

North West Rail Link Design and construction of tunnels and station civil works

TSC Project Deed

Transport for NSW
Principal

Thiess Pty Limited
ABN 87 010 221 486

John Holland Pty Limited
ABN 11 004 282 268

Dragados Australia Pty Limited
ABN 20 151 632 665

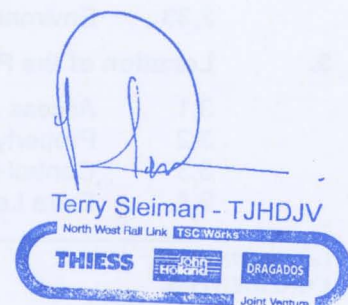
TSC Contractor

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Transport for NSW
ABN 18 804 239 602

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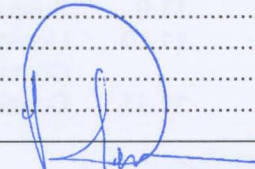

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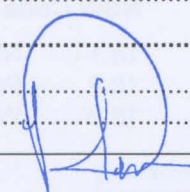



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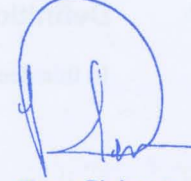

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Joint Venture

TSC Project Deed made at *Sydney* **on** *24 June 2013*

Parties **Transport for NSW ABN 18 804 239 602** a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 6, 18 Lee St, Chippendale NSW 2008 (**Principal**)

Thiess Pty Ltd ABN 87 010 221 486 of 179 Grey Street, South Brisbane QLD 4101

John Holland Pty Ltd ABN 11 004 282 268 of Level 5, 380 St Kilda Road, Melbourne VIC 3004

Dragados Australia Pty Ltd ABN 20 151 632 665 of Level 3, 44 Caroline Street, South Yarra VIC 3141

(together the **TSC Contractor**)

Background

- A. The Principal is procuring the North West Rail Link on behalf of the NSW government and the people of New South Wales.
- B. The delivery of the North West Rail Link comprises three main components, being the Project Works, the SVC Works and the OTS Project Works.
- C. The Project Works are to be designed, constructed, tested, commissioned and handed over by the TSC Contractor to the Principal pursuant to this deed.
- D. When completed, the TSC Contractor will progressively hand control of the Project Works to the Principal so that the Principal may hand control of the Project Works to OpCo, in order to allow it to undertake the OTS Project Works and to commence operation of the North West Rail Link.
- E. The Principal invited expressions of interest for the delivery of the tunnels and station civil works component of the North West Rail Link.
- F. Following the completion of a tender process, the Principal selected the TSC Contractor as the successful tenderer for the Project Works.
- G. The Principal and the TSC Contractor now wish to enter into this deed to record the terms on which the Project Works will be delivered.
- H. The objectives for the North West Rail Link are set out in section 1.1(a) of the SWTC.
- I. The objectives for the Project Works, the Temporary Works and the TSC Contractor's Activities are set out in section 1.1(b) of the SWTC.

This deed provides

1. Definitions and interpretation

1.1 Definitions

In this deed:



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THIESS

JOHN HOLLAND

DRAGADOS

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2011 Clean Energy Legislative Package means the various schemes, policies and programs implemented by the legislation comprising the Commonwealth Government's "Clean Energy Legislative Package" as passed by the Senate on 8 November 2011.

Act of Prevention means:

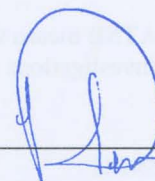
- (a) a breach of this deed by the Principal;
- (b) an act or omission by the Principal or its Associates and not being an act or omission:
 - (i) expressly permitted or allowed by this deed including any Direction given by the Principal or the Principal's Representative (other than a matter referred to in paragraph (c)); or
 - (ii) which is within a timeframe expressly permitted, or allowed by this deed (other than a matter referred to in paragraph (c)); or
 - (iii) to the extent the act or omission is caused or contributed to by a breach by the TSC Contractor of this deed or any negligent, or unlawful, act or omission of the TSC Contractor, or its Associates, including any breach, act or omission in connection with the TSC Contractor's obligations in respect of Interface Contractors; or
 - (iv) being the exercise by the Principal of any of its functions and powers pursuant to any Law; and
- (c) subject to clause 8.3(a)(ii), a Change the subject of a Direction by the Principal's Representative except where the Change is approved under clause 6.6(d).

Amenities Building means the secure amenities building and associated fencing at Cheltenham Oval described in section 7.5(a) of Appendix 7 to the SWTC.

Apprentice means an apprentice or trainee registered under the *Apprenticeship and Traineeship Act 2001* (NSW).

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

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



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- (f) any Environment Protection Licence issued in relation to the TSC Contractor's Activities,

but does not include:

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

Artefacts means any and all:

- (a) valuable minerals, fossils, or coins;
- (b) articles or objects of value or antiquity; and
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological or other special interest,

found on or under the surface of the Construction Site.

Asset Management Information means the information and documents relating to the operation and maintenance of the assets forming the Project Works and Handover Works as required by Appendix 25 of the SWTC.

Asset Management Information Delivery Plan means the Project Plan referred to as the "Asset Management Information Delivery Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 43 of the SWTC, as updated from time to time in accordance with clause 2.14.

Associates means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excludes:
- (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the TSC Contractor and its Subcontractors;
 - (iv) the SVC Contractor and its subcontractors;
 - (v) OpCo and its subcontractors; and
 - (vi) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (v) above; and
- (b) in respect of the TSC Contractor, its Subcontractors and any of the respective employees, agents, contractors or officers of the TSC Contractor and its Subcontractors (excluding the Independent Certifier and its employees, agents, consultants and officers).

ATSB means the Australian Transport Safety Bureau constituted under the Transport Safety Investigations Act 2003 (Cth).

Ausgrid means the NSW state owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW).

Authority means:

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

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

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

Bank Bill Rate is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if there is a manifest error in the calculation of the average bid rate under paragraph (a) or if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the TSC Contractor and the Principal having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

BIM means any building information model prepared in relation to the Project Works or the TSC Contractor's Activities, as further described in the SWTC.

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

Change means any change or variation to the Project Works or the Temporary Works and includes additions, increases, decreases, omissions, deletions, demolition or removal to or from any of these.

Change in Codes and Standards means a change in the Codes and Standards taking effect after the date of this deed.

Change in Law means (if it takes effect after the date of this deed):

- (a) the amendment, repeal or change of an existing Law (other than an Approval); or
- (b) a new Law (other than an Approval),

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

- (c) in respect of Tax (excluding for the avoidance of doubt a Law comprising the 2011 Clean Energy Legislative Package (including the *Clean Energy Act 2011* (Cth)));
- (d) which was caused or contributed to by any act or omission of the TSC Contractor; or
- (e) which, as at the date of this deed:
 - (i) was published or of which public notice had been given (even as a possible amendment, repeal or change of an existing Law or a possible new Law); or
 - (ii) a person experienced and competent in the delivery of works and services similar to the Project Works or the TSC Contractor's Activities would have reasonably foreseen or anticipated,

and, for the avoidance of doubt, excludes any increase in the charge percentage for an employer to avoid liability under the *Superannuation Guarantee (Charge) Act 1992* (Cth) (including as introduced under the *Superannuation Guarantee (Administration) Amendment Act 2012* (Cth)).

Change Order means a written document titled "Change Order" issued under clause 6.2(a).

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

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

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

Codes and Standards means the codes, standards, specifications and guidelines referred to in section 4.10 of the SWTC (including those specified in Appendix 15 of the SWTC).

Community Liaison Implementation Plan means the Project Plan referred to as the "Community Liaison Implementation Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 38 of the SWTC, as updated from time to time in accordance with clause 2.14.

Concept Design means the concept design prepared by the TSC Contractor and included in Appendix 28 of the SWTC.

Consequential Loss means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect);
- (b) direct or indirect financing costs; or
- (c) any loss, damage, cost, expense or liability that is special, indirect or consequential, whether present or future, fixed or unascertained, actual or contingent.

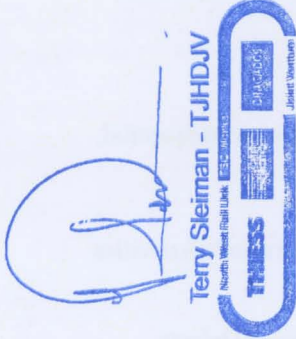
Construction Completion means the stage in the execution of the TSC Contractor's Activities in respect of a Portion when:

- (a) the Portion is complete in accordance with this deed except for minor Defects which can be corrected:
 - (i) after the relevant part of the Construction Site has been handed over to OpCo;
 - (ii) after OpCo has completed its construction activities under the OTS Project Deed within the relevant part of the Construction Site; and
 - (iii) within a 24 hour period if the TSC Contractor is given access by OpCo to the relevant part of the Construction Site for a 24 hour period;
- (b) the TSC Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this deed to be carried out and passed before the Portion reaches Construction Completion; or
 - B. must necessarily be carried out and passed before the Portion can be used for its intended purpose and to verify that the Portion is in the condition this deed requires it to be in at Construction Completion;
 - (ii) obtained all Approvals that it is required under this deed to obtain before Construction Completion of the Portion and provided such Approvals to the Principal's Representative;
 - (iii) given to the Principal's Representative (with a copy to OpCo) all documents or other information in respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Portion which:
 - A. are required by this deed to be given to the Principal's Representative before Construction Completion of the Portion; or
 - B. must necessarily be handed over before the Portion can be used for its intended purpose;

including copies of all documentation in accordance with the requirements of Appendix 23 of the SWTC;



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- (iv) executed a certificate in the form of Schedule 4 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
- (v) provided the training referred to in clause 7.15(a) to the reasonable satisfaction of the Principal's Representative; and
- (vi) removed all Construction Plant from the parts of the Construction Site that relate to the Portion, other than:
 - A. where the Principal's Representative has given a notice under clause 11.14(a) to carry out Transitional Handover Services in respect of the Portion, any Construction Plant required to carry out the Transitional Handover Services; and
 - B. any Construction Plant necessary to facilitate the handover of the Portion to the Principal or retained on the Construction Site in accordance with clause 7.12(c) (where approved by the Principal's Representative in accordance with clause 7.12(c));
- (c) the Quality Manager has executed a certificate in the form of Schedule 6 for the Portion and provided it to the Principal's Representative;
- (d) the TSC Contractor has, in respect of any Extra Land occupied or used in connection with the Portion, provided the Principal's Representative with:
 - (i) properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
 - (ii) statements under clause 3.4(a)(ii)B.2); and
- (e) the TSC Contractor has done everything else which is stated to be a condition precedent to Construction Completion of the Portion or which the TSC Contractor is otherwise required by this deed to do before Construction Completion of the Portion, including any additional conditions precedent to Construction Completion specified in Schedule 34.

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

Construction Environmental Management Plan means the Project Plan referred to as the "Construction Environmental Management Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 33 of the SWTC, as updated from time to time in accordance with clause 2.14.

Construction Leases means the leases entered into between the Principal and various landowners in respect of parts of the Construction Site as contained in Exhibit K.

Construction Manager means the person appointed to that position under clause 10.2(b) as at the date of this deed or any person appointed as a replacement under clause 10.2(b).

Construction Payment Schedule means Schedule 2.

Construction Plan means the Project Plan referred to as the "Construction Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 36 of the SWTC, as updated from time to time in accordance with clause 2.14.

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

Construction Site means the Project Site and the Temporary Areas.

Construction Site Interface Work has the meaning given in clause 2.16(a)(ii).

Contamination means the presence in, on or under land or any other aspect of the Environment of a substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) which is:

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

Contract Documentation and Materials has the meaning given in clause 5.3.

Core Sample Location Difference means a material difference between:

- (a) the actual location where a core sample which is the subject of a Geotechnical Report was taken; and
- (b) the location represented in the Geotechnical Report as being the location where the relevant core sample was taken.

Corporate OHS Management System has the meaning given in the New South Wales Government Occupational Health & Safety Management Systems Guidelines (June 2004) or any document issued from time to time which amends or replaces this document.

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

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

Crown Building Work has the meaning given to that term in section 109R of the *Environmental Planning and Assessment Act 1979* (NSW).

DAB Agreement means the agreement which appears in Schedule 36.

Data for the purposes of the definition of "Emissions and Energy Data" and clause 2.25(d)(i)A, includes data, information, records and reports.

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

- (a) at the date of this deed, the applicable date specified for the Portion in Schedule 34; or
- (b) where, in respect of a Portion, an extension of time for Construction Completion is granted by the Principal's Representative or allowed in any Dispute Avoidance Board determination or arbitration or litigation proceedings, the date resulting therefrom.

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

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

Deed of Disclaimer means the Deed of Disclaimer signed by the TSC Contractor in favour of the Principal, a copy of which appears in Exhibit G.

Defect means:

- (a) any defect, deficiency, fault, error or omission in the Project Works or Temporary Works; or
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the Project Works or Temporary Works; or
 - (ii) other aspect of the Project Works, Temporary Works or the TSC Contractor's Activities,

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

but does not include any damage caused to the Project Works after the Portion Handover Date by someone other than the TSC Contractor or its Associates.

Defective Early Works has the meaning given in clause 7.2(c)(ii).

Defects Correction Period means a period referred to in clauses 8.5, 8.6(a), 8.7(a) or 8.8.

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

Design Documentation means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models (including the BIM or any part thereof), samples, prototypes, calculations, drawings, shop drawings, digital records and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, which are required for the performance of the TSC Contractor's Activities, or which the TSC Contractor or any other person creates in performing the TSC Contractor's Activities (including the design of Temporary Works); and

- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the TSC Contractor's Activities.

Design Manager means the person appointed to that position under clause 10.2(b) as at the date of this deed or any person appointed as a replacement under clause 10.2(b)

Design Payment Schedule means Schedule 1.

Design Plan means the Project Plan referred to as the "Design Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 35 of the SWTC, as updated from time to time in accordance with clause 2.14.

Design Review Period has the meaning given to it in clause 5.2(i)(ii).

Developed Concept Design means the Design Documentation required to be completed for the Developed Concept Design Stage.

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

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

Dispute has the meaning given to that term in clause 15.1.

Dispute Avoidance Board means the board constituted under the DAB Agreement, referred to in clause 15.

Early Works means the works described in Appendix 4 of the SWTC.

Early Works Contractor means Boulderstone Pty Ltd ABN 56 002 625 130 or any replacement contractor engaged by the Principal from time to time.

EIS 2 Approval means the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 8 May 2013 (SSI-5414), a copy of which (as at the date of this deed) appears in Exhibit D, and includes all:

- (a) conditions to such approval; and
 - (b) documents incorporated by reference,
- as the approval may be modified from time to time.

Emissions and Energy Data means:

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



- (c) any other Data concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person is required by any other Law to keep or to provide to any Authority.

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

Engineering and Competency Management Plan means the Project Plan referred to as the "Engineering and Competency Management Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 44 of the SWTC, as updated from time to time in accordance with clause 2.14.

Environment means components of the earth, including:

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

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



Environmental and Sustainability Management System means an environmental and sustainability management system as described in section 3.8 of the SWTC.

Environmental Documents means the Planning Approval and Appendix 7 of the SWTC.

Environmental Manager means the person appointed to that position under clause 10.2(b) as at the date of this deed or any person appointed as a replacement under clause 10.2(b).

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

Environmental Representative or ER means Michael Woolley or, as an alternate, Jo Robertson, each of Healthy Buildings International (HBI) Pty Ltd (ABN 39 003 270 639) of 7/33 Ryde Road Pymble NSW 2073 as appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to the TSC Contractor.


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

EPBC Act Approval means the Minister for the Environment and Water Resources' approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC reference: 2012/6360) dated 11 April 2013, a copy of which (as at the date of this deed) appears in Exhibit M, as modified from time to time.

Excepted Risk means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage or terrorism;
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, chemical or biological contamination, in each case to the extent not caused by the TSC Contractor or its Associates; and
- (c) a negligent act or omission by the Principal or its Associates.

Excusable Cause of Delay means:

- (a) an Act of Prevention;
- (b) subject to clauses 11.9(b) and 11.9(c), a direction by the Principal's Representative under clause 11.9(a) to suspend the TSC Contractor's Activities;
- (c) a Force Majeure Event;
- (d) a Change in Law;
- (e) a reduction in the permissible working hours or in the permissible noise and vibration limits for the TSC Contractor's Activities which occurs in the circumstances set out in clause 2.5(b);
- (f) a court or tribunal order, or a direction by the Principal's Representative to the TSC Contractor, to suspend or cease performing its obligations under this deed as a result of a legal challenge as described in clause 2.8(g), except to the extent the legal challenge is initiated or upheld due to the TSC Contractor's negligent act or omission or non-compliance with its obligations under this deed;
- (g) Contamination on, in, over, under or around the Construction Site that is caused by the Principal (or its Associates) after the date of this deed and which:
 - (i) is disturbed by the carrying out of the TSC Contractor's Activities; or
 - (ii) the TSC Contractor is otherwise required by an Authority to remediate;
- (h) a statewide or nationwide strike, excluding any strike that is specifically related to:
 - (i) the Construction Site;
 - (ii) the Project Works or the TSC Contractor's Activities; or
 - (iii) any of, or one or more of:
 - A. the TSC Contractor;
 - B. any one of the TSC Contractor's Associates; and



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- C. any corporate group of which the TSC Contractor (or any person comprised in the TSC Contractor) forms part;
- (i) a Native Title Claim resulting in the TSC Contractor being directed, ordered or required by the Principal's Representative, a court or tribunal or by Law to suspend or cease to perform the TSC Contractor's Activities (or to change the way it does so);
 - (j) the discovery of an Artefact to the extent that the discovery of that Artefact results in the TSC Contractor being directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform the TSC Contractor's Activities for more than 10 days in aggregate (for each discovery of an Artefact);
 - (k) testing directed under clause 4.7(b) for which the TSC Contractor is entitled to be paid its costs pursuant to clause 4.7; and
 - (l) Defective Early Works, in the circumstances contemplated by clauses 7.2(g) and 7.2(i)(ii).

Executive Negotiator means:

- (a) for the TSC Contractor, its chief executive officer; or
 - (b) for the Principal, the Director-General of the Principal,
- (or his or her delegate, who must not be part of the Management Review Group).

Excluded Claim means any claim:

- (a) arising out of a Change in Law under clause 2.3(f);
- (b) for a Change directed by the Principal's Representative pursuant to clause 2.4(a)(ii)B arising out of a Change in Codes and Standards;
- (c) arising out of a change in the Planning Approval under clause 2.5(b);
- (d) arising out of a Core Sample Location Difference under clause 3.8(c);
- (e) for a Change to which clause 6.3 applies;
- (f) arising out of Defective Early Works under clause 7.2(g);
- (g) for an extension of time under clause 11.6; and
- (h) for payment under clause 12 of any part of the original Project Contract Sum.

Existing Operations means:

- (a) all infrastructure (including the existing infrastructure and the Utility Services) which is owned, operated or under the control of RailCorp, Ausgrid, RMS, Endeavour Energy or any other person; and
- (b) the businesses and operations undertaken by RailCorp, Ausgrid, RMS, Endeavour Energy or any other person,

on or in the vicinity of the Construction Site.

Extra Land means the land and buildings referred to in clause 3.4(a)(i).

Final Design Documentation means the Design Documentation required to be completed for the Final Design Documentation Stage.

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

Force Majeure Event means any of the following:

- (a) the events specified in paragraphs (a) and (b) of the definition of Excepted Risk;
- (b) an earthquake;
- (c) fire;
- (d) a terrorist act under section 5 of the *Terrorism Insurance Act 2003* (Cth);
- (e) a flood which might at the date of this deed be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event); or

(f) an explosion,

which:

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

Geotechnical Reports means the geotechnical reports listed in Schedule 27.

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

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of the TSC Contractor or its Associates, as the case may be, under the same or similar circumstances as the performance of the TSC Contractor's Activities.

GST, GST law and other terms used in clause 12.8 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except **GST law** also includes any applicable rulings and any reference to GST payable by the Supplier (as defined in clause 12.8) includes GST payable by the representative member of any GST group of which the Supplier is a member.

Handover Works means those works referred to as the "Handover Works" in the SWTC including in section 2.6 and Appendix 5 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).



Hazardous Substance means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the Environment.

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

IAMA means The Institute of Arbitrators and Mediators, Australia.

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

- (a) any work health and safety, environmental or security incident including:
 - (i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
 - (ii) loss of containment, escape of or migration of Contamination off-site and into the Environment;
 - (iii) any fire or dangerous event on the Construction Site or Extra Land;
 - (iv) a security breach;
 - (v) any unauthorised removal of trees;
 - (vi) any incident involving the community;
 - (vii) any accidents involving damage to persons or property occurring upon or in the vicinity of the Construction Site or any Extra Land;
 - (viii) a non-compliance with an Approval; or
 - (ix) any public complaint; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

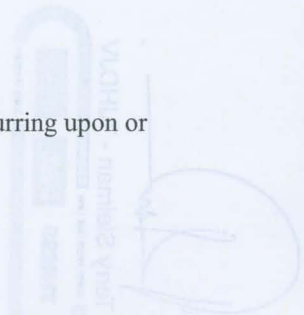
and includes:

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

Independent Certifier means APP Corporation Pty Limited (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney NSW 2060 or such other person(s) as may be engaged by the Principal, the TSC Contractor, and OpCo in accordance with the Independent Certifier Deed.

Independent Certifier Deed means the deed entered into between the TSC Contractor, the Principal, and the Independent Certifier and to which OpCo may accede, dated on or about the date of this deed and substantially in the form of Exhibit E.

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





- (a) referred to in Exhibit F;
- (b) issued or made available by, or on behalf of, the Principal or the NSW Government to the TSC Contractor in connection with the Invitation for Expressions of Interest, Request for Tender, the Project Works or the North West Rail Link (including anything issued or made available through the Principal's website) and which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document";
- (c) issued or made available by, or on behalf of, the Principal or the NSW Government to the TSC Contractor in connection with the Invitation for Expressions of Interest, Request for Tender, the Project Works, the TSC Contractor's Activities or the North West Rail Link (including anything issued or made available through the Principal's website), but which did not form part of the Invitation for Expressions of Interest or Request for Tender (as applicable), regardless of whether or not it was expressly classified or stated to be an "Information Document"; or
- (d) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

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

Insolvency Event means:

- (a) a controller (as defined in section 9 of the Corporations Act 2001 (Cth)), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act* 2001 (Cth);
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passes or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;

- (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
- (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

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

- (e) as a result of the operation of section 459F(1) of the *Corporations Act* 2001 (Cth), a person is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act* 2001 (Cth));
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

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

Interface Contractor means any contractor, consultant, artist, tradesperson or other person engaged by the Principal to do work on or adjacent to the Construction Site including:

- (a) the Early Works Contractor; and
- (b) any other contractor undertaking any work to rectify Defective Early Works as contemplated by clause 7.2(h),

but not including the TSC Contractor and its Subcontractors.

Interface Management Plan means the Project Plan referred to as the "Interface Management Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 42 of the SWTC, as updated from time to time in accordance with clause 2.14.

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

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

- (a) the TSC Contractor's Activities, the Project Works or the North West Rail Link; or
- (b) any activities of the Principal which are affected by the TSC Contractor's Activities, the Project Works or the North West Rail Link,

including ONRSR, ATSB and OTSI.

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

Key Plant and Equipment Amount means the amount provided for in Cost Item 1.2 in Cost Centre 1 of the Construction Payment Schedule (which, for clarity, forms part of the Construction Contract Sum).

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

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

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

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

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

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

Local Area Works means the modification, reinstatement and improvement of Local Areas which the TSC Contractor must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed and the SWTC including sections 2.3.3c) and 6.2 and Appendix 19 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Loss means:

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

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.

Management Review Group means the group referred to in clause 10.5.

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

Monitoring and Protection Plan means the Project Plan referred to as the "Monitoring and Protection Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 37 of the SWTC, as updated from time to time in accordance with clause 2.14.

Native Title Claim means any claim or application for a determination of native title under the Native Title Act 1993 (Cth) or any similar Law.

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

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

NSW Government Policies means the NSW Code, NSW Guidelines, Aboriginal Participation in Construction Guidelines (January 2007), Environmental Management Systems Guidelines (2nd edition) (September 2009), Occupational Health & Safety Management Systems Guidelines (4th edition) (June 2004), Guidelines for Auditing Project OHS Management Plans (June 2004), Training Management Guidelines (February 2009), Waste Reduction and Purchasing Policy (WRAPP) and any other NSW Government guidelines and requirements specified or required by this deed.

NSW Guidelines means the Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (July 2013)(as published by the NSW Treasury on 7 June 2013).

Non-Reviewable Temporary Works means the parts of the Temporary Works other than the Reviewable Temporary Works.

North West Rail Link means the railway line from Chatswood to Cudgegong Road, including the stabling yard and maintenance depot at Tallawong Road, the stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

Notice of Construction Completion means a notice in the form of Schedule 5 issued by the Independent Certifier pursuant to clause 11.11(e)(i).

Notice of Dissatisfaction means a notice given under clause 15.6(a).

NWRL Programming Protocol means the document entitled "North West Rail Link Programming Protocol" referred to in Appendix 15 of the SWTC.



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

OpCo means the party selected by the Principal to undertake the OTS Project Works component of the North West Rail Link and subsequently to operate and maintain the North West Rail Link and which enters into a contract with the Principal for those purposes.

OTS Project Deed means the deed to be entered into between the Principal and OpCo for the provision of the OTS Project Works and the performance of various services, including in particular the operation and maintenance of the North West Rail Link.

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

OTS Portion 1 Site Access Date means 13 July 2016 or, where the Principal has given a notice under clause 1.10, 13 May 2016.

OTS Portion 2 Site Access Date means 13 August 2016.

OTS Portion 3 Site Access Date means 3 April 2017.

OTS Site Access Date means each of OTS Portion 1 Site Access Date, OTS Portion 2 Site Access Date and OTS Portion 3 Site Access Date.

OTSI means the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

Overall D&C Program means the overall program for design and construction activities which is contained in Exhibit C, as updated in accordance with clause 11.2 (and which is referred to as the "tender program" in the NWRL Programming Protocol).

Performance and Compliance Incentive Payment Table means the table set out in Part 2 of Schedule 35.

PDCS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 16.1(b).

PETIA means the Third Party Agreement entitled "Project Epping TSC Interface Agreement" between the Principal and RailCorp dated 19 February 2013.

Planning Approval means:

- (a) the Project Planning Approval;
- (b) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Project Planning Approval from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time;
- (c) EIS 2 Approval; and



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- (d) the EPBC Act Approval.

Portion means a part of the Project Works and Handover Works described in the columns headed "Portion number" and "Description of Infrastructure in Portion" in Schedule 34 or as created or determined under clause 8.14 or 11.13.

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

- (a) the day after the Date of Construction Completion of the Portion; or
- (b) where the Principal's Representative gives written notice under clause 11.14(a) in respect of the Portion, the date notified in the corresponding notice given under clause 11.14(b) in respect of that Portion.

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

PPS Register has the meaning given to the term "Register" in the PPS Act.

Pre-Agreed Change means any of the Changes listed in Schedule 38.

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

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

Principal's Representative means:

- (a) the person appointed by the Principal under clause 10.1(a)(i); or
- (b) any other person appointed from time to time by the Principal under clause 10.1(a)(ii),

and includes any appointee under clause 10.1(b) or 10.1(d).

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

- (a) pursuant to clause 2.3(f)(iv)B, the reasonable amount on account of the increase in the TSC Contractor's costs actually incurred as a direct result of its compliance with a Change in Law;
- (b) pursuant to clause 2.5(b)(ii), the extra costs reasonably incurred by the TSC Contractor as a result of the reduction in the permissible working hours for the TSC Contractor's Activities;
- (c) pursuant to clause 3.1(e)(ii), the reasonable costs incurred by the TSC Contractor directly arising from the Principal's failure to give the TSC Contractor access as required by clause 3.1(a);
- (d) pursuant to clause 3.8(c), the extra costs reasonably incurred by the TSC Contractor arising from a Core Sample Location Difference;
- (e) pursuant to clause 3.9, the reasonable costs incurred by the TSC Contractor in complying with clause 3.9(c);



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- (f) pursuant to clause 3.12(b)(vi)C.1), the reasonable additional administration costs incurred or to be incurred by the TSC Contractor in complying with the executed version of the Draft Third Party Agreement or the revised version of Schedule 33;
- (g) pursuant to clause 3.12(b)(viii), the reasonable additional costs incurred by the TSC Contractor in satisfying the actual liability as described in 3.12(b)(vii);
- (h) pursuant to clause 6.4(d):
 - (i) a valuation pursuant to clause 6.4(d)(i)A or 6.4(d)(i)B;
 - (ii) the amount stated pursuant to clause 6.4(d)(i)C; or
 - (iii) the amount stated pursuant to clause 6.4(d)(ii);
- (i) pursuant to clause 8.4, the amount which represents the cost of correcting the Defect;
- (j) pursuant to clause 11.6(d)(ii), the reasonable period for the extension to a Date for Construction Completion;
- (k) pursuant to clause 11.7(d), the reduction in an extension of time where the TSC Contractor has compressed the TSC Contractor's Activities prior to a direction to compress the TSC Contractor's Activities being withdrawn;
- (l) pursuant to clause 11.8(a), the extra costs reasonably incurred by the TSC Contractor as a direct result of the delay for which the extension of time was granted;
- (m) pursuant to clause 11.9(b)(ii)A.1), the extra costs reasonably incurred by the TSC Contractor as a result of the suspension;
- (n) pursuant to clause 12.2(c), the progress amount due to the TSC Contractor; and
- (o) pursuant to clause 14.7, the amounts stated in respect of paragraphs (a) - (f).

Principal's Safety Management System means the Principal's safety management system as required by section 99 of the Rail Safety National Law (as updated from time to time).

Program means:

- (a) the Overall D&C Program; and
- (b) any program required by the NWRL Programming Protocol.

Project Aboriginal Participation Plan means a plan that satisfies the requirements of the NSW Government Aboriginal Participation in Construction Guidelines for an "Aboriginal Participation Plan".

Project Contract Sum means the sum of the following components:

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

Project Director means the person appointed to that position under clause 10.2(b) as at the date of this deed or any person appointed as a replacement under clause 10.2(b).



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Project Management Plan means the Project Plan referred to as the "Project Management Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 32 of the SWTC, as updated from time to time in accordance with clause 2.14.

Project Plan means any plan of the kind referred to in clause 2.14(a) or 18.3 as that plan may be updated, amended and further developed under clause 2.14.

Project Planning Approval means the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 25 September 2012 (SSI-5100), a copy of which (as at the date of this deed) appears in Exhibit D, and includes all:

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

as the approval may be modified from time to time (including by modification SSI Mod-5645 dated 18 April 2013).

Project Safety Management Plan means the document referred to as the "Project Safety Management Plan" in Appendix 15 to the SWTC.

Project Site means the land described as the Project Site in Appendix 2 to the SWTC.

Project Training Management Plan means the Project Plan referred to as the "Project Training Management Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 40 of the SWTC, as updated from time to time in accordance with clause 2.14.

Project WHS Management Plan means the Project Plan of that name referred to in clause 2.18 and Appendix 24 of the SWTC, an initial version of which is included in Appendix 39 of the SWTC, as updated from time to time in accordance with clause 2.14.

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

Property Works means all works required to existing buildings and infrastructure or to and within properties arising out of the TSC Contractor's Activities as described or specified in the SWTC, including in sections 2.3.3b) and 6.1 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

Quality Manager means the person appointed to that position under clause 10.2(b) as at the date of this deed and any person appointed as a replacement under clause 10.2(b).

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

Quality Plan means the Project Plan referred to as the "Quality Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 31 of the SWTC, as updated from time to time in accordance with clause 2.14.

RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353).

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



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Rail Safety National Law means the *Rail Safety National Law* (NSW).

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

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

Reference Design means the following documents prepared by the Principal for the North West Rail Link:

- (a) Information Document reference numbers 07.0001 and 07.0002: "Scope Definition Report and 3D Model";
- (b) Information Document reference numbers 04.02.0001 to 04.02.0993: "RailCorp Concept Design Pack"; and
- (c) Information Document reference numbers 07.02.0001 to 07.02.0139: "Design Pack 2",

each of which was provided to the TSC Contractor as an Information Document.

Request for Tender means the document entitled "Request for Tender for the design and construction of the North West Rail Link Tunnels and Station Civil Works" dated 23 October 2012, being a request for tenders for the tunnels and station civil works component of the North West Rail Link.

Reviewable Temporary Works means any Temporary Works that may:

- (a) have an impact upon the amenity of any members of the public; or
- (b) involve any potential risk to the health or safety of members of the public or property.

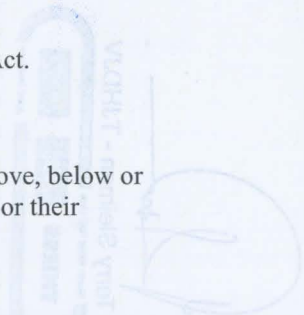
RMS means Roads and Maritime Services, a NSW Government agency constituted by section 46 of the *Transport Administration Act* 1988 (NSW).

Security Interest has the meaning given to that term in section 12 of the PPS Act.

Site Access Schedule means Exhibit B.

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

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, Hazardous Substance or other spoil or waste;



- (f) topography of the Construction Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions; and
- (k) any latent conditions.

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

Stakeholder and Community Relations Manager means the person appointed to that position under clause 10.2(b) as at the date of this deed or any person appointed as a replacement under clause 10.2(b).

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

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

Substantial Detailed Design means the Design Documentation required to be completed for the Substantial Detailed Design Stage.

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

Sustainability Manager means the person appointed to that position under clause 10.2(b) as at the date of this deed or any person appointed as a replacement under clause 10.2(b).

Sustainability Plan means the Project Plan referred to as the "Sustainability Plan" in Appendix 24 of the SWTC, an initial version of which is included in Appendix 34 of the SWTC, as updated from time to time in accordance with clause 2.14.

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

SVC Handover Area means the area to be handed over by the Principal to the SVC Contractor, being the area identified as Area 'P1-G2' in the drawings forming part of Schedule 34.



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SVC Project Deed means the deed to be entered into between the Principal and the SVC Contractor for the design and construction of the SVC Works.

SVC Works means the surface and viaduct civil works component of the North West Rail Link including the earthworks, formation works, viaduct and bridges, road and Utility Service diversions between Bella Vista and the stabling yard and maintenance depot at Tallawong Road.

SWTC or Scope of Works and Technical Criteria means Exhibit A.

Taxes means income, stamp, indirect or other taxes (including payroll tax), levies, imposts, deductions, charges (including any superannuation guarantee charge), duties (including import duty), workers compensation insurance premiums, compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

TBM(s) means the tunnel boring machines, as described in Cost Item 1.2 in Cost Centre 1 of the Construction Payment Schedule, which form part of the Key Plant and Equipment.

Temporary Areas means the land described as the Temporary Areas in Appendix 2 to the SWTC.

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

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

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

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

Tender Form means the document entitled "Tender Form" executed by the TSC Contractor as part of its Tender.

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

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

Third Party Agreement means an agreement referred to in Schedule 33 entered into or to be entered into by the Principal with the party referred to in Schedule 33 (including the Construction Leases), copies of which appear in Exhibit K.

Third Party Works means the Local Area Works, Property Works and Utility Service Works.

Training Management Guidelines means the document entitled "Training Management Guidelines" prepared by the New South Wales Government Department of Premier and Cabinet and dated February 2009, as updated from time to time.



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Transitional Handover Services means, in respect of any Portion for which the Principal's Representative gives a notice under clause 11.14(a), the relevant activities set out in Schedule 37 required to be performed after the Portion achieves Construction Completion.

Transitional Handover Services Payment Schedule means Schedule 3.

TSC Contractor Documentation Schedule means Appendix 23 of the SWTC.

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

TSC Contractor's Controlling Corporation means Leighton Holdings Limited ABN 57 004 482 982 in its capacity as a "controlling corporation" within the meaning of the NGER Legislation.

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

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

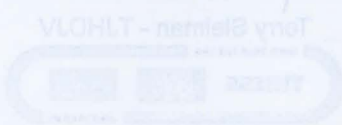
TSC Project Documents means:

- (a) this deed;
- (b) the Independent Certifier Deed;
- (c) the TSC-OTS Cooperation and Integration Deed;
- (d) the TSC-SVC Cooperation and Integration Deed; and
- (e) the Deeds of Disclaimer.

TSC-OTS Cooperation and Integration Deed means the deed so titled to be entered into between the Principal, the TSC Contractor and OpCo, in the form included in Exhibit J.

TSC Rail Zone Works has the meaning given in the PETIA.

TSC-SVC Cooperation and Integration Deed means the deed so titled to be entered into between the Principal, the TSC Contractor and the SVC Contractor, in the form included in Exhibit H.



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

Unowned Parcel means a parcel of land and property of which the Principal is not the registered proprietor and in relation to which, or upon which, Property Works are to be undertaken.

Utility Service means any service, facility or item of infrastructure, including water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, railway, industrial waste disposal and electronic communications service.

Utility Service Works means the construction, modification, or relocation of Utility Services all of which are to be designed and constructed by the TSC Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in the SWTC, including in sections 2.3.3d) and 6.3 and Appendix 20 of the SWTC (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

WAD means the Third Party Agreement entitled "Works Authorisation Deed - North West Rail Link – Tunnel and Station Civil (TSC) Works" between the Principal and RMS dated 17 June 2013.

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

WAD Practical Completion has the meaning given to the term "Practical Completion" in the WAD.

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

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

WHS Legislation means:

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

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

Work Health and Safety Manager means the person appointed to that position under clause 10.2(b) as at the date of this deed or any person appointed as a replacement under clause 10.2(b).

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

1.2 Interpretation

In this deed:

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

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North West Rail Link TSC Works

TSC Works

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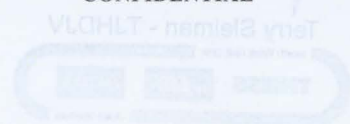
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and unless the context indicates a contrary intention:

- (b) **"person"** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) **"includes"** in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or Code and Standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) a reference to:
 - (i) this deed includes all schedules, exhibits (subject to clause 3.7(a)(ii)), attachments and annexures to it, including the SWTC; and
 - (ii) a reference to the SWTC includes all Appendices to the SWTC;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) for the purposes of clauses 11.6 and 11.8:
 - (i) any extension of time stated in days; or

(ii) any reference to "day",

will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Program submitted under clause 11.2(a) as working days;

(m) for all purposes other than as set out in clause 1.2(1), "day" means calendar day;

(n) a reference to a court or tribunal is to an Australian court or tribunal;

(o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;

(p) a reference to a "month" is a reference to a calendar month;

(q) a reference to "\$" or "dollar" is to Australian currency;

(r) any reference in this deed or in the Environmental Documents (or in any documents referred to in the Environmental Documents) to:

(i) the "Project Environmental Plan", or "PEMP";

(ii) the "Environmental Management Plan";

(iii) the "Construction Environmental Plan" or "CEMP";

(iv) the "Environmental Management Plan (Construction Stage)", or "EMP (Construction Stage)";

(v) the "environmental management plan", "Environmental Management Plan", "EMP" or "EMP(s)"; and

(vi) any other form of letters or words indicating an intention to refer to a plan relating to environmental management in respect of the Project Works or the Temporary Works,

will be read as a reference to the Construction Environmental Management Plan;

(s) for the avoidance of doubt, the Environmental Representative will perform the functions of the Environmental Representative or the ER under the Project Planning Approval and this deed;

(t) subject to clause 5.1(e), any reference to:

(i) the Project Works (including the Third Party Works);

(ii) the Temporary Works;

(iii) the Project Plans or the Asset Management Information;

(iv) the SWTC;

(v) the Design Documentation; or

(vi) any other document or thing,

or any part of any of them:

(vii) being fit for its purpose or for its intended purpose; or

(viii) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:

(ix) the Principal's intention that the Project Works will be used as an integral part of an operating rail system intended to provide frequent high speed mass transit services between Chatswood and Cudgegong Road and which may:

- A. be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;
- B. be subject to continuous operation;
- C. be operated by either the State of New South Wales or by private operator(s) on its behalf;
- D. involve further development of rail stations, including station structures and fitout to the extent referred to in this deed;
- E. be upgraded, augmented, extended and expanded to the extent referred to in this deed;
- F. be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and
- G. involve future construction and development of buildings and/or other infrastructure on, over or adjacent to railway stations to the extent referred to in this deed; and

(x) any purpose, intended purpose or intended use stated in, contemplated by or ascertainable from:

- A. this deed, including:
 - 1) the objectives referred to in sections 1.1a) and 1.1b) of the SWTC; and
 - 2) the requirement that the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
- B. (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change) any document provided by the Principal to the TSC Contractor specifically in connection with the Change (excluding any Information Documents);

(u) subject to clause 5.1(e), any reference to the Project Works or any part of any of them remaining at all relevant times fit for their purpose or for their intended purpose will be read as being subject to the Principal, Op Co and their respective Associates operating and maintaining the Project Works in accordance with the



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operation and maintenance manuals forming part of the Asset Management Information (as described in section 25.4 of Appendix 25 to the SWTC);

- (v) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and
- (w) any obligation of the TSC Contractor under this deed with respect to:
 - (i) a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by the TSC Contractor to the Principal's Representative under clause 2.14 in respect of which the Principal's Representative has not given a notice under clause 2.14(d); or
 - (ii) the Asset Management Information will be read as an obligation with respect to the version of the relevant Asset Management Information last submitted by the TSC Contractor to the Principal's Representative under clause 7.14:
 - A. which has not been rejected by the Independent Certifier under clause 7.14(k)(ii)A; and
 - B. in respect of which the Principal's Representative has not given a direction under clause 7.14(k)(iii).

1.3 Contra proferentem

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

1.4 Ambiguous terms

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



- (iii) will not limit or otherwise affect the Principal's rights against the TSC Contractor, whether under this deed or otherwise according to Law; and
- (iv) must, in respect of a notice given by the TSC Contractor under clause 1.4(a), be given within 20 Business Days of receipt of that notice.

1.5 Order of precedence

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

- (a) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (i) this deed excluding the schedules and exhibits; and
 - (ii) the schedules and exhibits;
- (b) to the extent paragraph (a) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different codes, standards, specifications or guidelines with which the TSC Contractor must comply, the order of precedence set out in section 4.10 of the SWTC will apply;
- (c) to the extent paragraphs (a) and (b) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different parts of the SWTC and the Environmental Documents, the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless directed otherwise by the Principal's Representative);
- (d) to the extent paragraphs (a), (b) and (c) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between the documents comprising the Environmental Documents, the order of precedence in Part 1 of Schedule 16 will apply;
- (e) to the extent paragraphs (a), (b), (c) and (d) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the Project Works or the Temporary Works, the TSC Contractor must comply with the highest quality or standard specified or perform the more onerous obligation; and
- (f) to the extent paragraphs (a) to (e) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions.

The documents comprising this deed (including the SWTC and the Environmental Documents) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.

1.6 Severability

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



- (a) that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to subparagraph (i), preserves to the maximum possible extent:
 - A. the enforceability of the provision and the provisions of this deed; and
 - B. the original effect and intent of this deed.

1.7 Interpretation for Portions

The interpretations of:

- (a) TSC Contractor's Activities;
- (b) Project Works;
- (c) Temporary Works;
- (d) Works;
- (e) Handover Works;
- (f) Third Party Works;
- (g) Local Area Works;
- (h) Property Works;
- (i) Utility Service Works;
- (j) Project Site;
- (k) Construction Site;
- (l) Temporary Areas;
- (m) Construction Completion;
- (n) Date for Construction Completion;
- (o) Date of Construction Completion; and
- (p) Defects Correction Period,

and clauses 3.1 to 3.4, 5.1(c)(x), 6.1(a)(ii), 7.8, 7.12, 7.14, 8, 11, to 11.13, 12.2, 13.1, 13.4, 13.5 and 13.15, Schedules 1 and 2 and the SWTC (including its appendices) will apply separately to each Portion (including any Portion created or determined under clause 8.14 or

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11.13) and references therein to any of the terms in paragraphs (a) - (p) above will mean so much of the TSC Contractor's Activities, Project Works, Temporary Works, Works, Handover Works, Third Party Works, Local Area Works, Property Works, Utility Service Works, Project Site, Construction Site, Temporary Areas, Construction Completion, Date for Construction Completion, Date of Construction Completion and Defects Correction Period as is comprised in, or associated with, the relevant Portion.

1.8 Authorities

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) The TSC Contractor acknowledges and agrees that, without limiting clause 1.8(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed and will not entitle the TSC Contractor to make any Claim against the Principal.
- (c) The parties agree that clauses 1.8(a) and 1.8(b) are taken not to limit any liability which the Principal would have had to the TSC Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 1.8(a) and 1.8(b) of this deed.
- (d) The TSC Contractor acknowledges and agrees that:
 - (i) there are many Authorities (other than the Principal) with jurisdiction over aspects of the TSC Contractor's Activities, parts of the Construction Site and other areas affected by the TSC Contractor's Activities (including Extra Land);
 - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the TSC Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
 - (iii) except to the extent expressly stated otherwise in this deed, it bears the full risk of all occurrences of the kind referred to in clause 1.8(d)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.



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1.9 Electronic files

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

1.10 Date for Construction Completion of Portion 1

- (a) The Principal and the TSC Contractor have agreed that the Principal has the option to amend the date specified in Schedule 34 as the Date for Construction Completion for Portion 1.

- (b) The Principal may exercise this option by giving a notice in writing to the TSC Contractor on or before 30 August 2013 stating that it is a notice under this clause 1.10.
- (c) If the Principal gives a notice under clause 1.10(b), the parties agree that this deed will be amended as follows:
 - (i) the OTS Portion 1 Site Access Date will become 13 May 2016;
 - (ii) the Date for Construction Completion of Portion 1 will become 15 February 2016;
 - (iii) the amount of liquidated damages payable will be adjusted as set out in Schedule 34; and



2. TSC Contractor's fundamental obligations

2.1 General

The TSC Contractor:

- (a) must carry out the TSC Contractor's Activities (including any Transitional Handover Services (if applicable)), including investigating, designing, constructing, commissioning and handing over the Project Works and Temporary Works, in accordance with this deed;
- (b) warrants that the Project Works and the Handover Works will, upon Construction Completion:
 - (i) be fit for their intended purposes; and
 - (ii) be capable of remaining at all relevant times fit for their intended purposes;
- (c) warrants that the Temporary Works (other than the Handover Works) will at all relevant times be fit for their intended purposes; and
- (d) subject to the express provisions of this deed, accepts responsibility for and the risk of any Loss, delays or disruptions which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed, including the following risks:
 - (i) the performance and cost of all Subcontractors;
 - (ii) obtaining access to all areas other than the Construction Site under clause 3.4;
 - (iii) the Site Conditions encountered including under clause 3.6;
 - (iv) all information provided or not provided by the Principal about the Project Works, the Temporary Works, the North West Rail Link and the Construction Site;
 - (v) Contamination under clause 3.11;

- (vi) complying with Schedule 33 and clause 3.12;
- (vii) congestion on approach roads to the Construction Site and any other difficulties with obtaining access to and from the Construction Site;
- (viii) complying with all Laws, Approvals and requirements of Authorities;
- (ix) the existence, location, condition and availability of Utility Services in respect of the TSC Contractor's Activities;
- (x) reliance upon or the use of the Reference Design or the Concept Design;
- (xi) providing all Materials, Construction Plant, Utility Services and labour necessary for the TSC Contractor's Activities under clause 7.6;
- (xii) industrial relations issues;
- (xiii) foreign exchange movements in any currencies adverse to the TSC Contractor;
- (xiv) increases in the costs of Materials, Construction Plant, Utility Services and labour required for the performance of the TSC Contractor's Activities;
- (xv) damage to the TSC Contractor's Activities, Project Works, Temporary Works, Construction Site or any Extra Land under clause 13.1; and
- (xvi) third party claims under clause 13.2.

2.2 Subcontracts

- (a) Subject to clauses 2.2(b) and 2.2(d), the TSC Contractor may enter into Subcontracts for the vicarious performance of its obligations under this deed.
- (b) The TSC Contractor must not enter into any Subcontract with a contract value over ten million dollars (\$10,000,000) unless it first obtains the written approval of the Principal's Representative (which must not be unreasonably withheld or delayed).
- (c) Any request by the TSC Contractor for approval to subcontract under clause 2.2(b) must be in writing and include such details as may be required by the Principal's Representative including details of the proposed Subcontract conditions and the proposed Subcontractor's capacity to undertake the relevant work, past performance in undertaking similar work, safety (including work health, safety and rehabilitation), environmental compliance (including any environmental and sustainability management system) and other performance management systems and proposed safe working procedures.
- (d) Unless the Principal's Representative otherwise approves in writing (which must not be unreasonably withheld or delayed), the TSC Contractor must contract with the persons set out in Schedule 12 (and must ensure that Subcontractors contract with the persons set out in Schedule 12) in respect of the relevant parts of the TSC Contractor's Activities set out in Schedule 12.
- (e) The TSC Contractor acknowledges that the Principal's Representative's approval referred to in clause 2.2(b) and 2.2(d) may be:



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- (i) conditional or unconditional and if conditional will set out the relevant conditions;
 - (ii) withheld on the grounds of safety including that the proposed Subcontractor has inadequate proposed working procedures or a poor safety history, with respect to which the Principal's Representative may have regard to the views of WorkCover or other relevant Authorities on the Subcontractor's compliance and approach to work health and safety.
- (f) The TSC Contractor agrees that:
- (i) its obligations under this deed are not limited or otherwise affected by:
 - A. the Principal's objection to, or failure to object to, any Subcontractor, the work to be performed by any Subcontractor or the terms of any Subcontract; or
 - B. the TSC Contractor entering into Subcontracts for the performance of those obligations; and
 - (ii) it will be liable to the Principal for the acts, defaults and omissions of its Associates as if they were those of the TSC Contractor, and any matter within the control of any Subcontractor will be taken to be within the control of the TSC Contractor.
- (g) The TSC Contractor must give the Principal's Representative details of each Subcontract which has a contract value of one million dollars (\$1,000,000) or more, including the name of the Subcontractor and the goods or services being provided under the Subcontract.
- (h) Without limiting clause 9.4, the TSC Contractor must ensure that every Subcontract which has a contract value of ten million dollars (\$10,000,000) or more includes the provisions set out in Schedule 13 and a clause to the same effect as this clause 2.2(h) which is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative.
- (i) Where a Subcontractor is to carry out design work, the TSC Contractor must, within 5 Business Days of the engagement by the TSC Contractor of the Subcontractor, provide the Principal with a deed of covenant (duly stamped) executed by the Subcontractor in the form of Schedule 14 (completed with all relevant particulars).

2.3 Compliance with Law and Change in Law

- (a) Subject to clause 2.3(b)(i), the TSC Contractor must in carrying out the TSC Contractor's Activities:
- (i) comply with, and ensure that the Project Works and Temporary Works comply with, all applicable Law;
 - (ii) comply with and provide the Principal's Representative copies of any requirement, notice, order or direction, received from or given by any Authority including any infringement notice, fine or penalty given or made in respect of the TSC Contractor's Activities;
 - (iii) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this deed;



- (iv) give the Principal's Representative at least 10 Business Days' prior written notice of any date on which the TSC Contractor will submit an application for an Approval (or for any change to an Approval), which notice must include details of the information the TSC Contractor will provide to the Authority and the date it will be provided;
- (v) give the Principal's Representative notices, reports and submissions it gives to Authorities in respect of the TSC Contractor's Activities at the time it submits such notices, reports and submissions together with responses from, and details of any consultations or other communications with, Authorities;
- (vi) give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it in respect of the TSC Contractor's Activities as soon as possible;
- (vii) at all times conform and comply with all NSW Government Policies; and
- (viii) not engage in any fraud, bribery or corruption.

(b) The TSC Contractor must:

- (i) obtain all Approvals except for those specified in Schedule 15 which either:
 - A. were obtained by the Principal prior to the date of this deed; or
 - B. will be obtained by the Principal after the date of this deed if required;
- (ii) except to the extent otherwise expressly specified in Schedule 16, comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the TSC Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Approvals specified in Schedule 15 to comply with, satisfy, carry out and fulfil;
- (iii) except to the extent prohibited by Law, indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a failure by the TSC Contractor to comply with its obligations under clauses 2.3(b)(i) or 2.3(b)(ii);
- (iv) as a condition precedent to Construction Completion of any Portion, ensure that it has:
 - A. obtained all Approvals it is required to obtain under this deed including those which are required for the purposes set out in paragraph (c) of the definition of "Approval" in clause 1.1;
 - B. complied with, satisfied, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out, satisfy and fulfil under this deed including those which must be satisfied for the purposes set out in paragraph (c) of the definition of "Approval" in clause



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1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Construction Completion); and

C. without limiting clauses 2.3(b)(iv)A and 2.3(b)(iv)B, complied with, carried out, satisfied and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, satisfy, carry out and fulfil (including the obtaining of the approval of any person for anything) under this deed insofar as this is necessary including for the purposes set out in paragraph (c) of the definition of "Approval" in clause 1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Construction Completion); and

(v) in respect of any:

- A. Approvals which are to be obtained by the Principal after the date of this deed; or
- B. conditions and requirements of Approvals which pursuant to Schedule 16 are to be satisfied or fulfilled by the Principal,

without limiting the requirements of Schedule 16, provide the Principal with such reasonable assistance as may be required by the Principal to enable the Principal to obtain the Approvals or satisfy or fulfil the conditions and requirements.

(c) The Principal must comply with, satisfy, carry out and fulfil the conditions and requirements of those Approvals for which the Principal is stated to have responsibility to the extent specified in Schedule 16.

(d) Without limiting clause 2.8 and Schedule 16, in respect of any submissions, surveys, investigations, reports, studies or other documents:

- (i) required to be submitted by a term of the Planning Approval; or
- (ii) proposed to be submitted by the TSC Contractor in support of any application to amend the Planning Approval,

the TSC Contractor:

(iii) must prepare, carry out and provide to the Principal any submissions, surveys, investigations, reports, studies or other documents:

- A. requested by the Principal's Representative;
- B. to the standard directed by the Principal's Representative; and
- C. within the time directed by the Principal's Representative;

(iv) must provide whatever other assistance and information the Principal's Representative reasonably requests within the time reasonably requested by the Principal's Representative; and



- (v) agrees that any act or omission (including delay or refusal) by the Principal or the relevant Authority in respect of an application to amend the Planning Approval does not constitute an Act of Prevention.
- (e) Where there is a Change in Law, the TSC Contractor must:
 - (i) within 10 Business Days of the Change in Law, give a written notice to the Principal and the Principal's Representative:
 - A. containing details of the Change in Law; and
 - B. where it believes that the Change in Law will cause a delay to the TSC Contractor's Activities that will entitle it to an extension of time pursuant to clause 11.6 (and without limiting its obligation to give any notices required by clause 11.6), such notice must be given within the time, and must contain the details, required by clause 11.5(b); and
 - (ii) subject to clause 2.3(f), comply with the Change in Law at its cost.
- (f) Where there is:
 - (i) a Change in Law comprising any amendment, repeal or change to:
 - A. a Law comprising the 2011 Clean Energy Legislative Package (including the *Clean Energy Act 2011* (Cth)); or
 - B. any other legislation imposing an effective carbon price on liquid and gaseous fuels; or
 - (ii) any other Change in Law which:
 - A. has a direct effect on the time, method or means by which the TSC Contractor carries out the TSC Contractor's Activities; and
 - B. directly results in an increase or decrease in the TSC Contractor's costs of carrying out the TSC Contractor's Activities,

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

- (iii) the party wishing to claim the increase or decrease must, within 15 Business Days of the Change in Law, give a written notice to the other and to the Principal's Representative:
 - A. stating that the party is claiming an increase or decrease to the Project Contract Sum on account of a Change in Law;
 - B. containing details of the Change in Law; and
 - C. setting out that party's estimate of the increase or decrease (as the case may be) in the TSC Contractor's costs of carrying out the TSC Contractor's Activities that result directly from complying with the Change in Law, including sufficient information to support the estimate;



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- (iv) if a party serves a notice under clause 2.3(f)(iii):
 - A. the Principal and the TSC Contractor must meet within 20 Business Days of a notice being given under clause 2.3(f)(iii) and will negotiate and endeavour to agree to any increase or decrease to the Project Contract Sum (as the case may be) on account of the increase or decrease in the TSC Contractor's costs of carrying out the TSC Contractor's Activities that result directly from the TSC Contractor's complying with the Change in Law and, where agreement is reached as to the amount of the increase or decrease to the Project Contract Sum, the relevant component or components of the Project Contract Sum will be so increased or decreased (as appropriate); and
 - B. if the Principal and the TSC Contractor cannot reach agreement as to any increase or decrease to the Project Contract Sum (as the case may be) within 20 Business Days (or such other period as may be approved by the Principal or Principal's Representative) of a notice being given under clause 2.3(f)(iii), the Project Contract Sum will be increased or decreased (as appropriate) by a reasonable amount on account of the increase or decrease in the TSC Contractor's costs of carrying out the TSC Contractor's Activities that result directly from the TSC Contractor complying with the Change in Law (subject to the TSC Contractor having taken all reasonable steps to mitigate those increased costs), by such amount as stated by the Principal's Representative.
- (g) The TSC Contractor must comply with all Changes in Law.

2.4 Change in Codes and Standards

- (a) Where there is a Change in Codes and Standards:
 - (i) the TSC Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:
 - A. details of the Change in Codes and Standards; and
 - B. an estimate of the TSC Contractor's increased or decreased costs of complying with that Change in Codes and Standards, including sufficient information to support the estimate; and
 - (ii) if a notice is given by the TSC Contractor which complies with clause 2.4(a)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
 - A. direct the TSC Contractor to disregard the Change in Codes and Standards; or
 - B. direct a Change under clause 6.2(a) in respect of the Change in Codes and Standards after which, subject to clause 2.4(c), the relevant adjustments will be made under clause 6.4.



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- (b) If the Principal's Representative gives a notice under clause 2.4(a)(ii)A, the TSC Contractor will not be regarded as being in breach of this deed to the extent that it disregarded the relevant Change in Codes and Standards.
- (c) Subject to clause 5.1(e), if the Principal gives a notice under clause 2.4(a)(ii)B, the TSC Contractor will not be entitled to any increase in the Project Contract Sum:
 - (i) except to the extent that the relevant Design Documentation, before such notice under clause 2.4(a)(ii)B, complied, or would have complied, with the requirements of this deed, including any requirement that the Design Documentation be fit for its intended purpose (or any similar reference); or
 - (ii) to the extent that, notwithstanding the Change in Codes and Standards, the TSC Contractor would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that the Project Works and the Temporary Works be fit for their intended purpose (or any similar reference).

2.5 Changes to Planning Approval

- (a) Where a change in the Planning Approval occurs after the date of this deed (other than a change arising from or in connection with an act or omission of the TSC Contractor or its Associates or a change made in response to a request by the TSC Contractor) which necessitates a Change to the Project Works or a reduction in the working hours or noise or vibration limits permitted for the TSC Contractor's Activities as at the date of this deed, the TSC Contractor must, within 10 Business Days of the date on which the TSC Contractor becomes aware or ought reasonably to have become aware of the change taking effect, notify the Principal's Representative in writing with detailed particulars of the reason why the change necessitates a Change to the Project Works or a reduction in the permissible working hours or noise or vibration limits.
- (b) If the TSC Contractor gives a notice under clause 2.5(a) and the change does necessitate a Change to the Project Works or a reduction in the permissible working hours or noise or vibration limits:
 - (i) in the case where the change necessitates a Change to the Project Works, the Principal's Representative will direct a Change under clause 6.2(a) after which relevant adjustments will be made under clause 6.4; and
 - (ii) in the case where the change necessitates a reduction in the permissible working hours or noise or vibration limits for the TSC Contractor's Activities, the TSC Contractor will be entitled to an increase in the Project Contract Sum for the amount of the extra costs reasonably incurred by the TSC Contractor arising out of the reduction in the permissible working hours or noise or vibration limits for the TSC Contractor's Activities, as stated by the Principal's Representative.
- (c) Except to the extent expressly stated otherwise in this clause 2.5, the TSC Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with a change in the Planning Approval.
- (d) The TSC Contractor:



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- (i) acknowledges that:
 - A. only the Principal can apply for modification to the Planning Approval;
 - B. the Principal may, in its absolute discretion, refuse to seek such modification or discontinue or withdraw or change an application for such modification at any time; and
 - C. the Principal need not apply for any modification to the Planning Approval on behalf of the TSC Contractor unless the TSC Contractor first submits its proposal for modification to the Principal's Representative for its review and the Principal's Representative consents to the modification, which consent it may give or withhold in its absolute discretion;
- (ii) must not seek to or apply for any modification to the Planning Approval other than via the Principal; and
- (iii) must pay the Principal all fees, costs and expenses arising out of, or in any way in connection with, such modification.

2.6 Environment Protection Licence

- (a) The TSC Contractor must:
 - (i) obtain an Environment Protection Licence in respect of the TSC Contractor's Activities for each Portion from the date on which the TSC Contractor is given access to that part of the Construction Site to which the Portion relates (or any part thereof) pursuant to clause 3.1;
 - (ii) hold an Environment Protection Licence in respect of the TSC Contractor's Activities for each Portion until the Portion Handover Date for that Portion; and
 - (iii) ensure that:
 - A. from each Portion Handover Date, the TSC Contractor's Environment Protection Licence is varied so as to exclude that part of the Construction Site to which the Portion relates; and
 - B. the TSC Contractor's Environment Protection Licence is surrendered on and from the Portion Handover Date for the last Portion to be handed over by the TSC Contractor,so as to allow OpCo to obtain an Environment Protection Licence for the relevant part of the Construction Site.
- (b) The TSC Contractor must ensure that any Environment Protection Licence is consistent with the Project Planning Approval.

2.7 Crown Building Work

- (a) The TSC Contractor must, in relation to any part of the Project Works or Temporary Works that is Crown Building Work (as defined in section 109R of the

EP&A Act), certify (on behalf of the Principal) as required by section 109R of the EP&A Act.

- (b) Any certification under clause 2.7(a) will not lessen or otherwise affect:
 - (i) the TSC Contractor's other liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the TSC Contractor, whether under this deed or otherwise according to Law.

2.8 Environmental requirements

- (a) The TSC Contractor must not use the Construction Site or any Extra Land, or allow its Associates to use the Construction Site or any Extra Land, so that:
 - (i) any Hazardous Substance is abandoned or dumped on the Construction Site or any Extra Land;
 - (ii) any Hazardous Substance is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
 - (iii) any other substance is released from, deposited to, or emanates from, the Construction Site or any Extra Land such that a state of Contamination occurs.
- (b) The TSC Contractor must at all times carry out, and ensure that its Associates carry out, the TSC Contractor's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.
- (c) The TSC Contractor must, without limiting clause 2.3 but subject to clause 2.3(b)(ii):
 - (i) comply with, and ensure that its Associates in performing the TSC Contractor's Activities comply with:
 - A. all Laws relating to the Environment;
 - B. all Environmental Notices; and
 - C. the Construction Environmental Management Plan and the Sustainability Plan; and
 - (ii) obtain and comply with all requirements of, and ensure that its Associates in performing the TSC Contractor's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Construction Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.
- (d) Unless otherwise specified in Schedule 16 and without limiting the TSC Contractor's other obligations under this deed, and insofar as they apply to the Project Works, Temporary Works or TSC Contractor's Activities the TSC Contractor must comply with, carry out and fulfil the conditions and requirements



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of all Environmental Documents, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works and TSC Contractor's Activities.

(e) The TSC Contractor must immediately notify the Principal in writing as soon as the TSC Contractor:

- (i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law, Approval or Environmental Document regarding the Environment in the performance of the TSC Contractor's Activities;
- (ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of the TSC Contractor in relation to the information, fact or circumstances); or
- (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the TSC Contractor must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.

(f) The TSC Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a failure by the TSC Contractor to comply with any obligation under this clause 2.8.

(g) If there is a legal challenge in relation to the assessment or determination of the North West Rail Link under the:

- (i) EP&A Act;
- (ii) *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
- (iii) any other Law,

the TSC Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:

- (iv) ordered by a court or tribunal; or
- (v) directed by the Principal's Representative.

(h) Subject to clause 2.8(i), the Principal must pay the TSC Contractor the reasonable costs and expenses directly incurred by the TSC Contractor arising directly as a result of a court or tribunal order referred to in clause 2.8(g)(iv) or direction by the Principal's Representative referred to in clause 2.8(g)(v) to the extent only that such court or tribunal order or direction by the Principal's Representative delays the TSC Contractor in achieving Construction Completion.



- (i) Clause 2.8(h) does not apply to the extent that a legal challenge of the kind referred to in clause 2.8(g) is initiated or upheld due to the TSC Contractor's non-compliance with its obligations under this deed.

2.9 Environmental Representative

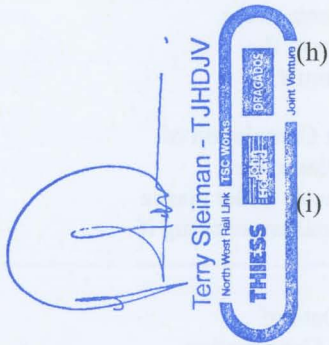
- (a) The TSC Contractor acknowledges that:
 - (i) the Environmental Representative is required to discharge certain functions as identified in the Project Planning Approval;
 - (ii) the Principal has appointed the Environmental Representative as required by the Project Planning Approval; and
 - (iii) the Environmental Representative:
 - A. is independent of the parties;
 - B. shall oversee the implementation of all environmental management plans and monitoring programs required under the Project Planning Approval and shall advise the Principal upon achievement of the outcomes contemplated in the Project Planning Approval; and
 - C. shall advise the Principal and the Principal's Representative on the TSC Contractor's compliance with the Project Planning Approval.
- (b) The TSC Contractor must provide the Environmental Representative with:
 - (i) all information and documents; and
 - (ii) allow the Environmental Representative:
 - A. to attend meetings; and
 - B. access to such premises,all as may be:
 - (iii) necessary or reasonably required by the Environmental Representative or the Principal's Representative to allow the Environmental Representative to perform its functions in connection with this deed; or
 - (iv) lawfully requested by the Environmental Representative or directed by the Principal's Representative.
- (c) The TSC Contractor must comply with the lawful requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Project Planning Approval.
- (d) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle the TSC Contractor to make any Claim against the Principal.



2.10 Utility Services

The TSC Contractor:

- (a) must obtain and pay for any Utility Services and all connections for all Utility Services it needs to perform its obligations under this deed;
- (b) must investigate, protect, relocate, remove, modify, support, reinstate and provide for Utility Services necessary for the TSC Contractor to comply with its obligations under this deed;
- (c) must not, without the Principal's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the Project Works that are not necessary to allow the TSC Contractor to carry out the TSC Contractor's Activities;
- (d) must obtain the Principal's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services;
- (e) must consult with and keep the Principal fully informed as to dealing with the Authorities and owners of Utility Services and comply fully with their requirements;
- (f) must ensure there are no unplanned disruptions to the Utility Services in carrying out the TSC Contractor's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the TSC Contractor's Activities;
- (g) must ensure that maintenance points for Utility Services are located within the Project Site and only with the prior written consent of the Principal's Representative (such consent not to be unreasonably withheld or delayed);
- (h) except to the extent expressly provided otherwise by this deed, must contract for the provision of, acquire or otherwise procure or provide all Materials, Construction Plant and Utility Services (including electricity) required for the performance of its obligations under this deed; and
- (i) must, to the extent not prohibited by Law, indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in connection with:
 - (i) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:
 - A. a failure by the TSC Contractor to comply with any obligations under this deed; or
 - B. any act or omission of the TSC Contractor or its Associates; or
 - (ii) a failure by the TSC Contractor to comply with any obligation under this deed with respect to Utility Services or the Utility Service Works including the TSC Contractor's obligations under the SWTC including sections 2.3.3d) and 6.3.



Subject to clause 7.2, the TSC Contractor is responsible for, and assumes the risk of all additional work, increased costs and any other Loss, delay or disruption (including any delay in achieving Construction Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of the TSC Contractor's Activities.

2.11 Long service levy

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

- (a) pay (or procure payment) to the Long Service Corporation or that body's agent all amounts due and payable for the long service levy in respect of the TSC Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986*; and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.11(a).

2.12 Unconditional undertakings

- (a) The TSC Contractor must give the Principal within 10 Business Days of the date of this deed:

- (i) an unconditional undertaking for █████ of the Project Contract Sum;
- (ii) an unconditional undertaking for █████ of the Project Contract Sum; and
- (iii) an unconditional undertaking for █████ of the Project Contract Sum,

each of which must be in the form of Schedule 17 and in favour of the Principal and which are, where required, duly stamped. These unconditional undertakings are provided for the purposes of the Project Works.

- (b) Subject to clause 2.12(g) and to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal must:
 - (i) within 20 Business Days after the Date of Construction Completion of the last Portion to achieve Construction Completion, release the unconditional undertaking provided by the TSC Contractor under clause 2.12(a)(i) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash);
 - (ii) (subject to clause 2.12(c)) within 18 months after the Date of Construction Completion of the last Portion to achieve Construction Completion, release the unconditional undertaking provided by the TSC Contractor under clause 2.12(a)(ii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash); and
 - (iii) within 20 Business Days after the later of:
 - A. the end of the last Defects Correction Period; and
 - B. the receipt by the Principal's Representative of a certificate in the form of Schedule 11 executed by the Independent Certifier,


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release the unconditional undertaking provided by the TSC Contractor under clause 2.12(a)(iii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash).

(c) If, prior to the date that is 18 months after the Date of Construction Completion of the last Portion to achieve Construction Completion, the Principal has required the TSC Contractor:

- (i) to correct a Defect pursuant to clause 8.2(a); or
- (ii) to carry out a Change to overcome a Defect pursuant to clause 8.2(b),

and the TSC Contractor has not corrected the Defect or carried out the Change by the date for release of the unconditional undertaking referred to in clause 2.12(b)(ii), the Principal's entitlement to the unconditional undertaking referred to in clause 2.12(b)(ii) is reduced to an amount which represents the reasonable costs of completing the rectification of the Defect or carrying out the Change (as determined by the Principal's Representative). The Principal's entitlement to the unconditional undertaking referred to in clause 2.12(b)(ii) will cease 20 Business Days after the Defect has been corrected or the Change has been carried out (as applicable) after which the Principal must release the unconditional undertaking to the TSC Contractor.

(d) The Principal:

- (i) may have recourse to any unconditional undertaking provided under this clause 2.12 at any time;
- (ii) is not obliged to pay the TSC Contractor interest on:
 - A. any unconditional undertaking; or
 - B. the proceeds of any unconditional undertaking if it has been converted into cash; and
- (iii) does not hold the proceeds referred to in clause 2.12(d)(ii) on trust for the TSC Contractor.

(e) Any unconditional undertaking provided under this clause 2.12 must be issued by a bank licensed in Australia with a credit rating of no less than A+ (S&P)/A1 (Moody's) with a branch in Sydney, or as otherwise approved by the Principal in its absolute discretion.

(f) The TSC Contractor must not take any steps to injunct or otherwise restrain:

- (i) any issuer of any unconditional undertaking provided under this clause 2.12, clause 12.6(a)(i) or clause 12.7(a)(i)A from paying the Principal pursuant to the unconditional undertaking;
- (ii) the Principal from taking any steps for the purposes of making a demand under any unconditional undertaking provided under this clause 2.12, clause 12.6(a)(i) or 12.7(a)(i)A or receiving payment under any such unconditional undertaking; or
- (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.12, clause 12.6(a)(i) or clause 12.7(a)(i)A.



- (g) Despite any other provision of this deed to the contrary, where this deed may otherwise require the Principal to release an unconditional undertaking or this deed is terminated by the Principal either pursuant to clause 14 or by reason of the TSC Contractor repudiating this deed (or otherwise at law), the Principal may continue to hold the unconditional undertaking after the date for its release or the termination of this deed to the extent of any claim which the Principal may have against the TSC Contractor arising out of, or in any way in connection with, this deed or the TSC Contractor's Activities whether for damages (including liquidated damages) or otherwise.

2.13 Parent company guarantee

- (a) The TSC Contractor must within 10 Business Days of the date of this deed provide to the Principal two guarantees:
- (i) one duly executed by Leighton Holdings Limited; and
 - (ii) one duly executed by Dragados S.A,
- in favour of the Principal in the form of Schedule 18 and which are, where required, duly stamped.
- (b) The TSC Contractor must within 15 Business Days of the date of this deed provide to the Principal a legal opinion:
- (i) from lawyers to the company providing the guarantee under clause 2.13(a)(ii), authorised to practice in the place of incorporation of the guarantor, stating that the guarantee is binding and enforceable against that guarantor;
 - (ii) in favour of the Principal; and
 - (iii) which is in a form reasonably satisfactory to the Principal.

2.14 Project Plans

- (a) The TSC Contractor must prepare the Project Plans including as specified in Appendix 24 of the SWTC.
- (b) Each Project Plan must:
- (i) where an initial plan exists for the relevant Project Plan and is contained in Appendices 31 to 44 of the SWTC, be based upon that initial plan;
 - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this clause 2.14 and section 3.6 of the SWTC; and
 - (iii) contain any relevant contents required under this deed, including as specified in clause 18.3 and in Appendix 24 of the SWTC.
- (c) Each Project Plan must be initially submitted to the Independent Certifier and the Principal's Representative within any relevant time period specified in this deed (including as specified in clause 18.3 and in Appendix 24 of the SWTC).
- (d) The Principal's Representative may:



- (i) review any Project Plan submitted under this clause 2.14; and
 - (ii) if the Project Plan submitted does not comply with this deed, notify the TSC Contractor of that within 15 Business Days of the initial submission of the Project Plan.
- (e) If the TSC Contractor receives a notice under clause 2.14(d)(ii), the TSC Contractor must promptly submit an amended Project Plan, or relevant part or component of it, to the Independent Certifier and the Principal's Representative.
- (f) The Principal's Representative owes no duty to the TSC Contractor to review any Project Plan submitted by the TSC Contractor for errors, omissions or compliance with this deed.
- (g) No review of, comments upon, notice in respect of any Project Plan or any other act or omission of the Principal's Representative (including a direction under clause 2.14(j)) about any Project Plan will lessen or otherwise affect:
- (i) the TSC Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the TSC Contractor, whether under this deed or otherwise according to Law.
- (h) The TSC Contractor acknowledges and agrees that:
- (i) an intended purpose of each Project Plan is for the TSC Contractor to provide a detailed description of how the TSC Contractor intends to carry out the TSC Contractor's Activities in accordance with the requirements of this deed with respect to the subject matter of each Project Plan; and
 - (ii) the Project Plans will require ongoing development, amendment and updating throughout the duration of the TSC Contractor's Activities to take into account:
 - A. Changes;
 - B. Changes in Law;
 - C. the commencement of new phases or stages of design and construction as shown in the Program;
 - D. those events or circumstances expressly identified for each Project Plan including as specified in Appendix 24 of the SWTC; and
 - E. any other events or circumstances which occur or come into existence and which have, or may have, any effect on the manner in which the TSC Contractor carries out the TSC Contractor's Activities.
- (i) The TSC Contractor:
- (i) warrants that each Project Plan will be fit for its intended purpose and that compliance by it with the Project Plans will enable it to fulfil its various obligations under this deed;



(ii) must not decrease or otherwise reduce the scope of any Project Plan, or the scope of work or level of effort or expertise required by a Project Plan, or the number of personnel or extent of surveillance required, including any initial Project Plan and any revision of a Project Plan, without the prior written approval of the Principal's Representative (which must not be unreasonably withheld); and

(iii) must continue to develop and promptly amend or update the Project Plans:

A. to take into account:

- 1) the circumstances and events referred to in clause 2.14(h)(ii) as those circumstances and events occur or come into existence; and
- 2) any breach or potential breach of the warranties referred to in clause 2.14(i)(i); and

B. as otherwise specified in the SWTC, including Appendix 24 of the SWTC,

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

(j) Without limiting clause 8, if the Principal's Representative believes that:

- (i) any Project Plan does not comply with the requirements of this deed; or
- (ii) the TSC Contractor has not further developed, updated or amended any Project Plan in accordance with the requirements of clause 2.14(i),

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

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

and the TSC Contractor must:

- (v) further develop, update or amend the Project Plan as directed by the Principal's Representative and so that it complies with the requirements of this deed; and
- (vi) submit the further developed, updated or amended Project Plan to the Independent Certifier and the Principal's Representative within the time specified under clause 2.14(j)(iv).

(k) The TSC Contractor:

- (i) must comply with each Project Plan which has been submitted to the Principal's Representative under clause 2.14 and in respect of which the



- Principal's Representative has not given a notice under clause 2.14(d); and
- (ii) agrees that compliance by it with any Project Plan will not in any way lessen or affect:
 - A. its liabilities or responsibilities under this deed or otherwise according to Law; or
 - B. the Principal's rights against it, whether under this deed or otherwise according to Law.
 - (l) The TSC Contractor must comply with the restrictions upon the carrying out of the TSC Contractor's Activities specified in Appendix 24 of the SWTC.
 - (m) To the extent they are relevant to the operation or maintenance of the Project Works or the Handover Works, all relevant components of the Project Plans must be incorporated into the Asset Management Information.

2.15 Control of traffic

The TSC Contractor:

- (a) is responsible for the control, direction and protection of all road and pedestrian traffic, in any way affected by the carrying out of the TSC Contractor's Activities;
- (b) must manage all such traffic to ensure:
 - (i) its continuous, safe and efficient movement;
 - (ii) the traffic carrying capacity of Local Areas is maintained; and
 - (iii) that any delays and disruptions to road traffic and the movement of road traffic are kept to an absolute minimum;
- (c) must at all times comply with the construction traffic management plan prepared in accordance with the Project Planning Approval and the requirements of the SWTC or any Third Party Agreement in respect of road traffic management and safety; and
- (d) must comply with the directions of any relevant Authority and the Principal's Representative with respect to such management.

2.16 Principal contractor

- (a) In this clause 2.16 and in clause 2.17, the terms "principal contractor", "workplace", "construction project" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:
 - (i) the TSC Contractor's Activities; and
 - (ii) any work carried out on the Construction Site by an Interface Contractor during any period in which the TSC Contractor has been engaged as principal contractor in respect of the Construction Site (**Construction Site Interface Work**),is taken to be part of the same "construction project".

- (b) Without limiting the TSC Contractor's obligations under any other provision of this deed:
- (i) to the extent that the TSC Contractor's Activities or any Construction Site Interface Work includes construction work, the Principal:
- A. engages the TSC Contractor as the principal contractor in respect of the TSC Contractor's Activities and the Construction Site Interface Work;
 - B. authorises the TSC Contractor to have management and control of each workplace at which the TSC Contractor's Activities and the Construction Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
 - C. must give the TSC Contractor prior notice of any Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences; and
 - D. must provide the TSC Contractor with an executed deed poll in favour of the TSC Contractor in the form set out in Schedule 40 from each Interface Contractor undertaking Construction Site Interface Work; and
- (ii) the TSC Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (c) The TSC Contractor's engagement and authorisation as a principal contractor will continue:
- (i) subject to clause 2.16(c)(ii), until the earlier of:
- A. the termination of this deed; and
 - B. in respect of each Portion, the Portion Handover Date; and
 - C. in respect of each discrete part of the Local Area Works, the point in time when the relevant discrete part of the Local Area Works has been determined by the Independent Certifier to have been completed in accordance with clause 8.6(d),

(unless sooner revoked by the Principal); and
- (ii) in respect of any rectification work carried out under clause 8.1 that is construction work, during the period any such work is carried out, unless OpCo has possession of the relevant part of the Construction Site at the time the rectification work is carried out, in which case:
- A. OpCo will be the principal contractor; and
 - B. clause 8.3(a)(i)G and the relevant provisions of the TSC-OTS Cooperation and Integration Deed will apply.
- (d) The TSC Contractor must:



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(i) ensure that if any Law, including in the State or Territory in which the Project Works are situated or the TSC Contractor's Activities are carried out (as the case may be) requires that:

A. a person:

- 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
- 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

B. a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;

(ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 2.16(d)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(iii) if requested by the Principal or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before the TSC Contractor or a Subcontractor (as the case may be) commences such work.

(e) Subject to clause 2.16(f), if the engagement of the TSC Contractor as principal contractor under this clause is not effective for any reason, the TSC Contractor agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under clause 2.16(b).

(f) If the TSC Contractor comprises two or more persons and the engagement of the TSC Contractor as principal contractor is not effective for any reason:

(i) the Principal shall be deemed to have:

A. engaged Thiess Pty Limited ABN 87 010 221 486 as principal contractor; and

B. authorised that person to have management and control,

in accordance with clause 2.16(b)(i)B;

(ii) clause 2.16(b) shall apply to the person named in clause 2.16(f)(i)A as if the references to the TSC Contractor in that clause were to that person alone; and



(iii) the person named in clause 2.16(f)(i)A agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged as principal contractor.

(g) Nothing in clause 2.16(f) is to prevent clause 2.16 otherwise applying to all persons comprising the TSC Contractor to the fullest extent that such application of clause 2.16:

(i) is permitted by Law; and

(ii) will not infringe regulation 293(4) of the *Work Health and Safety Regulation 2011* (NSW).

2.17 Work health and safety

(a) The TSC Contractor must carry out the TSC Contractor's Activities:

(i) safely and in a manner that does not put the health and safety of persons at risk; and

(ii) in a manner that protects property.

(b) If the Principal's Representative considers there is a risk of injury to people or damage to property arising from the TSC Contractor's Activities:

(i) the Principal's Representative may direct the TSC Contractor to change its manner of working or to cease working; and

(ii) the TSC Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 2.17(b)(i).

(c) The TSC Contractor must:

(i) ensure that in carrying out the TSC Contractor's Activities under this deed:

A. it complies with all Laws and other requirements of this deed for work health, safety and rehabilitation management;

B. all Subcontractors, contractors or consultants engaged by the TSC Contractor, comply with their respective obligations under the WHS Legislation; and

C. it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

(ii) have a Corporate OHS Management System which complies with the Law and is otherwise in accordance with the New South Wales Government Occupational Health & Safety Management Systems Guidelines (4th Edition) (June 2004);

(iii) in carrying out the TSC Contractor's Activities exercise and fulfil all of the functions and obligations of a principal contractor under the WHS Legislation so as to:



- (i) set out in adequate detail the procedures the TSC Contractor will implement to manage the TSC Contractor's Activities from a work health and safety perspective;
 - (ii) describe how the TSC Contractor proposes to ensure that the TSC Contractor's Activities are performed consistently with the WHS Legislation and any other Law;
 - (iii) address the matters specified in the WHS Legislation;
 - (iv) comply with the requirements applicable to a "Work Health Safety Management Plan" or "Site Specific Safety Management Plan" set out in section 9 of the NSW Guidelines;
 - (v) comply with the requirements applicable to a "Site Specific Safety Management Plan" set out in the Project Safety Management Plan; and
 - (vi) comply with the requirements applicable to a "Project OHS Management Plan" set out in the New South Wales Government Occupational Health & Safety Management Systems Guidelines.
- (c) Without limiting clause 2.14, the TSC Contractor must:
- (i) continue to correct any defects in or omissions from the Project WHS Management Plan (whether identified by the Principal's Representative or the TSC Contractor); and
 - (ii) regularly review and, as necessary, revise the Project WHS Management Plan in accordance with the WHS Legislation,
- and submit an amended draft of its Project WHS Management Plan to the Principal's Representative, after which clause 2.14 will reapply (to the extent applicable).
- (d) The TSC Contractor must document and maintain detailed records of inspections or audits undertaken as part of the Project WHS Management Plan.
 - (e) The TSC Contractor must carry out the TSC Contractor's Activities in accordance with, and otherwise implement, the latest Project WHS Management Plan.

2.19 Collusive arrangements

- (a) The TSC Contractor:
 - (i) warrants that, prior to the close of Tenders, the TSC Contractor had no knowledge of the Tender price of any other Tenderer and had not directly or indirectly communicated the TSC Contractor's Tender price to any other Tenderer;
 - (ii) warrants that except as disclosed in the Tender and as agreed with the Principal in writing, the TSC Contractor:
 - A. has not made any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:



- 1) the TSC Contractor will pay money to or confer any benefit upon any of the unsuccessful Tenderers; or
 - 2) the TSC Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard fee) in respect of this deed;
- B. has not made any allowance in the TSC Contractor's Tender price on account of a contract, arrangement or understanding of a kind referred to in clause 2.19(a)(ii)A; and
- C. will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 2.19(a)(ii)A; and
- (iii) acknowledges that it is aware that the Principal entered this deed in reliance upon the warranties in clause 2.19(a)(i) and clause 2.19(a)(ii).
- (b) The Principal and the TSC Contractor agree that if any matter warranted in clause 2.19(a)(i) or 2.19(a)(ii) is found not to be true or not to be correct, in addition to any other rights that the Principal may have, the TSC Contractor:
- (i) will be in fundamental breach of this deed; and
 - (ii) without limiting the Principal's rights under clause 14.3, must pay to the Principal as liquidated damages the sum equivalent to that paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 2.19(a)(ii).

2.20 Community relations

The TSC Contractor:

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

2.21 Cooperation and coordination with Interface Contractors

Without limiting the TSC Contractor's obligations under the TSC-OTS Cooperation and Integration Deed and the TSC-SVC Cooperation and Integration Deed, the TSC Contractor:

- (a) acknowledges that:
 - (i) the Interface Work forms part of the North West Rail Link;

- (ii) the TSC Contractor's Activities interface with the Interface Work;
- (iii) Interface Contractors will be executing work on parts of the Construction Site, or adjacent to the Construction Site, at the same time as the TSC Contractor is performing the TSC Contractor's Activities;
- (iv) Interface Contractors may require the TSC Contractor to provide information to them to coordinate the design of the Interface Work with the Project Works and the Temporary Works, and this must be provided in a timely manner by the TSC Contractor;

(b) must at all times:

- (i) permit Interface Contractors to execute the Interface Work on the applicable parts of the Construction Site or on any adjacent property to the Construction Site:
 - A. at the same time as the TSC Contractor is performing the TSC Contractor's Activities; and
 - B. at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose ensure they have safe, clean and clear access to those parts of the Construction Site, or property adjacent to the Construction Site, required by them for the purpose of carrying out their work (subject to, where the relevant Interface Contractor is carrying out Construction Site Interface Work, the Interface Contractor executing a deed poll in favour of the TSC Contractor in the form set out in Schedule 40);

- (ii) fully co-operate with Interface Contractors, and do everything reasonably necessary to:
 - A. facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative; and
 - B. ensure the effective coordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the Interface Work;
- (iii) carefully coordinate and interface the TSC Contractor's Activities with the Interface Work;
- (iv) perform the TSC Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- (v) be responsible for coordinating the TSC Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work; and
- (vi) attend coordination meetings chaired by the Principal's Representative with Interface Contractors and others at such times as may be reasonably



required by the Principal's Representative, to review current and future issues;

- (c) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may have an adverse effect upon the TSC Contractor's Activities; and
- (d) without limiting clause 2.22, must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a breach of this clause 2.21 by the TSC Contractor.

2.22 No Claims arising out of Interface Work

The TSC Contractor:

- (a) acknowledges and agrees that:
 - (i) no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the TSC Contractor's Activities, constitute an Act of Prevention; and
 - (ii) except where the Principal's Representative directs a Change in circumstances where the TSC Contractor has fully complied with clause 2.21, the Principal will not be liable upon any Claim by the TSC Contractor arising out of or in any way in connection with:
 - A. the Interface Contractors carrying out Interface Work; or
 - B. any act or omission of an Interface Contractor; and
- (b) warrants that the original Project Contract Sum (as at the date of this deed) and that the Overall D&C Program contains sufficient allowances for the assumption by the TSC Contractor of the obligations and risks under clause 2.21 and this clause 2.22, including the cost of all the design iterations required to accommodate Interface Work.

2.23 Liability under the NGER Legislation

- (a) Without limiting any other clause in this deed, the TSC Contractor acknowledges and agrees that, if the TSC Contractor's Activities or the Project Works and the Temporary Works constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and the TSC Contractor will comply with any obligations arising in respect of the TSC Contractor's Activities or the Project Works and the Temporary Works under the NGER Legislation.
- (b) If, despite the operation of clause 2.23(a), the Principal incurs, or but for this clause 2.23 would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the TSC Contractor's Activities or the design and construction of the Project Works and the Temporary Works (but not the operation of the Project Works), and the NGER Legislation provides that such liability can be transferred by the Principal to the TSC Contractor, the TSC Contractor must, upon the written request of the Principal, do all things reasonably necessary to transfer the liability to the TSC Contractor.



2.24 Provision of Emissions and Energy Data to the Principal

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

2.25 Reporting Emissions and Energy Data

- (a) This clause 2.25 applies if, despite the operation of clause 2.23, the Principal incurs a liability under or in connection with the NGER Legislation as a result of or in connection with the TSC Contractor's Activities or the Project Works and the Temporary Works.
- (b) If the Principal notifies the TSC Contractor in writing that the TSC Contractor is required to provide TSC Contractor's Emissions and Energy Data to the Principal, then the TSC Contractor must:
 - (i) provide the TSC Contractor's Emissions and Energy Data to the Principal's Representative in the same manner, form and level of detail, based on the same methods and at the same times:
 - A. as if the TSC Contractor was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;
 - B. in accordance with the requirements or approvals of any Authority and any directions by the Principal's Representative; and
 - C. without limiting clauses 2.25(b)(i)A or 2.25(b)(i)B, as may be required to enable the Principal:
 - 1) to discharge, as and when they fall due, any obligations that it may have to provide the TSC Contractor's Emissions and Energy Data to any Authority; and
 - 2) to provide to the Clean Energy Regulator, any TSC Contractor's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) keep all such TSC Contractor's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 2.25(b)(i);


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- (iii) retain records of its activities that are the basis of its TSC Contractor's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
 - (iv) permit the TSC Contractor's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 2.25(b)(ii) and 2.25(b)(iii) and answering questions.
- (c) Without limiting clause 2.25(b), the TSC Contractor must assist the Principal to comply with the NGER Legislation in relation to any aspect of the TSC Contractor's Activities.
- (d) The TSC Contractor acknowledges and agrees that:
- (i) the TSC Contractor's Emissions and Energy Data is provided to the Principal:
 - A. to discharge any obligations that the Principal may have to provide such Data to an Authority; and
 - B. so that the Principal may provide to the Clean Energy Regulator any TSC Contractor's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) the Principal may provide or otherwise disclose the TSC Contractor's Emissions and Energy Data to any applicable Authority; and
 - (iii) nothing in this clause 2.25 is to be taken as meaning that the Principal has agreed to perform on behalf of the TSC Contractor, any obligation that the TSC Contractor itself may have under any Law regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).



2.26 Indemnity

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

- (a) the TSC Contractor's breach of its obligations; and
- (b) any inaccuracy or omission in information provided to the Principal,

under clauses 2.23, 2.24 and 2.25.

2.27 Sustainability

- (a) The TSC Contractor must comply with the sustainability requirements set out in Appendix 10 of the SWTC.
- (b) Without limiting paragraph (a), the TSC Contractor must achieve:

(i) a "Design" rating score of at least 65 for the design of the Project Works and the Temporary Works; and

(ii) an "As Built" rating score of at least 65 for the construction of the Project Works and the Temporary Works,

from the Australian Green Infrastructure Council.

(c) Without limiting paragraph (b), in order to achieve the ratings referred to in paragraph (b) the TSC Contractor must:

(i) register with the Australian Green Infrastructure Council for the purposes of obtaining a rating;

(ii) cooperate and liaise with the Australian Green Infrastructure Council as required; and

(iii) provide any documentation required by the Australian Green Infrastructure Council.

2.28 Rail safety

(a) Without limiting clause 2.3, the TSC Contractor must comply with the Rail Safety National Law and Rail Safety Regulations.

(b) The TSC Contractor acknowledges that:

(i) the TSC Contractor's Activities and the Project Works are being undertaken for the purpose of constructing a railway;

(ii) to the extent that the TSC Contractor's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law it carries out those TSC Contractor's Activities for and on behalf of the Principal under the Principal's Accreditation.

(c) The TSC Contractor must:

(i) carry out the TSC Contractor's Activities so as not to put the Principal in breach of its obligations as a Rail Infrastructure Manager under the Rail Safety National Law and Rail Safety Regulations;

(ii) comply with all reasonable requirements of the Principal in relation to compliance with the Principal's Accreditation; and

(iii) not do anything (or fail to do anything) which jeopardises the Principal's Accreditation.

(d) The TSC Contractor must ensure that its Associates engaged in or in connection with the TSC Contractor's Activities comply with the same obligations as are imposed upon the TSC Contractor under clauses 2.28(a)-(c) as if they had been imposed upon the Associate.

(e) The TSC Contractor acknowledges that:

(i) the Principal holds accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and



- (ii) to the extent that, in carrying out the TSC Contractor's Activities, the TSC Contractor carries out any Railway Operations for which accreditation is required under the Rail Safety National Law and which are not permitted by the Principal's Accreditation, the TSC Contractor must obtain any necessary accreditation or other Approval required to enable it to comply with all applicable Law.
- (f) The TSC Contractor acknowledges that OpCo will be reliant upon information and documentation received from the TSC Contractor to obtain its accreditation under the Rail Safety National Law.
- (g) The TSC Contractor must liaise and cooperate with the Principal and OpCo and provide any reasonable assistance and documentation the Principal or OpCo may require in relation to safety matters, including in relation to OpCo obtaining its accreditation under the Rail Safety National Law.
- (h) Without limiting clause 2.28(g), the TSC Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the TSC Contractor or its Associates under or in connection with the Rail Safety National Law and the Rail Safety Regulations:
 - (i) relating to the TSC Contractor's Activities or the Project Works; or
 - (ii) which may adversely affect the ability of the TSC Contractor or its Associates to perform the TSC Contractor's Activities,promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the TSC Contractor or its Associates).
- (i) Without limiting clause 2.3, the TSC Contractor must ensure that all persons engaged by the TSC Contractor (or by any Associate of the TSC Contractor) in or in connection with the TSC Contractor's Activities:
 - (i) are competent to carry out the work for which they are engaged for the purposes of section 21 of the Rail Safety National Law; and
 - (ii) comply with their obligations under the Rail Safety National Law (including under section 9 of the Rail Safety National Law).
- (j) The TSC Contractor must and must ensure that its Associates:
 - (i) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
 - (ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and
 - (iii) not hinder or delay any Investigative Authority in carrying out its duties.
- (k) Compliance by the TSC Contractor with its obligations under this clause 2.28:
 - (i) does not discharge or excuse the TSC Contractor from complying with its other obligations under this deed; and

- (ii) is not evidence of compliance by the TSC Contractor with its other obligations under this deed.

2.29 Cooperation and integration deeds

- (a) The TSC Contractor must:
 - (i) within 5 Business Days of the date of this deed, provide to the Principal three copies of each of:
 - A. the TSC-OTS Cooperation and Integration Deed; and
 - B. the TSC-SVC Cooperation and Integration Deed,duly executed by the TSC Contractor; and
 - (ii) at all relevant times comply with:
 - A. the terms of the TSC-OTS Cooperation and Integration Deed and the TSC-SVC Cooperation and Integration Deed; and
 - B. the Interface Management Plan.
- (b) The Principal will request each of OpCo and the SVC Contractor to execute the TSC-OTS Cooperation and Integration Deed and the TSC-SVC Cooperation and Integration Deed (as applicable) but:
 - (i) does not represent or warrant that OpCo and the SVC Contractor will execute; and
 - (ii) will not be liable upon any Claim (insofar as is permitted by Law) by the TSC Contractor arising out of or in any way in connection with OpCo or the SVC Contractor not executing,

the TSC-OTS Cooperation and Integration Deed or the TSC-SVC Cooperation and Integration Deed (as applicable).

2.30 Aboriginal participation in construction

- (a) The TSC Contractor must comply with the NSW Government Aboriginal Participation in Construction Guidelines as amended from time to time (as at the date of signing of this deed, the edition of the Guidelines applying to projects commencing after 1 January 2007).
- (b) The TSC Contractor must:
 - (i) prior to commencing any TSC Contractor's Activities on the Construction Site, submit to the Principal a "Statement of Opportunities for Aboriginal Participation" (as defined in the Guidelines) and document and submit a Project Aboriginal Participation Plan; and
 - (ii) implement the Project Aboriginal Participation Plan.
- (c) The TSC Contractor must systematically manage its Aboriginal participation processes in accordance with the Project Aboriginal Participation Plan.



- (d) The TSC Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 2.30(a) to 2.30(c) inclusive.
- (e) The TSC Contractor acknowledges that the Principal's Representative may review the Project Aboriginal Participation Plan:
 - (i) prior to the commencement of the TSC Contractor's Activities on the Construction Site; and
 - (ii) periodically during the course of the carrying out of the TSC Contractor's Activities,
including by conducting an on-site verification that the Project Aboriginal Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.

2.31 Engineering authorisation

- (a) The TSC Contractor acknowledges that:
 - (i) it has prepared an initial version of the Engineering and Competency Management Plan and this initial version is contained in Appendix 44 of the SWTC;
 - (ii) it must develop, update, amend and implement the Engineering and Competency Management Plan in accordance with clause 2.14; and
 - (iii) it must otherwise comply with the requirements of Appendix 27 of the Scope of Works and Technical Criteria.
- (b) Based on the procedures of, and undertakings given by, the TSC Contractor and its Subcontractors as set out in the initial Engineering and Competency Management Plan, the Principal authorises:
 - (i) the TSC Contractor; and
 - (ii) the Subcontractors engaged to design the Project Works and the Temporary Works,
to design the Project Works and the Temporary Works.
- (c) The TSC Contractor must comply with, and ensure that its Subcontractors, comply with the Engineering and Competency Management Plan.
- (d) The TSC Contractor must immediately notify the Principal's Representative in writing of any circumstances that arise which may materially impact the ability of the TSC Contractor to comply with the Engineering and Competency Management Plan.

2.32 Project Safety Management Plan

The TSC Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any act or omission of the Principal in relation to the Project Safety Management Plan to the extent that the act or omission:

- (a) is permitted or allowed by the Project Safety Management Plan; or



- (b) does not relate to or affect the TSC Contractor's Activities.

2.33 Environmental and Sustainability Management System

The TSC Contractor must implement an Environmental and Sustainability Management System in accordance with the applicable requirements of the SWTC, including section 3.8 of the SWTC.

3. Location of the Project Works

3.1 Access

- (a) Subject to clauses 3.1(b) and 3.1(c) and any other provision of this deed affecting access, the Principal must:
 - (i) give, or ensure the TSC Contractor has, access to each area of the Construction Site specified in the Site Access Schedule by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and
 - (ii) thereafter continue to allow, or ensure that the TSC Contractor is continued to be allowed, access to each such area of the Construction Site.

The TSC Contractor acknowledges and agrees that access to the Construction Site or any part thereof will confer on the TSC Contractor a right to such management and control as is necessary to enable the TSC Contractor to execute the TSC Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor.

- (b) The Principal is not obliged to give the TSC Contractor access to any area of the Construction Site in accordance with clause 3.1(a), until the TSC Contractor has:
 - (i) complied with clauses 2.12(a) and 2.13;
 - (ii) submitted the Project WHS Management Plan to the Principal's Representative and the Principal's Representative has had 15 Business Days to review the Project WHS Management Plan and has not rejected the Project WHS Management Plan;
 - (iii) effected the insurances required under clauses 13.5, 13.6 (where required in accordance with clause 13.6), 13.7, 13.8 and 13.9; and
 - (iv) complied with clause 13.11(a)(i) with respect to each insurance.
- (c) The TSC Contractor acknowledges and agrees that:
 - (i) it may not be given exclusive access to the Construction Site;
 - (ii) the Principal may, without limiting its obligations under clause 2.21, engage Interface Contractors to perform Construction Site Interface Work on the Construction Site;

- (iii) it will cooperate with the Interface Contractors and coordinate the TSC Contractor's Activities with the Construction Site Interface Work in accordance with clause 2.21; and
- (iv) access to the Construction Site or any part thereof will be subject to the TSC Contractor's compliance with clause 3.1(g).
- (d) The Principal's obligation to give access under this clause 3.1 in respect of each part of the Construction Site identified in Schedule 34 in the column headed "Part of Construction Site to be handed back at Portion Handover Date" will cease upon the relevant Portion Handover Date.
- (e) Failure by the Principal to give access as required by clause 3.1(a) will not be a breach of this deed but will entitle the TSC Contractor to:
 - (i) an extension of time to any relevant Date for Construction Completion under clause 11 if the requirements of that clause are satisfied; and
 - (ii) be paid by the Principal any reasonable costs incurred by it directly arising from the Principal's failure to give the TSC Contractor access as required by clause 3.1(a), as stated by the Principal's Representative.
- (f) The TSC Contractor's entitlement under clause 3.1(e)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clause 3.1(a).
- (g) The TSC Contractor must comply with:
 - (i) any access conditions that apply to an area of the Construction Site as specified in the Site Access Schedule (including the terms of the Construction Leases as required by Schedule 33); and
 - (ii) the terms of any easement burdening the land contained in the Construction Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act* 1900 (NSW).
- (h) The TSC Contractor must ensure that at all times the Principal's Representative, any person authorised by the Principal (including OpCo, visitors invited by the Principal and other contractors and consultants who are to perform work on the Construction Site) and the Independent Certifier have safe and convenient access to:
 - (i) the Construction Site and any other areas affected by the TSC Contractor's Activities;
 - (ii) the Project Works and the Temporary Works;
 - (iii) any other place where any part of the TSC Contractor's Activities is being carried out (including Extra Land);
 - (iv) the TSC Contractor's Activities;
 - (v) the Design Documentation; and
 - (vi) any other documentation created for the purposes of the TSC Contractor's Activities.



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- (i) The TSC Contractor must provide the Principal, the Principal's Representative and the Independent Certifier with every reasonable facility necessary for the inspection of the TSC Contractor's Activities.
- (j) When accessing any area or thing referred to in clause 3.1(h), the Principal must:
 - (i) comply with; and
 - (ii) ensure that any persons authorised by it to access that area or thing comply with,the TSC Contractor's reasonable occupational, health, environmental and safety requirements.

3.2 Property Works

- (a) The TSC Contractor must:
 - (i) carry out the Property Works:
 - A. in accordance with the SWTC; and
 - B. so that they are fit for their intended purpose;
 - (ii) after completion of the Property Works with respect to an Unowned Parcel, including the work described in clause 3.2(f), provide to the Principal's Representative:
 - A. a certificate in the form of Schedule 20, duly executed by the owner or owners of any part of the Unowned Parcel; or
 - B. a statement signed by the TSC Contractor to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule 20 within 15 Business Days of it being provided by the TSC Contractor to the owner or owners following completion of the Property Works including the work described in clause 3.2(f); and
 - (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or owners of any part of an Unowned Parcel where:
 - A. such owner or owners have not duly signed a certificate in the form of Schedule 20; and
 - B. the claim or Loss arises out of or in any way in connection with the Property Works.
- (b) The acceptance of a certificate or statement provided by the TSC Contractor under clause 3.2(a)(ii) by the Principal's Representative is not approval by the Principal or the Principal's Representative of the TSC Contractor's performance of its obligations under this clause 3.2.
- (c) Where any Property Works are required to be carried out on an Unowned Parcel, the TSC Contractor must give a written notice to the owner or owners of the property (with a copy to the Principal's Representative) which:



- (i) describes the Property Works to be carried out;
 - (ii) requests access for the purpose of carrying out the Property Works; and
 - (iii) specifies the intended date for commencement of the Property Works, not less than 10 Business Days prior to the day which the TSC Contractor intends to commence the Property Works.
- (d) If the owner or owners of a property do not provide the TSC Contractor with sufficient access to carry out the Property Works from either:
- (i) the date notified in the notice under clause 3.2(c); or
 - (ii) such other date as may be agreed between the TSC Contractor and the owner or owners,
- the TSC Contractor must:
- (iii) give the Principal's Representative a notice stating this; and
 - (iv) not carry out the Property Works until the Principal's Representative gives the TSC Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 3.2(c) will reapply.
- (e) Upon being given access to any property for the purpose of carrying out any Property Works, the TSC Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.
- (f) The TSC Contractor must:
- (i) rehabilitate any part of an Unowned Parcel to the state agreed with the owner of such Unowned Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the TSC Contractor obtaining access; and
 - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 3.2.
- (g) The following are conditions precedent to Construction Completion of a Portion:
- (i) completion of all Property Works under this clause 3.2 that form part of the Portion, including all relevant work under clause 3.2(f); and
 - (ii) provision of all certificates or statements (as the case may be) to the Principal's Representative as required under clause 3.2(a)(ii) in respect of Property Works that form part of the Portion.

3.3 Control of Construction Site

- (a) At all times after being given access to the Construction Site or a part of the Construction Site under clause 3.1 until the relevant Portion Handover Date, the TSC Contractor must:

- (i) without limiting any right of the Principal or the Principal's Representative under this deed, be responsible for the management and control of the Construction Site;
 - (ii) control access to, and the security and maintenance of, and must ensure public safety on, and adjacent to, the Construction Site or that part;
 - (iii) provide for the continuous safe passage of the public and road users on existing public spaces, parks, footpaths, pedestrian ways, pedal cycle paths, roads and other access ways affected by the TSC Contractor's Activities in accordance with this deed;
 - (iv) keep any delays or disruptions to the movement of the public and all road users to an absolute minimum; and
 - (v) comply with all directions of any relevant Authority and Directions of the Principal's Representative with respect to the management of such access, safe passage and movement at all times.
- (b) The TSC Contractor and the Principal acknowledge that nothing in this deed including the right to inspect pursuant to clause 7.5 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:
- (i) the Principal has any management or control over the TSC Contractor's Activities or the Construction Site or Extra Land; or
 - (ii) the Principal has any responsibility for any act or omission by the TSC Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Approvals, Third Party Agreements or this deed.

3.4 Extra Land

- (a) The TSC Contractor must:
- (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Construction Site, which is necessary or which it requires for the execution of the TSC Contractor's Activities (which may include additional land or buildings required for the Third Party Works); and
 - (ii) as a condition precedent to Construction Completion of any Portion in which the TSC Contractor has had to procure occupation or use of or relevant rights over any Extra Land:
 - A. rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - B. provide to the Principal's Representative:
 - 1) a properly executed release on terms satisfactory to the Principal's Representative from all claims from the owner or occupier of, and from any other person having an interest in the Extra Land; or



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- 2) if the TSC Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from the TSC Contractor to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by the TSC Contractor to the owner, occupier or other person following completion of the work on the Extra Land; and
- (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or occupier of any part of the Extra Land where:
 - A. such owner or occupier has not executed such a release; and
 - B. the claim or Loss arises out of or in connection with the TSC Contractor's Activities.
- (b) The TSC Contractor acknowledges that:
 - (i) integration of the requirements for access to Extra Land is at the sole risk of the TSC Contractor; and
 - (ii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the TSC Contractor arising out of or in any way in connection with:
 - A. identifying and obtaining access to Extra Land; or
 - B. any delay, additional costs or other effects on the TSC Contractor's Activities related to the ability of the TSC Contractor or its Subcontractors to obtain access to Extra Land.

3.5 Temporary Areas

The TSC Contractor must, as a condition precedent to Construction Completion of any Portion where the TSC Contractor has occupied or made use of a Temporary Area in connection with that Portion, reinstate the Temporary Area to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Area:

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

3.6 Physical conditions

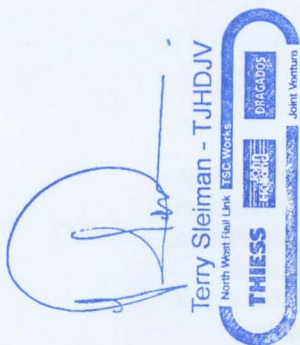
- (a) Without limiting clauses 3.7(b) or 16.11, the TSC Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, the TSC Contractor:

- (i) examined this deed, the Construction Site and its surroundings and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the TSC Contractor for the purpose of tendering;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this deed;
 - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of the TSC Contractor's Activities;
 - (iv) informed itself of:
 - A. all matters relevant to the employment of labour at the Construction Site; and
 - B. all industrial matters relevant to the Construction Site; and
 - (v) was given the opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - A. relating to the subject matter of Information Documents; and
 - B. for design purposes and otherwise;
 - (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, each Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this deed; and
 - (vii) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the TSC Contractor.
- (b) Without limiting or otherwise affecting clauses 3.6(c), 3.6(d) and 3.7, the Principal makes no representation and gives no warranty to the TSC Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the TSC Contractor's Activities or otherwise in respect of the condition of:
 - A. the Construction Site, Extra Land or their surroundings; or
 - B. any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land; or
 - (ii) the existence, location, condition or availability of any Utility Service on, under, above, adjacent to or related to the Construction Site or Extra Land.



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- (c) Subject to clauses 3.8(c), 3.11(b) and 7.2, the TSC Contractor accepts:
- (i) the Construction Site and any Extra Land; and
 - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Construction Site and any Extra Land;
- in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:
- (iii) all Loss, delay or disruption it suffers or incurs; and
 - (iv) any adverse effect on the Project Works or the Temporary Works, arising out of, or in any way in connection with the Site Conditions encountered in performing the TSC Contractor's Activities.
- (d) The TSC Contractor must investigate, design and construct the Project Works and Temporary Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:
- (i) the Site Conditions encountered in performing the TSC Contractor's Activities;
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - A. the Construction Site or any Extra Land, the Environment or their surroundings; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the Construction Site or any Extra Land, the Environment or their surroundings; and
 - (iii) any assumptions, projections, estimates, contingencies or otherwise that the TSC Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in subparagraph (ii).
- (e) Nothing in clauses 3.6 or 3.7 limits the operation of clauses 3.8(c), 3.11(b) or 7.2.



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3.7 Information Documents

- (a) Prior to the date of this deed the TSC Contractor signed each Deed of Disclaimer and provided them to the Principal in respect of Information Documents provided by the Principal to the TSC Contractor.
- Without limiting or otherwise affecting clause 3.7(b) or the warranties or acknowledgements in any Deed of Disclaimer:
- (i) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
 - (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, the TSC Contractor acknowledges that:

- A. the Information Document or part thereof does not form part of this deed and that clause 3.7(b) applies to the Information Document or part thereof; and
 - B. where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof;
- (iii) insofar as is permitted by Law, the Principal will not be liable upon any Claim by the TSC Contractor arising out of or in any way in connection with:
- A. the provision of, or the purported reliance upon, or use of the Information Documents to or by the TSC Contractor or any other person to whom the Information Documents are disclosed; or
 - B. a failure by the Principal to provide any information to the TSC Contractor.

(b) The TSC Contractor:

- (i) warrants that it did not in any way rely upon:
- A. any information, data, representation, statement or document made by, or provided to the TSC Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
- for the purposes of entering into this deed or carrying out the TSC Contractor's Activities but nothing in this subparagraph will limit or otherwise affect the TSC Contractor's obligations under this deed;
- (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:
- A. the warranties, acknowledgements and agreements in clauses 3.7(b)(i) and 3.7(b)(ii); and
 - B. the warranties and acknowledgements in the Deeds of Disclaimer and the Tender Form submitted by the TSC Contractor as part of its Tender.

(c) Subject to clause 3.8(c), the TSC Contractor releases and indemnifies the Principal from and against:

- (i) any Claim against the Principal by, or Liability of the Principal to, any person; or

- (ii) (without being limited by clause 3.7(c)(i)) any Loss suffered or incurred by the Principal,
arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the TSC Contractor or any other person to whom the Information Documents are disclosed by the TSC Contractor or a failure by the Principal to provide any information to the TSC Contractor;
 - (iv) any breach by the TSC Contractor of this clause 3.7; or
 - (v) the Information Documents being relied upon or otherwise used by the TSC Contractor or its Associates in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*), or any equivalent provision of State or Territory legislation.

3.8 Notice of Core Sample Location Difference

- (a) If, during the execution of the TSC Contractor's Activities, the TSC Contractor becomes aware of a Core Sample Location Difference, it must immediately give the Principal's Representative notice in writing.
- (b) Within 10 Business Days of giving a notice under clause 3.8(a), the TSC Contractor must give the Principal's Representative a written statement of:
 - (i) the Core Sample Location Difference and in what respects it will have a material impact upon the TSC Contractor's Activities;
 - (ii) the additional work and resources which the TSC Contractor estimates to be necessary to deal with the Core Sample Location Difference;
 - (iii) the time the TSC Contractor anticipates will be required to deal with the Core Sample Location Difference and the expected delay in achieving Construction Completion;
 - (iv) the TSC Contractor's estimate of the cost of the measures necessary to deal with the Core Sample Location Difference; and
 - (v) other details reasonably required by the Principal's Representative.
- (c) If the Core Sample Location Difference causes the TSC Contractor to:
 - (i) carry out additional work;
 - (ii) use additional Construction Plant; or
 - (iii) incur extra cost (excluding the costs of any delay or disruption arising out of or in any way in connection with the Core Sample Location Difference or the additional work required to deal with the Core Sample Location Difference),

which a competent and experienced contractor having done those things it is deemed to have done by clause 3.6(a) could not have avoided or mitigated, and could not reasonably have anticipated at the date of this deed, the Principal will pay the TSC Contractor any extra costs reasonably incurred by the TSC Contractor after the date of the TSC Contractor gives the written notice required by clause 3.8(a) for carrying out such work, as stated by the Principal's Representative.

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

3.9 Artefacts

As between the Principal and the TSC Contractor, any Artefacts are the property of the Principal.

The TSC Contractor must:

- (a) at its cost immediately notify the Principal's Representative if any Artefact is found;
- (b) at its cost ensure that the Artefact is protected and not disturbed any further;
- (c) comply with all requirements of Authorities and Directions of the Principal's Representative in relation to the Artefact; and
- (d) continue to perform the TSC Contractor's Activities except to the extent otherwise:
 - (i) directed by the Principal's Representative;
 - (ii) ordered by a court or tribunal; or
 - (iii) required by Law.

The Principal will pay the TSC Contractor the reasonable direct costs incurred by the TSC Contractor in complying with the requirements of clause 3.9(c) as stated by the Principal's Representative.

3.10 Site induction

Without limiting the TSC Contractor's obligations under clause 2.3(b) to comply with the conditions and requirements of all Approvals, the TSC Contractor must:

- (a) provide safety and environmental site induction for persons nominated by the Principal's Representative on the Construction Site and for all personnel directly or indirectly engaged by the TSC Contractor and requiring access to the Construction Site, any Extra Land and other areas where the TSC Contractor's Activities are being performed; and
- (b) ensure such persons satisfactorily complete such site induction before such persons are given such access or commence such work.

The induction must:

- (c) comply with all applicable Law, Project Plans and the Principal's procedures, policies and rules; and
- (d) otherwise be in accordance with the requirements of this deed.

The TSC Contractor must keep and maintain comprehensive and detailed induction records and provide the Principal's Representative or its nominee, upon request, with access to such records.

3.11 Contamination

(a) In addition to the requirements of the Environmental Documents and without limiting clause 3.6 (but subject to clause 3.11(b)), the TSC Contractor bears the risk of all Contamination:

- (i) on, in, over, under or about the Construction Site or any Extra Land which is disturbed by or interfered with in the carrying out of the TSC Contractor's Activities; or
- (ii) which otherwise arises out of or in connection with the TSC Contractor's Activities,

and, to the extent clause 3.11(a)(i) or 3.11(a)(ii) applies, the TSC Contractor must:

- (iii) dispose of, or otherwise deal with, such Contamination in accordance with Law and the Environmental Documents;
- (iv) remediate the Construction Site and any Extra Land to the extent to which:
 - A. it is in any way degraded by such Contamination; and
 - B. the Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated; and
- (v) except to the extent prohibited by Law, indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with such Contamination or any failure by the TSC Contractor to comply with any obligation under this deed in connection with Contamination.

(b) If Contamination on, in, over, under or about the Construction Site is caused by the Principal (or its Associates) after the date of this deed and such Contamination is disturbed by or interfered with in the carrying out of the TSC Contractor's Activities, clauses 3.11(a)(iii) to 3.11(a)(v) (inclusive) will apply, however:

- (i) where compliance with clauses 3.11(a)(iii) to 3.11(a)(v) (inclusive) in respect of such Contamination causes the TSC Contractor to incur greater cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Change; and
- (ii) the TSC Contractor will be entitled to an extension of time to any relevant Date for Construction Completion under clause 11 if the requirements of that clause are satisfied.

3.12 Third Party Agreements

(a) The TSC Contractor:

- (i) acknowledges that it has been given copies of the Third Party Agreements;

- (ii) must comply with its obligations in Schedule 33; and
- (iii) must, within 5 Business Days of the date of this deed, provide the Principal with:
 - A. an executed deed poll in favour of RailCorp in the form provided in Schedule 3 to the PETIA; and
 - B. an executed deed poll in favour of RMS in the form provided in Annexure E to the WAD.

(b) The parties acknowledge that:

- (i) as at the date of this deed, the terms and conditions of the Third Party Agreements identified in Schedule 33 as "Draft" have not been finalised between the Principal and the relevant Third Party (each a **Draft Third Party Agreement**);
- (ii) the TSC Contractor has reviewed the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements and has included in the original Project Contract Sum all of its costs (including the cost of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 3.12(a) and the Principal's obligations under the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements other than those identified in Schedule 33 for the Principal to perform;
- (iii) following finalisation of any Draft Third Party Agreement after the date of this deed, the Principal must promptly give the TSC Contractor a copy of the executed version of the Draft Third Party Agreement and amendments (if any) to Schedule 33 arising out of the execution of the Draft Third Party Agreement (**Revised Allocation**);
- (iv) within 20 Business Days of receipt of an executed copy of a Draft Third Party Agreement and the Revised Allocation, the TSC Contractor must inform the Principal's Representative in writing if any terms and conditions of the executed version of the Draft Third Party Agreement or the Revised Allocation are substantially more onerous than those contained in the relevant Draft Third Party Agreement and Schedule 33 (**Difference in Conditions**) and:

- A. where the Difference in Conditions or Revised Allocation will result in additional administration, details of such additional administration costs to be incurred by the TSC Contractor;
- B. where the Difference in Conditions or Revised Allocation will result in additional physical works:
 - 1) not forming part of the TSC Contractor's Activities; and
 - 2) which are otherwise in addition to any physical works contemplated by the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements,



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details of such additional physical works and the cost of carrying out such additional physical works; and

C. where the Difference in Conditions or Revised Allocation alters the TSC Contractor's risk profile under this deed and creates a contingent liability which the TSC Contractor did not previously bear and which may convert to an actual liability on the happening of:

- 1) an event;
- 2) a delay; or
- 3) an omission by any party to act,

(Trigger Event),

details of the altered risk profile, contingent liability and Trigger Event and a notice of intention to claim;

(v) if the Principal does not receive a notice from the TSC Contractor under clause 3.12(b)(iv) within the 20 Business Day period:

- A. Schedule 33 is amended in accordance with the Revised Allocation as and from the date of receipt by the TSC Contractor of the executed copy of the Draft Third Party Agreement and Revised Allocation under clause 3.12(b)(iii); and
- B. the TSC Contractor must carry out its obligations under this deed on the basis of the executed version of the Draft Third Party Agreement and the Revised Allocation without any adjustment to the Project Contract Sum or any entitlement to make any other Claim;

(vi) if the Principal's Representative receives a notice from the TSC Contractor under clause 3.12(b)(iv) within the 20 Business Day period, then:

- A. Schedule 33 is amended in accordance with the Revised Allocation as and from the date of receipt by the TSC Contractor of the executed copy of the Draft Third Party Agreement and Revised Allocation under clause 3.12(b)(iii);
- B. the TSC Contractor must carry out its obligations under this deed on the basis of the executed version of the Draft Third Party Agreement and the Revised Allocation;
- C. the Principal's Representative must:
 - 1) where the TSC Contractor has provided the details referred to in clause 3.12(b)(iv)A, give the TSC Contractor a notice setting out the Principal's Representative's statement of the reasonable, additional administration costs incurred or to be incurred by the TSC Contractor in complying with the executed version of the Draft Third Party



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Agreement or Revised Allocation and the Project Contract Sum will be increased by that amount; and

2) where the TSC Contractor has provided the details referred to in clause 3.12(b)(iv)B, if the terms of any executed version of a Draft Third Party Agreement or Revised Allocation require the TSC Contractor to carry out any physical work which:

- a) does not form part of the TSC Contractor's Activities; and
- b) is additional to any physical works contemplated by the Third Party Agreements executed at the date of this deed and the Draft Third Party Agreements;

direct the TSC Contractor to carry out such physical work as a Change under clause 6.2; and

D. where the TSC Contractor has provided the details referred to in clause 3.12(b)(iv)C, the Principal's Representative's obligation to make a determination in relation to the altered risk profile or contingent liability referred to in clause 3.12(b)(iv)C is deferred until the Trigger Event occurs;

(vii) if:

- A. the TSC Contractor issues a notice under clause 3.12(b)(iv) and provides the details referred to in clause 3.12(b)(iv)C; and
- B. during the implementation of the executed Draft Third Party Agreement and the Revised Allocation a Trigger Event occurs,

the TSC Contractor may issue a notice to the Principal's Representative providing details of the reasonable costs incurred in satisfying the actual liability which has arisen;

(viii) if the Principal's Representative receives a notice under clause 3.12(b)(vii), the Principal's Representative must give the TSC Contractor a notice setting out the Principal's Representative's statement of the reasonable, additional costs incurred by the TSC Contractor in satisfying the actual liability which has arisen and the Project Contract Sum will be increased by that amount; and

(ix) notwithstanding the provisions of this clause 3.12(b), the amount of any additional costs incurred by the TSC Contractor as a result of the circumstances referred to in clause 3.12(b) will not be added to the Project Contract Sum unless the TSC Contractor has taken all proper and reasonable measures to avoid or minimise the extra costs resulting from such circumstances.

(c) Without limiting any other provision of this deed, the TSC Contractor must indemnify the Principal from and against any claims against the Principal, or Loss



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suffered or incurred by the Principal, arising out of, or in any way in connection with, a breach of the requirements of this clause 3.12 or Schedule 33.

3.13 Existing Operations

- (a) The TSC Contractor acknowledges that:
- (i) RailCorp, RMS, Ausgrid, Endeavour Energy and any other persons must continue their Existing Operations during the course of the carrying out of the TSC Contractor's Activities;
 - (ii) the access ways to the Construction Site are used by other persons and will not be available exclusively to the TSC Contractor; and
 - (iii) in using these access ways the TSC Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The TSC Contractor bears the risk of coordinating its access to the Construction Site with any other relevant party (including RailCorp, RMS, Ausgrid and Endeavour Energy) that use the access ways to the Construction Site.
- (c) Without limiting any other obligations of the TSC Contractor, the TSC Contractor must:
- (i) to the extent reasonably possible in performing the TSC Contractor's Activities, not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations or block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;
 - (ii) comply with the Principal's reasonable directions in connection with:
 - A. the Existing Operations (including access to and use of the Construction Site); and
 - B. workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any Law relating to workplace health and safety;
 - (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
 - (iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Construction Site;
 - (v) ensure that in carrying out and completing the TSC Contractor's Activities, the Project Works and Handover Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works and Handover



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Works, when completed, to fully comply with the requirements of this deed; and

- (vi) immediately:
 - A. repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the TSC Contractor's Activities; and
 - B. when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 3.13(c) are complied with.

- (d) Except to the extent expressly permitted by this deed, the TSC Contractor must:
 - (i) not disrupt, interrupt or interfere in any way with the Existing Operations;
 - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the TSC Contractor's Activities in accordance with this deed; and
 - (iii) program and coordinate the TSC Contractor's Activities under this deed using design and construct best practices and so as to minimise the effect that the carrying out of the TSC Contractor's Activities under this deed has on the Existing Operations.
- (e) The TSC Contractor must ensure that its Associates at all times comply with this clause 3.13.

3.14 Waste Disposal

- (a) The TSC Contractor must:
 - (i) remove from the Construction Site and any Extra Land; and
 - (ii) dispose of,
any Contamination or other waste pursuant to its obligations under this Deed to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) The TSC Contractor must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Construction Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.
- (c) The TSC Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.

- (d) The TSC Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the TSC Contractor to comply with any obligation under this clause, provided that the TSC Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal contributed to the claim or Loss.

4. Quality

4.1 Quality Management System

- (a) The TSC Contractor must implement a Quality Management System for the management of all aspects of the TSC Contractor's obligations under this deed including in accordance with the applicable requirements of the SWTC, including section 3.2.1 of the SWTC and the Quality Plan.
- (b) The TSC Contractor must develop and implement a Quality Plan in accordance with this deed including the SWTC, including section 3.2.1 and Appendix 24 of the SWTC.

4.2 Independent Certifier

- (a) The Independent Certifier is to be engaged on the terms of the Independent Certifier Deed.

The Independent Certifier's role is to, amongst other things:

- (i) without limiting the rights or obligations of the parties under this deed, independently certify in accordance with the Independent Certifier Deed that the Project Works and the Reviewable Temporary Works comply with the requirements of this deed; and
- (ii) make determinations on matters that this deed expressly requires be determined by the Independent Certifier under clauses 5.2(j), 8.6(d) and 11.11(e).

Without limiting the effect which the determinations of the Independent Certifier will have upon the rights and obligations of the parties under this deed, the Independent Certifier does not have any power to give any Directions to the TSC Contractor.

- (b) The Independent Certifier is obliged to act independently of the TSC Contractor, the Principal and any of their Associates, and is not an employee, agent, contractor or consultant of the Principal or the TSC Contractor.
- (c) The parties acknowledge that:
- (i) the Independent Certifier has been engaged by the parties prior to OpCo having been engaged by the Principal;
- (ii) the Principal intends that once OpCo has been engaged by the Principal, OpCo will accede to the Independent Certifier Deed;
- (iii) the Independent Certifier is obliged to act independently of OpCo;

- (iv) the Independent Certifier may be engaged by OpCo in relation to the OTS Project Works but will demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to act independently of OpCo;
- (v) the TSC Contractor may not make any Claim against the Principal arising out of or in any way in connection with the Independent Certifier being engaged by OpCo in relation to the OTS Project Works; and
- (vi) neither party may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence because it is engaged by OpCo in relation to the OTS Project Works.

(d) The TSC Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier:

- (i) to attend design meetings;
- (ii) access to all premises where the TSC Contractor's Activities are being carried out; and
- (iii) to insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points,

all as may be:

- (iv) necessary or reasonably required by the Independent Certifier or the Principal's Representative, to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed; or
- (v) requested by the Independent Certifier or (subject to clause 4.2(f)) directed by the Principal's Representative.

(e) The Principal's Representative may provide comments to the Independent Certifier in respect of the TSC Contractor's Activities (with a copy to the TSC Contractor).

(f) The Principal's Representative may direct the insertion of additional Witness Points in the Project Plans but may not direct the insertion of additional Hold Points in the Project Plans (except as permitted in accordance with any Principal's General Specification).

(g) If the Principal becomes liable to the Independent Certifier for any additional costs pursuant to paragraph 3(b) of Schedule 2 of the Independent Certifier Deed and the fact, matter or thing which gives rise to the liability pursuant to paragraph 3(b) of Schedule 2 arose out of or in connection with an act of omission of the TSC Contractor, such costs will be a debt due and payable by the TSC Contractor to the Principal.

4.3 Quality management, verification and certification

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



- (ii) allows the Independent Certifier to observe, monitor, audit and test all aspects of quality in the TSC Contractor's Activities and the durability of the Project Works and the Temporary Works to certify compliance with the requirements of this deed;
 - (iii) requires the Independent Certifier by reviewing and assessing quality in the TSC Contractor's Activities and the durability of the Project Works and the Temporary Works, to certify the TSC Contractor's compliance with the requirements of this deed; and
 - (iv) allows the Principal's Representative to monitor compliance of the TSC Contractor's Activities with the requirements of this deed.
- (b) The TSC Contractor must ensure a Quality Manager is engaged who must:
- (i) independently certify the effectiveness and integrity of the TSC Contractor's quality system in achieving conformance with the requirements of this deed;
 - (ii) report to the Principal's Representative and the Independent Certifier on quality issues in accordance with the requirements of this deed; and
 - (iii) have the requisite experience and ability described for the Quality Manager in Schedule 28.
- (c) The TSC Contractor must provide to the Principal's Representative a certificate executed by the Quality Manager in the form of:
- (i) Schedule 21, within 3 months of the date of this deed;
 - (ii) Schedule 22, every 3 months from the date of this deed until the Date of Construction Completion of the last Portion to achieve Construction Completion;
 - (iii) Schedule 6, as a condition precedent to Construction Completion of any relevant Portion; and
 - (iv) Schedule 10, upon the expiry of the last Defects Correction Period.
- (d) The TSC Contractor must provide to the Principal's Representative a certificate executed by the Independent Certifier in the form of:
- (i) Schedule 23, within 3 months of the date of this deed;
 - (ii) Schedule 24, every 3 months from the date of this deed until the Date of Construction Completion of the last Portion to achieve Construction Completion; and
 - (iii) Schedule 11, upon the expiry of the last Defects Correction Period.
- (e) The Independent Certifier must audit and review each revision of the Quality Plan within 10 Business Days of submission of that plan to the Principal's Representative.
- (f) The TSC Contractor must provide to the Principal's Representative a certificate executed by the Environmental Manager in the form of Schedule 19 every 3 months



from the date of this deed until the Date of Construction Completion of the last Portion to achieve Construction Completion.

4.4 Hold Points and Witness Points

The TSC Contractor must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SWTC and the Quality Plan or inserted in Project Plans by the Independent Certifier pursuant to clause 4.2(d)(iii).

4.5 Project quality non-conformance

- (a) The TSC Contractor must comply with the procedure for non-conformances set out in the SWTC and the Quality Plan. Further to the provisions of clause 8.3(b) of AS/NZS ISO 9001-2008 and without limiting clause 8.4, the use, release or acceptance of nonconforming work can only be given by the Principal's Representative, in its absolute discretion and without being under any obligation to do so.
- (b) In addition to the procedure for non-conformances referred to in clause 4.5(a), and without limiting clause 8.3, if the TSC Contractor has not complied with this deed including the SWTC, the Principal's Representative may give written notice to the TSC Contractor of the TSC Contractor's failure to comply and requiring compliance within a reasonable time specified in the notice.
- (c) If the TSC Contractor does not comply with the notice referred to in clause 4.5(b), the Principal may, subject to clause 16.10(b), employ others to carry out the direction.
- (d) The amount of any Loss the Principal suffers or incurs in taking action contemplated in clause 4.5(c) or as a result of the TSC Contractor's failure to comply with clause 4.5 will be a debt due from the TSC Contractor to the Principal.
- (e) Corrective actions implemented under the TSC Contractor's quality system must comply with the requirements of this deed including the SWTC.
- (f) The TSC Contractor must promptly issue all documents relating to quality non-conformances to the Principal's Representative.

4.6 Monitoring and audits by the Principal's Representative

- (a) The TSC Contractor acknowledges that the Principal's Representative may, at any time up to the Date of Construction Completion of the last Portion to achieve Construction Completion, arrange monitoring and audits (including testing) to see if the TSC Contractor is complying with this deed (including the Quality Plan, Construction Environmental Management Plan, Project WHS Management Plan, the Engineering and Competency Management Plan and the other Project Plans).

(b) The TSC Contractor must:

- (i) make arrangements to ensure that the Principal's Representative (and its nominee) has access to all facilities, documentation, records and personnel (including those of Subcontractors) that are needed by the Principal's Representative for the carrying out of the monitoring and audits referred to in clause 4.6(a); and
- (ii) ensure that the Quality Manager, the Environmental Manager and the TSC Contractor's work health and safety representatives are available, as



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

4.7 Testing

The TSC Contractor must carry out all tests required:

- (a) by this deed; or
- (b) otherwise directed by the Principal's Representative.

The costs of a test which is directed by the Principal's Representative and which is not otherwise required by this deed will be borne by the Principal unless the test detects a Defect or is upon a Defect.

4.8 No relief from obligations

The TSC Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 8) or otherwise according to Law nor will the rights of the Principal whether under this deed or otherwise according to Law be limited or otherwise affected by:

- (a) the implementation of, and compliance with, any quality system or the Quality Plan by the TSC Contractor;
- (b) compliance with any Hold Point and Witness Point procedures;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the TSC Contractor proceeding past any Hold Point or Witness Point or as otherwise directed by the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect whilst participating in any Hold Point or Witness Point procedure including where such failure is the result of a negligent act or omission; or
- (e) any monitoring or audit arranged by the Principal's Representative under clause 4.6 or any discussions between the Quality Manager and the Principal's Representative as contemplated under clause 4.6(b)(ii).



5. Design and Design Documentation

5.1 Design obligations

- (a) The TSC Contractor acknowledges that prior to the date of this deed it prepared the Concept Design. The TSC Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the TSC Contractor of, or the reliance by the TSC Contractor upon, the Concept Design in performing the TSC Contractor's Activities and that such use and reliance will not limit any of its obligations under this deed.
- (b) The TSC Contractor is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:

- (i) the design and construction of the Project Works and the Temporary Works in accordance with the Concept Design costing more than the Project Contract Sum or taking longer than anticipated; and
- (ii) any differences between the Project Works and the Temporary Works which the TSC Contractor is required to design and construct (ignoring for this purpose any differences which are the subject of a Change Order) and the Concept Design including:
 - A. differences necessitated by any Site Conditions encountered; and
 - B. differences required to ensure that the Project Works and the Temporary Works will be and be capable of remaining fit for their intended purposes and satisfy the requirements of this deed,

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

(c) The TSC Contractor warrants to the Principal that:

- (i) the Concept Design has been prepared by the TSC Contractor;
- (ii) it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed despite the Concept Design;
- (iii) if the Project Works and the Temporary Works are designed and constructed in accordance with the Concept Design, the Project Works and the Temporary Works will satisfy the requirements of this deed but nothing in this subparagraph (iii) affects or limits clauses 5.1(a) or 5.1(b), which will prevail to the extent of any inconsistency;
- (iv) it will carry out and complete the TSC Contractor's Activities in accordance with the Concept Design but nothing in this subparagraph (iv) affects or limits clauses 5.1(a), 5.1(b) or 5.1(e), which will prevail to the extent of any inconsistency;
- (v) it will not make any adjustments to the Concept Design that will reduce the:
 - A. durability;
 - B. whole of life performance;
 - C. environment and sustainability performance;
 - D. functional performance; or
 - E. safety,

of any part of the Project Works, or increase user or maintenance costs of any part of the Project Works;

- (vi) it has checked, examined, analysed and carefully considered the SWTC and Environmental Documents and that:
 - A. it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SWTC;
 - B. it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SWTC and Environmental Documents;
 - C. the SWTC is proper, adequate and fit for its intended purpose including for the purpose of enabling the TSC Contractor to carry out the TSC Contractor's Activities in accordance with, and to ensure that the Project Works and the Temporary Works comply with, this deed including the other warranties in this clause 5.1;
 - D. it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the Independent Certifier or the Principal's Representative in accordance with this deed;
 - E. it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the TSC Contractor of, or reliance upon, the SWTC; and
 - F. the use of, or reliance upon, the SWTC does not affect any of its obligations under this deed or entitle the TSC Contractor to make any Claim against the Principal arising out of or in any way in connection with the SWTC;
- (vii) the Design Documentation will:
 - A. satisfy the requirements of the SWTC and the other requirements of this deed;
 - B. be and will remain at all relevant times fit for its intended purpose; and
 - C. be prepared, certified, verified, completed and used in accordance with the requirements of this deed;
- (viii) construction will be carried out in accordance with the Design Documentation which the TSC Contractor is entitled to use for construction purposes in accordance with clause 5.2(m);
- (ix) construction carried out in accordance with the Design Documentation which the TSC Contractor is entitled to use in accordance with clause 5.2(m) will satisfy the requirements of this deed; and
- (x) each Portion (both individually and in combination with any earlier completed Portions), the Project Works as a whole and the Handover Works, will:

- A. be completed in accordance with, and satisfy the requirements of, this deed;
- B. upon Construction Completion, be fit for their intended purposes; and
- C. thereafter be capable of remaining at all relevant times fit for their intended purposes.

(d) The TSC Contractor agrees that its obligations under, and the warranties given in, this clause 5.1 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:

- (i) any design work carried out by others prior to the date of this deed and incorporated in this deed;
- (ii) subject to clause 6.2(f), any Change the subject of a Direction by the Principal's Representative; or
- (iii) the termination (for any reason) of this deed.

Despite any provision to the contrary in this deed, the TSC Contractor will not be regarded as being in breach of any obligation under this deed in respect of or relating to any requirement that:

- (i) the alignment, locations, dimensions and clear openings for the Project Works (including the Third Party Works) and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference), by reason alone that the alignment, locations, dimensions and clear openings of the Project Works (including the Third Party Works) and any related Design Documentation complies with the alignment, locations, dimensions and clear openings documented in Appendix 3 of the SWTC; or
- (ii) the Works and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference), by reason alone that the TSC Contractor has relied on the load cases specified in Appendix 16 of the SWTC for the purpose of designing the Works.



5.2 Preparation of Design Documentation

- (a) The TSC Contractor must give the Independent Certifier and the Principal's Representative throughout the preparation of the Design Documentation the opportunity to review, to comment on and to monitor the design performance of the TSC Contractor in accordance with this clause 5.2.
- (b) The TSC Contractor must develop and complete all Design Documentation in accordance with this deed, the Third Party Agreements and the Design Plan.
- (c) The TSC Contractor must give the Principal's Representative, the Independent Certifier and all relevant Authorities, at the Developed Concept Design Stage and the Substantial Detailed Design Stage of each discrete design component of the TSC Contractor's Activities, or part or element of it, three sets of all Design Documentation (including electronic copies as required by Appendix 23 of the

SWTC) relating to that design component, or part or element of it, together with the information required by the TSC Contractor Documentation Schedule.

The sets of Design Documentation for each design component, or part or element of it, must:

- (i) include all Design Documentation for the Project Works and the Temporary Works that are relevant to that design component, or part or element of it;
- (ii) be submitted progressively and in a timely manner in accordance with the Overall D&C Program;
- (iii) be submitted in a manner which, having regard to the quantum of Design Documentation submitted, will allow the Principal's Representative and the Independent Certifier and relevant Authorities a reasonable opportunity to review the Design Documentation having regard to the time period allowed by this deed for them to review the Design Documentation;
- (iv) where they relate to WAD Works, comply with the requirements of the WAD; and
- (v) where they relate to TSC Rail Zone Works, comply with the requirements of the PETIA.

The Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the TSC Contractor in respect of the Design Documentation submitted by the TSC Contractor at the Developed Concept Design Stage and the Substantial Detailed Design Stage.

The TSC Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may, in respect of Design Documentation submitted by the TSC Contractor at the Developed Concept Design Stage, the Substantial Detailed Design Stage and the Final Design Documentation Stage:

- (vi) provide copies of any such Design Documentation received from the TSC Contractor to; and
- (vii) seek comments from and take into account the views of, the tenderers for the OTS Project Works, OpCo and any Authority.

The Principal's Representative may (but is not obliged to) make comments to the Independent Certifier in respect of the Design Documentation submitted by the TSC Contractor at the Developed Concept Design Stage, the Substantial Detailed Design Stage and the Final Design Documentation Stage.

The TSC Contractor is not required to submit to the Principal's Representative or the Independent Certifier any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works or the Handover Works, however, if at any time the Principal's Representative or the Independent Certifier requests the TSC Contractor to provide any such Design Documentation, the TSC Contractor must do so within 5 Business Days of the request.

- (d) The Design Documentation in respect of the Substantial Detailed Design Stage must be consistent with and be a logical development of the relevant Design



Documentation provided to the Principal's Representative and the Independent Certifier at the Developed Concept Design Stage, subject to changes to ensure compliance with this deed.

The Final Design Documentation referred to in clause 5.2(i) must be consistent with and be a logical development of the relevant Design Documentation provided to the Principal's Representative and the Independent Certifier at the Substantial Detailed Design Stage subject to changes to ensure compliance with this deed.

- (e) If the Design Documentation the TSC Contractor intends to submit at the Substantial Detailed Design Stage or the Final Design Documentation Stage, in respect of a design component, or part or element of it, does not comply with the requirements of clause 5.2(d):
- (i) the TSC Contractor must, prior to submitting the Design Documentation for the Substantial Detailed Design Stage or the Final Design Documentation Stage (as relevant), submit to the Principal's Representative and the Independent Certifier the Design Documentation that would have been required at the Developed Concept Design Stage (or such later stage as the Principal's Representative may agree) if the proposed changes to the design of that design component, or part or element of it, had been made at the Developed Concept Design Stage (or such later stage as the Principal's Representative may agree) and the process in this clause 5.2 in respect of Design Documentation will reapply as though the TSC Contractor had not previously submitted any Design Documentation in respect of the particular design component, or part or element of it; or
 - (ii) the TSC Contractor must amend that Design Documentation so as to comply with the requirements of clause 5.2(d).
- (f) The Final Design Documentation for each design component, or part or element of it, referred to in section 23.3.1(a) of Appendix 23 of the SWTC and any other design component, or part or element of it, nominated by the Principal's Representative (including any shop drawings that are required to provide the level of detail required by clause 5.2(i)) must be:
- (i) certified by the Subcontractor which prepared the design and the TSC Contractor as being appropriate for construction;
 - (ii) certified by the Subcontractor which prepared the design and the TSC Contractor as complying with this deed including the SWTC and, in particular, the durability requirements in section 4.6 of the SWTC and the design life requirements of section 5.2 of the SWTC; and
 - (iii) certified by the TSC Contractor as not involving or constituting a Change which has not been the subject of a Change Order or a notice under clause 6.6(d).
- (g) The design components referred to in clauses 5.2(c), 5.2(e) and 5.2(f) include the design components listed in section 23.3.1(a) of Appendix 23 of the SWTC.
- (h) The certification of the:
- (i) Subcontractor required under clause 5.2(f), must be in the form shown in Schedule 8; and

(ii) TSC Contractor required under clause 5.2(f), must be in the form shown in Schedule 9.

(i) The TSC Contractor must:

(i) submit to each of the Principal's Representative and the Independent Certifier and all relevant Authorities:

- A. one electronic set of all Final Design Documentation of each design component, or part or element of it, including all Design Documentation for the Temporary Works, certified in accordance with clause 5.2(f) including amended versions so certified and which, in the case of submission to the Principal's Representative and Independent Certifier, must be submitted via the PDCS (or by such other method notified by the Principal's Representative to the TSC Contractor);
- B. physical copies of the relevant certification of any Subcontractor which prepared the design; and
- C. in the case of Authorities, the number of physical copies of Final Design Documentation requested by the Authority,

and must store a hard copy of such Final Design Documentation in a secure location in accordance with the requirements of Appendix 23 of the SWTC or by such other method notified to the TSC Contractor by the Principal's Representative;

(ii) allow 15 Business Days (**Design Review Period**) from the later of:

- A. the date the sets of Final Design Documentation of each design component, or part or element of it, are submitted to the Principal's Representative, the Independent Certifier and all relevant Authorities in accordance with clause 5.2(i)(i); and
- B. the date the TSC Contractor delivers a presentation workshop in accordance with clause 5.2(q), where requested by the Principal's Representative,

for the Principal's Representative and Independent Certifier (if either of them so desires) to review the Design Documentation (not including Design Documentation for the Non-Reviewable Temporary Works or the Handover Works), consult with others in respect of the Design Documentation and to consult with the TSC Contractor and comment on that Design Documentation;

(iii) allow 5 Business Days after the expiry of the Design Review Period for the Independent Certifier to either provide certification or reject any such Design Documentation (not including Design Documentation for the Non-Reviewable Temporary Works or the Handover Works), as referred to in clause 5.2(j);

(iv) not use that Design Documentation (not including Design Documentation for the Non-Reviewable Temporary Works or the Handover Works) for construction purposes except as permitted by clause 5.2(m); and



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- (v) not amend for construction purposes any Design Documentation (not including Design Documentation for the Non-Reviewable Temporary Works or the Handover Works) which has:
 - A. been submitted to the Principal's Representative, the Independent Certifier and all relevant Authorities in accordance with this clause 5.2(i);
 - B. not been rejected under clause 5.2(j)(i)A; and
 - C. been certified by the Independent Certifier pursuant to clause 5.2(j)(i)B,

unless it first submits the proposed amendments (duly certified under clause 5.2(f)) to the Principal's Representative, the Independent Certifier and all relevant Authorities and the process in this clause 5.2(i) has been reapplied to the proposed amendments.

For the purposes of this clause 5.2(i), the Final Design Documentation (not including Design Documentation for the Non-Reviewable Temporary Works or the Handover Works) which must be provided by the TSC Contractor must be of a level of detail which is sufficient to permit the Independent Certifier, the Principal's Representative and all relevant Authorities to determine whether the Design Documentation does, and the Project Works or Temporary Works which will be constructed in accordance with the Design Documentation will, comply with this deed and for this purpose does not need to include any shop drawings unless these are necessary to provide this level of detail.

- (j) The Principal and the TSC Contractor acknowledge and agree that:
 - (i) the Independent Certifier must, within 5 Business Days after the expiry of the Design Review Period, either:
 - A. reject the Design Documentation (not including Design Documentation for the Non-Reviewable Temporary Works or the Handover Works) submitted to it under clause 5.2(i) (including for a failure to comply with the requirements of clauses 5.2(d) or 5.2(e)) and provide reasons for the rejection; or
 - B. certify the Design Documentation (not including Design Documentation for the Non-Reviewable Temporary Works or the Handover Works) by:
 - 1) including a notation on each document forming part of the Design Documentation;
 - 2) providing to the Principal's Representative, the TSC Contractor and OpCo a document signed by the Independent Certifier in the form in Schedule 25;
 - 3) where the Design Documentation relates to WAD NWRL Works or WAD Road Works, providing to the Principal's Representative and the TSC Contractor a document signed by the Independent



Certifier in the form of Part 1 or Part 2 of Schedule 3 of the WAD (as applicable); and

- 4) where the Design Documentation relates to TSC Rail Zone Works, providing to the Principal's Representative and the TSC Contractor a document signed by the Independent Certifier in the form of Schedule 5 of the PETIA; and
- (ii) the Principal's Representative may at any time (including after the Independent Certifier has certified the Design Documentation pursuant to clause 5.2(j)(i)B) direct the TSC Contractor to make amendments to the Design Documentation and clause 5.2(k) shall apply.
- (k) If any Design Documentation is rejected by the Independent Certifier under clause 5.2(j)(i)A or is the subject of a Direction by the Principal's Representative under clause 5.2(j)(ii), the TSC Contractor must promptly amend the Design Documentation and:
- (i) have it certified under clause 5.2(f); and
- (ii) re-submit it to the Principal's Representative, the Independent Certifier and all relevant Authorities,

and after this the process in clause 5.2(i) will be reapplied to the amended Design Documentation, except that the Design Review Period for the re-submitted Design Documentation will be such period as is reasonable having regard to the nature of the changes made to the Design Documentation (which period must not exceed 15 Business Days).

- (l) If the TSC Contractor considers that any Design Documentation which [REDACTED] is the subject of a Direction by the Principal's Representative under clause 5.2(j)(ii) constitutes or involves a Change, the TSC Contractor must if it wishes to make a Claim in relation to the matter give a notice and submit a claim in accordance with, and otherwise comply with clause 6.3.


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(m) Unless otherwise approved in writing by the Principal's Representative and except for any Design Documentation for Non-Reviewable Temporary Works or the Handover Works, the TSC Contractor must only use for construction purposes any Design Documentation to the extent that it has:

- (i) been certified by the Subcontractor who prepared it and by the TSC Contractor under clause 5.2(f);
- (ii) been submitted to the Principal's Representative, the Independent Certifier and all relevant Authorities under clause 5.2(i) and the period referred to in clause 5.2(i)(iii) has expired without the Independent Certifier having rejected the Design Documentation under clause 5.2(j)(i)A; and
- (iii) been certified by the Independent Certifier under clause 5.2(j)(i)B.

(n) The Principal and the TSC Contractor acknowledge and agree that:

- (i) neither the Principal nor the Principal's Representative assume a duty or owe any duty to the TSC Contractor to review the Design

Documentation for errors, omissions or compliance with the requirements of this deed or to consult with the TSC Contractor or make any comments regarding any Design Documentation; and

(ii) neither:

- A. any review or rejection of, or consultation or comments by the Principal, the Principal's Representative or the Independent Certifier, nor any failure by the Principal, the Principal's Representative or the Independent Certifier regarding, any Design Documentation or any other Direction by the Principal's Representative in respect of any Design Documentation; nor
- B. the certification of any Design Documentation by the Independent Certifier under clause 5.2(j)(i)B,

will lessen or otherwise affect:

- C. the TSC Contractor's warranties under clause 5.1 or any other of its liabilities or responsibilities under this deed or otherwise according to Law; or
- D. the Principal's rights against the TSC Contractor, whether under this deed or otherwise according to Law.

- (o) The TSC Contractor must give the Principal's Representative four hard copy sets of all Final Design Documentation which it is entitled pursuant to this clause 5.2 to use for construction purposes in accordance with the requirements of the SWTC.
- (p) The TSC Contractor must give the Principal's Representative four hard copy sets and one copy in electronic format of surveys and work as executed Design Documentation in accordance with the requirements of the SWTC.
- (q) The TSC Contractor must, at its cost, also deliver up to 10 design presentation workshops of four hours each at times requested by the Principal's Representative and attended by all relevant personnel from the TSC Contractor's design team to the nominees of the Principal's Representative and the Independent Certifier on the status and detail of the Design Documentation of any discrete design part or element in the TSC Contractor's Activities requested by the Principal's Representative.

5.3 Ownership of documentation

- (a) Documents (including Design Documentation) supplied by or on behalf of the TSC Contractor will be the Principal's property.
- (b) The TSC Contractor (irrevocably for all time and despite any termination of this deed for any reason):
 - (i) to the fullest extent permitted by law, assigns to the Principal all of the TSC Contractor's right, title and interest in the Intellectual Property Rights in or relating to:
 - A. the Design Documentation; and

- B. the materials, documents, images, photographs and software relevant to the TSC Contractor's Activities (other than processes and methods of working),

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

- (ii) in respect of all other Intellectual Property Rights in or relating to:

- A. the Contract Documentation and Materials; and
- B. the Temporary Works (other than the Handover Works) and the processes and methods of working relevant to the TSC Contractor's Activities (collectively called the **Contract Processes**),

grants to the Principal an irrevocable, royalty free, perpetual and fully assignable licence to use (and to sublicense others to use) the same for:

- C. the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the TSC Contractor's Activities or the Project Works and the Temporary Works;
- D. any purpose associated with further development of the Construction Site; and
- E. any other purpose,

which licence is effective immediately and will survive termination of this deed on any basis.

- (c) The TSC Contractor:

- (i) warrants that the Principal's use of the Contract Documentation and Materials, or any other work provided by the TSC Contractor under this deed, will not infringe any author's moral rights under the *Copyright Act* 1968 (Cth) or similar legislation in any jurisdiction; and
- (ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's moral rights under the *Copyright Act* 1968 (Cth) or similar legislation in any jurisdiction in connection with the Project Works, the Temporary Works, the TSC Contractor's Activities or the Contract Documentation and Materials.

- (d) For the purposes of clause 5.3(c), the Principal's use of the Contract Documentation and Material includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or Material or part of the Project Works or Temporary Works to which the Contract Documentation or Material or any other work provided by the TSC Contractor under this deed relates:



- (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.
- (e) The TSC Contractor agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents and do such further things (including assisting in relation to any litigation commenced by or brought against the Principal or its licensees, assignees or successors and their licensees, or any other person authorised by it) as reasonably requested by the Principal to give full effect to the provisions of this deed and to allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by it) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned or licensed Intellectual Property Rights (as the case may be) or of any such adaptation) or to prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.
- (f) The TSC Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 5.3 if the TSC Contractor fails to execute the document or do the relevant act or thing within 5 Business Days of a written request by the Principal's Representative.
- (g) The Principal grants to the TSC Contractor a royalty free licence for the duration of this deed to use, only for the purpose of executing the TSC Contractor's Activities, the Principal's Intellectual Property Rights in respect of which the Principal has absolute title under clause 5.3(b)(i).
- (h) The TSC Contractor warrants that:
- (i) the:
 - A. assignment to the Principal and any use of the Intellectual Property Rights assigned under this clause 5.3; and
 - B. use of the Intellectual Property Rights licensed under this clause 5.3 pursuant to the terms of this deed,does not and will not infringe the Intellectual Property Rights of any party;
 - (ii) were it not for the assignments effected by this deed, the TSC Contractor would be the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 5.3(b)(i); and
 - (iii) the TSC Contractor is either:
 - A. the absolute and unencumbered legal and beneficial owner of the Intellectual Property Rights referred to in clause 5.3(b)(i); or
 - B. able to grant the licence granted in clause 5.3(b)(ii).



(i) Without limiting clause 5.3(h), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by it, of the Contract Documentation and Materials, the Contract Processes, the TSC Contractor's Activities or the Project Works or any part of them, being disrupted, impaired or adversely affected, the TSC Contractor must at its own expense and at the Principal's option:

(i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by it the right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 5.3, in accordance with this deed; or

(ii) modify or replace the Contract Documentation and Materials, the Contract Processes, the TSC Contractor's Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 5.3, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, the TSC Contractor's Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 5.3 will:

- A. comply with the requirements of this deed; and
- B. not limit or otherwise affect the Principal's rights, or the TSC Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.

(j) The TSC Contractor indemnifies, and agrees to keep indemnified, the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:

- (i) a breach by the TSC Contractor of any warranty set out in this clause 5.3; or
- (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Contract Processes, the TSC Contractor's Activities or the Project Works or any part of them.

(k) The TSC Contractor:

- (i) acknowledges that the Principal may provide OpCo with copies of any documents (including Design Documentation) provided to the Principal or the Independent Certifier by or on behalf of the TSC Contractor in any way in connection with this deed, the Project Works, the Temporary Works or the TSC Contractor's Activities; and
- (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation or Materials that OpCo may reasonably require.

5.4 Delivery up of Design Documentation

If this deed is terminated whether pursuant to clause 14 or otherwise at Law:



- (a) the TSC Contractor must:
 - (i) subject to clause 5.4(b), immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not and including any Design Documentation stored electronically) then in existence to the Principal; and
 - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Design Documentation; and
- (b) the TSC Contractor and each Subcontractor may retain a copy of all such Design Documentation.

5.5 Reference Design

- (a) The TSC Contractor acknowledges that prior to the date of this deed the Principal prepared the Reference Design, a copy of which was provided to the TSC Contractor as an Information Document.
- (b) The Reference Design will not form part of this deed and is subject to the provisions of this deed and the Deeds of Disclaimer concerning Information Documents.
- (c) The TSC Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the TSC Contractor of, or the reliance by the TSC Contractor on, the Reference Design and the existence of the Reference Design will not limit any of the TSC Contractor's obligations under this deed, including that the TSC Contractor remains responsible for ensuring that the Project Works and the Temporary Works satisfy the requirements of this deed.

5.6 Design Life

- (a) The TSC Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 109ZK of the EP&A Act in respect of the design lives of the asset components referred to in section 5.2 of the SWTC where those design lives are for periods longer than those provided for in those Acts.
- (b) If the waiver referred to in clause 5.6(a) is held to be without effect or otherwise unenforceable, or if it is severed from this deed, the TSC Contractor shall indemnify and keep the Principal indemnified at all times from and against all Loss that the Principal may suffer or incur arising out of or in connection with the Principal's loss of the benefit of the waiver.
- (c) The indemnity in clause 5.6(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in section 5.2 of the SWTC.
- (d) The parties agree that any action by the Principal on the indemnity in clause 5.6(b) is not a "building action" for the purposes of section 109ZI of the EP&A Act.
- (e) Nothing in this clause 5.6 limits the operation of any other indemnity in this deed.

6. Changes

6.1 Proposed Changes

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

(i) the effect which the TSC Contractor anticipates the Change will have on:

- A. the Design Contract Sum and the Design Payment Schedule;
- B. the Construction Contract Sum and the Construction Payment Schedule and any potential impacts on the costs of maintaining and using the Project Works and the Handover Works;
- C. each Program and the TSC Contractor achieving Construction Completion of each Portion by the relevant Date for Construction Completion and if the proposed Change would entitle the TSC Contractor to an extension of time, the amount of its entitlement under clause 11.6 arising from that extension of time;
- D. the performance of the TSC Contractor's Activities, the Project Works and the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and
- E. the functionality or integrity of the elements of the TSC Contractor's Activities, the Project Works and the Temporary Works and the quality or performance standards required by this deed, including specific details of:

- 1) the elements of the TSC Contractor's Activities, the Project Works and the Temporary Works that will be affected;
- 2) how and to what extent the functionality or integrity of those elements will be affected;
- 3) the quality or performance standards affected and how and to what extent they will be affected; and
- 4) any adverse effect which the Change will have on the TSC Contractor's ability to satisfy its obligations under this deed (including any warranties the TSC Contractor is required to give under this deed); and

(ii) any other information concerning the proposed Change which the Principal's Representative requires including:



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- A. sufficient details to allow the Principal to reconsider the need for the Change;
- B. the direct net costs that the TSC Contractor anticipates would be incurred by it if a direction was given under clause 11.7 to compress the performance of the TSC Contractor's Activities to overcome part or all of any delay in achieving Construction Completion of a relevant Portion by the relevant Date for Construction Completion caused by the Change specified in the "Change Proposal Request"; and
- C. whether any land in addition to the Construction Site is required to implement the Change; and

■ [REDACTED]

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

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

6.2 Change Orders

- (a) Whether or not the Principal's Representative has issued a "Change Proposal Request" under clause 6.1(a), the Principal's Representative may at any time, by a written document titled "Change Order", direct the TSC Contractor to carry out a Change as specified in the "Change Order".

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

- (i) where the TSC Contractor has provided a notice under clause 6.1(a) with respect to the Change, whether any one or more of the following will be adjusted as set out in the TSC Contractor's notice under clause 6.1(a):
 - A. the Design Contract Sum and the Design Payment Schedule;
 - B. the Construction Contract Sum and the Construction Payment Schedule; and


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- C. a relevant Date for Construction Completion; or
- (ii) where the Principal's Representative's notice under subparagraph (i) states that the Principal's Representative does not agree with the TSC Contractor's notice under clause 6.1(a), or where no "Change Proposal Request" has been issued under clause 6.1, that any adjustment to:
 - A. the Design Contract Sum and the Design Payment Schedule; and
 - B. the Construction Contract Sum and the Construction Payment Schedule,will be made under clause 6.4(d).
- (b) Where the TSC Contractor receives a Change Order, it must perform its obligations under this deed in accordance with the Change specified in the Change Order.
- (c) There is no limitation on the power of the Principal's Representative to direct a Change, and no Change or direction to carry out a Change will invalidate this deed.
- (d) Where the TSC Contractor receives a Change Order but the Principal's Representative has not issued a "Change Proposal Request" under clause 6.1(a), the TSC Contractor may, within 10 Business Days of receipt of the Change Order (or such longer period as the Principal's Representative may direct), provide the Principal's Representative with a notice setting out the details specified in clause 6.1(a)(i)D and 6.1(a)(i)E.
- (e) Without limiting clause 8, the Principal's Representative may issue a Change Order at any time up to Construction Completion of the last Portion to reach Construction Completion.
- (f) If:
 - (i) the Principal's Representative issues a Change Order or directs a Change under any other provision of this deed;
 - (ii) the relevant Change Order or Change did not arise from any act or omission (including breach) of the TSC Contractor or any of its Associates; and
 - (iii) the TSC Contractor has provided the Principal's Representative with written notice under and within the time required by clause 6.1(a), 6.2(d) or 6.3(a) (whichever is applicable), containing details of the effect which the TSC Contractor anticipates the Change will have on:
 - A. the performance of the TSC Contractor's Activities, the Project Works or the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and/or
 - B. the functionality or integrity of any of the elements of the TSC Contractor's Activities, the Project Works or the Temporary Works or the quality or performance standards required by this deed, including specific details of:



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- 1) the elements of the TSC Contractor's Activities, the Project Works or the Temporary Works that will be affected;
- 2) how and to what extent the functionality or integrity of those elements will be affected;
- 3) the quality or performance standards affected and how and to what extent they will be affected; and
- 4) any adverse effect which the Change will have on the TSC Contractor's ability to satisfy its obligations under this deed,

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

- (iv) the matters notified by the TSC Contractor in the relevant written notice under clause 6.1(a), 6.2(d) or 6.3(a); and
- (v) the actual adverse effect which the Change has upon:

A. the performance of the TSC Contractor's Activities, the Project Works or the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and/or

B. the functionality or integrity of any of the elements of the TSC Contractor's Activities, the Project Works or the Temporary Works or the quality or performance standards required by this deed, including specific details of:

- 1) the elements of the TSC Contractor's Activities, the Project Works or the Temporary Works that will be affected;
- 2) how and to what extent the functionality or integrity of those elements will be affected;
- 3) the quality or performance standards affected and how and to what extent they will be affected; and
- 4) any adverse effect which the Change will have on the TSC Contractor's ability to satisfy its obligations under this deed.

(g) If the TSC Contractor fails to notify the Principal's Representative under clause 6.1(a), 6.2(d) or 6.3(a) of any adverse effect of a Change on:

- (i) the performance of the TSC Contractor's Activities, the Project Works or the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and/or
- (ii) the functionality or integrity of any of the elements of the TSC Contractor's Activities, the Project Works or the Temporary Works or the quality or performance standards required by this deed, including specific details of:



- A. the elements of the TSC Contractor's Activities, the Project Works or the Temporary Works that will be affected;
- B. how and to what extent the functionality or integrity of those elements will be affected;
- C. the quality or performance standards affected and how and to what extent they will be affected; and
- D. any adverse effect which the Change will have on the TSC Contractor's ability to satisfy its obligations under this deed,

then:

- (iii) the TSC Contractor will be deemed to have warranted to the Principal that the Change does not have any such adverse effect and the Change will not limit or otherwise affect the TSC Contractor's obligations under this deed; and
- (iv) the relevant Change will not be taken to limit or otherwise affect the TSC Contractor's obligations under this deed.

6.3 Notice of Change

- (a) If the TSC Contractor believes any Direction of the Principal's Representative, other than the issuing of a Change Order, constitutes or involves a Change it must, if it wishes to make a Claim against the Principal arising out of or, or in any way in connection with, the Direction:
 - (i) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with, the Direction, give notice to the Principal's Representative that sets out:
 - A. that it considers the Direction constitutes or involves a Change;
 - B. details of the relevant Direction; and
 - C. details of why it considers the Direction constitutes or involves a Change; and
 - (ii) within 10 Business Days of giving the notice under clause 6.3(a)(i) (or such longer period as the Principal's Representative may direct), submit a written Claim to the Principal's Representative which includes detailed particulars of:
 - A. why the TSC Contractor believes the Direction constitutes or involves a Change;
 - B. the details specified in clause 6.1(a)(i);
 - C. the Direction, including the date or dates of the Direction and any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;

- D. the provisions of this deed or other legal basis upon which the Claim is based; and
 - E. the amount claimed and how it has been calculated,
- failing which the TSC Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Principal's Representative's Direction.
- (b) Despite the fact that the TSC Contractor considers that a Direction by the Principal's Representative constitutes or involves a Change, the TSC Contractor must continue to carry out the TSC Contractor's Activities in accordance with this deed including any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 6.3(a).
 - (c) If the TSC Contractor issues a notice under clause 6.3(a), the Principal may:
 - (i) confirm that the Direction constitutes or involves a Change, or entitles the TSC Contractor to make a Claim, by the giving of a notice under this clause 6.3(c)(i), in which case the TSC Contractor must comply with the Direction;
 - (ii) deny that the Direction constitutes or involves a Change, or entitles the TSC Contractor to make a Claim, by the giving of a notice under this clause 6.3(c)(ii), in which case the TSC Contractor:
 - A. may within 10 Business Days of the receipt of the notice issue a notice of dispute under clause 15.3; and
 - B. unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
 - (iii) withdraw the Direction by giving a notice under this clause 6.3(c)(iii).
 - (d) If within 20 Business Days after first receipt of the notice under clause 6.3(a)(i), the Principal's Representative has not taken any action under clause 6.3(c), the Principal's Representative will be deemed to have given a notice under 6.3(c)(ii).

6.4 Valuation

Subject to clauses 6.3, 6.6(h), 6.7(c)(ii)A, 8.3 and 17, one or more of the following will, to the extent required by this deed, be adjusted for all Changes which have been the subject of a Direction by the Principal's Representative:

- (a) the Design Contract Sum and the Design Payment Schedule; and
 - (b) the Construction Contract Sum and the Construction Payment Schedule;
- by:
- (c) to the extent that clause 6.2(a)(i) applies, the agreed amount specified in the Change Order; or
 - (d) to the extent clause 6.2(a)(ii) applies:

(i) the net cost of the work (including Materials) to be added and/or omitted as a result of the Change, valued:

A. where the Change relates to the removal of any Handover Works and:

1) the direction to carry out the Change is given on or before the date which is 5 Business Days after the TSC Contractor's notice under clause 11.11(a)(ii) in relation to the relevant Portion to which the Handover Works relate, on the basis of any applicable rates and prices set out in the Construction Payment Schedule under the heading "Schedule of prices for removal of Handover Works" (without the application of any additional margin for overheads and profit); or

2) the direction to carry out the Change is given after the date referred to in clause 6.4(d)(i)A.1, in accordance with clause 6.4(d)(i)C;

B. where applicable, on the basis of the schedule of prices and daywork rates set out in the Design Payment Schedule and the Construction Payment Schedule and where relevant, on the basis of any other appropriate data including, where work is directed to be carried out (or, if applicable, omitted or deleted) by a direction given by the Principal's Representative under clause 6.7(a) after the relevant date set out in Schedule 38 and to the extent it is reasonable to use it in respect of a Pre-Agreed Change, the details in Schedule 38 relevant to that Pre-Agreed Change; or

C. otherwise on the basis of a reasonable amount which will include a margin for overheads and profit in accordance with the Design Payment Schedule and the Construction Payment Schedule which will be in total satisfaction of all the TSC Contractor's on-site overheads, preliminaries (including administrative costs, site supervision, establishment costs and attendance), off-site overheads and profit,

such value to be as stated by the Principal's Representative; and

(ii) if the Change will delay the TSC Contractor in carrying out the TSC Contractor's Activities, a reasonable amount for any increased costs which will be reasonably incurred by the TSC Contractor due to the delay that the Change will cause in the carrying out of the TSC Contractor's Activities, such amount to be as stated by the Principal's Representative,

provided however that where the Principal's Representative has issued a Change Proposal Request, the TSC Contractor's entitlement under this clause will not exceed any amount set out in the TSC Contractor's notice under clause 6.1(a).

6.5 Omissions

If the Principal's Representative directs a Change omitting or deleting any work from the TSC Contractor's Activities:

- (a) the Principal may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the TSC Contractor as a result of any work being omitted or deleted from the TSC Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages another person or persons to carry out and execute the omitted or deleted work; and
- (c) except for work omitted or deleted by a direction by the Principal's Representative made under clause 6.7(a) by the relevant date set out in Schedule 38, the work which has been omitted or deleted shall be valued in accordance with clause 6.4.

6.6 TSC Contractor may propose Change

- (a) The Principal and the TSC Contractor acknowledge that:
 - (i) the design and construct project delivery method chosen is intended, among other things, to allow the TSC Contractor to identify:
 - A. Changes which may enhance the quality of the TSC Contractor's Activities; and
 - B. Changes which may permit project cost savings while maintaining or enhancing the quality of the TSC Contractor's Activities; and
 - (ii) it is their intention that any cost savings should benefit the Principal and the TSC Contractor equally.
- (b) The TSC Contractor may propose a Change by giving written notice to the Principal's Representative with details of the proposed Change.
- (c) On receiving a notice under clause 6.6(b), the Principal's Representative may give written notice to the TSC Contractor requiring it to give the Principal's Representative:
 - (i) details of:
 - A. the proposed Change in addition to those provided in accordance with clause 6.6(b);
 - B. the reason for the proposed Change;
 - C. the effect of the proposed Change on the TSC Contractor's Activities;
 - D. the effect of the proposed Change on the Program and the Dates for Construction Completion of the Portions; and
 - E. the cost effect of assessing and carrying out the proposed Change, including:


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- 1) where the proposed Change will involve additional costs, any increased costs;
 - 2) where the proposed Change will lead to cost savings, proposals for any cost savings arising from the Change; and
 - 3) the effect the proposed Change will have on operating and maintenance costs;
- (ii) a written statement stating that the proposed Change:
- A. will not adversely affect the functional integrity of any of the elements of the TSC Contractor's Activities and the performance standards required by this deed; and
 - B. will not adversely affect the quality standards required under this deed; and
- (iii) any other information and supporting documentation the Principal's Representative requires.
- (d) Subject to clause 6.6(e), the Principal's Representative:
- (i) (in its absolute discretion) may, by notice in writing, approve or reject any Change the TSC Contractor proposes; and
 - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the TSC Contractor.

Prior to giving any direction under this clause 6.6(d), the Principal's Representative may seek to negotiate with the TSC Contractor over the level of cost increase or savings arising from the proposed Change. If the parties agree in writing upon a different level of cost increase or savings, the TSC Contractor's notice will be deemed to be amended by the inclusion of this different level of cost increase or savings in place of the original cost increase or savings notified by the TSC Contractor.

- (e) If a Change proposed by the TSC Contractor relates solely to Non-Reviewable Temporary Works (not including the Handover Works), the Principal's Representative will not unreasonably withhold its approval to any such proposed Change.

If the Principal's Representative gives a direction under clause 6.6(d) approving a Change proposed by the TSC Contractor, the TSC Contractor must perform its obligations under this deed in accordance with the approved Change.

- (g) With respect to any Change approved by the Principal's Representative pursuant to a direction under clause 6.6(d), the Project Contract Sum will be:

- (i) if the Change gives rise to a cost increase, increased by the cost increase notified by the TSC Contractor under clause 6.6(c)(i)E; or
- (ii) if the Change gives rise to cost savings, decreased by 50% of the cost savings notified by the TSC Contractor under clause 6.6(c)(i)E,



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or such other increased or decreased amount (as appropriate) as may be agreed between the Principal and the TSC Contractor pursuant to clause 6.6(d) and prior to the Principal's Representative's direction under clause 6.6(d).

(h) The TSC Contractor will:

(i) bear all costs:

- A. associated with proposing a Change under clause 6.6(b);
- B. associated with providing details under clause 6.6(c);
- C. reasonably incurred by the Principal (or the Principal's Representative) or OpCo in assessing the proposed Change (such costs (including the costs of the OpCo) to be a debt due from the TSC Contractor to the Principal); and

(ii) unless otherwise agreed and except as provided for in clause 6.6(g)(i):

- A. where a proposed Change is approved by the Principal's Representative, bear all costs associated with assessing and carrying out the proposed Change; and
- B. not be entitled to make any Claim against the Principal arising out of or in connection with the Change.

6.7 Pre-Agreed Changes

- (a) Subject to clause 6.7(f), the Principal's Representative may, in its absolute discretion and without being under any obligation to do so, direct by way of Change any Pre-Agreed Change by giving written notice to the TSC Contractor.
- (b) The Principal and the TSC Contractor agree that if a notice pursuant to clause 6.7(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule 38, this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in Schedule 38 from the date the TSC Contractor receives such notice.
- (c) Where the Principal's Representative directs a Pre-Agreed Change by giving written notice to the TSC Contractor by the relevant date referred to in clause 6.7(b), the TSC Contractor, in respect of that Pre-Agreed Change:

(i) must carry out its obligations under this deed as amended by clause 6.7(b); and

(ii) acknowledges that:

A. any adjustment of the components of the Project Contract Sum made pursuant to clause 6.7(b) will be full compensation for any Loss or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the Project Contract Sum under clause 6.4; and

B. the TSC Contractor is not entitled to make any Claim for:



- 1) any acceleration to the carrying out of the TSC Contractor's Activities which the TSC Contractor must perform at any time in order to achieve Construction Completion of a relevant Portion by its Date for Construction Completion; or
 - 2) any extension of time for any delay to the carrying out of the TSC Contractor's Activities,
- in connection with the issue of such a notice or the amendment of this deed pursuant to clause 6.7(b).
- (d) Nothing in this clause prevents the Principal's Representative from:
- (i) issuing a "Change Proposal Request" as referred to in clause 6.1(a); or
 - (ii) directing a Change by issue of a Change Order,
- that involves the same (or similar) changes to the Project Works as a Pre-Agreed Change after the relevant date for giving notice of the Pre-Agreed Change specified in Schedule 38.
- (e) If the Principal's Representative:
- (i) issues a "Change Proposal Request" as referred to in clause 6.1(a); or
 - (ii) directs a Change by issue of a Change Order,
- which involves the same or similar changes to the Project Works as are required by a Pre-Agreed Change and which is issued or directed (as relevant) after the relevant date in Schedule 38 for that Pre-Agreed Change, the Principal and the TSC Contractor agree that the Change will be valued in accordance with the process in clauses 6.1, 6.2 and 6.4.
- (f) The Principal's Representative may only give a notice under clause 6.7(a) in respect of Pre-Agreed Change 2 if the parties have agreed on the terms of a lease (as described in Schedule 38) prior to the date referred to in clause 6.7(b).

6.8 TSC Contractor's entitlements

This clause 6 is an exhaustive code of the TSC Contractor's rights in any way in connection with any Change. The TSC Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this deed.

6.9 Approvals for Changes

- (a) Subject to clause 6.9(b), the TSC Contractor must apply for and obtain all:
- (i) necessary amendments or modifications to any existing Approval; and
 - (ii) new Approvals that may be,
- required for the execution of a Change.



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- (b) Where the amendment or modification to any Approval required for the execution of the Change relates to any Approval specified in Schedule 15, the TSC Contractor must:
- (i) carry out and provide to the Principal all surveys, investigations, reports, studies:
 - A. requested by the Principal's Representative;
 - B. to the standard directed by the Principal's Representative; and
 - C. within the time directed by the Principal's Representative; and
 - (ii) provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Approval.
- (c) The TSC Contractor must implement the Change once the Approvals referred to in this clause 6.9 have been amended, modified, or granted to permit the Change to be implemented.

7. Construction

7.1 Construction

- (a) The TSC Contractor must construct the Project Works and the Temporary Works:
- (i) in accordance with the requirements of this deed including:
 - A. the SWTC;
 - B. subject to clause 7.1(b), any relevant Design Documentation which has:
 - 1) been certified by the Subcontractor who prepared it and by the TSC Contractor under clause 5.2(f);
 - 2) been submitted under clause 5.2(i);
 - 3) not been rejected under clause 5.2(j)(i)A; and
 - 4) certified by the Independent Certifier under clause 5.2(j)(i)B; and
 - C. any Direction of the Principal's Representative given or purported to be given under a provision of this deed, including any Change directed by the Principal's Representative by a Change Order; and
 - (ii) using good workmanship and Materials which are:
 - A. free of Defects and other imperfections; and
 - B. of the quality specified in the SWTC; and
 - (iii) so that they are and will be capable of remaining at all relevant times fit for their intended purposes.


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The TSC Contractor warrants that each Portion will upon Construction Completion of that Portion:

- (iv) be fit for its intended purpose; and
 - (v) be capable of remaining, at all relevant times, fit for its intended purpose.
- (b) If there is any ambiguity, discrepancy or inconsistency between this deed on the one hand or any Design Documentation which has been certified under clause 5.2(f), submitted under clause 5.2(i), not rejected under clause 5.2(j)(i)A and certified by the Independent Certifier under clause 5.2(j)(i)B on the other hand, then unless otherwise directed by the Principal's Representative, the requirements of this deed will prevail.

7.2 Early Works

- (a) The TSC Contractor acknowledges that the Principal has entered into one or more contracts for the Early Works (including a contract with the Early Works Contractor).
- (b) This clause 7.2 applies irrespective of whether these Early Works are completed prior to or subsequent to the TSC Contractor commencing the TSC Contractor's Activities on the Construction Site.
- (c) The TSC Contractor must:
 - (i) at the times specified in clause 7.2(d), inspect the Early Works (or a part thereof) (**Early Works Inspection**); and
 - (ii) if, as a result of the Early Works Inspection, it considers that the Early Works (or the relevant part thereof) have not been carried out in accordance with Appendix 4 of the SWTC (**Defective Early Works**), notify the Principal in writing forthwith and in any event within 5 Business Days of carrying out the Early Works Inspection, giving full details of:
 - A. the manner in which the Defective Early Works have not been carried out in accordance with Appendix 4 of the SWTC, together with information supporting this connection;
 - B. the effect of the Defective Early Works on the TSC Contractor's Activities, the Project Works or the Temporary Works;
 - C. the estimated additional cost (if any) of dealing with the Defective Early Works encountered and the additional work and resources involved;
 - D. the delay (if any) to the progress of the TSC Contractor's Activities;
 - E. the TSC Contractor's proposed methodology for dealing with or rectifying the Defective Early Works; and
 - F. any other relevant matters.



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- (d) The TSC Contractor must carry out the Early Works Inspections immediately upon completion of the relevant Early Works and in any event within 5 Business Days the TSC Contractor being given access to the relevant part of the Construction Site upon or in the vicinity of which the Early Works are located.
- (e) The TSC Contractor must provide the Principal's Representative with any information reasonably required by the Principal in relation to the Defective Early Works.
- (f) Unless the Principal's Representative gives a direction under clause 7.2(h)(i), the TSC Contractor is solely responsible for dealing with and rectifying the Defective Early Works in a manner so as to minimise any delay and extra costs.
- (g) Where the TSC Contractor carried out the Early Works Inspection within the time required by clause 7.2(d) and:
 - (i) has given a notice:
 - A. under clause 7.2(c)(ii); and
 - B. within the time required by clause 7.2(c)(ii); or
 - (ii) the TSC Contractor subsequently encounters Defective Early Works which could not reasonably have been anticipated by an experienced and competent contractor that had carried out a detailed and proper Early Works Inspection in accordance with clause 7.2(c),

any work performed by the TSC Contractor in dealing with or overcoming the Defective Early Works will be treated as a Change (as if the Principal had issued a Change Order), for which the TSC Contractor is entitled to claim:

- (iii) its reasonable direct additional costs of giving effect to the Change (valued in accordance with clause 6.4) excluding however any Loss arising out of or in connection with any delay or disruption arising out of or in connection with the Defective Early Works or the steps necessary to deal with the Defective Early Works; and
- (iv) an extension of time under clause 11 in respect of any delay in achieving Construction Completion (as a result of the Defective Early Works and their rectification).

Other than set out above the TSC Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any such work or the Defective Early Works.

- (h) The Principal may require any Defective Early Works to be rectified by the Early Works Contractor or another Interface Contractor, in which case the Principal will:
 - (i) promptly notify the TSC Contractor; and
 - (ii) procure the Early Works Contractor or other Interface Contractor (as applicable) to rectify the Defective Early Works expeditiously.
- (i) Where the Principal gives a notice under clause 7.2(h)(i), the TSC Contractor:

- (i) must cooperate with the Early Works Contractor or other Interface Contractor (as applicable) so that that contractor may rectify the Defective Early Works;
- (ii) where the TSC Contractor has:
 - A. carried out the Early Works Inspection within the time required by clause 7.2(d); and
 - B. given a notice under clause 7.2(c)(ii) within the time required by clause 7.2(c)(i),will be entitled to make a claim for an extension of time under clause 11 in respect of any delay in achieving Construction Completion as a result of the Defective Early Works and their rectification;
- (iii) other than as set out in subparagraph (i)(ii), will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Defective Early Works or their rectification; and
- (iv) upon the completion of the rectification by the Early Works Contractor or another Interface Contractor, the process in this clause 7.2 will reapply in relation to the relevant Early Works which have been rectified.

7.3 Performance of TSC Contractor's Activities

- (a) Without limiting clause 7.1, in performing the TSC Contractor's Activities, the TSC Contractor must:
 - (i) keep the Construction Site clean and tidy and regularly remove from any place where the TSC Contractor's Activities are being performed any waste or surplus material (including Materials) arising from such performance;
 - (ii) in respect of Construction Plant used in performing the TSC Contractor's Activities:
 - A. use any Construction Plant which this deed prescribes or otherwise requires the TSC Contractor to use including any Construction Plant referred to in a Project Plan;
 - B. ensure such Construction Plant complies with, and is maintained by the TSC Contractor in accordance with, all relevant Laws;
 - C. not remove Key Plant and Equipment from the Construction Site without the Principal's Representative's prior written consent;
 - D. provide the Principal's Representative, upon request, written details of the name and address of the owner of such Construction Plant (where such owner is not the TSC Contractor) held or used by the TSC Contractor under an agreement with the owner of the Construction Plant;



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- (iii) act in a timely and expeditious manner;
 - (iv) once it has commenced any construction activities on the Construction Site, regularly and diligently proceed with the construction of the Project Works and take all steps reasonably available to it (including re-sequencing and re-scheduling the commencement of other TSC Contractor's Activities) to minimise any disruption to, impact of the performance of the TSC Contractor's Activities on, or compromising the safety of other users of:
 - A. the Existing Operations;
 - B. Local Areas; or
 - C. Utility Services;
 - (v) give priority to the safety of persons or vehicles using the Existing Operations or otherwise affected by the performance of the TSC Contractor's Activities;
 - (vi) without limiting clause 2.21, coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or operations of Authorities;
 - (vii) do all things and take all measures necessary to protect people and property; and
 - (viii) prevent nuisance and unreasonable noise, vibration and disturbance (except to the extent such nuisance, noise, vibration and disturbance is a direct and unavoidable result of carrying out and completing the TSC Contractor's Activities in accordance with this deed) and comply with the requirements of Authorities.
- (b) Without limiting clause 7.1, the TSC Contractor warrants that it will perform the TSC Contractor's Activities using the workmanship and Materials required by this deed and which are fit for their intended purposes.
- (c) The TSC Contractor must take all reasonable precautions to avoid obstruction and damage to any property (including the property of the Principal) and Utility Services arising out of the performance of the TSC Contractor's Activities.
- (d) The TSC Contractor must not commence construction of the WAD Works or the TSC Rail Zone Works until the relevant preconditions to commencement of those works in the WAD and the PETIA respectively have been satisfied.

7.4 Setting out

The TSC Contractor must:

- (a) set out the Project Works in accordance with the requirements of this deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the TSC Contractor that are suitable for their purposes;

- (b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
- (c) for this purpose keep all survey marks in their true positions.

If the TSC Contractor discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the TSC Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the TSC Contractor must at its cost rectify the error.

7.5 Principal's right to inspect and seek comments

- (a) The Principal, the Principal's Representative (and any other persons nominated by the Principal), OpCo and the Independent Certifier may at any time:
 - (i) inspect the TSC Contractor's Activities on the Construction Site; and
 - (ii) seek comments from others in respect of the TSC Contractor's Activities,and the Principal, the Principal's Representatives and OpCo may at any time provide comments to the Independent Certifier in respect of the TSC Contractor's Activities (with a copy to the TSC Contractor).
- (b) OpCo may only inspect the TSC Contractor's Activities on the Construction Site when accompanied by a representative of the Principal or the Independent Certifier.
- (c) Neither the Principal, the Principal's Representative, OpCo nor any of the persons nominated by the Principal pursuant to paragraph (a) above, owes any duty to the TSC Contractor to:
 - (i) inspect the TSC Contractor's Activities; or
 - (ii) review any construction or repair for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (d) No inspection or review of the TSC Contractor's Activities or of any construction or repair by the Principal, the Principal's Representative, OpCo or any person nominated by the Principal pursuant to paragraph (a) above will in any way lessen or otherwise affect:
 - (i) the TSC Contractor's obligations under this deed (including its obligations under clause 7.1(a)) or otherwise according to Law; or
 - (ii) the Principal's rights against the TSC Contractor whether under this deed or otherwise according to Law.



7.6 All work included

- (a) Subject to any express term of this deed to the contrary, the TSC Contractor must, without adjustment to any component of the Design Contract Sum or the Construction Contract Sum, provide all services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work necessary for the TSC Contractor's Activities whether or not they are:
 - (i) expressly mentioned in this deed or the Design Documentation prepared by the TSC Contractor which the TSC Contractor is entitled to use for construction purposes under clause 5.2(m); or

(ii) anticipated by the TSC Contractor.

(b) Such services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work form part of the TSC Contractor's Activities and must be undertaken and provided by the TSC Contractor at its own cost and will not constitute a Change or otherwise entitle the TSC Contractor to make a Claim against the Principal.

7.7 The Principal's action

(a) Without limiting clause 16.10, the Principal's Representative may take any action necessary to protect, or to prevent or minimise risks to, the TSC Contractor's Activities, the Environment, other property or the health and safety of people which the TSC Contractor must take but does not take.

(b) The amount of any Loss the Principal suffers or incurs arising out of or in connection with:

- (i) taking the action contemplated in clause 7.7(a); or
- (ii) the TSC Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the TSC Contractor to the Principal.

7.8 Incident management

(a) The TSC Contractor must identify clear guidelines for responding to any Incident arising from the performance of the TSC Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.

(b) Should an Incident occur which is reportable under any relevant Law, the TSC Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative.

(c) In relation to any environmental or safety Incident involving Contamination or other waste that arises during the performance of the TSC Contractor's Activities, the TSC Contractor must:

- (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination or other waste arising from the Incident;
- (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
- (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.

(d) Without prejudice to the Principal's other rights under this deed, if the Principal's Representative forms the view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the TSC Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be

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entitled to recover its reasonable costs and expenses from the TSC Contractor as a debt due from the TSC Contractor to the Principal.

- (e) Without prejudice to the Principal's other rights under this deed, the Principal's Representative may issue an immediate stop work order in the event of any Incident, or the imminent risk of any Incident, involving:
- (i) a significant spill of Contamination;
 - (ii) any actual damage to the Environment or a significant risk of harm to the Environment; or
 - (iii) a fatality or injury to any person including any Incident which must be reported to New South Wales WorkCover Authority.
- (f) The Principal will not be liable upon any Claim by the TSC Contractor for any Loss arising out of or in connection with any work stoppage due to a stop work order or for the failure by the Principal's Representative to issue a stop work order.
- (g) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any stop work order in relation to the TSC Contractor's, its agents' or its Subcontractors' acts or omissions in performing the TSC Contractor's Activities as a debt due from the TSC Contractor to the Principal.



7.9 Instructions from Authorities

Notwithstanding any other provision of this deed, the TSC Contractor:

- (a) must not restrict, close, interfere with or obstruct the free flow of the public in public spaces, parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Local Areas, contrary to the instructions of the New South Wales Police Service or any other Authority; and
- (b) in restricting, closing, interfering with or obstructing the free flow of the public in public spaces or parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Local Areas, act in accordance with any instructions of the New South Wales Police Service or any other Authority including to cease any of the TSC Contractor's Activities and to re-open the public space, park, pedestrian way, pedal cycle path, lane or shoulder.

7.10 Training management

The TSC Contractor must satisfy its obligations as a contractor under the Training Management Guidelines, including by:

- (a) ensuring that it has an Enterprise Training Management Plan (as referred to in the Training Management Guidelines) that complies with the requirements of the Training Management Guidelines;
- (b) preparing a Project Training Management Plan in accordance with the Training Management Guidelines and submitting the Project Training Management Plan to the Principal;
- (c) complying with the Project Training Management Plan the TSC Contractor is permitted to use in accordance with clause 2.14(k);

- (d) co-operating with and assisting the Principal with any reviews undertaken by the Principal of the TSC Contractor's compliance with the Training Management Guidelines;
- (e) maintaining records evidencing the TSC Contractor's compliance with the Training Management Guidelines; and
- (f) making available all records maintained in accordance with clause 7.10(e) to the Principal.

7.11 Survey

The TSC Contractor must, as a condition precedent to Construction Completion of each Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative a survey certificate (within the meaning of that term in the *Surveying and Spatial Information Regulation 2006* (NSW)) signed by a land surveyor registered under the *Surveying and Spatial Information Act 2006* (NSW) who is approved by the Principal's Representative stating that:

- (a) the whole of the Portion is within the relevant boundaries of the Project Site stipulated in this deed, except only for parts of the Portion specifically required by this deed to be outside those boundaries (including any Handover Works which this deed specifically states may be left in a Temporary Area at Construction Completion);
- (b) the elements of the Portion are in the positions and within the tolerances required by this deed;
- (c) the survey information included in the Asset Management Information provided by the TSC Contractor pursuant to clause 7.14 complies with the requirements of this deed; and
- (d) any other matter identified by the Principal's Representative complies with the requirements of this deed.

7.12 Cleaning up

Without limiting clause 7.3, in carrying out the TSC Contractor's Activities, the TSC Contractor must:

- (a) keep the Construction Site, Extra Land and the Project Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material (including Materials) from the Construction Site and Extra Land; and
- (c) as a condition precedent to Construction Completion of a Portion, remove all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works (other than the Handover Works) from the relevant parts of the Construction Site and Extra Land relevant to that Portion except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

7.13 Work methods

Whether or not this deed prescribes a particular work method or a work method is otherwise a part of this deed or reviewed or approved (expressly or impliedly) by the Principal or the



Principal's Representative, the fact that any work method that the TSC Contractor adopts or proposes to adopt is impractical or impossible or that the TSC Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the TSC Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this deed to be frustrated.

7.14 Asset Management Information

- (a) The TSC Contractor must develop and implement an Asset Management Information Delivery Plan in accordance with this deed, including the SWTC (including Appendix 24 of the SWTC).
- (b) As a condition precedent to Construction Completion of each Portion, the TSC Contractor must develop the Asset Management Information for that Portion.
- (c) Each set of Asset Management Information must contain the contents required by the SWTC.
- (d) The TSC Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier an initial draft of the Asset Management Information for the Portion which is not intended to differ in substance from the final draft (including the initial submission of the Asset Management Information but excluding the incorporation of the other Project Plans required by clause 2.14(m)) but for minor details:
 - (i) no less than 180 days prior to the Date for Construction Completion of the Portion; or
 - (ii) if either:
 - A. the Principal's Representative reasonably anticipates that the Date of Construction Completion of the Portion will be prior to the applicable Date for Construction Completion, no less than 180 days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion for the Portion, provided that the Principal's Representative gives the TSC Contractor 35 days' notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion of the Portion will be earlier than the applicable Date for Construction Completion, no less than 180 days prior to the reasonably anticipated Date of Construction Completion of the Portion.
- (e) The TSC Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier a final draft of the Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 2.14(m)):
 - (i) no less than 90 days prior to the Date for Construction Completion of the Portion; or





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- (ii) if either:
 - A. the Principal's Representative reasonably anticipates that the Date of Construction Completion of the Portion will be prior to the applicable Date for Construction Completion, no less than 90 days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion for the Portion, provided that the Principal's Representative gives the TSC Contractor 35 days' notice of the required date for submission; or
 - B. it is otherwise reasonably apparent that the anticipated Date of Construction Completion of the Portion will be earlier than the applicable Date for Construction Completion, no less than 90 days prior to the reasonably anticipated Date of Construction Completion of the Portion.

(f) The TSC Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier the final Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 2.14(m)):

- (i) no less than 30 days prior to the Date for Construction Completion of the Portion; or
- (ii) if the Principal's Representative reasonably anticipates that the Date of Construction Completion of the Portion will be prior to the applicable Date for Construction Completion, no less than 30 days prior to the Principal's Representative's reasonably anticipated Date of Construction Completion for the Portion, provided that the Principal's Representative gives the TSC Contractor 35 days' notice of the required date for submission.

(g) The TSC Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may review any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 7.14(d), 7.14(e), 7.14(f), 7.14(l) or 7.14(q).

(h) The Principal's Representative may:

- (i) provide copies of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 7.14(d), 7.14(e), 7.14(f), 7.14(l) or 7.14(q) to; and
- (ii) seek comments in respect of any Asset Management Information, or any draft of any Asset Management Information, from,

OpCo.

(i) The TSC Contractor acknowledges and agrees that the Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the TSC Contractor in respect of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 7.14(d), 7.14(e), 7.14(f), 7.14(l) or 7.14(q).

(j) The Principal's Representative may (but is not obliged to) make comments (with a copy to the TSC Contractor) to the Independent Certifier in respect of any Asset

Management Information, or any draft of any Asset Management Information, submitted under clause 7.14(d), 7.14(e), 7.14(f), 7.14(l) or 7.14(q).

- (k) The Principal and the TSC Contractor acknowledge and agree that:
- (i) the Independent Certifier may, within 15 Business Days of the submission of a set of Asset Management Information or a draft thereof, reject the Asset Management Information or the draft for a failure to comply with the requirements of this deed;
 - (ii) the Independent Certifier must, within 15 Business Days of the submission of the final set of Asset Management Information under clause 7.14(f) (**Final Submission**), either:
 - A. reject the Final Submission for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Final Draft is required (together with reasons) and a time within which this must occur; or
 - B. certify the Final Submission by:
 - 1) including a notation on the Final Submission; and
 - 2) providing to the Principal's Representative, the TSC Contractor and OpCo a document signed by the Independent Certifier in the form in Schedule 32; and
 - (iii) the Principal's Representative may at any time (including after the Independent Certifier has certified a Final Submission pursuant to clause 7.14(k)(ii)B) direct the TSC Contractor to make amendments to the Asset Management Information.
- (l) If a set of Asset Management Information or any draft is rejected or if the Principal's Representative directs the TSC Contractor to amend a set of Asset Management Information under clause 7.14(k), clause 7.14(q) shall apply.
- (m) The Principal's Representative owes no duty to the TSC Contractor to review any Asset Management Information or any draft submitted by the TSC Contractor for errors, omissions or compliance with this deed.
- (n) No review of, comments upon or rejection of any Asset Management Information or any draft by the Principal's Representative or the Independent Certifier, nor any other Direction by the Principal's Representative (including a direction under clause 7.14(q)) in respect of any Asset Management Information or any draft, will lessen or otherwise affect:
- (i) the TSC Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the TSC Contractor, whether under this deed or otherwise according to Law.
- (o) The TSC Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Asset Management Information under clause 2.14(m), a purpose of each set of Asset Management Information is for the



TSC Contractor to provide a detailed description of how the Principal (or any nominee of the Principal) should maintain the relevant Portion.

(p) The TSC Contractor warrants that each set of Asset Management Information will be fit for its intended purpose, including for the purpose of enabling the Principal (or any nominee of the Principal) to maintain the relevant Portion.

(q) Without limiting clause 8, where a draft of a set of Asset Management Information is rejected by the Independent Certifier or the Principal's Representative directs the TSC Contractor to amend a set of Asset Management Information under clause 7.14(k), the TSC Contractor must:

(i) further develop, update or amend the Asset Management Information to address the matters raised by the rejection by the Independent Certifier under clause 7.14(k) or the Principal's Representative direction under clause 7.14(k)(iii) (as applicable); and

(ii) submit the further developed, updated or amended Asset Management Information to the Principal's Representative and the Independent Certifier within the time specified under clause 7.14(k)(ii)A,

and the process in clauses 7.14(g) to 7.14(q) will be reapplied to the further developed, updated or amended Asset Management Information.

7.15 Training

(a) For each Portion, during the final 3 months prior to the Date for Construction Completion of the Portion or such earlier date reasonably specified by the Principal's Representative, the TSC Contractor must train personnel as nominated by the Principal's Representative (which may include personnel of OpCo) in all aspects of the maintenance of the Works comprised in that Portion to a level of competency that will allow those personnel to operate, manage and maintain those Works after the Date of Construction Completion of the Portion.

(b) The TSC Contractor must ensure that it has competent and experienced personnel available to consult with the Principal (and any nominee of the Principal) on any aspect of the operation, maintenance and repair of the Works at any time until the date 12 months after the Date of Construction Completion of the last Portion to achieve Construction Completion.

8. Defects, inspection and repair

8.1 Defects

(a) The TSC Contractor must promptly give the Principal's Representative and OpCo a detailed written report of:

(i) any Defect it detects; and

(ii) all action proposed to correct that Defect, including the estimated time required.

(b) The TSC Contractor must correct all Defects whether or not the Principal's Representative notifies it of them, including correcting any Defects in a Portion which existed at the time of issue of the Notice of Construction Completion (including any minor Defects listed in the Notice of Construction Completion).



Without limiting any other obligation of the TSC Contractor to correct Defects, the TSC Contractor must:

- (i) use its best endeavours to correct all Defects identified in a Notice of Construction Completion within thirty (30) days of the Date of Construction Completion of the relevant Portion; and
- (ii) ensure all Defects identified in a Notice of Construction Completion are corrected within ninety (90) days of the Date of Construction Completion of the relevant Portion.

8.2 Principal's Representative's Direction

If the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 8.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give the TSC Contractor a direction specifying the Defect and doing one or more of the following:

- (a) requiring the TSC Contractor to correct the Defect or a part of it and specifying the time within which this must occur;
- (b) requiring the TSC Contractor to carry out a Change to overcome the Defect or a part of it and specifying the time within which this must be carried out;
- (c) advising the TSC Contractor that the Principal will accept the work or a part of it despite the Defect; or
- (d) in respect of any Defect:
 - (i) to which clause 8.3(b) applies; or
 - (ii) discovered during a Defects Correction Period, whether or not a direction has first been given under clause 8.2(a) or 8.2(b),

advising the TSC Contractor that an Interface Contractor or other contractor will correct (or has corrected) the Defect, or any part of it, or carry out (or has carried out) a Change to overcome the Defect, or any part of it.

In determining the times at which the TSC Contractor is required to correct a Defect or carry out a Change for the purposes of this clause, the Principal's Representative is entitled to have regard to the need to minimise the interference and disruption to the activities which OpCo may be carrying out in discharge of its obligations under the OTS Project Deed.

8.3 Correction of Defect or Change

- (a) If a direction is given under clause 8.2(a) or 8.2(b) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works (whether before or after Construction Completion), the TSC Contractor:
 - (i) must correct the Defect (or the part of it) or carry out the Change (as the case may be):
 - A. within the time specified in the Principal's Representative's direction;
 - B. at times notified by the Principal's Representative;

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- C. in accordance with the requirements of any relevant Authority;
 - D. so as to minimise the impact on the use of the relevant part of the Project Works;
 - E. in a manner which causes as little inconvenience as possible to the activities which OpCo may be carrying out in discharge of its obligations under the OTS Project Deed and to users of the Works, a Local Area, a Utility Service or any access and the adjacent community; and
 - F. at the TSC Contractor's risk in respect of any restrictions on access;
 - G. if OpCo has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing the OTS Project Works, in accordance with the requirements of OpCo in relation to access and site safety;
 - H. in accordance with its obligations under the TSC-OTS Cooperation and Integration Deed; and
 - I. regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect; and
- (ii) will only be entitled to receive an extension of time (if relevant) or to have any component of the Project Contract Sum adjusted for correcting the Defect (or the part of it) or for carrying out the Change if:
- A. it complies with clause 11.6 or clause 17 (as the case may be); and
 - B. the Defect (or the part of it) is something for which the TSC Contractor is not responsible.
- (b) If the TSC Contractor does not comply with clause 8.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the TSC Contractor with respect to the Defect under this deed or otherwise at Law, give the TSC Contractor a direction under clause 8.2(d) and have the correction or Change work carried out at the TSC Contractor's expense, and the cost of the correction or Change work incurred by the Principal will be a debt due from the TSC Contractor to the Principal.

8.4 Acceptance of work or rectification by others

If a direction is given under clause 8.2(c) or 8.2(d)(ii) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, and the TSC Contractor is responsible for the Defect (or the part of it), the Project Contract Sum will be reduced by the amount which represents the reasonable cost of correcting the Defect (or the part of it), such amount to be as stated by the Principal's Representative.

8.5 Works

The Works within a Portion have:

- (a) a Defects Correction Period which begins on the Date of Construction Completion of the Portion and ends on 23 December 2021; and
- (b) in respect of any work the subject of a direction under clause 8.2(a) or 8.2(b) during the Defects Correction Period which is carried out on or after 23 December 2020, 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 Change and continues for 12 months.

8.6 Local Area Works

- (a) Each discrete part of the Local Area Works has:
 - (i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date notified under clause 8.6(d)(i)); and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 8.2(a) or 8.2(b) (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 Change.
- (b) The completion of the Local Area Works will be assessed on an area by area basis.
- (c) When the TSC Contractor considers that a discrete part of the Local Area Works is complete, it must:
 - (i) notify the Principal's Representative and the Independent Certifier in writing and the Principal's Representative, the Independent Certifier, the Project Director and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time; and
 - (ii) to the extent that the discrete part of the Local Area Works constitutes WAD Road Works, follow the procedures in the WAD in relation to WAD Practical Completion of the WAD Road Works.
- (d) Following the joint inspection under clause 8.6(c) and subject to clause 8.6(e), the Principal and the TSC Contractor acknowledge that the Independent Certifier will determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the WAD (if applicable) and will notify the TSC Contractor and the Principal in writing and within 5 Business Days of the date of the inspection:
 - (i) if the discrete part is complete, of the date on which the TSC Contractor has completed the discrete part of the Local Area Works in accordance with this deed which, subject to clause 8.6(f)(i), will be the relevant date for the purposes of clause 8.6(a)(i); or
 - (ii) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 8.6(b) will reapply).
- (e) Each discrete part of the Local Area Works will not be regarded as complete unless:
 - (i) the Independent Certifier has executed and provided to the Principal's Representative a certificate in the form of Schedule 7 with respect to the discrete part of the Local Area Works; and



(ii) to the extent that the discrete part of the Local Area Works constitutes WAD Road Works, the Local Area Works have achieved WAD Practical Completion and the Independent Certifier has executed and provided to the Principal's Representative and RMS a certificate in the form of Schedule 4 of the WAD with respect to the discrete part of the Local Area Works.

(f) It is a condition precedent to:

(i) the commencement of the Defects Correction Period for a discrete part of the Local Area Works that the TSC Contractor provide the Principal's Representative with:

A. a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; or

B. if the TSC Contractor is unable to obtain a notice required under clause 8.6(f)(i)A despite having used its best endeavours to do so, a statement from the TSC Contractor to the effect that:

1) the discrete part of the Local Area Works is complete and the TSC Contractor has notified the relevant Authority of this matter; and

2) the relevant Authority has failed or refused to provide the written notice required under clause 8.6(f)(i)A despite being given 15 Business Days to provide the notice requested by the TSC Contractor; or

C. to the extent that the discrete part of the Local Area Works constitutes WAD Road Works, the Independent Certifier has executed and provided to the Principal's Representative and RMS a certificate in the form of Schedule 4 to the WAD with respect to the discrete part of the Local Area Works; and

(ii) Construction Completion of a Portion that the written notices or statements required under clause 8.6(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.

8.7 Utility Service Works

(a) Each discrete part of the Utility Service Works has:

(i) a Defects Correction Period of 12 months, which begins when:

A. the relevant Utility Service Authority which has jurisdiction in respect of the Utility Service gives written notice that the work is complete; or

B. if the TSC Contractor is unable to obtain a notice required under clause 8.7(a)(i)A despite having used its best endeavours to do so, a written statement from the TSC Contractor to the effect that:





- 1) the discrete part of the Utility Service Works is complete and the TSC Contractor has notified the relevant Utility Service Authority of this matter; and
- 2) the relevant Utility Service Authority has failed or refused to provide the written notice required under 8.7(a)(i)A despite being given 15 Business Days to provide the notice requested by the TSC Contractor,

and the Principal's Representative has been provided with a copy of the notice or statement; and

- (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 8.2(a) or 8.2(b) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins:
 - A. when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected or the Change completed and the Principal's Representative has been provided with a copy of the notice; or
 - B. if the relevant Utility Service Authority fails or refuses to give the notice required under clause 8.7(a)(ii)A, when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Change completed.

(b) It is a condition precedent to Construction Completion of a Portion, that:

- (i) a written notice of the kind referred to in clause 8.7(a)(i) has been given for each discrete part of the Utility Service Works that form part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or
- (ii) the TSC Contractor has:
 - A. used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 8.7(a)(i)A; and
 - B. provided the Principal's Representative with a written statement of the kind referred to in clause 8.7(a)(i)B.

8.8 Property Works

Each discrete part of the Property Works has:

- (a) a Defects Correction Period of 12 months, which begins upon:
 - (i) the completion of the Property Works; or
 - (ii) submission by the TSC Contractor of a certificate or signed statement (as the case may be) to the Principal's Representative under clause 3.2(a)(ii),whichever is the later; and

- (b) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 8.2(a) or 8.2(b) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Change.

8.9 Failure by the TSC Contractor to comply with Direction

- (a) Without limiting clause 16.10, if the TSC Contractor does not comply with a direction referred to in clause 8.2(a) or 8.2(b), the Principal may employ others to carry out that direction.
- (b) The Loss suffered or incurred by the Principal arising out of or in connection with taking the action contemplated in clause 8.9(a) or as a result of the TSC Contractor's failure to comply with clause 8.3(a)(i) will be a debt due from the TSC Contractor to the Principal.

8.10 Rights not affected

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

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any direction of the Principal's Representative under clause 8.2.

8.11 Warranties by others

- (a) The TSC Contractor must, as a condition precedent to Construction Completion of the last Portion to reach Construction Completion, procure and provide each of the Principal and OpCo with all warranties required by Schedule 42, from the relevant Subcontractors undertaking or supplying the work or items the subject of the warranty. These warranties must be in favour of the Principal and OpCo on the terms of the deed in Schedule 26.
- (b) The provision of those warranties will not derogate from any rights which the Principal may have against the TSC Contractor in respect of the subject matter of those warranties.

8.12 Use of defective facilities

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

8.13 Final inspections of Project Works

The TSC Contractor, the Principal's Representative, OpCo and the Independent Certifier will carry out a final inspection of the Project Works 6 months before the end of the Defects Correction Period in accordance with the TSC-OTS Cooperation and Integration Deed.

8.14 Amenities Building

- (a) When the TSC Contractor considers that the Amenities Building has achieved a state equivalent to Construction Completion it must notify the Principal's Representative in writing.
- (b) Upon receipt of a notice under clause 8.14(a), the Principal's Representative must inspect the Amenities Building and notify the TSC Contractor and the Principal in writing within 5 Business Days of the date of the inspection:
 - (i) if the Amenities Building has achieved a state equivalent to Construction Completion, that Construction Completion has occurred, in which case:
 - A. Portion 2 will be divided into two Portions, comprising:
 - 1) the Amenities Building as a new Portion 2A; and
 - 2) the balance of the work in the original Portion as the existing Portion 2; and
 - B. the Principal's Representative's notice must specify the date on which the TSC Contractor has completed the Amenities Building, which will be the Date of Construction Completion of Portion 2A; or
 - (ii) if the Amenities Building has not achieved a state equivalent to Construction Completion, the items which remain to be completed (after which the procedure in clause 8.14(a) will reapply).
- (c) The Principal's obligation to give access to the area identified as "Area 'SA-B8'" in the Site Access Schedule will cease on the Date of Construction Completion of Portion 2A, as specified in the Principal's Representative's notice under clause 8.14(b)(i)B.
- (d) Nothing in this clause 8.14 limits the Principal's rights under clause 11.13.



9. Liability

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


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[REDACTED]

9.2 Exclusion of proportionate liability scheme

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

Without limiting the above, the rights, obligations and liabilities of the Principal and the TSC Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

9.3 TSC Contractor not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the TSC Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the TSC Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the TSC Contractor (whether in contract, tort or otherwise), the TSC Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the TSC Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

9.4 Subcontracts

The TSC Contractor must:

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

9.5 Insurance requirements

The TSC Contractor must ensure that all policies of insurance covering third party liability it is required by this deed to effect or maintain (including the asbestos liability insurance policy referred to in clause 13.6, the professional indemnity policy referred to in clause 13.7, the Construction Plant and equipment policy referred to in clause 13.8 and the motor vehicle policy referred to in clause 13.9):

- (a) cover the TSC Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
- (b) do not exclude any potential liability the TSC Contractor may have to the Principal under or by reason of this deed.

10. Administration of the Project Works

10.1 Principal's Representative

- (a) The Principal:
 - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
 - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
 - (iii) must give written notice of all appointments under clauses 10.1(a)(i) and 10.1(a)(ii) to the TSC Contractor.
- (b) The Principal's Representative may:
 - (i) by written notice to the TSC Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed;
 - (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) revoke any appointment under clause 10.1(b)(i) by notice in writing to the TSC Contractor.
- (c) The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 10.1(b).
- (d) An appointee of the Principal's Representative under clause 10.1(b) may:
 - (i) by written notice to the TSC Contractor appoint persons to exercise any of the appointee's functions under this deed;
 - (ii) not appoint more than one person to exercise the same function under this deed; and
 - (iii) revoke any appointment under clause 10.1(d)(i) by notice in writing to the TSC Contractor.

- (e) The Principal and the TSC Contractor acknowledge and agree that the Principal's Representative acts at all times as the servant or agent of the Principal and is subject to the directions of the Principal and will act solely in the interests of the Principal.
- (f) The parties acknowledge that any Principal's Representative Statement is an interim position only and that, without limiting the rights of the Principal's Representative under clause 12.3, either party may seek to have any Principal's Representative Statement opened up, reviewed, decided and substituted pursuant to the dispute resolution provisions in clause 15 by giving a notice of Dispute to the other party in accordance with clause 15.3. If the TSC Contractor wishes to have a Principal's Representative Statement opened up, reviewed, decided and substituted it must give the notice of Dispute required under clause 15.2 within 10 Business Days of the date of receipt of the Principal's Representative Statement.

The Principal will not be liable upon any Claim by the TSC Contractor arising out of or in connection with any Principal's Representative Statement in circumstances where it is incorrect, subsequently overturned pursuant to clause 15, is unreasonable or has been made in accordance with the directions of the Principal (and not independently). The TSC Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any Principal's Representative Statement is by giving a notice of Dispute in accordance with clause 15.3.

If the TSC Contractor does not give such a notice under clause 15.3 within the time required under this clause 10.1(f), then, subject to clause 12.3:

- (i) the Principal's Representative Statement will be binding upon the TSC Contractor and will not thereafter be capable of being opened up or reviewed by any person, including the Dispute Avoidance Board or any arbitrator or court, at the request of or upon any application by the TSC Contractor; and
- (ii) the Principal will not be liable upon any Claim by the TSC Contractor arising out of or in any way in connection with the relevant Principal's Representative Statement, other than in accordance with the Principal's Representative Statement.



- (g) The TSC Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of this deed. Only the Principal's Representative or an appointee of the Principal's Representative under clause 10.1(b) is authorised to give any Direction to the TSC Contractor pursuant to this deed. The TSC Contractor must not comply with any Direction purporting to be made or given by any person on behalf of the Principal, other than the Principal's Representative or an appointee of the Principal's Representative under clause 10.1(b).

10.2 TSC Contractor's personnel

- (a) The TSC Contractor must:
 - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
 - (ii) ensure that its personnel (including those referred to in clause 10.2(b)) as a team carry out the TSC Contractor's Activities in a manner that is

courteous and co-operative and recognises the interests and needs of the local community.

(b) The TSC Contractor must:

(i) employ those personnel specified in Schedule 28 (or where the personnel are employees of a Subcontractor or subsubcontractor, the TSC Contractor must ensure they are so employed) in the positions and for the periods specified in Schedule 28;

(ii) subject to clause 10.2(b)(iii), not replace the personnel referred to in clause 10.2(b)(i) (or where the personnel are employees of a Subcontractor or subsubcontractor, the TSC Contractor must ensure they are not replaced) without the Principal's Representative's prior written approval; and

(iii) if any of the personnel referred to in clause 10.2(b)(i):

A. dies;

B. becomes seriously ill;

C. resigns from the employment of the TSC Contractor (other than to accept other employment with the TSC Contractor or any "related body corporate" of the TSC Contractor (as that term is defined in section 9 of the *Corporations Act 2001*)) or resigns from the employment of a Subcontractor or a sub-subcontractor (as applicable); or

D. becomes the subject of a direction under clause 10.2(d),

replace them (or where they are employees of a Subcontractor or subsubcontractor, the TSC Contractor must use best endeavours to ensure they are replaced) with personnel of at least equivalent experience, ability, competency and expertise (including in addition to the experience, ability and expertise required by Schedule 28, the same level of experience set out in the curriculum vitae which appear in the SWTC of the relevant person being replaced) approved by the Principal's Representative (acting reasonably).

(c) The personnel referred to in clause 10.2(b) (including any replacements) must:

(i) carry out the functions and be given the authorities and responsibilities specified for them in this deed; and

(ii) otherwise be available for consultation with the Principal's Representative when the Principal's Representative reasonably requires.

(d) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the TSC Contractor to remove any person (including a person referred to in clause 10.2(b)) from the Construction Site or the TSC Contractor's Activities.

(e) The TSC Contractor must ensure that any person the subject of a direction under clause 10.2(d) is not again employed in the TSC Contractor's Activities, or on the Construction Site.



10.3 Design development

- (a) The TSC Contractor must hold regular meetings of its design team including its designers and the Independent Certifier (and in any event at the Developed Concept Design Stage and the Substantial Detailed Design Stage of each discrete design part or element in the TSC Contractor's Activities).
- (b) The TSC Contractor must give reasonable notice to the Principal's Representative of those meetings and of any other meetings at which design issues are to be discussed to enable the Principal's Representative, its delegate and any representatives of OpCo to attend. The Principal may request the TSC Contractor to ensure the presence at the meeting of any relevant persons from any of the TSC Contractor's Subcontractors involved in the design of any part of the Project Works.
- (c) The TSC Contractor must give the Principal's Representative:
 - (i) an agenda prepared in consultation with or as directed by the Principal's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues as at the date of issue of the agenda); and
 - (ii) minutes of each design meeting within 48 hours after each meeting.

The TSC Contractor agrees that no such agenda or minutes of meeting shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

10.4 Project Site meetings

- (a) The TSC Contractor must convene meetings on the Construction Site, or such other place or places as the Principal's Representative may direct, at weekly intervals (or such longer period as may be required by the Principal's Representative) prior to the Date of Construction Completion of the last Portion to achieve Construction Completion.
- (b) The meetings referred to in clause 10.4(a) will be attended by:
 - (i) the Project Director (or his or her delegate);
 - (ii) the Principal's Representative (or its delegate); and
 - (iii) any other person required by the Principal's Representative (including any Subcontractor and a representative of OpCo).
- (c) The TSC Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting under clause 10.4(a) no less than 48 hours prior to each meeting.
- (d) The role of chairperson for meetings under clause 10.4(a) will be held by the Principal's Representative (or its delegate).
- (e) The chairperson of a meeting under clause 10.4(a) must give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting may not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.



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- (f) The purpose of the meetings under clause 10.4(a) includes the review of (at least) the matters set out in the reports referred to in clause 10.8 and any other matter as required by the Principal's Representative.

10.5 Management Review Group

The Management Review Group comprises:

- (a) the Principal's Representative;
- (b) any nominees of the Principal's Representative;
- (c) the following TSC Contractor's personnel:
 - (i) the Project Director;
 - (ii) the Construction Manager(s);
 - (iii) the Design Manager;
 - (iv) the Quality Manager;
 - (v) the Environmental Manager;
 - (vi) the Sustainability Manager;
 - (vii) the Stakeholder and Community Relations Manager; and
 - (viii) the Work Health and Safety Manager;
- (d) representatives of any of the TSC Contractor's Subcontractors which the Principal's Representative reasonably requires; and
- (e) any other person the Principal's Representative reasonably requires from time to time.



10.6 Management Review Group functions

Management Review Group functions include reviewing:

- (a) the progress of the TSC Contractor's Activities in relation to the Program and the performance of the TSC Contractor;
- (b) issues arising out of community relations and community concerns;
- (c) issues arising out of the quality of the TSC Contractor's Activities;
- (d) matters arising from the Design Documentation, including any proposed design changes;
- (e) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
- (f) potential impact of design and construction outcomes on operation and maintenance requirements;
- (g) environmental issues (including sustainability issues);

- (h) issues arising out of the interface with OpCo and the SVC Contractor;
- (i) issues arising out of the subject of the Third Party Agreements;
- (j) safety issues; and
- (k) any other matters or determined or directed by the Principal's Representative.

10.7 Management Review Group meetings

- (a) The Management Review Group must meet:
 - (i) on a regular monthly basis prior to Construction Completion of the last Portion to achieve Construction Completion or such other regular period as the Principal and the TSC Contractor agree in writing;
 - (ii) in accordance with this clause 10.7; and
 - (iii) at other times which the Principal's Representative or the TSC Contractor requires.
- (b) The TSC Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting of the Management Review Group no less than 48 hours prior to each meeting.
- (c) The role of chairperson for meetings of the Management Review Group will alternate between the Project Director and the Principal's Representative with the Principal's Representative to chair the first such meeting.
- (d) The chairperson of a meeting of the Management Review Group must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 5 Business Days after the meeting.
- (e) The members of the Dispute Avoidance Board may, by invitation of either party, attend a Management Review Group meeting but will not be members of the Management Review Group.
- (f) Notwithstanding the recording of the minutes of any Management Review Group meeting, no resolution or communication at any Management Review Group meeting (nor minutes recording any resolution or communication) or anything else which occurs during a Management Review Group meeting or as part of the process for such meetings will:
 - (i) limit or otherwise affect either party's rights or obligations under this deed or otherwise according to Law; or
 - (ii) be construed as or amount to a Direction unless and until a separate direction is given to the TSC Contractor in writing by the Principal's Representative,

and the parties agree that all discussions, debates, disagreements and resolutions on any matters raised at these meetings are only for the purpose of reviewing the matters referred to in this clause 10.7 or such other matters raised at the meetings.



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10.8 TSC Contractor's reporting obligations

The TSC Contractor must provide reports to the Principal and the Principal's Representative as required by the TSC Contractor Documentation Schedule or as otherwise reasonably requested by the Principal's Representative.

The Principal may provide any such reports and any Program to tenderers for the OTS Project Works or to OpCo.

10.9 Minimise disruption and complaints and notifications

- (a) The TSC Contractor must, in carrying out the TSC Contractor's Activities:
- (i) avoid unnecessary interference with the passage of people, vehicles, traffic; and
 - (ii) do all things necessary to minimise the disturbance to the occupants of land adjoining the Construction Site or located in the vicinity of the Construction Site.
- (b) The TSC Contractor must immediately notify the Principal in writing if any:
- (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,

by anyone (including any Authority or any landowner, lessee or licensee on or near the Construction Site or any Extra Land) against the TSC Contractor or any of its Associates in respect of any aspect of the carrying out of the TSC Contractor's Activities, including:

- (iv) Contamination, noise or vibration arising out of, or in any way in connection with, the TSC Contractor's Activities;
 - (v) the TSC Contractor's non-compliance with any Environmental Document (or condition or requirement thereunder), any Project Plan, any Third Party Agreement or any Law regarding the Environment;
 - (vi) the TSC Contractor's use or occupation of the Construction Site or any Extra Land; or
 - (vii) loss or damage of the kind referred to in clause 13.17.
- (c) Without limiting the TSC Contractor's obligations under section 3.14.9 of the SWTC, the TSC Contractor must (at its own cost):
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 10.9(b);
 - (ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings); and
 - (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in clause 10.9(b), which:



- A. contains full details of:
 - 1) each complaint, proceedings, letter of demand, order and direction; and
 - 2) the action taken by the TSC Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - B. is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - C. may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.
- (d) The TSC Contractor must notify anyone who may be adversely affected by the TSC Contractor's Activities before the relevant work is carried out including notification of:
- (i) the likely duration of that work; and
 - (ii) the North West Rail Link 24 hour telephone number, postal address and email address established by the Principal, in case any person wishes to make a complaint.

10.10 Media requests

The TSC Contractor must not issue any information, publication, document or article for publication concerning the TSC Contractor's Activities in any media without the prior written approval of the Principal's Representative. In granting approval, the Principal's Representative may make such approval subject to any conditions which it may determine.

If the TSC Contractor receives a direct request from the media for comment in respect of any aspect of the TSC Contractor's Activities, it must promptly provide details of such request to the Principal's Representative.

10.11 Industrial relations

The TSC Contractor must in carrying out the TSC Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the TSC Contractor's Activities;
- (b) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the TSC Contractor's Activities; and
- (c) without limiting clause 2.3(a), comply with the Construction Plan and the NSW Code.

10.12 Not used**10.13 Not used****10.14 Document management and transmission**

- (a) The TSC Contractor must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in the SWTC or as otherwise required by the Principal's Representative.
- (b) Documents supplied to the TSC Contractor will remain the property of the Principal and must be returned by the TSC Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the TSC Contractor's Activities.
- (c) The TSC Contractor must keep all the TSC Contractor's records relating to the TSC Contractor's Activities in a secure and fire proof storage.
- (d) The TSC Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 10.14.
- (e) The TSC Contractor must ensure that any Contract Documentation and Materials that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

10.15 Exchange of Information between Government agencies

- (a) The TSC Contractor authorises the Principal, its employees and agents to make information concerning the TSC Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the TSC Contractor to the Principal and any information relating to the TSC Contractor's performance under this deed.
- (b) The TSC Contractor acknowledges that any information about the TSC Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the TSC Contractor future opportunities for NSW government work.
- (c) The TSC Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the TSC Contractor's performance under this deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

11. Time and Completion

11.1 Start and progress

The TSC Contractor must:

- (a) start to perform its obligations under this deed from the date of this deed; and
- (b) regularly and diligently progress the TSC Contractor's Activities in accordance with this deed to ensure that Construction Completion of each Portion is achieved by the Date for Construction Completion for the Portion.

Without limiting its rights under the SOP Act, the TSC Contractor must not suspend the progress of the whole or any part of TSC Contractor's Activities except where directed by a court or by the Principal's Representative under clauses 2.8(g)(v) or 11.9.

Without limiting the next paragraphs of this clause 11.1 or clause 11.2(d), the TSC Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the TSC Contractor to carry out the TSC Contractor's Activities in accordance with this deed.

The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions, earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this deed.

The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 11.1, direct in what order and at what time the various stages or parts of the TSC Contractor's Activities must be performed. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 11.1 unless the direction is in writing and expressly states that it is a direction under this clause 11.1.

If compliance with a written direction expressly stated to be pursuant to this clause 11.1 causes the TSC Contractor to incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Change except where:

- (c) the direction was necessary because of, or arose out of or in any way in connection with, a failure by the TSC Contractor to comply with its obligations under this deed; or
- (d) the direction was given under clause 11.7(g).

Such costs shall be the TSC Contractor's sole entitlement, and the TSC Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 11.1.

11.2 TSC Contractor's programming obligations

- (a) The TSC Contractor must prepare the Programs required by the NWRL Programming Protocol which must:
 - (i) be based upon the Overall D&C Program; and
 - (ii) contain the details required by the NWRL Programming Protocol.
- (b) The TSC Contractor must:

- (i) update each Program and report against it in accordance with the TSC Contractor Documentation Schedule and NWRL Programming Protocol;
 - (ii) provide the reports and updated programs listed in section 8.2 of the NWRL Programming Protocol; and
 - (iii) give the Independent Certifier and the Principal's Representative the reports required by the TSC Contractor Documentation Schedule and the NWRL Programming Protocol in both hard copy form and in an electronic form approved by the Principal.
- (c) No submission of or Direction relating to, or review of or comment upon, a Program (including the Overall D&C Program) prepared by the TSC Contractor, by the Principal or the Principal's Representative in connection with the Program, nor the inclusion of the Overall D&C Program as an exhibit to this deed, will:
- (i) relieve the TSC Contractor from or alter its liabilities or obligations under this deed, especially (without limitation) the obligations under clause 11.3;
 - (ii) evidence or constitute notification of a delay or the claiming of or the granting of, an extension of time to any Date for Construction Completion, or a Direction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the TSC Contractor's Activities; or
 - (iii) affect the time for performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable the TSC Contractor to achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion.
- (d) If the TSC Contractor chooses to compress the TSC Contractor's Activities or otherwise accelerate progress:
- (i) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the TSC Contractor to achieve Construction Completion of a Portion before the Date for Construction Completion of the Portion; and
 - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

11.3 Date for Construction Completion

The TSC Contractor must achieve Construction Completion of each Portion by the Date for Construction Completion of the relevant Portion.

11.4 Importance of Completion on time

The TSC Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 11.3 to enable OpCo to carry out the work required under the OTS Project Deed in order that operations of the North West Rail Link may commence, including so as to allow the Principal to pursue improved public transport in Sydney; and

- (ii) if the effects of the delay continue beyond the 10 Business Day period referred to in clause 11.6(b)(i) and the TSC Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
 - A. every 10 Business Days after the first written claim until 5 Business Days after the end of the effects of the delay; and
 - B. containing the information required by clause 11.6(b)(i).

The Principal's Representative may, within 10 Business Days of receiving the TSC Contractor's claim or further claim for an extension of time for Construction Completion, by written notice to the TSC Contractor, request additional information in relation to the claim or further claim. The TSC Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

- (c) Subject to clause 11.6(g), it is a condition precedent to the TSC Contractor's entitlement to an extension of time that:
 - (i) the TSC Contractor must give the notices and claims required by clauses 11.5(b) and 11.6(b) as required by those clauses;
 - (ii) the cause of the delay was beyond the reasonable control of the TSC Contractor; and
 - (iii) the TSC Contractor is actually, or will be, delayed in achieving Construction Completion:
 - A. on or prior to the Date for Construction Completion of a Portion, by an Excusable Cause of Delay; or
 - B. after the Date for Construction Completion, by an Excusable Cause of Delay under paragraph (a), (b), (c), (d), (e) or (g) of that definition.

If the TSC Contractor fails to comply with the conditions precedent in this clause 11.6(c):

- (iv) the Principal will not be liable upon any Claim by the TSC Contractor; and
- (v) the TSC Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

- (d) Subject to clauses 11.6(e), 11.6(g) and 11.7, if the conditions precedent in clause 11.6(c) have been satisfied, the Principal's Representative must extend the Date for Construction Completion of a Portion by:
 - (i) if the cause of delay is a Change, any period stated by the Principal's Representative in a Change Order; or

(ii) otherwise, a reasonable period, such period to be as stated by the Principal's Representative and notified to the Principal and the TSC Contractor within 15 Business Days after:

A. the latest of the:

- 1) TSC Contractor's last claim under clause 11.6(b); or
- 2) provision by the TSC Contractor of any additional information requested by the Principal's Representative under clause 11.6(b); or

B. where the Principal's Representative has given the TSC Contractor a direction to compress under clause 11.7 and subsequently issues a notice under clause 11.7 withdrawing the direction to compress given under clause 11.7, the date of issue of the notice withdrawing the compression.

A failure of the Principal's Representative to grant a reasonable extension of time to the Date for Construction Completion or to grant an extension of time to the Date for Construction Completion within the relevant 21 day period will not cause the Date for Construction Completion to be set at large, but nothing in this paragraph will prejudice any right of the TSC Contractor to damages.

(e) In respect of each claim for an extension of time under clause 11.6(b), the TSC Contractor's entitlement to an extension of time will be reduced by the extent to which the TSC Contractor:

- (i) could have lessened or avoided the delay if it had taken all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay, including the expenditure of reasonable sums of money and taking reasonable steps to accommodate or re-schedule within the Overall D&C Program (or any other relevant Program) the cause of delay and the TSC Contractor's Activities affected by the delay; or
- (ii) contributed to the delay.

(f) The Principal's Representative may in its absolute discretion for any reason and at any time, from time to time, by notice in writing to the TSC Contractor and the Principal unilaterally extend the Date for Construction Completion of a Portion by any period specified in a notice to the TSC Contractor and the Principal.

The power to extend the Date for Construction Completion of a Portion under this clause 11.6(f):

- (i) may be exercised whether or not the TSC Contractor has made, or is entitled to make, a claim for an extension of time to any Date for Construction Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Construction Completion, under this clause 11.6;
- (ii) subject to clause 11.6(f)(iii), may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 11.6(f) for the benefit of the TSC Contractor;



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under clause 11.6(b), such extension of time to be reduced to the extent that the compression of the TSC Contractor's Activities taken by the TSC Contractor prior to the withdrawal of the direction has mitigated the delay which is the subject of the claim for an extension of time made by the TSC Contractor under clause 11.6(b), as stated by the Principal's Representative.

(e) If the Principal's Representative gives a direction to the TSC Contractor under clause 11.7(a):

■ [REDACTED]

(ii) to the extent that the TSC Contractor would, but for the direction, have been entitled to an extension of time to the Date for Construction Completion of a Portion for the cause of delay in respect of which the TSC Contractor made a claim under clause 11.6(b), the TSC Contractor will to the extent that it would have been entitled to an extension of time be entitled to be paid:

A. if the direction relates to:

- 1) all of the delay caused by a Change; or
- 2) part of any delay caused by a Change as specified in the relevant "Change Proposal Request" under clause 6.1,

any amount notified by the TSC Contractor under clause 6.1(a)(ii)B where that amount is approved by the Principal's Representative; or

B. the lesser of:

- 1) otherwise the direct net extra costs reasonably incurred by the TSC Contractor (which if the Principal's Representative gives a notice to withdraw the direction under clause 11.7(a), will be those direct net extra costs reasonably incurred prior to the giving of such notice) and directly attributable to compressing the performance of the TSC Contractor's Activities as required by the Principal's Representative's direction under clause 11.7(a), together with a margin on account of profit and offsite overheads at the relevant rate set out in Schedule 2; and
- 2) the cost estimate (if any) provided by the TSC Contractor pursuant to clause 11.7(a); and

(iii) subject to clause 11.6(g), the TSC Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the cause of delay and any direction under clause 11.7(a), whether for an extension of time to the Date for Construction



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Completion of a Portion which the TSC Contractor might have had but for the direction or otherwise, other than the amount it is entitled to under clause 11.7(e)(ii).

- (f) The Principal's rights to liquidated damages, and the TSC Contractor's indemnity, under clause 11.10(d) for a failure by the TSC Contractor to achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion will not be affected by the Principal's Representative giving the TSC Contractor a Direction to compress under this clause 11.7.
- (g) If at any time the progress of the TSC Contractor's Activities has fallen behind that shown in the Overall D&C Program or any other Program or otherwise is not in accordance with this deed, the TSC Contractor must at its own cost take the necessary corrective action so as to ensure that progress is maintained in accordance with this deed. Such corrective action may include the working of overtime and additional shifts, the application of more resources to carry out the work and the adjustment and rescheduling of activities. The Principal's Representative from time to time may direct the TSC Contractor to provide details of the corrective action it plans to take under this clause 11.7(g).
- (h) If the TSC Contractor fails to take corrective action in accordance with clause 11.7(g), the Principal's Representative may direct the TSC Contractor as to the corrective action it is to take and the TSC Contractor must comply with that direction at its own cost and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with that direction.
- (i) No direction by the Principal's Representative will be taken to constitute a direction under clause 11.7(h) unless the direction is in writing, is signed by the Principal's Representative and expressly states that it is a direction under clause 11.7(h).

11.8 TSC Contractor's delay costs

- (a) Where the Date for Construction Completion of a Portion is extended by the Principal's Representative under clause 11.6(d) due to a delay resulting from a breach of this deed by the Principal, the TSC Contractor will be entitled to be paid the extra costs reasonably incurred by the TSC Contractor as a direct result of the delay for which the extension of time was granted, such amount to be as stated by the Principal's Representative.
- (b) The TSC Contractor must provide the Principal's Representative with such evidence of the extra costs referred to in clause 11.8(a) as may be required by the Principal's Representative to enable the Principal's Representative to comply with clause 11.8(a).
- (c) The extra costs payable to the TSC Contractor under clause 11.8(a) will be the TSC Contractor's sole remedy for the recovery of any Loss which the TSC Contractor suffers or incurs arising out of or in any way in connection with any delay and disruption that:
 - (i) the TSC Contractor encounters in carrying out the TSC Contractor's Activities; and
 - (ii) arises out of, or in any way in connection with, the breach of this deed by the Principal,

and this clause 11.8 is a limitation upon the Principal's liability to the TSC Contractor for any Losses suffered or incurred by the TSC Contractor arising out of or in any way in connection with any such delay or disruption.

11.9 Suspension

- (a) The Principal's Representative may direct the TSC Contractor to suspend and subsequently to re-commence performance of all or any of the TSC Contractor's Activities.
- (b) If the suspension arises as a result of:
 - (i) the TSC Contractor's failure to carry out its obligations under this deed, the TSC Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension;
 - (ii) a cause other than the TSC Contractor's failure to perform its obligations under this deed:
 - A. a direction to suspend under this clause 11.9 will entitle the TSC Contractor to:
 - 1) be paid by the Principal the extra costs reasonably incurred by the TSC Contractor as a result of the suspension, as stated by the Principal's Representative; and
 - 2) an extension of time to the Date for Construction Completion of any Portion, where it is otherwise so entitled under clause 11.6;
 - B. the TSC Contractor must take all steps possible to mitigate the extra costs incurred by it and any delay in achieving Construction Completion of any Portion as a result of the suspension.
- (c) The TSC Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under clause 11.9(b)(ii).



11.10 Liquidated damages and indemnity for delay in reaching Construction Completion

- (a) The Principal and the TSC Contractor agree and acknowledge that the Principal is pursuing a policy of building the North West Rail Link and the Project Works for purposes that include achieving the objectives set out in sections 1.1(a) and 1.1(b) of the SWTC.
- (b) The TSC Contractor and the Principal acknowledge and agree that the TSC Contractor's Activities represents a most important element of the building of the North West Rail Link, as a major new public transport link servicing the needs of North West Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after the TSC Contractor's Activities, improve

the efficiency of the Sydney public transport network and improve the local environment.

(c) The TSC Contractor acknowledges and agrees that its failure to achieve Construction Completion of the Portions by the required Dates for Construction Completion will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

(d) The TSC Contractor agrees that if it does not achieve Construction Completion of a Portion by the Date for Construction Completion of the Portion, it must:

(i) pay the Principal the applicable amount for that Portion set out in Schedule 34 (each of which is exclusive of GST) for every day after the Date for Construction Completion of the Portion up to and including:

- A. the Date of Construction Completion of the applicable Portion; or
- B. the date that this deed is validly terminated,

whichever first occurs; and

(ii) to the extent that Construction Completion of a Portion has not occurred by the relevant OTS Site Access Date for the Portion, indemnify the Principal from and against any claim against the Principal by, or Liability suffered or incurred by the Principal to, OpCo or the SVC Contractor arising out of or in connection with the failure to achieve Construction Completion of the Portion by the Date for Construction Completion for the Portion (including under any agreement between the Principal and OpCo or the SVC Contractor entered into after the date of this deed) up to an aggregate of [REDACTED] for every day after the later of:

- A. the relevant OTS Site Access Date; and
- B. the Date for Construction Completion,

for the applicable Portion up to and including:

- C. the Date of Construction Completion of the applicable Portion; or
- D. the date that this deed is validity terminated,

whichever first occurs.

The TSC Contractor's total aggregate liability under clause 11.10(d)(ii) in respect of any day for which the TSC Contractor must indemnify the Principal in respect of more than one Portion is [REDACTED] per day.

(da) The parties acknowledge that:



- (i) following Construction Completion of Portion 1 the SVC Handover Area will be handed over to the SVC Contractor to enable it to design and construct the SVC Works;
 - (ii) the SVC Contractor will be required to design and construct the SVC Works to be constructed within the SVC Handover Area within a specified period following the SVC Contractor being given access to the SVC Handover Area (**SVC Time for Handover**);
 - (iii) the Principal will notify the TSC Contractor of the SVC Time for Handover following execution of the SVC Project Deed;
 - (iv) once the SVC Works in the SVC Handover Area are complete, those SVC Works will be handed to the Principal and on to OpCo;
 - (v) if the TSC Contractor fails to achieve Construction Completion of Portion 1 by the Date for Construction Completion of Portion 1, there may be a delay in the date by which the SVC Contractor completes the SVC Works in the SVC Handover Area and consequently the date on which the SVC Handover Area is handed over by the SVC Contractor to the Principal and on to OpCo;
 - (vi) the indemnity in clause 11.10(d)(ii) includes any Loss suffered or incurred by the Principal to OpCo as a result of a delay in the SVC Handover Area (or any part of such area) being handed over to the Principal and on to OpCo; and
 - (vii) in determining the TSC Contractor's liability under the indemnity in clause 11.10(d)(ii), the Loss will exclude any delay in handing the SVC Handover Area to the Principal and on to OpCo to the extent that the delay arises from the SVC Contractor taking longer than the SVC Time for Handover (as extended by any extensions of time to which the SVC Contractor is entitled under the SVC Project Deed) to complete the SVC Works in the SVC Handover Area.
- (e) The parties agree that the liquidated damages provided for in clause 11.10(d)(i):
- (i) are a genuine pre-estimate of the anticipated or actual Loss that will be suffered or incurred by the Principal if Construction Completion of a Portion occurs after the Date for Construction Completion of the Portion (except for amounts referred to in clause 11.10(d)(ii)) and the TSC Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by the Principal for both its own Loss and for its failure to achieve its policy objectives arising from the failure of the TSC Contractor to achieve Construction Completion of the Portion by the Date for Construction Completion of the Portion and do not constitute, and are not intended to be, a penalty;
 - (ii) do not include any Loss suffered or incurred by the Principal in respect of the circumstances described in clause 11.10(d)(ii); and
 - (iii) will be recoverable from the TSC Contractor as a debt due and payable by the Principal.
- (f) The Principal and the TSC Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive

commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.

- (g) The TSC Contractor agrees to pay the liquidated damages, and indemnify the Principal, under clause 11.10(d) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (h) The TSC Contractor entered into the obligation to pay the amounts specified in clause 11.10(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the TSC Contractor in accordance with its terms.
- (i) The TSC Contractor agrees:
 - (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
 - (ii) that if this clause 11.10 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Works) as a result of the TSC Contractor failing to achieve Construction Completion of a relevant Portion by its Date for Construction Completion, but the TSC Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (j) The Principal's Representative, when issuing a payment schedule pursuant to clause 12.2(c) or 12.2(d) after the Date for Construction Completion of a relevant Portion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 11.10(d)(i) or under the indemnity in clause 11.10(d)(ii) to the date of the payment schedule (despite Construction Completion of that Portion not having occurred).
- (k) The Principal and the TSC Contractor agree that the aggregate of the amount payable under clauses 11.10(d)(i), 11.10(d)(ii) and 11.10(i)(ii) is:
 - (i) limited as set out in clause 9.1(b); and
 - (ii) a limitation on the TSC Contractor's liability to the Principal for a failure to achieve Construction Completion of any Portion by the relevant Date for Construction Completion,

and the Principal will not be entitled to make, nor will the TSC Contractor be liable upon, any Claim in these circumstances other than for the amount for which the TSC Contractor is liable under this clause 11.10 (including where applicable common law damages under clause 11.10(i)(ii)).

11.11 Construction Completion

- (a) The TSC Contractor must, in respect of each Portion, give the Principal's Representative:
- (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,
- written notice of the estimated Date of Construction Completion of the Portion.
- (b) Subject to clause 11.11(g), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the notice referred to in clause 11.11(a)(ii) jointly inspect the TSC Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days of the joint inspection referred to in clause 11.11(b), the Independent Certifier must give the TSC Contractor and the Principal a notice either:
- (i) containing a list of items which it believes must be completed before Construction Completion of the Portion is achieved; or
 - (ii) stating that it believes the TSC Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to issue a list as contemplated in clause 11.11(c)(i).
- (d) When the TSC Contractor considers it has achieved Construction Completion of the Portion, the TSC Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule 4.
- Thereafter, and subject to clause 11.11(g), the Principal's Representative, the Project Director and the Independent Certifier must jointly inspect the TSC Contractor's Activities at a mutually convenient time.
- (e) Following the joint inspection under clause 11.11(d), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 11.11(d), or of receipt of a notice under clause 11.11(f):
- (i) if Construction Completion of the Portion has been achieved, provide to the Principal's Representative and the TSC Contractor a document signed by the Independent Certifier in the form in Schedule 5; or
 - (ii) if Construction Completion of the Portion has not been achieved, issue a notice to the TSC Contractor and the Principal in which it states:
 - A. the items which remain to be completed before Construction Completion of the Portion; or
 - B. that the TSC Contractor is so far from achieving Construction Completion of the Portion that it is not practicable to notify



the TSC Contractor of the items which remain to be completed as contemplated by clause 11.11(e)(ii)A.

- (f) If the Independent Certifier issues a notice under clause 11.11(e)(ii) the TSC Contractor must proceed with the TSC Contractor's Activities and thereafter when it considers it has achieved Construction Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 11.11(d) and 11.11(e) will reapply.
- (g) The TSC Contractor acknowledges and agrees that:
 - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 11.11, including representatives of OpCo; and
 - (ii) the Principal's Representative and OpCo may provide comments to the Independent Certifier (with a copy to the TSC Contractor) in relation to any non-compliance of the TSC Contractor's Activities with this deed.

(h)

- (h) Without affecting the TSC Contractor's obligation to achieve Construction Completion of each Portion by the relevant Date for Construction Completion of each Portion the parties acknowledge that:
 - (i) no separate Date for Construction Completion of the Project Works is specified in this deed;
 - (ii) Construction Completion of the Project Works is achieved by achieving Construction Completion of all Portions;
 - (iii) Construction Completion of the Project Works will be taken to have occurred once Construction Completion of all Portions has occurred; and
 - (iv) the Date of Construction Completion of the Project Works will be taken to be the Date of Construction Completion of the last Portion to reach Construction Completion.

11.12 Effect of Notice of Construction Completion

- (a) A Notice of Construction Completion will not:
 - (i) constitute approval by the Principal or the Principal's Representative of the TSC Contractor's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the Project Works or the Handover Works comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal or the Principal's Representative.
- (b) Without limiting clause 11.12(a), the parties agree that, in the absence of manifest error by the Independent Certifier, the Independent Certifier's certification as set out in a Notice of Construction Completion is final and binding on the parties for the purposes only of establishing that Construction Completion of the relevant Portion has occurred. No other determination of the Independent Certifier will be final and binding on the parties and the parties may, if they wish to dispute any other determination of the Independent Certifier, must do so in accordance with clause 15.

11.13 Part of the Project Works or a Portion

- (a) Without limiting clause 1.7, if any part of a Portion has reached a stage equivalent to Construction Completion but another part of that Portion has not reached Construction Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may determine that the respective parts of the Portion will be separate Portions by written notice to the TSC Contractor.
- (b) The Principal (and its nominees) may, after the TSC Contractor is given written notice by the Principal's Representative under clause 11.13(a), occupy or use any part of the Portion although the whole of the Portion has not reached Construction Completion.
- (c) If the Principal's Representative gives any such notice under clause 11.13(a):
 - (i) the Principal must allow the TSC Contractor reasonable access to the part of the Portion referred to in the notice and being occupied or used by the Principal (and its nominees), to enable the TSC Contractor to bring the relevant Portion of which the area being occupied or used forms part to Construction Completion; and
 - (ii) this will not otherwise limit or affect the responsibilities, obligations or liabilities of the parties under this deed, including the obligation of the TSC Contractor to achieve Construction Completion of the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Construction Completion.

11.14 Transitional Handover Services and handover

- (a) The Principal's Representative may give written notice to the TSC Contractor at least 5 Business Days before the TSC Contractor's estimated Date of Construction Completion of a Portion (which has been notified in accordance with clause 11.11(a)) that Transitional Handover Services must be carried out in respect of the Portion. If the Principal's Representative gives such a notice in respect of a Portion:
 - (i) the TSC Contractor must carry out the Transitional Handover Services in respect of the Portion from the relevant Date of Construction Completion until the date specified in a notice given by the Principal pursuant to clause 11.14(b); and
 - (ii) the TSC Contractor is entitled to be paid for the Transitional Handover Services in respect of the Portion in accordance with the Transitional Handover Services Payment Schedule.
- (b) At any time after issuing a notice under clause 11.14(a) in respect of a Portion, the Principal's Representative may give further written notice to the TSC Contractor that the TSC Contractor is to cease performance of the Transitional Handover Services in respect of the Portion on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the TSC Contractor receives the further notice.
- (c) On the Portion Handover Date, the TSC Contractor must:
 - (i) hand control of the Portion to the Principal; and

provide the Principal with all spare parts, consumables and special tools as required by the SWTC.



12. Payment

12.1 Principal's payment obligation for design and construction

- (a) Subject to clauses 12.11 and 15.16 and to any other right to set-off which the Principal may have, the Principal must pay the TSC Contractor the Project Contract Sum and any other amount payable by the Principal to the TSC Contractor under this deed in accordance with this clause 12, the Design Payment Schedule, the Construction Payment Schedule and the Transitional Handover Services Payment Schedule for the progressive completion of the TSC Contractor's Activities.
- (b) The Design Payment Schedule, the Construction Payment Schedule and the Transitional Handover Services Payment Schedule may set out (among other things):
- (i) those parts of the TSC Contractor's Activities which must be completed before the TSC Contractor may claim a progress payment with respect to that part;
 - (ii) the payment the TSC Contractor may claim for each progress payment;
 - (iii) any limitations or other constraints on the TSC Contractor's ability to make claims for payment; and
 - (iv) the restrictions (if any) on the timing and sequencing of the TSC Contractor's Activities with which the TSC Contractor must comply.

In addition to the Design Payment Schedule, the Construction Payment Schedule and the Transitional Handover Payment Schedule, clause 12.2(h) sets out further payment constraints that are to apply.

- (c) The Design Contract Sum, the Construction Contract Sum and the rates set out in the Transitional Handover Services Payment Schedule are not subject to rise and fall.

12.2 Payment claims

- (a) The TSC Contractor must give the Principal's Representative a progress claim, with respect to the Project Contract Sum and any other amount payable by the Principal to the TSC Contractor under this deed (including any amounts payable under clause 11.14(a)(ii)):
- (i) on the twenty-fifth day of each month (or if this day is not a Business Day, the next Business Day after this day); and
 - (ii) thirty (30) Business Days after:
 - A. the issue of a Notice of Construction Completion for the last Portion to reach Construction Completion; and
 - B. the expiry of the last Defects Correction Period.
- (b) For each claim made under clause 12.2(a) the TSC Contractor must:
- (i) give the Principal's Representative:



Construction Contract Sum and any other amount payable by the Principal to the TSC Contractor or by the TSC Contractor to the Principal under this deed.

- (f) Within 10 Business Days of the issue of a payment schedule in accordance with clause 12.2(c) or clause 12.2(d):
- (i) where the payment schedule provides that an amount is payable by the Principal to the TSC Contractor, but subject to clauses 12.4, 12.5, 12.6, 12.7 and 15.16 and the Design Payment Schedule and the Construction Payment Schedule, the Principal must pay the TSC Contractor the progress payment due to the TSC Contractor as certified in the payment schedule; and
 - (ii) where the payment schedule provides that an amount is payable by the TSC Contractor to the Principal, the TSC Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (g) If the TSC Contractor lodges a progress claim earlier than at the times specified under clause 12.2(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that progress claim earlier than it would have been obliged had the TSC Contractor submitted the progress claim in accordance with this deed.
- (h) Despite any other provisions of this deed to the contrary, the amount of any progress claim to which the TSC Contractor is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 12.2(c) as the amount payable to the TSC Contractor arising out of or in any way in connection with this deed will:
- (i) not include the following amounts:
 - A. any amount which this deed provides cannot be claimed or is not payable because of the failure by the TSC Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);
 - B. any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
 - C. any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Design Payment Schedule or the Construction Payment Schedule);
 - D. any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
 - E. any amount in respect of which the TSC Contractor has failed to provide supporting information as required by this deed; or
 - F. any amount for work which is not in accordance with this deed;


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- (ii) deduct the following amounts:
 - A. any amounts which have become due from the TSC Contractor to the Principal under this deed; and
 - B. any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the progress claim, including under clauses 12.5 or 12.11;
- (iii) in determining amounts to be excluded or deducted under subparagraphs (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 Project Contract Sum (with additions or deductions, if any, provided for by this deed).

(i) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the TSC Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.

(j) The TSC Contractor must include in the payment claim lodged by it after:

- (i) the issue of a Notice of Construction Completion for the last Portion to reach Construction Completion; and
- (ii) the expiration of the last Defects Correction Period,

all Claims that the TSC Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the TSC Contractor's Activities, the Project Works or this deed which occurred:


- (iii) in the case of the payment claim referred to in subparagraph (i), prior to the date of that payment claim; and
- (iv) in the case of the payment claim referred to in subparagraph (ii), in the period between the date of the payment claim referred to in subparagraph (i) and the date of the payment claim.

The TSC Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the TSC Contractor's Activities, the Project Works or this deed that occurred prior to the date of submission of the relevant payment claim referred to in subparagraphs (i) or (ii), except for any claim which:

- (v) has been included in the relevant payment claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 12.2(a); and
- (vi) has not been barred under another provision of this deed.

12.3 Effect of payment schedules and payments

Neither the issue of a payment schedule under clause 12.2(c), nor the making of any payment pursuant to any such payment schedule, will:



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- (a) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
- (b) constitute evidence of the value of any work or an admission of liability or evidence that work has been executed or completed in accordance with this deed; or
- (c) prejudice the right of either party to dispute under clause 15 whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 15 or as otherwise agreed, of the amount properly due and payable, the Principal or the TSC Contractor, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment schedule are payments on account only.

Notwithstanding clause 10.1(f), the Principal's Representative may at any time correct, modify or amend any payment schedule (including any amount included in a Principal's Representative Statement made under any of clauses 6.4(d), 8.4, 11.9(b)(ii)A.1), 12.2(c) and 14.7).

12.4 Conditions precedent

The following are conditions precedent to the TSC Contractor's right to make a progress claim under clause 12.2(a) or the Principal's obligation to make any payment under clause 12.2(f), the TSC Contractor has:

- (a) effected and is maintaining all insurances it is required to effect and maintain under clause 13 and has complied with clause 13.11;
- (b) complied with clauses 2.2(i), 2.12(a) and 2.13;
- (c) complied with its obligations under clause 2.29(a)(i);
- (d) provided the executed deed polls under clause 3.12(a)(iii);
- (e) provided the statement under clause 12.2(b)(i)B;
- (f) provided certification by the Independent Certifier in accordance with clause 12.2(b)(i)C;
- (g) where clause 12.9(q) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by the TSC Contractor pursuant to that clause;
- (h) provided the Principal's Representative with a statutory declaration in the form of Schedule 29 as required by clause 12.5(d) which has been executed on the date the relevant payment claim was issued; and
- (i) in the case of the Principal's obligation to make any payment under clause 12.2(f), provided the Principal with a tax invoice that complies with GST law.

The Principal is not obliged to make a payment under clause 12.2(f), unless the TSC Contractor has submitted a claim for payment in accordance with clause 12.2(b) and provided any accompanying document or other information required by that clause.

12.5 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 TSC Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid shall be a debt due from the TSC Contractor to the Principal.
- (b) If the Principal receives notices of:
- (i) the TSC Contractor being placed under administration; or
 - (ii) the making of a winding up order in respect of the TSC Contractor,
- the Principal will not make any payment to a worker or Subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.
- (c) Nothing in this clause 12.5 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).
- (d) The TSC Contractor must as a condition precedent to the TSC Contractor's right to submit a claim for payment in accordance with clause 12.2(a) or the Principal's obligation to make any payment under clause 12.2(f) provide the Principal's Representative with a statutory declaration in the form of Schedule 29 duly executed:
- (i) by a representative of the TSC Contractor who is in a position to know the facts declared; and
 - (ii) on the date the relevant payment claim was issued.

12.6 Payment for Key Plant and Equipment

- (a) The Principal is not under any obligation to pay any amount as an advance payment in accordance with this clause 12.6 unless the following conditions precedent have been satisfied:
- (i) the TSC Contractor has delivered to the Principal four unconditional undertakings each in an amount equal to 25% of the Key Plant and Equipment Amount in the form of Schedule 17 in favour of the Principal and issued by a bank licensed in Australia with a credit rating of no less than A + (S&P)/A1 (Moody's) with a branch in Sydney, or as otherwise approved by the Principal in its absolute discretion, and
 - (ii) the TSC Contractor has granted a separate charge over each item of Key Plant and Equipment in accordance with this clause 12.6 in favour of the Principal and on such terms and conditions as are required by the Principal (acting reasonably); and
 - (iii) the TSC Contractor has done everything required by the Principal under clause 12.6(f).



- (ii) be reduced by 50% on the date which is one month after the date that the second TBM commences tunnelling; and
- (iii) be reduced by 75% on the date which is one month after the date that the third TBM commences tunnelling; and
- (iv) be reduced by 100% on the date which is one month after the date that the fourth TBM commences tunnelling.

12.7 Payment for unfixed Materials

(a) The value of unfixed Materials intended for incorporation in the Project Works but not yet incorporated are not to be included in a payment schedule under clause 12.2(c) and the Principal is under no obligation to pay for such Materials unless the following conditions precedent have been satisfied:

- (i) the TSC Contractor:
 - A. has provided to the Principal at the same time as its progress claim under clause 12.2(a) an unconditional undertaking in the form of Schedule 17 in favour of the Principal and issued by a bank licensed in Australia with a credit rating of no less than A + (S&P)/A1 (Moody's) with a branch in Sydney, or as otherwise approved by the Principal in its absolute discretion, for an amount equal to the payment claimed for the Materials; and
 - B. gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed Materials will vest in the Principal upon payment;
- (ii) the Materials are clearly marked as the property of the Principal and are on the Project Site or Temporary Areas or available for immediate delivery to the Project Site or Temporary Areas; and
- (iii) the Materials are properly stored in a place approved by the Principal's Representative; and
- (iv) there is evidence (in a form satisfactory to the Principal) that the TSC Contractor has registered a Security Interest in favour of the Principal in the unfixed Materials.

(b) Upon payment of a payment schedule which includes an amount in respect of unfixed Materials, title in the unfixed Materials will vest in the Principal.

(c) If the TSC Contractor provides an unconditional undertaking for payment for unfixed Materials, the Principal must release the unconditional undertaking to the TSC Contractor within 5 Business Days of those Materials:

- (i) being incorporated into the Project Works; and
- (ii) complying with the requirements of this deed.

(d) The parties agree that clause 12.7(a)(i)A does not apply to pre-cast tunnel lining segments to be incorporated in the Project Works.



12.8 GST

- (a) Except where the context suggests otherwise, terms used in this clause 12.8 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.8.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 12.8) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.8.
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under paragraph (e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph (g) is deemed to be a payment, credit or refund of the additional amount payable under paragraph (e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 5 Business Days after the date of the adjustment event.



12.9 SOP Act

- (a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) The TSC Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) In responding to the TSC Contractor under the SOP Act, the Principal's Representative also acts as the agent of the Principal.
- (d) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
 - (i) serve the payment schedule itself; or

- (ii) notify the TSC Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

then a payment schedule issued by the Principal's Representative under this deed which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).

- (e) Without limiting paragraph (c), the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (f) For the purposes of this deed, the amount of the progress payment to which the TSC Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 12.2 less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (g) The TSC Contractor agrees that:
 - (i) the date prescribed by clause 12.2(a) as the date on which the TSC Contractor is entitled to make a progress claim is, for the purposes of the SOP Act (including section 8 of the SOP Act), the reference date; and
 - (ii) a progress claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no liability to make a payment of any amount in respect of a progress claim unless the amount has been included in a payment schedule issued by the Principal's Representative in accordance with clause 12.2(c) or 12.2(d).
- (h) Nothing in this deed will be construed to:
 - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or
 - (ii) subject to paragraph (i), give to the TSC Contractor rights under this deed which extend or are in addition to rights given to the TSC Contractor by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (i) If the TSC Contractor suspends the whole or part of the TSC Contractor's Activities pursuant to the SOP Act:
 - (i) the suspension will be an Act of Prevention for the purposes of this deed; and
 - (ii) except to the extent (if any) expressly provided under the SOP Act and subparagraph (h), the Principal will not be liable for and the TSC Contractor is not entitled to Claim any Loss suffered or incurred by the TSC Contractor as a result of the suspension.
- (j) The TSC Contractor must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:



- (i) a suspension by a Subcontractor of work which forms part of the TSC Contractor's Activities pursuant to the SOP Act; or
 - (ii) a failure by the TSC Contractor to comply with its obligations under paragraph (b).
- (k) The TSC Contractor agrees that for the purposes of section 17(3) of the SOP Act:
- (i) it has irrevocably chosen IAMA as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the TSC Contractor's Activities is to be made; and
 - (ii) the TSC Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (l) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the TSC Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 12.2(c);
 - (ii) if it is subsequently determined pursuant to this deed that the TSC Contractor was not entitled under this deed to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by the TSC Contractor to the Principal which the TSC Contractor must pay to the Principal upon demand and in respect of which the TSC Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the TSC Contractor to the Principal upon demand and in respect of which the TSC Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (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; and
 - (v) the payment schedule referred to in clause 12.9(l)(iv)C will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 15.
- (m) Without limiting clause 12.11, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (n) If the Principal withholds from money otherwise due to the TSC Contractor any amount that is less than or equal to the amount claimed to be owed under a payment



withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:

- (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the TSC Contractor from the Principal; and
- (ii) the period during which the Principal retains money due to the TSC Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the Principal to the TSC Contractor has been unpaid; and
 - B. the date by which payment of money owed by the Principal to the TSC Contractor must be made.

(o) The TSC Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.

(p) Any amount paid by the Principal pursuant to section 26C of the Act will be a debt due from the TSC Contractor to the Principal.

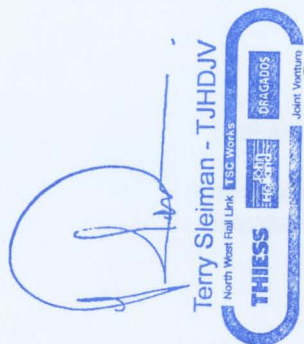
(q) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the TSC Contractor:

- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
- (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the TSC Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clauses 12.9(n)(i) - (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).

12.10 Performance and compliance incentive payment

- (a) The Principal may at any time provide the TSC Contractor with details of a proposed performance and compliance incentive payment scheme.
- (b) Upon receipt of the Principal's proposal, the TSC Contractor may notify the Principal in writing that it accepts the Principal's proposed performance and compliance incentive payment scheme, in which case the scheme will be incorporated in Schedule 35 and the TSC Contractor will be entitled to receive payments in accordance with the scheme.
- (c) If the TSC Contractor does not accept the Principal's proposed performance and compliance incentive payment scheme, the parties will negotiate to reach an agreed position but the Principal is under no obligation to agree to any changes to its proposed scheme.



12.11 Right of set-off

The Principal's Representative may (on behalf of the Principal) in any payment schedule issued under clauses 12.2(c) or 12.2(d) withhold, set-off or deduct from the money which would otherwise be certified as payable to the TSC Contractor or the Principal may at any time withhold, set-off or deduct from moneys otherwise due to the TSC Contractor:

- (a) any debt or other moneys due from the TSC Contractor to the Principal (including any debt due from the TSC Contractor to the Principal pursuant to section 26C of the SOP Act);
- (b) 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; or
- (c) any claim to money which the Principal may have against the TSC Contractor whether for damages (including liquidated damages) or otherwise,

under or arising out of or in connection with this deed or the TSC Contractor's Activities and whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

This clause 12.11 will survive the termination of this deed.

12.12 Interest

The Principal will pay simple interest at the rate of 1% above the Bank Bill Rate on any:

- (a) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 12.2(c), but which is not paid by the Principal within the time required by this deed;
- (b) damages; and
- (c) amount which is found after the resolution of a Dispute to be payable to the TSC Contractor, and which has not been paid by the Principal,

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

This will be the TSC Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

12.13 Title

Title in all items forming part of the Project Works and the Handover Works will pass progressively to the Principal on the earlier of payment for, or delivery of, such items to the Construction Site. Risk in all such items remains with the TSC Contractor in accordance with clause 13.

13. Risks and Insurance

13.1 Responsibility for care of the Project Works

- (a) Subject to clause 13.1(d), the TSC Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:

- (i) the TSC Contractor's Activities, the Project Works and the Temporary Works and any Extra Land, from the date of this deed; and
- (ii) the relevant parts of the Construction Site, from the date on which access is granted under clause 3.1(a)(i),
until 4.00pm on the Portion Handover Date for the relevant Portion.

(b) After the time after which the TSC Contractor ceases to be responsible under clause 13.1(a) for the care of a part of the Project Works or any other thing referred to in clause 13.1(a), subject to clause 13.1(d), the TSC Contractor will bear the risk of any destruction, loss of or damage to that part of the Project Works or other thing, arising from:

- (i) any act or omission of the TSC Contractor during the Defects Correction Period (including any extension under clause 8.5(b)) or any other TSC Contractor's Activities; or
- (ii) any event which occurred while the TSC Contractor was responsible for the care of the relevant part of the Project Works or other thing under clause 13.1(a) in connection with the TSC Contractor's Activities.

(c) Subject to clause 13.1(d), the TSC Contractor must:

- (i) in accordance with clause 13.15, (at its own cost) promptly make good destruction, loss or damage to anything caused during the period the TSC Contractor is responsible for its care; and
- (ii) indemnify the Principal against such destruction, loss or damage.

(d) This clause 13.1 does not apply to the extent that any destruction, loss or damage for which the TSC Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause results from an Excepted Risk.

(e) Where any destruction, loss or damage arises to any extent from an Excepted Risk, the TSC Contractor must where directed by the Principal's Representative to do so, make good or repair the destruction, loss or damage in which event such making good or repair will, to the extent the destruction, loss or damage arises from an Excepted Risk, be treated as if it were a Change the subject of a direction by the Principal's Representative and clause 6 applies.

13.2 Indemnity by the TSC Contractor

- (a) The TSC Contractor must indemnify the Principal against:
 - (i) the loss of, loss of use of or access to (whether total or partial), or any destruction or damage to, any of the Principal's real or personal property (other than property referred to in clause 13.1 while the TSC Contractor is responsible for its care); or
 - (ii) any claim against the Principal or Liability the Principal may have to third parties in respect of or arising out of or in connection with:
 - A. any illness, personal injury to, or death of, any person; or

- B. the loss of, loss of use of or access to (whether total or partial) or destruction or damage to any real or personal property, caused by, arising out of, or in any way in connection with, the TSC Contractor's Activities, the Project Works or the Temporary Works or any failure by the TSC Contractor to comply with its obligations under this deed.
- (b) Clause 13.2(a) does not limit or otherwise affect the TSC Contractor's other obligations under this deed or otherwise according to Law.
- (c) The TSC Contractor is not relieved of any obligation to indemnify the Principal under this Clause 13.2 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal pursuant to clause 13.3.

13.3 Principal's insurance

- (a) The Principal must, on and from the date which is 20 Business Days after the date of this deed, effect and maintain insurances on the terms of the policies set out in Exhibit I.
- (b) Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the TSC Contractor must:
- (i) satisfy itself of the nature and extent of the cover provided by these insurance policies;
- (ii) acknowledge that the Principal's insurances do not cover every risk to which the TSC Contractor might be exposed and are subject to deductibles and limits and the TSC Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the Principal's insurances; and
- (iii) where the TSC Contractor:
- A. bears the risk of the relevant destruction, loss or damage under clause 13.1, or is required to indemnify the Principal under clause 13.2, and makes a claim under any of these insurance policies in respect of the destruction, loss or damage or the event giving rise to the indemnity; or
- B. otherwise makes a claim under or in respect of any of these insurance policies,
- (c) bear the cost of any excesses or deductibles in the insurance policies in Exhibit I or any insurance taken out by the TSC Contractor under this clause 13.3, that may apply in those circumstances.

13.4 TSC Contractor's insurance obligations

The TSC Contractor must effect and maintain the following insurance:

- (a) workers compensation insurance referred to in clause 13.5;
- (b) asbestos liability insurance referred to in clause 13.6;
- (c) professional indemnity insurance referred to in clause 13.7;

- (d) Construction Plant insurance referred to in clause 13.8; and
- (e) motor vehicle insurance referred to in clause 13.9.

13.5 Workers compensation insurance

- (a) The TSC Contractor must effect and maintain workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the maximum amount required by Law; and
 - (ii) in the name of the TSC Contractor and (if legally possible) extended to indemnify the Principal for its statutory liability to persons employed by the TSC Contractor.
- (b) The TSC Contractor must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the maximum amount required by Law; and
 - (ii) in the name of the Subcontractor and (if legally possible) extended to indemnify the Principal and the TSC Contractor for their statutory liability to persons employed by the Subcontractor.



13.6 Asbestos liability insurance

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

- (a) covers liability on an occurrence basis (and not a claims made basis) in respect of or in connection with the presence of asbestos and any work involving asbestos or asbestos decontamination that is caused by or arises out of or in connection with any act or omission of the TSC Contractor or its Associates in connection with the carrying out of the TSC Contractor's Activities; and
- (b) has a limit of indemnity of at least \$20,000,000 for any one occurrence.

13.7 Professional indemnity insurance

[Redacted text]

13.8 Construction Plant insurance

[Redacted text]

[Redacted]

13.9 Motor vehicle insurance

[Redacted]

[Redacted]

[Redacted]

13.10 Periods of insurance

[Redacted]

[Redacted]

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13.11 Evidence of policies

[Redacted]

[Redacted]

[Redacted]


Terry Sleiman - TJHDJV
North West Rail Link ESC Works
THIES
PACADIOS
Joint Work



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13.13 Premiums

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13.14 Undertaking to inform

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.15 Reinstatement

If, prior to the Date of Construction Completion of the last Portion to achieve Construction Completion, if any destruction, damage or loss occurs to the Project Works or the Temporary Works, the TSC Contractor must:

- (a) make secure the Project Works and the Temporary Works and the parts of the Construction Site which are still under the control of the TSC Contractor in accordance with clause 3.3;
- (b) notify:
 - (i) appropriate Authorities, emergency services and the like; and
 - (ii) the insurers for assessment,and comply with their instructions; and
- (c) promptly consult with the Principal to agree on steps to be taken to ensure:
 - (i) the prompt repair or replacement of the destruction, loss or damage so that:
 - A. it complies with the SWTC; and
 - B. there is minimal disruption to the Project Works or the Temporary Works; and
 - (ii) that, to the greatest extent possible, the TSC Contractor continues to comply with its obligations under this deed;
- (d) subject to clause 13.1(e), manage all repair and replacement activities so as to minimise the impact on the Project Works or the Temporary Works; and
- (e) keep the Principal's Representative fully informed of the progress of the repair and replacement activities.



13.16 Application of insurance proceeds

Where, prior to the Date of Construction Completion of the last Portion to achieve Construction Completion, the Project Works or the Temporary Works are damaged or destroyed, all insurance proceeds in respect of that damage or destruction that are payable under any insurances maintained by the Principal in accordance with clause 13.3 will be:

- (a) paid to the Principal;
- (b) paid by the Principal to the TSC Contractor by progress payments under clause 12.2 as and when the TSC Contractor reinstates the Project Works and the Temporary Works; and
- (c) subject to clause 13.1(e), the limit of the TSC Contractor's entitlement to payment for reinstatement of the destruction, loss or damage.

13.17 Damage to property

- (a) Subject to clause 13.17(c), where any loss of or destruction or damage to real or personal property or the Environment (including any Utility Services but excluding the Project Works or the Temporary Works) occurs arising out of, or in any way in connection with, the carrying out by the TSC Contractor of the TSC Contractor's Activities or a failure by the TSC Contractor to comply with its obligations under this deed, the TSC Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) If the TSC Contractor fails to carry out any repair work under clause 13.17(a), the Principal may carry out such work and any Loss suffered or incurred by the Principal will be a debt due and payable from the TSC Contractor to the Principal.
- (c) This clause 13.17 does not apply where the owner of the real or personal property does not agree to the TSC Contractor carrying out the work under clause 13.17(a).
- (d) Nothing in this clause 13.17 limits the operation of the indemnity in clause 13.2(a).



13.18 Risk of deductibles or excesses

Without limiting clause 13.3, the TSC Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under an insurance policy which the TSC Contractor is required to effect under this clause 13.

14. Termination by Principal

14.1 Notice of default

The Principal may give a written notice to the TSC Contractor if the TSC Contractor is in breach of this deed in that it:

- (a) does not commence to perform its obligations in accordance with the requirements of this deed;
- (b) does not progress the TSC Contractor's Activities in accordance with clause 11.1;
- (c) suspends the TSC Contractor's Activities (except to the extent required by this deed or permitted by Law);
- (d) fails to provide any unconditional undertaking in accordance with clause 2.12;

- (e) fails to provide any guarantee in accordance with clause 2.13;
- (f) fails to effect and maintain any insurances required to be effected and maintained by the TSC Contractor, or fails to provide evidence of such insurances, in accordance with clause 13;
- (g) commits a material breach of clause 2.3;
- (h) commits a material breach of clause 2.28;
- (i) fails to comply with its obligations under the Independent Certifier Deed and this results in the termination of the Independent Certifier Deed;
- (j) does not comply with any Direction of the Principal's Representative made in accordance with this deed;
- (k) knowingly provides a statutory declaration or documentary evidence which contains a statement that is untrue;
- (l) fails to pay a sum of money due and owing to the Principal in accordance with the TSC Project Deed and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment; or
- (m) is otherwise in breach of a material or substantial term of, or obligation under, this deed.

14.2 Contents of notice

The notice under clause 14.1 must state:

- (a) that it is a notice under clause 14.1;
- (b) the breach relied upon; and
- (c) that the Principal requires the TSC Contractor to:
 - (i) remedy the breach or overcome its effects; or
 - (ii) where the breach cannot be remedied, make other arrangements to the satisfaction of the Principal,

within a reasonable period of time specified in the notice (which period must not be less than 15 Business Days from the date of the notice).

Upon giving a notice under clause 14.1, the Principal may suspend payments to the TSC Contractor until the date upon which the TSC Contractor remedies the breach.

14.3 Termination by the Principal for insolvency or breach

Subject to clause 14.8, the Principal may terminate this deed by notice in writing to the TSC Contractor from the date stated in the notice if:

- (a) an Insolvency Event occurs to:
 - (i) the TSC Contractor; or
 - (ii) where the TSC Contractor comprises more than one person, any one of those persons;



(iii) Leighton Holdings Limited; or

(iv) Dragados S.A,

whether or not the TSC Contractor is then in breach of this deed;

(b) the TSC Contractor does not remedy a breach of this deed the subject of a notice under clause 14.1 or overcome its effects within the period of time specified in the notice under clause 14.1;

(c) where a breach of this deed the subject of a notice under clause 14.1 cannot be remedied, the TSC Contractor has not made other arrangements to the satisfaction of the Principal; or

(d) the TSC Contractor is in fundamental breach as contemplated in clause 2.19(b)(i).

Notwithstanding clause 14.3(a), the Principal may not terminate this deed pursuant to clause 14.3(a)(i) or 14.3(a)(ii) where:

(e) the TSC Contractor comprises more than one person and an Insolvency Event occurs to one, but not all, of those persons; and

(f) the TSC Contractor demonstrates to the satisfaction of the Principal that it is still able to carry out the TSC Contractor's Activities in a manner which will enable it to comply with its obligations under the deed.

14.4 The Principal's entitlements after termination

(a) If the Principal terminates this deed under clause 14.3, the Principal:

(i) may without payment of compensation to the TSC Contractor:

A. take possession of, and use (and permit others to use), the Construction Plant, Materials, Utility Services, the Temporary Works and other things on or in the vicinity of the Construction Site and Extra Land as were used by the TSC Contractor (and, for this purpose, the TSC Contractor must ensure that the Principal has access to the Extra Land in which the Principal has no interest);

B. contract with such of the Subcontractors; and

C. take possession of, and use (and permit others to use), such of the Design Documentation and other information in the possession of the TSC Contractor,

as are reasonably required by the Principal to facilitate completion of the TSC Contractor's Activities (as the case may be) remaining to be completed under this deed as at the date of termination (**Remaining Work**);

(ii) may engage third parties to carry out and complete the whole or any part of the Remaining Work;

(iii) may exclude from the Construction Site the TSC Contractor and any other person concerned with the carrying out and completion of the TSC Contractor's Activities;



- (iv) will be entitled to recover from the TSC Contractor any Loss suffered or incurred by the Principal arising out of or in any way in connection with the breach, Insolvency Event or termination of this deed and until the Principal's rights in this regard are satisfied, Principal will not be obliged to make any further payments to the TSC Contractor, including any money the subject of a progress claim under clause 12.2(a) or a payment schedule under clause 12.2(c) or 12.2(d); and
- (v) will be entitled to have recourse to any unconditional undertaking held under clause 2.12, 12.6 or 12.7.
- (b) If the Principal takes possession of Construction Plant and Materials, the Principal must maintain them in good working order and, subject to paragraph (c), on completion of the Remaining Work, the Principal shall return the Construction Plant and Materials that are surplus.
- (c) If the TSC Contractor is indebted to the Principal, the TSC Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 14.4(a)(i)A such that the Principal may retain that property until the debt is met. If after reasonable notice, the TSC Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the TSC Contractor.
- (d) The TSC Contractor must do all things (including executing all documents) reasonably required by the Principal to enable the Principal to lawfully register any Security Interest in the Construction Plant or other things taken under paragraph (a) so as to ensure the Principal's rights under this clause 14.4 are not adversely affected.

14.5 TSC Contractor's rights after repudiation or wrongful termination

- (a) If the Principal:
 - (i) repudiates this deed and the TSC Contractor terminates this deed; or
 - (ii) wrongfully:
 - A. exercises or attempts to exercise any right or power conferred on it by clause 14.3; or
 - B. determines or purports to determine this deed at common law,
- then the:
- (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 14.6 and the TSC Contractor's sole rights in such circumstances will be those set out in clause 14.7; and
 - (iv) the TSC Contractor:
 - A. will not be entitled to the payment of damages;
 - B. will not be entitled to any payment on a quantum meruit basis; and



C. waives all other rights it has to make a Claim in such circumstances.

(b) This clause 14.5 will survive the termination of this deed.

14.6 Termination for convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this deed, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the TSC Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the TSC Contractor; and
- (b) thereafter either itself or by a third party complete the uncompleted part of the TSC Contractor's Activities.

14.7 Cost

If the Principal terminates this deed under clause 14.6, without prejudice to any of the Principal's other rights, entitlements or powers under this deed (including its right of set-off under clause 12.11), the TSC Contractor will be entitled to payment of the following amounts:

- (a) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the TSC Contractor submitted a payment claim under clause 12.2 for work carried out to the date of termination;
- (b) the cost of Materials or other items reasonably ordered by the TSC Contractor for the TSC Contractor's Activities and for which it is legally bound to pay provided that:
 - (i) the value of the Materials and other items have not been previously paid or included in the amount payable under clause 14.7(a); and
 - (ii) title in the Materials will vest in the Principal upon payment;
- (c) the reasonable cost of making the Project Site safe and removing from the Project Site and the Temporary Areas all Construction Plant, Materials and Temporary Works and other things used in the performance of the TSC Contractor's obligations;
- (d) the reasonable costs incurred by the TSC Contractor as a result of terminating Subcontracts;
- (e) where termination occurs prior to Construction Completion of the last Portion to achieve Construction Completion, 2% of the unpaid balance (if any) of the Construction Contract Sum (after taking into account the amount payable under clause 14.7(a)) as that balance stands at the date of termination; and
- (f) the costs reasonably incurred by the TSC Contractor in the expectation of completing the whole of the TSC Contractor's Activities and not included in any other payment by the Principal,

such amounts to be as stated by the Principal's Representative.

The TSC Contractor must:



- (g) take all steps possible to mitigate the costs referred to in clauses 14.7(b), 14.7(c), 14.7(d) and 14.7(f); and
- (h) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other things to enable the Principal to complete the design and construction of the Project Works and the Temporary Works.

The TSC Contractor and each of its Subcontractors may retain one copy of the information, documents and records referred to in clause 14.7(h).

To the extent it has not had recourse to them, the Principal will, subject to clause 2.12(g), return the unconditional undertakings then held by it under clauses 2.12, 12.6 or 12.7 when the TSC Contractor has complied with its obligations under this clause.

Upon payment of the amount payable under this clause 14.7 title in the Materials referred to in clause 14.7(b) will vest in the Principal.

The amount to which the TSC Contractor is entitled under this clause 14.7 will be a limitation upon the Principal's liability to the TSC Contractor arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the TSC Contractor upon any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under this clause 14.7.

This clause 14.7 will survive the termination of the deed under clause 14.6.

14.8 Preservation of rights

Nothing in this clause 14 or that the Principal does or fails to do pursuant to this clause 14 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 12.11) which it may have, including where the TSC Contractor breaches (including repudiates) this deed.

14.9 Termination by Frustration

If under the Law this deed is frustrated:

- (a) the Principal will:
 - (i) pay the TSC Contractor the following amounts as determined by the Principal's Representative:
 - A. an amount calculated in accordance with clause 14.7(a) for work carried out prior to the date of frustration;
 - B. the costs calculated in accordance with the terms of, and subject to the conditions in, clause 14.7(b); and
 - C. the costs calculated in accordance with the terms of clauses 14.7(c) and 14.7(f); and
 - (ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 2.12, 12.6 or 12.7 (or the remaining proceeds of the unconditional undertakings if they have been converted into cash) when the TSC Contractor has complied with its obligations under this clause; and



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- (b) the TSC Contractor must:
- (i) take all steps possible to mitigate the costs referred to in clause 14.9(a)(i)B - C; and
 - (ii) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other things to enable the Principal to complete the design and construction of the Project Works and the Temporary Works.

Upon payment of the amount payable under this clause 14.9, title in the Materials the subject of the costs payable in respect of clause 14.9(a)(i)B will vest in the Principal.

The amount to which the TSC Contractor is entitled under this clause 14.9 will be a limitation upon the Principal's liability to the TSC Contractor arising out of, or in any way in connection with, the frustration of this deed and the Principal will not be liable to the TSC Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed other than for the amount payable under this clause 14.9.

Without limiting any other provision of this Deed, this clause 14.9 will survive the frustration of this deed.

14.10 Codification of TSC Contractor's entitlements

This clause 14 is an exhaustive code of the TSC Contractor's rights arising out of or in any way in connection with any termination and the TSC Contractor:

- (a) cannot otherwise terminate, rescind or treat this deed as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this deed as repudiated, otherwise than in accordance with this clause 14.

15. Dispute resolution

15.1 Disputes generally

Subject to clause 15.19, any dispute, difference, controversy or Claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with a Principal's Representative Statement, the Project Works, the Temporary Works, the TSC Contractor's Activities, the North West Rail Link, this deed (including any questions relating to the existence, validity or termination of this deed) or either party's conduct before the date of this deed, shall be resolved in accordance with this clause 15.

15.2 Dispute Avoidance Board's advisory function

- (a) The Dispute Avoidance Board has been constituted under the DAB Agreement.
- (b) In performing its functions the Dispute Avoidance Board must comply with this deed and the DAB Agreement.
- (c) In addition to its functions determining Disputes, the Dispute Avoidance Board will have a general advisory function.
- (d) Each party must provide all reasonable assistance to the Dispute Avoidance Board in fulfilling its advisory function including providing all information it reasonably requests.

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- (e) Either party may refer any unresolved matters that are not yet a Dispute to the Dispute Avoidance Board for its opinion. Any such referrals must be made in writing to the chairperson of the Dispute Avoidance Board and a copy simultaneously provided to the other party.
- (f) For the purposes of enabling it to fulfil this function the Dispute Avoidance Board will:
- (i) keep itself informed as to the progress of the Project Works and in particular any issues affecting the successful progression of the Project Works;
 - (ii) attend any Management Review Group meetings which it is requested to attend by either party; and
 - (iii) provide, in writing, a recommendation for the resolution of any matter referred to it under paragraph (e) within 10 Business Days of the referral, or within a longer time if agreed between the Dispute Avoidance Board, the Principal and the TSC Contractor.



15.3 Notice of Dispute

- (a) If a party requires a Dispute to be resolved, the party may, within the time required by clause 15.3(b), give the other party and the Principal's Representative written notice of the Dispute (**Notice of Dispute**). The Notice of Dispute must:
- (i) specify the Dispute;
 - (ii) provide particulars of the party's reasons for being dissatisfied; and
 - (iii) set out the position which the party believes is correct.
- (b) Without limiting clause 17, the Notice of Dispute must be given to the other party and the Principal's Representative:
- (i) (in the case where the Dispute is in respect of a Principal's Representative Statement) within any time period required by clause 10.1(f); or
 - (ii) (otherwise) within 20 Business Days of the Dispute arising.

15.4 Executive negotiation

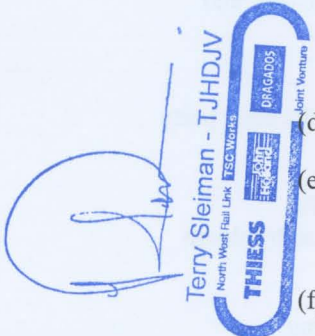
- (a) Where a Notice of Dispute is given under clause 15.3, the Dispute must be referred to the Executive Negotiators and the Executive Negotiators must, within 5 Business Days after the date on which the Notice of Dispute was given under clause 15.3, commence meetings and negotiations with a view to resolving the Dispute.
- (b) If the Executive Negotiators:
- (i) have not resolved the Dispute; or
 - (ii) have not reached agreement upon a procedure to resolve the Dispute,
- within 20 Business Days after the date on which the Notice of Dispute was given under clause 15.3 (or such longer period of time as the Executive Negotiators or the parties may have agreed in writing) then, whether or not the Executive Negotiators

have met and undertaken negotiations with a view to resolving the Dispute, either party may by giving notice to the other party and the Dispute Avoidance Board in accordance with clause 15.4(c) require that those parts of the Dispute that remain unresolved be referred to the Dispute Avoidance Board (**Notice of Referral to DAB**).

- (c) A Notice of Referral to DAB must:
- (i) be given within 20 Business Days after the expiry of the 20 Business Day period referred to in clause 15.4(b);
 - (ii) state that it is a Notice of Referral to DAB under this clause 15.4; and
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute which remain unresolved.

15.5 Obtaining Dispute Avoidance Board's decision

- (a) If a Dispute is referred to the Dispute Avoidance Board under clause 15.4, the Dispute Avoidance Board will be deemed to have received such reference on the date when the Notice of Referral to DAB is received by the chairperson of the Dispute Avoidance Board.
- (b) The decision of a Dispute by the Dispute Avoidance Board under clause 15.5 must be made in accordance with the rules in Appendix 2 of Schedule 36 or such rules as may otherwise be agreed between the parties.
- (c) Both parties must promptly make available to the Dispute Avoidance Board all such additional information, access to the Construction Site and appropriate facilities, as the Dispute Avoidance Board may require for the purposes of making a decision on the Dispute.
- (d) The Dispute Avoidance Board will be deemed to be not acting as arbitrators.
- (e) Notwithstanding anything else, to the extent permitted by Law, the Dispute Avoidance Board will have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act* 2002 NSW.
- (f) Within 30 Business Days after receiving a Notice of Referral to DAB under clause 15.4, or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must give its decision in writing, which must be reasoned and must state that it is given under this clause 15.5(f). The decision will be immediately binding on both parties, who must give effect to it unless and until it is revised in an amicable settlement or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 15.



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15.6 Notice of dissatisfaction

- (a) If:
- (i) either party is dissatisfied with the Dispute Avoidance Board's decision, then either party may, within 10 Business Days after receiving the decision, give notice to the other party of its dissatisfaction; or
 - (ii) the Dispute Avoidance Board fails to give its decision within the period of 30 Business Days (or as otherwise agreed) after receiving a Notice of



Referral to DAB under clause 15.4, then either party may, within 10 Business Days after this period has expired, give a notice of dissatisfaction to the other party,

(Notice of Dissatisfaction).

- (b) A Notice of Dissatisfaction issued under this clause 15.6 must:
 - (i) state that it is given under this clause 15.6; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 15.10 and clause 15.11, 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 15.6.

15.7 Final and binding decision

- (a) If the Dispute Avoidance Board has given its decision as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 15.6, within 10 Business Days after it received the Dispute Avoidance Board's decision, then the decision will become final and binding upon both parties.
- (b) Once a decision of the Dispute Avoidance Board has become final and binding under clause 15.7(a), neither party will be entitled to challenge the decision on the basis that a member of the Dispute Avoidance Board did not, at the time of making the decision, meet the criteria referred to in clause 7.11(c) of the Request for Tender.

15.8 Failure to comply with Dispute Avoidance Board's decision

If a party fails to comply with any final and binding decision of the Dispute Avoidance Board, then the other party may, without prejudice to any other rights it may have, give a notice to the other party requiring the failure itself to be determined as a Dispute in accordance with clause 15.9. In these circumstances clauses 15.2 - 15.5 will not apply to this Dispute.

In making any judgement or arbitral award, in respect of any such Dispute, the court or the arbitral tribunal will not be entitled to open up and review the decision of the Dispute Avoidance Board.

15.9 Amicable settlement

Where a Notice of Dissatisfaction has been given under clause 15.6, or where a notice has been given under clause 15.8, both parties must attempt to settle the Dispute amicably before the commencement of any further proceedings. However, unless both parties agree otherwise, if no amicable settlement has been reached by the 15th Business Day after the day on which the Notice of Dissatisfaction or the notice under clause 15.8 was given, the Dispute will be determined in accordance with clause 15.13 whether or not the Executive Negotiators have met and undertaken any genuine and good faith negotiations.

15.10 Expiry of Dispute Avoidance Board's appointment

If a Dispute arises and there is no Dispute Avoidance Board in place, whether by reason of the expiry of the Dispute Avoidance Board's appointment or otherwise:

- (a) clause 15.4 will still apply, but if the Dispute is not resolved within 20 Business Days after a notice is given under clause 15.2, the Dispute will not be referred to the Dispute Avoidance Board;
- (b) clauses 15.5 - 15.9 will not apply; and
- (c) whether or not the Executive Negotiators have met and undertaken any genuine and good faith negotiations, the Dispute will be determined in accordance with clause 15.13.

15.11 Replacement of Dispute Avoidance Board member

- (a) If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:
 - (i) if that member is the chairperson, the remaining two members will appoint a replacement member; and
 - (ii) if that member is not the chairperson:
 - A. if the parties have previously agreed upon one or more reserve members for the Dispute Avoidance Board, and one or more such members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced will appoint one of the reserve members to the Dispute Avoidance Board; or
 - B. if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
- (b) If, within 30 Business Days of a member declining to act or being unable to act on the Dispute Avoidance Board, the member has not been replaced by a person appointed in accordance with clause 15.11(a), either party may request the President of IAMA to appoint a replacement member. This appointment will be final and conclusive.
- (c) The parties, the remaining members and the new member must enter into a replacement Dispute Avoidance Board agreement on substantially the same terms as the DAB Agreement.



15.12 Termination of Dispute Avoidance Board

The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by the Principal or the TSC Contractor acting alone. Unless otherwise agreed by both parties, the DAB Agreement will terminate upon the later of:

- (a) the Dispute Avoidance Board having made a decision in accordance with clause 15.5 in respect of all Disputes that were referred to it; and
- (b) 18 months after the Date of Construction Completion of the last Portion to achieve Construction Completion unless otherwise directed by the Principal.

15.13 Litigation or arbitration

Where this clause applies, the Principal in its absolute discretion may within 15 Business Days after the expiry of:

- (a) the 15 Business Day period referred to in clause 15.9; or
- (b) the 20 Business Day period referred to in clause 15.10,

(as applicable) issue a notice to the TSC Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 15 Business Day period, the Dispute will be referred to arbitration.

15.14 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:
 - (i) ACICA Expedited Arbitration Rules for any Dispute in respect of a Principal's Representative Statement; or
 - (ii) ACICA Arbitration Rules for any other Dispute.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The number of arbitrators will be:
 - (i) one, in the case of an arbitration conducted in accordance with the ACICA Expedited Arbitration Rules; or
 - (ii) agreed or determined pursuant to Article 8 of the ACICA Arbitration Rules in the case of an arbitration conducted in accordance with 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 shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - A. the number of written submissions that will be permitted;
 - B. where appropriate, the length of written submissions;
 - C. the extent of document discovery permitted, if any;
 - D. the consolidation of proceedings, when requested;



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- 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 15.15, 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.

15.15 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 15.
- (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.

15.16 Payments

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

15.17 TSC Contractor to continue performing obligations

Despite the existence of any Dispute the TSC Contractor must:

- (a) continue to perform the TSC Contractor's Activities; and
- (b) perform its other obligations under this deed.

15.18 Urgent relief

Nothing in this clause 15 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

15.19 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 15 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under the provisions of the TSC-OTS Cooperation and Integration Deed;
- (b) the parties shall be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the TSC-OTS Cooperation and Integration Deed; and
- (c) where the Dispute is a Common Dispute, as that term is defined in clause 10 of Schedule 33, then this clause 15 will apply subject to the provisions of clause 10 of Schedule 33.

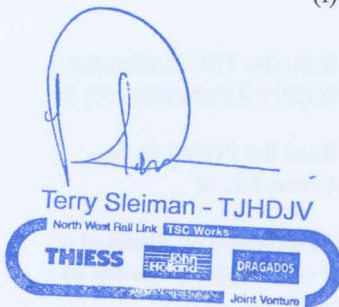
15.20 Survive termination

This clause 15 will survive termination of this deed.

16. General

16.1 Notices

- (a) Wherever referred to in this clause, 'Notice' means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time the Principal's Representative may notify the TSC Contractor that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the TSC Contractor to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
 - (i) before the date referred to in clause 16.1(b)(ii):
 - A. be in writing;
 - B. be addressed:
 - 1) in the case of a Notice from the TSC Contractor, to the Principal's Representative; or
 - 2) in the case of a Notice from the Principal, to the Project Director;



C. be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

D. be delivered or posted to the relevant address or sent to the facsimile number shown below (or to any new address or facsimile number notified by the intended recipient):

1) **to the Principal:**

Address: Transport for NSW
8-12 Castlereagh Street
Sydney NSW 2000

Fax: (02) 8265 6470

Attention: Colin Rudd
Deputy Project Director Delivery;

2) **to the Principal's Representative:**

Address: Transport for NSW
8-12 Castlereagh Street
Sydney NSW 2000

Fax: (02) 8265 6470

Attention: Colin Rudd
Deputy Project Director Delivery;

3) **to the TSC Contractor:**

Name: Thiess John Holland Dragados Joint
Venture

Address: Level 7, 345 George Street
Sydney NSW 2000

Attention: Terry Sleiman; and



(ii) on and from the commencement date for use of the PDCS referred to in clause 16.1(b)(ii):

A. without limiting clause 16.1(c)(ii)C, be sent through the PDCS in accordance with the requirements set out in clause 16.1(f) and:

1) in the case of a Notice from the TSC Contractor, be addressed to the Principal's Representative; or

2) in the case of a Notice from the Principal, be addressed to the Project Director; or

B. in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 16.1(c)(i); and

C. in the case of Notices which have been issued in accordance with clause 16.1(c)(ii)A:

- 1) by the TSC Contractor:
 - a) under clauses, 11 (Time and Completion), 12 (Payment), 14 (Termination by Principal), 15 (Dispute Resolution) or 17 (Notification of Claims);
 - b) in relation to an Excluded Claim; or
 - c) in relation to the SOP Act; or
- 2) by the Principal under clauses 14 (Termination by Principal) or 15 (Dispute Resolution),

in addition to the Notice sent pursuant to clause 16.1(c)(ii)A, a copy of the Notice sent through the PDCS must be printed and delivered or posted to the relevant address or sent to the facsimile number shown above in clause 16.1(c)(i)D.1), 16.1(c)(i)D.2) or 16.1(c)(i)D.3) (as applicable).

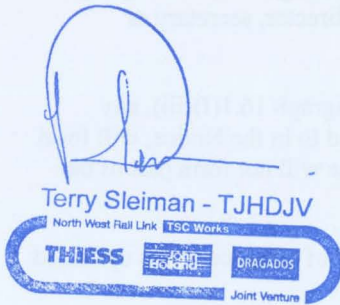
(d) For the avoidance of doubt:

- (i) a Notice referred to in clause 16.1(c)(ii)C will not be effective unless it is delivered in accordance with both clauses 16.1(c)(ii)A and 16.1(c)(ii)C; and
- (ii) a Notice issued pursuant to clause 16.1(c)(ii)A and a Notice issued pursuant to clause 16.1(c)(ii)C must be identical, and in the event that they are not identical, neither Notice will constitute a valid Notice.

(e) Subject to clause 16.1(e)(vi), 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;
- (v) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (vi) where clause 16.1(c)(ii)C applies, the relevant Notice will be taken to have been received on the later of:

A. the date determined in accordance with clause 16.1(e)(i); and



B. the date determined in accordance with clause 16.1(e)(ii), 16.1(e)(iii), 16.1(e)(iv) or 16.1(e)(v) (as the case may be),

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am 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 paragraph 16.1(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) The TSC Contractor warrants that it will:

- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
- (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
- (iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the TSC Contractor from time to time;
- (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
- (v) advise the Principal's Representatives of which personnel require access to the PDCS;
- (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
- (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 16.1(c)(ii)B to the Principal's Representative through the PDCS.

(h) If the TSC Contractor is an unincorporated joint venture and one of the joint venturers is, a foreign company (as defined in the Corporations Act 2001 (Cth)), the TSC Contractor must:

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- (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
- (ii) obtain the process agent's consent to the appointment.

The Principal has no liability for any Losses the TSC Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the TSC Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the TSC Contractor's access to or use of the PDCS or any failure of the PDCS.

- (j) Wherever this deed requires the TSC Contractor to provide any documents, notices or other communications to OpCo, the TSC Contractor must address such communications to OpCo:
 - (i) at the address notified to the TSC Contractor by the Principal; or
 - (ii) if required by the Principal, by way of the PDCS.

16.2 Governing Law and Jurisdiction

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Where the Principal issues a notice under clause 15.13 referring to a Dispute to litigation or where clause 15.18 applies, each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 16.2(b)(i).

16.3 Cost

- (a) Subject to clause 16.3(b), a party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.
- (b) The TSC Contractor must:
 - (i) pay all stamp duties and any related fines and penalties and any other fees payable in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and
 - (ii) indemnify the Principal against any liability arising from failure to comply with clause 16.3(b)(i).
- (c) The TSC Contractor is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

16.4 Taxes

Without limiting clause 2.3, the TSC Contractor must pay all Taxes which may be payable in respect of the TSC Contractor's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.

16.5 Indemnity

- (a) The TSC Contractor must indemnify the Principal from and against:
- (i) any Liability to or claim by any other person; and
 - (ii) any Loss suffered or incurred by the Principal,
- arising out of, or in any way in connection with, the TSC Contractor's breach of a term of this deed.
- (b) Where the TSC Contractor indemnifies the Principal under this deed from and against any Liability, claim or Loss, its liability to indemnify the Principal will be reduced to the extent that an act or omission of the Principal or its Associates contributed to the Liability, claim or Loss.

16.6 Indemnities to survive

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligation of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

16.7 Variations

Subject to clause 6.7, this deed may only be varied by a deed executed by or on behalf of both the Principal and the TSC Contractor.

16.8 Permitted disclosure

- (a) The Principal may publish or disclose (on the internet or otherwise):
- (i) the terms and conditions of any TSC Project Document, including this deed; and
 - (ii) any document or information arising under, out of or in connection with any TSC Project Document, including this deed, or relating to the performance of any TSC Project Document, including this deed.
- (b) The TSC Contractor acknowledges and agrees that disclosures regarding the Project Works by the Principal, the State of New South Wales or any Authority may be required:
- (i) under the GIPA Act or any similar or replacement legislation; or



- (ii) to satisfy the disclosure requirements of the Auditor General or to satisfy the requirements of Parliamentary accountability,

(Public Disclosure Obligations).

- (c) The TSC Contractor must, at its own cost and expense, use all reasonable endeavours to assist the Principal, the State of New South Wales or an Authority in meeting its Public Disclosure Obligations.
- (d) Subject to clause 16.8(e), the TSC Contractor must:
 - (i) keep confidential the TSC Project Documents and any information relating to the Project Works, the TSC Contractor's Activities and any discussions concerning the TSC Project Documents; and
 - (ii) ensure that each of its Associates comply with the terms of clause 16.8(d)(i).
- (e) The TSC Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the TSC Contractor; or
 - (ii) the disclosure of which is:
 - A. required by Law;
 - B. given with the written consent of the Principal; or
 - C. given to a court in the course of proceedings to which the TSC Contractor is a party.



The parties acknowledge that:

- (i) the Principal will notify the TSC Contractor of any proposed disclosure of the TSC Project Documents by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
- (ii) following notification by the Principal in accordance with clause 16.8(f)(i), the Principal will take reasonable steps to consult with the TSC Contractor before disclosing any part of the TSC Project Documents that the TSC Contractor considers to be commercial-in-confidence (as defined in the GIPA Act); and
- (iii) nothing in this clause 16.8 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

16.9 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

16.10 The Principal may act

- (a) If the TSC Contractor fails to perform an obligation under this deed, then, subject to clause 16.10(b), the Principal may take such action as may be necessary to remedy the failure by the TSC Contractor and the Principal may for this purpose enter the

Construction Site, any Extra Land and any other land upon which the TSC Contractor's Activities are being carried out.

- (b) Except where the Principal is taking action in the circumstances referred to in clause 7.7, the Principal may only take action as referred to in clause 4.5(c) or clause 16.10(a) where the Principal's Representative has given the TSC Contractor 5 Business Days' prior written notice of the TSC Contractor's failure to perform an obligation under this deed and that the Principal intends to take action to remedy the failure.
- (c) The Loss suffered or incurred by the Principal in so performing such an obligation of the TSC Contractor will be a debt due and payable from the TSC Contractor to the Principal.
- (d) Where the Principal or the Principal's Representative is entitled under this deed to exercise any right or power to:
 - (i) direct or instruct the TSC Contractor to; or
 - (ii) itself step in to,take any action or omit to take any action, it is not obliged to exercise that power or issue that Direction or instruction and it may do so in its absolute discretion.
- (e) Where the Principal or the Principal's Representative does exercise any such right or power, the TSC Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the TSC Contractor's Activities, the Project Works and the Temporary Works.

16.11 Non reliance

Without limiting clauses 3.6 and 3.7, the TSC Contractor:

- (a) warrants that it did not in any way rely upon any information, representation, statement or documentation, whether forming part of this deed or not, made by or provided to the TSC Contractor by the Principal or anyone on behalf of the Principal for the purposes of entering into this deed;
- (b) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties in clauses 16.11(a) and 16.11(b).

16.12 Entire agreement

To the extent permitted by Law, this deed and the other TSC Project Documents:

- (a) embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties; and
- (b) supersede any prior written or other agreement of the parties,

in relation to the subject matter of this deed.

16.13 Counterparts

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

16.14 Unlimited discretion

- (a) Except as expressly otherwise provided in this deed (including in clause 16.14(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 16.14(a):
 - (i) except as expressly provided in this deed (including in clause 16.14(c)), neither the Principal nor the Principal's Representative will be:
 - A. constrained in the manner in which it exercises; or
 - B. under any obligation to exercise,any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement;
 - (ii) any approval or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise;
 - (iii) a Direction (including an absolute or sole discretion) or power of the Principal's Representative is validly and properly exercised or made for the purposes of this deed if exercised or made (or if it is not exercised or made) by the Principal's Representative whether it is exercised or made:
 - A. independently;
 - B. after consultation with the Principal and its advisers; or
 - C. as directed by the Principal;
 - (iv) any control or influence exercised by the Principal over the Principal's Representative does not:
 - A. affect the valid and proper exercise of any power or Direction (including an absolute or sole discretion) by the Principal's Representative; or
 - B. entitle the TSC Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the Direction (including an absolute or sole discretion) or power; and



- (v) subject to any express provision in this deed to the contrary, a provision of this deed which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing.
- (c) Nothing in this clause 16.14 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

16.15 Joint and several liability

- (a) The obligations of the TSC Contractor, if more than one person, under this deed, are joint and several and each person constituting the TSC Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any one or all of them.
- (b) The rights of the TSC Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the TSC Contractor (and not severally or jointly and severally).
- (c) Any payment by the Principal under this deed to any account nominated in writing by the TSC Contractor, or failing such nomination, to any one or more persons constituting the TSC Contractor, will be deemed to be payment to all persons constituting the TSC Contractor.
- (d) The TSC Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the TSC Contractor.

16.16 No assignment

The TSC Contractor must not assign or otherwise transfer any of its rights, interests, liabilities or obligations under this deed without the prior written consent of the Principal.

16.17 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of either the Principal or the TSC Contractor to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or
- (b) constituting the relationship between the Principal on one hand and the TSC Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

16.18 Waiver

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



- (c) No waiver by the Principal of:
- (i) a breach of any term of this deed; or
 - (ii) any other failure by the TSC Contractor to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,
- will operate as a waiver of:
- (iii) another breach of that term or of a breach of any other term of this deed; or
 - (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

16.19 Further acts and documents

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

16.20 Provisions limiting or excluding liability

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

16.21 Survival of certain provisions

- (a) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed and any rights arising on termination shall survive, including any warranties, guarantees, licences or indemnities given under this deed.
- (b) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

16.22 PPS Act

The TSC Contractor acknowledges and agrees that:

if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in connection with this deed or any transaction contemplated by this deed, the Principal may at the TSC Contractor's expense take all steps that the Principal considers advisable to:

- (i) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest ("relevant personal property"); and
- (ii) better secure the Principal's position in respect of the relevant personal property under the PPS Act;


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- (b) it will do all things reasonably necessary to assist the Principal to take the steps described in paragraph (a);
- (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in the relevant personal property;
- (d) if, and only if, the Principal is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the TSC Contractor and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
- (e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this deed, the amount or performance obligation secured by the Principal's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;
- (f) it must immediately notify the Principal if the TSC Contractor becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to relevant personal property; and
- (g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in relevant personal property.

For the purposes of this clause 16.22, "registration", "secured party", "verification statement", "financing statement", "personal property" and "financing change statement" each have the meaning given to those terms in the PPS Act.

Nothing in this clause 16.22 limits clause 12.6.

17. Notification of Claims

17.1 Notice of other Claims

If the TSC Contractor wishes to make a Claim (other than an Excluded Claim) against the Principal in respect of any Direction of the Principal or the Principal's Representative or other event, circumstance, act, omission, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed, the TSC Contractor's Activities or the Project Works, including anything in respect of which:

- (a) the TSC Contractor is otherwise given an express entitlement under this deed; or
- (b) this deed expressly provides that:
 - (i) costs are to be paid to the TSC Contractor, or
 - (ii) the Project Contract Sum, the Design Contract Sum or the Construction Contract Sum will be increased or adjusted,by an amount stated by the Principal's Representative,



the TSC Contractor must give the Principal's Representative the notice required by clause 17.2(a) and a Claim in accordance with clause 17.2(b).

17.2 Prescribed notices

(a) Any written notice referred to in clause 17.1 must:

(i) be provided not later than 15 Business Days after the later of:

- A. the first occurrence of; or
- B. when the TSC Contractor first became aware of, or ought reasonably to have first become aware of,

the Direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and

(ii) expressly specify:

- A. that the TSC Contractor proposes to make a Claim; and
- B. the Direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.

(b) Any written Claim referred to in clause 17.1 must:

(i) be provided not later than 20 Business Days after giving the written notice under clause 17.2(a); and

(ii) include:

- A. detailed particulars, including the date or dates, of the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
- B. the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
- C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- D. details of the amount claimed and how it has been calculated.

17.3 Continuing events

If the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim referred to in clause 17.1 is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact matter or thing are continuing, the TSC Contractor must continue to give the information required by clause 17.2(b) every 20 Business Days after the written Claim under clause 17.2(b) was submitted or given, until after the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.



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17.4 Bar

If the TSC Contractor fails to comply with clauses 2.3, 2.4, 2.5, 3.8, 6.3, 7.2, 11.6, 17.1, 17.2 or 17.3:

- (a) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the TSC Contractor; and
- (b) the TSC Contractor will be barred from making any Claim against the Principal, arising out of or in any way in connection with the relevant Direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

17.5 Other provisions unaffected

Nothing in clauses 17.1 to 17.4 will limit the operation or effect of any other provision of this deed which requires the TSC Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

18. NSW Code of Practice

18.1 NSW Code and NSW Guidelines

In addition to terms defined in this deed, terms used in this clause 18 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

18.2 Primary Obligation

- (a) In carrying out the TSC Contractor's Activities, the TSC Contractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines, as if the invitation for expressions of interest for the Project Works had been issued on or after 1 July 2013.
- (b) Nothing in paragraph (a) requires the TSC Contractor to:
 - (i) comply with the NSW Guidelines when undertaking privately funded building and construction work for which expressions of interest or tenders were called for prior to 1 July 2013; or
 - (ii) ensure that its related entities (as defined in the NSW Guidelines) comply with the NSW Guidelines when carrying out public building and construction work for which expressions of interest or tenders were called for prior to 1 July 2013.
- (c) The parties acknowledge and agree that any existing enterprise agreements approved by the Fair Work Commission prior to the earlier of:
 - (i) the date of this deed; and
 - (ii) 1 July 2013,will be deemed acceptable for the purposes of compliance with the NSW Code and NSW Guidelines.
- (d) The TSC Contractor must notify the Construction Compliance Unit (CCU) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines



and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

- (e) Where the TSC Contractor engages a subcontractor or consultant, the TSC Contractor must ensure that the contract with the subcontractor or consultant imposes on the subcontractor or consultant equivalent obligations to those in this clause 18, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (f) The TSC Contractor must not appoint or engage another party in relation to the TSC Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

18.3 Workplace Relations Management Plan

The TSC Contractor must, within 20 Business Days of the date of this deed:

- (a) prepare a workplace relations management plan which addresses the matters set out in section 6 of the NSW Guidelines (**Workplace Relations Management Plan**); and
- (b) submit the Workplace Relations Management Plan to the Principal's Representative.

18.4 Access and information

- (a) The TSC Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors and consultants.
- (b) The TSC Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

- (i) enter and have access to sites and premises controlled by the TSC Contractor, including the Construction Site;
- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the project;
- (v) have access to personnel; and
- (vi) interview any person;

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by the TSC Contractor, its subcontractors and consultants.

- (c) The TSC Contractor must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.



18.5 Sanctions


- (a) The TSC Contractor warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the TSC Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the TSC Contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

18.6 Compliance

- (a) The TSC Contractor bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The TSC Contractor is not entitled to make, and the Principal and the State of NSW will not be liable upon, any Claim against the Principal or the State of NSW arising out of or in any way in connection with the TSC Contractor's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the TSC Contractor from responsibility to perform the TSC Contractor's Activities or any other obligation under this deed, or from liability for any Defect in the Project Works or Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a Change is proposed, and that Change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the TSC Contractor must immediately notify the Principal (or nominee) of the Change, or likely Change and specify:
 - (i) the circumstances of the proposed Change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Change;
 - (iii) what steps the TSC Contractor proposes to take to mitigate any adverse impact of the Change (including any amendments it proposes to a workplace relations management plan or work health and safety management plan); and



- (iv) the Principal will direct the TSC Contractor as to the course it must adopt within 10 Business Days of receiving notice.


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