



Execution Version

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**MINOR WORKS CONTRACT – CONSTRUCT ONLY**

**SM 00013/11851**

**Sydney Metro West**

**Power Enabling Works Construct Only Package**

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Between

**Sydney Metro**

ABN 12 354 063 515

and

**Quickway Constructions Pty Ltd**

ABN 80 123 146 449

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Level 43, 680 George Street  
Sydney NSW 2000

## CONTENTS

<b>1.</b>	<b>DEFINITIONS AND INTERPRETATION.....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation .....	7
1.3	Authorities .....	8
<b>2.</b>	<b>CONTRACTOR'S OBLIGATIONS.....</b>	<b>8</b>
2.1	General .....	8
2.2	Subcontracting and Assignment .....	8
2.3	Interface Contractors .....	9
2.4	Statutory Requirements .....	10
	<b>[REDACTED]</b>	
2.5	Security and Performance Undertakings .....	12
2.6	Industrial Relations.....	13
2.7	General WHS Requirements .....	13
2.8	WHS Legislation and Principal Contractor.....	14
2.9	Incident Investigation, Reporting and Management .....	16
2.10	Prohibition and Improvement Notices and On-the-Spot Fines .....	16
2.11	Not used.....	16
2.12	Not used.....	16
2.13	Third Party Agreements .....	16
2.14	Australian Government Requirements.....	18
<b>3.</b>	<b>SITE.....</b>	<b>19</b>
3.1	Site Access to a Site that is not Public Road .....	19
3.1A	Site Access to a Site that is Public Road.....	21
3.1B	Site access general obligations .....	21
3.2	Site Access for Principal and others .....	22
3.3	Site Requirements.....	22
3.4	Information Documents.....	22
	<b>[REDACTED]</b>	
3.5	Contamination .....	23
3.6	Site Conditions.....	25
3.7	Valuable Objects Found on Site .....	25
3.8	Survey.....	25
3.9	Road Occupancy Licences .....	26
<b>4.</b>	<b>QUALITY .....</b>	<b>26</b>
4.1	Quality of Materials and Work.....	26
4.2	Self Verification and Quality System.....	26
4.3	Collaborative Auditing Process.....	27
4.7	Notice of Tests .....	27
<b>5.</b>	<b>DESIGN AND DOCUMENTATION .....</b>	<b>27</b>
5.1	Contractor's Design.....	27
5.1A	Principal's Design Documentation .....	28
5.1B	Liability for Constructability Issues.....	28
5.2	Principal's Representative May Review .....	28
5.3	Fit for Purpose and WHS Requirements.....	29
5.4	Intellectual Property Rights .....	29
5.5	Moral Rights.....	29
5.6	Order of precedence .....	29
<b>6.</b>	<b>VARIATIONS.....</b>	<b>30</b>
6.1	General .....	30
6.2	Proposed Variations.....	30
6.3	Valuation .....	30
6.4	Dayworks .....	30

6.5	Notice of Variation .....	31
6.6	Option .....	31
<b>7.</b>	<b>CONSTRUCTION .....</b>	<b>31</b>
7.1	Description of Works .....	31
7.2	All Work Included .....	31
7.3	Urgent Protection .....	32
7.4	Not used .....	32
7.5	Community Liaison .....	32
7.6	Make Good Damage to Property or the Environment .....	32
7.7	Not used .....	32
7.8	Environment Management .....	32
7.9	Warranties .....	32
7.10	Provisional Sum Work .....	32
7.11	Safety .....	33
<b>7A.</b>	<b>PLANNING APPROVAL .....</b>	<b>34</b>
7A.1	Project Planning Approval Application .....	34
7A.2	Issue of the Project Planning Approval .....	34
7A.3	Direction to Proceed .....	34
7A.4	Revised Baseline Conditions and Baseline Mitigation Measures .....	35
<b>8.</b>	<b>DEFECTS .....</b>	<b>35</b>
<b>9.</b>	<b>ADMINISTRATION .....</b>	<b>35</b>
9.1	Principal's Representative .....	35
9.2	Exchange of Information between Government Departments and Agencies .....	36
9.3	Financial Assessment .....	36
9.4	Training Management .....	36
9.5	Submissions for the Principal's Representative .....	36
<b>10.</b>	<b>TIMES FOR COMMENCEMENT AND COMPLETION .....</b>	<b>37</b>
10.1	Time for Commencement of Work on the Site .....	37
10.2	Date for Completion and Contractor's Programming Obligations .....	37
10.3	Portions .....	37
10.4	Extension of Time for Completion .....	37
10.5	Claim for Extension of Time .....	38
10.5A	Conditions Precedent to Extension of Time .....	38
10.6	Delay Costs .....	39
10.7	Acceleration .....	39
10.8	Suspension by Principal's Representative .....	40
<b>11.</b>	<b>PAYMENT .....</b>	<b>40</b>
11.1	General .....	40
11.2	Payment Claim .....	40
11.3	Payment Schedule .....	40
11.4	Provision of documentation and other requirements .....	41
11.5	Final Payment Claim .....	41
11.6	Adjudication under the Security of Payment Act .....	42
11.7	Set Off .....	43
<b>12.</b>	<b>COMPLETION .....</b>	<b>43</b>
12.1	Process .....	43
12.2	Liquidated Damages for Delay in Reaching Completion .....	44
12.3	Limit on Liquidated Damages .....	44
<b>13.</b>	<b>RISK OF THE WORKS AND INSURANCE .....</b>	<b>44</b>
13.1	Risk and Indemnity .....	44
13.2	Works Insurance – Alternative 1 .....	44
13.3	Works Insurance – Alternative 2 .....	44



13.4	Public and Products Liability Insurance – Alternative 1 .....	45
13.5	Public and Products Liability Insurance – Alternative 2 .....	45
13.6	Professional Indemnity Insurance .....	46
13.7	Contractor's Other Insurance Obligations .....	46
13.8	Cross Liability .....	46
<b>14.</b>	<b>TERMINATION .....</b>	<b>47</b>
14.1	Notice of Breach .....	47
14.2	Termination for Breach or Financial Difficulty .....	47
14.3	Termination for any reason .....	47
<b>15.</b>	<b>DISPUTE RESOLUTION .....</b>	<b>48</b>
<b>16.</b>	<b>GENERAL .....</b>	<b>48</b>
16.1	Governing Law .....	48
16.2	Confidentiality .....	48
16.3	The Principal May Act .....	49
16.4	Civil Liability Act .....	49
16.5	Assignment .....	49
16.6	Personal Property Securities (PPS) Act .....	50
16.7	Notices .....	50
<b>17.</b>	<b>LIMITATION OF LIABILITY .....</b>	<b>51</b>
<b>18.</b>	<b>GST .....</b>	<b>51</b>
<b>19.</b>	<b>TFNSW'S STATEMENT OF BUSINESS ETHICS .....</b>	<b>52</b>
<b>20.</b>	<b>NSW GUIDELINES .....</b>	<b>52</b>
20.1	NSW Guidelines .....	52
20.2	Primary Obligation .....	52
20.3	Access and Information .....	53
20.4	Sanctions .....	53
20.5	Compliance .....	54
	<b>Schedule 1 – Contract Particulars .....</b>	<b>55</b>
	<b>Schedule 2 – Not Used .....</b>	<b>60</b>
	<b>Schedule 3 – Form of Statutory Declaration and Subcontractor's Statement .....</b>	<b>61</b>
	<b>Schedule 4 – Confidentiality Deed Poll .....</b>	<b>72</b>
	<b>Schedule 5 – Third Party Agreement Responsibility Allocations .....</b>	<b>80</b>
	<b>Schedule 6 – Options .....</b>	<b>98</b>
	<b>Schedule 7 - Form of Warranty .....</b>	<b>66</b>
	<b>Schedule 8 - Form of Subcontractor Deed .....</b>	<b>68</b>
	<b>Schedule 9 – Deed of Novation .....</b>	<b>71</b>
	<b>Schedule 10 – Sites .....</b>	<b>78</b>
	<b>Schedule 11 – Property Owner's Certificate .....</b>	<b>79</b>
	<b>Schedule 12 – [REDACTED]</b>	
	<b>Schedule 13 – [REDACTED]</b>	
	<b>Schedule 14 – [REDACTED]</b>	



- EXHIBIT A – NOT USED**
- EXHIBIT B – NOT USED**
- EXHIBIT C – NOT USED**
- EXHIBIT D – NOT USED**
- EXHIBIT E – NOT USED**
- EXHIBIT F – INFORMATION DOCUMENTS**
- EXHIBIT G – PRINCIPAL'S INSURANCE POLICIES**
- EXHIBIT H – CONTRACTOR'S SCHEDULES**
- EXHIBIT I – SITE ACCESS PLAN**
- EXHIBIT J – NOT USED**
- EXHIBIT K – REPORTS**
- EXHIBIT L – THIRD PARTY AGREEMENTS**
- EXHIBIT M – SERVICES BRIEF**

## MINOR WORKS CONTRACT – GENERAL CONDITIONS

This Contract is between the Principal and the Contractor described in the Contract Particulars.

### GENERAL CONDITIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Contract:

**"Authority"** includes 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 (and includes the ASA) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works or the Contractor's Activities.

**"Authority Approval"** means any licence, permit, consent, approval, determination, certificate or permission which must be obtained to carry out the Contractor's Activities (including any condition or requirement under them).

**"Baseline Conditions"** means the indicative conditions of the Project Planning Approval set out in Schedule 12.

**"Baseline Mitigation Measures"** means the indicative mitigation measures and performance outcomes set out in Schedule 12.

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

**"Building Code"** means the Building Code issued under section 34(1) of the BCIIP Act, being the document titled 'Code for the Tendering and Performance of Building Work'.

**"Business Day"** means any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales, or
- (b) 27, 28, 29, 30 or 31 December.

**"CCU"** means Construction Compliance Unit, the unit established within NSW Industrial Relations to monitor compliance with and receive reports of alleged breaches of the NSW Guidelines.

**"Certificate of Completion"** means a notice issued under clause 12.1 by the Principal's Representative stating that Completion of the Works or a Portion has been achieved.

**"Certified Contaminated Land Consultant"** means the Key Person specified as such in the Contract Particulars, or any replacement in accordance with clause 2.1(d), who must hold current certification in accordance with the NSW EPA Contaminated Land Consultant Certification Policy.

**"Claim"** means claim for any monies or for an adjustment to the Contract Sum or for any extension of time for Completion or for any costs, expense, loss or damage on any basis whatsoever including, without limitation, any claim pursuant to contract, in tort (including negligence), on a quantum meruit, pursuant to quasi contract, for unjust enrichment or pursuant to any other principle of law or equity.

**"Completion"** is the stage when:

- (a) the Works are capable of use for their intended purpose;

- (b) the Works are complete in accordance with the Contract and minor Defects that can be rectified without prejudicing the convenient intended use of the Works;
- (c) the Site and its surroundings have been made good; and
- (d) the pre-conditions set out in the Contract Particulars have been satisfied.

**"Constructability Issues"** means an issue in the Principal's Design Documentation that will result in:

- (a) construction of the Works or the Temporary Works in accordance with the Principal's Design Documentation not being feasible (including not being feasible within the timeframe required by this Contract); or
- (b) the Works or the Temporary Works as specified in the Principal's Design Documentation not being constructible in a safe manner.

**"Construction Environmental Management Plan"** means the plan of that name required to be developed, implemented and maintained by the Contractor in accordance with the Services Brief.

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

**"Contract"** means the contractual relationship between the Principal and the Contractor constituted by:

- (a) these General Conditions and the Schedules and Exhibits to the General Conditions (other than Exhibit F and Exhibit K); and
- (b) the additional Contract documents, if any referred to in the Contract Particulars.

**"Contract Particulars"** means the particulars in Schedule 1.

**"Contract Sum"** means the amount set out in the Contract Particulars, as may be varied from time to time in accordance with the Contract.

**"Contractor's Activities"** means all things or tasks that the Contractor is required to do to comply with the obligations under this Contract.

**"Contractor's Representative"** is the person described in the Contract Particulars who is nominated by the Contractor to act with the Contractor's authority in respect of all matters relating to this Contract.

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**"Date for Completion"** means the date shown in the Contract Particulars or that date as adjusted in accordance with this Contract.

**"Date of Completion"** means the date certified by the Principal's Representative as being the date when Completion was achieved.

**"Deed of Licence"** means the deed of licence between Newcastle Port Corporation trading as Port Authority of New South Wales and Sydney Metro for Part Lot 10 DP1170710 and Lot 2 DP879549.

**"Defect"** means any:

- (a) defect, deficiency, fault, error or omission in the Works or the Contractor's Activities; or
- (b) other aspect of the Works or Contractor's Activities that is not in accordance with the requirements of the Contract, including non-compliances, non-conformances and non-conformities.

**"Defects Liability Period"** means the period stated in the Contract Particulars commencing from the Date of Completion, as extended by clause 8.

**"Environmental Mitigation Measures"** means the Baseline Mitigation Measures or any revised environmental mitigation measures in respect of the Project Planning Approval.

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

**"EPA"** means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991* (NSW).

**"Excepted Risk"** means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage;
- (b) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003 (Cth)* (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003 (Cth)*); and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

in each case occurring within Australia.

**"Final Certificate"** means the Final Certificate issued under clause 11.5.

**"Final Payment Claim"** means the Final Payment Claim issued under clause 11.5.

**"Force Majeure Event"** means:

- (a) an Excepted Risk;
- (b) an earthquake;
- (c) a flood which might at the date of this Contract be expected to occur less frequently than once every 100 years; or
- (d) a fire or explosion resulting from any event referred to in paragraphs (a) – (c) above.

**"Heavy Vehicle National Law"** means the *Heavy Vehicle National Law (NSW) Act 2013* (No 42a) and associated regulations.

**"Information Documents"** means any document, information and material in any format or medium including any electronic form provided to the Contractor in respect of the Works unless that document, information or material is expressly identified as forming part of this Contract and includes:

- (a) the documents referred to in Exhibit F; and
- (b) the Reports.

**"Interface Contractor"** means any contractor (other than the Contractor and its subcontractors) carrying out work on the Site including any person identified by the Principal's Representative as an Interface Contractor that is carrying out, or will carry out, Interface Work.

**"Interface Work"** means the works, operations, services, supplies and/or maintenance to be executed by Interface Contractors, which will interface with or affect or be affected by the Contractor's Activities.

**"Key People"** means the person(s) specified in the Contract Particulars who are engaged by the Contractor under clause 2.1(c).

**"Law"** means:

- (a) all Commonwealth, New South Wales or local government legislation including any regulations, ordinances, instruments, codes, requirements, by-laws, orders, proclamations and other subordinate legislation;
- (b) common law; and
- (c) Authority Approvals and the lawful requirements of any person acting in the exercise of statutory powers enabling them to give directions affecting the Contractor's Activities.

**"Material Adverse Planning Effect"** means a material adverse effect arising from the requirements or conditions of the Project Planning Approval on:

- (a) the ability of the Contractor to comply with its obligations under this Contract;
- (b) the Principal's rights and/or obligations under this Contract; or
- (c) the objectives for the Project as contemplated in this Contract.

**"Monument"** has the meaning given to that term in the *Surveying and Spatial Information Regulation 2017* (NSW).

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

**"Nominated Subcontractor"** means a subcontractor identified in the Contract Particulars to whom the Contractor must subcontract the Nominated Subcontract Work

**"Nominated Subcontract Work"** means the certain work or the supply of the certain items that must be subcontracted to a Nominated Subcontractor.

**"Notice of Claim"** has the meaning given in clause 10.5.

**"NSW Guidelines"** has the meaning given in clause 20.1.

**"NSW Trains"** means the corporation by that name constituted by section 37 of the *Transport Administration Act 1988* (NSW).

**"Option"** means an option referred to in Schedule 6.

**"PDCS"** means the Principal's project document collaboration system, being Teambinder (or such other project document collaboration system as notified by the Principal to the Contractor from time to time).

**"Port Authority of NSW"** means Newcastle Port Corporation trading as Port Authority of New South Wales.

**"Portion"** means a portion of the Works as described in the Contract Particulars or created pursuant to clause 10.3(b).

**"PPS Act"** means the *Personal Property Securities Act 2009* (Cth).

**"PPS Law"** means:

- (a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of clause (a).

**"Principal Contractor"** means the person nominated in the Contract Particulars and has the same meaning as "principal contractor" in the WHS Legislation.



**"Principal"** means Sydney Metro.

**"Principal's Design Documentation"** means the design documentation set out in the Services Brief, including any updates issued by the Principal to the Contractor.

**"Principal's Representative"** is the person named in the Contract Particulars or any other person notified in writing by the Principal to the Contractor as the Principal's Representative.

**"Prohibited Subcontractor"** means:

- (a) any subcontractor:
  - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
  - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in, corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or
- (b) any subcontractor employing an employee in respect of whom clause (a) applies.

**"Project"** means the project or projects stated in the Contract Particulars in respect of which the Works are provided.

**"Project Planning Approval"** means:

- (a) the relevant approval in relation to the Project Planning Approval Application, once granted by the Minister for Planning under the EP&A Act; and
- (b) includes all:
  - (i) conditions to such approvals; and
  - (ii) documents incorporated by reference, as modified from time to time.

**"Project Planning Approval Application"** means the:

- (a) application for approval under Part 5 of the EP&A Act in respect of Sydney Metro West – Stage 1 submitted by the Principal to the Minister for Planning and Public Spaces in April 2020, as amended by the amendment report to be lodged by the Principal in November 2020; and
- (b) application for approval under Part 5 of the EP&A Act in respect of Sydney Metro West – Pre cast facility to be determined by the Principal in accordance with Section 5.5 of the EP&A Act.

**"Project Work Health and Safety Management Plan"** means the Project Work Health and Safety management plan prepared by the Contractor which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Contractor's Activities are performed consistently with Law in relation to work health and safety, including WHS Legislation and Heavy Vehicle National Law; and
- (c) where the Contractor has been appointed as principal contractor, comply with the specific requirements of Part 6.4 of the *Work Health and Safety Regulations 2017* (NSW) in relation to the matters that a WHS management plan must include.

**"PSMP"** means the Sydney Metro Program Safety Management Plan, as amended from time to time.

**"Provisional Sum Work"** means the work detailed in the Contract Particulars.

**"Public Road"** has the meaning given in *Roads Act 1993* (NSW).

**"Related Body Corporate"** has the meaning given to that term in section 9 of the *Corporations*



*Act 2001 (Cth).*

**"Reliance Letter"** means the deed poll from the Utilities Investigation Contractor in favour of the Contractor to be procured by Sydney Metro in accordance with clause 3.4A, a form of which is set out in Schedule 13.

**"Report"** means each report referred to in the Contract Particulars.

**"Reviewable Deliverable"** means:

- (a) any project plan required under this Contract;
- (b) any other deliverable specified as reviewable in the Services Brief; and
- (c) any other deliverable identified as such by the Principal from time to time.

**"Rozelle Interface Agreement"** means the "Sydney Metro West – Rozelle Interchange Interface Deed" entered into between Roads and Maritime Services and Sydney Metro dated on or around December 2016.

**"Safe Work Method Statement"** has the meaning given in the *Work Health and Safety Regulation 2017* (NSW).

**"SafeWork NSW"** means the NSW Government work health and safety regulator of that name.

**"Security Interest"** has the meaning given to that term in clause 16.6(a).

**"Senior Management Representative"** is the person nominated by the Contractor in writing to the Principal in accordance with clause 2.7(a)(v).

**"Services Brief"** means the document at Exhibit M of this Contract and includes the Principal's Design Documentation.

**"Site"** means the land or other places made available for the performance of the Works and "a Site" means any discrete part of the Site.

**"Site Access Plan"** means the Site Access Plan contained in Exhibit I.

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

**"Statement of Business Ethics"** means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au)

**"Survey Certificate"** has the meaning given to that term in the *Surveying and Spatial Information Regulation 2017* (NSW).

**"Survey Plan"** has the meaning given to that term in the *Surveying and Spatial Information Act 2002* (NSW).

**"Sydney Trains"** means the corporation by that name constituted by section 36 of the *Transport Administration Act 1988* (NSW).

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

**"Temporary Works"** means works used in the execution of the Works but not forming part of the Works.

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

**"Third Party Agreement"** means an agreement which appears or is listed in in Exhibit L.

**"Transport Management Centre"** means the NSW Transport Management Centre responsible for monitoring and managing the New South Wales road network



**"Unforeseeable PA Conditions"** are requirements and conditions of:

- (a) the Project Planning Approval which are not part of, or are different to, the Baseline Conditions; or
- (b) the Environmental Mitigation Measures, which are not part of, or are different to the Baseline Mitigation Measures,

and which have a Material Adverse Planning Effect.

**"Utilities Investigation Contractor"** means RPS Australia East Pty Ltd ABN 44 140 292 762.

**"Valuable Finds"** has the meaning given in clause 3.7(a).

**"Variation"** means:

- (a) any addition or increase to, or decrease, omission or deletion from, the Works or the Temporary Works;
- (b) any change to the character or quality, or demolition or removal, of any material or work; or
- (c) any change to the levels, lines, positions or dimensions of any part of the Works or the Temporary Works,

but it excludes any changes to the Works or Temporary Works that are required due to the exercise of an Option by the Principal's Representative under clause 6.6.

**"Waste"** has the meaning given in the *Protection of the Environment Operations Act 1997 (NSW)*.

**"Waste Classification Guidelines"** means the Waste Classification Guidelines, Part 1: Classifying Waste (NSW EPA, 2014).

**"WHS Guidelines"** means the New South Wales Government Work Health and Safety Management Guidelines (6th Edition) (December 2019) or any document issued from time to time which amends or substitutes this document.

**"WHS Legislation"** means the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2017 (NSW)*.

**"worker"** has the same meaning as in the *Work Health and Safety Act 2011 (NSW)*.

**"Works"** means the whole of the physical works to be carried out and completed in accordance with the Contract (other than the Temporary Works), including any changes required as a result of the exercise of an Option by the Principal's Representative under clause 6.6 or due to Variations provided for by the Contract, as generally described in the Contract Particulars.

## 1.2 Interpretation

In this Contract, unless the Contract otherwise requires:

- (a) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (b) any references to standards, codes, guidelines or other similar documents, including Standards Australia publications, must be read as a reference to the version of the particular document current at the date of the Contract;
- (c) for the purposes of clauses 10.4, 10.5, 10.5A, 10.5B, 10.5C and 10.6:
  - (i) any extension of time to any Date for Completion stated in days; or



- (ii) any reference to "day";

will include only those days indicated in the Contract Particulars, or otherwise approved by the Principal's Representative, as working days; and

- (d) any reference to "intended use" or "intended purpose" (or any similar expression) will be read as referring to the intended use or intended purpose having regard to any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Contract and any other documents provided by the Principal to the Contractor under or pursuant to this Contract.

### 1.3 Authorities

- (a) This Contract 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 legislation.
- (b) Without limiting clause 1.3(a), anything the Principal does, or fails to do or purport to do, pursuant to its functions and powers under any legislation, will be deemed not to be an act or omission by the Principal under this Contract.

## 2. CONTRACTOR'S OBLIGATIONS

### 2.1 General

The Contractor must:

- (a) perform the Contractor's Activities and deliver the Works in accordance with the Contract;
- (b) exercise reasonable skill, care and diligence in the performance of the Contractor's Activities;
- (c) employ the Key People, including the Contractor's Representative, in the performance of the Contractor's Activities;
- (d) if any of the Key People:
  - (i) dies;
  - (ii) becomes unable to continue in their positions due to illness; or
  - (iii) resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any Related Body Corporate of the Contractor);promptly notify the Principal's Representative and replace those Key People with personnel:
  - (iv) of at least equivalent experience, ability, knowledge and expertise; and
  - (v) who have been approved by the Principal's Representative;
- (e) commence and progress the Contractor's Activities expeditiously and in accordance with any directions of the Principal's Representative and achieve Completion by the Date for Completion;
- (f) use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal and the Principal's Representative during the performance of the Contractor's Activities; and
- (g) liaise, cooperate and confer with others as directed by the Principal's Representative.

### 2.2 Subcontracting and Assignment

- (a) The Contractor must:



- (i) not enter into any subcontract with a Prohibited Subcontractor; and
  - (ii) not assign or subcontract any part of the Contractor's Activities without the prior written approval of the Principal's Representative.
- (b) An approval given by the Principal's Representative permitting the Contractor to subcontract any part of the Contractor's Activities does not relieve the Contractor from its obligations and liabilities pursuant to the Contract.
- (c) If the Contract Particulars specify that Nominated Subcontract Work is required, the Contractor must subcontract the Nominated Subcontract Work to the identified Nominated Subcontractor. The Contractor must proceed promptly to do so and must notify the Principal's Representative in writing as soon as the subcontract has been entered into. The Contractor will not be relieved of its obligations and liabilities under the Contract as a result of the requirement to engage a Nominated Subcontractor.
- (d) If required by the Principal's Representative the Contractor must procure that a subcontractor sign the Deed Poll in Schedule 8 and provide an original of this to the Principal's Representative.

### 2.3 Interface Contractors

The Contractor acknowledges and agrees that:

- (a) the co-ordination of each Interface Contractor to complete the Interface Work forms part of the Contractor's Activities;
- (b) each Interface Contractor will be executing work on parts of the Site at the same time as the Contractor is performing the Works;
- (c) any delay in the performance of the Contractor's Activities as a result of work by an Interface Contractor will not form the basis for an extension of time or claim for additional costs; and
- (d) the Contractor must indemnify the Principal against all claims, costs, losses or damages the Principal may suffer or incur arising out of or in connection with the management of each Interface Contractor and co-ordination of the Interface Work with the Contractor's Activities.

The Contractor agrees that at all times it will:

- (e) permit each Interface Contractor to execute the Interface Work on the applicable parts of the Site (and areas adjoining the Site, including access ways) at the same time as the Contractor is performing the Contractor's Activities at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative;
- (f) provide safe and clear access to those parts of the Site (and areas adjoining the Site, including access ways) required by each Interface Contractor for the purpose of carrying out their Interface Work(s) and fully co-operate with each Interface Contractor to facilitate the execution of work by each Interface Contractor;
- (g) coordinate the interface between the Contractor's Activities and the Interface Works, including planning for the use of, and access to the Sites by the Interface Contractors;
- (h) provide each Interface Contractor with a copy of the Contractor's program and to coordinate the Contractor's Activities with the work to be carried out by each Interface Contractor and to make proper allowance in all programs for the work of each Interface Contractor;
- (i) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the work of each Interface Contractor;
- (j) attend coordination meetings chaired by the Principal with each Interface Contractor and others at times to be advised by the Principal's Representative;
- (k) provide the Principal's Representative with at least 15 Business Days' notice of when

information is required from each Interface Contractor;

- (l) when any information is requested by the Principal's Representative on behalf of each Interface Contractor, provide the information to the Principal's Representative within the time requested by the Principal's Representative; and
- (m) promptly advise the Principal's Representative of all matters arising out of the liaison with each Interface Contractor that may involve a change to design, construction work or sequence or otherwise have an adverse effect upon the Contractor's Activities.

## 2.4 Statutory Requirements

- (a) Without limiting clause 2.4(c), the Contractor must comply with, and ensure that the Contractor's Activities and the Works comply with all requirements of Law.
- (b) Subject to clause 2.4(e), the Contractor must give the notices and pay the fees necessary to comply with the requirements referred to in clause 2.4(a).
- (c) The Contractor must obtain all Authority Approvals except for those:
  - (i) for which the Principal's Representative gives written notice to the Contractor that the Authority Approval will be; or
  - (ii) identified in the Contract Particulars as to be, obtained by the Principal, or by a person (other than the Contractor), acting on behalf of the Principal.
- (d) The Contractor must pay all taxes, duties, levies, imposts and charges, including bonds, that may be payable arising out of or in any way in connection with the Contractor's Activities.
- (e) The Contractor may claim an increase to the Contract Sum for the direct cost of any fees payable to TfNSW or local councils with respect to the Contractor's Activities (exclusive of any profit and off site overhead costs).







## 2.5 Security and Performance Undertakings

- (a) Security is to be provided by the Contractor for the purpose of ensuring the due and proper performance of the Contract.
- (b) If it is stated in the Contract Particulars that the Contractor will provide security then the Contractor must provide the security in the amount stated in the Contract Particulars.
- (c) Security may be in the form of:
  - (i) cash retention from progress payments; or
  - (ii) unconditional undertakings in a form acceptable to the Principal, as specified in the Contract Particulars.
- (d) Should unconditional undertakings be required under clause 2.5(c), these undertakings must be provided to the Principal prior to the commencement of the Works on the Site, duly executed in favour of the Principal and which are, where required, duly stamped.
- (e) Within 28 days of the latter of:
  - (i) Date of Completion; or
  - (ii) a written request by the Contractor to do so,the Principal's entitlement to security will be reduced by [REDACTED] and where it is holding a cash retention the Principal must pay to the Contractor the balance of the cash retention then held by the Principal that exceeds [REDACTED]
- (f) Within 14 days of the latter of:
  - (i) issue of the Final Certificate; or
  - (ii) a written request by the Contractor to do so,the Principal must release the balance of the security then held by the Principal.
- (g) The Principal:
  - (i) may have recourse to security provided under this clause 2.5 at any time;
  - (ii) is not obliged to pay the Contractor interest on:
    - A. any security; or
    - B. the proceeds of any unconditional undertaking if it is converted into cash; and
  - (iii) does not hold the proceeds referred to in clause 2.5(g)(ii)B on trust for the Contractor.
- (h) The Contractor must not take any steps to injunct or otherwise restrain:
  - (i) any issuer of any unconditional undertaking provided under this clause 2.5

- 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 2.5 or receiving payment under any such unconditional undertaking; or
    - (iii) the Principal using the money received under any unconditional undertaking provided under this clause 2.5.
  - (i) Despite any other provision of this Contract to the contrary, where this Contract may otherwise require the Principal to release any security, or this Contract is terminated by the Principal either pursuant to clause 14 by reason of the Contractor repudiating this Contract, the Principal may continue to hold the security after the date for its release or the termination of this Contract to the extent of any claim which the Principal may have against the Contractor arising out of, or in connection with, this Contract or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.

## 2.6 Industrial Relations

The Contractor and its subcontractors must adhere to all work site-specific industrial and employee relations requirements. The Contractor acknowledges and has allowed for in the Contract Sum all the costs and expenses involved with complying with all relevant law in relation to industrial and employee relations awards, memoranda of understanding, enterprise and industrial agreements and site-specific agreements/awards.

Where the Contractor is specified in the Contract Particulars as being responsible for payment of the long service leave levy, then, before commencing any construction work under this Contract (including any construction of Temporary Works), the Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.6(a).

## 2.7 General WHS Requirements

- (a) The Contractor must comply with the WHS Guidelines and must:
  - (i) continuously promote a safer, healthier, more productive workplace;
  - (ii) provide strong leadership and promote safety as a core value, establishing and enforcing high standards of performance and ensuring relevant expertise is available;
  - (iii) ensure open and effective consultation and further mutual trust with the Principal, providing timely responses to safety issues and concerns;
  - (iv) develop a Project Work Health and Safety Management Plan that complies with the requirements of the PSMP. The Services Brief contains more details about this requirement; and
  - (v) identify and advise the Principal who is the Senior Management Representative responsible for complying with the Contractor's WHS requirements set out in the Contract, including the Services Brief. The Services Brief contains more details about the requirement to appoint a Senior Management Representative.
- (b) **Safety Risk Management**  
The Contractor must manage risks in accordance with the WHS Legislation and the Heavy Vehicle National Law and the PSMP.
- (c) **Personnel management**



The Contractor must:

- (i) prior to appointing any subcontractor, assess the work health and safety management capability of such subcontractor and institute systems to obtain regular written assurances from all subcontractors about their ongoing compliance with the WHS Legislation and Heavy Vehicle National Law;
- (ii) prior to performing the Contractor's Activities on any site of the Project, ensure that any induction or training by subcontractor workers, required by the Principal, has been undertaken;
- (iii) comply with, and procure that any subcontractor complies with, any reasonable directions issued by the Principal's Representative in relation to work, health and safety;
- (iv) provide written assurances from each subcontractor and its workers about the subcontractor's and its workers' ongoing compliance with the WHS Legislation, Heavy Vehicle National Law to the Principal; and
- (v) ensure its subcontracts include provisions equivalent to the obligations of the Contractor in this clause and any other provisions of this Contract concerning work health and safety matters (not including principal contractor duties).

## 2.8 WHS Legislation and Principal Contractor

- (a) In this clause 2.8 the terms 'construction project', 'construction work' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.
- (b) Without limiting the Contractor's obligations under any other provision of this Contract to the extent the Contractor's Activities includes construction work in respect of which the WHS Legislation requires that a principal contractor be engaged and the Contractor is specified in the Contract Particulars as being the principal contractor:
  - (i) the Principal:
    - A. engages the Contractor as principal contractor in respect of the construction project of which the construction work forms a part under clause 293 of the *Work Health and Safety Act 2011* (NSW); and
    - B. authorises the Contractor to have management and control of each workplace at which such construction work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
  - (ii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation;
  - (iii) the Contractor's engagement and authorisation as principal contractor will continue:
    - A. until the Date of Completion of the last Portion to achieve Completion; and
    - B. while ever any rectification work that is "construction work" (as that term is defined under the WHS Legislation) is carried out during the Defects Liability Period,
 unless sooner revoked by the Principal terminating the Contract pursuant to any provision of the Contract or according to law; and
  - (iv) as a condition precedent to access to any Site, the Contractor must prepare and submit to the Principal's Representative a Project Work Health and Safety Management Plan which has not been rejected within 15 Business Days after submission to the Principal's Representative.



- (c) No comment upon nor any review, acceptance or approval of the Project Work Health and Safety Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.
- (d) Without limiting its obligations and whether or not the Contractor has been engaged as the principal contractor, the Contractor must:
  - (i) comply with and ensure that each of its workers, officers and the Contractor's subcontractors and their workers engaged in the performance of the Contractor's Activities comply with the WHS Legislation (including 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), the Heavy Vehicle National Law, the PSMP and the WHS Guidelines as a minimum;
  - (ii) if requested by the Principal's Representative or required by WHS Legislation or Heavy Vehicle National Law demonstrate compliance with the WHS Legislation or Heavy Vehicle National Law, including providing to the Principal evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
  - (iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;
  - (iv) provide the Principal with all information and documents the Principal requests, and consult with the Principal as requested, so that the Principal may comply with its duties under the WHS Legislation and Heavy Vehicle National Law. This includes creating any document the Principal may request; and
  - (v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation or Heavy Vehicle National Law.
- (e) The Contractor acknowledges that where it is not named as the principal contractor in the Contract Particulars:
  - (i) the party specified in the Contract Particulars will be the principal contractor in respect of all construction work carried out by or on behalf of the Principal on the Site during the Works;
  - (ii) it must comply with any requirement of the principal contractor referred to in clause 2.8(e)(i) which is necessary to enable the principal contractor to discharge the duties imposed on a principal contractor by the WHS Legislation; and
  - (iii) the Contractor must submit to the Principal's Representative a Safe Work Method Statement which has been reviewed by the principal contractor and which complies with the WHS Legislation, applicable Codes of Practice and Australian Standards and WHS Guidelines for any activity that involves significant risk before that activity commences.
- (f) To the extent not prohibited by law, the Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in connection with the Contractor's failure to comply with this clause 2.8 including where the Contractor has been appointed as principal contractor, any failure to discharge the duties imposed on a principal contractor by the WHS Legislation.

## 2.9 Incident Investigation, Reporting and Management

The Contractor must:

- (a) investigate, report to the Principal and manage incidents in accordance with the Services Brief and the Sydney Metro Principal Contractor Health & Safety Standard (SM-20-00039714 version 5.0 dated 1 April 2020), including the requirement to notify the Principal verbally and in writing of:
  - (i) any work health and safety, environmental, community or other incident, accident or occurrence arising out of, or in any way in connection with, the Contractor's Activities (including any incident, accident or occurrence resulting in a near hit, physical injury or harm, or any lost time due to injury);
  - (ii) any unsafe work practice or environment that has the potential to cause physical injury or harm; and
  - (iii) any incident that damages infrastructure;
- (b) provide monthly safety statistics in the form and using the indices required by the Principal's Representative; and
- (c) before commencing the Contractor's Activities:
  - (i) nominate to the Principal's Representative the persons who will be available and responsible for responding to, recovering from, and investigating accidents and incidents, and initiating corrective actions during and outside normal working hours;
  - (ii) nominate procedures for contacting the responsible persons; and
  - (iii) notify promptly any changes to such nominations and procedures.

## 2.10 Prohibition and Improvement Notices and On-the-Spot Fines

The Contractor must:

- (a) immediately notify the Principal's Representative of any notices or on-the-spot fine issued by SafeWork NSW or any other regulator or any potentially notifiable events;
- (b) provide the Principal's Representative with a copy of the notice or fine notice and written details of the corrective action taken by the Contractor to rectify the circumstances which led to the issue of the PIN or fine notice and to prevent recurrence of those circumstances; and
- (c) otherwise deal with notices and on-the-spot fines in accordance with the Sydney Metro Principal Contractor Health & Safety Standard (SM-20-00039714 version 5.0 dated 1 April 2020) and the WHS Legislation (or other applicable legislation).

2.11 Not used

2.12 Not used

## 2.13 Third Party Agreements

The Contractor:

- (a) acknowledges that the Principal has entered or will enter into the Third Party Agreements;
- (b) must:
  - (i) in respect of the Deed of Licence, carry out and fulfil the conditions and requirements of the Deed of Licence specified in Part A of Schedule 5;
  - (ii) in respect of the Rozelle Interface Agreement, carry out and fulfil the conditions and requirements of the Rozelle Interface Agreement specified in Part B of Schedule 5;



- (iii) in respect of all other Third Party Agreements, unless otherwise expressly specified in Part C of Schedule 5, comply with, satisfy, carry out and fulfil the conditions and requirements of such Third Party Agreements, including those conditions and requirements that the Principal is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
- (iv) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 5, that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.13(b)(iii);
- (c) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in Schedule 5;
- (d) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
- (e) in respect of Third Party Agreements other than the Deed of Licence and Rozelle Interface Agreement:
  - (i) must, where such Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;
  - (ii) must, in carrying out the Contractor's Activities:
    - A. ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and
    - B. otherwise act consistently with the terms of the Third Party Agreement;
  - (iii) agrees that whenever, pursuant to the terms of such Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in Schedule 5 and the other terms of this Contract, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by the Principal under a Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this Contract; and
  - (iv) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Contract.

The parties acknowledge that the Contractor has reviewed the Third Party Agreements and has included in the original Contract Sum all of its costs (including the cost of all physical works and an allowance for any delay or disruption) in complying with its obligations under clauses 2.13(a) to 2.13(e)(iv) including:

- (f) in respect of the Deed of Licence, the Principal's obligations under the Deed of Licence identified in Part A of Schedule 5;
- (g) in respect of the Rozelle Interface Agreement, the Principal's obligations under the



- Rozelle Interface Agreement identified in Part B of Schedule 5; and
- (h) in respect of each other Third Party Agreement, the Principal's obligations under the relevant Third Party Agreement other than those identified in Part C of Schedule 5 for the Principal to perform.

The Contractor:

- (i) must indemnify the Principal from and against:
- (i) any claim by a Third Party against the Principal; or
  - (ii) any liability of the Principal, to a Third Party,
- arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement executed after the date of this Contract) to the extent that the claim or liability arises out of or in any way in connection with the Contractor's Activities, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal or an agent of the Principal contributed to the claim or liability; and
- (j) agrees that it:
- (i) bears the full risk of:
    - A. complying with the obligations under this clause 2.13; and
    - B. any acts or omissions of Third Parties; and
  - (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 risks referred to in clause 2.13(j)(i).

## 2.14 Australian Government Requirements

- (a) This clause 2.14 only applies if the Contractor's Activities will be partially or fully funded by the Commonwealth as identified in the Contract Particulars, or if the Contractor is a Code Covered Entity.
- (b) The Contractor:
- (i) declares as at the date of the Contract in relation to the Works;
  - (ii) must ensure that during the term of this Contract in relation to the Works, that it and its subcontractors:
  - (iii) comply with the Building Code;
  - (iv) are not subject to an Exclusion Sanction;
  - (v) have not had an adverse decision, direction or order made by a court or tribunal for a breach of the BCIP Act, a designated building law, work health and safety law or competition and consumer law which has not been stayed or revoked and for which the period for compliance has expired without the Contractor or subcontractor having complied with the decision, direction or order;
  - (vi) will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
  - (vii) unless approved otherwise by the ABC Commissioner, are not excluded from performing "building work" (within the meaning in subsection 3(4) of the Building Code) funded by a state or territory government; and
  - (viii) comply with the workplace relations management plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Works.
- (c) Compliance with the Building Code does not relieve the Contractor from responsibility to perform this Contract, or from liability for any Defect in the Contractor's Activities or the Works arising from compliance with the Building Code.

- (d) The Contractor must notify the ABCC of any breach or suspected breach of the Building Code as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- (e) The Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIIP Act and the Building Code and will ensure that it and its subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including but not limited to requests for entry under section 72 of the BCIIIP Act, requests to interview any person under section 74 of the BCIIIP Act, requests to produce records or documents under sections 74 and 77 of the BCIIIP Act and responding to requests for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (f) The Contractor must only enter into a subcontract for any of the Works where:
  - (i) the subcontractor is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
  - (ii) the subcontractor has submitted a Declaration of Compliance including the further information outlined in Attachment A to the declaration of compliance, in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
  - (iii) the subcontract with the subcontractor contains clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- (g) The Contractor must provide the Principal and the ABCC with any subcontractor's Declaration of Compliance referred to in clause 2.14(f)(i) on request.
- (h) The Contractor must ensure that its subcontractors comply with those clauses referred to in clause 2.14(f)(iii) contained in the subcontract.
- (i) In this clause 2.14:
  - (i) "**ABC Commissioner**" means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCIIIP Act;
  - (ii) "**ABCC**" means the body referred to in subsection 29(2) of the BCIIIP Act;
  - (iii) "**Code Covered Entity**" has the same meaning as in section 6 of the Building Code.
  - (iv) "**Declaration of Compliance**" means a declaration in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code, including the further information outlined in 'Attachment A' to that model declaration of compliance;
  - (v) "**Exclusion Sanction**" has the same meaning as in subsection 3(3) of the Building Code; and
  - (vi) "**Related Entity**" has the same meaning as in subsection 3(2) of the Building Code.

### 3. SITE

#### 3.1 Site Access to a Site that is not Public Road

This clause 3.1 only applies to a Site which is not a Public Road or footpath.

- (a) The Contractor acknowledges and agrees that access to any Site which is not a Public Road will be provided progressively to the Contractor as set out in the Contract Particulars.
- (b) Subject to clause 3.1(c), 3.1(d), and 3.9 and any other provision of this Contract



affecting access, the Principal must:

- (i) give, or ensure the Contractor has, access to the Site by the dates set out in the Contract Particulars (and if a period is specified in relation to access to a part of the Site, then by the last day of that period) (**Site Access Dates**); and
- (ii) once access to a part of the Site is provided to the Contractor, thereafter continue to allow, or ensure that the Contractor is continued to be allowed, access to that part of the Site.

(c) The Contractor acknowledges and agrees that:

- (i) access to the Site or any part thereof will only confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this Contract and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor (if applicable);
- (ii) the Principal is not obliged to give the Contractor access to any part of the Site until the Contractor has:
  - A. complied with clause 2.5(c) of this Contract;
  - B. submitted the Project Work Health and Safety Management Plan to the Principal's Representative under clause 2.8(b)(iv);
  - C. effected any insurance policies required under clause 13;
  - D. complied with clauses 13.6 and 13.7 with respect to each insurance policy; and
  - E. complied with the matters set out in the Contract Particulars;
- (iii) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to the Site or carry out the Contractor's Activities; and

(d) The parties acknowledge and agree that:

- (i) once the Project Planning Approval is granted, the Principal will provide written notice to the Contractor confirming:
  - A. the Project Planning Approval has been granted; and
  - B. the Contractor can commence Works on the Site; and
- (ii) the Contractor must not commence any Works on any Site until the Principal provides a notice under clause 3.1(d)(i).

(e) Subject to clauses 3.1(h) and 3.1(i), the Principal's obligations under clause 3.1(a) and 3.1(b) in respect of each part of the Site will cease upon Completion in respect of the last Portion occupying that part of the Site, except to the extent required to allow the Contractor to comply with its obligations during the Defects Liability Period.

(f) Failure by the Principal to give access as required by clause 3.1(b) will not be a breach of this Contract but will entitle the Contractor to:

- (i) an extension of time to any relevant Date for Completion under clause 10.4 if the requirements of that clause are satisfied; and
- (ii) have the Contract Sum increased by the costs reasonably and necessarily incurred by the Contractor as a direct result of the failure of the Principal to give access as required by clause 3.1(b) as determined by the Principal's Representative up to but not exceeding the maximum daily amount set out in the Contract Particulars.

(g) The Contractor's entitlement under clause 3.1(f)(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 clauses 3.1(a) or 3.1(b).



- (h) Notwithstanding any other provision of this Contract, the Principal may, by giving the Contractor 30 days' notice, direct the Contractor to vacate and hand back some or all of the part of the Site identified as "Area E1C" on the Site Access Plan.
- (i) If the Principal gives a notice under clause 3.1(h):
  - (i) the Contractor must vacate and hand back the relevant part of the Site within the time required by the Principal and must comply with any reasonable demobilisation requirements notified to the Contractor by the Principal; and
  - (ii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of or in any way in connection with the Principal exercising its rights under clause 3.1(h).

**3.1A Site Access to a Site that is Public Road**

- (a) This clause 3.1A only applies to any Site which is a Public Road or footpath.
- (b) The Contractor acknowledges and agrees that:
  - (i) the Principal is not responsible for providing (or assisting the Contractor to obtain) access to any Site;
  - (ii) the location of the Sites may not be fixed and, in such cases, must be determined by the Contractor in consultation with the Principal;
  - (iii) it accepts all risk and responsibility in respect of identifying the location of and gaining access to the Sites necessary in respect of the Works and it must procure for itself and at its own cost the occupation or use of or relevant rights over the Sites, including complying with all requirements;
  - (iv) it will comply with all directions of the owners, occupiers or persons providing access to the respective Sites; and
  - (v) it will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of the Contractor being unable to obtain access to any Site.

**3.1B Site access general obligations**

In respect of any Site, the Contractor must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to any Site which is necessary or which it may require for the purposes of carrying out the Contractor's Activities;
- (b) at its own cost carry out all activities and procure all utility services necessary to make the Sites suitable for use by the Contractor;
- (c) as a condition precedent to Completion of the Works or any Portion:
  - (i) rehabilitate any relevant Site in accordance with the requirements of all relevant Authorities and other relevant persons; and
  - (ii) if required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule 11 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Sites; and
- (d) indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in any Site provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or an agent of the Principal contributed to the damage, expense, loss, cost or liability.

### 3.2 Site Access for Principal and others

- (a) The Contractor acknowledges and agrees that:
  - (i) it will not have exclusive access to the Site; and
  - (ii) the Principal and the Principal's employees, consultants and agents may at any time have access to any part of the Site for any purpose.
- (b) The Contractor must:
  - (i) provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways, cycleways and rail tracks affected by the Contractor's Activities in accordance with this Contract;
  - (ii) cooperate and coordinate with Authorities and adjoining property owners with respect to access to the Site (and areas adjoining the Site, including access ways); and
  - (iii) not impede access or utilities services to private property without the consent of the Principal's Representative and the relevant owner or occupier.

### 3.3 Site Requirements

The Contractor must comply with all access and other Site requirements including:

- (a) accreditation for, entry to, movement on, and exit from the Site, including site security accreditation;
- (b) removal from the Site of people whom in the opinion of the Principal's Representative are unsuitable; and
- (c) keeping verified, current and full details of each person accredited to enter the work site, and making the details available to the Principal's Representative within 24 hours of a request.

### 3.4 Information Documents

- (a) Nothing in this clause 3.4 limits the Contractor's rights under clause 3.5 or clause 3.6.
- (b) The Contractor acknowledges that 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, and the Information Documents do not form part of this Contract.
- (c) The 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 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 Contract except to the extent that any such information, statement or document forms part of this Contract;
  - (ii) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon the warranties, acknowledgements and agreements in clauses 3.4(c)(i) and 3.4(c)(ii).




- (d) Subject to clause 3.4(a) the Contractor will have no entitlement to make any Claim against the Principal arising out of or in any way in connection with:
  - (i) the provision of, or the purported reliance upon, or use of the Information Documents by the Contractor or any other person to whom the Information Documents are disclosed; or
  - (ii) a failure by the Principal to provide any other information, data or documents to the Contractor.

**3.4A**



**3.5 Contamination**

- (a) The Contractor acknowledges that it is aware that there may be Contamination and Waste at, upon, under or around the Site.
- (b) The Contractor must:
  - (i) classify;
  - (ii) manage;
  - (iii) handle;
  - (iv) remove from the Site; and
  - (v) dispose of,
 any Contamination or Waste:
  - (vi) pursuant to its obligations under this Contract, including this clause 3.5;
  - (vii) in accordance with the Construction Environmental Management Plan; and
  - (viii) in accordance with all relevant Law and Authority Approvals.
- (c) The Contractor must:
  - (i) notify the Principal's Representative in writing within 7 days of becoming aware of the existence of any Contamination or Waste at, upon, under or around the Site, and thereafter provide the Principal's Representative with such further written details as the Principal's Representative may request;
  - (ii) 
  - (iii) take the steps required so as to ensure that the Site is remediated to the extent it is in any way degraded by the Contamination or Waste; and
  - (iv) in dealing with any Contamination or Waste:
    - A. ensure that any material exhibiting indicators of Contamination is segregated from other in-situ or excavated materials so as to prevent cross-contamination;
    - B. ensure that the Contamination and Waste materials are sampled and classified in accordance with the Waste Classification Guidelines by a Certified Contaminated Land Consultant prior to decontaminating, disposing of offsite, or otherwise dealing with the particular Contamination or Waste;
    - C. document the steps necessary to implement the protection



described in clause 3.5(b) above; and

D. not incorporate contaminated materials into the Works.

(d) To the extent not prohibited by law, the Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause 3.5, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty or the Principal failed to take reasonable steps to mitigate the claim, damage, expense, loss, liability, fine or penalty.

(e)



(f) Other than as set out in this clause 3.5, the Contractor is not entitled to make, and the Principal will not be liable upon, any claim arising out of or in connection with Contamination or Waste.

(g) In this clause 3.5, General Solid Waste, Special Waste, Restricted Solid Waste and Hazardous Waste have the meaning given in the NSW EPA Waste Classification Guidelines Part 1: Classifying Waste (November 2014).

### 3.6 Site Conditions

- (a) Without limiting or otherwise affecting the other provisions of this Contract, the Principal makes no representation and gives no warranty to the Contractor in respect of the site conditions likely to be encountered during the execution of the Contractor's Activities.
- (b) Subject to clauses 3.5(e), 10.5 and 10.6, the Contractor accepts the Site and any structures or other things on, above or adjacent to, or under the surface of, the Site, in their present condition including all defects and site conditions and agrees that it is responsible for, and assumes the risk of:
  - (i) all loss, delay or disruption it suffers or incurs; and
  - (ii) any adverse effect on the Works or the Temporary Works,arising out of, or in any way in connection with the site conditions encountered in performing the Contractor's Activities.

### 3.7 Valuable Objects Found on Site

- (a) Each valuable mineral, fossil, coin, article or object of value or antiquity, and each other remains or thing of geological, heritage, archaeological, anthropological or other special interest found on the Site (each a "**Valuable Find**") is, and will, as between the Contractor and the Principal, be and remain, the property of the Principal.
- (b) The Contractor must:
  - (i) immediately notify the Principal's Representative if it discovers a Valuable Find;
  - (ii) ensure the Valuable Find is protected and not lost, removed, disturbed or damaged;
  - (iii) comply with the requirements of any Authorities and all Laws in relation to the Valuable Find; and
  - (iv) comply with any directions of the Principal's Representative in relation to the Valuable Find.
- (c) Despite the acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) and 3.6(b):
  - (i) the Contract Sum will be increased by the additional costs reasonably and necessarily incurred by the Contractor in complying with:
    - A. requirements of Authorities in accordance with clause 3.7(b)(iii) in relation to the Valuable Find, where such requirements are additional to the requirements of Authorities with which the Contractor is already required to comply under Laws; or
    - B. the Principal's Representatives directions under clause 3.7(b)(iv); and
  - (ii) the Contractor will be entitled to make a claim for an extension of time under clause 10.5 in respect of the discovery of a Valuable Find,but in each case only to the extent that the discovery of that Valuable Find results in the 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 Contractor's Activities, as determined by the Principal's Representative.

### 3.8 Survey

The Contractor must, as a condition precedent to Completion of the Works or any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

- (a) a Survey Plan for the Works or the relevant Portion that:
  - (i) has regard to the setback requirements in the Building Code;
  - (ii) has regard to any stratum lots whether above or below ground;



- (iii) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
  - (iv) shows all internal title boundaries;
  - (v) shows all easements; and
  - (vi) shows the location of the Works; and
- (b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the Surveying and Spatial Information Act 2002 (NSW) stating that:
- (i) the whole of the Works or the Portion has been constructed within the relevant boundaries of the Site;
  - (ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law and this Contract;
  - (iii) any survey information included in the Services Brief complies with the requirements of this Contract; and
  - (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Contract.

### 3.9 Road Occupancy Licences

- (a) The Contractor must obtain approval from the Transport Management Centre for road occupancies and closures required to perform the Contractor's Activities.
- (b) The Contractor must, in carrying out the Contractor's Activities, comply with the requirements of each road occupancy licence.
- (c) The Principal will not be liable for any Claim by the Contractor arising out of or in any way in connection with any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor its subcontractors to obtain any road occupancy licences required to perform the Contractor's Activities.

## 4. QUALITY

### 4.1 Quality of Materials and Work

The Contractor must perform the Contractor's Activities in a satisfactory manner including (unless otherwise stated in the Contract):

- (a) supplying materials which are new, free from defects and suitable for the intended purpose; and
- (b) using standards of workmanship and work methods which are in conformity with the Contract (and if no standard is specified, ensure that all workmanship is fit for its intended purpose).

### 4.2 Self Verification and Quality System

If stated in the Contract Particulars, the Contractor must:

- (a) plan, establish and maintain a conforming quality system, in accordance with the NSW Government *Quality Management System Guidelines*, for the purposes of self-verification that the Contractor's Activities comply with the requirements of the Contract; and
- (b) ensure that the Principal's Representative has access to the quality systems of the Contractor and its subcontractors so as to enable monitoring and quality auditing.

Any such quality system must be used only as an aid to achieving compliance with the Contract and to document such compliance. Such systems will not discharge the Contractor's other obligations under the Contract.

#### **4.3 Collaborative Auditing Process**

The Contractor and the Principal will, on a collaborative basis, develop, agree and implement, a scope and program for the Principal's Representative to undertake audits of the Contractor's compliance with the requirements of the Contractor's Quality Management System as these may apply to the Contractor's Activities and obligations under the Contract; and

- (a) the Contractor agrees to participate and assist in the development and completion of these audits; and
- (b) the Contractor must, when requested by the Principal's Representative, share the results of any self-verification by the Contractor and/or the outcome of any audits completed with the Principal's Representative.

#### **4.4 Principal's Representative May Order Tests**

In clauses 4.4, 4.6 and 4.7 'test' includes examine and measure.

At any time prior to the issue of the Final Certificate the Principal's Representative may direct that any materials or Works be tested. The Contractor must provide such assistance and samples and make accessible such parts of the Works as may be required. On completion of the tests the Contractor must make good the Works so that they fully comply with the Contract.

#### **4.5 Covering Up of Work**

The Principal's Representative may direct that any part of the Works must not be covered up or made inaccessible without the Principal's Representative prior approval.

#### **4.6 Who Conducts Tests**

Tests will be conducted by the Principal's Representative or a person (which may include the Contractor) nominated by the Principal's Representative.

#### **4.7 Notice of Tests**

- (a) Before conducting a test the Principal's Representative must give notice in writing to the Contractor of the time, date and place of the test within the time specified in the Contract Particulars. If no time is specified, the Principal's Representative must give no less than one working day notice. If the Contractor does not then attend, the test may nevertheless proceed.
- (b) Unless the test shows that the work or materials the subject of the test were in accordance with the Contract at the time of testing, the cost of any tests must be borne by the Contractor.

### **5. DESIGN AND DOCUMENTATION**

#### **5.1 Contractor's Design**

The Contractor:

- (a) must:
  - (i) design the parts of the Works and the Temporary Works (if any) which the Contract requires it to design including any Variation directed under clause 6.1 which requires the Contractor to design the work the subject of the Variation; and
  - (ii) provide that part of the design identified in the Services Brief it prepares to the Principal's Representative for his or her review; and
- (b) warrants that:
  - (i) any design documentation it prepares will comply with the requirements of the Contract and will be fit for its intended purpose; and



- (ii) the Works and the Temporary Works will be fit for their intended purpose.

#### **5.1A Principal's Design Documentation**

- (a) The Contractor acknowledges that prior to the date of this deed the Principal engaged a third party in order to prepare the Principal's Design Documentation.
- (b) Subject to clause 5.1B, if:
  - (i) the Contractor considers that any part of the Principal's Design Documentation is not complete, accurate or suitable for the purposes of the Contractor carrying out the Contractor's Activities; or
  - (ii) an Authority requires changes to the Principal's Design Documentation,then:
  - (iii) the Contractor must promptly notify the Principal; and
  - (iv) the Principal will, within 15 Business Days of receiving the Contractor's notice under clause 5.1A(b)(iii) either:
    - A. direct a Variation under clause 6 to address (to the extent deemed necessary in the Principal's sole discretion) the issues raised in the Contractor's notice; or
    - B. notify the Contractor that it does not consider a Variation is required, with reasons.

#### **5.1B Liability for Constructability Issues**

- (a) The Contractor:
  - (i) acknowledges and agrees that:
    - A. prior to entering into this Contract, it undertook a review of the Principal's Design Documentation to ensure that there were no Constructability Issues in relation to the Principal's Design Documentation; and
    - B. it bears all risk in relation to all Constructability Issues; and
  - (ii) warrants that the Contract Sum and the Contractor's program contain sufficient allowance for the assumption by the Contractor of all risk in relation to Constructability Issues.
- (b) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim by the Contractor arising out of, or in any way in connection with Constructability Issues.

#### **5.2 Principal's Representative May Review**

- (a) The Principal's Representative may reject or give his or her permission to use the design provided by the Contractor under clause 5.1(a)(ii). Where the design is rejected the Contractor must submit an amended design to the Principal's Representative. The Contractor must not commence construction of the part of the Works or the Temporary Works to which submitted or resubmitted design applies unless the Principal's Representative either:
  - (i) gives his or her permission to use the design; or
  - (ii) does not reject that submitted or resubmitted design within 14 days after submission to the Principal's Representative.
- (b) The Principal's Representative owes no duty to the Contractor to review any design or other documentation submitted by the Contractor (whether under clause 5.1(a)(ii) or otherwise) for errors, omissions or compliance with the Contract. No comments on, reviews or rejection of or permission to use the design by the Principal's

Representative will relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities under the Contract or otherwise.

### 5.3 Fit for Purpose and WHS Requirements

Without limiting clause 1.2(d), in the Contract, unless the context otherwise indicates, in relation to any aspect of the Works or the performance of the Contractor's Activities that is the subject of a fitness for purpose warranty, a reference to the 'intended purpose' (or any similar expression) of the Works requires, among other things, that the Works will be designed and constructed in compliance with all work health and safety requirements contained in the WHS Legislation.

### 5.4 Intellectual Property Rights

- (a) The Contractor must ensure that, whilst performing the Contractor's Activities, it does not infringe any patent, registered design, trade mark or name, copyright or other protected right.
- (b) Copyright in any design prepared by the Contractor under clause 5.1(a)(i) is assigned to the Principal upon its creation. The Principal grants to the Contractor a licence to use such design for the Contractor's Activities.
- (c) The Contractor must indemnify the Principal against any claims against, or cost, 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 patent, registered design, trade mark or name, copyright or other protected right.

### 5.5 Moral Rights

The Contractor:

- (a) must ensure that it does not infringe any moral right of any author of an artistic work in carrying out the Contractor's Activities;
- (b) must ensure that it obtains and provides to the Principal's Representative irrevocable written consents, for the benefit of the Principal and the Contractor, from all the authors of any artistic work to be incorporated into, or used during the design or construction of, the Works, including any necessary consents from its employees and any consultants engaged by it, to:
  - (i) any act of false attribution of the artistic work; and
  - (ii) any repairs to, maintenance and servicing of, additions, refurbishment or alterations to, changes, relocation, destruction or replacement of the artistic work or the Works; and
- (c) indemnifies the Principal against any claims against, or costs, 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 arising out of or in any way in connection with the Works, or arising in the future out of or in connection with any change, alteration, relocation or destruction of the Works.

This clause 5.5 will survive the termination of the Contract and the completion of the Works.

The terms "artistic work" and "act of false attribution" have the meaning given to them in the *Copyright Act 1968* (Cth).

### 5.6 Order of precedence

The Contract documents are to be read as mutually explanatory and anything contained in one but not in another will be equally binding as if contained in all, so as to ensure that the Works comply with this Contract and are fit for their intended purpose. If the Contractor believes there to be any ambiguity, inconsistency or discrepancy in or between the documents which make up the Contract the Contractor must notify the Principal's Representative in writing with details of the ambiguity, inconsistency or discrepancy.



## 6. VARIATIONS

### 6.1 General

The Principal's Representative may by written notice direct the Contractor to carry out a Variation.

Unless the Principal's Representative and the Contractor agree upon the price for the Variation, the Variation will be valued under clause 6.3. The Principal's Representative may direct that the Variation be carried out as daywork.

If the Variation is a decrease, deletion or omission of any part of the Works the Principal may thereafter perform the work itself or have the work carried out by another party and the Contractor will have no entitlement to make any Claim against the Principal arising out of or in connection with the decreased, deleted or omitted work.

### 6.2 Proposed Variations

Prior to issuing a direction to carry out a Variation the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering and request such information as may be required by the Principal.

Within 14 days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out details of the information required by the Principal.

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

### 6.3 Valuation

Where the Contract provides that a valuation will be made under this clause 6.3, unless the parties agree otherwise, the valuation will be made using the rates or prices set out in the Contract Particulars where included. If the rates for Variations are not included or if these are not relevant to the Variation, the valuation will be made by the Principal's Representative using reasonable rates and prices. If daywork applies, then the valuation will be made by the Principal's Representative in accordance with clause 6.4.

### 6.4 Dayworks

If the Contractor is given a direction under clause 6.1 to carry out work as daywork, the Contractor must:

- (a) carry out the daywork in an efficient manner; and
- (b) after the direction, each day provide the Principal's Representative with a written report signed by the Contractor that:
  - (i) records particulars of all resources used by the Contractor for the execution of the daywork; and
  - (ii) includes the particulars, and copies of time sheets, wage sheets, invoices, receipts and other documents evidencing the cost of the daywork.

In determining the value of daywork regard will be had to:

- (c) the amount of wages and allowances paid or payable by the Contractor at the rates pertaining to the Site at the time as established by the Contractor to the satisfaction of the Principal's Representative or at such other rates as may be determined by the Principal's Representative;
- (d) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under clause 6.4(c);

- (e) the amount of hire charges in respect of constructional plant approved by the Principal's Representative for use on the work in accordance with such hiring rates and conditions as may be agreed between the Principal's Representative and the Contractor, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Principal's Representative;
- (f) the amounts paid for services, subcontracts and professional fees;
- (g) the actual cost to the Contractor at the Site of all materials supplied and required for the work; and
- (h) the percentage specified in the Contract Particulars of the amounts determined under clauses 6.4(c) to 6.4(g) of this clause, which will be in total satisfaction of all the Contractor's non-time related preliminaries and on-site overheads, and all off-site overheads and profit.

Amounts payable for daywork will not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

## 6.5 Notice of Variation

If the Contractor considers that a direction, notice, instruction, order, request or requirement of the Principal or the Principal's Representative constitutes a Variation, but the Principal's Representative has not issued a written notice to direct a Variation under clause 6.1, the Contractor must submit a written claim for a Variation to the Principal's Representative within 5 Business Days from the date of the direction, notice, instruction, order, request or requirement.

The Principal's Representative must, within 10 Business Days of receipt of the written claim, either issue a written notice to direct a Variation under clause 6.1 or reject the claim. If the Contractor fails to give this written claim within the time period required the Contractor will be barred from making any Claim against the Principal arising out of or in any way in connection with the direction, notice, instruction, order, request or requirement.

## 6.6 Option

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 6, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Contract on the basis that the Contract Sum and the provisions of this Contract will be adjusted as set out in Schedule 6 for the relevant Option.

## 7. CONSTRUCTION

### 7.1 Description of Works

The Contractor must undertake the Works and the Temporary Works in accordance with:

- (a) the Contract and any design documentation prepared by the Contractor in accordance with the requirements of the Contract;
- (b) any direction of the Principal's Representative given or purported to be given under a provision of the Contract including Variations directed by the Principal's Representative in accordance with clause 6.1; and
- (c) the other requirements of the Contract.

### 7.2 All Work Included

- (a) The Contractor has allowed in the Contract Sum for the provision of all plant, equipment, materials and other work necessary for the performance of the Contractor's Activities, whether or not expressly mentioned in the Contract or any design documentation.
- (b) Any such plant, equipment, materials and other work must be undertaken and



provided by the Contractor and form part of the Contractor's Activities and will not entitle the Contractor to make any Claim except on account of the Contract Sum or as provided for in the Contract.

### **7.3 Urgent Protection**

Without limiting clause 16.3 if urgent action is necessary to prevent, avoid or minimise loss or damage to any property or harm to the environment or personal injury to any person arising in connection with the Works and the Contractor fails to take the action, the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the cost incurred by the Principal will be a debt due from the Contractor to the Principal.

### **7.4 Not used**

### **7.5 Community Liaison**

The Principal will be responsible for and undertake all community liaison activities, other than where the Contract expressly requires the Contractor to carry out community liaison activities (including in accordance with the communications procedure detailed in the Services Brief). Where the Principal is responsible for undertaking community liaison activities, then the Contractor must assist the Principal with those activities to the extent required by the Principal.

### **7.6 Make Good Damage to Property or the Environment**

The Contractor must, at its own expense, promptly make good any damage to property or the environment caused by the Contractor, subcontractors, employees or agents when carrying out the Contractor's Activities.

### **7.7 Not used**

### **7.8 Environment Management**

Without limiting clause 7.6, the Contractor must perform the Contractor's Activities in such a manner as to avoid nuisance and damage to the environment and must comply with the latest edition of the NSW Government *Environmental Management Guidelines*.

The environmental management requirements of the Contract are in addition to, but not in substitution for, any statutory requirements and do not limit the powers of the Principal and the Principal's Representative or the obligations, liabilities and responsibilities of the Contractor.

### **7.9 Warranties**

The Contractor must, as a condition precedent to Completion of the Works or a Portion, procure and provide the Principal's Representative with those warranties described in the Contract Particulars or elsewhere in this Contract from relevant subcontractors undertaking or supplying the work or items the subject of the warranty.

These warranties:

- (a) must be in the form set out in Schedule 7 and must be in favour of the Principal and any other person specified in the Contract Particulars; and
- (b) will not derogate from any rights that the Principal may have against the Contractor in respect of the subject matter of these warranties.

### **7.10 Provisional Sum Work**

For each item of Provisional Sum Work, the Principal's Representative will give the Contractor a direction either requiring the Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.

Where the Principal's Representative gives the Contractor a notice requiring the Contractor to

proceed with an item of Provisional Sum Work, the Principal's Representative may define the method of proceeding with the Provisional Sum Work including the method by which it will be valued. The Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:

- (a) the amount allowed for the item of Provisional Sum Work in the Contract Particulars; and
- (b) either:
  - (i) an amount agreed between the Contractor and the Principal's Representative; or
  - (ii) if they fail to agree, an amount determined by the Principal's Representative:
    - A. using reasonable rates and prices; or
    - B. if the Principal's Representative directs that the item of Provisional Sum Work is to be carried out as daywork, under clause 6.4,

as if the item of Provisional Sum Work were a Variation, provided that the amount determined will not include any margin for on-site overheads, preliminaries, off-site overheads, profit or the percentage referred to in clause 6.4(h) but will include the relevant percentage for Provisional Sum Works in the Contract Particulars for the offsite overheads and profit of the Contractor.

Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:

- (c) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Contract Particulars;
- (d) the Principal may engage another contractor to carry out the item of Provisional Sum Work; and
- (e) the Principal will not be liable upon any Claim by the Contractor arising out of the deletion of the item of Provisional Sum Work.

## 7.11 Safety

- (a) The Contractor must carry out the 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.

If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.

- (b) Without limiting clause 16.3, the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, other property or the health or safety of people.

If the action taken by the Principal is action which the Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost, loss or liability that the Principal suffers or incurs arising out of or in connection with:

- (i) taking the action contemplated in this clause 7.11; or
- (ii) the Contractor's failure to take that action,

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



## **7A. PLANNING APPROVAL**

### **7A.1 Project Planning Approval Application**

- (a) The parties acknowledge and agree that:
  - (i) the Principal is the proponent under the EP&A Act in respect of the Project Planning Approval; and
  - (ii) as at the date of this Contract, the Principal has submitted the Project Planning Approval Application including all associated plans, specifications and environmental impact statement updates.
- (b) Except to the extent expressly stated otherwise in this clause 7A, the Contractor will not be entitled to make, and the Principal will not be liable for, any Claim arising out of or in any way in connection with the process set out in clause 7A. The parties acknowledge that this clause 7A does not limit the Contractor's right to payment under clause 11.
- (c) The parties acknowledge and agree that while the Baseline Conditions and Baseline Mitigation Measures constitute the considered estimation of the Principal of the conditions and requirements that may be imposed under the Project Planning Approval, the terms of the Project Planning Approval which the Minister for Planning may issue arise from the exercise of a statutory discretion in accordance with the terms of the EP&A Act.
- (d) Subject to the provisions of this clause 7A.2, the Contractor must comply with the Baseline Conditions and Baseline Mitigation Measures.
- (e) The Contractor acknowledges that the Contract Sum allows for compliance with the Baseline Conditions and Baseline Mitigation Measures.

### **7A.2 Issue of the Project Planning Approval**

- (a) The Principal will give notice to the Contractor within 2 Business Days of the Project Planning Approval being issued by the Minister for Planning, together with a copy of the Approval.
- (b) Within 10 Business Days of the Project Planning Approval being issued by the Minister for Planning, the Principal must give notice ("**PPA Notice**") to the Contractor:
  - (i) stating that the Principal considers that there are no Unforeseeable PA Conditions; or
  - (ii) stating that the Principal considers that there are Unforeseeable PA Conditions and that the Principal intends to exercise its rights to require a Variation, in which case clause 7A.3 will apply.

### **7A.3 Direction to Proceed**

- (a) If:
  - (i) the Minister for Planning grants, or indicates that it will grant, the Project Planning Approval subject to what the Principal considers to be an Unforeseeable PA Condition; or
  - (ii) the Principal, acting reasonably and after having consulted with the Contractor, considers that a Variation is required to ensure that:
    - A. the Project Planning Approval is granted; or

- B. the Project Planning Approval is granted without being subject to what the Principal considers to be an Unforeseeable PA Condition,  
  
then the Principal may issue a notice in accordance with clause 6.1 or a Variation Proposal Request in accordance with clause 6.2 to the Contractor setting out the details of a proposed Variation to enable:
- C. the Project Planning Approval to be granted;
- D. the Project Planning Approval to be granted without being subject to what the Principal considers to be an Unforeseeable PA Condition;  
or
- E. the Contractor to comply with what the Principal considers to be the Unforeseeable PA Condition.

(b) If the Principal issues a notice pursuant to clause 7A.3(a), clause 6 will apply.

#### **7A.4 Revised Baseline Conditions and Baseline Mitigation Measures**

Within 20 Business Days of the Principal's PPA Notice, the Principal will provide to the Contractor a revised version of Schedule 12 with such revisions as are reasonable and necessary to reflect the terms of the Project Planning Approval, with which the Contractor must comply, but without prejudice to clause 7A.3.

### **8. DEFECTS**

The Defects Liability Period will commence on the Date of Completion.

At any time prior to the 14th day after the expiration of the Defects Liability Period, the Principal's Representative may direct the Contractor to rectify any Defect and the Contractor must correct that work within the time specified by the Principal's Representative.

Any such direction to the Contractor will identify the Defect and state a date by which the Contractor must complete rectification. If the direction is given during the Defects Liability Period the direction may provide that in respect of any Defect rectification work there will be a separate Defects Liability Period of a stated duration not exceeding the period stated in the Contract Particulars. Any separate Defects Liability Period will commence on the date the Contractor completes the work of rectification.

If the Contractor does not correct the Defect within the time specified, the Principal may have the work corrected by others at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such Defect and the cost of the work of rectification incurred by the Principal will be a debt due from the Contractor to the Principal.

Instead of requiring the Contractor to rectify a Defect the Principal may accept a Defect. The resulting reasonable increase or decrease in the value to the Principal of the work and any other reasonable loss or detriment suffered by the Principal will be assessed by the Principal's Representative and the amount paid to or deducted from monies payable to the Contractor.

If during the Defects Liability Period it is necessary for the Contractor to carry out Defect rectification works, the Contractor must do so at times and in a manner that causes as little inconvenience to the users and occupants of the Works as is reasonably possible.

### **9. ADMINISTRATION**

#### **9.1 Principal's Representative**

The Principal's Representative is authorised by the Principal to act with the Principal's authority in respect of all matters relating to the Contract as the agent of the Principal (and not as an



independent certifier, assessor or valuer). The Principal's Representative may delegate authority to another and must notify the Contractor in writing if he or she does so.

The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.

## 9.2 Exchange of Information between Government Departments and Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 9.3) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal or the Principal's Representative and any information relating to the Contractor's performance under the Contract.

The Contractor acknowledges that any information about the 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 Contractor future opportunities for NSW government work.

The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its Contractors and that these processes will apply to this Contract. The Contractor agrees to participate in the Principal's 'Contractor Performance Reporting' process.

## 9.3 Financial Assessment

Without limiting or otherwise restricting clause 9.2, the Contractor acknowledges and agrees that:

- (a) the Principal may, during the term of the Contract, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments (**Financial Assessment**) of the Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Works; and
- (c) it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

## 9.4 Training Management

Subject to the express provisions of the Contract, the Contractor must comply with the NSW Government *Training Management Guidelines*, July 2020.

Training management requirements specified in the Contract and the NSW Government *Training Management Guidelines* may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.

The Contractor must demonstrate to the Principal's Representative, whenever requested, that it has met and is meeting at all times its obligations under this clause 9.4.

## 9.5 Submissions for the Principal's Representative

Unless otherwise advised by the Principal's Representative, where the Contractor must submit a document to the Principal's Representative then it must submit the number of copies of the document stated in this Contract, or if no number is stated then:

- (a) an electronic version on USB (in both pdf and native formats), which must be virus free;
- (b) 1 printed original; and
- (c) 3 printed copies (2 bound and 1 unbound).

## **10. TIMES FOR COMMENCEMENT AND COMPLETION**

### **10.1 Time for Commencement of Work on the Site**

The Contractor must give the Principal's Representative 14 days' notice of the date upon which the Contractor proposes to commence work on a Site.

The Principal's Representative may reduce the period of notice required.

The Contractor must commence work on that Site within 14 days of the Contractor's notice under this clause 10.1.

The Principal's Representative may extend the time for commencement of work on the Site.

### **10.2 Date for Completion and Contractor's Programming Obligations**

The Contractor must achieve Completion of the Works by the Date for Completion.

Within 7 days of commencement of the Contractor's Activities the Contractor must provide the Principal's Representative with a program acceptable to the Principal's Representative. Thereafter the Contractor must regularly revise the program at intervals acceptable to the Principal's Representative.

### **10.3 Portions**

(a) The interpretations of:

- (i) Date for Completion;
- (ii) Date of Completion; and
- (iii) Completion,

and clauses 7.7, 10, 12.1, 12.2 and 13.1 will apply separately to each Portion and reference therein to the Works and to the Contractor's Activities will mean so much of the Works and the Contractor's Activities as is comprised in the relevant Portion.

If the Contract does not make provision for the amount of security, retention moneys or liquidated damages to a Portion, the respective amounts applicable will be such proportion of the security, retention moneys or liquidated damages to the whole of the Works as the value of the Portion bears to the value of the Contract Sum.

(b) Further Portions may be created by the Principal's Representative issuing a written notice in which the Principal's Representative must clearly identify for each, the:

- (i) portion of the Works;
- (ii) Date for Completion; and
- (iii) respective amounts for security and liquidated damages (all calculated pro-rata according to the ratio of the Principal's Representative's valuation of the Portion to the Contract Sum).

### **10.4 Extension of Time for Completion**

If the Contractor is or will be delayed in reaching Completion by an act or omission of the Principal or Principal's Representative (including breach of contract or a Variation directed under clause 6.1 or a suspension directed under clause 10.8 where the suspension is not due to an act or omission of the Contractor or its employees, agents or subcontractors) or a cause set out in the Contract Particulars, and within 20 Business Days after the first occurrence of the cause of the delay the Contractor gives the Principal's Representative a written claim for an extension of time for Completion in accordance with clause 10.5, the Contractor will, subject to clause 10.5A, be entitled to a reasonable extension of time for Completion.



## 10.5 Claim for Extension of Time

Subject to clause 10.5A, to claim an extension of time, the Contractor must submit:

- (a) a written notice to the Principal within 5 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the commencement of an event or circumstance causing delay which has, or is likely to give rise to a delay in reaching Completion (**Initial Notice**); and
- (b) a written claim to the Principal's Representative within 20 Business Days of the first occurrence of the event or circumstance causing the delay (or when the Contractor ought reasonably to have first become aware of the occurrence of the event or the circumstances causing the delay) (Notice of Claim). This Notice of Claim must include:
  - (i) details of the delay and the event or circumstance causing the delay;
  - (ii) details of the activities that are critical to the maintenance of progress in the execution of the Contractor's Activities;
  - (iii) details of the steps the Contractor has or will take to avoid or mitigate the delay or the event or circumstances causing the delay;
  - (iv) a statement of the number of days extension of time claimed together with the basis of calculating that period; and
  - (v) any additional information which the Principal's Representative may request from time to time.

If the effects of the delay continue beyond the period of 20 Business Days after the first occurrence of the event or circumstance causing the delay (or when the Contractor ought reasonably to have first become aware of the occurrence of the event or the circumstances causing the delay) and the Contractor wishes to claim extensions of time in respect of the further delays, the Contractor must submit further written claims to the Principal's Representative at intervals not greater than 15 Business Days (or such other period as approved by the Principal's Representative) after the first Notice of Claim until 5 Business Days after the cessation of the event or circumstance causing the delay.

Notwithstanding that the Contractor is not entitled to an extension of time the Principal's Representative may at any time by notice in writing to the Contractor extend the time for Completion for any reason.

The Principal's Representative is not required to exercise its discretion under the previous paragraph for the benefit of the Contractor.

### 10.5A Conditions Precedent to Extension of Time

The Contractor acknowledges and agrees that the following are conditions precedent to the Contractor's entitlement to an extension of time under clause 10.5:

- (a) the Contractor has submitted an Initial Notice and Notice of Claim as required by clause 10.5 in respect of any delay or event or circumstance;
- (b) the Contractor has complied with any request for additional information in accordance with clause 10.5(v);
- (c) the delay or event or circumstances causing the delay is beyond the reasonable control of the Contractor; and
- (d) the Contractor is actually, or will be, delayed in achieving Completion by a delay, event or circumstance referred to in clause 10.4.

### 10.5B Principal's determination

If the conditions precedent in clause 10.5A have been satisfied, the Principal's Representative must determine the extension of time to which the Contractor is entitled within:

- (a) 15 Business Days after the date of the Notice of Claim; or

- (b) in the case of ongoing delay, within 15 Business Days of the later of:
  - (i) the Contractor's last written claim under clause 10.5; and
  - (ii) the relevant cessation of the delay, event or circumstance.

#### **10.5C Reduction in Entitlement**

The Contractor's entitlement to an extension of time will be reduced to the extent that:

- (a) the Contractor caused or contributed to the delay;
- (b) the Contractor failed to take all reasonably practicable steps necessary to preclude the cause of the delay or 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 the Contractor's Activities;
- (c) a delay, event or circumstance referred to in clause 10.4, and any other delay, event or circumstance, occurred at the same time and the Contractor would have been delayed even if the delay, event or circumstance referred to in clause 10.4 had not occurred; or
- (d) the Contractor has been given a direction to accelerate under clause 10.7 to overcome the whole or part of any delay.

#### **10.6 Delay Costs**

- (a) Subject to clause 10.6(c), where the Contractor has been granted an extension of time under clause 10.4 due to a delay caused by an act or omission of the Principal or the Principal's Representative, or a cause set out in the Contract Particulars, the Principal will pay to the Contractor its actual incremental costs arising directly out of such delay for each day by which the Date for Completion is extended under clause 10.4, up to the maximum daily cap specified in the Contract Particulars.
- (b) Nothing in this clause 10.6 will oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a Variation or any other payment under the Contract.
- (c) The amount payable pursuant to this clause 10.6 will be a limitation upon the Principal's liability to the Contractor for any delay or disruption that:
  - (i) the Contractor encounters in carrying out the Contractor's Activities; and
  - (ii) arises out of, or in any way in connection with, the act or omission (including where this amounts to a breach of Contract) by the Principal or the Principal's Representative.

#### **10.7 Acceleration**

The Principal's Representative may instruct the Contractor to accelerate progress of the Works and the Contractor must comply.

Prior to commencing any such acceleration the Contractor must give the Principal's Representative an estimate of the costs of taking all such necessary measures and a full description how the costs are estimated.

The Principal will reimburse the Contractor's reasonable costs of the acceleration undertaken by the Contractor as approved by the Principal's Representative. The steps to be taken and basis for reimbursing the Contractor's costs of acceleration will be agreed wherever possible before the Contractor takes steps to accelerate progress of the works, and the reasonable costs will be valued under clause 6.3.

The Principal will only reimburse the Contractor for acceleration as an addition to the Contract Sum if the Contractor achieves the acceleration instructed by the Principal's Representative, unless the only reason for failure is a delay beyond the Contractor's control, and the Contractor has taken all reasonable steps to avoid and minimise the effects of the delay.



## 10.8 Suspension by Principal's Representative

The Principal's Representative may direct the Contractor to suspend the whole or part of the Contractor's Activities for such period as it may direct.

Any cost incurred by the Contractor by reason of a suspension under this clause 10.8 must be borne by the Contractor but if the suspension is due to an act or omission of the Principal, the Principal's Representative or an employee, consultant or agent of the Principal and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be valued under clause 6.3 and added to the Contract Sum.

## 11. PAYMENT

### 11.1 General

The Principal must pay the Contractor the Contract Sum. The basis of payment is as set out in the Contract Particulars.

### 11.2 Payment Claim

The Contractor may submit to the Principal's Representative a claim for payment on account of the Contract Sum and any other amounts payable under the Contract on the dates set out in the Contract Particulars.

All payment claims must be addressed to Sydney Metro and must refer to the Minor Works Contract No. on the cover page of this Contract.

For lump sum contracts, the proportion of the lump sum due for each payment period for work completed will be the same proportion as the amount of work completed is to the whole of the work, subject to any adjustments which the Principal is entitled to make under the Contract.

### 11.3 Payment Schedule

The Principal's Representative must within the time stated in the Contract Particulars following receipt of a payment claim give the Contractor a payment schedule, which sets out:

- (a) the payment claim to which it relates;
- (b) the value of the Works completed in accordance with the Contract;
- (c) the amount already paid to the Contractor;
- (d) the amount that the Principal is entitled to retain, deduct, withhold or set-off under the Contract; and
- (e) the amount (if any) which the Principal proposes to pay to the Contractor.

If the amount in clause 11.3(e) is less than the amount claimed in the payment claim, the Principal's Representative must set out in the payment schedule:

- (f) the reason why the amount in paragraph (e) is less than the amount claimed in the payment claim; and
- (g) if the reason for the difference is that the Principal is retaining, deducting, withholding or setting-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The failure of 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 under this Contract will not prejudice the Principal's right to subsequently exercise such right.

The Principal's Representative may, in any payment schedule, correct any error and modify any assumptions or allowances made in any previous payment schedule issued by the Principal's Representative. The Contractor agrees that the amount referred to in the payment schedule is, for the purposes of section 9 and 10 of the SOP Act, the amount of the "progress payment" (as

defined in the SOP Act) calculated in accordance with the terms of this Contract to which the Contractor is entitled in respect of this Contract.

The Contractor acknowledges and agrees that the Principal's Representative is the agent of the Principal for the purposes of receiving payment claims and issuing payment schedules under the SOP Act.

Where the Principal has notified the Contractor in accordance with that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor for the Principal, the Contractor must within 2 Business Days after receipt of the payment schedule issued by the Principal's Representative give the Principal's Representative a tax invoice (which complies with the GST Law) for the amount of the payment schedule.

Subject to clause 11.7 the Principal must within 15 Business Days of receipt of a payment claim pay the amount proposed to be paid in the payment schedule.

The issuing of a payment schedule or a Final Certificate by the Principal's Representative and the making of a payment by the Principal under this clause 11.3 is not evidence of the value of the Works performed and does not constitute an admission by the Principal that any Works provided by the Contractor conform with the requirements of this Contract and payment is on account only.

#### **11.4 Provision of documentation and other requirements**

The Principal is not obliged to pay the Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment statement unless the Contractor has:

- (a) provided the Principal's Representative with a statutory declaration in the form which appears in Schedule 3 signed by the Contractor or where the Contractor is a corporation by a person who is in a position to know the facts declared made out not earlier than the date of the payment claim;
- (b) where clause 11.6(g) applies, provided the Principal's Representative with the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause;
- (c) the Contractor has effected or procured to be effected the insurances required by clauses 13.2, 13.3, 13.5, 13.4, 13.6 and 13.7 and (if requested) provided evidence of this to the Principal's Representative; and
- (d) if required by clause 11.3, provided a tax invoice.

#### **11.5 Final Payment Claim**

On the date falling 28 days after the expiration of the Defects Liability Period, or where there is more than one, the last to expire the Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating the Contract Sum, all payments received on account of the Contract Sum and the balance, if any, due to the Contractor. The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

The Contractor, at the date for submission of a Final Payment Claim, 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 Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Final Payment Claim.

Within 10 Business Days after receipt of the Contractor's Final Payment Claim or, where the Contractor fails to lodge such claim, the expiration of the period specified in the previous paragraph for the lodgement of the Final Payment Claim by the Contractor, the Principal's

Representative will issue to the Contractor, on behalf of the Principal, a final payment certificate endorsed Final Certificate. In addition to satisfying the requirements of clauses 11.3(a) to 11.3(d), the Principal's Representative will set out in the Final Certificate, the amount which is due from



the Principal to the Contractor or from the Contractor to the Principal under the Contract.

Within 14 days after the issue of a Final Certificate which certifies a balance owing by the Principal to the Contractor, the Principal will release to the Contractor any retention moneys or security then held by the Principal.

#### 11.6 Adjudication under the Security of Payment Act

- (a) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to the Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 11.3;
  - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract 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 Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the 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 Contractor to the Principal upon demand and in respect of which the 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 statement; and
  - (v) the payment statement referred to in clause 11.6(a)(iv)C will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 15.
- (b) For the purposes of section 17(3) of the SOP Act the Contractor irrevocably chooses the Resolution Institute, Australia, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Contract.
- (c) Without limiting clause 11.6, 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 Part 3 of the SOP Act.
- (d) If the Principal withholds from money otherwise due to the 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 Part 3 of the SOP Act, then:
- (i) the Principal may plead and rely upon Division 2A of Part 3 of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and
  - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of Part 3 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 Contractor has been unpaid; and
    - B. the date by which payment of money owed by the Principal to the

Contractor must be made.

- (e) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of Part 3 of the SOP Act.
- (f) Any amount paid by the Principal pursuant to Section 26C of the SOP Act will be a debt due from the Contractor to the Principal.
- (g) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act and the 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 Contractor must so notify the Principal's Representative within 5 days of the occurrence of the event in clause 11.6(g)(i) or 11.6(g)(ii) above (as applicable) by providing to the Principal and the Principal's Representative a statement in writing in the form of a statutory declaration together with such other evidence as the Principal or the Principal's Representative may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

#### 11.7 Set Off

The Principal may at any time withhold, set-off or deduct from amounts otherwise payable to the Contractor:

- (a) any debt or other moneys due from the Contractor to the Principal (including any debt from the 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 Part 3 of the SOP Act; or
- (c) any claim to money which the Principal may have against the Contractor whether for damages or otherwise,

whether under the Contract or otherwise at law.

## 12. COMPLETION

### 12.1 Process

The Contractor must notify the Principal's Representative in writing 7 days prior to the date upon which the Contractor anticipates that Completion will be reached.

The Principal's Representative, after receipt of this notice from the Contractor, must inspect the Works and the Contractor's Activities and, if appropriate, issue a Certificate of Completion stating the date that the Principal's Representative determines Completion was achieved. Should the Principal's Representative, acting reasonably, consider that the Works have not achieved Completion, the Principal's Representative must inform the Contractor in writing of the matters that are considered incomplete.

This process will be continued until the matters are resolved in accordance with this Contract and the Certificate of Completion is issued.

The issue of a Certificate of Completion will not:

- (a) constitute approval of any work or other matter nor will it prejudice any claim by the Principal;
- (b) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under the Contract;



(c) be taken as an admission or evidence that the Works or the Portion complies with the requirements of the Contract; or

(d) prejudice any rights or powers of the Principal or the Principal's Representative.

Upon the Date of Completion the Contractor must vacate the Site.

### **12.2 Liquidated Damages for Delay in Reaching Completion**

If the Contractor fails to reach Completion by the Date for Completion, the Contractor will be indebted to the Principal for liquidated damages at the rate stated in the Contract Particulars for every day after the Date for Completion to and including the Date of Completion or the date that the Contract is terminated, whichever first occurs.

If after the Contractor has paid or the Principal has deducted liquidated damages, the Date for Completion is extended, the Principal must forthwith repay to the Contractor any liquidated damages paid or deducted in respect of the period up to and including the new Date for Completion.

### **12.3 Limit on Liquidated Damages**

The amounts payable to the Principal under clause 12.2 are limited in total to the maximum aggregate amount set out in the Contract Particulars.

## **13. RISK OF THE WORKS AND INSURANCE**

### **13.1 Risk and Indemnity**

Except where it arises from an Excepted Risk, the Contractor will bear the risk of and indemnify the Principal against:

(a) any loss of or damage to the Works, plant and equipment and unfixed goods and materials (whether on or off Site) until Completion;

(b) after Completion, any loss of or damage to the Works arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to Completion;

(c) any loss of or damage to property of the Principal; and

(d) any liability to or claims by a third party in respect of loss of, loss of use of, or damage to property or injury to or death of persons caused by, or arising out of, or any way in connection with, the Contractor's Activities.

### **13.2 Works Insurance – Alternative 1**

This alternative applies if so stated in the Contract Particulars.

Before commencing the Contractor's Activities, the Contractor must effect and maintain until the issue of the Final Certificate, insurance for loss of and damage to the Works (including any Temporary Works and all materials, constructional plant and other things that are brought onto the Site by or on behalf of the Contractor or are entrusted to the Contractor by the Principal) in the joint names of the Principal and the Contractor and covering the Contractor, subcontractors, the Principal's Representative and the Principal, for an amount not less than the Contract Sum.

The Contractor must provide evidence of the insurances to the Principal's Representative prior to commencement of the Contractor's Activities on Site.

### **13.3 Works Insurance – Alternative 2**

This alternative applies if so stated in the Contract Particulars.

Upon entering into this Contract, if there are any policies for insurance of the Works included in Exhibit G these policies will come into effect and will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the

**Contractor's Activities.**

The Principal must maintain the policies until the issue of the Final Certificate.

This insurance is subject to the exclusions, conditions and excesses noted on the policies, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that it was provided with a copy of terms of the insurance policies in Exhibit G prior to the date of this Contract and it reviewed and examined the terms of those insurance policies and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) must, if required by the Contractor, take out at the Contractor's expense any insurance to:
  - (i) insure any risks not insured by the insurance policies in Exhibit G; or
  - (ii) cover any exclusions, conditions or excesses in the insurance policies in Exhibit G,which the Contractor wants to insure against or cover; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies in Exhibit G.

**13.4 Public and Products Liability Insurance – Alternative 1**

This alternative applies if so stated in the Contract Particulars.

Before commencing the Contractor's Activities, the Contractor must effect and maintain until the issue of the Final Certificate, a broad form public and products liability insurance policy.

The policy must:

- (a) be in the joint names of the Principal and the Contractor;
- (b) cover the:
  - (i) respective rights and interests;
  - (ii) liabilities for loss or damage to property (other than property required to be insured by clause 13.2) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy); and
  - (iii) liabilities to third parties,of the Contractor and the Principal, the Principal's Representative, subcontractors from time to time, arising out of the Contractor's Activities; and
- (c) provide insurance cover for an amount not less than the amount stated in the Contract Particulars, or if no amount is stated, [REDACTED] for any single occurrence.

The Contractor must provide evidence of the insurances to the Principal's Representative prior to commencement of the Contractor's Activities on Site.

**13.5 Public and Products Liability Insurance – Alternative 2**

This alternative applies if so stated in the Contract Particulars.

Upon entering into this Contract, if there are any policies for public liability insurance included in Exhibit G these policies will come into effect and will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

The Principal must maintain the policies until the issue of the Final Certificate.



This insurance is subject to the exclusions, conditions and excesses noted on the policies, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that it was provided with a copy of terms of the insurance policies in Exhibit G prior to the date of this Contract and it reviewed and examined the terms of those insurance policies and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) must, if required by the Contractor, take out at the Contractor's expense any insurance to:
  - (i) insure any risks not insured by the insurance policies in Exhibit G; or
  - (ii) cover any exclusions, conditions or excesses in the insurance policies in Exhibit G,which the Contractor wants to insure against or cover; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies in Exhibit G.

### **13.6 Professional Indemnity Insurance**

Where so stated in the Contract Particulars, the Contractor must effect and maintain professional indemnity insurance:

- (a) which covers liability arising from a breach of a duty owed in a professional capacity, whether owed in contract or otherwise, by any act or omission of the Contractor or its subcontractors in relation to the carrying out of the Contractor's Activities in accordance with this Contract;
- (b) with a limit of indemnity of the amount specified in the Contract Particulars for any one claim with provision for one reinstatement per period of insurance; and
- (c) until 7 years after the Date of Completion of the last Portion to achieve Completion.

### **13.7 Contractor's Other Insurance Obligations**

The Contractor must ensure the following insurance policies are in place before commencing the Contractor's Activities, and must ensure that these insurances are maintained until the issue of the Final Certificate or as otherwise indicated below:

- (a) workers' compensation or employers liability insurance covering liability for death of or injury to persons employed by the Contractor including liability by statute and at common law; and
- (b) if the Contractor's Activities includes the use of motor vehicles or constructional plant licensed for road use to transport items or substances, the Contractor must effect a policy of comprehensive motor vehicle insurance for motor vehicles and such plant covering own damage and third party liability for property damage, extended specifically to cover transportation of such items or substances, for an amount stated in the Contract Particulars.

Without limiting its rights under clause 14, if the Contractor fails to effect or maintain any insurance, the Principal may effect the insurance at the Contractors cost.

The Contractor must provide evidence of the insurances to the Principal's Representative prior to commencement of the Contractor's Activities on Site.

### **13.8 Cross Liability**

Where this Contract requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and

endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;

- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be the notice of all insured parties.

## 14. TERMINATION

### 14.1 Notice of Breach

If the Contractor is in breach of the Contract, then the Principal may give a written notice to the Contractor stating:

- (a) that it is a notice under this clause 14.1;
- (b) the breach relied upon; and
- (c) that the Contract will be terminated unless the breach is remedied within the period set out in the notice.

### 14.2 Termination for Breach or Financial Difficulty

The Principal may, without prejudice to any other right, terminate the Contract by notice in writing to the Contractor from the date stated in the notice if:

- (a) the Contractor fails to remedy a breach of the Contract within the time stated in a notice under clause 14.1; or
- (b) whether or not the Contractor is in breach of the Contract, the Contractor becomes an externally administered body corporate (as defined in the *Corporations Act 2001* (Cth)) or commits an act of bankruptcy or is in the Principal's reasonable opinion unable to pay its debts or to financially proceed with the Contract.

If the Contract is terminated under clause 14.2 the rights and liabilities of the parties will be the same as they would be at common law if the Contractor had wrongfully repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.

This clause 14.2 will survive the termination of the Contract by the Principal under this clause 14.2.

### 14.3 Termination for any reason

The Principal may terminate the Contract at any time for its sole convenience and for any reason, by written notice addressed to the Contractor and thereafter, at its absolute discretion, complete the uncompleted part of the Works either itself or by engaging another contractor.

If the Principal terminates the Contract under this clause 14.3, the Contractor:

- (a) will be entitled, for work performed prior to the date of termination, to the amount which would have been payable if the Contract had not been terminated and the Contractor had submitted a payment claim for work performed to the date of termination; and
- (b) must immediately hand over to the Principal all copies of any documents provided by the Principal to the Contractor and all material brought into existence by the Contractor in delivering the Works (whether complete or not).

The amount to which the Contractor is entitled under clause 14.3(a) will be a limitation upon the



Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any claim (under the Contract or otherwise at law or in equity) against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under clause 14.3(a).

This clause 14.3 will survive the termination of the Contract by the Principal under this clause 14.3.

## 15. DISPUTE RESOLUTION

If any dispute or difference concerning or in any way related to the Contract arises between the Principal (or the Principal's Representative) and the Contractor, then either party may give the other party written notice of the dispute.

The Contractor and the Principal must endeavor to resolve any dispute expeditiously by negotiation.

If a dispute between the Contractor and the Principal is not resolved by negotiation within 28 days of the issue of the notice of dispute, then, if a party wishes to take further steps to resolve the dispute it must, prior to commencing litigation by notice in writing to the other party refer the dispute to mediation in accordance with, and subject to, The Resolution Institute Mediation Rules and Conciliation Rules.

The mediator will be an independent person agreed by the parties or, failing agreement within 14 days after the referral of the dispute to mediation, the mediator will be an independent person appointed by the Chair of the Resolution Institute.

The cost of mediation will be borne equally by the parties.

If the dispute is not resolved within 60 days of the submission of the dispute to mediation (or such longer period as may be agreed upon by the parties), then, either party may commence litigation to resolve the dispute.

Notwithstanding the existence of a dispute, the Principal and Contractor must continue to perform the Contract, and the Contractor must continue with the Contractor's Activities.

## 16. GENERAL

### 16.1 Governing Law

The Contract is subject to the laws of the State of New South Wales.

### 16.2 Confidentiality

- (a) Subject to clause 16.2(b), the Contractor must:
  - (i) keep confidential this Contract and any information relating to the Contractor's Activities and any discussions concerning this Contract; and
  - (ii) ensure that each of its officers, employees and subcontractors complies with the terms of clause 16.2(a)(i).
- (b) The Contractor is not obliged to keep confidential any information:
  - (i) which is in the public domain through no default of the Contractor; or
  - (ii) the disclosure of which is:
    - A. required by Law;
    - B. consented to in writing by the Principal; or
    - C. given to a court in the course of proceedings to which the Contractor is a party or to an expert or other person appointed under this Contract or an agreed arbitrator.
- (c) The Contractor must submit to the Principal's Representative within 14 days of the

date of this Contract:

- (i) a Corporate Confidentiality Deed Poll in the form of Part B of Schedule 4 executed by the Contractor; and
  - (ii) Individual Confidentiality Deeds Poll in the form of Part A of Schedule 4 executed by each member of the Contractor's personnel who will be carrying out the Contractor's Activities.
- (d) If required by the Principal's Representative the Contractor must:
- (i) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Deed Poll are aware of their obligations under the terms of the Confidentiality Deed Poll in Schedule 4; and
  - (ii) ensure that each subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Deed Poll to the Principal's Representative within the time directed by the Principal's Representative.
- (e) The Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
- (i) the *Government Information (Public Access) Act 2009* (NSW);
  - (ii) the *Ombudsman Act 1974* (NSW);
  - (iii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
  - (iv) any other Law.
- (f) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the item referred to in clause 16.2(e).

### 16.3 The Principal May Act

The Principal may, either itself or by a third party, perform an obligation which the Contractor was obliged to perform but which it failed to perform. The costs, expenses and damages suffered or incurred by the Principal in performing such an obligation will be a debt due from the Contractor to the Principal.

### 16.4 Civil Liability Act

- (a) It is agreed that to the extent permitted by law the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 16.4(a) it is further agreed that the rights, obligations and liabilities of the Principal and the Contractor (including those relating to proportionate liability) are as specified in this Contract and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

### 16.5 Assignment

- (a) The Contractor must not assign, transfer or novate any of its rights, interests or obligations in this Contract without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.
- (b) The Principal may at any time, at its sole discretion, assign, transfer or novate any of its rights, interests or obligations in this Contract to any person. If the Principal elects to novate the Contract the Principal will provide the Contractor with a duly completed



deed of novation in the form of Schedule 9 or any other form acceptable to the Principal and the Contractor must execute the deed of novation and deliver it to the Principal within 5 Business Days of the Principal's request to do so.

## 16.6 Personal Property Securities (PPS) Act

- (a) By signing this Contract, the Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (**Security Interest**), the Contractor shall do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
  - (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
  - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
  - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- (b) If Chapter 4 of the *PPS Act* applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the *PPS Act* will not apply to the enforcement of the Security Interest.
- (c) The Contractor:
  - (i) acknowledges that the Security Interests created under or pursuant to this Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
  - (ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
  - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the *PPS Act* and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the *PPS Act* to authorise the disclosure of the above information.

## 16.7 Notices

- (a) Unless otherwise notified by the Principal's Representative to the Contractor, notices in connection with this Contract must be sent via the PDCS and be addressed to the Principal's Representative or Contractor's Representative (as applicable).
- (b) All notices must be in writing, and all instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable.
- (c) The Principal has no liability for any losses the 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 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 Contractor's access to or use of the PDCS or any failure of the PDCS.

- (d) The Contractor acknowledges and agrees that it has made full allowance in the Contract Sum for all its costs in complying with its obligations set out in this clause 16.7, including establishing the PDCS.

## 17. LIMITATION OF LIABILITY



## 18. GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with this Contract, including the Contractor's Activities or the Works, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 18(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) If any party is required under this Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Contract, where the Recipient is the Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 18 or otherwise) in respect of a taxable supply made by the Principal unless the Principal issues to the Contractor a tax invoice that complies with the GST Law in respect of that taxable supply.
- (f) The parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Contract:



- (i) the Principal will issue to the Contractor a recipient created tax invoice (**RCTI**) for each taxable supply made by the Contractor to the Principal under this Contract;
  - (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
  - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
  - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 11.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect of any such taxable supply.
- (g) Each party acknowledges and warrants that at the time of entering into this Contract it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (h) If the GST payable in relation to a supply made by the Supplier under this Contract varies from the additional amount paid by the other party under this clause 18 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).
- (i) The Contractor must ensure that any insurance which the Contractor is required by clause 13 to effect, covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed.
- (j) In clauses 11.3 and 18:
- (i) **GST** means the tax payable on taxable supplies under GST Law;
  - (ii) **GST Law** means the *A New Tax System (Goods & Services Tax) Act 1999* and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
  - (iii) terms that are defined in GST Law have the meaning provided by GST Law.

## 19. TfNSW'S STATEMENT OF BUSINESS ETHICS

- (a) The Contractor must at all times comply with TfNSW's Statement of Business Ethics.
- (b) Prior to the engagement of any subcontractor by the Contractor, the Contractor must obtain a written acknowledgement from such subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

## 20. NSW GUIDELINES

### 20.1 NSW Guidelines

In addition to terms defined in this document, terms used in clause 20 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Industrial Relations Guidelines: Building and Construction Procurement (**NSW Guidelines**) (as published by the NSW Treasury July 2013).

### 20.2 Primary Obligation

- (a) The Contractor must at all times comply with, and meet any obligations imposed by,

the NSW Guidelines.

- (b) The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a subcontractor, the Contractor must ensure that the contract imposes on the subcontractor equivalent obligations to those in clause 20, including that the subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (d) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

### 20.3 Access and Information

- (a) The Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its subcontractors and related entities.
- (b) The 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 Contractor, including but not limited to the 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 Works;
  - (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 Guidelines, by the Contractor, its subcontractors and related entities.
- (c) The Contractor, and its related entities, must agree to, and comply with, a 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.

### 20.4 Sanctions

- (a) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the 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 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 Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.



## 20.5 Compliance

- (a) The Contractor bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- (b) Compliance with the NSW Guidelines does not relieve the Contractor from responsibility to perform the Works and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (c) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the 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 Guidelines will be, or is likely to be, affected by the change; and
  - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Work Health and Safety Management Plan),and the Principal will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice.





**SCHEDULE 1 – CONTRACT PARTICULARS**

**Principal:** **Sydney Metro** ABN 12 354 063 515  
 Address: Level 43, 680 George Street  
 Sydney NSW 2000  
 Tel: 02 8265 9400

**Contractor:** **Quickway Constructions Pty Ltd** ABN 80 123 146 449  
 Address: Unit 40, 2 Slough Avenue, Silverwater  
 NSW 2128  
 Tel: 02 9644 6333

**Pre-Conditions to Completion:** Anything else stated in the Contract to be a condition precedent to, or  
 (clause 1.1) requirement of, Completion

**Additional Contract Documents:**  
 (clause 1.1)

**Contractor's Representative:** [REDACTED] Senior Project Manager  
 (clause 1.1)

**Principal's Representative:** [REDACTED] Utilities and Stakeholder Manager  
 (clause 1.1)

**Contract Sum:** [REDACTED] as set out in Part A of Exhibit H  
 (clause 1.1)

**Defects Liability Period:** 12 months from the Date of Completion  
 (clause 1.1)

**Portion:** Not applicable  
 (clause 1.1)

**Project:** The Sydney Metro project, including the project to build a new metro  
 (clause 1.1) railway that will connect the Sydney CBD and Parramatta, linking  
 communities along the way with a new underground railway (Sydney  
 Metro West), the project to build a new metro railway which will service  
 Greater Western Sydney and the new Western Sydney International  
 Airport, and other ancillary projects arising out of or in connection with, or  
 as a result of, the Sydney Metro project.

**Reports:** The documents (if any) included in Exhibit K  
 (clause 1.1)

**The Works:** Means the ASP1 enabling works (power) for the Bays and the OSL  
 (clause 1.1) Precast Facility for the Sydney Metro West Project and all other works as  
 set out in Exhibit M – Services Brief

**Date for Completion:** Portion 1: [REDACTED]  
 (clause 1.1) Portion 2: [REDACTED]

**Working Days:** As per the Project Planning Approval.  
 (clause 1.2(c))

Name	Role
[REDACTED]	Senior Health & Safety Manager
[REDACTED]	Certified Occupational Hygienist





**Site access preconditions:** As specified in the Services Brief  
(clause 3.1(c)(ii)E)

**Maximum daily amount of delay damages for failure to give access:** [REDACTED]  
(clause 3.1(f)(ii))

**Claim Permitted in relation to Contamination in Reports:** Not applicable  
(clause 3.5(e)(ii)B)

**Self Verification and Quality System:** Applicable  
(clause 4.2)

**Rates or prices for the valuation of Variations:** As set out in Exhibit H  
(clause 6.3)

**Percentage for preliminaries, profit and overheads to be applied to daywork costs:** [REDACTED]  
(clause 6.4(h))

<b>Warranties:</b> (clause 7.9)	<b>Description of Equipment and Warranty (including Term)</b> Siemens Substation kiosk and switchgear at the Bays - 3 years from the Date of Completion	<b>Beneficiaries of Warranty (in addition to Sydney Metro)</b> Sydney Metro and Sydney Metro's tunneling contractor
------------------------------------	--	--

**Provisional Sum Work:**  
(clause 1.1 and 7.10)

Provisional Sum Work	Provisional Sum
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]





<b>Times for Payment Schedule:</b> (clause 11.3)	10 Business Days after receipt of payment claim.
<b>Liquidated Damages:</b> (clause 12.2)	██████ per day for each Portion
<b>Limit on Liquidated Damages:</b> (clause 12.3)	██████ of the Contract Sum
<b>Works Insurance:</b> (clause 13.2 and 13.3)	The full reinstatement and replacement value of the Works.
(a) Alternative applying	Alternative 2
<b>Public and Products Liability Insurance:</b> (clause 13.4 and 13.5)	
(a) Alternative applying If Alternative 1 applies	Alternative 2
(b) Public Liability Insurance	Not applicable
<b>Professional Indemnity Insurance:</b> (clause 13.6)	Applicable ██████ each single claim and ██████ in the annual aggregate
<b>Motor Vehicle Insurance:</b> (clause 13.7(b))	Own damage – Market value Third party property damage - ██████ for any single occurrence
<b>Limit of Contractor’s Liability:</b> (clause 17)	██████ of the Contract Sum

**SCHEDULE 2- NOT USED**





.....  
4A All subcontractors who have at any time been engaged by the Contractor for work done under the Contract have been paid to the date of this declaration in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), with the exception of the subcontractors and respective amounts unpaid for each subcontractor listed below:

Subcontractor:

Amount unpaid:

.....  
.....  
.....  
.....

5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).

5A Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under Part 2 of the Building and Construction Industry Security of Payment Regulation 2008 (NSW), with the exception of the items listed below:

.....  
.....  
.....

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

(a) that their subcontracts with their subcontractors and



suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and

- (a1) that all their subcontractors, as at the date of the making of such a declaration, have been paid in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), and
- (b) that all their employees, as at the date of the making of such a declaration:
  - i) have been paid all remuneration and benefits due and payable to them by; or
  - ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and

- (c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(a1) and 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor: amount unpaid:	Due
.....	
.....	
.....	
.....	
.....	

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

- 9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor or supplier: unpaid or not accrued:	Amount
.....	
.....	
.....	
.....	
.....	

insert names of the subcontractors, the name and addresses of the unpaid employees,

- 10. In relation to the statutory declaration provided by each

subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Pay-Roll Tax Act 1971 and Industrial Relations Act 1996) which is a written statement:
- (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;
  - (b) under section 18(6) of Schedule 2 of part 5 of the Pay-Roll Tax Act 2007 in the form and providing the detail required by that legislation; and
  - (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.
12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:
- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Pay-Roll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
  - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I willfully make a false statement in this declaration.

Declared at ..... on

.....  
(place) (day) (month) (year)

.....  
(Signature of Declarant)

Before me:

.....  
(Signature of person before whom the declaration is made)

.....  
(Name of the person before whom the declaration is made)



.....  
(Title\* of the person before whom the declaration is made)

And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):

[\*strike out the text that does not apply]

1. \*I saw the face of the declarant.  
OR  
\*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.
2. \*I have known the declarant for at least 12 months.  
OR  
\*I confirmed the declarant's identity using the following identification document:

\_\_\_\_\_  
Identification document relied on  
(may be original or certified copy)

\_\_\_\_\_  
Signature of person before whom the declaration is made

Before me:

.....  
(Signature of person before whom the declaration is made)

.....  
(Name of the person before whom the declaration is made)

.....  
(Title\* of the person before whom the declaration is made)

\* The declaration must be made before one of the following persons:

- where the declaration is sworn within the State of New South Wales:

- (i) a justice of the peace of the State of New South Wales;
- (ii) a solicitor of the Supreme Court of New South Wales with a current practicing certificate; or
- (iii) a notary public.

- where the declaration is sworn in a place outside the State of New South Wales:

- (i) a notary public; or
- (ii) any person having authority to administer an oath in that place.

**ANNEXURE A**

**Supporting statement by head contractor regarding payment to subcontractors**

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms "principal", "head contractor", "subcontractor", and "construction contract" have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Head contractor: *[business name of head contractor]*

ABN: *[ABN]*

\* 1. has entered into a contract with:*[business name of subcontractor]*

ABN: *[ABN]*

Contract number/identifier: *[contract number/identifier]*

OR

\* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

\* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: ..... Date: .....

Full name: ..... Position/Title: .....



**Attachment**

<b>Schedule of subcontractors paid all amounts due and payable</b>				
<b>Subcontractor</b>	<b>ABN</b>	<b>Contract number / identifier</b>	<b>Date of works (period)</b>	<b>Date of payment claim (head contractor claim)</b>

<b>Schedule of subcontractors for which an amount is in dispute and has not been paid</b>				
<b>Subcontractor</b>	<b>ABN</b>	<b>Contract number / identifier</b>	<b>Date of works (period)</b>	<b>Date of payment claim (head contractor claim)</b>

**ANNEXURE B**  
**Subcontractor's Statement**  
**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION**  
**(Note 1 - see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

***SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.***

Subcontractor: ..... ABN:  
.....

*(Business name)*

of

.....

*(Address of subcontractor)*

has entered into a contract with .....  
ABN:.....

*(Business name of principal contractor) (Note 2)*

Contract number/identifier ..... (Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, (Note 4)  
subject of the payment claim dated: ...../...../..... (Note 5)

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../.....(Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)



- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

Signature .....

Full name.....

Position/Title .....

Date ...../...../.....

*NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

### Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.



### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information, visit the SafeWork NSW website [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## SCHEDULE 4– CONFIDENTIALITY DEED POLL

### Part A: Form of Undertaking (Individuals)



## Confidentiality Deed Poll (Individuals)

Date	
Given by (full name of individual)	(Recipient)
Recipient's Organisation	(Recipient's Organisation)
In favour of	Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street Sydney NSW 2000 ( <b>Sydney Metro</b> )
In relation to	Carrying out the Contractor's Activities under the Utilities Infrastructure Works Contract between Sydney Metro and [insert Contractor] ( <b>Permitted Purpose</b> ).

### Agreed Covenants

#### 1. Disclosure and Use of Confidential Information

##### 1.1 Recipient obligations

Subject to clause 1.3, the Recipient warrants and represents that the Recipient will:

- (a) keep confidential and not disclose the Confidential Information;
- (b) not do any act or thing involving the use or disclosure of the Confidential Information which may cause loss or damage to Sydney Metro;
- (c) not use or permit the use of the Confidential Information for any purpose other than the Permitted Purpose without the prior written consent of Sydney Metro; and
- (d) not copy or reproduce the Confidential Information or make any notes which include the Confidential Information or any summary, extract or part of it except to the extent necessary for the Permitted Purpose.

##### 1.2 Security measures

The Recipient must establish and maintain comprehensive security measures to ensure that any Confidential Information in the Recipient's possession, custody or control is secure at all times. The Recipient must also comply with any reasonable direction of Sydney Metro regarding the safekeeping and storage of the Confidential Information.



### 1.3 Disclosure of Confidential Information

- (a) The Recipient may disclose the Confidential Information:
  - (i) with the prior written consent of Sydney Metro which can be given or withheld by Sydney Metro in its absolute discretion;
  - (ii) to the Recipient's Associates to the extent that each has a need to know the Confidential Information for the Permitted Purpose; and
  - (iii) to the extent required by Law (subject to complying with clause 1.3(b)).
- (b) If the Recipient is required by Law to disclose Confidential Information, the Recipient (if legally permissible and practicable in the circumstances) must before doing so:
  - (i) notify Sydney Metro;
  - (ii) give Sydney Metro a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of the Confidential Information; and
  - (iii) notify the third party that the information is the Confidential Information of Sydney Metro.

### 2. Return, Destroy or Erase Confidential Information

- (a) Subject to clause 2(b), if requested by Sydney Metro, the Recipient must:
  - (i) promptly return or promptly destroy all documents and other physical records of Confidential Information in the Recipient's possession, custody, power or control;
  - (ii) delete the Confidential Information from any computer system or other device operated, controlled or which may be accessed by the Recipient; and
  - (iii) provide a statutory declaration to Sydney Metro confirming that all those records and any copies of Confidential Information have been returned, destroyed or erased, as appropriate.
- (b) The obligations in clause 2(a) to return, destroy or erase Confidential Information do not extend to:
  - (i) legal advice, legal opinions or reports prepared by the Recipient as a legal adviser in connection with the Permitted Purpose;
  - (ii) documents or other materials that are required to be retained in order to comply with any relevant Laws, professional obligations, insurance requirements, audit requirements or order of any Government agency for so long as it is necessary to satisfy the relevant requirements; or
  - (iii) documents or other materials that are stored in electronic backups or records that are produced by the Recipient in their normal course of business and it is not reasonably practicable for the Recipient to delete such backups or records, so long as these are not accessed during any period of backup storage.
- (c) If the Recipient retains any Confidential Information pursuant to clause 2(b), the Recipient must maintain the confidentiality of such Confidential Information in accordance with the terms of this Deed.
- (d) The return, destruction or deletion of Confidential Information in accordance with this clause 2 does not release the Recipient from the obligations imposed on the Recipient under this Deed.

### 3. Breach of Confidentiality Obligations

- (a) The Recipient must immediately notify Sydney Metro of any actual or suspected breach of this Deed by the Recipient and comply with any directions issued by Sydney Metro or its authorised

representative regarding any unauthorised use or disclosure of the Confidential Information by the Recipient.

- (b) The Recipient must provide such assistance as may be reasonably requested by Sydney Metro in relation to any claim or proceedings that Sydney Metro may take against any third party for unauthorised use or disclosure of the Confidential Information.

#### 4. **Audit and inspection**

The Recipient must consent to such inspections and audits as may be reasonably required by Sydney Metro for the purpose of auditing compliance with the terms of this Deed.

#### 5. **Sydney Metro may enforce the Deed**

The Recipient agrees that Sydney Metro may enforce the obligations in this Deed.

The Recipient acknowledges that damages may not be an adequate remedy for Sydney Metro for any breach of this Deed by the Recipient and Sydney Metro is entitled to seek injunctive relief as a remedy for any breach, or threatened breach, of this Deed, in addition to any other remedies available at law or in equity under, or independently of, this Deed.

#### 6. **General**

- (a) **(No exclusion of law or equity)** This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.
- (b) **(No waiver)** No waiver by Sydney Metro of one breach of any obligation or provision herein contained or implied will operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.
- (c) **(Waiver to be in writing)** None of the provisions in this Deed will be taken either at law or in equity to have been varied, waived, discharged or released by Sydney Metro unless by its express consent in writing.
- (d) **(Governing law)** The laws of New South Wales apply to the construction and interpretation of this Deed.
- (e) **(Continuing obligation)** The obligations of the Recipient under this Deed continue after the termination of any employment, engagement or assignment in respect of the Permitted Purpose.
- (f) **(Further assurances)** The Recipient must do all things and execute all documents, including but not limited to executing any agreements of assignment, which may be required by Sydney Metro to give effect to the provisions of this Deed.
- (g) **(No revocation)** This Deed may not be revoked or otherwise modified without the prior written consent of Sydney Metro.

#### 7. **Definitions**

In this Deed, unless the context otherwise requires:

**Associates** means any other individuals within the Recipient's Organisation that are involved with the Permitted Purpose and that have also executed a confidentiality deed poll in favour of Sydney Metro in the form of this Deed.

**Confidential Information** means any information in any form (including written or electronic) and all other knowledge at any time disclosed (whether in writing, electronically or orally) to the Recipient or the Recipient's Associates by or on behalf of Sydney Metro, or at any time acquired by the Recipient or the Recipient's Associates as part of the Permitted Purpose, which:



- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential; or
- (c) the Recipient knows or ought to know is confidential,

but which does not include any information which the Recipient can demonstrate to be in the public domain other than through a breach of this Deed.

**Deed** means this deed poll.

**Law** means legislation, including regulations, by-laws and other subordinate legislation, orders of courts, tribunals, governmental or other regulatory bodies or the listing rules of a recognised stock exchange.

## **EXECUTED AS A DEED POLL**

**SIGNED, SEALED and DELIVERED** for

in the presence of:

\_\_\_\_\_  
Name of Recipient

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Recipient

\_\_\_\_\_  
Name of witness

## Part B: Form of Undertaking (Organisations)



# Confidentiality Deed Poll (Organisations)

Date	
Given by (full name of individual)	(Recipient)
In favour of	Sydney Metro (ABN 12 354 063 515) of Level 43, 680 George Street Sydney NSW 2000 ( <b>Sydney Metro</b> )
In relation to	Carrying out the Contractor's Activities under the Utilities Infrastructure Works Contract between Sydney Metro and the Recipient ( <b>Permitted Purpose</b> ).

### Agreed Covenants

#### 1. Disclosure and Use of Confidential Information

##### 1.1 Recipient obligations

Subject to clause 1.3, the Recipient warrants and represents that it will:

- (a) keep confidential and not disclose the Confidential Information;
- (b) not do any act or thing involving the use or disclosure of the Confidential Information which may cause loss or damage to Sydney Metro;
- (c) not use or permit the use of the Confidential Information for any purpose other than the Permitted Purpose without the prior written consent of Sydney Metro; and
- (d) not copy or reproduce the Confidential Information or make any notes which include the Confidential Information or any summary, extract or part of it except to the extent necessary for the Permitted Purpose.

##### 1.2 Security measures

The Recipient must establish and maintain comprehensive security measures to ensure that any Confidential Information in its possession, custody or control is secure at all times. The Recipient must also comply with any reasonable direction of Sydney Metro regarding the safekeeping and storage of the Confidential Information.

##### 1.3 Disclosure of Confidential Information

- (a) The Recipient may disclose the Confidential Information:
  - (i) with the prior written consent of Sydney Metro which can be given or withheld by Sydney Metro in its absolute discretion;
  - (ii) to its Representatives to the extent that each has a need to know the Confidential Information for the Permitted Purpose and has executed a confidentiality deed poll in favour of Sydney Metro in the form of this Deed; and
  - (iii) to the extent required by Law (subject to complying with clause 1.3(b)).



- (b) If the Recipient is required by Law to disclose Confidential Information, the Recipient (if legally permissible and practicable in the circumstances) must before doing so:
  - (i) notify Sydney Metro;
  - (ii) give Sydney Metro a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of the Confidential Information; and
  - (iii) notify the third party that the information is the Confidential Information of Sydney Metro.

## **2. Return, Destroy or Erase Confidential Information**

- (a) Subject to clause 2(b), if requested by Sydney Metro, the Recipient must (and must ensure that its Representatives):
  - (i) promptly return or promptly destroy all documents and other physical records of Confidential Information in its possession, custody, power or control;
  - (ii) delete the Confidential Information from any computer system or other device operated, controlled or which may be accessed by the Recipient and its Representatives; and
  - (iii) provide a statutory declaration to Sydney Metro confirming that all those records and any copies of Confidential Information have been returned, destroyed or erased, as appropriate.
- (b) The obligations in clause 2(a) to return, destroy or erase Confidential Information do not extend to:
  - (i) legal advice, legal opinions or reports prepared by the Recipient as a legal adviser in connection with the Permitted Purpose;
  - (ii) documents or other materials that are required to be retained in order to comply with any relevant Laws, professional obligations, insurance requirements, audit requirements or order of any Government agency for so long as it is necessary to satisfy the relevant requirements; or
  - (iii) documents or other materials that are stored in electronic backups or records that are produced by the Recipient in their normal course of business and it is not reasonably practicable for the Recipient to delete such backups or records, so long as these are not accessed during any period of backup storage.
- (c) If the Recipient retains any Confidential Information pursuant to clause 2(b), the Recipient must maintain the confidentiality of such Confidential Information in accordance with the terms of this Deed.
- (d) The return, destruction or deletion of Confidential Information in accordance with this clause 2 does not release the Recipient from its obligations under this Deed.

## **3. Breach of Confidentiality Obligations**

- (a) The Recipient must immediately notify Sydney Metro of, and take all steps necessary to prevent, any actual, threatened or suspected breach of this Deed by the Recipient or its Representatives and comply with any directions issued by Sydney Metro or its authorised representative regarding any unauthorised use or disclosure of the Confidential Information by the Recipient or its Representatives.
- (b) The Recipient must provide such assistance as may be reasonably requested by Sydney Metro in relation to any claim or proceedings that Sydney Metro may take against any third party for unauthorised use or disclosure of the Confidential Information.

#### 4. **Representatives**

The Recipient must ensure that each of its Representatives comply with the terms of this Deed as if the Representative was the Recipient. A breach of this Deed by a Representative will be deemed to be a breach of this Deed by the Recipient.

#### 5. **Audit and inspection**

The Recipient must consent, and procure the necessary consents from its Representatives, to such inspections and audits as may be reasonably required by Sydney Metro for the purpose of auditing compliance with the terms of this Deed.

#### 6. **Sydney Metro may enforce the Deed**

The Recipient agrees that Sydney Metro may enforce the obligations in this Deed.

The Recipient acknowledges that damages may not be an adequate remedy for Sydney Metro for any breach of this Deed by the Recipient or its Representatives and Sydney Metro is entitled to seek injunctive relief as a remedy for any breach, or threatened breach, of this Deed, in addition to any other remedies available at law or in equity under, or independently of, this Deed.

#### 7. **Indemnity**

The Recipient indemnifies Sydney Metro in respect of any claim against Sydney Metro or any liability, loss, damage, cost or expense suffered or incurred by Sydney Metro which in any way arises out of or in connection with any breach of this Deed, or any disclosure of the Confidential Information by, the Recipient or its Representatives.

#### 8. **General**

- (a) **(No exclusion of law or equity)** This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.
- (b) **(No waiver)** No waiver by Sydney Metro of one breach of any obligation or provision herein contained or implied will operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.
- (c) **(Waiver to be in writing)** None of the provisions in this Deed will be taken either at law or in equity to have been varied, waived, discharged or released by Sydney Metro unless by its express consent in writing.
- (d) **(Governing law)** The laws of New South Wales apply to the construction and interpretation of this Deed.
- (e) **(Continuing obligation)** The obligations of the Recipient under this Deed continue after the termination of any employment, engagement or assignment in respect of the Permitted Purpose.
- (f) **(Further assurances)** The Recipient must do all things and execute all documents, including but not limited to executing any agreements of assignment, which may be required by Sydney Metro to give effect to the provisions of this Deed.
- (g) **(No revocation)** This Deed may not be revoked or otherwise modified without the prior written consent of Sydney Metro.

#### 9. **Definitions**

In this Deed, unless the context otherwise requires:

**Confidential Information** means any information in any form (including written or electronic) and all other knowledge at any time disclosed (whether in writing, electronically or orally) to the Recipient or its



Representatives by or on behalf of Sydney Metro, or at any time acquired by the Recipient or its Representatives as part of the Permitted Purpose, which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential; or
- (c) the Recipient knows or ought to know is confidential,

but which does not include any information which the Recipient can demonstrate to be in the public domain other than through a breach of this Deed.

**Deed** means this deed poll.

**Law** means legislation, including regulations, by-laws and other subordinate legislation, orders of courts, tribunals, governmental or other regulatory bodies or the listing rules of a recognised stock exchange.

**Representative** means an employee, officer, agent, adviser or consultant of the Recipient, or entity engaged by the Recipient, involved with the Permitted Purpose

**Executed as a deed poll**

***[Note: Insert appropriate execution block]***

**SCHEDULE 5 – THIRD PARTY AGREEMENT RESPONSIBILITY ALLOCATIONS**

(clause 2.13)

















































## SCHEDULE 6 – OPTIONS

(clause 6.6)

Not applicable



## SCHEDULE 7 - FORM OF WARRANTY

(clause 7.9)

This Deed Poll is made the                      day of                      20

**To:**        **Sydney Metro (ABN 12 354 063 515)** a NSW Government agency, a corporation constituted by section 38 of the *Transport Administration Act 1988* (NSW), of Level 43, 680 George Street, Sydney NSW 2000 ("**Principal**"); and

**The person described in Item 1 of the Schedule** (the "**Beneficiary**").

**By:**        That person described in Item 2 of the Schedule ("**Warrantor**") which expression will include its successors and assigns)

### Recitals

- A.    The Warrantor has supplied the items described in Item 3 of the Schedule ("**Equipment**") to the person described in Item 4 of the Schedule ("**Contractor**") or the person described in Item 4 of the Schedule, a subcontractor of the Contractor ("**Subcontractor**"), for the works ("**Works**") being carried out by the Contractor under the contract described in Item 6 of the Schedule ("**Contract**") with the Principal.
- B.    It is a requirement of the Contract that the Contractor procure the Warrantor to give the following warranties in favour of the Principal and the Beneficiary with respect to the Equipment.

### Operative

---

#### 1.        **Quality**

The Warrantor:

- (a)        warrants to the Principal and the Beneficiary that the Equipment will be to the quality and standard stipulated by the Contract and will be of merchantable quality and fit for the purpose for which it is required; and
- (b)        gives the warranty more particularly set out in Item 7 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

---

#### 2.        **Replacement**

The Warrantor warrants to the Principal and the Beneficiary that it will replace so much of the Equipment as within the period described in Item 8 of the Schedule:

- (a)        is found to be of a lower quality or standard than that referred to in clause 1; or
- (b)        shows deterioration of such extent that in the opinion of the Principal or the Beneficiary the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.

---

#### 3.        **Warrantor to bear cost**

The Warrantor covenants to the Principal and the Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

---

#### 4.        **Principal not liable**

The Warrantor acknowledges to the Principal and the Beneficiary that nothing contained in this deed poll is intended to nor will render either the Principal or the Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Contract or otherwise.

---

**5. This deed poll may not be revoked**

This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and the Beneficiary.

---

**6. Governing Law**

This deed poll is governed by the laws of the State of New South Wales.

---

**7. Jurisdiction**

The Warrantor irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.

---

**8. Enforcement of this deed poll**

The interests of the Principal and the Beneficiary under this deed poll are several. Each obligation from the Warrantor to the Principal and the Beneficiary is the separate and independent right and property of the Principal and the Beneficiary. The Principal and the Beneficiary has the right to protect and enforce its rights arising under or in connection with this deed poll without joining the other in any proceedings for this purpose.

**Schedule**

Item 1: Name and Address of Beneficiary

Item 2: Name and Address of Warrantor

Item 3: Equipment  
(Recital A)

Item 4: Contractor  
(Recital A)

Item 5: Subcontractor  
(Recital A)

Item 6: Contract  
(Recital A)

Item 7: Detailed Warranty of Warrantor  
(clause 1(b))

Item 8: Period of Years  
(clause 2)

**[insert period]** years from the expiry of the last "Defects Liability Period" as defined in the General Conditions of the Contract (including any extension under clause 8 of the General Conditions of the Contract).

**Executed** as a deed poll.

**Executed by [insert name of Warrantor] (ABN [insert ABM])** by or in the presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

## SCHEDULE 8 - FORM OF SUBCONTRACTOR DEED

(clause 2.2(d))

THIS DEED POLL is made on ....., 20..... by  
..... ACN.....of  
..... (the "Subcontractor").

### RECITALS:

- A. **Sydney Metro (ABN 12 354 063 515)** a NSW Government agency, a corporation constituted by section 38 of the *Transport Administration Act 1988* (NSW), of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**") has entered into a contract with [ ] ("**Contractor**") for the construction of [ ] ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Contractor for the execution and completion of the [ ] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

**THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES** with and for the benefit of the persons named in the Schedule as follows:

1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
  - (a) must if required by a written notice by the Principal to sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
  - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
4. This Deed Poll is governed by the laws of the State of New South Wales.
5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.

### PERSONS NAMED IN THE SCHEDULE TO THE DEED POLL

Transport for NSW (ABN 18 804 239 602)

Sydney Metro (ABN 12 354 063 515)

Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353)



**EXECUTED AS A DEED POLL.**

Executed by *[insert name]* (ABN *[insert ABN]*) by or in the presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

## Attachment 1 (to Schedule 8)

THIS DEED OF NOVATION is made on [ ] 20[ ] between the following parties:

1. [ ] ("Substitute Contractor")
2. [ ] ("Original Contractor")
3. [ ] ("Subcontractor").

### RECITALS:

- A. By deed dated [ ] (the "Deed") between:
- (i) **Sydney Metro (ABN 12 354 063 515)** a NSW Government agency, a corporation constituted by section 38 of the *Transport Administration Act 1988* (NSW), of Level 43, 680 George Street, Sydney NSW 2000 (the "**Principal**"); and
  - (ii) Original Contractor,
- the Principal engaged the Original Contractor to undertake the Works (as defined in the Deed).
- B. The Original Contractor has entered into an agreement ("**Subcontract**") with the Subcontractor for the execution and completion of the [ ] ("**Subcontract Works**") as part of the Works.
- C. The Principal has terminated the Deed and has engaged Substitute Contractor to complete the Works.
- D. The Principal and Substitute Contractor wish to effect a novation of the Subcontract.

**THIS DEED WITNESSES** that in consideration, among other things, of the mutual promises contained in this Deed, the parties agree:

1. Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed at the date of this deed. Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Contractor.
2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if Substitute Contractor was originally named in the Subcontract in place of Original Contractor.
3. This Deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

**EXECUTED** by the parties as a deed:

**[Insert appropriate execution clauses]**

## SCHEDULE 9 – DEED OF NOVATION

(clause 16.5(b))

### Deed of Novation

[Name of Party]

Ait[ABN/ACN/ARBN] [number]

and

[Name of Party]

Ait[ABN/ACN/ARBN] [number]



Deed of Novation made at \_\_\_\_\_ on \_\_\_\_\_

**BETWEEN:**

- (1) **Sydney Metro** ABN 12 354 063 515 of Level 43, 680 George Street, Sydney NSW 2000 (the **Retiring Party**);
- (2) **[Name of Party] Alt[ABN/ACN/ARBN]** [number] of [address] (the **Continuing Party**); and
- (3) **[Name of Party] Alt[ABN/ACN/ARBN]** [number] of [address] (the **[party's label]**).

**RECITALS**

- A The Retiring Party and the Continuing Party are parties to the Contract.
- B The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

**THIS DEED PROVIDES**

**1. Definitions and interpretation**

**1.1 Definitions**

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"**Claim**" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"**Contract**" means the Minor Works Contract – Construct Only [insert contract number] between the Retiring Party and the Continuing Party dated [insert].

"**Effective Date**" means [insert date].

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

"**Liability**" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

"**Related Entity**" has the meaning ascribed to that term in section 9 of the Corporations Act 2001 (Cth).

**1.2 Interpretation**

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (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, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) includes in any form is not a word of limitation; and
- (k) a reference to \$ or dollar is to Australian currency.

## **2. Condition Precedent to Novation**

Clause 3 of this deed will have no force and effect until the Effective Date.

## **3. Novation**

### **3.1 *Novation***

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party will be read as a reference to the Substitute Party.

### **3.2 *Assumptions of rights and obligations***

- (a) The Substitute Party:
  - (i) will be bound by and must comply with the terms of the Contract and will enjoy the rights and benefits conferred on the Retiring Party under the Contract; and
  - (ii) will assume the obligations and Liability of the Retiring Party under the Contract,

in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

### **3.3 *Release by Continuing Party***

- (a) The Continuing Party releases the Retiring Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and



- (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Contract.

#### 3.4 **Insurance**

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party will take the necessary steps to ensure that, for any insurances required to be effected by the Continuing Party under of the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

### 4. **Ongoing Rights of Retiring Party**

#### 4.1 **Direct Enquiries**

In addition to any other rights which the Retiring Party may have, the Continuing Party and the Substitute Party each agree that the Retiring Party may make enquiries directly of the Continuing Party for the purpose of establishing whether the Continuing Party is complying with its obligations under the Contract.

#### 4.2 **Retiring Party to have benefit of Promises**

- (a) The Continuing Party warrants in favour of the Retiring Party that in performing the Works it will comply with its obligations under the Contract and that the Retiring Party will continue to have the benefit of all promises, undertakings, covenants and warranties made or given by the Continuing Party under the Contract as if the Retiring Party remained a party to the Contract.
- (b) Without limiting the above, the Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence in performing the Works including in issuing any certificates it is required to issue under the Contract and further acknowledges that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in issuing those certificates and acknowledges that:
  - (i) in performing the Works it will owe a duty of care to the Retiring Party; and
  - (ii) it is aware that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in performing the Works and the warranties given by the Continuing Party in this deed.

#### 4.3 **Report by Continuing Party**

The Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence to ensure that the design intent of the Works as contained in the design documentation in existence at the date of execution of this deed, is reflected in the execution of the Works.

Without limiting the above, the Continuing Party must conduct such inspections of the Works at such times and in such detail as may reasonably be expected of a contractor engaged in a project of the size and complexity of the Works.

The Continuing Party must act in good faith and in the best interests of the Retiring Party and promptly advise the Retiring Party about any matter in which the Continuing Party has been instructed by the Substitute Party to provide the Works in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including any instruction or direction which it receives,



or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract including where the Substitute Party's instructions are not consistent with the Contract or may result in the Works to be constructed not being fit for their intended purpose.

## **5. Representations and warranties**

### **5.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

### **5.2 Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

### **5.3 Binding obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

## **6. Duties, costs and expenses**

### **6.1 Stamp duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

### **6.2 Costs**

Each Party must pay its own legal costs and expenses in negotiating, preparing and executing this deed.

### **6.3 GST**

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

## **7. General**

### **7.1 Governing law**

This deed is governed by and must be construed according to the laws of New South Wales.

### **7.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

### 7.3 **Amendments**

This deed may only be varied by a document signed by or on behalf of each party.

### 7.4 **Waiver**

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

### 7.5 **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.

### 7.6 **Severance**

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

### 7.7 **Further acts and documents**

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

### 7.8 **Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

**EXECUTED AS A DEED**

Signed sealed and delivered for and on behalf of Sydney Metro ABN 12 354 063 515 by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Full Name of Witness

\_\_\_\_\_  
Full Name of Authorised Signatory

**EXECUTED** by [**CONTINUING PARTY AND ABN**] in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full

**EXECUTED** by [**SUBSTITUTE PARTY AND ABN**] in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Secretary/other Director in full



## **SCHEDULE 10 – SITES**

(clause 3.1)

Refer to section 2 the Services Brief.

**SCHEDULE 11 – PROPERTY OWNER’S CERTIFICATE**

(clause 1.1(c)(ii))

This deed poll is made the \_\_\_\_\_ day of \_\_\_\_\_ 20

To: **Sydney Metro (ABN 12 354 063 515)** of Level 43, 680 George Street, Sydney NSW 2000 (the "Principal")

By: [ \_\_\_\_\_ ].

Property Address: .....

- 1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:  
**[Insert description of works on property and property]**
- 2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
- 3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.
- 4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a deed poll.

Signed sealed and delivered **[insert name]** (ABN **[insert ABN]**) by or in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

SCHEDULE 12



























































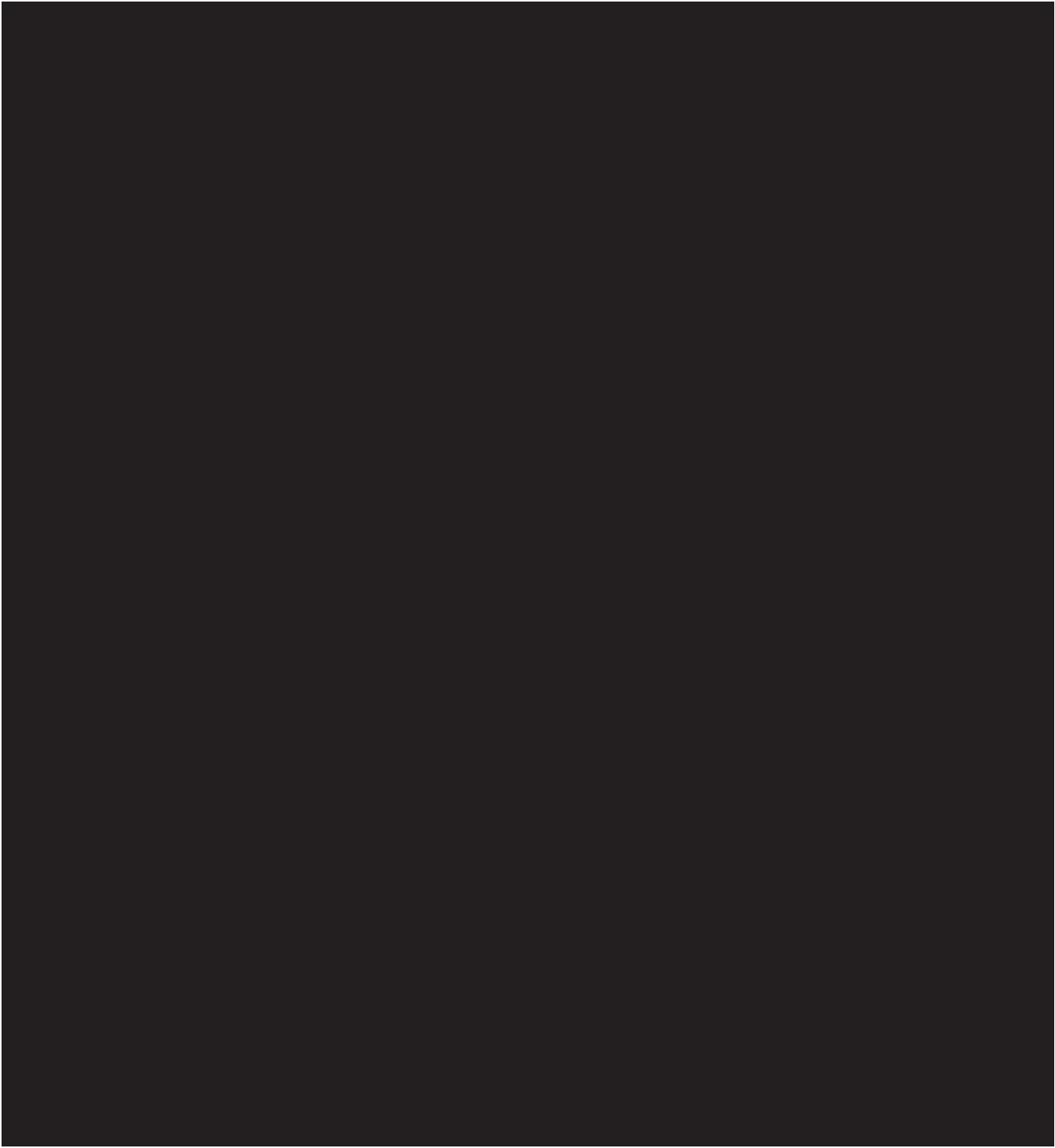
























































































































































































































































































































































































































































REPORT

**2.7 Trench BP 44 (Part 2)**

Slit Trench-ID	Easting	Northing	RL	Service	DBYD Config Size (mm)	Depth Actual (mm)	Description	Comments
EMPTY								

**2.7.1 Trench BP 44 (Part 2) – No Utilities**



**Figure 22 Trench BP 44 (Part 2)**















































































SCHEDULE 14 – [REDACTED]





























































*Transport & Utilities Infrastructure*

## COVID-19; Who can catch it?

- Anybody can be infected
- COVID-19 does not discriminate between race nor gender therefore we are all at risk of infection
- We all need to be safe
- There are important things that we can do to protect ourselves, our family and those in our care













































































**CONTRACT EXECUTION PAGE**

DATED .....17..... day of *February*..... 2021

SIGNED as an agreement.

Signed for and on behalf of **SYDNEY METRO  
ABN 12 354 063 515** by its authorised  
delegate in the presence of:



Signed by **QUICKWAY CONSTRUCTIONS PTY  
LTD ABN 80 123 146 449** in accordance with  
section 127 of the *Corporations Act 2001* (Cth):



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**EXHIBIT A – NOT USED**

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**EXHIBIT B – NOT USED**

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**EXHIBIT C – NOT USED**

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**EXHIBIT D – NOT USED**

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**EXHIBIT E – NOT USED**

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**EXHIBIT F – INFORMATION DOCUMENTS**

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Exhibit F



Information Documents		Title	Author
File Name			
Attachment C.1 – Contract Works Insurance_Power Enabling Works COP 20200828		Contract Works Material Damage Insurance Policy	iCare
Attachment C.2 – Public Products Liability_Power Enabling Works COP 20200828		General, Products and Environmental Liability Insurance Policy	iCare
Attachment C.3 – Schedule 12 - Indicative Approval SMW V1.0 - The Bays & Westmead		Sydney Metro West Power Supply Works COP - Indicative Approval - The Bays & Westmead	Sydney Metro
Attachment C.4 – Staging Timeline_MetroWest Cable Install Rozelle V2_200806		Staging Timeline - MetroWest Cable Install Rozelle	Sydney Metro
Attachment C.5 – Westmead - Survey Data Package		Westmead - Survey Data Package	RPS
Attachment C.6 – The Bays - Survey Data Package		The Bays - Survey Data Package	RPS
Attachment C.7 – Traffic Staging Diagrams - 33kV The Bays - Rozelle v3.0		Traffic Staging Diagrams - 33kV The Bays - Rozelle	Sydney Metro
Attachment C.8 – RPS_WO15_Precast Yard - Document Register		Precast Yard - Document Register	RPS
Attachment C.9 – Utility Investigation Works Data Package Precast Facility South - 12da		Utility Investigation Works Data Package Precast Facility South - 12da	RPS
Attachment C.10 – Utility Investigation Works Data Package Precast Facility South - Drawing		Utility Investigation Works Data Package Precast Facility South - Drawing	RPS
Attachment C.11 – Utility Investigation Works Data Package Precast Facility South - Pit Cards		Utility Investigation Works Data Package Precast Facility South - Pit Cards	RPS
Attachment C.12 – Utility Investigation Works Data Package Precast Facility South - Trench Cards		Utility Investigation Works Data Package Precast Facility South - Trench Cards	RPS
Attachment C.13 – RPS_WO 2_ASP3 power to Rozelle to Bays - Document Register		Rozelle to Bays - Document Register	RPS
Attachment C.14 – Utility Investigation Works Data Package Rozelle - 12da		Utility Investigation Works Data Package Rozelle - 12da	RPS
Attachment C.15 – Utility Investigation Works Data Package Rozelle - Drawing		Utility Investigation Works Data Package Rozelle - Drawing	RPS
Attachment C.16 – Utility Investigation Works Data Package Rozelle - Pit Cards		Utility Investigation Works Data Package Rozelle - Pit Cards	RPS
Attachment C.17 – Utility Investigation Works Data Package Rozelle - Trench Cards		Utility Investigation Works Data Package Rozelle - Trench Cards	RPS
Attachment C.18 – Westmead 30% Design Drawings		Westmead 30% Design Drawings	Ullegra
Attachment C.19 – SMW ASP1 Enabling Works (Power) - Minor Works Contract (CLEAN - 14 September 2020)		SMW ASP1 Enabling Works (Power) - Minor Works Contract (CLEAN - 14 September 2020)	Ashurst
Attachment C.20 – Schedule 12 - REMMS - ASP1 Precast Facility v1.0		REMMS - ASP1 Precast Facility	Sydney Metro
Attachment C.21 – Pre Cast Site Access Plan ASP1		Pre Cast Site Access Plan	RPS
Attachment C.22 – SMWSDDS-RPS-TBY-SR-COR-000068-B.1-The Bays Site Access ASP1		The Bays Site Access Drawing	RPS
Attachment C.23 – SingleLine_2020-09-22_11-35-21		n/a	Various
Attachment C.24 – Power Enabling Works Geotechnical Information Package		n/a	n/a
Attachment C.25 - SMW ASP1 Enabling Works (Power) - Minor Works Contract (Addendum 03)		n/a	n/a
Attachment C.26 - DRAFT Letter of Offer - ASP3 route Rozelle		Letter of Offer - ASP3 route Rozelle	Jemena
Attachment C.27 - Precast Certified Design Package		n/a	n/a
Attachment C.28 - Sydney Trains Pilot Cable Rozelle		n/a	n/a
Attachment C.29 - Underbore Reports.zip		n/a	n/a

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**EXHIBIT G – PRINCIPAL'S INSURANCE POLICIES**

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## EXHIBIT H – CONTRACTOR’S SCHEDULES

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Part A of Exhibit H – Contract Sum price breakdown









**Part B of Exhibit H – Schedule of rates for Variations**







**Part C of Exhibit H – Contractor’s Workplace Relations Management Plan (Final)**































































**Part D of Exhibit H – Contract Program (Final)**

























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**EXHIBIT I – SITE ACCESS PLAN**

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**EXHIBIT J – NOT USED**

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## EXHIBIT K – REPORTS

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- Detailed Site Investigation WBPS Proposed Lot 1 (JBS&G 2017, Rev A, April 2017)
- Detailed Site Investigation WBPS Proposed Lot 2 (JBS&G 2017, Rev A, May 2017)
- Factual Contamination Assessment Report, 00013/11180 Sydney Metro West Geotechnical Investigation, Golder and Douglas Partners, May 2020
- ADDITIONAL GROUNDWATER SAMPLING, 00013/11180 SYDNEY METRO WEST GEOTECHNICAL INVESTIGATION, 1791865-010-R-Additional Groundwater Sampling-RevA, Golder & Douglas Partners, 18 January 2019
- GROUNDWATER MONITORING REPORT, 00013/11180 SYDNEY METRO WEST GEOTECHNICAL INVESTIGATION, 1791865-003-R-GWMR-RevA Golder & Douglas Partners 16 October 2018
- Lotsearch LSO011866 EP, Lenore Drive, Eastern Creek, NSW 2766 (Part 1)
- Lotsearch LSO011866 EP, Lenore Drive, Eastern Creek, NSW 2766 (Part 2)
- Sydney Metro West Precast Facility, Preliminary contaminated site investigation, Document No. IA199800, Draft B, 13 March 2020
- Contamination Reports referred to in Part A of Schedule 5

The Reports are provided via a separate USB.

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## EXHIBIT L – THIRD PARTY AGREEMENTS

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(Clause 2.13)

1. Deed of Licence
2. Rozelle Interface Agreement

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## **EXHIBIT M – SERVICES BRIEF**

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(clause 1.1)