

CLAYTON UTZ

**M5 East – Air Filtration Project
Managing Contractor Contract
Contract No. 08.2622.1349**

Roads and Traffic Authority of New South Wales
ABN 64 480 155 255

RTA

Boulderstone Hornibrook Engineering Pty Ltd
ACN 003 898 397

Bilfinger Berger AG
ARBN 081 929 473

Contractor

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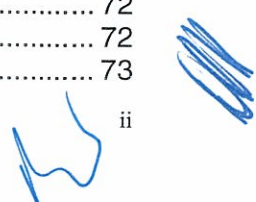
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Our reference 130/11661/80003229

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**M5 East – Air Filtration Project – Managing Contractor Contract made at
on 4th April 2008**

Parties **Roads and Traffic Authority of NSW ABN 64 480 155 255** of 260 Elizabeth Street, Surry Hills NSW 2010 ("RTA")

Baulderstone Hornibrook Engineering Pty Ltd ACN 003 898 397 of Miller St, North Sydney, NSW

Bilfinger Berger AG ARBN 081 929 473 of Miller St, North Sydney, NSW

(together the "Contractor")

Background

- A. The parties entered into a deed for the design, construction and ten year operation and maintenance of M5 East Motorway from King Georges Road, Beverly Hills to General Holmes Drive, Mascot on 25 August 1998 ("DCOM Deed").
- B. In accordance with the DCOM Deed, the Contractor designed and constructed the M5 East Motorway and has maintained it since its completion.
- C. RTA now wishes to engage the Contractor to implement a air filtration project in connection with the M5 East Motorway pursuant to this Managing Contractor Contract.
- D. RTA proposes to issue change orders to the Contractor pursuant to the DCOM Deed in due course, requiring the Contractor (in its capacity as counterparty to the DCOM Deed) to continue to provide support to the Contractor (in its capacity as counterparty to this Contract) during the delivery of and commissioning of the Works and operate and maintain the M5 East Motorway together with the air filtration project.

Operative Provisions

1. RTA and the Contractor promise to carry out and complete their respective obligations in accordance with:
- (a) the attached Conditions of Contract; and
- (b) the other documents referred to in clause 1.1 of the Conditions of Contract as constituting the Contract.
2. The Contractor acknowledges (without limiting any provision of the Contract) that the managing contractor delivery method:
- (a) is intended to:
- (i) increase collaboration between RTA and the Contractor and promote a "one team" culture across all stakeholders;
- (ii) maximise the scope of work delivered for the available funds, so as to optimise the utility of the Works to the end users; and
- (iii) provide a monetary incentive for exceptional performance;
- (b) involves two phase delivery comprising:
- (i) an initial preliminary contract in the Planning Phase; and

- (ii) subject to the achievement of Planning Phase Agreement and Planning Phase Approval, a subsequent consolidated contract in the Delivery Phase;
- (c) in the Planning Phase, involves two sub-phases, comprising:
 - (i) Planning Phase Agreement; and
 - (ii) Planning Phase Approval;
- (d) in the Planning Phase, involves the Contractor:
 - (i) prior to Planning Phase Agreement:
 - A. preparing Planning Phase Design Documentation, programs, a cost plan and project plans to the satisfaction of RTA; and
 - B. assisting RTA to achieve the Planning Phase Milestones by the Planning Phase Milestone Dates;
 - (ii) prior to Planning Phase Approval - assisting RTA to obtain the Planning Approval;
 - (iii) generally performing the other activities forming part of the Contractor's Work (Planning); and
 - (iv) being paid in accordance with the existing arrangements between the RTA and the Contractor, documented in the letter from RTA to the Contractor dated 29 September 2006 and agreed to by the Contractor on the same date and RTA's further letter dated on or about the Award Date, in consideration of the Contractor performing the Contractor's Work (Planning);
- (e) before the end of the Planning Phase, allows RTA (in its absolute discretion) to elect not to proceed with the Contractor to the Delivery Phase if:
 - (i) the proposed Target Cost exceeds the Initial Target Cost or it does not otherwise agree with the adjustment to the fees for the Delivery Phase proposed by the Contractor;
 - (ii) RTA does not obtain all Approvals; or
 - (iii) the Contract Particulars (Delivery Phase) have not been agreed and executed in accordance with clause 6.5(f) of the Conditions of Contract;
- (f) if the conditions in paragraph (e) are satisfied, requires RTA to proceed with the Contractor to the Delivery Phase, on the terms of the new contract referred to in clause 6.6(b)(i)B of the Conditions of Contract, under which the Contractor will:
 - (i) complete (to the extent not completed in the Planning Phase) the design of; and
 - (ii) commence, construct, commission, complete and handover, the Works;
- (g) if the conditions in paragraph (e) are not satisfied, allows RTA to proceed to have the Works executed:

- (i) by a third party, including any of the other Tenderers which submitted a tender for the Contractor's Activities (whether on the basis of that tender or otherwise as negotiated), without being obliged to carry out any further tender process; and
 - (ii) using the Project Documents prepared and the Subcontractors engaged by the Contractor in the Planning Phase; and
- (h) alternatively, if RTA requires certain parts of the Works to be delivered notwithstanding that the conditions in paragraph (e) are not satisfied, allows it to elect (in its absolute discretion) to waive the satisfaction of those conditions in relation to those parts of the Works, in accordance with clause 6.7(d) of the Conditions of Contract.

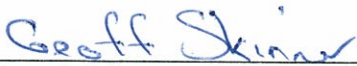


Signed as an agreement.

Signed for and on behalf of RTA in the presence of:



Signature of Witness



Name of Witness in full



Signature of Authorised Signatory



Name of Authorised Signatory

Executed by Boulderstone Hornibrook Engineering Pty Ltd by or in the presence of:



Signature of Director

A.G. TOOMBES
DIRECTOR

Name of Director in full



Signature of Secretary/other Director

P. F. HARDAKER
Director

Name of Secretary/other Director in full

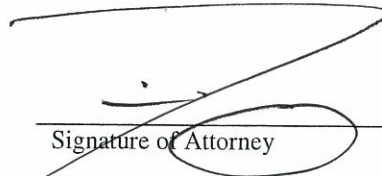
Signed for and on behalf of Bilfinger Berger AG by its Attorneys under Powers of Attorney dated 1 October 2007, and the Attorneys declare that they have not received any notice of the revocation of such Powers of Attorney, in the presence of:



Signature of Attorney

ANDREW ROBERT LONSDALE

Name of Attorney in full



Signature of Attorney

WILLIAM SHANE ROWLEY

Name of Attorney in full



Conditions of Contract

1. Glossary of terms, interpretation and miscellaneous

1.1 Glossary of Terms

Unless the context otherwise indicates, whenever used in this Contract, each word or phrase in the headings in this clause 1.1 has the meaning given to it under the relevant heading.

Act of Prevention

Any one of:

- (a) a breach of the Contract by RTA;
- (b) any other act or omission of RTA, the Contract Administrator or an Other Contractor engaged by RTA; or
- (c) (other than for the purpose of clause 10.4(a)(ii)B), a Variation the subject of a direction by the Contract Administrator, except where the Variation is instructed in the circumstances described in clause 9.9(b).

Approval

Any licence, permit, consent, approval, determination, certificate, notice or other requirement of any Commonwealth, State, Territory or local authority, body or other organisation having any jurisdiction in connection with the Site, the Works or the Contractor's Activities or under any other applicable Statutory Requirement, which must be obtained or satisfied to:

- (a) carry out the Contractor's Activities; or
- (b) service, occupy and use the completed Works or a completed Stage.

Approved Security

An unconditional undertaking (duly stamped) in the form set out in the Schedule 1 and otherwise on terms, and given by a financial institution, approved by RTA.

Approved Subcontract Agreement

An agreement which is entered into by the Contractor:

- (a) with a Subcontractor on the terms which have been approved in writing by the Contract Administrator under clause 8.7(a) as adjusted (if applicable) by the Contract Particulars (Delivery Phase); or
- (b) with a Selected Subcontractor, pursuant to clause 8.35.

Award Date

The date on which the Formal Agreement, to which these Conditions of Contract are attached, has been completed and signed by RTA and the Contractor.

Brief

The document referred to in the Contract Particulars.

Business Day

A day other than a Saturday, Sunday or public holiday or the 27th, 28th, 29th, 30th or 31st day of December.

Claim

Includes any claim for an increase in the Contract Price or payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, the Contract, including any direction of the Contract Administrator;
- (b) arising out of, or in any way in connection with, the Contractor's Activities, the Works or either party's conduct before the Contract; or
- (c) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution.

Commissioning and Handover Plan

The plan described in the Contract Particulars.

Community Involvement Plan

The community involvement plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail how the Contractor will comply with its community involvement obligations during the Delivery Phase under this Contract including:

- (a) the matters specified in the Contract Particulars; and
- (b) any other matters required by the Contract Administrator.

Completion

The point in time when, in respect of the Works or a Stage:

- (a) the Works are, or the Stage is, complete except for minor Defects:
 - (i) which do not prevent the Works or the Stage from being reasonably capable of being used for the intended purpose of the Works or the Stage; and
 - (ii) which can be corrected without prejudicing the convenient use of the Works or the Stage;
- (b) those tests which are required by the Contract to be carried out and passed before the Works or the Stage reach Completion have been carried out and passed;
- (c) all documents and other information referred to in the Contract, including all Approvals, which are required for the use, operation and maintenance of the Works or the Stage have been supplied to the Contract Administrator; and

- (d) without limiting paragraph (c), the Contractor has done those things described in Annexure 1 and in the Contract Particulars.

Consultant Deed of Covenant

A consultant deed of covenant in the form set out in Schedule 3.

Consultant Design Certificate

The certificate set out in Schedule 4.

Contamination

The presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under land, air or water in the same locality, that presents a risk of significant Environmental Harm, including harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance with any Statutory Requirement for the protection of the Environment.

Contract

The contractual relationship between the parties constituted by:

- (a) for the Planning Phase:
- (i) the Formal Agreement to which these Conditions of Contract are attached;
 - (ii) these Conditions of Contract (including the Schedules);
 - (iii) the Contract Particulars (Planning Phase);
 - (iv) the Special Conditions;
 - (v) the Brief; and
 - (vi) the other documents (if any) referred to in the Contract Particulars (Planning Phase); and
- (b) if clause 6.6(b)(i)B applies, for the Delivery Phase:
- (i) the documents referred to in paragraph (a) (except to the extent that the Contract Particulars (Planning Phase) are superseded by the Contract Particulars (Delivery Phase));
 - (ii) the Contract Particulars (Delivery Phase); and
 - (iii) the other documents (if any) referred to in the Contract Particulars (Delivery Phase).

Contract Administrator

The person nominated in the Contract Particulars or any other person nominated by RTA from time to time under clause 3.2 to replace that person.

Contractor

The person named in the Contract Particulars.

Contractor's Activities

All things or tasks which the Contractor is, or may be, required to do to comply with its Contract obligations, including the Contractor's Work (Planning), the Contractor's Work (Delivery) and the Reimbursable Work.

Contractor Design Certificate

The certificate set out in Schedule 5.

Contractor's Representative

The person named in the Contract Particulars or any other person from time to time appointed as Contractor's Representative in accordance with clause 3.6.

Contractor's Work (Delivery)

That part of the Contractor's Activities, other than the Reimbursable Work, which must be performed by the Contractor itself (rather than by engaging Subcontractors) during the Delivery Phase, as specified in the Brief.

Contractor's Work (Planning)

That part of the Contractor's Activities, other than the Reimbursable Work, which must be performed by the Contractor itself (rather than by engaging Subcontractors) during the Planning Phase, as specified in the Brief.

Contractor's Work Fee (Delivery)

The lump sum payable to the Contractor for performing the Contractor's Work (Delivery):

- (a) if a notice is given under clause 6.6(a)(i) - either:
 - (i) set out in the Contract Particulars (Planning Phase); or
 - (ii) if the amount set out in the Contract Particulars (Planning Phase) is adjusted under clause 6.4(a)(i) - set out in the Contract Particulars (Delivery Phase); or
- (b) if a notice is given under clause 6.6(a)(ii)B - any amount agreed to by the parties under clause 6.7(d) and set out in the Contract Particulars (Delivery Phase),

as adjusted under clause 8.19(e), 8.29, 10.4(a)(iii), 10.5(d)(i) or 11.3(a)(iii).

Contract Particulars

In the Planning Phase, means the Contract Particulars (Planning Phase) and in the Delivery Phase, means the Contract Particulars (Delivery Phase).

Contract Particulars (Delivery Phase)

The particulars prepared and completed in accordance with clause 6.5(d) and (e) or, where the parties have agreed the particulars, clause 6.7(d) (as the case may be), executed by the parties

in accordance with clause 6.5(f), annexed to these Conditions of Contract and entitled "Contract Particulars (Delivery Phase)".

Contract Particulars (Planning Phase)

The particulars annexed to these Conditions of Contract and entitled "Contract Particulars (Planning Phase)".

Contract Price

Subject to this Contract, the sum of:

- (a) the Reimbursable Costs;
- (b) the Contractor's Work Fee (Delivery); and
- (c) the Management Fee.

Cost Plan

The cost plan approved by the Contract Administrator under clause 6.2(d), as revised with the approval of the Contract Administrator under clause 6.19.

Date for Planning Phase Agreement

The date set out in the Contract Particulars (Planning Phase), as adjusted (if at all) under clause 6.6(d).

Date for Planning Phase Approval

The date set out in the Contract Particulars (Planning Phase), as adjusted (if at all) under clause 6.6(d).

Date of Completion

The date of Completion set out in a Notice of Completion.

Date of Planning Phase Agreement

The date stated in a notice under clause 6.6(a)(i).

Date of Planning Phase Approval

The date stated in a notice under clause 6.6(a)(iii)A.

DCAP

The Detailed Contractor's Activities Proposal referred to in the Contract Particulars, as amended from time to time in accordance with clause 6.17.

DCOM Deed

The deed for the design, construction and ten year operation and maintenance of M5 East Motorway from King Georges Road, Beverly Hills to General Holmes Drive, Mascot between RTA and the Contractor dated 25 August 1998.

Defect

Any defect, shrinkage, fault or omission in the Works including any aspect of the Works which is not in accordance with the requirements of this Contract.

Defects Liability Period

The period which commences on the Date of Completion of the Works or a Stage, and which continues for the period described in the Contract Particulars, as extended by clause 9.11.

Delivery Phase

The period following the Date of Planning Phase Approval during which Contractor's Activities are performed.

Delivery Phase Design Documentation

All design documentation (including drawings, specifications, models, samples and calculations) in computer readable and written forms necessary for the Contractor to complete any part of the Works which is not fully designed and documented in the Planning Phase Design Documentation.

direction

Any agreement, approval, authorisation, certificate, consent, decision, demand, determination, direction, explanation, failure to consent, instruction, notice, notification, order, permission, rejection, request or requirement.

Employees Liability Insurance

A policy of insurance covering the liability of the Contractor towards its employees at common law, for injuries arising out of or in the course of their employment, whether as an extension under Workers Compensation Insurance or otherwise.

Enabling Work

Means the work described in section 1.2 of the Brief.

Environment

Includes:

- (a) ecosystems and their constituent parts, including people and communities;
- (b) natural and physical resources;
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a), (b) or (c).

Environmental Harm

Any actual or threatened adverse impact on, or damage to, the Environment.

Environmental Incident

Any Environmental Harm or Contamination caused by or in relation to the Contractor's Activities.

Environmental Management Plan

The environmental management plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail the procedures the Contractor will implement to manage the Contractor's Activities from an environmental perspective and describe how the Contractor proposes to ensure the Contractor's Activities will be performed consistently with:

- (a) the requirements of the Contract;
- (b) the Statutory Requirements;
- (c) the Contractor's environmental commitments set out in the DCAP; and
- (d) the Environmental Objectives.

Environmental Objectives

The Environmental Objectives are to:

- (a) encourage best practice environmental management through planning, commitment and continuous improvement;
- (b) prevent and minimise adverse impacts on the Environment;
- (c) identify the potential for, and respond to, Environmental Incidents, accidents and emergency situations and take corrective action;
- (d) identify and control possible environmental hazards associated with the Works and the Contractor's Activities;
- (e) establish procedures to ensure that no hazardous substance is stored on RTA land without approval;
- (f) recognise and protect any special environmental characteristics of the Site (including cultural heritage significance);
- (g) define roles and responsibilities for personnel;
- (h) ensure environmental training and awareness programmes are provided to employees and subcontractors;
- (i) ensure subcontractors implement the Environmental Management Plan;
- (j) define how the management of the Environment during the Contractor's Activities is reported and performance evaluated;
- (k) describe all monitoring procedures required to identify impacts on the Environment as a result of the Works and the Contractor's Activities;
- (l) implement complaint reporting procedures and maintain records of complaints and response to complaints; and

- (m) establish and maintain programs and procedures for periodic Environmental Management Plan audits to be carried out.

Executive Negotiators

The representatives of the parties nominated in the Contract Particulars or any person nominated by the relevant party to replace that person from time to time by notice in writing to the other party.

Existing Planning Approval

Means the project approval for the M5 East Motorway granted by the Minister for Urban Affairs and Planning on 9 December 1997.

Filtration Plant Costs

The Reimbursable Costs incurred under the subcontract for the Filtration Plant.

Filtration Plant

Means the systems for filtering the air from the M5 East tunnel that will be installed as part of the Works, as more particularly described in section 2.3(d) of the Brief and its control systems more particularly described in section 2.3(g) of the Brief.

Final Payment Statement

Means the payment statement issued under clause 12.4 in response to the payment claim issued under clause 12.11.

Financial Auditor

An independent auditor appointed by RTA to audit financial transactions and payments under this Contract, and until notified otherwise by RTA the Financial Auditor will be Easedown Consulting.

Incentive

The incentive (if any) to which the Contractor may become entitled to or liable for under clause 18.5 and which is to be calculated on the basis:

- (a) agreed under clause 6.4(a)(iii); and
- (b) set out in the Contract Particulars (Delivery Phase).

Initial Delivery Phase Fee Proposal

The initial Delivery Phase fee proposal referred to in the Contract Particulars (Planning Phase).

Initial Target Cost

The amount set out in the Contract Particulars (Planning Phase)

Initial Target Date

The date, in respect of the Works or a Stage, set out in the Contract Particulars (Planning Phase).

Insolvency Event

Any of the following:

- (a) a "controller" (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement other than with the prior approval of RTA under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a person is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth));
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law of any jurisdiction; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

Intellectual Property Rights

All statutory and other proprietary rights in respect of inventions, innovations, patents, utility models, designs, circuit layouts, mask rights, copyrights (including future copyrights), confidential information, trade secrets, know-how, trade marks and all other rights in respect

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

KPIs

The key performance indicators (if any) agreed under clause 6.4(a)(iii).

Latent Conditions

Any ground conditions at the Site, excluding the condition of the Motorway and ground conditions resulting from inclement weather wherever occurring, which differ materially from those which should have been anticipated by a prudent, competent and experienced contractor:

- (a) if it had done those things which the Contractor must do under clause 6.1(a)(ii) and is deemed to have done under clause 7.1; and
- (b) if it had the knowledge that the Contractor had in respect of the Site and its surroundings arising from its role as constructor, operator and maintainer of the Motorway pursuant to the DCOM Deed.

Management Fee

The lump sum:

- (a) if a notice is given under clause 6.6(a)(i) - either:
 - (i) set out in the Contract Particulars (Planning Phase); or
 - (ii) if the amount set out in the Contract Particulars (Planning Phase) is adjusted under clause 6.4(a)(i) - set out in the Contract Particulars (Delivery Phase); or
- (b) if a notice is given under clause 6.6(a)(ii)B - any amount agreed under clause 6.7(d) and set out in the Contract Particulars (Delivery Phase),

as adjusted pursuant to clause 8.36 and 11.3(e).

Material Effect

In respect of a Variation instructed by the Contract Administrator under clause 11 during the Delivery Phase, an increase in:

- (a) the scope of the Contractor's Work (Delivery); and
- (b) the resources required for, and the costs of, performing the Contractor's Work (Delivery),

which a prudent, competent and experienced contractor would not have anticipated as at the Date of Planning Phase Approval.

Milestone Fee Payment Schedule

The schedule:

- (a) during the Planning Phase - set out in the Contract Particulars (Planning Phase); and
- (b) during the Delivery Phase:

- (i) if a notice is given under clause 6.6(a)(i) - as agreed under clause 6.4(a)(ii) and set out in the Contract Particulars (Delivery Phase); or
- (ii) if a notice is given under clause 6.6(a)(ii)B - any amount agreed under clause 6.7(d) and set out in the Contract Particulars (Delivery Phase),

otherwise as adjusted from time to time in accordance with clause 11.3, setting out:

- (c) the instalments in which the Contractor's Work Fee (Delivery) and Management Fee are to be payable; and
- (d) the milestones which must be achieved by the Contractor for each instalment to become payable.

Moral Rights

Has the meaning given by the *Copyright Act 1968* (Cth).

Motorway

Has the meaning given to it in the DCOM Deed.

Notice of Completion

A notice under clause 13.2(b)(i) by the Contract Administrator stating that Completion of the Works or a Stage has been achieved.

NSW Procurement Policy

The NSW Government Code of Practice for Procurement.

Other Contractor

Any contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor and its subcontractors.

Outline Cost Plan

The outline cost plan (if any) referred to in the Contract Particulars (Planning Phase).

Outline Program

The outline program referred to in the Contract Particulars (Planning Phase).

Planning Approval

The approval issued by the Minister for Planning dated 18 July 2007 and all conditions to it, a copy of which at the date of this deed appears as Exhibit 6 and includes all documents incorporated by reference, as that approval may be modified from time to time.

Planning Phase

The period from the Award Date to the earlier of:

- (a) the Date for Planning Phase Approval;
- (b) the Date of Planning Phase Approval; or
- (c) the date of a notice under clause 6.6(a)(ii)A or B or (a)(iii)B.

Planning Phase Agreement

Means:

- (a) the Contractor has finalised the Planning Phase Design Documentation as required by clause 6.1;
- (b) the Contractor has prepared a cost plan which has been approved by the Contract Administrator as required by clause 6.2;
- (c) the Contractor has prepared programs which have been approved by the Contract Administrator as required by clause 6.3;
- (d) agreement on all of the matters in subparagraphs (i) - (iii) of clause 6.4(a) has been reached;
- (e) the Planning Phase Milestones have been achieved;
- (f) the Proposed Contract Particulars (Delivery Phase) have been agreed and prepared in accordance with clause 6.5(d); and
- (g) the Contractor has otherwise complied with all of its obligations under the Contract to the extent applicable before the Date of Planning Phase Agreement, including finalisation of all of the Project Plans under clause 9.2.

Planning Phase Approval

Means:

- (a) the Contractor has achieved Planning Phase Agreement;
- (b) Planning Approval has been obtained;
- (c) the parties have executed the Contract Particulars (Delivery Phase) in accordance with clause 6.5(f); and
- (d) the Contractor has otherwise complied with all of its obligations under the Contract to the extent applicable before the Date of Planning Phase Approval.

Planning Phase Design Documentation

All design documentation (including drawings, specifications, models, samples and calculations) in computer readable and written forms which the Contract Administrator determines is necessary for:

- (a) the Contractor to establish the scope of the Works and to prepare (and for the Contract Administrator to review and approve) the Cost Plan and Target Cost in accordance with clause 6.2(a); and
- (b) Planning Phase Approval to be achieved.

Planning Phase Milestone Dates

The dates set out or referred to in the Contract Particulars (Planning Phase), as adjusted (if at all) under clause 6.6(d).

Planning Phase Milestones

The milestones set out or referred to in the Contract Particulars (Planning Phase).

Plant, Equipment and Work

Those things used, or work undertaken, by the Contractor to construct the Works or a Stage but which will not form part of the Works or the Stage.

Program

A program approved by the Contract Administrator under clause 6.3(a) or 6.3(e), as updated with the approval of the Contract Administrator under clause 10.2.

Project Documents

Includes:

- (a) Planning Phase Design Documentation and Delivery Phase Design Documentation;
- (b) Cost Plan;
- (c) programs;
- (d) Approved Subcontract Agreements;
- (e) DCAP;
- (f) Project Plans;
- (g) WOL Plan;
- (h) Commissioning and Handover Plan;
- (i) Approvals;
- (j) operation and maintenance manuals and warranties from subcontractors;
- (k) the documents which the Contractor is obliged to maintain under clause 12.17;
- (l) without limiting paragraphs (a)-(k), any other material:
 - (i) produced; or
 - (ii) provided, or required to be provided, to RTA or the Contract Administrator,

under, for the purposes of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor (including by subcontractors), including all documents, papers, books of account, labour time sheets, invoices (whether for services, materials, plant hire or otherwise), financial accounts, reports, software, databases or other information stored in any electronically-retrievable medium, technical information, plans, drawings (including as-built drawings), specifications, charts, calculations, tables, schedules, correspondence (including correspondence by third parties to the Contractor), internal memoranda, minutes of meetings, diary notes, audio material, visual material, audio-visual material, working papers, draft documents and any other

material of a similar nature to those materials relating to or arising out of or in connection with the Contract, the Contractor's Activities or the Works; and

- (m) without limiting paragraphs (a) - (l), all material at any time derived (under, for the purposes of or in connection with the Contract, the Contractor's Activities or the Works) from, or based on, the material described in paragraphs (a) - (l).

Project Plans

The:

- (a) Environmental Management Plan;
- (b) Site Management Plan;
- (c) Tendering Probity Plan;
- (d) Community Involvement Plan; and
- (e) other plans referred to in the Contract Particulars and prepared and finalised by the Contractor under clause 9.2(a)(ii),

as amended (if at all) with the written consent of the Contract Administrator.

Proposed Contract Particulars (Delivery Phase)

The proposed Contract Particulars (Delivery Phase) prepared in accordance with clause 6.5(d)(ii).

Reimbursable Costs

The aggregate of:

- (a) all amounts properly and actually incurred and payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontract Agreements:
 - (i) excluding:
 - A. any adjustments in accordance with the Approved Subcontract Agreements for the performance of Variations;
 - B. amounts incurred and payable to Subcontractors for correcting Defects;
 - C. amounts (including damages) paid or payable by the Contractor to any Subcontractor by reason of any breach of contract or other wrongful act or omission by the Contractor including a breach by the Contractor of the Contract, except to the extent that such breach or wrongful act or omission was directly caused by any breach of contract or other wrongful act or omission of RTA; and
 - D. other amounts not properly incurred in respect of the execution of the Reimbursable Work or which the Contract provides are to be borne by the Contractor or to be a debt due from the Contractor to RTA; and

- (ii) adjusted for Variations by the amounts determined in accordance with clause 11.3(a)(i);
- (b) any fixed price agreed, or amount incurred and payable in accordance with a basis otherwise agreed, under clause 8.15(b); and
- (c) any other amounts stated in this Contract to be "Reimbursable Costs",

less, in respect of any Defect which is the subject of an instruction under clause 9.6(b) or (c), the amount that, in the opinion of the Contract Administrator, would have been payable to Subcontractors for correcting the Defect if an instruction had been made under clause 9.6(a).

Reimbursable Work

That part of the Contractor's Activities for which the Contractor must engage Subcontractors, being the entirety of the Contractor's Activities other than the Contractor's Work (Planning) and Contractor's Work (Delivery).

Related Body Corporate

Has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth).

Road Occupancy Licence

A licence which the Contractor must obtain from RTA under clause 7.6.

RTA Risks

Any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority;
- (b) the use or threat of unlawful violence against persons or property which does not arise out of any individual relationship between the perpetrator and the victim, or for purposes of robbery, but which is directed at victims as members of a class, race, organisation, nationality, religious or ethnic group, or which is intended to intimidate, coerce or inflict revenge upon any civilian population, government, institution or corporation; and
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any subcontractor or any of their employees or agents.

Schedule of Rates

The schedule set out or referred to in the Contract Particulars containing rates and prices to be used for the purpose of:

- (a) agreeing the adjustment (if any) to the Contractor's Work Fee (Delivery) and Management Fee under clause 6.4(a)(i);
- (b) negotiating with a view to agreeing the Contractor's Work Fee (Delivery) and Management Fee under clause 6.7(d); and
- (c) valuing adjustments to the Contractor's Work Fee (Delivery) where clause 11.3(a)(iii)B applies.

Security of Payment Legislation

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

Selected Subcontractor

Means each Subcontractor specified in the Contract Particulars.

Site

The site for the Works:

- (a) for the purposes of the Planning Phase - described in the Contract Particulars (Planning Phase); and
- (b) for the purposes of the Delivery Phase - described in the Contract Particulars (Delivery Phase).

Site Management Plan

The site management plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Contractor will implement to manage the Contractor's Activities on and near the Site including:

- (a) the matters specified in the Contract Particulars; and
- (b) any other matters required by the Contract Administrator.

Special Conditions

The document referred to in the Contract Particulars.

Stage

A stage of the Works:

- (a) described in the Contract Particulars (Planning Phase);
- (b) agreed under clause 6.3 and described in the Contract Particulars (Delivery Phase);
- (c) created under clause 6.7(d)(i); or
- (d) directed by the Contract Administrator under clause 13.5.

Statutory Requirements

Means:

- (a) any law applicable to the carrying out of the Contractor's Activities, including Acts, ordinances, regulations, by-laws and other subordinate legislation; and
- (b) Approvals (including any condition or requirement under them).

Subcontractor

Any person (including a consultant, subcontractor or supplier) engaged by the Contractor under clause 8 or otherwise in accordance with the Contract to perform any part of the Reimbursable Work, including Selected Subcontractors.

Subcontractor Deed of Novation

A deed of novation in the form set out in Schedule 10.

Subcontract Proposal

A document issued by the Contractor under clause 8.2.

Subcontract Tender Documentation

In relation to a Subcontract Proposal, means:

- (a) the Delivery Phase Design Documentation, which the Contractor is entitled to use for tendering purposes under clause 6.8(d), relevant to the part of the Reimbursable Work to be subcontracted;
- (b) the conditions of the subcontract agreement which must, unless otherwise expressly directed in writing by the Contract Administrator, be on the terms of the GC21 Subcontract;
- (c) if the Contract Administrator so directs, a request for tender; and
- (d) any other documentation necessary for that part of the Reimbursable Work to be subcontracted.

Target Cost

The Target Cost means the sum of:

- (a) the Management Fee;
- (b) the Contractor's Work Fee (Delivery); and
- (c) the Target Reimbursable Costs,

the initial Target Cost being the amount:

- (d) approved by the Contract Administrator under clause 6.2(d); or
- (e) agreed under clause 6.7(d),

and set out in the Contract Particulars (Delivery Phase).

Target Date

In relation to the Works or a Stage, means the date, or period of time:

- (a) either:
 - (i) agreed under clause 6.3(e); or
 - (ii) agreed under clause 6.7(d),

and set out in the Contract Particulars (Delivery Phase); or

- (b) directed by the Contract Administrator under clause 13.5, as adjusted under clause 10.4.

Target Reimbursable Costs

The target Reimbursable Costs:

- (a) approved by the Contract Administrator under clause 6.2(a)(ii) (based upon the cost analysis carried out under clause 6.2(b)(ii)); or
- (b) agreed under clause 6.7(d) ,

and set out in the Contract Particulars (Delivery Phase), and as adjusted in accordance with clause 8.36 and 11.3(d).

Tendering Probity Plan

The tendering probity plan prepared by the Contractor and finalised under clause 9.2, which must set out in adequate detail all procedures the Contractor will implement to ensure the probity and competitiveness of the tender process for Reimbursable Work is maintained including:

- (a) the matters specified in the Contract Particulars; and
- (b) any other matters required by the Contract Administrator.

Variation

Unless otherwise stated in the Contract, means any change to the Works directed by the Contract Administrator under clause 11 during the Delivery Phase including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Works.

WOL

Whole of life.

WOL Cost

The total of the direct/indirect, recurring/non-recurring, fixed/variable financial costs to RTA arising out of, or in any way in connection with, the Works over the whole life of the Works including the costs of designing and constructing the Works prior to Completion and operating and maintaining the Works after Completion.

WOL Objectives

Means balancing:

- (a) WOL Cost;
- (b) the useful life of the Works;
- (c) the reliability and availability for use of the Works throughout their useful life;
- (d) the operability and maintainability of the Works throughout their useful life;

- (e) the value for money achieved by RTA from the design, construction, operation and maintenance of the Works; and
- (f) the achievement of the specific additional matters (if any) relating to WOL specified in the Contract Particulars.

WOL Plan

The plan described in the Contract Particulars.

Works

The physical works, a brief description of which is set out in the Contract Particulars, which the Contractor must plan, design, construct, commission, complete and hand over to RTA in accordance with the Contract.

1.2 Interpretation

In this Contract, unless the context otherwise indicates:

- (a) words in the singular include the plural and vice versa;
- (b) references to a person include an individual, firm, corporation or unincorporated body;
- (c) except in clause 1.1, headings are for convenience only and do not affect the interpretation of this Contract;
- (d) references to any party to this Contract include its successors or permitted assigns;
- (e) a reference to a party, clause, Annexure, Schedule, or exhibit is a reference to a party, clause, Annexure, Schedule or exhibit of or to this Contract;
- (f) references to this Contract and any deed, agreement or instrument are deemed to include references to this Contract or such other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) words denoting any gender include all genders;
- (h) references to any legislation or to any section or provision of any legislation include any:
 - (i) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Contract or any part;
- (j) a reference to "\$" is to Australian currency;
- (k) where under the Contract:
 - (i) a direction is required to be given or must be complied with; or
 - (ii) payment of money must be made (other than under clause 12.5),

within a period of 7 days or less from a specified event, then Saturdays, Sundays and public holidays in the place in which the Site is situated will not be counted in computing the number of days;

- (l) for the purposes of clause 10.4, any reference to "day" will exclude public holidays and include only those days which are stated in the Contractor's approved program under clause 10.2 as working days;
- (m) other than as set out in paragraphs (k) and (l) references to "day" are references to calendar days;
- (n) the words "including" and "includes", and any variants of those words, will be read as if followed by the words "without limitation";
- (o) the word "subcontractor" will include subcontractors, suppliers, consultants and Subcontractors, and the word "subcontract" will include a contract with a subcontractor (including an Approved Subconsultant Agreement);
- (p) derivatives of a word or expression which has been defined in clause 1.1 will have a corresponding meaning to that assigned to it in clause 1.1; and
- (q) unless agreed or notified in writing by the Contract Administrator, a reference to Standards Australia standards, overseas standards or other similar reference documents in the Brief, Planning Phase Design Documentation or Delivery Phase Design Documentation is a reference to the edition last published prior to the preparation of the Planning Phase Design Documentation or Delivery Phase Design Documentation (as the case may be). If requested by the Contract Administrator, the Contractor must make copies of all Standards Australia standards, overseas standards or other similar reference documents referred to in the Brief, Planning Phase Design Documentation and Delivery Phase Design Documentation available to the Contract Administrator.

1.3 Miscellaneous

- (a) This Contract is subject to and is to be construed in accordance with the laws of the State or Territory set out in the Contract Particulars.
- (b) None of the terms of the Contract can be waived, discharged or released at law or in equity unless:
 - (i) to the extent that the term involves a right of the party seeking to waive the term or one party seeking to waive an obligation of the other party - this is done by written notice to the other party; or
 - (ii) otherwise, both parties agree in writing.
- (c) This Contract constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite:
 - (i) any prior agreement in conflict or at variance with the Contract; or
 - (ii) any correspondence or other documents relating to the subject matter of the Contract which may have passed between the parties prior to the Award Date and which are not included in the Contract.
- (d) Where a party comprises two or more persons, each person will be jointly and severally bound by the party's obligations under the Contract.

- (e) Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
- (f) All obligations to indemnify under this Contract survive termination of the Contract.
- (g) Unless expressly stated to the contrary in this Contract, the Contractor must perform the Contractor's Activities at its cost.

2. Nature of contract

2.1 Agreement

- (a) RTA engages the Contractor to:
 - (i) plan and design the Works in the Planning Phase; and
 - (ii) if Planning Phase Approval is achieved - complete (to the extent not completed in the Planning Phase) the design of, commence, construct, commission, complete and handover the Works in the Delivery Phase,in accordance with the Contract.
- (b) In consideration of the Contractor undertaking the Contractor's Activities, RTA will pay the Contractor:
 - (i) for the Planning Phase, in accordance with the existing arrangements between the RTA and the Contractor, documented in the letter from RTA to the Contractor dated 29 September 2006 and agreed to by the Contractor on the same date and RTA's further letter on or about the Award Date; and
 - (ii) for the Delivery Phase, the Contract Price.

2.2 Contractor's primary obligations

- (a) The Contractor:
 - (i) will be primarily responsible for the performance of the Contractor's Activities in accordance with the Contract; and
 - (ii) acknowledges that RTA is relying upon the advice, skill and judgment of the Contractor in the planning, design, commencement, construction, commissioning, completion and handover of the Works.
- (b) Without limiting the generality of the Contractor's obligations, the Contractor will be responsible for (and will control, co-ordinate, administer and direct) all activities necessary for the planning, design, commencement, construction, commissioning, completion and handover of the Works including:
 - (i) the performance of the Contractor's Work (Planning) and the Contractor's Work (Delivery); and
 - (ii) the engagement, supervision, control, co-ordination and direction of all subcontractors and the execution of the Reimbursable Work.

2.3 Contractor's Warranties

Without limiting clause 2.2, the Contractor warrants that:

- (a) without limiting the strict or absolute nature of any of its other obligations or warranties under this Contract, it will exercise (and ensure that its subcontractors exercise) the standard of skill, care and diligence in the performance of the Contractor's Activities that would be expected of an expert professional provider of the Contractor's Activities;
- (b) the design of the Works will be:
 - (i) performed in accordance, and so as to comply, with the Brief; and
 - (ii) fit for its intended purpose as stated in or reasonably ascertainable from the Brief;
- (c) without limiting its obligations under paragraph (a), it will ensure that the Reimbursable Work is performed:
 - (i) in a proper and workmanlike manner;
 - (ii) so that it is fit for its intended purpose as stated in or reasonably ascertainable from the Brief; and
 - (iii) in compliance with clauses 8.17 and 9.1;
- (d) the Works and each Stage will when constructed be fit for their intended purpose as stated in or reasonably ascertainable from the Brief and comply with all Statutory Requirements (subject to paragraph (g)(i)) and all other requirements of the Contract;
- (e) it will use its best endeavours to ensure that:
 - (i) it achieves Completion of the Works so that the Contract Price does not exceed the Target Cost;
 - (ii) it achieves Completion of the Works and each Stage by the relevant Target Date; and
 - (iii) it performs the Contractor's Activities so as to maximise the achievement of the objectives set out in, and reasonably ascertainable from, the Brief;
- (f) it will exercise a duty of the utmost good faith to RTA in performing the following obligations under the Contract:
 - (i) the preparation of the Cost Plan in accordance with clause 6.2, the preparation of the program in accordance with clause 6.3 and undertaking negotiations under clause 6.4;
 - (ii) the preparation of the Subcontract Tender Documentation for the Reimbursable Work and in all post-tender communications (verbal or otherwise) with tenderers prior to the entry of an Approved Subcontract Agreement (where applicable);
 - (iii) the administration of Approved Subcontract Agreements including all negotiations concerning Variations and extensions of time; and

- (iv) in making payment claims under clause 12.2;
- (g) it will:
 - (i) unless otherwise specified in the Contract Particulars, in performing the Contractor's Activities, comply with all Statutory Requirements;
 - (ii) apply for, obtain and give RTA copies of all Approvals, other than those referred to in the Contract Particulars; and
 - (iii) provide to RTA any document, submission or other information required to be provided by RTA to the Director-General of the Department of Planning under the Planning Approval;
- (h) without limiting its other Contract obligations, it will at all times in the performance of the Contractor's Activities generally comply with the DCAP; and
- (i) without limiting its other Contract obligations, it will keep the Contract Administrator fully and regularly informed as to all matters affecting or relating to the Contractor's Activities or the Works, including any matter which may change or which has changed:
 - (i) the nature, scope or timing of the Works; or
 - (ii) the possible levels of expenditure by RTA under this Contract or in connection with or relating to the operation or maintenance of the Works.

2.4 Contractor's Work (Planning)

The Contractor must:

- (a) immediately following the Award Date, commence to plan the Works in consultation with the Contract Administrator;
- (b) take all reasonable steps to achieve Planning Phase Agreement before the Date for Planning Phase Agreement, including:
 - (i) design development in accordance with clause 6.1;
 - (ii) cost planning in accordance with clause 6.2;
 - (iii) programming in accordance with clause 6.3;
 - (iv) agreeing the matters required to be agreed in accordance with clause 6.4;
 - (v) achievement of the Planning Phase Milestones by the Planning Phase Milestone Dates in accordance with clause 6.5;
 - (vi) agreement to and preparation of the Proposed Contract Particulars (Delivery Phase) in accordance with clause 6.5(d); and
 - (vii) compliance with all of its other obligations under the Contract to the extent applicable before the Date of Planning Phase Agreement, including finalisation of all Project Plans under clause 9.2; and
- (c) take all reasonable steps to enable Planning Phase Approval to be achieved before the Date for Planning Phase Approval, including:

- (i) for the purposes of assisting RTA to obtain Planning Approval under clause 6.5(b)(i);
- (ii) agreement to and execution of the Contract Particulars (Delivery Phase) in accordance with clause 6.5(f); and
- (iii) compliance with all of its other obligations under the Contract to the extent applicable before the Date of Planning Phase Approval.

For the purposes of this clause 2.4 and clauses 6.2(c)(iii) and 6.5, "all reasonable steps" includes attending such meetings, providing such drafts of documents and such other information, responding to such queries and proposals and obtaining such assistance from consultants and other third parties as may be required by the Contract Administrator for the purpose of achieving the required outcome.

2.5 Authorities

- (a) Subject to clause 2.5(b), the Contractor acknowledges and agrees that:
 - (i) this Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of RTA to exercise any of its functions and powers pursuant to any legislation; and
 - (ii) without limiting clause 2.5(a)(i), anything which RTA does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by RTA under this Contract and will not entitle the Contractor to make any Claim against RTA.
- (b) Despite the existence of clause 2.5(a)(ii), the parties agree that if anything that RTA does or fails to do, to which clause 2.5(a)(ii) applies would, but for the existence of clause 2.5(a)(ii), have been a breach of a term of this Contract by RTA, the Contractor will be entitled to payment of an amount equivalent to, and calculated in the same manner as (including having regard to the Contractor's duty to mitigate losses), the damages that would have been payable by RTA but for the operation of clause 2.5(a)(ii).
- (c) The Contractor acknowledges and agrees that:
 - (i) there are many authorities (other than RTA) with jurisdiction over aspects of the Contractor's Activities, parts of the Site and areas affected by the Contractor's Activities;
 - (ii) such authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities; and
 - (iii) unless otherwise provided in the Contract, it bears the full risk of all occurrences of the kind referred to in clause 2.5(c)(ii) and will have no Claim against RTA arising out of or in any way in connection with such occurrences.

2.6 Not Used

2.7 Prior work

The terms of the Contract apply to all of the work performed by the Contractor in connection with the Contractor's Activities even if it was performed prior to the date of execution of the Contract (including work performed in accordance with the existing arrangements between the RTA and the Contractor, documented in the letter from RTA to the Contractor dated 29 September 2006 and agreed to by the Contractor on the same date and RTA's further letter on or about the Award Date).

3. Personnel

3.1 Contract Administrator

The Contract Administrator will give directions and carry out all of the other functions of the Contract Administrator under the Contract as the agent of RTA (and not as an independent certifier, assessor or valuer).

The Contractor must:

- (a) comply with any direction by the Contract Administrator given or purported to be given under a provision of this Contract; and
- (b) not comply with any direction of RTA other than as expressly stated in the Contract.

Except where the Contract otherwise provides, the Contract Administrator may give a direction orally but will as soon as practicable confirm it in writing.

3.2 Replacement of Contract Administrator

RTA may at any time replace the Contract Administrator, in which event RTA will appoint another person as the Contract Administrator and notify the Contractor of that appointment.

Any substitute Contract Administrator appointed under this clause 3.2 will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.

3.3 Parties' Conduct

Without limiting any of the rights or obligations of RTA and Contractor under the Contract, RTA and Contractor must co-operate with each other in carrying out their obligations under the Contract.

3.4 Contract Administrator's Representative

The Contract Administrator may:

- (a) by written notice to the Contractor appoint persons to exercise any of the Contract Administrator's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract at any one time; and
- (c) revoke any appointment under paragraph (a) by notice in writing to the Contractor.

As at the Award Date, the Contract Administrator is deemed to have appointed the persons set out in the Contract Particulars to carry out the functions set out in the Contract Particulars.

All references in the Contract to Contract Administrator include a reference to a representative appointed under this clause 3.4.

3.5 Contractor's Representative

The Contractor must ensure that the Contractor's Representative is present on the Site at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.

A direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

3.6 Key People

The Contractor must:

- (a) employ those people specified in the Contract Particulars, including the Contractor's Representative, in the jobs specified in the Contract Particulars;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Contract Administrator's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Contract Administrator of at least equivalent experience, ability and expertise.

3.7 Removal of Persons

The Contract Administrator may by notice in writing instruct the Contractor to remove any person from the Site or the Contractor's Activities who in the reasonable opinion of the Contract Administrator is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Contractor's Activities.

3.8 Industrial Relations

Without limiting the Contractor's obligations under clause 19.4, the Contractor must in carrying out the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial awards and enterprise agreements and any relevant Statutory Requirements, for all employees engaged by any person, are always observed in full;
- (c) keep the Contract Administrator fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the Contractor's Activities; and
- (d) comply with all other requirements of the Contract relating to industrial relations.

3.9 Project Review

The Contractor must:

- (a) meet monthly (or at such other times as the Contract Administrator may require) with the Contract Administrator and any other persons whom the Contract Administrator nominates;
- (b) discuss the reports it has prepared under clauses 17.4 and 18.3 and such other matters as the Contract Administrator may from time to time require;
- (c) promptly and fully respond to any questions which the Contract Administrator asks in relation to any report; and
- (d) if it requires instructions from RTA, make all necessary recommendations as to the action required.

The Contract Administrator must:

- (e) before each meeting – prepare an agenda for that meeting; and
- (f) after each meeting – prepare minutes of the meeting and distribute them to all attendees of the meeting.

4. Security

4.1 Form

The Contractor must provide security to RTA:

- (a) in the form of Approved Security;
- (b) in the amount set out in the Contract Particulars; and
- (c) as a condition precedent to Planning Phase Approval.

4.2 Release

RTA must:

- (a) within 14 days of the issue of a Notice of Completion for the Works or for each and every Stage, release from the security held under clause 4.1, 50% of the security required under clause 4.1;
- (b) within 14 days of the expiration of the last Defects Liability Period (excluding any extensions under clause 9.11), release such amount of the security under clause 4.1 then held, as the Contract Administrator determines to be reasonable, having regard to the work to which the remaining Defects Liability Periods apply, to ensure RTA's interests are not prejudiced; and
- (c) release the balance of the security under clause 4.1 then held when:
 - (i) the last Defects Liability Period has expired; and
 - (ii) the Contractor has complied with all its obligations under the Contract.

4.3 Interest

- (a) RTA:
 - (i) is not obliged to pay the Contractor interest on:
 - A. the Approved Security; or
 - B. subject to paragraph (b), the proceeds of the Approved Security if it is converted into cash; and
 - (ii) does not hold the proceeds or money referred to in subparagraph (i) on trust for the Contractor.
- (b) If RTA makes a call upon any security held under clause 4.1 and obtains cash as a consequence:
 - (i) RTA will pay simple interest, at the rate applying to damages for the purpose of clause 12.13, on the amount of any cash obtained in excess of the sum to which RTA is entitled at the time of such call; and
 - (ii) the sum attracting interest pursuant to subparagraph (i) will be further reduced by any unsatisfied amounts which subsequently become payable (whether as a debt, by way of damages or otherwise) by the Contractor to RTA at the time such amounts become payable.

5. Risks and insurance

5.1 Risk of Works

Except to the extent that it arises from an RTA Risk, the Contractor will bear the risk of and indemnify RTA against:

- (a) any loss of or damage to:
 - (i) the Works or a Stage;
 - (ii) Plant, Equipment and Work; and
 - (iii) unfixed goods and materials (whether on or off Site), including anything provided by RTA to the Contractor or brought onto Site by a subcontractor, used or to be used in carrying out the Contractor's Activities,until:
 - (iv) in the case of loss of or damage to the Works or a Stage, a Notice of Completion is issued for the Works or the Stage; and
 - (v) otherwise, a Notice of Completion is issued for the Works or the last Stage to reach Completion; and
- (b) after the issue of a Notice of Completion for the Works or a Stage, any loss of or damage to the Works or the Stage arising from any act or omission of the Contractor during the Defects Liability Period or from an event which occurred prior to the issue of the Notice of Completion for the Works or the Stage.

5.2 Other Risks

Except to the extent that it arises from an RTA Risk, the Contractor will indemnify RTA against:

- (a) any loss of or damage to property of RTA (other than property referred to in clause 5.1(a)); and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Contractor's Activities provided that the Contractor's responsibility to indemnify RTA will be reduced to the extent that an act or omission of RTA, the Contract Administrator or an Other Contractor may have contributed to the loss, damage, injury or death.

5.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage under clause 5.1, the Contractor must:

- (a) subject to paragraph (b), promptly replace or otherwise make good any loss of, or repair the damage to, the Works or a Stage, any Plant, Equipment and Work or any unfixed goods and materials used or to be used in carrying out the Contractor's Activities; and
- (b) where the loss or damage arises from an RTA Risk, only comply with paragraph (a) to the extent directed by the Contract Administrator.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an RTA Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an RTA Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Contract Administrator and clause 11.3 applied.

5.4 Principal Arranged Insurance

- (a) RTA has effected an insurance policy or policies to cover RTA, the Contractor and all Subcontractors employed from time to time in relation to the Works for their respective rights, interests and liabilities with respect to:
 - (i) liability for loss or damage referred to in clause 5.1, including loss or damage to materials, plant, equipment and other goods (excluding constructional plant, motor vehicles, appliances and things (including scaffolding, formwork and the like), clothing, tools and sundry equipment) of the Contractor or any Subcontractor used in or in relation to the carrying out of the Works or entrusted to the Contractor by RTA for that purpose, but not forming or intended to form part of the Works; and
 - (ii) liabilities to third parties of the type set out in clause 5.2 and subject to the maximum limits of liability set out in the Contract Particulars.
- (b) RTA may in its discretion have other insureds named or included in the policy or policies referred to in clause 5.4(a), including any other government entity with an interest in the Works or the Site.

- (c) The policy or policies will be maintained by RTA until the issue of the Final Payment Statement.
- (d) Before the earlier of:
- (i) 10 Business Days after the Award Date; or
 - (ii) the Contractor commencing to carry out any part of the Works,
- the Contractor must contact the insurance broker nominated in writing to the Contractor as RTA's insurance broker and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clause 5.4(a).
- (e) The Contractor acknowledges that extracts of the policy terms have been provided to the Contractor prior to the Award Date and are attached in Schedule 9. Full copies of the policy terms are available for inspection by arrangement with RTA's insurance broker.
- (f) The insurance cover under clause 5.4(a) is subject to exclusions. These are set out in the policy terms referred to in clause 5.4(e) and include the following exclusions:
- (i) damages for delay in completing or for the failure to complete the Works;
 - (ii) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - (iii) loss or damage resulting from the RTA Risk defined in paragraph (a) of the definition; and
 - (iv) matters required to be insured under clauses 5.5(c) and 5.5(d).
- (g) The Contractor shall be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in clause 5.4(a) in accordance with the policy terms. The Contractor may effect its own insurance to cover the amount of any excess.
- (h) The Contractor acknowledges that:
- (i) the insurances referred to in clause 5.4(a) have been obtained at RTA's cost; and
 - (ii) the Contractor shall not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance.
- (i) The obtaining of insurance by RTA in accordance with this clause will not reduce, vary, or otherwise affect the Contractor's liabilities and obligations pursuant to clause 5.1, warranties given or otherwise under the Contract or in connection with the Works.
- (j) If there is a claim for significant damage or destruction under the Works policy of insurance (as determined by RTA, acting reasonably):
- (i) all settlement amounts must be paid by the insurer directly to RTA;

- (ii) RTA may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by RTA under the Contract; and
 - (iii) the Contractor must reinstate the Works if instructed to by RTA and except as otherwise provided in the Contract may only make a Claim for payment for reinstatement of the Works up to the amount of any insurance settlement.
- (k) The provisions of clauses 5.5(l) and 5.5(m) also apply to insurance arranged by RTA.

5.5 Contractor Insurance

- (a) Before starting any work for or in connection with the Contract, the Contractor must arrange and have in place insurance (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums) for the minimum amounts specified in the Contract Particulars, and pay all premiums for:
- (i) Workers Compensation and related liability insurance in accordance with the requirements of the Workers Compensation Act 1987, as specified in the Contract Particulars, and where possible, extended to indemnify RTA against statutory liability to persons employed by the Contractor;
 - (ii) (if required in the Contract Particulars) a professional indemnity policy of insurance to cover liability for breach of professional duty (whether in contract or otherwise) arising out of any negligence, whether in relation to errors in design, documentation, supervision or other professional duties of the Contractor (whether in contract or otherwise), as specified in the Contract Particulars, and extended to include cover for any breach of all such professional duties carried out on behalf of the Contractor by Subcontractors; and
 - (iii) either comprehensive motor vehicle/mobile plant insurance or third party property damage insurance, as specified in the Contract Particulars, and where possible in the joint names of RTA, the Contractor and all Subcontractors employed from time to time in relation to the Works for their respective rights and interests to cover their liabilities to third parties in connection with the use of each motor vehicle in relation to the Contract.
- (b) The Contractor must ensure that every Subcontractor is insured at all times for Workers Compensation and related liability in accordance with the requirements of the Workers Compensation Act, 1987.
- (c) If any work for or in connection with the Contract includes asbestos decontamination, the Contractor must pay all premiums and insure under an asbestos liability policy of insurance to cover risks with asbestos decontamination work, as specified in the Contract Particulars.
- (d) If any work for or in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, the Contractor must pay all premiums and insure under a marine liability policy and a marine protection and indemnity policy to cover the use of such craft, as specified in the Contract Particulars.

- (e) The Contractor must obtain the written approval of RTA for all of its insurers and for the terms and conditions of the policies and provide copies of the approved policies to RTA.
- (f) The Contractor must ensure that each policy required to be effected and maintained under the Contract or under Subcontracts is effected before commencing work and must be maintained in effect for the relevant period specified in the Contract Particulars.
- (g) All policies must:
 - (i) require the insurer to notify RTA (other than in relation to Workers Compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and
 - (ii) provide that a notice of claim given to the insurer by RTA, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim given by all of the insured.
- (h) The policies referred to in clauses 5.5(c) and 5.5(d) must be in the name of the Contractor with RTA as an additional named insured and must cover the Contractor, RTA, the Contractor Administrator and all Subcontractors, employed from time to time for or in relation to the Contract and the Works for their respective rights and interests and cover their liabilities to third parties.

The policies referred to in clauses 5.5(c) and 5.5(d) must include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons covered and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons covered as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result).

The Contractor must:

- (i) ensure that in respect of each insurance required to be effected or taken out as required by clauses 5.5(a), 5.5(c) and 5.5(d) by the Contractor or any Subcontractor, it:
 - A. does not do anything which prejudices any insurance;
 - B. if necessary, rectifies anything which might prejudice any insurance;
 - C. reinstates an insurance policy if it lapses;
 - D. does not cancel, vary or allow an insurance policy to lapse without the prior written consent of RTA;
 - E. immediately notifies RTA of any event which may result in an insurance policy lapsing or being cancelled;
 - F. gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and

- (ii) ensure that any insurance required to provide coverage to Subcontractors acknowledges that the same coverage applies to Suppliers and Consultants.
 - (iii) ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
 - (iv) ensure that a notice to the insurer by one insured will be deemed to be notice by all insured parties.
- (i) Before the Contractor starts any work for or in connection with the Contract and whenever requested in writing by RTA, the Contractor must supply proof that all insurance policies required under the Contract and under Subcontracts are current. However, for asbestos decontamination work, the proof must be supplied initially within 60 days after starting that work.
 - (j) RTA need not make any payment under the Contract to the Contractor unless the Contractor has complied with and continues to comply with clause 5.5(i).
 - (k) If the Contractor fails to comply with clauses 5.5(a), 5.5(c), 5.5(d) and 5.5(i), RTA may effect and maintain that insurance and pay the necessary premiums. RTA may recover from the Contractor the cost of the premiums and RTA's reasonable costs of effecting and maintaining the insurance, as a debt due by the Contractor.
 - (l) The Contractor must, as soon as practicable, inform RTA in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that RTA is kept fully informed of subsequent action and developments concerning the claim. The Contractor must take such steps as are necessary or appropriate to ensure that a Subcontractor will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor take in relation to RTA similar action to that which the Contractor is required to take under this clause 5.5(l).
 - (m) The requirements for insurance to be effected and maintained do not affect or limit the Contractor's liabilities (including indemnities given under clause 5.1) or other obligations under the Contract.

5.6 Limitation of liability

- (a) Subject to paragraph (b), the Contractor's total aggregate liability to RTA under this Contract is limited to 40% of the Target Cost.
- (b) Paragraph (a) does not apply or limit the Contractor's liability:
 - (i) in respect of liability which:
 - A. cannot be limited at law;
 - B. arises under clauses 5.2 or 6.15;
 - C. is due to the Contractor's wilful or reckless misconduct, fraud or criminal conduct; or
 - D. arises in connection with the Contractor's abandonment of its obligations under the Contract; or

- (ii) to the extent that (ignoring the application of paragraph (a)), the Contractor is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability but for any act or omission of the Contractor,

and those liabilities will not be included in any calculation of the Contractor's total aggregate liability under clause 5.6(a).

6. Planning and design

6.1 Planning Phase Design Documentation

- (a) Prior to the Date for Planning Phase Agreement, the Contractor must:
 - (i) develop the design of the Works, and for this purpose prepare all relevant Planning Phase Design Documentation, in accordance with the Brief and the other requirements of this Contract;
 - (ii) undertake such:
 - A. site investigations including topographical surveys, soil reports, bore holes and other geotechnical tests; and
 - B. other risk reduction studies,as a prudent, competent and experienced contractor would consider necessary for the comprehensive and accurate planning, scoping, design, costing and programming of the Works during the Planning Phase;
 - (iii) advise the Contract Administrator of:
 - A. every reasonably available method of design and construction for the Works; and
 - B. the possible alternative materials which are suitable for use with each particular method,having regard to the investigations and studies undertaken under subparagraph (ii) and any limitations on the design and construction of the Works (if any):
 - C. imposed by the Site; or
 - D. arising from the Contractor's obligation under clause 2.3(g) to comply with all Statutory Requirements and obtain all Approvals unless otherwise specified;
 - (iv) in accordance with the program prepared and updated in accordance with clause 6.3(a), submit to the Contract Administrator for approval a design development program which makes allowance for the Planning Phase Design Documentation to be submitted to the Contract Administrator at each of the design review milestones as identified in the DCAP and otherwise in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Planning Phase Design Documentation within the period of time within which the Contract Administrator may review it under paragraph (b);

- (v) conduct design reviews at each of the design review milestones as identified in the DCAP; and
 - (vi) submit the Planning Phase Design Documentation it prepares to the Contract Administrator in accordance with the design development program approved by the Contract Administrator under subparagraph (iv).
- (b) The Contract Administrator may (in its absolute discretion):
- (i) review any Planning Phase Design Documentation, or any resubmitted Planning Phase Design Documentation, prepared and submitted by the Contractor; and
 - (ii) within the number of days set out in the Contract Particulars (Planning Phase) of the submission by the Contractor of such Planning Phase Design Documentation, or resubmitted Planning Phase Design Documentation, reject the Planning Phase Design Documentation.
- (c) If any Planning Phase Design Documentation is rejected, the Contractor must submit amended Planning Phase Design Documentation to the Contract Administrator.
- (d) Without limiting clause 6.7, the Contractor must not commence the next phase of the Contractor's Activities (including any design of the part of the Works to which any Planning Phase Design Documentation which it has submitted to the Contract Administrator applies):
- (i) unless the Contract Administrator has had the number of days set out in the Contract Particulars (Planning Phase) to review the relevant Planning Phase Design Documentation and has not rejected it; and
 - (ii) where the next phase of the Contractor's Activities would include preparation of Delivery Phase Design Documentation under clause 6.8, until the Date of Planning Phase Approval.
- (e) If the Contractor does not finalise the Planning Phase Design Documentation to the satisfaction of the Contract Administrator (in its absolute discretion) by the Date for Planning Phase Agreement, then RTA may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.

6.2 Cost Planning

- (a) Prior to the Date for Planning Phase Agreement, the Contractor must:
- (i) prepare a cost plan for the Contractor's Activities:
 - A. if an Outline Cost Plan exists - based on that Outline Cost Plan; and
 - B. in accordance with the requirements of RTA notified in writing by the Contract Administrator; and
 - (ii) submit the cost plan to the Contract Administrator for approval, no later than the date notified in writing by the Contract Administrator.
- (b) The cost plan to be prepared under paragraph (a) must include:

- (i) identification in detail of all work required for, and all risks which could be encountered in, Completion of the Works, which a prudent, competent and experienced contractor would anticipate and provide for in its cost plan for the Contractor's Activities;
 - (ii) a cost analysis in respect of each part of the Works, including a detailed break-up, by reference to each separate construction package, of the Reimbursable Costs to be payable during the Delivery Phase, including a budget and detailed break-up for each construction package;
 - (iii) a detailed recommendation as to possible alternative amounts which RTA could set as the Target Cost, having regard to all relevant considerations including:
 - A. the budgetary limitations and requirements of RTA in respect of the Works which the Contract Administrator may from time to time notify to the Contractor in writing;
 - B. the paramount importance to RTA of balancing between minimising both the cost and time to achieve Completion of the Works (on the one hand) and maximising the scope of the Works to be delivered, the extent to which the WOL Objectives are furthered in the design and construction of the Works and cost certainty for RTA (on the other hand);
 - C. demonstrably maximising value for money for RTA and complying with NSW Procurement Policy;
 - D. without limiting subparagraph C, all opportunities for cost savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the other requirements of the Contract, including the insurer through whom the Construction Risks Insurance is to be effected; and
 - E. all other relevant considerations, arising out of or in connection with or reasonably incidental to or to be inferred from the considerations in subparagraphs A - D, which the Contract Administrator may from time to time notify to the Contractor in writing;
 - (iv) the proposed Management Fee and Contractor's Work Fee (Delivery), including a detailed breakdown of each fee against milestones for the purposes of the payment of each instalment of each fee under the Milestone Fee Payment Schedule; and
 - (v) all such other matters as the Contract Administrator may reasonably require in writing.
- (c) The Contractor must:
- (i) if any cost plan submitted by the Contractor is rejected by the Contract Administrator (and the Contract Administrator must provide reasons for the rejection), submit an amended cost plan that deals with the reasons for the rejection;

- (ii) in the process of preparing the cost plan or an amended cost plan, co-operate with RTA, the Contract Administrator and all other people nominated by the Contract Administrator for the purpose of furthering the considerations referred to in paragraph (b)(iii); and
- (iii) use its best endeavours to ensure that the Target Cost does not exceed the budgetary limitations and requirements of RTA in respect of the Works notified to the Contractor under paragraph (b)(iii)A, including all such reasonable steps directed by the Contract Administrator.
- (d) If the cost plan and the target cost are approved by the Contract Administrator, then the Contract Administrator will issue a written notice to the Contractor.
- (e) If the Contractor does not prepare a cost plan (or a revised cost plan) which is approved by the Contract Administrator under paragraph (d) before the Date for Planning Phase Agreement, then RTA may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.
- (f) To assist the Contract Administrator in determining whether or not to approve a cost plan (or a revised cost plan):
 - (i) the Contract Administrator may engage a third party to perform an external audit of the cost plan; and
 - (ii) the Contractor must:
 - A. co-operate with the Contract Administrator and that third party; and
 - B. without limiting clause 6.18, comply with its obligations under clause 6.18.

6.3 Programming

- (a) The Contractor must
 - within 14 days of the Award Date, give a program of the Contractor's Activities during the Planning Phase to the Contract Administrator for approval.
- (b) Prior to the Date for Planning Phase Agreement, the Contractor must:
 - (i) prepare a program, based on the Outline Program, for the Contractor's Activities during the Delivery Phase;
 - (ii) as part of the program it is to prepare under subparagraph (i), submit to the Contract Administrator for approval a documentation program which makes allowance for the Delivery Phase Design Documentation to be submitted to the Contract Administrator at each of the design review milestones identified in the DCAP and otherwise in a manner and at a rate which will give the Contract Administrator a reasonable opportunity to review the Delivery Phase Design Documentation within the period of time within which the Contract Administrator may review the Delivery Phase Design Documentation under clause 6.8; and
 - (iii) submit the program to the Contract Administrator for approval no later than the date notified in writing by the Contract Administrator.

- (c) The program to be prepared under paragraph (b) must:
- (i) include identification in detail of all work required for, and risks which could be encountered in, Completion of the Works, which a prudent competent and experienced contractor would anticipate and provide for in its program for the Contractor's Activities;
 - (ii) include a separate sub-program for each separate construction package;
 - (iii) include a detailed recommendation as to every reasonably possible:
 - A. Stage which could be created; and
 - B. date which RTA could set as the Target Date for the Works or each Stage;
 - (iv) have regard to all relevant considerations including:
 - A. the desirability of staging and sequencing the Works so as to enable RTA to have use of facilities forming part of the Works as soon as possible; and
 - B. the paramount importance to RTA of balancing between minimising the time to achieve Completion of the Works (on the one hand) and maximising time certainty for RTA (on the other hand),

provided that no Target Date can be after the Initial Target Date;
 - (v) include the milestones set out in the Milestone Fee Payment Schedule; and
 - (vi) include all such other matters as the Contract Administrator may require in writing.
- (d) The Contractor must:
- (i) if any program submitted by the Contractor under paragraph (a) or (b) is rejected by the Contract Administrator (and the Contract Administrator must provide reasons for the rejection, submit an amended program (within the time required by the Contract Administrator) that deals with the reasons for the rejection;
 - (ii) in the process of preparing a program under paragraph (a) or (b) or an amended program, co-operate with RTA, the Contract Administrator and all other people nominated by the Contract Administrator for the purpose of furthering the considerations referred to in paragraph (c)(iv); and
 - (iii) ensure that the Target Date does not exceed the Initial Target Date.
- (e) If any program and target dates are approved by the Contract Administrator, then the Contract Administrator will issue a written notice to the Contractor.
- (f) If the Contractor does not prepare a program (or a revised program) under paragraph (b) which is approved by the Contract Administrator under paragraph (e) before the Date for Planning Phase Agreement, then RTA may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.

- (g) To assist the Contract Administrator in determining whether or not to approve a program (or a revised program) submitted under paragraph (b):
 - (i) the Contract Administrator may engage a third party to perform an external review of the program; and
 - (ii) the Contractor must:
 - A. co-operate with the Contract Administrator and that third party; and
 - B. without limiting clause 6.18, comply with its obligations under clause 6.18.

6.4 Adjustment of Fees

- (a) As part of the process of preparing the Cost Plan for the approval of the Contract Administrator under clause 6.2, and in any event by no later than the Date for Planning Phase Agreement, the Contractor must undertake genuine and good faith negotiations with the Contract Administrator to reach agreement, in the Contract Administrator's absolute discretion, as to:
 - (i) the adjustment (if any) required to the Initial Target Cost, the Management Fee, the Contractor's Work Fee (Delivery) and the subcontract price under any Approved Subcontract Agreement then in place as a result of the design development, cost planning and programming carried out under clauses 6.1, 6.2 and 6.3;
 - (ii) the adjustment (if any) required to the Milestone Fee Payment Schedule; and
 - (iii) the KPIs and other bases for calculating the amount of the Incentive, and all related matters required, for the purposes of clause 18,having regard to:
 - (iv) the Initial Delivery Phase Fee Proposal and, in the case of the adjustment (if any) to the Management Fee, Contractor's Work Fee (Delivery), Milestone Fee Payment Schedule and the Schedule of Rates;
 - (v) the budgetary limitations and requirements of RTA notified to the Contractor under clause 6.2(b)(iii)A;
 - (vi) the paramount importance to RTA of balancing between minimising both the cost and time to achieve Completion of the Works (on the one hand) and maximising the scope of the Works to be delivered, the extent to which the WOL Objectives are furthered in the design and construction of the Works and cost certainty for RTA (on the other hand);
 - (vii) demonstrably maximising value for money for RTA and complying with the NSW Procurement Policy;
 - (viii) without limiting subparagraph (vii), all opportunities for cost savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the other requirements of

the Contract, including the insurer through whom the Construction Risks Insurance is to be effected; and

- (ix) all other relevant considerations, arising out of, reasonably incidental to or to be inferred from the considerations in subparagraphs (iv) - (viii), which the Contract Administrator may from time to time notify to the Contractor in writing.
- (b) If agreement on all of the matters in subparagraphs (i) - (iii) of paragraph (a) is reached by the Date for Planning Phase Agreement, then the Contract Administrator will record the agreement in Proposed Contract Particulars (Delivery Phase).
- (c) If agreement on all the matters in subparagraphs (i) - (iii) of paragraph (a) is not reached and recorded in Proposed Contract Particulars (Delivery Phase) by the Date for Planning Phase Agreement, then RTA may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B.

6.5 Other Planning Phase Obligations

- (a) In addition to design development under clause 6.1, cost planning under clause 6.2 and programming under clause 6.3, the Contractor must:
 - (i) take all reasonable steps to ensure that the Planning Phase Milestones are achieved by the relevant Planning Phase Milestone Dates;
 - (ii) do all such things or tasks as may be required to be done as part of the Contractor's Work (Planning) before the Date of Planning Phase Agreement; and
 - (iii) do all such other things or tasks as may be necessary to achieve Planning Phase Agreement and provide RTA with such other assistance as the Contract Administrator may require in connection with the Contractor's Activities or the Works, before the Date for Planning Phase Agreement.
- (b) In addition to its other obligations under this Contract, the Contractor must do all such things or tasks as may be:
 - (i) necessary to achieve Planning Phase Approval, including provide RTA with such assistance and attend such meetings as the Contract Administrator may require in writing for the purpose of obtaining Planning Approval; and
 - (ii) required to be done as part of the Contractor's Work (Planning), before the Date for Planning Phase Approval.
- (c) If:
 - (i) a Planning Phase Milestone is not achieved by the relevant Planning Phase Milestone Date, or the Contractor does not comply with paragraph (a)(ii) or (a)(iii), then RTA may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(ii)A or B; and
 - (ii) the Contractor does not comply with paragraph (b)(i) or (b)(ii), then RTA may (in its absolute discretion) elect to issue a notice under clause 6.6(a)(iii)B.

- (d) By no later than the Date for Planning Phase Agreement:
 - (i) the parties must agree on all details to be included in the Contract Particulars (Delivery Phase) to be executed in accordance with paragraph (f); and
 - (ii) the Contract Administrator will prepare the Proposed Contract Particulars (Delivery Phase) setting out the details referred to in subparagraph (i).
- (e) If any amendments are required to the Proposed Contract Particulars (Delivery Phase) as a result of fulfilling any of the requirements for Planning Phase Approval referred to in paragraph (a) to (c), then the Contractor must undertake genuine and good faith negotiations with the Contract Administrator to reach agreement on any such amendments.
- (f) The parties must execute the Contract Particulars (Delivery Phase) (incorporating the amendments (if any) agreed in accordance with paragraph (e)):
 - (i) subject to subparagraph (ii), on the date required by the Contract Administrator after the date upon which Planning Phase Approval is obtained; or
 - (ii) if RTA issues a notice under clause 6.6(a)(ii)B - by the date stated in the notice.

6.6 Planning Phase Agreement and Approval

- (a) RTA must:
 - (i) if Planning Phase Agreement is achieved, issue a written notice to the Contractor stating the date upon which Planning Phase Agreement was achieved;
 - (ii) if Planning Phase Agreement has not been achieved, issue a written notice so advising the Contractor and:
 - A. stating that clause 6.7(d) does not apply; or
 - B. stating the date from which and to the extent to which clause 6.7(d) is to apply;
 - (iii) after a notice has been issued under subparagraph (i):
 - A. if Planning Phase Approval is achieved, issue a written notice to the Contractor stating the date upon which Planning Phase Approval was achieved; and
 - B. if Planning Phase Approval has not been achieved, issue a written notice so advising the Contractor.
- (b) If RTA issues a notice under paragraph (a)(ii)B or (a)(iii)A, then:
 - (i) the parties will immediately upon the issue of the notice be deemed to have:
 - A. terminated the Contract; and

B. entered into a new contract, on the same terms as this Contract as amended by the Contract Particulars (Delivery Phase) (and from that point in time (other than in subparagraph A) references to "Contract" will be references to that new contract on those amended terms), under which the Contractor will complete (to the extent not completed during the Planning Phase) the design of, commence, construct, commission, complete and handover the Works;

(ii) RTA must give the Contractor sufficient access to the Site to allow it to commence execution of the Works on the later of:

- A. the date for access to the Site specified in the notice;
- B. the Contractor having provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.5(i) that the Contractor has effected the insurances then required in accordance with clause 5.5; and
- C. the satisfaction of the conditions precedent to access set out in the Contract Particulars,

and, subject to other provisions of the Contract affecting access, continue to allow the Contractor to have sufficient access to the Site to enable it to carry out the Contractor's Activities; and

(iii) the Contractor must:

- A. immediately commence to carry out the remainder of the Contractor's Activities; and
- B. commence execution of the Works on the later of the dates under subparagraph (ii).

(c) The Contractor acknowledges that:

- (i) it will have no entitlement to complete (to the extent not completed in the Planning Phase) the design of, commence, construct, commission, complete and handover any part of the Works during the Delivery Phase unless RTA issues a notice under paragraph (a)(ii)B or (a)(iii)A; and
- (ii) the splitting of the Contractor's Activities into the Planning Phase and the Delivery Phase is solely for the benefit of RTA, to enable RTA (in its absolute discretion) to ascertain whether it will maximise value for money for RTA and otherwise further the considerations referred to in clauses 6.2(b)(iii) and 6.3(c)(iv), and the rights and obligations of the parties and the functions of the Contract Administrator are to be construed accordingly.

(d) RTA may, in RTA's absolute discretion, at any time and from time to time, by written notice to the Contractor unilaterally extend:

- (i) a Planning Phase Milestone Date;
- (ii) the Date for Planning Phase Agreement; or

- (iii) the Date for Planning Phase Approval.
- (e) Neither an extension of a Planning Phase Milestone Date, the Date for Planning Phase Agreement or the Date for Planning Phase Approval under paragraph (d), nor the issue of a notice under paragraph (a)(ii)A or (a)(iii)B, will:
 - (i) limit or affect the Contractor's obligations or liabilities under this Contract or prejudice the right of RTA to exercise any right or remedy (including recovery of damages, whether while electing to keep the Contract on foot or after termination) which it may have where the Contractor breaches the Contract, whether under the Contract or otherwise according to law; or
 - (ii) entitle the Contractor to bring a Claim against RTA.
- (f) The Contractor acknowledges that any Act of Prevention which prevents Planning Phase Agreement being achieved by the Date for Planning Phase Agreement or Planning Phase Approval being achieved by the Date for Planning Phase Approval including:
 - (i) finalisation of the Planning Phase Design Documentation as required under clause 6.1(e) by the Date for Planning Phase Agreement;
 - (ii) finalisation of a cost plan which is approved by the Contract Administrator as required under clause 6.2(a) by the Date for Planning Phase Agreement;
 - (iii) finalisation of a program which is approved by the Contract Administrator as required under clause 6.3(b) by the Date for Planning Phase Agreement;
 - (iv) agreement on all the matters in clause 6.4(a)(i)-(iii) as required under clause 6.4(a) by the Date for Planning Phase Agreement;
 - (v) achievement of a Planning Phase Milestone by the relevant Planning Phase Milestone Date; or
 - (vi) Planning Approval and all other Approvals being obtained by the Date for Planning Phase Approval,will not:
 - (vii) entitle the Contractor to bring a Claim against RTA; or
 - (viii) limit or affect any right of RTA or the Contract Administrator, including the right of RTA to elect not to proceed with the Contractor to deliver the Works or to issue a notice under paragraphs (a)(ii) or (a)(iii)B,whether on the basis that the obligation to finalise, agree, achieve or obtain the relevant matter has become an obligation to finalise, agree, achieve or obtain the relevant matter within a reasonable time or on any other basis at law or in equity.
- (g) The Contractor acknowledges that:
 - (i) an absolute discretion in the Contract Administrator or RTA under this clause 6 is not required to be exercised for the benefit of the Contractor;

- (ii) neither the Contract Administrator nor RTA is bound to exercise any such absolute discretion in any particular manner or having regard to any particular consideration notwithstanding that such considerations might be stated in this Contract;
- (iii) no provision of clause 6 conferring such an absolute discretion gives the Contractor any rights (including any right to make any Claim arising out of the exercise or failure to exercise the discretion); and
- (iv) the exercise or failure to exercise such an absolute discretion is not capable of being the subject of a dispute or difference for the purpose of clause 15.1 or otherwise subject to review.

6.7 Failure to Achieve Planning Phase Agreement or Approval

If RTA issues a notice under clause 6.6(a)(ii)A, 6.6(a)(ii)B or 6.6(a)(iii)B, then:

- (a) subject to paragraph (d), the Contractor will:
 - (i) have no entitlement to complete (to the extent not completed in the Planning Phase) the design of, commence, construct, commission, complete or handover any part of the Works;
 - (ii) be entitled to payment of the

Reimbursable Costs due and payable for the Contractor's Activities completed in accordance with the Contract before issue of the relevant notice; and
 - (iii) not be entitled to payment of any portion of the Management Fee or the Contractor's Work Fee (Delivery) or to make any Claim (to the extent permitted by law) against RTA arising out of, or in any way in connection with, the relevant notice, this Contract, the Contractor's Activities or the Works other than for the amount payable under subparagraph (ii);
- (b) subject to paragraph (d), the Contractor must:
 - (i) immediately hand over to RTA copies (or, where required by the Contract Administrator, originals) of all Project Documents prepared by the Contractor to the date of issue of the relevant notice (whether complete or not);
 - (ii) immediately take all steps necessary to novate to RTA any of the Subcontractors required by the Contract Administrator to be novated; and
 - (iii) co-operate with RTA and any third parties required by the Contract Administrator, and take all other steps necessary, to ensure that RTA is able to re-tender or procure the execution of the Works under paragraph (c)(i);
- (c) subject to paragraph (d), RTA may:
 - (i) re-tender the execution of the Works (whether with or without obtaining a tender from the Contractor) or procure the execution of the Works in any other manner which RTA may determine; and

- (ii) without limiting the licence granted under clause 6.13, use the Project Documents for the purposes of re-tendering or procuring the execution of the Works under subparagraph (i);
- (d) RTA may (in its absolute discretion) waive the requirement that the Contractor achieve Planning Phase Agreement and Planning Phase Approval before designing, constructing and commissioning certain parts of the Works, in its notice under clause 6.6(a)(ii)B, in which case:
 - (i) each such part of the Works will be a Stage as identified in the notice;
 - (ii) the relevant provisions of the Contract will apply to each Stage as if it were the only work included in the Contractor's Activities and the Works; and

the Target Cost, Target Date, Target Reimbursable Costs, Management Fee, Contractor's Work Fee (Delivery) and Milestone Fee Payment Schedule will be as agreed by the parties and recorded by the Contract Administrator in the Contract Particulars (Delivery Phase) to be executed by the parties in accordance with clause 6.5(f); and
- (e) unless the parties come to an agreement under clause 6.7(d) within 14 days of the issue of the notice under clause 6.6(a)(ii)A, 6.6(a)(ii)B or 6.6(a)(iii)B (as the case may be), the Contract will be terminated.

6.8 Delivery Phase Design Documentation

- (a) After the Date of Planning Phase Approval the Contractor must:
 - (i) design the Works in accordance with the Brief, the Planning Phase Design Documentation and the other requirements of this Contract and for this purpose (but without limitation) prepare all relevant Delivery Phase Design Documentation;
 - (ii) be responsible for co-ordinating the work of its design subcontractors, including by providing and directing all necessary personnel to administer, supervise, inspect, coordinate and control these subcontractors in a manner and at a rate of progress so that the Contractor complies with its obligations under subparagraph (iii);
 - (iii) conduct design reviews at each of the design review milestones as identified in the DCAP; and
 - (iv) submit the Delivery Phase Design Documentation it prepares to the Contract Administrator in accordance with the documentation program approved by the Contract Administrator under clause 6.3(e).
- (b) The Contract Administrator may:
 - (i) review any Delivery Phase Design Documentation, or any resubmitted Delivery Phase Design Documentation, prepared and submitted by the Contractor; and
 - (ii) within the number of days set out in the Contract Particulars of the submission by the Contractor of such Delivery Phase Design Documentation or resubmitted Delivery Phase Design Documentation,

reject the Delivery Phase Design Documentation and provide reasons why it is rejected.

- (c) If any Delivery Phase Design Documentation is rejected, the Contractor must address the reasons for rejection given by the Contract Administrator and must submit amended Delivery Phase Design Documentation to the Contract Administrator.
- (d) The Contractor must not:
 - (i) issue any Subcontract Tender Documentation to tenderers for; or
 - (ii) commence construction of,

any part of the Works to which Delivery Phase Design Documentation which it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars to review the Delivery Phase Design Documentation and has not rejected the Delivery Phase Design Documentation.

6.9 No Obligation to Review

- (a) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the Planning Phase Design Documentation or Delivery Phase Design Documentation submitted by the Contractor for errors, omissions or compliance with the Contract.
- (b) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any Planning Phase Design Documentation or Delivery Phase Design Documentation prepared by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of RTA in relation to, the Planning Phase Design Documentation or Delivery Phase Design Documentation will:
 - (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law; or
 - (ii) prejudice RTA rights against the Contractor whether under the Contract or otherwise according to law.

6.10 Copies of Design

For the purposes of clauses 6.1(a)(vi) and (c) and 6.8(a)(iv) and (c), the Contractor must submit or resubmit to the Contract Administrator the number of copies specified in the Contract Particulars of any Planning Phase Design Documentation or Delivery Phase Design Documentation in:

- (a) hard copy; and
- (b) electronic copy,

in each case in accordance with the requirements set out in the Contract Particulars.

6.11 Fitness for Purpose

The Contractor warrants that:

- (a) the Planning Phase Design Documentation and Delivery Phase Design Documentation it prepares will be fit for their intended purpose; and
- (b) upon Completion, the Works or each Stage will be fit for their intended purpose as stated in or reasonably ascertainable from the Brief.

6.12 Availability

The Contractor must keep available for the use of the Contract Administrator, RTA and any person authorised by either the Contract Administrator or RTA:

- (a) on the Site, one complete set of the Brief, all Planning Phase Design Documentation and Delivery Phase Design Documentation and all other Project Documents directed in writing by the Contract Administrator; and
- (b) at any area off-Site where the Contractor's Activities are being carried out, one complete set of each of those items specified in paragraph (a) insofar as they are relevant to the Contractor's Activities being carried out in that area.

6.13 Licence over Project Documents

The Contractor grants to RTA a perpetual, royalty-free, irrevocable, non-exclusive, worldwide licence to exercise all rights of the owner of the Intellectual Property Rights in the Project Documents, including to use, re-use, reproduce, communicate to the public, modify and adapt any of the Project Documents.

This licence:

- (a) arises, for each Project Document, immediately the Project Document is:
 - (i) produced; or
 - (ii) provided, or required to be provided, to RTA or the Contract Administrator,under, for the purposes of or in connection with the Contract, the Contractor's Activities or the Works by, for or on behalf of the Contractor;
- (b) includes an unlimited right to sub-licence;
- (c) without limitation, extends to:
 - (i) any subsequent operation, maintenance or servicing of, or additions, alterations or repairs to the Works; and
 - (ii) use or adaptation in any way for any other RTA project; and
- (d) survives the termination of this Contract on any basis.

6.14 Intellectual Property Warranties

The Contractor warrants that:

- (a) the Contractor owns all Intellectual Property Rights in the Project Documents or, to the extent that it does not, is entitled to grant the assignments and licences contemplated by this Contract;
- (b) use or adaptation by RTA or any sublicensee or subsublicensee of the Project Documents in accordance with this Contract will not infringe the rights (including Intellectual Property Rights and Moral Rights) of any third party;
- (c) neither RTA nor any sublicensee or subsublicensee is liable to pay any third party any licence or other fee in respect of the use or adaptation of the Project Documents, whether by reason of Intellectual Property Rights or Moral Rights of that third party or otherwise; and
- (d) the use or adaptation by RTA or by any sublicensee or subsublicensee of the Project Documents in accordance with this Contract will not breach any laws (including any laws in respect of Intellectual Property Rights and Moral Rights).

6.15 Intellectual Property Rights

- (a) The Contractor must:
 - (i) ensure that the Contractor's Activities do not infringe any patent, registered design, trade mark or name, copyright, Moral Rights or other protected right; and
 - (ii) indemnify RTA against any claims against, or costs, losses or damages suffered or incurred by, RTA 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, Moral Rights or other protected right.
- (b) The Contractor must ensure that it obtains a perpetual irrevocable written consent, for the benefit of RTA and the Contractor, from the author of any artistic work to be incorporated into, or used during the design, construction or maintenance of, the Works, including any necessary consents from its employees and any consultants engaged by it, to:
 - (i) any non attribution or false attribution of authorship 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.

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

6.16 Resolution of Ambiguities

If there is any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any Planning Phase Design Documentation (which the Contractor is entitled to use for the purposes of preparing the Delivery Phase Design Documentation under clause 6.1(d)), Delivery Phase Design Documentation (which the Contractor is entitled to use for tender or construction purposes under clause 6.8(d)) or any other Project Document:

- (a) the order of precedence in the Contract Particulars will apply;

- (b) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Planning Phase Design Documentation, Delivery Phase Design Documentation or any other Project Document, the higher standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Contract will prevail;
- (c) if it is discovered by the Contractor or the Contract Administrator, then the party discovering it must promptly give notice to the other; and
- (d) the Contract Administrator must instruct the Contractor as to the course it must adopt within 7 days of the notice under paragraph (c).

6.17 DCAP

The Contractor:

- (a) warrants that:
 - (i) the DCAP complies with the requirements of this Contract;
 - (ii) preparation of the Planning Phase Design Documentation and Delivery Phase Design Documentation in accordance with the DCAP will ensure that the Planning Phase Design Documentation and Delivery Phase Design Documentation comply with the requirements of this Contract and that the Contractor otherwise discharges its obligations under the Contract; and
 - (iii) construction in accordance with the DCAP will ensure that the Works achieve Completion in accordance with, and will otherwise enable the Contractor to discharge its obligations under, the Contract;
- (b) acknowledges that the DCAP:
 - (i) does not limit the Contractor's obligations under this Contract; and
 - (ii) may require updating and refining throughout the execution of the Contractor's Activities:
 - A. to the extent that it does not reflect all the tasks and other things to be done or provided to perform the Contractor's Activities in accordance with the Contract; and
 - B. without limiting subparagraph A, on account of Variations;
- (c) must update and refine the DCAP as required by paragraph (b)(ii) with the written approval of the Contract Administrator;
- (d) will not be entitled to bring any Claim against RTA arising out of or in connection with any work which the Contractor is required to carry out arising out of or in connection with paragraph (b) or (c); and
- (e) acknowledges that RTA has not made and does not make any representation or give any warranty as to any of the matters referred to in subparagraphs (i) - (iii) of paragraph (a).

6.18 Access to Project Documents

The Contractor must:

- (a) at the request of the Contract Administrator at any time during the execution of the Contractor's Activities and the period of 10 years following the issue of a Notice of Completion for the Works (or, if RTA issues a notice under clause 6.6(a)(ii)A or 6.6(a)(iii)B, 10 years following the issue of that notice):
 - (i) make the Project Documents available for inspection and copying by the Contract Administrator or any other person nominated by the Contract Administrator;
 - (ii) provide to the Contract Administrator such copies of the Project Documents as the Contract Administrator may require;
 - (iii) provide all such facilities and assistance and answer all such questions which may be required to enable the Contract Administrator or any nominated persons to identify the amounts being (or proposed to be) incurred or expended by the Contractor in performing the Contractor's Activities; and
 - (iv) make available any officers, employees, agents or subcontractors for interviews with the Contract Administrator or any nominated persons;
- (b) as a condition precedent to Completion of each Stage or the Works, deliver to the Contract Administrator a copy of the installed version of each item of software incorporated in that Stage or the Works, in a storage medium reasonably satisfactory to RTA, together with a copy of all documentation, including licence terms, warranty terms and operating manuals associated with each item of such software; and
- (c) ensure that its subcontractors comply with the requirements of paragraphs (a) and (b) to the extent required by the Contract Administrator.

6.19 Cost Control

The Contractor must:

- (a) use its best endeavours to ensure that it achieves Completion of the Works so that the Contract Price does not exceed the Target Cost;
- (b) without limiting paragraph (a), review the Cost Plan with the Contract Administrator as the preparation of the Delivery Phase Design Documentation proceeds, to:
 - (i) ensure that the cost of construction of the design is in accordance with the Cost Plan; and
 - (ii) advise the Contract Administrator how the design should or can be modified to ensure that the cost of the design is in accordance with the Cost Plan;
- (c) without limiting paragraph (a), institute a system of cost control and, together with the Contract Administrator, review and, where approved by the Contract Administrator, amend the Cost Plan to take account of any item affecting or likely

to affect any component of the Cost Plan, and advise the Contract Administrator as to the alternative steps available where:

- (i) the tenders for any part of the Reimbursable Work exceed the amount included for that work in the Cost Plan; or
- (ii) the Reimbursable Costs incurred under any Approved Subcontract Agreement exceed (or appear likely to exceed) the amount allowed for that particular Approved Subcontract Agreement in the Cost Plan.

6.20 Design Certification

Without limiting the Contractor's obligations, the Contractor must, with each payment claim under clause 12.2 and as a condition precedent to Completion of the Works or a Stage (as the case may be) provide the Contract Administrator with:

- (a) a certificate in the form of the Contractor Design Certificate which certifies that (to the extent then applicable):
 - (i) the Planning Phase Design Documentation or the Delivery Phase Design Documentation (as the case may be) complies with:
 - A. subject to clause 2.3(g), all Statutory Requirements; and
 - B. the requirements of the Contract; and
 - (ii) the Works comply or the Stage complies (as the case may be) with the Delivery Phase Design Documentation which the Contractor is entitled to use for construction purposes under clause 6.8(d); and
 - (b) a corresponding certificate from each subcontractor that performs design work forming part of the Contractor's Activities in the form of the Consultant Design Certificate which certifies that (to the extent then applicable):
 - (i) all design carried out by that subcontractor complies with:
 - A. subject to the subcontract, all Statutory Requirements; and
 - B. the requirements of the subcontract; and
 - (ii) the Works comply or the Stage complies (as the case may be) with the design carried out by that subcontractor,
- except to the extent set out in such certificates.

6.21 Samples

- (a) The Contractor must:
 - (i) obtain each sample or range of samples required by the Contract; and
 - (ii) submit the sample or range of samples it obtains to the Contract Administrator:
 - A. in the Planning Phase - in accordance with the documentation program approved by the Contract Administrator under clause 6.3(a); or

B. in the Delivery Phase - in accordance with the program approved by the Contract Administrator under clause 6.3(e), as updated with the approval of the Contract Administrator under clause 10.2.

- (b) The Contract Administrator may:
- (i) review the sample or range of samples, or any resubmitted sample or range of samples, submitted by the Contractor; and
 - (ii) within the number of days set out in the Contract Particulars of the submission of such sample or range of samples or resubmitted sample or range of samples, reject the sample or range of samples and if so must provide reasons for the rejection.
- (c) If any sample or range of samples is rejected, the Contractor must submit an amended or substituted sample or range of samples to the Contract Administrator.
- (d) The Contractor must not:
- (i) issue any Subcontract Tender Documentation to tenderers for; or
 - (ii) commence construction of,

any part of the Works to which the sample or range of samples which it has submitted to the Contract Administrator applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars to review the sample or range of samples and has not rejected the sample or samples.
- (e) The Contract Administrator does not assume or owe any duty of care to the Contractor to review, or in reviewing, the sample or range of samples submitted by the Contractor for errors, omissions or compliance with the Contract.
- (f) No review of, comments upon, consent to or rejection of, or failure to review or comment upon or consent to or reject, any sample or range of samples submitted by the Contractor or any other direction by the Contract Administrator about, or any other act or omission by the Contract Administrator or otherwise by or on behalf of RTA in relation to, the sample or range of samples will:
- (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Contract or otherwise according to law; or
 - (ii) prejudice RTA's rights against the Contractor whether under the Contract or otherwise according to law.
- (g) Without limiting paragraphs (e) or (f), any failure by the Contract Administrator to reject a sample will bind RTA in respect of the aesthetic qualities of the sample (but not its functionality or performance).

7. Site

7.1 Contractor to Inform Itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that it has made sufficient allowances in the amounts comprising the Contract Price to protect it against any of these risks eventuating.

7.2 Site Information

Without limiting clause 7.5:

- (a) RTA has made available to the Contractor, before the Award Date, certain information, data and documents which were obtained by RTA for the purposes of the Works from investigations it carried out as to the conditions on, in, under or in the vicinity of the Site;
- (b) RTA does not warrant, guarantee or make any representation about the accuracy or adequacy of any such information, data and documents made available to the Contractor;
- (c) the Contractor acknowledges that such information, data and documents do not form part of the Contract and that clause 7.5 applies to the information, data and documents; and
- (d) to the extent permitted by law, RTA will not be liable upon any Claim by the Contractor arising out of, or in any way in connection with, that information, data and documents.

7.3 Site Access

- (a) RTA:
 - (i) is not obliged to:
 - A. provide the Contractor with sole access to the Site; or
 - B. carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Contractor's Activities;
 - (ii) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor; and
 - (iii) must use reasonable endeavours to ensure that any Other Contractors engaged by RTA comply with the reasonable requirements of the Contractor as to matters concerning industrial relations, site safety, noise levels, insurance and hours of working.
- (b) RTA is not obliged to provide the Contractor with access to the Site during the Planning Phase unless:
 - (i) the Site Management Plan has been finalised under clause 9.2;
 - (ii) the Contractor has provided the Contract Administrator with evidence satisfactory to the Contract Administrator under clause 5.5(i) that the Contractor has effected the insurances then required in accordance with clause 5.5;

- (iii) the Contractor has submitted a request in writing to the Contract Administrator during the Planning Phase for access to the Site; and
- (iv) the Contractor has otherwise satisfied the conditions precedent to access set out in the Contract Particulars (Planning Phase),

in which event, RTA must give the Contractor such access to the Site during the Planning Phase as is necessary to enable the Contractor to commence and progress investigations and design work for the purpose of preparing the Planning Phase Design Documentation.

7.4 Contractor's Obligation to Provide Access

In carrying out the Contractor's Activities, the Contractor must:

- (a) minimise disruption or inconvenience to RTA and any person authorised by RTA or the Contract Administrator to occupy, use or attend upon the Site in their occupation or use of, or attendance upon, any part of the Site, including any occupation or use of a part of the Works or a Stage under clause 13.5;
- (b) at all reasonable times give RTA, the Contract Administrator and any person authorised by either RTA or the Contract Administrator access to the Works, the Site or any areas off-Site where the Contractor's Activities are being carried out; and
- (c) provide RTA and the Contract Administrator with every reasonable facility necessary for the supervision, examination and testing of the Contractor's Activities.

7.5 Non-Reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by RTA or anyone on behalf of RTA; or
 - (ii) the accuracy or adequacy of any such information, data, representation, statement or document,

for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;

- (b) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that RTA has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

7.6 Road occupancy

- (a) Where any Contractor's Activities will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the M5 East Motorway, the Contractor must obtain a Road Occupancy Licence from the RTA Transport Management Centre, through the operator of the M5 East Motorway under the DCOM Deed.

- (b) .Where any Contractor's Activities will or is likely to obstruct or have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any other road for which RTA is the roads authority, the Contractor must obtain a Road Occupancy Licence from the RTA Transport Management Centre directly.
- (c) A Road Occupancy Licence will not be issued by RTA when traffic volumes are likely to exceed the capacity of the M5 East Motorway. This may occur during the times specified in the Contract Particulars (Delivery Phase).
- (d) The Contractor must not undertake any Contractor's Activities, which has the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any lane or shoulder of the M5 East Motorway:
 - (i) without a Road Occupancy Licence;
 - (ii) outside of the permitted times stated in the Road Occupancy Licence; or
 - (iii) otherwise than in accordance with the terms and conditions of a Road Occupancy Licence,
 and a breach of a term or condition of the Road Occupancy Licence shall constitute a breach of this Contract.
- (e) The Contractor must also liaise with and obtain the approval of the New South Wales Police Service in relation to any proposed lane or shoulder closures.

7.7 Contract Administrator's directions

Notwithstanding any Road Occupancy Licence issued by the Contract Administrator for any lane or shoulder closure, the Contract Administrator may at any time direct the Contractor to temporarily cease any Contractor's Activities and to reopen the lane or shoulder.

7.8 Not Used

7.9 Control of Traffic

The Contractor:

- (a) is responsible for the control, direction and protection of all traffic in any way affected by the carrying out of the Contractor's Activities;
- (b) must manage all such traffic to ensure:
 - (i) its continuous, safe and efficient movement;
 - (ii) the traffic carrying capacity of local roads is maintained, except where the Contractor obtains a Road Occupancy Licence pursuant to clause 7.6; and
 - (iii) that any delays and disruptions to traffic and the movement of traffic are kept to an absolute minimum;
 - (iv) must at all times comply with the Contractor's Traffic Management Plan and Safety Plan and the requirements of the Brief in respect of traffic management and safety; and
 - (v) must comply with the directions of any relevant Authority and the Contract Administrator with respect to such management.

7.10 Notice of Latent Conditions

If the Contractor considers it has encountered or found a Latent Condition, it must immediately give the Contract Administrator notice in writing, giving full details of:

- (a) the Latent Condition encountered or found;
- (b) the effect on the Contractor's Activities;
- (c) the delay (if any) to progress of the Contractor's Activities; and
- (d) any other relevant matters.

The Contract Administrator may request the Contractor to provide any further information relating to the circumstances of the Latent Conditions encountered or found.

8. Reimbursable Work

8.1 Restrictions on Reimbursable Work

- (a) Reimbursable Work must, unless otherwise agreed by the Contract Administrator in writing, be performed under Approved Subcontract Agreements which will be made between the Contractor and Subcontractors in accordance with:
 - (i) the procedure in this clause 8;
 - (ii) if the Contract Administrator gives the Contractor a written direction to that effect, the relevant procedure in the DCAP; or
 - (iii) a Subcontractor Deed of Novation executed pursuant to clause 8.35(a).
- (b) The Contractor must not include any of the work which forms part of the Contractor's Work (Planning) or the Contractor's Work (Delivery) in the scope of any part of the Reimbursable Work.
- (c) The Contractor must ensure that all Subcontract Tender Documentation is prepared and all tender processes for Reimbursable Work are conducted:
 - (i) in accordance with NSW Procurement Policy and all other NSW requirements and policies;
 - (ii) on terms which maximise value for money for RTA; and
 - (iii) with the highest standards of probity, fairness and equal opportunity and in accordance with the Tendering Probity Plan.

8.2 Subcontract Proposal

The Contractor must:

- (a) advise RTA and the Contract Administrator on (and obtain the consent of the Contract Administrator to) how the Reimbursable Work should be divided into packages for the purposes of facilitating the calling of tenders for Subcontractors;
- (b) before inviting tenders for the performance of Reimbursable Work by Subcontractors, issue a document titled "Subcontract Proposal" to the Contract Administrator for approval which will set out particulars of:

- (i) the part of the Reimbursable Work to be the subject of the tender;
 - (ii) the amount included for this work in the Cost Plan;
 - (iii) how the Contractor will ascertain the tender list for the part of the Reimbursable Work to be the subject of the tender, including:
 - A. if an expression of interest process is to be used - details of the criteria (with weightings) for the assessment of each expression of interest; or
 - B. if an expression of interest process is not to be used - details of, and justification for the manner in which the tender list will be established;
 - (iv) how the Contractor will select the preferred tenderer including details of the criteria (with weightings) for the assessment of tenders;
 - (v) the method of delivery for the work;
 - (vi) if the Contractor proposes to enter into an Approved Subcontract Agreement based upon conditions of subcontract other than the GC21 Subcontract, details of the proposed conditions of subcontract; and
 - (vii) the proposed date for calling of tenders and for tender responses;
- (c) subject to paragraph (d), for the purposes of paragraph (b)(iii), if the tender list is to be ascertained by an expression of interest process, do all things necessary to carry out the expression of interest process including:
- (i) preparing and arranging advertising;
 - (ii) preparing and distributing briefing documents;
 - (iii) evaluating responses from prospective tenderers; and
 - (iv) making a recommendation to the Contract Administrator for the purposes of clause 8.4;
- (d) obtain the prior written approval of the Contract Administrator to all advertisements and briefing documents prior to requesting expressions of interest; and
- (e) pay for all advertising (local, State, Territory and national) in respect of all expressions of interest. The Contractor will not be entitled to payment or reimbursement of any such costs by RTA (whether as Reimbursable Costs or otherwise).

8.3 Subcontract Tender Documentation

After the Contract Administrator has approved the Subcontract Proposal, the Contractor must:

- (a) prepare the Subcontract Tender Documentation and submit a copy of it to the Contract Administrator for approval at least 21 days before tenders are to be invited; and
- (b) subsequently amend the Subcontract Tender Documentation as required by the Contract Administrator.

8.4 Tendering

The Contractor must:

- (a) subject to subparagraph (c)(ii), recommend to the Contract Administrator those persons which in the Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
- (b) subject to subparagraph (c)(ii), subsequently finalise the tender list in consultation with the Contract Administrator who may (acting reasonably and in consultation with the Contractor) remove or add any person from or to the tender list subject to the Contractor not making a reasonable objection to any person which the Contract Administrator may remove from or add to the tender list;
- (c) call tenders from:
 - (i) subject to subsubparagraph (ii), the persons in the tender list finalised with the Contract Administrator; or
 - (ii) for those design disciplines listed in the Contract Particulars - the persons listed in the Contract Particulars,in sufficient time to avoid delays or disruption to the progress of the Works; and
- (d) if so requested by the Contract Administrator, promptly provide a copy of each tender to the Contract Administrator.

8.5 Consideration of Tenders

The Contractor must:

- (a) examine and analyse all tenders received;
- (b) recommend to the Contract Administrator which tenderer, if any, should be accepted by the Contractor; and
- (c) submit together with any such recommendation:
 - (i) an evaluation report detailing the Contractor's assessment of tenders against the evaluation criteria;
 - (ii) the work to be covered and executed under the proposed subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3;
 - (iii) the time for commencement and completion of that work and confirmation that these times are in accordance with the then current program under clause 10.2;
 - (iv) the proposed subcontract price (including any amount allowed for contingency) and the amounts tendered by other tenderers;
 - (v) any proposed amendments to the subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3;
 - (vi) the proposed tenderer's contact details;

- (vii) if any Statutory Requirement in the State or Territory in which the Works are situated requires that a person be registered or licensed to carry out that part of the work, evidence to the satisfaction of the Contract Administrator that the proposed tenderer is so registered or licensed;
- (viii) if requested by the Contract Administrator, a Subcontractor Deed of Covenant or Consultant Deed of Covenant (as the case may be), duly completed with all relevant particulars and executed by the Contractor and the proposed tenderer; and
- (ix) any other details which may be reasonably required by the Contract Administrator.

No Subcontractor Deed of Covenant or Consultant Deed of Covenant will be construed in any way to modify or limit any of the rights, powers or remedies of RTA against the Contractor whether under the Contract or otherwise.

8.6 Post Tender Negotiations

If required by the Contract Administrator, the Contractor must conduct post-tender negotiations with the tenderers, which must, if the Contract Administrator so requires, be held in the presence of the Contract Administrator.

8.7 Subcontracts

The Contract Administrator will consider the recommended tenderer and (acting reasonably and in consultation with the Contractor) approve or disapprove the Contractor's recommendation. If the Contract Administrator approves the Contractor's recommended tenderer, the Contractor must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:
 - (i) the subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3 with only such amendments as the Contract Administrator may have approved in writing; and
 - (ii) the subcontract price approved by the Contract Administrator; and
- (b) if required by the Contract Administrator, provide the Contract Administrator with a copy of the executed subcontract agreement including the Planning Phase Design Documentation or Delivery Phase Design Documentation relevant to that agreement.

Without limiting paragraph (a)(i), the Contractor must ensure that each subcontract contains provisions which bind the subcontractor to participate in any novation required by RTA under clause 14.5(a)(ii).

8.8 Procedure on Disapproval

If the Contract Administrator disapproves the Contractor's recommended tenderer and the Contract Administrator directs the Contractor to accept the tender of another tenderer, provided that the Contract Administrator has acted reasonably and provided reasons, the Contractor must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:

- (i) the subcontract agreement contained in the Subcontract Tender Documentation approved by the Contract Administrator under clause 8.3 with only such amendments as the Contract Administrator may have approved in writing; and
- (ii) the subcontract price approved by the Contract Administrator; and
- (b) if required by the Contract Administrator, provide the Contract Administrator with a copy of the executed subcontract agreement including the Planning Phase Design Documentation or Delivery Phase Design Documentation relevant to that agreement.

8.9 Subcontractor Warranties

As a condition precedent to Completion of the Works or any Stage specified in the Contract Particulars, and without limiting section 3.2(d) of the Brief, the Contractor must use best endeavours to procure and provide RTA with the warranties described in the Contract Particulars:

- (a) from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty;
- (b) in favour of, and directly enforceable by, RTA against the relevant subcontractor; and
- (c) on the best available terms obtainable from the relevant subcontractor.

No warranty from a subcontractor will be construed in any way to modify or limit any of the rights, powers or remedies of RTA against the Contractor whether under the Contract or otherwise.

If the Contractor is unable to or fails for any reason to provide any warranty from a subcontractor required by this Contract:

- (d) RTA will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and
- (e) for the purpose of paragraph (d), the Contractor irrevocably appoints RTA as its lawful attorney to execute any instrument necessary to give effect to the assignment.

No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of against the Contractor whether under the Contract or otherwise.

8.10 Co-ordination of Subcontractors

The Contractor must:

- (a) administer, supervise, inspect, co-ordinate and control the work of all subcontractors engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the Approved Subcontract Agreements and all subcontractors engaged by it;

- (c) appoint a duly qualified person to exercise the functions of the Contractor's Representative under the Approved Subcontract Agreements and otherwise ensure the Approved Subcontract Agreements are administered in accordance with:
 - (i) the terms of the Approved Subcontract Agreements; and
 - (ii) the directions of the Contract Administrator; and
- (d) at all times co-ordinate the Contractor's Activities and ensure execution and completion of the Approved Subcontract Agreements in a proper and workmanlike manner according to:
 - (i) the Delivery Phase Design Documentation which the Contractor is entitled to use for construction purposes under clause 6.8(d); and
 - (ii) the obligations of the respective subcontractors.

8.11 Work under Approved Subcontract Agreements not to be varied

The Contractor must:

- (a) not vary the work which is the subject of an Approved Subcontract Agreement unless:
 - (i) the Contract Administrator has provided the Contractor with a Variation Order in accordance with clause 11.2 and that Variation Order relates directly to the work the subject of the Approved Subcontract Agreement; or
 - (ii) the Contractor makes a written request to the Contract Administrator to authorise it to issue a direction to a Subcontractor to vary the work, and the Contract Administrator gives written consent to this request; and
- (b) indemnify RTA from any costs, expenses, losses or damages suffered or incurred by RTA arising out of or in any way in connection with any variation to the work which is the subject of an Approved Subcontract Agreement other than as provided for under paragraph (a).

8.12 Subcontractor's Compliance with Statutory Requirements

The Contractor must ensure that all subcontractors comply with all Statutory Requirements, including in relation to occupational health and safety.

8.13 Responsibility for Subcontractors

- (a) The Contractor will:
 - (i) not be relieved from any of its liabilities or obligations under the Contract including those under clause 2.3; and
 - (ii) remain responsible for all subcontractors and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any subcontractors default or otherwise fail to observe or comply with the requirements of the relevant subcontract,
- despite:

- (iii) subcontracting any part of the Contractor's Work (Planning), the Contractor's Work (Delivery) or the Reimbursable Work;
 - (iv) any comments upon, consent to or review, approval or disapproval of:
 - A. a Subcontract Proposal under clause 8.2; or
 - B. a tenderer recommended by the Contractor under clause 8.5(b),
 by RTA or the Contract Administrator;
 - (v) RTA listing the persons from whom tenders are to be obtained under clause 8.4(c)(ii) for the design disciplines listed in the Contract Particulars;
 - (vi) any direction by the Contract Administrator under clause 8.7 to accept the tender of a tenderer other than that recommended by the Contractor;
 - (vii) being required to accept a novation of the agreements between RTA and the Selected Subcontractors under clause 8.35; or
 - (viii) any other act or omission of RTA or the Contract Administrator in connection with the subcontracting of any part of the Contractor's Work (Planning), Contractor's Work (Delivery) or the Reimbursable Work.
- (b) Subject to clauses 8.13(c) and 8.14 but otherwise without limitation, if the Contractor terminates an Approved Subcontract Agreement, the Contractor must:
- (i) complete the work the subject of the terminated Approved Subcontract Agreement; and
 - (ii) bear the extra costs incurred by the Contractor in completing this work, and such costs will not form part of the Reimbursable Costs, except to the extent that they do not exceed the amount of Reimbursable Costs which would have been payable under the terminated Approved Subcontract Agreement.
- (c) Where the Contractor terminates an Approved Subcontract Agreement in circumstances where the relevant Subcontractor was not the tenderer recommended by the Contractor pursuant to clause 8.5(b):
- (i) the Contractor must complete the work the subject of the terminated Approved Subcontract Agreement;
 - (ii) the costs incurred in completing this work will be Reimbursable Costs (provided the definition of Reimbursable Costs applies); and
 - (iii) the Target Reimbursable Costs will be increased by any amount by which the Reimbursable Costs under paragraph (ii) exceed the amount of Reimbursable Costs which would have been payable under the terminated Approved Subcontract Agreement had the Approved Subcontract Agreement not been terminated.

8.14 Subcontractor Insolvency

Where an Insolvency Event occurs in relation to a Subcontractor, the Contractor must:

- (a) promptly notify the Contract Administrator of this fact; and
- (b) if the Contractor terminates the Approved Subcontract Agreement:
 - (i) promptly notify the Contract Administrator of this; and
 - (ii) engage another person as Subcontractor in accordance with this clause 8 to complete the work the subject of the terminated Approved Subcontract Agreement.

8.15 Reimbursable Work by Contractor or Related Body Corporate

The Contractor or a Related Body Corporate of the Contractor may not itself carry out any part of the Reimbursable Work unless:

- (a) the express written approval of the Contract Administrator is obtained;
- (b) the Contractor and the Contract Administrator agree in writing upon a fixed price (or other agreed basis for payment) for the work prior to the Contractor or the Related Body Corporate of the Contractor commencing the work; and
- (c) in the case of the Enabling Work, the Contractor must undertake genuine and good faith negotiations with the Contract Administrator to reach agreement, in the Contract Administrator's absolute discretion, as to the adjustment (if any) required to the initial price set out in the Contract Particulars.

8.16 Tendering probity

The Contractor must:

- (a) appoint an independent probity auditor to monitor and audit the tender processes for Reimbursable Work;
- (b) prepare the Tendering Probity Plan in accordance with clause 9.2;
- (c) carry out the tender processes for Reimbursable Work:
 - (i) so as to ensure the probity and competitiveness of the tender process; and
 - (ii) in accordance with the Tendering Probity Plan;
- (d) procure that the Contractor's probity auditor prepares a draft Probity Report which either:
 - (i) confirms that to the best knowledge of the Contractor's probity auditor, having made all reasonable enquiries:
 - A. the Tenderer has carried out the tender processes for Reimbursable Work in accordance with the Tendering Probity Plan; and
 - B. they are not aware of any fact, matter, circumstance or thing concerning, arising out of or in any way in connection with the tender process which might adversely affect, or create the perception of adversely affecting, the probity or competitiveness of the tender process (other than those which RTA has been previously notified of); or

- (ii) if there are any circumstances which preclude the Contractor's probity auditor from confirming (without qualification) those matters, confirms those matters to the extent possible, and provides full details of the circumstances which preclude them from confirming those matters (without qualification); and
- (e) comply with any direction by the Contract Administrator or RTA's probity auditor concerning the probity and competitiveness of the tender processes for Reimbursable Work.

The Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of any direction of the Contract Administrator or RTA's probity auditor concerning the probity and competitiveness of the tender process for Reimbursable Work.

8.17 Description of Works

Subject to clause 6.16, the Contractor must construct the Works in accordance with:

- (a) any Delivery Phase Design Documentation prepared by the Contractor in accordance with the requirements of the Contract, and which the Contractor is entitled to use for construction purposes under clause 6.8(d);
- (b) any direction of the Contract Administrator given or purported to be given under a provision of the Contract, including any Variation directed by the Contract Administrator by a document titled "Variation Order"; and
- (c) the other requirements of the Contract.

8.18 Statutory Requirements

The Contract Particulars describe the Approvals which exist at the Award Date or which RTA will obtain after the Award Date.

In carrying out the Contractor's Activities, the Contractor must:

- (a) comply with all applicable Statutory Requirements (as set out in clause 2.3(g)(i));
- (b) without limiting paragraph (a):
 - (i) apply for and obtain all Approvals (as set out in clause 2.3(g)(ii)); and
 - (ii) give all notices and pay all fees and other amounts which it is required to pay in respect of the carrying out of its Contract obligations; and
- (c) promptly give the Contract Administrator copies of all documents (including Approvals and other notices) that any authority, body or organisation having jurisdiction over the Works or the carrying out of the Contractor's Activities issues to the Contractor.

8.19 Change in Statutory Requirements or Variance with Contract

If:

- (a) there is any change in a Statutory Requirement after the Date of Planning Phase Approval; or
- (b) a Statutory Requirement is at variance with the Contract,

then:

- (c) the party discovering this must promptly notify the other;
- (d) the Contract Administrator will instruct the Contractor as to the course it is to adopt insofar as the Contractor's Activities are affected by the change or variance (as the case may be); and
- (e) the Contractor's Work Fee (Delivery) will be:
 - (i) increased by any extra costs reasonably incurred by the Contractor; or
 - (ii) decreased by any saving made by the Contractor,

in carrying out the Contractor's Work (Delivery) after the giving of the notice under paragraph (c) and arising directly from the change or variance (as the case may be) or the Contract Administrator's instruction, in either case as determined by the Contract Administrator in accordance with clause 11.3(a)(iii)B or C.

8.20 Co-operation with Other Contractors

The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;
- (c) carefully co-ordinate and interface the Contractor's Activities with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Contractor's Activities so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8.21 Setting Out

The Contractor must:

- (a) set out the Works in accordance with the requirements of the Contract; and
- (b) carry out any survey which may be necessary for this purpose.

8.22 Survey

The Contractor must:

- (a) as a condition precedent to Completion of the Works or of any Stage specified in the Contract Particulars, submit to the Contract Administrator a certificate signed by a licensed surveyor stating that:
 - (i) the whole of the Works or the Stage are within any particular boundaries stipulated in the Contract except only for parts of the Works or Stage specifically required by the Contract to be outside those boundaries; and
 - (ii) where so required by this Contract, structural elements of the Works or the Stage are within the tolerances specified; and

- (b) ensure that all work required under paragraph (a) is performed under Approved Subcontract Agreements and must not include any allowance in the Contractor's Work Fee (Delivery) or Management Fee for such work.

8.23 Safety

- (a) The Contractor must carry out the Contractor's Activities safely and so as to protect persons and property.
- (b) If the Contract Administrator reasonably considers there is a risk of injury to people or damage to property arising from the Contractor's Activities, the Contract Administrator may direct the Contractor to change its manner of working or to cease working.

8.24 Occupational Health, Safety and Rehabilitation Management

- (a) The Contractor is responsible for and must comply with the requirements of the Contract for occupational health and safety, subject to the express provisions of the *Occupational Health and Safety Act 2000* and the Occupational Health and Safety Regulation 2001. This includes, without limitation, compliance with the NSW Government "Occupational Health and Safety Management Systems Guidelines".
- (b) RTA hereby appoints the Contractor as principal contractor for the Works and authorises the Contractor to exercise such authority of RTA as is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor by the Occupational Health and Safety Regulation 2001.
- (c) At least 14 days before starting design and construction the Contractor must document, submit and implement an occupational health and safety management plan which complies with the Occupational Health & Safety Regulation 2001 and the NSW Government "Occupational Health and Safety Management Systems Guidelines".
- (d) The Contractor must systematically manage its occupational health and safety management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- (e) The Contractor must demonstrate to RTA whenever requested, that it has met and is meeting at all times its obligations under clauses 8.24(a) - 8.24(d).

8.25 Plant, Equipment and Work

The Contractor must not remove from the Site any material Plant, Equipment and Work without the Contract Administrator's prior written approval except for the purpose of achieving Completion as contemplated under clause 8.26(b).

8.26 Cleaning Up

The Contractor must:

- (a) in carrying out the Contractor's Activities, keep the Site and the Works clean and tidy and free of refuse;
- (b) as a condition precedent to Completion of the Works and each Stage, remove all rubbish, materials and Plant, Equipment and Work from the part of the Site relevant to the Works or the Stage; and

- (c) ensure that all work required under paragraph (b) is performed under Approved Subcontract Agreements and must not include any allowance in the Contractor's Work Fee (Delivery) or Management Fee for such work.

8.27 The Environment

The Contractor must:

- (a) ensure that in carrying out the Contractor's Activities:
 - (i) other than to the extent identified in writing by the Contract Administrator, it complies with all Statutory Requirements and other requirements of the Contract for the protection of the Environment;
 - (ii) it does not cause any Environmental Incident;
 - (iii) without limiting subparagraph (ii), it does not cause or contribute to Contamination of the Site or any other land, air or water, or cause or contribute to any Contamination emanating from the Site;
 - (iv) it immediately notifies the Contract Administrator of:
 - A. any non-compliance with the requirements of this clause 8.27;
 - B. a breach of any Statutory Requirement for the protection of the Environment;
 - C. any Environmental Incident; or
 - D. the receipt of any notice, order or communication received from an authority for the protection of the Environment; and
 - (v) its subcontractors comply with the requirements referred to in this clause 8.27; and
- (b) clean up and restore the Environment, including any Contamination or Environmental Harm, arising out of, or caused by the Contractor's Activities, whether or not it has complied with all Statutory Requirements or other requirements of the Contract for the protection of the Environment.

8.28 Urgent Protection

RTA may take any action necessary to protect the Works, other property, the Environment or people which the Contractor must take but does not take.

8.29 Valuable Objects Found on Site

Any things of value or archaeological or special interest found on or in the Site will, as between the parties, be the property of RTA.

Where such an item is found the Contractor must:

- (a) immediately notify the Contract Administrator;
- (b) protect it and not disturb it further; and
- (c) comply with any instructions of the Contract Administrator in relation to the item.

The reasonable extra costs incurred by the Contractor in complying with its obligations under paragraphs (a) - (c) will be determined by the Contract Administrator, in accordance with clause 11.3(a)(iii)B or C, and added to the Contractor's Work Fee (Delivery).

The Target Cost will be increased by the amount by which the Contractor's Work Fee (Delivery) is increased.

8.30 RTA May Act

RTA may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses and damages suffered or incurred by RTA in so carrying out such a Contract obligation will be a debt due from the Contractor to RTA.

8.31 Working Hours

Unless otherwise agreed in writing between the Contractor and the Contract Administrator, the hours of work applicable to the Contractor's Activities to be carried out on Site are those set out in the Contract Particulars.

8.32 Salvaged Materials

Subject to clause 8.29, unless expressly stated to the contrary in the Contract or directed by the Contract Administrator, all materials, plant, equipment, fixtures and other things salvaged from the Site or from the Works are the property of the Contractor.

8.33 Measurements and Dimensions

Without limiting clause 8.21:

- (a) the Contractor must obtain and check all relevant measurements and dimensions on Site before proceeding with the Contractor's Activities;
- (b) the layout of plant, equipment, ductwork, pipework and cabling shown in the Brief (if any) is to be taken as diagrammatic only and all measurements and dimension information concerning the Site required to carry out the Contractor's Activities must be obtained and checked by the Contractor; and
- (c) RTA will not be liable upon any Claim by the Contractor resulting from the Contractor's failure to obtain and check measurements and dimension information concerning the Site as required by this clause.

8.34 Community relations

The Contractor:

- (a) acknowledges that the areas where the Contractor's Activities are being carried out are of great importance to many people; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
 - (i) contained in the Community Involvement Plan; or
 - (ii) reasonably required by RTA from time to time.

8.35 Novation of Selected Subcontractors

The Contractor agrees that it will accept a novation of the agreements between RTA and the Selected Subcontractors on a date nominated by the Contract Administrator and must:

- (a) execute a Subcontractor Deed of Novation (completed with all relevant particulars) for each Selected Subcontractor;
- (b) deliver those deeds to RTA on the date nominated by the Contract Administrator; and
- (c) thereafter have the Selected Subcontractors carry out the relevant work or provide the equipment or materials.

8.36 Target Cost adjustment for provisional Filtration Plant Costs

The Target Reimbursable Costs will be adjusted by the difference between:

- (a) the amount allowed in the Target Reimbursable Costs for the subcontract price for the Filtration Plant Costs; and
- (b) the subcontract price for the Target Reimbursable Costs approved by the Contract Administrator under clause 8.7(a)(ii).

In addition, the Management Fee will be adjusted by an amount equal to 15% of any adjustment to the Target Reimbursable Costs as a result of this clause.

9. Quality

9.1 Construction

The Contractor must in carrying out the Contractor's Activities:

- (a) use workmanship:
 - (i) of:
 - A. the standard prescribed in the Contract; or
 - B. to the extent it is not so prescribed, a standard consistent with the best industry standards for work of a nature similar to the Works and which is at least to the same standard as that found in the development referred to in the Contract Particulars; and
 - (ii) which is fit for its purpose;
- (b) use materials:
 - (i) which:
 - A. comply with the requirements of the Contract; or
 - B. if not fully described in the Contract, are new and consistent with the best industry standards for work of a nature similar to the Works and which are at least to the same standard as those found in the development referred to in the Contract Particulars; and

- (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Works; and
- (c) comply with the requirements of the Contract and, to the extent they are not inconsistent, the requirements of the Building Code of Australia and all relevant standards of Standards Australia.

9.2 Project Plans

- (a) The Contractor:
 - (i) must carry out the Contractor's Activities in accordance with, and otherwise implement, the Project Plans; and
 - (ii) for the purposes of subparagraph (i), must:
 - A. prepare draft Project Plans based on the outline approach to preparing the Project Plans and performing the Contractor's Activities to be covered by the Project Plans, submitted by the Contractor in its tender for the Contractor's Activities, and otherwise in accordance with the requirements of the Contract and submit them to the Contract Administrator no later than the number of days set out in the Contract Particulars after the Award Date;
 - B. not commence any of the Contractor's Activities to which any Project Plan applies, unless the Contract Administrator has had the number of days set out in the Contract Particulars to review the draft Project Plans and has not rejected them;
 - C. if any draft Project Plan is rejected and the Contract Administrator provides reasons for the rejection, submit an amended draft of the Project Plan to the Contract Administrator which addresses those reasons;
 - D. in any event, finalise each Project Plan in accordance with the requirements of the Contract to the satisfaction of the Contract Administrator by the Date for Planning Phase Agreement;
 - E. after the Project Plans have been finalised, continue to correct any defects in or omissions from a Project Plan (whether identified by the Contract Administrator or the Contractor) and submit an amended draft of the Project Plan to the Contract Administrator, after which subparagraphs A-D will apply (to the extent applicable); and
 - F. document and maintain detailed records of inspections or audits undertaken as part of any Project Plan.
- (b) The Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of:
 - (i) the implementation of, and compliance with, the requirements of any Project Plan;

- (ii) any direction by the Contract Administrator concerning a Project Plan or the Contractor's compliance or non-compliance with a Project Plan;
- (iii) any audit or other monitoring by the Contract Administrator of the Contractor's compliance with a Project Plan; or
- (iv) any failure by the Contract Administrator, or anyone else acting on behalf of RTA, to detect any defect in or omission from a Project Plan including where any such failure arises from any negligence on the part of the Contract Administrator or other person.

9.3 Contract Administrator's Right to Inspect

The Contract Administrator may at any time inspect the Contractor's Activities.

The Contractor however acknowledges that:

- (a) the Contract Administrator owes no duty to the Contractor to:
 - (i) inspect the Contractor's Activities; or
 - (ii) review construction for errors, omissions or compliance with the requirements of this Contract if it does so inspect; and
- (b) no inspection of the Contractor's Activities or review of construction by the Contract Administrator will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations whether under this Contract or otherwise according to law; or
 - (ii) RTA's rights against the Contractor whether under this Contract or otherwise according to law.

9.4 Testing

The Contractor must carry out all tests required by the Contract or directed by the Contract Administrator.

All tests are to be carried out in accordance with any procedure:

- (a) set out in the Contract which may apply to the tests; or
- (b) if no procedure exists, as reasonably directed by the Contract Administrator.

9.5 Costs of Testing

If:

- (a) the Contract Administrator directs the Contractor to carry out a test which:
 - (i) is not otherwise required by the Contract; or
 - (ii) does not relate to a Defect in respect of which the Contract Administrator gave an instruction under clause 9.6; and
- (b) the results of the test show the work is in accordance with the Contract,

the reasonable costs incurred by the Contractor in carrying out the test will be determined by the Contract Administrator as a Variation in accordance with clause 11.3(a)(i) and (iii).

9.6 Defects

Subject to paragraphs (b) and (c), the Contractor must correct all Defects.

If, prior to the expiration of the Defects Liability Period for the Works or a Stage, the Contract Administrator discovers or believes there is a Defect, the Contract Administrator may give the Contractor an instruction specifying the Defect and doing one or more of the following:

- (a) requiring the Contractor to correct the Defect, or any part of it, and specifying the time within which this must occur;
- (b) requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out; or
- (c) advising the Contractor that RTA will accept the work, or any part of it, despite the Defect.

9.7 Correction of Defect or Variation

If an instruction is given under clause 9.6(a) or (b), the Contractor must correct the Defect or carry out the Variation:

- (a) within the time specified in the Contract Administrator's instruction; and
- (b) if after Completion, at times and in a manner which cause as little inconvenience to the occupants of the Works or the Stage as is reasonably possible.

9.8 Claim for Correction of Defect

Where an instruction is given under clause 9.6(a):

- (a) the Contractor will only be entitled to make a Claim for correcting the Defect (or the relevant part) if the Defect (or the relevant part) is something for which the Contractor is not responsible; and
- (b) where the Contractor is so entitled to make a Claim, the work involved in the correction of the Defect will be treated as if it were a Variation the subject of a direction by the Contract Administrator and clause 11.3 applied.

9.9 Claim for Variation

Where a Variation has been instructed under clause 9.6(b) and:

- (a) the Contractor is not responsible for the Defect (or the relevant part) - the cost of the Variation will be valued in accordance with clause 11.3; or
- (b) the Contractor is responsible for the Defect (or the relevant part):
 - (i) the Contract Administrator will determine:
 - A. the value of the Variation in accordance with clause 11.3; and
 - B. the cost of correcting the Defect (or the relevant part) as if clause 9.8(b) applied; and

- (ii) the difference between the valuations under subparagraph (i) will be dealt with as follows:
 - A. if the value under subparagraph (i)A is greater than the cost under subparagraph (i)B, the Contractor will be entitled to the excess; or
 - B. if the value under subparagraph (i)B is greater than the cost under subparagraph (i)A, the difference will be a debt due from the Contractor to RTA.

9.10 Acceptance of Work

If:

- (a) an instruction is given under clause 9.6(c) prior to the expiration of the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part),

the amount determined by the Contract Administrator which represents the cost of correcting the Defect (or the relevant part) will be a debt due from the Contractor to RTA.

9.11 Extension of Defects Liability Period

If:

- (a) the Contract Administrator gives the Contractor an instruction under clause 9.6(a) or (b) during the Defects Liability Period; and
- (b) the Contractor is responsible for the Defect (or the relevant part),

the Defects Liability Period will be extended for the work required by the instruction by the period set out in the Contract Particulars, commencing upon completion of the correction of the Defect (or the relevant part) or completion of the Variation.

9.12 Common Law Rights not Affected

Neither RTA's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law in respect of Defects, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon RTA or Contract Administrator by this clause 9 or any other provision of the Contract;
- (b) the failure by RTA or the Contract Administrator to exercise any such rights; or
- (c) any instruction of the Contract Administrator under clause 9.6.

9.13 Commissioning and Handover

Without limiting the Contractor's obligations or liabilities, or RTA's or the Contract Administrator's rights under clause 13, the Contractor must:

- (a) fully co-operate with Other Contractors and otherwise to take all steps necessary to ensure:

- (i) the timely, efficient and comprehensive commissioning of the Works;
and
 - (ii) the smooth handover of the Works to, and the initial occupation of the Works by, RTA;
- (b) without limiting paragraph (a) in consultation with the Contract Administrator, provide RTA with such specific assistance as may be required by the Contract Administrator to facilitate the timely, efficient and comprehensive commissioning of the Works and the smooth handover of the Works to RTA;
 - (c) as a condition precedent to Completion, hand to the Contract Administrator or any Other Contractor or other person nominated by the Contract Administrator all documents which are required for the use, operation and maintenance of the Works or the relevant Stage; and
 - (d) as and when reasonably required by the Contract Administrator, meet with the Contract Administrator and such Other Contractors or other persons as are nominated by the Contract Administrator with a view to ensuring that RTA and the nominated Other Contractors or other persons have sufficient information to enable the nominated Other Contractors or other persons to:
 - (i) operate the Works;
 - (ii) maintain the Works; or
 - (iii) perform such other activities as may be required by RTA in respect of the Works.

9.14 Co-ordination during Defects Liability Period

The Contractor acknowledges that it is aware that during the Defects Liability Period for the Works or each Stage in rectifying Defects it will be required to co-ordinate its activities with the maintenance carried out under the DCOM Deed.

9.15 Defects Liability Period Review and Report

- (a) Without limiting clause 9.6, the Contractor must maintain adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects during the Defects Liability Period.
- (b) Within 14 days of the end of the Defects Liability Period for the Works or a Stage, the Contractor must provide a report to the Contract Administrator in a form satisfactory to the Contract Administrator which sets out:
 - (i) adequate records of all calls, attendances, recommendations and actions taken in respect of all Defects;
 - (ii) recommendations for the future maintenance of the Works; and
 - (iii) any other matters specified in the Contract Particulars or required by the Contract Administrator.

10. Time

10.1 Progress and Time for Completion

The Contractor must:

- (a) regularly and diligently progress the Contractor's Activities; and
- (b) use its best endeavours to achieve Completion of the Works or each Stage by the relevant Target Date.

10.2 Programming

The Contractor must:

- (a) ensure that all programs prepared by the Contractor under the Contract contain the details required by the Contract or which the Contract Administrator otherwise reasonably directs;
- (b) update the Program periodically, at least at intervals of no less than that specified in the Contract Particulars, to take account of:
 - (i) changes to the Program; or
 - (ii) delays which may have occurred;
- (c) give the Contract Administrator copies of all programs for approval;
- (d) ensure that the subcontractors adhere to the Program; and
- (e) provide all programs in a format compatible with the software described in the Contract Particulars.

10.3 Contractor Not Relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Contract Administrator will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract, especially (without limitation) the obligation to use its best endeavours to achieve Completion by each Target Date;
- (b) evidence or constitute an instruction by the Contract Administrator to accelerate, disrupt, prolong or vary any or all of the Contractor's Activities; or
- (c) affect the time for the carrying out of RTA's or the Contract Administrator's Contract obligations.

10.4 Adjustment of Target Date and Contractor's Work Fee (Delivery)

- (a) Where:
 - (i) the Contractor demonstrates to the satisfaction of the Contract Administrator that the Contractor has actually been delayed;
 - (ii) the cause of the delay:
 - A. is beyond the control of the Contractor;

B. arises directly out of an Act of Prevention or any other event specified in the Contract Particulars; and

C. was not contributed to by the failure of the Contractor to comply with its obligations under the Contract; and

(iii) the Contractor:

A. within 14 days of the commencement of the delay gives a written notice to the Contract Administrator that in the Contractor's opinion it is entitled to an extension of a Target Date and an adjustment of the Contractor's Work Fee (Delivery) under this clause 10.4; and

B. as soon as reasonably practicable after providing the notice under subparagraph A, provides the Contract Administrator with sufficiently detailed particulars to enable the Contract Administrator to make an informed decision,

then:

(iv) the Target Date will be adjusted in accordance with clause 10.4(b)(i); and

(v) where the cause of the delay was an Act of Prevention or Latent Condition, the Contractor's Work Fee (Delivery) will be adjusted in accordance with clause 10.4(b)(ii).

(b) Subject to clause 10.4(d), if clause 10.4(a) is satisfied:

(i) the Target Date will be extended by a reasonable period determined by the Contract Administrator and notified to RTA and the Contractor; and

(ii) the Contractor's Work Fee (Delivery) will be increased by the amount of extra costs:

A. reasonably incurred by the Contractor as a result of the delay or disruption;

B. less the amount of any costs, expenses or damages suffered or incurred by the Contractor as a result of such delay or disruption which have been included in the value of any Variation or which are otherwise payable to the Contractor under any other provision of the Contract,

as determined by the Contract Administrator in accordance with clause 11.3(a)(iii)B or C.

(c) The amount referred to in clause 10.4(b)(ii) will be a limitation upon RTA's liability to the Contractor for any delay or disruption which:

(i) the Contractor encounters in carrying out the Contractor's Activities; and

(ii) arises out of, or in any way in connection with, an Act of Prevention,

and the Contractor will not be entitled to make, nor will RTA be liable upon, any Claim in these circumstances other than for the adjustment to be made under this clause 10.4.

- (d) The Contract Administrator will reduce any extension to the Target Date it would otherwise have notified to RTA and the Contractor under clause 10.4(b) to the extent that the Contractor:
 - (i) contributed to the delay; or
 - (ii) failed to take all reasonable steps both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

10.5 Suspension

- (a) The Contract Administrator:
 - (i) may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Contractor's Activities; and
 - (ii) is not required to exercise the Contract Administrator's power under subparagraph (i) for the benefit of the Contractor.
- (b) If a suspension under this clause 10.5 arises during the Planning Phase, the Contractor will not be entitled to:
 - (i) include any costs incurred as a result of the suspension in the Reimbursable Costs; or
 - (ii) make any other Claim against RTA arising out of, or in any way in connection with, the suspension.
- (c) To the extent that a suspension under this clause 10.5 arises during the Delivery Phase and as a result of the Contractor's failure to carry out its obligations in accordance with the Contract:
 - (i) the Reimbursable Costs will not include the costs incurred as a result of the suspension;
 - (ii) the Contractor's Work Fee (Delivery) will not be adjusted as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make any other Claim against RTA arising out of, or in any way in connection with, the suspension.
- (d) To the extent that a suspension under this clause 10.5 arises during the Delivery Phase and as a result of a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
 - (i) an instruction to suspend under this clause 10.5 will entitle the Contractor to have the Contractor's Work Fee (Delivery) increased by the amount of extra costs reasonably incurred by the Contractor as a result of the suspension, as determined by the Contract Administrator in accordance with clause 11.3(a)(iii)B or C;
 - (ii) the Contractor must take all reasonable steps to mitigate the extra costs incurred by it as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make any Claim against RTA arising out of, or in any way in connection with, the suspension other than:

- A. under this paragraph (d); or
 - B. for Reimbursable Costs.
- (e) Except to the extent permitted by the relevant Security of Payment Legislation, the Contractor may only suspend the Contractor's Activities when instructed to do so under this clause 10.5.

10.6 Extension of Time in Approved Subcontract Agreements

The Contractor is required to administer the provisions of each Approved Subcontract Agreement strictly in accordance with their terms and must not approve an extension of time or unilaterally grant an extension of time to any Subcontractor unless:

- (a) the Subcontractor is entitled to such extension of time under the terms of the Approved Subcontract Agreement;
- (b) the Contractor has given notice of the proposed extension of time to the Contract Administrator; and
- (c) the Contract Administrator has given written approval to the extension of time.

11. Variations

11.1 Variation Price Request

At any time during:

- (a) the Planning Phase; or
- (b) the Delivery Phase prior to the Date of Completion of the Works or a Stage (but without limiting clauses 5.3 and 9.6),

the Contract Administrator may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which RTA is considering.

The Contractor must immediately take all action required under the relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Variation.

Within 21 days of the receipt of a "Variation Price Request" the Contractor must provide the Contract Administrator with a written notice in which the Contractor sets out:

- (c) the adjustment (if any) to the Contractor's Work Fee (Delivery) (subject to clause 11.9) to carry out the proposed Variation; and
- (d) the effect (if any) that the carrying out of the proposed Variation will have on:
 - (i) the Reimbursable Costs; and
 - (ii) the then approved program, including the achievement of each Target Date.

11.2 Variation Order

Whether or not the Contract Administrator has issued a "Variation Price Request" under clause 11.1, the Contract Administrator may at any time during:

- (a) the Planning Phase; or

- (b) the Delivery Phase prior to the Date of Completion of the Works or a Stage (but without limiting clauses 5.3 and 9.6),

instruct the Contractor to carry out a Variation by a written document titled "Variation Order" in which the Contract Administrator will state one of the following:

- (c) the proposed adjustments to the amounts payable under the Contract as set out in the Contractor's notice under clause 11.1 are agreed and will be made; or
- (d) any adjustment to the Contractor's Work Fee (Delivery) or the Reimbursable Costs (as applicable) amounts payable under the Contract will be determined under clause 11.3.

11.3 Cost of Variation

- (a) Subject to clauses 9.9(b) and 11.8, the amounts payable under the Contract will be adjusted as follows:
 - (i) where the Variation requires more or less Reimbursable Work, the adjustments to the Reimbursable Costs will be valued as follows:
 - A. as agreed under clause 11.2(c);
 - B. if subparagraph A does not apply, in accordance with the rates or prices included in any schedule of rates or schedule of prices under any relevant Approved Subcontract Agreement, if and insofar as the Contract Administrator determines that those rates or prices are applicable to the Variation; or
 - C. if subparagraph B does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Contract Administrator; and
 - (ii) not used; and
 - (iii) where a Variation during the Delivery Phase has a Material Effect, the adjustment to the Contractor's Work Fee (Delivery) will be valued as follows:
 - A. as agreed under clause 11.2(c);
 - B. if subparagraph A does not apply, in accordance with the rates and prices in the Schedule of Rates, if and insofar as the Contract Administrator determines that those rates or prices are applicable; or
 - C. if subparagraph B does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Contract Administrator,

to which will be added or from which will be subtracted the percentage set out in the Schedule of Rates of the amount otherwise calculated under this subparagraph (iii).

- (b) If the Contractor's Work Fee (Delivery) is adjusted under paragraph (a)(iii) or the Management Fee is adjusted under paragraph (e) (as the case may be), then the Milestone Fee Payment Schedule will be adjusted on a pro rata basis:
 - (i) as agreed by the Contractor and the Contract Administrator; or
 - (ii) if not agreed, as reasonably determined by the Contract Administrator.
- (c) Not used.
- (d) The Target Reimbursable Costs will be increased by the sum of the adjustments referred to in clause 11.3(a)(i).
- (e) If the sum of all adjustments to the Target Cost which arise from the increase to the Target Reimbursable Costs pursuant to clause 11.3(d) (**the "Adjustments"**) is greater than 20% of the initial Target Cost then the Contractor will be entitled to be paid by way of additional Management Fee an amount equal to 15% of the amount by which the Adjustments exceed 20% of the original Target Cost.

11.4 Variations Generally

The adjustment determined under clause 11.2 or 11.3 in respect of any Reimbursable Work required for a Variation will be deemed to be in full satisfaction of all Claims in respect of such further work required for the Variation, notwithstanding that the amounts actually payable by the Contractor to relevant Subcontractors in respect of such Reimbursable Work may be more or less than the adjustment.

No Variation will invalidate the Contract irrespective of the nature, extent or value of the work the subject of the Variation.

11.5 Omissions

If a Variation the subject of a direction by the Contract Administrator omits any part of the Works or a Stage, RTA may thereafter carry out this omitted work either itself or by engaging Other Contractors.

11.6 Variations Requested by Contractor

The Contractor may, for its convenience, request the Contract Administrator to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with RTA including the amount;
- (c) any benefits which will flow to RTA from the Variation; and
- (d) the effect which the Variation will have upon the future cost of operating and maintaining the Works.

11.7 Contract Administrator's Determination

After a request is made by the Contractor in accordance with clause 11.6, the Contract Administrator will, in the Contract Administrator's absolute discretion, give a written notice to the Contractor:

- (a) rejecting the request; or

- (b) approving the request either conditionally or unconditionally.

The Contract Administrator will not be obliged to exercise the Contract Administrator's discretion for the benefit of the Contractor.

11.8 Variation Approved by Contract Administrator

If the Contract Administrator issues a written notice under clause 11.7 approving the Contractor's request under clause 11.6:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against RTA arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with RTA, the amounts payable under the Contract (or the methods of determining them) will be reduced or adjusted in accordance with the Contractor's offer; and
- (c) the Contractor will be responsible for all parts of the Works which are in any way affected by the Variation.

11.9 Allowances in Contractor's Work Fee (Delivery)

The Contractor acknowledges and agrees that:

- (a) it is deemed to have made an allowance in its lump sum Contractor's Work Fee (Delivery) for all of the Contractor's Work (Delivery) which may be required during the Delivery Phase, other than additional Contractor's Work (Delivery):
 - (i) arising out of Variations instructed by the Contract Administrator in the Delivery Phase under this clause 11 which have a Material Effect; or
 - (ii) for which the Contractor is entitled to an adjustment under clause 8.19(e), 8.29, 10.4(b)(ii), 10.5(d)(i) or 11.3(a)(iii); and
- (b) it will not be entitled to any increase in the Contractor's Work Fee (Delivery), or to make any other Claim against RTA (other than in respect of Reimbursable Costs or the Management Fee under clause 11.3(e)), arising out of or in connection with any Variation instructed by the Contract Administrator during the Delivery Phase other than an adjustment under clause 11.3(a)(iii) for Variations instructed by the Contract Administrator during the Delivery Phase which have a Material Effect.

12. Payment

12.1 Progressive Payments

Subject to clause 12.15 and to any other right to set-off which RTA may have, RTA will pay the Contractor in progressive payments as follows:

- (a) not used;
- (b) if RTA proceeds to the Delivery Phase - the Reimbursable Costs in monthly instalments based on the Contract value of the Reimbursable Work which has been carried out;
- (c) if RTA proceeds to the Delivery Phase - the:
 - (i) Contractor's Work Fee (Delivery); and

- (ii) Management Fee,
in instalments in accordance with the Milestone Fee Payment Schedule; and
- (d) the Incentive (if any) - in accordance with clause 18.5 and at the times set out in the Contract Particulars (Delivery Phase).

RTA has made separate arrangements with the Contractor for payment for the Contractor's Work (Planning) documented in the letter from RTA to the Contractor dated 29 September 2006 and agreed to by the Contractor on the same date and RTA's further letter dated on or about the Award Date.

12.2 Payment Claims

Subject to the final paragraph of this clause 12.2 and subject to clause 12.3, the Contractor must give the Contract Administrator claims for payment on account of all amounts then payable by RTA to the Contractor under the Contract:

- (a) monthly, at the times stated in the Contract Particulars until Completion or termination of the Contract (whichever is earlier);
- (b) unless terminated earlier, after Completion or the Defects Liability Period (as the case may be) within the time required by clause 12.9 or 12.11 (as the case may be);
- (c) in such format as the Contract Administrator reasonably requires;
- (d) which show separately the amounts (if any) claimed on account of:
 - (i) not used;
 - (ii) the Reimbursable Costs payable to:
 - A. Subcontractors; and
 - B. the Contractor;
 - (iii) the Contractor's Work Fee (Delivery);
 - (iv) the Management Fee; and
 - (v) the Incentive; and
- (e) which set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (i) to enable the Contract Administrator to reasonably determine (without needing to refer to any other documentation or information) the amounts then payable by RTA to the Contractor under the Contract; and
 - (ii) including any such documentation or information which the Contract Administrator may by written notice from time to time reasonably require the Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.

Prior to the issue of a payment claim under this clause 12.2, the Contractor and the Contract Administrator must consultatively consider any relevant payment claims by Subcontractors for Reimbursable Work and agree on a proper assessment of those claims to be included in the payment statement to be issued by the Contractor to each Subcontractor and the amount on

account of Reimbursable Costs payable to Subcontractors to be included in the payment claim under this clause 12.2.

12.3 Conditions Precedent

- (a) The Contractor's entitlement to submit a payment claim under clause 12.2 is conditional upon the Contractor having:
- (i) provided RTA with Approved Security for the amount (if any) required under clause 4.1;
 - (ii) obtained the insurance required by clause 5.5 and (if requested) provided evidence of this to the Contract Administrator;
 - (iii) complied with its programming obligations under clauses 10.2(b), (c) and (e);
 - (iv) complied with clause 12.16; and
 - (v) provided the Contract Administrator with duly executed copies of:
 - A. any Consultant Deed of Covenant that the Contractor is required to obtain under the Contract; and
 - B. the certificates required under clause 6.20.
- (b) If the Contractor has not satisfied the conditions in paragraph (a) at the time of submitting a payment claim, then:
- (i) the payment claim is deemed to have been invalidly submitted under clause 12.2;
 - (ii) the Contract Administrator will not be obliged to include in any payment statement under clause 12.4 any amount included in the payment claim; and
 - (iii) RTA will not be liable to pay any amount included in the payment claim.
- (c) If the Contractor:
- (i) submits a payment claim; and
 - (ii) has failed to comply with the requirements of clause 12.2(e) in relation to any amount (or portion of any amount) claimed in the payment claim,
- then:
- (iii) the Contractor will not be entitled to payment of;
 - (iv) the Contract Administrator will not be obliged to include in any payment statement under clause 12.4; and
 - (v) RTA will not be liable to pay,
- the amount (or the portion of the amount) claimed in the payment claim in relation to which the Contractor has failed to comply with the requirements of clause 12.2(e), unless:

- (vi) the Contract Administrator (in its absolute discretion and without being under any obligation to exercise this discretion for the benefit of the Contractor) issues a written notice to the Contractor identifying the documentation or information which the Contractor has failed to provide under clause 12.2(e); and
- (vii) the Contractor provides that documentation or information to the Contract Administrator within the time required in the Contract Administrator's notice.

12.4 Payment Statements

The Contract Administrator:

- (a) must, within 10 Business Days of receiving a payment claim submitted or purported to be submitted in accordance with clause 12.2 (including the payment claim required by clauses 12.9 and 12.11); or
- (b) may, if the Contractor fails to submit any such claim in accordance with clause 12.2, at any time,

give the Contractor (with a copy to RTA), on behalf of RTA, a payment statement which states:

- (c) the payment claim to which it relates (if any);
- (d) the Contractor's total value of entitlement under the Contract;
- (e) the amount already paid to the Contractor;
- (f) the amount (if any) which the Contract Administrator believes to be then payable by RTA to the Contractor on account of all amounts payable in accordance with the Contract and which RTA proposes to pay to the Contractor; and
- (g) if the amount in paragraph (f) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (f) is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that RTA has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.

Any evaluation, or issue of a payment statement, by the Contract Administrator will not:

- (h) constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works covered by the payment statement has been satisfactorily carried out in accordance with the Contract; or
- (i) constitute a waiver of the requirements of clauses 12.2 and 12.3 in relation to any payment claim other than to the extent (if any) to which RTA expressly waives such requirements in respect of the payment claim the subject of the payment statement.

The amount in paragraph (f) on account of Reimbursable Costs for a Subcontractor must equal any amount agreed between the Contractor and the Contract Administrator pursuant to the final paragraph of clause 12.2 as the proper assessment of any relevant payment claim by the Subcontractor.

12.5 Payment

Within the number of Business Days stated in the Contract Particulars of RTA receiving a payment statement under clause 12.4, RTA will pay the Contractor the amounts set out as then payable in the payment statement.

12.6 Payment on Account

Any payment of moneys under clause 12.5 is not:

- (a) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) approval by RTA or the Contract Administrator of the Contractor's performance or compliance with the Contract,

but is only to be taken as payment on account.

12.7 Unfixed Goods and Materials

Unfixed goods or materials will not be included in the value of work in a payment statement under clause 12.4 unless:

- (a) the Contract Administrator is satisfied (acting reasonably) that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Contractor to comply with its obligations under the Contract;
- (b) the Contractor gives the Contract Administrator with its payment claim under clause 12.2:
 - (i) additional Approved Security equal to the payment claimed for the unfixed goods and materials; and
 - (ii) such evidence as may be required by the Contract Administrator that title to the unfixed goods and materials will vest in RTA upon payment;
- (c) the unfixed goods and materials are clearly marked as the property of RTA and are on the Site or available for immediate delivery to the Site; and
- (d) the unfixed goods and materials are properly stored in a place approved by the Contract Administrator.

Upon payment of a payment statement which includes unfixed goods and materials, title in the unfixed goods and materials will vest in RTA.

12.8 Release of Additional Approved Security

If the Contractor has given RTA additional Approved Security for payment for unfixed goods and materials, RTA must release it to the Contractor once those goods and materials are incorporated into the Works.

12.9 Completion Payment Claim and Notice

Within 56 days (or such longer period agreed in writing by the Contract Administrator) after the issue of a Notice of Completion for the Works or a Stage, the Contractor must give the Contract Administrator:

(a) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from RTA on account of all amounts payable under the Contract; and

(b) notice of any other amounts which the Contractor claims from RTA,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which:

(c) in the case of the Works, occurred prior to the Date of Completion of the Works; or

(d) in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage.

The payment claim and notice required under this clause 12.9 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.10 Release after Completion Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.9 has passed, the Contractor releases RTA 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 or the Contract which:

(a) in the case of the Works, occurred prior to the Date of Completion of the Works; or

(b) in the case of a Stage, occurred prior to the Date of Completion of the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.9 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.9.

12.11 Final Payment Claim and Notice

Within 56 days (or such longer period agreed in writing by the Contract Administrator) after the end of the Defects Liability Period for the Works or a Stage, the Contractor must give the Contract Administrator:

(a) a payment claim which complies with clause 12.2 and which must include all amounts which the Contractor claims from RTA on account of all amounts payable under the Contract; and

(b) notice of any other amounts which the Contractor claims from RTA,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities or the Contract which:

(c) in the case of the Works, occurred during the Defects Liability Period for the Works; or

(d) in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage.

The payment claim and notice required under this clause 12.11 are in addition to the other notices which the Contractor must give to the Contract Administrator under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

12.12 Release after Final Payment Claim and Notice

After the date for submitting the payment claim and notice under clause 12.11 has passed, the Contractor releases RTA 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 or the Contract which:

- (a) in the case of the Works, occurred during the Defects Liability Period for the Works; or
- (b) in the case of a Stage, occurred during the Defects Liability Period for the Stage, insofar as the fact, matter or thing relates to the Stage,

except for any Claim included in a payment claim or notice under clause 12.11 which is given to the Contract Administrator within the time required by, and in accordance with the terms of, clause 12.11.

12.13 Interest

RTA will pay simple interest at the rate stated in the Contract Particulars on any:

- (a) amount which has been set out as payable by the Contract Administrator in a payment statement under clause 12.4, but which is not paid by RTA within the time required by the Contract; and
- (b) damages.

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

12.14 Correction of Payment Statements

The Contract Administrator may, in any payment statement:

- (a) correct any error in any previous payment statement; and
- (b) modify any previous payment statement,

issued by the Contract Administrator.

12.15 Right of Set-Off

RTA may deduct from moneys otherwise due to the Contractor:

- (a) any debt or other moneys due from the Contractor to RTA; and
- (b) any bona fide claim to money which RTA may have against the Contractor whether for damages or otherwise,

relating to the Works or the Contractor's Activities.

12.16 Payment of Workers and Subcontractors

The Contractor must with each payment claim under clause 12.2 provide the Contract Administrator with:

- (a) a statutory declaration, together with any supporting evidence which may be reasonably required by the Contract Administrator, duly signed by a representative of the Contractor who is in a position to know the facts declared, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts and Subcontractors) all Subcontractors have been paid all moneys due and payable to them in respect of the Contractor's Activities;
- (b) a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) and section 31H of the *Pay-Roll Tax Act 1971* (NSW), which is in a form approved by the Contract Administrator, each of which cover the period covered by the relevant payment claim; and
- (c) copies of all relevant certificates of currency in respect of workers compensation insurance which the Contractor has in place in connection with the work under the Contract.

RTA is entitled to withhold from any payment which would otherwise be due to the Contractor under the Contract the amount disclosed as unpaid under this clause 12.16.

12.17 Accounting Records

The Contractor must keep accurate and up to date accounting records including invoices, books of account, labour time sheets, invoices for materials, plant hire, final accounts and any other documents or papers which show all details in relation to:

- (a) the payment referred to in the last paragraph of clause 12.1; and
- (b) Reimbursable Costs incurred or expended by the Contractor.

12.18 Access to Accounting Records

The Contractor must give every assistance to RTA and the Financial Auditor and make available to RTA and the Financial Auditor on an open book basis the accounting records which the Contractor is required to maintain pursuant to clause 12.17.

12.19 GST

- (a) Unless otherwise stated, all amounts set out in this Contract are GST exclusive.
- (b) Subject to paragraphs (c) and (d), where any supply occurs under or in connection with the Contract or the Works for which GST is not otherwise provided, the party making the supply ("**Supplier**") will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (c) Reimbursable Costs payable by the Contractor to Subcontractors will not be reduced for any input tax credits and will be paid in full to the Contractor. In consideration of this, the Contractor is not entitled to any additional amount in respect of GST on those Reimbursable Costs.
- (d) Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Works (other than on account of Reimbursable Costs

payable by the Contractor to Subcontractors) which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (b).

- (e) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (f) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (g) In this clause:
 - (i) "GST" means the tax payable on taxable supplies under the GST Legislation;
 - (ii) "GST Legislation" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation.

12.20 Security of Payment Legislation

- (a) The Contractor agrees with RTA that:
 - (i) a payment claim submitted to the Contract Administrator under clause 12.2 is received by the Contract Administrator as agent for RTA;
 - (ii) unless otherwise notified to the Contractor by RTA in writing, the Contract Administrator will give payment statements and carry out all other functions of RTA under the Security of Payment Legislation as the agent of RTA; and
 - (iii) to the extent permitted by and for the purposes of the Security of Payment Legislation, the "reference dates" are those of the dates prescribed in clause 12.2(a) and (b) on which the Contractor has satisfied the requirements of clause 12.3(a).
- (b) Failure by the Contract Administrator to set out in a payment statement an amount which RTA is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by RTA will not prejudice:
 - (i) the Contract Administrator's ability to set out in a subsequent payment statement an amount which RTA is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by RTA; or

- (ii) RTA's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.
- (c) The Contractor agrees that the amount set out in the payment statement in accordance with clause 12.4(f) is, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of the "progress payment" calculated in accordance with the terms of this Contract, which the Contractor is entitled to in respect of the Contract.
- (d) The Contractor irrevocably chooses the person set out in the Contract Particulars as the "authorised nominating authority" (as that term is defined in the Security of Payment Legislation) for any adjudication application it may make under the Security of Payment Legislation in respect of the subject matter of this Contract.

12.21 PAYG Withholding

- (a) This clause 12.21 applies where:
 - (i) the Contractor is not registered for GST and does not have an ABN;
 - (ii) the parties are bound by a Voluntary Agreement; or
 - (iii) the Subcontractor is a foreign resident within the meaning of the *Taxation Administration Act 2001*.
- (b) Whether or not RTA should bind itself to a Voluntary Agreement at any time may be determined by RTA in its absolute discretion.
- (c) Where this clause 12.21 applies, RTA shall be entitled to withhold from any payment otherwise due to the Contractor under or in connection with this Contract, tax calculated and to be held in accordance with the PAYG Law.
- (d) In this clause 12.21:
 - (i) terms defined by the GST Law and PAYG Law and used (without separate definition) in this clause, shall have the meaning given to them by the GST Law or PAYG Law;
 - (ii) "GST" means goods and services tax or tax equivalents as imposed by the GST Law;
 - (iii) "GST Law" has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act, including any Act or arrangement relating to the operation or administration of a voluntary or notional GST or tax equivalents regime referred to in clause 17 of the Intergovernmental Agreement on the Reform of Commonwealth-State Financial relations dated June 1999;
 - (iv) "PAYG Law" means any Act dealing with or relating to the introduction or administration of the PAYG system referred to in Schedule 1 of the *Taxation Administration Act 2001*;

- (v) **"registered for GST"** means registered as a supplier under the GST Law and in respect of the Contractor, also having provided an ABN to the Principal; and
- (vi) **"tax invoice"** has the meaning given to that term by the GST Law and includes a recipient created tax invoice.

12.22 Disputes with Subcontractors

If a Subcontractor disputes with the Contractor that its entitlement in relation to a Variation directed in writing by the Contract Administrator under clause 11.2 reflects the valuation of the Variation under clause 11.3(a)(i), and the Subcontractor pursues any court action or adjudication application under the Security of Payment Legislation, then:

- (a) the Contractor will be responsible for carriage of the dispute, provided it must:
 - (i) keep the Contract Administrator fully informed of all aspects of the dispute; and
 - (ii) act in accordance with the reasonable instructions of the Contract Administrator; and
- (b) the Contractor's reasonable costs of administering the court action or adjudication application will be Reimbursable Costs.

13. Completion

13.1 Contractor to Notify

- (a) Nothing in this clause 13 limits the Contractor's obligations or liabilities, or RTA's or the Contract Administrator's rights, under clause 9.13.
- (b) The Contractor must give the Contract Administrator written notice 28 days, and then again 14 days, before it anticipates achieving Completion of the Works or a Stage.

13.2 Contract Administrator to Inspect

The Contract Administrator must:

- (a) promptly, and in any event no later than 14 days after receiving the Contractor's notice 14 days before it anticipates achieving Completion of the Works or a Stage under clause 13.1(b) or a notice under paragraph (d) (as the case may be), inspect the Works or the Stage; and
- (b) if:
 - (i) satisfied that Completion has been achieved, issue a notice to RTA and the Contractor:
 - A. stating the date upon which the Contract Administrator determines Completion was achieved; and
 - B. containing a list of any minor Defects of the type described in paragraph (a) of the definition of "Completion" in clause 1.1; or

- (ii) not satisfied that Completion has been achieved, issue a notice so advising the Contractor and RTA.

If the Contract Administrator issues a notice under paragraph (b)(ii), the Contractor must:

- (c) proceed to bring the Works or the Stage to Completion; and
- (d) when it considers it has achieved Completion, give the Contract Administrator written notice to that effect (after which this clause 13.2 will reapply).

13.3 Unilateral Issue of Completion Notice

If at any time a notice required to be given by the Contractor to the Contract Administrator under clause 13.1(b) or 13.2 is not given by the Contractor yet the Contract Administrator is of the opinion that Completion of the Works or a Stage has been achieved, the Contract Administrator may issue a Notice of Completion under clause 13.2(b)(i) for the Works or the Stage.

13.4 Take Over Upon Completion

Upon the issue of a Notice of Completion, the Contractor must:

- (a) hand over the Works or the Stage to RTA; and
- (b) correct all Defects listed in the Notice of Completion as soon as possible.

13.5 Part of the Works or a Stage

- (a) RTA may, after written notice is given to the Contractor by the Contract Administrator, occupy or use any part of the Works or a Stage although the whole of the Works or the Stage has not reached Completion.
- (b) If any such notice is given by the Contract Administrator, RTA must allow the Contractor reasonable access to the part of the Works or the Stage referred to in the notice and being occupied or used by RTA, to enable the Contractor to bring the Works or the relevant Stage of which the area being occupied or used forms part to Completion.
- (c) Without limiting paragraph (a), the Contract Administrator may, at any time during the Delivery Phase by written notice to the Contractor, direct that:
 - (i) any part of the Works or any part of a Stage is to be a new Stage notwithstanding the whole of the Works or the Stage has not reached Completion; and
 - (ii) the Target Date for the new Stage created under subparagraph (i) is to be the date set out in the notice.
- (d) A notice under paragraph (a) or (c) will not limit or affect the obligations of the Contractor under the Contract, including the obligation of the Contractor to use its best endeavours to achieve Completion of the Works or each Stage by the relevant Target Date.

13.6 Effect of Notice of Completion

A Notice of Completion will not:

- (a) constitute approval by RTA of the Contractor's performance of its Contract obligations;
- (b) be taken as an admission or evidence that the Works or the Stage complies with the Contract; or
- (c) prejudice any rights or powers of RTA or Contract Administrator.

14. Termination

14.1 Preservation of Rights

Subject to clause 14.6, nothing in this clause 14 or that RTA does or fails to do pursuant to this clause 14 will prejudice the right of RTA to exercise any right or remedy (including recovering damages) which it may have where the Contractor breaches (including repudiates) the Contract.

14.2 Contractor Default

RTA may give a written notice under clause 14.3 to the Contractor if the Contractor:

- (a) does not commence the Contractor's Activities in accordance with the requirements of the Contract;
- (b) suspends the Contractor's Activities in breach of clause 10.5 or otherwise does not proceed with the Contractor's Activities regularly and diligently;
- (c) fails to provide security as required by clause 4.1;
- (d) fails to comply with any of its obligations under clause 5.5;
- (e) fails to use the materials or standards of workmanship required by the Contract;
- (f) does not comply with any direction of the Contract Administrator made in accordance with the Contract; or
- (g) is otherwise in substantial breach of the Contract.

14.3 Contents of Notice of Default

A notice under this clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the breach relied upon; and
- (c) that RTA requires the Contractor to remedy the breach within the number of days set out in the Contract Particulars of receiving the notice.

14.4 Termination for Insolvency or Breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or

- (b) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within the number of days set out in the Contract Particulars of receiving the notice under clause 14.3,

then RTA may by written notice to the Contractor terminate the Contract.

14.5 RTA's Entitlements after Termination

Subject to clause 14.1, if RTA terminates the Contract under clause 14.4, or if the Contractor repudiates the Contract and RTA terminates the Contract:

- (a) RTA will:
 - (i) be entitled to take over and use, or require the Contractor to remove from the Site, the Plant, Equipment and Work and all materials, equipment and other things intended for the Works;
 - (ii) be entitled to require the Contractor to novate to RTA or RTA's nominee, any or all subcontracts between the Contractor and its subcontractors as required by RTA;
 - (iii) to the extent permitted by the relevant Security of Payment Legislation, not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or a payment statement under clause 12.4; and
 - (iv) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination; and
- (b) the Contractor must immediately hand over to RTA all copies of:
 - (i) documents provided by RTA in connection with the Contractor's Activities; and
 - (ii) Project Documents prepared by the Contractor to the date of termination (whether complete or not).

14.6 Contractor's Entitlements after Termination

If RTA repudiates the Contract and the Contractor terminates the Contract, the Contractor will:

- (a) be entitled to claim an amount determined in accordance with clause 14.8 as if RTA had terminated the Contract under clause 14.7; and
- (b) not be entitled to a quantum meruit.

This clause 14.6 will survive the termination of the Contract.

14.7 Termination for Convenience

Without prejudice to any of RTA's other rights under this Contract, and without being limited by RTA's rights under clause 6, RTA may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in RTA's notice or if no such time is stated, at the time the notice is given to the Contractor; and

- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Works either itself or by engaging Other Contractors.

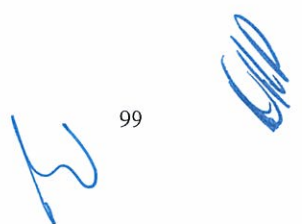
14.8 Costs

If RTA terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Contract Administrator:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for work carried out to the date of termination;
 - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Works for which the Contractor is legally bound to pay provided that:
 - A. the value of the goods or materials is not included in the amount payable under subparagraph (i); and
 - B. title in the goods and materials will vest in RTA upon payment; and
 - (iii) the reasonable cost of removing from the Site all labour, Plant, Equipment and Work and other things used in the Contractor's Activities; and
- (b) must:
 - (i) take all steps possible to mitigate the costs referred to in paragraphs (a)(ii) and (a)(iii); and
 - (ii) immediately hand over to RTA all copies of:
 - A. documents provided by RTA in connection with the Contractor's Activities; and
 - B. Project Documents prepared by the Contractor to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause 14.8 will be a limitation upon RTA's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract (whether under clause 14.7 or deemed to be under clause 14.7 through the operation of clause 14.6(a)) and the Contractor will not be entitled to make any Claim against RTA arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.8.

This clause 14.8 will survive the termination of the Contract by RTA under clause 14.7 or by the Contractor following repudiation by RTA.



15. Disputes

15.1 Notice of Dispute

If a dispute or difference arises between the Contractor and RTA or between the Contractor and the Contract Administrator 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 the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 15.

Where such a dispute or difference arises, either party may give a notice in writing to the Contract Administrator and the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and
- (c) the position which the party believes is correct.

15.2 Expert Determination

If the dispute or difference is in relation to a direction of the Contract Administrator under one of the clauses referred to in the Contract Particulars and is not resolved within 14 days after a notice is given under clause 15.1, the dispute or difference must be submitted to an expert determination.

15.3 The Expert

- (a) The expert determination under clause 15.2 is to be conducted by:
 - (i) the independent industry expert specified in the Contract Particulars; or
 - (ii) where no such independent industry expert is specified or paragraph (b) applies, an independent industry expert appointed by the person specified in the Contract Particulars.
- (b) If the expert appointed under this clause 15.3:
 - (i) is unavailable;
 - (ii) declines to act;
 - (iii) does not respond within 14 days to a request by one or both parties for advice as to whether he or she is able to conduct the determination;
 - (iv) does not enter into the agreement in accordance with clause 15.7(b) within 14 days of his or her appointment under this clause 15; or
 - (v) does not make a determination within the time required by clause 15.6,the jurisdiction of the expert shall lapse and a further expert must be appointed under paragraph (a).
- (c) If there has been an appointment under paragraph (a) and one of the events in paragraph (b) has occurred, the further expert appointed under paragraph (a) shall not be an expert previously appointed under paragraph (a) in respect of the same dispute or difference.

15.4 Not Arbitration

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.5 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

15.6 Conclusion of Expert Determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 28 days from the acceptance by the expert of his or her appointment.

15.7 Agreement with Expert

- (a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (b) The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 8 or such other terms as the parties and the expert may agree.

15.8 Determination of Expert

The determination of the expert:

- (a) must be in writing;
- (b) will be substituted for the relevant direction of the Contract Administrator unless a party gives notice of appeal to the other party within 21 days of receiving such determination in which case, subject to clauses 15.9 and 15.10, any such appeal will be by way of a hearing de novo; and
- (c) will be final and binding, unless a party gives notice of appeal to the other party within 21 days of receiving such determination.

15.9 Executive Negotiation

- (a) If:
 - (i) clause 15.2 applies, and a notice of appeal is given under clause 15.8; or
 - (ii) clause 15.2 does not apply,the dispute or difference is to be referred to the Executive Negotiators.
- (b) The Executive Negotiators must within:
 - (i) 21 days of:

- A. if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - B. otherwise, the notice of appeal given under clause 15.8; or
- (ii) such longer period of time as the Executive Negotiators may agree in writing,

meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference and, if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference (such as mediation or further expert determination).

15.10 Arbitration Agreement

If, within:

- (a) 21 days of:
 - (i) if the dispute or difference is not one which is to be referred to expert determination under clause 15.2, the notice of dispute given under clause 15.1; or
 - (ii) otherwise, the notice of appeal given under clause 15.8; or
 - (b) such longer period of time as the Executive Negotiators may agree in writing, the Executive Negotiators:
 - (c) or either party refuse or fail to meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
 - (d) cannot resolve the dispute or difference; or
 - (e) have not reached agreement upon a procedure to resolve the dispute or difference,
- the dispute or difference will be referred to arbitration by a written notice by either party to the other party.

15.11 Arbitration

- (a) Arbitration pursuant to this clause will be conducted in accordance with the Rules for the Conduct of Commercial Arbitration of The Institute of Arbitrators and Mediators Australia current at the time of the reference to arbitration and as otherwise set out in this clause.
- (b) The seat of the arbitration will be Sydney, Australia and hence the proper law of the arbitration shall be New South Wales.
- (c) Nothing in this clause is intended to modify or vary the rights of appeal contained in the *Commercial Arbitration Act 1984 (NSW)*.
- (d) The parties agree that:
 - (i) they have entered into the arbitration agreement under this clause 15 for the purposes of achieving a just, quick and cheap resolution of any dispute or difference;

- (ii) any arbitration conducted pursuant to this clause will not mimic court proceedings of the seat of the arbitration and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
- (iii) in conducting the arbitration, the arbitrator must take into account the matters set out in subparagraphs (i) and (ii).
- (e) One arbitrator will be appointed.
- (f) All evidence in chief will be in writing unless otherwise ordered by the arbitrator.
- (g) Discovery will be governed by the substantive and procedural rules and practices adopted by the Supreme Court of NSW at the time of arbitration.
- (h) The oral hearing will be conducted as follows:
 - (i) the oral hearing will take place in Sydney, Australia;
 - (ii) the date and duration of the oral hearing will be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in paragraph (d) when determining the duration of the oral hearing;
 - (iii) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
 - (iv) not less than 28 days prior to the date fixed for the oral hearing, each party will give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination; and
 - (v) in exceptional circumstances, the arbitrator may amend the date of hearing and extend the time for the oral hearing set under subparagraph (ii).
- (i) Unless otherwise ordered, each party may only rely upon one expert witness in respect of any recognised area of specialisation.

15.12 Proportional Liability

Notwithstanding anything else, to the extent permissible by law, the expert or the arbitrator (as the case may be) will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any dispute referred to arbitration or expert determination pursuant to this clause.

15.13 Continuation of Contractor's Activities

Despite the existence of a dispute or difference between the parties the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under the Contract.

16. Notices

16.1 Notice of Variation

If a direction by the Contract Administrator, other than a "Variation Order" under clause 11.2, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against RTA arising out of, or in any way in connection with, the direction:

- (a) within 14 days of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Contract Administrator that it considers the direction constitutes or involves a Variation;
- (b) within 21 days after giving the notice under paragraph (a), submit a written claim to the Contract Administrator which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with the Contract and all directions of the Contract Administrator, including any direction in respect of which notice has been given under this clause 16.1.

16.2 Notices of Other Claims

Except for claims for:

- (a) payment under clause 12.2 of any component of the Contract Price; or
- (b) a Variation instructed in accordance with clause 11.2 or to which clause 16.1 applies,

the Contractor must give the Contract Administrator the notices required by clause 16.3 if it wishes to make a Claim against RTA in respect of any direction by the Contract Administrator or any other fact, matter or thing (including a breach of the Contract by RTA) under, arising out of, or in any way in connection with, the Contractor's Activities or the Contract, including anything in respect of which:

- (c) it is otherwise given an express entitlement under the Contract; or
- (d) the Contract expressly provides that:
 - (i) specified costs are to be added to any component of the Contract Price; or
 - (ii) any component of the Contract Price will be otherwise increased or adjusted,

as determined by the Contract Administrator.

16.3 Prescribed Notices

The notices referred to in clause 16.2 are:

- (a) a written notice within 28 days of the first occurrence of the direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and

- (ii) the direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 28 days of giving the written notice under paragraph (a), which must include:
 - (i) detailed particulars concerning the direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

16.4 Continuing Events

If the direction or fact, matter or thing upon which the Claim under clause 16.1(b) or 16.2 is based or the consequences of the direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 28 days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Contract Administrator, until after the direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

16.5 Time Bar

If the Contractor fails to comply with clause 16.1, 16.2, 16.3 or 16.4:

- (a) RTA will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against RTA,

arising out of, or in any way in connection with, the relevant direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

16.6 Other Provisions Unaffected

Nothing in clauses 16.1 - 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Contract Administrator in order to preserve an entitlement to make a Claim against RTA.

16.7 Address for Service

Any notice to be given or served under or arising out of a provision of this Contract must:

- (a) be in writing;
- (b) be delivered by hand, sent by prepaid post or sent by fax, as the case may be, to the relevant address or fax number:
 - (i) stated in the Contract Particulars; or
 - (ii) last notified in writing to the party giving or serving the notice,

for the party to whom or upon which the notice is to be given or served; and

- (c) be signed by the party giving or serving the notice or (on the party's behalf) by the solicitor for or attorney, director, secretary or authorised agent of the party giving or serving the notice.

16.8 Receipt of Notices

A notice given or served in accordance with clause 16.7 is taken to be received by the party to whom or upon whom the notice is given or served in the case of:

- (a) delivery by hand, on delivery;
- (b) prepaid post sent to an address in the same country, on the third day after the date of posting;
- (c) prepaid post sent to an address in another country, on the fifth day after the date of posting; and
- (d) fax, at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent.

17. WOL

17.1 Design and Construction

Without limiting the Contractor's other obligations under the Contract, the Contractor must:

- (a) design the parts of the Works which the Contract requires it to design; and
- (b) construct the Works,

in a manner which:

- (c) complies with the requirements of the WOL Plan; and
- (d) achieves the WOL Objectives.

17.2 Consultation

The Contractor must meet at such times and with such Other Contractors as the Contract Administrator may require from time to time to:

- (a) review the progress of the design and construction of the Works against the WOL Plan and the WOL Objectives; and
- (b) consult with the Contract Administrator and the Other Contractors as to any designs, materials or methods of construction which they might recommend to maximise the achievement of the WOL Objectives.

17.3 WOL Proposals

Without limiting its other Contract obligations, the Contractor must at all times in carrying out the Contractor's Activities:

- (a) use its best endeavours to identify, and recommend to the Contract Administrator, all reasonably available proposals for maximising the achievement of the WOL Objectives; and
- (b) consult with the Contract Administrator as to:
 - (i) proposals which it is considering making under paragraph (a); and
 - (ii) possible proposals under paragraph (a) identified by RTA.

17.4 Reporting

The Contractor must provide the Contract Administrator with a written performance report:

- (a) at each meeting in accordance with clause 3.9(a); and
- (b) in such form and on such matters as the Contract Administrator may require from time to time, including a detailed explanation of the Contractor's compliance with the WOL Plan.

17.5 Post Occupancy Evaluation

The Contract Administrator may:

- (a) at any time carry out (or procure an Other Contractor to carry out) a post occupancy evaluation of the Works; and
- (b) without limiting paragraph (a):
 - (i) inspect the Works to review the extent to which the Contractor has complied with the WOL Plan and otherwise maximised the achievement of the WOL Objectives in the design and construction of the Works; and
 - (ii) issue a report to RTA and the Contractor:
 - A. stating the extent to which the Contractor has complied with the WOL Plan and otherwise maximised the achievement of the WOL Objectives in the design and construction of the Works; and
 - B. containing a list of any aspects of the Works which do not conform with the requirements of the Contract.

The Contractor must consult with the Contract Administrator and Other Contractors, and must provide such other assistance as is necessary, for the purposes of the Contract Administrator carrying out the requirements in paragraphs (a) and (b).

17.6 Rights and Obligations Not Affected

Neither RTA's rights, nor the Contractor's liability, whether under the Contract or otherwise according to law or in equity, whether before or after the expiration of the Defects Liability Period, will be affected or limited by:

- (a) the rights conferred upon RTA or Contract Administrator by this clause 17 or the failure by RTA or the Contract Administrator to exercise any such rights;
- (b) the obligations imposed upon the Contractor by this clause 17 or the Contractor's compliance with those obligations; or

- (c) any direction of the Contract Administrator under or purported to be given under the Contract, including any comment or direction upon or review, acceptance or rejection of:
 - (i) any advice, recommendation or other assistance provided by the Contractor under this clause 17; or
 - (ii) any post occupancy evaluation carried out (including any report prepared and finalised) under clause 17.5.

18. KPIs and Incentive

18.1 Purpose of KPIs

- (a) Clause 18 (other than this paragraph (a)) does not apply unless it is agreed by the parties under clause 6.4 that it applies.
- (b) The Contractor acknowledges that the purpose of the KPIs is to specify quantitative and qualitative assessment mechanisms to enable the parties to measure the performance of the Contractor under the Contract against specified targets for the purpose of calculating the extent to which the Incentive is payable to the Contractor.

18.2 Recording Performance Against KPIs

The Contractor:

- (a) must keep sufficient records of its performance as against the KPIs to enable the Contract Administrator to evaluate the performance of the Contractor under the Contract; and
- (b) acknowledges that the records required to be kept under paragraph (a) will not limit the Contract Administrator's evaluation of the performance of the Contractor under the Contract and the Contract Administrator may consider all such other matters as it considers (in its absolute discretion) to be relevant to the evaluation of the performance of the Contractor under the Contract.

18.3 Contractor's Monthly Report

The Contractor must provide the Contract Administrator with a monthly report in such form and on such matters as the Contract Administrator requires from time to time and which will include:

- (a) a report on the progress of the Works including photographs of the Works;
- (b) particulars of deviations from the then current program prepared by the Contractor in accordance with clause 10.2;
- (c) a comprehensive financial report with a summary, details for each Subcontract, the current cost forecast, explanation of changes from the previous month's forecast, options for reducing costs, a comparison of the original cash flow forecast, the revised cash flow forecast and the actual cash flow including comments on compliance with budgetary limitations and planned expenditure in any fiscal period;
- (d) a description of any matters which currently have a positive or adverse effect on the execution of the Works;

- (e) a description of any matters which in the Contractor's opinion have the potential to significantly affect the execution of the Works;
- (f) particulars of the preventative and remedial action which has been, is being or may be taken in respect of the items referred to in paragraphs (d) and (e);
- (g) a report on the status of all Variations (and any potential Variations);
- (h) a report on the progress of the tendering procedure for the Reimbursable Work;
- (i) a summary of all Claims made by the Contractor;
- (j) details of any other matters affecting or likely to affect the progress and cost of the Works including the Reimbursable Costs and time of completion for the Works;
- (k) an analysis of the Contractor's performance against the KPIs both during the relevant month and on a cumulative basis; and
- (l) an analysis of the premium (if any) included in the proposed cost for any subcontract package made to reduce the WOL Cost.

18.4 Meetings

At meetings under clause 3.9, the Contractor must (without limiting clause 3.9) discuss and provide RTA with all advice which it may require on measurement, review and improvement of the Contractor's performance under the Contract, including the Contractor's performance against the KPIs and determination of any action required where the KPIs indicate that the Contractor's performance under the Contract is unsatisfactory.

18.5 Incentive

- (a) The Contractor must, with the Completion payment claim referred to in clause 12.9 and the final payment claim referred to in clause 12.11, give the Contract Administrator written notice of the amount of the Incentive which it believes it is entitled to be paid or is liable for.
- (b) At the times the Contractor provides the notice in paragraph (a):
 - (i) if the Contractor is entitled to be paid an amount on account of the Incentive, the Contract Administrator will determine the amount of the Incentive payable to the Contractor in accordance with clause 12.4 and include that amount, or any necessary adjustment to any amount previously paid on account of the Incentive to reflect changes in the Contractor's Incentive entitlement since then, in the payment statement it issues in accordance with clause 12.4; or
 - (ii) if the Contractor has a liability to RTA, the Contract Administrator will determine the amount of the Incentive payable by the Contractor and the Contractor must pay RTA the amount determined, or any necessary adjustment to any amount previously paid on account of the Incentive to reflect changes in the Contractor's Incentive liability since then, within 15 Business Days, which will be a debt due and payable from the Contractor to RTA.
- (c) If at any time before the Completion payment claim referred to in clause 12.9 and the final payment claim referred to in clause 12.11, it becomes likely that the Contractor will be required to pay RTA an amount on account of the Incentive,

RTA may retain such amounts from payments under clause 12.5 that are equal to the total likely liability of the Contractor on account of the Incentive.

18.6 Rights and Obligations Not Affected

The parties acknowledge that:

- (a) the purpose of the KPIs is as set out in clause 18.1(b); and
- (b) the parties' rights and obligations, whether under the Contract or otherwise at law or in equity, in relation to the Contractor's Activities, the Works or this Contract, will not be affected or limited by the provisions of this clause 18, anything done or omitted to be done under or purported to be under this clause, the KPIs or the Contractor's performance as against the KPIs.

19. General

19.1 Long Service Leave

- (a) Without limiting its other obligations or liabilities under this Contract or otherwise, the Contractor must comply with its obligations under the Long Service Leave Legislation.
- (b) The Contractor must pay any levy, charge, contribution or associated amount required by the Long Service Leave legislation in respect of the Contractor's Activities.
- (c) Any amount paid by the Contractor under paragraph (b) is deemed to be included in the Contractor's Work Fee (Delivery) and the Contractor will have no Claim against RTA arising out of or in connection with its obligations under this clause 19.1 or any other obligation under the Long Service Leave Legislation.
- (d) In this clause 19.1, "**Long Service Leave Legislation**" means *Building and Construction Industry Long Service Payments Act 1986* (NSW).

19.2 Assignment

The Contractor must not, without the prior written approval of RTA and except on the terms and conditions determined in writing by RTA, assign, mortgage, charge or encumber the Contract or any part or any benefit or moneys or interest under the Contract.

19.3 Publicity

Without limiting clause 19.4, the Contractor must:

- (a) not furnish any information or issue any document or other written or printed material concerning the Contractor's Activities or the Works for publication in the media without the prior written approval of the Contract Administrator; and
- (b) refer any enquiries from the media concerning the Contractor's Activities or the Works to the Contract Administrator.

19.4 Confidentiality

- (a) Subject to clause 19.4(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 19.4(a)(i).
- (b) The Contractor is not obliged to keep confidential any information to the extent that:
- (i) it is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of it is:
 - A. required by law;
 - B. given with the written consent of RTA; or
 - C. given to a court in the course of proceedings to which the Contractor is a party or to an expert appointed under this Contract or an agreed arbitrator.

19.5 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 deed 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 subclause 19.5(a) it is further agreed that the rights, obligations and liabilities of RTA and the Contractor (including those relating to proportionate liability) are as specified in this deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

CONTRACT PARTICULARS (PLANNING PHASE)

CLAUSE 1 - GLOSSARY OF TERMS, INTERPRETATION AND MISCELLANEOUS

Brief: (Clause 1.1)	Refer to Exhibit 1 - Project Brief
Commissioning and Handover Plan: (Clause 1.1)	Refer to Commissioning and Handover Plan contained in Exhibit 3 - Preliminary Project Plans
Completion - additional conditions precedent to Completion: (Clause 1.1)	<ol style="list-style-type: none">1. NSW Fire Brigades approval of the design and construction of the Works2. Certification from a NATA registered organisation that the Works comply with the noise level requirements of the Brief3. The instrumentation system including sampling ports, instrumentation, proposed data collection, storage, validation and reporting methods being audited for compliance against the nominated standards and sound laboratory practice, by an organisation accredited by NATA and nominated by RTA, and the rectification of any non-compliances.4. Compliance with the documentation requirements listed in Appendix 4 of the Brief.5. All stages of the testing have been successfully completed in accordance with the requirements of section 6 of the Brief.6. All aspects of the training have been completed in accordance with the requirements of section 7 of the Brief.
Contract - other documents forming part of the Contract: (Clause 1.1)	Exhibits listed in the Contents (other than the Brief)
Contract Administrator: (Clause 1.1)	Greg Butler
Contractor: (Clause 1.1)	Boulderstone Hornibrook Engineering Pty Ltd ACN 003 898 397 Bilfinger Berger AG ARBN 081 929 473
Contractor's Representative: (Clause 1.1)	David Peacock
Contractor's Work Fee (Delivery): (Clause 1.1)	\$12,674,214.87
Date for Planning Phase Agreement: (Clause 1.1)	20 March 2008

Date for Planning Phase Approval: (Clause 1.1)	20 March 2008	
DCAP (Detailed Contractor's Activities Proposal): (Clause 1.1)	Refer Exhibit 2 - Detailed Contractor's Activities Proposal	
Defects Liability Period: (Clause 1.1)	12 months	
Executive Negotiators: (Clause 1.1)	RTA: Paul Goldsmith (GM, Motorway Projects) Contractor: Steve Cowdrey	
Initial Delivery Phase Fee Proposal: (Clause 1.1)	Refer Exhibit 9 - Initial Delivery Phase Fee Proposal	
Initial Target Cost (Clause 1.1)	\$59,894,041.69	
Initial Target Date: (Clause 1.1)	Stage	Initial Target Date
	Complete commissioning of Filtration Plant	10 September 2009
	The remainder of the Works	8 October 2009
Management Fee: (Clause 1.1)	\$7,812,266.31	
Milestone Fee Payment Schedule: (Clause 1.1)	Refer Exhibit 7 - Milestone Fee Payment Schedule	
Outline Cost Plan: (Clause 1.1)	Refer Exhibit 4 - Outline Cost Plan	
Outline Program: (Clause 1.1)	Refer Exhibit 5 - Outline Program	
Planning Phase Milestones and Planning Phase Milestone Dates: (Clause 1.1)	Milestone	Date
	Agreement of Target Cost	17 March 2008

Project Plans:
(Clause 1.1)

Environmental Management Plan
Site management Plan
Traffic Management Plan
Community Involvement Plan (omitted)
OH&S Management Plan
Tender Probity Plan
Commissioning and Handover Plan
Whole of Life (WOL) Plan
Project Management Plan
Design Management Plan

Schedule of Rates:
(Clause 1.1)

Refer Exhibit 8 - Schedule of Rates

Selected Subcontractor:
(Clause 1.1)

None

Site:
(Clause 1.1)

As detailed in Exhibit 1 - Project Brief

Site Management Plan:
(Clause 1.1)

Security procedures
Access to the Site by visitors, pedestrians and vehicles
Site induction procedures
Safety procedures
Emergency procedures
Waste management procedures
Site maintenance and cleaning procedures
Site establishment procedures
Dangerous, prohibited and hazardous materials and goods procedures
Approval procedures
User group and stakeholder procedures
Noise management procedures
Vehicle and traffic management procedures

Special Conditions:
(Clause 1.1)

Not applicable

Stages of the Works:
(Clause 1.1)

Testing of the Filtration Plant (as further described in the Brief)

Remainder of the Works

Tendering Probity Plan:
(Clause 1.1)

The appointment of a Contractor's probity auditor.

Procedures to ensure that:

- (a) none of the tenderers for any of the Reimbursable Work has any arrangement or arrives at any understanding with any of the other tenderers or with any employee of an association of which any of the tenderers is a member about the work the subject of tender; and
- (b) without limitation, no tenderer engages in:
 - (i) any discussion or correspondence with any such persons concerning the sum of money it is going to tender as its tender sum; or
 - (ii) any collusive tendering with any of the other tenderers or any conduct or any arrangement or arrives at any understanding with any of the other tenderers which in any way could have the effect of reducing the competitiveness of the tender process for the work and increasing the price,

(as the case may be).

WOL Objectives (specific additional):
(Clause 1.1)

Not applicable

WOL Plan:
(Clause 1.1)

As detailed in WOL Plan contained in Exhibit 3 - Preliminary Project Plans

Works:
(Clause 1.1)

As defined in Exhibit 1 - Project Brief

Governing law:
(Clause 1.3(a))

New South Wales

CLAUSE 2 - NATURE OF CONTRACT



Statutory Requirements with which the Contractor does not need to comply:
(Clauses 2.3(g)(i) and 8.18)

The Contractor is not required to comply with the following conditions of the Planning Approval under this Contract:

- (a) condition 81A to the extent of operating the Filtration Plant;
- (b) condition 81B;
- (c) condition 81C;
- (d) condition 81K to the extent of disposal of waste material during the operation and maintenance of the Filtration Plant; and
- (e) condition 81M.

Existing Approvals and other Approvals which RTA is to obtain:
(Clauses 2.3(g)(ii) and 8.18)

Planning Approval

CLAUSE 3 – PERSONNEL

Contract Administrator's representatives and their functions:
(Clause 3.4)

Representative	Function(s)
John Betts	Project Manager
Lawrence Chow	Site Engineer
Martin Jones	Project Engineer

Contractor's key people:
(Clause 3.6(a))

Person	Position
David Peacock	Construction Manager
David Peacock	Project Manager
Bruce Judd	Design Manager
Conrad Strachan	Snr Project Engineer
Graham Crighton	Snr Project Engineer
Romeo Daoud	Project Engineer
Paul Blackwood	Civil Estimator
Adrian Coombs	Contract Manager

CLAUSE 4 - SECURITY .

Security to be provided by the Contractor:
(Clause 4.1)

\$2,500,000 or 5% of the sum of the Contractor's Work Fee (Delivery) and the Management Fee, whichever is the higher.

CLAUSE 5 - RISKS AND INSURANCE

Public liability insurance
(Clause 5.4(a)(ii))

Minimum cover: As per Policy Extract in Schedule 9

Insurer: As per Policy Extract in Schedule 9

Policy number: As per Policy Extract in Schedule 9

Period of cover: Until issue of Final Payment Statement

Workers Compensation insurance
(Clause 5.5(a)(i))

Minimum cover: As required by law

Insurer: QBE Workers Compensation (NSW) Ltd

Policy number: 1SF0013174GWC154

Period of cover: Until issue of Final Payment Statement

Professional indemnity insurance
(Clause 5.5(a)(ii))

Is a professional indemnity policy to be held by the Contractor or Designer? ("Yes") applies if not filled in)

Minimum Cover \$20 million

Insurer: Lloyds Underwriters & others

Policy number: B0621PBIL00906

Period of cover: for 7 years after the Date of Completion of the Works

Motor Vehicle Fleet/Mobile Plant insurance
(Clause 5.5(a)(iii))

Minimum cover (Third Party Property Damage): \$20M

Insurer: Aust. Risk Management Services and/or Zurich Australian Insurance

Policy number: 76708

Period of cover: Until issue of Final Payment Statement

Asbestos liability insurance
(Clause 5.5(c))

Minimum Cover \$10 million

Insurer: American Home Insurance Company of Australia Ltd

Policy number: EL 82945
 Period of cover: Until issue of Final Payment Statement

Marine liability and marine protection and Indemnity insurance
 (Clause 5.5(d))

Marine liability Minimum Cover Not Applicable
 Insurer: Not Applicable
 Policy number: Not Applicable

Marine Protection and indemnity Minimum Cover Not applicable
 Insurer: Not Applicable
 Policy number: Not Applicable

CLAUSE 6 - PLANNING AND DESIGN

Period for Planning Phase Design Documentation review: 15 Business Days
 (Clauses 6.1(b)(ii) and 6.1(d)(i))

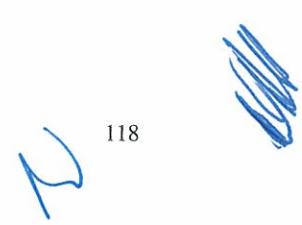
Conditions precedent to Site access for the Delivery Phase: None
 (Clause 6.6(b)(ii)C)

Period for Delivery Phase Design Documentation review: 15 Business Days
 (Clauses 6.8(b)(ii) and (d))

Number of copies of Planning Phase Design Documentation and Delivery Phase Design Documentation (if any) to be submitted by the Contractor to the Contract Administrator: 3 hard copies
 1 electronic copy
 (Clause 6.10)

Planning Phase Design Documentation and Delivery Phase Design Documentation hard copy requirements: Compatible with Autocad 14
 To scale
 Printed in black ink on white ISO Standard Sheet (size A1, A3, A4 or as determined by the Contract Administrator)
 (Clause 6.10(a))

Planning Phase Design Documentation and Delivery Phase Design Documentation electronic copy requirements: In accordance with the RTA CADD Exchange Policy or as determined by the Contract Administrator
 (Clause 6.10(b))



Order of precedence of documents in the case of any ambiguity, discrepancy or inconsistency:
(Clause 6.16(a))

1. Formal Agreement
2. Conditions of Contract (including the Schedules)
3. Special Conditions
4. Contract Particulars (Delivery Phase)
4. Contract Particulars (Planning Phase)
5. Brief
6. Any other documents forming part of the Contract (as set out in the relevant item under clause 1.1 in these Contract Particulars (Planning Phase))

Period for sample review:
(Clauses 6.21(b)(ii) and 6.21(d))

5 Business Days

CLAUSE 7 - SITE

Conditions precedent to Site access during the Planning Phase:
(Clause 7.3(b)(iv))

Not applicable

Times when traffic volume likely to exceed road capacity
(Clause 7.6(c))

As approved by the RTA upon submission of a Road Occupancy License but generally between 5 am to 10 am and 3 pm to 9 pm

CLAUSE 8 - REIMBURSABLE WORK

Design disciplines and Subcontractors:
(Clause 8.4(c)(ii))

Design Discipline	Subcontractor
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Not Applicable

Stages for which warranty required:
(Clause 8.9)

Not applicable

Subcontractor warranties required to be procured by the Contractor from subcontractors and provided to RTA:
(Clause 8.9)

All mechanical equipment including the control systems, air quality instrumentation, filtration systems and fans.

Initial Price for Reimbursable Work by Contractor or Related Body Corporate for Enabling Work:
(Clause 8.15(c))

\$919,272

Stages for which a certificate signed by a surveyor is required as condition precedent to Completion:
(Clause 8.22)

Not applicable.

Working hours for Contractor's Activities on Site during Planning Phase:
(Clause 8.31)

As agreed with the Contract Administrator but generally

Monday to Friday 7:00 am to 6:00 pm

Saturdays 8:00 am to 1:00 pm

No work Sundays or Public Holidays

Working hours for Contractor's Activities on Site during Delivery Phase:
(Clause 8.31)

As detailed in the Planning Approval

CLAUSE 9 - QUALITY

Reference development for purpose of determining minimum standards for workmanship and materials:
(Clause 9.1(a)(i)B and 9.1(b)(i)B)

M5 East Motorway

Number of days for submission of Project Plans:
(Clause 9.2(a)(ii)A)

20 Business Days

Number of days for review of Project Plans:
(Clause 9.2(a)(ii)B)

10 Business Days

Period by which Defects Liability Period will be extended following rectification of a Defect or completion of a Variation to overcome a Defect:
(Clause 9.11)

6 months

Defects Liability Period Review and Report (additional):
(Clause 9.15)

Not applicable

CLAUSE 10 - TIME

Maximum intervals between program updates by Contractor:
(Clause 10.2(b))

1 month

Program format to be compatible with:
(Clause 10.2(e))

Microsoft Project 2000

Other qualifying causes of delay:
(Clause 10.4(a)(ii)B)

Latent Conditions

Any other cause reasonably outside of the control of the Contractor excluding industrial disputation which is limited to the Site, the Works or the Contractor.

CLAUSE 12 - PAYMENT

Times for submission of payment claims by the Contractor to the Contract Administrator:
(Clause 12.2(a))

Monthly on the last Business day of each month

Number of business days for payment:
(Clause 12.5)

20 Business Days

Interest rate:
(Clause 12.13)

1. In the case of damages - the Australian Taxation Office-sourced General Interest Charge Rate current at the due date for payment or such other rate nominated in writing from time to time by the Contract Administrator; or
2. In the case of late payments - the greater of:
 - (a) the rate in paragraph (1); and
 - (b) the rate of interest prescribed under any applicable Security of Payment Legislation.

Appointed Adjudicator/Prescribed Appointer/Authorised Nominating Authority:
(Clause 12.20(d))

The Chair of the Institute of Arbitrators and Mediators Australia of the NSW Chapter.

CLAUSE 14 - TERMINATION

Number of days to remedy breach:
(Clauses 14.3(c) and 14.4(b))

20 Business Days

CLAUSE 15 - DISPUTES

Directions to be subject of an expert determination if disputed:
(Clause 15.2)

Directions under clauses: 4.2(b), 8.19(e), 8.29, 9.5, 9.9(b)(i), 9.10, 10.4, 10.5(d)(i), 11.3(a)(i)B, 11.3(a)(i)C, 11.3(a)(iii)B, 11.3(a)(iii)C, 11.3(b)(ii), 12.4, 13.2(b)(ii), 14.8(a), 18.5(b).

Industry expert who will conduct expert determinations:
(Clause 15.3(a)(i))

.....

Nominating authority for industry expert:
(Clause 15.3(a)(ii))

The President for the time being of the Institute of Arbitrators and Mediators Australia unless otherwise stated

CLAUSE 16 - NOTICES

Address and fax number, for the giving or serving of notices, upon:
(Clause 16.7(b)(i))

RTA:

Level 4, 260 Elizabeth Street, Surry Hills NSW 2010,
PO Box K198 Haymarket 1240

Fax: 02 9218 6262

Contract Administrator:

Level 4, 260 Elizabeth Street, Surry Hills NSW 2010,
PO Box K198 Haymarket 1240

Fax: 02 9218 6262

Contractor: Level 10, 40 Miller Street, North Sydney
2060, New South Wales

Fax: 02 9935 7090

ANNEXURE 1 - COMPLETION

Number of copies of Final Operation and Maintenance Manuals:
(Clause 3(a))

3 copies

Content of manuals (additional):
(Clause 3(d)(xii))

None

Number of persons to be trained:
(Clause 4(a))

5 persons

Categories of persons to be trained:
(Clause 4(a))

Tunnel operators and maintenance engineers