



Execution Version

# Martin Place Metro Station Deed of Variation (Caverns Scope) Station Delivery Deed

**Sydney Metro**

ABN 12 354 063 515

and

**Macquarie Group Limited**

ABN 94 122 169 279

in relation to the Martin Place Metro Station Project Station Delivery Deed  
(Contract No. 507)

## CONTENTS

CLAUSE	PAGE
1. INTERPRETATION .....	2
1.1 Definitions .....	2
1.2 Terms defined in the Revised SDD .....	3
1.3 Rules for interpreting this deed.....	3
2. CONSIDERATION .....	3
3. AMENDMENT .....	3
3.1 Amendment to Base SDD.....	3
3.2 Effect of amendment.....	4
4. ACKNOWLEDGEMENTS .....	4
4.1 Commercial Principles .....	4
4.2 Interim CST Amount .....	4
4.3 CST Amount.....	5
4.4 No time or Delay Costs entitlement.....	6
4.5 SDD Program .....	6
4.6 Material Impact .....	6
4.7 Interim CST Letter .....	6
4.8 Updated Project Plans .....	6
4.9 Bank Guarantee.....	6
4.10 Variations to the Base SDD .....	6
5. CONFIDENTIALITY AND PERMITTED DISCLOSURE.....	7
6. REPRESENTATIONS AND WARRANTIES.....	7
6.1 Representations and warranties of the Principal.....	7
6.2 Representations and warranties of Macquarie.....	7
6.3 Reliance on representations and warranties .....	8
7. GENERAL .....	8
7.1 Governing law .....	8
7.2 Liability for expenses.....	8
7.3 Giving effect to this deed .....	8
7.4 Operation of this deed .....	8
7.5 Exclusion of contrary legislation.....	9
7.6 Amendment .....	9
7.7 Counterparts.....	9

### Schedule

1	Amendments to the General Conditions .....	10
2	Amendments to Schedule A2 of the Base SDD .....	11
3	Amendments to Schedule B1 of the Base SDD .....	12
4	Amendments to Schedule C1 of the Base SDD .....	13
5	Amendments to Schedule E1 of the Base SDD .....	14
6	Amendments to Schedule E4 of the Base SDD .....	15
7	Amendments to Schedule F1 of the Base SDD .....	16
8	Amendments to Annexure D of the Base SDD.....	17
9	Updated SDD Program.....	18

**THIS DEED** is made on 11 DECEMBER 2020

**BETWEEN:**

- (1) **Sydney Metro** ABN 12 354 063 515, a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney New South Wales 2000 (**Principal**); and
- (2) **Macquarie Group Limited** ABN 94 122 169 279 of Level 6, 50 Martin Place, Sydney New South Wales 2000 (**Macquarie**).

**RECITALS:**

- (A) The Principal and Macquarie have entered into the Base SDD for the design, construction and completion of the Martin Place Metro Station.
- (B) The parties wish to amend the Base SDD in the manner set out in this deed.

**THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this deed:

**Amending Deeds** means:

- (a) the deed titled "Martin Place Metro Station Deed of Variation (Pending Changes) Station Delivery Deed" between the Principal and Macquarie dated 20 November 2019;
- (b) the deed titled "Martin Place Metro Station Project Deed of Amendment – Station Delivery Deed" between the Principal and Macquarie dated 22 June 2020; and
- (c) the deed titled "Martin Place Metro Station Deed of Variation ( [REDACTED] ) - Third Deed of Variation of Station Delivery Deed" between the Principal and Macquarie dated 29 October 2020.

**Base OSD PDA** has the meaning given to that term in the OSD PDA Deed of Variation.

**Base SDD** means the deed titled "Martin Place Metro Station Project Station Delivery Deed (Contract No. 507)" between the Principal and Macquarie dated 12 September 2018 as amended by the Amending Deeds, but without the amendments effected by this deed.

**Caverns Scope** means:

- (a) the physical works which Macquarie must design and construct pursuant to Appendix 67 to the SWTC as amended by this deed;
- (b) any other changes to or impacts on:
  - (i) Macquarie's construction methodology, sequencing, programming or design of the Project Works or OSD Works; or
  - (ii) any other of Macquarie's Activities,(in each case, as existed at the Commencement Date) that are required in order to accommodate the scope of the works referred to in paragraph (a); and

- (c) all activities associated with the works described in paragraph (a) or paragraph (b) that Macquarie performs, or is required to perform, to comply with its obligations under the Revised SDD.

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

**CST Activities** means those activities carried out by Macquarie in connection with the Caverns Scope prior to the Effective Date.

**CST Amount** means the amount of [REDACTED]

**Effective Date** means the date of this deed.

**General Conditions** means clauses 1 to 60 (inclusive) of the Base SDD.

**Interim CST Amount** means the amount of [REDACTED] (excluding GST) paid by the Principal to Macquarie in relation to the CST Activities prior to the Effective Date.

**Interim CST Letter** means the deed entered into between the Principal and Macquarie dated 17 September 2020 and executed 18 September 2020 regarding the Caverns Scope and process for execution of this deed, as amended.

**OSD PDA Deed of Variation** means the deed entered into between the Principal and Macquarie titled "Martin Place Metro Station Deed of Variation (Caverns Scope) – Over Station Development Project Delivery Agreement" dated on or about the date of this deed regarding amendments to the Base OSD PDA.

**Relevant SDD Project Documents** means the Base SDD, the D&C Contract, the D&C Side Deed and the Sub-SDD.

**Revised SDD** means the Base SDD, as amended by this deed.

**Updated SDD Program** means the program set out in Schedule 9.

## 1.2 Terms defined in the Revised SDD

A term (other than a term defined in clause 1.1) that is defined in the Revised SDD has the same meaning in this deed.

## 1.3 Rules for interpreting this deed

Clause 1.2 of the Revised SDD will apply to the interpretation of this deed as if set out in full in this deed.

## 2. CONSIDERATION

Each party acknowledges that it has received valuable consideration for entering into this deed.

## 3. AMENDMENT

### 3.1 Amendment to Base SDD

(a) On and from the Effective Date, the Base SDD is amended as follows:

- (i) the General Conditions are amended as set out in Schedule 1 (*Amendments to the General Conditions*) of this deed;

- (ii) Schedule A2 (*Portions and Milestones*) is amended as set out in Schedule 2 (*Amendments to Schedule A2 of the Base SDD*) of this deed;
  - (iii) Schedule B1 (*Commercially Sensitive Information*) is amended as set out in Schedule 3 (*Amendments to Schedule B1 of the Base SDD*) of this deed;
  - (iv) Schedule C1 (*Scope of Works and Technical Criteria*) is amended as set out in Schedule 4 (*Amendments to Schedule C1 of the Base SDD*) of this deed;
  - (v) Schedule E1 (*Payment Schedule*) is amended as set out in Schedule 5 (*Amendments to Schedule E1 of the Base SDD*) of this deed;
  - (vi) Schedule E4 (*Delay Costs*) is amended as set out in Schedule 6 (*Amendments to Schedule E4 of the Base SDD*) of this deed;
  - (vii) Schedule F1 (*Electronic Files*) is amended as set out in Schedule 7 (*Amendments to Schedule F1 of the Base SDD*) of this deed; and
  - (viii) Annexure D (*Site Access Schedule*) is amended as set out in Schedule 8 (*Amendments to Annexure D of the Base SDD*) of this deed.
- (b) The parties acknowledge and agree that:
- (i) except to the extent provided for in clause 4.2 and clause 4.3, clause 3.1(a) does not affect any right or obligation of either party that arose pursuant to the Base SDD before the Effective Date; and
  - (ii) the Principal is not and shall not be in breach of the Base SDD arising out of or in connection with the Principal not issuing one or more Variation Orders for the Caverns Scope before the Effective Date.

### 3.2 **Effect of amendment**

Except as expressly amended by this deed, no changes to the Base SDD are to be inferred or implied, and in all other respects the Base SDD is confirmed and remains in full force and effect.

## 4. **ACKNOWLEDGEMENTS**


### 4.1 **Commercial Principles**

The parties acknowledge that prior to the Effective Date:

- (a) following the issuance by Macquarie of a Variation Impact Proposal (TeamBinder reference no.: SMCSWSMP-MQG-SMP-MQG-GEN-000898), the parties worked together to reach an in principle agreement on the "Commercial Principles" (as defined in the Interim CST Letter) in respect of the Caverns Scope; and
- (b) the parties agreed to enter into this deed and the OSD PDA Deed of Variation to record the terms of the agreement reached between the parties in respect of the Caverns Scope.

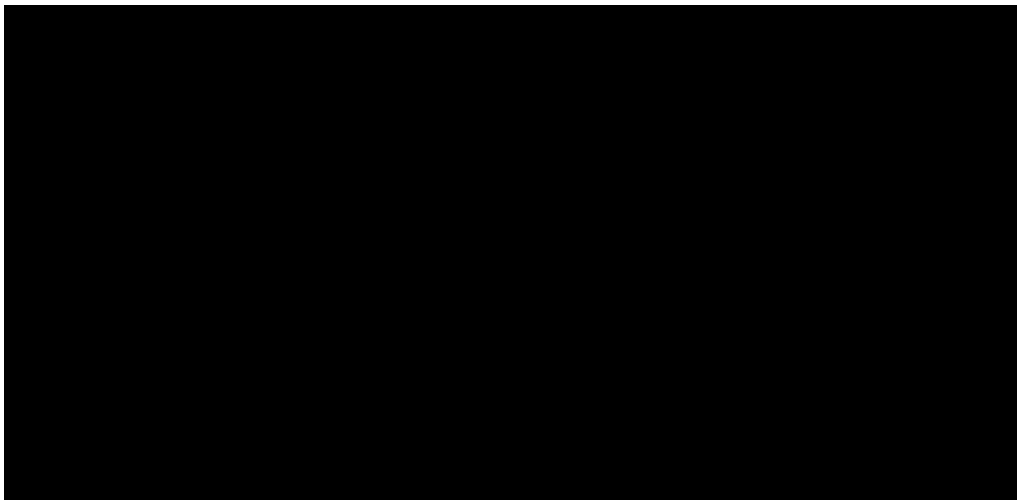
### 4.2 **Interim CST Amount**

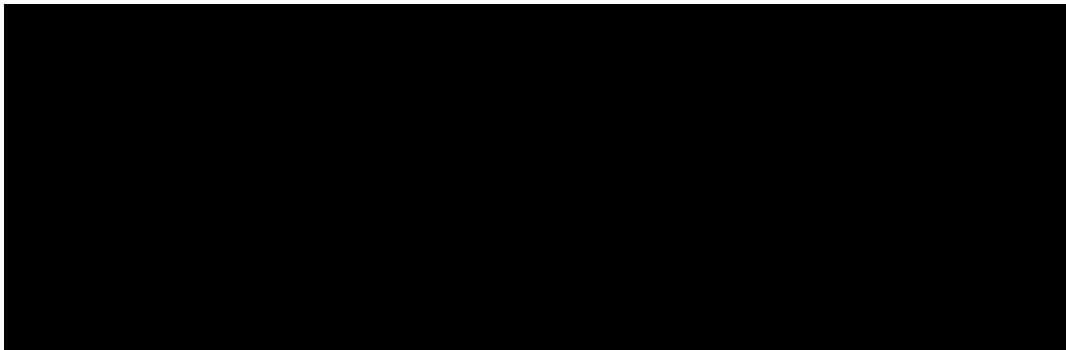
- (a) The parties acknowledge and agree that:
  - (i) prior to the Effective Date, Macquarie carried out the CST Activities pursuant to the Interim CST Letter;

- (ii) the CST Activities form part of the Caverns Scope and shall be treated as though they had been performed by and on behalf of Macquarie under the Revised SDD;
  - (iii) the Principal paid Macquarie the Interim CST Amount prior to the Effective Date as payment for the performance of the CST Activities;
  - (iv) the Interim CST Amount will be treated as if such amount was paid by the Principal to Macquarie under the Revised SDD as part of Core Payment 2 (as amended); and
  - (v) the Interim CST Amount forms part of the CST Amount and the payments in relation to the Caverns Scope after the Effective Date will not exceed 
- (b) Macquarie acknowledges and agrees that Macquarie will not be entitled to, and the Principal will not be liable for, any further payment arising out of or in connection with the CST Activities under the Revised SDD or otherwise.

4.3 **CST Amount**

- (a) Subject to clause 23.9, clause 24, clause 35 and clause 38 of the Revised SDD, the parties acknowledge and agree that:
- (i) the CST Amount reflects full payment by the Principal to Macquarie for all Liabilities in connection with the Caverns Scope and (subject to clause 4.2) such amount will be paid as part of Core Payment 2 for the performance of the Caverns Scope under the Revised SDD pursuant to clause 34 of the Revised SDD following the Effective Date; and
  - (ii) except as expressly provided in clause 4.3(a)(i), Macquarie is not entitled to any payment and Macquarie is not entitled to make, and the Principal will not be liable for, any Claim, whether under the Revised SDD or otherwise, arising out of or in connection with the adjustment to the scope of works under the Revised SDD to address the Caverns Scope.
- (b) The parties acknowledge and agree that:
- (i) the CST Amount does not include an amount in respect of Macquarie's legal fees for the review and, to the extent applicable, the negotiation, finalisation and execution of this deed and the Relevant SDD Project Documents (**CST Legal Fees**);





**4.4 No time or Delay Costs entitlement**

Except as expressly provided in the Revised SDD, Macquarie is not entitled to make, and the Principal is not liable upon, any Claim under clause 23.9 or clause 24 of the Base SDD or the Revised SDD arising out of or in connection with the Caverns Scope or any other matter in connection with this deed.

**4.5 SDD Program**

The parties acknowledge and agree that Macquarie has submitted the Updated SDD Program to the Principal which reflects the details of Macquarie's Activities in connection with the Caverns Scope as if Macquarie had done so in accordance with clause 23.4 of the Base SDD.

**4.6 Material Impact**

Macquarie warrants that the Caverns Scope does not give rise to a Material Impact and/or any Specified Material Impact Variation.

**4.7 Interim CST Letter**

The parties acknowledge and agree that the Interim CST Letter is terminated on and from the Effective Date and will have no further effect.

**4.8 Updated Project Plans**

Macquarie must review and, if necessary, update each Project Plan to account for the Caverns Scope within 60 Business Days of the Effective Date and submit the updated Project Plans to the Principal as if Macquarie had been required to do so in accordance with clause 7.3 of the Revised SDD.

**4.9 Bank Guarantee**

The parties acknowledge and agree that:

- (a) prior to Financial Close, Macquarie provided to the Principal a Bank Guarantee in accordance with clause 6 of the Base SDD for [REDACTED] of the Total Project Sum for Bank Guarantees; and
- (b) Macquarie will not be in breach of its obligations under clause 6.1 of the Revised SDD by virtue of not providing, and nothing in this deed requires Macquarie to provide, an additional or replacement Bank Guarantee in connection with any amounts payable in relation to the Caverns Scope.

**4.10 Variations to the Base SDD**

The parties acknowledge and agree that:

- (a) the adjustment to the scope of works under the Base SDD to address the Caverns Scope;
- (b) the amendments to the Base SDD to account for the Caverns Scope; and
- (c) this deed,

do not reflect or incorporate any Variations that do not relate to the Caverns Scope under the Base SDD prior to the Effective Date.

## 5. **CONFIDENTIALITY AND PERMITTED DISCLOSURE**

The parties acknowledge and agree that clause 48 of the Base SDD applies to this deed as if set out in full in this deed.

## 6. **REPRESENTATIONS AND WARRANTIES**

### 6.1 **Representations and warranties of the Principal**

The Principal represents and warrants for the benefit of Macquarie that:

- (a) it is a NSW government agency validly constituted and existing under the Transport Administration Act;
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under this deed (or will have them in full force and effect at the time the obligation is to be performed);
- (c) this deed constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance of this deed 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.

### 6.2 **Representations and warranties of Macquarie**

Macquarie represents and warrants for the benefit of the Principal that:

- (a) 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) it is duly registered and remains in existence;
- (c) it has power to enter into this deed and comply with its obligations under it;
- (d) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with its obligations under it and to allow it to be enforced;
- (e) its obligations under this deed are valid and binding and are enforceable against it in accordance with its terms;
- (f) this deed and the transactions under it 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) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (h) 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;
- (i) it is not aware of any material facts or circumstances relating to Macquarie that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether Macquarie has the financial or technical capabilities to adhere to its obligations and deliver on its commitments under this deed; and
- (j) the Treasurer cannot prohibit and has not prohibited the grant of this deed under the FIRB Act.

### 6.3 **Reliance on representations and warranties**

Each party acknowledges that the other has executed this deed and agreed to take part in the transactions that it contemplates in reliance of the representations and warranties that are made in this clause 6.

## 7. **GENERAL**

### 7.1 **Governing law**

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them, in respect of any proceedings arising out of or in connection with this deed.

### 7.2 **Liability for expenses**

Subject to clause 4.3(b), each party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed.

### 7.3 **Giving effect to this deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this deed.

### 7.4 **Operation of this deed**

- (a) Subject to clause 7.4(b), this deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this deed and has no further effect.
- (b) Any right that a person may have under this deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this deed enforceable, unless this would materially change the intended effect of this deed.

7.5 **Exclusion of contrary legislation**

Any legislation that adversely affects an obligation of a party, or the exercise by a party of a right or remedy, under or relating to this deed is excluded to the full extent permitted by law.

7.6 **Amendment**

This deed can only be amended or replaced by another deed executed by or on behalf of both the Principal and Macquarie.

7.7 **Counterparts**

This deed may be executed in counterparts.



## **SCHEDULE 1**

### **Amendments to the General Conditions**

With effect from the Effective Date, the General Conditions of the Base SDD are deleted and replaced with the version **included** in this Schedule 1, with the amendments to the General Conditions of the Base SDD shown in mark-up.



***Proposed base for GST-DeV Schedule 1 - Amendments to Main Body of Base SDD***

# Martin Place Metro Station Project Station Delivery Deed

Contract No: 507

**Sydney Metro**

ABN 12 354 063 515

and

**Macquarie Group Limited**

ABN 94 122 169 279

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION .....	1
1.1 Definitions .....	1
1.2 Interpretation.....	<del>60</del> 61
1.3 Resolution of ambiguities.....	64
1.4 No bias against drafter .....	65
1.5 Business Day .....	65
1.6 Excluding liability.....	65
1.7 Severability.....	65
1.8 Authorities .....	<del>65</del> 66
1.9 Best or reasonable endeavours.....	66
1.10 Macquarie's Associates .....	67
1.11 Electronic files .....	67
1.12 Sydney Metro Northwest Augmentation .....	67
2. CONDITIONS PRECEDENT .....	68
2.1 Conditions Precedent.....	68
2.2 Satisfaction of Conditions Precedent.....	68
2.3 Waiver of Conditions Precedent .....	68
2.4 Condition Precedent Deadline Dates .....	68
3. OBJECTIVE AND RISKS .....	69
3.1 Objectives for Sydney Metro City & Southwest .....	69
3.2 Project objectives .....	69
3.3 Customer is at the centre .....	71
3.4 Achievement of Project Values.....	71
3.5 Macquarie's primary obligations.....	71
3.6 Principal's primary obligations .....	71
3.7 [REDACTED] .....	71
3.8 Principal's rights do not affect risk allocation .....	72
4. GOVERNANCE.....	74
4.1 Principal's Representative .....	74
4.2 Appointees of the Principal's Representative.....	<del>74</del>
4.3 Macquarie's Representative.....	75
4.4 Independent Certifier .....	75
4.5 Proof Engineer.....	79
4.6 Project Control Group.....	80
4.7 Working Groups.....	81
4.8 Risk management meetings .....	82
4.9 No legal effect .....	82
4.10 Independent Property Impact Assessment Panel.....	82
5. LAW AND APPROVALS .....	83
5.1 Compliance with Laws .....	83
5.2 Approvals .....	84
5.3 Modifications to Planning Approvals.....	85
5.4 Legal challenge to Planning Approvals .....	86
5.5 Environment Protection Licence .....	86
5.6 Crown Building Work.....	<del>86</del>
5.7 Environmental Representative .....	87
5.8 Long service leave levy.....	88
6. BANK GUARANTEE .....	88

6.1	Macquarie to give Bank Guarantee .....	88
6.2	Calling on a Bank Guarantee .....	88
6.3	Returning the Bank Guarantee .....	89
6.4	Replacement of expiring Bank Guarantee.....	89
6.5	Replacement of Bank Guarantee where issuer ceases to have the Required Rating .....	90
6.6	No injunction.....	90
6.7	No interest.....	91
6.8	No trust.....	91
7.	PROJECT PLANS.....	91
7.1	Purpose .....	91
7.2	Initial Project Plans .....	91
7.3	Updated Project Plans .....	91
7.4	Fitness for purpose .....	92
7.5	Review of Project Plans.....	92
7.6	Principal may request updates.....	93
7.7	Implementation and compliance .....	93
8.	SUBCONTRACTING.....	94
8.1	Subcontracting by Macquarie.....	94
8.2	Significant Subcontracts .....	94
8.3	Lifts and escalators .....	95
8.4	Framework arrangements .....	98
9.	MACQUARIE'S GENERAL OBLIGATIONS .....	99
9.1	All work included .....	99
9.2	Principal contractor .....	99
9.3	Protection of persons and property .....	102
9.4	Work health and safety.....	102
9.5	Application of Sydney Metro Principal Contractor Health and Safety Standard .....	104
9.6	Project Health and Safety Management Plan .....	104
9.7	Rail Safety .....	105
9.8	Engineering Authorisation and ASA compliance.....	107
9.9	Performance of Macquarie's Activities .....	108
9.10	Control of traffic .....	109
9.11	Industrial relations.....	109
9.12	Workforce development and industry participation .....	110
9.13	Australian Jobs Act.....	110
9.14	Community relations .....	110
9.15	Personnel .....	111
9.16	Services .....	112
9.17	Project Documentation .....	113
9.18	Sustainability .....	113
10.	INTERFACE WITH RAIL CONTRACTORS.....	113
10.1	Rail Contractors.....	113
10.2	Cooperation and Integration Deeds .....	114
10.3	Cooperation and coordination with Rail Contractors.....	115
10.4	Line-wide Contractors' design team meetings.....	119
10.5	Disputes between Macquarie and Rail Contractors.....	119
10.6	Indemnity .....	119
10.7	No Claims arising out of Rail Contractors' Work .....	119
10.8	Excusable Causes of Delay .....	120
10.9	Interface Management Services.....	120
10.10	Master Interface Protocols Deed Poll .....	121
10.11	Collateral Warranty Deed Poll .....	123

11.	TSE CONTRACT .....	123
	<b>11.2</b> Principal initiated TSE Works Change.....	123
	<b>11.3</b> MLC Pedestrian Link .....	125
	<b>11.5</b> Macquarie bears risks.....	128
	<b>11.6</b> TSE Works design team meetings .....	128
	<b>11.7</b> TSE Works Design Documentation .....	<del>129</del> 128
	<b>11.8</b> TSE Works Asset Management Information .....	129
	<b>11.9</b> Inspection of TSE Works.....	<del>130</del> 129
	<b>11.10</b> TSE Works documentation .....	130
	<b>11.11</b> Care and maintenance of TSE Works .....	131
	<b>11.15</b> Access by TSE Contractor .....	133
	<b>11.18</b> TSE Handover Works.....	134
	<b>11.20</b> Access by TSE Contractor to Principal Construction Site .....	135
12.	.....	135
	<b>12.2</b> Existing Operations .....	<del>139</del> 138
	<b>12.3</b> Pedestrian links proposed by Macquarie.....	140
13.	INTERFACE WITH OSD AND RETAIL LESSEE.....	141
	<b>13.1</b> Acknowledgements regarding OSD and Retail Lease interface .....	141
	<b>13.2</b> Procuring access to the OSD Construction Site .....	<del>142</del> 141
	<b>13.4</b> OSD Step-in Events .....	<del>143</del> 142
	<b>13.5</b> Inconsistency .....	143
14.	NSW CODE AND NSW GUIDELINES .....	143
	<b>14.1</b> NSW Code and NSW Guidelines .....	143
	<b>14.2</b> Primary obligation.....	143
	<b>14.3</b> Access and information.....	<del>144</del> 143
	<b>14.4</b> Sanctions.....	144
	<b>14.5</b> Compliance .....	<del>145</del> 144
15.	AUSTRALIAN GOVERNMENT REQUIREMENTS.....	145
	<b>15.1</b> Building Code .....	145
	<b>15.2</b> WHS Accreditation .....	<del>147</del> 146
16.	INFORMATION DOCUMENTS AND ENVIRONMENTAL ISSUES.....	147
	<b>16.1</b> Physical conditions.....	147
	<b>16.2</b> Information Documents.....	148
	<b>16.3</b> Condition of the Construction Site.....	150
	<b>16.4</b> Contamination.....	151
	<b>16.5</b> Environmental compliance .....	153
	<b>16.6</b> Environmental Management Plans.....	<del>155</del> 154
	<b>16.7</b> Liability under the NGER Legislation .....	155
	<b>16.8</b> Provision of Emissions and Energy Data to the Principal.....	<del>156</del> 155
	<b>16.9</b> Reporting Emissions and Energy Data .....	156
17.	COMMENCEMENT OF WORKS AND ACCESS .....	157

17.1	Interim Access Licence and interface coordination.....	157
17.2	Construction Licence .....	<del>159</del> <u>158</u>
17.3	Access to and use of the Principal Construction Site .....	162
17.4	Variation of the Principal Construction Site.....	<del>163</del> <u>162</u>
17.5	Conditions precedent to access the Principal Construction Site .....	163
17.6	Licence over Macquarie Construction Site .....	163
17.7	Property Works.....	<u>163</u>
17.8	Native Title Applications and Threatened Species Claims.....	<del>166</del> <u>165</u>
17.9	Finding of Artefacts.....	166
17.10	Working hours.....	<del>167</del> <u>166</u>
17.11	Extra Land .....	<u>166</u>
17.12	Permitted use.....	<u>167</u>
17.13	Value Engineering .....	168
17.14	.....	169
17.15	South Tower OSD Access.....	169
18.	PORTIONS .....	170
18.1	Principal's Representative may direct Portions .....	170
18.2	Interpretation of Portions.....	172
19.	ENCUMBRANCES.....	<u>172</u>
19.1	Principal's Land .....	<u>172</u>
19.2	Macquarie Land .....	<u>173</u>
20.	DESIGN AND DESIGN DOCUMENTATION.....	<del>174</del> <u>175</u>
20.1	Design obligations.....	<del>174</del> <u>175</u>
20.2	Design Stage 1.....	<u>174</u>
20.3	Design warranties.....	<u>175</u>
20.4	Preparation and submission of Design Documentation .....	<u>177</u>
20.5	Third Party Works .....	<u>178</u>
20.6	Certification of Design Documentation .....	<u>178</u>
20.7	Explanation of Design Documentation .....	<del>179</del> <u>180</u>
20.8	Review of Design Documentation .....	<del>179</del> <u>180</u>
20.9	Design Review Panel .....	183
20.10	Rail Contractors.....	<u>183</u>
20.11	Design Documentation for construction .....	<del>184</del> <u>185</u>
20.12	Amendments to Final Design Documentation by Macquarie .....	<del>185</del> <u>186</u>
20.13	Amendments to Final Design Documentation required by Follow-on Contractors.....	<del>186</del> <u>187</u>
20.14	No duty to review .....	<u>186</u>
20.15	Ownership of documentation .....	<del>187</del> <u>188</u>
20.16	Delivery up of Design Documentation .....	<del>190</del> <u>191</u>
20.17	Reference design .....	<del>190</del> <u>191</u>
20.18	Design Life.....	191
21.	CONSTRUCTION .....	192
21.1	Construction obligations .....	192
21.2	Construction warranties.....	193
21.3	Setting out.....	<u>193</u>
21.4	All work included .....	<u>193</u>
21.5	Incident management .....	194
21.6	Instructions from Authorities .....	195
21.7	Survey .....	<u>195</u>
21.8	Cleaning up.....	196
21.9	Work methods.....	196
21.10	Asset Management Information .....	<u>196</u>
21.11	As-built drawings.....	<u>199</u>
21.12	Training.....	<u>200</u>



21.13	Area 6 Handover Items .....	201
22.	QUALITY .....	202
22.1	Quality Management System .....	202
22.2	Quality management, verification and certification .....	<u>202</u>
22.3	Project quality non-conformance.....	<u>203</u>
23.	TIME .....	<u>203</u>
23.1	Commencement .....	<u>203</u>
23.2	Dates for Milestone Achievement, Construction Completion and Completion .....	<u>203</u>
23.3	Importance of Milestone Achievement, Construction Completion and Completion on time.....	204
23.4	SDD Program .....	<u>204</u>
23.5	Acceleration by Macquarie.....	<u>205</u>
23.6	Suspension .....	<u>205</u>
23.7	Delays.....	206
23.8	Corrective action plan.....	<u>206</u>
23.9	Claim for extension of time .....	207
23.10	Conditions precedent to extension .....	<u>211</u> <del>209</del>
23.11	Grant of extension of time .....	<u>211</u>
23.12	Liquidated damages for delay .....	<u>213</u> <del>211</del>
23.13	Extension to Site Access Expiry Date .....	<u>219</u>
23.14	Unilateral extension .....	<u>220</u>
23.15	Concurrent delays.....	<u>220</u>
23.16	Progress Reports .....	<u>220</u>
24.	COMPENSATION EVENTS .....	<u>220</u>
	<b>24.2</b> Claim for compensation .....	<u>221</u>
	<b>24.3</b> Continuing Compensation Events .....	<u>222</u>
	<b>24.4</b> Condition precedent to compensation .....	<u>222</u>
	<b>24.5</b> Delay Costs and <b>24.5</b> .....	<u>223</u> <del>222</del>
	<b>24.6</b> Limitation on Delay Costs .....	<u>223</u>
	<b>24.7</b> Mitigation .....	<u>223</u>
25.	MILESTONE ACHIEVEMENT .....	<u>224</u>
25.1	Milestone Achievement .....	<u>224</u>
25.2	Effect of Notice of Milestone Achievement .....	<u>225</u>
25.3	Access for Follow-on Contractors .....	<u>225</u>
26.	TESTING AND COMMISSIONING .....	<u>226</u>
26.1	Testing and Commissioning Plan .....	<u>226</u>
26.2	Test Procedures.....	<u>226</u>
26.3	Notice of Tests .....	<u>227</u> <del>225</del>
26.4	Conduct of Tests.....	<u>227</u>
26.5	Test Reports .....	<u>227</u>
26.6	Failure of Test .....	<u>228</u> <del>227</del>
26.7	Non-compliant Test Report.....	<u>228</u>
26.8	Additional testing by the Principal .....	<u>228</u>
27.	CONSTRUCTION COMPLETION.....	<u>229</u>
27.1	Construction Completion.....	<u>229</u>
	<b>27.3</b> Effect of Notice of Construction Completion .....	<u>232</u>
28.	COMPLETION.....	<u>232</u>

28.1	Completion .....	<u>232</u>
28.2	Effect of Notice of Completion .....	<u>234</u>
29.	POST-COMPLETION ARRANGEMENTS .....	<u>234</u>
29.1	Access following Completion of a Portion.....	<u>234</u>
29.2	Interface Management Services after Completion .....	<u>235</u> <del>234</del>
30.	DEFECTS RECTIFICATION .....	<u>235</u>
30.1	Defects.....	<u>235</u>
30.2	Principal's Representative's Direction.....	<u>236</u>
30.3	Correction of Defect or Change.....	<u>237</u>
30.4	Acceptance of work or rectification by others.....	<u>239</u> <del>238</del>
30.5	Changes under other contracts to overcome Defects .....	<u>239</u> <del>238</del>
30.6	Works .....	<u>239</u>
30.7	Local Area Works.....	<u>239</u>
30.8	Service Works .....	<u>241</u>
30.9	Property Works.....	<u>242</u>
30.10	Rights not affected.....	<u>242</u>
30.11	Warranties by others.....	<u>242</u>
30.12	Use of defective facilities .....	<u>243</u>
30.13	Final inspections of Project Works (other than Third Party Works) .....	<u>243</u>
30.14	Final inspections of Third Party Works .....	<u>243</u>
31.	SUBDIVISION.....	<u>243</u>
31.1	Subdivision requirements.....	<u>243</u>
31.2	Amendments to draft Subdivision Documents.....	<u>245</u>
31.3	Subdivision Proposal .....	<u>248</u> <del>247</del>
31.4	Preparation of Subdivision Documents for the Subdivision Proposal.....	<u>249</u>
31.5	Determination of Shared Facilities and shared costs .....	<u>250</u>
31.6	Minor adjustments by the Principal to boundaries .....	<u>250</u>
31.7	Macquarie bound by Encumbrances.....	<u>251</u> <del>250</del>
31.8	Two stage subdivision .....	<u>251</u>
31.9	Licence to use Loading Dock .....	<u>253</u>
31.10	Notice of creation of Development Lots.....	<u>254</u> <del>253</del>
31.11	Transfer of substratum land from the Principal to Macquarie Bank Limited <u>254</u> <del>253</del>	
31.12	Transfer of substratum land from Macquarie Bank Limited to the Principal <u>255</u> <del>254</del>	
31.13	ESL Easement Instruments .....	<u>256</u> <del>255</del>
31.14	Operation of the registered Building Management Statement .....	<u>256</u>
31.15	Survival.....	<u>257</u>
32.	RETAIL LEASES .....	<u>257</u>
33.	MACQUARIE PAYMENT .....	<u>258</u> <del>257</del>
33.1	Station Works D&C Savings .....	<u>258</u> <del>257</del>
33.2	Payment of Macquarie Payment.....	<u>258</u>
33.3	Interest on unpaid Macquarie Payments .....	<u>258</u>
33.4	Macquarie Payments are non-refundable .....	<u>259</u> <del>258</del>
33.5	Incorrect amount paid .....	<u>259</u> <del>258</del>
34.	PRINCIPAL PAYMENTS .....	<u>259</u>
34.1	Core Payment 2.....	<u>259</u>
34.2	Payment claims .....	<u>260</u> <del>259</del>
34.3	Effect of payment schedules and payments.....	<u>263</u>
34.4	Provision of documentation and other requirements .....	<u>264</u>
34.5	Payment of Subcontractors, workers compensation and payroll tax.....	<u>264</u>
34.6	Payment for unfixed Construction Materials.....	<u>265</u>

34.7	SOP Act .....	<a href="#">266</a>
34.8	Right of set-off .....	<a href="#">269</a>
34.9	Not used.....	<a href="#">269</a>
34.10	Interest .....	<a href="#">269</a>
34.11	Title .....	<a href="#">269</a>
34.12	Payments .....	<a href="#">270</a>
<b>35. PRINCIPAL INITIATED VARIATIONS..... <a href="#">271</a></b>		
35.1	Variation Impact Request.....	<a href="#">271</a>
35.2	Variation Impact Proposal .....	<a href="#">272</a>
35.3	Cost of preparing Variation Impact Proposal.....	<a href="#">273</a>
35.4	Election by the Principal.....	<a href="#">274</a>
35.5	Principal must consult with Macquarie in relation to Material Impacts .....	<a href="#">274</a>
35.6	Principal accepts Variation Impact Proposal.....	<a href="#">276</a>
35.7	Principal rejects Variation Impact Proposal.....	<a href="#">276</a>
35.8	Parties reach agreement.....	<a href="#">277</a>
35.9	If parties fail to reach agreement.....	<a href="#">277</a>
35.10	Principal may direct that Variation proceed .....	<a href="#">277</a>
35.11	Principal options following determination .....	<a href="#">278</a>
35.12	Macquarie to implement Variation.....	<a href="#">278</a>
35.13	Instruction to proceed .....	<a href="#">278</a>
35.14	Omissions .....	<a href="#">279</a>
35.15	No liability unless Variation Order .....	<a href="#">279</a>
35.16	Template .....	<a href="#">280</a>
35.17	Not used.....	<a href="#">280</a>
35.18	Variations required as a consequence of OSD Variations .....	<a href="#">280</a>
<b>36. MACQUARIE INITIATED VARIATIONS .....</b>		
36.1	Macquarie may propose a Variation.....	<a href="#">281</a>
36.2	Principal may approve or reject .....	<a href="#">282</a>
36.3	Variation required as a result of a Change in Law or Planning Approval modification .....	<a href="#">282</a>
36.4	Macquarie to bear risks and costs .....	<a href="#">283</a>
<b>37. VARIATION COSTS AND VARIATION SAVINGS..... <a href="#">283</a></b>		
<b>38. OPTIONAL CONDITIONS .....</b>		
<b>39. CHANGE IN LAW .....</b>		
39.1	Change in Codes and Standards .....	<a href="#">290</a>
39.2	Changes in Law .....	<a href="#">291</a>
39.3	Implementation of Change in Law .....	<a href="#">291</a>
<b>40. ADVERTISING AND SIGNAGE .....</b>		
40.1	Advertising and signage.....	<a href="#">291</a>
40.2	Electronic signage.....	<a href="#">292</a>
<b>41. RISKS AND INSURANCE.....</b>		
41.1	Responsibility for care of the Project Works.....	<a href="#">293</a>
41.2	Principal's insurance.....	<a href="#">294</a>
41.3	Macquarie's Insurance obligations.....	<a href="#">295</a>
41.4	Workers compensation insurance.....	<a href="#">295</a>
41.5	Asbestos liability insurance .....	<a href="#">296</a>

41.6	Professional indemnity insurance .....	296
41.7	Construction Plant insurance .....	<u>296</u>
41.8	Motor vehicle insurance .....	<u>296</u>
41.9	Periods of Insurance .....	297
41.10	Evidence of policies.....	297
41.11	Provisions in policies .....	298
41.12	Premiums .....	299
41.13	Undertaking to inform .....	300
41.14	Reinstatement.....	300
41.15	Application of Principal's Insurance proceeds.....	301
41.16	Damage to property .....	302
<b>[REDACTED]</b>		
41.18	DSU Insurance .....	<u>302</u>
41.19	Liabilities of Macquarie not affected.....	303
41.20	No merger .....	303
42.	INDEMNITY AND LIABILITY EXCLUSIONS.....	303
42.1	Indemnity from Macquarie .....	303
<b>[REDACTED]</b>		
42.6	Procedure for Third Party Claims.....	308
42.7	Obligations not affected.....	<u>308</u>
<b>[REDACTED]</b>		
43.	DEFAULT.....	309
43.1	Macquarie Event of Default .....	309
43.2	Default Notice .....	310
43.3	Cure Plan.....	310
43.4	Prevention Plan .....	<u>311</u>
44.	STEP-IN.....	313
44.1	Step-in Events.....	313
44.2	Step-in Rights .....	313
44.3	Step-in Powers .....	314
44.4	Macquarie's obligations.....	314
44.5	Principal's obligations .....	315
44.6	No liability .....	315
44.7	Step-out.....	315
44.8	Principal's Costs.....	316
45.	TERMINATION .....	316
45.1	Macquarie Termination Events.....	316
45.2	Notice of Macquarie Termination Event.....	317
45.3	Termination for Macquarie Termination Event.....	317
45.4	Principal Termination Events .....	317
45.5	Termination for Principal Termination Event.....	317
<b>[REDACTED]</b>		
45.7	Termination of OSD PDA.....	319
45.8	Principal not entitled to give notice .....	320
45.9	Consequences of termination .....	320
45.10	Termination payment .....	321
45.11	Other matters relevant to termination .....	322
45.12	Preservation of rights .....	323
45.13	No other termination rights .....	323

45.14	Survival.....	323
46.	ACCESS, INSPECTIONS AND AUDITS .....	323
46.1	Principal's right of entry.....	323
46.2	Access to third parties' information .....	325
46.3	Macquarie to cooperate .....	325
47.	RECORDS AND REPORTING OBLIGATIONS.....	325
47.1	Records .....	325
47.2	Financial reporting .....	325
47.3	Early warning risk register .....	326
47.4	Notices under Project Documents.....	326
47.5	Advice on rights of third parties under Project Documents .....	326
47.6	ASIC and ASX notices.....	326
47.7	Other information .....	<u>326</u>
47.8	Retention of records.....	327
48.	CONFIDENTIALITY AND PERMITTED DISCLOSURE.....	327
48.1	Confidentiality .....	327
48.2	Principal's Public Disclosure Obligations .....	328
48.3	Media Requests .....	329
49.	FINANCING AND REFINANCING .....	329
49.1	Financing documents.....	329
49.2	Negotiating terms of financing documents .....	329
50.	NOT USED .....	330
51.	ASSIGNMENT AND CHANGE IN OWNERSHIP .....	330
51.1	Change in ownership .....	330
51.2	Permitted Changes in Ownership .....	331
51.3	Assignment.....	331
52.	DISPUTE RESOLUTION .....	332
52.1	Disputes generally .....	332
52.2	Independent Dispute Avoidance and Resolution Panel .....	332
52.3	Consultation.....	332
52.4	Recommendation.....	333
52.5	Expert determination.....	334
52.6	Notice of dissatisfaction .....	335
52.7	Final and binding decision .....	335
52.8	Litigation or arbitration.....	335
52.9	Arbitration rules .....	336
52.10	Exclusion from determination or award.....	337
52.11	Payments .....	337
52.12	Macquarie to continue performing obligations.....	337
52.13	Urgent relief.....	337
52.14	Dispute under related contracts.....	337
52.15	Disputes with Significant Subcontractors.....	337
52.16	Survive termination .....	338
53.	REPRESENTATIONS AND WARRANTIES.....	338
53.1	Principal's representations and warranties.....	338
53.2	Macquarie representations and warranties .....	338
53.3	Repetition of representation and warranties .....	339
53.4	Obligations not affected.....	339
53.5	Undertakings by Macquarie .....	340
54.	NOTICE OF CLAIMS .....	340

54.1	Notice of Variation .....	340
54.2	Notices of other Claims.....	341
54.3	Prescribed notices.....	341
54.4	Continuing events.....	342
54.5	Time bar.....	342
54.6	Temporary waiver of notification requirements .....	342
54.7	Other provisions unaffected .....	343
55.	PROPORTIONATE LIABILITY .....	343
55.1	Exclusion of proportionate liability scheme.....	343
55.2	Macquarie not to apply proportionate liability scheme.....	344
55.3	Subcontracts.....	344
56.	COSTS.....	344
56.1	Obligations of Macquarie.....	344
56.2	Costs of negotiating this deed .....	344
56.3	Each party to pay its Costs .....	345
57.	TAXES .....	345
57.1	Liability for Taxes .....	345
58.	GST .....	345
58.1	Payment of GST .....	345
58.2	Later adjustment to price or GST.....	345
58.3	Tax invoice/adjustment note .....	345
58.4	Recipient created tax invoice/recipient created adjustment note .....	345
58.5	Indemnities and reimbursement .....	346
59.	NOTICES .....	346
60.	GENERAL .....	349
60.1	Governing Law and jurisdiction.....	349
60.2	Amendments.....	349
60.3	Waiver .....	349
60.4	Survival of certain provisions; no merger.....	350
60.5	Further acts and documents.....	350
60.6	Consents .....	350
60.7	No representation or reliance .....	350
60.8	Exercise of remedies .....	350
60.9	Entire agreement.....	351
60.10	Indemnities.....	351
60.11	Counterparts.....	351
60.12	Attorneys.....	352
60.13	Relationship between the Principal and Macquarie.....	352
60.14	Principal not liable .....	352
60.15	Supervening legislation .....	352
60.16	Set off.....	352
60.17	Continuing breaches.....	352
60.18	Antecedent obligations .....	353
60.19	Vienna Convention.....	353
60.20	Transfer of functions or Public Transport Agency assets .....	353

**THIS DEED** is made on

2018

**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) Macquarie Group Limited ABN 94 122 169 279 of Level 6, 50 Martin Place, Sydney NSW 2000 (**Macquarie**).

**RECITALS:**

- (A) On 16 February 2017, MCH submitted an unsolicited proposal to the NSW Government for the design, construction and completion of:
  - (1) Martin Place Metro Station; and
  - (2) two commercial towers above Martin Place Metro Station.
- (B) On 15 March 2017, the NSW Government invited MCH to enter into negotiations to finalise all outstanding issues in relation to MCH's unsolicited proposal and to enable MCH to submit the Binding Offer.
- (C) On the Commencement Date, the NSW Government accepted the Binding Offer.
- (D) The Principal and Macquarie now wish to enter into this deed to set out the terms and conditions on which Macquarie will:
  - (1) investigate, finance, fund, plan, design, construct, test and commission the Project Works;
  - (2) interface and coordinate Macquarie's Activities with the Rail Contractors' Activities and the OSD Developer's Activities; and
  - (3) hand over the completed Martin Place Metro Station to the Principal.
- (E) The Principal and the OSD Developer will separately enter into the OSD PDA in respect of the OSD.

**THE PARTIES AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply in this deed.

**50 Martin Place Ancillary Amenities Lot** means the stratum lot shown as Lot 2 in the Draft Subdivision Plan which will be created by way of subdivision pursuant to clause 31 and in which the end of trip facilities for 50 Martin Place, Sydney and the north south concourse link will sit.

**50 Martin Place Works** has the meaning given to that term in Schedule E9.

**50 MP Tenant** means every tenant, lessee, sub-tenant, sub-lessee, licensee or other occupier of the Macquarie Land or any building on the Macquarie Land, other than Macquarie Bank Limited or a Related Entity of Macquarie Bank Limited.

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

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

**Aboriginal Participation Plan** means the Project Plan referred to as the Aboriginal Participation Plan in Appendix 54 to the SWTC, as updated from time to time in accordance with clause 7.

**Accepted Defect** means:

- (a) with respect to a Milestone, a Defect (other than a Minor Defect) in that Milestone in relation to which the Principal has issued a direction under clause 30.2(a)(iii), 30.2(a)(iv) or 30.2(a)(v)(B) prior to the Date of Milestone Achievement of that Milestone;
- (b) with respect to Portion 1, a Defect (other than a Minor Defect) in that Portion in relation to which the Principal has issued a direction under clause 30.2(a)(iii), 30.2(a)(iv) or 30.2(a)(v)(B) prior to the Date of Construction Completion of that Portion; and
- (c) with respect to any Portion other than Portion 1, a Defect (other than a Minor Defect) in any Project Works forming part of that Portion which have been carried out:
  - (i) prior to the Date of Construction Completion of that Portion, in relation to which the Principal has issued a direction under clause 30.2(a)(iii), 30.2(a)(iv) or 30.2(a)(v)(B) prior to the Date of Construction Completion of that Portion; or
  - (ii) after the Date of Construction Completion of that Portion, in relation to which the Principal has issued a direction under clause 30.2(a)(iii), 30.2(a)(iv) or 30.2(a)(v)(B) prior to the Date of Completion of that Portion.

**Accessible** means, in respect of a part of the TSE Site, that Macquarie's access to that part of the TSE Site is safe, clean and clear.

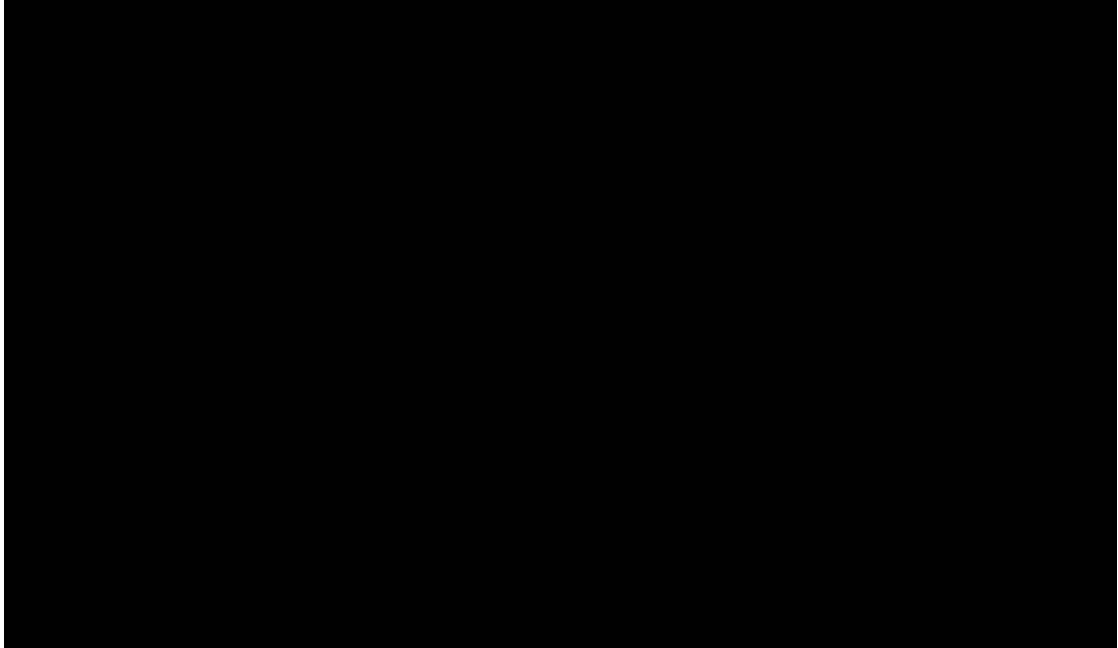
**Accreditation** means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from the same).

**Act of Prevention** means:

- (a) a breach by the Principal of this deed or any other Project Document to which it is a party; or
- (b) an act or omission by the Principal or its Associates, not being an act or omission:
  - (i) permitted or allowed by any of the Project Documents;
  - (ii) which is within a timeframe expressly permitted or allowed by any of the Project Documents;

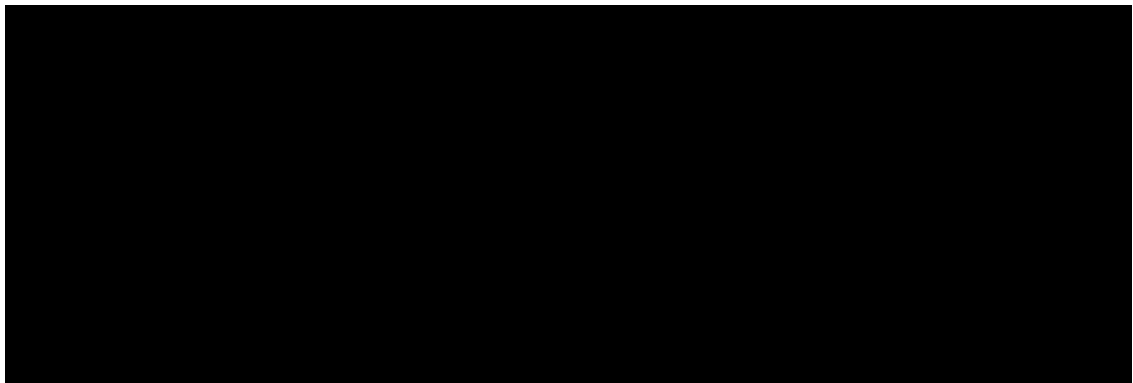


- (iii) to the extent the act or omission is caused or contributed to by a breach by Macquarie of any Project Document or any negligent or unlawful act or omission of Macquarie or its Associates; or
- (iv) being the exercise by the Principal of any of its functions and powers pursuant to any Law.



**Additional SDD Scope means:**

- (a) the physical works which Macquarie must design, construct and complete under this deed as set out in:
  - (i) section 2.2.2(a)(xxv) of the SWTC;
  - (ii) section 2.2.2(a)(xxvi) of the SWTC;
  - (iii) section 2.2.9(a)(i) of the SWTC; and
  - (iv) section 2.2.9(a)(ii) of the SWTC;



- (d) all activities associated with the works described in paragraph (a) or paragraph (b) that Macquarie performs, or is required to perform, to comply with its obligations under this deed.

**Additional Third Party Agreement** has the meaning given in clause 12.1(a)(iii).

**Adjoining Property Easements** has the meaning given to that term in Schedule D6.

**AEO or Authorised Engineering Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for the Sydney Metro City & Southwest.

**Agreed Defect** means:

- (a) with respect to a Milestone, a Defect (other than a Minor Defect) in that Milestone that:
  - (i) the Principal and Macquarie agree in writing; or
  - (ii) the Principal's Representative otherwise directs,does not need to be rectified in order to achieve Milestone Achievement of that Milestone;
- (b) with respect to Portion 1, a Defect (other than a Minor Defect) in that Portion that:
  - (i) the Principal and Macquarie agree in writing; or
  - (ii) the Principal's Representative otherwise directs,does not need to be rectified in order to achieve Construction Completion of that Portion; and
- (c) with respect to any Portion other than Portion 1, a Defect (other than a Minor Defect) in any Project Works forming part of that Portion which have been carried out:
  - (i) prior to the Date of Construction Completion of that Portion, that:
    - (A) the Principal and Macquarie agree in writing; or
    - (B) the Principal's Representative otherwise directs,does not need to be rectified in order to achieve Construction Completion of that Portion; and
  - (ii) after the Date of Construction Completion of that Portion, that:
    - (A) the Principal and Macquarie agree in writing; or
    - (B) the Principal's Representative otherwise directs,does not need to be rectified in order to achieve Completion of that Portion.

**Applicable Cure Period** has the meaning given to that term in clause 43.3(c)(i).

**Appointed Principal Contractor** means Lendlease Building Pty Ltd ABN 97 000 098 162.

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

- (a) to perform Macquarie's Activities;
- (b) in connection with the Construction Site or the Extra Land;

- (c) for the use and occupation of the Project Works or Martin Place Metro Station; and
- (d) otherwise to comply with any Law;

and includes:

- (e) the Planning Approval; and
- (f) any Environment Protection Licence which applies to Macquarie's Activities,

but does not include:

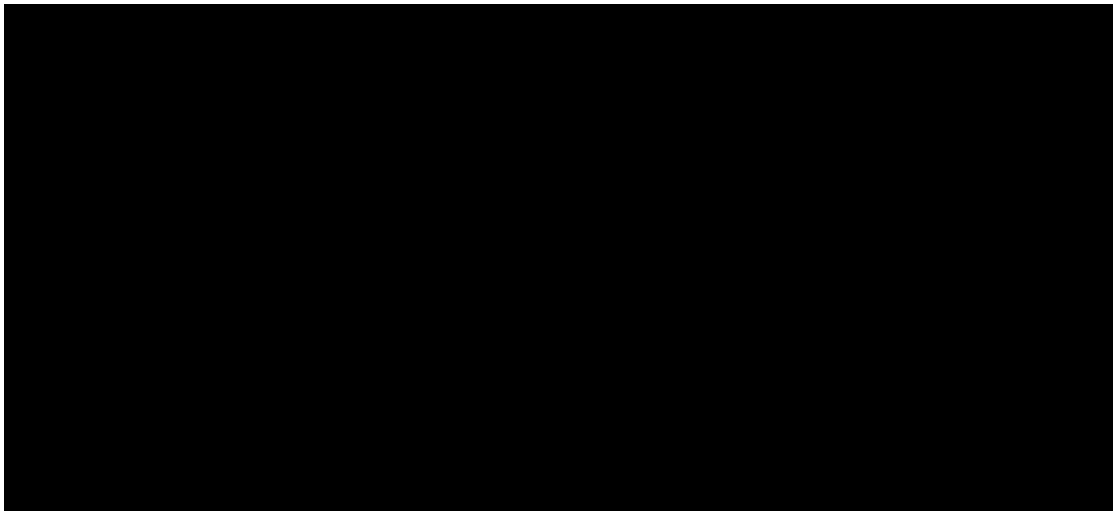
- (g) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or
- (h) the exercise by the Principal of its rights under this deed or any other Project Document.

**Approved Cure Plan** has the meaning given to that term in clause 43.3(c).

**Approved TSE Works Change** means any TSE Works Change:

- (a) notified to Macquarie under clause 11.2(a) and in respect of which:
  - (i) clause 11.2(e) applies; or
  - (ii) a Variation has been implemented under clause 11.2(d)(ii)(B); or
- (b) proposed by Macquarie and implemented by the Principal pursuant to clause 11.4.

**Area 4 Notice** has the meaning given to that term in clause 17.2(l).



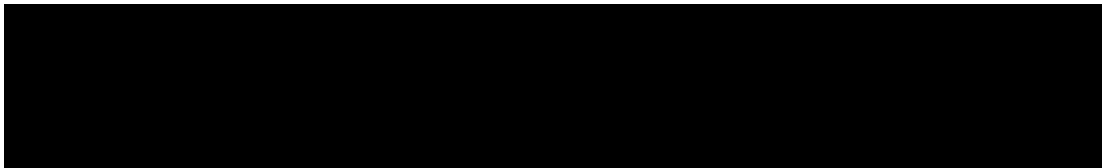
**Area 6 Handover Items** means the items set out in Schedule A24.



**Area 6 Licence Event** means a day where the Principal has failed to provide any access to Construction Site (Area 6) to Macquarie where such day is:

- (a) after the Construction Licence Commencement Date for Construction Site (Area 6); and

(b) occurs in the period commencing on [REDACTED] and expiring on [REDACTED]



**Area 6 PC Date** means the earlier of:

- (a) the day after the TSE Portion 14 Date of Construction Completion; and
- (b) the day after the Principal notifies Macquarie and the D&C Contractor that the Appointed Principal Contractor is engaged as the principal contractor in respect of Macquarie's Activities and any Construction Site Interface Work carried out on Construction Site (Area 6).

**Area 6 Site Access Event** means a failure by the Principal to provide Macquarie with access to Construction Site (Area 6) on or before the relevant Site Access Date.

**Artefact** means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical or archaeological interest.

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

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

**ASA Requirements** has the meaning given to that term in the ASA Charter.

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

**Asset Lifecycle Services** means the aspects of Macquarie's Activities, if any, which relate to the Asset Lifecycle of Transport Assets.

**Asset Management Information** means the information and documents relating to the operation and maintenance of the assets forming the Project Works as required by section 8A of the SWTC.

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

**Associate** means:

- (a) in respect of the Principal, the Principal's Representative and any of the employees, agents, contractors or officers of the Principal or the Principal's Representative, but excludes:
  - (i) the Independent Certifier;
  - (ii) the TSE Independent Certifier;
  - (iii) the Environmental Representative;

- (iv) Macquarie and each person listed in paragraph (b) of this definition;
  - (v) any Rail Contractor;
  - (vi) the Operator; and
  - (vii) the employees, agents, consultants and officers of the persons listed in paragraphs (a)(i) to (vi) (inclusive) of this definition; and
- (b) in respect of Macquarie:
- (i) DevCo;
  - (ii) Macquarie's Subcontractors;
  - (iii) the D&C Guarantor;
  - (iv) the OSD Developer and OSD Developer's Associates;
  - (v) the Retail Lessee and any Sub-Tenants; and
  - (vi) each of the employees, agents, contractors or officers of Macquarie, the Subcontractors, the D&C Guarantor, the OSD Developer or the OSD Developer's Associates, the Retail Lessee or any Sub-Tenants (excluding any Rail Contractors and the Independent Certifier and its employees, agents, consultants and officers).

**Authority** means:

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

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

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

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page BBSY (or any page which replaces that page) at about 10:30am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if there is a manifest error in the calculation of the average bid rate under paragraph (a) of this definition or if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a) of this definition, the bid rate agreed in good faith by the parties having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

**Bank Guarantee** means an irrevocable and unconditional undertaking by an Australian bank to pay on demand the guaranteed amount.

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

**Binding Offer** means the binding offer submitted by Macquarie to the NSW Government on or about [REDACTED] as amended, in accordance with the NSW Government's Unsolicited Proposals: Guide for Submission and Assessment dated February 2014.

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

**Building Management Statement** means a document substantially in the form of Annexure A which has been amended in accordance with clause 31 so that it is in a form acceptable to the Principal and Macquarie (each acting reasonably).

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

**Business Day** means a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December).

**Call Option Deed** means each of the following:

- (a) the Call Option Deed (Retail Lot North); and
- (b) the Call Option Deed (Retail Lot South).

**Call Option Deed (Retail Lot North)** means the deed titled "Call Option Deed (Retail Lot North)" between the Principal as grantor and the Retail (North) Lessee as grantee, in substantially the same form as Annexure K.

**Call Option Deed (Retail Lot South)** means the deed titled "Call Option Deed (Retail Lot South)" between the Principal as grantor and the Retail (South) Lessee as grantee, in substantially the same form as Annexure L.

**Cash Deposit** has the meaning given to that term in clause 6.4(b).

**Cash Deposit Account** has the meaning given to that term in clause 6.4(b).

**Caverns Scope** means:

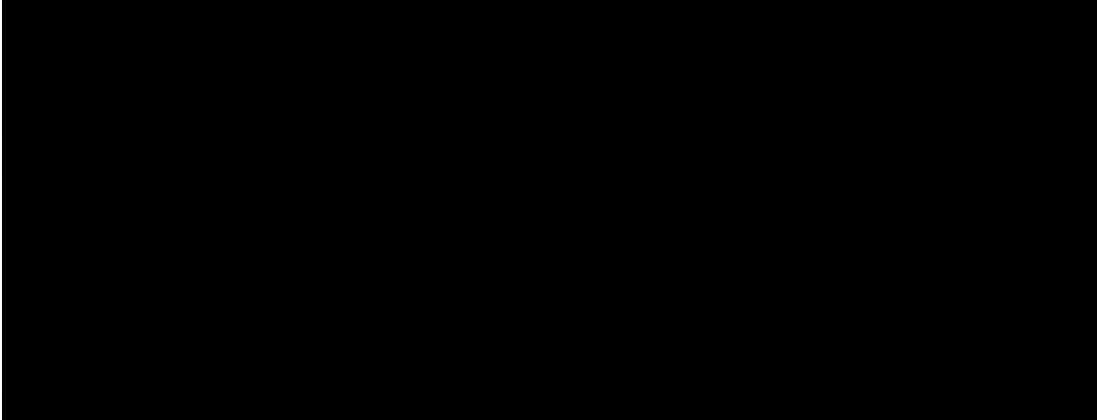
- (a) the physical works which Macquarie must design and construct pursuant to Appendix 67 to the SWTC;
- (b) any other changes to or impacts on:
  - (i) Macquarie's construction methodology, sequencing, programming or design of the Project Works or OSD Works; or
  - (ii) any other of Macquarie's Activities,

(in each case, as existed at the Commencement Date) that are required in order to accommodate the works set out in paragraph (a); and
- (c) all activities associated with the works described in paragraph (a) or paragraph (b) that Macquarie performs, or is required to perform, to comply with its obligations under this deed.

Caverns Scope Design Documentation means the Design Stage 3 Design Documentation for the Caverns Scope and included in Appendix 67 to the SWTC.

**CCB2** means the Configuration Control Board control gate 2.

**CCB3** means the Configuration Control Board control gate 3.



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

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

**Change in Codes and Standards** means:

- (a) a change in the Codes and Standards (including any new code, standard, specification or guideline which replaces a Code and Standard); or
- (b) a change in any NSW Government Policy (including any new NSW Government guidelines or requirements which replaces a NSW Government Policy),

which takes effect after the Commencement Date, excluding a change in the Codes and Standards or change in NSW Government Policy which, as at the Commencement Date:

- (c) was published or of which public notice had been given (even as a possible change in the Codes and Standards or possible change in NSW Government Policy); or
- (d) a person experienced and competent in the delivery of works and services similar to Macquarie's Activities would have reasonably foreseen or anticipated,

in substantially the same form as the change in Codes and Standards or change in NSW Government Policy occurring after the Commencement Date.

**Change in Disability Law** means a Change in Law the terms of which impose requirements relating to the ability of disabled persons to access and use rail facilities.

**Change in Environmental Law** means a Change in Law:

- (a) relating to the storage, handling or transportation of waste, dangerous goods or hazardous chemicals;
- (b) relating to work health and safety; or
- (c) the purpose of which relates specifically to the protection of the Environment.

**Change in Rail Safety Law** means a Change in Law the terms of which impose requirements relating to rail safety.

**Change in Law** means any of the following to take effect on or after the Commencement Date:

- (a) the amendment, repeal or change of an existing Law (other than an Approval);
- (b) a new Law (other than an Approval); or
- (c) a judgment of a court of law which changes a binding precedent,

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

- (d) in respect of Tax;
- (e) which was caused or contributed to by any act or omission of Macquarie; or
- (f) which, as at the Commencement Date:
  - (i) was published or of which public notice had been given (even as a possible amendment, repeal or change of an existing Law or a possible new Law or judgment); or
  - (ii) a person experienced and competent in the delivery of works and services similar to Macquarie's Activities would have reasonably foreseen or anticipated,

in substantially the same form as the amendment, repeal or change of an existing Law or new Law or judgment occurring after the Commencement Date.

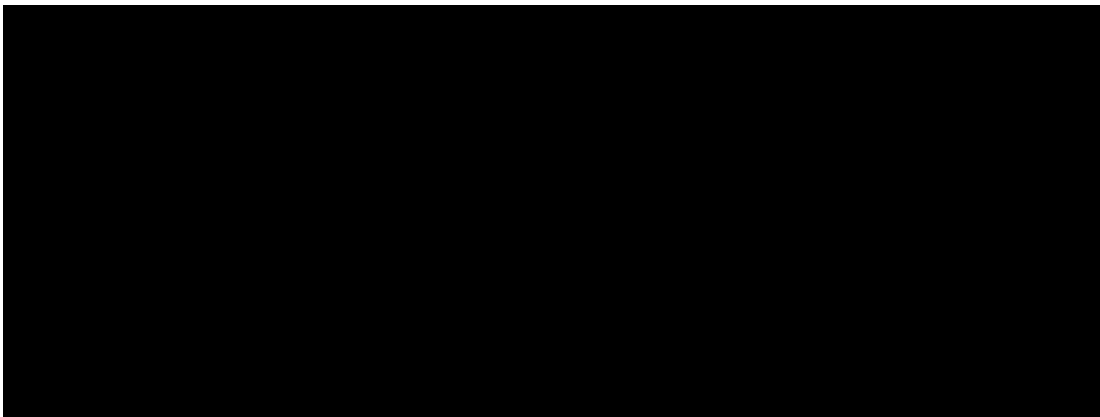
**City of Sydney** means The Council of the City of Sydney ABN 22 636 550 790.

**Claim** means a claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

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

**Codes of Practice** means a code of practice which has been approved as a code of practice for the purposes of the WHS Legislation.

**Codes and Standards** means the codes, standards, specifications and guidelines referred to in Appendix 57 of the SWTC.





**Collateral Warranty Deed Poll** means the deed poll entitled "Collateral Warranty Deed Poll" to be executed by [REDACTED]

**Commencement Date** means the date of this deed.

**Commercially Sensitive Information** means the information:

- (a) relating to Macquarie's cost structure or profit margins;
- (b) relating to any of Macquarie's Intellectual Property Rights; or
- (c) which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to Macquarie or its shareholders or Subcontractors,

and which is described in Schedule B1.

**Commonwealth** means the Commonwealth of Australia.

**Community Communications Strategy** means the Project Plan referred to as the Community Communications Strategy in Appendix 54 to the SWTC, as updated from time to time in accordance with clause 7.

**Compensable Change in Law** means:

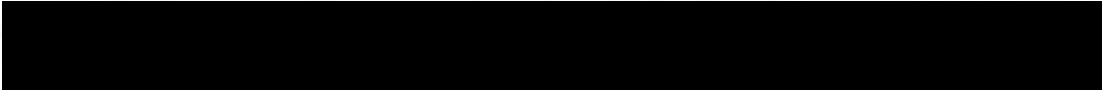
- (a) a Project-Specific Change in Law (other than a Project-Specific Change in Law of the Commonwealth with respect to Tax);
- (b) a Change in Disability Law;
- (c) a Change in Environmental Law;
- (d) a Change in Rail Safety Law; or
- (e) a General Change in Law (other than with respect to Tax).

**Compensation Event** means each of the following:

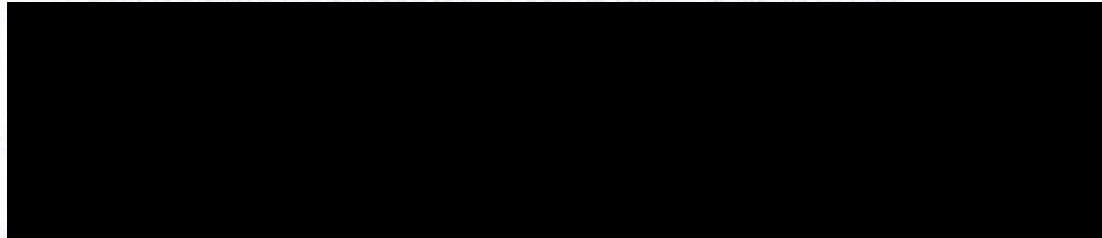
- (a) a breach by the Principal of its obligations under a Project Document, including a failure by the Principal to provide Macquarie with access to part of the Principal Construction Site by the relevant Site Access Date, but in each case excluding an Area 6 Site Access Event and an Area 6 Licence Event;
- (b) where:
  - (i) there is a legal challenge brought about by way of commencement of court proceedings in relation to the Planning Approval; or
  - (ii) the Planning Approval is modified, withdrawn, revoked, replaced, invalidated or suspended,


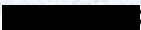
except to the extent that the legal challenge, modification, withdrawal, revocation, replacement, invalidation or suspension relates to or arises out of or in connection with (or, in the case of a legal challenge, is upheld due to):

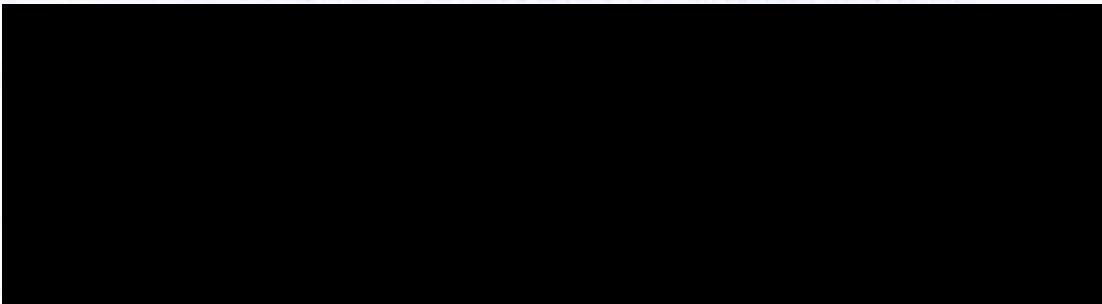
- (iii) a Variation requested by Macquarie;
- (iv) the Project Planning Approval Modification; or
- (v) any of the approvals referred to in clause 5 of the OSD PDA;



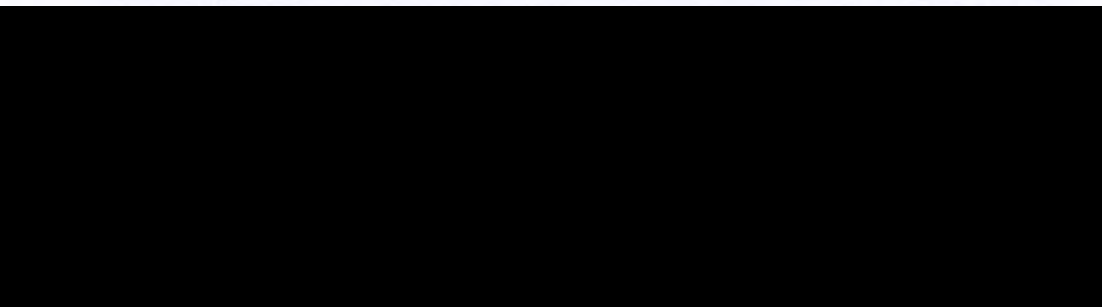
- (d) a direction by the Principal's Representative under clause 23.6 requiring Macquarie to suspend the performance of any of Macquarie's Activities;
- (e) the occurrence of a Compensable Change in Law;
- (f) a Step-in Party exercises all or any of the Step-in Powers in respect of a Step-in Event, except to the extent that the Step-in Event was an event referred to in clause 44.1(a);



- (h) a Native Title Application with respect to the Principal Construction Site which results in Macquarie being directed, ordered or required by the Principal, the Principal's Representative, a court or tribunal or by Law to suspend or cease to perform Macquarie's Activities (or to change the way it does so);
- (i) the discovery of an Artefact on the Principal Construction Site, to the extent that the discovery of that Artefact results in Macquarie being directed, ordered or required by the Principal, the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform Macquarie's Activities in, on or under the Principal Construction Site for more than  or  or



- (m) the issuance of a direction or notice (as applicable) from the Principal under clauses 7.2, 7.3 or 10.1 of the Independent Certifier Deed to change the Core Services, suspend the Core Services or terminate the appointment of the Independent Certifier (as applicable), unless Macquarie confirmed (acting reasonably) its agreement with such direction or notice under clauses 7.2, 7.3 or 10.1 of the Independent Certifier Deed;



[REDACTED]

except to the extent that an event in paragraphs (a) to ~~(m)~~(o) (inclusive) (or its effects) occurs or arises as a result of:

~~(m)~~(p) an act or omission of Macquarie or an Associate of Macquarie which was undertaken fraudulently, recklessly, unlawfully, negligently or maliciously; or

~~(n)~~(q) a failure by Macquarie or a Related Entity of Macquarie to comply with their obligations under a Project Document or a failure of the OSD Developer to comply with its obligations under an OSD Project Document or a failure of the D&C Contractor to comply with its obligations under any Project Cooperation and Integration Deed.

**Completion** has the meaning given to that term in paragraph 1 of Schedule A18.

**Concourse Link Easement** has the meaning given to that term in paragraph 2.1(b)(ii) of the Subdivision Principles.

**Concourse Link Works** means the physical works which Macquarie must design, construct and complete to deliver the pedestrian link to be situated on basement level 3 of the 50 Martin Place Ancillary Amenities Lot and Retail Lot South linking the Retail Lot North and the Retail Lot South (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed).

**Condition Precedent** means a condition precedent set out in Schedule A1.

**Condition Precedent Deadline Date** means [REDACTED] or such other date as the parties may agree.

**Configuration Control Board** means the board established by the Principal to manage configuration changes for the Principal's delivery office in accordance with the Configuration Management Framework.

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

**Consequential Loss** means any:

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

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

**Construction Completion** has the meaning given to that term in paragraph 2 of Schedule A18.

**Construction Compliance Unit** or **CCU** means the Construction Compliance Unit established within NSW Industrial Relations to undertake auditing and inspection of workplace agreements and practices.

**Construction Environmental Management Plan** means the Project Plan of that name, as required by conditions C1 and C2 of the Project Planning Approval, as updated from time to time in accordance with clause 7.

**Construction Heritage Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Construction Licence** means, with respect to each part of the Principal Construction Site, the licence granted by the Principal to Macquarie pursuant to clause 17.2(b).

**Construction Licence Commencement Date** means, in relation to each part of the Principal Construction Site, the date on which the first Construction Licence is granted pursuant to clause 17.2.

**Construction Licence Sunset Date** means, in respect of Construction Site (Area 3) only, the date specified as the "Construction Licence Sunset Date" for Construction Site (Area 3) in the Site Access Schedule.

**Construction and Site Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

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

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

**Construction Site** means:

- (a) the Principal Construction Site; and
- (b) the Macquarie Construction Site.

**Construction Site (Area 1)** means the part of the Principal Construction Site made up of the areas identified in section 2 of the Site Access Schedule.

**Construction Site (Area 2)** means the part of the Principal Construction Site made up of the areas identified in section 3 of the Site Access Schedule.

**Construction Site (Area 3)** means the part of the Principal Construction Site made up of the areas identified in section 4 of the Site Access Schedule.

**Construction Site (Area 4)** means the part of the Principal Construction Site made up of the areas identified in section 5 of the Site Access Schedule.

**Construction Site (Area 5)** means the part of the Principal Construction Site made up of the areas identified in section 6 of the Site Access Schedule.

**Construction Site (Area 6)** means the part of the Principal Construction Site made up of the areas identified in section 7 of the Site Access Schedule.

**Construction Site Interface Work** has the meaning given to that term in clause 9.2(a)(ii).

**Construction Traffic Management Plan** means the Construction Traffic Management Plan referred to in Appendix 54 of the SWTC and required by condition C3 of the Project Planning Approval (which is a sub-plan to the Construction Environmental Management Plan), as updated from time to time in accordance with clause 7.

**Consultation** has the meaning given in clause 52.3(e).

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

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

**Contract Amount** means:

- (a) Core Payment 2;
- (b) the Lifts and Escalators Amount;
- (c) the IMS Amount;
- (d) [REDACTED]
- (e) if applicable, the Optional Condition 2 Amount; and
- (f) any other amounts specified in the Payment Schedule as being payable by the Principal to Macquarie not already captured by paragraphs (a) to (e) (inclusive).

**Contract Documentation and Materials** has the meaning given to that term in clause 20.15(b).

**Contract Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Cooperation and Integration Control Group** has the meaning given to that term in the Project Cooperation and Integration Deeds.

**Core Payment 2** means the amount of [REDACTED] payable by the Principal to Macquarie as part of the payments in, and in accordance with, the Payment Schedule, subject to any adjustment made pursuant to clause 37 and pursuant to clause 38 in relation to Optional Condition 1.

**Core Services** has the meaning given to that term in the Independent Certifier Deed.

**Corporate Environmental Management System** has the meaning given to that term in the New South Wales Environmental Management Systems Guidelines (3rd Edition) (August 2013).

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

**Cost Forecast Schedule** means the schedule attached to Schedule A6.

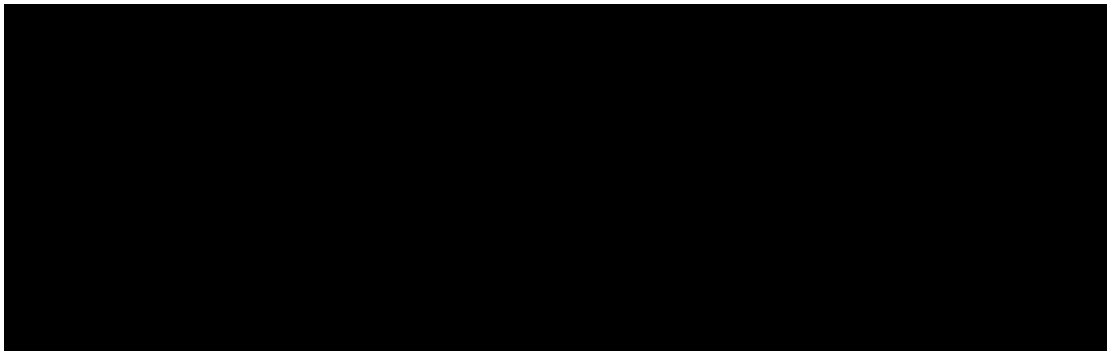
**Costs** means all costs, charges and expenses, including those incurred in connection with advisers.

**CPI** means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (**ABS**) provided that:

- (a) if for any reason the CPI is not published for any quarter, the interim number determined by the Reserve Bank of Australia for application in regards to

Commonwealth of Australia Treasury Indexed Bonds will be used for the purposes for which the actual CPI figure would have been applied. If no such interim number is determined by the Reserve Bank of Australia then the CPI published for the previous quarter will apply in the interim;

- (b) if the ABS ceases to publish the CPI and publishes another index which is stated to be in replacement of the CPI, then that will be used for the relevant determination;
- (c) if the ABS ceases to publish the CPI without publishing a replacement index, or if any change is made to the coverage, periodicity, or basic calculation of the CPI which, in the opinion of the Treasurer, constitutes a change in the CPI which is materially detrimental to the interests of Commonwealth of Australia Treasury Indexed Bond holders then, in such circumstances, the index to be announced by the Treasurer for use with Commonwealth of Australia Treasury Indexed Bonds will be substituted for the CPI. In the event of no such index being established, the President of the Institute of Actuaries of Australia or his or her nominee acting as an independent arbitrator will be called on to calculate an index which he or she determines to be appropriate as a general indication of the rate of price change for consumer goods and services in the capital cities of Australia; and
- (d) if the reference base of the CPI is changed, the index which will be used will be the CPI numbers expressed on the new base as published by the ABS.



**Customers** means all users and potential users of:

- (a) Sydney Metro City & Southwest; and/or
- (b) services associated with Sydney Metro City & Southwest.

**D&C Contract** means the document titled "Martin Place Metro Station Project: Station D&C Contract" entered into between DevCo and the D&C Contractor on or about the Commencement Date in relation to the Project Works.

**D&C Contractor** means Lendlease Building Pty Ltd ABN 97 000 098 162.

**D&C Delay Costs** means with respect to a Compensation Event, the net incremental costs of the D&C Contractor that are directly attributable to the delay caused by the Compensation Event, excluding any direct costs saved or which will be saved or which ought reasonably to have been saved in connection with the delay and excluding any finance costs.

**D&C Delay Cost Cap** has the meaning given to that term in Schedule E4.

**D&C Guarantor** means [REDACTED]

**D&C Margin** means:

- (a) in respect of a Variation Cost, [REDACTED] of the direct costs; and

- (b) in respect of a Variation Saving, ■■■ of the direct costs.

**D&C Side Deed** means the document titled "Martin Place Metro Station D&C Side Deed" dated on or about the Commencement Date between the Principal, Macquarie, DevCo, Macquarie Bank Limited, the D&C Contractor and the D&C Guarantor.



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

- (a) unless paragraph (b) applies, the applicable date specified as the date for Completion for that Portion in paragraph 3 of Schedule A2; or
- (b) where, in respect of that Portion, an extension of time for Completion is granted by the Principal's Representative or allowed in any dispute resolution proceedings, the date resulting from that extension of time.

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

- (a) unless paragraph (b) applies, the applicable date specified as the date for Construction Completion for that Portion in paragraph 3 of Schedule A2; or
- (b) where, in respect of that Portion, an extension of time for Construction Completion is granted by the Principal's Representative or allowed in any dispute resolution proceedings, the date resulting from that extension of time.

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

- (a) unless paragraph (b) applies, the applicable date specified as the date for Milestone Achievement for that Milestone in paragraph 4 of Schedule A2; or
- (b) where, in respect of that Milestone, an extension of time for Milestone Achievement is granted by the Principal's Representative or allowed in any dispute resolution proceedings, the date resulting from that extension of time.

**Date for Practical Completion** has the meaning given to that term in the OSD PDA.

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

- (a) the date notified in the Notice of Completion for that Portion as the date Completion was achieved; or
- (b) subject to clauses 4.4(j) and 4.4(k), where another date is determined in any dispute resolution proceedings as the date upon which Completion of that Portion was achieved, that date.

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

- (a) the date notified in the Notice of Construction Completion for that Portion as the date Construction Completion was achieved; or
- (b) subject to clauses 4.4(j) and 4.4(k), where another date is determined in any dispute resolution proceedings as the date upon which Construction Completion of that Portion was achieved, that date.

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

- (a) the date notified in the Notice of Milestone Achievement as the date Milestone Achievement was achieved; or
- (b) subject to clauses 4.4(j) and 4.4(k), where another date is determined in any dispute resolution proceedings as the date upon which Milestone Achievement of that Milestone was achieved, that date.

**Day 1 Clause** means:

- (a) subject to paragraph (b) of this definition, each of clauses 1, 2, 3.2, 3.4, 5.1, 5.2, 6, 8.1, 8.2, 10.1(a), 12.1(a), 12.1(b), 12.1(c), 12.1(d), 12.1(i), 12.1(n) 14, 15, 16.2, 17.6, 17.13(a), 19.1(c), 19.1(d), 19.2(a), 19.2(b), 20.4(c), 20.15, 24.8, 31.2(a), 31.4(b), 41.1(a), 41.3, 41.4, 41.5, 41.6, 41.7, 41.8, 41.9, 41.11, 41.12, 42, 45.10, 45.12, 48, 49, 51, 52, 53, 54, 55, 56.3, 57, 58, 59, 60, clause 3.3(e) of Schedule A16, clause 3(c)(3) of Schedule A21 and clause 2 of Schedule E7 and any other clauses or schedules required to have commenced in order to give effect to those clauses; and
- (b) in relation to Construction Site (Area 1) only, any clauses required in order for the parties to exercise their rights and perform their obligations in respect of Construction Site (Area 1) between the Commencement Date and Financial Close but not including clause 34.

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

**Default Notice** means a notice given by the Principal under clause 43.2.

**Defect** means any:

- (a) defect, deficiency, fault, error or omission in the Project Works; or
- (b) cracking, shrinking, movement or subsidence in the Project Works which is not expressly allowed by the terms of this deed; or
- (c) other aspect of the Project Works which is not in accordance with the requirements of this deed,

but does not include any:

- (d) damage caused to Portion 1 after the Date of Construction Completion of that Portion, or any Portion other than Portion 1 after the Date of Completion of that Portion; or
- (e) defect in part of the Project Works resulting from theft occurring in relation to Portion 1 after the Date of Construction Completion of that Portion, or any Portion other than Portion 1 after the Date of Completion of that Portion,

other than to the extent that is caused or contributed to by Macquarie or its Associates.

**Defects Correction Period** means each of the periods referred to in clauses 30.6, 30.7, 30.8 and 30.9.

**Defects Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Delay Costs** means the aggregate of:



- (a) the D&C Delay Costs; and
- (b) the Delay Costs (Macquarie).

**Delay Costs (Macquarie)** means with respect to a Compensation Event, the net incremental costs of Macquarie, to the extent such costs are additional and reasonable, arm's length third party costs (excluding finance costs), that are directly attributable to the delay caused by the Compensation Event, excluding any direct costs saved or which will be saved or which ought reasonably to have been saved in connection with the delay and excluding any finance costs.

**Delay Costs (Macquarie) Cap** has the meaning given to that term in Schedule E4.

**Design Documentation** means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, drawings, shop drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means; and
- (b) computer software (including both source code and object code versions),

which are required for the performance of Macquarie's Activities, or which Macquarie, the D&C Contractor or any other person on behalf of the D&C Contractor creates in performing Macquarie's Activities (including the design of the Temporary Works [and the Caverns Scope Design Documentation](#)).

**Design Life** has the meaning given to that term in section 1.1 of Appendix 1 of the SWTC.

**Design Review Panel** means the architectural and urban design review panel established as an advisory body to the Principal in relation to the Project in accordance with the conditions of the Project Planning Approval.

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

**Design Stage 1** means the stage 1 design prepared by Macquarie and included in Schedule C3.

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

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

**DevCo** means Skylight Dev Co Pty Limited ABN 43 627 172 445.

**Development Lot** has the meaning given to that term in the OSD PDA.



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

**Dispute** has the meaning given to that term in clause 52.

**Draft BMS** means the draft document attached as Annexure A.

**Draft Cure Plan** has the meaning given to that term in clause 43.3(a)(iv).

**Draft DSI Contract** means the draft DSI Contract in the form set out in Part A of Annexure C that sets out the proposed terms of the DSI Contract.

**Draft Prevention Plan** has the meaning given to that term in clause 43.4(a).

**Draft Section 88B Instrument** means the draft section 88B instrument attached as Annexure J.

**Draft Subdivision Plan** means the draft plan attached as Annexure I.

**Draft Third Party Agreement** has the meaning given to that term in clause 12.1(a)(ii).

**DSI Contract** means the contract to be entered into between the D&C Contractor and the Lifts and Escalators Contractor in respect of the Lifts and Escalators Work.

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

**Early Works** means the works referred to in Schedule A20.



**Emissions and Energy Data** means any data, information, records and reports:

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

**Encumbrance** means any interest, right, licence, lease, affectation, encumbrance, easement, covenant or restriction on use registered on title or otherwise created and validly existing from time to time.

**Environment** means components of the earth, including:

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

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

**Environmental Documents** means the Planning Approval and any documents listed as such in Appendix 49 to the SWTC.

**Environmental Hazard** means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

**Environmental Law** means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development, the erection of a building or the subdivision of land (including the EP&A Act);
- (b) emissions of substances into the atmosphere and land;
- (c) Pollution and Contamination of the atmosphere and land; and
- (d) production, use, handling, storage, transportation and disposal of:
  - (i) waste;
  - (ii) hazardous substances;
  - (iii) dangerous goods;
  - (iv) threatened, endangered and other flora and fauna species;
  - (v) conservation, heritage and natural resources; and
  - (vi) the health and safety of people,

whether made or in force before or after the Commencement Date.

**Environmental Liability** means any of the following liabilities arising before the expiration or termination of this deed:

- (a) all Costs associated with undertaking the remediation of any Contamination ordered or required by any Authority or court of any land or building;
- (b) any compensation or other monies that an Authority or court requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and

- (e) all other Claims or Loss payable under in respect of an Environmental Law.

**Environmental Management Plans** means:

- (a) the Construction Environmental Management Plan; and
- (b) the Sustainability Management Plan.

**Environmental Manager** means the person appointed by Macquarie to that position under clause 9.15 as at the Commencement Date or any person appointed as a replacement under clause 9.15.

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

**Environmental Representative** means [REDACTED] of Healthy Buildings International Pty Limited ABN 39 003 270 693 appointed by TfNSW under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified by the Principal to Macquarie.

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

**EPA** means the New South Wales Environment Protection Authority.

**ESL Easement Instrument (Retail Lot South)** means the easement for pedestrian access in favour of RailCorp and Sydney Trains (or land owned by them), burdening the Retail Lot South (in part) and in the form of the easement instrument set out in Schedule A23.

**ESL Easement Instruments** means the instruments creating the easements in favour of RailCorp and Sydney Trains as contemplated in paragraph 2.2(e) of the Subdivision Principles and pursuant to clause 31.13.

**ETS** means the ticketing system for the Martin Place Metro Station, including the software, smartcards, portable readers and all other aspects of the system, as modified or replaced from time to time.

**ETS Contractors** means:

- (a) Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561 and any other contractors engaged by the Principal in relation to the ETS; and
- (b) any subcontractors and suppliers at any level of the entities referred to in paragraph (a).

**Excepted Risk** means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage, in each case occurring within Australia;
- (b) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth));
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, in each case occurring within Australia and only to the extent not caused by Macquarie or their Associates; and

- (d) damage to the Project Works or Temporary Works by the Principal or a Rail Contractor.

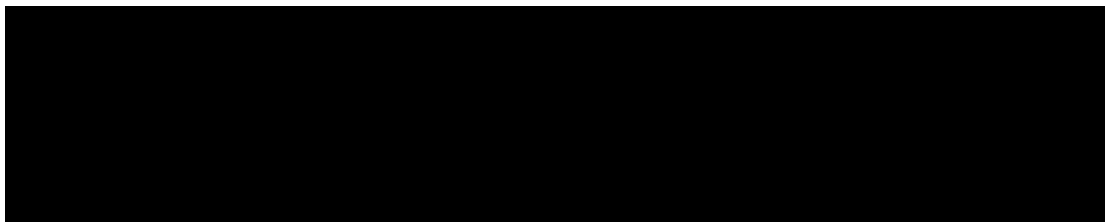
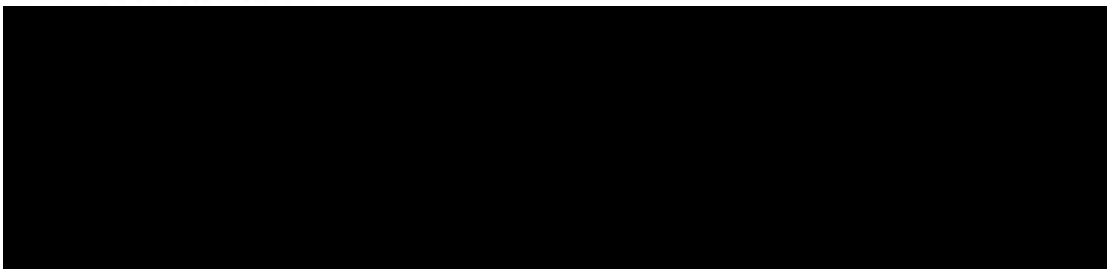
**Excluded Variations** means any Variation arising from or given as result of:

- (a) clauses 8.3(f)(ii), 18.1(c), 25.3(b), 26.8(c), 30.2(a)(ii), 30.3(c), 41.1(e)(ii); or
- (b) clause 35.18(a) (other than a Metro Impact Variation); or
- (c) clause 36 (other than a Variation pursuant to clause 36.3(a)(ii) to the extent the Variation relates to any Planning Approval Modification).

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

**Excusable Cause of Delay** means:

- (a) a Compensation Event;
- (b) an Act of Prevention;
- (c) a Force Majeure Event;
- (d) the suspension or revocation of TfNSW's Accreditation and/or the Principal's Accreditation (as applicable);
- (e) testing directed under clause 26.8 for which Macquarie is entitled to be paid its costs pursuant to clause 26.8(c);
- (f) a requirement for Macquarie to remediate any Contamination:
  - (i) on, in, over, under or around the Construction Site that is caused by the Principal or its Associates after the Commencement Date; or
  - (ii) for which Macquarie is not responsible under clause 16.4(a),  
in circumstances contemplated by clause 16.4(c);
- (g) every day after [REDACTED] where the conditions of approval required for the commencement of demolition of the building on Construction Site (Area 1) have not been satisfied;



[REDACTED]

except to the extent that an event in paragraph (a) to (e) (inclusive) or (g) to ~~(k)~~(i) (inclusive) (or its effects) occurs or arises as a result of:

~~(j)~~(l) an act or omission of Macquarie or an Associate of Macquarie which was undertaken fraudulently, recklessly, unlawfully, negligently or maliciously; or

~~(k)~~(m) a failure by Macquarie or a Related Entity of Macquarie to comply with their obligations under a Project Document or a failure of the OSD Developer to comply with its obligations under an OSD Project Document or a failure of the D&C Contractor to comply with its obligations under any Project Cooperation and Integration Deed.

**Executive Negotiator** means:

(a) for Macquarie, the person holding the title of [REDACTED] within Macquarie; and

(b) for the Principal, the person holding the title of [REDACTED] within the Principal,

(or his or her delegate, who must not be a member of the Project Control Group).

**Existing Operations** means:

(a) all infrastructure (including existing infrastructure, but in respect of infrastructure that is under construction, is limited to infrastructure that is under construction as at the Commencement Date) and Services which:

(i) do not form part of any Rail Contractors' Activities or infrastructure that is the subject of a Project Cooperation and Integration Deed;

(ii) are the subject of the Third Party Agreement (other than an Additional Third Party Agreement); and

(iii) are owned, operated or under the control of an Existing Operator; and

(b) the businesses and operations undertaken by an Existing Operator,

on or in the vicinity of the Construction Site.

**Existing Operator** means:

(a) RailCorp;

(b) Sydney Trains;

- (c) NSW Trains;
- (d) Ausgrid, being the statutory State owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW);
- (e) Jemena Limited ABN 95 052 167 405;
- (f) Sydney Water Corporation ABN 49 776 225 038;
- (g) State Transit Authority, being the operating agency of TfNSW responsible for, amongst other things, buses in the Sydney CBD;
- (h) Roads and Maritime Services, being the NSW Government agency constituted by section 56 of the Transport Administration Act;
- (i) City of Sydney;
- (j) Telstra Corporation Limited ABN 33 051 775 556 and other telecommunication operators;
- (k) owners and occupiers of adjoining properties; or
- (l) any other person:
  - (i) who owns, operates or controls any infrastructure (including existing infrastructure, but in respect of infrastructure that is under construction, is limited to infrastructure that is under construction as at the Commencement Date) and Services, which does not form part of any Rail Contractors' Activities or infrastructure that is the subject of a Project Cooperation and Integration Deed); or
  - (ii) undertakes any business or operation on or in the vicinity of the Construction Site,

and any of their Related Entities.

**Expert** means the person appointed to determine a Dispute pursuant to clause 52.5.

**Extra Land** means the land and buildings referred to in clause 17.11(a)(i).

**Extra TSE Adjustment Works** has the meaning given to that term in Schedule A21.

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

- (a) Macquarie is entitled to use for construction in accordance with clause 20.11(a); or
- (b) has been amended by a Variation directed or approved by the Principal's Representative in accordance with clause 35 or clause 36.

**Final Detailed Interface Requirements** has the meaning given to that term in Schedule A14.

**Financial Close** occurs when the last Condition Precedent to be satisfied (or waived under clause 2.3) has been satisfied (or waived under clause 2.3).

**Financiers** means the providers of any facilities, financial arrangements or accommodation provided from time to time for the purposes of the Project and may, where the context permits, include any agent or trustee of such Financiers.

**Financiers' Side Deed** means:

- (a) the Financiers' Side Deed D&C; and
- (b) the Financiers' Side Deed SDD.

**Financiers' Side Deed D&C** means a deed "to be entered into between the Principal, Macquarie, DevCo, the D&C Contractor, the Financiers and others (if required) in accordance with clause 49.2.

**Financiers' Side Deed SDD** means a deed to be entered into between the Principal, Macquarie, DevCo, the Financiers and others (if required) in accordance with clause 49.2.

**FIRB Act** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**Fire and Life Safety Report** means a fire and life safety report which satisfies the requirements of Appendix 43 to the SWTC.

**Follow-on Contractor** means any entity engaged by the Principal or the Operator to perform one or more of the design, construction, supply, installation, testing or commissioning of any Follow-on Works on or adjacent to the Construction Site or Martin Place Metro Station, including the Operator, the Line-wide Contractors and the ETS Contractors.

**Follow-on Contractor Cooperation and Integration Deed** means:

- (a) in relation to an ETS Contractor, a deed to be entered into between the Principal, Macquarie, the D&C Contractor and an ETS Contractor substantially in the form of part 1 of Schedule A4;
- (b) in relation to the Operator, a deed to be entered into between the Principal, Macquarie, the D&C Contractor and the Operator substantially in the form of part 2 of Schedule A4;
- (c) in relation to any other Line-wide Contractor, a deed to be entered into between the Principal, Macquarie, the D&C Contractor and a Line-wide Contractor substantially in the form of part 3 of Schedule A4; and
- (d) in relation to any other Follow-on Contractor, a deed to be entered into between the Principal, Macquarie, the D&C Contractor and a Follow-on Contractor (as applicable) substantially in the form of the part of Schedule A4 directed by the Principal,

in each case subject to any amendments required to reflect party details, appropriate clause cross-references and other similar changes.

**Follow-on Works** means any works or the provision of any material, plant, equipment, machinery or other infrastructure required for Sydney Metro City & Southwest, other than the TSE Contractor's Activities, Macquarie's Activities and the OSD Developer's Activities.

**Force Majeure Event** means any of the following:

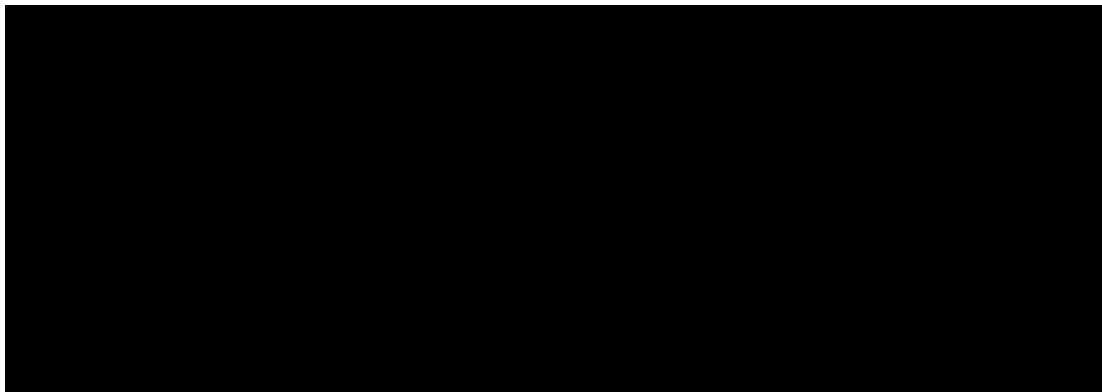
- (a) an Excepted Risk;
- (b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;
- (c) an earthquake occurring within Australia or a Key Plant and Equipment Manufacturing Country;



- (d) a flood which might at the Commencement Date be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia or a Key Plant and Equipment Manufacturing Country;
- (e) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within a Key Plant and Equipment Manufacturing Country;
- (f) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of the public or an act of sabotage, in each case occurring in a Key Plant and Equipment Manufacturing Country; or
- (g) a fire or explosion resulting from an event referred to in:
  - (i) paragraphs (a) or (b) occurring in Australia;
  - (ii) paragraphs (c) or (d) occurring in Australia or a Key Plant and Equipment Manufacturing Country; or
  - (iii) paragraphs (e) or (f) occurring in a Key Plant and Equipment Manufacturing Country,

which:

- (h) is beyond the reasonable control of Macquarie and its Associates; and
- (i) prevents or delays Macquarie from performing an obligation under this deed, where that event or the consequence of that event does not arise from any act or omission of Macquarie or its Associates (including from any breach by Macquarie or its Associates of a Project Document).



**GBCA** means the Green Building Council of Australia.

**General Change in Law** means a Change in Law which is not a Project-Specific Change in Law.

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

**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the same or a similar type of undertaking as that of Macquarie or its Associates, as the case may be, under the same or similar circumstances as the delivery of the Project Works and the Temporary Works.

**GST** has the meaning it has in the GST Law.

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

**Handover Works** has the meaning given to that term in the TSE Contract.

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

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

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of an authority designated by the Independent Certifier pursuant to clause 4.4(f)(iii).

**IC Design Review Period** means:

- (a) 20 Business Days after the date on which any Design Documentation for any Design Stage is submitted in accordance with clause 20.4; or
- (b) where the relevant Design Documentation relates to works relevant to a Third Party Agreement, the review period allowed for the Independent Certifier under that Third Party Agreement.

**IC Re-Review Period** means:

- (a) the number of Business Days taken by Macquarie to re-submit the Design Documentation rejected under clause 20.8(b)(ii)(A) or the as-built drawings rejected under clause 21.11(c)(i) (as applicable), provided that:
  - (i) if Macquarie has taken less than 5 Business Days to re-submit the Design Documentation the period is 5 Business Days; or
  - (ii) if Macquarie has taken more than 15 Business Days to re-submit the Design Documentation the period is 15 Business Days; or
- (b) in the case of Third Party Agreement Design Documentation, the IC Design Review Period.

**IDAR Panel** means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement.

**IDAR Panel Agreement** means the agreement in Schedule A12.

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

**Illegality Event** means the occurrence of any of the following events:

- (a) Macquarie or any of Macquarie's Associates ceases to hold an Approval or breaches a Law, and such failure or breach is, in the reasonable opinion of the Principal, material to the performance of Macquarie's obligations under this deed and, where the event is capable of being remedied, is not remedied within 20 Business Days after the earlier to occur of:
  - (i) the date on which the Principal notifies Macquarie of the failure or breach; and
  - (ii) the date on which Macquarie becomes aware of the failure or breach;

- (b) any Project Document:
- (i) being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against Macquarie or any other party to a Project Document (except the Principal, the Independent Certifier or a Rail Contractor), other than as contemplated by the Project Documents; or
  - (ii) becoming invalid, void or voidable in any material respect other than where the Principal, the Independent Certifier or a Rail Contractor has caused it to be invalid, void or voidable,

and, where the event is capable of being remedied, the event is not remedied within 20 Business Days after Macquarie became aware of the relevant event occurring; or

- (c) it is or becomes unlawful for Macquarie or any of Macquarie's Associates to perform any of their obligations under the Project Documents, and, where the event is capable of being remedied, such event is not remedied within 20 Business Days after Macquarie becoming aware of the relevant event occurring.

**IMS Amount** means the rates based amount payable by the Principal to Macquarie in accordance with clause 10.9(b), 29.2(b)(ii), the Payment Schedule and Schedule A6 (as applicable).

**IMS Cap** means [REDACTED] subject to adjustment as a result of a Principal Initiated Variation under clause 35.

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

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

and includes:

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

**Indemnified Party** has the meaning given to that term in clause 42.3(a).

**Independent Certifier** means the person or persons jointly appointed by the Principal and Macquarie to be the Independent Certifier under the Independent Certifier Deed.

**Independent Certifier Deed** means the deed entered into between the Principal, Macquarie and the Independent Certifier in relation to the services of the Independent Certifier required by this deed substantially in the form set out in Annexure M.

**Independent Property Impact Assessment Panel** means the "Independent Property Impact Assessment Panel" established by TfNSW for the purpose of Sydney Metro City & Southwest in accordance with the requirements of the Planning Approval.

**Information Disclaimer** [REDACTED]

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

- (a) referred to in Annexure B;
- (b) issued or made available by, or on behalf of, the Principal, TfNSW or the State to MCH, Macquarie Bank Limited, Macquarie, DevCo or the OSD Developer in connection with the Binding Offer, Macquarie's Activities, the Project or the ETS regardless of whether at the time of issue (or being made available) was expressly classified or stated to be an "Information Document"; or
- (c) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available on, before or after the date of execution of this deed, other than any information, data, document or material which the Principal is obliged by the terms of a Project Document to provide to Macquarie and Macquarie is expressly permitted by the terms of a Project Document to rely on.

**Initial Detailed Interface Requirements** has the meaning given to that term in Schedule A14.

**Insolvency Event** means, in relation to a person, the occurrence of any of the following events:

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a person and, where an application has been made for the

dismissal or withdrawal of the application for winding up within 10 Business Days, and the application is not dismissed or withdrawn within 30 Business Days;

- (b) an order is made and not set aside within 10 Business Days for the winding up of a person, except for the purpose of a reconstruction, amalgamation, merger or consolidation where that person is solvent or on terms approved by the Principal before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a person passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation where that person is solvent or on terms approved by the Principal before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to take possession of any property of a person and the appointment is not set aside within 10 Business Days;
- (e) the holder of a Security Interest or its agent takes possession of any property of the person or otherwise enforces its Security Interest and is not set aside within 30 Business Days where that enforcement has or is reasonably likely to have a material adverse effect on its ability to perform its obligations under the Project Documents;
- (f) a person or any other person appoints an administrator to the person and the appointment is not set aside within 10 Business Days;
- (g) a person:
  - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or Claim which is the subject of a good faith dispute);
  - (ii) ceases or threatens to cease to carry on all or a material part of its business where, in the case of Macquarie only, that has or is reasonably likely to have a material adverse effect on its ability to perform its obligations under the Project Documents;
  - (iii) is or states that it is unable to pay its debts; or
  - (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand, which is not withdrawn or set aside within 10 Business Days;
- (h) a person enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition or arrangement with its creditors or members, without the prior consent of the Principal, except for the purposes of a solvent reconstruction or amalgamation; or
- (i) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (h) of this definition (inclusive) including under any laws of any applicable jurisdiction.

**Insurances** means the insurances required to be effected and maintained under any Project Document.

**Intellectual Property Right** means any statutory and other proprietary right in respect of inventions, innovations, patents, utility models, registered and registrable designs, circuit layouts, mask rights, copyright (including future copyright), confidential information, trade secrets, technical data and know-how, trademarks and any other right in respect of

intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967.

**Interface Management Services** means the services referred to in Schedule A6 and Appendixes 56 and 64 to the SWTC.

**Interim Access Licence** means, with respect to each part of the TSE Site identified in a notice given by the Principal to Macquarie pursuant to clause 17.1(a), the licence granted by the Principal to Macquarie pursuant to clause 17.1(b).

**Interim Access Period** means, in respect of any part of the TSE Site, the period:

- (a) commencing on the date which the Principal notifies Macquarie in writing that that part of the TSE Site is Accessible under clause 17.1(a); and
- (b) ending on the date the Construction Licence with respect to the relevant part of the TSE Site commences.

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

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

including the Australian Transport Safety Bureau constituted under the *Transport Safety Investigation Act 2003* (Cth), ONRSR and the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

**Key Plant and Equipment** means [REDACTED] required for the construction of the Project Works.

**Key Plant and Equipment Manufacturing Country** means [REDACTED] and [REDACTED] to the extent that Macquarie or its Associates is manufacturing the Key Plant and Equipment in such countries.

**Known Defects Rectification Period** means the period:

- (a) commencing on the date of the TSE Notice of Construction Completion for the TSE Portion to which the TSE Known Defect relates; and
- (b) ending on the date that is 90 days after the date in paragraph (a).

**Last Date of Completion** means the Date of Completion of the last Portion to achieve Completion (other than Portion 1).

**Law** means common law, principles of equity, and laws made by parliament (and laws made by parliament include state, territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and includes any notice issued by, and any requirements of, an Authority.

**LD Cap** means [REDACTED] of the Total Project Sum.

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

- (a) liquidated or not;

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

**Lifts and Escalators Amount** means:

- (a) the lump sum amount set out in the DSI Contract as the total contract sum payable to the Lifts and Escalators Contractor for the performance of the Lifts and Escalators Work, including the design contract sum, the supply and installation contract sum and the support services payment;
- (b) any shipping and installation costs payable under the DSI Contract in relation to the Lifts and Escalators Works based on the rates set out in the DSI Contract; and
- (c) subject to clause 8.3(l), any amounts payable to the Lifts and Escalators Contractor under the DSI Contract in relation to the extension of the defects correction period to 31 December 2026, based on the rates set out in the DSI Contract,

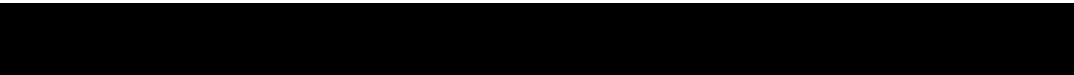
each as set out in the DSI Contract provided by the Principal pursuant to clause 8.3(d), subject to adjustment to limb (a) of this definition for any variation agreed by the Principal or the events referred to in limbs (a)(i) and (a)(iii) of the definition of Contract Sum Adjustment Event (as defined under the DSI Contract) where reasonably necessary for Macquarie to comply with this deed, except to the extent any such adjustment is due to an Act of Prevention (as defined under the DSI Contract) by the D&C Contractor (but only to the extent such Act of Prevention (as defined under the DSI Contract) has not been caused or contributed to by an Act of Prevention or a risk for which the Principal bears the risk under this deed.

**Lifts and Escalators Contractor** means the contractor engaged by the Principal under a framework agreement and engaged by the D&C Contractor under the DSI Contract to perform the Lifts and Escalator Work.

**Lifts and Escalators Work** means the work to be performed by the Lifts and Escalators Contractor in relation to the Project Works.

**Line-wide Contract** means any contract between the Principal (on one hand) and a Line-wide Contractor (on the other hand) to carry out Line-wide Works.

**Line-wide Contractor** means any entity that is engaged by the Principal to carry out Line-wide Works, and will include the Operator to the extent that the Principal engages the Operator to carry out any Line-wide Works.



**Line-wide Works** means the physical works comprising the line-wide components of the Sydney Metro City & Southwest including:

- (a) tunnel ventilation system;
- (b) track including tunnel services (drainage, lighting, fire systems, LV supplies), stabling, combined services cable brackets;

- (c) high voltage power supply;
- (d) overhead wiring and traction power supply;
- (e) radio;
- (f) communication systems;
- (g) central control systems;
- (h) passenger display, public address systems, CCTV and wayfinding;
- (i) signalling and train control systems;
- (j) platform screen doors and mechanical gap fillers;
- (k) access control systems; and
- (l) ETS.

**Loading Dock** has the meaning given to that term in the Draft Section 88B Instrument.

**Local Area Works** means the modification, reinstatement and improvement of Local Areas which Macquarie must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed).

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

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

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

**Longstop Date** means the date that is [REDACTED] after the date which is the later of the Date for Completion of Portion 2A and the Date for Completion of Portion 2B ~~Date for Completion of Portion 2.~~

**Loss** means:

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

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential Loss.



**Lot Owner** has the meaning given to the term "Owner" in the Draft BMS.

**LRS** means NSW Land Registry Services.

**LW Contractor** means:

- (a) the Operator; and
- (b) the contractor engaged by the Principal that is responsible for designing, constructing, testing and commissioning the following systems in accordance with the Interface Requirement Specifications in Appendix 25 to the SWTC:
  - (i) track and tunnel services (drainage, lighting, fire systems, LV supplies), stabling, combined services cable brackets;
  - (ii) high voltage power supply;
  - (iii) overhead wiring & traction supply;
  - (iv) tunnel ventilation system;
  - (v) platform screen doors;
  - (vi) radio;
  - (vii) signalling system;
  - (viii) central control system; and
  - (ix) communication system.

**Macquarie Bank Limited** means Macquarie Bank Limited ABN 46 008 583 542.

**Macquarie Construction Site** means that part of the Macquarie Land that is below RL 14.3 and which is required by the TSE Contractor in order to undertake the works contemplated by the TSE Adjustment Works.

**Macquarie Event of Default** has the meaning given to that term in clause 43.1.

**Macquarie Financial Holdings** means Macquarie Financial Holdings Pty Limited ABN 63 124 071 398.

**Macquarie Group** means Macquarie and any Related Entity identified in the Macquarie Group Structure as a subsidiary (as defined in section 46 of the *Corporations Act 2001* (Cth)) of Macquarie, and any Related Entity which becomes a member of Macquarie Group pursuant to a consent given in accordance with clause 51.

**Macquarie Group Structure** means the structure of Macquarie Group as set out in Schedule A3 as at the Commencement Date.

**Macquarie Land** means Lot 1 in Deposited Plan 182023, known as 50 Martin Place, Sydney.

**Macquarie Payment** means each of the payments to be made by Macquarie to the Principal referred to in:

- (a) clause 33; and
- (b) clause 25 of the OSD PDA.

**Macquarie SDD Termination Payment** has the meaning given to that term in the Termination Payment Schedule.

**Macquarie Termination Event** means any event specified in clause 45.1.

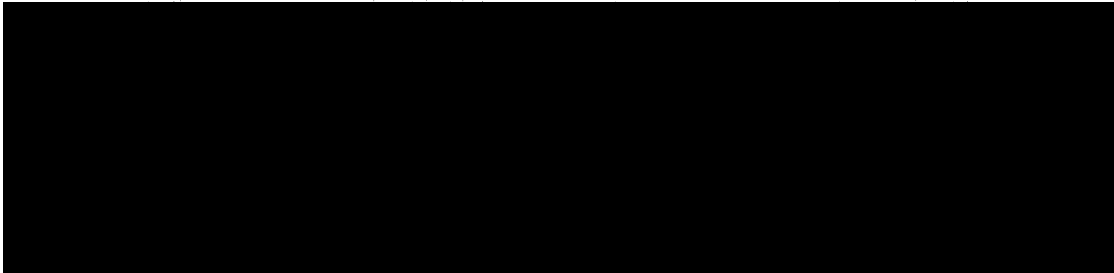
**Macquarie Termination Payment** has the meaning given to that term in the Termination Payment Schedule.

**Macquarie's Activities** means all activities that Macquarie performs, or is required to perform, to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by Macquarie to another person, including designing, constructing, testing and commissioning the Project Works and Temporary Works, carrying out Interface Management Services and carrying out the demolition of the building on Construction Site (Area 1).

**Macquarie's Representative** means [REDACTED] or any person appointed by Macquarie as a replacement from time to time, as notified by Macquarie to the Principal in writing.

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

**Major TSE Defect** means a TSE Defect in the following features of the TSE Works:



**Mandatory Defect** means:

- (a) with respect to a Milestone, a Defect which has been notified by the Principal's Representative under clause 30.2(a)(i) at any time before the date that is 28 days prior to the estimated Date of Milestone Achievement of that Milestone specified in a notice given under clause 25.1(a)(iii), but does not include an Accepted Defect, an Agreed Defect or a Minor Defect in that Milestone that is not reasonably capable of correction within the 28 day period contemplated by this paragraph (a);
- (b) with respect to Portion 1, a Defect which has been notified by the Principal's Representative under clause 30.2(a)(i) at any time before the date that is 28 days prior to the estimated Date of Construction Completion of that Portion specified in a notice given under clause 27.1(a)(iii), but does not include an Accepted Defect, an Agreed Defect or a Minor Defect in that Portion that is not reasonably capable of correction within the 28 day period contemplated by this paragraph (b); and
- (c) with respect to any Project Works forming part of any Portion other than Portion 1 which are carried out:
  - (i) prior to the Date of Construction Completion of that Portion, a Defect which has been notified by the Principal's Representative under clause 30.2(a)(i) at any time before the date that is 28 days prior to the estimated Date of Construction Completion of that Portion specified in a notice given under clause 27.1(a)(iii), but does not include an Accepted Defect, an Agreed Defect or a Minor Defect in those Project Works that is not reasonably capable of

correction within the 28 day period contemplated by this paragraph (c)(i);  
and

- (ii) after the Date of Construction Completion of that Portion, a Defect which has been notified by the Principal's Representative under clause 30.2(a)(i) at any time before the date that is 28 days prior to the estimated Date of Completion of that Portion specified in a notice given under clause 28.1(a)(iii), but does not include an Accepted Defect, an Agreed Defect or a Minor Defect in those Project Works that is not reasonably capable of correction within the 28 day period contemplated by this paragraph (c)(ii).

**Martin Place ESR Station** means the existing Sydney Trains station on the Eastern Suburbs railway line.

**Martin Place Metro Station** means the new underground metro station for Sydney Metro City & Southwest known as "Martin Place Station".

**Martin Place Metro Station Lot** means the stratum lot shown as Lot 5 in the Draft Subdivision Plan, which will be created by way of subdivision pursuant to clause 31.

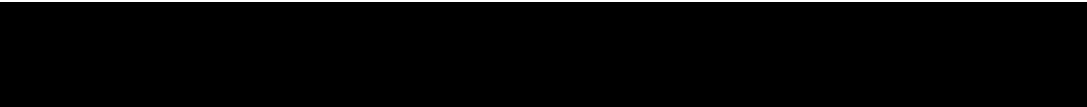
**Master Interface Protocols Deed Poll** means a deed poll in substantially the same form as Schedule A19.

**Material** means material in any form (whether visible or not) including documents, recordings on disc or any other form of storage, reports, information, data and includes all releases, updates and amendments to the original material.

**Material Impact** has the meaning given to that term in clause 35.2(c)(ix).

**MCH** means Macquarie Corporate Holdings Pty Limited ABN 54 096 705 109.

**Metro Construction Licence** means the construction licence entered into between the Principal and Macquarie Bank Limited dated 9 August 2018.



**Metro Impact** means anything which will or is likely to change the proposed boundaries of the Martin Place Metro Station Lot, the Retail Lots or any proposed easement sites from those shown on the Draft Subdivision Plan.

**Metro Impact Variation** has the meaning given to that term in the OSD PDA.

**Milestone Achievement** means, in respect of a Milestone, the stage in the execution of Macquarie's Activities when the Project Works comprising that Milestone have achieved the level of completion required for that Milestone in paragraph 4 of Schedule A2 except for any:

- (a) Minor Defects referred to in paragraph (a) of the definition of "Minor Defect";
- (b) Accepted Defects referred to in paragraph (a) of the definition of "Accepted Defect";  
and
- (c) Agreed Defects referred to in paragraph (a) of the definition of "Agreed Defect".

**Milestones** means each of the milestones set out in paragraph 4 of Schedule A2 and **Milestone** means each of them.

**Minor Defect** means:

- (a) with respect to a Milestone, a Defect in that Milestone which:
  - (i) is capable of being corrected without causing unreasonable delay or disruption to the activities that are to be performed by any Rail Contractor within the Construction Site; and
  - (ii) the Independent Certifier determines (acting reasonably) that Macquarie has reasonable grounds for not promptly correcting prior to Milestone Achievement for the relevant Milestone;
- (b) with respect to Portion 1, a Defect in that Portion which:
  - (i) is capable of being corrected:
    - (A) after the relevant part of the Construction Site has been handed over to the Principal; and
    - (B) without causing unreasonable delay or disruption to the activities that are to be performed by any Rail Contractor within the Construction Site; and
  - (ii) the Independent Certifier determines (acting reasonably) that Macquarie has reasonable grounds for not promptly correcting prior to handover of the Project Works to the Principal; and
- (c) with respect to any Project Works forming part of any Portion other than Portion 1 which are carried out:
  - (i) prior to Construction Completion of that Portion, a Defect in that Portion which:
    - (A) is capable of being corrected without causing unreasonable delay or disruption to the activities that are to be performed by any Rail Contractor within the Construction Site; and
    - (B) the Independent Certifier determines Macquarie has reasonable grounds for not promptly correcting prior to Construction Completion; and
  - (ii) after Construction Completion of that Portion, a Defect in that Portion which:
    - (A) is capable of being corrected:
      - (aa) after the relevant part of the Construction Site has been handed over to the Principal; and
      - (bb) without causing unreasonable delay or disruption to the activities that are to be performed by any Rail Contractor within the Construction Site; and
    - (B) the Independent Certifier determines acting reasonably that Macquarie has reasonable grounds for not promptly correcting prior to handover of the Project Works to the Principal,

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

**Minor Non-Compliances** means a minor error, minor omission or minor non-compliance:

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

**MLC Pedestrian Link** means:

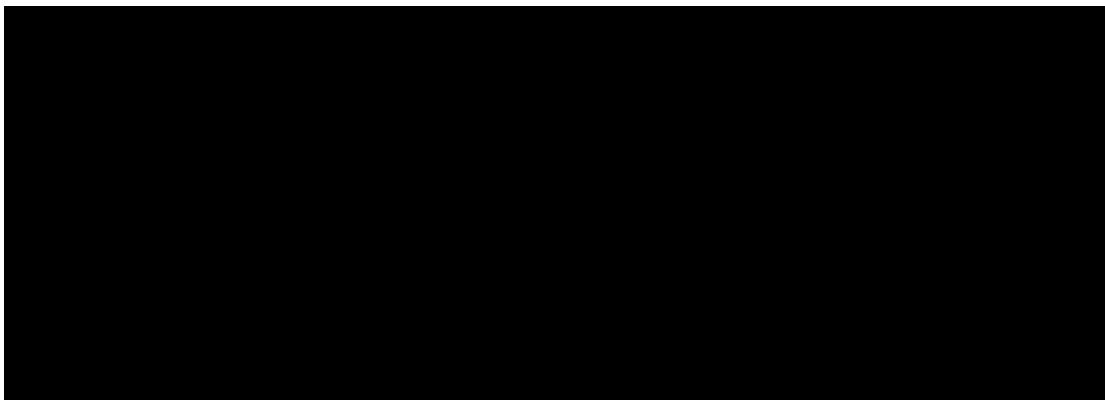
- (a) the pedestrian link located partly in Crown Reserve R88056, the land beneath Elizabeth Street and Castlereagh Street; and
- (b) the land circled in red in the plan set out in Annexure H.

**Moral Rights** means any of the rights described in Article 6b is of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any Law (including the *Copyright Act 1968* (Cth) or any Law outside Australia), that exists now or in the future anywhere in the world.

**Native Title Application** means any application made pursuant to the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW).

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

**Nominated Member** has the meaning given in clause 52.3(b).



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

**North Shaft Elongation Works** means the works required in addition to the North Shaft Reference Works to expand the North Shaft (as defined in Schedule A16), as shown in diagram B.7 of Attachment B to Schedule A16.

**North Shaft Reference Works** means excavation and related works for the North Shaft (as defined in Schedule A16) included in the TSE Works as at the date of execution of the TSE Contract, as shown in diagram 3 in B.1 of Attachment B to Schedule A16.

**North Tower Lot** has the meaning given to it in the OSD PDA.

**Notice of Completion** means a notice in the form of Schedule B24 issued by the Independent Certifier pursuant to clause 28.1(e)(i)(A).

**Notice of Construction Completion** means a notice in the form of Schedule B4 issued by the Independent Certifier pursuant to clause 27.1(e)(i)(A).

**Notice of Dispute** means a notice given under clause 52.4(b).

**Notice of Issue** means a notice given under clause 52.3(a).

**Notice of Milestone Achievement** means a notice in the form of Schedule B5 issued by the Independent Certifier pursuant to clause 25.1(e)(i).

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

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

**NSW Government Policy** means the NSW Code, NSW Guidelines, New South Wales Government Work Health & Safety Management Systems and Auditing Guidelines (5th edition) (September 2013, updated May 2014), NSW Government Policy on Aboriginal Participation in Construction (June 2018), Environmental Management Systems Guidelines (3rd edition) (August 2013), Quality Management System Guidelines for Construction (August 2013), NSW Government Resource Efficiency Policy (GREP) and any other NSW Government guidelines and requirements specified or required by this deed.

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

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

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

**Operator** means any entity, from time to time, that the Principal engages to perform the OTS2 Project Works.

**Optional Condition 1** means the optional condition described as "Optional Condition 1" in the table in Schedule E9.

**Optional Condition 1 Amount** means:

- (a) the amount proposed by Macquarie pursuant to clause 38.1(a)(i)(C) if accepted by the Principal in accordance with clause 38.1(a)(iii)(C); or
  - (b) the amount determined in accordance with clause 38.1(a)(iv),
- (as applicable).

**Optional Condition 1 Cap** means the amount in the column titled "Cost Adjustment" of the table in Schedule E9 that applies in respect of Optional Condition 1.

**Optional Condition 2** means the optional condition described as "Optional Condition 2" in the table in Schedule E9.

**Optional Condition 2 Amount** means the amount in the column titled "Cost Adjustment" of the table in Schedule E9 that applies in respect of Optional Condition 2.

**Optional Conditions** means each of Optional Condition 1 and Optional Condition 2.

**Optional Condition Criteria** means, in relation to an Optional Condition, the criteria specified in the column titled "Criteria to be met for relevant Optional Condition to be required" corresponding with the relevant Optional Condition as set out in the table in Schedule E9.

**OSD or Over Station Development** means the development to be carried out and completed in accordance with the OSD PDA.

**OSD Construction Site** has the meaning given to the term "Construction Site" in the OSD PDA.

**OSD Date of Completion** has the meaning given to the term "Last Date of Practical Completion" in the OSD PDA.

**OSD Design Documentation (CC)** has the meaning given to that term in the OSD PDA.

**OSD Design Parameters** has the meaning given to that term in the OSD PDA.

**OSD Developer** means Macquarie Group Limited ABN 94 122 169 279.

**OSD Developer's Activities** means all activities that the OSD Developer performs, or is required to perform, to comply with its obligations under the OSD PDA, whether or not the performance of such things or tasks is subcontracted by the OSD Developer to another person.

**OSD Developer's Associates** means the people and entities referred to in paragraph (b) of the definition of "Associates" in the OSD PDA.

**OSD Entrance Works** means the physical works which Macquarie must design, construct and complete within the areas identified in the "Station Works Drawings" in Appendix 4 to the SWTC as "OSD Entrance Works" (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed), as further described in section 2.2.4 of the SWTC.

**OSD PDA** means the document titled "Martin Place Metro Station Project - Over Station Development Project Delivery Agreement" (Contract No: 507) entered into between the Principal and the OSD Developer on or about the Commencement Date.

**OSD Planning Approval** has the meaning given to the term "Planning Approval" in the OSD PDA.

**OSD Project Documents** means each "Project Document" (as defined in the OSD PDA).

**OSD Step-in Event** has the meaning given to the term "Step-in Event" in the OSD PDA.

**OSD Step-in Party** has the meaning given to the term "Step-in Party" in the OSD PDA.

**OSD Step-in Powers** has the meaning given to the term "Step-in Powers" in the OSD PDA.

**OSD Variation** has the meaning given to the term "Variation" in the OSD PDA.

**OSD Works** has the meaning given to that term in the OSD PDA.

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

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

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

**OTS2 Project Works** means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the Operator must, in accordance with the OTS2 Project Deed, design, construct, manufacture, install, test and commission for the purposes of completing Sydney Metro City & Southwest, including equipment, systems (including all information systems, central control systems and communications systems), hardware and software, rolling stock, trackwork and support structures, platform screen doors and control centre.

**Over Station Rail Works** means the physical works which Macquarie must design, construct and complete within the Development Lot and which are required to deliver an operating Martin Place Metro Station, as further described in Appendix 4 to the SWTC and section 2.2.5 of the SWTC (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed).

**Payment Schedule** means Schedule E1.

**PDCS** means the Principal's web based TeamBinder project data, collaboration and document management system including any of its functionalities as required by the Principal, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 59(b).



**PPS Act** means the *Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Regulations 2010* (Cth).

**Planning Approval** means:

- (a) the Project Planning Approval, to the extent that the Project Planning Approval relates to Macquarie's Activities, the Project Works, the Temporary Works or Martin Place Metro Station; and
- (b) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Planning Approvals from time to time in respect of Macquarie's Activities, the Project Works, the Temporary Works or Martin Place Metro Station and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence, approval or determination may be modified from time to time.

**Pollution** has the meaning given to that term in the *Protection of the Environment Operations Act 1997* (NSW).

**Portion** means a part of the Project Works described in the columns titled "Portion" and "Description" in paragraph 3 of Schedule A2 or as directed by the Principal's Representative under clause 18.1.

**Portion 1** means the Project Works described as "Portion 1" in paragraph 3 of Schedule A2.

**Portion 2A** means the Project Works described as "Portion 2A" in paragraph 3 of Schedule A2.

**Portion 2B** means the Project Works described as "Portion 2B" in paragraph 3 of Schedule A2.

**Portion Handover Date** means:

- (a) in respect of Portion 1, the Date of Construction Completion of Portion 1; and
- (b) in respect of any other Portion, the later of:
  - (i) the day after the Date of Completion of that Portion; or
  - (ii) where the Principal's Representative gives a written notice under clause 29.2(a) in respect of the Portion, the date notified in the notice given under clause 29.2(c) in respect of the Portion.

**Principal Construction Site** means the areas identified in the Site Access Schedule, being Construction Site (Area 1), Construction Site (Area 2), Construction Site (Area 3), Construction Site (Area 4), Construction Site (Area 5) and Construction Site (Area 6), as increased in area pursuant to clause 17.4.

**Principal Project Documents** means those Project Documents to which the Principal is a party.

**Principal SDD Termination Payment** has the meaning given to that term in the Termination Payment Schedule.

**Principal Termination Event** has the meaning given to that term in clause 45.4.

**Principal Termination Payment** has the meaning given to that term in the Termination Payment Schedule.

**Principal's Insurances** means a policy or the policies of insurance which the Principal has obtained under clause 41.2(a).

**Principal's Land** means each of the following parcels of land:

- (a) Lot 1 in Deposited Plan 222356, known as 55 Hunter Street, Sydney;
- (b) Lot 1 in Deposited Plan 173027 and Lots 1 and 2 in Deposited Plan 929277, known as 8-12 Castlereagh Street, Sydney;
- (c) Lot 2 in Deposited Plan 548142, known as 5 Elizabeth Street, Sydney;
- (d) all lots comprising Strata Plan 13171, known as 7 Elizabeth Street, Sydney;
- (e) Lot 1 in Deposited Plan 260232, known as Martin Place Shopping Circle, Sydney;
- (f) Lots 1 and 2 in Deposited Plan 1103195, known as 39 Martin Place, Sydney;
- (g) Lot 1 in Deposited Plan 526161, known as 9-19 Elizabeth Street, Sydney;
- (h) Lot 131 in pre-allocated plan number Deposited Plan 1232469; and
- (i) Lot 132 in pre-allocated plan number Deposited Plan 1232469,

but does not include:

- (j) the above ground stratum of Lot 5 in Deposited Plan 984182;
- (k) the RailCorp Lot;
- (l) any land forming part of the surface of Martin Place; or
- (m) Lot 1 in Deposited Plan 626651, known as 33 Bligh Street, Sydney.

**Principal's Representative** means any person appointed by the Principal as the Principal's representative or any replacement from time to time, as notified by the Principal to Macquarie in accordance with clause 4.

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

- (a) pursuant to clause 7.5(a), a determination as to whether the Project Plan complies with this deed; and
- (b) pursuant to clause 23.11, the reasonable period for extension to the Date for Milestone Achievement of a Milestone or Date for Construction Completion or Date for Completion of a Portion

**Progress Report** means each progress report to be submitted by Macquarie under clause 23.16.

**Project** means:

- (a) the design and construction of Martin Place Metro Station by Macquarie; and
- (b) the performance, carrying out, exercise or provision of:
  - (i) the Project Works and Temporary Works by Macquarie in accordance with this deed; and

- (ii) Macquarie's Activities under the Project Documents.

**Project Control Group** means the group established in accordance with clause 4.6.

**Project Cooperation and Integration Deed** means each of:

- (a) the TSE Cooperation and Integration Deed; and
- (b) each Follow-on Contractor Cooperation and Integration Deed.

**Project Documents** means:

- (a) this deed;
- (b) the Independent Certifier Deed;
- (c) the D&C Contract;
- (d) the D&C Side Deed;
- (e) the Sub-SDD;
- (f) each Project Cooperation and Integration Deed;
- (g) the Master Interface Protocols Deed Poll;
- (h) the Collateral Warranty Deed Poll;
- (i) the IDAR Panel Agreement;
- (j) each of the Call Option Deed (Retail Lot North) and the Call Option Deed (Retail Lot South);
- (k) the Retail Lease; and
- (l) any document which the Principal and Macquarie acknowledge in writing to be a Project Document,

but does not include the OSD Project Documents.

**Project Documentation** means:

- (a) all drawings, plans, manuals, software designs, reports, computer records, specifications, calculations and any other documents (whether in hard copy or electronic form) prepared or required to be prepared by or on behalf of Macquarie or its Subcontractors in performing Macquarie's Activities;
- (b) without limiting paragraph (a), Design Documentation and Project Plans.

**Project Health and Safety Management Plan or PHSMP** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Project Objectives** means the matters set out in clause 3.2.

**Project Plans** means the plans listed in Appendix 54 to the SWTC, including all subsidiary plans and supporting documents and information, as updated from time to time in accordance with this deed.

**Project Planning Approval** means the approval granted by the Minister for Planning under section 115ZB of the EP&A Act dated 9 January 2017, including all:

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

as modified from time to time (including by the Project Planning Approval Modification).

**Project Planning Approval Modification** means the modification to the Project Planning Approval granted by the Minister for Planning dated 22 March 2018.

**Project Site** means:

- (a) the areas of the Principal Construction Site; and
- (b) the areas of the Macquarie Land below RL 14.3 required for the purposes of Macquarie's Activities.

**Project Trust** means Skylight Project Trust created by trust deed dated 10 July 2018.

**Project Works** means the physical works which Macquarie must design, construct and complete under this deed and includes:

- (a) the Station Works;
- (b) the Retail Works;
- (c) the OSD Entrance Works;
- (d) the Over Station Rail Works;
- (e) the Third Party Works; and
- (f) the Concourse Link Works,

including, to the extent relevant to such works, Variations directed or approved in accordance with this deed but excluding Temporary Works.

**Project Values** means the values that will guide the delivery of the Project, being:

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

**Project-Specific Change in Law** means a Change in Law, the terms of which apply to:

- (a) Project Works or the Temporary Works, and not to other works;
- (b) Macquarie, and not to other persons; or
- (c) the Principal Construction Site, and not to any other:
  - (i) similarly situated land or facilities; or

- (ii) land or facilities where similar activities to Macquarie's Activities are undertaken.

**Proof Engineer** means the person or persons engaged from time to time by Macquarie in accordance with clause 4.5 to perform the role of the Proof Engineer.

**Proof Engineered Temporary Works** means any Temporary Works that may:

- (a) have an impact upon:
  - (i) the amenity of any members of the public; or
  - (ii) the assets of any Authority; or
- (b) involve a material potential risk:
  - (i) to the health or safety of any person; or
  - (ii) of loss of or damage to property.

**Property Works** means all works required to existing buildings and infrastructure or to and within properties arising out of Macquarie's Activities as described or specified in the SWTC, including section 2.2.7 of the SWTC and Appendix 52 to the SWTC (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed).

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

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

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

**Quality Manager** means the person appointed to that position under clause 9.15 as at the Commencement Date, and any person appointed as a replacement under clause 9.15, who satisfies the requirements of section 5.5.1(a) of the SWTC.

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

**Quality Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

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

**RailCorp Lot** means the land presently comprised in Auto Consol 11565-203.

**Rail Contract** means any contract entered into between the Principal and a Rail Contractor.

**Rail Contractors** means any contractor, consultant, tradesperson, supplier or other person engaged or authorised by the Principal to do work on or about the Construction Site, including:

- (a) the TSE Contractor;
- (b) the Operator;
- (c) the Line-wide Contractors;
- (d) the ETS Contractors; and
- (e) any other Follow-on Contractor,

but excluding Macquarie and any Associate of Macquarie.

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

**Rail Contractors' Work** means any work to be executed by the Rail Contractors.

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

**Rail Safety National Law** means the *Rail Safety National Law* (NSW), as defined in the *Rail Safety (Adoption of National Law) Act 2012* (NSW), and any associated regulations.

**Rail Safety Regulations** means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

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

**Recommendation** has the meaning given in clause 52.4(a).

**Related Entity** of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act; and
- (b) a unit trust in relation to which that corporation directly or indirectly:
  - (i) controls the right to appoint the trustee;
  - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
  - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

**Release Date** means the date on which the Principal makes payment of the [REDACTED] for the relevant [REDACTED] to Macquarie.

**Relevant Land** means that part of the Macquarie Land where, as at the date of registration of the Subdivision Plan, any physical works or infrastructure which are required for, or otherwise associated with, the Martin Place Metro Station are located, including any part of

the Macquarie Land where rock anchors have been installed for the purposes of the construction of the Martin Place Metro Station.

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

**Remedy** means, in respect of a Macquarie Event of Default, to remedy or cure the Macquarie Event of Default or otherwise overcome the consequences of the Macquarie Event of Default.

**Required Rating** means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investor Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investor Services, Inc, an equivalent rating with another reputable rating agency.

**Resolution Institute** means the Resolution Institute Australia.

**Residual Lot** has the meaning given to that term in section 1.2(g) of the Subdivision Principles.

**Residual Stage 1 Lot** has the meaning given to that term in section 1.2(h) of the Subdivision Principles.

**Retail Activation Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Retail Lease** means each of the long term leases over the Retail Lots granted by the Principal to the relevant Retail Lessee in accordance with the relevant Call Option Deed, and in the form attached to the relevant Call Option Deed.

**Retail Lease Grant Date** means the date which is the later of:

- (a) the day after the Date of Construction Completion of the last Portion to achieve Construction Completion; and
- (b) the date on which the Subdivision Plan is registered in accordance with clause 31 creating Retail Lot North and Retail Lot South.

**Retail Lessee** means:

- (c) with respect to the Retail Lot North, the Retail (North) Lessee; and
- (d) with respect to the Retail Lot South, the Retail (South) Lessee.

**Retail Lot** means each of Retail Lot North and Retail Lot South.

**Retail Lot North** means the stratum lot shown as Lot 1 in the Draft Subdivision Plan which will be created by way of subdivision pursuant to clause 31.

**Retail (North) Lessee** means Skylight RN Pty Limited as trustee for the Skylight Retail North Sub Trust ABN 75 181 954 053.

**Retail Lot South** means the stratum lot shown as Lot 6 in the Draft Subdivision Plan which will be created by way of subdivision pursuant to clause 31.

**Retail (South) Lessee** means Skylight RS Pty Limited as trustee for the Skylight Retail South Sub Trust ABN 11 453 957 225.

**Retail Sublease** has the same meaning as "Sublease" as defined in clause 1.1 of each of the Retail Leases.

**Retail Works** means the physical works which Macquarie must design, construct and complete within the Retail Lots and which are required to deliver an operating Martin Place Metro Station, as further described in section 2.2.3 of the SWTC (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed) and Appendix 4 to the SWTC.

**Revised Design Stage 1** means the Design Stage 1 documents and deliverables referred to in Schedule C3 prepared by Macquarie updated for design developments for the Project Works, including to incorporate any comments from CCB2 but excluding any design development associated with the Additional SDD Scope ~~of~~ the [REDACTED] or the Caverns Scope.

**Risk Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Risk Register** means a register of risks of which Macquarie has notified to the Principal in accordance with clause 47.3.

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

[REDACTED]

**SDD Program** means the program for Macquarie's Activities, as updated from time to time in accordance with clause 23.4(b)(ii).

**Section 88B Instrument** means the document in the form of the Draft Section 88B Instrument and otherwise in a form acceptable to the Principal and Macquarie (each acting reasonably).

**Security Interest** means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person or any interest in relation to personal property provided for by a transaction that in substance secures payment or performance of an obligation or otherwise would be considered to be a "security interest" under section 12(1) of the PPS Act.

**Service** means any service utility, service facility or item of public or private infrastructure, including for the provision or measurement of water, electricity, gas, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and electronic communications service (including power, electricity, gas, water, sewerage and telecommunications and all pipes, wires, cables, ducts and other conduits in connection with them).

**Service Works** means the construction, modification, or relocation of Services to be designed and constructed by Macquarie and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in the SWTC (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed) but excluding the construction of any Services that will form part of Martin Place Metro Station.

**Shared Facilities** means a Service, facility or other infrastructure which services more than one stratum lot in the Subdivision Plan.



**Significant Subcontractor** means a party (other than Macquarie) to a Significant Subcontract.

**Significant Subcontract** means:

- (a) the D&C Contract;
- (b) each contract for the provision of any "Significant Subcontract Work" listed in Schedule A5;
- (c) each contract with the Lifts and Escalators Contractor;
- (d) each contract entered into by Macquarie, DevCo or the D&C Contractor in connection with Macquarie's Activities with a contract value of greater than [REDACTED] (excluding any contract with a Sub-Tenant and any contract for fit out purposes); and
- (e) any other contract that the parties agree from time to time is a Significant Subcontract.

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

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

**Site Access Schedule** means Annexure D.

**Site Conditions** are any physical conditions and characteristics of, on, above, below or over the surface, or in the vicinity, of the Construction Site and any Extra Land or their surroundings including:

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Chemical or other spoil or waste;
- (f) topography of the Construction Site and any Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Services, systems and facilities, above or below ground level and all facilities with which such Services and systems are connected;

- (j) the Environment, water, weather or climatic conditions, or the effects of the Environment, water, weather or climatic conditions, including rain, surface water runoff and drainage, water seepage, wind-blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions;
- (k) any adjoining property; and
- (l) any latent conditions.

**SMPCH&SS** means the Sydney Metro Principal Contractor Health & Safety Standard.

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

**South Tower Lot** has the meaning given to it in the OSD PDA.

**Stage 1 Subdivision Documents** has the meaning given to that term in clause 31.8(a).

**Stage 1 Subdivision Proposal** has the meaning given to that term in clause 31.8(a).

**Stage 2 Consent** has the meaning given to it in the OSD PDA.

**State** means the Crown in right of the State of New South Wales.

**State Indemnified Party** has the meaning given to that term in clause 42.1.

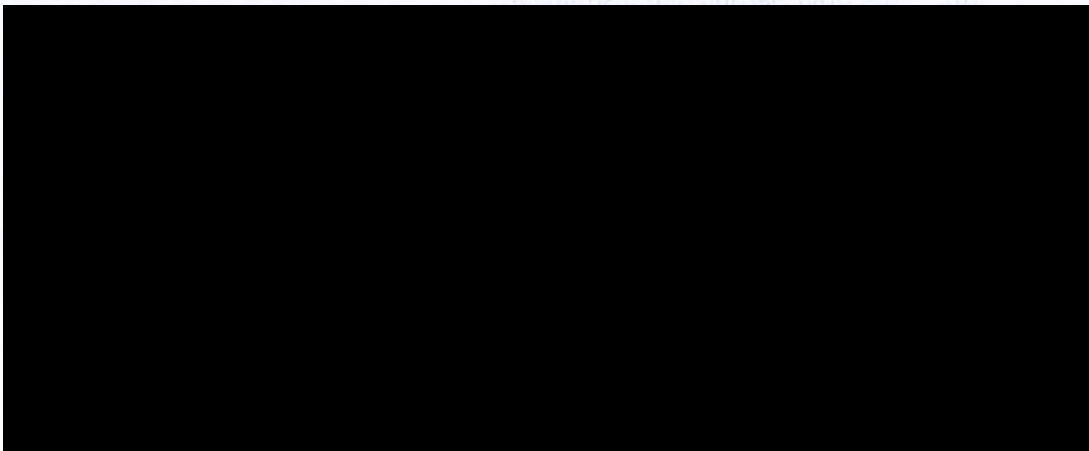
**Station Works** means the physical works which Macquarie must design, construct and complete within the Martin Place Metro Station Lot and the RailCorp Lot and which are required to deliver an operating Martin Place Metro Station, as further described in section 2.2.2 of the SWTC and Schedule A21 (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed).

**Station Works D&C Cost Estimate** means [REDACTED]

**Station Works D&C Savings** means the greater of:

- (a) the amount equal to the Station Works D&C Cost Estimate minus the Station Works D&C Sum; and
- (b) zero.

**Station Works D&C Sum** means the total actual amount incurred or payable by Macquarie in the design and construction of the Project Works and Temporary Works and excluding any costs associated with:



**Station Works Portion** means any Portion comprising part of the Station Works.

**Step-in Event** has the meaning given to that term in clause 44.1.

**Step-in Party** means an agent, attorney or nominee of the Principal, and may be more than one person appointed to act jointly.

**Step-in Powers** has the meaning given to that term in clause 44.3.

**Step-in Rights** has the meaning given to that term in clause 44.2(a).

**Sub-SDD** means the document titled "Martin Place Metro Station Project – Sub SDD" entered into between Macquarie and DevCo on or about the Commencement Date.

**Subcontract** means an agreement for supply of goods or services (including professional services and plant hire) or both and includes the D&C Contract.

**Subcontractor** means:

- (a) for the purposes of clauses 9.13, 20.16(b), 46.2, 46.3 and 48.1(c), any person who enters into a contract in connection with Macquarie's Activities with Macquarie or DevCo;
- (b) for the purposes of clauses 34.5(e) and 34.5(f), any person who enters into a contract in connection with Macquarie's Activities with Macquarie, DevCo or the D&C Contractor or any subcontractor who enters into a contract with the D&C Contractor (or any subcontractor appointed by that subcontractor); and
- (c) otherwise, any person who enters into a contract in connection with Macquarie's Activities with Macquarie or DevCo or whose subcontract is in connection with Macquarie's Activities and is in a chain of contracts where the ultimate contract is with Macquarie or DevCo.

**Subdivide** and **Subdivision** means a subdivision, consolidation or dedication of land (or to create the land) under the Subdivision Legislation.

**Subdivision Certificate** means a certificate referred to in section 6.15 of the EP&A Act.

**Subdivision Document** means any of the management statement, development contract, by-laws, or an instrument creating easements, covenants or restrictions under the Subdivision Legislation, including:

- (a) the Draft Subdivision Plan;
- (b) the Draft Section 88B Instrument;
- (c) the Draft BMS; and
- (d) Concourse Link Easement,

as updated in accordance with clause 31.

**Subdivision Land** means those parts of the Principal's Land and Macquarie Land which will be Subdivided to create each of the following:

- (a) Martin Place Metro Station Lot;
- (b) North Tower Lot;

- (c) South Tower Lot;
- (d) Retail Lot North;
- (e) Retail Lot South; and
- (f) 50 Martin Place Ancillary Amenities Lot.

**Subdivision Legislation** means any of the *Conveyancing Act 1919* (NSW), *Real Property Act 1900* (NSW), *Community Land Development Act 1989* (NSW), *Strata Schemes Development Act 2015* (NSW), *Strata Schemes Management Act 2015* (NSW), the *Roads Act 1993* (NSW) or the EP&A Act.

**Subdivision Plan** means a plan prepared by the Surveyor on behalf of Macquarie in accordance with clause 31, including a Subdivision Certificate (where applicable).

**Subdivision Principles** means the principles set out in Schedule D5.

**Subdivision Proposal** means a proposal by Macquarie in respect of the Subdivision of the Subdivision Land which must:

- (a) outline and provide reasonable details of the proposed number and configuration of the stratum lots which will comprise the Martin Place Station Lot, the Retail Lots, the Development Lots and the Residual Lot (if any); and
- (b) attach:
  - (i) the proposed Subdivision Plan;
  - (ii) full copies of all proposed Subdivision Documents that Macquarie intends to be registered together with the Subdivision Plan which must include the Building Management Statement (including all annexures and schedules) in unamended form or amended only with the prior written approval of the Principal and the Section 88B Instrument in the form which has been approved by the Principal in writing; and
  - (iii) a certificate from the Surveyor addressed to the Principal confirming that the above documents accord with the Project Planning Approval, Stage 2 Consent and the Subdivision Principles.

**Sub-Tenant** has the meaning given to that term in the Retail Lease.

**Suggested Modification** has the meaning given to that term in clause 35.2(c)(ix).

**Surveyor** means a surveyor who is a member of the Association of Consulting Surveyors NSW Inc having at least 5 years' experience in surveying premises of the same type as the integrated Martin Place Metro Station and Over Station Development.

**Sustainability Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**SWTC** means the Scope of Work and Technical Criteria contained in Schedule C1.

**SWTC Reliance Provisions** means the sections of the SWTC referred to in Schedule A13.

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

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

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

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

**Sydney Metro Principal Contractor Health and Safety Standard** means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-PS-ST-221)" in Appendix 57 to the SWTC, as amended from time to time.

**Sydney Metro Programming Protocol** means the document titled "Sydney Metro Basis of Schedule and Management Procedure" referred to in Appendix 57 to the SWTC.

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

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

**Sydney Trains Interface Works** means the "Sydney Metro Works" and "Sydney Trains Works" as those terms are defined in the Sydney Trains Transition Agreement.

**Sydney Trains Transition Agreement** has the meaning given to that term in Schedule D4.

**Taxes** means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them.

**Technical Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Temporary Tunnel Services** means any power, communications, water and dewatering lines which have been affixed in the tunnel caverns within the "C3 profile" in Construction Site (Area 5) by the TSE Contractor.

**Temporary Works** means any temporary physical works required for the purpose of performing Macquarie's Activities (and including, to the extent relevant to such works, Variations directed or approved in accordance with this deed).

**Termination Payment** has the meaning given to that term in the Termination Payment Schedule.

**Termination Payment Schedule** means Schedule E7.

**Test** means

- (a) a test required by Appendix 56 to the SWTC or the Testing and Commissioning Plan; and

(b) an additional test which Macquarie is directed to carry out under clause 26.8(a).

**Testing** means the carrying out of the Tests.

**Testing and Commissioning Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Test Procedure** means a detailed procedure for the conduct of a Test.

**Test Program** has the meaning given to that term in clause 26.3(d)(i).

**Test Report** means a report on the conduct of a Test, including supporting documentation.

**Third Party Agreement** means:

- (a) an agreement set out in Annexure E which has been entered into by the Principal prior to the Commencement Date;
- (b) any Draft Third Party Agreement set out in Annexure E; or
- (c) Additional Third Party Agreement entered into by the Principal on or after the Commencement Date,

in relation to the Sydney Metro City & Southwest and the Project Works.

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

**Third Party Interface Works** means those elements of the Project Works which require consent under any Third Party Agreement.

**Third Party Works** means Local Area Works, Property Works and Service Works.

**Threatened Species** means a threatened species, population or ecological community or the habitat of a threatened species, population or ecological community as regulated by the *Threatened Species Conservation Act 1995* (NSW), the *National Parks and Wildlife Act 1974* (NSW) or the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Threatened Species Claim** means a claim made or legal proceedings commenced in connection with the existence of a Threatened Species.

**Total Project Sum** means an amount equal to the contract sum under the D&C Contract.

**Total Project Sum for Bank Guarantees** means [REDACTED]

**Trains and Systems Integrator** has the meaning given to the defined term "Integrator" in the OTS2 Project Deed.

**Transport Administration Act** means the *Transport Administration Act 1988* (NSW).

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

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

**Treasurer** means the Treasurer of the Commonwealth of Australia.



**TSE Adjustment Works** means a TSE Works Change as described in Schedule A16.

**TSE Adjustment Works Price** means the agreed cost of the TSE Adjustment Works payable by the Principal to the TSE Contractor.

**TSE Construction Completion** has the meaning given to the term "Construction Completion" in the TSE Contract with respect to the TSE Works.

**TSE Contract** means the redacted copy of the contract between TfNSW and the TSE Contractor to carry out the TSE Works annexed as Annexure F, which was vested in Sydney Metro on 1 July 2018.

**TSE Contractor** means John Holland Pty Ltd ABN 11 004 282 268, CPB Contractors Pty Ltd ABN 98 000 893 667 and Ghella Pty Ltd ABN 85 142 392 461.

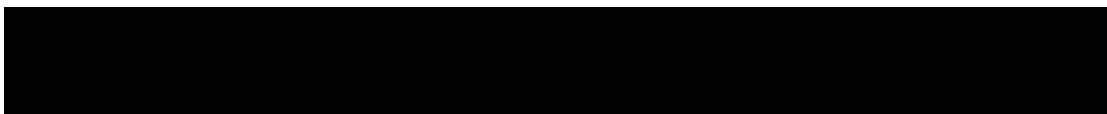
**TSE Contractor's Activities** has the meaning given to that term in the TSE Contract.

**TSE Cooperation and Integration Deed** means a deed to be entered into between the Principal, Macquarie and the TSE Contractor substantially in the form of Schedule A7.

**TSE Date for Construction Completion** has the meaning given to the term "Date for Construction Completion" under the TSE Contract with respect to the TSE Works.

**TSE Date of Construction Completion** means, in respect of the TSE Works:

- (a) the date notified by the TSE Independent Certifier as the date TSE Construction Completion was achieved; or
- (b) where another date is determined in accordance with the dispute resolution procedures under the TSE Contract as the date upon which TSE Construction Completion was achieved, that date.



**TSE Defect** means:

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

which is not in accordance with the requirements of the TSE Contract,

including a Major TSE Defect, but does not include any 

**TSE Independent Certifier** means APP Corporation Pty Limited ABN 29 003 764 770 or such other person(s) as may be engaged by the Principal and the TSE Contractor in accordance with the TSE Independent Certifier Deed.

**TSE Independent Certifier Deed** means the deed so entitled entered into between the TSE Contractor, TfNSW and the TSE Independent Certifier, which was vested in the Principal on 1 July 2018.

**TSE Known Defect** means a TSE Defect which is listed in a TSE Notice of Construction Completion.

**TSE Minor Defect** has the meaning given to the term "Minor Defect" in the TSE Contract.

**TSE Notice of Construction Completion** has the meaning given to the term "Notice of Construction Completion" in the TSE Contract.

**TSE Portion** has the meaning given to the term "Portion" in the TSE Deed.

**TSE Portion 14 Date of Construction Completion** means the TSE Date of Construction Completion for the TSE Portion identified as "Portion 14" in the TSE Contract.

**TSE Project Contract Sum** has the meaning given to the term "Project Contract Sum" in the TSE Contract.

**TSE Services** has the meaning given to it in clause 9.16(d)(i).

**TSE Site** means the "Construction Site" (as defined in the TSE Contract), to the extent that that "Construction Site" forms part of the Principal Construction Site.

**TSE Transitional Handover Services** has the meaning given to the term "Transitional Handover Services" in the TSE Contract.

**TSE Works** means the physical works to be designed, constructed and completed by the TSE Contractor within "Portion 6A", "Portion 6B" and "Portion 6C" and, in relation to the platform caverns for Martin Place Metro Station, "Portion 7" of the TSE Contract, as adjusted by the TSE Adjustment Works.

**TSE Works Asset Management Information** means any "Asset Management Information" (as defined in the TSE Contract), including any draft "Asset Management Information" submitted to TfNSW or the Principal by the TSE Contractor under the TSE Contract, to the extent that "Asset Management Information" or draft "Asset Management Information" relates to the TSE Works.

**TSE Works Change** means the TSE Adjustment Works and any change or variation to the TSE Works after the Commencement Date including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them, or any change or variation to the dimensions of the TSE Works, but not including any change or variation that the TSE Contractor is entitled to make to the design of the TSE Works under the TSE Contract without the Principal's consent where, following any such change or variation, the TSE Works will continue to comply with the requirements of the TSE Contract.

**TSE Works O&M Manuals** means the operation and maintenance manuals forming part of the TSE Works Asset Management Information certified by the TSE Independent Certifier under the TSE Contract.

**Unowned Parcels** means a parcel of land and property of which the State is not the registered proprietor, lessee or licensee and in relation to which, or upon which, Property Works are to be undertaken.

**Updated Stage 2 DA Design Docs** has the meaning given in the OSD PDA.

**Urgent Defect** means, with respect to a Portion, a Defect in that Portion which poses an actual or potential risk:



- (a) to the health or safety of any person; or
- (b) of loss of or damage to property.

**Variation** means any change to the requirements of this deed for the Project Works, Temporary Works or Macquarie's Activities, including:

- (a) any addition, reduction, increase to, decrease, omission or deletion from the Project Works, Temporary Works or Macquarie's Activities;
- (b) any change to the character or quality, or demolition or removal, of any material or work;
- (c) any change to the levels, lines, positions or dimensions of any part of the Project Works;
- (d) any acceleration or change to the sequencing, method or timing of construction of Macquarie's Activities; and
- (e) changes to the Principal Construction Site (other than in accordance with clause 17.4).

**Variation Approval** means a notice titled "Variation Approval" issued by the Principal under clause 36.2(a)(ii)(A).

**Variation Cost** means, to the extent a Variation increases the cost of the Project Works, the Temporary Works or Macquarie's Activities, or where Variation Costs are payable under clause 23.11(f), the following amounts:

- (a) the direct costs and on-site overheads and the cost of Construction Materials, reasonably arising out of or in connection with the Variation (including any increased construction costs) to the extent those costs are reasonable and incurred on an arm's length basis;
- (b) with respect to the D&C Contractor:
  - (i) a reasonable amount on account of the off-site overheads and preliminaries (including administration costs, site supervision, establishment costs, attendance and insurance costs) of the D&C Contractor; and
  - (ii) an amount on account of the profit margin of the D&C Contractor (which must be equal to the D&C Margin),  
  
not including an amount on account of the off-site overheads, preliminaries and profit margin of Macquarie;
- (c) a reasonable amount on account for additional third party, arm's length costs incurred by Macquarie but excluding any finance costs and any amount on account of the off-site overheads, preliminaries and profit margin of Macquarie;
- (d) if the Variation will delay Macquarie in carrying out Macquarie's Activities, the net incremental costs of Macquarie and the D&C Contractor that are directly attributable to the delay caused by the Variation, excluding any direct costs saved or which will be saved or which ought reasonably to have been saved in connection with the delay; and
- (e) without limiting paragraphs (a) to (c) (inclusive) of this definition, in the case of clause 23.11(f), or where the Variation requires Macquarie to accelerate the Project Works, Temporary Works or Macquarie's Activities to achieve Milestone Achievement

by the Date for Milestone Achievement, Construction Completion by the Date for Construction Completion and/or Completion by the Date for Completion, the reasonable direct costs incurred by Macquarie and the D&C Contractor in accelerating the Project Works, Temporary Works or Macquarie's Activities,

after deducting any Variation Savings arising from the Variation.

**Variation Impact Proposal** means a proposal issued by Macquarie under clause 35.2.

**Variation Impact Request** means a notice titled "Variation Impact Request" issued by the Principal under clause 35.1.

**Variation Order** means a notice titled "Variation Order" issued by the Principal under clause 35.

**Variation Savings** means:

- (a) the savings in the cost of designing and constructing the Project Works arising out of or in connection with the Variation (including any savings in relation to construction costs and associated on-site overheads); and
- (b) with respect to the D&C Contractor:
  - (i) a reasonable amount on account of savings in the off-site overheads of the D&C Contractor; and
  - (ii) an amount on account of the profit margin of the D&C Contractor (which must be equal to the D&C Margin),

not including an amount on account of the off-site overheads and profit margin of Macquarie.

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

**WHS Legislation** means:

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

**Wilful Misconduct** means an act or failure to act by a party or its Associates that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

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

**Works** means the physical works which Macquarie must design, construct, complete and hand over to the Principal in accordance with this deed (including, to the extent relevant to such works, Variations directed in accordance with this deed) but excludes the Third Party Works and the Temporary Works.

**Working Group** means each working group established pursuant to clause 4.7.

**Workforce Development and Industry Participation Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

**Workplace Relations Management Plan** means the Project Plan of that name, as updated from time to time in accordance with clause 7.

## 1.2 Interpretation

In this deed:

- (a) headings and subheadings are for convenience only and do not affect interpretation of this deed;

and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:

- (b) 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;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a person, entity or contractor includes that person, entity or contractor's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (g) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (h) a reference to a document, contract or agreement is to that document, contract or agreement as varied, novated, ratified or replaced from time to time;
- (i) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (j) 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;
- (k) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (l) a reference to:
  - (i) a part, schedule, exhibit, attachment or annexure is a reference to a part, schedule, exhibit, attachment or annexure to or of this deed;
  - (ii) this deed includes all schedules, exhibits, attachments and annexures to it, including the SWTC; and
  - (iii) the SWTC includes all Appendices to the SWTC;
- (m) any reference to the Project Works or any part of them being capable of remaining at all relevant times fit for their purposes or for their intended purpose, or to Macquarie being liable or responsible for a Defect after the Date of Construction Completion (in respect of Portion 1) or the Date of Completion (in respect of any Portion other than Portion 1), will be read as being subject to the Principal, the Operator and their respective Associates operating and maintaining the relevant Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information (as described in section 8A of the SWTC);
- (n) a reference in:
  - (i) this deed to a clause is a reference to a clause of this deed; and
  - (ii) a schedule, exhibit, attachment, annexure or appendix to a clause, paragraph or annexure, is a reference to a clause, paragraph or annexure of that schedule, exhibit, attachment, annexure or appendix;
- (o) any reference to:
  - (i) the Project Works, the Temporary Works or any aspect of the Project;
  - (ii) Macquarie's Activities;
  - (iii) the SWTC;
  - (iv) design and related documentation (including Design Documentation and Project Documentation); or
  - (v) any other document or thing,
 or any part of any of them:
  - (vi) being or remaining fit for its purpose or for its intended purpose; or
  - (vii) as having an intended use,
 (or any similar reference) will be read as referring to the purpose, intended purpose or intended use prior to and at the Date of Construction Completion (in respect of Portion 1) or prior to and at the Date of Completion (in respect of any Portion other than Portion 1), having regard to:
  - (viii) the Principal's intention that the Project Works and Martin Place Metro Station will be used as an integral part of an operating and integrated rail system

intended to provide frequent high speed mass transit services between Chatswood and Bankstown, and may:

- (A) be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;
  - (B) be subject to continuous operation;
  - (C) be operated by either the State of New South Wales or by private operator(s) on its behalf;
  - (D) be further developed, upgraded, augmented, extended and expanded to the extent referred to in this deed;
  - (E) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and
  - (F) involve future construction and development of building, over station developments and/or other infrastructure (including the OSD) on, over, under or adjacent to the Project Works and Martin Place Metro Station to the extent referred to in this deed; and
- (ix) any purpose, intended purpose or intended use stated in, contemplated by or reasonably ascertainable from:
- (A) this deed, including:
    - (aa) the SWTC Reliance Provisions and the [REDACTED] and
    - (bb) the requirement that the Project Works, when completed, and Martin Place Metro Station will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
  - (B) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Variation) any document provided by the Principal to Macquarie specifically in connection with the Variation (excluding any Information Documents);
- (p) 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;
- (q) **includes** in any form is not a word of limitation;
- (r) a reference to **\$** or **dollar** is to Australian currency;
- (s) a reference to **construction** includes development, manufacture, supply, installation, integration, testing and commissioning;
- (t) any reference to **information** will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (u) any obligation of Macquarie under this deed with respect to a **Project Plan** will be read as an obligation with respect to the version of the relevant Project Plan last submitted by Macquarie to the Principal's Representative under clause 7, in respect

of which the Principal's Representative has not rejected within the review period specified in this deed;

- (v) 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;
- (w) 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;
- (x) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (y) 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;
- (z) 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;
- (aa) a time of day is a reference to Sydney time; and
- (bb) any obligation of Macquarie under this deed to mitigate will be read as an obligation to mitigate having regard to Macquarie's obligations under this deed.

### 1.3 Resolution of ambiguities

- (a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:
  - (i) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
    - (A) this deed (excluding the schedules and annexures to this deed); and
    - (B) the schedules and annexures to this deed;
  - (ii) to the extent clause 1.3(a)(i) does not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different codes, standards, specifications or guidelines with which Macquarie must comply, the order of precedence set out in section 3.2.2 of the SWTC will apply;
  - (iii) to the extent clauses 1.3(a)(i) and (ii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different requirements of the SWTC, the order of precedence set out in section 3.2.2 of the SWTC will apply;
  - (iv) to the extent clauses 1.3(a)(i) to (iii) (inclusive) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between the SWTC and the Environmental Documents, the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless the Principal's Representative directs otherwise);

- (v) to the extent clauses 1.3(a)(i) to (iv) (inclusive) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between the documents comprising the Environmental Documents, the order of precedence in Schedule D2 will apply;
  - (vi) to the extent clauses 1.3(a)(i) to 1.3(a)(v) (inclusive) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the Project Works or Macquarie's Activities, Macquarie must comply with the highest quality or standard specified or perform the more onerous obligation; and
  - (vii) to the extent clauses 1.3(a)(i) to (vi) (inclusive) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured dimensions will prevail over the scaled dimensions.
- (b) The documents comprising this deed (including the SWTC and the Environmental Documents) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
  - (c) If an ambiguity, discrepancy or inconsistency is discovered by Macquarie, Macquarie must notify the Principal within 5 Business Days after such discovery.
  - (d) The Principal's Representative must, within 10 Business Days after receipt of a notice under clause 1.3(c), instruct Macquarie as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in this clause 1.3.

**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 is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

**1.6 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.

**1.7 Severability**

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

- (a) that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
  - (i) avoids the provision being void, illegal, invalid or unenforceable; and

- (ii) subject to clause 1.7(b)(i), preserves to the maximum possible extent:
  - (A) the enforceability of the provision and the provisions of this deed; and
  - (B) the original effect and intent of this deed.

#### 1.8 **Authorities**

- (a) The Principal Project 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) Without limiting clause 1.8(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 for the purposes of this deed (including a breach of contract) and will not entitle Macquarie to make any Claim against the Principal.
- (c) Clauses 1.8(a) and (b) do not limit any liability which the Principal would have had to Macquarie under this deed as a result of a breach by the Principal of a term of this deed but for clauses 1.8(a) and (b).
- (d) Macquarie acknowledges that:
  - (i) there are many Authorities (other than the Principal) with jurisdiction over aspects of Macquarie's Activities, parts of the Construction Site and other areas affected by Macquarie's Activities (including Extra Land);
  - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect Macquarie's Activities or the Project generally; and
  - (iii) except to the extent expressly stated otherwise in a Project Document, Macquarie bears the risk of all occurrences of the kind referred to in this clause 1.8(d) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

#### 1.9 **Best or reasonable endeavours**

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

- (a) unless otherwise expressly stated in this deed, 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) unless otherwise expressly stated in this deed, the Principal is not obliged to expend any money or make any payment to Macquarie or any other parties;
- (c) the Principal cannot ensure the relevant outcome; and



- (d) the Principal, by undertaking to exercise best or reasonable endeavours, 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 Project 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 Project Documents;
  - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Documents; or
  - (v) act in any other way that the Principal regards as not in the public interest.

#### 1.10 **Macquarie's Associates**

If this deed prohibits Macquarie from doing a thing, then Macquarie must:

- (a) do everything reasonably necessary to ensure that Macquarie's Associates do not do that thing; and
- (b) not authorise or cause any person to do that thing.

#### 1.11 **Electronic files**

Where this deed (including the SWTC) refers to an electronic file on a separate disc or other electronic storage device which forms part of this deed, those electronic files are contained in the disc or other electronic storage device identified in Schedule F1.

#### 1.12 **Sydney Metro Northwest Augmentation**

- (a) The parties acknowledge that:
  - (i) TfNSW and NRT are parties to the OTS Project Deed under which NRT must undertake the OTS Project Works and subsequently operate and maintain Sydney Metro Northwest;
  - (ii) the OTS Project Deed contains provisions pursuant to which TfNSW and NRT may seek to negotiate and agree an augmentation which includes the OTS2 Project Works and the subsequent operation and maintenance of the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest (**Sydney Metro Northwest Augmentation**); and
  - (iii) the Principal and NRT are currently negotiating a Sydney Metro Northwest Augmentation.
- (b) The Principal must promptly notify Macquarie in writing of the outcome of any negotiations in relation to any Sydney Metro Northwest Augmentation.
- (c) If the Principal and NRT do not agree to a Sydney Metro Northwest Augmentation, the Principal may procure the delivery of the OTS2 Project Works by alternative means and engage an alternate Operator to operate the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest. This deed therefore contemplates that:

- (i) the OTS2 Project Works may be carried out by NRT or an alternate Operator; and
- (ii) the operation and maintenance of the combined Sydney Metro City & Southwest extension and Sydney Metro Northwest may be carried out by NRT or an alternate Operator.

## **2. CONDITIONS PRECEDENT**

### **2.1 Conditions Precedent**

This deed will not commence unless and until each of the Conditions Precedent has been satisfied (or waived under clause 2.3), except for the provisions contained in the Day 1 Clauses, which will commence on the Commencement Date.

### **2.2 Satisfaction of Conditions Precedent**

- (a) The Principal must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be included for the benefit of Macquarie (or Macquarie and the Principal) by the Condition Precedent Deadline Date.
- (b) Macquarie must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of the Principal (or the Principal and Macquarie) by the Condition Precedent Deadline Date.
- (c) When a party is of the opinion that a Condition Precedent has been satisfied, it must promptly give the other party written notice of its opinion.
- (d) The party receiving a written notice given under clause 2.2(c) must, within 10 Business Days, notify the other party in writing whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (e) If the party receiving a notice given under clause 2.2(c) fails to give the other party a written notice under clause 2.2(d) within the 10 Business Day Period under clause 2.2(d), the Condition Precedent will be deemed to have been satisfied.
- (f) Upon the satisfaction (or waiver under clause 2.3) of all Conditions Precedent, the parties must promptly give each other a written notice acknowledging that Financial Close has occurred.

### **2.3 Waiver of Conditions Precedent**

A Condition Precedent is waived if, and only if:

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

### **2.4 Condition Precedent Deadline Dates**

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2.3) by 11.59 pm on the Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule A1 in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition

Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in its notice (which must not be less than 5 Business Days).

- (b) If a party gives notice under clause 2.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (c) Subject to clause 45.10, if this deed is terminated pursuant to this clause 2.4 then:
  - (i) clause 2 of the Termination Payment Schedule will apply and no party will have any other Claim against any other party under or in respect of any Principal Project Document, except for any Claim arising from or in relation to a breach of any Day 1 Clause; and
  - (ii) the parties acknowledge that where an amount referred to in clause 2 of the Termination Payment Schedule has been paid under the OSD PDA, that payment is a payment in respect of the termination of both the OSD PDA and this deed and no further amount will be payable under this deed in respect of that amount.

### 3. OBJECTIVE AND RISKS

#### 3.1 Objectives for Sydney Metro City & Southwest

- (a) The parties acknowledge that Martin Place Metro Station will form part of Sydney Metro City & Southwest and that the Principal's strategic objectives for Sydney Metro City & Southwest are to:
  - (i) improve the quality of the transport experience for Customers;
  - (ii) provide a transport system that is able to satisfy long-term demand;
  - (iii) grow public transport patronage and mode share;
  - (iv) support the global economic corridor;
  - (v) serve and stimulate urban development;
  - (vi) improve the resilience of the transport network;
  - (vii) improve the efficiency and cost effectiveness of the public transport system; and
  - (viii) implement a feasible solution recognising impacts, constraints and delivery risk.
- (b) Each party will, subject to and in accordance with this deed, perform its obligations under this deed having regard to the achievement of these objectives.

#### 3.2 Project objectives

- (a) The Principal's objectives for the Project are:
  - (i) to complete Martin Place Metro Station so as to enable Sydney Metro City & Southwest to commence operation, with the OSD substantially or fully complete at the time Sydney Metro City & Southwest commences operation;
  - (ii) to:

- (A) ensure the Project Works and Temporary Works are safe and de-risked through innovation and expertise in planning, design and delivery methodologies;
- (B) deliver an excellent metro station that exceeds the expectations of Customers;
- (C) demonstrate excellence in design and environmental sustainability;
- (D) enhance connectivity around and through the Martin Place Metro Station precinct and optimise the quality of the public realm;
- (E) deliver the Project Works and Temporary Works and perform Macquarie's Activities in a collaborative and cooperative manner, including by working closely with the Rail Contractors, to allow the timely and effective delivery of Martin Place Metro Station and OSD and opening of Sydney Metro City & Southwest;
- (F) minimise impacts on the Environment, including but not limited to noise and vibration, air quality, traffic and transport, heritage, waste, water and energy management and embodied environmental impacts;
- (G) maximise opportunities in relation to social sustainability, including workforce development and local procurement;
- (H) minimise disruption, delay and inconvenience to the affected public, road and public transport users, adjacent businesses, stakeholders and the community during the construction of the Project Works and Temporary Works and the performance of Macquarie's Activities;
- (I) achieve a value-for-money outcome when viewed on the basis of effective risk management, certainty of delivery and whole-of-life cost;
- (J) commence the Project Works in 2018 and hand over the completed Project Works (other than the Concourse Link Works) to the Principal in accordance with the requirements of this deed;

(iii) to provide a Customer experience with:

- (A) a high quality Martin Place Metro Station as part of an integrated station and development which is safe, easy to use and highly accessible;
- (B) high quality and reliable information, and intuitive and clear wayfinding and signage consistent with the TfNSW and the Principal's brands; and
- (C) retailing and services as part of the integrated Martin Place Metro Station and integration with adjacent land uses;
- (D) that Macquarie will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community ownership of the integrated Martin Place Metro Station and OSD; and

(iv) that Macquarie will deliver a sound financing strategy for Macquarie's Activities which provides value for money to the State.

(b) Each party will, subject to and in accordance with this deed, perform its obligations under this deed, having regard to the achievement of these objectives.

3.3 **Customer is at the centre**

- (a) Macquarie acknowledges the Principal's vision statement, namely that "The Customer is at the centre of everything we do in transport".
- (b) Each party will, subject to and in accordance with this deed, perform its obligations under this deed, having regard to this vision statement.

3.4 **Achievement of Project Values**

The parties:

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

3.5 **Macquarie's primary obligations**

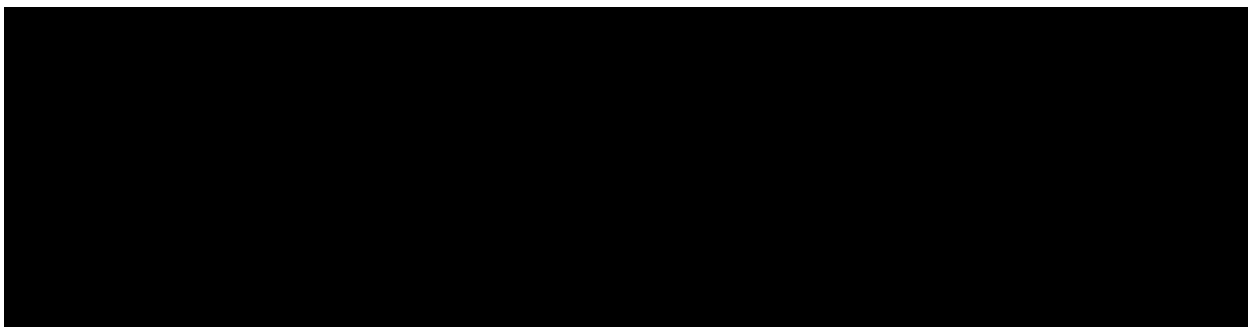
Without limiting Macquarie's obligations under this deed, Macquarie must:

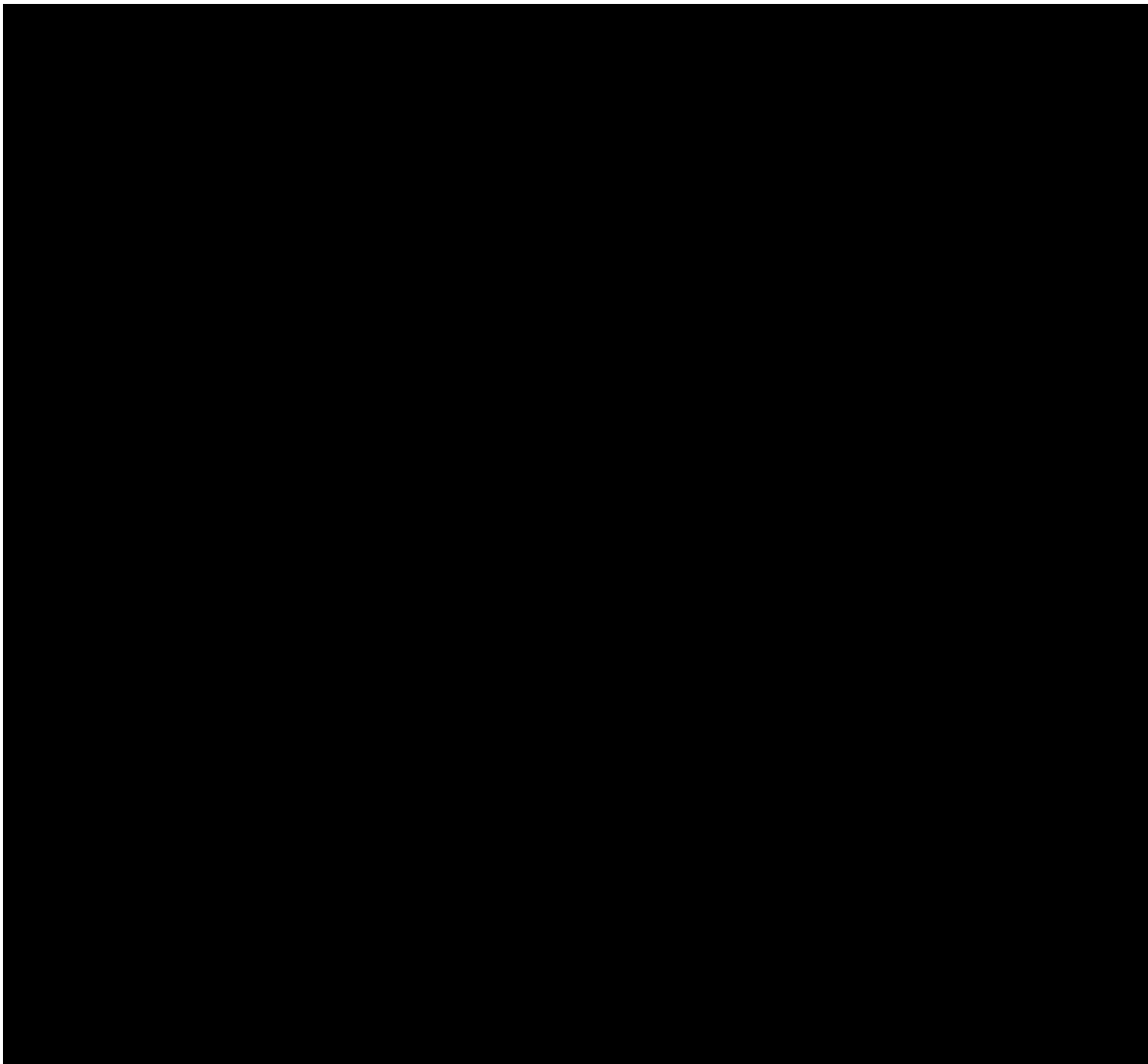
- (a) finance, or procure the financing of Macquarie's Activities;
  - (b) design and construct the Project Works and Temporary Works;
  - (c) hand over the completed Project Works (other than the Concourse Link Works); and
  - (d) pay the Macquarie Payment referred to in clause 33.1 to the Principal,
- subject to, and in accordance with, this deed.

3.6 **Principal's primary obligations**

Without limiting the Principal's obligations under this deed, the Principal must:

- (a) grant Macquarie the licence referred to in clause 17.2;
  - (b) procure the design and construction of the TSE Works in accordance with the TSE Contract, as amended to reflect any Approved TSE Works Change and the TSE Adjustment Works; and
  - (c) pay Core Payment 2 to Macquarie in accordance with clause 34,
- subject to, and in accordance with, this deed.





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

- (a) The Principal has various rights under the Project Documents which are designed to give the Principal the ability to monitor the performance of Macquarie's obligations. Those rights include:
  - (i) the right to review Project Plans, Design Documentation, the SDD Program, Progress Reports, Test Procedures, Test Reports and other documents which Macquarie must submit to the Principal (**Macquarie Submissions**);
  - (ii) rights to inspect, monitor or audit Macquarie's Activities; and
  - (iii) rights to attend Tests.
- (b) Neither the exercise of, nor the failure to exercise, such rights will:
  - (i) relieve Macquarie from, or alter or affect, Macquarie's liabilities, obligations or responsibilities whether under a Project Document or otherwise according to Law;
  - (ii) prejudice or limit the Principal's rights against Macquarie whether under a Project Document or otherwise according to Law; or

- (iii) without limiting clause 3.8(b)(ii), preclude the Principal from subsequently asserting that Macquarie has not fulfilled its obligations whether under a Project Document or otherwise according to Law.
- (c) Without limiting clause 3.8(b):
- (i) neither the Principal nor the Principal's Representative assumes or owes any duty of care to Macquarie to review, or if it does review, in reviewing, any Macquarie Submissions for errors, omissions or compliance with the Project Documents;
  - (ii) no review of, comments on, or notice in respect of, or any failure to review, comment on or give any notice in respect of, any Macquarie Submissions will:
    - (A) relieve Macquarie from, or alter or affect, Macquarie's liabilities, obligations or responsibilities whether under a Project Document or otherwise according to Law;
    - (B) prejudice or limit the Principal's rights against Macquarie whether under a Project Document or otherwise according to Law;
    - (C) constitute an instruction to accelerate, disrupt, prolong or vary any of Macquarie's Activities; or
    - (D) affect the time for the performance of the Principal's obligations;
  - (iii) Macquarie will not be relieved from compliance with any of its obligations under a Project Document or from any of its liabilities whether under a Project Document or otherwise according to Law as a result of:
    - (A) compliance with any Project Plan;
    - (B) any audits or other monitoring by the Principal of Macquarie's compliance with any Project Plan; or
    - (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 such other person;
  - (iv) neither the Principal nor the Principal's Representative assumes or owes any duty of care to Macquarie to inspect, or if it does so inspect, in inspecting, Macquarie's Activities or the Project Works or Martin Place Metro Station for errors, omissions or compliance with the requirements of the Project Documents; and
  - (v) any inspection of Macquarie's Activities (or lack of inspection) by or on behalf of the Principal will not in any way:
    - (A) relieve Macquarie from, or alter or affect, Macquarie's liabilities, obligations or responsibilities whether under a Project Document or otherwise according to Law; or
    - (B) prejudice or limit the Principal's rights against Macquarie whether under a Project Document or otherwise according to Law.
- (d) This clause 3.8 does not affect Macquarie's rights in respect of any breach of clause 46.

#### 4. GOVERNANCE

##### 4.1 Principal's Representative

- (a) The Principal may at any time by written notice to Macquarie replace the Principal's Representative with another person.
- (b) 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).
- (c) Macquarie must comply with all Directions given by the Principal's Representative in accordance with this deed.
- (d) The parties acknowledge that any Principal's Representative Statement is an interim position only and that, without limiting the rights of the Principal's Representative under clause 34.3, either party may seek to have any Principal's Representative Statement opened up, reviewed, decided and substituted pursuant to the dispute resolution provisions in clause 52 by giving a Notice of Issue to the other party in accordance with clause 52.3(a). If Macquarie wishes to have a Principal's Representative Statement opened up, reviewed, decided and substituted it must give the Notice of Issue under clause 52.3(a) within 15 Business Days after the receipt of the Principal's Representative Statement.
- (e) The Principal will not be liable upon any Claim by Macquarie arising out of or in connection with any Principal's Representative Statement in circumstances where it is incorrect, subsequently overturned pursuant to clause 52, is unreasonable (unless the Principal's Representative has an express obligation to act reasonably) or has been made in accordance with the directions of the Principal (and not independently). Macquarie acknowledges and agrees that its sole means of redressing any errors contained in or associated with any Principal's Representative Statement is by giving a Notice of Issue in accordance with clause 52.3(a).
- (f) If Macquarie does not give such notice under clause 52.3(a) within the time required under clause 4.1(d), then, subject to clause 34.3:
  - (i) the Principal's Representative Statement will be binding upon Macquarie and will not thereafter be capable of being opened up or reviewed by any person, including the IDAR Panel or any arbitrator or court, at the request of or upon any application by Macquarie; and
  - (ii) the Principal will not be liable upon any Claim by Macquarie arising out of or in any way in connection with the relevant Principal's Representative Statement, other than in accordance with the Principal's Representative Statement.
- (g) The Principal must ensure that, in exercising its functions under clauses 7.5, 20.8(a) (in respect of the Revised Design Stage 1 Design Documentation and the Stage 2 Design Documentation), 21.10(j), 21.11 and 26.5, the Principal must ensure that the relevant person responsible for performing the relevant functions pursuant to these clauses will act with the degree of professional care, knowledge, skill, expertise and experience which would be reasonably expected of a professional performing functions similar to those under clauses 7.5, 20.8(a) (in respect of the Revised Design Stage 1 Design Documentation and the Stage 2 Design Documentation), 21.10(j), 21.11 and 26.5 within the design and construction industries generally and the design and construction of major engineering works in particular.

##### 4.2 Appointees of the Principal's Representative

The Principal's Representative:



- (a) may, by written notice to Macquarie, appoint persons to exercise any of the functions of the Principal's Representative under this deed;
- (b) must not appoint more than one person to exercise a specific function at any one time;
- (c) may revoke any appointment under clause 4.2(a) by written notice to Macquarie; and
- (d) may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 4.2(a) (provided that any Directions of the Principal's Representative take precedence over those of any other representatives to the extent of any inconsistency).

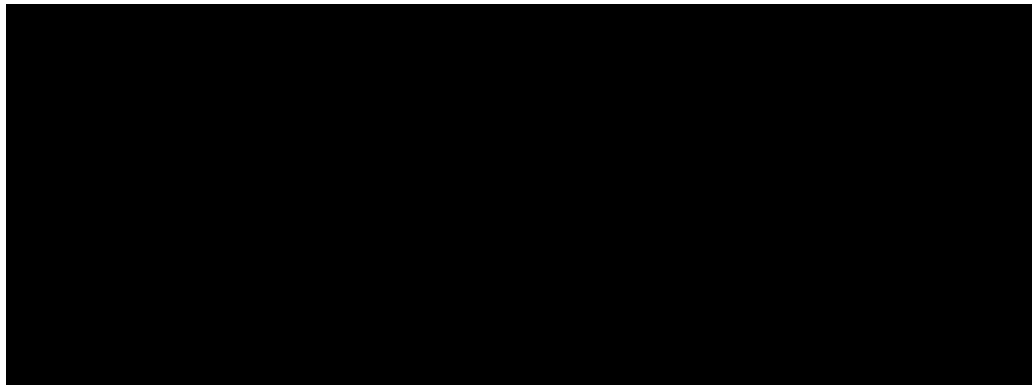
All references in this deed to the Principal's Representative include a reference to an appointee under this clause 4.2.

#### 4.3 **Macquarie's Representative**

Macquarie must ensure that Macquarie's Representative is available at all reasonable times for communications with the Principal's Representative.

#### 4.4 **Independent Certifier**

- (a) **(Independent Certifier Deed):**



- (iii) Subject to clause 4.4(n), Macquarie acknowledges and agrees that the Principal will select in its absolute discretion, and the Principal and Macquarie must jointly engage, the Independent Certifier to act as Independent Certifier in accordance with the terms of this deed and the Independent Certifier Deed.
- (b) **(Selection):** The Independent Certifier engaged pursuant to clause 4.4(a) will be a suitably qualified independent consultant engineer.
- (c) **(Role):** The Independent Certifier's role under this deed is to, amongst other things:
  - (i) independently certify in accordance with the Independent Certifier Deed:
    - (A) that the Design Documentation for Design Stage 3 complies with the requirements of this deed;
    - (B) the achievement of Milestone Achievement of each Milestone;
    - (C) the achievement of Construction Completion of each Portion; and
    - (D) the achievement of Completion of each Portion (other than Portion 1);

- (ii) participate in meetings as specified in this deed, the Independent Certifier Deed or otherwise as requested by the Principal;
  - (iii) attend Tests;
  - (iv) make determinations on matters that this deed (including the SWTC) expressly requires be determined by the Independent Certifier; and
  - (v) issue certificates as contemplated by this deed.
- (d) **(Independent):** The Independent Certifier is obliged to act independently of the Principal, Macquarie and their Subcontractors.
- (e) **(Conduct does not affect obligations):** Without limiting clause 4.4(l), an act or omission (including negligence) of the Independent Certifier will not:
- (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to Law; or
  - (ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to Law.
- (f) **(Provision of information):** The Principal and Macquarie must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
- (i) to attend meetings (including any Project Control Group meetings);
  - (ii) to access to all premises; and
  - (iii) to insert Hold Points or Witness Points in the SDD Program and designate the authority to release the Hold Points,
- all as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.
- (g) **(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.
- (h) **(Principal may provide comments):** The Principal's Representative and Macquarie may provide comments to the Independent Certifier in respect of Macquarie's Activities.
- (i) **(Hold/Witness Points):** Macquarie must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SWTC or inserted in the SDD Program by the Independent Certifier pursuant to clause 4.4(f)(iii).
- (j) **(Effect of determinations):** Without limiting clauses 4.4(e) or 4.4(l), in the absence of a manifest error on the face of the determination notice, the following determinations of the Independent Certifier are final and binding on the parties:
- (i) a determination under clauses 20.8(b)(ii) or 20.8(h)(ii) in relation to Design Stage 3 Design Documentation;

- (ii) a determination under clause 25.1 in relation to Milestone Achievement of a Milestone;
- (iii) a determination under clause 27.1 in relation to Construction Completion of a Portion;
- (iv) a determination under clause 27.2 in relation to the [REDACTED] and [REDACTED];
- (v) a determination under clause 28.1 in relation to Completion of a Portion (other than Portion 1).

(k) **(Dispute of determination):** If either party:

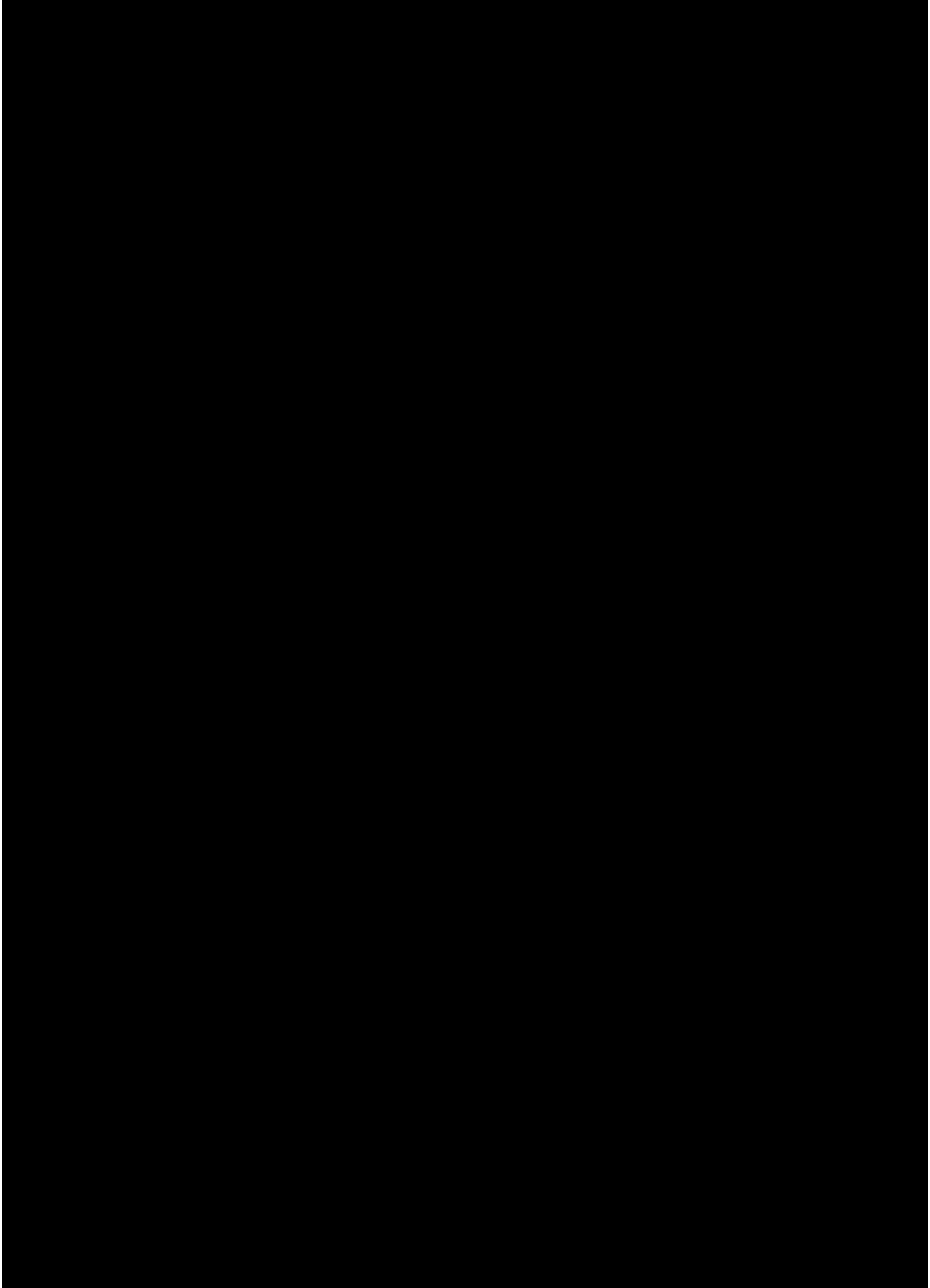
- (i) believes that there is a manifest error on the face of the determination notice from the Independent Certifier referred to in clause 4.4(j) and wishes to dispute the determination on that basis; or
- (ii) wishes to dispute any other determination by the Independent Certifier not referred to in clause 4.4(j),

it must do so in accordance with clause 52. Determinations of the Independent Certifier referred to in clause 4.4(j) will be immediately binding on the parties, who must give effect to such determinations unless and until they are revised pursuant to the dispute resolution process in clause 52.

(l) **(Not approval or evidence):**

- (i) A certification or determination by the Independent Certifier will not:
  - (A) constitute an approval by the Principal of Macquarie's performance of its obligations under this deed;
  - (B) constitute an approval by Macquarie of the Principal's performance of its obligations under this deed;
  - (C) 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 (including in relation to whether or not any Direction by the Principal's Representative under clause 20.8(c) involves or constitutes a Variation); or
  - (D) prejudice any rights or powers of the Principal or Macquarie under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the Project Works.
- (ii) No act or omission of the Independent Certifier, including any certification or determination by the Independent Certifier, whether or not such certification or determination:
  - (A) is final and binding;
  - (B) contains a manifest error; or
  - (C) is overturned in subsequent dispute resolution proceedings,
 will:

- (D) be deemed to be an act or omission by the Principal or Macquarie (including a breach of contract) under or in connection with the Principal Project Documents; or
- (E) without limiting clause 4.4(k), entitle Macquarie to make any Claim against the Principal.





4.5 **Proof Engineer**

- (a) Macquarie must:
  - (i) procure that DevCo engages the Proof Engineer at DevCo's cost; and
  - (ii) must procure that DevCo does not replace the Proof Engineer without the prior written consent of the Principal (which must not be unreasonably withheld or delayed).
- (b) Macquarie warrants that the Proof Engineer (and any replacement Proof Engineer) and (as applicable) any individual from the Proof Engineer (or replacement Proof Engineer) who will be responsible for performing any aspect of the duties of the Proof Engineer pursuant to this deed has:
  - (i) at least the qualifications, experience and expertise described in Schedule A8; and
  - (ii) the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 4.5 and the other requirements of this deed.
- (c) The Proof Engineer's role under this deed is to, amongst other things:
  - (i) undertake a full and independent assessment, without exchange of calculations or similar information, of the Proof Engineered Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing and independent dimensional check;
  - (ii) provide to Macquarie, with copies to the Principal's Representative, a comprehensive report on the assessment required under clause 4.5(c)(i); and
  - (iii) independently certify that the Proof Engineered Temporary Works:
    - (A) are adequate and suitable for their intended purpose; and
    - (B) comply with the requirements of this deed (including the SWTC); and
  - (iv) issue the certification required by clause 20.6(b)(ii).
- (d) The parties acknowledge and agree that:
  - (i) the Proof Engineer is obliged to act independently of Macquarie, the Principal and any of their Associates;
  - (ii) the Proof Engineer must not be an employee of Macquarie, the Principal, the Independent Certifier or any of their Associates; and

- (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer to Macquarie must be in writing and must be made available to the Principal's Representative upon request.
- (e) Macquarie must provide the Proof Engineer with all information and documents and allow the Proof Engineer to:
  - (i) attend design meetings; and
  - (ii) access the Construction Site and all places at which Macquarie's Activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of Macquarie given in relation to work health and safety, as may be:
    - (iii) necessary or reasonably required by the Proof Engineer or the Principal's Representative, to allow the Proof Engineer to perform its role under this deed; and
    - (iv) requested by the Proof Engineer or directed by the Principal's Representative.
- (f) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle Macquarie to make any Claim against the Principal.

#### 4.6 **Project Control Group**

- (a) A Project Control Group must be established consisting of:
  - (i) the Principal's Representative;
  - (ii) Macquarie's Representative;
  - (iii) 1 representative from the D&C Contractor;
  - (iv) 2 persons from each of the Principal and Macquarie holding positions the same or more senior than the persons referred to in clauses 4.6(a)(i) and 4.6(a)(ii) (as applicable to the relevant party); and
  - (v) such other persons as the Principal and Macquarie agree.
- (b) **(Delegates):** The persons referred to in clause 4.6(a)(i), 4.6(a)(ii) and 4.6(a)(iv) may appoint delegates (of an equivalent level of seniority or experience) to attend Project Control Group meetings in their absence.
- (c) **(Objectives):** The objectives of the Project Control Group are to:
  - (i) facilitate the development of a collaborative working relationship between the parties;
  - (ii) monitor the overall progress of Macquarie's Activities;
  - (iii) assist with the resolution of any matters or Disputes referred to the Project Control Group by a party, including issues arising out of the subject of the Third Party Agreements and the Project Cooperation and Integration Deeds;
  - (iv) review each Progress Report provided by Macquarie; and
  - (v) review and consider such other matters relating to Macquarie's Activities as are agreed between the parties from time to time.

- (d) (**Frequency of meetings**): The Project Control Group will meet monthly prior to the last Portion Handover Date, unless the parties agree otherwise.
- (e) (**Administration**): The Principal's Representative will convene the meetings of the Project Control Group. The meetings will be chaired by the most senior attendee from the Principal.
- (f) (**Principal may require certain representatives to attend**): At the Principal's request, Macquarie must procure the attendance of representatives of any Significant Subcontractor at meetings of the Project Control Group.
- (g) (**Principal may bring certain representatives**): The Principal may invite representatives of the Operator, the Line-wide Contractors, any other Rail Contractor, the State or any Authority to attend any meeting of the Project Control Group.
- (h) (**Members of IDAR Panel**): The members of the IDAR Panel may, by invitation of either party, attend a Project Control Group meeting but will not be members of the Project Control Group.

#### 4.7 Working Groups

- (a) (**Disciplines**): Working Groups will be established in relation to particular aspects of Macquarie's Activities and, in particular, in accordance with the Technical Management Plan. There will be a Working Group with respect to interfaces between Macquarie's Activities and the Over Station Development and the Rail Contractors.
- (b) (**Composition**): The composition of each Working Group will include a nominated representative of the Principal, Macquarie and the Independent Certifier, and representatives nominated in accordance with the Technical Management Plan as relevant. Attendance by others will be agreed by the Project Control Group, or in the absence of agreement as directed by the Principal having regard to the particular solutions being discussed. If the Principal requests, Macquarie must procure the attendance of representatives of any Significant Subcontractor at a Working Group meeting.
- (c) (**Purpose**): The purpose of each Working Group meeting is to provide a non-binding forum for Macquarie to present its proposed solutions, for the Principal and the Independent Certifier to understand those solutions and for the parties to discuss the solutions.
- (d) (**Frequency of meetings**): Each Working Group will meet monthly prior to the last Portion Handover Date, unless otherwise agreed by the Project Control Group.
- (e) (**Administration**): Macquarie must convene and chair meetings of each Working Group unless otherwise agreed between the parties.
- (f) (**Agenda and program**): Macquarie must prepare and issue a three month rolling program of meetings.
- (g) (**Information only**): Documentation prepared for Working Group meetings, documentation developed in Working Group meetings and information discussed in Working Group meetings are Information Documents and cannot be relied on by either party.

#### 4.8 **Risk management meetings**

- (a) Macquarie must attend risk management meetings with the Principal's Representative on a monthly basis prior to the Last Date of Completion, or as otherwise directed by the Principal's Representative.
- (b) At risk management meetings, the parties agree to:
  - (i) review the current Risk Register;
  - (ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register;
  - (iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and
  - (iv) remove from the Risk Register those risks which have been avoided or passed.
- (c) Macquarie must advise the Principal at the risk management meetings if it considers that any proposal or solution discussed at the meeting would be a Variation or could give rise to a Claim.

#### 4.9 **No legal effect**

The Project Control Group and each Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:

- (a) affect the rights or obligations of any party under the Project Documents;
- (b) entitle a party to make any Claim against the others;
- (c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to Law;
- (d) prejudice a party's rights against the others whether under this deed or otherwise according to Law; or
- (e) be construed as a Direction by a party to do or not do anything.

#### 4.10 **Independent Property Impact Assessment Panel**

- (a) Macquarie acknowledges that TfNSW has established an Independent Property Impact Assessment Panel for Sydney Metro City & Southwest in accordance with the requirements of the Project Planning Approval.
- (b) Macquarie must (at its cost):
  - (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
  - (ii) permit the Independent Property Impact Assessment Panel to access the Construction Site and inspect Macquarie's Activities provided that Macquarie is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with Macquarie's reasonable work health and safety procedures; and



- (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that Macquarie is given reasonable prior written notice of any such meeting.

## 5. **LAW AND APPROVALS**

### 5.1 **Compliance with Laws**

Macquarie must:

- (a) in performing Macquarie's Activities, comply with all applicable Laws (including all WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law);
- (b) ensure that Subcontractors, in performing Macquarie's Activities, comply with all applicable Laws (including all WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law);
- (c) ensure that Portion 1, prior to and on Construction Completion, and the balance of the Project Works, prior to and on Completion, and Temporary Works, comply with all applicable Laws;
- (d) give the Principal's Representative copies of:
  - (i) all material documents given to Macquarie or a Significant Subcontractor by an Authority (including Approvals and other notices) as soon as practicable after receipt;
  - (ii) all material documents (other than documents required to be prepared pursuant to the Planning Approval) given by Macquarie or a Significant Subcontractor to an Authority at the time that those documents are given to the Authority; and
  - (iii) details of any other material communications between Macquarie or a Significant Subcontractor and an Authority,  
in connection with Macquarie's Activities;
- (e) in relation to any document required to be prepared pursuant to a Planning Approval, which is also required to be submitted to an Authority:
  - (i) provide the Principal's Representative with copies of any such documents;
  - (ii) provide the Principal with a reasonable opportunity to comment on any such documents;
  - (iii) consider any comments made by the Principal in relation to any such documents;
  - (iv) deliver a final version of any such documents in order to enable the Principal to submit the relevant document to any Authority; and
  - (v) provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to comply with all applicable Laws.

### 5.1A **Consistency assessment – Bligh Street**

The Principal confirms that it has undertaken a consistency assessment which has identified that the ongoing use of Construction Site (Area 6) until [REDACTED] as a construction compound to support construction of the Martin Place Metro Station is consistent with the Project Planning Approval and no further assessment of the Project Planning Approval is required.

### 5.2 **Approvals**

(a) The parties acknowledge and agree that, prior to the Commencement Date:

- (i) TfNSW obtained the Project Planning Approval and provided the Project Planning Approval to Macquarie; and
- (ii) TfNSW obtained the Project Planning Approval Modification at Macquarie's request.

(b) Macquarie must:

- (i) obtain and maintain, and ensure that its Subcontractors obtain and maintain, all Approvals required to perform Macquarie's Activities (other than those Approvals which this deed expressly states that TfNSW or the Principal have obtained or requires the Principal to obtain or maintain);
- (ii) except to the extent otherwise expressly specified in Schedule D2:
  - (A) comply with, carry out and fulfil, and ensure that its Subcontractors comply with, carry out and fulfil; and
  - (B) ensure that Portion 1, prior to and on Construction Completion, and the balance of the Project Works, prior to and on Completion, and the Temporary Works, comply with,  
  
the conditions and requirements of all Approvals (including those which TfNSW and/or the Principal are expressly or impliedly under the terms of the Approval required to comply with, carry out or fulfil);
- (iii) except to the extent prohibited by Law, indemnify TfNSW and the Principal against any Loss suffered by TfNSW and/or the Principal arising out of or in any way in connection with a failure by Macquarie to comply with its obligations under clauses 5.2(b)(i) and 5.2(b)(ii);
- (iv) except to the extent otherwise expressly specified in clause 41.2 and Schedule D2, pay all fees, effect all Insurances, provide any bonds and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which Macquarie must obtain or comply with (and ensure that its Subcontractors do likewise in relation to any Approvals which they must maintain or comply with in connection with Macquarie's Activities);
- (v) without limiting clause 5.2(b)(ii), provide TfNSW and/or the Principal with such assistance as may reasonably be required by TfNSW and/or the Principal to enable them to obtain or satisfy or fulfil the conditions and requirements in respect of any:
  - (A) Approvals which are obtained by the Principal after the Commencement Date; or

- (B) conditions and requirements of Approvals which are required to be satisfied or fulfilled by TfNSW and the Principal pursuant to Schedule D2;
  - (vi) use reasonable endeavours to achieve the satisfaction of the conditions of approval required for the commencement of the structural demolition of the building on Construction Site (Area 1) by [REDACTED] and
  - (vii) ensure that it keeps the Principal informed of its progress in relation to the satisfaction of the conditions of approval required for the commencement of the demolition of the building on Construction Site (Area 1).
- (c) The Principal must provide reasonable assistance to Macquarie in:
- (i) expediting and achieving the satisfaction of all necessary development, planning and construction conditions of approval to enable Macquarie to commence the demolition of the buildings located on Construction Site (Area 1),
  - (ii) achieving expeditious closure of the amended CCB2 approval process to include the North Shaft Elongation Works;
  - (iii) the documentation and completion of the submission for the CCB3 approval process for the foundations and Station Works; and
  - (iv) negotiations with the relevant Authorities to optimise excavation works traffic management and truck movements approval,
- provided the Principal has no obligation to exercise any statutory powers or make any payment to Macquarie or any other party in relation to its obligations under this clause 5.2(c).
- (d) The Principal must comply with the requirements of the Planning Approval allocated to Sydney Metro in Schedule D2 to the extent such compliance is necessary for Macquarie to comply with its obligations under this deed.

### 5.3 Modifications to Planning Approvals

Notwithstanding clause 39, if:

- (a) any further environmental impact assessment is required under Part 4 or Part 5 of the EP&A Act (or their equivalents) in connection with Macquarie'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 Macquarie's Activities;
  - (c) an Approval is modified and/or amended under the EP&A Act;
  - (d) a new Approval is issued under the EP&A Act in respect of Macquarie's Activities, either in substitution for or replacement of a Planning Approval or otherwise; or
  - (e) any such new Approval is modified under the EP&A Act,
- arising out of or in connection with:
- (f) the Project Planning Approval Modification;
  - (g) a Variation requested by Macquarie; or

- (h) any failure by Macquarie to comply with its obligations under this deed or any other Project Document,

then any such events and any actions or additional work arising out of or in connection with any such events will be at Macquarie's cost and risk, irrespective of who is required to, or does, carry out any such assessment.

#### 5.4 **Legal challenge to Planning Approvals**

If there is a legal challenge brought about by way of commencement of court proceedings in relation to the grant of, or compliance with, the Planning Approvals, Macquarie must continue to perform Macquarie's Activities unless, as a result of that legal challenge, it is otherwise ordered by a court or directed by the Principal.

#### 5.5 **Environment Protection Licence**

- (a) Subject to clause 5.5(b), Macquarie must ensure that Macquarie or the D&C Contractor:

- (i) obtains an Environment Protection Licence:

- (A) in respect of Macquarie's Activities; and

- (B) which includes all parts of the Construction Site,

from the first date on which Macquarie undertakes:

- (C) construction activities;

- (D) "railway systems activities" within the meaning of the *Protection of the Environment Operations Act 1997* (NSW); or

- (E) any other activity which triggers an obligation for an Environment Protection Licence to be obtained,

on any part of the Construction Site; and

- (ii) holds an Environment Protection Licence in respect of Macquarie's Activities for each Portion until the Portion Handover Date for that Portion.

- (b) Macquarie must ensure that any application for an Environment Protection Licence which is required in respect of the development which is the subject of the Planning Approval is substantially consistent with the Planning Approval.

- (c) In the event that an Environment Protection Licence is not substantially consistent with the Planning Approval, Macquarie must use its best endeavours to procure that the Environment Protection Licence be amended to achieve substantial consistency.

- (d) To the extent that Macquarie's Activities are controlled by an Environment Protection Licence held by a person other than Macquarie, Macquarie must comply with the terms of that Environment Protection Licence.

#### 5.6 **Crown Building Work**

- (a) Macquarie 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 5.6(a) will not lessen or otherwise affect:

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

**5.7 Environmental Representative**

- (a) The Principal must engage the Environmental Representative as required by the Planning Approval.
- (b) Macquarie acknowledges that the Environmental Representative:
  - (i) is independent of the parties;
  - (ii) is required to discharge certain functions as identified in the Planning Approval;
  - (iii) is required to oversee the implementation of all Environmental Management Plans and monitoring programs required under the Planning Approval and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval; and
  - (iv) is required to advise the Principal and the Principal's Representative on Macquarie's compliance with the Planning Approval.
- (c) Macquarie must co-operate with the Environmental Representative and provide the Environmental Representative with:
  - (i) all information and documents (including licences and approvals relating to environmental performance and environmental impacts); and
  - (ii) allow the Environmental Representative:
    - (A) to attend meetings; and
    - (B) access to such premises,all as may be:
  - (iii) necessary or reasonably required by the Environmental Representative or the Principal's Representative to allow the Environmental Representative to perform its functions in connection with this deed; or
  - (iv) lawfully requested by the Environmental Representative or directed by the Principal's Representative.
- (d) Macquarie must:
  - (i) comply with the lawful requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Planning Approval; and
  - (ii) not interfere with or improperly influence the Environmental Representative in the performance of any of its functions in connection with this deed.

- (e) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle Macquarie to make any Claim against the Principal.

#### 5.8 Long service leave levy

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

- (a) pay (or procure payment) 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.

### 6. BANK GUARANTEE

#### 6.1 Macquarie to give Bank Guarantee

- (a) Macquarie must, prior to Financial Close, give to the Principal a Bank Guarantee for ■ of the Total Project Sum for Bank Guarantees for the purpose of ensuring the due and proper performance by Macquarie of its obligations under this deed in connection with the Project Works.
- (b) Macquarie acknowledges and agrees that each Bank Guarantee required under this deed (and any replacement Bank Guarantee provided under clause 6.4) must:
  - (i) be in favour of the Principal;
  - (ii) be in the form of Schedule E2 (or such other form approved by the Principal);
  - (iii) be provided by a bank that:
    - (A) is regulated by the Australian Prudential Regulation Authority; and
    - (B) at all times maintains the Required Rating;
  - (iv) be payable at an office of the issuer in Sydney (or such other place approved by the Principal); and
  - (v) where required by Law, be duly stamped at the Cost of Macquarie.

#### 6.2 Calling on a Bank Guarantee

The Principal may call on:

- (a) the Bank Guarantee referred to in clause 6.1(a) at any time if Macquarie fails to perform any of its obligations under a Project Document in connection with the Project Works; and
- (b) the Bank Guarantee referred to in clause 34.6 at any time if Macquarie fails to perform any of its obligations under clause 34.6,

including for the purpose of covering the Cost of the Principal rectifying such non-performance or any Loss caused to the Principal by reason of such non-performance.

### 6.3 Returning the Bank Guarantee

- (a) Subject to the Principal's rights to have recourse to the Bank Guarantee and to the cash proceeds of a Bank Guarantee if a Bank Guarantee referred to in clause 6.1(a) is converted into cash, the Principal must:
- (i) within 20 Business Days after the Last Date of Completion, release so much of the Bank Guarantee referred to in clause 6.1(a) (or the remaining proceeds of that Bank Guarantee if that Bank Guarantee has been converted into cash) so that the Principal then holds a Bank Guarantee (or the proceeds of the Bank Guarantee if that Bank Guarantee has been converted into cash) for █████ of the Total Project Sum for Bank Guarantees;
  - (ii) within 20 Business Days after expiry of the original Defects Correction Period of the last Portion to achieve Completion referred to in clause 30.6(a)(i), release so much of the Bank Guarantee referred to in clause 6.1(a) (or the remaining proceeds of the Bank Guarantee if the Bank Guarantee has been converted into cash) so that the Principal then holds the Bank Guarantee (or the proceeds of the Bank Guarantee if the Bank Guarantee has been converted into cash) for █████ of the reasonable cost of correcting any Defects in the Works that Macquarie is responsible for having regard to clause 1.2(m), and which have not been accepted, corrected, or the subject of a Variation that has been implemented, under clause 30.2 as at that date; and
  - (iii) within 20 Business Days after expiry of the final Defects Correction Period referred to in clause 30.6 (as certified by the Independent Certifier in a certificate executed by the Independent Certifier in the form of Schedule B6), release the balance of the Bank Guarantee (or the remaining proceeds of the Bank Guarantee if the Bank Guarantee has been converted into cash).
- (b) Despite any other provision of this deed to the contrary, where this deed is terminated by the Principal, the Principal may continue to hold the Bank Guarantee referred to in clause 6.1(a) (or any proceeds of that Bank Guarantee if that Bank Guarantee has been converted into cash) after termination of this deed under clause 45.3 to the extent of any claim which the Principal may have against Macquarie arising out of, or in any way in connection with, the Station Works, whether for damages (including liquidated damages) or otherwise.

### 6.4 Replacement of expiring Bank Guarantee

If a Bank Guarantee has an expiry date, Macquarie must, if the Principal has not returned the Bank Guarantee to Macquarie in accordance with this clause 6, provide the Principal with a replacement Bank Guarantee in the same amount no later than 10 Business Days prior to that expiry date in exchange for the Principal delivering to Macquarie the Bank Guarantee to be replaced. If Macquarie fails to provide the Principal with the replacement Bank Guarantee as required, the Principal:

- (a) may call on the full amount of the relevant Bank Guarantee without notice to Macquarie;
- (b) must hold the amount of that Bank Guarantee as a cash deposit (**Cash Deposit**) in a separate bank account in the name of the Principal (**Cash Deposit Account**);
- (c) may withdraw money (including accrued interest) from the Cash Deposit Account and use that money:
  - (i) in accordance with clause 6.2 as if the Cash Deposit were the amount secured by the Bank Guarantee; and

- (ii) to pay all Costs and Taxes payable in connection with that Cash Deposit Account; and
- (d) must return the amount held in the relevant Cash Deposit Account (including accrued interest but less any amounts payable to or by the Principal under clause 6.4(c)) to Macquarie in accordance with clause 6.3 as if the amount in that Cash Deposit Account were the Bank Guarantee.

#### 6.5 **Replacement of Bank Guarantee where issuer ceases to have the Required Rating**

- (a) If the issuer of a Bank Guarantee ceases to have the Required Rating and, at that time, another bank regulated by the Australian Prudential Regulation Authority acceptable to the Principal maintains the Required Rating, then Macquarie must:
  - (i) promptly notify the Principal of that circumstance; and
  - (ii) within 20 Business Days after being requested to do so, procure the issue to the Principal of a replacement Bank Guarantee which must have a face value equal to that of the unconditional undertaking being replaced and must satisfy the requirements of clause 6.1(b),

and the Principal must surrender the original Bank Guarantee to Macquarie in exchange for the issue of the replacement Bank Guarantee.

- (b) If the issuer of any Bank Guarantee ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:
  - (i) if the current issuer of the Bank Guarantee has a rating of less than the second highest rated Major Australian Bank, Macquarie must procure the issue to the Principal of a replacement Bank Guarantee from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 6.1(b);
  - (ii) Macquarie must monitor the credit rating of the issuer of the replacement Bank Guarantee and the credit rating of the Major Australian Banks and procure a replacement Bank Guarantee from an issuer which has the Required Rating within 15 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and
  - (iii) the Principal must surrender the original Bank Guarantee to Macquarie in exchange for the replacement Bank Guarantee.

#### 6.6 **No injunction**

Macquarie must not take any steps to injunct or otherwise restrain:

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



6.7 **No interest**

The Principal is not obliged to pay Macquarie interest on any Bank Guarantee or the proceeds of any Bank Guarantee unless the Principal makes a wrongful call on that Bank Guarantee.

6.8 **No trust**

The Principal does not hold the proceeds of any Bank Guarantee on trust for Macquarie.

7. **PROJECT PLANS**

7.1 **Purpose**

The intended purposes of the Project Plans include:

- (a) to demonstrate to the Principal that Macquarie has the understanding, capacity and capability at all times to perform Macquarie's Activities safely and in accordance with the requirements of this deed;
- (b) to ensure that the Project Works and Temporary Works comply with the requirements of this deed;
- (c) to define responsibilities, resources and processes for planning, performing and verifying that Macquarie's Activities satisfy the requirements of this deed;
- (d) to allow the Principal to understand how Macquarie will achieve the objectives set out in clause 3 and otherwise fulfil its obligations under this deed; and
- (e) with respect to the Retail Activation Plan, to provide a framework for the nature and types of retail activities to be implemented, and any requirements with respect to vacant tenancies, under the Retail Lease.

7.2 **Initial Project Plans**

- (a) Initial versions of certain Project Plans are included in the SWTC.
- (b) Macquarie must submit:
  - (i) initial versions of the remaining Project Plans to the Principal's Representative at the times required by Appendix 54 to the SWTC; and
  - (ii) the initial version of the Retail Activation Plan to the Principal's Representative not less than 6 months prior to the anticipated Last Date of Completion (as notified by Macquarie to the Principal under clause 28.1(a)(i)).

7.3 **Updated Project Plans**

Macquarie must:

- (a) review and, if necessary, update each Project Plan to take account of events or circumstances which will, or may, affect Macquarie's Activities relevant to the Project Plan, including:
  - (i) Variations;
  - (ii) Changes in Law;

- (iii) the commencement of new phases or stages of design, construction, testing or commissioning;
  - (iv) any Direction given by the Principal's Representative under clause 18.1(a); and
  - (v) any breach or potential breach of the warranty in clause 7.4;
- (b) without limiting clause 7.3(a), update each Project Plan at the times required by Appendix 54 to the SWTC;
- (c) promptly submit each updated Project Plan to the Principal's Representative;
- (d) not update any Project Plan in a manner which makes the Principal's obligations under the Principal Project Documents more onerous or increases any liability or potential liability, or reduces any right, of the Principal in connection with the Project Works, to the extent:
- (i) such Principal Project Documents are entered into by the relevant parties prior to the Commencement Date; or
  - (ii) the terms or draft terms of the Principal Project Documents are included as a schedule or annexure to this deed or the terms of the Principal Project Documents have otherwise been provided to Macquarie prior to the Commencement Date; and
- (e) ensure that any updated Project Plans:
- (i) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
  - (ii) provide an equal or greater level of detail than,
 

the initial versions of the Project Plans contained in the SWTC (where applicable) and any version of the Project Plan which has been submitted to the Principal's Representative and has not been rejected by the Principal's Representative in accordance with this deed.

#### 7.4 **Fitness for purpose**

Macquarie warrants that each Project Plan will at all relevant times be fit for its purpose.

#### 7.5 **Review of Project Plans**

- (a) With respect to the Project Plans, the Principal may review each Project Plan and, within 20 Business Days following submission of the Project Plan at times required by Appendix 54 of the SWTC to the Principal's Representative:
- (i) determine whether the Project Plan complies with the requirements of this deed; and
  - (ii) if the Project Plan does not comply with the requirements of this deed (Minor Non-Compliances excepted), notify Macquarie that the Project Plan is rejected and specify the non-compliances (with detailed reasons).
- (b) If Macquarie receives a notice in accordance with clause 7.5(a)(ii) that the Project Plan is rejected as it does not comply with the requirements of this deed, Macquarie must, within 20 Business Days, submit a revised Project Plan (or, where a Project Plan is comprised of a head-plan and one or more sub-plans and the non-compliance

relates only to (i) the head-plan, (ii) one or more sub-plans, or (iii) the head-plan and one or more sub-plans (in each case the "**affected plans**"), submit a revised version of the affected plans) to the Principal's Representative which complies with the requirements of this deed whereupon the provisions of this clause 7.5 will reapply to the revised Project Plan or affected plans (as applicable).

- (c) If the notice provided by the Principal pursuant to clause 7.5(a)(ii) lists any Minor Non-Compliances:
  - (i) the Principal may, in the notice, recommend the action that could be taken by Macquarie to address the Minor Non-Compliances; and
  - (ii) Macquarie must complete the recommended action, or take any other action Macquarie deems reasonable in the circumstances to correct the Minor Non-Compliances to the extent required for that Project Plan to comply with this deed, within the time frame (if any) specified by the Principal.

#### 7.6 **Principal may request updates**

If:

- (a) any Project Plan does not comply with the requirements of this deed; or
- (b) Macquarie has not updated any Project Plan in accordance with the requirements of clause 7.3(a),

the Principal's Representative may by written notice request that Macquarie amend or update the Project Plan specifying:

- (c) the reasons why such updating is required (or why the Project Plan does not comply with this deed); and
- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and Macquarie must:

- (e) amend or update the Project Plan as requested by the Principal to comply with the requirements of this deed; and
- (f) submit the amended or updated Project Plan to the Principal within the time specified under clause 7.6(d).

#### 7.7 **Implementation and compliance**

- (a) Macquarie must implement and comply with each Project Plan submitted to the Principal's Representative which has not been rejected by the Principal's Representative in accordance with this deed.
- (b) If the Principal's Representative does not respond or provides comments to Macquarie in respect of any Minor Non-Compliances only within the 20 Business Day period referred to in clause 7.5(a)(ii), Macquarie may use the Project Plan at Macquarie's own risk.
- (c) Macquarie acknowledges and agrees that proceeding at risk pursuant to clause 7.7(b) does not limit or reduce Macquarie's obligation under clause 7.5(c) in relation to any Minor Non-Compliances.

## 8. SUBCONTRACTING

### 8.1 Subcontracting by Macquarie

- (a) Subject to this clause 8, Macquarie may enter into Subcontracts for the vicarious performance of Macquarie's Activities and obligations or any part of them.
- (b) Macquarie will be liable to the Principal for the acts and omissions of Subcontractors in connection with Macquarie's Activities as if such acts or omissions were acts or omissions of Macquarie.
- (c) Subcontracting by Macquarie of any obligation under the Principal Project Documents will not relieve Macquarie of, or otherwise affect, any obligation or Liability it has to the Principal under the Principal Project Documents.
- (d) Macquarie must (unless otherwise approved in writing by the Principal's Representative) ensure that each Subcontract it enters into in connection with Macquarie's Activities, regardless of its value, includes provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions and includes a clause to the same effect as this clause 8.1(d) which is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative.
- (e) Macquarie must ensure that the technical and quality requirements in each Subcontract with a Subcontractor from whom a warranty is required pursuant to clause 30.11(a) will not put Macquarie in breach of the relevant technical and quality obligations in this deed.

### 8.2 Significant Subcontracts

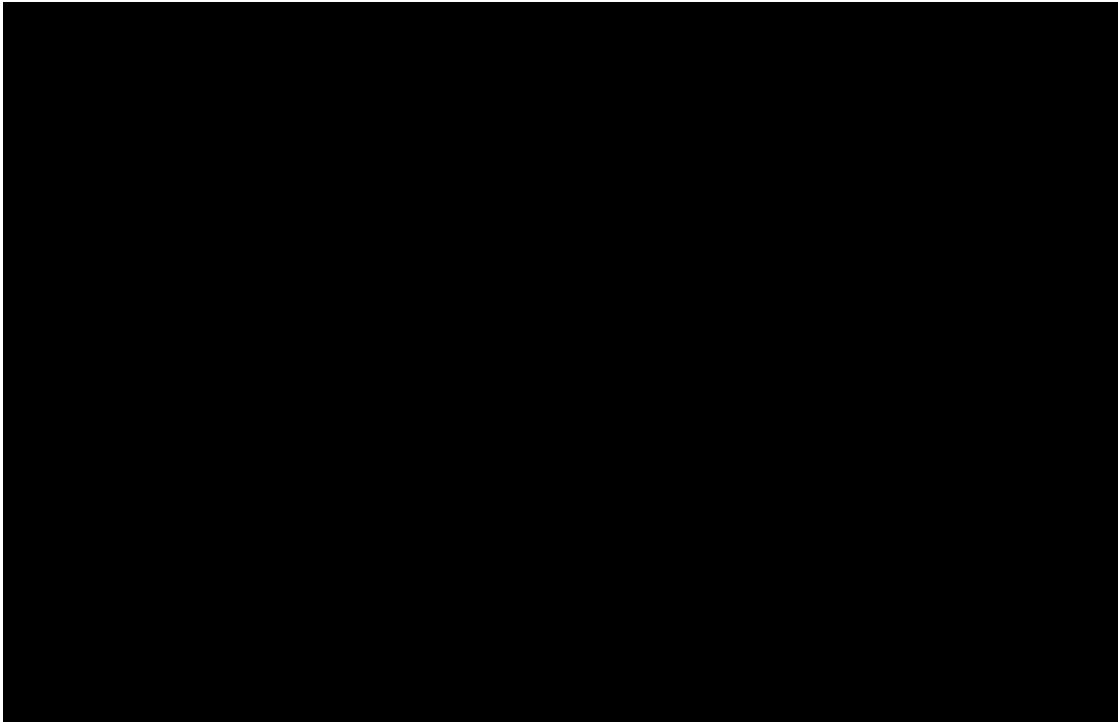
- (a) **(Principal consent required):** Macquarie must not, and must ensure that DevCo and the D&C Contractor does not:
  - (i) other than with a Subcontractor named in Schedule A5 (with respect to the corresponding "Significant Subcontract Work" listed in Schedule A5 for that Subcontractor), enter into;
  - (ii) where it may impact the rights or increase the Liabilities or obligations of the Principal, make or permit any amendment to, or replacement of or waiver of a provision 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);
  - (iv) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
  - (v) where it may impact the rights or increase the Liabilities or obligations of the Principal, enter into any agreement or arrangement which affects the operation or interpretation of,a Significant Subcontract without obtaining the Principal's prior written consent (which consent must not be unreasonably withheld or delayed).
- (b) **(Qualifications):** Macquarie 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, Macquarie'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 Macquarie which are being subcontracted to it; and
- (ii) immediately upon becoming aware that a Significant Subcontractor does not satisfy the requirements of clause 8.2(b)(i), use its best endeavours to cause:
    - (A) the Significant Subcontractor to do whatever is necessary to promptly satisfy the requirements of clause 8.2(b)(i); or
    - (B) subject to clause 8.2(a), the relevant Significant Subcontract to be terminated.
- (c) **(Provisions to be included in Significant Subcontracts):** Macquarie must ensure that each Significant Subcontract contains provisions which:
    - (i) satisfy the requirements of clauses 9.4(j) and 55.3;
    - (ii) recognise the Principal's rights under clauses 44 and 46; and
    - (iii) are consistent with the Principal's rights under clause 20.15.
  - (d) **(Monitoring of Significant Subcontracts):** Macquarie must:
    - (i) use its best endeavours to ensure that each Significant Subcontractor complies with the terms of its Significant Subcontract; and
    - (ii) notify the Principal of:
      - (A) any material breach of a Significant Subcontract; or
      - (B) any dispute which is notified as such under a Significant Subcontract, immediately upon becoming aware of such breach or dispute; and
    - (iii) keep the Principal informed of the status of any such breach or dispute.
  - (e) **(Copy):** Macquarie must provide the Principal with a copy of each Significant Subcontract (subject to removal, exclusion or redaction of any "commercial-in-confidence provision" as that term is defined in the GIPA Act).

### 8.3 Lifts and escalators

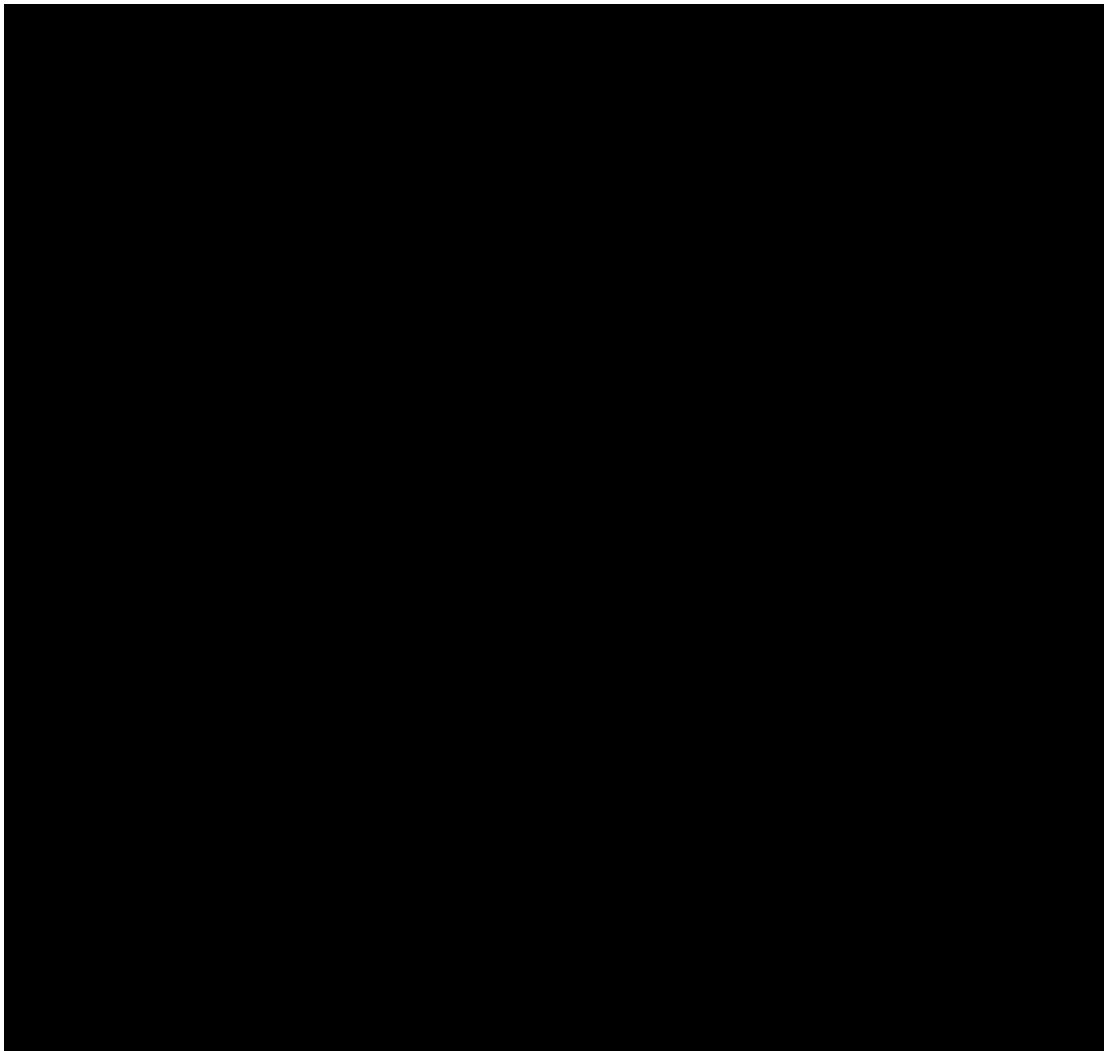
- (a) Macquarie acknowledges that:
  - (i) the Principal has entered into a framework agreement with the Lifts and Escalators Contractor prior to the Commencement Date and a redacted version of that contract is included in Part B of Annexure C; and
  - (ii) the Lifts and Escalators Contractor will be required to enter into contracts with other contractors of the Principal for the Project, including the D&C Contractor.

- (b) Macquarie must:
  - (i) ensure that the D&C Contractor enters into a DSI Contract with the Lifts and Escalators Contractor for the performance of Lifts and Escalators Work required for Macquarie's Activities;
  - (ii) provide the Principal with a copy of the executed DSI Contract, together with all documentation relevant to that agreement; and
  - (iii) not, and must ensure that the D&C Contractor does not, cause, instruct, permit, request or consent to:
    - (A) a variation or amendment to the DSI Contract or the work under the DSI Contract;
    - (B) any increase in the amount payable to the Lifts and Escalators Contractor under, or for the performance of, the Lifts and Escalators Work; or
    - (C) the termination of the DSI Contract,  
  
without the prior written approval of the Principal, unless such variation or amendment or increase in the amount payable is required under the terms of the DSI Contract, in which case such prior written approval is not required.
- (c) Macquarie acknowledges that Part A of Annexure C sets out the terms of the Draft DSI Contract.
- (d) The Principal will provide Macquarie with the DSI Contract for execution with the Lifts and Escalators Contractor.



- (h) Macquarie must minimise the cost of undertaking the Lifts and Escalators Work.

- (i) Subject to clause 8.3(j), the Principal shall be liable to pay Macquarie the Lifts and Escalators Amount in connection with the performance of the Lifts and Escalators Work in accordance with clause 34.
- (j) Macquarie shall be liable for:
  - (i) all costs associated with supervision and coordination in relation to the performance of the Lifts and Escalators Work; and
  - (ii) any amounts payable or owing to the Lifts and Escalators Contractor in addition to the Lifts and Escalators Amount.
- (k) The Principal's Representative may, at any time during the performance of the Lifts and Escalators Work, request Macquarie to provide a reasonable estimate of the Lifts and Escalators Amount, including sufficient information to support such estimate.
- (l) The parties acknowledge and agree that the Principal may, in its absolute discretion, elect to either:
  - (i) extend the defects correction period under the DSI Contract, in which case the Costs of extending the defects correction period under the DSI Contract will be included in the Lifts and Escalators Amount; or
  - (ii) not extend the defects correction period under the DSI Contract, in which case clause 30.1 to clause 30.9 (inclusive) will not apply in respect of the rectification of defects in the Lifts and Escalators Work after the expiry of the defects correction period under the DSI Contract and the Principal will not be liable for any Costs incurred by Macquarie or its Associates in connection with the Lifts and Escalators Work during that period.
- (m) Without prejudice to the other provisions of this deed:
  - (i) Macquarie must procure that the D&C Contractor uses its best endeavours to:
 
    - (B) minimise the costs of any such variation;
  - (ii) if, despite using its best endeavours, the D&C Contractor is unable to procure the relevant variation referred to in clause 8.3(m)(i) within three months after Financial Close under this deed, then Macquarie must promptly notify the Principal in writing;
  - (iii) the Principal must, within a reasonable time (but no longer than three months) after receiving Macquarie's notice under clause 8.3(m)(ii), either:
    - (A) direct a Variation such that the  or
    - (B) take such other action as is reasonably necessary to ensure Macquarie can comply with the requirements of this deed in relation to the escalators required for the Station Works using the DSI Contract; and
  - (iv) a variation agreed under clause 8.3(m)(i)(A) is deemed to be a variation agreed by the Principal for the purpose of the definition of Lifts and Escalators Amount.



**8.4 Framework arrangements**

- (a) Macquarie acknowledges that the Principal may elect to conduct a single source procurement to engage a contractor or service provider to perform certain works or services in connection with the Project and Sydney Metro City and Southwest.
- (b) For the purposes of the Principal's rights under clause 8.4(a), on request from the Principal, Macquarie must cooperate and coordinate with the Principal to:
  - (i) identify any works or services that may be appropriate for this procurement approach;
  - (ii) develop an approach for the inclusion of any relevant contractor or service provider into Macquarie's Activities; and
  - (iii) subject to the relevant Variation Order being issued, enter into a contract with the relevant contractor or service provider for the provision of the relevant works or services provided that, in issuing the Variation Order, the Principal will have regard to any gap risk that the D&C Contractor would bear as a consequence of entering into the relevant contract that would not ordinarily be taken by a head contractor in relation to such contracts in the market.
- (c) Macquarie acknowledges and agrees that a contract referred to in clause 8.4(b)(iii) will:



- (i) reflect the market-standard terms; and
- (ii) have a pass down of the D&C Contract that is commensurate with market practice,

for an agreement of the relevant size and nature of such contract.

- (d) Without limiting clause 8.4(a), Macquarie acknowledges that the Principal may elect to conduct a single source procurement in relation to a building management control system for Sydney Metro City and Southwest, including the Martin Place Metro Station.

## 9. MACQUARIE'S GENERAL OBLIGATIONS

### 9.1 All work included

Except as stated in this deed, Macquarie has allowed for the provision of all work and materials necessary for Macquarie's Activities, whether or not expressly mentioned in this deed. All such work and materials:

- (a) must be undertaken and provided by Macquarie at its own Cost;
- (b) form part of Macquarie's Activities and will not constitute a Variation; and
- (c) will not entitle Macquarie to make a Claim except as provided for in this deed.

### 9.2 Principal contractor

- (a) (**Definitions**): In this clause 9.2 and clause 9.4 the terms "principal contractor", "workplace", "construction work" and "construction project" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (i) Macquarie's Activities; and
- (ii) any construction work carried out on the Construction Site by:
  - (A) the OSD Developer under the OSD PDA;
  - (B) the Retail Lessee and Sub-Tenants;
  - (C) the Principal, Sydney Trains or a Rail Contractor; or
  - (D) any other person who:
    - (aa) Macquarie or the D&C Contractor invite onto, or otherwise agree may access, the Construction Site; or
    - (bb) is an Authority (other than the Principal),

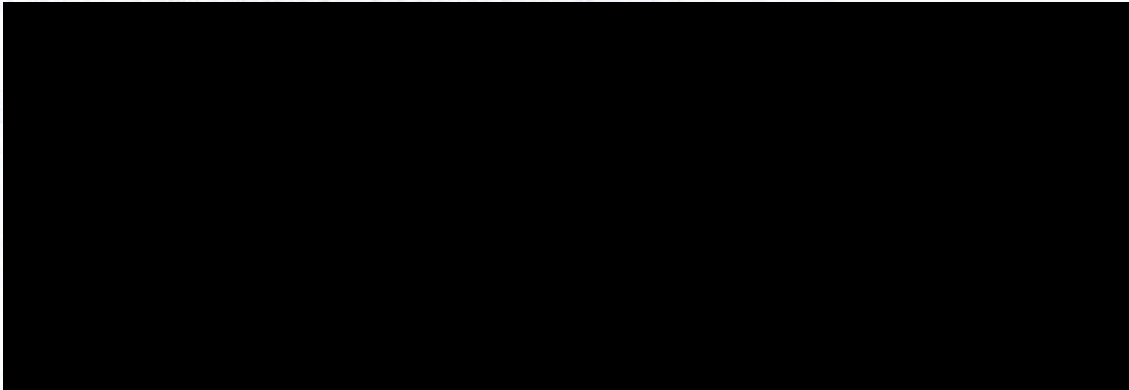
which is performed during any period in which the Appointed Principal Contractor has been engaged as principal contractor (**Construction Site Interface Work**),

are taken to be part of the same "construction project" (except for any TSE Works being undertaken by the TSE Contractor on the Macquarie Construction Site).

- (b) (**Engagement as principal contractor**): Without limiting Macquarie's obligations under any other provision of this deed but subject to clause 9.2(ba), the parties

acknowledge and agree that under the D&C Side Deed, from the date on which Macquarie is given access to a part of the Principal Construction Site in accordance with this deed:

- (i) to the extent that Macquarie'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 Macquarie's Activities and the Construction Site Interface Work;
  - (B) authorises the Appointed Principal Contractor to have management and control of each workplace at which Macquarie's Activities and the Construction Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
  - (C) must give the Appointed Principal Contractor prior notice of any Rail Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences (other than any person undertaking Construction Site Interface Work referred to in clause 9.2(a)(ii)(A), (a)(ii)(B) or (a)(ii)(D)); and
  - (D) must provide the Appointed Principal Contractor and Macquarie with executed deed polls in favour of the Appointed Principal Contractor in the form set out in Schedule D3 from each Rail Contractor engaged by the Principal undertaking Construction Site Interface Work (other than any person undertaking Construction Site Interface Work referred to in clause 9.2(a)(ii)(A), (a)(ii)(B) or (a)(ii)(D)); 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.



(bb) **(Construction Site (Area 5) – effecting engagement)**: The parties acknowledge and agree that:

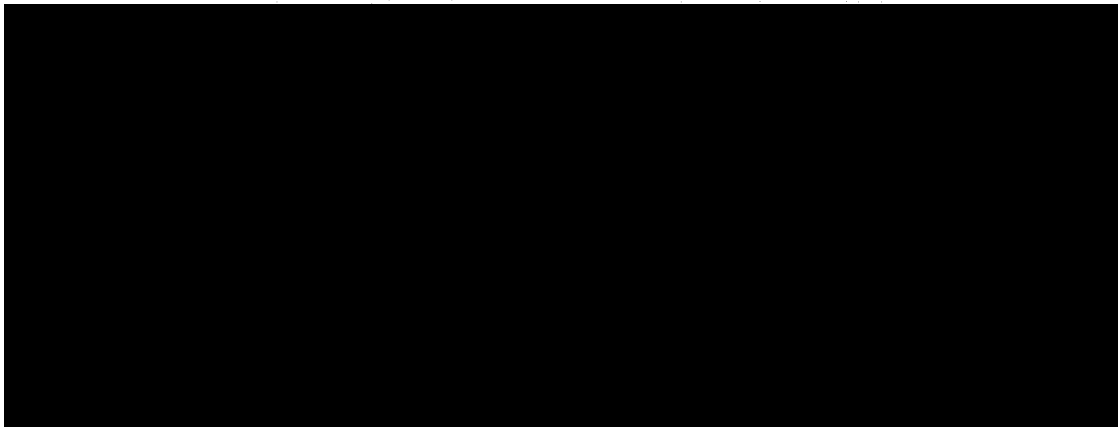
- (i) it is important to Macquarie that the Appointed Principal Contractor's engagement as the principal contractor in respect of Macquarie's Activities and the Construction Site Interface Work that constitute "construction work" to be carried out on Construction Site (Area 5) commences on the same day that the Principal provides Macquarie with access to Construction Site (Area 5); and
- (ii) pursuant to, but without limiting clause 9.2(b), other than the Principal providing Macquarie with access to Construction Site (Area 5), nothing further is required from the Principal for the engagement of the Appointed Principal

Contractor as principal contractor in respect of Macquarie's Activities and the Construction Site Interface Work that constitute "construction work" to be carried out on Construction Site (Area 5) to commence.

- (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 in accordance with clauses 30.7, 30.8 or 30.9 (as applicable);
  - (ii) in respect of Portion 1, the earlier of:
    - (A) the termination of this deed; and
    - (B) the Date of Construction Completion of Portion 1; and
  - (iii) in respect of each other Portion, the earlier of:
    - (A) the termination of this deed; and
    - (B) the Date of Completion of the relevant Portion.
- (d) **(Authorisations and licences):** Macquarie must:
- (i) ensure that if any Law, including in the State or Territory in which the Project Works are situated or Macquarie's Activities are carried out (as the case may be) requires that:
    - (A) a person:
      - (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
      - (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
    - (B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
  - (ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 9.2(d)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
  - (iii) if requested by the Principal or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of the Principal before Macquarie or a Subcontractor (as the case may be) commences such work.
- (e) **(If engagement not effective):** If the engagement of an Appointed Principal Contractor as principal contractor under the D&C Side Deed is not effective for any reason, Macquarie agrees that it will ensure that the Appointed Principal Contractor

exercises and fulfils the functions and obligations of the principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor as contemplated by clause 9.2(b).

- (f) **(Indemnity):** To the extent not prohibited by Law, Macquarie indemnifies the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with the failure of:
- (i) an Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation; or
  - (ii) Macquarie to comply with this clause 9.2, clause 9.3, clause 9.4 or with WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law or any other Law or provision of a Project Document concerning work health and safety.



9.3 **Protection of persons and property**

Macquarie must carry out Macquarie's Activities:

- (a) safely and in a manner that, insofar as is reasonably practicable, does not put the health or safety of persons at risk; and
- (b) in a manner that protects property.

9.4 **Work health and safety**

Macquarie must:

- (a) **(WHS Legislation):** ensure that in carrying out Macquarie's Activities under this deed:
  - (i) it complies with all Laws, Codes of Practice and other requirements of this deed for work health, safety and rehabilitation management;
  - (ii) all Subcontractors comply with their respective obligations under all Laws, Codes of Practice and other requirements of this deed for work health safety and rehabilitation management; and
  - (iii) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

- (b) (**corporate work health and safety management system**): have a corporate work health and safety management system which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th Edition) (September 2013, updated May 2014);
- (c) (**notify**): notify the Principal's Representative in accordance with the PHSMP of all work health and safety Incidents arising out of, or in any way in connection with Macquarie's Activities;
- (d) (**assurances from Significant Subcontractors**): institute systems to obtain regular written assurances from all Significant Subcontractors about their ongoing compliance with WHS Legislation, Codes of Practice and other requirements of this deed for work health safety and rehabilitation management;
- (e) (**assurances to the Principal**): provide the Principal's Representative with the written assurances referred to in clause 9.4(d), together with written assurances from Macquarie about Macquarie's ongoing compliance with Laws, Codes of Practice and other requirements of this deed for work health safety and rehabilitation management;
- (f) (**report**): provide the Principal's Representative with a written report of all work health safety and rehabilitation matters in connection with Macquarie's Activities as the Principal's Representative may require from time to time;
- (g) (**cooperate**): consult, cooperate and co-ordinate its activities with the Rail Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (h) (**duty**): carry out Macquarie's duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable Laws;
- (i) (**ensure the Principal does not breach WHS Legislation**): ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation, the Heavy Vehicle National Law or other Law concerning work health and safety;
- (j) (**Significant Subcontracts**): ensure that each Significant Subcontract includes provisions equivalent to clauses 9.2(d), 9.3 and this clause 9.4 and requiring the Significant Subcontractor to prepare a safety management plan in accordance with the requirements in clause 9.6(b);
- (k) (**safety leadership**): provide strong safety leadership and continuously promote safety as a core value;
- (l) (**SMPCH&SS**): comply with those parts of the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, that the Principal notifies Macquarie in writing that it must comply with as if it was a principal contractor for the purposes of that standard; and
- (m) (**Direction to cease work**): if there is an imminent risk to the health or safety of people or damage to property arising from Macquarie's Activities:
  - (i) the Principal's Representative may direct Macquarie to change its manner of working or to cease working; and
  - (ii) Macquarie must, at its Cost, comply with any direction by the Principal's Representative under this clause 9.4(m).

9.5 **Application of Sydney Metro Principal Contractor Health and Safety Standard**

Nothing in clauses 9.4(l), 9.6(b)(vi) or 9.6(c), requires Macquarie to be a principal contractor for the purposes of this deed or the WHS Legislation.

9.6 **Project Health and Safety Management Plan**

(a) Macquarie acknowledges that preparation of the Project Health and Safety Management Plan in accordance with clause 7 is a condition precedent to the Principal's obligations under clause 17.2.

(b) Without limiting any requirement of the WHS Legislation or this deed, the Project Health and Safety Management Plan must:

- (i) set out in adequate detail the policies and procedures that will be implemented to manage Macquarie's Activities from a work health and safety perspective;
- (ii) describe how Macquarie proposes to ensure that Macquarie's Activities are performed consistently with the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law, Codes of Practice, Australian Standards and any other applicable Law;
- (iii) address the matters specified in the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law, Codes of Practice, Australian Standards and any other applicable Law;
- (iv) comply with the requirements applicable to a "Project WHS Management Plan" and "Project Safety Plan" set out in the New South Wales Government Work Health & Safety Management Systems and Auditing Guidelines (5th edition) (September 2013, updated May 2014) and the Office of the Federal Safety Commissioner's Audit Criteria Guidelines;
- (v) comply with the requirements applicable to a "Work Health Safety Management Plan" or "Site Specific Safety Management Plan" set out in section 9 of the NSW Guidelines; and
- (vi) comply with the requirements applicable to a "Safety Management Plan" set out in the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221), as amended from time to time.

(c) Without limiting clause 7, Macquarie must:

- (i) continue to correct any defects in or omissions from the Project Health and Safety Management Plan (whether identified by the Principal's Representative or Macquarie); and
- (ii) regularly review and, as necessary, revise the Project Health and Safety Management Plan in accordance with the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety, applicable Codes of Practice and the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time,

and submit any amended draft of its Project Health and Safety Management Plan (or, where the non-compliance relates only to (i) the head-plan, (ii) one or more sub-plans, or (iii) the head-plan and one or more sub-plans (in each case the "**affected plans**"), submit a revised version of the affected plans) to the Principal's Representative, after which clauses 7.3, 7.5 and 7.7 will reapply to the revised Project Health and Safety Management Plan or affected plans (as applicable).

- (d) Macquarie must document and maintain detailed records of inspections or audits undertaken as part of the Project Health and Safety Management Plan.
- (e) Macquarie must carry out Macquarie's Activities in accordance with, and otherwise implement, the latest Project Health and Safety Management Plan.
- (f) Macquarie acknowledges and agrees that:
  - (i) the Principal will update the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to Macquarie's Activities and the Sydney Metro City & Southwest; and
  - (ii) subject to clause 39, Macquarie will not be entitled to make, and the Principal will not be liable on, any Claim arising out of or in any way in connection with:
    - (A) any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard; or
    - (B) 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 TfNSW or the Principal or an Associate of TfNSW or the Principal).

#### 9.7 Rail Safety

- (a) Without limiting any other clause in this deed, Macquarie must:
  - (i) comply with (and procure that its Associates comply) with:
    - (A) the Rail Safety National Law and Rail Safety Regulations; and
    - (B) the Principal's reasonable requirements in relation to rail safety; and
  - (ii) not do anything, and procure that its Associates do not do anything, that would interfere with or compromise the safe operation of Sydney Metro City & Southwest or any other railway.
- (b) Macquarie must ensure that it does not do anything or fail to do anything that would cause the Principal, TfNSW any of the Principal's Associates to be in breach of the Rail Safety National Law or the Rail Safety Regulations.
- (c) Macquarie acknowledges that:
  - (i) Macquarie's Activities and the Project Works are being undertaken for the purpose of constructing a railway;
  - (ii) TfNSW and/or the Principal (as applicable) hold accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
  - (iii) to the extent that Macquarie's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law it carries out such Macquarie's Activities for and on behalf of the Principal under TfNSW's Accreditation and/or the Principal's Accreditation (as applicable).
- (d) In carrying out any part of the Project Works and Temporary Works which require Accreditation as a Rail Infrastructure Manager, Macquarie:

- (i) must comply with all conditions of TfNSW's Accreditation and/or the Principal's Accreditation (as applicable) as a Rail Infrastructure Manager and the Principal's Safety Management System;
  - (ii) carry out the Project Works so as not to put TfNSW and/or the Principal in breach of its obligations as a Rail Infrastructure Manager under the Rail Safety National Law and the Rail Safety Regulations;
  - (iii) must not do anything (or fail to do anything) which jeopardises TfNSW's Accreditation and/or the Principal's Accreditation (as applicable), except to the extent required by Law; and
  - (iv) must ensure that its Subcontractors engaged in or in connection with the Project Works or Temporary Works, comply with Macquarie's obligations under this clause 9.7 as if those obligations had been imposed directly upon those Subcontractors.
- (e) Macquarie must liaise and co-operate with the Principal, TfNSW, the Operator and any other Public Transport Agency and provide any reasonable assistance and documentation that the Principal, TfNSW, the Operator or any Public Transport Agency may require in relation to safety matters, TfNSW's Accreditation and/or the Principal's Accreditation (as applicable) 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.
- (f) To the extent that, in carrying out Macquarie's Activities, Macquarie carries out any Railway Operations for which accreditation is required under the Rail Safety National Law and which are not permitted by TfNSW's Accreditation and/or the Principal's Accreditation (as applicable), Macquarie must ensure that the necessary accreditation or other Approval required is obtained to enable it to comply with all applicable Law.
- (g) Macquarie acknowledges that the Operator will be reliant upon information and documentation received from Macquarie to obtain or extend its accreditation under the Rail Safety National Law.
- (h) Without limiting clause 9.7(e), Macquarie must provide the Principal with copies of all notices, reports and other correspondence given to or received by Macquarie or its Associates under or in connection with the Rail Safety National Law and Rail Safety Regulations:
- (i) relating to Macquarie's Activities or the Project Works; or
  - (ii) which may adversely affect the ability of Macquarie to perform Macquarie's Activities,
- promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given to or received by Macquarie or its Associate).
- (i) Without limiting clause 9.7(f), Macquarie must ensure that all persons engaged by Macquarie (or any Associate of Macquarie) in or in connection with the Project Works:
- (i) are competent to carry out the work for which they are engaged for the purposes of section 52 of the Rail Safety National Law; and
  - (ii) comply with their obligations under the Rail Safety National Law (including under section 56 of the Rail Safety National Law).
- (j) Macquarie must ensure that it and its Associates:



- (i) promptly gives all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
- (ii) co-operates with and responds to any lawful requests made by any Investigative Authority, within the time requested;

does not hinder or delay any Investigative Authority in carrying out its duties.

- (k) Nothing in clause 9.7(j) is deemed to be a waiver of rights in respect of privileged information.
- (l) Compliance by Macquarie with its obligations under this clause does not discharge Macquarie from complying with its other obligations under this deed and is not evidence of compliance by Macquarie with its other obligations under this deed.
- (m) The parties acknowledge that the Principal has provided copies of TfNSW's Accreditation and/or the Principal's Accreditation (as applicable) dated 1 July 2018 to Macquarie prior to the Commencement Date.
- (n) The Principal must ensure that any amendment or update to the Principal's Accreditation (as applicable), to the extent that the amendment or update is relevant to Macquarie's Activities, is provided to Macquarie within 20 Business Days of the relevant amendment or update.

#### 9.8 **Engineering Authorisation and ASA compliance**

- (a) Macquarie represents and warrants that if it or any of its Subcontractors will carry out Asset Lifecycle Services, they are an AEO and have obtained ASA Authorisation to carry out the Asset Lifecycle Services.
- (b) Without limiting or otherwise restricting clause 9.8(c) and clause 9.8(d), Macquarie must:
  - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as Macquarie's Activities are carried out; and
  - (ii) on and from the date that ASA Authorisation was granted, comply (and must ensure that its Subcontractors and all personnel for which Macquarie is responsible comply) with the conditions of the applicable ASA Authorisation.
- (c) Macquarie must (and must ensure that its Subcontractors and all personnel for which Macquarie is responsible):
  - (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
  - (ii) immediately notify the Principal's Representative in writing of any non-compliance with this clause 9.8;
  - (iii) co-operate fully with the ASA in the performance of the ASA's functions;
  - (iv) provide access to premises and resources that are within Macquarie's control as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
  - (v) comply with the Directions, instructions and requirements issued by the ASA;

- (vi) notify the ASA of any matter that arises out of or in connection with Macquarie's Activities that could reasonably be expected to affect the exercise of the ASA's functions promptly after Macquarie becomes aware of it;
  - (vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the context of Macquarie's Activities in the exercise of its functions; and
  - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to co-operate fully with the ASA and to implement and comply with ASA Requirements.
- (d) Subject to clauses 23, 24, 35, 37, 39, Macquarie acknowledges and agrees that it is not entitled to make (and neither the Principal, TfNSW nor the ASA will be liable upon) any Claim arising out of or in connection with the performance of any of its obligations under this clause 9.8.

#### 9.9 Performance of Macquarie's Activities

- (a) In performing Macquarie's Activities, Macquarie must:
- (i) in respect of Construction Plant used in performing Macquarie's Activities:
    - (A) use any Construction Plant which this deed prescribes or otherwise requires Macquarie to use including any Construction Plant referred to in a Project Plan;
    - (B) ensure such Construction Plant complies with, and is maintained by Macquarie in accordance with, all relevant Laws;
    - (C) provide the Principal's Representative, upon request, written details of the name and address of the owner of such Construction Plant (where such owner is not Macquarie) held or used by Macquarie under an agreement with the owner of the Construction Plant;
  - (ii) act in a timely and expeditious manner;
  - (iii) once it has commenced any construction activities on the Construction Site, regularly and diligently proceed with the construction of the Project Works and take all steps reasonably available to it (including re-sequencing and re-scheduling the commencement of other Macquarie's Activities) to minimise any disruption to, impact on the performance of Macquarie's Activities on, or compromising the safety of other users of:
    - (A) the Existing Operations;
    - (B) Local Areas; or
    - (C) Services;
  - (iv) give priority to the safety of persons and vehicles using the Existing Operations or otherwise affected by the performance of Macquarie's Activities (to the extent necessary, prioritising the safety of persons over the safety of vehicles); and
  - (v) act in accordance with Good Industry Practice.