

Schedule 6 – Net Financial Impact

(clauses 1.1, 10.15(d), 10.24(g), 12.6(c), 20.12(e)(ii), 29.2(b)(vi)(A), 29.6(a), 33.2(e)(i)(B), 33.3(f), 33.12(d)(ii), 35.4(b), 35.6(a)(iv)(A), 35.7(b), 41.2, 42.4, 44.3(d)(viii)(F), 44.3(e)(i), 51.2, 57.2(a)(v), 61.4(e), Schedule 3 (*Modifications*), Schedule 7 (*Schedule of Rates*), Schedule 8 (*Cost Risk Sharing*), Schedule 12 (*Public Art*), Schedule 37 (*Extensions*))

1. Definitions

For the purposes of this Schedule 6 (*Net Financial Impact*), the following definitions will apply:

Base Costs means, in respect of an NFI Event, the aggregate of the Base Delivery Costs and the Base O&M Costs, or either of them, as the context requires.

Base Delivery Costs means, in respect of an NFI Event and OpCo or an OpCo Contractor (as applicable), the actual incremental costs that:

- (a) OpCo or that OpCo Contractor (as applicable) has properly and reasonably incurred or will incur as a result of the circumstances referred to in clause 3(a)(i)(A)(I), 3(a)(i)(A)(II) or 3(a)(i)(B) (as applicable); and
- (b) are directly attributable to the NFI Event,

but excluding:

- (c) any Base O&M Costs, Third Party Preparation Costs, any costs or fees of Professional Service Providers, Off Site Overheads, On-Site Overheads, Prolongation Costs, Financing Costs and Financing Delay Costs that OpCo or the relevant OpCo Contractor (as applicable) has incurred or will incur;
- (d) in respect of OpCo, a Core Contractor or a Specified OpCo Contractor, any Margin Elements that OpCo or the relevant OpCo Contractor (as applicable) has incurred or will incur; and
- (e) any costs incurred or that will be incurred by:
 - (i) in the case of OpCo, an OpCo Contractor (acknowledging that such costs may form part of the Base Delivery Costs of that OpCo Contractor); and
 - (ii) in the case of an OpCo Contractor (**First OpCo Contractor**), any other OpCo Contractor (including a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of the First OpCo Contractor) (acknowledging that such costs may form part of the Base Delivery Costs of that other OpCo Contractor).

Base O&M Costs means, in respect of an NFI Event and OpCo or an OpCo Contractor (as applicable), the actual incremental costs, including associated onsite administrative and overhead costs, warranty costs and lifecycle costs, that:

- (a) OpCo or that OpCo Contractor (as applicable) has properly and reasonably incurred or will incur as a result of the circumstances referred to in clause 3(a)(ii)(A) or 3(a)(ii)(B) (as applicable); and
- (b) are directly attributable to the NFI Event,

but excluding:

- (c) any Base Delivery Costs, Third Party Preparation Costs, any costs or fees of Professional Service Providers, Off Site Overheads and Financing Costs that OpCo or the relevant OpCo Contractor (as applicable) has incurred or will incur;
- (d) in respect of OpCo, a Core Contractor, a Specified OpCo Contractor, any Margin Elements that OpCo or the relevant OpCo Contractor (as applicable) has incurred or will incur; and
- (e) any costs incurred or that will be incurred by:

- (i) in the case of OpCo, an OpCo Contractor (acknowledging that such costs may form part of the Base O&M Costs of that other OpCo Contractor); and
- (i) in the case of an OpCo Contractor (**First OpCo Contractor**), any other OpCo Contractor (including a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of the First OpCo Contractor) (acknowledging that such costs may form part of the Base O&M Costs of that other OpCo Contractor).

Compensation Period (Interest) has the meaning given in clause 4.14(b).

Compensation Period (Principal) has the meaning given in clause 4.14(c).

Core Contractor Subcontractor means a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of the Core Contractor involved in performing the Core Contractor's activities in respect of the SSTOM PPP but excluding the Independent Certifier.

Delivery Phase Interest has the meaning given in clause 4.14(b).

Delivery Phase Principal has the meaning given in clause 4.14(c).

DSU Policy means the Principal's Insurance titled '*Delay in Start Up Insurance Policy – Sydney Metro Western Sydney Airport*'.

Financing Costs means, in respect of an NFI Event, if the Principal requests that an OpCo Group Member fund some or all of the Net Base Costs arising from an NFI Event, the financing costs that the applicable OpCo Group Members will incur in relation to the funding of such Net Base Costs, subject to clause 4.19.

Financing Delay Costs means an amount calculated under clause 4.14.

Incremental Interest and Fees has the meaning given in clause 4.14(b).

Interest Period has the meaning given in the Debt Financing Documents.

Margin means, in respect of an NFI Event, the applicable amount which may be charged by OpCo or an OpCo Contractor (as applicable) on account of Margin Elements, and which:

- (a) in the case of OpCo, a Core Contractor or a Specified OpCo Contractor, must be determined in accordance with clause 4.6(e); and
- (b) in the case of an OpCo Contractor (other than a Core Contractor or a Specified OpCo Contractor), must comply with the requirements set out in clause 4.6(g).

Margin Elements means profit, Off Site Overheads and any other offsite administrative and corporate and other like costs.

Net Base Costs means, in respect of an NFI Event, the aggregate of the Net Base Delivery Costs and the Net Base O&M Costs, or either of them, as the context requires.

Net Base Delivery Costs means, in respect of OpCo or an OpCo Contractor (as applicable), its Base Delivery Costs as a result of the relevant NFI Event, less any incremental cost savings which accrue or will accrue to OpCo or the OpCo Contractor (as applicable) as a direct result of the NFI Event (which may be a positive or negative amount).

Net Base O&M Costs means, in respect of OpCo or an OpCo Contractor (as applicable), its Base O&M Costs as a result of the relevant NFI Event, less any incremental cost savings which accrue or will accrue to OpCo or the OpCo Contractor (as applicable) as a direct result of the NFI Event (which may be a positive or negative amount).

NFI Breakdown Schedule means the NFI Breakdown Schedule in Annexure A of this Schedule 6 (*Net Financial Impact*).

NFI Event means:

- (a) Compensation Events;
- (b) Modifications directed by the Principal under clause 33 of the Operative Provisions;
- (c) Minor Modifications;

- (d) the Principal requires OpCo to create information, provide access or comply with a direction pursuant to clause 10.15(d) of the Operative Provisions;
- (e) an Authority carries out Non-contestable Utility Service Works in accordance with clause 10.24(g) of the Operative Provisions;
- (f) OpCo or an OpCo Contractor has paid, or is required to pay under a Public Art Contract, an amount to a Shortlisted Artist or Approved Artist (as those terms are defined in Schedule 12 (*Public Art*)) in accordance with clause 2.4(b) of Schedule 12 (*Public Art*);
- (g) subject to clause 12.6(c) of the Operative Provisions, OpCo is directed, ordered or required to cease to perform any of OpCo's Activities (or to change the way it does so) as a result of the discovery of a Valuable Find;
- (h) the Principal directs OpCo to accelerate the Delivery Activities in accordance with clause 20.12 of the Operative Provisions and OpCo would, but for the direction, have been entitled under the Operative Provisions to an extension of time to the Date for Completion for the cause of the delay;
- (i) the Principal is entitled to be paid an amount calculated by reference to the Net Financial Impact in the circumstances set out in clause 41.3 or 41.4(b)(v) of the Operative Provisions;
- (j) the Principal directs OpCo to perform any Nominated Subcontractor Work in accordance with clause 61.4 of the Operative Provisions; and
- (k) OpCo has paid, or is required to pay under the CRS Estimator Deed, an amount to the CRS Estimator in accordance with the CRS Estimator Deed in respect of the services to be provided by the CRS Estimator contemplated in Schedule 8 (*Cost Risk Share*),

but does not include an Extension.

Off Site Overheads means the costs set out in Part B of Annexure C to this Schedule 6 (*Net Financial Impact*).

On-Site Overheads means the costs set out in Part A of Annexure C to this Schedule 6 (*Net Financial Impact*).

Preliminaries means, in respect of an NFI Event, the applicable amount which may be charged by OpCo on account of On-Site Overheads, as determined in accordance with clause 4.7.

Principal Repayment Date means each date on which principal amounts are required to be repaid in accordance with the Repayment Schedule (as that term is defined in the Facility Agreement).

Professional Service Providers means financial, legal, accounting and insurance advisors and claims consultants, but excludes any third party designer or technical advisor (including an architect, engineer or other design consultant).

Prolongation Costs has the meaning given in clause 3(a)(ix).

Prolongation Costs Cap Maximum Daily Amount means the daily amount set out in cells F538:F543 of the Model Outputs Schedule.

Specified OpCo Contractor means:

- (a) the SMEC and Arup Design Significant Contractor;
- (b) the Siemens Mobility Significant Contractor;
- (c) Rhomberg Rail Significant Contractor;
- (d) Richard Crookes Significant Contractor; and
- (e) any other OpCo Contractor that is engaged for a package of work that exceeds a value threshold of:
 - (i) ██████████ for the Delivery Activities; and
 - (ii) ██████████ for the Operations Activities.

Specified OpCo Contractor Subcontractor means a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of the Specified OpCo Contractor involved in performing the Specified OpCo Contractor's activities in respect of the SSTOM PPP.

[REDACTED]

2. [Not used]

3. Calculation of Net Financial Impact

(a) Subject to clause 4, 5 and 6 and Schedule 8 (*Cost Risk Sharing*), the Net Financial Impact of an NFI Event comprises:

(i) to the extent that the NFI Event either:

(A) involves:

(I) a change in the scope of the Delivery Activities; or

(II) the delivery of capital components during the Operations Phase; or

(B) does not involve a change in the scope of OpCo's Activities but results in an increase or decrease in the costs of performing the Delivery Activities which OpCo and/or any OpCo Contractors have incurred or will incur as a result of the NFI Event,

then the Net Financial Impact will include an amount equal to the aggregate of:

(C) in respect of OpCo:

(I) the Net Base Delivery Costs of OpCo; and

(II) the applicable Margin as determined in accordance with clause 4.6; and

(D) in respect of each OpCo Contractor (other than Professional Service Providers) involved in the performance of the relevant activities:

(I) the Net Base Delivery Costs of that OpCo Contractor;

(II) the applicable Preliminaries as determined in accordance with clause 4.7(a) or agreed in accordance with clause 4.7(c); and

- (III) the applicable Margin as determined in accordance with clause 4.6.
- (ii) to the extent that the NFI Event either:
 - (A) involves a change in the scope of the Operations Activities; or
 - (B) does not involve a change in the scope of OpCo's Activities but results in an increase or decrease in the costs of performing the Operations Activities which OpCo and/or any OpCo Contractors have incurred or will incur as a result of the NFI Event,
 then the Net Financial Impact will include an amount equal to the aggregate of:
 - (C) in respect of OpCo:
 - (I) the Net Base O&M Costs of OpCo; and
 - (II) the applicable Margin as determined in accordance with clause 4.6; and
 - (D) in respect of each OpCo Contractor (other than Professional Service Providers) involved in the performance of the relevant activities:
 - (I) the Net Base O&M Costs of that OpCo Contractor; and
 - (II) the applicable Margin as determined in accordance with clause 4.6;
- (iii) in respect of a Modification directed by the Principal under clause 33 of the Operative Provisions, an amount in respect of Third Party Preparation Costs, as calculated in accordance with clause 4.8;
- (iv) any liability to third parties incurred by OpCo or an OpCo Contractor as a result of the NFI Event (other than liability to OpCo or other OpCo Contractors (as applicable), an entity in the OpCo Group or an OpCo Equity Investor);
- (v) subject to clause 4.10, any redundancy payments which are necessary as a result of the NFI Event;
- (vi) any additional insurance cost impacts as a result of the NFI Event and other amounts in respect of insurance, as determined in accordance with clause 4.11;
- (vii) any additional costs of bank guarantees as calculated in accordance with clause 4.12;
- (viii) if the Principal requests that an OpCo Group Member fund some or all of the incremental costs arising from an NFI Event in accordance with clause 4.19, the relevant Financing Costs;
- (ix) any net incremental costs that OpCo or an OpCo Contractor has properly and reasonably incurred and which arises out of or in connection with a delay to the Delivery Activities (including accelerating, compressing, resequencing or reorganising the Delivery Activities):
 - (A) that is directly attributable to an NFI Event; and
 - (B) for the number of days for which OpCo has been granted an extension of time to the Date for Completion in accordance with the Operative Provisions,**(Prolongation Costs),**
 up to and not exceeding on a per day basis the Prolongation Costs Cap Maximum Daily Amount;
- (x) any Financing Delay Costs calculated in accordance with clause 4.14; and
- (xi) subject to clause 4.15, any Service Payment Deduction that OpCo properly and reasonably incurs and is directly attributable to an NFI Event,

less:

- (xii) subject to clause 5.9, any insurance proceeds, damages, compensation or other revenue which OpCo or an OpCo Contractor receives or is entitled to receive as a result of the NFI Event (or, in the case of insurance proceeds, would have been entitled to receive, had it fully complied with its insurance obligations under the Operative Provisions and the applicable insurance policy and (to the extent it was entitled to do so) had diligently pursued a proper claim).
- (b) If the incremental costs and Service Payment Deductions incurred or suffered by OpCo as a result of an NFI Event exceeds the cost savings or revenue derived by OpCo as a result of the NFI Event, the Net Financial Impact of that amount is referred to in this Schedule 6 (*Net Financial Impact*) and the Operative Provisions as a negative amount and will be payable by the Principal to OpCo in accordance with clause 7.
- (c) If the cost savings or revenue derived by OpCo as a result of the NFI Event exceeds the incremental costs and Service Payment Deductions incurred or suffered by OpCo as a result of an NFI Event, the Net Financial Impact of that amount is referred to in this Schedule 6 (*Net Financial Impact*) and the Operative Provisions as a positive amount and will be payable by OpCo to the Principal in accordance with clause 7.
- (d) OpCo acknowledges and agrees that this Schedule 6 (*Net Financial Impact*) provides for specific limitations to OpCo's or the Principal's entitlement to Net Financial Impact for different NFI Events.

4. Principles for calculating Net Financial Impact

4.1 Incremental costs and revenues only

Changes in costs and revenues are to be determined on an incremental basis where:

- (a) in the case of an increase in costs, only costs that would not be incurred but for the NFI Event are taken into account;
- (b) in the case of a reduction in costs, only savings that would not have accrued but for the NFI Event are taken into account;
- (c) in the case of Service Payment Deductions, only Service Payment Deductions that would not have been deducted but for the NFI Event are taken into account;
- (d) in the case of an increase in revenue, only revenues that would not have been received but for the NFI Event are taken into account; and
- (e) in the case of a decrease in revenue, only revenues that would have been received but for the NFI Event are taken into account.

4.2 Fair and reasonable, arm's length arrangements

All increases or decreases in costs and revenues included in the calculation must:

- (a) be fair and reasonable;
- (b) reflect commercial arm's length arrangements; and
- (c) without limiting clause 4.2(a) or 4.2(b), where any aspect of an NFI Event involves any works, activities, items or personnel that are substantially the same as or similar to any works, activities, items or personnel contained in:
 - (i) the Schedule of Rates; or
 - (ii) any Core Contract, Subcontract with a Specified OpCo Contractor, Significant Contract or Nominated Subcontract (as applicable),

then the prices, rates or unit costs for such works, activities, items or personnel must be based on and/or equivalent to the prices, rates or unit costs (as applicable) in the Schedule of Rates or the relevant Core Contract, Subcontract with a Specified OpCo Contractor, Significant Contract or Nominated Subcontract (as applicable).

4.3 Subcontractors

OpCo must:

- (a) use all reasonable endeavours to ensure that all OpCo Contractors:
 - (i) minimise any increase in costs and loss of revenue which would have been incurred or suffered; and
 - (ii) maximise any reduction in costs or additional revenue which would have been derived,as a result of the NFI Event; and
- (b) ensure that the calculation of the Net Financial Impact on each OpCo Contractor is calculated in accordance with this clause 4.

4.4 Non-compliance with other obligations

The Net Financial Impact of an NFI Event will:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any incremental cost savings or additional revenue which would have been derived,

had OpCo complied with its obligations under the Project Agreements.

4.5 Mitigation

Without limiting clause 4.4, the Net Financial Impact of an NFI Event will:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any incremental cost savings or additional revenue which would have been derived,

had OpCo and each OpCo Contractor used all reasonable endeavours to:

- (c) mitigate the effects of the NFI Event (including by putting in place temporary measures reasonably acceptable to the Principal's Representative); and
- (d) without limiting clause 4.3 or clause 4.5(c):
 - (i) avoid or minimise the duration and consequences of any delay caused by the NFI Event;
 - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of the NFI Event; and
 - (iii) maximise any cost savings or additional revenue derived as a result of the NFI Event.

4.6 Margins

- (a) Subject to clause 4.6(b), none of OpCo, the Core Contractors nor any Specified OpCo Contractors will be entitled to any amount on account of any Margin Elements incurred as a result of an NFI Event;

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- (g) OpCo must ensure that the Margins applied by each OpCo Contractor (other than the Core Contractors and Specified OpCo Contractors) to the Net Base Costs incurred by the relevant OpCo Contractor in respect of an NFI Event are:
- (i) reasonable; and
 - (ii) do not exceed the margins originally charged by the relevant OpCo Contractor for the relevant component of OpCo's Activities.
- (h) Where an NFI Event involves positive Net Base Costs (including as a result of the omission of work or the omission of work and substitution with new work), OpCo acknowledges and agrees that the positive Net Financial Impact payable by OpCo to the Principal in accordance with clause 7 will include both:
- (i) the positive Net Base Costs; and
 - (ii) the positive amounts on account of Margin Elements calculated by OpCo, the Core Contractors or the Specified OpCo Contractors (as applicable) applying the Margin percentage set out in Annexure B to this Schedule 6 (*Net Financial Impact*) to the applicable positive Net Base Costs in accordance with this clause 4.6.

4.7 Preliminaries

- (a) Subject to clauses 4.7(b) and 4.7(c), if an NFI Event involves:
- (i) a change in the scope of the Delivery Activities; or
 - (ii) the delivery of capital components during the Operations Phase,
- the Net Financial Impact of the NFI Event will include an amount on account of On-Site Overheads, to be calculated in respect of:
- (iii) each Core Contractor by applying the relevant Preliminaries percentage set out in Annexure B to this Schedule 6 (*Net Financial Impact*) to the sum of:
 - (A) the Net Base Delivery Costs or Net Base O&M Costs (as applicable) of that Core Contractor; and
 - (B) the aggregate Net Base Delivery Costs and Net Base O&M Costs (as applicable) of all Core Contractor Subcontractors of that Core Contractor other than Specified OpCo Contractors as a result of the NFI Event; and
 - (iv) each Specified OpCo Contractor by applying the relevant Preliminaries percentage set out in Annexure B to this Schedule 6 (*Net Financial Impact*) to the sum of:
 - (A) the Net Base Delivery Costs or Net Base O&M Costs (as applicable) of that Specified OpCo Contractor; and
 - (B) the aggregate Net Base Delivery Costs or Net Base O&M Costs (as applicable) of all Specified OpCo Contractor Subcontractors of that Specified OpCo Contractor as a result of the NFI Event.
- (b) If Annexure B to this Schedule 6 (*Net Financial Impact*) does not specify a Preliminaries percentage for a Specified OpCo Contractor, the parties will, acting reasonably, agree on a Preliminaries percentage to be applied taking into account what is reasonable for a

contractor performing OpCo's Activities that the relevant Specified OpCo Contractor is engaged to perform. The parties acknowledge and agree that to the extent:

- (i) the Specified OpCo Contractor is the Rhomberg Rail Significant Contractor or the Richard Crookes Significant Contractor, the parties will agree a Preliminaries percentage in accordance with the pre-amble to this clause 4.7(b); and
 - (ii) the Specified OpCo Contractor is a Significant Contractor (other than the Rhomberg Rail Significant Contractor or the Richard Crookes Significant Contractor), the Preliminaries percentage provided for in the Significant Contract approved by the Principal under clause 61.3(a) of the Operative Provisions will be the agreed Preliminaries percentage for the purposes of this clause 4.7(b).
- (c) If an NFI Event:
- (i) involves a change in the scope of the Delivery Activities or involves the delivery of a capital component in the Operations Phase and the aggregate Net Base Delivery Costs incurred by or accruing to all OpCo Contractors as a result of the NFI Event are greater than [REDACTED]; or
 - (ii) does not involve any change in the scope of Delivery Activities or the delivery of a capital component in the Operations Phase but OpCo considers that an OpCo Contractor has incurred, or will incur, any amount on account of On-Site Overheads arising out of or in connection with the NFI Event (including accelerating, compressing, resequencing or reorganising the Delivery Activities as a result of the NFI Event),

then:

- (iii) the NFI Breakdown Schedule submitted by OpCo in accordance with clause 4.16 must set out:
 - (A) sufficient details regarding the reasons for the NFI Event resulting in an increase or decrease in the amounts incurred or to be incurred on account of On-Site Overheads; and
 - (B) the reasonable incremental increase or decrease in the amounts that have been incurred or will be incurred (as applicable) on account of On-Site Overheads by each applicable OpCo Contractor as a result of the NFI Event; and
- (iv) the amount to be included in the Net Financial Impact of the NFI Event on account of On-Site Overheads will be agreed by the parties (acting reasonably),

but in each instance the amount of Preliminaries must not include any amount in respect of costs referred to in clauses 3(a)(iii) - 3(a)(xi).

- (d) OpCo acknowledges and agrees that the amounts recoverable under clauses 4.7(a) and 4.7(c) will be the sole entitlement of OpCo (and, through OpCo, of all OpCo Contractors) for compensation in respect of additional or reduced On-Site Overheads that any OpCo Contractor has incurred or will incur as a result of the NFI Event.

4.8 Third Party Preparation Costs

Where:

- (a) the Principal has directed a Modification under clause 33 of the Operative Provisions; and
- (b) the estimate of Third Party Preparation Costs for a Modification Impact Proposal has been approved by the Principal under clause 33.3(c)(i) of the Operative Provisions, agreed by the parties in accordance with clause 33.3(d)(ii) of the Operative Provisions, applied in accordance with clause 33.3(d)(iii)(A) of the Operative Provisions or determined through the dispute resolution process in clause 63 of the Operative Provisions,

the calculation of Net Financial Impact may include any reasonable Third Party Preparation Costs in excess of the TPPC Threshold incurred by OpCo in preparing the Modification Impact Proposal, capped at the amount equal to the Approved TPPC Estimate less the TPPC Threshold and subject to OpCo providing evidence of the amounts claimed on an Open Book Basis.

4.9 Risk and Opportunity

- (a) The Base Delivery Costs or Base O&M Costs of an NFI Event may include, in respect of OpCo and each Core Contractor (as applicable), an amount (determined by the Principal to be reasonable) in respect of risk and opportunity, subject to:
 - (i) OpCo providing a reasonable level of breakdown in respect of the monetarised risk and opportunity items, including:
 - (A) a description of each risk or opportunity identified;
 - (B) OpCo's assessment of the probability of each risk or opportunity occurring; and
 - (C) the amount allocated to each risk or opportunity; and
 - (ii) if the Principal requests, OpCo or the relevant Core Contractor (as applicable) conducting a quantitative risk assessment in respect of the NFI Event.
- (b) OpCo must:
 - (i) invite the Principal (and its nominees) to attend any risk workshop conducted by OpCo or a Core Contractor in respect of an NFI Event; and
 - (ii) if required by the Principal, make available the appropriately qualified personnel to:
 - (A) explain the quantitative risk assessment; and
 - (B) provide such information regarding the quantitative risk assessment as the Principal reasonably requests.

4.10 Redundancy payments

Any redundancy payments which are necessary as a result of an NFI Event (but excluding annual leave, rostered days off and long service leave entitlements) will be included in the calculation of the Net Financial Impact of an NFI Event in respect of OpCo, each Core Contractor and each Specified OpCo Contractor (as applicable), provided that OpCo or the relevant Core Contractor or Specified OpCo Contractor (as applicable) has used reasonable endeavours to avoid or minimise the cost of those redundancies.

4.11 Insurance costs

- (a) Subject to clause 4.11(b), the Net Financial Impact of an NFI Event may include, for the insurances referred to in clauses 45.2(a), 45.2(b), 45.2(g), 45.3(a), 45.3(b), 45.3(c) and 45.3(i) of the Operative Provisions (**Relevant Insurances**), all of the insurance cost impacts for the Relevant Insurances as a result of an NFI Event determined in accordance with clause 4.11(c).
- (b) To the extent that the Relevant Insurance is a Benchmarked Insurance, the Net Financial Impact will include the cost impacts for the Relevant Insurances determined in accordance with clause 4.11(c) only until the next scheduled adjustment in accordance with clause 45.16 of the Operative Provisions.
- (c) The Net Financial Impact of an NFI Event in respect of OpCo and each Core Contractor will be limited to (as applicable):
 - (i) where any Relevant Insurances are required to be extended by OpCo or the relevant Core Contractor (as applicable) as a result of the NFI Event, the additional costs resulting from such an extension; and
 - (ii) where any different conditions on any Relevant Insurance effected by OpCo or the relevant Core Contractor (as applicable) are required as a result of the NFI Event, the additional cost for such difference in conditions.
- (d) The Net Financial Impact of an NFI Event in respect of OpCo and each Core Contractor will include any excesses or deductibles paid as the result of the NFI Event and for which OpCo is entitled to seek reimbursement.

(e) Except as set out in clause 4.7 and this clause 4.11, the Net Financial Impact will exclude all insurance cost impacts as result of an NFI Event.

4.12

[Redacted]

4.13 Expiry Date

The calculations under this Schedule 6 (*Net Financial Impact*) will assume that the Term will end on the Expiry Date.

4.14

[Redacted]

4.16 NFI Breakdown Schedule

- (a) OpCo must:
- (i) provide, and procure that each Core Contractor and Specified OpCo Contractor (as applicable) provides; and
 - (ii) use all reasonable endeavours to ensure that each subcontractor engaged by:
 - (A) each Core Contractor (other than any Specified OpCo Contractor) engaged by that Core Contractor); and
 - (B) each Specified OpCo Contractor, provides,the Principal's Representative with all information required to be provided for an NFI Event in accordance with clauses 4.16(b) and 4.16(c) on an Open Book Basis, to enable an assessment of the applicable compensation for the NFI Event, including each of the components of the Net Financial Impact set out in clause 3(a), as relevant, as calculated in accordance with this Schedule 6 (*Net Financial Impact*).
- (b) In respect of each NFI Event:
- (i) OpCo must provide the Principal's Representative with:
 - (A) a detailed cost breakdown of the relevant calculation of the Net Financial Impact in the form of, and including all information required to be included in:
 - (I) the template NFI Breakdown Schedule set out in Annexure A to this Schedule 6 (*Net Financial Impact*); or
 - (II) such other form requested by, or agreed with, the Principal from time to time; and
 - (B) any additional information reasonably required by the Principal in respect of a NFI Breakdown Schedule submitted by OpCo under clause 4.16(b)(i)(A) in order to explain any amount set out in the NFI Breakdown Schedule; and
 - (ii) the NFI Breakdown Schedule must set out a breakdown of the Net Base Costs by clearly and separately identifying:
 - (A) the Base Costs as result of the relevant NFI Event;
 - (B) any incremental cost savings which accrue or will accrue to OpCo or the OpCo Contractor (as applicable) as a direct result of the NFI Event; and
 - (C) any insurance proceeds, damages, compensation or other revenue which OpCo or the OpCo Contractor (as applicable) receives or is entitled to receive as a result of the NFI Event (or would have been entitled to receive, had it fully complied with its insurance obligations under the Operative Provisions and the applicable insurance policy and made a proper claim).
- (c) OpCo must allow, and must procure that the relevant Core Contractors and Specified OpCo Contractors allow the Principal, its Associates or any other person authorised by the Principal to review the reasonable details of the calculation of the Net Financial Impact of an NFI Event to verify compliance with this Schedule 6 (*Net Financial Impact*) (as agreed between the parties).

4.17 Impact of NFI Event on Financial Model

At the request of the Principal, OpCo must (and must promptly require any OpCo Contractor to) demonstrate and explain the Net Financial Impact of an NFI Event (including Base Costs and cost savings) relative to the financial impact of the NFI Event that is implied or calculated using the Financial Model.

4.18 No unnecessary contracting layers

No entity which is a shareholder in a Core Contractor or a Related Body Corporate of such an entity may perform work arising out of a Modification as a subcontractor to that Core Contractor or to any other contractor further down the contracting chain without the Principal's consent.

4.19 Financing

- (a) Subject to clause 4.19(c), if the Principal requests that OpCo fund some or all of the Net Base Costs arising from an NFI Event, OpCo must:
 - (i) use all reasonable endeavours to obtain competitive financing for such costs; and
 - (ii) advise the Principal of the basis (if any) on which an OpCo (or an OpCo Group Member or Finance Co Group Member) is able to finance such costs (including margins and fees) and the resulting Net Financial Impact.
- (b) The parties acknowledge and agree that the Principal's right to request that a OpCo fund some or all of the Net Base Costs arising from an NFI Event does not apply to the NFI Events in paragraphs (c), (d), (e), (f), (g) and (j) of the definition of 'NFI Event'.
- (c) The parties acknowledge and agree that:
 - (i) the Facility Agreement provides the flexibility for the the Project Entities to enter into one or more Modification Facilities (as that term is defined in the Facility Agreement) in relation to a Modification under this deed; and
 - (ii) to the extent that the Principal requests that OpCo fund some or all of a Modification utilising a Modification Facility, OpCo must take any reasonable steps contemplated under the Debt Financing Documents to access a Modification Facility in accordance with the Debt Financing Documents.

4.20 Foreign Exchange and Escalation

To the extent that the NFI Event involves the delivery of capital components, the Base Delivery Costs or Base O&M Costs may include an amount (determined by the Principal to be reasonable) in respect of (as applicable):

- (a) escalation, subject to OpCo or the relevant Core Contractor (as applicable) providing full details regarding the underlying assumptions of the estimated escalation, including the split of costs for CPI and WPI escalation; and
- (b) foreign exchange, subject to OpCo or the relevant Core Contractor (as applicable) providing full details regarding the underlying foreign currency exchange rate assumptions.

5. Rules for the calculation of Net Financial Impact for specific NFI Events (other than Compensable Changes in Law or Compensable Changes in Government Policy)

5.1 Compensation for Principal directed acceleration

Notwithstanding any other provision of this Schedule 6 (*Net Financial Impact*), where the NFI Event involves the Principal directing OpCo to accelerate the Delivery Activities in accordance with clause 20.12 of the Operative Provisions, OpCo and the OpCo Contractors will not be entitled to:

- (a) apply the relevant Margin percentage set out in Annexure B to this Schedule 6 (*Net Financial Impact*) to the Net Base Costs; or
- (b) any amount on account of any Margin Elements, incurred as a result of that NFI Event.

5.2 Compensation for Pandemic Compensation Events

- (a) Notwithstanding any other provision of this Schedule 6 (*Net Financial Impact*), if the NFI Event is a Pandemic Compensation Event:
 - (i) at any time on or before the Date of Completion, the Net Financial Impact will be limited to the amounts (if any) calculated in accordance with:
 - (A) to the extent there is a Pandemic Construction Site Closure or clause 5.2(b) applies, clauses 3(a)(i)(C)(I), 3(a)(i)(C)(II), 3(a)(i)(D)(I), 3(a)(i)(D)(II) and 3(a)(vi); and
 - (B) clauses 3(a)(viii), 3(a)(ix) and 3(a)(x); and
 - (ii) at any time after the Date of Completion, the Net Financial Impact will be limited to the amounts (if any) calculated in accordance with clauses 3(a)(i)(C)(I), 3(a)(i)(D)(I), 3(a)(ii)(C)(I), 3(a)(ii)(D)(I), 3(a)(viii) and 3(a)(xi).
- (b) If the NFI Event is a Compensation Event which is a Pandemic Compensation Event, the Base Delivery Costs will include Additional Mitigation Costs only to the extent the Principal's Representative (in its absolute discretion) directs OpCo to carry out the additional mitigation activities referred to in clause 29.2(b)(vi)(A) of the Operative Provisions.

5.3 Compensation for Non-contestable Utility Service Works

Notwithstanding any other provision of this Schedule 6 (*Net Financial Impact*), if the applicable NFI Event is the NFI Event referred to in paragraph (e) of the definition of 'NFI Event':

- (a) the Net Financial Impact will be limited to the Net Base Delivery Costs of OpCo and each OpCo Contractor; and
- (b) for the purposes of calculating the Net Base Delivery Costs referred to in clause 5.3(a):
 - (i) the aggregate Base Delivery Costs will be limited to the amounts reasonably and properly incurred (including approval fees) and paid by OpCo or an OpCo Contractor to an Authority which are directly attributable to the Non-contestable Utility Service Works; and
 - (ii) to the extent that any amount paid by OpCo or an OpCo Contractor to an Authority relates to both:
 - (A) Non-contestable Utility Service Works; and
 - (B) Utility Service Works which are not Non-contestable Utility Service Works, the amount paid that is attributable to Utility Service Works which are not Non-contestable Utility Service Works will be excluded from the calculation of Base Delivery Costs under clause 5.3(b)(i).

5.4 Compensation in relation to the discovery of a Valuable Find

Notwithstanding any other provision of this Schedule 6 (*Net Financial Impact*), if the applicable NFI Event is the NFI Event referred to in paragraph (g) of the definition of 'NFI Event', the Net Financial Impact will be limited to the amounts (if any) calculated in accordance with clause 3(a)(i).

5.5 Compensation for Nominated Subcontractor Work

Notwithstanding any other provision of this Schedule 6 (*Net Financial Impact*), if the applicable NFI Event is the NFI Event referred to in paragraph (j) of the definition of 'NFI Event':

- (a) the Net Financial Impact will be limited to the Net Base Delivery Costs of OpCo or the relevant Core Contractor that has entered into the Nominated Subcontract with the Nominated Subcontractor; and
- (b) for the purposes of calculating the Net Base Delivery Costs referred to in clause 5.5(a), the aggregate Base Delivery Costs will be limited to the amounts calculated using the rates in the existing contract between the Principal and the Nominated Subcontractor referred to in clause 61.4(a) of the Operative Provisions.

5.6 Compensation for payments to Shortlisted Artists and Approved Artists

Notwithstanding any other provision of this Schedule 6 (*Net Financial Impact*), if the applicable NFI Event is the NFI Event referred to in paragraph (f) of the definition of 'NFI Event':

- (a) the Net Financial Impact will be limited to the Net Base Delivery Costs of OpCo or the relevant Core Contractor; and
- (b) for the purposes of calculating the Net Base Delivery Costs referred to in clause 5.6(a), the aggregate Base Delivery Costs will be limited to the amount OpCo or a Core Contractor has paid, or is required to pay under a Public Art Contract, to a Shortlisted Artist or an Approved Artist (as those terms are defined in Schedule 12 (*Public Art*) in accordance with clause 2.4(b) of Schedule 12 (*Public Art*).

5.7

[REDACTED]

5.8 Compensation for payments to the CRS Estimator under the CRS Estimator Deed

Notwithstanding any other provision of this Schedule 6 (*Net Financial Impact*), if the applicable NFI Event is the NFI Event referred to in paragraph (k) of the definition of 'NFI Event':

- (a) the Net Financial Impact will be limited to the Net Base Delivery Costs of OpCo; and
- (b) for the purposes of calculating the Net Base Delivery Costs referred to in clause 5.8(a), the aggregate Base Delivery Costs will be limited to the amount OpCo has paid, or is required to pay under the CRS Estimator Deed, to the CRS Estimator in accordance with the CRS Estimator Deed in respect of the services to be provided by the CRS Estimator contemplated in Schedule 8 (*Cost Risk Share*).

5.9

[REDACTED]

6. Compensation for Compensable Changes in Law or Compensable Changes in Government Policy

6.1 Definitions

For the purposes of this clause 6, the following definitions will apply:

General Change in Government Policy means a Compensable Change in Government Policy which is not a Project-Specific Change in Government Policy.

Project-Specific Change in Government Policy means a Compensable Change in Government Policy, the terms of which apply to:

- (a) all or part of Sydney Metro – Western Sydney Airport, and not to other railways in Australia;
- (b) OpCo, and not to other persons;
- (c) the Sydney Metro Site, and not to any other:
 - (i) similarly situated land or facilities; or
 - (ii) land or facilities where similar activities to OpCo's Activities are undertaken; or
- (d) projects procured or established under the:
 - (i) NSW Working with Government Guidelines for Privately Financed Projects or other policies of the State in respect of privately financed projects; or
 - (ii) National Public Private Partnership Guidelines or other policies of the Commonwealth in respect of privately financed projects,and not to other projects.

6.2 Project-Specific Change in Law, Project-Specific Change in Government Policy, Changes in Disability Law, Environmental Law or Rail Safety Law or Pandemic Change in Law

Where a Compensation Event is:

- (a) a Project-Specific Change in Law (other than a Project-Specific Change in Law of the Commonwealth of Australia with respect to Tax);
- (b) a Project-Specific Change in Government Policy;
- (c) a Change in Disability Law;
- (d) a Change in Environmental Law;
- (e) a Change in Rail Safety Law; or
- (f) a Pandemic Change in Law which is a Compensable Change in Law,

the Principal will be liable for [REDACTED] of any negative Net Financial Impact.

6.3 Pandemic Change in Law

- (a) Where there is a Pandemic Change In Law which is a Compensable Change in Law, the Net Financial Impact will be based on the cost information set out in the Pandemic Management Plan and limited to the Net Financial Impact strictly necessary in order to comply with the change in Pandemic Management Plan necessitated by the Pandemic Change in Law.
- (b) Notwithstanding any other provisions of this Schedule 6 (*Net Financial Impact*), if the NFI Event is a Pandemic Change In Law which is a Compensable Change in Law:
 - (i) at any time on or before the Date of Completion, the Net Financial Impact will be limited to the amounts (if any) calculated in accordance with clauses 3(a)(i)(C)(I), 3(a)(i)(C)(II), 3(a)(i)(D)(I), 3(a)(i)(D)(II), 3(a)(ii)(C)(I), 3(a)(ii)(D)(I), 3(a)(vi), 3(a)(viii), 3(a)(ix) and 3(a)(x); and

[REDACTED]

Each amount referred to in clause 6.4(c) and clause 6.4(d) will be CPI Indexed.

6.5 Beneficial changes

OpCo's liability to the Principal in respect of positive Net Financial Impacts is provided in the Operative Provisions.

7. Form and timing of compensation

7.1 If agreed

- (a) OpCo will be compensated (or where there is a positive Net Financial Impact, the Principal will be paid) for the Net Financial Impact of an NFI Event by any one or more of the following means, as agreed between the parties:
 - (i) an adjustment to the Indexed Availability Fee (as defined in Schedule 2 (*Service Payment Calculation*)) or the Indexed Lifecycle Component (as defined in Schedule 2 (*Service Payment Calculation*));
 - (ii) a single lump sum payment, or a series of lump sum payments;
 - (iii) milestone payments; or
 - (iv) any other means which the parties may agree (including, for example, an extension to the Term).
- (b) If the parties agree the arrangements by which OpCo will be compensated (or the Principal will be paid) then the Principal (or if applicable, OpCo) must provide the agreed compensation in accordance with the agreed arrangements.

7.2 If not agreed

If the parties do not agree upon an arrangement for the payment of compensation, then the Principal may give notice to OpCo, and:

- (a) where there is a positive Net Financial Impact that accrues in respect of the Delivery Activities, subject to any other express requirements of this deed in relation to when and how OpCo must pay to the Principal the positive Net Financial Impact, the Principal may:
 - (i) first, set off or deduct that amount pursuant to clause 28.13 of the Operative Provisions from any amount due from the Principal to OpCo during the Delivery Phase including the Final Completion Payment, Pre-Agreed Option Construction Payment or any CRS Principal Share Amount; and
 - (ii) second, to the extent any part of the positive Net Financial Impact remains or will remain outstanding from the Date of Completion, the Principal may determine an appropriate adjustment to the Indexed Availability Fee (as defined in Schedule 2 (*Service Payment Calculation*)) to cover the remaining amount of the positive Net Financial Impact;
- (b) where there is a positive Net Financial Impact that accrues in respect of the Operations Activities:
 - (i) the Principal may determine an appropriate adjustment to the Indexed Availability Fee (as defined in Schedule 2 (*Service Payment Calculation*)) to cover the amount of the positive Net Financial Impact; or
 - (ii) if there are insufficient subsequent monthly Indexed Availability Fees (as defined in Schedule 2 (*Service Payment Calculation*)) payable to OpCo to cover the amount of the Net Financial Impact, the amount will be due and owing from OpCo to the Principal; and
- (c) where there is a negative Net Financial Impact that is not financed by OpCo in accordance with clause 4.19, where the negative Net Financial Impact accrues:

- (i) in respect of the Delivery Activities, the Principal will pay that amount to OpCo in a series of one or more milestone payments in arrears as reasonably determined by the Principal and reflecting the relevant change in OpCo's Delivery Phase cashflows comprising the Net Financial Impact: or
 - (ii) in respect of the Operations Activities, the Principal may determine an appropriate adjustment to the Indexed Availability Fee (as defined in Schedule 2 (*Service Payment Calculation*)) or the Indexed Lifecycle Component (as defined in Schedule 2 (*Service Payment Calculation*)) to cover the amount of the negative Net Financial Impact and the relevant change in OpCo's Operations Phase cashflows.
- (d) If OpCo considers that any adjustment determined by the Principal in accordance with this clause 7.2 does not accurately cover the amount of the relevant Net Financial Impact or (if applicable) the adjustment does not have reasonable regard to the change in OpCo's Operations Phase cashflows, then the matter can be referred to dispute resolution in accordance with clause 63 of the Operative Provisions to determine the amount of the adjustment required to do so.

7.3 Claims for payment

- (a) OpCo may submit claims for payments due under clause 7.1 (if agreed) or 7.2(c) (if not agreed) in accordance with clause 28 of the Operative Provisions.
- (b) Without limiting clause 28.13 of the Operative Provisions or any other provision of this Schedule 6 (*Net Financial Impact*), the Principal may deduct from amounts which are due from the Principal to OpCo under this Schedule 6 (*Net Financial Impact*), any amounts which are due from OpCo to the Principal under clause 7.1 (if agreed), 7.2 (if not agreed) or any other clause of this Schedule 6 (*Net Financial Impact*).

Annexure C – Overheads

Part A: On-Site Overheads

On-Site Overheads means:

- (a) all costs for supervisors (including foremen), superintendents, procedural managers (including safety, quality, planning, procurement, environment, commercial), project managers, design managers, site and project engineers, project directors, administration staff and any other person employed or contracted by OpCo or any of its OpCo Contractors to supervise or manage any of OpCo's Activities on the Sydney Metro Site, including costs associated with redundancy and bonuses;
- (b) site accommodation costs;
- (c) storage charges;
- (d) project site offices (including those for the Principal and Principal's Representative) and amenities (including running costs);
- (e) site mobilisation and demobilisation (including clean-up);
- (f) storage area and facilities;
- (g) site survey;
- (h) Temporary Works design and inspection;
- (i) fees and permits;
- (j) independent consultant costs;
- (k) temporary fencing, signage, hoardings and gantries;
- (l) inductions;
- (m) plant and equipment compliance;
- (n) site services;
- (o) furniture and office fittings;
- (p) computers, printers, printing, photocopying and stationery;
- (q) project specific software, data processing and network systems;
- (r) the cost impact, if any, of diverting OpCo's or any OpCo Contractor's resources away from other components of OpCo's Activities;
- (s) vehicle charges (including operating costs such as fuel costs, servicing and repairs or make good);
- (t) small tools, plant and equipment;
- (u) all recruitments costs;
- (v) employee mobilisation and demobilisation costs, including all travel and accommodation;
- (w) telephones – lease and installation, rental and charges including mobiles;
- (x) office supplies, consumables and outgoings;
- (y) reproduction of drawings;
- (z) IT infrastructure and support; and
- (aa) safety and quality.

Part B: Off Site Overheads

Off Site Overheads means:

- (a) regional management and administrative support;

- (b) finance support;
- (c) marketing and communications (including external staff recruitment advertisement);
- (d) industry memberships and subscriptions;
- (e) accreditation;
- (f) audit and taxation fees;
- (g) research and development;
- (h) business development, sales and marketing;
- (i) corporate infrastructure and support;
- (j) corporate head offices running costs and payroll.
- (k) off-site support staff for safety, quality and human resources management;
- (l) executive management;
- (m) financial, legal, human resources and corporate commercial;
- (n) other than in relation to any Relevant Insurances referred to in clause 4.11(b), insurance premiums and related costs (including any excess payable) in relation to the Delivery Phase; and
- (o) subject to clause 4.12, the cost of bank guarantees and any other comparable financial instruments.