

30.4 Acceptance of work or rectification by others

If a Direction is given under clause 30.2(a)(iii) or 30.2(a)(v)(B) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and Macquarie is responsible for the Defect (or the part of it) having regard to clause 1.2(m), the reasonable cost of correcting the Defect (or the part of it) will be a debt due and payable from Macquarie to the Principal.

30.5 Changes under other contracts to overcome Defects

If a Direction is given by the Principal's Representative under clause 30.2(a)(iv) and the Defect (or part of it) is something for which Macquarie is responsible having regard to clause 1.2(m):

- (a) Macquarie indemnifies the Principal from and against any Loss suffered or incurred by the Principal arising out of or in connection with the change or variation directed by the Principal under the relevant Rail Contract to the extent necessary to overcome the Defect (or the part of it); and
- (b) clause 30.4 will not apply with respect to the Defect the subject of that Direction.

30.6 Works

- (a) Subject to clause 30.6(b), the Works within a Portion (other than the Temporary Works) have:
 - (i) a Defects Correction Period which begins on:
 - (A) with respect to Portion 1, the Date of Construction Completion of that Portion; and
 - (B) with respect to any Portion other than Portion 1, the Date of Completion of that Portion,and ends on [REDACTED] and
 - (ii) in respect of any work the subject of a Direction under clause 30.2(a)(i) or 30.2(a)(ii) during the Defects Correction Period which is carried out on or after [REDACTED] a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Variation and continues for [REDACTED]
- (b) No Defects Correction Period for the Works (or any part of them) within a Portion will extend beyond [REDACTED]

30.7 Local Area Works

- (a) Each discrete part of the Local Area Works has:
 - (i) a Defects Correction Period of [REDACTED] which begins when the relevant works are complete (being the date notified under clause 30.7(d)(i)); and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a Direction under clause 30.2(a)(i) or 30.2(a)(ii) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Variation,

provided that no Defects Correction Period for any discrete part of the Local Area Works will extend beyond the date that is [REDACTED] after the date notified under clause 30.7(d)(i) as the date on which the relevant part of the Local Area Works were completed.

- (b) The completion of the Local Area Works will be assessed on an area by area basis either:
 - (i) in accordance with clauses 30.7(c) and 30.7(d); or
 - (ii) any relevant specific completion requirements in the Third Party Agreements (if any).
- (c) When Macquarie considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative and the Independent Certifier in writing and the Principal's Representative, the Independent Certifier, Macquarie's Representative and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.
- (d) Following the joint inspection under clause 30.7(c) and subject to clause 30.7(e), the Principal and Macquarie acknowledge that the Independent Certifier will determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the requirements of any relevant Third Party Agreement (if applicable) and will notify Macquarie and the Principal in writing and within 5 Business Days after the date of the inspection (or such longer period permitted under any relevant Third Party Agreement):
 - (i) if the discrete part is complete, of the date on which Macquarie has completed the discrete part of the Local Area Works in accordance with this deed, which subject to clause 30.7(f)(i), will be the relevant date for the purposes of clause 30.7(a)(i); or
 - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 30.7(c) and this clause 30.7(d) will reapply).
- (e) Each discrete part of the Local Area Works will not be regarded as complete unless the Independent Certifier has:
 - (i) executed and provided to the Principal's Representative a certificate in the form of Schedule B18 with respect to the discrete part of the Local Area Works; and
 - (ii) provided any certificates required under any Third Party Agreements which relate to obligations in Schedule D4 with which Macquarie is required to comply, if any.
- (f) It is a condition precedent to:
 - (i) the commencement of the Defects Correction Period for a discrete part of the Local Area Works that Macquarie provide the Principal's Representative with:
 - (A) a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete;
 - (B) if Macquarie is unable to obtain a notice required under clause 30.7(f)(i)(A) despite having used its best endeavours to do so, a statement from Macquarie to the effect that:

- (aa) the discrete part of the Local Area Works is complete and Macquarie has notified the relevant Authority of this matter; and
- (bb) the relevant Authority has failed or refused to provide the written notice required under clause 30.7(f)(i)(A) despite being given 15 Business Days to provide the notice requested by Macquarie; and
- (C) any notices required under the Third Party Agreements required prior to the commencement of the Defects Correction Period of the Portion to which the Local Area Works relate; and
- (ii) Completion of each Portion other than Portion 1, that the written notices or statements required under clause 30.7(f)(i) have been provided to the Principal's Representative for all discrete parts of the Local Area Works that form part of that Portion.

30.8 Service Works

- (a) Each discrete part of the Service Works has:
 - (i) a Defects Correction Period of [REDACTED] which begins when:
 - (A) the relevant Authority which has jurisdiction in respect of the Service gives written notice that the work is complete; or
 - (B) if Macquarie is unable to obtain a notice required under clause 30.8(a)(i)(A) despite having used its best endeavours to do so, a written statement from Macquarie to the effect that:
 - (aa) the discrete part of the Service Works is complete and Macquarie has notified the relevant Authority of this matter; and
 - (bb) the relevant Authority has failed or refused to provide the written notice required under 30.8(a)(i)(A) despite being given 15 Business Days to provide the notice requested by Macquarie,

and the Principal's Representative has been provided with a copy of the notice or statement; and
 - (ii) a further Defects Correction Period of [REDACTED] in respect of any work the subject of a Direction under clause 30.2(a)(i) or 30.2(a)(ii) (relating to the discrete part of the Service Works) during the Defects Correction Period, which begins:
 - (A) when the relevant Authority gives written notice that the Defect (or the part of it) has been corrected or the Variation completed and the Principal's Representative has been provided with a copy of the notice; or
 - (B) if the relevant Authority fails or refuses to give the notice required under clause 30.8(a)(ii)(A), when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Variation completed,

provided that no Defects Correction Period for any discrete part of the Service Works will extend beyond the date that is [REDACTED] after the date of the applicable notice or statement given under clause 30.8(a)(i).

- (b) It is a condition precedent to Construction Completion of Portion 1, and Completion of each Portion other than Portion 1, that:
 - (i) a written notice of the kind referred to in clause 30.8(a)(i)(A) has been given for each discrete part of the Service Works that form part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or
 - (ii) Macquarie has:
 - (A) used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 30.8(a)(i)(A); and
 - (B) provided the Principal's Representative with a written statement of the kind referred to in clause 30.8(a)(i)(B).

30.9 **Property Works**

- (a) Subject to clause 30.9(b), each discrete part of the Property Works has:
 - (i) a Defects Correction Period of [REDACTED], which begins upon:
 - (A) the completion of the Property Works; or
 - (B) submission by Macquarie of a certificate or signed statement (as the case may be) to the Principal's Representative under clause 17.7(a)(ii),
whichever is the later; and
 - (ii) a further Defects Correction Period of [REDACTED] in respect of any work the subject of a direction under clause 30.2(a)(i) or 30.2(a)(ii) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Variation.
- (b) No Defects Correction Period for any discrete part of the Property Works will extend beyond the date that is [REDACTED] after the date of the applicable certificate or signed statement given under clause 17.7(a)(ii).

30.10 **Rights not affected**

Neither the Principal's rights, nor Macquarie's liability, whether under this deed or otherwise according to Law in respect of Defects, whether before or after the expiration of any relevant Defects Correction Period, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 30 or any other provision of a Project Document;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any Direction of the Principal's Representative under clause 30.2.

30.11 **Warranties by others**

- (a) Macquarie must, as a condition precedent to Completion of the last Portion to achieve Completion, procure and provide each of the Principal and the Operator with all warranties required by Schedule A10, from the relevant Subcontractors undertaking

or supplying the work or items the subject of the warranty. Each warranty must be in favour of the Principal and the relevant beneficiaries identified in Schedule A10 and on the terms of the deed in Schedule A11.

- (b) The provision of those warranties will not derogate from any rights which the Principal may have against Macquarie in respect of the subject matter of those warranties.

30.12 Use of defective facilities

Macquarie must not allow the use of any part of the Project Works or Temporary Works which Macquarie knows is defective or unsafe and which threatens the health or safety of people.

30.13 Final inspections of Project Works (other than Third Party Works)

- (a) Macquarie, the Principal's Representative and the Operator will carry out a final inspection of the Project Works (other than the Third Party Works) 6 months before the end of the Defects Correction Period referred to in clause 30.6(a)(i)(B) (**Final Inspection**).
- (b) Clause 5 of the Follow-on Contractor Cooperation and Integration Deed entered into between the Principal, the Operator, Macquarie and the D&C Contractor will apply in relation to the Final Inspection.

30.14 Final inspections of Third Party Works

- (a) Macquarie, the Principal's Representative, and applicable Authorities will carry out a final inspection of the Third Party Works 3 months before the end of the Defects Correction Period for the relevant Third Party Works (or at such other time specified in any relevant Third Party Agreement) (**Final Third Party Works Inspection**).
- (b) If the Principal's Representative, or the applicable Authority identifies any Defects during the Final Third Party Works Inspection, the Principal may give a notice under clause 30.2 with respect to that Defect.

31. SUBDIVISION

31.1 Subdivision requirements

- (a) Subject to clause 31.1(b), the Principal and Macquarie acknowledge and agree that:
 - (i) Macquarie must, on or before the Date of Completion in respect of the last Portion to achieve Completion, procure the Subdivision of the Subdivision Land in accordance with the Subdivision Documents, as more particularly set out in this clause 31;
 - (ii) Macquarie will cause the Subdivision Documents for the Subdivision Plan to be prepared in accordance with:
 - (A) the Project Planning Approval;
 - (B) the Stage 2 Consent;
 - (C) a Variation Order issued by the Principal pursuant to clause 35 (excluding clause 35.13 unless the Principal and Macquarie agree or a determination is made under clause 52) or clause 26 of the OSD PDA (excluding clause 26.11 unless the Principal and Macquarie agree or a

determination is made under clause 40 of the OSD PDA or clause 52 of this deed);

- (D) a Variation proposed by Macquarie and approved by the Principal pursuant to clause 36;
 - (E) a Variation proposed by Macquarie and not objected to by the Principal pursuant to clause 27 of the OSD PDA;
 - (F) the Subdivision Proposal approved under this clause 31; and
 - (G) the Subdivision Principles;
- (iii) the Draft Subdivision Plan represents the parties' intentions at the Commencement Date for the proposed Subdivision of the Subdivision Land, to the extent that relevant information was available to the parties as at the Commencement Date and subject to the Subdivision Principles;
- (iv) the Draft Subdivision Plan shows the approximate intended boundaries of the various elements of the Subdivision Land referable to the Project Works (other than the Third Party Works) and the OSD Works, including the following:
- (A) Martin Place Metro Station Lot;
 - (B) Retail Lot North;
 - (C) Retail Lot South;
 - (D) North Tower Lot;
 - (E) South Tower Lot;
 - (F) 50 Martin Place Ancillary Amenities Lot; and
 - (G) the Concourse Link Easement,
- subject to the Subdivision Principles;
- (v) the Draft Section 88B Instrument contains the easements and their draft terms that will need to be created in conjunction with the Subdivision of the Subdivision Land and represents the agreement of the Principal and Macquarie at the Commencement Date to those easements and their draft terms, to the extent that relevant information was available to the parties as at the Commencement Date and subject to the Subdivision Principles;
- (vi) the Draft BMS represents the parties' negotiated and agreed terms and position at the Commencement Date, to the extent that relevant information was available to the parties as at the Commencement Date and subject to the Subdivision Principles;
- (vii) the Draft Subdivision Plan, the Draft Section 88B Instrument and the Draft BMS may require amendment up to the date of lodgement for registration at the LRS, such amendment to be made in accordance with the provisions set out in this clause 31; and
- (viii) if there is a Residual Lot created with the approval of the Principal, it will remain in the ownership of the Principal or such other person or entity nominated by the Principal.

- (b) If clause 31.8 applies, the Principal and Macquarie acknowledge and agree that:
 - (i) on or before the Date of Completion in respect of the last Portion to achieve Completion, Macquarie must procure the Subdivision of the Subdivision Land in accordance with the Stage 1 Subdivision Documents, as more particularly set out in clause 31.8;
 - (ii) Macquarie will cause the Stage 1 Subdivision Documents to be prepared in accordance with the Project Planning Approval, the Stage 1 Subdivision Proposal approved under clause 31.8 and the Subdivision Principles;
 - (iii) the Residual Stage 1 Lot (if any) will remain in the ownership of the Principal unless otherwise agreed between the parties; and
 - (iv) Macquarie must procure the Subdivision of the Residual Stage 1 Lot to create the Development Lots as soon as practicable and in accordance with clause 31.8(l).

31.2 Amendments to draft Subdivision Documents

- (a) After the Commencement Date, either the Principal or Macquarie may propose amendments to any or all of:
 - (i) the Draft Subdivision Plan;
 - (ii) the Draft Section 88B Instrument; or
 - (iii) the Draft BMS,as more specifically set out in this clause 31.2.
- (b) If the Principal or Macquarie proposes an amendment to a draft Subdivision Document as contemplated by clause 31.2(a), then the party proposing the amendment (**Proposing Party**) must notify the other party (**Proposal Recipient**) in writing of the proposed amendments (including a copy of the proposed amended draft Subdivision Document and reasonable details of the reasons for the Proposing Party's request for the amendments) as soon as practicable. Within 20 Business Days after receiving the proposed amendments, the Proposal Recipient may request further information from the Proposing Party in order for the Proposal Recipient to consider its position in respect of the amendments proposed by the Proposing Party under clause 31.2(d) and clause 31.2(f).
- (c) Subject to clause 31.2(d), within 20 Business Days after receipt of a notice under clause 31.2(b) or clause 31.2(i)(i) (as applicable), the Principal and Macquarie must:
 - (i) meet to discuss the proposed amendments; and
 - (ii) use reasonable endeavours to negotiate in good faith to reach a mutually acceptable position in relation to the proposed amendments to the draft Subdivision Document.
- (d) Within 10 Business Days after the Principal and Macquarie meet, the Proposal Recipient (acting reasonably), must notify the Proposing Party in writing that it either:
 - (i) agrees to all or part of the Proposing Party's proposed amendments to the draft Subdivision Document;

- (ii) withholds its consent (in accordance with clause 31.2(f)(i) or clause 31.2(f)(ii) (as applicable)) to all or part of the Proposing Party's proposed amendments to the draft Subdivision Document and provide the grounds on which it is withholding such consent and, where reasonably possible, provide comments and recommendations in respect of amendment of the draft Subdivision Document; or
 - (iii) proposes that the parties reconsider the proposed amendment as part of the Subdivision Proposal under clause 31.3.
- (e) Despite clause 31.2(c), the Principal and Macquarie are not required to meet if, within 20 Business Days after receipt of a notice under clause 31.2(b) or clause 31.2(i)(i) (as applicable), the Proposal Recipient confirms in writing to the Proposing Party that the Proposal Recipient agrees to the amendments proposed by the Proposing Party, in which case clause 31.2(g) applies.
- (f) Subject to clause 31.2(g), in relation to a proposed amendment to a draft Subdivision Document:
- (i) if the Proposal Recipient is the Principal, the Principal may only withhold its consent to Macquarie's proposed amendment to the draft Subdivision Document if the proposed amendment:
 - (A) is not consistent with the Subdivision Principles, the OSD Design Parameters, the Design Stage 3 Design Documentation or the Updated Stage 2 DA Design Docs;
 - (B) would or is likely to give rise to a Metro Impact;
 - (C) in respect of the Draft Section 88B Instrument, would or is likely to adversely affect the financial implications or rights or obligations of the Principal or a Public Transport Agency under or in connection with the Draft Section 88B Instrument or as contemplated under clause 19.1(d); or
 - (D) in respect of the Draft BMS, will or is likely to adversely affect the risk or cost allocation borne by the Principal as represented in the Draft BMS; and
 - (ii) if the Proposal Recipient is Macquarie, Macquarie may withhold its consent to the Principal's proposed amendment to a draft Subdivision Document if the proposed amendment would:
 - (A) in respect of the Draft Section 88B Instrument, adversely affect the financial implications or obligations of the Lot Owners (other than the Principal) under or in connection with the Draft Section 88B Instrument;
 - (B) in respect of the Draft BMS, adversely affect the risk or cost allocation as between Lot Owners represented in the Draft BMS;
 - (C) in Macquarie's opinion (acting reasonably) have a material adverse effect on Macquarie's ability to undertake the Works and the OSD Works; or
 - (D) in Macquarie's opinion (acting reasonably) have a material adverse effect on the value or projected value of the Retail Lot, the 50 Martin Place Ancillary Amenities Lot, the North Tower Lot or the South Tower Lot.

- (g) If a Subdivision Document is required to be amended as a result of:
- (i) a Variation Order issued by the Principal pursuant to clause 35 (excluding clause 35.13 unless the Principal and Macquarie agree or a determination is made under clause 52) or clause 26 of the OSD PDA (excluding clause 26.11 unless the Principal and Macquarie agree or a determination is made under clause 40 of the OSD PDA or clause 52 of this deed);
 - (ii) a Variation proposed by Macquarie and approved by the Principal pursuant to clause 36;
 - (iii) a Variation proposed by Macquarie and not objected to by the Principal pursuant to clause 27 of the OSD PDA; or
 - (iv) the Additional SDD Scope, ~~and~~ the [REDACTED] or the Caverns Scope,

then, provided the proposed amendment to the Subdivision Document is consistent with such Variation, Additional SDD Scope, ~~or~~ the [REDACTED] or the Caverns Scope, neither party may withhold their consent to the proposed amendment.

- (h) If the Principal and Macquarie agree to amend a draft Subdivision Document under this clause 31.2 (whether under clause 31.2(d), clause 31.2(e) or otherwise), then from the date that that agreement is reached:
- (i) the Draft Subdivision Plan is deemed to be updated so as to include the agreed amendments;
 - (ii) the Draft Section 88B Instrument is deemed to be updated so as to include the agreed amendments; or
 - (iii) the Draft BMS is deemed to be updated so as to include the agreed amendments,
- as applicable.
- (i) If the Proposal Recipient withholds its consent to the proposed amendment to the draft Subdivision Document in accordance with clause 31.2(f)(i) or clause 31.2(f)(ii) (as applicable), the Proposing Party may either:
- (i) amend the draft Subdivision Document to take into account the comments and recommendations of the Proposal Recipient and then, by notice to the Proposal Recipient, resubmit the amended draft Subdivision Document for review by the Proposal Recipient under this clause 31.2, and the provisions of clauses 31.2(c) to 31.2(f) (inclusive) will reapply (as applicable);
 - (ii) withdraw its request for the proposed amendments; or
 - (iii) serve a Notice of Issue under clause 52.3(a) if the Proposing Party does not agree with the grounds on which the Proposal Recipient withheld its consent.
- (j) If, pursuant to clause 31.2(d)(iii), the Proposal Recipient requests that the proposed amendments to the draft Subdivision Documents be considered as part of the Subdivision Proposal under clause 31.3, then Macquarie must prepare the Subdivision Proposal for the Principal's consideration under clause 31.3 with the proposed amendments included and highlighted for the Principal's consideration in accordance the provisions of clause 31.3.

31.3 Subdivision Proposal

- (a) Macquarie must, by the date which is at least 9 months before the Date for Completion (or such other date as agreed between the parties), provide to the Principal a Subdivision Proposal.
- (b) Macquarie must consult and co-operate with the Principal in good faith to develop the Subdivision Proposal and submit it to the Principal in a timely manner.
- (c) Within 20 Business Days after the date on which Macquarie submits the Subdivision Proposal to the Principal under clause 31.3(a), the Principal must by notice to Macquarie either:
 - (i) approve the Subdivision Proposal; or
 - (ii) reject the Subdivision Proposal and provide reasons for such rejection and any amendments required to the Subdivision Proposal.
- (d) The Principal must act reasonably in approving or rejecting the Subdivision Proposal and is only entitled to reject an aspect of the Subdivision Proposal to the extent that such aspect of the Subdivision Proposal:
 - (i) is not consistent with the Subdivision Principles, the Design Stage 3 Design Documentation, the Updated Stage 2 DA Design Docs or the Subdivision Documents in the form required under clause 31.4 or the OSD Design Parameters;
 - (ii) would or is likely to give rise to a Metro Impact;
 - (iii) in respect of the Draft Section 88B Instrument, would or is likely to adversely affect the financial implications or obligations of the Principal or a Public Transport Agency under or in connection with the Draft Section 88B Instrument; or
 - (iv) in respect of the Draft BMS, will or is likely to adversely affect the risk or cost allocation borne by the Principal as represented in the Draft BMS,and if the Principal rejects any aspect of the Subdivision Proposal, the Principal:
 - (v) must provide detailed reasons in writing for that rejection; and
 - (vi) may provide detailed proposed amendments to the Subdivision Proposal to overcome the reasons for that rejection.
- (e) For the purposes of clause 31.3(d)(i), if there is any ambiguity between the Subdivision Principles, the Design Stage 3 Design Documentation, the Updated Stage 2 DA Design Docs, Subdivision Documents or the OSD Design Parameters, the documents will be given precedence in accordance with the following:
 - (i) Subdivision Principles;
 - (ii) OSD Design Parameters;
 - (iii) Design Stage 3 Design Documentation;
 - (iv) Updated Stage 2 DA Design Docs;
 - (v) Draft Subdivision Plan; and

- (vi) Subdivision Documents (other than the Draft Subdivision Plan).
- (f) If the Principal rejects the Subdivision Proposal in accordance with clause 31.3(d), then unless Macquarie refers the matter to dispute resolution under clause 52, Macquarie must amend the Subdivision Proposal to take into account the amendments required by the Principal, acting reasonably, and resubmit the Subdivision Proposal to the Principal, in which case, clauses 31.3(b) to 31.3(d) (inclusive) will again apply to that re-submitted Subdivision Proposal.
- (g) If the Principal approves the Subdivision Proposal, Macquarie must, as soon as practicable, lodge the Subdivision Plan and associated Subdivision Documents approved as part of the Subdivision Proposal with the LRS for registration. Macquarie must also lodge with the LRS the original certificate of title for the Macquarie Land. Within 5 Business Days after approving the Subdivision Proposal, the Principal must produce at the LRS the certificates of title for the Principal's Land to enable Macquarie to lodge and register the Subdivision Plan and the associated Subdivision Documents.
- (h) Macquarie may alter the draft Subdivision Documents prior to submission of those documents to the Principal under clause 31.3(a) to the extent necessary to comply with any Law, the requirements of any Authority or the requirements of the LRS.
- (i) After the Principal has approved the Subdivision Proposal, Macquarie may alter the Subdivision Documents prior to submission of those documents to the LRS for registration, but only to the extent necessary to comply with any Law, the requirements of any Authority or the requirements of the LRS.
- (j) If requested to do so by the Principal, Macquarie must, as soon as reasonably practicable:
 - (i) meet with the Principal to discuss the Subdivision Proposal;
 - (ii) make available the Surveyor for the purpose of such discussion; and
 - (iii) do all things reasonably requested by the Principal, including providing additional information, to assist in the review of the Subdivision Proposal by the Principal.
- (k) Macquarie acknowledges that the 20 Business Day period under clause 31.3(c) does not commence until such time as Macquarie has provided the Principal with a full and complete copy of all documents forming part of the Subdivision Proposal.

31.4 **Preparation of Subdivision Documents for the Subdivision Proposal**

- (a) In preparing the Subdivision Documents for a Subdivision Proposal, Macquarie must address the following matters:
 - (i) the creation of all Encumbrances required by the Principal acting reasonably having regard to the operation of clause 19 of this deed and clause 14 of the OSD PDA and that comprehensive Encumbrances, including easements for support, services and access, may be required between the various lots created by the Subdivision and may not be included in the Draft Section 88B Instrument; and
 - (ii) without limiting clause 31.4(a)(iv) any matters set out in the Subdivision Principles;
 - (iii) the Building Management Statement must form part of the Subdivision Proposal;

- (iv) the sharing of costs and responsibilities for Shared Facilities not included in the Draft BMS between the Lot Owners having regard to paragraph 3.4 of the Subdivision Principles; and
 - (v) any other matters required by the Principal (acting reasonably).
- (b) Macquarie must:
- (i) appoint a Surveyor to prepare the Subdivision Documents;
 - (ii) appoint the Surveyor within 20 Business Days after the Commencement Date; and
 - (iii) obtain the prior written consent of the Principal (acting reasonably) to:
 - (A) the appointment of the Surveyor under clause 31.4(b)(ii); and
 - (B) any replacement of the Surveyor from time to time.

31.5 Determination of Shared Facilities and shared costs

If, within 40 Business Days after the submission in clause 31.3(a) is made by Macquarie to the Principal, the parties cannot reach agreement in relation to the matters referred to in clause 31.4(a)(iv), Macquarie may, at its Cost, appoint an independent expert (being an expert approved by the Principal (acting reasonably)) to determine the above matters, such determination to be made within 20 Business Days after the appointment of the independent expert. The determination of the expert will be binding on Macquarie and the Principal, except where such determination was made fraudulently or contains a manifest error.

31.6 Minor adjustments by the Principal to boundaries

- (a) The Principal may, at any time, request minor adjustments to the cadastral boundaries between the Martin Place Metro Station Lot, the Retail Lots and the Development Lots, as applicable, to reflect the location and position of the as-built structures of the development carried out under this deed and the OSD PDA in those lots (consistent with the principles set out in paragraphs 1.2(a) and 1.2(c) of the Subdivision Principles).
- (b) If the Principal notifies Macquarie of any adjustments the Principal wishes to make pursuant to clause 31.6(a), Macquarie must do all things necessary to facilitate such minor adjustments being made, including procuring the execution of any necessary documents (and procuring that each of its Financiers (if any) sign any necessary documents) and procuring the production of the title to the Development Lots at the LRS for such purpose.
- (c) Macquarie acknowledges and agrees that:
 - (i) no compensation or consideration is payable by the Principal in respect of such minor adjustments to the boundaries; and
 - (ii) each Project Document and the Building Management Statement must, where applicable, include a clause equivalent to this clause 31.6, and Macquarie must procure that each of its Financiers (if any) consents to and complies with this clause 31.6.
- (d) This clause does not lapse at the expiry of completion of the OSD Works, but does cease to be of any force or effect after the first anniversary of the OSD Date of Completion.

31.7 Macquarie bound by Encumbrances

Macquarie acknowledges and agrees that:

- (a) it is bound, or will be bound on registration of all Encumbrances to be created under clause 31.4 (except those which relate to public access which do not bind Macquarie until the Date of Completion in respect of the last Portion to achieve Completion); and
- (b) any lease, licence or other right of occupation granted by Macquarie in respect of the Retail Lots and/or the Development Lots must contain an acknowledgment from any tenant, licensee or occupier that it is bound by the terms of those Encumbrances even if they are registered after the Commencement Date or after the date Macquarie enters into its arrangements with the relevant tenant, licensee or occupier.

31.8 Two stage subdivision

(a) The parties agree that if:

- (i) the OSD Works are not sufficiently advanced to achieve accurate boundary definitions of the Development Lots; or
- (ii) the OSD Developer has not procured the relevant Approval to Subdivide the Subdivision Land to create the Development Lots,

by the date which is 9 months before the Date for Completion, then Macquarie must create the Martin Place Metro Station Lot, the Retail Lots and the Residual Stage 1 Lot by Subdivision (**Stage 1 Subdivision**) and provide to the Principal a Subdivision proposal (**Stage 1 Subdivision Proposal**) which must:

- (iii) outline and provide reasonable details of the stratum lots which will comprise the Martin Place Metro Station Lot, the Retail Lots and the Residual Stage 1 Lot; and
- (iv) attach:
 - (A) the Draft Subdivision Plan which creates the Martin Place Station Lot, the Retail Lots, the 50 Martin Place Ancillary Amenities Lot and the Residual Stage 1 Lot (**Draft Stage 1 Subdivision Plan**);
 - (B) a s88B instrument which includes, in the opinion of the Principal, all easements required to operate and maintain Sydney Metro City & Southwest or are required by an Authority;
 - (C) the Concourse Link Easement;
 - (D) a Building Management Statement; and
 - (E) a certificate from the Surveyor addressed to the Principal confirming that the above documents accord with the Project Planning Approval, the Subdivision Principles and as much as reasonably practicable, the draft Subdivision Documents,

(the **Stage 1 Subdivision Documents**).

- (b) Macquarie must consult and co-operate with the Principal in good faith to develop the Subdivision Proposal and submit it to the Principal in a timely manner.

- (c) Within 20 Business Days after the date on which Macquarie submits the Stage 1 Subdivision Proposal to the Principal under clause 31.8(a), the Principal must by notice to Macquarie either:
 - (i) approve the Stage 1 Subdivision Proposal; or
 - (ii) reject the Stage 1 Subdivision Proposal and provide reasons for such rejection and any amendments required to the Stage 1 Subdivision Proposal.
- (d) The Principal must act reasonably in approving or rejecting the Stage 1 Subdivision Proposal and is only entitled to reject an aspect of the Stage 1 Subdivision Proposal to the extent that an aspect of the Stage 1 Subdivision Proposal:
 - (i) is not consistent with the Subdivision Principles (where applicable), the Design Stage 3 Design Documentation, the Draft Subdivision Plan (where such plan refers to the Martin Place Metro Station Lot or the Retail Lots), the Draft Section 88B Instrument (where such instrument refers to the Concourse Link Easement), the Draft BMS or Updated Stage 2 DA Design Docs; or
 - (ii) would or is likely to give rise to a Metro Impact,
 and if the Principal rejects any aspect of the Stage 1 Subdivision Proposal, the Principal:
 - (iii) must provide detailed reasons in writing for that rejection; and
 - (iv) may provide detailed proposed amendments to the Stage 1 Subdivision Proposal to overcome the reasons for that rejection.
- (e) For the purposes of clause 31.8(d)(i), if there is any ambiguity between the Subdivision Principles, the Design Stage 3 Design Documentation, Draft Subdivision Plan (where such plan refers to the Martin Place Metro Station Lot or the Retail Lots), Draft Section 88B Instrument, the Draft BMS and the Updated Stage 2 DA Design Docs, the documents will be given precedence in accordance with the following:
 - (i) Subdivision Principles;
 - (ii) OSD Design Parameters;
 - (iii) Design Stage 3 Design Documentation;
 - (iv) Updated Stage 2 DA Design Docs;
 - (v) Draft Subdivision Plan; and
 - (vi) Subdivision Documents (other than the Draft Subdivision Plan).
- (f) If the Principal rejects the Stage 1 Subdivision Proposal in accordance with clause 31.8(d), then unless Macquarie refers the matter to dispute resolution under clause 52, Macquarie must amend the Stage 1 Subdivision Proposal to take into account the amendments required by the Principal, acting reasonably, and resubmit the Stage 1 Subdivision Proposal to the Principal, in which case, clauses 31.8(b) to 31.8(d) (inclusive) will apply to that re-submitted Stage 1 Subdivision Proposal.
- (g) If the Principal approves the Stage 1 Subdivision Proposal, Macquarie must, as soon as reasonably practicable, lodge the Stage 1 Subdivision Documents approved as part of the Stage 1 Subdivision Proposal with the LRS for registration. Within 5 Business Days after approving the Stage 1 Subdivision Proposal, the Principal must

produce at the LRS the certificates of title for the Subdivision Land to enable Macquarie to lodge and register those documents.

- (h) Macquarie may alter the Draft Stage 1 Subdivision Plan and associated draft Stage 1 Subdivision Documents prior to submission of those documents to the Principal under clause 31.8(a) to the extent necessary to comply with any Law, the requirements of any Authority or the requirements of the LRS.
- (i) After the Principal has approved the Stage 1 Subdivision Proposal, Macquarie may alter the Subdivision Plan and associated Stage 1 Subdivision Documents prior to submission of those documents to the LRS for registration, but only to the extent necessary to comply with any Law, the requirements of any Authority or the requirements of the LRS.
- (j) If requested to do so by the Principal, Macquarie must, as soon as reasonably practicable:
 - (i) meet with the Principal to discuss the Stage 1 Subdivision Proposal;
 - (ii) make available the Surveyor for the purpose of such discussion; and
 - (iii) do all things reasonably requested by the Principal to assist in the review of the Stage 1 Subdivision Proposal by the Principal.
- (k) Macquarie acknowledges that the 20 Business Day period under clause 31.8(c) does not commence until such time as Macquarie has provided the Principal with a full and complete copy of all documents forming part of the Stage 1 Subdivision Proposal.
- (l) In respect of the subsequent creation of the Development Lots by the preparation and registration of a further plan of subdivision, Macquarie must achieve the creation of the Development Lots as soon as is practicable in the circumstances and in accordance with the principles and processes set out in clauses 31.3 and 31.4 (to the extent relevant and applicable, noting that any reference to a Subdivision Document in those clauses will be deemed to be a reference to an amendment or replacement form of a registered Stage 1 Subdivision Document as necessary to make those documents consistent with the Subdivision Documents) (**Stage 2 Subdivision**).
- (m) For the avoidance of doubt, the parties acknowledge and agree that if Macquarie carries out a two stage subdivision in accordance with this clause 31.8, Macquarie will not be relieved of its obligation to procure Subdivision in accordance with the Subdivision Documents, and the parties intend that Stage 1 Subdivision and Stage 2 Subdivision will, when taken together, achieve the same result as a Subdivision carried out in accordance clauses 31.3 and 31.4.

31.9 Licence to use Loading Dock

- (a) If, for whatever reason, Macquarie is unable to create the Development Lots by the Date of Completion, then, for the period commencing on the Date of Completion and expiring on the date of registration of an easement in respect of the Loading Dock substantially in the form of the easement for Loading Dock as set out in the Draft Section 88B Instrument attached to this deed, Macquarie grants a licence or must procure the grant of a licence in favour of the Principal and its Associates to access and use the Loading Dock on the same terms and conditions as set out in the Draft Section 88B Instrument attached to this deed.
- (b) If the Principal or its Associates access or use the Loading Dock pursuant to a licence granted under clause 31.9(a), the Principal or its Associates (as applicable) must

comply with the reasonable site access and work health safety and procedures of the Appointed Principal Contractor.

31.10 Notice of creation of Development Lots

Macquarie must, within 2 Business Days after it becomes aware that the Development Lots have been created by way of registration of the Subdivision Documents, or if clause 31.8 applies, the Stage 1 Subdivision Documents, notify the Principal in writing of such registration.

31.11 Transfer of substratum land from the Principal to Macquarie Bank Limited

(a) Subject to the provisions of clause 31.11(b)(i) having been complied with, on the same date that the Principal transfers to Macquarie Bank Limited the freehold title to the North Tower Lot (pursuant to the Call Option Deed (North Tower Lot) as that term is defined in the OSD PDA), the Principal must transfer to Macquarie Bank Limited the freehold title of:

- (i) the 50 Martin Place Ancillary Amenities Lot; and
- (ii) each other parcel of land that is situated below the Macquarie Land that:
 - (A) is within the volumetric area below the Macquarie Land, but only to the extent that the volumetric area falls within boundaries of the Macquarie Land as if those boundaries were extended downwards;
 - (B) does not fall within the Martin Place Metro Station Lot; and
 - (C) is owned by the Principal,

(together, the **Principal Transfer Land**) on the same terms and conditions as the Development Lot Sale Contract (as defined in the OSD PDA) (other than clauses 47, 48 and 49) for a purchase price of [REDACTED] (exclusive of GST).

(b) Macquarie and the Principal will comply with the following process in respect of the transfer of land under clause 31.11(a):

- (i) Macquarie will prepare and register a plan of subdivision to create the land identified in clause 31.11(a)(ii) (if required);
- (ii) when the parties reasonably expect that the transfer of the freehold title to the North Tower Lot from the Principal to Macquarie Bank Limited will occur, the Principal will prepare two execution versions of the sale contract for the Principal Transfer Land by completing the details of the sale contract where required and attaching relevant title documents and other statutory documents;
- (iii) the Principal and Macquarie will then each procure execution of a counterpart of the sale contract as soon as is practicable in the circumstances;
- (iv) the Principal and Macquarie Bank Limited will then simultaneously exchange and complete the sale contract for the Principal Transfer Land; and
- (v) Macquarie will attend to the stamping of the sale contract and transfer for the Principal Transfer Land.

(c) Macquarie must not lodge, and must ensure that Macquarie Bank Limited does not lodge, a caveat on the title to the Principal Transfer Land in respect of the interest of Macquarie Bank Limited under this clause 31.11(c).

- (d) The obligations of Macquarie and the Principal under this deed continue and the terms of this deed do not merge on completion of the sale contract referred to in this clause 31.11(d).

31.12 Transfer of substratum land from Macquarie Bank Limited to the Principal

- (a) At or as soon as practicable after registration of the Subdivision Plan under clause 31.3, Macquarie must procure that Macquarie Bank Limited transfers to the Principal the freehold title of the land comprising:

- (i) the Relevant Land; less
- (ii) any land contained within Lot 2 in the Subdivision Plan registered pursuant to clause 31.3,

(together, the **MBL Transfer Land**) on the same terms and conditions as the contract for sale in relation to 9-19 Elizabeth Street, Sydney that the Principal and Macquarie Bank Limited entered into on or before the Commencement Date, for a purchase price of [REDACTED] (exclusive of GST).

- (b) As soon as practicable after registration of the Subdivision Plan under clause 31.3, Macquarie and the Principal will comply with the following process in respect of the transfer of land under clause 31.12(a) (and the Principal agrees that Macquarie will be deemed to have complied with its obligations in the paragraphs below if those obligations are performed by Macquarie Bank Limited):

- (i) Macquarie will prepare two execution versions of the sale contract for the MBL Transfer Land by completing the details of the sale contract where required and attaching relevant title documents and other statutory documents;
- (ii) the Principal and Macquarie will then each procure execution of a counterpart of the sale contract as soon as is practicable in the circumstances;
- (iii) the Principal and Macquarie Bank Limited will then simultaneously exchange and complete the sale contract for the MBL Transfer Land; and
- (iv) the Principal will attend to the stamping of the sale contract and transfer for the MBL Transfer Land.

- (c) If, for whatever reason, Macquarie is unable to procure the transfer of the MBL Transfer Land to the Principal by the Date of Completion, then, for the period commencing on the Date of Completion and expiring on the date of transfer of the MBL Transfer Land to the Principal, Macquarie must procure that Macquarie Bank Limited grants a licence in favour of the Principal to permit the Principal and its Associates to access the MBL Transfer Land and do all things on and in respect of the MBL Transfer Land as if the Principal were the freehold owner of that land, provided that such access and use is undertaken in accordance with any relevant obligations of the Principal under this deed. Macquarie acknowledges and agrees that:

- (i) the Principal may, at any time after the Date of Completion, acquire the MBL Transfer Land by compulsory process if Macquarie will be unable to procure the transfer of the MBL Transfer Land to the Principal;
- (ii) Macquarie will procure that Macquarie Bank Limited agrees that the compensation payable in respect of the acquisition of the interest in land referred to in clause 31.12(c)(i) will be [REDACTED] (exclusive of GST); and

- (iii) despite clause 31.12(c)(ii), if there is any compensation payable by the Principal to Macquarie Bank Limited in respect of the acquisition, Macquarie will reimburse the Principal the amount of such compensation.
- (d) The Principal must not lodge a caveat on the title to the MBL Transfer Land in respect of the interest of the Principal under this clause 31.12.
- (e) The obligations of Macquarie and the Principal under this deed continue and the terms of this deed do not merge on completion of the sale contract referred to in this clause 31.12.

31.13 **ESL Easement Instruments**

The Principal and Macquarie acknowledge and agree that the following will apply to the ESL Easement Instruments:

- (a) in relation to the connection of the Eastern Suburbs rail line to the Martin Place Metro Station Lot at basement level 5:
 - (i) Macquarie will include the site of the proposed easement in favour of RailCorp and Sydney Trains on the Subdivision Plan in the location within the Martin Place Metro Station Lot as agreed by the Principal; and
 - (ii) the Principal will, at its Cost:
 - (A) liaise with and procure the agreement of RailCorp and Sydney Trains (as required) to the terms and conditions of any easement rights in respect of the Eastern Suburbs rail line connection;
 - (B) procure the preparation of an instrument (such as a transfer granting easement) which will enable the creation of the easement terms and conditions agreed by RailCorp and Sydney Trains; and
 - (C) procure the execution by RailCorp and Sydney Trains of the instrument and the registration of the instrument on the title to the Martin Place Metro Station Lot after the Stage 1 Subdivision Documents have been registered; and
- (b) in relation to the connection of the Eastern Suburbs rail line to the Retail Lot South at basement level 1:
 - (i) Macquarie must, at its Cost, procure the execution by RailCorp and Sydney Trains of the ESL Easement Instrument (Retail Lot South) and the registration of the ESL Easement Instrument (Retail Lot South), together with and at the same time as the Subdivision Documents, or if clause 31.8 applies, the Stage 1 Subdivision Documents; and
 - (ii) if the Principal, RailCorp or Sydney Trains requires amendments to the ESL Easement Instrument (Retail Lot South), the Principal must seek Macquarie's consent to the amendments. Macquarie must act reasonably and without unreasonable delay if the amendments proposed by the Principal, RailCorp or Sydney Trains are no more detrimental than the Eastern Suburbs Rail Line easement instrument that will burden the Metro Station Lot.

31.14 **Operation of the registered Building Management Statement**

If the Building Management Statement has been registered on title as contemplated under this clause 31, during the period commencing on the date of such registration and expiring

on the date on which the Development Lot is transferred to the Development Lot Purchaser (as that term is defined in the OSD PDA), in respect of that Development Lot:

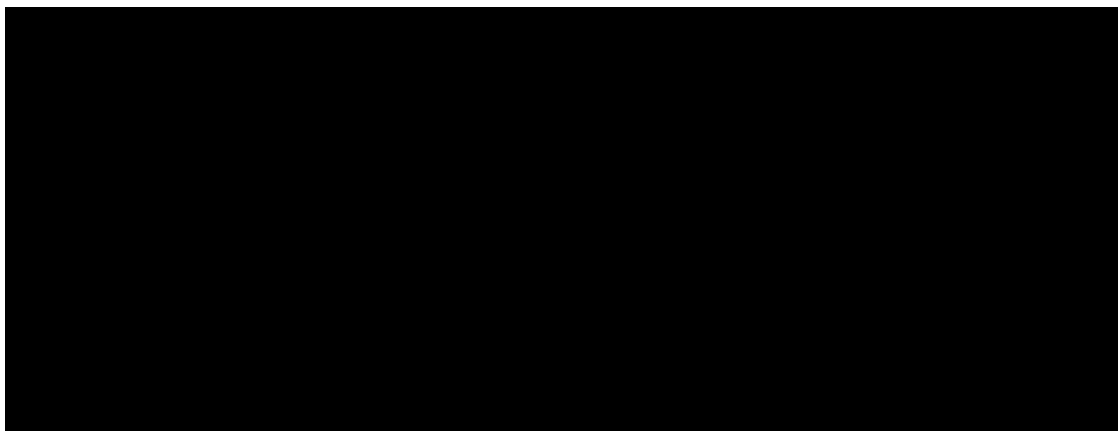
- (a) Macquarie agrees to be bound by and to comply with the terms and conditions of the registered Building Management Statement (to the extent that such terms and conditions apply) as if it were the registered proprietor of the Development Lot, provided that to the extent there is any inconsistency between the terms and conditions of the registered Building Management Statement and this deed, this deed will prevail;
- (b) Macquarie is responsible for all Costs that are payable under the registered Building Management Statement by the registered proprietor of the Development Lot in respect of shared facilities and shared areas and must either:
 - (i) pay those Costs directly; or
 - (ii) subject to any relevant clause in this deed relating to the payment of amounts by Macquarie (such as paying the Costs of utilities consumed in respect of the OSD Works), promptly reimburse the Principal for those Costs following a demand by the Principal for payment; and
- (c) the Principal will keep Macquarie informed of any meetings of the building management committee under the registered Building Management Statement and Macquarie may in its discretion, if Macquarie is not in breach of this deed at that time:
 - (i) attend all meetings of the building management committee; and/or
 - (ii) direct the Principal as to how the registered proprietor of the Development Lot is to vote in respect of any matters being decided by the building management committee by way of resolution and the Principal must ensure that the registered proprietor of the Development Lot votes in the manner directed by Macquarie.

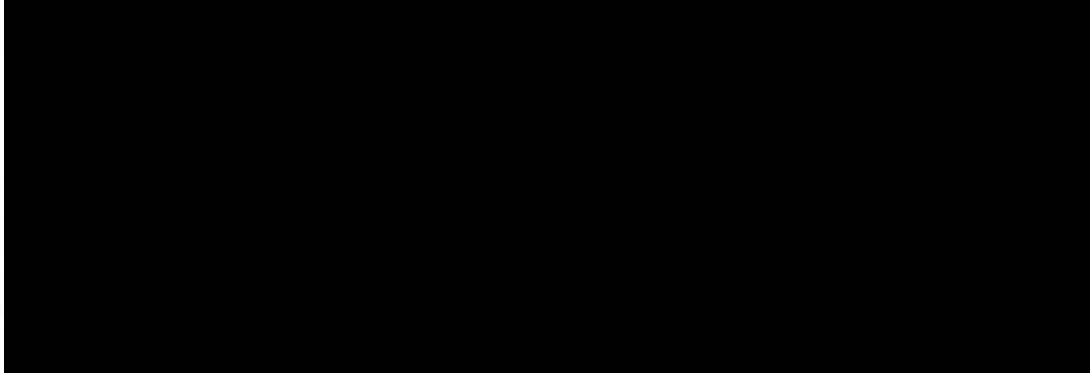
31.15 **Survival**

This clause 31 survives termination or expiry of this deed.

32. **RETAIL LEASES**

- (a) The Principal must, at least 10 Business Days prior to the date on which it reasonably anticipates will be the Construction Licence Commencement Date for Construction Site (Area 2) and Construction Site (Area 4), give written notice to Macquarie informing it of the anticipated Construction Licence Commencement Date.





33. MACQUARIE PAYMENT

33.1 Station Works D&C Savings

- (a) If at any point, but not later than 45 Business Days after the Last Date of Completion, Macquarie submits to the Principal sufficient evidence (in the opinion of the Principal, acting reasonably) that the Station Works D&C Sum actually incurred is greater than the Station Works D&C Cost Estimate, no payment in relation to the Station Works D&C Savings is payable by Macquarie.
- (b) If no submission has been made under 33.1(a), within 60 Business Days of the Last Date of Completion, Macquarie must submit to the Principal the Station Works D&C Sum actually incurred by Macquarie, including evidence to substantiate the proposed amount.
- (c) Macquarie must pay to the Principal an amount equal to [REDACTED] of the Station Works D&C Savings within 10 Business Days of notification by the Principal of the Station Works D&C Savings.
- (d) The parties acknowledge that the expected Station Works D&C Sum for the Station Works, (as of the Commencement Date), the Additional SDD Scope and the Caverns Scope is the amount of [REDACTED] comprising the "Total Design Contract Sum" of [REDACTED] and the "Total Construction Contract Sum" of [REDACTED] as detailed in Schedule E1, less [REDACTED] equal to the Principal's contribution to TSE Adjustment Works.
- (e) For the avoidance of doubt:
 - (i) if the Station Works D&C Savings is zero, neither party is required to make a payment in relation to the Station Works D&C Savings; and
 - (ii) where the Station Works D&C Sum is greater than the Station Works D&C Cost Estimate, the Principal is not required to make a payment to Macquarie in relation to the difference.

33.2 Payment of Macquarie Payment

Macquarie must pay the Macquarie Payment referred to in clause 33.1 to the Principal by way of unendorsed bank cheque, or by such other method the Principal reasonably requires, without set-off or counterclaim, and without any deduction to the extent permitted by Law.

33.3 Interest on unpaid Macquarie Payments

If Macquarie does not pay the Macquarie Payment referred to in clause 33.1 by the date on which that Macquarie Payment is due, Macquarie must pay simple interest at the rate of [REDACTED] above the Bank Bill Rate from the date that Macquarie Payment was due and payable

until the date that Macquarie Payment is paid, and that interest will be a debt due and payable by Macquarie to the Principal.

33.4 Macquarie Payments are non-refundable

- (a) Subject to any express provision in this deed to the contrary, the Macquarie Payments referred to in clause 33.1 are the Principal's property and are not refundable in any circumstances.
- (b) This clause does not limit Macquarie's right to commence proceedings against the Principal for the Principal's breach of a Project Document.

33.5 Incorrect amount paid

If Macquarie pays an amount to the Principal under this clause 33 and it is found later that the amount payable should have been:

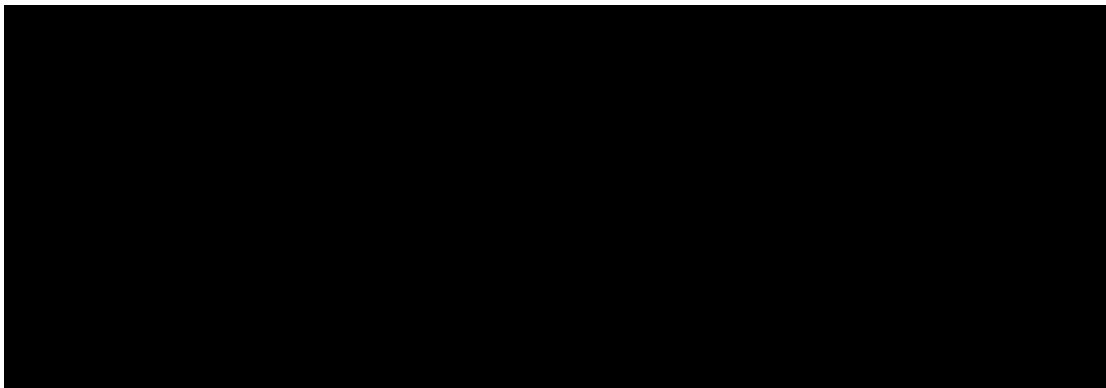
- (a) higher, then Macquarie must immediately pay the Principal the difference between the amount paid to the Principal and the amount that should have been paid to the Principal; or
- (b) lower, then the Principal must repay the difference to Macquarie.

34. PRINCIPAL PAYMENTS

34.1 Core Payment 2

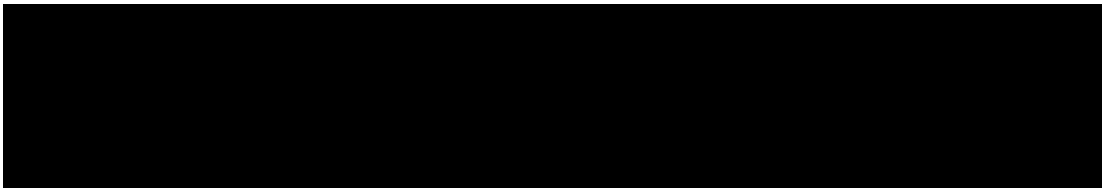
- (a) The Principal must pay Core Payment 2 to Macquarie in accordance with this clause 34 and the Payment Schedule.
- (b) The Payment Schedule may set out (among other things):
 - (i) those parts of the Station Works which must be completed before Macquarie may claim a progress payment with respect to that part;
 - (ii) the payment Macquarie may claim for each progress payment;
 - (iii) any limitations or other constraints on Macquarie's ability to make claims for payment; and
 - (iv) the restrictions (if any) on the timing and sequencing of the Station Works with which Macquarie must comply.

In addition to the Payment Schedule, clause 34.2(l) sets out further payment constraints that are to apply.



34.2 **Payment claims**

- (a) Macquarie may give the Principal's Representative a progress claim with respect to the Contract Amount and any other amount payable to Macquarie under this deed:
 - (i) on the twentieth day of each month (or if this day is not a Business Day, the next Business Day after this day) up to the Last Date of Completion;
 - (ii) in respect to correction of any Defects for which Macquarie is entitled to be reimbursed under clause 30.3(b), on the twentieth day of each month (or if this day is not a Business Day, the next Business Day after this day) up to the expiry of the last Defects Correction Period;
 - (iii) 30 Business Days after:
 - (A) the issue of the Notice of Completion for the last Portion to achieve Completion; and
 - (B) the expiry of the last Defects Correction Period; and
 - (iv) in relation to the Interface Management Services carried out pursuant to clause 29.2, on the twentieth day of each month (or if this day is not a Business Day, the next Business Day after this day) from the Date of Completion of the first Portion to achieve Completion up to 30 Business Days after the date specified in the notice issued under clause 29.2(c) (if applicable), and if no date is specified in that notice, 30 Business Days after receipt by Macquarie of that notice.
- (b) For each claim made under clause 34.2(a), Macquarie must:
 - (i) give the Principal's Representative a claim in a format required by the Principal's Representative (including electronic format) showing the amount Macquarie claims;
 - (ii) in the case of the payment claims issued:
 - (A) after the issue of the Notice of Completion for the last Portion to achieve Completion;
 - (B) after the expiration of the last Defects Correction Period; and
 - (C) pursuant to clause 34.2(a)(iv),comply with clause 34.2(n).
- (c) Each progress claim made under clause 34.2(a) must set out or be accompanied by:
 - (i) all details, calculations, supporting documentation and other information required to substantiate the amounts claimed; and
 - (ii) such other documentation or information as the Principal's Representative may reasonably require from time to time.



- (e) Notwithstanding clause 34.2(d), the Principal's Representative must, on behalf of the Principal, within 10 Business Days after receipt of Macquarie's claim under clause 34.2(a), issue to Macquarie and the Principal, a payment schedule stating the amount (if any) which the Principal's Representative assesses to be then payable by the Principal to Macquarie under this deed and which the Principal proposes to pay to Macquarie or the amount which the Principal's Representative assesses to be then payable by Macquarie to the Principal, including details of the calculation of the progress amount.
- (f) In issuing a payment schedule, the Principal's Representative:
 - (i) may deduct from the amount which would otherwise be payable to Macquarie or DevCo any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including any amount which the Principal is entitled to set-off or withhold under clause 34.8; and
 - (ii) must, if the payment schedule shows an amount less than the amount claimed by Macquarie in the progress claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (g) If Macquarie does not give the Principal's Representative a progress claim at a time required by clause 34.2(a), the Principal's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a progress claim was made at the time required.
- (h) A payment schedule issued under clause 34.2(e) or 34.2(g) will separately identify the sum of the amounts due on account of the Contract Amount.
- (i) If the amount set out in a payment schedule issued under clause 34.2(e) is different to the amount in Macquarie's progress claim or if the Principal's Representative issues a payment schedule under clause 34.2(g), the Principal will issue a recipient created tax invoice or adjustment note (as the case may be) to Macquarie to reflect the amount in the payment schedule.
- (j) Within the earlier of 15 Business Days after the date of Macquarie's progress claim in accordance with clause 34.2(a) or within 5 Business Days after the issue of a payment schedule in accordance with clause 34.2(g):
 - (i) where the payment schedule provides that an amount is payable by the Principal to Macquarie, but subject to clauses 34.4, 34.5, 34.6 and 34.8 and the Payment Schedule, the Principal must pay Macquarie the progress payment due to Macquarie as certified in the payment schedule; and
 - (ii) where the payment schedule provides that an amount is payable by Macquarie to the Principal, Macquarie must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (k) If Macquarie lodges a progress claim earlier than at the times specified under clause 34.2(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that progress claim earlier than it would have been obliged had Macquarie submitted the progress claim in accordance with this deed.
- (l) Subject to clause 34.1(d) but otherwise despite any other provisions of this deed to the contrary, the amount of any progress claim to which Macquarie is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 34.2(e) as the amount payable to Macquarie arising out of or in any way in connection with this deed will:

- (i) not include the following amounts:
 - (A) any amount which this deed provides cannot be claimed or is not payable because of the failure by Macquarie to take any action (including to give any notice to the Principal or the Principal's Representative);
 - (B) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
 - (C) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Payment Schedule);
 - (D) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
 - (E) any amount in respect of which Macquarie has failed to provide supporting information as required by this deed; or
 - (F) any amount for work which is not in accordance with this deed;
- (ii) deduct the following amounts:
 - (A) any amounts which have become due from Macquarie or DevCo to the Principal under this deed; and
 - (B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the progress claim, including under clauses 34.4, 34.5 or 34.8;
- (iii) in determining amounts to be excluded or deducted under clauses 34.2(1)(i) and (ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and
- (iv) be determined having regard to the Contract Amount.
- (m) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to Macquarie or DevCo by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.
- (n) Macquarie must include in the payment claim lodged by it:
 - (i) after the issue of the Notice of Completion for the last Portion to achieve Completion;
 - (ii) after the expiration of the last Defects Correction Period; and
 - (iii) pursuant to clause 34.2(a)(iv),

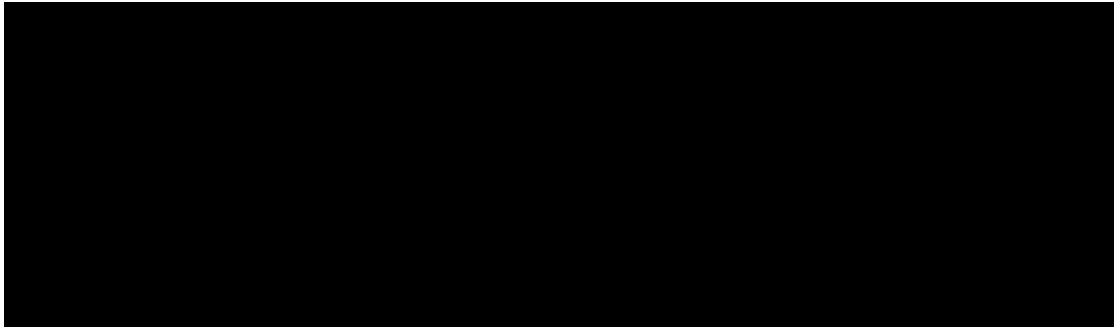
all Claims that Macquarie wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Station Works which occurred:

 - (iv) in the case of the payment claim referred to in clause 34.2(n)(i), prior to the date of that payment claim;

- (v) in the case of the payment claim referred to in clause 34.2(n)(ii), in the period between the date of the payment claim referred to in clause 34.2(n)(i) and the date of the payment claim (but not including any Claims for activities undertaken in accordance with clause 29.2); and
- (vi) in the case of the payment claim referred to in clause 34.2(n)(iii), in the period between the date of the payment claim referred to in clause 34.2(n)(i) and the date of the payment claim (but not including any Claims made in a payment claim lodged pursuant to clause 34.2(n)(v)).
- (o) Without limiting Macquarie's right to raise any defence in relation to a Claim made by the Principal against Macquarie, Macquarie releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Station Works that occurred prior to the date of submission of the relevant payment claim referred to in clauses 34.2(n)(i), 34.2(n)(ii) and 34.2(n)(iii), except for any claim which:
 - (i) has been included in the relevant payment Claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 34.2(a); and
 - (ii) has not been barred under another provision of this deed.

34.3 Effect of payment schedules and payments

- (a) Neither the issue of a payment schedule under clause 34.2(e) or clause 34.2(g), nor the making of any payment pursuant to any such payment schedule, will:
 - (i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
 - (ii) constitute evidence of the value of any work or an admission of Liability or evidence that work has been executed or completed in accordance with this deed; or
 - (iii) prejudice the right of either party to dispute under clause 52 whether any amount certified as payable in a payment schedule is the amount properly due and payable under this deed (and on determination, whether under clause 52 or as otherwise agreed, of the amount properly due and payable, the Principal or Macquarie, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is determined to be properly due and payable),and any payments made pursuant to a payment schedule are payments on account only.
- (b) The Principal's Representative may at any time correct any error in a payment schedule.



34.4 **Provision of documentation and other requirements**

- (a) Subject to clause 34.1(d), the Principal is not obliged to pay Macquarie any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until Macquarie has:
- (i) effected and is maintaining all Insurances that Macquarie is required to effect and maintain under clause 41;
 - (ii) complied with clause 6;
 - (iii) provided a statement by the Quality Manager in the form of Schedule B19 that the parts of Macquarie's Activities in respect of which any payment is claimed comply with the requirements of this deed;
 - (iv) where clause 34.7(q) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by Macquarie pursuant to that clause; and
 - (v) provided the Principal's Representative with a statutory declaration in the form of Schedule B20 which has been duly executed:
 - (A) by a representative of Macquarie who is in a position to know the facts declared; and
 - (B) on the date the relevant payment claim was issued.
- (b) Subject to clause 34.1(d), the Principal is not obliged to pay Macquarie any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until Macquarie has provided updated SDD Programs as required by this deed.
- (c) Any amount withheld by the Principal under clauses 34.4(a) or 34.4(b) must be paid within 10 Business Days after Macquarie has complied with the relevant obligation.

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

- (a) If a worker or a Subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials (including Materials) supplied for, or work performed with respect to, the Station Works, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid will be a debt due and payable from Macquarie to the Principal.
- (b) If the Principal receives notices of:
- (i) Macquarie being placed under administration; or
 - (ii) the making of a winding up order in respect of Macquarie,
- the Principal will not make any payment to a worker or Subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.
- (c) If any moneys are shown as unpaid in Macquarie's statutory declaration under clause 34.4(a)(v), the Principal may withhold the moneys so shown until Macquarie provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons. The parties acknowledge and agree that this

clause 34.5(c) applies to amounts which are due and payable (and not disputed amounts).

- (d) Nothing in this clause 34.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).
- (e) If a Subcontractor has become entitled to suspend work under a Subcontract in accordance with the SOP Act because of a failure by Macquarie or any Subcontractor to pay moneys due and payable to that Subcontractor, the Principal may pay to the Subcontractor the amount owing to the Subcontractor in connection with that work, and any amount so paid by the Principal will be a debt due and payable by Macquarie to the Principal. Where practicable, the Principal will provide prior written notice to Macquarie prior to paying the relevant Subcontractor.
- (f) Notwithstanding clause 34.5(e), if any amount is:
 - (i) certified as payable; or
 - (ii) otherwise due and payable (and not disputed amounts),

to a Subcontractor under a Subcontract, and Macquarie or the relevant Subcontractor does not pay such amount to that Subcontractor in accordance with that Subcontract, then the Principal may pay such amount to that Subcontractor provided it has given Macquarie 10 Business Days' notice of its intention to do so, and any amount so paid by the Principal to that Subcontractor will be a debt due and payable by Macquarie to the Principal.

34.6 **Payment for unfixed Construction Materials**

- (a) The value of unfixed Construction Materials intended for incorporation in the Station Works but not yet incorporated are not to be included in a progress claim under clause 34.2(a) and the Principal is under no obligation to pay for such Construction Materials unless the following conditions precedent have been satisfied:
 - (i) Macquarie:
 - (A) has provided to the Principal at the same time as its progress claim under clause 34.2(a) a Bank Guarantee that complies with the requirements of clause 6.1(b), for an amount equal to the payment claimed for the Construction Materials; and
 - (B) gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed Construction Materials will vest in the Principal upon payment;
 - (ii) the Construction Materials are clearly marked as the property of the Principal;

- (iii) the Construction Materials are properly stored in a place approved by the Principal's Representative (not to be unreasonably withheld); and
 - (iv) there is evidence (in a form satisfactory to the Principal) that Macquarie has registered a Security Interest in favour of the Principal in the unfixed Construction Materials.
- (b) Upon payment in full in respect of unfixed Construction Materials title in the relevant unfixed Construction Materials will vest in the Principal.
- (c) If Macquarie provides a Bank Guarantee for payment for unfixed Construction Materials, the Principal must release the Bank Guarantee to Macquarie within [REDACTED] after those Construction Materials:
- (i) are incorporated into the Station Works; and
 - (ii) comply with the requirements of this deed.

34.7 SOP Act

- (a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) Macquarie must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) In responding to Macquarie under the SOP Act, the Principal's Representative also acts as the agent of the Principal.
- (d) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify Macquarie that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,
 then a payment schedule issued by the Principal's Representative under this deed which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).
- (e) Without limiting clause 34.7(c), the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (f) For the purposes of this deed, the amount of the progress payment to which Macquarie is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 34.2 less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (g) Macquarie agrees that:
 - (i) the date prescribed by clause 34.2(a) as the date on which Macquarie is entitled to make a progress claim is, for the purposes of the SOP Act (including section 8 of the SOP Act), the date for the serving of a payment claim; and

- (ii) a progress claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no Liability to make a payment of any amount in respect of a progress claim unless the amount has been included in a payment schedule issued by the Principal's Representative in accordance with clause 34.2(e) or 34.2(g).
- (h) Nothing in this deed will be construed to:
 - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of a Project Document (unless the Principal would have been in breach of a Project Document if the SOP Act had no application); or
 - (ii) subject to clause 34.7(h)(i), give to Macquarie rights under this deed which extend or are in addition to rights given to Macquarie by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (i) If Macquarie suspends the whole or part of Macquarie's Activities pursuant to the SOP Act then, except to the extent (if any) expressly provided under the SOP Act, the Principal will not be liable for and Macquarie is not entitled to Claim any Loss suffered or incurred by Macquarie as a result of the suspension.
- (j) Macquarie indemnifies and must keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:
 - (i) a suspension by a Subcontractor of work which forms part of Macquarie's Activities pursuant to the SOP Act unless and except to the extent that the suspension is due to non-payment by the Principal of an amount that is due and payable under this deed; or
 - (ii) a failure by Macquarie to comply with its obligations under clause 34.7(b).
- (k) Macquarie agrees that for the purposes of section 17(3) of the SOP Act:
 - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of Macquarie's Activities is to be made; and
 - (ii) Macquarie must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (l) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to Macquarie:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 34.2(e) or clause 34.2(g);
 - (ii) if it is subsequently determined pursuant to this deed that Macquarie was not entitled under this deed to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by Macquarie to the Principal which Macquarie must pay to the Principal upon demand and in respect of which Macquarie is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by Macquarie to the Principal upon demand and in respect of which Macquarie is

not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and

- (iv) the Principal's Representative:
 - (A) is not bound by the adjudication determination;
 - (B) may reassess the value of the work that was valued by the adjudicator; and
 - (C) may, if it disagrees with the adjudication determination, express its own valuation in any payment schedule.
- (m) Without limiting clause 34.8, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (n) If the Principal withholds from money otherwise due to Macquarie any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by Macquarie from the Principal; and
 - (ii) the period during which the Principal retains money due to Macquarie pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to Macquarie has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to Macquarie must be made.
- (o) Macquarie agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (p) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from Macquarie to the Principal.
- (q) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and Macquarie:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then Macquarie must so notify the Principal within 5 Business Days after the occurrence of the event in clause 34.7(q)(i) or 34.7(q)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

34.8 **Right of set-off**

(a) The Principal's Representative may (on behalf of the Principal) in any payment schedule issued under clauses 34.2(e) or 34.2(g) withhold, set-off or deduct from the money which would otherwise be certified as payable to Macquarie or DevCo or which would otherwise be due to Macquarie or DevCo under this deed or the OSD PDA:

- (i) any debt or other moneys due from Macquarie to the Principal (including any Macquarie Payment and any debt due from Macquarie to the Principal pursuant to section 26C of the SOP Act);
- (ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act;
- (iii) any amount that the Principal is entitled to withhold under clause 34.4; or
- (iv) any bona fide claim to money which the Principal may have against Macquarie whether for damages (including liquidated damages) or otherwise, including any amount referred to in clause 23.12(l),

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

(b) This clause 34.8 will survive the termination of this deed.

34.9 **Not used**

34.10 **Interest**

(a) The Principal will pay simple interest at the rate of ■■■ above the Bank Bill Rate on any:

- (i) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 34.2(e) but which is not paid by the Principal within the time required by this deed;
- (ii) damages; and
- (iii) amount which is found, after the resolution of a Dispute, to be payable to Macquarie, and which has not been paid by the Principal,

from the date that amount was first due and payable until the date that amount is paid.

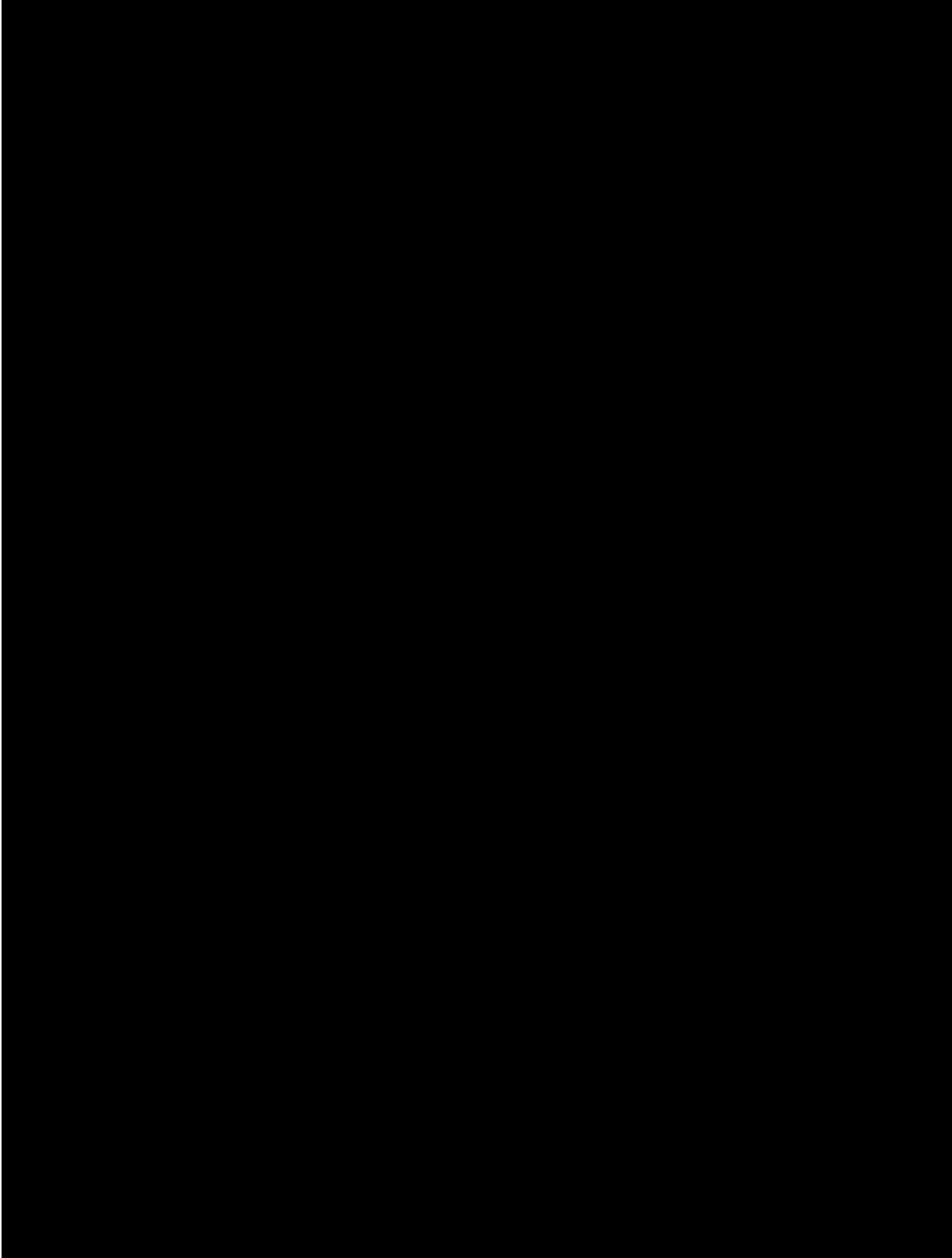
(b) This will be Macquarie's sole entitlement to interest, including to damages for loss of use of, or the cost of borrowing, money.

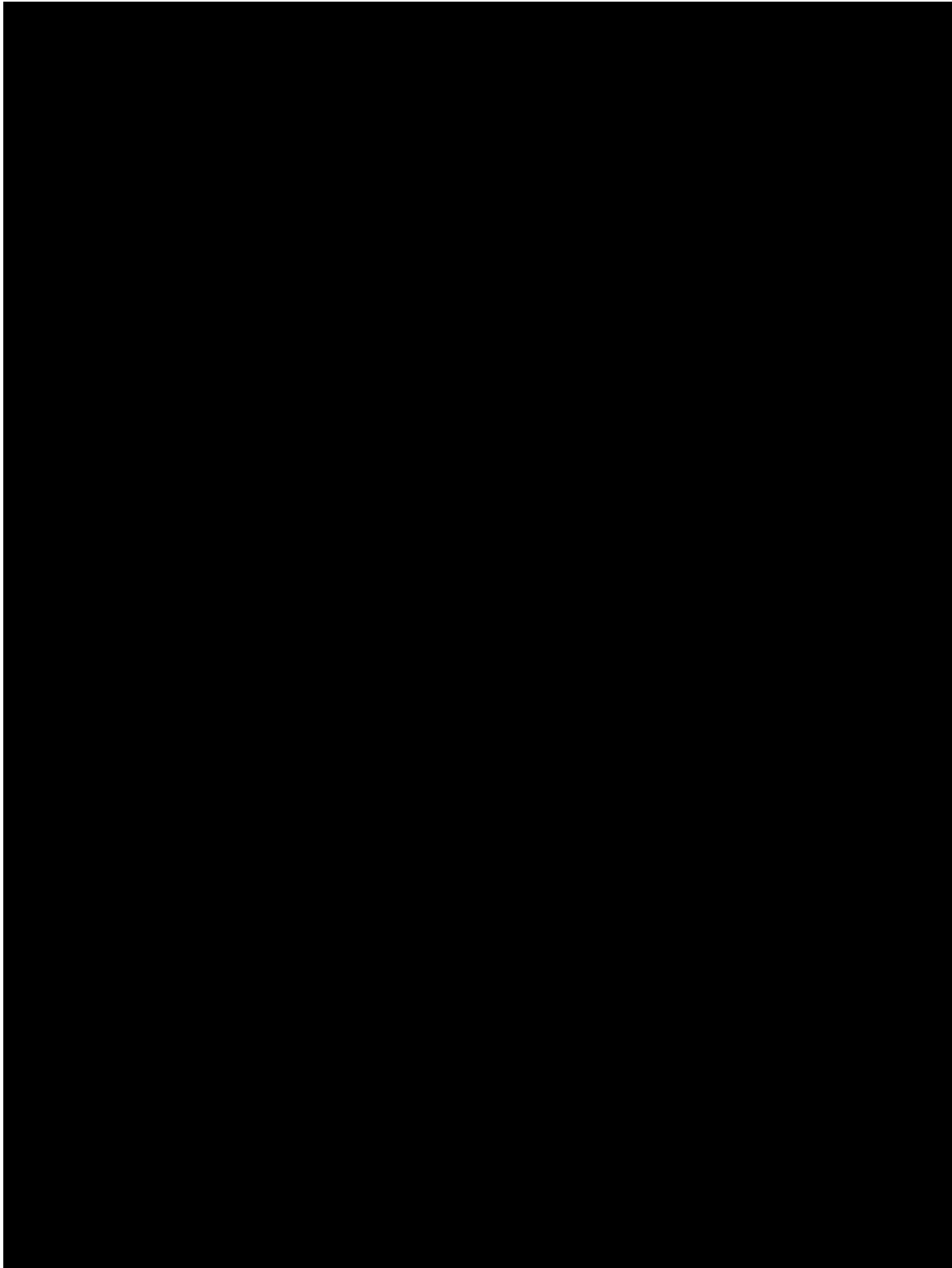
34.11 **Title**

Title in all items forming part of the Project Works (other than the Concourse Link Works) will pass progressively to the Principal on the earlier of payment for, or incorporation of, such items to the Construction Site. Risk in all such items remains with Macquarie in accordance with clause 41.

34.12 Payments

The Principal may withhold payment of any part of the Contract Amount which is the subject of a payment claim under clause 34.2(a) but not included in a payment schedule issued pursuant to clause 34.2(e).





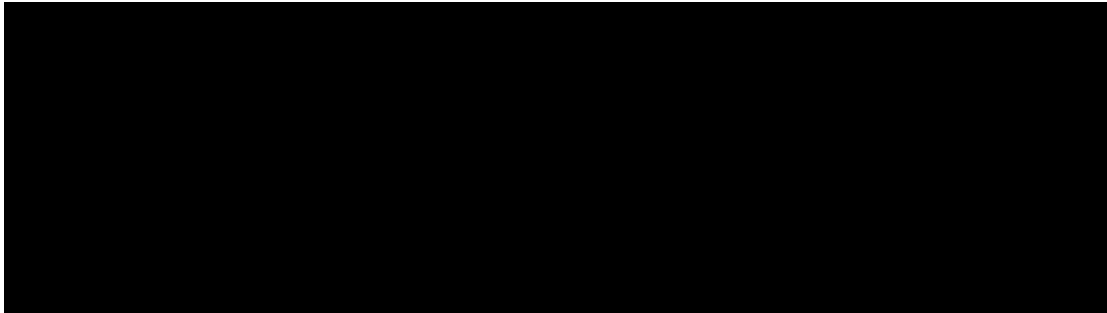
35. PRINCIPAL INITIATED VARIATIONS

35.1 Variation Impact Request

- (a) The Principal's Representative may at any time issue to Macquarie a Variation Impact Request setting out the details of a proposed Variation which the Principal is considering.

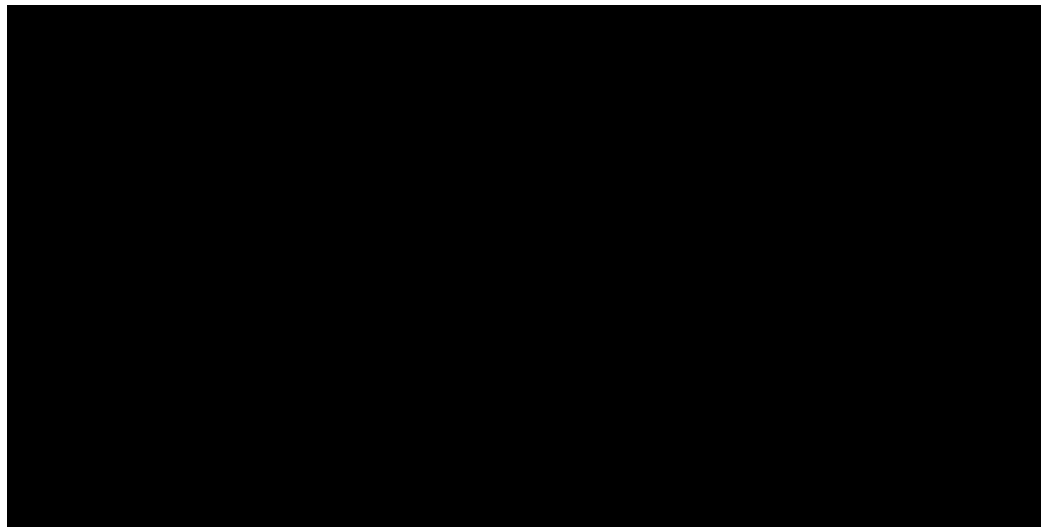
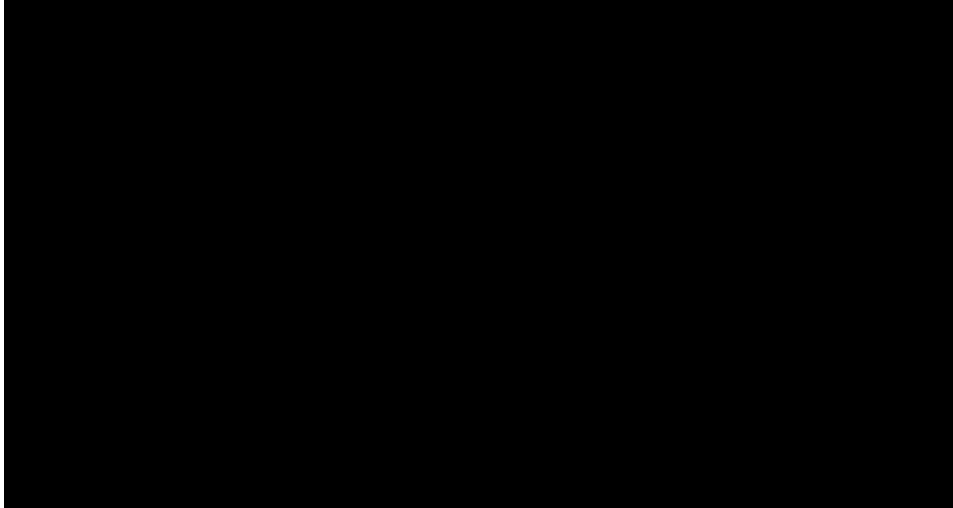
- (b) The Variation Impact Request must request that Macquarie provides an estimate of the third party Costs that Macquarie will incur in preparing a Variation Impact Proposal, and Macquarie must provide that estimate within 5 Business Days after receipt of the Variation Impact Request (or such longer period as is reasonable having regard to the nature of the request).
- (c) The Principal will not be obliged to proceed with any Variation proposed in a Variation Impact Request.

35.2 Variation Impact Proposal



- (c) The Variation Impact Proposal must set out detailed particulars of Macquarie's view on:
 - (i) the Variation Costs or Variation Savings (if any) of the proposed Variation;
 - (ii) the effect which the proposed Variation will have on the SDD Program (including any extension of time required to a Date for Milestone Achievement, a Date for Construction Completion or a Date for Completion and the measures Macquarie proposes to take to avoid, mitigate or minimise the effect of the proposed Variation on the SDD Program);
 - (iii) any Approvals required to implement the proposed Variation, and the effect of the proposed Variation on any existing Approvals and any OSD Planning Approval and on the ability of Macquarie or the OSD Developer to comply with those Approvals;
 - (iv) the effects which the proposed Variation will have on Macquarie's ability to satisfy its obligations under a Project Document (including any warranties given by Macquarie under a Project Document) or exercise its rights under a Project Document;
 - (v) any relief which is required from Macquarie's obligations under this deed to ensure that it is left in a no better and no worse position than it would be in if the Variation were not implemented;
 - (vi) the effect Macquarie anticipates the Variation will have on the functionality or integrity of the elements of Macquarie's Activities, the Project Works and the Temporary Works and the quality or performance standards required by a Project Document, including specific details of:
 - (A) the elements of Macquarie's Activities, the Project Works and the Temporary Works that will be affected;
 - (B) how and to what extent the functionality or integrity of those elements will be affected;
 - (C) the quality or performance standards affected and how and to what extent they will be affected;

- (vii) whether an OSD Variation will be required to enable the proposed Variation to be implemented or as a consequence of the proposed Variation;
- (viii) whether the proposed Variation will result in, or is likely to result in:



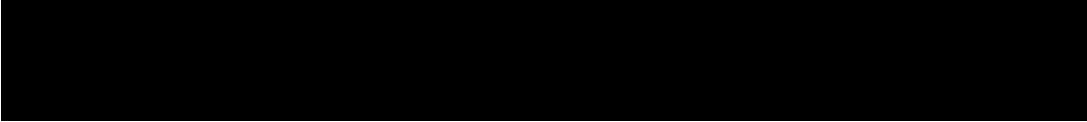
- (x) the quantum of any potential claim by Macquarie under clause 2 of Schedule E7 to the OSD PDA; and
- (xi) any other information requested by the Principal in the Variation Impact Request.

35.3 Cost of preparing Variation Impact Proposal

If:

- (a) Macquarie prepares a Variation Impact Proposal in accordance with clause 35.2; and
- (b) the Principal does not issue a Variation Order in respect of the proposed Variation,

then the Principal must reimburse Macquarie within 20 Business Days after the demand from Macquarie the additional and reasonable, arm's length third party Costs incurred by Macquarie in:

- 
- (d) performing its obligations under clause 35.7.

35.4 **Election by the Principal**

Within 20 Business Days (or such longer period as the Principal reasonably requires, having regard to the size and complexity of the proposed Variation and whether the Variation requires a response from Macquarie under the OSD PDA) after receiving a Variation Impact Proposal, the Principal's Representative may:

- (a) accept the Variation Impact Proposal;
- (b) reject the Variation Impact Proposal; or
- (c) inform Macquarie that it does not wish to proceed with the proposed Variation,

by written notice to Macquarie (which in the case of clause 35.4(a) must be a Variation Order).

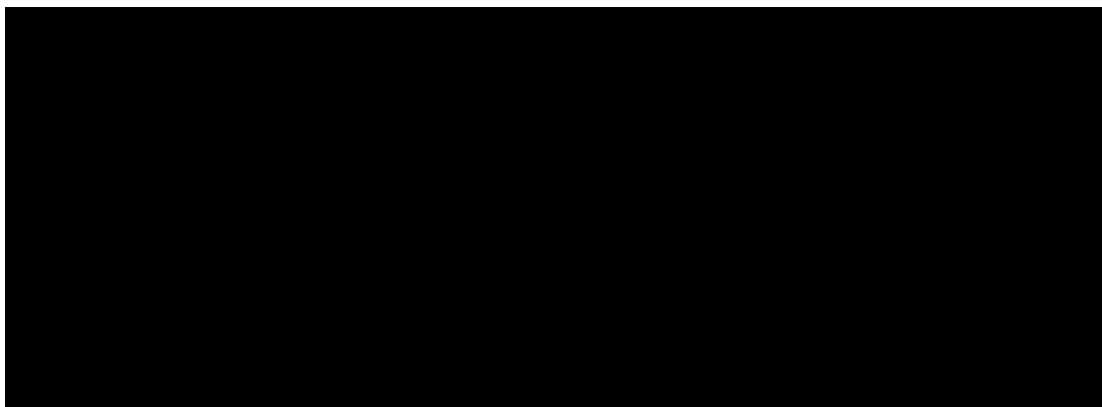
35.5 **Principal must consult with Macquarie in relation to Material Impacts**

- (a) If:
 - (i) a Variation Impact Proposal provided by Macquarie under clause 35.2(b) states that, in Macquarie's view, the proposed Variation will give rise to, or is likely to give rise to, a Material Impact; and
 - (ii) the Principal's Representative has not given a written notice to Macquarie that it does not wish to proceed with the proposed Variation pursuant to clause 35.4(c),

then, within 10 Business Days after receipt of the Variation Impact Request, the Principal's Representative must:

- (iii) consult in good faith with Macquarie's Representative with respect to the Material Impact identified by Macquarie in the Variation Impact Proposal; and
 - (iv) if, following consultation between the parties pursuant to clause 35.5(a)(iii), the Principal's Representative (acting reasonably) agrees that the proposed Variation, if implemented, will give rise to, or is likely to give rise to, a Material Impact:
 - (A) consult in good faith with Macquarie's Representative with respect to any Suggested Modification identified by Macquarie in the Variation Impact Proposal; and
 - (B) use reasonable endeavours to agree a mutually acceptable modification to the proposed Variation (which may include a modification to the timing of the proposed Variation or to the manner in which the Variation is proposed to be implemented) to lessen or avoid that Material Impact.
- (b) If, following consultation between the parties pursuant to clause 35.5(a)(iii), the Principal's Representative has not agreed with Macquarie's view that the proposed Variation, if implemented, will give rise to, or is likely to give rise to, a Material Impact, then:

- (i) within 10 Business Days after the consultation between the parties pursuant to clause 35.5(a)(iii), the Executive Negotiators must meet and:
 - (A) negotiate with a view to resolving whether the proposed Variation, if implemented, will give rise to, or is likely to give rise to, a Material Impact;
 - (B) consult in good faith with respect to any Suggested Modification identified by Macquarie in the Variation Impact Proposal or, if applicable, with respect to any suggested modification which Macquarie raises in the consultation process under this clause 35.5; and
 - (C) use reasonable endeavours to agree a mutually acceptable modification to the proposed Variation (which may include a modification to the timing of the proposed Variation or to the manner in which the Variation is proposed to be implemented) to lessen or avoid that Material Impact;
- (ii) if the Executive Negotiators agree to a mutually acceptable modification to the proposed Variation, then the Principal may give Macquarie a written notice:
 - (A) requesting that Macquarie provides a Variation Impact Proposal which reflects the matters agreed by the Executive Negotiators, in which case Macquarie must provide to the Principal the Variation Impact Request as soon as practicable, and clause 35.2 applies; or
 - (B) pursuant to clause 35.4(b), in which case the Principal may not then require that the parties consult in good faith under clause 35.7; and
- (iii) if the Executive Negotiators do not agree to a mutually acceptable modification to the proposed Variation within the 10 Business Days after the consultation between the parties pursuant to clause 35.5(a)(iii), then the Principal may:
 - (A) give Macquarie a notice pursuant to clause 35.4(b), in which case the Principal may not then require that the parties consult in good faith under clause 35.7;
 - (B) give Macquarie a notice pursuant to clause 35.4(c), withdrawing the proposed Variation; or
 - (C) give Macquarie a notice pursuant to clause 35.4(a), accepting the proposed Variation.



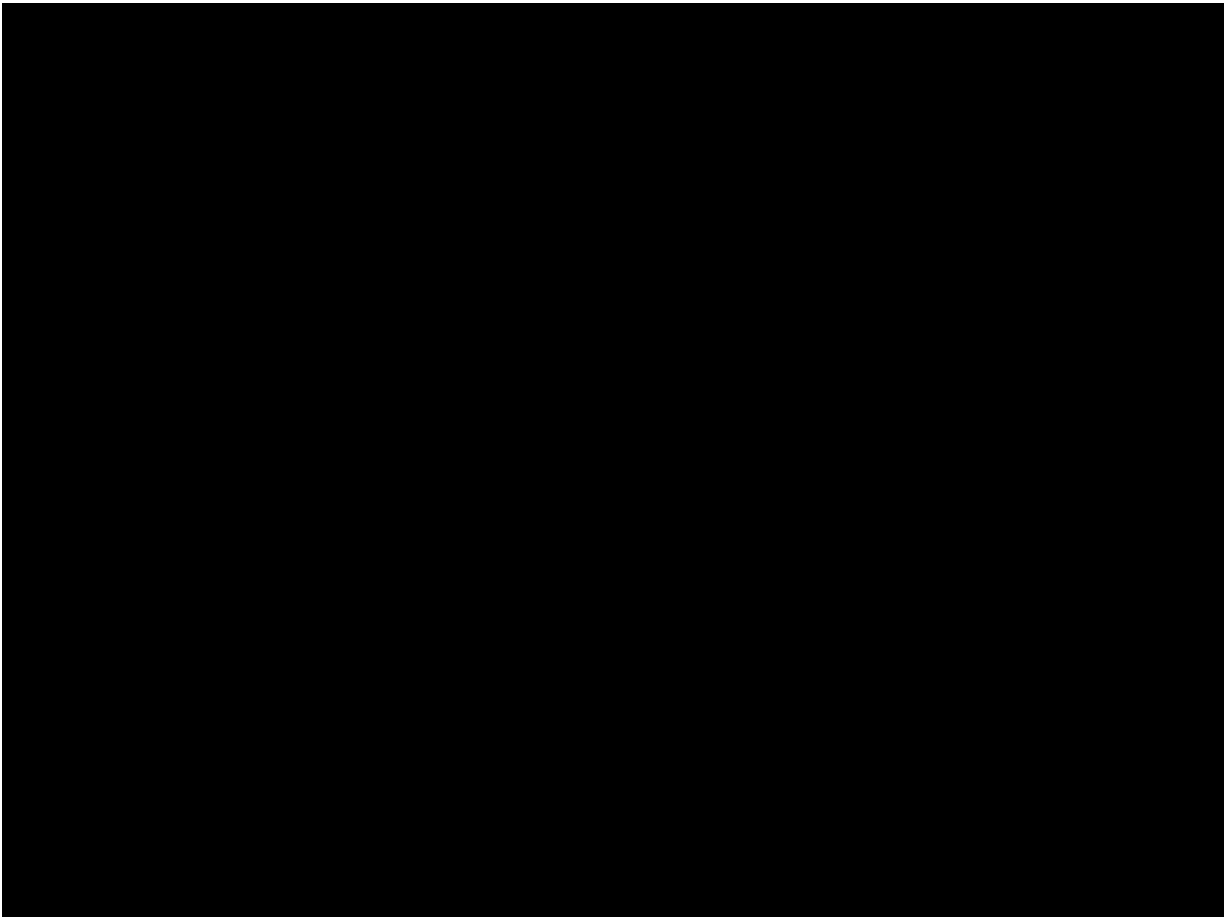
35.6 Principal accepts Variation Impact Proposal

If the Principal accepts the Variation Impact Proposal in accordance with clause 35.4(a):

- (a) Macquarie must implement the Variation on the basis of the Variation Impact Proposal (as submitted by Macquarie or otherwise agreed by the parties);
- (b) Macquarie will be relieved of its obligations under this deed to the extent specified in the Variation Impact Proposal (as submitted by Macquarie or otherwise agreed by the parties);
- (c) the relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion will be extended as specified in the Variation Impact Proposal; and
- (d) the Principal must pay Macquarie the Variation Costs, or Macquarie must pay the Principal the Variation Savings (as applicable) of the Variation in accordance with clause 37.

35.7 Principal rejects Variation Impact Proposal

If the Principal rejects the Variation Impact Proposal in accordance with clause 35.4(b), the Principal may require that the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Variation Impact Proposal which are in dispute.



35.8 **Parties reach agreement**

If the parties reach agreement on the disputed matters in the Variation Impact Proposal and the Principal directs Macquarie to implement the Variation by issuing a Variation Order:

- (a) Macquarie must implement the Variation on the basis of the Variation Impact Proposal (as varied by the parties' agreement);
- (b) Macquarie will be relieved of its obligations under this deed to the extent specified in the Variation Impact Proposal (as varied by the parties' agreement);
- (c) the relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion will be extended as specified in the Variation Impact Proposal (as varied by the parties' agreement); and
- (d) the Principal must pay Macquarie the Variation Costs, or Macquarie must pay the Principal the Variation Savings (as applicable) of the Variation in accordance with clause 37.

35.9 **If parties fail to reach agreement**

If the parties are unable to reach agreement within 20 Business Days after the Principal rejects the Variation Impact Proposal in accordance with clause 35.4(b), the Principal may refer the matter for dispute resolution in accordance with clause 52. In making this referral, the Principal must refer all matters under the Variation Impact Proposal that are in dispute to be determined in accordance with clause 52.

35.10 **Principal may direct that Variation proceed**

- (a) If the Principal refers the matter for dispute resolution under clause 35.9, the Principal may also direct Macquarie to implement the Variation by issuing a Variation Order whether or not any matters in dispute have been agreed in accordance with clause 52.
- (b) If the Principal issues a Variation Order under clause 35.10(a):
 - (i) the disputed matters in the Variation Impact Proposal will, until the Principal and Macquarie otherwise agree or a determination is made in accordance with clause 52, be reasonably determined by the Principal's Representative. In making his or her reasonable determination, the Principal's Representative must determine all disputed matters in the Variation Impact Proposal required to enable the Variation to be implemented;
 - (ii) Macquarie must proceed to implement the Variation on the basis of the Variation Impact Proposal and the matters determined by the Principal's Representative under clause 35.10(b)(i) (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 52);
 - (iii) Macquarie will be relieved of its obligations under this deed to the extent specified in the Variation Order;
 - (iv) the relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion will be extended as specified in the Variation Order; and
 - (v) any necessary adjustments will be made following the determination of a dispute under clause 52 (where applicable).

35.11 Principal options following determination

Following determination of a dispute referred to in clause 35.9 in accordance with clause 52, the Principal may, only if it has not already exercised its right to issue a Variation Order under clause 35.10, elect to do either of the following:

- (a) require Macquarie to implement the proposed Variation in accordance with the Variation Impact Proposal as varied by the determination; or
- (b) withdraw the proposed Variation (in which case clause 35.3 applies),

by written notice to Macquarie (which in the case of clause 35.11(a) must be a Variation Order).

35.12 Macquarie to implement Variation

If the Principal gives a Variation Order pursuant to clause 35.11(a):

- (a) Macquarie must carry out the Variation described in the Variation Order on the basis of the Variation Impact Proposal (as varied by the determination, once made);
- (b) Macquarie will be relieved of its obligations under this deed to the extent specified in the Variation Impact Proposal (as varied by the determination, once made);
- (c) the relevant Date for Milestone Achievement, Date for Construction Completion or Date for Completion will be extended as specified in the Variation Impact Proposal (as varied by the determination, once made); and
- (d) the Principal must pay Macquarie the Variation Costs, or Macquarie must pay the Principal the Variation Savings (as applicable) of the Variation in accordance with clause 37.

35.13 Instruction to proceed

- (a) Subject to clause 35.13(b) but whether or not the Principal has issued a Variation Impact Request under clause 35.1 and whether or not Macquarie has issued a Variation Impact Proposal under clause 35.2 in response to a Variation Impact Request, the Principal's Representative may at any time instruct Macquarie to implement a Variation by issuing a Variation Order. In these circumstances, the matters set out in clause 35.2(c) and any other matters required to enable the Variation to be implemented will, until the Principal and Macquarie agree otherwise or a determination is made in accordance with clause 52, be reasonably determined by the Principal's Representative.
- (b) The Principal's Representative must not issue a Variation Order pursuant to clause 35.13(a) where the relevant Variation has a Material Impact, provided that whether or not the relevant Variation has a Material Impact will be determined by the Principal's Representative (unless and until the Principal and Macquarie agree otherwise or a determination is made in accordance with clause 52).
- (c) If Macquarie disagrees with a matter determined by the Principal's Representative (including whether the Variation has a Material Impact):
 - (i) Macquarie may refer the matter for dispute resolution in accordance with clause 52;
 - (ii) Macquarie must proceed to implement the Variation on the basis determined by the Principal's Representative notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 52;

- (iii) Macquarie will be relieved of its obligations under this deed to the extent specified in the Variation Order; and
- (iv) any necessary adjustments will be made following any agreement or determination under clause 52.

35.14 Omissions

- (a) If a Variation omits any part of the Project Works or Macquarie's Activities, the Principal may carry out those omitted Project Works or Macquarie's Activities itself or by engaging a Rail Contractor or the TSE Contractor.
- (b) The Principal must ensure that it and the TSE Contractor or any Rail Contractor it engages to carry out those omitted Project Works or Macquarie's Activities does not put Macquarie (or the D&C Contractor) in breach of its obligations under the Rail Safety National Law and Rail Safety Regulations.

35.15 No liability unless Variation Order

- (a) Macquarie will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, any Variation, except where Macquarie is directed to implement a Variation pursuant to a Variation Order issued by the Principal under this clause 35 or where clauses 35.3, 35.6, 36.3(b), or 54.1 apply.
- (b) Subject to clause 35.15(c), if:
 - (i) the Principal's Representative issues a Variation Order;
 - (ii) the Variation the subject of the Variation Order did not arise from any wrongful act or omission of Macquarie or any of its Associates or any breach of a Project Document by Macquarie; and
 - (iii) Macquarie has provided the Principal's Representative with a Variation Impact Proposal which complies with the requirements of clause 35.2(c), including details of the effect that Macquarie anticipates the Variation will have on:
 - (A) Macquarie's ability to satisfy its obligations under a Project Document (including any warranties given by Macquarie under a Project Document) and exercise its rights under a Project Document; and
 - (B) the functionality or integrity of the elements of Macquarie's Activities, the Project Works and the Temporary Works and the quality or performance standards required by a Project Document, including:
 - (aa) the elements of Macquarie's Activities, the Project Works and the Temporary Works that will be affected;
 - (bb) how and to what extent the functionality or integrity of those elements will be affected; and
 - (cc) the quality or performance standards affected and how and to what extent they will be affected,

then Macquarie's liability under this deed will be reduced to the extent that liability arises as a result of:

- (iv) the matters notified by Macquarie in the Variation Impact Proposal; and
- (v) the actual adverse effect which the Variation has upon:

- (A) Macquarie's ability to satisfy its obligations under this deed and exercise its rights under this deed; and
 - (B) the functionality or integrity of the elements of Macquarie's Activities, the Project Works and the Temporary Works or the quality or performance standards required by this deed.
- (c) If Macquarie fails to notify the Principal's Representative of any adverse effect of the Variation on:
- (i) Macquarie's ability to satisfy its obligations under a Project Document (including any warranties given by Macquarie under a Project Document); or
 - (ii) the functionality or integrity of the elements of Macquarie's Activities, the Project Works and the Temporary Works and the quality or performance standards required by a Project Document, including:
 - (A) the elements of Macquarie's Activities, the Project Works and the Temporary Works that will be affected;
 - (B) how and to what extent the functionality or integrity of those elements will be affected; or
 - (C) the quality or performance standards affected and how and to what extent they will be affected,
- then:
- (iii) Macquarie will be deemed to have warranted to the Principal that the Variation does not have any such adverse effect and the Variation will not limit or otherwise affect Macquarie's obligations or liabilities under a Project Document; and
 - (iv) the Variation will not be taken to limit or otherwise affect Macquarie's obligations or liabilities under a Project Document.

35.16 **Template**

Schedule B21 contains a template which the parties may use to document a Principal initiated Variation. The parties are not obliged to use this template.

35.17 **Not used**

35.18 **Variations required as a consequence of OSD Variations**

If the OSD Developer has determined under clause 26.2(c)(vi) of the OSD PDA that an OSD Variation proposed by the Principal under clause 25.1 of the OSD PDA cannot be implemented unless a corresponding Variation is implemented under this deed (**Corresponding Variation**):

- (a) Macquarie must issue to the Principal a Variation Impact Proposal for that Corresponding Variation in accordance with clause 35.2 within 5 Business Days after the date of the OSD Developer's determination;
- (b) The Principal may only elect to not proceed with the Corresponding Variation pursuant to clause 35.4(c) if:
 - (i) the Principal has elected not to proceed with, or has withdrawn, the OSD Variation pursuant to clause 24 of the OSD PDA;

- (ii) the parties have agreed that the Corresponding Variation is not required to enable the OSD Variation to be implemented; or
 - (iii) the OSD Developer's determination has been referred to dispute resolution pursuant to clause 38 of the OSD PDA and the expert or arbitrator (as applicable) has determined that the Corresponding Variation is not required to enable the OSD Variation to be implemented; and
- (c) If the Principal rejects the Variation Impact Proposal for the Corresponding Variation pursuant to clause 35.7:
- (i) the Principal must require that the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Variation Impact Proposal which are in dispute pursuant to clause 35.7; and
 - (ii) if the parties are unable to reach agreement within 20 Business Days after the Principal rejects the Variation Impact Proposal, the Principal must refer the matter for dispute resolution pursuant to clause 35.9; and
 - (iii) following determination of the dispute, the Principal must require Macquarie to implement the Variation in accordance with the Variation Impact Proposal as varied by the determination pursuant to clause 35.11(a).

36. **MACQUARIE INITIATED VARIATIONS**

36.1 **Macquarie may propose a Variation**

Macquarie may propose a Variation by giving a written notice to the Principal's Representative with details of:

- (a) the proposed Variation;
- (b) the reason for the proposed Variation;
- (c) the time within, and the manner in which, Macquarie proposes to implement the proposed Variation;
- (d) the effect the proposed Variation will have on the SDD Program (including any extension of time required to a Date for Milestone Achievement, Date for Construction Completion or Date for Completion);
- (e) any Approvals required to implement the proposed Variation, and the effect of the proposed Variation on any existing Approvals and any OSD Planning Approval and on the ability of Macquarie and the OSD Developer to comply with those Approvals;
- (f) the effects which the proposed Variation will have on Macquarie's ability to satisfy its obligations under a Project Document (including any warranties given by Macquarie under a Project Document) and exercise its rights under a Project Document;
- (g) the effect which the proposed Variation will have on any works carried out by the Rail Contractors;
- (h) whether an OSD Variation will be required to enable the proposed Variation to be implemented, or as a consequence of the proposed Variation;
- (i) whether the Variation is required to enable an OSD Variation to be implemented under clause 27 of the OSD PDA, or as a consequence of an OSD Variation;

- (j) whether the Variation will give rise to, or is likely to give rise to, a Material Impact; and
- (k) the value for money for the Principal arising from the Variation, including the Variation Savings that Macquarie expects to arise from the Variation.

36.2 Principal may approve or reject

- (a) If Macquarie gives a notice under clause 36.1, the Principal:
 - (i) will consider Macquarie's proposed Variation in good faith; and
 - (ii) subject to clause 36.3, may:
 - (A) approve (with or without conditions) the proposed Variation in its absolute discretion by issuing a Variation Approval to Macquarie; or
 - (B) reject the proposed Variation in its absolute discretion; and
 - (iii) will be under no obligation to approve the proposed Variation for the convenience of or to assist Macquarie.
- (b) If the Principal issues a Variation Approval under clause 36.2(a)(ii)(A) without conditions:
 - (i) Macquarie must proceed to implement the Variation on the basis set out in the Variation Approval; and
 - (ii) Macquarie will be relieved of its obligations under this deed to the extent specified in the Variation Approval.
- (c) If the Principal issues a Variation Approval under clause 36.2(a)(ii)(A) with conditions:
 - (i) Macquarie may proceed to implement the Variation on the basis set out in the Variation Approval, in which case Macquarie will be relieved of its obligations under this deed to the extent specified in the Variation Approval; or
 - (ii) Macquarie may withdraw the proposed Variation if Macquarie, acting reasonably, does not accept any of the conditions attached to the Variation Approval.

36.3 Variation required as a result of a Change in Law or Planning Approval modification

- (a) To the extent that any Variation requested by Macquarie is required to ensure that the Project Works and Temporary Works comply with a Change in Law or a modification to the Planning Approval (other than the Project Planning Approval Modification), the Principal must, in its discretion, either:
 - (i) approve the Variation proposed by Macquarie by issuing a Variation Approval;
 - (ii) direct Macquarie to carry out a Variation in accordance with clause 35 to ensure that the Project Works and the Temporary Works comply with the Change in Law or the modification to the Planning Approval (as applicable); or

- (iii) take such other action as the Principal reasonably considers necessary to ensure the Project Works and the Temporary Works comply with the Change in Law or the modification to the Planning Approval (as applicable).
- (b) If the Principal approves or directs a Variation in accordance with clause 36.3(a)(i) or clause 36.3(a)(ii):
 - (i) Macquarie must proceed to implement the Variation on the basis of Macquarie's notice under clause 36.1 or in accordance with clause 35 (as applicable) and clause 37 will apply with respect to that Variation; and
 - (ii) if the Variation is required to ensure that the Project Works or the Temporary Works comply with a Compensable Change in Law or a modification to the Planning Approval contemplated in paragraph (b) of the definition of Compensation Event, clauses 23.11 and 24 will apply (and, in the case of clause 23.11, as if the Variation proposal notice given by Macquarie under clause 36.1 were a claim for an extension of time under clause 23.9 provided the proposal includes all the information required by clause 23.9).

36.4 **Macquarie to bear risks and costs**

Unless otherwise agreed in writing by the Principal and excluding any Variation under clause 36.3, Macquarie will:

- (a) bear all risks and Costs associated with a Variation proposed by Macquarie, including:
 - (i) any amounts that are payable by Macquarie or the Principal to any of the Rail Contractors under any Project Cooperation and Integration Deeds or any other contracts entered into between the Principal and the Rail Contractors; and
 - (ii) the risk of any Material Impact arising out of or in connection with that Variation;
- (b) be responsible for managing a Variation proposed by Macquarie, including with the Rail Contractors where a Variation proposed by Macquarie impacts upon the Rail Contractors; and
- (c) not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, a Variation proposed by Macquarie (including any Variation that has a Material Impact, regardless of whether or not that Material Impact was identified in any notice given by Macquarie under clause 36.1),

including where the Principal issues a Variation Approval in relation to such Variation.

37. **VARIATION COSTS AND VARIATION SAVINGS**

- (a) If:
 - (i) a Variation directed by the Principal under clause 35 results in Variation Costs; or
 - (ii) Variation Costs are payable to Macquarie under clauses 23.11(f) or are otherwise required by an express provision of this deed to be valued as a Variation,
 then:
 - (iii) if the Principal directed Macquarie to implement a Variation under clause 35.10(a) or clause 35.13 or the quantum of Variation Costs payable to

Macquarie under clause 23.11(f) is the subject of a Dispute, the Principal must pay Macquarie its Variation Costs:

- (A) pending agreement between the parties or determination of the Variation Costs in accordance with clause 52, as reasonably determined by the Principal; and
- (B) following determination or agreement between the parties, as so determined or agreed,

progressively within 16 Business Days after each month in which the relevant work was undertaken. If the Variation Costs paid under clause 37(a)(iii)(A) are more or less than the Variation Costs for the relevant month as subsequently determined or agreed, the difference must be paid by the relevant party to the other; or

(iv) otherwise:

- (A) Macquarie may claim the Variation Costs progressively within 16 Business Days after each month in which the relevant work was undertaken unless agreed between the parties; and
- (B) the Principal must pay Macquarie the Variation Costs within 10 Business Days after receiving Macquarie's claim under clause 37(a)(iv)(A).

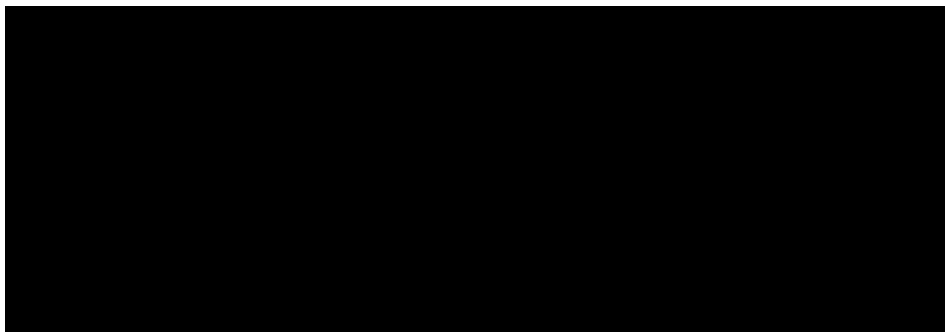
- (b) The parties acknowledge that, in the calculation of any Variation Costs, there must not be any double counting of any amounts (including, where Variation Costs are payable in connection with a Compensation Event, any double counting of any amounts included in the calculation of the Delay Costs payable with respect to that Compensation Event).
- (c) If a Variation directed by the Principal under clause 35 results in overall Variation Savings (or a Variation approved by the Principal under clause 36.2 is expected to result in Variation Savings, as advised by Macquarie under clause 36.1), the parties agree that:
 - (i) in the case of a Variation directed by the Principal under clause 35, the Principal is entitled to receive [REDACTED] of any Variation Saving; and
 - (ii) in the case of a Variation approved by the Principal under clause 36.2, the Principal is entitled to receive [REDACTED] of the Variation Savings agreed between the parties at the time the Principal issues the relevant Variation Order.
- (d) If a Variation is implemented under this deed to enable Macquarie to comply with a Change in Law or Change in Codes and Standards and that Variation gives rise to Variation Savings, or a Change in Law or Change in Codes and Standards otherwise results in cost savings, the Principal is entitled to [REDACTED] of the Variation Savings or cost savings (as applicable).
- (e) If Variation Savings or cost savings are payable to the Principal under clause 37(c) or clause 37(d), they will be:
 - (i) set off against the Variation Costs payable by the Principal to Macquarie under clause 37(a) and the amounts payable by the Principal to Macquarie under clause 34; and

- (ii) otherwise, paid by Macquarie to the Principal progressively within 10 Business Days after the end of each month in which the relevant work which has been deleted or omitted would have been undertaken but for the Variation.
- (f) Notwithstanding any other provision in this deed, to the extent the Variation Costs payable to Macquarie pursuant to this deed includes activities, items or costs that are the same or similar to activities, items or costs that are set out in Part 2 and Part 3 of Schedule E1, the applicable Variation Costs must be calculated using the rates set out for such activities, items or costs in Part 2 and Part 3 of Schedule E1.
- (g) Subject to clauses 35.7A and 38.4, this clause 37 is an exhaustive code of Macquarie's rights in any way in connection with any Variation. Macquarie waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 37, otherwise than in accordance with this deed.

38. **OPTIONAL CONDITIONS**

38.1 **Optional Condition Criteria**

- (a) For the purposes of agreeing or determining whether Optional Condition 1 applies:
 - (i) if Macquarie considers that Optional Condition 1 applies to Macquarie's Activities, Macquarie must give a written notice to the Principal:
 - (A) detailing how the Optional Condition Criteria for Optional Condition 1 have been satisfied;



- (C) specifying the amount claimed by Macquarie in respect of Optional Condition 1, being the costs expected to be reasonably incurred by Macquarie directly as a result of Optional Condition 1 applying to Macquarie's Activities, up to the Optional Condition 1 Cap; and
- (D) including all details, calculations, supporting documentation and other information required to substantiate the amount claimed by Macquarie pursuant to clause 38.1(a)(i)(C),

(Optional Condition 1 Proposal);

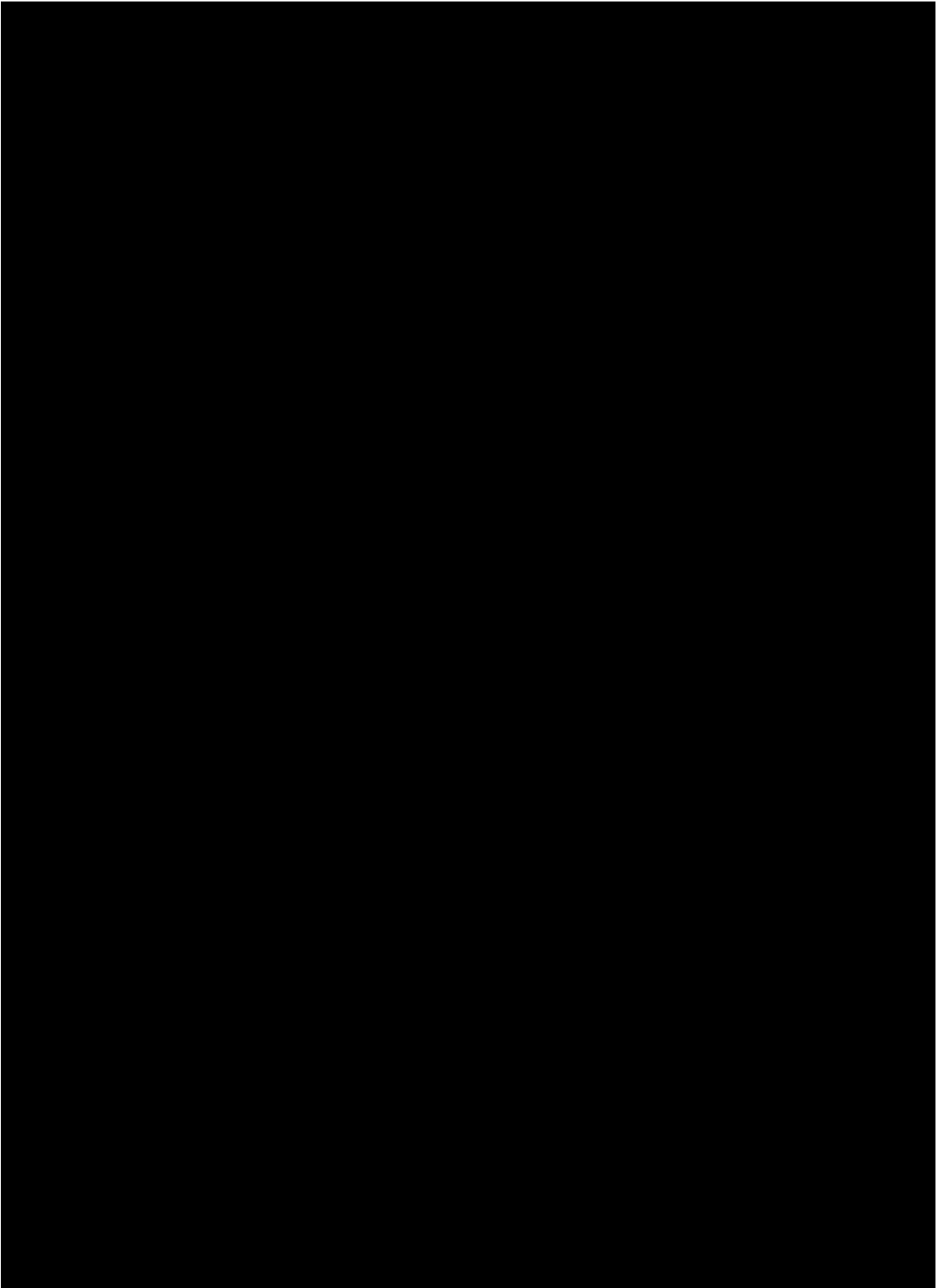
- (ii) if the Principal requires further information in relation to the Optional Condition 1 Proposal:
 - (A) the Principal may give Macquarie written notice detailing the further information required by the Principal; and
 - (B) Macquarie must provide the Principal with the information requested under clause 38.1(a)(ii)(A) within 10 Business Days of the date on which the notice was provided under clause 38.1(a)(ii)(A);

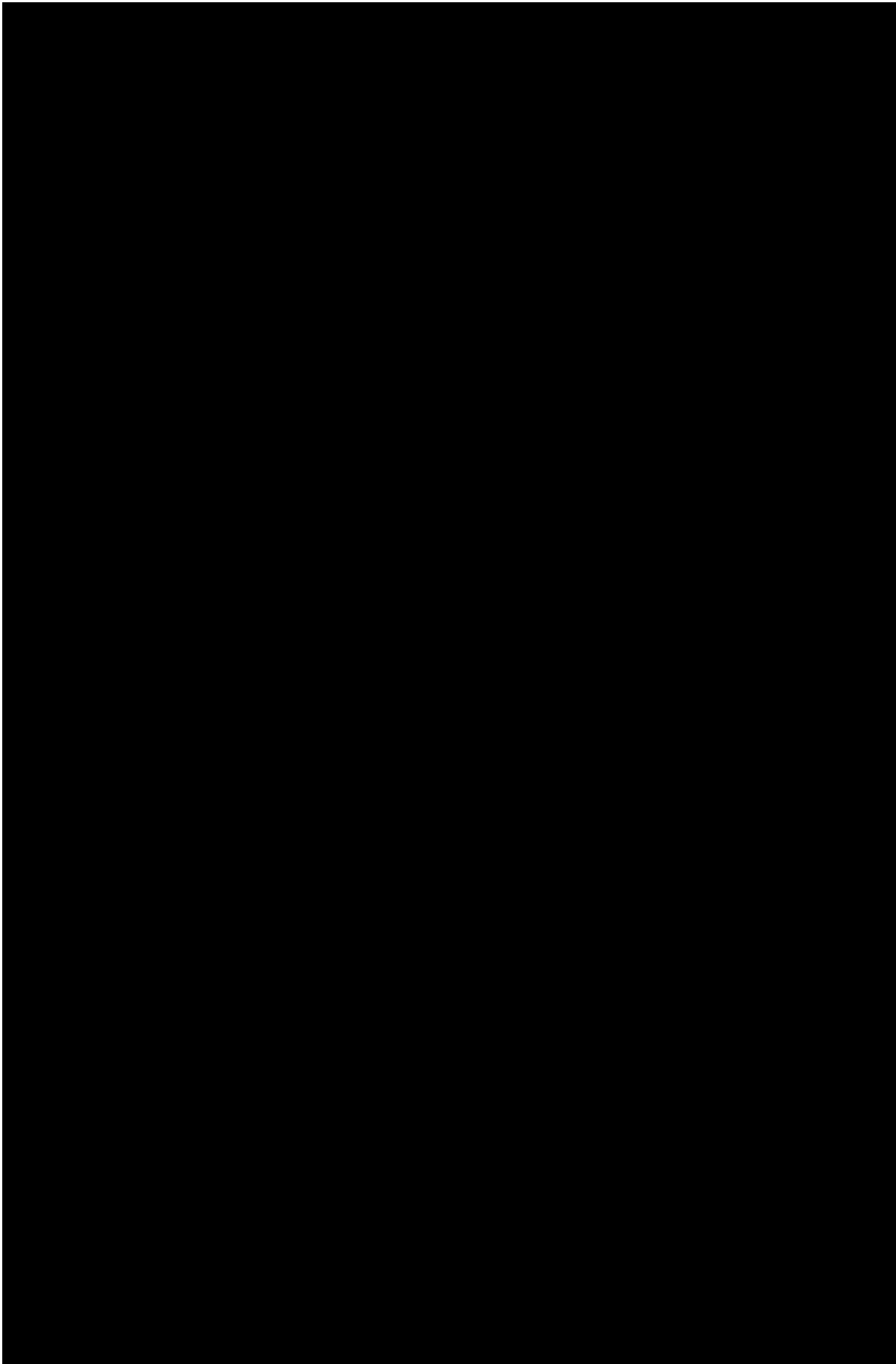
- (iii) within 20 Business Days of the later of the:
 - (A) date on which Macquarie gives the Principal the Optional Condition 1 Proposal; and
 - (B) the date on which Macquarie gives the Principal the additional information required by the Principal pursuant to clause 38.1(a)(ii),
 the Principal may either:
 - (C) accept the Optional Condition 1 Proposal; or
 - (D) reject the Optional Condition 1 Proposal, giving reasons; and
 - (iv) if the Principal rejects the Optional Condition 1 Proposal in accordance with clause 38.1(a)(iii)(D), then either party may refer the matter for dispute resolution in accordance with clause 52.
- (b) The parties acknowledge and agree that:
- (i) Optional Condition 2 will apply if the relevant Optional Condition Criteria have been satisfied; and
 - (ii) if Optional Condition 2 applies pursuant to clause 38.1(b)(i), the Date for Construction Completion for Portion 1 will be brought forward by ■ calendar days.

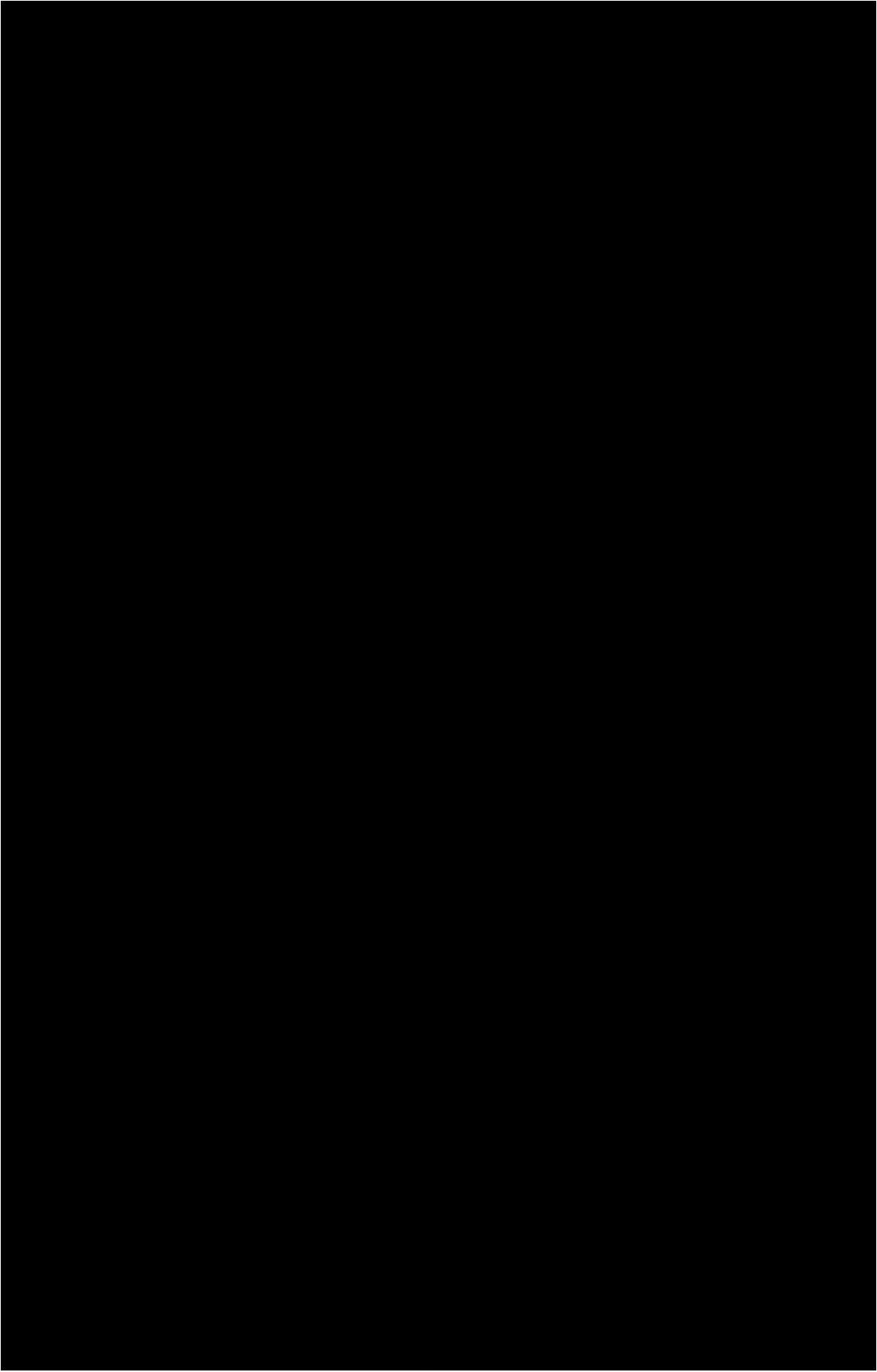
38.2 Payment for Optional Conditions

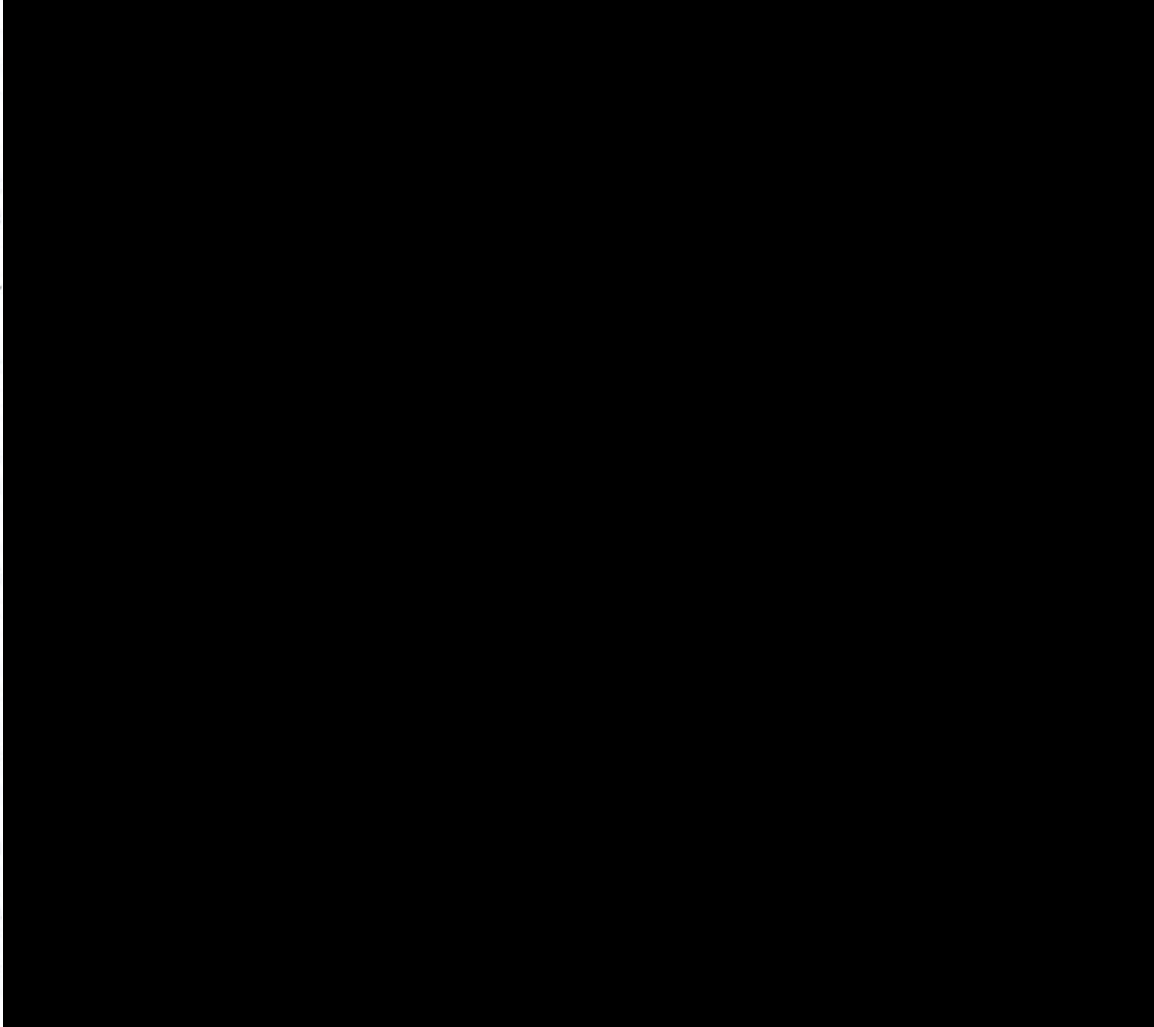
- (a) If Optional Condition 1 is agreed or determined to apply to Macquarie's Activities pursuant to clause 38.1(a), the Principal must pay Macquarie the Optional Condition 1 Amount progressively in accordance with clause 34.
- (b) Notwithstanding anything else in this deed, the amount to which Macquarie is entitled to be paid arising out of or in connection with Optional Condition 1 must not exceed the Optional Condition 1 Cap.
- (c) If Optional Condition 2 applies pursuant to clause 38.1(b)(i):
 - (i) Macquarie may include the Optional Condition 2 Amount in a progress claim to be issued by Macquarie for the next calendar month after the relevant Optional Condition Criteria have been satisfied; and
 - (ii) the Principal must pay Macquarie the Optional Condition 2 Amount in accordance with clause 34.
- (d) Except as expressly provided for in clause 38.1(a)(iv), clause 38.2(a) and clause 38.2(c), Macquarie is not entitled to make, and the Principal will not be liable for, any Claim by virtue of an Optional Condition applying or not applying pursuant to clause 38.1(a) or clause 38.1(b), including under clause 23.9, 23.13 and clause 24 in respect of any delay to achieving:
 - (i) Milestone Achievement of a Milestone;
 - (ii) Construction Completion of a Portion; or
 - (iii) Completion of a Portion (other than Portion 1),

by virtue of an Optional Condition applying or not applying pursuant to clause 38.1(a) or clause 38.1(b)(i).

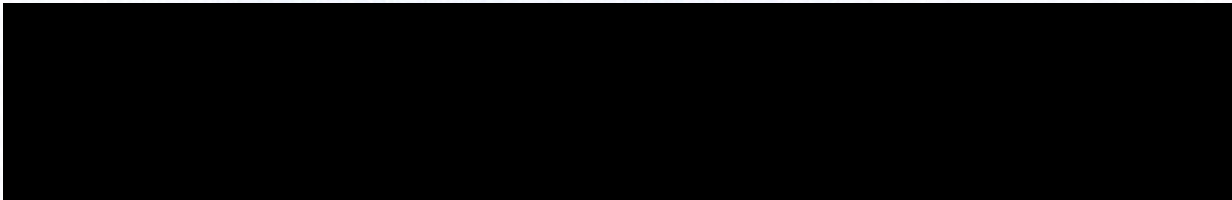








- (p) 1. The Principal must give Macquarie written notice that the TSE Portion 14 Date of Construction Completion has occurred (together with the relevant date) as soon as reasonably practicable after, but in any case within 1 Business Day of, the TSE Portion 14 Date of Construction Completion occurring.



39. CHANGE IN LAW

39.1 Change in Codes and Standards

- (a) Where there is a Change in Codes and Standards:
- (i) Macquarie must give a written notice to the Principal's Representative within 20 Business Days after the date on which it first become aware of (or ought reasonably to have first become aware of) the Change in Codes and Standards, containing:
 - (A) details of the Change in Codes and Standards; and

- (B) an estimate of Macquarie's increased or decreased costs of complying with that Change in Codes and Standards, including sufficient information to support the estimate as well as the information referred to in clause 35.2(c); and
- (ii) if a notice is given by Macquarie which complies with clause 39.1, then within 10 Business Days after the date of the notice, the Principal's Representative must either:
 - (A) direct Macquarie to disregard the Change in Codes and Standards; or
 - (B) direct Macquarie to implement a Variation under clause 35.13 to enable Macquarie to comply with the Change in Codes and Standards.
- (b) If the Principal's Representative gives a notice under clause 39.1(a)(ii)(A), Macquarie will not be regarded as being in breach of this deed to the extent that it disregards the relevant Change in Codes and Standards.
- (c) Subject to clause 39.1(d), if the Principal gives a notice under clause 39.1(a)(ii)(B), Macquarie will not be entitled to be paid the Variation Cost of the Variation:
 - (i) except to the extent that, as at the date of the notice given by the Principal under clause 39.1(a)(ii)(B), the relevant Design Documentation complied, or would have complied, with the requirements of this deed (but for the relevant Change in Codes and Standards), including any requirement that the Design Documentation be fit for its intended purpose (or any similar reference); or
 - (ii) to the extent that, notwithstanding the Change in Codes and Standards, Macquarie would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that the Project Works and the Temporary Works be fit for their intended purpose (or any similar reference).
- (d) Clause 39.1(c)(i) will not disentitle Macquarie to the Variation Cost of the Variation where the relevant non-compliance in the Design Documentation is a minor non-compliance that is capable of correction without the need for any significant redesign of the relevant part of the Project Works or the Temporary Works.

39.2 **Changes in Law**

Subject to clauses 23.11, 24 and 36.3 and subject to the Call Option Deed (Retail Lot North) and the Call Option Deed (Retail Lot South), Macquarie will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, a Change in Law.

39.3 **Implementation of Change in Law**

To the extent it is able to do so, on reasonable request, the Principal must use reasonable endeavours (without having to incur additional cost) to avail Macquarie of any relief, implementation arrangements or programs which are extended to the Principal in respect of compliance with any Change in Law (other than any Compensable Change in Law).

40. **ADVERTISING AND SIGNAGE**

40.1 **Advertising and signage**

- (a) Notwithstanding any other provision of this clause 40, Macquarie must obtain the Principal's prior written consent to the installation or display of any art, advertising,

signage or other display within Martin Place Metro Station or the Retail Lot if any aspect of that art, advertising, signage or display would impact upon, or could reasonably be expected to impact upon:

- (i) the fire and life safety requirements specified in Appendix 43 to the SWTC;
 - (ii) any wayfinding signage or infrastructure; or
 - (iii) the operation of Sydney Metro City & Southwest.
- (b) Subject to clauses 40.1(a) and (d), Macquarie may:
- (i) sell advertising space and place advertisements; and
 - (ii) place art, signage and displays,
- within Martin Place Metro Station and the Retail Lot in accordance with this clause 40 and Appendix 11 to the SWTC.
- (c) Provided that Macquarie have complied with their obligations under this clause 40.1, Macquarie will be entitled to retain any revenue derived from the sale of advertising space or the installation of any art, signage or display pursuant to clause 40.1(b).
- (d) Any advertising, art, signage or display within Martin Place Metro Station and the Retail Lot must:
- (i) comply with the requirements of the SWTC;
 - (ii) comply with all applicable Approvals and Laws;
 - (iii) comply with codes of conduct, codes of ethics and codes of advertising for the advertising industry prepared or adopted by the Advertising Standards Bureau of Australia, the Classification Board and the Australian Association of National Advertisers;
 - (iv) not depict political, religious, racist, sexually explicit, offensive or other similar subject matter;
 - (v) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour; and
 - (vi) not interfere with the operation of Sydney Metro City & Southwest.
- (e) The parties acknowledge that:
- (i) this clause 40 applies from the Commencement Date up to the Last Date of Completion; and
 - (ii) the Building Management Statement will apply in relation to the parties' advertising and signage rights and obligations during the period of operation of Martin Place Metro Station.

40.2 **Electronic signage**

- (a) Macquarie must ensure that any electronic signage installed by Macquarie within Martin Place Metro Station or the Retail Lot pursuant to clause 40.1 complies with Appendix 11 and 18 to the SWTC.

- (b) If any accident, event or occurrence which causes or has the potential to cause death, serious injury or significant disruption to any person occurs, the Principal or its nominee may use the electronic signage referred to in clause 40.2(a) to display emergency announcements and information.
- (c) The Principal is not required to obtain consent from, or give notice to, Macquarie, the Retail Lessee or any Sub-Tenant before exercising its rights under clause 40.2(b).

41. **RISKS AND INSURANCE**

41.1 **Responsibility for care of the Project Works**

- (a) Subject to clauses 23.11, 24 and 41.1(d), Macquarie is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:
 - (i) Macquarie's Activities, the Project Works, the Temporary Works, the Macquarie Construction Site and any Extra Land, from the Commencement Date;
 - (ii) any Extra Land from the date Macquarie procures access to such Extra Land; and
 - (iii) the Principal Construction Site, from the Construction Licence Commencement Date,

up to and including:

 - (iv) to the extent the relevant Macquarie's Activities, the Project Works, the Temporary Works, the Macquarie Construction Site, any Extra Land or the Principal Construction Site relate to Portion 1 and not to any Portion other than Portion 1, the Date of Construction Completion of Portion 1; and
 - (v) subject to clause 41.1(a)(iv), the Date of Completion of the relevant Portion.
- (b) After the time referred to in clause 41.1(a), subject to clause 41.1(d), Macquarie will bear the risk of any destruction, loss of or damage to the Project Works, the Temporary Works, the Construction Site, any Extra Land and Martin Place Metro Station arising from:
 - (i) any act or omission of Macquarie or its Associates during the Defects Correction Period (including any extension to a Defects Correction Period under clause 30) or any other Macquarie's Activities; or
 - (ii) any event which is notifiable pursuant to, or which has been notified in accordance with, the Insurances under clause 41.3 which occurred while Macquarie was responsible for the care of the relevant part of Macquarie's Activities, the Project Works, the Temporary Works, the Construction Site, any Extra Land or Martin Place Metro Station under clause 41.1(a) in connection with Macquarie's Activities.
- (c) Subject to clause 41.1(d), Macquarie must:
 - (i) in accordance with clause 41.14, (at its own Cost) promptly make good any destruction, loss or damage for which Macquarie bears the risk under this clause 41; and
 - (ii) indemnify the Principal against Loss resulting from such destruction, loss or damage.

- (d) This clause 41.1 does not apply to the extent that any destruction, loss or damage:
 - (i) for which Macquarie:
 - (A) would otherwise have been responsible; or
 - (B) bears the risk; or
 - (ii) in respect of which Macquarie is obliged to indemnify the Principal against under clause 41.1(c)(ii),
results from an Excepted Risk.
- (e) Where any destruction, loss or damage arises to any extent from an Excepted Risk:
 - (i) Macquarie must, where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage; and
 - (ii) the destruction, loss or damage (where a direction to repair or make good is not given) or that making good or repair (where a direction to repair or make good is given) will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Variation directed by the Principal and clause 35 will apply.

41.2 **Principal's insurance**

- (a) The Principal must, on or before Financial Close, effect and thereafter maintain:
 - (i) contract works (material damage) insurance;
 - (ii) public and products liability insurance; and
 - (iii) delay in start-up insurance (**DSU Insurance**),
including for the benefit of each member of the Macquarie Group as at the Commencement Date, and for the benefit of the D&C Contractor at nil premium cost to them in respect of the contract works (material damage) insurance and public and products liability insurance, on the terms of the policies referred to in Schedule E5.
- (b) The Principal's Insurances are subject to the exclusions, conditions, deductibles and excesses noted on the Principal's Insurance policies and Macquarie acknowledges and agrees that:
 - (i) it has satisfied itself of the nature and extent of the cover provided by the Principal's Insurances;
 - (ii) the Principal's Insurances do not cover every risk to which Macquarie or its Associates may be exposed and are subject to deductibles and limits;
 - (iii) Macquarie may, at its cost, elect to effect insurance for any risk or liability which is not covered by the Principal's Insurances;
 - (iv) if Macquarie makes a claim under any Principal's Insurance (including in respect of any destruction, loss or damage for which Macquarie bears the risk under clause 41.1 or any risk against which Macquarie indemnifies a State Indemnified Party under clause 42.1) and the event giving rise to that claim was not caused by the Principal or a Rail Contractor, Macquarie will bear the Cost of any excesses, deductibles or self-insured retentions payable under the Principal's Insurance in connection with that claim;

- (v) the DSU Insurance is effected by the Principal for the benefit of Macquarie, and Macquarie warrants that it has complied with the duty of disclosure owed to the insurer and that information provided by Macquarie for provision to the insurer for the purposes of disclosure and the proposal is, to the best of Macquarie's knowledge, full, true, and correct and does not exclude information that may have affected the insurers decision to insure and on what terms; and
- (vi) a failure by it to comply with the duty of disclosure to the DSU Insurance insurer may entitle the insurer to void the policy or to reduce its liability for a claim and in such circumstances Macquarie agrees that the Principal is not responsible for the avoidance of the policy by the insurer or any reduction in the insurer's liability for a claim and Macquarie agrees not to bring any claim against the Principal for compensation.

41.3 **Macquarie's Insurance obligations**

Macquarie must effect and maintain, or cause to be effected and maintained, the following Insurance:

- (a) workers compensation insurance referred to in clause 41.4;
- (b) asbestos liability insurance referred to in clause 41.5;
- (c) professional indemnity insurance referred to in clause 41.6;
- (d) Construction Plant insurance referred to in clause 41.7;
- (e) motor vehicle insurance referred to in clause 41.8; and
- (f) any other insurances required by Law.

41.4 **Workers compensation insurance**

- (a) Macquarie must effect and maintain, or cause to be effected and maintained, workers compensation insurance (unless Macquarie is a licensed self-insurer under the relevant statutory scheme) which covers workers in accordance with any statute relating to workers or accident compensation:
 - (i) for the amount required by Law; and
 - (ii) in the name of Macquarie and, where permissible under the relevant statutory scheme, extended to indemnify the Principal for its statutory liability to persons employed, or deemed to be employed, by Macquarie.
- (b) Macquarie must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the amount required by Law; and
 - (ii) in the name of the Subcontractor and, where permissible under the relevant statutory scheme, extended to indemnify the Principal and Macquarie for their statutory liability to persons employed, or deemed to be employed, by the Subcontractor.

41.5 Asbestos liability insurance

If Macquarie's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, Macquarie must effect and maintain (or cause to be effected and maintained) asbestos liability insurance which:

- (a) covers liability on an occurrence basis (and not a claims made basis) in respect of or in connection with the presence of asbestos and any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal that is caused by or arises out of or in connection with any act or omission of Macquarie or its Associates in connection with the carrying out of Macquarie's Activities; and
- (b) has a limit of indemnity of at least [REDACTED] for any one occurrence and in the aggregate.

41.6 Professional indemnity insurance

[REDACTED]

41.7 Construction Plant insurance

[REDACTED]

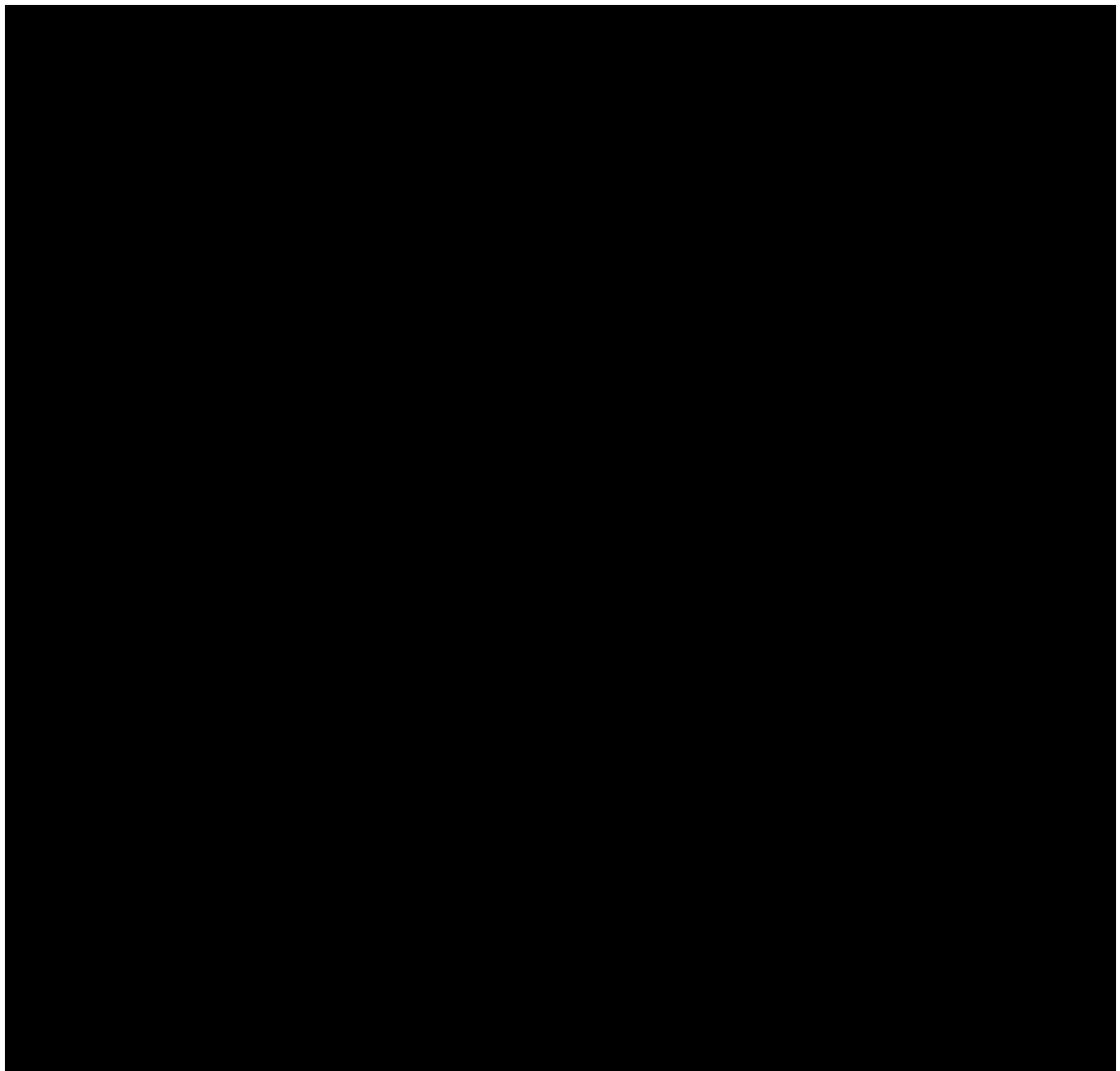
41.8 Motor vehicle insurance

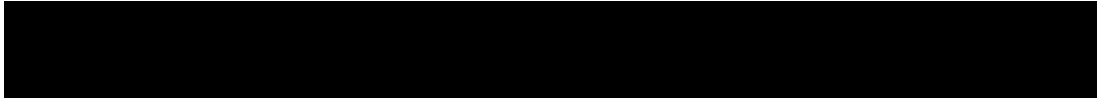
[REDACTED]

41.9 **Periods of Insurance**

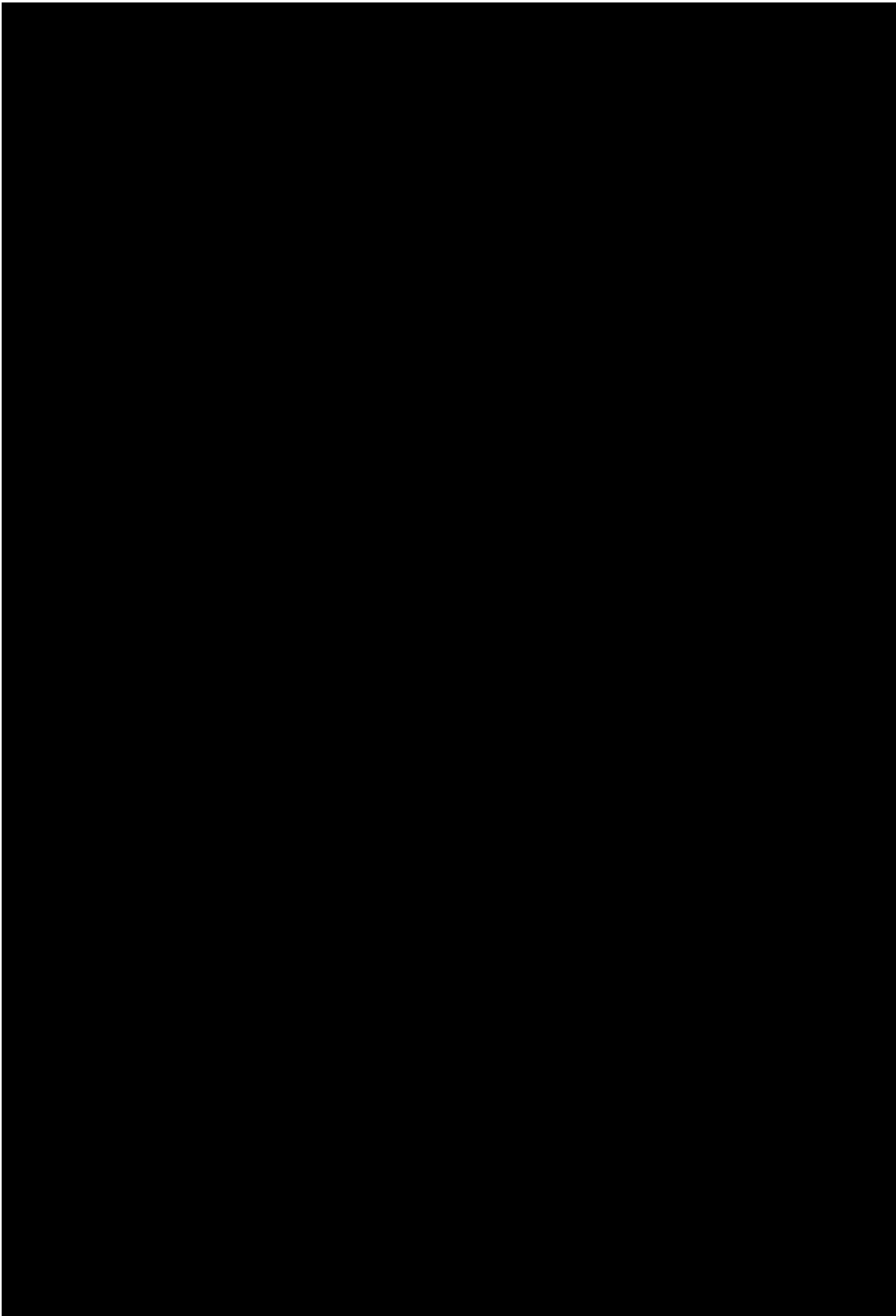


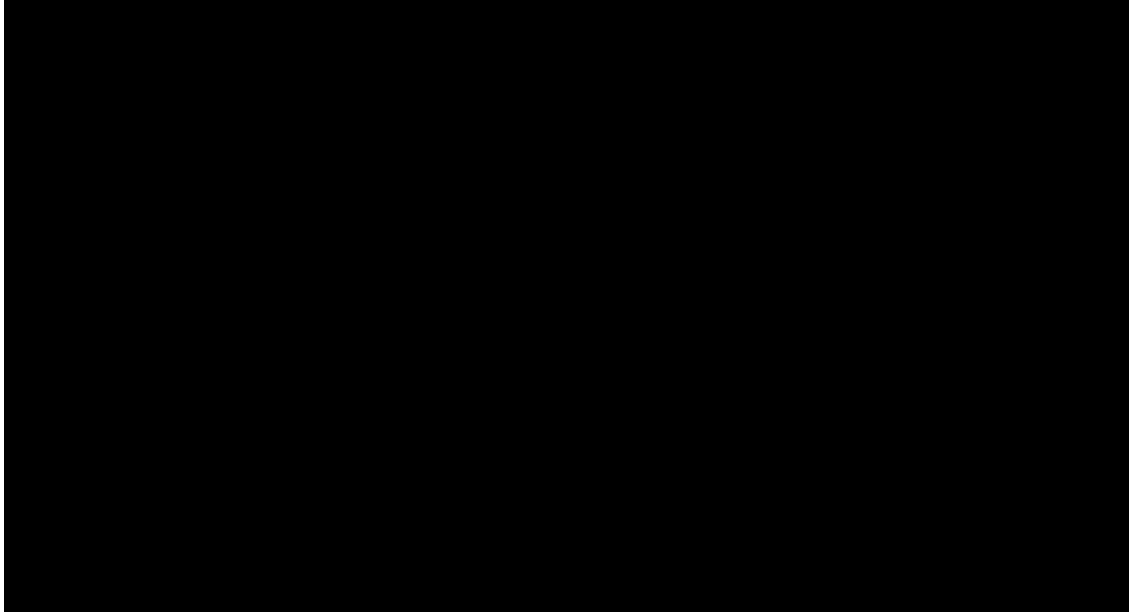
41.10 **Evidence of policies**



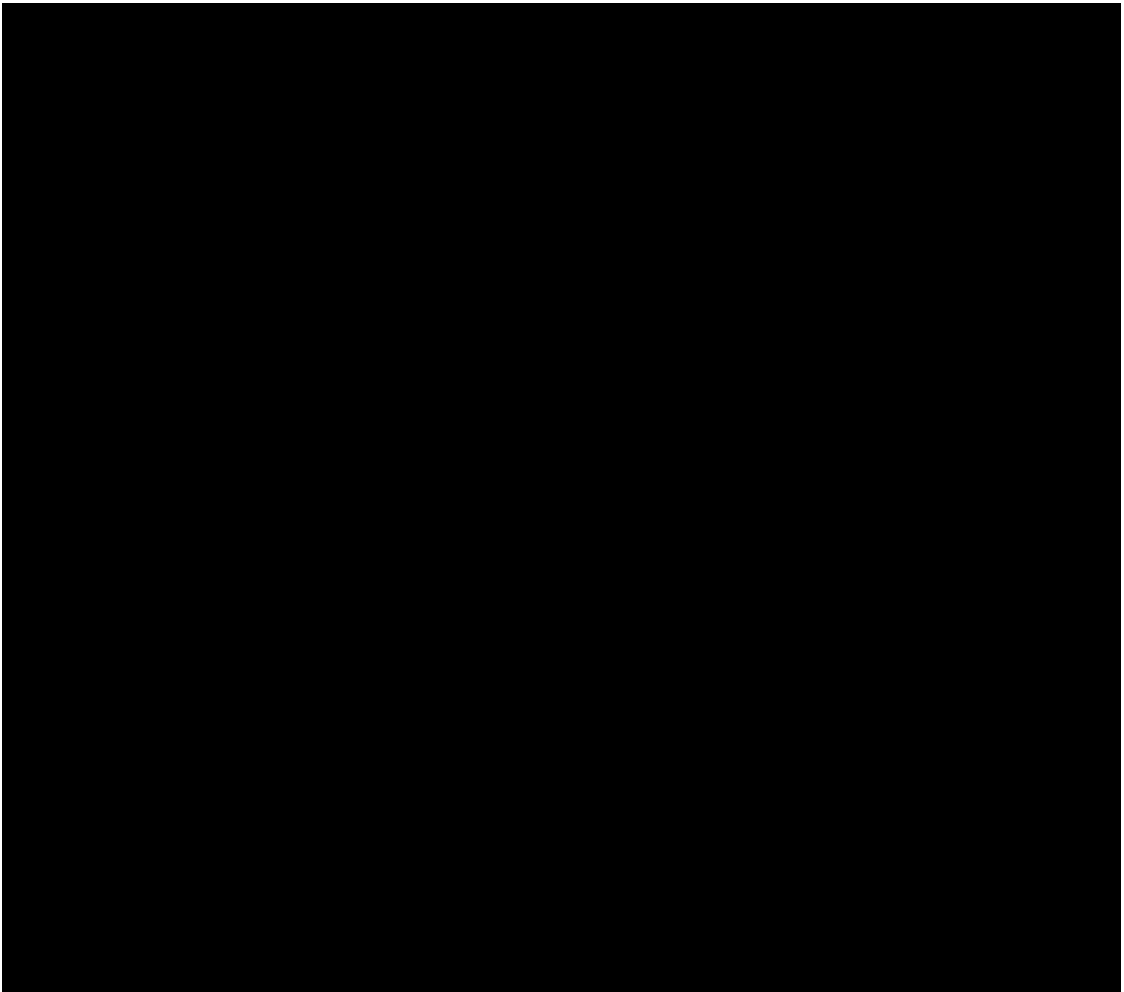


41.11 Provisions in policies

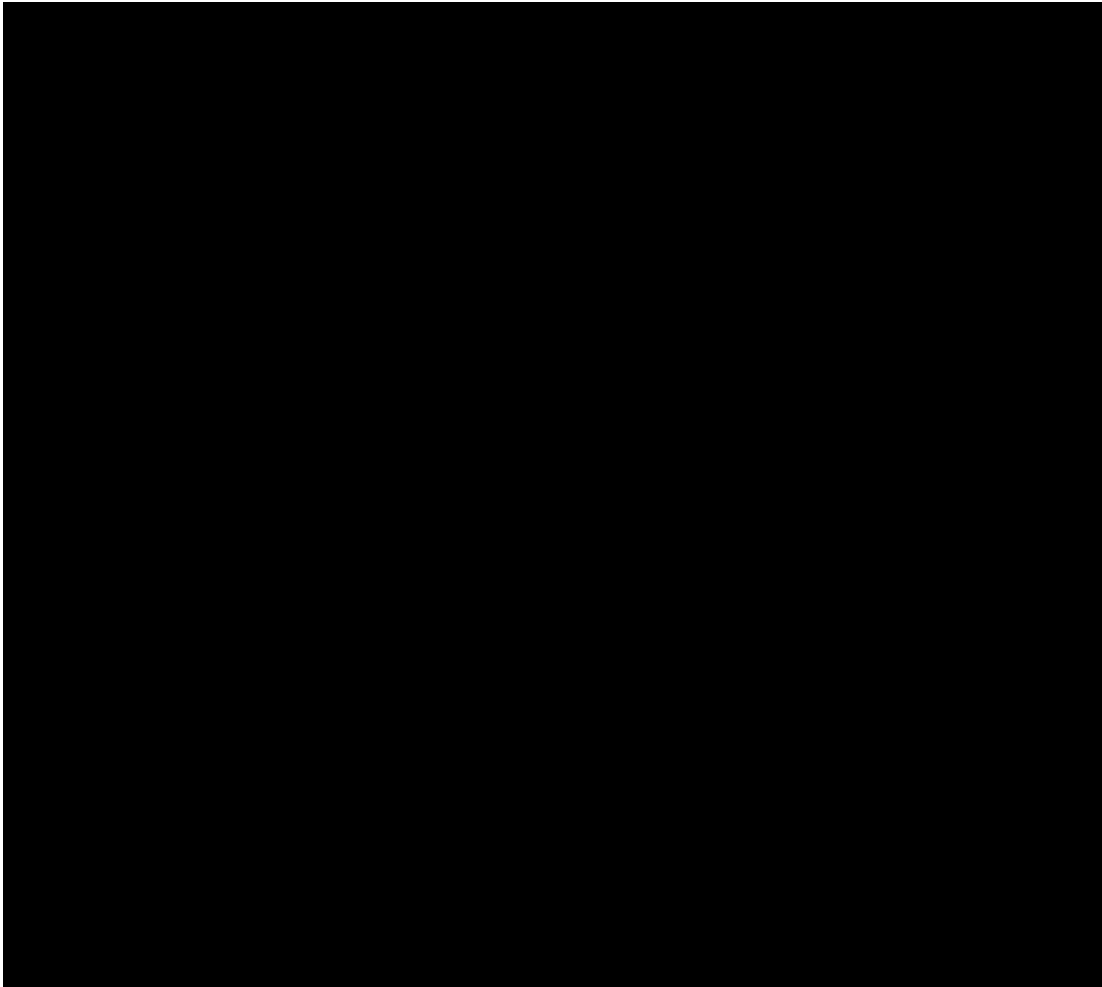




41.12 **Premiums**



41.13 **Undertaking to inform**



41.14 **Reinstatement**

- (a) If, prior to the time Macquarie ceases to be responsible under clause 41.1 for the care of a part of the Project Works, the Temporary Works or any other thing referred to in clause 41.1(a), any destruction, damage or loss occurs to the Project Works or the Temporary Works, Macquarie must:
 - (i) make secure the Project Works and the Temporary Works and the parts of the Construction Site which are still under the control of Macquarie;
 - (ii) notify:
 - (A) appropriate Authorities and emergency services; and
 - (B) the insurers for assessment,
and comply with their instructions;
 - (iii) promptly consult with the Principal to agree on steps to be taken to ensure:
 - (A) the prompt repair or replacement of the destruction, loss or damage so that:
 - (aa) it complies with the SWTC; and

- (bb) there is minimal disruption to the Project Works the Temporary Works or Macquarie's Activities; and
- (B) that, to the greatest extent possible, Macquarie continues to comply with its obligations under this deed;
- (iv) subject to clause 41.1(e), manage all repair and replacement activities so as to minimise the impact on the Project Works, the Temporary Works or Macquarie's Activities; and
- (v) keep the Principal's Representative fully informed of the progress of the repair and replacement activities.
- (b) Subject to clause 41.1(e), Macquarie will bear the Cost of complying with this clause 41.14.

41.15 Application of Principal's Insurance proceeds

- (a) Subject to, and without limiting, clause 41.1, where, prior to the Last Date of Completion, the Project Works or the Temporary Works are damaged or destroyed, then:
 - (i) to the extent the damaged or destroyed Project Works or Temporary Works have been the subject of a payment or allowance under clause 34 or clause 34 of the D&C Contract, all insurance proceeds under the contract works (material damage) insurance required pursuant to clause 41.2 in respect of those damaged or destroyed Project Works or Temporary Works that are payable under such Principal's Insurance will be:
 - (A) paid to the Principal; and
 - (B) paid by the Principal to Macquarie (or such other entity as it may direct in writing from time to time) as progress payments under clause 34.2 as and when Macquarie or DevCo reinstates the Project Works and the Temporary Works,

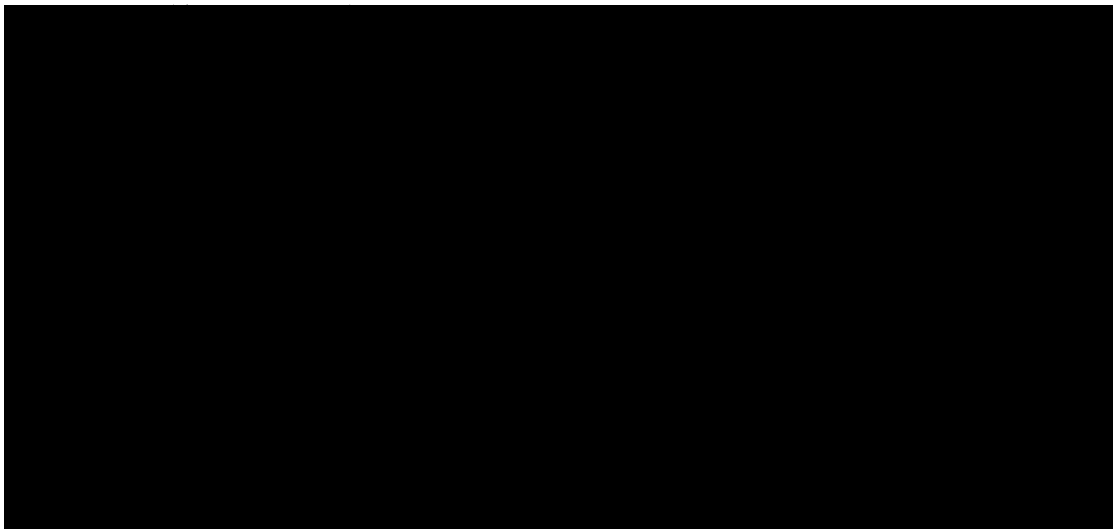
and subject to clause 41.1(e), those insurance proceeds will be Macquarie's sole entitlement to payment in respect of the reinstatement of that destruction of or damage to the Project Works or the Temporary Works;
 - (ii) to the extent the damaged or destroyed Project Works or Temporary Works have not been the subject of a payment or allowance under clause 34 or clause 34 of the D&C Contract, the Principal will direct that all insurance proceeds under the contract works (material damage) insurance required pursuant to clause 41.2 in respect of those damaged or destroyed Project Works or Temporary Works that are payable under such Principal's Insurance will be paid to Macquarie (or such other entity as Macquarie may direct in writing from time to time) as loss payee immediately; and
 - (iii) payment of insurance proceeds under clause 41.15(a)(ii) will be limited to the amount that Macquarie would have been entitled to be paid for the lost or damaged work described in that clause, if not for the loss or damage. Any insurance proceeds in excess of this amount will be paid in accordance with clause 41.15(a)(i).
- (b) This clause does not apply to any insurance proceeds that are payable under any Principal's Insurance in respect of an Excepted Risk, which will be retained by the Principal.

41.16 Damage to property

- (a) Subject to clause 41.16(c), where any loss of, or destruction or damage to, real or personal property or the Environment (including any Services but excluding the Project Works or the Temporary Works) occurs arising out of, or in any way in connection with, the carrying out by Macquarie of Macquarie's Activities or a failure by Macquarie to comply with its obligations under a Project Document, Macquarie must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) If Macquarie fails to carry out any repair work under clause 41.16(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal in doing so will be a debt due and payable from Macquarie to the Principal.
- (c) This clause 41.16 does not apply where the owner of the real or personal property does not agree to Macquarie carrying out the work under clause 41.16(a).
- (d) Nothing in this clause 41.16 limits the operation of the indemnity in clause 42.



41.18 DSU Insurance





41.19 **Liabilities of Macquarie not affected**

The effecting of Insurances does not limit the Liabilities or obligations of Macquarie under the Project Documents.

41.20 **No merger**

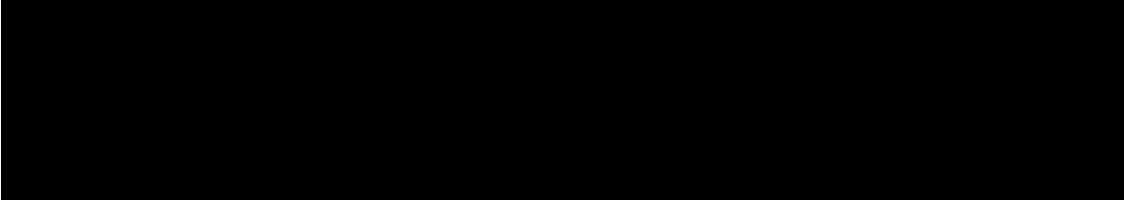
This clause 41 survives termination or expiry of this deed.

42. **INDEMNITY AND LIABILITY EXCLUSIONS**

42.1 **Indemnity from Macquarie**

Macquarie indemnifies:

- (a) the Principal;



(each a **State Indemnified Party**) from and against:

- (e) any Loss incurred by a State Indemnified Party in respect of:
 - (i) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any State Indemnified Party's real or personal property; or
 - (ii) any Claim against a State Indemnified Party (including by another State Indemnified Party) or Liability a State Indemnified Party may have to third parties in respect of or arising out of or in connection with:
 - (A) any illness, personal injury to, or death of, any person; or
 - (B) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property, caused by, arising out of, or in any way in connection with Macquarie's Activities; or
- (f) any Loss incurred by a State Indemnified Party, or Liability to any other person, arising out of or in any way in connection with:
 - (i) any breach or failure to comply with the terms of any Project Document by Macquarie; or

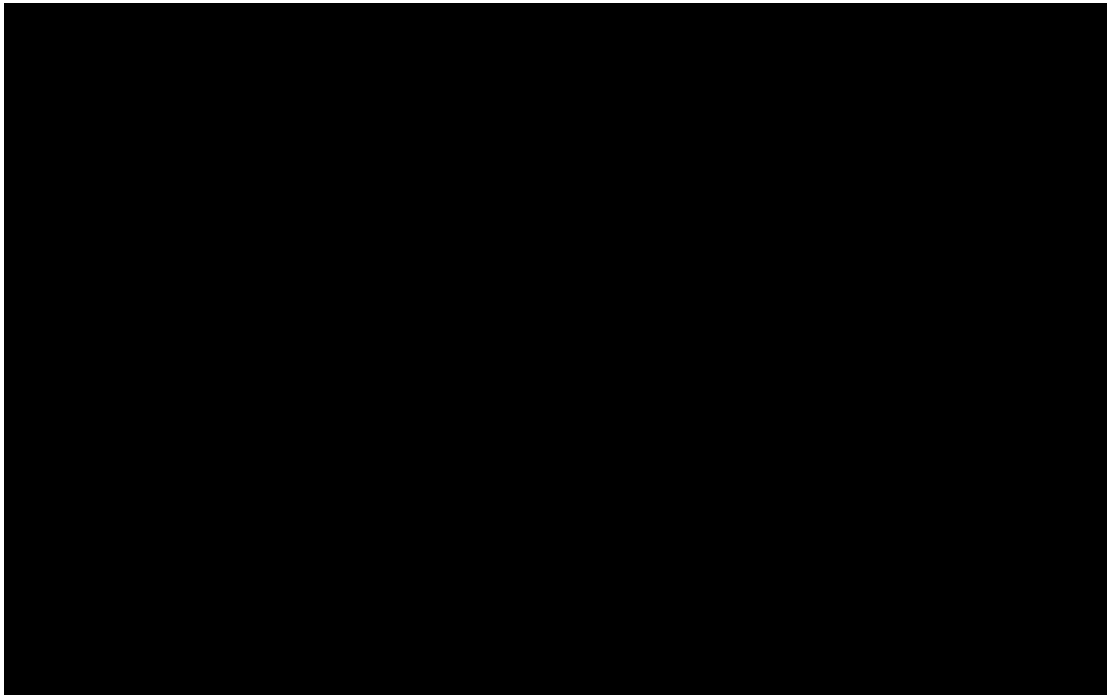
- (ii) any fraudulent or negligent act or omission by Macquarie, its Associates or any of its Subcontractors arising from or in connection with Macquarie's Activities.

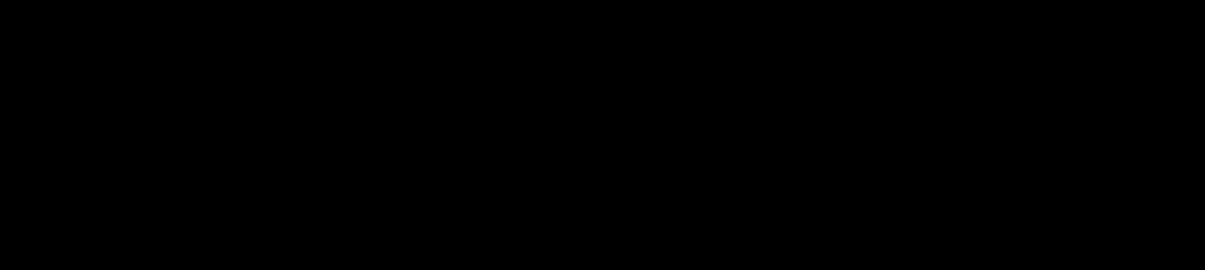
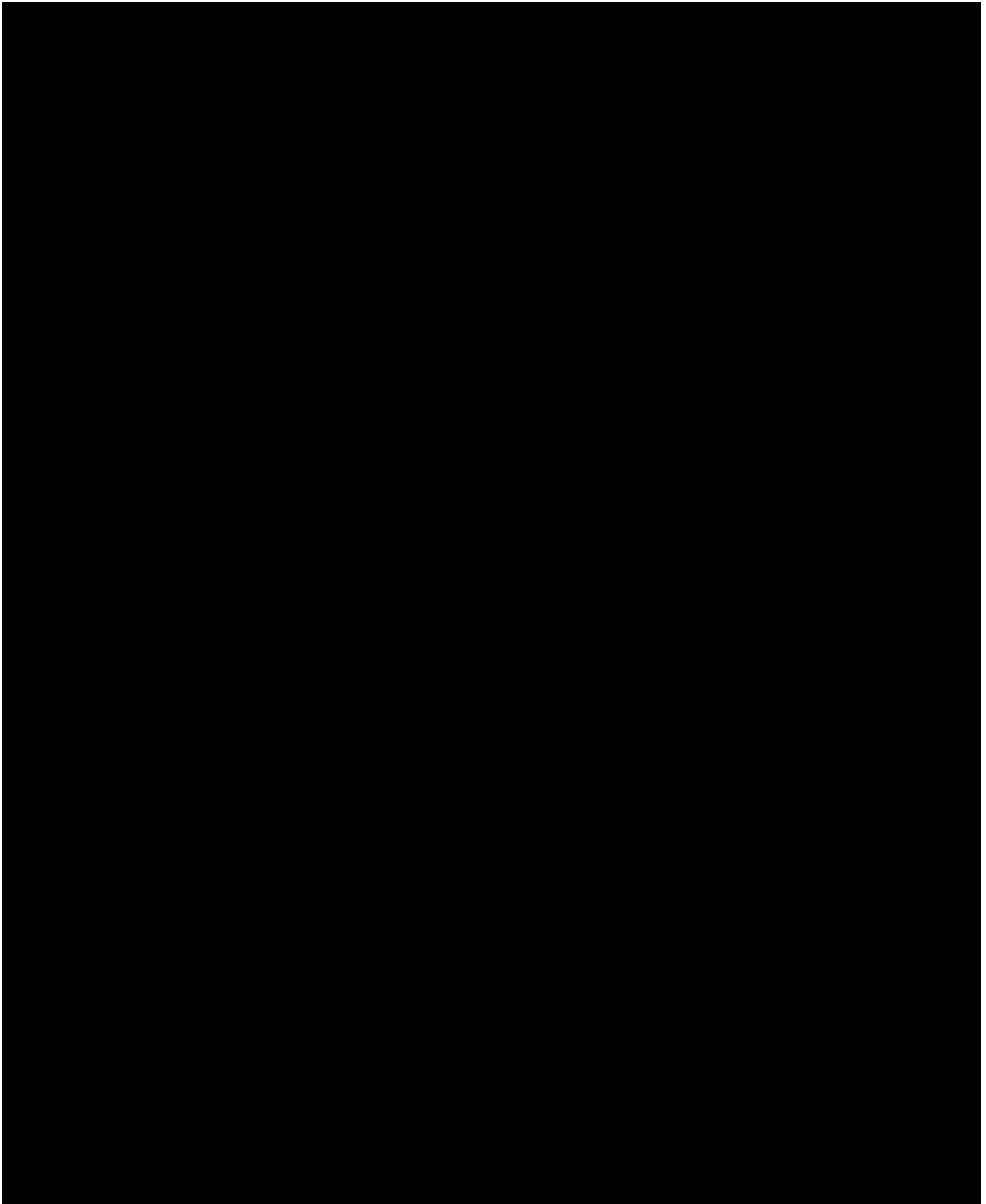
42.2 Limitations upon Macquarie's liability

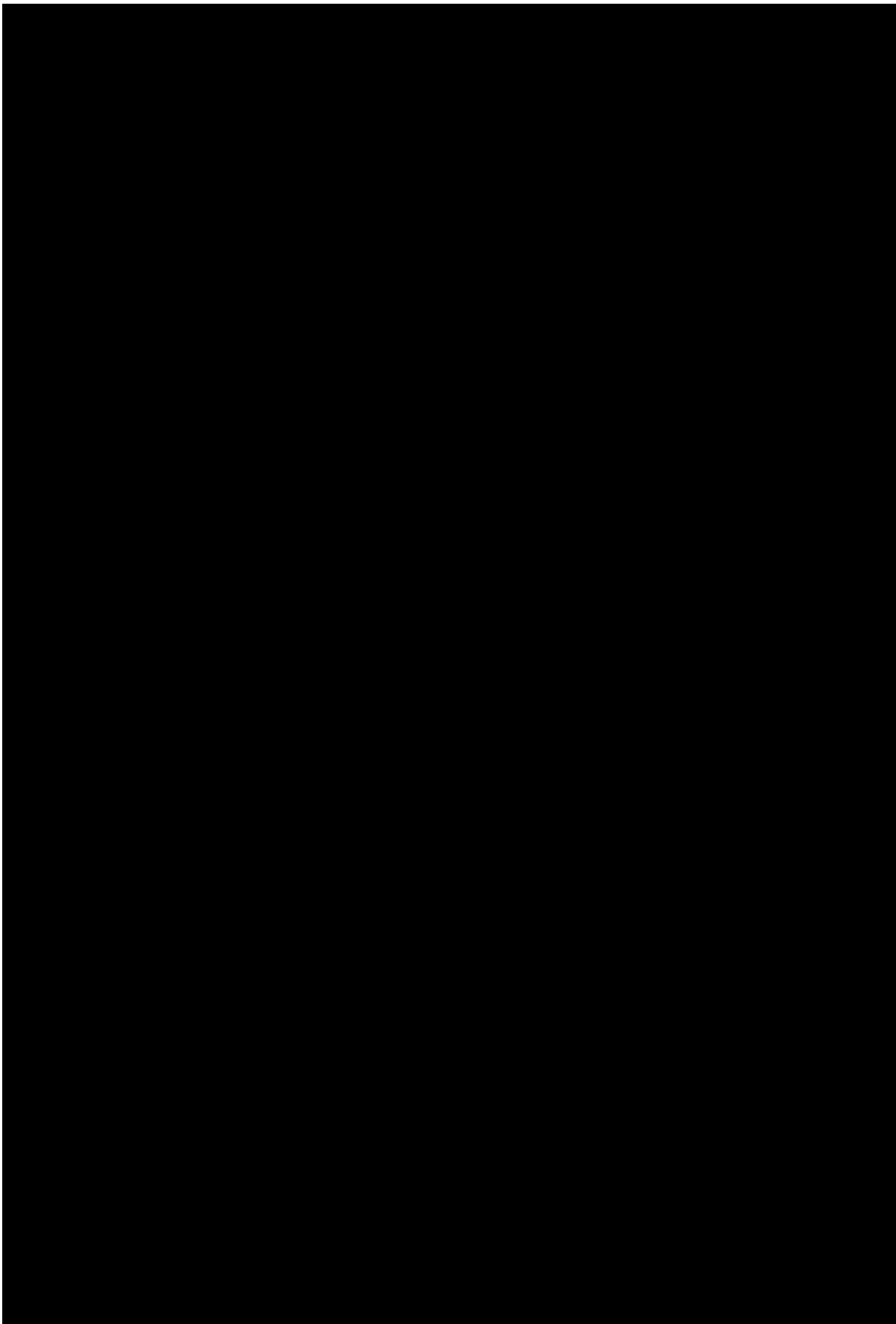
(a) Subject to clause 42.5(a), Macquarie's total aggregate liability under or in connection with:

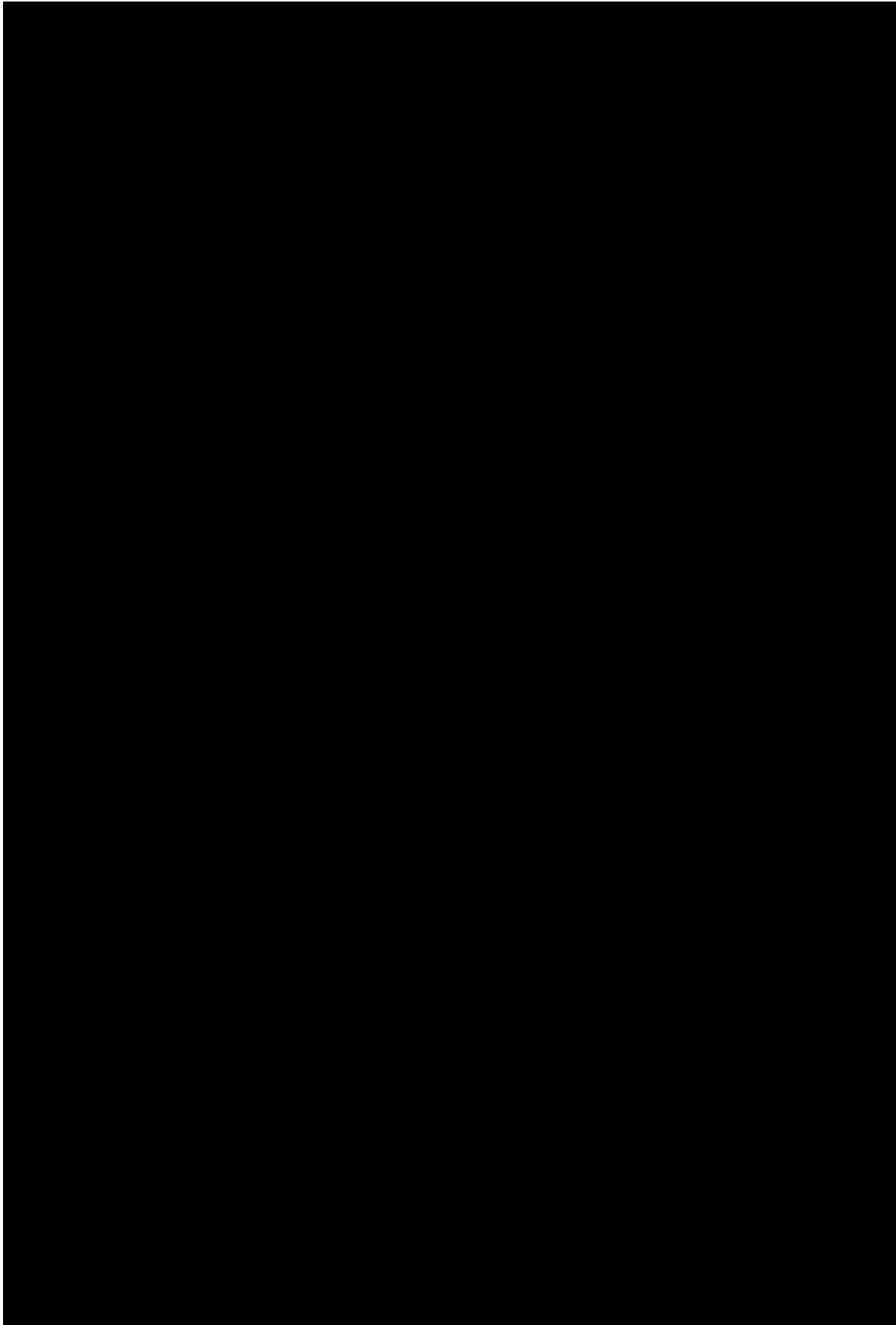
- (i) this deed;
- (ii) any Project Document; or
- (iii) any Third Party Agreement,

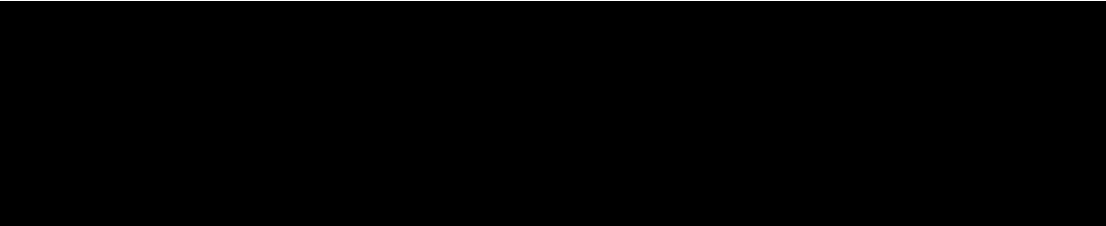
however caused or arising, whether in contract, tort, or otherwise, is limited to an amount equal to [REDACTED] of the Total Project Sum.









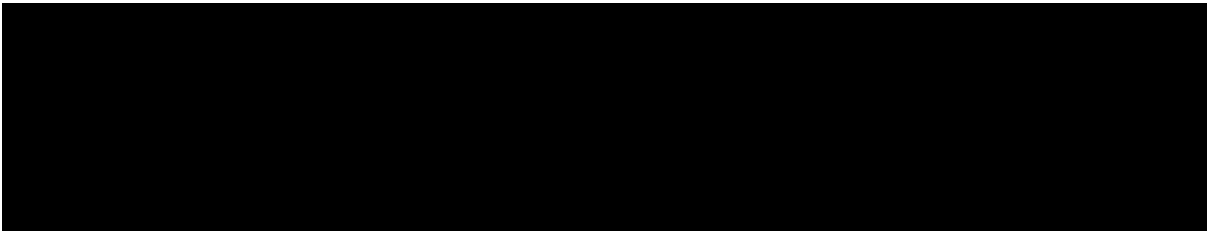
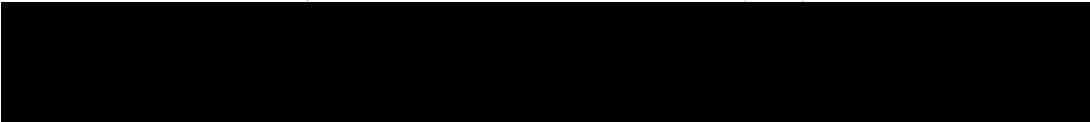


42.6 **Procedure for Third Party Claims**

- (a) If a State Indemnified Party wishes to claim indemnity under clause 42.1 in respect of a claim against the State Indemnified Party by a third party (**Third Party Claim**), the State Indemnified Party must:
 - (i) give notice of the Third Party Claim to Macquarie as soon as reasonably practicable;
 - (ii) keep Macquarie informed of the progress of the Third Party Claim;
 - (iii) regularly consult with Macquarie in relation to the manner in which proceedings relating to the Third Party Claim are conducted and implement Macquarie's reasonable instructions as to the manner in which those proceedings are conducted;
 - (iv) not settle or pay the Third Party Claim, other than a Third Party Claim which:
 - (A) that State Indemnified Party is obliged by Law to pay; or
 - (B) is settled for an amount which is less than or equal to the amount that State Indemnified Party would otherwise have been liable to pay to the relevant third party,without Macquarie's prior written consent (which must not be unreasonably withheld or delayed).
- (b) If Macquarie wishes to direct a State Indemnified Party to take actions in defending or mitigating the Third Party Claim, Macquarie must first give reasonable security to the State Indemnified Party for any Cost or liability arising out of such direction.
- (c) Macquarie's liability under clause 42.1 will be reduced to the extent that a failure by a State Indemnified Party to comply with clause 42.6(a) prejudices Macquarie, but not otherwise.

42.7 **Obligations not affected**

- (a) Clause 42.1 does not limit or otherwise affect Macquarie's other obligations under the Project Documents or otherwise according to Law.



43. DEFAULT

43.1 Macquarie Event of Default

Each of the following events is a Macquarie Event of Default:

- (a) **(failure to progress)**: Macquarie fails to expeditiously and diligently progress Macquarie's Activities as required under clause 23.2(e);
- (b) **(failure to insure)**: Macquarie fails to effect or maintain (or cause to be effected or maintained) an Insurance as required by this deed, and fails to do so within 10 Business Days after receipt of a notice from the Principal directing it to do so;
- (c) **(subcontracting)**: Macquarie breaches its obligations under clause 8;
- (d) **(fraud)**: the Principal is the victim of any fraud or dishonest conduct by Macquarie, DevCo or the D&C Contractor in connection with Macquarie's Activities, or the Independent Commission Against Corruption or similar public body determines that Macquarie (or the D&C Contractor, in performing Macquarie's Activities) has engaged in corrupt conduct, collusive pricing or other similar activity;
- (e) **(incorrect representation or warranty)**: a representation or warranty made or given by Macquarie in this deed or any other Principal Project Document proves to be untrue which has a material adverse effect on Macquarie's ability to comply with its obligations under the Project Documents;
- (f) **(delay)**: Macquarie has not achieved:
 - (i) Milestone Achievement of a Milestone by the Date for Milestone Achievement for that Milestone;

- (ii) Construction Completion of a Portion by the Date for Construction Completion for that Portion; or
- (iii) Completion of a Portion (other than Portion 1) by the Date for Completion for that Portion; and
- (g) (**other breach**): any other material breach by Macquarie of an obligation under this deed or any other Principal Project Document.

43.2 **Default Notice**

If a Macquarie Event of Default occurs, the Principal may give Macquarie a notice (the **Default Notice**):

- (a) stating that it is a notice under this clause 43.2; and
- (b) specifying the nature of the Macquarie Event of Default.

43.3 **Cure Plan**

- (a) If:
 - (i) a Default Notice is given; and
 - (ii) the Macquarie Event of Default is capable of being Remedied,

Macquarie must, within [REDACTED] (or such longer period as the Principal may agree) after receipt of the Default Notice:

 - (iii) Remedy the Macquarie Event of Default; or
 - (iv) prepare and submit to the Principal a draft plan describing the actions and measures which Macquarie will diligently pursue to Remedy the Macquarie Event of Default (including the proposed cure period) (**Draft Cure Plan**).
- (b) Within [REDACTED] after receipt of the Draft Cure Plan, the Principal must (acting reasonably) either:
 - (i) approve the Draft Cure Plan by notifying Macquarie; or
 - (ii) reject the Draft Cure Plan by notifying Macquarie and providing reasons to Macquarie for its rejection.
- (c) If the Principal approves a Draft Cure Plan pursuant to clause 43.3(b)(i) (the **Approved Cure Plan**):
 - (i) the period of time in the Approved Cure Plan to Remedy the Macquarie Event of Default is the cure period (the **Applicable Cure Period**); and
 - (ii) Macquarie must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remedy of the Macquarie Event of Default) and Remedy the Macquarie Event of Default within the Applicable Cure Period.
- (d) If the Principal rejects a Draft Cure Plan pursuant to clause 43.3(b)(ii), Macquarie, in consultation in good faith with the Principal, must amend the Draft Cure Plan to meet the Principal's reasonable requirements and submit the amended Draft Cure Plan to the Principal for its approval, in which case this clause 43.3 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 43.3(a).

- (e) If:
- (i) a Default Notice is given;
 - (ii) the Macquarie Event of Default is capable of being Remedied; and
 - (iii) Macquarie fails to:
 - (A) Remedy the Macquarie Event of Default, or submit a Draft Cure Plan, in accordance with clause 43.3(a);
 - (B) if the Principal rejects a Draft Cure Plan pursuant to clause 43.3(b)(ii), amend the Draft Cure Plan to meet the Principal's reasonable requirements and submit the amended Draft Cure Plan in accordance with clause 43.3(d); or
 - (C) comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remedy of the Macquarie Event of Default), except in a minor respect,

and such failure is not remedied by Macquarie within [REDACTED] after notice from the Principal regarding that failure, a Macquarie Termination Event will occur.

- (f) If at any time prior to the expiry of an Applicable Cure Period, Macquarie reasonably considers that it requires an extension to the Applicable Cure Period it may request an extension to the Applicable Cure Period by notifying the Principal in writing setting out the reasons for that belief and the reasonable period of time proposed by Macquarie for the extension of the Applicable Cure Period.

- (g) If:
- (i) Macquarie gives the Principal a notice under clause 43.3(f); and
 - (ii) the Principal is reasonably satisfied that Macquarie has diligently pursued and is continuing to diligently pursue a Remedy (other than in a minor respect) of the applicable Macquarie Event of Default but that the Macquarie Event of Default cannot, despite such diligence, be Remedied within the Applicable Cure Period,

the Principal must grant an extension of the Applicable Cure Period for such period as the Principal reasonably considers is reasonably required to Remedy the Macquarie Event of Default, provided that the Principal is not required to grant more than one extension to an Applicable Cure Period.

- (h) Without prejudice to the Principal's rights under clause 23 and this clause 43, for the purposes of this clause 43.3, the Principal agrees that the Macquarie Event of Default referred to in clause 43.1(f) is capable of being Remedied.

43.4 **Prevention Plan**

- (a) If:
- (i) a Default Notice is given; and
 - (ii) the Macquarie Event of Default is not capable of being Remedied,

Macquarie must, within [REDACTED] after receipt of the Default Notice, prepare and submit to the Principal a draft plan describing the actions and measures which

Macquarie will diligently pursue to prevent the Macquarie Event of Default from recurring (**Draft Prevention Plan**).

- (b) Within [REDACTED] after receipt of the Draft Prevention Plan, the Principal must (acting reasonably) either:
 - (i) approve the Draft Prevention Plan by notifying Macquarie; or
 - (ii) reject the Draft Prevention Plan by notifying Macquarie and providing reasons to Macquarie for its rejection.
- (c) If the Principal approves a Draft Prevention Plan pursuant to clause 43.4(b)(i) (the **Approved Prevention Plan**), Macquarie must comply with and implement the Approved Prevention Plan.
- (d) If the Principal rejects a Draft Prevention Plan pursuant to clause 43.4(b)(ii), Macquarie, in consultation in good faith with the Principal, must amend the Draft Prevention Plan to meet the Principal's reasonable requirements and submit the amended Draft Prevention Plan to the Principal for its approval, in which case this clause 43.4 will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 43.4(a).
- (e) If:
 - (i) a Default Notice is given;
 - (ii) the Macquarie Event of Default is not capable of being Remedied; and
 - (iii) Macquarie fails to:
 - (A) submit a Draft Prevention Plan in accordance with clause 43.4(a);
 - (B) if the Principal rejects a Draft Prevention Plan pursuant to clause 43.4(b)(ii), amend the Draft Prevention Plan to meet the Principal's reasonable requirements and submit the amended Draft Prevention Plan in accordance with clause 43.4(d); or
 - (C) comply with and implement, except in a minor respect, the Approved Prevention Plan,

and such failure is not remedied by Macquarie within [REDACTED] after notice from the Principal regarding that failure, a Macquarie Termination Event will occur.

- (f) If Macquarie reasonably considers that it requires an extension to any of the time periods in the Approved Prevention Plan, it may request an extension to such time period by notifying the Principal in writing setting out the reasons for that belief and the reasonable period of time proposed by Macquarie for the extension of the applicable time period.
- (g) If:
 - (i) Macquarie gives the Principal a notice under clause 43.4(f); and
 - (ii) the Principal is reasonably satisfied that Macquarie has diligently pursued and is continuing to diligently pursue compliance with the Approved Prevention Plan (other than in a minor respect),

the Principal must grant an extension to the applicable timing in the Approved Prevention Plan for such period as the Principal considers is reasonably required,

provided that the Principal is not required to grant more than one extension to an Approved Prevention Plan.

44. **STEP-IN**

44.1 **Step-in Events**

Each of the following is a Step-in Event:

- (a) a Macquarie Termination Event; and
- (b) an event or circumstance which arises out of or in connection with Macquarie's Activities that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the health or safety of persons;
 - (ii) the Environment;
 - (iii) any property; or
 - (iv) the safe and secure performance of Macquarie's Activities.

44.2 **Step-in Rights**

- (a) If:
 - (i) a Step-in Event occurs; and
 - (ii) the Principal has given notice to Macquarie in accordance with clause 44.2(b),
then a Step-in Party may exercise all or any of the Step-in Powers set out in clause 44.3 in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event (**Step-in Right**).
- (b) The notice referred to in clause 44.2(a)(ii):
 - (i) must be in writing and must specify:
 - (A) the Step-in Event which has triggered the Step-in Right;
 - (B) the Macquarie's Activities which the Step-in Party proposes to perform;
 - (C) the date on which the relevant Step-in Party proposes to commence performing the relevant Macquarie's Activities; and
 - (D) the date on which the relevant Step-in Party proposes to cease exercising the relevant Macquarie's Activities; or
 - (ii) may be given orally if the Principal's Representative considers that the Step-in Event requires urgent remedy or action and there is insufficient time to issue a written notice under clause 44.2(b)(i), but if given orally must be followed within 24 hours by a written notice under clause 44.2(b)(i).
- (c) The Step-in Right is without prejudice to the Principal's other rights in respect of a Step-in Event, including its rights under clause 45.

44.3 **Step-in Powers**

A Step-in Party may, in performing Macquarie's Activities referred to in the notice under clause 44.2(b), do anything in respect of those activities that Macquarie could do including:

- (a) enter into and remain in possession of all or any of the Project Works, Temporary Works and/or the Construction Site;
- (b) manage all or any of the Project Works, Temporary Works and/or the Construction Site;
- (c) exercise all or any of Macquarie's rights, and perform all or any of Macquarie's obligations:
 - (i) in connection with the performance of Macquarie's Activities;
 - (ii) under or in relation to a Project Document or any other document to which Macquarie is a party; and
 - (iii) under or in relation to any Approval held by Macquarie, as if it were Macquarie, to the exclusion of Macquarie;
- (d) do anything the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
- (e) do anything incidental to the matters listed in clauses 44.3(a) to (d) (inclusive),

(Step-in Powers).

44.4 **Macquarie's obligations**

- (a) Macquarie must:
 - (i) cooperate with the Step-in Party in the exercise of the Step-in Powers; and
 - (ii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
 - (iii) ensure that its Significant Subcontractors (excluding the Lifts and Escalators Contractor) do likewise, and use its best endeavours to ensure the Lifts and Escalators Contractor and all other Subcontractors do likewise.
- (b) Without limiting clause 44.4(a), Macquarie must:
 - (i) allow the Step-in Party to access and use:
 - (A) all or any of the land and assets used in the performance of Macquarie's Activities;
 - (B) its Associates; and
 - (C) any information the Step-in Party reasonably requires;
 - (ii) comply with all reasonable Directions given by the Step-in Party; and

- (iii) ensure that its Significant Subcontractors (excluding the Lifts and Escalators Contractor) do likewise, and use its best endeavours to ensure the Lifts and Escalators Contractor and all other Subcontractors do likewise,

to enable the Step-in Party to exercise its Step-in Powers.

- (c) Macquarie's obligations under this deed will be suspended to the extent and for such period as is necessary to permit the Principal to exercise its Step-in Rights.

44.5 **Principal's obligations**

- (a) The Principal must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform Macquarie's Activities in accordance with the requirements of this deed.
- (b) Macquarie acknowledges that a Step-in Party is not under any obligation to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.

44.6 **No liability**

Macquarie acknowledges that, except as provided for in clauses 23 and 24 the Principal will have no Liability to Macquarie, and Macquarie will not be entitled to make any Claim against the Principal, arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) for any Loss which results,
except where it arises from:
 - (c) fraud or Wilful Misconduct on the part of the Step-in Party or its Associates; or
 - (d) an Excusable Cause of Delay, in which case clause 23 and clause 24 shall apply to any such claims.

44.7 **Step-out**

- (a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, on the earlier of:
 - (i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome); and
 - (ii) the Principal's Representative notifying Macquarie in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) The Principal must give written notice to Macquarie of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by the Principal to Macquarie a reasonable time prior to the date the Step-in Party proposes to cease to exercise the Step-in Powers).
- (c) The Principal and Macquarie must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to Macquarie resuming the performance of the relevant Macquarie's Activities is effected without interruption to Macquarie's Activities.

- (d) Upon the Step-in Party ceasing to exercise the Step-in Powers, Macquarie must resume the performance of the relevant Macquarie's Activities in accordance with this deed (unless this deed has been terminated).

44.8 **Principal's Costs**

The Principal will be entitled to recover its reasonable Costs and expenses for any action taken pursuant to clause 44.1(a) as a debt due and payable from Macquarie to the Principal.

45. **TERMINATION**

45.1 **Macquarie Termination Events**

Each of the following is a Macquarie Termination Event:

- (a) **(Termination of the OSD PDA)**: termination of the OSD PDA for a "Macquarie Termination Event" (as defined in the OSD PDA) under the OSD PDA prior to the [REDACTED];
- (b) **(Failure to pay)**: Macquarie fails to pay any Macquarie Payment or any other amount which it is obliged to pay to the Principal under this deed, the amount is not disputed and the failure is not remedied within 20 Business Days after a written demand from the Principal;
- (c) **(Failure to submit, amend or implement a cure or prevention plan or to Remedy or prevent)**: an event described in clause 43.3(e) or clause 43.4(e);
- (d) **(Failure to achieve Completion by Longstop Date)**: a failure by Macquarie to achieve Completion of the Project Works by the Longstop Date;
- (e) **(abandonment)**: Macquarie abandons the Project Works;
- (f) **(insolvency of Macquarie)**: an Insolvency Event occurs in relation to Macquarie, whether or not Macquarie has been in breach of this deed;
- (g) **(insolvency of D&C Contractor or D&C Guarantor)**: an Insolvency Event occurs in relation to the D&C Contractor or the D&C Guarantor, whether or not Macquarie is then in breach of this deed, and:
 - (i) the D&C Contractor or D&C Guarantor is not replaced within 120 Business Days; or
 - (ii) at any time during that period, Macquarie is not diligently pursuing the replacement of the D&C Contractor or D&C Guarantor (as applicable),
by a person that:
 - (iii) satisfies the requirements of clause 8.2(b); or
 - (iv) is otherwise acceptable to the Principal (acting reasonably);
- (h) **(assignment)**: Macquarie breaches its obligations under clause 51.3 and the failure is not remedied within 8 Business Days after a written notice from the Principal;
- (i) **(breach of clause 51.1)**: Macquarie breaches its obligations under clause 51.1 and the failure is not remedied within 8 Business Days after a written notice from the Principal;
- (j) **(Illegality Event)**: an Illegality Event; or

- (k) (**Liability caps exceeded**) the aggregate liability of Macquarie to the Principal:
 - (i) under or in connection with this deed, the Project Documents and the Third Party Agreements is equal to or exceeds [REDACTED] of the Total Project Sum; or
 - (ii) under clauses 23.12(d)(i), 23.12(d)(ii), 23.12(e)(i), 23.12(e)(ii) and 23.12(k)(ii), and in respect of any breach of clauses 23.2(a) and 23.2(b), is equal to or exceeds the LD Cap.

45.2 **Notice of Macquarie Termination Event**

Without limiting the Principal's other rights or Macquarie's other obligations under the Project Documents, Macquarie must notify the Principal's Representative immediately on becoming aware of any Macquarie Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become a Macquarie Termination Event.

45.3 **Termination for Macquarie Termination Event**

If a Macquarie Termination Event occurs and is subsisting, the Principal may give a written notice to Macquarie immediately terminating this deed. The notice must set out details of the Macquarie Termination Event for which the Principal is giving the notice.

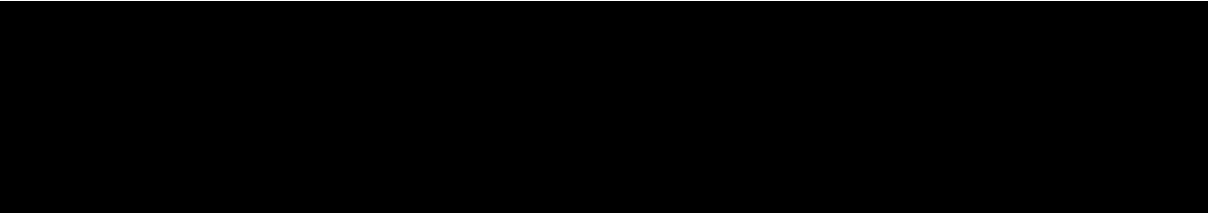
45.4 **Principal Termination Events**

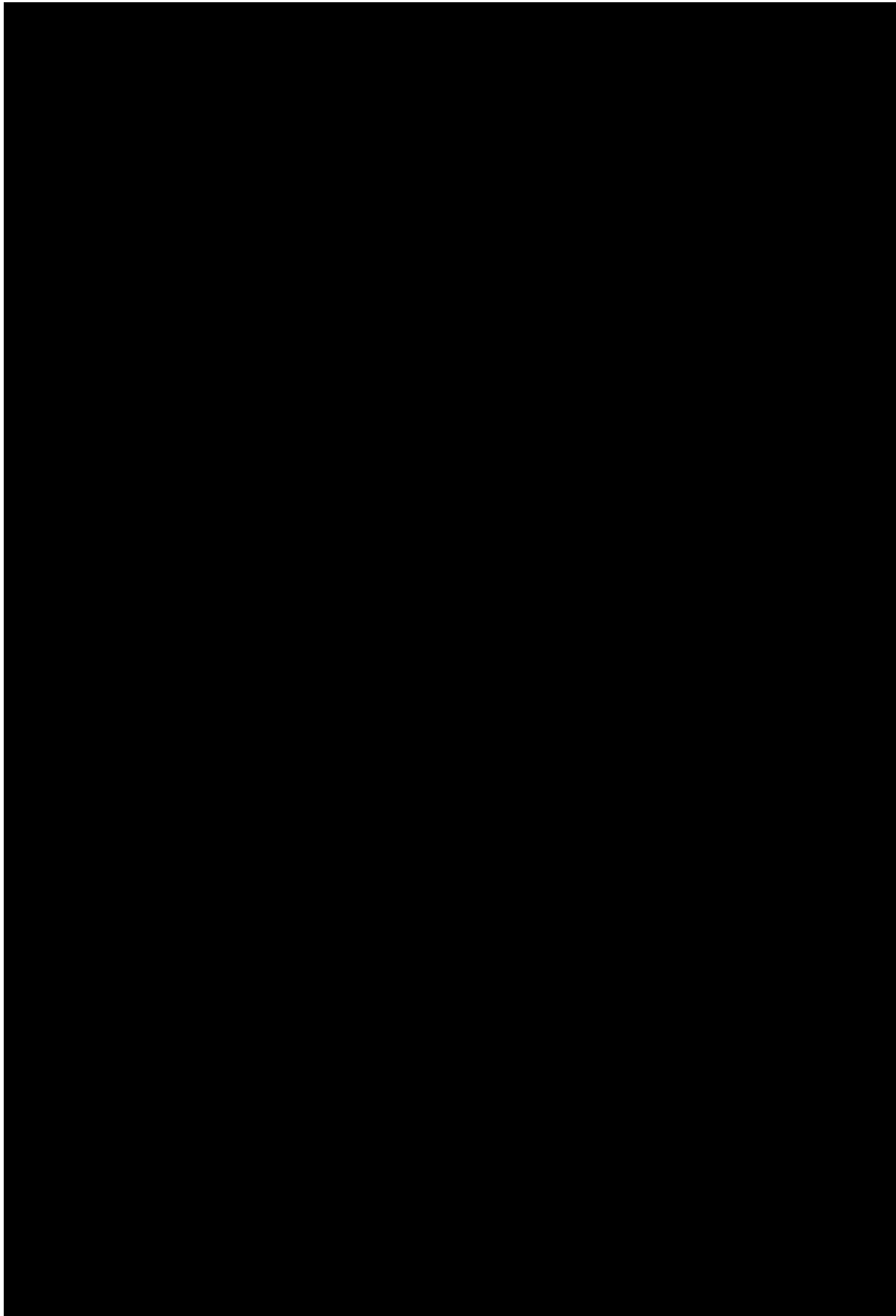
Each of the following is a Principal Termination Event:

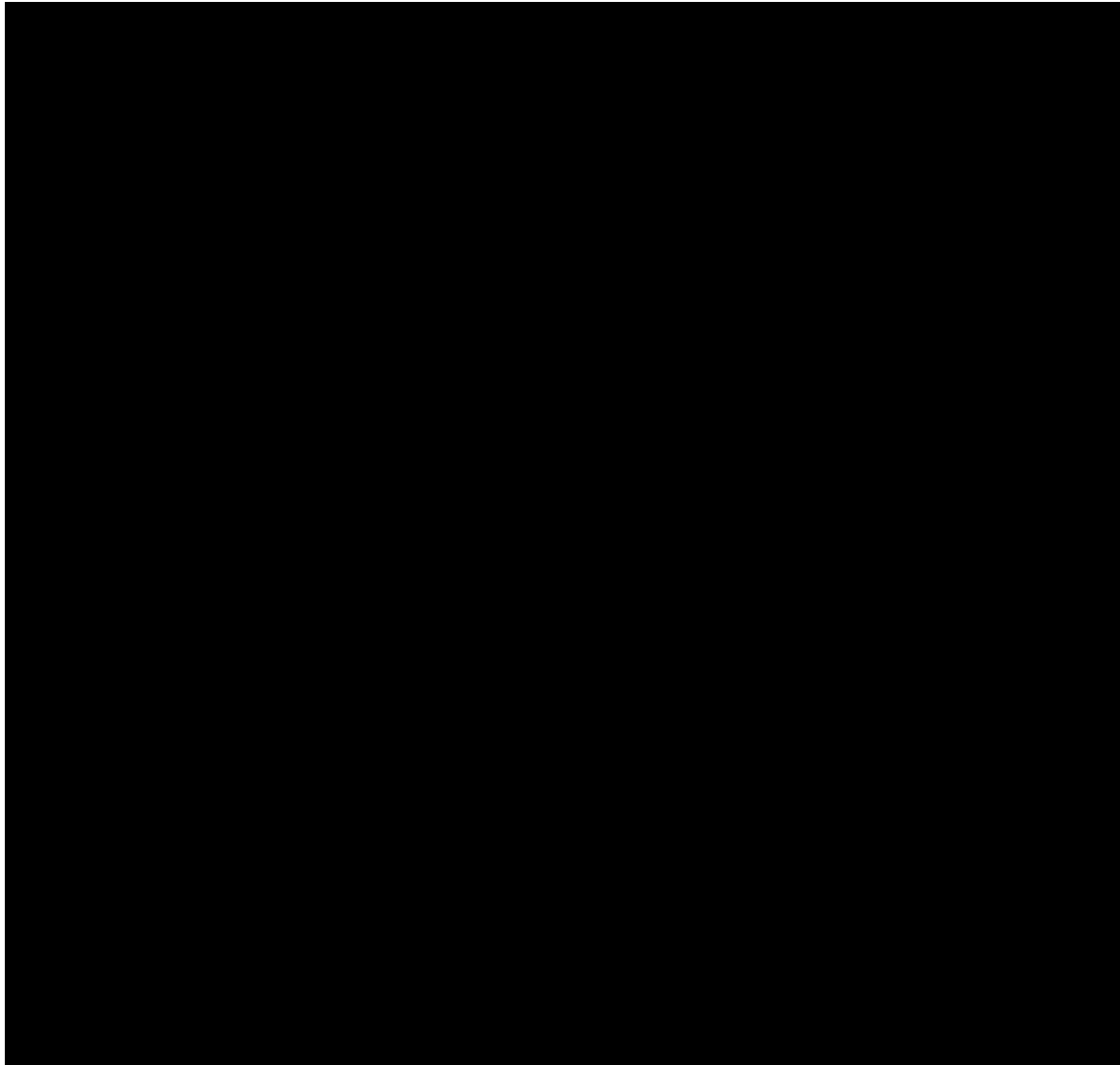
- (a) (**Failure to pay**): the Principal fails to comply with its payment obligations under clause 34 and the failure is not remedied within 20 Business Days after a written demand from Macquarie; or
- (b) (**Frustration**): a breach by the Principal of this deed which substantially frustrates or renders it impossible for Macquarie to achieve Completion of the Project Works;
- (c) (**Termination of the OSD PDA**): termination of the OSD PDA for a "Principal Termination Event" (as defined in the OSD PDA) under the OSD PDA prior to the [REDACTED] or
- (d) (**Material breach**): the Principal commits a material breach of this deed (other than in relation to any failure to provide access) and that breach is not remedied within 20 Business Days after written notice from Macquarie.

45.5 **Termination for Principal Termination Event**


- (a) If a Principal Termination Event occurs, Macquarie may give the Principal 30 Business Days' notice of its intention to terminate this deed.
- (b) If the relevant Principal Termination Event has not been remedied (or its effects overcome) within 30 Business Days after receipt of Macquarie's notice under clause 45.5(a), Macquarie may, if the Principal Termination Event is still subsisting, immediately terminate this deed by notice to the Principal.







45.7 **Termination of OSD PDA**

- (a) The parties acknowledge that, if this deed is terminated by:
 - (i) the Principal under clause 45.3 or clause 45.6; or
 - (ii) Macquarie under clause 45.5 or clause 45.6,
 the OSD PDA will automatically terminate.
- (b) If:
 - (i) the OSD PDA is terminated (including under clause 2 of the OSD PDA) prior to the Last Date of Completion; and
 - (ii) this deed is not terminated,
the parties must use best endeavours to agree:
 - (iii) the amendments required to the Project Documents to reflect the fact that:
 - (A) the OSD PDA has been terminated;

- (B) the Project Documents must operate independently of the OSD Project Documents; and
- (C) the Principal may engage a third party to carry out the OSD Developer's Activities; and
- (iv) any Variation required to the Project Works, the Temporary Works or Macquarie's Activities as a consequence of the termination of the OSD PDA, which may include a Variation to:
 - (A) ensure that Martin Place Metro Station:
 - (aa) will satisfy the requirements of the SWTC; and
 - (bb) can be operated safely and in a manner which does not put the health and safety of persons at risk, despite the OSD not being constructed or completed; or
 - (B) enable an over station development similar to the OSD to be completed after Sydney Metro City & Southwest commences operations.
- (c) If there is a dispute between the parties as to the amendments required to the Project Documents under clause 45.7(b)(iii) or any Variation required under clause 45.7(b)(iv), that Dispute will be resolved in accordance with clause 52.
- (d) If the parties agree, or it is determined under clause 52, that a Variation is required to the Project Works, the Temporary Works or Macquarie's Activities pursuant to clause 45.7(b)(iv), that Variation will be deemed to have been proposed by Macquarie pursuant to clause 36.1 and approved by the Principal in accordance with clause 36.2(a)(ii)(A) and clause 36.4 will apply to that Variation.
- (e) The parties acknowledge and agree that any Variation required under clause 45.7(b)(iv) will be treated as a Variation requested by Macquarie except in circumstances where the OSD PDA is terminated for the default of the Principal under the OSD PDA or pursuant to clause 45.6.

45.8 **Principal not entitled to give notice**

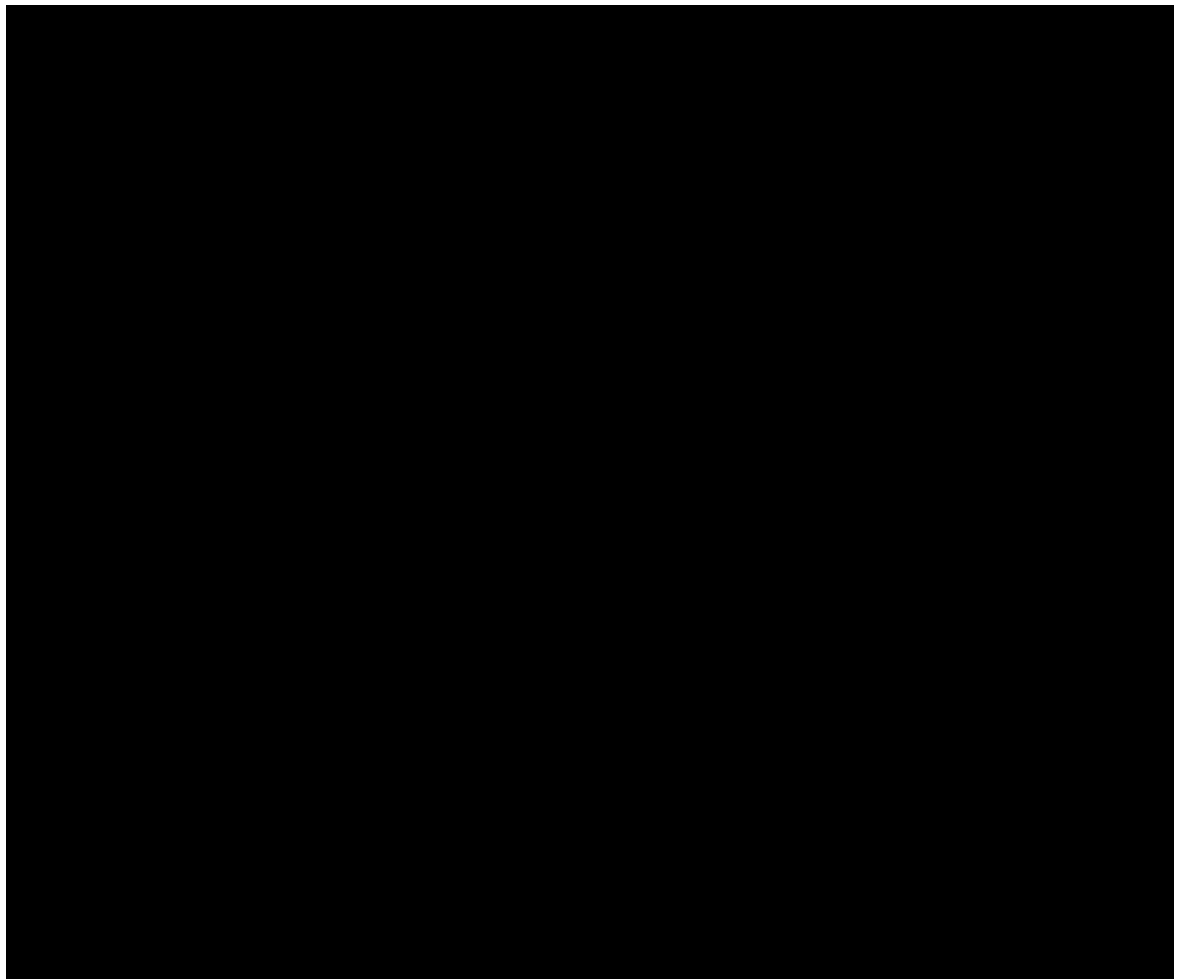
The Principal will not be entitled to give any notice under clauses 43.2 or 45.3 and will not be entitled to terminate this deed to the extent the occurrence or circumstance which would otherwise entitle the Principal to give such a notice results from the relevant Principal Termination Event.

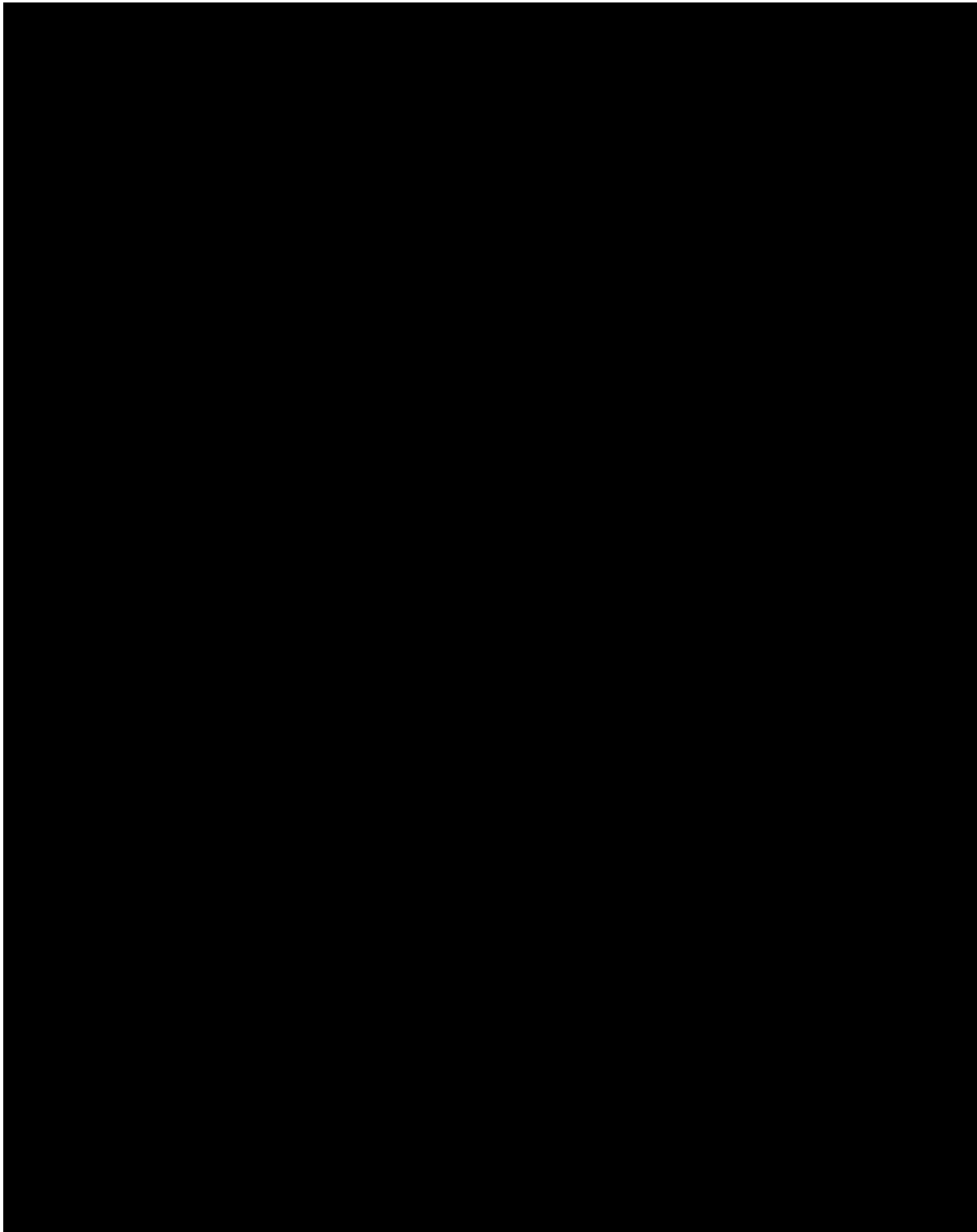
45.9 **Consequences of termination**

- (a) On expiry or termination of this deed, the rights and obligations of the parties under this deed will cease except for:
 - (i) any accrued rights and obligations under this deed, including those arising out of the termination of this deed (including the Payment Schedule); and
 - (ii) any rights and obligations which expressly or impliedly continue after termination of this deed, including those referred to in clause 60.4.
- (b) If this deed is terminated pursuant to clause 45.3, clause 45.5 or clause 45.6, the Principal may, in its absolute discretion, to the extent reasonably required by the Principal to make the Construction Site and any Extra Land safe and/or facilitate completion of the Project Works (as the case may be) (**Remaining Work**):

- (i) take possession of, and use (and permit others to use), the Construction Site and any Extra Land (and, for this purpose, Macquarie must ensure that the Principal has such access to the Extra Land);
 - (ii) contract with any of the Subcontractors;
 - (iii) take possession of, and use (and permit others to use), such of the Design Documentation, Material and other information in the possession of Macquarie or any of Macquarie's Associates and Macquarie must ensure that all necessary rights for this purpose are assigned to the Principal;
 - (iv) itself or engage third parties to carry out and complete the whole or any part of the Remaining Works; and
 - (v) exclude from the Construction Site and the Extra Land Macquarie and any of Macquarie's Associates.
- (c) If this deed is terminated pursuant to clause 45.3, the Principal may have recourse to the Bank Guarantee held under clause 6.
- (d) Macquarie acknowledges and agrees that the Principal's rights and entitlements set out in this clause 45 are in addition to the Principal's rights and entitlements under the D&C Side Deed.

45.10 Termination payment





45.11 **Other matters relevant to termination**

- (a) Macquarie must:
 - (i) take all steps possible to mitigate the incurring by it of Costs or Loss in respect of any termination of this deed; and

- (ii) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other things to enable the Principal to exercise its rights to use such Design Documentation.
- (b) Macquarie may continue to use and occupy the Principal Construction Site pursuant to clause 17.2 until the date that is 20 Business Days after the date on which this deed is terminated (or such other date agreed between the parties) to the extent reasonably necessary to enable Macquarie to:
 - (i) demobilise and remove its Construction Materials and Construction Plant from the Construction Site (other than Construction Materials in which title has vested in the Principal pursuant to clause 34.6); and
 - (ii) comply with its obligations under clause 45.11(a).

This clause 45.11(b) will only apply if the Principal does not exercise its rights under clause 3 of the D&C Side Deed.

- (c) To the extent the Principal has not had recourse to the Bank Guarantee, the Principal must, subject to clause 6, return the Bank Guarantee then held by it under clause 6 when Macquarie has complied with its obligations under this clause 45.
- (d) Nothing in this clause 45 or that the Principal does or fails to do pursuant to this clause 45 will prejudice the right of the Principal to exercise any right or remedy which it may have, including where Macquarie breaches (including repudiates) this deed.

45.12 **Preservation of rights**

- (a) **(No prejudice)** Nothing in this clause 45 prejudices the right of the Principal to exercise any right or remedy which it may have against Macquarie in respect of any breach of a Project Document occurring before termination (other than a breach leading to termination of this deed under clause 45), including any rights arising in relation to any Liability a State Indemnified Party may have to third parties for which the State Indemnified Party is entitled to be indemnified pursuant to clause 42.
- (b) **(Direct deeds)** The Principal's rights and entitlements set out in this clause 45 are in addition to the Principal's rights and entitlements under the D&C Side Deed.

45.13 **No other termination rights**

Despite any rule of Law or equity to the contrary, this deed may not be terminated other than as provided for in this deed.

45.14 **Survival**

This clause 45 will survive the termination of this deed.

46. **ACCESS, INSPECTIONS AND AUDITS**

46.1 **Principal's right of entry**

- (a) The Principal (and any person authorised by the Principal, which may include a Nominated Member) may, at any time, enter the Construction Site and upon reasonable notice enter any other premises where Macquarie's Activities are being carried out:
 - (i) in respect of the Principal (or any person authorised by the Principal), for the purpose of:

- (A) observing or inspecting Macquarie's Activities;
 - (B) monitoring compliance by Macquarie with its obligations under any Project Document and any Project Plan; or
 - (C) exercising any right or performing any obligation which the Principal has under any Principal Project Document; and
- (ii) in respect of a Nominated Member, for the purposes of providing its Recommendation.
- (b) When exercising this right, the Principal must, and must procure that any person authorised by the Principal to enter the Construction Site:
 - (i) give Macquarie reasonable notice of its intention to enter the Construction Site or other premises where Macquarie's Activities are being carried out; and
 - (ii) do so (and must ensure any person authorised by the Principal does so) in a manner that:
 - (A) does not unreasonably interfere with Macquarie's Activities; and
 - (B) complies with Macquarie's reasonable site access and work health and safety procedures.
- (c) Macquarie must use reasonable endeavours to:
 - (i) coordinate Macquarie's Activities so they do not interfere with the exercise by the Principal of its right of entry; and
 - (ii) provide the Principal and any person authorised by the Principal to enter the Construction Site with every reasonable facility and other assistance necessary for any inspection by the Principal and such person, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.
- (d) If an inspection shows that Macquarie has not complied or is not complying with its obligations under this deed, the Principal's Representative:
 - (i) may notify Macquarie or the Independent Certifier of the details of the non-compliance;
 - (ii) may specify a reasonable period within which Macquarie must carry out appropriate rectification and/or remedy activities; and
 - (iii) will be entitled to be reimbursed by Macquarie for the reasonable costs of the inspection including any reasonable administrative costs incurred by the Principal in relation to the inspection.
- (e) Neither the Principal nor any person authorised by the Principal (including any Rail Contractor) owes any duty to Macquarie to inspect Macquarie's Activities or review the Project Works or Temporary Works for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (f) No inspection or review of Macquarie's Activities, the Project Works or the Temporary Works by the Principal or any person authorised by the Principal (including any Rail Contractor) will in any way lessen or otherwise affect:

- (i) Macquarie's obligations under this deed or any other Project Document or otherwise according to Law; or
- (ii) the Principal's rights against Macquarie, whether under this deed or any other Project Document or otherwise according to Law.

46.2 **Access to third parties' information**

Macquarie must:

- (a) ensure that the Principal (and any person authorised by the Principal) has direct access to any information, documents or material that:
 - (i) is maintained by a third party (including Macquarie's Associates); and
 - (ii) the Principal is entitled to have access to, or have copies of, from Macquarie under this deed;
- (b) ensure that any contractual arrangements between Macquarie or Subcontractors and any third parties acknowledge the Principal's right of access under clause 46.2(a); and
- (c) provide to the Principal on demand written evidence (including copies of any contractual arrangements referred to in clause 46.2(b)) showing compliance by Macquarie with its obligations under clause 46.2(b).

46.3 **Macquarie to cooperate**

Macquarie must cooperate, and must ensure that Subcontractors cooperate, with the Principal and any persons authorised by the Principal in the exercise of the Principal's rights under this clause 46.

47. **RECORDS AND REPORTING OBLIGATIONS**

47.1 **Records**

- (a) Macquarie must keep appropriate books of account, records, documentation and systems which evidence its performance of Macquarie's Activities and its compliance with the Project Documents.
- (b) Macquarie must ensure its books of account, records, documentation and systems are available to the Principal upon request by the Principal (acting reasonably).

47.2 **Financial reporting**

- (a) Not later than 4 months after the end of each financial year, Macquarie must give the Principal:
 - (i) unconsolidated audited financial statements for the previous financial year for Macquarie;
 - (ii) the audited financial statements for the previous financial year of any consolidated entity of which Macquarie forms part; and
 - (iii) the audited financial statements for the previous financial year of any consolidated entity of which the D&C Contractor forms part.
- (b) Each of the documents to be provided to the Principal in accordance with this clause 47.2 must be accompanied by a certificate signed by two authorised officers of the

relevant entity certifying that the information provided is accurate, complete and correct in all respects.

- (c) Macquarie must prepare (or procure the preparation of) the accounts and financial statements required under this clause 47.2 in compliance with Law and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.

47.3 **Early warning risk register**

- (a) Macquarie will give early warning by notifying the Principal as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:
 - (i) a delay in achieving Milestone Achievement of any Milestone or Construction Completion or Completion of any Portion;
 - (ii) an adverse effect on the performance of Macquarie's Activities or the Project Works;
 - (iii) Macquarie being in breach of any term of this deed; or
 - (iv) a Claim.
- (b) Upon receipt of an early warning notification under clause 47.3(a), Macquarie will enter the risk the subject of the early warning notification on the Risk Register (which will include a description of the risk and the actions which are to be taken to avoid or mitigate the risk).
- (c) Macquarie must provide the Principal with access to the Risk Register or as otherwise directed by the Principal's Representative.
- (d) A notification provided by either party under this clause 47.3 will not relieve Macquarie from or alter its Liabilities or obligations under this deed, including any and all other notification obligations under this deed.

47.4 **Notices under Project Documents**

Macquarie must give the Principal as soon as practicable certified copies of all notices of default, breach or dispute given or received by it under the Project Documents from any of its co-contracting parties.

47.5 **Advice on rights of third parties under Project Documents**

Macquarie undertakes to advise the Principal as soon as practicable after an event has occurred which, to Macquarie's actual knowledge, could in any way materially prejudice the Principal's rights under the Project Documents by reason of the exercise of rights available to third parties arising from the Project Documents.

47.6 **ASIC and ASX notices**

Macquarie must give the Principal, as soon as practicable, copies of all notices and other documents given or received by a member of the Macquarie Group to or from the Australian Securities and Investments Commission or the ASX Limited.

47.7 **Other information**

Macquarie must promptly give the Principal such other information relating to Macquarie's Activities as the Principal may reasonably require from time to time.

47.8 **Retention of records**

Macquarie must retain all records in relation to Macquarie's Activities:

- (a) until they are delivered to the Principal; or
- (b) if not so delivered to the Principal, for at least 7 years after the Last Date of Completion.

48. **CONFIDENTIALITY AND PERMITTED DISCLOSURE**

48.1 **Confidentiality**

- (a) Subject to clauses 48.1(b) and 48.1(c), Macquarie must:
 - (i) keep the Project Documents and any information relating to the Project Works, Macquarie's Activities and any discussions concerning the Project Documents (together, the **Information**) confidential; and
 - (ii) ensure that each of its Associates comply with clause 48.1(a)(i).
- (b) Macquarie is not obliged to keep any Information confidential to the extent:
 - (i) that Information is in the public domain through no default of Macquarie;
 - (ii) that Information is:
 - (A) required to be disclosed by Law or the ASX listing rules; or
 - (B) given to a court in the course of proceedings to which Macquarie is a party; or
 - (iii) the Principal consents in writing to the disclosure of that Information.
- (c) Subject to clause 48.1(d), Macquarie may provide Information to:
 - (i) its Related Entities;
 - (ii) bona fide potential purchasers of an interest in a member of the Macquarie Group (excluding Macquarie, Macquarie Bank Limited, Project Trust, DevCo and Macquarie Financial Holdings) or a Retail Lot from Macquarie or a Related Entity of Macquarie, pursuant to clause 51, and any Related Entity of such potential purchaser;
 - (iii) Subcontractors, advisors, Financiers and prospective Financiers of Macquarie or any of the parties set out in clauses 48.1(c)(i) and 48.1(c)(ii); and
 - (iv) the officers, employees and agents of Macquarie or of any of the parties set out in clauses 48.1(c)(i) and 48.1(c)(ii), 48.1(c)(iii),
to the extent that the disclosure of such Information is:
 - (v) necessary to enable Macquarie to perform its obligations under this deed, the OSD PDA or any other Project Document; or
 - (vi) required in relation to the potential sale of an interest in a member of the Macquarie Group (excluding Macquarie, Macquarie Bank Limited, Project Trust, DevCo and Macquarie Financial Holdings) or a Retail Lot,

and provided that, in the case of the parties described in clauses 48.1(c)(i), 48.1(c)(ii) and 48.1(c)(iii), Macquarie ensures that the relevant party is subject to the same obligations of confidentiality as those contained in this deed.

- (d) Macquarie may not disclose any provision of Annexure F to any person pursuant to clause 48.1(c) unless the relevant provision of Annexure F is in the public domain through no fault of Macquarie.

48.2 **Principal's Public Disclosure Obligations**

- (a) Macquarie acknowledges and agrees that the Principal, the State or any Authority may be required to disclose the Principal Project Documents and information concerning the Principal Project Documents and Macquarie's Activities:

- (i) under the GIPA Act or any similar legislation (subject to the prior redaction of Commercially Sensitive Information which is not required to be disclosed under the GIPA Act or any similar legislation);
- (ii) by Law; or
- (iii) to satisfy the disclosure requirements of the NSW Auditor General or to satisfy the requirements of Parliamentary accountability,

(Public Disclosure Obligations).

- (b) Macquarie must, at its own Cost and expense, use all reasonable endeavours to assist the Principal, the State or an Authority to meet its Public Disclosure Obligations.

- (c) The parties acknowledge and agree that:

- (i) by entering into this deed, the Principal has consulted with Macquarie in relation to the disclosure of the Principal Project Documents and information concerning the Principal Project Documents and Macquarie's Activities under the GIPA Act that is not Commercially Sensitive Information;
- (ii) the Principal must notify Macquarie of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
- (iii) following notification by the Principal in accordance with clause 48.2(c)(ii), the Principal must take reasonable steps to consult with Macquarie before disclosing the information referred to in clause 48.2(c)(ii) under the GIPA Act; and
- (iv) if, following:
 - (A) notification by the Principal in accordance with clause 48.2(c)(ii); and
 - (B) consultation between the Principal and Macquarie in accordance with clause 48.2(c)(iii),

Macquarie objects to disclosure of some or all of the information referred to in clause 48.2(c)(ii) under the GIPA Act on the basis that it is Commercially Sensitive Information, Macquarie must provide details of any such objection within 5 Business Days after the date Macquarie received notification from the Principal or the date on which the consultation process concluded (as relevant).

- (d) The Principal may take into account any objection received from Macquarie pursuant to clause 48.2(c)(iv) in determining whether the information identified by Macquarie as Commercially Sensitive Information should be disclosed under the GIPA Act.
- (e) Nothing in this clause 48.2 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

48.3 **Media Requests**

Without limiting clauses 48.1 and 48.2, if Macquarie receives a request from the media for comment with respect to any aspect of Macquarie's Activities, Macquarie must:

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

49. **FINANCING AND REFINANCING**

49.1 **Financing documents**

- (a) The Principal acknowledges that:
 - (i) Macquarie, DevCo or its Related Entities may obtain financial accommodation to fund the OSD Works; and
 - (ii) it may be a condition of obtaining that financial accommodation that the Principal enters into one or more Financiers' Side Deeds and other agreements with the Financiers.
- (b) The parties acknowledge and agree that if and when one or more Financiers' Side Deeds are entered into by the relevant parties, the Financiers' Side Deeds will be Project Documents.

49.2 **Negotiating terms of financing documents**

- (a) The Principal agrees to:
 - (i) enter into a Financiers' Side Deed (and other agreements referred to in clause 49.1(a)(ii)) if required by the Financier (acting reasonably); and
 - (ii) subject to clause 49.2(b), act reasonably in negotiating:
 - (A) the form of the Financiers' Side Deed; and
 - (B) the terms of the other agreements referred to in clause 49.1(a)(i).
- (b) The Principal will be deemed to be acting reasonably under clause 49.2(a)(ii) if it withholds its consent to the form of the Financiers' Side Deed or to the terms of an agreement referred to in clause 49.1(a)(ii) where:
 - (i) the Principal is of the reasonable opinion that the particular term of the Financiers' Side Deed or the terms of an agreement referred to in clause 49.1(a)(ii) would bring about:

- (A) an increase or adverse change in the profile of the risks or potential liabilities of the Principal under the Project Documents; or
- (B) a material derogation of the Principal's rights under this deed ,
without adequate compensation to the Principal;
- (ii) Macquarie has not agreed to pay all Costs reasonably incurred by the Principal arising out of or in connection with the negotiation and execution of the Financiers' Side Deed and agreements referred to in clause 49.1(a)(ii); or
- (iii) the Principal is not satisfied (acting reasonably) with the credit standing of the Financier (including, where the Financier is acting in a security trustee capacity, that the Principal is not satisfied that the entity providing commitments to the Principal under the Financiers' Side Deed is capable of financially performing those obligations) after taking into account:
 - (A) the benefit of any indemnities the Principal may have from Macquarie and/or any financier; and
 - (B) the recourse of the Financier to the assets of the security trust pursuant to the relevant security trust deed.
- (c) For the purposes of this clause 49.2, "Financier" means each Financier (if any) which enters into a Financiers' Side Deed.

50. **NOT USED**

51. **ASSIGNMENT AND CHANGE IN OWNERSHIP**

51.1 **Change in ownership**

Subject to clause 51.2:

- (a) Macquarie represents and warrants that the legal and beneficial ownership of each member of the Macquarie Group (other than Macquarie) as at the Commencement Date is as set out in the Macquarie Group Structure;
- (b) Macquarie must not permit, and must ensure that there is not, any change in the beneficial or legal ownership of any shares, units or other interest in the nature of equity in Macquarie, [REDACTED]
[REDACTED]
[REDACTED]
- (c) without limiting clause 51.1(b), Macquarie must not permit any change in the beneficial or legal ownership of any shares, units or other interest in the nature of equity, in any member of [REDACTED]
[REDACTED] Macquarie has notified the Principal in writing:
 - (i) at least [REDACTED] prior to any proposed change; and
 - (ii) no later than [REDACTED] after any change,in the beneficial or legal ownership of such shares, units or other interest; and
[REDACTED]



51.2 Permitted Changes in Ownership

Clauses 51.1 and 51.3 do not apply to:

- (a) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange (including conversion of any relevant interest); or
- (b) any capital raising (whether hybrid capital or equity capital), share buy-back, share reduction or any other capital markets transaction conducted by and in relation to Macquarie; or
- (c) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Entity of Macquarie, provided Macquarie gives the Principal prior written notice of the transfer and provided that Macquarie remains the ultimate parent company.

51.3 Assignment

- (a) Subject to clauses 51.2, 51.3(b) and 51.3(d), Macquarie must not, and must ensure that Macquarie Bank Limited and DevCo do not assign, novate, grant a Security Interest over, or otherwise dispose of all or any benefit, right or interest in or under:
 - (i) the Project Documents; or
 - (ii) prior to the OSD Date of Completion:
 - (A) the Construction Site;
 - (B) the Macquarie Land; or
 - (C) the Retail Lot,without the Principal's prior written consent.
- (b) Nothing in clause 51.3(a) will limit a Retail Lessee's right to enter into the Retail Subleases pursuant to clause 12.3(a) of the Retail Lease.
- (c) Macquarie acknowledges and agrees that it will be a condition of any assignment or novation of this deed in accordance with clause 51.3(a) that the proposed counterparty provides a parent company guarantee in a form satisfactory to the Principal from a parent company with sufficient long term credit rating and financial standing determined in the Principal's opinion.
- (d) Despite clause 51.3(a), nothing in this clause 51 restricts or limits the ability of Macquarie or its Related Entities to assign, grant a Security Interest (including real property mortgage) or otherwise dispose of all or any benefit, right or interest in Macquarie Bank Limited's estate and interest in any part of the Macquarie Land that does not include the Macquarie Construction Site, the Relevant Land, 50 Martin Place Ancillary Amenities Lot or the Concourse Link Works.

52. DISPUTE RESOLUTION

52.1 Disputes generally

Subject to clause 52.14, any dispute, difference, controversy or Claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with the Project Works, Macquarie's Activities, the Project or this deed (including any questions relating to the existence, validity or termination of this deed) or either party's conduct before the Commencement Date, but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with this clause 52.

52.2 Independent Dispute Avoidance and Resolution Panel

- (a) (**Establishment**) The IDAR Panel will be constituted under the IDAR Panel Agreement.
- (b) (**Accession by Macquarie**) Macquarie must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.
- (c) (**Attendance and Assistance**) Each party must:
 - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
 - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this deed; and
 - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of Macquarie's Activities including providing all information that the IDAR Panel reasonably requests.

52.3 Consultation

- (a) (**Notice of Issue**) Where a Dispute arises, the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute (**Notice of Issue**) from the dissatisfied party (**Party A**) to the IDAR Panel and the other party (**Party B**). The Notice of Issue must:
 - (i) provide brief particulars of the issues in Dispute;
 - (ii) be issued within 10 Business Days after Party A first became aware of the fact, matter or thing on which the Dispute is based.
- (b) (**Selection of Nominated Member**) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel (**Nominated Member**) to review the Dispute. If:
 - (i) the parties fail to reach such agreement within 2 Business Days; or
 - (ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,the Chair must nominate a replacement Nominated Member within a further 2 Business Days.
- (c) (**Replacement of Nominated Member**) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement

Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.

- (d) (**Appointment by Resolution Institute**) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 52.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.
- (e) (**Parties to consult**) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting (**Consultation**) to facilitate genuine and good faith negotiations with a view to:
 - (i) resolving the Dispute; and
 - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) (**Attendees**) Each Consultation will be attended by:
 - (i) the Nominated Member;
 - (ii) the Principal's Representative;
 - (iii) Macquarie's Representative; and
 - (iv) other persons as agreed between the Principal's Representative and Macquarie's Representative.
- (g) (**Conclusion of Consultation**) The Nominated Member will advise the parties in writing once the Consultation process has concluded.
- (h) (**Failure to notify in time is breach**) A failure to comply with clause 52.3(a)(ii) will be treated as a breach of this deed by the relevant party.

52.4 Recommendation

- (a) (**Notification of Recommendation**) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:
 - (i) the formulation of the issues in Dispute;
 - (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 52.5; and
 - (iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 52.8,

(**Recommendation**).
- (b) (**Referral to expert determination**) Subject to clause 52.4(d), if the Dispute is not resolved within the later of:
 - (i) 5 Business Days of the Recommendation; and
 - (ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of clause 52.4(b)(i) and clause 52.4(b)(ii) or such other period of time as agreed between the parties (**Notice of Dispute**).

- (c) (**Requirements of Notice**) The Notice of Dispute must:
- (i) be in writing;
 - (ii) state that it is a Notice of Dispute under clause 52.4(b);
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
 - (A) references to any:
 - (aa) provisions of this deed; and
 - (bb) acts or omissions of any person, relevant to the Dispute;
 - (B) the relief sought and the basis for claiming the relief sought; and
 - (C) copies of, or relevant extracts from, any documents in support of the claim.
- (d) (**Parties may accept Recommendations**) If the Nominated Member makes a Recommendation:
- (i) under clause 52.4(a)(ii), the parties may accept the recommendation or clause 52.5(a) will apply; or
 - (ii) under clause 52.4(a)(iii), that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 52.8, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 52.5 will apply.

52.5 **Expert determination**

- (a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A15.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Construction Site, other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) The parties agree that, to the extent permitted by Law:
 - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.

- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 52.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 52.

52.6 **Notice of dissatisfaction**

- (a) If:
 - (i) either party is dissatisfied with a determination made by an Expert under clause 52.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties), then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,

(Notice of Dissatisfaction).

- (b) A Notice of Dissatisfaction issued under this clause 52.6 must:
 - (i) state that it is given under this clause 52.6; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 52.4(d)(ii), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 52.6.

52.7 **Final and binding decision**

- (a) If the Expert has made a determination as to a Dispute and no Notice of Dissatisfaction has been given by either party under clause 52.6 within 10 Business Days after that party received the Expert's determination, then the Expert's determination will become final and binding upon both parties.
- (b) Once a determination of an Expert has become final and binding under clause 52.7(a), neither party will be entitled to challenge that determination on any basis.

52.8 **Litigation or arbitration**

Where this clause applies, the Principal in its absolute discretion, may within 5 Business Days:

- (a) after issuing or receiving a Notice of Dissatisfaction; or
- (b) of reaching an agreement under clause 52.4(d)(ii),

(as applicable) issue a notice to Macquarie stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

52.9 Arbitration rules

- (a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The number of arbitrators will be agreed or determined pursuant to the ACICA Arbitration Rules.
- (d) The language of the arbitration will be English.
- (e) The parties further agree to the following general principles relating to the procedure of the arbitration:
 - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) that any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (A) the number of written submissions that will be permitted;
 - (B) where appropriate, the length of written submissions;
 - (C) the extent of document discovery permitted, if any;
 - (D) the consolidation of proceedings, when requested;
 - (E) the joinder of parties, when requested;
 - (F) the length of any hearing, if any; and
 - (G) the number of experts, if any, each party is permitted to appoint.
- (f) The parties agree that:
 - (i) subject to clause 52.10, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (g) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (h) Any award of the arbitral tribunal will be final and binding upon the parties.
- (i) This arbitration agreement is governed by and must be construed according to the Law applying in New South Wales.

52.10 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 52.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

52.11 Payments

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

52.12 Macquarie to continue performing obligations

Despite the existence of any Dispute:

- (a) Macquarie must continue to perform Macquarie's Activities; and
- (b) the parties must perform their respective obligations under this deed.

52.13 Urgent relief

Nothing in this clause 52 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

52.14 Dispute under related contracts

Other than in relation to a dispute under clause 26 of the OSD PDA, the parties acknowledge and agree that:

- (a) the provisions of this clause 52 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed;
- (c) the provisions of this clause 52 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under a Project Cooperation and Integration Deed;
- (d) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to a Project Cooperation and Integration Deed; and
- (e) where the Dispute is a Common Dispute, as that term is defined in Schedule D4, then this clause 52 will apply subject to the provisions of Schedule D4.

52.15 Disputes with Significant Subcontractors

- (a) The parties acknowledge and agree that a dispute arising under the D&C Contract may concern the respective rights and obligations of the parties under this deed.

- (b) Macquarie must inform the Principal immediately of any formal disputes or differences under the D&C Contract and the consequences (if any) of those disputes or differences under this deed.
- (c) In such circumstances, and if the Principal consents (in its absolute discretion), Macquarie may permit the D&C Contractor to:
 - (i) attend and observe the dispute resolution process under this deed; or
 - (ii) be joined as a party to the dispute resolution process.

52.16 Survive termination

This clause 52 will survive termination of this deed.

53. REPRESENTATIONS AND WARRANTIES

53.1 Principal's representations and warranties

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 each of the Principal Project Documents (or will have them in full force and effect at the time the obligation is to be performed);
- (c) each Principal Project Document constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance of each Principal Project Document 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.

53.2 Macquarie representations and warranties

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, or will have (in respect of those Project Documents still to be executed as at the Commencement Date), power to enter into the Project Documents to which it is a party and comply with its obligations under them;
- (d) it has, or will have (in respect of those Project Documents still to be executed as at the Commencement Date) in full force and effect the authorisations necessary for it to enter into the Project Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
- (e) its obligations under the Project Documents (once executed) are valid and binding and are enforceable against it in accordance with their terms;

- (f) the Project Documents and the transactions under them which involve it do not contravene its constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (g) 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) no Macquarie Event of Default has occurred or is subsisting;
- (j) it is not in default of its material obligations under any Principal Project Document;
- (k) it does not have immunity from the jurisdiction of a court of Australia or from Australian legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (l) there has been no material change in the financial condition of Macquarie (since the Commencement Date) which would prejudice the ability of Macquarie to perform its obligations under the Project Documents;
- (m) 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;
- (n) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on it or its ability to perform its financial or other obligations under any Project Document to which it is a party; and
- (o) the Treasurer cannot prohibit and has not prohibited the grant of this deed under the FIRB Act.

53.3 Repetition of representation and warranties

The representations and warranties contained in clauses 53.2(f), 53.2(i), 53.2(j), 53.2(m), 53.2(n) and 53.2(o) are made on the Commencement Date. Each other representation and warranty contained in this clause 53:

- (a) is made on the Commencement Date; and
- (b) will be deemed to be repeated on each anniversary of the Commencement Date up to and including the Date of Completion,

with reference to the facts and circumstances then subsisting.

53.4 Obligations not affected

Macquarie acknowledges that the representations and warranties in this clause 53 and Macquarie's obligations under the Project Documents remain unaffected notwithstanding any receipt or review of, or comment or Direction on, documentation prepared by Macquarie.

53.5 **Undertakings by Macquarie**

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

54. **NOTICE OF CLAIMS**

54.1 **Notice of Variation**

- (a) If a Direction of the Principal, other than a Variation Order under clause 35, constitutes or involves a Variation, Macquarie must, if it wishes to make a Claim against the Principal arising out of or, or in any way in connection with, the Direction:
 - (i) within 20 Business Days after receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give notice to the Principal's Representative that sets out:
 - (A) that it considers the Direction constitutes or involves a Variation;
 - (B) details of the relevant Direction; and
 - (C) details of why it considers the Direction constitutes or involves a Variation; and
 - (ii) within 10 Business Days after giving the notice under clause 54.1(a)(i), submit a written Claim to the Principal's Representative which includes the details required by clause 54.3(b); and
 - (iii) continue to carry out Macquarie's Activities in accordance with this deed including any Direction in respect of which notice has been given under this clause 54.1.
- (b) If Macquarie issues a notice under clause 54.1(a)(i), the Principal may:
 - (i) confirm that the Direction constitutes or involves a Variation (in which case clauses 35 and 37 will apply and Macquarie will be entitled to any Variation Costs payable under clause 37), or entitles Macquarie to make a Claim, by the giving of a notice under this clause 54.1(b)(i), in which case Macquarie must comply with the Direction;
 - (ii) deny that the Direction constitutes or involves a Variation, or entitles Macquarie to make a Claim, by the giving of a notice under this clause 54.1(b)(ii), in which case Macquarie:
 - (A) may within 10 Business Days after the receipt of the notice issue a Notice of Issue under clause 52; and
 - (B) unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
 - (iii) withdraw the Direction by giving a notice under this clause 54.1(b)(iii) provided that the Principal must compensate Macquarie for its reasonable costs incurred in compliance with such withdrawn Direction pursuant to clause 54.1(a)(iii).

- (c) If within 20 Business Days after first receipt of the notice under clause 54.1(a)(i), the Principal's Representative has not taken any action under clause 54.1(b), the Principal's Representative will be deemed to have given a notice under clause 54.1(b)(ii).

54.2 Notices of other Claims

- (a) Subject to clause 54.2(b), Macquarie must give the Principal the notices required by clause 54.3 if it wishes to make a Claim against the Principal in respect of any Direction or any other fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in connection with Macquarie's Activities or this deed, including anything in respect of which it is given an express entitlement under this deed but excluding anything which Macquarie is expressly prohibited from claiming under this deed.
- (b) Clause 54.2(a) does not apply to the following Claims:
 - (i) a Claim in relation to suspension under clause 23.6;
 - (ii) a Claim for an extension of time under clause 23.9;
 - (iii) a Claim for Delay Costs or [REDACTED] under clause 24.5;
 - (iv) a Claim in respect of a Variation ordered in accordance with clause 35 or to which clause 54.1 applies; or
 - (v) a Claim for payment under clauses 33, 34 or 45.10.

54.3 Prescribed notices

The notices referred to in clause 54.2 are:

- (a) a written notice within 20 Business Days after Macquarie first became aware of the Direction or first became aware of any other fact, matter or thing on which the Claim is based, expressly specifying:
 - (i) that Macquarie intends to submit a Claim;
 - (ii) the relevant clause of the deed under which the Claim is made; and
 - (iii) the Direction or any other fact, matter or thing on which the Claim will be based; and
- (b) a written Claim within 10 Business Days after giving notice under clause 54.3(a), which must include:
 - (i) detailed particulars concerning the Direction or any other fact, matter or thing on which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (iii) the facts relied on in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

54.4 **Continuing events**

If the Direction or any other fact, matter or thing on which the Claim under clause 54.3(b) is based or the consequences of the events are continuing, Macquarie must continue to give information required by clause 54.3(b) within 14 Business Days after the end of each calendar month after the written Claim under clauses 54.1(a)(ii) or 54.3(b) (as the case may be) was submitted, until after the Direction or fact, matter or thing on which the Claim is based has, or the consequences thereof have, ceased.

54.5 **Time bar**

If Macquarie fails to comply with clauses 54.1, 54.2, 54.3 or 54.4:

- (a) the Principal will not be liable (insofar as it is possible to exclude such liability) in respect of any Claim by Macquarie; and
- (b) Macquarie will be absolutely barred from making any Claim against the Principal, arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clauses 54.1 or 54.3 applies.

54.6 **Temporary waiver of notification requirements**

- (a) Within 5 Business Days after receipt of a written notice referred to in clause 23.9(b)(i), 24.2(a), 54.1(a)(i) or 54.3(a) (as applicable), the Principal's Representative may notify Macquarie in writing that the Principal wishes to temporarily waive the requirements of clause 23.9(b)(ii), 24.2(b), 54.1(a)(ii) or 54.3(b) (as applicable) (**Claims Clause**) in relation to the proposed Claim that is the subject of Macquarie's notice.
- (b) If the Principal's Representative issues a notice under clause 54.6(a), the parties must meet within 2 Business Days (or such longer period agreed between the parties) to discuss the proposed Claim and seek to agree:
 - (i) the period for which the requirements of the relevant Claims Clause will not apply in relation to the proposed Claim; and
 - (ii) the next steps (if any) that the parties wish to take in relation to the proposed Claim.
- (c) If, at a meeting under clause 54.6(b), the parties agree a period for which the requirements of the relevant Claims Clause will not apply, the Principal's Representative will promptly confirm such period by notice in writing to Macquarie.
- (d) A meeting under clause 54.6(b) may be held in person, by phone, by video conference or by any other means of instantaneous communication agreed between the parties.
- (e) If the Principal's Representative has given a written notice under clause 54.6(a) and, with respect to the requirements of the relevant Claims Clause, the parties:
 - (i) agree a period for which the requirements of the relevant Claims Clause will not apply, Macquarie must provide a written Claim including the details required by the Claims Clause no later than 20 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 54.6(a) (or such longer period as the parties may subsequently agree in writing); or

- (ii) fail to agree a period for which the requirements of the relevant Claims Clause will not apply, Macquarie must provide a written Claim including the details required by the relevant Claims Clause no later than 20 Business Days after the date of the meeting held under clause 54.6(b).
- (f) Macquarie must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Principal's Representative under clause 54.6(a) and provide a copy of this register to the Principal's Representative at least 3 Business Days in advance of each meeting of the Project Control Group.
- (g) The register of potential Claims under clause 54.6(f) must include:
 - (i) Claim number;
 - (ii) Claim description;
 - (iii) the date the initial notice of Claim was received;
 - (iv) the clause(s) under which the notice was given;
 - (v) the date of the notice issued by the Principal's Representative under clause 54.6(a);
 - (vi) the date of the meeting under clause 54.6(b);
 - (vii) the date on which the Claim is required (as agreed or pursuant to clause 54.6(e)(ii));
 - (viii) any next steps agreed at the meeting under clause 54.6(b); and
 - (ix) the status of those next steps.
- (h) Nothing done by the Principal or the Principal's Representative under this clause 54.6:
 - (i) constitutes acceptance by the Principal that the relevant notice under clause 24.2, 54.1 or 54.2 (as the case may be) is valid; or
 - (ii) prejudices in any way the Principal's right to later assert a time bar in respect of such notice provided that, for the purposes of any such subsequent assertion, the calculation of the time bar must not include any time period the subject of a waiver granted under this clause 54.6.

54.7 Other provisions unaffected

Nothing in clauses 54.1 to 54.5 (inclusive) will limit the operation or effect of any other provision of this deed which requires Macquarie to give notice to the Principal or the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

55. PROPORTIONATE LIABILITY

55.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- (b) Without limiting the above, the rights, obligations and liabilities of the Principal and Macquarie under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.

55.2 **Macquarie not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) Macquarie must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any Claim by the Principal against Macquarie (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any Claim by the Principal against Macquarie (whether in contract, tort or otherwise), Macquarie must indemnify the Principal against any Loss, damage, Cost or expense that forms part of a Claim by the Principal against Macquarie which the Principal cannot recover from Macquarie because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

55.3 **Subcontracts**

Macquarie must:

- (a) in each Subcontract into which it enters into for the performance of Macquarie's Activities, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each Subcontract whether these rights, obligations or liabilities are sought to be enforced by a Claim in contract, tort or otherwise; and
- (b) require each Subcontractor to include, in any further contract that it enters into with a third party for the performance of Macquarie's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, tort or otherwise.

56. **COSTS**

56.1 **Obligations of Macquarie**

Except as otherwise specified in a Project Document, Macquarie must pay or reimburse the Principal on demand for the Costs of the Principal (including legal Costs on a solicitor and own client basis) in connection with:

- (a) any consent or approval sought by Macquarie or anyone claiming through Macquarie under any Project Document (whether or not that consent or approval is given);
- (b) a waiver, variation, release, surrender or discharge of or in connection with any Project Document; and
- (c) the Principal doing anything at the request of Macquarie to vary documents or negotiate with any other entity.

56.2 **Costs of negotiating this deed**

Subject to clause 57.1, each party agrees to pay its own Costs of and incidental to the negotiation and execution of this deed.

56.3 Each party to pay its Costs

Unless otherwise provided and subject to clause 57.1, anything which a party does in connection with a Project Document must be done at the party's own Cost.

57. TAXES

57.1 Liability for Taxes

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

58. GST

58.1 Payment of GST

Unless otherwise expressly stated, all amounts payable under or in connection with this deed are stated exclusive of GST. If GST is or will be payable on a supply made under or in connection with this deed:

- (a) the consideration otherwise provided for that supply under this deed is increased by the amount of that GST; and
- (b) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 5 Business Days after receiving a written demand from the supplier.

58.2 Later adjustment to price or GST

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier, within 10 Business Days after becoming aware of the adjustment event:

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

58.3 Tax invoice/adjustment note

Subject to clause 58.4, the right of the supplier to recover from the recipient any amount in respect of GST under this deed on a supply is subject to the issuing of a tax invoice or adjustment note to the recipient.

58.4 Recipient created tax invoice/recipient created adjustment note

- (a) The parties agree that the Principal will issue a tax invoice or adjustment note (as appropriate) for all taxable supplies made by Macquarie to the Principal under or in connection with a Project Document within 28 days of the making, or determining the value, of the relevant supply.

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

58.5 Indemnities and reimbursement

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this deed must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

59. NOTICES

- (a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time, the Principal's Representative may notify Macquarie that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;

- (iii) any password, login details or similar information required for the parties to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time, the Principal's Representative may notify Macquarie that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 59(d)(i) and must be given 10 Business Days prior to the implementation of any such change to the notice arrangements.
- (d) Each Notice must:
- (i) before the date referred to in clause 59(b)(ii) applies, be:
 - (A) in writing;
 - (B) addressed:
 - (aa) in the case of a Notice from Macquarie, to the Principal's Representative; or
 - (bb) in the case of a Notice from the Principal, to Macquarie's Representative;
 - (C) signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - (D) delivered or posted to the relevant address or sent to the relevant email address shown below (or to any new address or email address notified by the intended recipient):
 - (aa) to the Principal:

Address: Level 43, 680 George Street Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED]
 - (bb) to Macquarie:

Address: c/- Macquarie Capital
Level 4, 50 Martin Place
Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED]
 - (ii) on and from the commencement date for use of the PDCS referred to in clause 59(b)(ii) (other than where clause 59(c) applies):
 - (A) be sent through the PDCS in accordance with the requirements set out in clause 59(f) and:

- (aa) in the case of a Notice to the Principal, be addressed to the Principal's Representative; or
 - (bb) in the case of a Notice to Macquarie, be addressed to Macquarie's Representative; or
 - (B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 59(d)(i).
- (e) A communication is taken to be received by the addressee:
 - (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email):
 - (A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.
- (f) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to clause 59(f)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) .pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (g) Macquarie warrants that it will:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;

- (iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to Macquarie from time to time;
 - (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (v) advise the Principal's Representatives of which personnel require access to the PDCS;
 - (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 59(d)(ii)(B) to the Principal's Representative through the PDCS.
- (h) The Principal has no liability for any Losses Macquarie may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and Macquarie will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with such access to or use of the PDCS or any failure of the PDCS.
 - (i) If this deed requires Macquarie to provide any documents, notices or other communications to a Rail Contractor, Macquarie must address those communications to the relevant Rail Contractor:
 - (i) at the address notified by the Principal to Macquarie; or
 - (ii) if required by the Principal, by way of the PDCS.

60. GENERAL

60.1 Governing Law and jurisdiction

- (a) This deed is governed by and must be constructed according to the Law in force in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed.

60.2 Amendments

This deed may only be varied by a formal deed or agreement executed by or on behalf of each party.

60.3 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of a Project Document.

60.4 Survival of certain provisions; no merger

- (a) Without limiting clause 60.10(a):
 - (i) clauses 1, 6, 10.6, 11.4(g), 11.4A, 11.5, 11.11, 11.17, 11.19, 16.2, 16.5, 17.14, 20.15, 20.16, 20.18, 34.8, 34.10, 42, 48, 51.3, 52, 54, 57, 58, 59, 60, Schedule A21, the representations, warranties and indemnities given by Macquarie under this deed and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination (together, the **Surviving Clauses**) and any rights arising on termination will survive rescission, termination or expiration of this deed; and
 - (ii) if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (A) under the Surviving Clauses; or
 - (B) in respect of any breach of this deed occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

60.5 Further acts and documents

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

60.6 Consents

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

60.7 No representation or reliance

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

60.8 Exercise of remedies

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

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

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

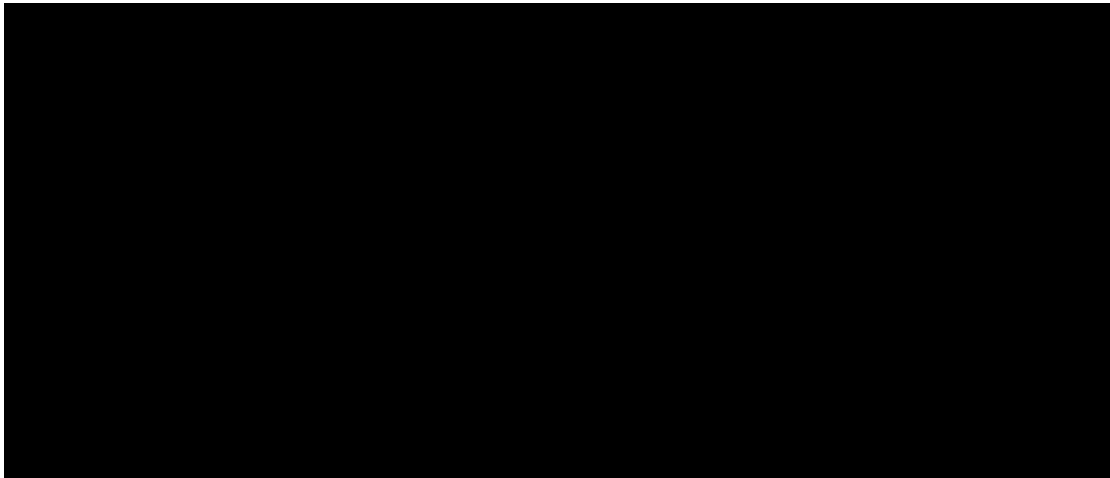
60.9 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

60.10 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.
- (d) Where Macquarie gives any indemnity or release under any of the Project Documents, it gives an equivalent indemnity and release to the State. The Principal holds for itself and on trust for the State the benefit of each such indemnity and release in this deed.



60.11 Counterparts

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

60.12 **Attorneys**

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

60.13 **Relationship between the Principal and Macquarie**

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

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

60.14 **Principal not liable**

Except to the extent expressly provided for in this deed, the Principal is not liable for any Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, power or remedy.

60.15 **Supervening legislation**

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

60.16 **Set off**

Except to the extent expressly provided for in this deed:

- (a) any party may set off any liquidated amount owing by it to the other party under this deed against any other liquidated amount owing by that other party; and
- (b) a party cannot set off any unliquidated amount owing by it to the other party under this deed arising from a breach of this deed by that party, against any liquidated amount owing by that other party.

60.17 **Continuing breaches**

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

60.18 Antecedent obligations

The expiry or termination of this deed does not affect a party's obligations:

- (a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to the other party to enable it to calculate those payments.

60.19 Vienna Convention

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

60.20 Transfer of functions or Public Transport Agency assets

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
 - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) Macquarie acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) Macquarie will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 60.20.
- (d) For the purposes of this clause 60.20, "another entity" means a government or semi-government entity, including any agency, statutory corporation, statutory authority, department or state owned corporation.

EXECUTED as a deed.

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

Signature of Delegate

Signature of witness

Name

Name

SIGNED by **MACQUARIE GROUP LIMITED** ABN 94 122 169 279 by its duly authorised attorneys who hereby state that at the time of executing this instrument they have no notice of the revocation of the Power of Attorney dated 4 September 2018:

Signature of Attorney

Signature of Attorney

Name of Attorney

Name of Attorney

Signature of witness

Signature of witness

Name of witness

Name of witness

SCHEDULE 2

Amendments to Schedule A2 of the Base SDD

With effect from the Effective Date, Schedule A2 of the Base SDD is deleted and replaced with the version **included** in this Schedule 2, with the amendments to the version included in the Base SDD shown in mark-up.

**SCHEDULE A2
Portions and Milestones**

1. GENERAL

- (a) Subject to paragraph 1(c), unless the context requires otherwise, terms which are defined in the SWTC have the same meaning where used in this Schedule A2.
- (b) A reference to an area of the Construction Site by an individual area number is a reference to the area of the Construction Site so numbered and described in the drawings described in section 2 of this Schedule A2 below.
- (c) In this Schedule A2:
 - (i) **Degree 1 Activities Completion** means the stage in execution of Macquarie’s Activities in respect of a specified part of the Project Works when all of the activities identified as “Degree 1 Activities Completion” in Table 1 in Appendix 1 to this Schedule A2 have been completed, as applicable, in accordance with this deed;
 - (ii) **Degree 2 Activities Completion** means the stage in execution of Macquarie’s Activities in respect of a specified part of the Project Works when all of the activities identified as “Degree 2 Activities Completion” in Table 1 in Appendix 1 to this Schedule A2 have been completed, as applicable, in accordance with this deed; and
 - (iii) **Degree 3 Activities Completion** means the stage in execution of Macquarie’s Activities in respect of a specified part of the Project Works when all of the activities identified as “Degree 3 Activities Completion” in Table 1 in Appendix 1 to this Schedule A2 have been completed, as applicable, in accordance with this deed.
- (d) In this Schedule A2, where, in respect of a Milestone or a Portion (as applicable), there is an extension of time for the Date for Milestone Achievement, Date for Construction Completion or Date for Completion (as applicable) granted by the Principal’s Representative under this deed or allowed in any dispute resolution proceedings any reference in this Schedule A2 to that Date for Milestone Achievement, Date for Construction Completion or Date for Completion (as applicable) is to the relevant extended Date for Milestone Achievement, Date for Construction Completion or Date for Completion (as applicable).

2. PORTION DRAWINGS

The drawings of the areas of the Construction Site referred to in this Schedule A2 are set out in the table below:

Drawing Number	Revision	Drawing Title and number of sheets	Electronic File Reference
MP-Portion-Plan-01	1/10/19 <u>02</u>	1 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00-INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>

Proposed base for CST DoV Schedule 2 – Amendments to Schedule A2 of the Base SDD

Drawing Number	Revision	Drawing Title and number of sheets	Electronic File Reference
MP-Portion-Plan-02	<u>021/10/19</u>	2 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-03	<u>021/10/19</u>	3 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-04	<u>021/10/19</u>	4 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-05	<u>021/10/19</u>	5 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-06	<u>021/10/19</u>	6 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-07	<u>021/10/19</u>	7 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-08	<u>021/10/19</u>	8 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-09	<u>021/10/19</u>	9 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-10	<u>021/10/19</u>	10 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-11	<u>021/10/19</u>	11 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-12	<u>021/10/19</u>	12 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-13	<u>021/10/19</u>	13 of 302	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309

Proposed base for CST DoV Schedule 2 – Amendments to Schedule A2 of the Base SDD

Drawing Number	Revision	Drawing Title and number of sheets	Electronic File Reference
MP-Portion-Plan-14	<u>02</u> 1 /10/19	14 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-15	<u>02</u> 1 /10/19	15 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-16	<u>02</u> 1 /10/19	16 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-17	<u>02</u> 1 /10/19	17 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-18	<u>02</u> 1 /10/19	18 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-19	<u>02</u> 1 /10/19	19 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-20	<u>02</u> 1 /10/19	20 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-21	<u>02</u> 1 /10/19	21 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-22	<u>02</u> 1 /10/19	22 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-23	<u>02</u> 1 /10/19	23 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-24	<u>02</u> 1 /10/19	24 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Portion-Plan-25	<u>02</u> 1 /10/19	25 of <u>30</u> 2	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 <u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>

Proposed base for CST DoV Schedule 2 – Amendments to Schedule A2 of the Base SDD

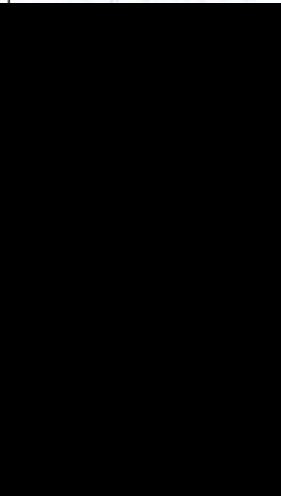

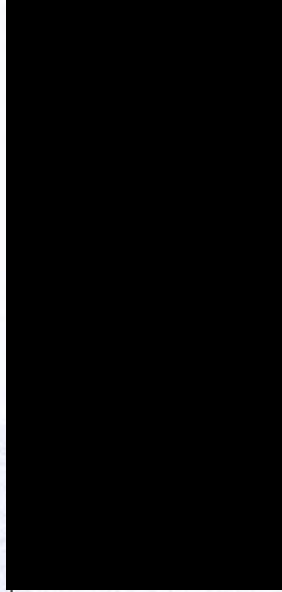
Drawing Number	Revision	Drawing Title and number of sheets	Electronic File Reference
MP-Portion-Plan-26	<u>02</u> 1 /10/19	26 of 30 <u>2</u>	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-27	<u>02</u> 1 /10/19	27 of 30 <u>2</u>	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-28	<u>02</u> 1 /10/19	28 of 30 <u>2</u>	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-29	<u>02</u> 1 /10/19	29 of 30 <u>2</u>	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
MP-Portion-Plan-30	<u>02</u> 1 /10/19	30 of 30 <u>2</u>	SMCSWSMP-SMD-SMP-CO-PLN-000959.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001309
<u>MP-Portion-Plan-31</u>	<u>02</u>	<u>31 of 32</u>	<u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
<u>MP-Portion-Plan-32</u>	<u>02</u>	<u>32 of 32</u>	<u>SMCSWSMP-SMD-SMP-CO-PLN-001309</u>
MP-Milestone-Plan-01	<u>03</u> 19 /09/19	1 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-02	<u>03</u> 19 /09/19	2 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-03	<u>03</u> 19 /09/19	3 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-04	<u>03</u> 19 /09/19	4 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-05	<u>03</u> 19 /09/19	5 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-06	<u>03</u> 19 /09/19	6 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308

Drawing Number	Revision	Drawing Title and number of sheets	Electronic File Reference
MP-Milestone-Plan-07	0319/09/19	7 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-08	0319/09/19	8 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-09	0319/09/19	9 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-10	0319/09/19	10 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-11	0319/09/19	11 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-12	0319/09/19	12 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-13	0319/09/19	13 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-14	0319/09/19	14 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-15	0319/09/19	15 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-16	0319/09/19	16 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-17	0319/09/19	17 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-18	0319/09/19	18 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308

Proposed base for CST Dev Schedule 2 – Amendments to Schedule A2 of the Base SDD

Drawing Number	Revision	Drawing Title and number of sheets	Electronic File Reference
MP-Milestone-Plan-19	<u>03</u> 19 /09/19	19 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-20	<u>03</u> 19 /09/19	20 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-21	<u>03</u> 19 /09/19	21 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-22	<u>03</u> 19 /09/19	22 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-23	<u>03</u> 19 /09/19	23 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-24	<u>03</u> 19 /09/19	24 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-25	<u>03</u> 19 /09/19	25 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP-Milestone-Plan-26	<u>03</u> 19 /09/19	26 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308
MP- Milestone -Plan 27	<u>03</u> 19 /09/19	27 of 27	SMCSWSMP-SMD-SMP-CO-PLN-000958.00.INF.00.01 SMCSWSMP-SMD-SMP-CO-PLN-001308

3. PORTIONS

Portion	Description	Date for Construction Completion	Date for Completion	Additional conditions precedent to Construction Completion	Additional conditions precedent to Completion	Liquidated damages post Date for Construction Completion (clause 23.12(e)(i)) \$/day	Liquidated damages post Date for Completion (clause 23.12(f)(i)) \$/day	Comments
Portion 1	The permanent ways part of the Project Works shown on drawing MP-Portion-Plan-13, MP-Portion-Plan-14, MP-Portion-Plan-15 , MP-Portion-Plan-16 and MP-Portion-Plan-302 comprising: 	 (unless adjusted in accordance with clause 38.1(b)(ii))	Not applicable	Not applicable	Not applicable	For every day after the Date for Construction Completion for Portion 1 which occurs in the period: 	Not applicable	

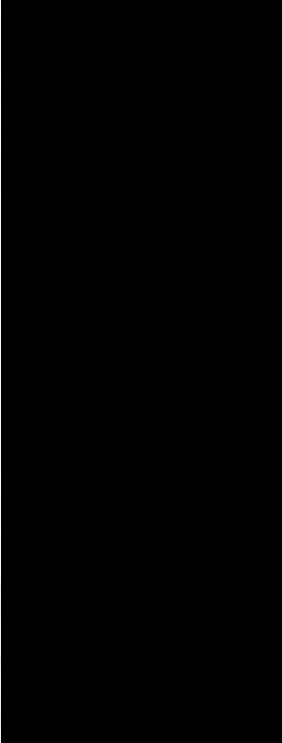
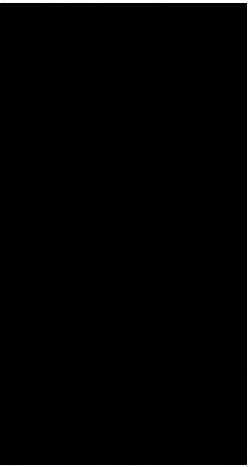
Proposed base for CST DoV Schedule 2 – Amendments to Schedule A2 of the Base SDD

Portion	Description	Date for Construction Completion	Date for Completion	Additional conditions precedent to Construction Completion	Additional conditions precedent to Completion	Liquidated damages post Date for Construction Completion (clause 23.12(e)(i)) \$/day	Liquidated damages post Date for Completion (clause 23.12(f)(i)) \$/day	Comments

Portion	Description	Date for Construction Completion	Date for Completion	Additional conditions precedent to Construction Completion	Additional conditions precedent to Completion	Liquidated damages post Date for Construction Completion (clause 23.12(e)(i)) \$/day	Liquidated damages post Date for Completion (clause 23.12(f)(i)) \$/day	Comments
Portion 2A	All Project Works not completed in Portion 1 or in Portion 2B			Degree 3 Activities at Construction Completion	Not applicable	For every day after the Date for Construction Completion for Portion 2A which occurs in the period:	For every day after the Date for Completion for Portion 2A which occurs in the period:	

~~Proposed base for CST DoV~~ Schedule 2 – Amendments to Schedule A2 of the Base SDD

Portion	Description	Date for Construction Completion	Date for Completion	Additional conditions precedent to Construction Completion	Additional conditions precedent to Completion	Liquidated damages post Date for Construction Completion (clause 23.12(e)(i)) \$/day	Liquidated damages post Date for Completion (clause 23.12(f)(i)) \$/day	Comments
Portion 2B	All Project Works located in the area between grids S04			Degree 3 Activities at	Not applicable	For every day after the Date for Construction	For every day after the Date for Completion for	

Portion	Description	Date for Construction Completion	Date for Completion	Additional conditions precedent to Construction Completion	Additional conditions precedent to Completion	Liquidated damages post Date for Construction Completion (clause 23.12(e)(i)) \$/day	Liquidated damages post Date for Completion (clause 23.12(f)(i)) \$/day	Comments
	and S07 on Levels B3-to Level B1, and escalators 14-17 and lifts LS09 and LS10.			Construction Completion		Completion for Portion 2B which occurs in the period: 	Portion 2B which occurs in the period: 	

~~Proposed base for CST DoV~~ Schedule 2 – Amendments to Schedule A2 of the Base SDD

Portion	Description	Date for Construction Completion	Date for Completion	Additional conditions precedent to Construction Completion	Additional conditions precedent to Completion	Liquidated damages post Date for Construction Completion (clause 23.12(e)(i)) \$/day	Liquidated damages post Date for Completion (clause 23.12(f)(i)) \$/day	Comments

4. MILESTONES

Milestone	Description	Date for Milestone Achievement	Liquidated damages (clause 23.12(d)(i))	Level of Completion Required	Comments
2A	Submission of Design Stage 3 Design Documentation for all design packages for the Project Works <u>excluding the TVS slab, North Shaft adit lining and track base slab.</u>	[REDACTED]	[REDACTED] for every day after the Date for Milestone Achievement	All Design Stage 3 Design Documentation submitted to Independent Certifier for review in accordance with clause 20.4	
2B <u>North</u>	Degree 2 Activities Completion shown on drawing MP-Milestones-Plan-12 and MP-Milestones-Plan-27 comprising: [REDACTED] (b) <u>Cable containment associated with this Milestone, Milestone 2B South, cable containment to platforms, and outstanding cable containment to Milestone 2C rooms</u>	[REDACTED]	[REDACTED] for every day after the Date for Milestone Achievement	Degree 2 Activities Completion	
2B <u>South</u>	Degree 2 Activities Completion shown on drawing <u>MP-Milestones-Plan-27</u> comprising: [REDACTED] <u>Excluding cable containment to the room, to be provided by Milestone 2B North.</u>	[REDACTED]	[REDACTED] for every day after the Date for Milestone Achievement	<u>Degree 2 Activities Completion</u>	