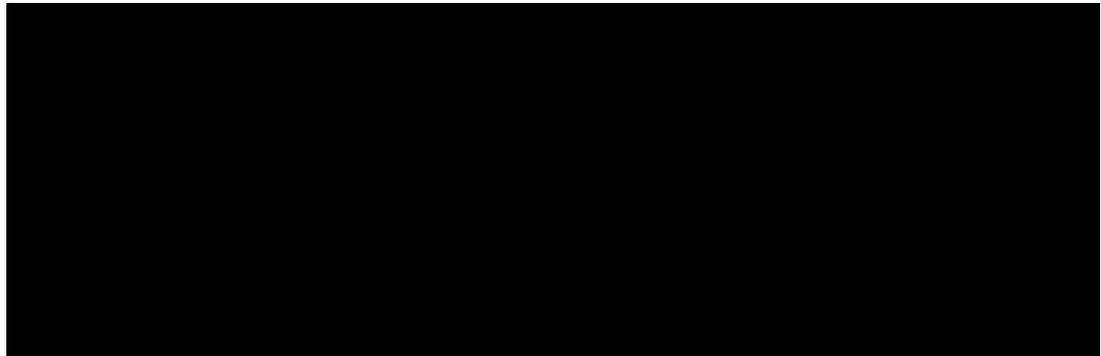


30.8 Evidence of policies

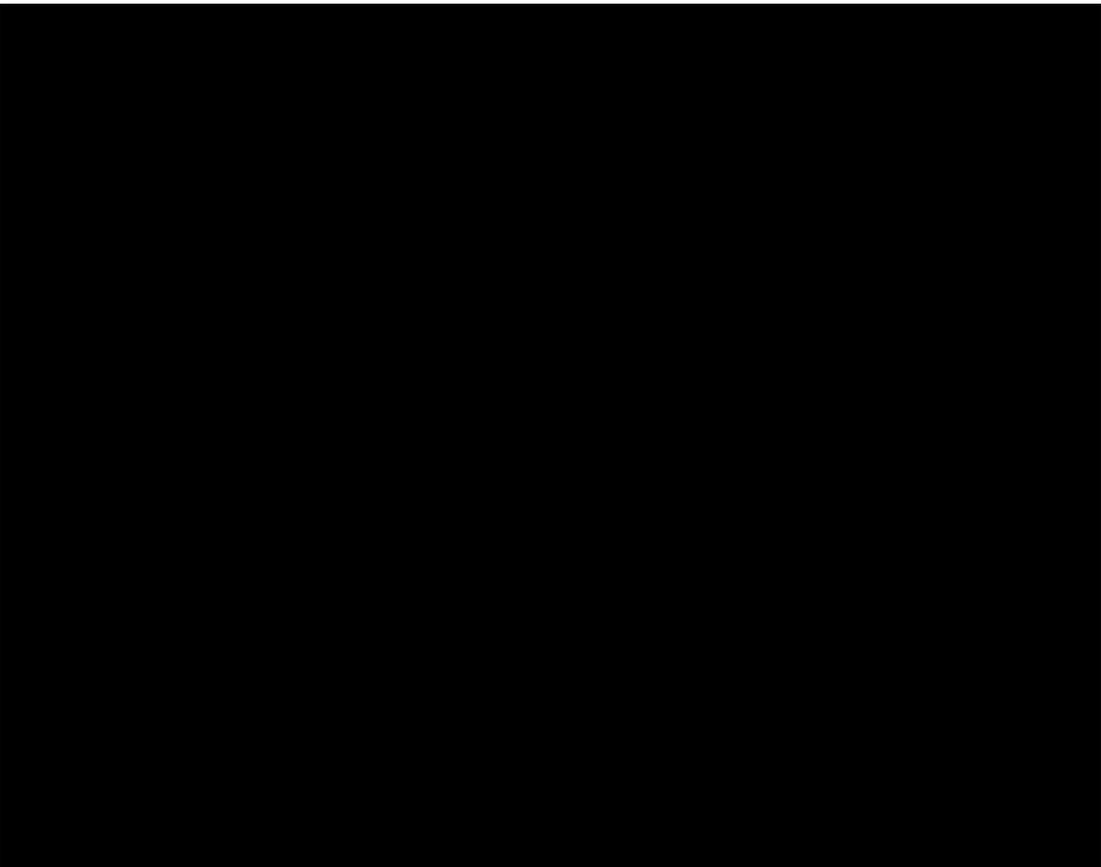




30.9 **Premiums**



30.10 **Undertaking to inform**



30.11 **Reinstatement**

If, prior to the time the WL Contractor ceases to be responsible under clause 30.1 (*Responsibility for care of the WL Contractor's Activities*) for the care of a part of the WL Contractor's Activities, the Project Works, the Temporary Works or any other thing referred to in clause 30.1(a), any destruction, damage or loss occurs to the WL Contractor's Activities, the Project Works or the Temporary Works for which the WL Contractor bears the risk under this clause 30, the WL Contractor must:

- (a) **(make secure)** make secure the WL Contractor's Activities, the Project Works and the Temporary Works and the parts of the Construction Site which are still under the control or are required to be under the control of the WL Contractor;
- (b) **(notify)** notify:
 - (i) appropriate Authorities and emergency services; and
 - (ii) the insurers for assessment,and comply with their instructions;
- (c) **(consult)** promptly consult with the Principal's Representative to agree on steps to be taken to ensure:
 - (i) the prompt make good, repair or replacement of the destruction, loss or damage so that:
 - (A) it complies with the SWTC and this deed; and
 - (B) there is minimal disruption to the Project Works, the Temporary Works or the WL Contractor's Activities;
 - (ii) that, to the greatest extent possible, the WL Contractor continues to comply with its obligations under this deed; and
 - (iii) promptly make good, repair or replace any of the destruction, loss or damage to the Project Works, the Construction Site or improvements on the Construction Site (if any);
- (d) **(make good)** subject to clause 30.1(d)(ii), manage all make good, repair and replacement activities so as to minimise the impact on the Project Works, the Temporary Works or the WL Contractor's Activities; and
- (e) **(keep informed)** keep the Principal's Representative fully informed of the progress of the make good, repair and replacement activities.

30.12 **Application of the Principal's Insurance proceeds**

- (a) **(Damage)** Subject to, and without limiting, clause 30.1 (*Responsibility for care of the WL Contractor's Activities*), where, prior to the Date of Completion of the last Portion to reach Completion, the WL Contractor's Activities, the Project Works or the Temporary Works are damaged or destroyed, all insurance proceeds in respect of those damaged or destroyed WL Contractor's Activities, Project Works or Temporary Works that are payable under any of the Principal's Insurance will be:

- (i) paid to the Principal;
 - (ii) paid by the Principal to the WL Contractor as progress payments under clause 28.3 (*Payment claims*) as and when the WL Contractor reinstates the WL Contractor's Activities, the Project Works and the Temporary Works; and
 - (iii) subject to clause 30.1(d)(ii), the WL Contractor's sole entitlement to payment in respect of the reinstatement of that destruction of or damage to the WL Contractor's Activities, the Project Works or the Temporary Works.
- (b) (**Excepted Risk**) This clause does not apply to any Insurance proceeds that are payable under any of the Principal's Insurance in respect of an Excepted Risk, which will be retained by the Principal.

30.13 Damage to property

- (a) (**Responsibility of WL Contractor**) Subject to clause 30.13(c), where any loss of, or destruction or damage to, real or personal property or the Environment (including any Utility Services) occurs arising out of, or in any way in connection with, the carrying out by the WL Contractor of the WL Contractor's Activities or a failure by the WL Contractor to comply with its obligations under this deed, the WL Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) (**Failure to repair**) If the WL Contractor fails to carry out any repair work under clause 30.13(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 in doing so will be a debt due and payable from the WL Contractor to the Principal.
- (c) (**Clause does not apply**) This clause 30.13 does not apply where the owner of the real or personal property does not agree to the WL Contractor carrying out the work under clause 30.13(a).
- (d) (**Indemnity not affected**) Nothing in this clause 30.13 limits the operation of the indemnity in clause 31 (*Liability*).

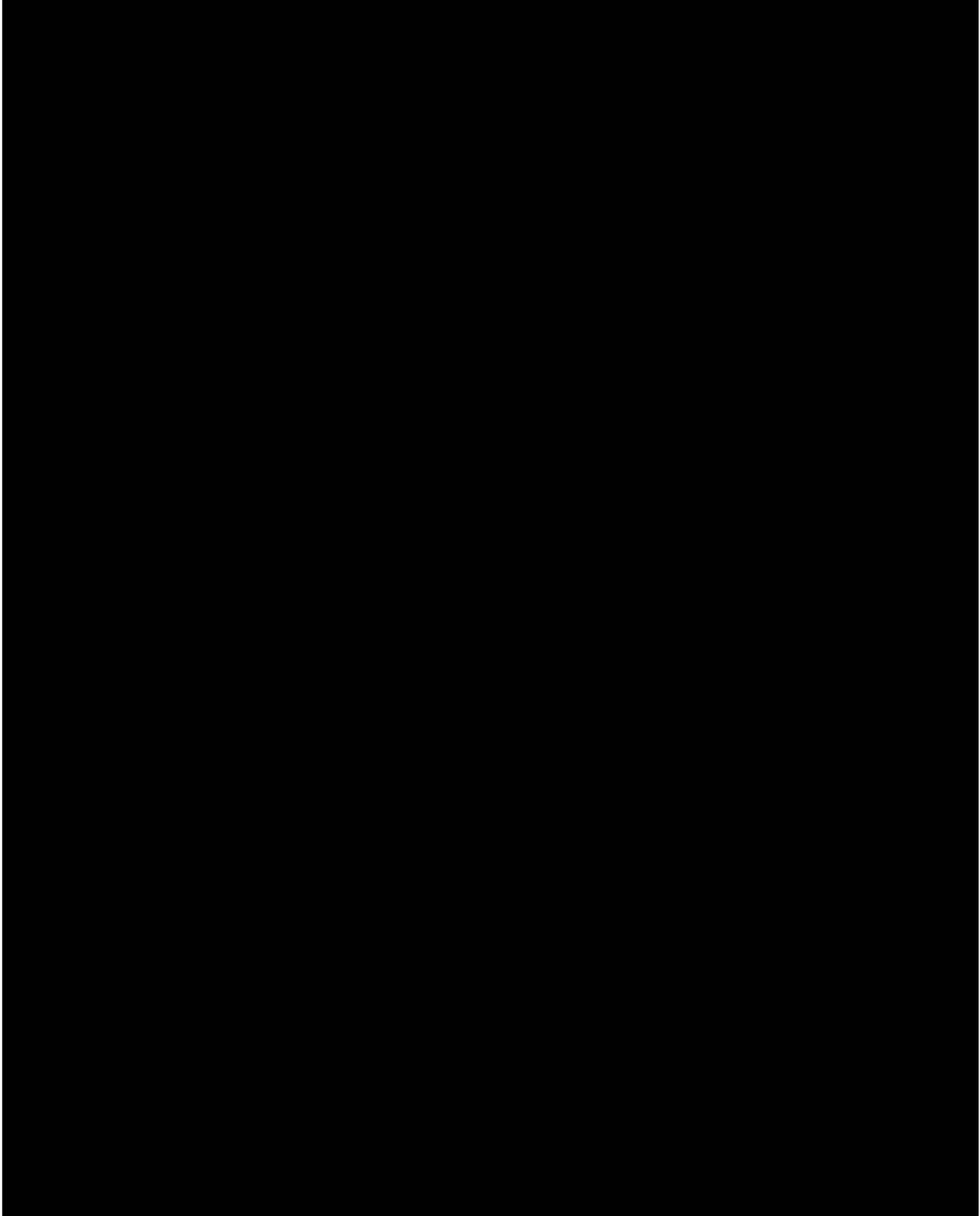
30.15 Liabilities of WL Contractor not affected

The effecting of Insurances does not limit the Liabilities or obligations of the WL Contractor under this deed.

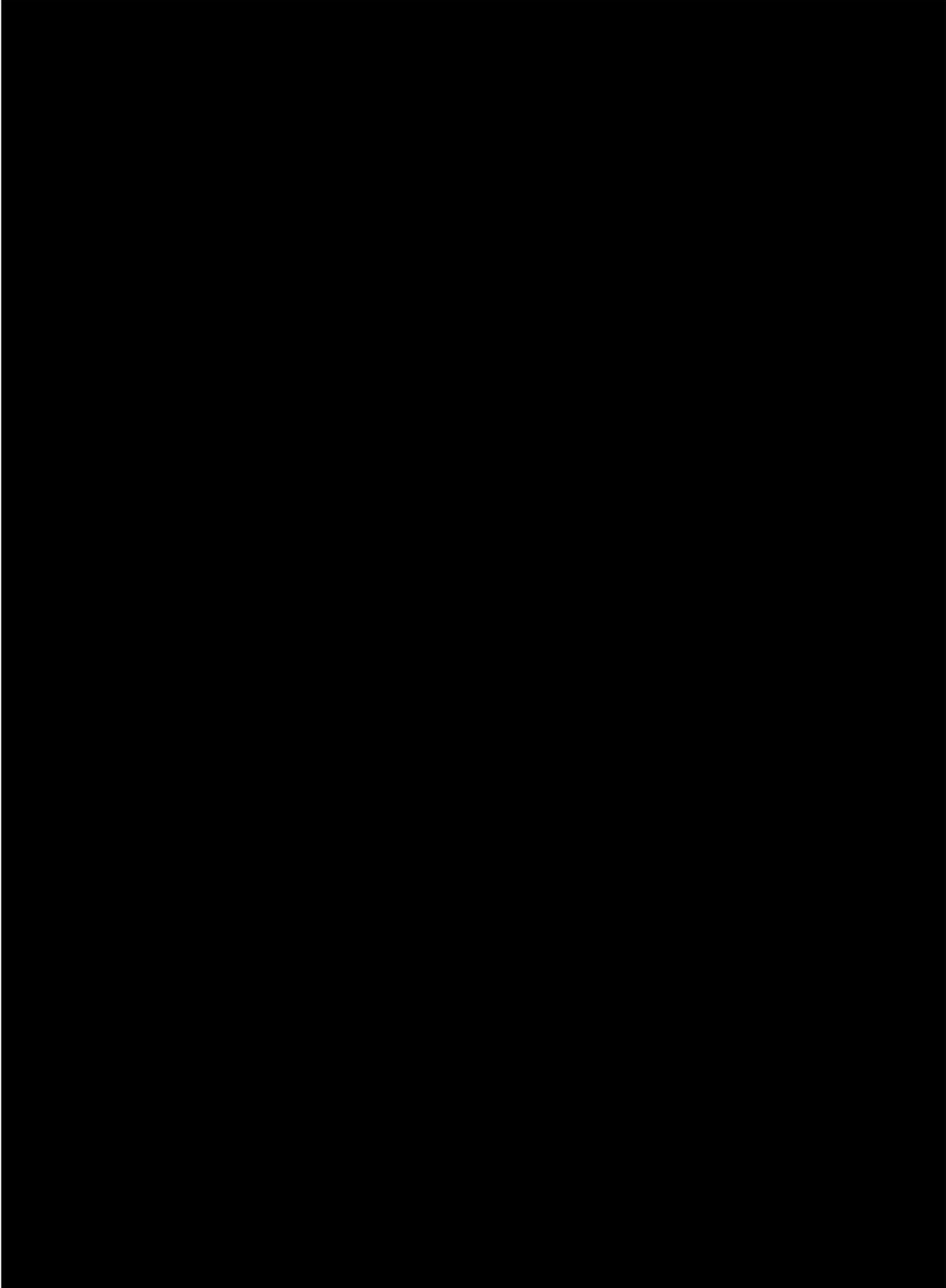
30.16 **Survival of termination**

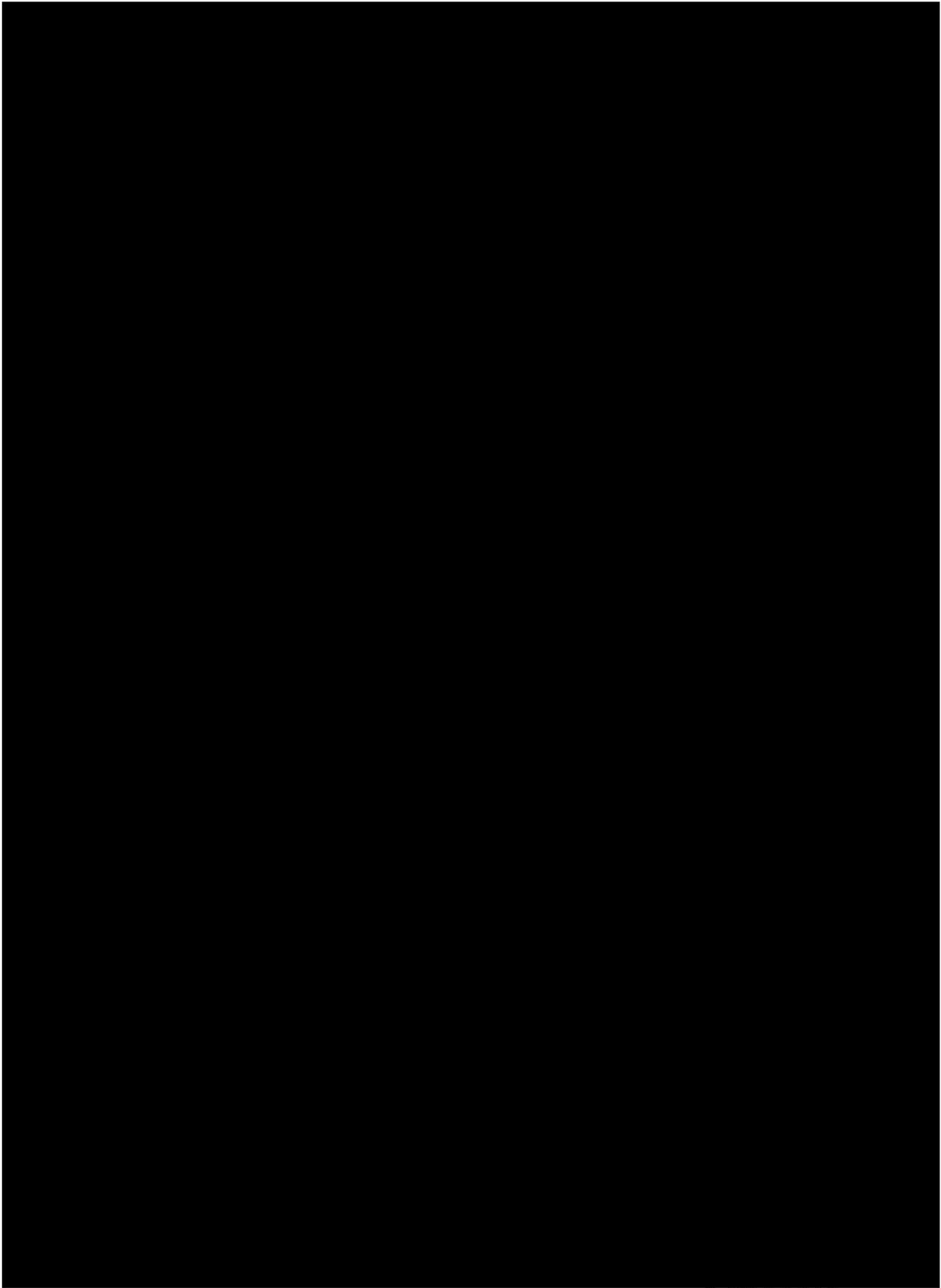
This clause 30 survives termination or expiry of this deed.

31. **LIABILITY**



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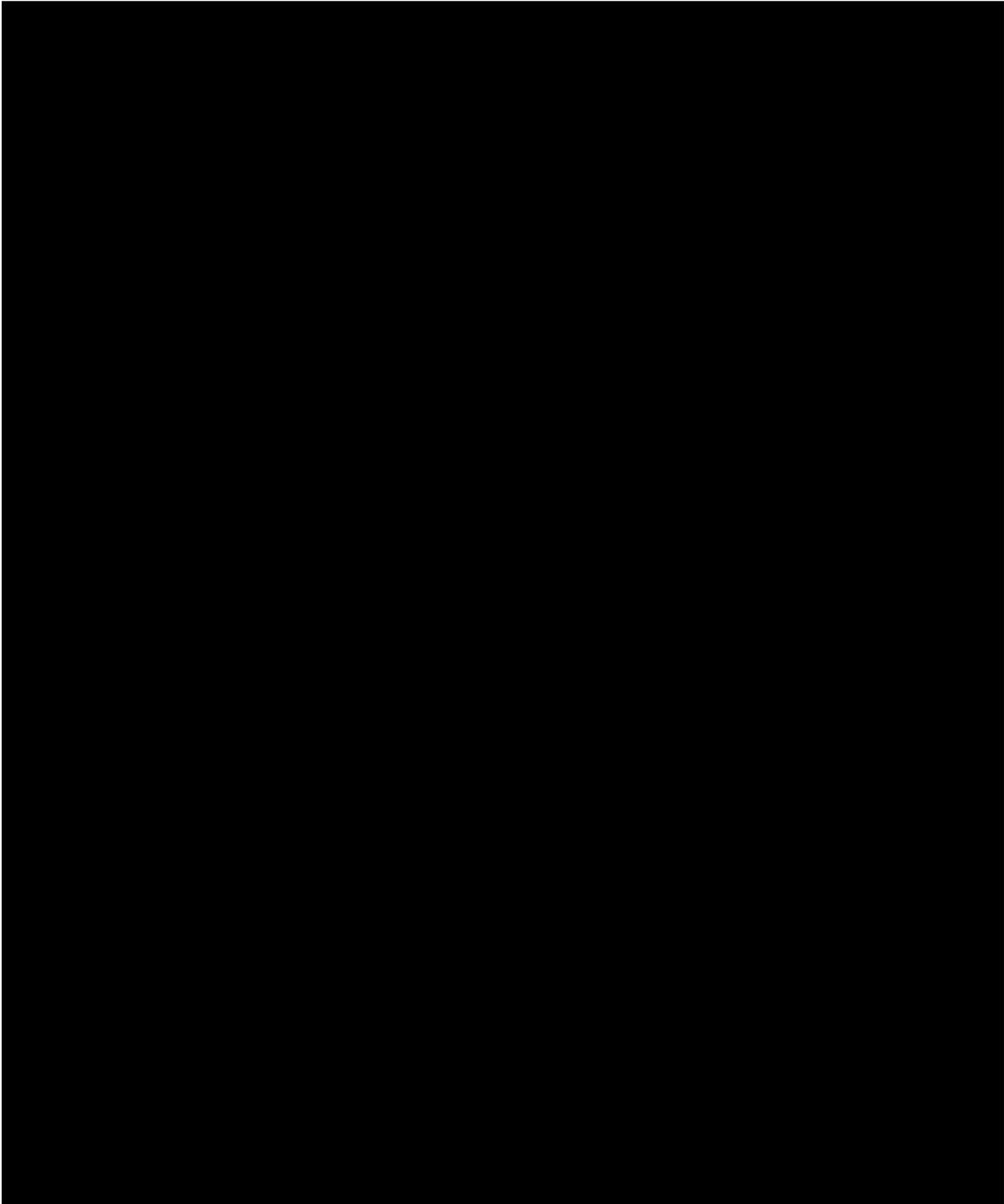




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31.6 **Proportionate Liability**

- (a) **(Exclusion of Part 4)** To the extent permitted by Law:
 - (i) 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 these rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise);
 - (ii) the WL 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 WL Contractor (whether in contract, tort or otherwise); and
 - (iii) 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 WL Contractor (whether in contract, tort or otherwise), the WL Contractor must indemnify the Principal against any Loss, damage or expense that forms part of a Claim by the Principal against the WL Contractor which the Principal cannot recover from the WL Contractor because of the operation of Part 4 of the *Civil Liability Act 2002 (NSW)*.
- (b) **(Proportionate Liability)** Without limiting clause 31.6(a), the rights, obligations and Liabilities of the Principal and the WL Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or Liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.



32. **DEFAULT AND TERMINATION**

32.1 **WL Contractor Event of Default**

Each of the following events is a WL Contractor Event of Default:

- (a) **(failure to progress)** the WL Contractor fails to expeditiously and diligently progress the WL Contractor's Activities as required under clause 21.1(a);

- (b) (**wrongful suspension**) the WL Contractor suspends performance of the WL Contractor's Activities (except to the extent permitted under this deed or by Law);
- (c) (**failure to insure**) the WL Contractor does not effect or maintain (or cause to be effected or maintained) an Insurance which is required to be effected or maintained by the WL Contractor under this deed and fails to do so within 10 Business Days after receipt of a notice from the Principal directing it to do so;
- (d) (**subcontracting**) the WL Contractor breaches its obligations under clause 17 (*Subcontracting*);
- (e) (**fraud**) the Principal is the victim of any fraud or dishonest conduct by the WL Contractor in connection with the WL Contractor's Activities or Sydney Metro City & Southwest, or the Independent Commission Against Corruption or similar public body determines that the WL Contractor has engaged in corrupt conduct, collusive pricing or other similar activity;
- (f) (**incorrect representation or warranty**) a representation or warranty made or given by the WL Contractor in this deed or any other of the WL Station Contract Documents proves to be untrue which has a material adverse effect on the WL Contractor's ability to comply with its obligations under the WL Station Contract Documents;
- (g) (**unconditional undertakings**) the WL Contractor fails to provide the unconditional undertakings in breach of clause 3.1 (*Unconditional undertakings*);
- (h) (**Parent Company Guarantee**) the WL Contractor fails to provide a Parent Company Guarantee in breach of clause 3.4 (*Parent Company Guarantee*);
- (i) (**Parent Company Guarantee is void or voidable**) the Parent Company Guarantee becomes void or voidable;
- (j) (**WHS**) the WL Contractor fails to comply with or ensure compliance with the obligations under this deed regarding work health and safety;
- (k) (**accreditation status**) lack or breach of rail Accreditation (where the WL Contractor is obliged to hold rail Accreditation), AEO status, ASA Authorisation, or threatened or actual suspension or revocation of the WL Contractor's rail Accreditation, AEO status or ASA Authorisation;
- (l) (**untrue statutory declaration**) the WL Contractor knowingly provides a statutory declaration or documentary evidence which contains a statement that is untrue;
- (m) (**Recovery Plan**) the WL Contractor fails to provide, comply with or otherwise diligently pursue a Recovery Plan in accordance with clause 21.5A (*Recovery Plan*) in respect of delay that is not caused by an Excusable Cause of Delay; and
- (n) (**other breach**) any other material breach by the WL Contractor of this deed or any other WL Station Contract Document.

32.2 Default Notice

- (a) (**Content of Default Notice**) If a WL Contractor Event of Default occurs (other than for a breach of clause 21.2(a)), the Principal may give the WL Contractor a notice (**Default Notice**):
 - (i) stating that it is a notice under this clause 32.2(a);

- (ii) providing details of the WL Contractor Event of Default; and
- (iii) requiring the WL Contractor to:
 - (A) remedy the WL Contractor Event of Default; or
 - (B) where the WL Contractor Event of Default cannot be remedied, overcome the WL Contractor Event of Default or make other arrangements to the satisfaction of the Principal,

within a reasonable period of time specified in the Default Notice (which period must not be less than 15 Business Days from the date of the Default Notice).
- (aa) **(Milestone Achievement)** In respect of a WL Contractor Event of Default for a breach of clause 21.2(a), the Principal may give the WL Contractor a notice **(Default Notice (Milestone Achievement))**:
 - (iv) stating that it is a notice under this clause 32.2(aa);
 - (v) providing details of the WL Contractor Event of Default; and
 - (vi) requiring the WL Contractor to:
 - (A) prepare and provide the Principal with a Remedy Plan (Milestone Achievement) within a reasonable period of time as specified in the Default Notice (Milestone Achievement) (which period must not be less than 15 Business Days from the date of the Default Notice ((Milestone Achievement))); and
 - (B) overcome the delay within a reasonable period of time as set out in the WL Contractor's Remedy Plan (Milestone Achievement).

In this clause 32.2(aa), "**Remedy Plan (Milestone Achievement)**" means a program and plan which describes the actions and measures which the WL Contractor will diligently pursue to remedy or mitigate all delay.

- (b) **(Compliance and Remedy Plan)** If the Principal gives the WL Contractor a Default Notice or a Default Notice (Milestone Achievement):
 - (i) the WL Contractor must comply with the Default Notice or Default Notice (Milestone Achievement); and
 - (ii) unless urgent action is necessary or the relevant WL Contractor Event of Default is a failure to pay money or a WL Contractor Event of Default referred to in clause 32.1(g), clause 32.1(h) or clause 32.1(i):
 - (A) the WL Contractor must give the Principal:
 - (aa) in the case of a WL Contractor Event of Default (other than for a breach of clause 21.2(a)), a program and plan (a **Remedy Plan**) outlining the manner in which the WL Contractor will:
 - (a) remedy the WL Contractor Event of Default; or
 - (b) overcome the WL Contractor Event of Default or make other arrangements to the satisfaction of the Principal,

in accordance with the terms of the Default Notice; or

(bb) in the case of a WL Contractor Event of Default for a breach of clause 21.2(a), a Remedy Plan (Milestone Achievement) within the time period specified in the Default Notice (Milestone Achievement);

(B) the parties must consult with each other to develop and agree that Remedy Plan or Remedy Plan (Milestone Achievement); and

(C) the WL Contractor must thereafter comply with that Remedy Plan or Remedy Plan (Milestone Achievement).

32.3 Rights of the Principal following Default Notice

(Principal's rights) If the WL Contractor fails to remedy the breach, make arrangements satisfactory to the Principal or fails to comply with a Remedy Plan or Remedy Plan (Milestone Achievement) within:

(a) the time specified in a Default Notice;

(b) the time specified in a Default Notice (Milestone Achievement); or

(c) such longer period included in a Remedy Plan or Remedy Plan (Milestone Achievement) and agreed to by the Principal,

then the Principal may, by notice in writing to the WL Contractor:

(d) take out of the hands of the WL Contractor the whole or part of the work remaining to be completed; or

(e) terminate this deed.

32.4 WL Contractor Termination Events

Each of the following is a WL Contractor Termination Event:

(a) **(failure to pay)** the WL Contractor fails to pay any amount which it is obliged to pay to the Principal under this deed and the failure is not remedied within 20 Business Days after a written demand from the Principal;

(b) **(abandonment)** the WL Contractor abandons the WL Contractor's Activities;

(c) **(insolvency of WL Contractor or WL Contractor Guarantor)** an Insolvency Event occurs in relation to:

(i) the WL Contractor (or where the WL Contractor comprises more than one person, any one of those persons); or

(ii) a WL Contractor Guarantor,

and the WL Contractor is not able to satisfy the Principal (in its absolute discretion) within 10 Business Days of the Insolvency Event occurring (or such longer period agreed by the Principal) that this deed should not be terminated;

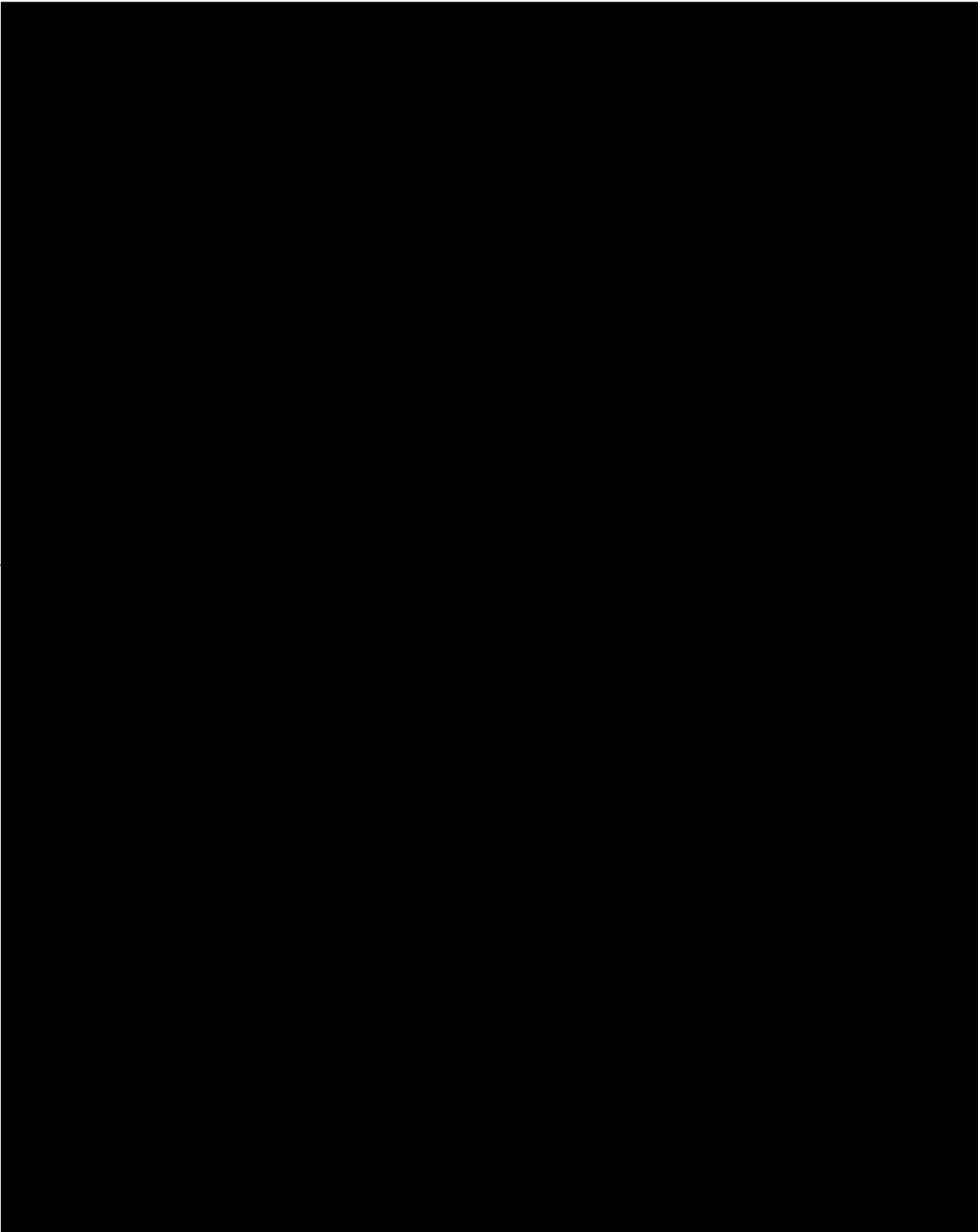
(d) Not used;

- (e) **(assignment)** the WL Contractor breaches its obligations under clause 34.1 (*Assignment by the WL Contractor*). For the purpose of this clause 32.4(e), a breach of clause 34.1 (*Assignment by the WL Contractor*) in respect of granting Security Interests will not be a WL Contractor Termination Event but will be a WL Contractor Event of Default pursuant to clause 32.1(n);
- (f) **(Liability caps exceeded)** the aggregate liability of the WL Contractor to the Principal:
 - (i) under or in connection with this deed, the WL Station Contract Documents and the Third Party Agreements is equal to or exceeds [REDACTED] of the Contract Sum; or
 - (ii) under clause 21.11(a) or clause 21.11(d) is equal to or exceeds:
 - (A) the LD Cap and the Principal and the WL Contractor have not agreed in writing to increase the LD Cap to [REDACTED] of the Contract Sum; or
 - (B) 15% of the Contract Sum, if the Principal and the WL Contractor have agreed to increase the LD Cap under clause 32.4(f);
- (g) **(Change in Control of WL Contractor)** a Change in Control occurs in respect of an entity that comprises the WL Contractor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 34.3(c)); or
- (h) **(Change in Control of WL Contractor Guarantor)** a Change in Control occurs in respect of the WL Contractor Guarantor without the prior written consent of the Principal (other than a Change in Control that is permitted under clause 34.4(c)).

32.5 Immediate termination or take out

If a WL Contractor Termination Event occurs, the Principal may, whether or not the WL Contractor is then in breach of this deed and without giving a notice under clause 32.2 (*Default Notice*), exercise a right under clause 32.3(d) or clause 32.3(e).

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32.7 Principal's rights after take out or termination

(a) **(Following take out or termination)** If:

(i) the Principal:

(A) exercises its rights under clause 32.3(d); or

- (B) terminates this deed under clause 32.3(e), clause 32.5 (*Immediate termination or take out*), [REDACTED] or clause 32.11 (*Termination for convenience*); or
- (ii) the WL Contractor repudiates this deed and the Principal otherwise terminates this deed,

then:

- (iii) **(WL Contractor obligations)** the WL Contractor:
 - (A) must novate to the Principal or the Principal's nominee those Subcontracts between the WL Contractor and the WL Contractor's Subcontractors that the Principal directs by executing a deed of novation substantially in the form of Schedule A21 (*Form of deed of novation*); and
 - (B) after 5 Business Days' written notice from the Principal, irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the WL Contractor's attorney to:
 - (aa) execute, sign, seal and deliver all notices, deeds and documents; and
 - (bb) undertake actions in the name of the WL Contractor, for the purposes referred to in clause 32.7(a)(iii)(A); and
- (iv) **(Principal's rights)** the Principal may:
 - (A) require the WL Contractor to:
 - (aa) make safe; and
 - (bb) remove any Construction Plant, Construction Material and Temporary Works and all other things intended for the Project Works or the WL Contractor's Activities from, the Construction Site or any area affected by the Project Works;
 - (B) take possession of and use (and permit others to use) such of the following:
 - (aa) Construction Plant, Construction Materials, Temporary Works and other things on or in the vicinity of the Construction Site or Extra Land as are reasonably required by the Principal to facilitate completion of the Project Works, except that where the Principal has terminated this deed under clause 32.11 (*Termination for convenience*) the Principal will not be entitled to take possession of or use (or permit others to use) Construction Plant belonging to the WL Contractor; and
 - (bb) Design Documentation, Material and other information in the possession of the WL Contractor or any of the WL Contractor's Associates and the WL Contractor must ensure that all necessary rights for this purpose are assigned to the Principal;
 - (C) complete any part of the Project Works remaining to be completed;

- (D) contract with any of the Subcontractors;
- (E) exclude the WL Contractor and any of the WL Contractor's Associates from the Construction Site and the Extra Land; and
- (F) have recourse to any unconditional undertakings held under clause 3.1 (*Unconditional undertakings*) provided that termination under clause 32.11 (*Termination for convenience*) [REDACTED]
[REDACTED] does not in and of itself entitle the Principal to have recourse to such unconditional undertaking (if the Principal would not otherwise have had such a right to recourse but for such termination).

- (b) (**Survival**) This clause 32.7 survives the termination of this deed.

32.8 Principal's entitlements after take-out

- (a) (**No further payment**) If the Principal exercises the right under clause 32.3(d), the WL Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the WL Contractor unless a payment becomes due to the WL Contractor under this clause 32.8.
- (b) (**Cost to complete**) When all of the work taken out of the hands of the WL Contractor under clause 32.3(d) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate to the WL Contractor certifying the amount. If the cost incurred by the Principal is:
 - (i) greater than the amount that would have been paid to the WL Contractor if the WL Contractor had completed the work, the difference will be a debt due from the WL Contractor to the Principal; or
 - (ii) less than the amount that would have been paid to the WL Contractor if the WL Contractor had completed the work, the difference will be a debt due to the WL Contractor from the Principal.
- (c) (**Recovery of costs**) Without limiting clause 32.8(b), if the Principal exercises the right under clause 32.3(d), the Principal will be entitled to recover from the WL Contractor any Loss incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (d) (**Grant of lien**) If the WL Contractor is indebted to the Principal, the WL Contractor grants to the Principal a lien over the Construction Plant, Construction Materials, Temporary Works or other things taken under clause 32.7 (*Principal's rights after take out or termination*) such that the Principal may retain that property until the debt is met. If after reasonable notice, the WL Contractor fails to pay the debt, the Principal may sell the Construction Plant, Construction Materials, 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 WL Contractor.

32.9 Principal's rights after termination

- (a) (**Principal's rights**) Subject to clause 32.14 (*Preservation of rights*), if:
 - (i) the Principal terminates this deed under:

- (A) clause 32.3 (*Rights of the Principal following Default Notice*) or clause 32.5 (*Immediate termination or take out*); or

[REDACTED]

- (ii) if the WL Contractor repudiates this deed and the Principal otherwise terminates this deed,

the Principal will:

- (iii) not be obliged to make any further payments to the WL Contractor, including any money that is the subject of a progress claim under clause 28.3 (*Payment claims*) or a payment schedule issued under clause 28.3(d)(i) or clause 28.3(d)(ii); and

- (iv) [REDACTED] be entitled to recover from the WL Contractor any Loss incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; or

- (v) [REDACTED]

- (b) (**Survival**) This clause 32.9 survives the termination of this deed.

32.10 WL Contractor's rights after repudiation or wrongful termination

- (a) (**Termination deemed lawful**) If the Principal:

- (i) repudiates this deed and the WL Contractor terminates this deed; or
- (ii) wrongfully:

- (A) exercises or attempts to exercise any right or power conferred on it by clause 32.3 (*Rights of the Principal following Default Notice*), clause 32.5 (*Immediate termination or take out*) [REDACTED]; 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 32.11 (*Termination for convenience*) and the WL Contractor's sole rights in such circumstances will be those set out in clause 32.12 (*Payment for termination for convenience, repudiation or wrongful termination*); and

- (iv) the WL 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) **(Survival)** This clause 32.10 will survive the termination of this deed.

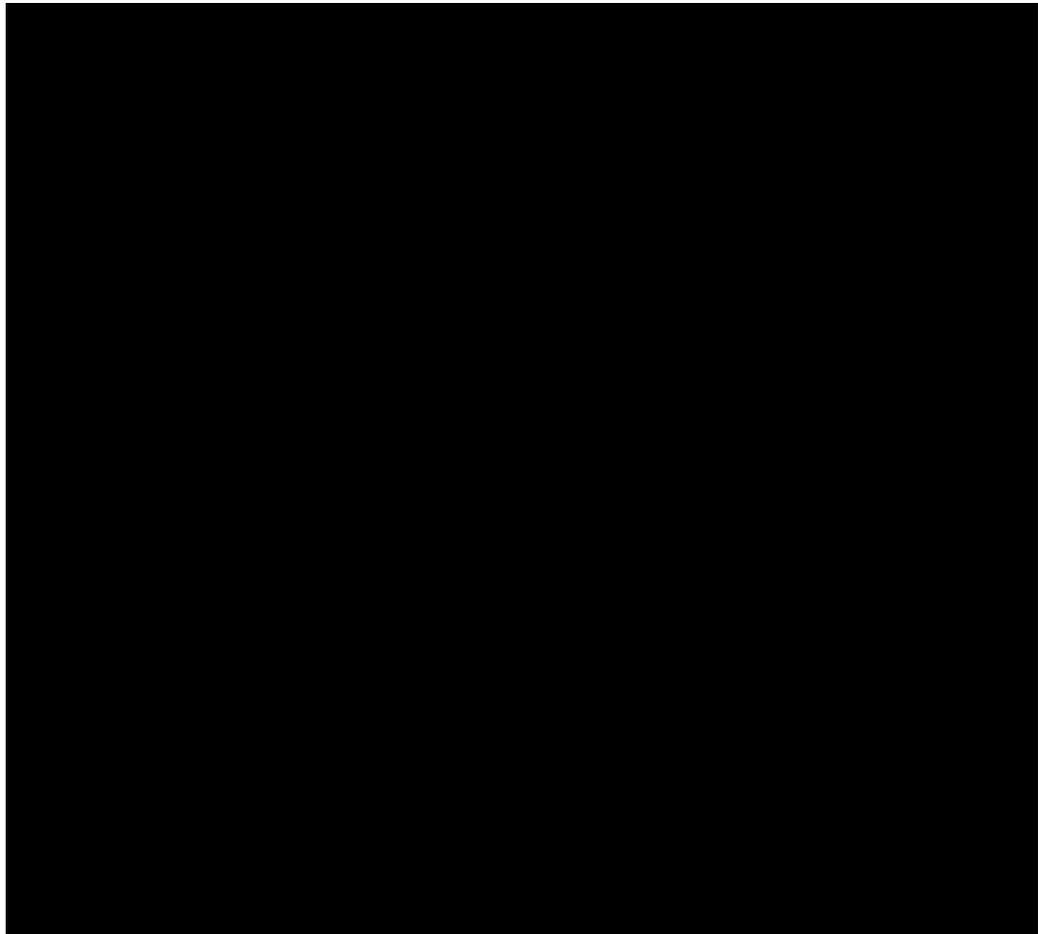
32.11 Termination for convenience

Without prejudice to any of the Principal's other rights, 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 WL 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 WL Contractor; and
- (b) thereafter, at the Principal's absolute discretion, complete the uncompleted part of the WL Contractor's Activities or the Project Works either itself or by engaging other contractors.

32.12 Payment for termination for convenience, repudiation or wrongful termination

- (a) **(WL Contractor entitlements)** If the Principal terminates this deed under:





- (b) **(Obligation to mitigate)** The WL Contractor must take all steps possible to mitigate the costs referred to in clause 32.12(a)(iv) to clause 32.12(a)(vii).
- (c) **(Return of unconditional undertakings)** To the extent it has not had recourse to them, the Principal will return all unconditional undertakings then held by the Principal when the WL Contractor has complied with all of its obligations under this clause 32.
- (d) **(No further Liability)** The amounts to which the WL Contractor is entitled under this clause 32.12 are a limitation on the Principal's Liability to the WL Contractor arising out of, or in any way in connection with, the termination of this deed and the Principal will otherwise have no Liability to the WL Contractor upon any Claim arising out of, or in any way in connection with, the termination of this deed.
- (e) **(Survival)** This clause 32.12 will survive the termination of this deed.

32.13 Termination by frustration

- (a) **(WL Contractor entitlements)** If this deed is frustrated in accordance with Law, the Principal will:
 - (i) pay the WL Contractor the amounts referred to clause 32.12(a)(iii) to clause 32.12(a)(vii), as determined by the Principal's Representative; and
 - (ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by the Principal when the WL Contractor has complied with all of its obligations under this clause 32.
- (b) **(No further Liability)** The amounts to which the WL Contractor is entitled under this clause 32.13 are a limitation on the Principal's Liability to the WL Contractor arising out of, or in any way in connection with, the frustration of this deed and the Principal will otherwise have no Liability to the WL Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed.
- (c) **(Survival)** This clause 32.13 will survive the termination of this deed.

32.14 Preservation of rights

- (a) **(No prejudice)** Nothing in this clause 32 or that the Principal does or fails to do pursuant to this clause 32 will prejudice the right of the Principal to exercise any right or remedy which it may have, including where the WL Contractor breaches or repudiates this deed.

- (b) (**Direct deeds**) The Principal's rights and entitlements set out in this clause 32 are in addition to the Principal's rights and entitlements under any other Significant Subcontractor Direct Deed.

32.15 **Not Used**

33. **CONFIDENTIALITY AND PERMITTED DISCLOSURE**

33.1 **Confidentiality**

- (a) (**Keep confidential**) Subject to clause 33.1(b) and clause 33.1(c), the WL Contractor must:
 - (i) keep the WL Station Contract Documents, all Information Documents and any information relating to the Project Works, the Temporary Works, the WL Contractor's Activities and any discussions concerning the WL Station Contract Documents or any Information Documents (together the **Information**) confidential;
 - (ii) not use the Information except as necessary for the performance of the WL Contractor's Activities; and
 - (iii) ensure that each of its Associates comply with clause 33.1(a)(i) and clause 33.1(a)(ii).
- (b) (**No obligation to keep confidential**) The WL Contractor is not obliged to keep any Information confidential to the extent:
 - (i) that Information is in the public domain through no default of the WL Contractor;
 - (ii) that Information is:
 - (A) required to be disclosed by Law or the listing rules of any recognised stock exchange (to the extent applicable to it); or
 - (B) given to a court in the course of proceedings to which the WL Contractor is a party; or
 - (iii) the Principal consents in writing to the disclosure of that Information.
- (c) (**Provision to other parties**) Subject to clause 33.1(a)(iii), the WL Contractor may provide the Information to its related body corporate, Subcontractors or other Associates, employees, agents, advisors, equity investors and each of these parties' advisors as is necessary to enable the WL Contractor to perform its obligations under this deed or any other WL Station Contract Document, provided that the WL Contractor ensures that the relevant recipient is subject to the same obligations of confidentiality as those contained in this deed.

33.2 **Principal's Public Disclosure Obligations**

- (a) (**WL Contractor acknowledgement**) The WL Contractor acknowledges and agrees that the Principal, the State or any Authority may be required to disclose the WL Station Contract Documents and information concerning the WL Station Contract Documents and the WL Contractor's Activities:
 - (i) under the GIPA Act or any similar legislation;

- (ii) by Law; or
- (iii) to satisfy the disclosure requirements of the NSW Auditor General or to satisfy the requirements of Parliamentary accountability,

(Public Disclosure Obligations).

- (b) **(WL Contractor assistance)** The WL Contractor must, at its own Cost, use all reasonable endeavours to assist the Principal, the State or an Authority to meet its Public Disclosure Obligations.

33.3 Media requests

Without limiting clause 33.1 (*Confidentiality*) and clause 33.2 (*Principal's Public Disclosure Obligations*), if the WL Contractor receives a request from the media for comment with respect to any aspect of the WL Contractor's Activities, the WL Contractor must:

- (a) promptly provide details of the request to the Principal;
- (b) in relation to the matters contemplated by the Community Communications Strategy - Waterloo, respond only in accordance with the requirements of that Project Plan; and
- (c) in relation to matters not contemplated by the Community Communications Strategy - Waterloo, not respond without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed).

34. ASSIGNMENT AND CHANGE IN CONTROL

34.1 Assignment by the WL Contractor

- (a) **(No assignment without consent)** Subject to the remainder of this clause 34.1, the WL Contractor must not assign, transfer, novate, grant a Security Interest over, or otherwise dispose of or deal with all or any benefit, right or interest under or in:
 - (i) the WL Station Contract Documents; or
 - (ii) prior to the MQD Date of Completion or otherwise at any time if the MQD PDA is never entered into:
 - (A) the Construction Site; or
 - (B) the Principal's Land,

without the Principal's prior written consent (which may be given or withheld in its absolute discretion).

- (b) **(Conditions of assignment or novation)** It will be a condition of any assignment or novation of this deed in accordance with clause 34.1(a) that the proposed counterparty provides a parent company guarantee in a form satisfactory to the Principal from a parent company with a long term credit rating and financial standing acceptable to the Principal (in its absolute discretion).

34.2 Assignment and novation by the Principal

- (a) Without limiting clause 40.16 (*Transfer of functions or Public Transport Agency assets*), the Principal may:

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- (i) assign, novate or otherwise transfer all or any part of its rights under this deed without the WL 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;
 - (ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the WL Contractor's prior written consent (which must not be unreasonably withheld or delayed); and
 - (iii) disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the WL Contractor.
- (b) In the case of a novation by the Principal under this clause:
- (i) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the WL Contractor against one another under this deed will cease;
 - (ii) the novated deed will be on the same terms as this deed, such that the incoming party and the WL Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 34.2(b)(i), except that the incoming party replaces the Principal for all purposes under the deed; and
 - (iii) the WL Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (c) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

34.3 Change in control of an entity that comprises the WL Contractor

- (a) Subject to the terms of this clause 34.3, the WL Contractor must ensure that there is no Change in Control of any entity that comprises the WL Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The WL Contractor must notify the Principal in writing of any proposed Change in Control of any entity that comprises the WL 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 34.3(d), in relation to the Change in Control of the relevant entity that comprises the WL 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 WL 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 WL Contractor where the Principal is of the reasonable opinion that:
 - (i) the person or entity which will exercise Control of the WL Contractor or the relevant entity that comprises the WL 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 WL 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 WL Contractor under this deed.
- (e) If a Change in Control of any entity that comprises the WL Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 34.3(c)), the WL Contractor acknowledges that the Principal may terminate this deed by notice in writing to the WL Contractor.
- (f) The Principal's approval of a Change in Control of any entity that comprises the WL Contractor will not relieve the WL Contractor of any of its obligations under this deed.

34.4 Change in control of the WL Contractor Guarantor

- (a) Subject to the terms of this clause 34.4, the WL Contractor must ensure that there is no Change in Control of the WL Contractor Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The WL Contractor must notify the Principal in writing of any proposed Change in Control of the WL 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 34.4(d), in relation to the Change in Control of the WL 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 Entity of that person, provided the WL 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 the WL Contractor Guarantor where the Principal is of the reasonable opinion that:
 - (i) the person or entity which will exercise Control of the WL 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 WL 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 WL Contractor Guarantor under the Parent Company Guarantee.
- (e) If a Change in Control of the WL Contractor Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 34.4(c)), the WL Contractor acknowledges that the Principal may terminate this deed by notice in writing to the WL Contractor.
- (f) The Principal's approval of a Change in Control of the WL Contractor Guarantor will not relieve the WL Contractor of any of its obligations under this deed.

35. DISPUTE RESOLUTION

Any dispute, difference, controversy or Claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with this deed or the Project Works, the Temporary Works or the WL Contractor's Activities, including any questions relating to the existence, validity or termination of this deed, but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with the Dispute Procedure.

36. REPRESENTATIONS AND WARRANTIES

36.1 Principal's representations and warranties

The Principal represents and warrants for the benefit of the WL Contractor that:

- (a) (**statutory body**) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) (**all authorisations**) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations

under each of the Principal WL Station Contract Documents (or will have them in full force and effect at the time the obligation is to be performed);

- (c) **(binding obligations)** each of the Principal WL Station Contract Documents constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) **(non-violation of Law)** the execution, delivery and performance of each of the Principal WL Station Contract Documents by the Principal does not violate any Law, or any document or agreement to which it is a party or which is binding on it or its assets.

36.2 **WL Contractor representations and warranties**

The WL Contractor represents and warrants for the benefit of the Principal that:

- (a) **(incorporated)** it has been incorporated as a company limited by shares in accordance with the Law of its place of incorporation, is validly existing under that Law and has power and authority to carry on its business as it is now being conducted;
- (b) **(properly constituted)** it is duly registered, properly constituted and remains in existence;
- (c) **(power)** it has, or will have (in respect of those WL Station Contract Documents still to be executed as at the date of this deed), power to enter into the WL Station Contract Documents to which it is or will be a party and comply with its obligations under them;
- (d) **(all authorisations)** it has, or will have (in respect of those WL Station Contract Documents still to be executed as at the date of this deed) in full force and effect the authorisations necessary for it to enter into the WL Station Contract Documents to which it is or will be a party, to comply with its obligations under them and to allow them to be enforced;
- (e) **(binding obligations)** its obligations under the WL Station Contract Documents (once executed) are valid and binding and are enforceable against it in accordance with their terms;
- (f) **(no contravention)** the WL Station Contract Documents and the transactions under them which involve it do not contravene its constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (g) **(benefits)** it benefits by entering into the WL Station Contract Documents to which it is or will be a party;
- (h) **(trustee)** except as disclosed in writing to the Principal prior to the date of this deed, it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (i) **(payment of debts)** there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (j) **(no breach)** it is not in breach of a Law or obligation affecting it or its assets in a way which is, or is likely to have, a material adverse effect on its ability to comply

with its obligations under this deed and it is not in default of its material obligations under any of the WL Station Contract Documents;

- (k) (**consolidated group**) it is a member of a Consolidated Group for purposes of the *Income Tax Assessment Act 1997* (Cth) and it, and each other member of the Consolidated Group, have validly entered into and executed or acceded to a Tax Sharing Agreement and Tax Funding Agreement.
- (l) (**no Event of Default**) no WL Contractor Event of Default has occurred or is subsisting;
- (m) not used;
- (n) (**no immunity**) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (o) not used;
- (p) (**full disclosure**) it is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with the WL Contractor;
- (q) (**no litigation**) except to the extent otherwise disclosed by the WL Contractor prior to the date on which the warranty is given or deemed to be repeated, no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on it or its ability to perform its financial or other obligations under any WL Station Contract Document to which it is a party; and
- (r) (**FIRB**) the Treasurer of the Commonwealth of Australia cannot prohibit and has not prohibited this deed under the FIRB Act.

36.3 Repetition of representation and warranties

The representations and warranties contained in clause 36.2(k), clause 36.2(l), clause 36.2(p) and clause 36.2(r) are made on the date of this deed. Each other representation and warranty contained in clause 36.2 (*WL Contractor representations and warranties*):

- (a) is made on the date of this deed; and
- (b) will be deemed to be repeated on each anniversary of the date of this deed up to and including the expiry of the last Defects Correction Period under this deed,

with reference to the facts and circumstances then subsisting.

36.4 Obligations not affected

The WL Contractor acknowledges that the representations and warranties in this clause 36 and the WL Contractor's obligations under the WL Station Contract Documents remain unaffected notwithstanding any receipt or review of, or comment or Direction on, documentation prepared by the WL Contractor.

36.5 **Undertakings by each party**

Each party undertakes to notify the other party promptly if any representation or warranty made or taken to be made by or on behalf of the party in connection with a WL Station Contract Document other than this deed is found, having regard to the other party's rights under, or by virtue of this deed, to be materially incorrect or materially misleading when made or taken to be made.

36.6 **Tax consolidation undertaking**

The WL Contractor must:

- (a) ensure that it is or becomes a party to a Tax Sharing Agreement and Tax Funding Agreement and that each other member of the Consolidated Group is a party to those documents;
- (b) ensure that the Tax Sharing Agreement and the Tax Funding Agreement are maintained in full force and effect and that it and each other member of the relevant Consolidated Group fully complies with the Tax Sharing Agreement and the Tax Funding Agreement; and
- (c) ensure that any entity which is or becomes a member of the Consolidated Group accedes to the Tax Sharing Agreement and the Tax Funding Agreement with effect from the time that the entity becomes a member of the Consolidated Group.

37. **NOTIFICATION OF CLAIMS**

37.1 **Purpose of notification**

- (a) **(Notice)** The parties acknowledge that notices are required to be given in the form and in the time required by this deed to give the Principal an opportunity to:
 - (i) assess the matters the subject of the Claim based on complete information at the time the circumstances giving rise to a Claim occur; and
 - (ii) consider what steps could be taken to mitigate or avoid the impact of the Claim or the circumstances giving rise to the Claim including those which may have an impact on the relationship between the Principal and Interface Contractors, Third Parties and other stakeholders.
- (b) **(Prejudice)** The WL Contractor acknowledges that the Principal will be prejudiced and may lose its rights under arrangements with Interface Contractors, Third Parties and other stakeholders if the notices are not given by the WL Contractor in the time required under this deed.

37.2 **Notices of Claims**

Except for Claims for:

- (a) an extension of time under clause 21.6 (*Extensions of time*); or
- (b) payment under clause 28 (*Payment*),

the WL Contractor must give the Principal's Representative the notices required by clause 37.3 (*Prescribed notices*) in relation to any Claim against the Principal in respect of any Direction by the Principal's Representative or any other fact, matter or thing (including for a Contract Sum Adjustment Event or a breach of this deed by the Principal) under, arising

out of, or in any way in connection with, the WL Contractor's Activities, the Project Works or this deed.

37.3 **Prescribed notices**

The notices referred to in clause 37.2 (*Notices of Claims*) are:

- (a) (**notice of Direction for a Modification**) if the WL Contractor considers that a Direction from the Principal is a Direction to perform a Modification but is not in the form of a Modification Order then, before implementing the Direction, and in any event within 10 Business Days of the Direction, a written notice specifying the Direction, and the facts, matters and circumstances which give rise to the assertion that it constitutes a Direction for a Modification sufficient for the Principal to be able to ascertain whether or not the Direction was for a Modification;
- (b) (**written notice**) a written notice within 20 Business Days after:
 - (ia) the first occurrence of the Direction upon which the Claim is based; or
 - (ib) the date on which the WL Contractor became aware or ought reasonably to have become aware of the other fact, matter or thing upon which the Claim is based,(as applicable) expressly specifying:
 - (i) that the WL Contractor proposes to make a Claim;
 - (ii) the relevant clause of the deed under which the Claim is made; and
 - (iii) the Direction or other fact, matter or thing upon which the Claim will be based;
- (c) (**written Claim**) a written Claim within 15 Business Days after giving the written notice under clause 37.3(b), which must contain sufficient detail for a party to determine whether or not the WL Contractor has an entitlement to make a Claim and the valuation of the Claim including:
 - (i) detailed particulars of the Direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim including, if it is based on a term of this deed, the specific term;
 - (iii) the facts and evidence relied upon in support of the entitlement to make a Claim and the valuation of the Claim;
 - (iv) details of the valuation claimed and how it has been calculated (including, to the extent costs have not yet been incurred, an estimate of the amount to which the WL Contractor is entitled under the deed); and
 - (v) details of any relief from the WL Contractor's obligations claimed and, where the WL Contractor considers the Direction to be a Direction under clause 22.1(a), the matters described in clause 2.1(b)(iv) of Schedule A8 (*Modification Procedure*); and
- (d) (**continuing events**) if the Direction or fact, matter or thing upon which a Claim is based or the consequences of the Direction or fact, matter or thing continue for more than 10 Business Days, the information required by clause 37.3(c) must be

provided every 20 Business Days after the written claim under clause 37.3(c), until after the Direction or fact, matter or thing upon which the Claim is based, has, or the consequences thereof have, ceased.

37.4 **No Liability**

If, in relation to a Claim, the WL Contractor fails to deliver notices in the form and within the time required by clause 37.3 (*Prescribed notices*) the Principal will have no Liability to the WL Contractor in relation to the Claim arising out of or in any way in connection with, the relevant Direction or fact, matter or thing.

37.5 **Other provisions unaffected**

Nothing in this clause 37 will limit the operation or effect of any other provision of this deed which:

- (a) requires the WL Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal; or
- (b) excludes the Liability of the Principal.

38. **COSTS**

Unless otherwise expressly provided for in this deed each party agrees to pay its own Costs of and incidental to the negotiation and execution of this deed.

39. **NOTICES**

- (a) (**Meaning of Notice**) Wherever referred to in this clause 39, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) (**PDCS**) At any time and from time to time, the Principal's Representative may notify the WL 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 parties to use the PDCS;
 - (iv) any requirement for specific notices (eg notice of Claims);
 - (v) the name and contact details of any additional person which the Principal nominates for receipt of Notices under this deed; and
 - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) (**No PDCS**) At any time and from time to time, the Principal's Representative may notify the WL 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 39(d)(i) and must be given 10 Business Days prior to the implementation of any such change to the notice arrangements.

- (d) **(Content of Notice)** Each Notice must:
- (i) before the date referred to in clause 39(b)(ii) or where clause 39(c) applies:
 - (A) be in writing;
 - (B) be addressed:
 - (aa) in the case of a Notice from the WL Contractor, to the Principal's Representative; or
 - (bb) in the case of a Notice from the Principal, to the WL Contractor's Representative;
 - (C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
 - (D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - (E) be delivered or posted to the address or sent to the email address shown in item 11 or item 12 (as relevant) of the Reference Schedule (or to any new address or email address notified by the intended recipient); and
 - (ii) on and from the commencement date for use of the PDCS referred to in clause 39(b)(ii) (other than where clause 39(c) or clause 39(d)(i) applies):
 - (A) be sent through the PDCS in accordance with the requirements set out in clause 39(f):
 - (aa) in the case of a Notice to the Principal, be addressed to the Principal's Representative; and
 - (bb) in the case of a Notice to the WL Contractor, be addressed to the WL Contractor's Representative; 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 39(d)(i).
- (e) **(Communication received)** A communication is taken to be received by the addressee:
- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email):

- (A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.
- (f) **(PDCS Notices)** 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 clause 39(f)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) .pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (g) **(WL Contractor warranties)** The WL Contractor warrants that it will:
 - (i) ensure that relevant trained personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (ii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the WL Contractor from time to time and all necessary training required by the Principal's Representative;
 - (iii) advise the Principal's Representatives of which personnel require access to the PDCS; and
 - (iv) 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 39(d)(ii)(B) to the Principal's Representative through the PDCS.
- (h) **(No Liability)** The Principal has no Liability for any Losses the WL 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.
- (i) **(Interface Contractor)** If this deed requires the WL Contractor to provide any documents, notices or other communications to an Interface Contractor, the WL Contractor must address those communications to the relevant Interface Contractor:
 - (i) at the address notified by the Principal to the WL Contractor; or
 - (ii) if required by the Principal, by way of the PDCS.

40. **GENERAL**

40.1 **Governing Law and jurisdiction**

- (a) This deed is governed by and must be constructed according to the Law in force in New South Wales.
- (b) Each party irrevocably and unconditionally 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 proceedings that may be brought at any time relating to this deed.

40.2 **Amendments**

This deed may only be amended, varied or replaced by written agreement executed by or on behalf of each party.

40.3 **Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver by the Principal of:
 - (i) a breach of a term of this deed; or
 - (ii) any other failure by the WL 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,

operates as a waiver of another breach of that term or of a breach of any other term of this deed or failure to comply with any other requirement of this deed.

40.4 **Survival of certain provisions; no merger**

- (a) **(Surviving clauses)** Without limiting clause 40.12(a) or the schedules to this deed:
 - (i) clause 1 (*Definitions and interpretation*), clause 3 (*Security*), clause 10.2 (*Information Documents*), clause 25 (*Intellectual Property rights*), clause 28.9 (*Right of set-off*), clause 28.13 (*Interest*), clause 29 (*GST*), clause 31 (*Liability*), clause 32.7 (*Principal's rights after take out or termination*), clause 32.8 (*Principal's entitlements after take-out*), clause 32.9 (*Principal's rights after termination*), clause 32.10 (*WL Contractor's rights after repudiation or wrongful termination*), clause 32.11(b), clause 32.12 (*Payment for termination for convenience, repudiation or wrongful termination*), clause 32.13 (*Termination by frustration*), clause 33 (*Confidentiality and permitted disclosure*), clause 35 (*Dispute resolution*), clause 37 (*Notification of Claims*), clause 39 (*Notices*), clause 40 (*General*), the representations, warranties and indemnities given by the WL Contractor

under this deed and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination (together, the **Surviving Clauses**) and any rights arising on termination will survive rescission, termination or expiration of this deed; and

- (ii) if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (A) under the Surviving Clauses; or
 - (B) in respect of any breach of this deed occurring before such rescission or termination.

- (b) (**No merger**) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

40.5 **Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

40.6 **Liability for Taxes**

Except as otherwise specified in this deed, the WL Contractor must pay or reimburse the Principal on demand for the Costs of the Principal (including legal Costs on a solicitor and own client basis) in connection with any Taxes which may be payable or determined to be payable in connection with this deed.

40.7 **Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

40.8 **No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

40.9 **Exercise of remedies**

- (a) If the WL Contractor breaches any of its obligations under this deed or any other WL Station Contract Document, the Principal may exercise any or all of the rights and powers and pursue any or all of the remedies available to the Principal under the WL Station Contract Documents and/or enforce any other legal or equitable remedy available under applicable Law.
- (b) Each and every right, power and remedy of the Principal will be cumulative and in addition to any other right, power and remedy, whether under a WL Station

Contract Document or applicable Law, which may be exercised by the Principal and the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.

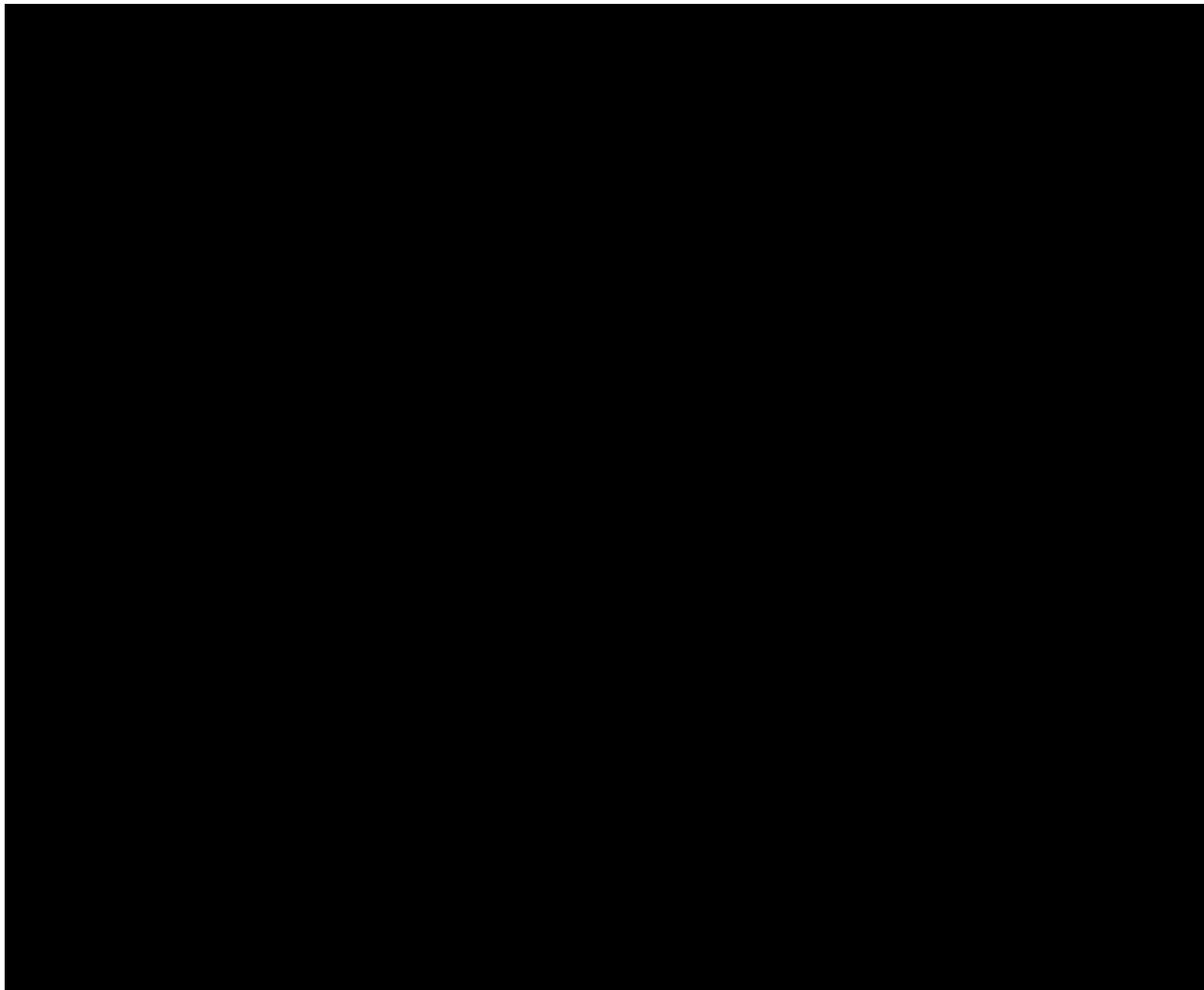
- (c) No delay or omission by the Principal in the exercise of any right, power or remedy will impair such right, power or remedy or constitute a waiver of the relevant breach.

40.10 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties and supersedes any prior written or other agreement of the parties.

40.11 Joint and several liability

- (a) The rights and obligations of the Principal and the WL Contractor, if more than one person, under this deed, are joint and several.
- (b) Each person constituting the WL Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.



40.13 Excluding liability

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

40.14 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 40.14(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.

40.15 Relationship between the Principal and WL Contractor

Nothing in, or contemplated by, this deed or any other Station Contract Document will be construed or interpreted as:

- (a) constituting a relationship between the Principal and the WL Contractor, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent;
- (b) imposing any general duty of good faith on the Principal to the WL Contractor or the WL Contractor's Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the Principal under this deed or any other WL Station Contract Document on a good faith basis; or
- (c) imposing any general duty of good faith on the WL Contractor to the Principal or the Principal's Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the WL Contractor under this deed or any other WL Station Contract Document on a good faith basis.

40.16 **Transfer of functions or Public Transport Agency assets**

- (a) The parties acknowledge that:
- (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The WL Contractor acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to any WL Station Contract Document, or any replacement agreement or agreements for any WL Station Contract Document to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The WL Contractor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 40.16.
- (d) For the purposes of this clause 40.16 "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

40.17 **Principal not Liable**

Except to the extent expressly provided for in this deed, the Principal has no Liability for any Loss caused by or Claim in relation to the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, power or remedy.

40.18 **Supervening legislation**

Any present or future legislation which operates to vary the obligations of the WL Contractor in connection with this deed with the result that the Principal's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by Law.

40.19 **Set off of unliquidated amounts**

Except to the extent expressly provided for in this deed a party cannot set off any unliquidated amount owing by it to the other party under this deed arising from a breach of this deed by that party, against any liquidated amount owing by that other party.

40.20 **Continuing breaches**

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

40.21 **Principal may act**

- (a) **(Principal may act)** The Principal may, either itself or by a third party, perform an obligation under this deed that the WL Contractor was obliged to perform but which it failed to perform.
- (b) **(Costs)** Any Loss suffered or incurred by the Principal in so performing such an obligation will be a debt due from the WL Contractor to the Principal.
- (c) **(No obligation)** 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 WL Contractor to; or
 - (ii) itself step-in to,take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.
- (d) **(WL Contractor remains responsible)** Where the Principal or the Principal's Representative does exercise any such right or power, the WL Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the WL Contractor's Activities or the Project Works.

40.22 **Personal Property Securities Act**

- (a) **(Security Interest)** By signing this deed, the WL Contractor acknowledges and agrees that if this deed and the transactions contemplated by it, operate as, or give rise to, a Security Interest, the WL Contractor must do anything (including amending this deed or any other document, executing any new terms or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Act for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Act;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this deed.
- (b) **(Provisions not applying)** If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the WL Contractor agrees that sections 95, 120, 121(4),

125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.

- (c) **(WL Contractor agreements)** The WL Contractor:
- (i) acknowledges that the Security Interests created under or pursuant to this deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Act in respect of the Security Interest;
 - (iii) undertakes it will not register a financing change statement without first notifying the Principal; and
 - (iv) agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- (d) **(No disclosure)** The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Act.

40.23 **Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods and the *Sale of Goods (Vienna Convention) Act 1986* (NSW) do not apply to this deed.

40.24 **Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

40.25 **Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

EXECUTED as a deed.

SIGNED for **SYDNEY METRO (ABN 12 354 063 515)** by its duly authorised delegate, in the presence of:



SIGNED, SEALED AND DELIVERED by **JOHN HOLLAND PTY LIMITED (ABN 11 004 282 268)** by its Attorney under a Power of Attorney dated [REDACTED] (and the Attorney declares that he/she has not received any notice of the revocation of such Power of Attorney) in the presence of:

