Regional Rail - Project Deed
Contract Number: ISD-17-6185

Transport for NSW (TfNSW)
ABN 18 804 239 602

and

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

and

Momentum Trains Pty Ltd (Project Co)
ACN 630 634 507
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Regional Rail Project Deed

Date: 14 February 2019

Parties:
1. Transport for NSW (ABN 18 804 239 602), a corporation constituted under section 3C of the Transport Administration Act 1988 (NSW) (TfNSW);
2. Rail Corporation New South Wales (ABN 59 325 778 353), a NSW government agency constituted under section 4 of the Transport Administration Act 1988 (NSW) (RailCorp); and
3. Momentum Trains Pty Ltd (ACN 630 634 507), in its personal capacity and as trustee for the Project Trust (Project Co).

Background:

A. TfNSW has conducted a public tender process and selected Project Co as the preferred tenderer for the Project.

B. This Deed sets out the terms on which:
   (a) Project Co agrees to:
       (i) design, manufacture, supply, test, commission and Maintain the New Fleet;
       (ii) design, construct, complete and Maintain the Maintenance Facility; and
       (iii) provide the Services and Maintain the other Maintained Rail Assets;
   (b) Finance Co has agreed to finance the Project Activities and will do so by, amongst other things, entry into the Finance Documents and the Receivables Purchase Deed;
   (c) Project Co agrees to progressively undertake the Works and carry out the other Delivery Phase Activities in consideration of the payment by TfNSW to Project Co of the Construction Payments;
   (d) TfNSW agrees to pay or procure payment of the CDPD Amount and the Monthly Service Payment to Project Co;
   (e) RailCorp will own the Delivered Rail Assets; and
   (f) the risks associated with the Project are allocated as between the parties.

Operative provisions

Part A - Interpretation and project parameters

1. Definitions

In this Deed, unless the context otherwise requires:

Abatement means a reduction in the Monthly Service Payment by application of the Monthly Service Payment Adjustment.
Aboriginal means a person who:

(a) is a member of the Aboriginal race of Australia;
(b) identifies as an Aboriginal person; and
(c) is accepted by the Aboriginal community as an Aboriginal person, (as defined by the Aboriginal Land Rights Act 1983 (NSW)) and references to Aboriginality shall be construed accordingly.

Aboriginal Participation Manager means the person of that title, as identified as one of the Required People specified in item 22A of the Contract Particulars, who must meet the minimum requirements set out in sections 3(a)(ii), 3(e)(iv) and 3(e)(v) of Part B3 (Jobs, Skills and Industry Participation Requirements) of the Project Scope and Requirements.

Aboriginal Participation Plan (Construction) means the plan within the Jobs, Skills and Industry Participation Management Plan, which Project Co must prepare in accordance with clause 10.11(a).

Aboriginal Participation Reports (Construction) means the Project Reports of that name, which Project Co must prepare in accordance with clauses 10.11(c) and 10.11(d).

Acceptance means:

(a) Preliminary Acceptance;
(b) Provisional Acceptance; and
(c) Final Acceptance,

or the relevant one of these as the case may be.

Acceptance Criteria means:

(a) Preliminary Acceptance Criteria;
(b) Provisional Acceptance Criteria;
(c) Final Acceptance Criteria; and
(d) Returned Asset Criteria,

or the relevant one of these as the case may be.

Acceptance Schedule means Schedule 12.

Accepted Car means a Car within an Accepted Unit.

Accepted Unit means a Unit (including Option Units in respect of which TfNSW has issued an Option Notice) for which a Certificate of Provisional Acceptance has been issued under this Deed.

Access Agreements means:

(a) the Existing Access Agreements; and
(b) the New Access Agreements.
Access Provider means any person who from time to time manages or is responsible for providing access to any part of the Network.

Access Requirements has the meaning given in clause 21.8(c)(ii).

Accounts and Records has the meaning given in clause 61.1(a).

Accreditation means accreditation (including provisional accreditation) in accordance with the requirements of the Rail Safety National Law.

Accreditation Variation has the meaning given in clause 6A.1(a).

Accreditation Variation Application means all and any applications or submissions required to be made to ONRSR under or in accordance with the Rail Safety National Law in order to obtain any Accreditation Variation.

Accreditation Variation Documents means all documentation required to be prepared and submitted to ONRSR to support an Accreditation Variation Application.

Accredited Persons means each Access Provider, the Operator, Sydney Trains, TfNSW and any other person that has, or will have, effective control and management of:

(a) any Rail Infrastructure forming part of the Network;
(b) the operation or movement of Rolling Stock other than the New Fleet on any Rail Infrastructure forming part of the Network; or
(c) the operation or movement of the New Fleet on any Rail Infrastructure.

Actual Energy Consumption means the amount calculated as AEC in accordance with section 10.2 of the Performance Regime.

Additional Land means all land on which the Project Activities are carried out that is not:

(a) a Site;
(b) the Train Manufacturer's Facility; or
(c) the Network.

Additional Option Items mean the Bi-Mode System.

Additional Option Item Final Date means in respect of the Bi-Mode System, the date specified in clause 12.3.

Additional Maintenance Service Payment or AMSP has the meaning given in section 7 of the Payment Schedule.

Additional Network Access Rights has the meaning given in section 4(a) of the Network Access Regime Schedule.

Additional Special Event Periods has the meaning given in section 6.1(b) of the Payment Schedule.

Additional Verification Activities has the meaning given in clause 21.4(a).

Additional Receivables Purchase Price has the meaning given in the Receivables Purchase Deed.
Adjoining Property means any land adjoining or in close proximity to, or in the vicinity of, a Site, and each and every part of that land, including improvements on the land such as walls, fencing, buildings and infrastructure on, under or within the land.

Adjustment Note has the meaning given in the GST Law.

Advance Payment Bond means a Performance Bond in the form set out in Appendix 2 to Schedule 16 delivered or to be delivered pursuant to the provisions of section 2.2A of Schedule 16.

Adverse Rights means all (if any) interests, rights, affectations, encumbrances, Easements, covenants (including any rights, Easements and other affectations or encumbrances in respect of conduits) and other restrictions on use (excluding rights of light and air):

(a) affecting or impacting a Site as set out in the Project Information; or

(b) of which Project Co has actual knowledge,

in each case as at the date of this Deed.

Aggregate Approved Commercial Opportunities Profit means an amount calculated as follows:

\[ AACOP = AI - AC \]

Where:

AACOP is the Aggregate Approved Commercial Opportunities Profit;

AC is the aggregate direct marginal costs reasonably and properly incurred by Project Co in the ordinary course of business in connection with the provision of the Approved Commercial Opportunities during the Relevant Period (including depreciation on assets specifically acquired and used solely for the purposes of undertaking the Approved Commercial Opportunities), provided that:

(a) where such costs relate to amounts payable by Project Co to third parties, they shall only be included in the calculation to the extent that such costs have been incurred by Project Co on reasonable commercial arm's length terms; and

(b) no amount shall be included in respect of overheads or indirect costs; and

AI is the aggregate income received by Project Co or any of its Associates during the Relevant Period from fees or charges paid by the users or beneficiaries of the Approved Commercial Opportunities.

Agreed Network Access Rights has the meaning given in the Network Access Regime Schedule.

Agreed Rates has the meaning given in section 11.3(a) of the Payment Schedule.

Agreed Uninsurable Risk means each:

(a) Day 1 Uninsurable Risk; and

(b) Uninsurable Risk, but only as agreed or determined in accordance with clause 47.1.

AM Services means works and services required to rectify a TfNSW Defect pursuant to Project Co's obligations under clause 44, excluding Modification Services.
Amendment has the meaning given in clause 53.1(a).

Annual Performance Review means the review by TfNSW described in clause 10.8C.

Annual Performance Review Report or APRR has the meaning given in clause 10.8C(c).

Annual Rectification Works Proposal means a draft works plan and program submitted by Project Co to TfNSW in accordance with clause 29.4(a).

Annual Special Event Periods means:

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<tr>
<td>Parkes Elvis Festival</td>
<td>January</td>
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<tr>
<td></td>
<td>Commencing on the day prior to the first calendared day and ending on the day after the last calendared day of the Parkes Elvis Festival.</td>
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<tr>
<td>Broken Heel Festival</td>
<td>September / October</td>
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<td>Commencing on the day prior to the first calendared day and ending on the day after the last calendared day of the Broken Heel Festival.</td>
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Appointed Principal Contractor means:

(a) in respect of the Maintenance Facility Site during the period prior to and including the Date of Provisional Acceptance (Maintenance Facility), the Depot Subcontractor;

(b) in respect of the Returned Asset Site during the period prior to and including Returned Asset Handback, the Depot Subcontractor;

(c) in respect of the Maintenance Facility Site during the period after the Date of Provisional Acceptance (Maintenance Facility) until the Expiry Date, the Maintenance Subcontractor; and

(d) in respect of the Legacy Maintenance Centre Site, on and from the Date of Handover (Legacy Maintenance Centre) until the Expiry Date, the Maintenance Subcontractor.

Approval means:

(a) the Key Planning Approval; and

(b) any other licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission, exemptions, notification, application, filing, lodgement, deed, direction or declaration or the like, which must be obtained or satisfied (as the case may be) in connection with the Project.

Approved Commercial Opportunities means revenue generating services or commercial opportunities, in each case using or in connection with any of the Assets, which Project Co is entitled to carry out pursuant to clause 43.1(a).
Artefacts means any places, fossils, bones, artefacts, coins, articles of value or antiquity, structures, natural features or remains or things of scientific, geological, historical, aesthetic, social, spiritual, cultural or aboriginal heritage or archaeological interest.

Asset means:
(a) during the Delivery Phase, the Works; and
(b) during the Maintenance Phase, the Maintained Rail Assets.

Asset Information System or AIS means the system for the storage, processing, transmission and management of Asset information as referred to in section 6.2 of Part C7 (Services Specification) of the Project Scope and Requirements.

Asset List means the list of identified components and sub-components of the Legacy Maintenance Centre set out in the Asset Management Plan.

Asset Management Plan means the Management Plan of that name.

Asset Management Solution means Annexure B.

Asset Management System means the asset management system described in section 22 of the Management Requirements.

Asset Standards Authority or ASA means that body within TfNSW known as the 'Asset Standards Authority' with the objectives, functions, powers and governance as described in its charter, a copy of which can be found at www.asa.transport.nsw.gov.au.

Associate or Associates means, in relation to a person, any Related Body Corporate of that person, and any officer, agent, adviser, consultant, contractor or employee of that person or that Related Body Corporate and:

(a) in the case of Project Co, includes:
   (i) the Project Co Representative;
   (ii) any Group Member or Consortium Member (other than Project Co) and their respective officers, agents, advisers, consultants, contractors, employees, nominees and licensees, each acting in connection with the Project;
   (iii) the Equity Investors, any Subcontractors (that are not covered by paragraph (a)(ii)) and their respective officers, agents, advisers, consultants, contractors, employees, nominees or licensees, each acting in connection with the Project; and
   (iv) any person on or at a Site at the express or implied invitation of Project Co or a Subcontractor in connection with the performance of the Project Activities,

   but does not include TfNSW or any of TfNSW’s Associates, RailCorp or any of RailCorp’s Associates, the Operator, the Operator’s Associates, the Independent Certifier, the Environmental Management Representative or any Transition Out Reviewer;

(b) in the case of TfNSW, includes:
   (i) officers, agents, advisers, consultants, contractors, authorised officers and employees of TfNSW, each acting in connection with the Project;
(ii) the TfNSW Representative and any other person responsible for the administration or management or implementation of the Project, or any aspect of the Project, for and on behalf of TfNSW;

(iii) any other person to whom TfNSW delegates a right, power, function or duty under this Deed; and

(iv) RailCorp, TAHE, Sydney Trains and the Operator,

but does not include Project Co or any of Project Co’s Associates, the Independent Certifier, the Environmental Management Representative, any Transition Out Reviewer, the author of a Site Information Report or any Rail Entity (other than those Rail Entities referred to in paragraph (b)(iv)); and

(c) in the case of RailCorp, includes:

(i) officers, agents, advisers, consultants, contractors, authorised officers and employees of RailCorp, each acting in connection with the Project;

(ii) any person responsible for the administration or management or implementation of the Project, or any aspect of the Project, for and on behalf of RailCorp;

(iii) any other person to whom RailCorp delegates a right, power, function or duty under this Deed; and

(iv) TfNSW, TAHE, Sydney Trains and the Operator,

but does not include Project Co or any of Project Co’s Associates, the Independent Certifier, the Environmental Management Representative, any Transition Out Reviewer, the author of a Site Information Report or any Rail Entity other than those referred to in paragraph (c)(iv).

Associate Significant Subcontract Information, Relevant Source Code and Escrow Information has the meaning given in clause 62.9(d).

Australian Rail Track Corporation or ARTC means Australian Rail Track Corporation Limited (ABN 75 081 455 754).

Australian Rail Track Corporation Access Agreement means the track access agreement for indicative services dated 28 June 2013 between ARTC and RailCorp.

Australian Rail Track Corporation Network means that part of the Network that is managed by the Australian Rail Track Corporation from time to time.

Authorisation and Accreditation Management Plan means the Management Plan of that name.

Authorised Engineering Organisation or AEO means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering organisation status by the Asset Standards Authority.

Authority means:

(a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; and
any other person having jurisdiction over, or ownership of, any Utilities, External Infrastructure or Utility Infrastructure.

**Availability Adjustment** means, in respect of a Payment Period, the amount calculated in accordance with section 2.1 of the Performance Regime.

**Availability Payment** means, in respect of a Payment Period, the amount calculated in accordance with section 2.1 of the Payment Schedule.

**Availability Period** or **AP** means the 24 hour period from 00:00:00 to 23:59:59 on any day of the week.

**Availability Period Service Charge Base Fleet** has the meaning given in section 2.1 of the Payment Schedule.

**Available** has the meaning given in section 10.3 of the Payment Schedule and **Availability** has a corresponding meaning.

**Bank Bill** means a bill of exchange (as defined in the Bills of Exchange Act 1909 (Cth)) that has been accepted by a bank authorised under a law of the Commonwealth of Australia or any state to carry on banking business.

**Bank Bill Rate**, for a period, means:

(a) the rate, expressed as a yield per cent per annum (rounded up (if necessary) to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page 'BBSY' (or any page that replaces that page) at about 10.10am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in Months which is closest to that period; or

(b) if there is a manifest error in the calculation of that average bid rate, or if no average bid rate is published for Bank Bills of that tenor by about 10.30am, then the Bank Bill Rate will be the rate reasonably determined by TfNSW, having regard to the rates otherwise bid for Bank Bills having a tenor as described above, at or around that time, to be the appropriate equivalent rate.

**Base Case Financial Model** means Project Co's audited financial model for the Project, as at the date of this Deed, a copy of which has been initialled by the parties and is attached as Attachment 1.

**Base Costs** has the meaning given in the Change Compensation Principles.

**Base Fleet** means the New Fleet excluding the Option Units.

**Base Fleet Capital Cost** has the meaning given in section 8.1(c) of the Performance Regime.

**Base Interest Rate Adjustment** has the meaning given in section 9.1 of the Payment Schedule.

**Baseline Delivery Program** means the Initial Delivery Program until such time as the Initial Delivery Program is updated in accordance with clause 16.2(b)(i), or as further updated from time to time in accordance with clauses 16.2(b)(ii), 16.2(b)(iii) and section 4.1 of the Programming Requirements and having been Confirmed.

**Baseline Environmental Site Assessment** means a baseline environmental contamination report procured by TfNSW in accordance with clause 8.3A for the purpose of determining the nature and extent of Contamination existing on, in or under the Legacy Maintenance Centre Site prior to the Date of Handover (Legacy Maintenance Centre).
Baseline Pre-Existing Contamination means Contamination that the Baseline Environmental Site Assessment expressly identifies as being present in, on or under the Legacy Maintenance Centre as at the date of the Baseline Environmental Site Assessment.

Benchmarked Insurances means the industrial special risks insurance, public and products liability insurance and professional indemnity insurance required to be taken out by Project Co in accordance with Part B of the Insurance Schedule.

Beneficiaries has the meaning given in clause 62.8.

Best Delivery Practices means design, manufacture, supply, construction, installation, testing, commissioning and repair practices which are carried out:

(a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional carrying out design, manufacture, supply, construction, installation, testing, commissioning and repair work similar to the Delivery Phase Activities;

(b) in a manner safe to all people and the Environment;

(c) in a manner which facilitates Best Services Practices;

(d) with the intent of ensuring reliable, long term and safe operation of the Maintained Rail Assets;

(e) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;

(f) with adequate levels of resources, including personnel, materials and supplies; and

(g) using suitable, new and high quality finishes and materials which are free from defects.

Best Industry Practices means Best Delivery Practices and Best Services Practices (or either as the context requires).

Best Services Practices means the practices required for the Maintenance of assets similar to the Maintained Rail Assets or the Returned Asset (as applicable) with services similar to the Services, which are performed:

(a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of services similar to the Services;

(b) in a manner safe to all people and the Environment;

(c) with the intent of ensuring reliable, long term and safe operation of the Maintained Rail Assets or the Returned Asset (as applicable);

(d) by trained and experienced personnel using high quality, safe and proper equipment, tools, procedures and industry standards;

(e) with adequate levels of resources, including personnel, materials and supplies;

(f) using suitable, new and high quality finishes and materials which are free from defects; and

(g) with a commitment to continually providing innovation and meeting advancements in technology and improving the standards and quality of the Services, provided
that this requirement in and of itself does not require Project Co to upgrade the Maintained Rail Assets.

**Bi-Mode System** means a system that allows traction and auxiliary power systems to utilise power generated from both an on-board diesel engine(s) and an overhead electrical power supply.

**Business Day** means a day in New South Wales:

(a) that is not a Saturday, Sunday or public holiday;

(b) on which banks are open for business generally in Sydney, New South Wales; and

(c) that does not fall during the period:

(i) commencing on the Monday before 24 December in any given year; and

(ii) ending on the Friday following 1 January of the following year.

**Business Hours** means between 9:00 am and 5:00 pm on a Business Day.

**Cancellation** means, in relation to a Unit, that it suffers a Type 1 Failure, a Type 2 Failure, or a Delay or likely Delay which results in a Type 1 Failure and references to **Cancelled** shall be construed accordingly.

**Cancellation Adjustment** means, in respect of a Payment Period, the amount calculated in accordance with section 3.1 of the Performance Regime.

**Car** means a single passenger carrying vehicle with or without propulsion.

**CCA Event** means where a Change Compensation Event is compensated by way of an adjustment to the Monthly Service Payments in accordance with section 6(a) (Adjustment to Securitised Licence Structure) of the Change Compensation Principles.

**CCE Model Variation Event** has the meaning given in clause 60.3(a)(iii).

**CCTV** or **Closed Circuit Television** means a television system in which signals are not publically distributed but are monitored, primarily for surveillance and security purposes.

**CCU** has the meaning given in clause 15.2(b).

**CDPD Adjustment Protocol** means the protocol to update the Financial Model and the Model Output Schedule CDPD Amount for the payment of the CDPD Amount (if applicable) in accordance with clauses 34 and 60, as attached in Schedule 13.

**CDPD Conditions** has the meaning given in clause 34.1.

**CDPD Notice Date** means the date of the notice issued by Project Co under clause 34.3(c)(i).
**CDPD Payment Date** means the last day of the "Interest Period" (as that term is defined in the Facility Agreement) which is at least 15 Business Days after:

(a) the delivery of the CDPD Satisfaction Notice; or

(b) if there is no CDPD Satisfaction Notice and the CDPD Conditions are waived by TfNSW in accordance with clause 34.4, then such other date determined by TfNSW in its absolute discretion, which date must be within the CDPD Period.

**CDPD Period** means the period of time:

(a) beginning on the second anniversary of the later of the Original Date for Final Acceptance (CDPD) and the Date of Final Acceptance (CDPD); and

(b) ending on the fourth anniversary of the later of the Original Date for Final Acceptance (CDPD) and the Date of Final Acceptance (CDPD).

**CDPD Satisfaction Notice** has the meaning given in clause 34.3(d)(i).

**CD-ROM** means compact disc read only memory.

**Certificate of Final Acceptance** means each certificate issued by the Independent Certifier pursuant to clause 25.9(a)(i) certifying that Final Acceptance has been achieved in respect of a Unit, a Simulator, the Maintenance Facility, the Upgrade Services or the Base Fleet and Continuous Production Options (as applicable) in the form set out in section 5 of the Schedule of Forms and Certificates.

**Certificate of Preliminary Acceptance** means each certificate issued by TfNSW pursuant to clause 22A.7(a)(i) certifying that Preliminary Acceptance has been achieved in respect of a Unit in the form set out in section 1 of the Schedule of Forms and Certificates.

**Certificate of Provisional Acceptance** means each certificate issued by the Independent Certifier pursuant to clause 23.9(a)(i) certifying that Provisional Acceptance has been achieved in respect of a Unit, a Simulator, the Maintenance Facility or the Upgrade Services (as applicable) in the form set out in section 3 of the Schedule of Forms and Certificates.

**Certified Environmental Consultant** means an environmental consultant that holds current certification in relation to contaminated land assessment and remediation under a scheme endorsed by the New South Wales Environment Protection Authority.

**Change Compensation Event** has the meaning given in the Change Compensation Principles.

**Change Compensation Principles** means Schedule 5.

**Change in Control** means:

(a) where, at any time, any person or Entity alone or together with any Associate or Associates, ceases to or commences to, directly or indirectly have Control of an Entity; or

(b) a change in the manager, trustee or Responsible Entity of any Group Member that is a trust.

For the purposes of this definition, Associate or Associates has the meaning given in the Corporations Act and includes a person deemed to be an Associate of a designated body (within the meaning of section 12 of the Corporations Act).

**Change in Law** means:
the coming into effect of, or a change to, or the repeal of, Legislation; or

any judgement or decision of a court of law which changes the way a Law is applied or interpreted,

after the date of this Deed, but does not include:

(a) a change in the way a Law is applied or interpreted due to:

(i) the failure of Project Co or any of its Associates to comply with a Law, Standard or Approval; or

(ii) a Project Co Act or Omission;

(b) any new Law or change in existing Law relating to Taxes including the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 1997 (Cth) and the GST Law;

(c) any new Law or change in or repeal of any existing Law which was not in force at the date of this Deed but which:

(i) had been published in the Government Gazette by way of bill, draft bill or draft statutory instrument or otherwise specifically referred to prior to the date of this Deed;

(ii) is listed or referred to in the Project Scope and Requirements, the Proposal, Project Information or any Project Document;

(iii) a party exercising Best Industry Practices would have reasonably foreseen or anticipated prior to the date of this Deed;

(iv) is substantially the same as a Law in force prior to the date of this Deed; or

(v) is substantially the same as any other requirement with which any Project Co Entity was required to comply under any TfNSW Project Document as at the date of this Deed;

(d) any new Law or change in any existing Law relating to the matters (if any) specified in item 1 of the Contract Particulars; or

(e) any new Law or change in existing Law of a jurisdiction that is not the Commonwealth or a state or territory of Australia.

**Change in Management** means a change in:

(a) any Entity which provides management functions to any Project Co Entity, any Key Subcontractor or the Depot Subcontractor;

(b) the senior employees of:

(i) any Entity which provides management functions to any Project Co Entity; or

(ii) not used;

(c) the Key People; or

(d) the senior management of any Project Co Entity,
as applicable.

Change in Mandatory Requirements means:

(a) a:

(i) Project-Specific Change in Law;
(ii) Change in Standard; or
(iii) General Change in Law in respect of disability discrimination or rail safety,

that occurs after the date of this Deed and that will have an effect on the cost of carrying out the Project Activities; or

(b) a General Change in Law that occurs after the Date of Final Acceptance (Unit) of the last Unit forming part of the New Fleet to achieve Final Acceptance (Unit), that will have an effect on the cost of carrying out the Project Activities by virtue of involving capital works.

Change in Standard means any one or more of the following that occurs after the date of this Deed:

(a) the introduction of a new Standard;
(b) a change in a Standard;
(c) not used;
(d) any changes to or new conditions attaching to the Key Planning Approval after it has been granted; or
(e) any withdrawal, revocation, suspension, invalidation or replacement of all or any part of the Key Planning Approval,

but does not include:

(f) any one of the events referred to in paragraphs (a) to (e):

(i) of which TfNSW has expressly notified any Project Co Entity prior to the date of this Deed;
(ii) which is contained or referred to in the Project Scope and Requirements, the Proposal, any Project Document or Project Information or any other material provided by TfNSW to Project Co or any of its Associates in connection with the Project prior to the date of this Deed;
(iii) which is substantially the same as a Standard or any condition to the Key Planning Approval in force prior to the date of this Deed; or
(iv) which is substantially the same as any other requirement with which any Project Co Entity was required to comply with under the TfNSW Project Documents prior to the date of this Deed;

(g) any:

(i) new Approval;
new requirement to obtain a new Approval; or

amendment, repeal or change in, or any requirement to amend or change, an existing Approval other than, subject always to section 2 of Part B5 (Planning and Environmental Requirements) of the Project Scope and Requirements, the Key Planning Approval;

any of the events referred to in paragraphs (a) or (b) that results from or is in response to any Project Co Act or Omission;

any new Standard or change in any existing Standard relating to the matters (if any) specified in item 2 of the Contract Particulars; or

any of the events referred to in paragraphs (d) or (e) that results from or is in response to any Project Co Act or Omission or any performance of the Delivery Phase Activities that is not in accordance with the Key Planning Approval.

Change Notice has the meaning given in the Change Compensation Principles.

Change Response has the meaning given in the Change Compensation Principles.

Claim means any claim, action, demand, suit, proceeding, penalty or fine (including by way of contribution or indemnity) made:

in connection with the Project Documents, the Assets, a Site or the Project; or

at Law or for specific performance, restitution or payment of money (including damages).

Claims Handling Protocol means the protocol referred to in clause 46.5(a) to the extent that it has been agreed in writing between Project Co, TfNSW and the relevant insurer.

CLM Act means the Contaminated Land Management Act 1997 (NSW).

Commercially Sensitive information means the information referred to in the Commercially Sensitive Information Schedule.

Commercially Sensitive Information Schedule means Schedule 23.

Community Engagement and Communications Professional means the person of that title, as identified as one of the Required People specified in item 22A of the Contract Particulars, who must meet the minimum requirements set out in sections 4(dd) and (ee) of Part B1 (Management Requirements) of the Project Scope and Requirements.

Communications, Community and Stakeholder Management Plan means the Management Plan of that name.

Compensable Extension Event means any of the following events occurring during the Delivery Phase:

(a) (TfNSW breach): a breach by TfNSW of any TfNSW Project Document;

(b) (fraud): fraud, a malicious act or a malicious omission of TfNSW or a TfNSW Associate (other than any NSW Rail Entity) in connection with the Project;

(c) (Contamination Compensation Event): a Contamination Compensation Event;

(d) (Emergency and Step in): TfNSW exercises its rights under clause 41.1(a) or its step-in rights under clause 41.3(e) to 41.3(g), other than where the event which
gives rise to the exercise of TfNSW’s rights is a Force Majeure Event or is a result of a Project Co Act or Omission;

(e) not used;

(f) (Accreditation Variation delay): any delay in an Accredited Person obtaining an Accreditation Variation beyond the date for such Accreditation Variation being obtained as set out in the Baseline Delivery Program, except to the extent that the delay is caused or contributed to by Project Co’s failure to comply with its obligations in clause 6A in respect of the Accreditation Variation; or

(g) (other events): any other event described as a Compensable Extension Event in this Deed.

Compensable Intervening Event means any of the following events occurring during the Maintenance Phase:

(a) (TfNSW breach): a breach by TfNSW of any TfNSW Project Document;

(b) (fraud): fraud, a malicious act or a malicious omission of TfNSW or a TfNSW Associate (other than any NSW Rail Entity) in connection with the Project;

(c) (Contamination Compensation Event): a Contamination Compensation Event; or

(d) (other events): any other event described as a Compensable Intervening Event in this Deed.

Compensation Date has the meaning given in the Termination Payments Schedule.

Condition Precedent means each condition precedent in the Conditions Precedent Schedule.

Condition Precedent Deadline means the date so specified in item 4 of the Contract Particulars.

Condition Review Date has the meaning given in clause 36.5(a) as adjusted (if at all) in accordance with clause 36.6(a).

Conditions Precedent Schedule means Schedule 2.

Confidential Design Information means:

(a) all Technical Documents; and

(b) any other information designated by the TfNSW Representative to be Confidential Design Information.

Confidential Information means:

(a) the Project Documents;

(b) the Project Information;

(c) any Commercially Sensitive Information;

(d) information provided by:

(i) RailCorp, TfNSW or any of their Associates to Project Co or any of its Associates; or
(ii) Project Co or any of its Associates to RailCorp, TfNSW or any of their Associates,
in connection with this Deed or the Project, whether provided prior to or after the date of this Deed;

(e) Project Co Material;

(f) Confidential Design Information; and

(g) Personal Information,

but does not include any report prepared by or on behalf of TfNSW in relation to the performance or non-performance by Project Co or its Associates of its obligations pursuant to this Deed.

**Configurable Items** means those items listed in the column entitled 'Configurable Item / Parameter' in the tables in Annexure A of the Change Compensation Principles.

**Configurable Item Changes** means the changes to configurations of the Configurable Items and the physical retrieval contemplated by the tables set out in Annexure A to the Change Compensation Principles.

**Configuration Management Plan** means the Management Plan of that name.

**Confirmed** means, in relation to a document that must be submitted for review in accordance with the Review Procedures, that the document has been submitted for review and has been returned marked by the Reviewing Party or a Verification and Acceptance Reviewing Party (as applicable) with a statement 'no comments' in accordance with the Review Procedures or is deemed under the Review Procedures to have been returned marked 'no comments'.

**Confirmed Documents** and **Confirmed Technical Documents** will be interpreted accordingly.

**Consent Deed** means:

(a) the Delivery Consent Deed;

(b) the Maintenance Consent Deed; and

(c) the Depot Subcontract Consent Deed.

**Consequential or Indirect Loss** means any:

(a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings; or

(b) to the extent not prohibited by Law, penalties payable under agreements other than the TfNSW Project Documents.

**Consortium** means:

(a) Project Co;

(b) Finance Co;

(c) each Holding Entity;

(d) the Delivery Subcontractor up to the commencement of the CDPD Period;
(e) the Maintenance Subcontractor;

(f) the Depot Subcontractor up to the date falling 2 years after the Date of Final Acceptance (Maintenance Facility);

(g) not used;

(h) not used; and

(i) the Parent Guarantor of the Maintenance Subcontractor,

and **Consortium Member** means any of them.

**Construction Change Payment** means, in respect of a CCA Event, an amount equal to an increase in the Construction Price determined in accordance with section 6(d)(ii) (Adjustment to Securitised Licence Structure) of the Change Compensation Principles, which must equal the corresponding Additional Receivables Purchase Price calculated under the Receivables Purchase Deed.

**Construction Environmental Management Plan** or **CEMP** means the Management Plan of that name.

**Construction Payment** means each payment to be paid by TfNSW to Project Co under clause 33.1 as adjusted (if at all) in accordance with clauses 33.2 or 33.3, which must equal the corresponding Receivables Instalment Payment calculated under the Receivables Purchase Deed.

**Construction Payment Date** means the 'Construction Payment Date' for payment of a Construction Payment as set out in the Model Output Schedule.

**Construction Price** means the aggregate of:

(a) the Construction Payments; and

(b) any Construction Change Payments.

which must equal the Receivables Purchase Price calculated under the Receivables Purchase Deed.

**Consumable** means any consumable materials required to support the Maintenance, repair or overhaul of any Maintained Rail Assets during the Term.

**Consumer Price Index** or **CPI** has the meaning given in the Indexes Schedule.

**Contamination** has the meaning set out in the CLM Act.

**Contamination Compensation Event** means where Project Co is required under clause 8.4(f) to:

(a) Remediate Contamination:

   (i) that is on, in, over, under or emanating from a Project Site, to the extent such Contamination has been caused or contributed to by TfNSW or its Associates (other than any NSW Rail Entities) after the date of this Deed;

   (ii) that has migrated onto a Project Site from an Adjoining Property after the date of this Deed, if:

   A. the presence of the Contamination presents an unacceptable risk of harm to human health or the Environment, having regard to Best Industry Practices; or
B. the Contamination is required to be Remediated to comply with any Environmental Requirements, Law or any Contamination Remediation Notice; or

(iii) that is Unidentified Pre-Existing Contamination; or

(iv) that is Baseline Pre-Existing Contamination,

other than the extent to which the Contamination:

(v) would have been:

A. minimised; or

B. in respect of Contamination other than Baseline Pre-Existing Contamination, reasonably foreseeable as at the date of this Deed,

by a prudent, experienced and competent contractor in the same circumstances as Project Co using Best Industry Practices;

(vi) has been:

A. caused or contributed to;

B. disturbed; or

C. exacerbated,

by a Project Co Act or Omission;

(vii) would have been:

A. prevented or minimised; or

B. in respect of Contamination other than Baseline Pre-Existing Contamination, discovered,

by a prudent, experienced and competent contractor in the same circumstances using Best Industry Practices;

(viii) is Pre-Existing Contamination at the Maintenance Facility Site or the Returned Asset Site identified in a Site Information Report, Planning Approval Document or in investigations carried out by, or on behalf of, Project Co or its Associates; or

(ix) is Contamination that would occur in the normal course of operating a similar facility providing similar services in accordance with Best Industry Practices; or

(b) Remediate Contamination that is outside the boundary of a Project Site other than the extent to which the Contamination:

(i) is on, in, under or emanating from Additional Land; or

(ii) has been:

A. caused or contributed to;
B. disturbed; or
C. exacerbated,

by a Project Co Act or Omission.

Contamination Remediation Action Plan has the meaning given in clause 8.5(a), as may be updated from time to time by Project Co in accordance with this Deed.

Contamination Remediation Notice means any notice, order or direction issued under Legislation requiring a person to take measures to Remediate any Contamination in, on, under or emanating from a Site, or any other action regarding Contamination including a clean up notice, preliminary investigation order, management order or ongoing maintenance order.

Continuous Production Options means the Options Units in respect of which TNSW has issued Option Notices during the Option Continuous Production Period.

Contract Close means the date of this Deed.

Contract Particulars means Schedule 1.

Contract Review Meeting means a meeting held in accordance with clause 10.8D.

Control means:

(a) 'Control' as defined in the Corporations Act;

(b) the ability to control, directly or indirectly, the composition of the board or partnership committee (or if the Entity is a trust, the appointment of a trustee of that trust);

(c) being in a position to cast, or control the casting of, more than \( \frac{2}{3} \) of the maximum number of votes that may be cast at a general meeting or similar (or if the Entity is a trust, a meeting of unit holders); or

(d) having a relevant interest (as defined in section 608 of the Corporations Act but as if a reference in that section to 'securities' were a reference to Securities as defined in this Deed) in more than \( \frac{1}{2} \) of the Securities,

of an Entity (whether alone or together with any Associates). For the purposes of this definition, Associate has the meaning given in the Corporations Act and includes a person deemed to be an associate of a designated body (within the meaning of section 12 of the Corporations Act).

Controlling Entity means, in relation to a Change in Control of a Consortium Member, the person or Entity to whom Control will pass.

Controlling Unit Holder means, in respect of any trust or managed investment scheme, any entity which:

(a) controls (within the meaning of section 50AA of the Corporations Act) the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts); or

(b) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of unit holders of the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts or managed investment schemes); or
(c) holds more than one half of the units in the trust or managed investment scheme.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**COTS** means, in respect of Software and Firmware, a commercial off-the-shelf product that is ready-made and available for sale to the general public.

**Counterparty Details** means, in connection with each person (other than TfNSW or RailCorp) who is a party to a TfNSW Project Document:

(a) a certified copy of its constitution (or other constituent documents);

(b) in the case of a trustee who enters into the TfNSW Project Documents on behalf of a trust, a certified copy of the relevant trust deed;

(c) a certified copy of any powers of attorney under which the person executed each TfNSW Project Document; and

(d) a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations in accordance with each TfNSW Project Document to which it is a party.

**Crew Cab** means the enclosed area, which must incorporate a Driver's Workstation, located at the terminal end of a Unit for the purpose of locating Train Crew in order to operate a Train.

**Crew Compartment** means the enclosed area for use by Crew or Staff to sit comfortably which is separate from Passenger areas.

**Crew Office** means the enclosed area, which must incorporate a Crew Workstation, which enables Crew to carry out operational tasks and perform a customer service role.

**Crew Workstation** means the dedicated area and associated components which Train Crew interface with in order to operate the Train, including controls, indicators and seating. This includes the Driver's Workstation.

**Cumulative Unit Kilometres Trigger** means the total number of kilometres travelled by an Accepted Unit since Provisional Acceptance (Unit) of that Unit as set out in the relevant table in sections 3.1(e), (f) and (g) of the Payment Schedule which applies to that Unit.

**Customers or Passengers** means passengers and all other users and potential users (including children, adults, the elderly and people with Disabilities) of:

(a) the Train;

(b) the Network; or

(c) services and facilities associated with the Network.

It does not include Staff or any transport safety employee employed with respect to a public passenger service or any person carrying out work for the operator of a public passenger service, or any authorised officer or transport safety investigator, while carrying out work or on duty in that capacity.

**Customer Delay Seconds** means the elapsed period of Delay (in seconds) calculated at each Monitored Platform on a Journey and is measured from the time that a Train is scheduled in the Train Plan to arrive at a Monitored Platform to the time the Train actually arrives at that Monitored Platform.
Customer Impact Delay means, in respect of an Availability Period, the amount calculated in accordance with section 4.2 of the Performance Regime to recognise the impact to Customers of experiencing a Delay.

Data means all data and expressions of data contained in or processed or generated by the Assets or produced as a result of the Project Activities, including:

(a) all data and expressions of data contained in or processed or generated by the Assets;
(b) all data and expressions of data comprising reports generated by the Assets; and
(c) all data and expressions of data about or relating to or generated by Project Co or its Associates in connection with the Assets.

Data Storage Medium (Attachments) means the CD Rom, USB key or other data storage medium labelled 'RRP - Attach' and initialled by TfNSW, RailCorp and Project Co for identification purposes.

Data Storage Medium (Annexures) means the CD Rom, USB key or other data storage medium labelled 'RRP - Annex' and initialled by TfNSW, RailCorp and Project Co for identification purposes.

Date for Acceptance means:

(a) the Date for Provisional Acceptance; and
(b) the Date for Final Acceptance,

or the relevant one of these as the case may be.

Date for CDPD means

Date for Final Acceptance means, in respect of:

(a) the Maintenance Facility, the Date for Final Acceptance (Maintenance Facility);
(b) the Base Fleet and Continuous Production Options, the Date for Final Acceptance (Base Fleet and Continuous Production Options);
(c) each Simulator, the relevant Date for Final Acceptance (Simulator);
(d) each Unit forming part of the New Fleet, the relevant Date for Final Acceptance (Unit);
(e) Final Acceptance (CDPD), the Date for Final Acceptance (CDPD);
(f) Final Acceptance (Project), the Date for Final Acceptance (Project); and
(g) the Upgrade Services, the Date for Final Acceptance (Upgrade Services),

or the relevant one of these as the case may be.

Date for Final Acceptance (Base Fleet and Continuous Production Options) means the date specified as such in item 9 of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

Date for Final Acceptance (CDPD) means the latest of:
(a) the Date for Final Acceptance (Unit) of the last Unit forming part of the Base Fleet;
(b) the Date for Final Acceptance (Maintenance Facility); and
(c) the Date for Final Acceptance (Simulator) in respect of the second Simulator to achieve Final Acceptance (Simulator).

**Date for Final Acceptance (Maintenance Facility)** means the date specified as such in item 8 of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

**Date for Final Acceptance (Project)** means the latest of:

(a) the Date for Final Acceptance (Base Fleet and Continuous Production Options);
(b) not used;
(c) the Date for Final Acceptance (Maintenance Facility); and
(d) the Date for Final Acceptance (Simulator) in respect of the second Simulator to achieve Final Acceptance (Simulator).

**Date for Final Acceptance (Simulator)** means the relevant date specified for each Simulator in item 10 of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

**Date for Final Acceptance (Unit)** means the relevant date specified for each Unit forming part of the New Fleet in item 11 of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

**Date for Final Acceptance (Upgrade Services)** means the date specified as such in item 12B of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

**Date for Handover (Legacy Maintenance Centre)** means the date specified as such in item 12 of the Contract Particulars.

**Date for Provisional Acceptance** means, in respect of:

(a) the Maintenance Facility, the Date for Provisional Acceptance (Maintenance Facility);
(b) the Base Fleet and Continuous Production Options, the Date for Provisional Acceptance (Base Fleet and Continuous Production Options);
(c) each Simulator, the relevant Date for Provisional Acceptance (Simulator);
(d) each Unit forming part of the New Fleet, the relevant Date for Provisional Acceptance (Unit); and
(e) the Upgrade Services, the Date for Provisional Acceptance (Upgrade Services), or the relevant one of these as the case may be.

**Date for Provisional Acceptance (Base Fleet and Continuous Production Options)** means the date specified as such in item 5A of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

**Date for Provisional Acceptance (Maintenance Facility)** means the date specified as such in item 5 of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.
Date for Provisional Acceptance (Simulator) means the relevant date specified for each Simulator in item 6 of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

Date for Provisional Acceptance (Unit) means the relevant date specified for each Unit forming part of the New Fleet in item 7 of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

Date for Provisional Acceptance (Upgrade Services) means the date specified as such in item 12A of the Contract Particulars, as adjusted (if at all) in accordance with this Deed.

Date of Acceptance means:
(a) the Date of Provisional Acceptance; and
(b) the Date of Final Acceptance,
or the relevant one of these as the case may be.

Date of Final Acceptance means, in respect of:
(a) the Maintenance Facility, the Date of Final Acceptance (Maintenance Facility);
(b) the Base Fleet and Continuous Production Options, the Date of Final Acceptance (Base Fleet and Continuous Production Options);
(c) each Simulator, the relevant Date of Final Acceptance (Simulator);
(d) each Unit forming part of the New Fleet, the relevant Date of Final Acceptance (Unit);
(e) Final Acceptance (CDPD), the Date of Final Acceptance (CDPD);
(f) Final Acceptance (Project), the Date of Final Acceptance (Project); and
(g) the Upgrade Services, the Date of Final Acceptance (Upgrade Services),
or the relevant one of these as the case may be.

Date of Final Acceptance (Base Fleet and Continuous Production Options) means the date specified in the Certificate of Final Acceptance issued in respect of the Base Fleet and Continuous Production Options as the date on which Project Co achieved Final Acceptance (Base Fleet and Continuous Production Options).

Date of Final Acceptance (CDPD) means the latest of:
(a) the Date of Final Acceptance (Unit) of the last Unit forming part of the Base Fleet;
(b) the Date of Final Acceptance (Maintenance Facility); and
(c) the Date of Final Acceptance (Simulator) in respect of the second Simulator to achieve Final Acceptance (Simulator).

Date of Final Acceptance (Maintenance Facility) means the date specified in the Certificate of Final Acceptance issued in respect of the Maintenance Facility as the date on which Project Co achieved Final Acceptance (Maintenance Facility).

Date of Final Acceptance (Project) means the latest of:
(a) the Date of Final Acceptance (Base Fleet and Continuous Production Options);
(b) not used;
(c) the Date of Final Acceptance (Maintenance Facility); and
(d) the Date of Final Acceptance (Simulator) in respect of the second Simulator to achieve Final Acceptance (Simulator).

Date of Final Acceptance (Simulator) means, for each Simulator, the date specified in the Certificate of Final Acceptance issued in respect of that Simulator as the date on which Project Co achieved Final Acceptance (Simulator).

Date of Final Acceptance (Upgrade Services) means the date specified in the Certificate of Final Acceptance issued in respect of the Upgrade Services as the date on which Project Co achieved Final Acceptance (Upgrade Services).

Date of Final Acceptance (Unit) means, for each Unit forming part of the New Fleet, the date specified in the Certificate of Final Acceptance issued in respect of that Unit as the date on which Project Co achieved Final Acceptance (Unit).

Date of Handover (Legacy Maintenance Centre) means the date specified as the 'Commencement Date' in the Legacy Maintenance Centre Licence.

Date of Preliminary Acceptance means, for each Unit forming part of the New Fleet, the date specified in the Certificate of Preliminary Acceptance issued in respect of that Unit as the date on which Project Co achieved Preliminary Acceptance.

Date of Provisional Acceptance means, in respect of:

(a) the Maintenance Facility, the Date of Provisional Acceptance (Maintenance Facility);
(b) the Base Fleet and Continuous Production Options, the Date of Provisional Acceptance (Base Fleet and Continuous Production Options);
(c) each Simulator, the relevant Date of Provisional Acceptance (Simulator);
(d) each Unit forming part of the New Fleet, the relevant Date of Provisional Acceptance (Unit); and
(e) the Upgrade Services, the Date of Provisional Acceptance (Upgrade Services),
or the relevant one of these as the case may be.

Date of Provisional Acceptance (Base Fleet and Continuous Production Options) means the Date of Provisional Acceptance (Unit) of the last Unit forming part of the Base Fleet or the last of the Continuous Production Options (whichever is latest).

Date of Provisional Acceptance (Maintenance Facility) means the date specified in the Certificate of Provisional Acceptance issued in respect of the Maintenance Facility as the date on which Project Co achieved Provisional Acceptance (Maintenance Facility).

Date of Provisional Acceptance (Simulator) means, for each Simulator, the date specified in the Certificate of Provisional Acceptance issued in respect of the Simulator as the date on which Project Co achieved Provisional Acceptance (Simulator).
Date of Provisional Acceptance (Upgrade Services) means the date specified in the Certificate of Provisional Acceptance issued in respect of the Upgrade Services as the date on which Project Co achieved Provisional Acceptance (Upgrade Services).

Date of Provisional Acceptance (Unit) means, for each Unit forming part of the New Fleet, the date specified in the Certificate of Provisional Acceptance issued in respect of that Unit as the date on which Project Co achieved Provisional Acceptance (Unit).

Date of Returned Asset Handback means the date on which Returned Asset Handback is achieved.

Date of the Option Notice means the date on which TfNSW serves the Option Notice on Project Co.

Day 1 Uninsurable Risk means:

(a) war, act of a public enemy (whether war is declared or not), civil war, rebellion, revolution, military usurped power, military insurrection, military commotion or other like hostilities;

(b) chemical, nuclear or biological contamination;

(c) ionising radiation or contamination by radioactivity; and

(d) any act of terrorism occurring at a Project Site, except to the extent coverage is provided for a declared terrorist incident under the Terrorism Insurance Act 2003 (Cth), save to the extent caused or contributed to by a Project Co Act or Omission.

Debt means the principal amounts properly drawn down by any Project Co Entity under the Finance Documents to finance the Project Activities, including accrued interest and fees payable in respect of those principal amounts, and any net amounts payable under any hedging arrangements under Finance Documents that are relevant to those principal amounts deducting all credit balances on all debt reserve and debt service accounts (however named) (excluding, for the avoidance of doubt, any credit balances on any equity reserve or distributions account (however named)) held by or on behalf of any Project Co Entity or any Financier and related to the Project (and also deducting any cash that would have been on deposit in those accounts but for the fact that such cash (i) has been replaced with a letter of credit or similar instrument as contemplated by the terms of the Finance Documents or (ii) has been used to invest in permitted investments as contemplated by the Finance Documents) but does not include default interest, equity shareholder loans, or amounts in the nature of Equity.

Deed has the meaning given in clause 2.2(a).

Deed of Novation means a deed of novation substantially in the same form set out at Schedule 11.

Deemed Available has the meaning given in section 10.6 of the Payment Schedule and references to Deemed Availability shall be construed accordingly.

Default Termination Event means the occurrence of any of the following events:

(a) (abandonment): Project Co wholly or substantially abandons the Project or any material part of the Project Activities;

(b) (Group Member Insolvency Event): an Insolvency Event occurs in relation to a Group Member;
(c) (Project Co Entity fraud): a Project Co Entity engages in fraud, collusion or dishonest conduct in performing its obligations under any Project Document;

(d) (assignment, transfer or disposal): a Project Co Entity assigns, transfers or otherwise disposes of any of its rights, title and interest in or under any Project Document, the whole or any part of a Site or an Asset in breach of clause 58;

(e) (Change in Control): a Change in Control (which is not a Permitted Change in Control) occurs in respect of a Project Co Entity other than in accordance with clause 59;

(f) (unremedied Major Default): a Major Default is capable, or is deemed to be capable, of remedy and Project Co fails to remedy the Major Default within the period set out in the Major Default Notice (as extended, if at all, in accordance with clause 48.4(b));

(g) (unremedied Major Default by Sunset Date): a Major Default is capable, or is deemed to be capable, of remedy and Project Co fails to remedy the Major Default by the Sunset Date (including a failure to achieve Final Acceptance of the relevant Asset by the applicable Sunset Date);

(h) (Major Default not capable of remedy): a Major Default is not capable of remedy and Project Co fails to diligently comply with any reasonable requirements of TfNSW to overcome the consequences of the Major Default within the time stated in the Major Default Notice (as extended, if at all, under clause 48.4(b));

(i) [Redacted]

(j) (termination of an Access Agreement): a breach by Project Co of any of its obligations under clause 6B(f) causing an Access Agreement to be terminated by an Access Provider;

(k) (Illegality Event): an Illegality Event occurs;

(l) (Probity Event): Project Co fails to comply with clause 64.1(d), in relation to a Probity Event;

(m) (late Provisional Acceptance): Project Co fails to achieve Provisional Acceptance of:

- (i) the first Long Unit to achieve Provisional Acceptance by the date that is [Redacted] Months after the relevant Date for Provisional Acceptance (Unit);
- (ii) the last Long Unit to achieve Provisional Acceptance by the date that is [Redacted] Months after the relevant Date for Provisional Acceptance (Unit);
- (iii) the first Short Unit (Regional) to achieve Provisional Acceptance by the date that is [Redacted] Months after the relevant Date for Provisional Acceptance (Unit);
(n) (Persistent Breaches): TfNSW has issued a Final Persistent Breach Notice and the relevant breach has:

(i) continued beyond [redacted] Business Days after the date of issue of the Final Persistent Breach Notice; or

(ii) recurred 3 or more times in the [redacted] Month period after the date of issue of the Final Persistent Breach Notice;

(o) (Frequent Breaches): TfNSW has issued a Final Frequent Breaches Notice and Frequent Breaches occur at any time during the [redacted] Month period after the date of issue of the Final Frequent Breaches Notice;

(p) (Unit leaving Train Manufacturer’s Facility): a breach by Project Co of clause 22A.4; or

(q) (deemed Default Termination Event): any other event which is deemed to be a Default Termination Event under clause 44.6(c)(i) or clause 48.2(e).

Default Termination Payment means the payment calculated in accordance with section 3 of the Termination Payments Schedule.

Defect means:

(a) any defect, shrinkage, expansion, fault or omission in an Asset (excluding any normal shrinkage or expansion of materials accommodated in accordance with Best Industry Practices); or

(b) any other aspect of an Asset which is not in accordance with the requirements of this Deed.

Defects Expert has the meaning given in clause 29.3(f).

Defects Term has the meaning given in clause 29.2(a).

Delay occurs when a Train is behind its schedule at any point in its Journey, substantially because of a Project Co Defect affecting that Train on that Journey. It is measured in Customer Delay Seconds.

Delay Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 4.1 of the Performance Regime.

Deliverable means each:

(a) Delivered Rail Asset;
and any other item to be designed, developed, constructed, manufactured, supplied, delivered, tested or commissioned by Project Co under this Deed, and including any Modifications to such items.

Delivered Rail Assets means each of:

(a) the New Fleet;
(b) the Simulators;
(c) the Maintenance Facility;
(d) all Equipment, Spares, Consumables and Special Tools; and
(e) the Upgrade Services,

and including any Modifications to such items.

Delivery Consent Deed means the document entitled ‘Delivery Consent Deed - Regional Rail Project’ between Project Co, the Security Trustee, the Delivery Subcontractor and others.

Delivery Phase means the period beginning on the date of Financial Close and ending on the Date of Final Acceptance (Project).

Delivery Phase Activities means:

(a) the Works and all things which Project Co is, or may be, required to carry out or do in connection with the Works; and
(b) all other things which Project Co is, or may be, required to carry out or do in accordance with the TfNSW Project Documents during the Delivery Phase, but excludes the Services.

Delivery Phase CCE Model Variation Event has the meaning given in clause 60.3(b).

Delivery Phase Insurances means the Insurances referred to in Part A of the Insurance Schedule.

Delivery Phase Licence means the licence granted under clause 19.1 by TfNSW to Project Co for Project Co and its Associates to enter upon and occupy the Maintenance Facility Site and the Returned Asset Site to the extent necessary to carry out the Project Activities.

Delivery Side Deed means the document entitled ‘Delivery Side Deed’ dated on or about the date of this Deed between TfNSW, RailCorp, Project Co and the Delivery Subcontractor substantially in the form set out in Schedule 27.

Delivery Subcontract means the agreement between Project Co and the Delivery Subcontractor to carry out the Delivery Phase Activities, and any other contract between Project Co and a Subcontractor to carry out any part of the Delivery Phase Activities.
Delivery Subcontractor means, as at the date of this Deed, the party listed as such in item 17 of the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out any part of the Delivery Phase Activities.

Depot Subcontract means the agreement between the Delivery Subcontractor and the Depot Subcontractor in respect of the design and construction of the Maintenance Facility.

Depot Subcontract Consent Deed means the document entitled 'Depot Subcontract Consent Deed - Regional Rail Project' between the Security Trustee, Project Co, the Delivery Subcontractor, the Depot Subcontractor and others.

Depot Subcontract Side Deed means the document entitled 'Depot Subcontract Side Deed' dated on or about the date of this Deed between TfNSW, RailCorp, Project Co, the Delivery Subcontractor and the Depot Subcontractor substantially in the form set out in Schedule 29A.

Depot Subcontractor means, as at the date of this Deed, the party listed as such in item 18 of the Contract Particulars and any person who in addition or substitution is engaged by the Delivery Subcontractor to carry out the design and construction of a material part of the Maintenance Facility.

Design Consultant means, as at the date of this Deed, the party listed as such in item 13A of the Contract Particulars, and any person who in addition or substitution is engaged by Project Co, a Key Subcontractor or a Significant Subcontractor to design a material part of the Maintenance Facility.

Design Consultant Engagement means the document entitled 'Design Consultant Engagement' dated on or about the date of this Deed between the Depot Subcontractor and the Design Consultant.

Design Consultant Side Deed means the document entitled 'Design Consultant Side Deed' dated on or about the date of this Deed between TfNSW, RailCorp, Project Co, the Depot Subcontractor, the Delivery Subcontractor and the Design Consultant substantially in the form set out in Schedule 26.

Design Development Presentations means the presentations organised and conducted by Project Co during the Design Development Process.

Design Development Process means the process for the development of the Technical Documents which is described in the Design Development Schedule.

Design Development Schedule means Schedule 8.

Design Life means, in respect of a Design Life Item, the period of years for which the item must be designed, manufactured and constructed to be Fit For Purpose as specified for that Design Life Item in column 2 of Table 1 of the Residual Life and Design Life Schedule, measured from the FFP Warranty Commencement Date in respect of the Asset which contains or comprises the Design Life Item.

Design Life Item means each Asset (including each component, system, and sub-system of an Asset) as specified in Table 1 of the Residual Life and Design Life Schedule.

Design Requirements means requirements for the design of the Delivered Rail Assets as set out in:

(a) the Project Scope and Requirements;

(b) the Technical Solution;

(c) the Design Development Schedule;
(d) any relevant Standards (including all Approvals);
(e) the Systems Engineering Management Plan;
(f) any Modification directed by TfNSW; and
(g) the remainder of this Deed.

Design Stage means the five stages which the Technical Documents are to be progressed, being:
(a) System Definition Review;
(b) Preliminary Design Review;
(c) Detailed Design Review;
(d) Test Readiness Review; and
(e) System Verification Review,
or the relevant one of these as the case may be.

Designated Investor means an investor described as such in item 14 of the Contract Particulars.

Detailed Design means the design presented at the Detailed Design Review.

Detailed Design Review or DDR means the review conducted in accordance with section 25.3 of the Management Requirements and the Review Procedures.

Developed IP means any Project Co Material created, developed or produced by or on behalf of Project Co or any of its Associates in the course of carrying out the Project Activities, including:
(a) developments, modifications, improvements or additions to, or adaptations, customisations or enhancements of, or deletions or derivatives from, Project Co Background IP, that are developed as part of the Project Activities, or for the purposes of the Project, regardless of whether developed prior to the date of this Deed); and
(b) all research conducted by Project Co or any of its Associates in relation to the Project or any part of it.

Disability has the meaning given to it in section 4 of the DDA.

Disability Discrimination Act or DDA means the Disability Discrimination Act 1992 (Cth).

Dispute has the meaning given in clause 50.1(a).

Distance Based Payment means the amount calculated in accordance with sections 3.1(e), 3.1(f) or 3.1(g) of the Payment Schedule (as applicable).

Distribution means, without double counting and whether in cash or kind:
(a) any distribution by a Project Co Entity to its Equity Investors or their Related Bodies Corporate (or any Related Trust Entity of an Equity Investor), or amount available for such distribution, whether by way of dividend, return of capital, redemption, purchase, buy back, cancellation, payment, repayment, loan, contractual
arrangement, transfer of assets or rights or otherwise in respect of the share capital of a Project Co Entity, units in any trust or any subordinated debt;

(b) the receipt from a Project Co Entity by its Equity Investors or their Related Bodies Corporate (or by any Related Trust Entity of an Equity Investor) of any other benefit which is not received in the ordinary course of business or on reasonable commercial terms;

(c) subject to paragraph (b), any payment by a Project Co Entity to any Equity Investor or Related Body Corporate of any Equity Investor (or any Related Trust Entity of an Equity Investor), which is not received in the ordinary course of business or on reasonable commercial terms; or

(d) the release by a Group Member of any actual or contingent liability of any Project Co Entity or any Equity Investor (or any Related Body Corporate or Related Trust Entity of an Equity Investor).

**Document Management System** means the system to be used by TfNSW and Project Co to manage contract correspondence and documentation which may be TeamBinder or such other system as may be notified to Project Co by TfNSW from time to time.

**Document Management System Commencement Date** has the meaning given in clause 65.1A(a)(i).

**Driver’s Workstation** means the dedicated area and associated components which the Driver interfaces with in order to operate the Train, including controls, indicators and seating.

**Driving Motor Car** means a single Car with a Crew Cab.

**DTRS** has the meaning given in Part A3 (Definitions) of the Project Scope and Requirements.

**Duty** has the meaning given in clause 35.7(a).

**Duty Estimate** has the meaning given in clause 35.7(b)(ii).

**Early Warning (Delivery)** has the meaning given in clause 37.1(a).

**Early Warning (Services)** has the meaning given in clause 38.1(a).

**Easements** means all easements, restrictions on use, covenants, agreements, or other similar arrangements together with any leases, sub-leases, licences, rights or privileges, in each case as are granted on or prior to the date of this Deed.

**Emergency** means any event or circumstance which:

(a) involves serious personal injury, death or significant damage to or destruction of the Assets, or any other real or personal property;

(b) poses a serious risk to:

(i) the public interest;

(ii) the health or safety of any person;

(iii) the Environment;

(iv) any part of a Site;

(v) the structural integrity of any part of the Assets; or
(vi) any part of the Network;
(c) poses a serious risk of damaging or destroying the Assets or any other real or personal property; or
(d) may interfere or threaten:
(i) the safe operation of the Assets;
(ii) the safe operation of the Network; or
(iii) the operational capacity or efficiency of the Network.

Emissions and Energy Data means any data, information, records and reports required to be kept or provided under the NGER Legislation or any other Law concerning:
(a) greenhouse gas emissions, energy production or energy consumption;
(b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; or
(c) environmental emissions or energy production, use, consumption or efficiency, in connection with the Project.

Endeavour means the diesel fleet comprising Cars numbered TE 2801-2815 and LE 2851-2865 (in each case inclusive), currently used by the Operator to provide Intercity Non-Electric Services on the Intercity Trains Network.

Energy Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 10.1 of the Performance Regime.

Energy Adjustment Factor means the amount calculated as EAF in accordance with section 10.2 of the Performance Regime.

Energy Consumption Deduction means the amount calculated as ECD in accordance with section 10.2 of the Performance Regime.

Engineering Change has the meaning given in clause 39.16(a).

Engineering Change Notice means a notice issued in accordance with clause 39.16(a)(iv) in respect of an Engineering Change containing the information required by clause 39.16(b).

Engineering Change Process means the process described in clause 39.16.

Entity has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint venture within the meaning of Australian Accounting Standard 131 (AASB 131).
Entry Time means, for an Availability Period, the time at which a Train is to depart the Entry Point to enter another part of the Network as set out in the Train Plan.

Environment means the physical factors of the surroundings of humans and other life forms, including the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social factor of aesthetics.

Environment and Sustainability Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 12 of the Performance Regime.

Environment and Sustainability Management System or E&SMS means the system to be developed by Project Co in accordance with section 3 of Part B5 (Planning and Environmental Requirements) of the Project Scope and Requirements.

Environmental Guidelines means:
(b) Contaminated Sites: Guidelines for Consultants reporting on Contaminated Sites (2011) published by NSW Office of Environment and Heritage;
(c) National Environmental Protection (Assessment of Site Contamination) Measure (1999) published by National Environment Protection Council;
(d) Contaminated Sites: Guidelines for the Assessment and Management of Groundwater Contamination (2007) published by Department of Environment and Conservation NSW; and

Environmental Hazard means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Environmental Management Representative or EMR means the independent environmental representative appointed to the Project jointly by TfNSW and Project Co from time to time in accordance with clause 8.4A.

Environmental Manager means the person of that title, as identified as one of the Required People specified in item 22A of the Contract Particulars, who must meet the minimum requirements set out in section 3(e), Part B5 (Planning and Environmental Requirements) of the Project Scope and Requirements.

Environmental Requirements means all Laws relating to the Environment and the conditions and requirements of any Approval relating to the Environment and all environmental safeguards and measures necessary to avoid, reduce, minimise or mitigate the environmental impacts of the Project Activities, including those identified in the Project Scope and Requirements.

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


EPA Reportable Event means a breach of any Environmental Requirement required to be notified to the EPA including:
(a) a Pollution Incident referred to in section 148(1) of the *Protection of the Environment Operations Act 1997* (NSW); and

(b) Contamination of land referred to in section 60(1) of the CLM Act.

**Equalisation Swap** means the interest rate swap between Finance Co and Project Co dated on or about the date of this Deed.

**Equipment** means all plant, machinery, furniture, fittings and fixtures which:

(a) are necessary for the performance of the Services;

(b) are referred to in the Project Scope and Requirements; or

(c) without limiting paragraphs (a) and (b) above, Project Co or its Associates installs, constructs or places on a Site and which is, or becomes, part of a Maintained Rail Asset,

and includes Special Tools but excludes all Temporary Equipment and Spares.

**Equity** means all partnership interests and ordinary unit capital and ordinary share capital in, or the subordinated debt which is, in substance, equivalent to ordinary equity of, any Project Co Entity, and includes any securities which are convertible into ordinary partnership interests or ordinary unit capital or ordinary share capital in Project Co.

**Equity Documents** means each of the documents listed in the Equity Documents Schedule.

**Equity Documents Schedule** means Schedule 20.

**Equity Investor** means:

(a) a person identified as such in the Ownership Schedule (until that person is replaced in accordance with clause 59);

(b) each person who has provided or has agreed to provide:

(i) Equity at the times and in the amounts set out in the Financial Model (whether by way of subscription for units or shares or provision of unitholder or shareholder loans); or

(ii) any other equity, financial arrangement, security or option issued by or provided to a Group Member which does not constitute a Refinancing; and

(c) any person who replaces or is added, in accordance with clause 59, to the persons referred to in paragraphs (a) or (b).

**Equity IRR** means the nominal blended internal rate of return to Equity Investors (equal to the percentage set out under 'Equity IRR' in the Model Output Schedule) which is calculated after the deduction of tax on project cash flows by any Project Co Entity but before any tax paid or payable by Equity Investors.

**Escrow Agent** means an escrow agent approved by TfNSW.

**Escrow Agreement** means a deed substantially in the form set out in Schedule 39.

**ETCS** means the European Train Control System as further defined in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements.

**Executive Representatives** has the meaning given in clause 51(a).
**Existing Access Agreements** means the following agreements in force as at the date of this Deed providing for access to the Network:

(a) Australian Rail Track Corporation Access Agreement;
(b) TfNSW Access Agreement;
(c) Schedule 11 (Network Access) of the NSW Trains Rail Services Contract;
(d) Southern Cross Station Access Agreement;
(e) Southern Cross Station Passenger Yard Access Agreement;
(f) VicTrack Rail Network Access Agreement; and
(g) Queensland Rail Access Agreement,

and includes any extension or renewal of any such agreement on the same terms.

**Exotic Swap** means any hedging or swap arrangement that does not satisfy all of the following criteria:

(a) either:
   (i) a fixed to floating (and vice versa) interest rate swap; or
   (ii) a cross-currency swap which swaps payments in respect of the relevant currency of any underlying financial indebtedness that is not denominated in Australian dollars to Australian dollar payments and has a tenor of no longer than 5 years (or such longer period as agreed by TfNSW in writing);
(b) does not have any element of accretion or indexation of the notational principal;
(c) has a tenor of no longer than the tenor of the underlying principal of the Debt and may include forward start swaps provided the termination date of such swaps is no later than the term of the underlying principal of the Debt; and
(d) together with all other hedging or swap arrangements of any Project Co Entity, has a notional amount that is no more than the underlying principal of the Debt.

**Expert Determination Agreement** means an expert determination agreement to be entered into between Project Co, TfNSW and an independent expert substantially in the form set out in Schedule 30.

**Expiry Date** means the date of termination of this Deed in accordance with its terms or the date on which this Deed expires by effluxion of time in accordance with clause 4.2 (as applicable).

**Expiry Refund Payment** has the meaning given to it in the Receivables Purchase Deed.

**Extended Short Unit (Intercity)** means a Short Unit (Intercity) which is increased in length and capacity by the insertion of any additional Car.
Extended Short Unit (Regional) means a Short Unit (Regional) which is increased in length and capacity by the insertion of any additional Car.

Extension 1 Expiry Date means the date falling 5 years after the Initial Expiry Date.

Extension 2 Expiry Date means the date falling 5 years after the Extension 1 Expiry Date.

Extension 3 Expiry Date means the date falling 5 years after the Extension 2 Expiry Date.

Extension 4 Expiry Date means the date falling 5 years after the Extension 3 Expiry Date.

Extension Event means any of the following events occurring during the Delivery Phase:

(a) (Compensable Extension Event): a Compensable Extension Event;

(b) (TfNSW act or omission): subject to clause 2.1(b) any act or omission of:
   (i) TfNSW; or
   (ii) any Associate of TfNSW (other than any NSW Rail Entity),
   in connection with the Project other than any act or omission which is authorised or permitted under a TfNSW Project Document, Standard or Law;

(c) (Force Majeure Event): a Force Majeure Event;

(d) (blockade): a blockade or embargo that directly affects the Maintenance Facility Site or the Returned Asset Site prior to the Date of Provisional Acceptance (Maintenance Facility) (other than industrial action);

(e) (Change in Mandatory Requirements): a Change in Mandatory Requirements which occurs in respect of the Works, for which TfNSW has issued a Modification Order in accordance with clause 39.10;

(f) (Modification): a Modification for which TfNSW has issued a Modification Order; or

(g) (Agreed Uninsurable Risk): TfNSW requires Project Co to repair or rebuild the Assets and clause 47.3(a)(i) applies.

External Infrastructure means infrastructure which is external to, but is to be provided to, a Site, by Project Co or its Associates, and which is used in common with other users, including roads, footpaths, transport facilities and any Utility Infrastructure external to a Site.

Facility Agent means the person appointed from time to time as agent under the Facility Agreement.

Facility Agreement has the meaning given in the Finance Documents Schedule.

Facility Damage has the meaning given in clause 44.2(c)(ii).

Failure means that:

(a) a Unit is Unavailable;

(b) a Unit suffers a Cancellation;

(c) a Train suffers an incidence of Delay; or

(d) a Simulator suffers a Simulator Failure.
**Fair Value** has the meaning given in the Termination Payments Schedule.

**FFP Warranty** means the warranties given by Project Co in clause 5.4.

**FFP Warranty Commencement Date** means in respect of:

(a) the Maintenance Facility, the Date of Provisional Acceptance (Maintenance Facility);

(b) each Unit, the Date of Provisional Acceptance (Unit) for that Unit;

(c) each Simulator, the Date of Provisional Acceptance (Simulator) for that Simulator;

(d) the Returned Asset, the Date of Returned Asset Handback;

(e) the Legacy Maintenance Centre and the Upgrade Services, the Date of Provisional Acceptance (Upgrade Services); and

(f) each other Deliverable, the date on which that Deliverable is first used in the performance of the Project Activities.

**Final Acceptance** means:

(a) Final Acceptance (Maintenance Facility);

(b) Final Acceptance (Base Fleet and Continuous Production Options);

(c) Final Acceptance (Simulator) for each Simulator;

(d) Final Acceptance (Unit) for each Unit forming part of the New Fleet;

(e) Final Acceptance (CDPD);

(f) Final Acceptance (Project); and

(g) Final Acceptance (Upgrade Services),

or the relevant one of these as the case may be.

**Final Acceptance (Base Fleet and Continuous Production Options)** means when all the Final Acceptance Criteria in respect of the Base Fleet and Continuous Production Options have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

**Final Acceptance (CDPD)** means when the Independent Certifier has issued a Certificate of Final Acceptance in respect of each of:

(a) Final Acceptance (Unit) of the last Unit forming part of the Base Fleet;

(b) Final Acceptance (Maintenance Facility); and

(c) Final Acceptance (Simulator) in respect of both Simulators.

**Final Acceptance Criteria** means the criteria set out in the following sections of the Acceptance Schedule:

(a) section 3.1, in respect of the Maintenance Facility,

(b) section 3.2, in respect of each Simulator;
(c) section 3.3, in respect of each Unit forming part of the New Fleet;
(d) section 3.4, in respect of the Base Fleet and Continuous Production Options; and
(e) section 3.5, in respect of the Upgrade Services,
or the relevant one of these as the case may be.

**Final Acceptance Deduction** means, in respect of a Payment Period, the amount calculated in accordance with section 8.1 of the Performance Regime.

**Final Acceptance (Maintenance Facility)** means when all the Final Acceptance Criteria in respect of the Maintenance Facility have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

**Final Acceptance (Project)** means when the Independent Certifier has issued a Certificate of Final Acceptance in respect of each of:

(a) Final Acceptance (Base Fleet and Continuous Production Options);
(b) not used;
(c) Final Acceptance (Maintenance Facility); and
(d) Final Acceptance (Simulator) in respect of both Simulators.

**Final Acceptance Report** means each report in respect of Final Acceptance required to be submitted by Project Co in accordance with clause 25.7 containing the information required by section 19.7 of the Management Requirements, as amended and updated in accordance with this Deed.

**Final Acceptance (Simulator)** means, for each Simulator, when all the Final Acceptance Criteria in respect of that Simulator have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

**Final Acceptance (Unit)** means, for each Unit forming part of the New Fleet, when all the Final Acceptance Criteria in respect of that Unit have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

**Final Acceptance (Upgrade Services)** means when all the Final Acceptance Criteria in respect of the Upgrade Services have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

**Final Expiry Date** means on any date:

(a) if TfNSW has not elected to extend the Term under clause 4.2(b) on or prior to that date, the Initial Expiry Date;
(b) if TfNSW has elected to extend the Term under clause 4.2(b), but has not elected to further extend the Term under clause 4.2(c) on or prior to that date, the Extension 1 Expiry Date;
(c) if TfNSW has elected to extend the Term under clause 4.2(c) but has not elected to further extend the Term under clause 4.2(d) on or prior to that date, the Extension 2 Expiry Date;
(d) if TfNSW has elected to extend the Term under clause 4.2(d), but has not elected to further extend the Term under clause 4.2(e) on or prior to that date, the Extension 3 Expiry Date; or
(e) if TfNSW has elected to extend the Term under clause 4.2(e) on or prior to that date, the Extension 4 Expiry Date.

Final Frequent Breaches Notice has the meaning given in clause 48.7(b).

Final Persistent Breach Notice has the meaning given in clause 48.6(b).

Final Refurbishment Works has the meaning given in clause 36.5(b)(i).

Finance Documents means:
(a) each of the documents listed in the Finance Documents Schedule;
(b) any document entered into in relation to a Refinancing of the Debt approved by TfNSW under clause 40; and
(c) any other document which TfNSW and Project Co agree is a Finance Document for the purposes of this Deed.

Finance Documents Schedule means Schedule 21.

Finance Co means Momentum Trains Finance Pty Limited (ACN 624 093 947).

Financial Close means the date on which the last Condition Precedent to be satisfied has been satisfied (or waived in accordance with clause 3.3(b)) as set out in a notice given by TfNSW to Project Co in accordance with clause 3.2(d).

Financial Close Adjustment Protocol means the protocol to:
(a) update the Base Case Financial Model; and
(b) amend this Deed,
to be applied at Financial Close, in accordance with clauses 3.5 and 60 and contained in Annexure C.

Financial Close Financial Model means the Base Case Financial Model as updated and audited in accordance with the Financial Close Adjustment Protocol.

Financial Model means the Financial Close Financial Model as updated from time to time in accordance with clause 60.

Financial Year means each 12 Month period commencing on 1 July and ending on 30 June.

Financiers means the providers of any financing facilities, financial arrangements or accommodation to Project Co or a Group Member under the Finance Documents from time to time and may, where the context permits, include any agent or trustee of such Financiers (other than Finance Documents solely between Group Members).

Financiers' Tripartite Deed means the document entitled 'Financiers' Tripartite Deed' dated on or about the date of this Deed between RailCorp, TfNSW, each Project Co Entity and the Security Trustee on behalf of the Financiers.

Financing Delay Costs has the meaning given in the Change Compensation Principles.

Firmware means a set of coded instructions embedded within a device or component of a device that performs functions or provides data to enable the device to operate in a specified manner.
First Indexation Factor has the meaning given in the Indexes Schedule.

**Fit For Purpose or FFP** means:

(a) is fit for its intended purposes, functions and uses specified in, or which can reasonably be ascertained from, clauses 1 to 66, the Project Scope and Requirements, the Performance Regime or the Payment Schedule;

(b) otherwise meets the requirements set out in or which can reasonably be ascertained from:

(i) the Design Requirements and, other than in respect of the Returned Assets, the Services Requirements; and

(ii) all other requirements of this Deed; and

(c) other than in respect of the Returned Assets, is fit for the performance of the Services in accordance with Service Requirements and so as to facilitate the achievement of the Project Objectives.

**Fleet Acceptance Deduction** means, in respect of a Payment Period, the amount calculated in accordance with section 9.1 of the Performance Regime.

**Force Majeure Event** means any of the following events occurring:

(a) a Day 1 Uninsurable Risk or an Uninsurable Risk;

(b) bushfire, lightning, cyclone, hurricane, tempest, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;

(c) a flood which might at the date of this Deed be expected to occur no more frequently than once in 100 years;

(d) fire or explosion caused by events referred to in paragraphs (a) to (c); or

(da) during the Maintenance Phase, any electricity not being available for use at a Project Site (at all or in the necessary quantity) due to an interruption (excluding an interruption that is caused or contributed to by a failure of Project Co to comply with the relevant requirements of the PSR) that occurs upstream of the point of supply of that electricity, and Project Co has exhausted any back-up supply of electricity and which:

(e) in respect of paragraphs (a) to (d), occur at or directly in the vicinity of a Project Site;

(f) in:

(i) respect of a claim for an extension of time pursuant to clause 37 only, prevents or delays Project Co from carrying out all or substantially all of the Project Activities; or

(ii) all other circumstances, prevents Project Co from carrying out all or substantially all of the Project Activities;

(g) was not caused by Project Co or its Associates, or TfNSW or its Associates;

(h) was beyond the reasonable control of Project Co or its Associates; and
(i) could not have been prevented, avoided, remedied or overcome by taking those steps which a prudent, experienced and competent designer, constructor, manufacturer, supplier, maintainer or operator of assets similar to the Assets and providing services similar to the Services would have taken using Best Industry Practices (including the expenditure of reasonable sums of money).

**Force Majeure Termination Event** means:

(a) TfNSW or Project Co has been prevented from carrying out all or substantially all of the Project Activities for a continuous period exceeding 180 days as a result of a Force Majeure Event; and

(b) at least 180 days has elapsed since Project Co gave notice to TfNSW in accordance with clause 37.3 or 38.1(d) (as the case may be) of the Force Majeure Event,

or any other event expressly deemed to be a Force Majeure Termination Event in this Deed.

**Force Majeure Termination Payment** means the payment calculated in accordance with section 5 of the Termination Payments Schedule.

**FRACAS** has the meaning given in clause 21.5(d).

**Frequent Breaches** means frequent breaches of any TfNSW Project Document by Project Co which, in aggregate:

(a) substantially frustrate the Project Objectives;

(b) significantly impair TfNSW’s ability to fulfil any of its objectives under the Transport Administration Act 1988 (NSW);

(c) have a material adverse effect on the Project, TfNSW, RailCorp, any Rail Entity or Customers; or

(d) in TfNSW’s reasonable opinion, indicate that Project Co does not intend to be, or does not regard itself as being, bound by this Deed,

and whether or not such breaches are of the same type or class or constitute a Major Default, but not where such breach is:

(e) a Major Default that:

(i) is the subject of a program provided by Project Co under clause 48.3(a) and Confirmed by the TfNSW Representative in accordance with the Review Procedures; and

(ii) Project Co is diligently pursuing the remedy of;

(f) a breach that results in an adjustment to the Monthly Service Payment by application of the Performance Regime and the Payment Schedule; or

(g) a failure to achieve Acceptance by the relevant Date for Acceptance.

**Frequent Breaches Notice** has the meaning given in clause 48.7(a)

**General Change in Law** means a Change in Law that is not a Project-Specific Change in Law.

**Generally Approved AM Services** means any AM Services:
(a) that are required to be performed by Project Co in accordance with clause 44.2A to rectify TfNSW Defects and that the TfNSW Representative notifies Project Co in writing from time to time are considered to be Generally Approved AM Services; or

(b) the Additional Maintenance Service Payment for which:

(i) can be calculated solely on the basis of the prices set out in section 11.2 of the Payment Schedule and Annexure A to the Change Compensation Principles; or

(ii) can be calculated on the basis described in section 7 of the Payment Schedule and do not exceed:

A. (Indexed) per incidence; or

B. (Indexed) when aggregated with other Generally Approved AM Services carried out in any Payment Period,

and the performance of which will not adversely affect Project Co's ability to meet either:

(c) the Minimum Simulator Operating Condition during the Minimum Simulator Available Hours; or

(d) the Required Availability (disapplying the Deemed Availability provisions of section 10.6 of the Payment Schedule),

provided always that, where any relevant AM Services would not constitute Generally Approved AM Services solely by reason of the application of paragraph (d) of this definition, such AM Services may nonetheless constitute Generally Approved AM Services if the location and time of commencement of the provision of such AM Services are first approved in writing by the TfNSW Representative.

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

**Graffiti** means an intentional application of a 'substance' (including writing, drawing or painting) to deface a Maintained Rail Asset.

**Groundwater Monitoring Program** means the monitoring of groundwater contamination across the Legacy Maintenance Centre Site by TfNSW.

**Group** means Project Co, Finance Co, each Holding Entity and any wholly owned subsidiary of any of them.

**Group Member** means any of Project Co, Finance Co, each Holding Entity or any wholly owned subsidiary of any of them.

**GSF Act** means the *Government Sector Finance Act 2018* (NSW).

**GSF Act Deed Poll of Guarantee** means the guarantee made on or about the date of Financial Close pursuant to section 6.27 of the GSF Act in respect of TfNSW's financial obligations under the TfNSW Project Documents, substantially in the form set out in Schedule 31.

**GSF Agency** has the meaning given in the *Government Sector Finance Act 2018* (NSW).

**GST** means:

(a) the same as in the GST Act; and
any other goods and services tax, or any Tax applying to this transaction in a similar way.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST Amount has the meaning given in clause 35.8(c)(ii).

GST Law has the meaning given in the GST Act.

Handback means the process of delivery of a Train or Simulator from Project Co to the Operator as described in the Interface Protocols.

Handback Point means the location for Handback of a Train or Simulator to occur, as designated in the Train Plan or as otherwise designated by TfNSW or the Operator, such designation must be given by way of a written direction from TfNSW to Project Co and clause 39.9 will apply to the extent such direction constitutes a Modification.

Handover means the process of delivery of a Train or Simulator from the Operator to Project Co as described in the Interface Protocols.

Handover Point means the location for Handover of a Train or Simulator to occur, as designated in the Train Plan or as otherwise designated by TfNSW or the Operator.

Harmful Code means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

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

Heritage Claim means a claim made in connection with a requirement under any Law for the protection, preservation or removal of any Artefact.

Holding Entity means each company or trust which, directly or indirectly, holds all of the issued shares or units in each Project Co Entity, and which is not itself wholly owned by any other single Entity.

HVAC means heating, ventilation and air conditioning.

IEDR means internal emergency door release.

Illegality Event means Project Co, a Key Subcontractor or a Significant Subcontractor: 
(a) ceases to hold an Approval; or
(b) breaches applicable Legislation,

and TfNSW forms the view (acting reasonably) that such failure or breach is material to the performance of Project Co's obligations under this Deed and such failure or breach is not remedied within 30 days after the earlier of:

(c) the date on which TfNSW notifies Project Co of the failure or breach; and
(d) the date on which Project Co becomes aware of the failure or breach.

In Service has the meaning given in section 10.4(a) of the Payment Schedule.

In Service Reliability Failure means in respect of any Availability Period,

(a) a Type 1 Failure by Unit;
(b) a Type 2 Failure by Unit; or
(c) a Delay of more than Customer Delay Seconds by a Unit forming part of a Train consist, provided that where there are multiple occurrences of such events causing a Delay to a Unit and arising from the same cause in a particular Availability Period it will be deemed only to comprise one In Service Reliability Failure for those Delays in respect of that Unit.

For the avoidance of doubt, this does not limit the application of section 3.2(a) of Schedule 17.

Incident and Security Management Plan means the Management Plan of that name.

Increased TfNSW Risk Allocation means any increase in the risks for or liabilities of TfNSW in relation to the Project as a result of entry into, or the existence or implementation of, the Securitised Licence Structure and/or the Securitised Licence Structure Changes.

Indemnified IP Party has the meaning in clause 45.4(a).

Indemnified Person has the meaning in clause 45.1.

Independent Certifier means the entity appointed as the Independent Certifier under the Independent Certifier Deed, as replaced (if at all) in accordance with clause 14.4.

Independent Certifier Deed means the deed so entitled to be entered into between TfNSW, RailCorp, Project Co and the Independent Certifier substantially in the form set out in Schedule 25.

Independent Safety Assessor or ISA means the person appointed by TfNSW to perform the role of the independent safety assessor in accordance with the TfNSW standard entitled System Safety Standard for New or Altered Assets T MU MD 20001 ST and associated standards T MU MD 00004 TI and T MU MD 00003 GU.

Independent Safety Assessor Appointment means the contract so entitled to be entered into between TfNSW and the Independent Safety Assessor.

Independent Sustainability Professional means the person of that title, as identified as one of the Required People specified in item 22A of the Contract Particulars, who must be engaged by Project Co in accordance with section 3(I), Part B4 (Sustainability Requirements) of the Project Scope and Requirements.

Index means each index set out in the Indexes Schedule.
Indexed means the relevant amount as indexed in accordance with the Indexes Schedule.

Indexes Schedule means Schedule 14.

Indicative Access Requirements has the meaning in clause 21.8(b).

Industry Participation Manager means the person of that title, as identified as one of the Required People specified in item 22A of the Contract Particulars, who must meet the minimum requirements set out in section 3(a)(iii), (e)(vi) and (e)(vii) of Part B3 (Jobs, Skills and Industry Participation Requirements) of the Project Scope and Requirements.

Industry Participation Response means Annexure E.

Infrastructure Monitoring System means the systems referred to in section 3.23 (Infrastructure monitoring systems) of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements.

Initial Delivery Program means the program for the Project Activities which is attached as Attachment 3.

Initial Spares, Consumables and Equipment List means the initial list of Spares, Consumables and Equipment set out in Schedule 37.

Initial Equity Investor means each of the Designated Investors.

Initial Management Plans means the version of the following Management Plans at the date of this Deed attached as Attachment 2:

- the Project Management Plan;
- the Communication, Community and Stakeholder Management Plan;
- the Authorisation and Accreditation Management Plan;
- the Systems Engineering Management Plan;
- the Asset Management Plan;
- the Sustainability Management Plan;
- the Jobs, Skills and Industry Participation Management Plan;
- the Workplace Relations Management Plan; and
- the Verification Matrix.

Input Tax Credit has the meaning given by the GST Law.

Insolvency Event means, in relation to a party, the occurrence of any of the following events:

- an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a party and, where an application has been made...
for the dismissal or withdrawal of the application for winding up within 10 Business
Days, the application is not dismissed or withdrawn within 30 Business Days;

(b) an order is made for the winding up of a party, except for the purpose of a
reconstruction, amalgamation, merger or consolidation on terms approved by
TfNSW before that order is made where the reconstruction, amalgamation, merger
or consolidation is implemented in accordance with the terms of the approval;

(c) a party passes a resolution for its winding up or deregistration, except for the
purpose of a reconstruction, amalgamation, merger or consolidation on terms
approved by TfNSW before that resolution is passed where the reconstruction,
amalgamation, merger or consolidation is implemented in accordance with the
terms of that approval;

(d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory
manager, trustee for creditors or in bankruptcy or analogous person is appointed to
take possession of, or the holder of a Security Interest takes (or appoints an agent
to take) possession of, any property of a party or otherwise enforces its Security
Interest but excluding the enforcement by TfNSW of the TfNSW Security for the
purposes of or to facilitate the exercising or enforcing of its rights under clause
41.3;

(e) a party or any other person appoints an administrator to the party, or takes any step
to do so;

(f) a party:

(i) suspends payment of its debts (other than as the result of a failure to pay
a debt or claim which is the subject of a good faith dispute);

(ii) ceases or threatens to cease to carry on all or a material part of its
businesses;

(iii) is or states that it is unable to pay its debts; or

(iv) is taken to have failed to comply with a statutory demand as a result of
the operation of section 459F of the Corporations Act;

(g) a party enters into a readjustment or rescheduling of its indebtedness or makes a
general assignment for the benefit of or a composition with its creditors, without the
prior consent of TfNSW, except for the purposes of a solvent reconstruction or
amalgamation permitted by this Deed;

(h) any act is done or event occurs which has an analogous or similar effect to any of
the events in paragraphs (a) to (g).

Insurance Component means in relation to a Benchmarked Insurance, the insurance
component (being the insurance premiums, statutory charges and fees) of the Monthly Service
Payment payable in respect of that Benchmarked Insurance.

Insurance Proceeds Account has the meaning given in clause 46.11(a).

Insurance Review Date means:

(a) between each third and fifth anniversary of the Date of Final Acceptance (Project),
such date as is notified by TfNSW to Project Co at least 4 Months prior to such
date; and

(b) such other dates as may specified by TfNSW from time to time.
Insurance Schedule means Schedule 22.

Insurances means the insurances required to be effected and maintained in accordance with this Deed.

Insured means in relation to any Insurance, any person referred to in the Insurance Schedules entitled to coverage under that Insurance.

Insured Risk means a risk which is the subject of the industrial special risks insurance.

Intellectual Property Register means the register described in clause 62.6(b).

Intellectual Property Rights means all present and future rights throughout the world conferred by any law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, innovations, know-how and other results in the industrial, commercial, scientific, literary or artistic fields, including confidential information whether or not registrable, registered or patentable, including:

(a) all rights in all applications to register these rights;
(b) all renewals and extensions of these rights; and
(c) all rights in the nature of these rights,

but excluding Moral Rights.

Intercompany Loan Agreement means:

(a) the document entitled ‘Intercompany Loan Agreement A’ between Finance Co (as lender) and Project Co (as borrower) dated on or about the date of this Deed; and
(b) the document entitled ‘Intercompany Loan Agreement B’ between Finance Co (as borrower) and Project Co (as lender) dated on or about the date of this Deed.

Intercity Non-Electric Fleet means the new fleet of Trains to be designed, manufactured, supplied, tested, commissioned and Maintained by Project Co in accordance with this Deed and which will be used by the Operator to operate Intercity Non-Electric Services in place of the Endeavour fleet.

Intercity Non-Electric Services means the train services provided by the Operator on the Intercity Trains Network between:

(a) Newcastle interchange and Dungog in the north;
(b) Newcastle interchange and Scone in the north-west;
(c) Sydney Central and Bathurst in the west;
(d) Campbelltown and Goulburn in the south-west; and
(e) Kiama and Bombaderry in the south.

Intercity Non-Electric Train means a Train formed from one or more Short Units (Intercity) that is part of the Intercity Non-Electric Fleet.

Intercity Trains Network means the rail network comprising the NSW Metropolitan Rail Network and the Regional Trains Network in NSW and ACT to a distance of up to approximately 200 km from Sydney, currently bounded by:

(a) Dungog in the north;
(b) Scone in the north-west;
(c) Newcastle interchange in the north-east;
(d) Bathurst in the west;
(e) Goulburn in the south-west;
(f) Bomaderry in the south;
(g) Port Kembla in the south-east; and
(h) Bondi Junction in the east,

amended from time to time and as indicatively depicted on the map entitled 'NSW TrainLink Intercity Trains Network Map' set out in Schedule 32.

**Interface Deed** has the meaning given in the Maintenance Subcontract.

**Interface Parties** has the meaning given in clause 12.8.

**Interface Protocols** means the interface protocols between Project Co, the Operator, TfNSW and any other Rail Entities (to the extent required) which are to be developed by Project Co in accordance with the requirements of Part B2 (Schedule of Deliverables) of the Project Scope and Requirements and sections 3.5 and 3.6 of Part C3 (Services Specification) of the Project Scope and Requirements, as may be amended from time to time in accordance with clause 16.1.

**Intervening Event** means any of the following occurring during the Maintenance Phase:

(a) *(Compensable Intervening Event):* a Compensable Intervening Event;

(b) *(TfNSW act or omission):* subject to clause 2.1(b), any act or omission of:
   (i) TfNSW; or
   (ii) any Associate of TfNSW (other than any NSW Rail Entity),

   in connection with the Project other than any such act or omission which is authorised or permitted under a TfNSW Project Document, Standard or Law;

(c) *(Force Majeure Event):* a Force Majeure Event;

(d) *(loss or damage):* TfNSW requires Project Co to repair or rebuild the Assets and clause 44.3(d) applies;

(e) *(Emergency and Step-In):* TfNSW exercises its rights under clause 41.1(a) or its step-in rights under clause 41.3(d) to 41.3(g), other than where the event that gives rise to the exercise of TfNSW's rights is a Force Majeure Event or is, or is a result of, a Project Co Act or Omission; or
and in each case it is, in order to permit Project Co to perform the Services (other than the Rectification Works) at the Legacy Maintenance Centre Site, essential to undertake those Rectification Works not approved in the case of paragraph (i) above in the Financial Year proposed by Project Co in the relevant Annual Rectification Works Proposal and, in the case of paragraph (ii) above, at the time proposed by Project Co in the Notice of Urgent Rectification Works.

Investigative Authority means any Authority authorised to undertake investigative action in connection with rail safety, including under the Rail Safety National Law or the Transport Safety Investigations Act 2003 (Cth).

ISCA means the Infrastructure Sustainability Council of Australia ABN 53 131 329 774.

ISCA Innovation Credit has the definition given by ISCA in the IS Rating Tool.

ISCA Rating has the meaning given in section 12.1(a) of the Performance Regime.

IS Rating Tool means version 1.2 of the rating scheme administered by ISCA which is used to assess the sustainability credentials of infrastructure.

Jobs and Skills Manager means the person of that title, as identified as one of the Required People specified in item 22A of the Contract Particulars, who must meet the minimum requirements set out in sections 3(a)(i), (e)(i) and (e)(ii) of Part B3 (Jobs, Skills and Industry Participation Requirements) of the Project Scope and Requirements.

Jobs, Skills and Industry Participation Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 11.1 of the Performance Regime.

Jobs, Skills and Industry Participation Management Plan means the Management Plan of that name, which includes the Aboriginal Participation Plan (Construction).

Jobs, Skills and Industry Participation Output Delivery Profile means the output delivery profile included in part B of Attachment 4.

Journey means a train service from the timetabled departure Platform to the timetabled Terminating Platform.

JSIP Abatement means the amount calculated in accordance with Table 9 in section 11.1 of the Performance Regime.

JSIP Payment means the amount calculated in accordance with Table 10 in section 11.1 of the Performance Regime.

Juridical Recorder Unit or JRU means a train event recorder complying with the ETCS standard.

Key People means:

(a) the people so named in item 15 of the Contract Particulars as replaced (if at all) in accordance with clauses 10.6(a)(ii) or 10.6(a)(iii); and

(b) the dedicated transition person provided by Project Co in accordance with clause 36.2.
Key Performance Indicator Adjustment or KPI Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 15 of the Performance Regime.

Key Planning Approval means the approval procured by TfNSW and identified as such in item 16 of the Contract Particulars.

Key Planning Approval Conditions means the conditions set out in Schedule 15.

Key Subcontract means:
(a) the Delivery Subcontract;
(b) the Maintenance Subcontract; and
(c) any other Subcontract in respect of the Project Activities identified in item 17 of the Contract Particulars as a 'Key Subcontract',
as replaced in accordance with clause 12.2.

Key Subcontractors means:
(a) the Delivery Subcontractor;
(b) the Maintenance Subcontractor; and
(c) any other Subcontractor who is engaged to perform the Project Activities and is referred to in item 17 of the Contract Particulars as a 'Key Subcontractor',
as replaced in accordance with clause 12.2.

Labour Index has the meaning given in the Indexes Schedule.

Law means:
(a) those principles of common law and equity established by decisions of courts; and
(b) Legislation.


Legacy Maintenance Centre means the Maintenance centre located at the Legacy Maintenance Centre Site and includes all associated assets and systems, and all other physical infrastructure contained within the boundaries of the Legacy Maintenance Centre Site.

Legacy Maintenance Centre Licence has the meaning given in clause 28.1(a)(ii).

Legacy Maintenance Centre Site means the site for the Legacy Maintenance Centre at Sydenham as identified in section 2 of the Site Plan and, during the Temporary Licensed Area Term only, includes the Temporary Licensed Area.
Legislation means all legislation, statutes, rules, regulations, by-laws, ordinances and subordinated legislation of the Commonwealth, the State, the state of Victoria, the state of Queensland or an Authority, including the lawful directions of an Authority.

Level 1 Maintenance has the meaning given in Part A3 (Definitions) of the Project Scope and Requirements.

Level 2 Maintenance has the meaning given in Part A3 (Definitions) of the Project Scope and Requirements.

Liability means any debt, obligation, claim, action, cost, (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

(a) actual, prospective or contingent; or

(b) currently ascertainable or not,

and whether under or arising out of or in any way in connection with this Deed, any other Project Documents or arising at Law.

Licence means:

(a) each Delivery Phase Licence; and

(b) each Maintenance Phase Licence.

Licence Payment means:

(a) the LMC Licence Payments; and

(b) the MFSM Licence Payments.

Licence Payment Date means the 'Licence Payment Date' for payment of a Licence Payment as set out in the Model Output Schedule.

LMC Licence Payments means the payments of the Licence Fee (as defined in the Legacy Maintenance Centre Licence) to be made by Project Co to TfNSW under the Legacy Maintenance Centre Licence.

Lodgement Due Date has the meaning given in clause 35.7(b)(i).

Long Unit means the long Units that will form part of the Regional Fleet, as described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements.

Maintain means planned and responsive inspections, examinations, condition assessments, maintenance, servicing, cleaning, adjustments, alterations, modifications, repairs, reconditioning, overhauls, renewals, refurbishments and replacement of component parts and references to Maintain and Maintained shall be construed accordingly.

Maintained Rail Assets means all assets in respect of which Project Co is required under this Deed to undertake the Services, being:

(a) the Delivered Rail Assets; and

(b) on and from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre,

including any Modifications to those assets.
Maintenance Consent Deed means the document entitled 'Maintenance Consent Deed' between Project Co, the Security Trustee, the Maintenance Subcontractor, the Parent Guarantor of the Maintenance Subcontractor and others.

Maintenance Facility means the facility to be designed and constructed by Project Co and, following Provisional Acceptance (Maintenance Facility), to be operated and Maintained by Project Co, including the service and administration buildings, train wash, wheel lathe, roads and fuelling and decanting facilities, all associated assets and systems, and all other physical infrastructure contained within the boundaries of the Maintenance Facility Site, as further described in Part C5 (Maintenance Facility Specification) of the Project Scope and Requirements.

Maintenance Facility Site means:
(a) until the Date of Provisional Acceptance (Maintenance Facility), the site on which the Maintenance Facility is to be constructed, as identified in section 1 of the Site Plans; and
(b) on and from the Date of Provisional Acceptance (Maintenance Facility), has the meaning given to 'Licensed Area' in the Maintenance Facility Site Maintenance Phase Licence,

excluding, from the date that TfNSW provides its approval of the area nominated by Project Co to be the Returned Asset Site in accordance with clause 24(aa), the Returned Asset Site.

Maintenance Facility Site Maintenance Phase Licence has the meaning given in clause 28.1(a)(i).

Maintenance Payment means, in respect of a Payment period, the amount calculated in accordance with section 3.1 of the Payment Schedule.

Maintenance Phase means the period beginning on the earliest of:
(a) the Date of Handover (Legacy Maintenance Centre);
(b) the Date of Provisional Acceptance (Simulator); and
(c) the Date of Provisional Acceptance (Maintenance Facility),

and ending on the Expiry Date.

Maintenance Phase Insurances means the Insurances referred to in Part B of the Insurance Schedule.

Maintenance Phase Licence means:
(a) the Maintenance Facility Site Maintenance Phase Licence; and
(b) the Legacy Maintenance Centre Licence,

(as the context requires).

Maintenance Phase Sites means:
(a) on and from the Date of Provisional Acceptance (Maintenance Facility), the Maintenance Facility Site;
(b) the Legacy Maintenance Centre Site; and
(c) each Stabling Yard,

(as the context requires) and includes any part of such area or land.

**Maintenance Side Deed** means the document entitled 'Maintenance Side Deed' dated on or about the date of this Deed between TfNSW, RailCorp, Project Co, the Maintenance Subcontractor and the Parent Guarantor of the Maintenance Subcontractor substantially in the form set out in Schedule 28.

**Maintenance Subcontract** means the agreement between Project Co and a Maintenance Subcontractor to perform any of the Services.

**Maintenance Subcontractor** means, as at the date of this Deed, the party listed as such in item 17 of the Contract Particulars and any person who in addition or substitution is engaged by Project Co to carry out any Services during the Maintenance Phase.

**Maintenance Works Program** means the program of that name provided as part of the Annual Performance Review Report which meets the requirements of section 31 of the Management Requirements.

**Major Default** means any of the following events:

(a) **(late Final Acceptance):** Project Co fails to achieve Final Acceptance of:

(i) a Simulator by the date that is \[M\] Months after the Date for Final Acceptance (Simulator) for that Simulator;

(ii) a Unit by the date that is \[M\] Months after the Date for Final Acceptance (Unit) for that Unit; or

(iii) the Maintenance Facility by the date that is \[M\] Months after the Date for Final Acceptance (Maintenance Facility);

(b) **(Finance Documents):** any event that would restrict or cancel any Project Co Entity's ability to obtain or to have available finance in accordance with the Finance Documents, except to the extent that immediately after that restriction or cancellation, the funding available to any Project Co Entity is greater than that required to enable Project Co to fully undertake the Project;

(c) **(fraud):** an Associate of any Project Co Entity engages in fraud, collusion or dishonest conduct in performing its obligations under the Project Documents;

(d) **(representations and warranties):** a representation or warranty given by any Project Co Entity under a TfNSW Project Document is found to be materially incorrect or misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by any Project Co Entity in respect of any financial statements or invoices or other books or records of any Project Co Entity;

(e) **(subcontracting, Key People and Required People):** Project Co breaches an obligation in clauses 10.6(a), 10.6(b), 12.2, 12.3 or 12.4;

(f) **(Personal Information):** any failure by Project Co to comply with its obligations under clause 63.6;

(g) **(breach of TfNSW Project Document):** any breach of any TfNSW Project Document by any Project Co Entity (other than any Failure, other Major Default or a Default Termination Event) which is not cured within 20 Business Days (or such longer period as TfNSW (acting reasonably) determines) of Project Co receiving a notice of that breach from TfNSW;
(h) **(Change in Management):** as a result of a Change in Management, a Project Co Entity no longer has the same or better management skills available to it as it had prior to the Change in Management;

(i) **(Change in Control):** a Change in Control (which is not a Permitted Change in Control) occurs in respect of any Consortium Member other than any Project Co Entity without the consent of TfNSW in accordance with clause 59.3;

(j) **(Probity Event):** Project Co fails to remedy a Probity Event in accordance with clause 64;

(k) **(Refinancing):** a failure by any Project Co Entity to inform or obtain the prior consent of TfNSW (as the case may be) of a Refinancing or to distribute any TfNSW Refinancing Share in accordance with clause 40;

(l) **(breach of other Project Document):** a Project Co Entity:

   (i) breaches any of its obligations under any Project Document or the Interface Deed, which is not a TfNSW Project Document, (other than where such breach is a Major Default, a Default Termination Event or a Failure);

   (ii) the breach has or will have a material adverse effect on Project Co's ability to deliver the Project; and

   (iii) Project Co is not diligently pursuing the remedy of the breach;

(m) **(Unacceptable Availability):** at any time after the Date of Provisional Acceptance (Unit) of:

   (i) the Unit to achieve Provisional Acceptance up to and including the Date of Provisional Acceptance (Unit) of the twenty second Unit to achieve Provisional Acceptance:

      A. less than of the Required Availability is achieved in any Availability Periods in any rolling Month period; or

      B. not used; or

   (ii) the third Unit to achieve Provisional Acceptance:

      A. less than of the Required Availability is achieved in any Availability Periods in any rolling Month period; or

      B. less than of the Required Availability is achieved in any Availability Periods in any rolling Month period;

(n) **(Unacceptable reliability):** the calculated MDBF in any Reliability Measurement Period is lower than the MDBF default threshold set out in the following table:

<table>
<thead>
<tr>
<th>Number of Accepted Units</th>
<th>MDBF default threshold (km)</th>
</tr>
</thead>
<tbody>
<tr>
<td>to (inclusive)</td>
<td></td>
</tr>
<tr>
<td>or more</td>
<td></td>
</tr>
</tbody>
</table>
**MDBF = \( \text{KmT/AFR} \)**

Where:

**KmT** means the total kilometres travelled by all Accepted Units in the New Fleet (measured to the nearest whole kilometre) over the Reliability Measurement Period; and

**AFR** means the number of In Service Reliability Failures in the Reliability Measurement Period;

(o) **(Insolvency Event of Consortium Member):** an Insolvency Event occurs in relation to a Consortium Member (excluding a Group Member);

(p) **(Insurances):** a breach by Project Co of any its obligations under clauses 46.1, 46.2(a), 46.3, 46.5, 46.6, 47.1 or 47.4;

(q) **(corrective action plan):**

(i) Project Co fails to issue a corrective action plan in accordance with clause 19.4(c); or

(ii) an event that is a deemed Major Default under clause 19.4(i);

(r) **(suspension of access under an Access Agreement):** a breach by Project Co of any of its obligations under clause 6B(f) causing a NSW Rail Entity's access under an Access Agreement to any part of the Network to be suspended;

(s) **(rail safety and accreditation):** a breach by Project Co or any of its Associates of an obligation under clause 6A.2, 6A.3, 6A.4, 6A.5, 6A.6, 6A.8 or 6A.9;

(t) **(Train Completion Works):** a breach by Project Co of clause 19.2(f);

(u) **(AEO authorisation):** a breach by:

(i) Project Co of clause 6C(a); or

(ii) Project Co or a Subcontractor of any AEO authorisation requirements set out in sections 20(b) and (c) of the Management Requirements;

(v) **(Safety breach) either:**

(i) a Unit is involved in a collision or derailment whilst that Unit is In Service which causes injury to any person; or

(ii) there is a Notifiable Incident at a Site or in respect of the Maintained Rail Assets,

and the incident is found to be primarily attributable to breach or negligence of any one or more of Project Co or its Associates.
Major Default Notice has the meaning given in clause 48.2(b).

Major Graffiti means Graffiti on a Maintained Rail Asset covering an area in excess of 10m² using a technique that closely encloses the affected area.

Management Plan means each document listed in the Management Requirements, including all subsidiary plans, programs and supporting documents, information and the Interface Protocols, as updated from time to time in accordance with clause 16.1.

Management Requirements means Part B1 (Management Requirements) of the Project Scope and Requirements.

Mandatory Requirements means Law and Standards (other than Non-Mandatory Changes in Standards that TfNSW has directed Project Co to not comply with pursuant to clause 39.10).

Margin has the meaning given in the Change Compensation Principles.

Marginal Unit has the meaning given in section 6.1(b) of the Payment Schedule.

Marginal Unit Adjustment Payment means, in respect of a Payment Period, the amount calculated in accordance with section 6.2 of the Payment Schedule.

Material means tangible and intangible information, documents (including any document within the meaning of the Evidence Act 1995 (NSW)), reports, Software (including source and object code), inventions, discoveries, designs, drawings, innovations, technology, processes, methods, techniques, know-how, data, recordings and all other materials in any media whatsoever.

Material Defect means a Project Co Defect which:

(a) TfNSW considers will prevent:

(i) a Maintained Rail Asset from complying with the FFP Warranty; or
(ii) Project Co from delivering the Services in accordance with the Services Requirements; or

(b) in the case of a Unit, has the consequence that the Unit does not comply with the Minimum Operating Standards; or

(c) in the case of any other Asset, has the consequence that the Asset does not comply with a Mandatory Requirement.

MFSM Licence Payments means the payments of the Licence Fee (as defined in the Maintenance Facility Site Maintenance Phase Licence) to be made by Project Co to TfNSW under the Maintenance Facility Site Maintenance Phase Licence.

Minimum Operating Standards or MOS means the minimum operating standards that must be met by a Train as set out in Part C2 (Minimum Operating Standards) of the Project Scope and Requirements and as updated from time to time in accordance with clause 16.1A.

Minimum Simulator Available Hours means the times of the day during which each Simulator is to be made available to TfNSW, being from 06:00 hours to 22:00 hours each day.

Minimum Simulator Operating Condition means a Simulator is free from Project Co Defects and otherwise meets the requirements for a Simulator as set out in Part C4 (Simulator Specification) of the Project Scope and Requirements.

Minor Modification means a Modification proposed by either Project Co or TfNSW in accordance with clause 39.12(b) that:
has a Base Cost of less than:

(i) 

(ii) 

is a Non-Sensitive Modification; and

in respect of which Project Co will not be entitled to an extension of time to any Date for Acceptance if it occurs during the Delivery Phase.

Minor Modification Proposal means a proposal provided in accordance with clause 39.12(b) in respect of a Minor Modification.

Minor Technical Change means any change to the Maintained Rail Assets after the Date of Provisional Acceptance of the relevant Maintained Rail Assets (or, where the Maintained Rail Asset is not subject to Provisional Acceptance, at any time during the Maintenance Phase) proposed by Project Co in accordance with clause 39.16, including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Maintained Rail Assets, that:

(a) does not constitute a non-compliance with, or require a change to, the Project Scope and Requirements, the Technical Solution or any Approval; and

(b) will not, in TfNSW's opinion (acting reasonably), result in a Saving to Project Co.

Mock-up (Crew Cab) means fully representative mock-ups of the Crew Cab, to be provided by Project Co in accordance with requirements of section 6 of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements and the terms of this Deed (including the Design Development Schedule).

Mock-up (Crew Compartment) means fully representative mock-ups of the Crew Compartment, to be provided by Project Co in accordance with the requirements of section 6 of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements and the terms of this Deed (including the Design Development Schedule).

Mock-up (Crew Office) means fully representative mock-ups of the Crew Office, to be provided by Project Co in accordance with the requirements of section 6 of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements and the terms of this Deed (including the Design Development Schedule).

Mock-up (Passenger Saloon) means fully representative mock-ups of the Passenger Saloon configuration in respect of the New Fleet, to be provided by Project Co in accordance with requirements of section 6 of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements and the terms of this Deed (including the Design Development Schedule).

Mock-ups means:

(a) the Mock-up (Passenger Saloon);

(b) the Mock-up (Crew Office);

(c) the Mock-up (Crew Cab); and

(d) the Mock-up (Crew Compartment),

or any one of them as the case may be.
Model Output Schedule means the work sheets in the Financial Close Financial Model identified as the Model Output Schedule, as updated from time to time in accordance with clause 60.

Model Variation Event has the meaning given in clause 60.3(a).

Modification means:

(a) in the period prior to the Date of Final Acceptance (Project), any change to the Works or the Design Requirements including any addition, decrease, omission, deletion, demolition or removal to or from the Works or the Design Requirements;

(b) during the Maintenance Phase, a change to the Maintained Rail Assets including any addition, increase, decrease, omission, deletion, demolition or removal to or from the Maintained Rail Assets; and

(c) after the date of this Deed:

(i) in respect of the Services, a change to the Services Requirements or the Services including any addition, increase, decrease, omission, deletion, or removal of any part of the Services;

(ii) a New Access Agreement which has the direct effect of:

A. making performance of Project Co's obligations under this Deed materially more onerous; or

B. materially increasing any liability or potential liability of Project Co in connection with the Project;

(iii) a direction under clause 6E(a) in respect of a New Third Party Agreement which has the direct effect of:

A. making performance of Project Co's obligations under this Deed materially more onerous; or

B. materially increasing any liability or potential liability of Project Co in connection with the Project,

but excluding:

(d) development and refinement of the Technical Documents in accordance with the Design Development Process;

(e) not used;

(f) any direction by TfNSW to Project Co to undertake additional or alternative works or services in accordance with clause 41.1(b);

(g) any change of the type referred to in paragraphs (a) to (c) which is required to ensure that the Assets or the Services are otherwise in accordance with this Deed,

(h) the changes contemplated by clause 16.1A(d), 16.1B(d), 18.1(c), 43.1(d)(iii);

(i) Minor Technical Changes;
(j) Configurable Item Changes;
(k) any direction by TfNSW under clause 39.14(a) in respect of the Option Units prior to the applicable Option Final Date; and
(l) any change to the bounds of the Network.

Modification Order means a Change Response entitled 'Modification Order' issued in accordance with clause 39.5 or 39.7 and the Change Compensation Principles, requiring Project Co to proceed with the relevant Modification or comply with the Change in Mandatory Requirements (as applicable).

Modification Proposal means the Change Notice submitted by Project Co under clauses 39.3 or 39.8.

Modification Request has the meaning given in clause 39.1.

Modification Services means works and services required to rectify a TfNSW Defect:
(a) the Additional Maintenance Service Payment of which:
   (i) exceeds (Indexed) per Unit or Simulator; or
   (ii) cannot be readily calculated on the basis described in section 7 of the Payment Schedule;
(b) that will require:
   (i) amendment to a Management Plan; or
   (ii) a new Approval or Accreditation, or an amendment to an existing Approval or Accreditation;
(c) in respect of which Project Co will be entitled to an extension of time to a Date for Acceptance if it occurs during the Delivery Phase; or
(d) that will adversely affect:
   (i) the durability or functional integrity of any Asset;
   (ii) the safety, use, Availability or reliability of any Asset; or
   (iii) Project Co's ability to:
      A. satisfy any warranty given under this Deed; or
      B. perform any of its other obligations under this Deed.

Monitored Platform means each of the Platforms at the stations listed in Appendix A of the Performance Regime.

Month means a calendar month.

Monthly Performance Report or MPR means the Project Report of that name.

Monthly Service Payment means a monthly service payment payable to Project Co calculated in accordance with the Payment Schedule.
Monthly Service Payment Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 1 of the Performance Regime.

Monthly Works Report or MWR means the Project Report of that name.

Moral Rights has the meaning given in the Copyright Act 1968 (Cth) and any corresponding rights granted under any other laws anywhere in the world.

Moral Rights Consent means a consent by the owner of Moral Rights substantially in the form of Schedule 10.

National Train Communications System or NTCS means the train control radio communication system defined in section 10.6 of the Reference Document “T HR RS 00100 ST”.

Native Title Claim means any claim or application under any Law or future Law relating to native title, including any application under section 61 of the Native Title Act 1993 (Cth).

Network means the Intercity Trains Network and the Regional Trains Network and includes all Rail Infrastructure associated with them.

Network Access Regime Schedule means Schedule 36.

Network Access Rights means:

(a) a Work on Track Authority;
(b) a Train Run Entitlement; and
(c) access to Train Drivers.
Network Maintenance Contractor means John Holland Rail Pty Ltd (ABN 61 009 252 653) in its capacity as maintainer of the Regional Trains Network in NSW and ACT as appointed by the Country Rail Infrastructure Authority (ABN 21 298 300 693) and any other entity or entities from time to time appointed by the Country Rail Infrastructure Authority, the State, TINSW, a NSW Rail Entity or any of their Associates to maintain any part of the NSW Metropolitan Rail Network or the Regional Trains Network in NSW and ACT.

New Access Agreements means any:

(a) variation to any Existing Access Agreement made after the date of this Deed; and

(b) agreement entered into by the Operator with an Access Provider after the date of this Deed providing for access to any part of the Network, including any variation to, or extension of, such agreement.

New Fleet means the Regional Fleet and the Intercity Non-Electric Fleet to be designed, manufactured, supplied, tested, commissioned and Maintained by Project Co in accordance with this Deed, as further described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements and the Option Units in respect of which TINSW has issued Option Notices.
New Third Party Agreement means any agreement entered into by TfNSW or any other NSW Rail Entity with a third party after the date of this Deed, as notified by TfNSW to Project Co from time to time.

NGER Legislation means the National Greenhouse and Energy Reporting Act 2007 (Cth).

Nominee has the meaning given in clause 58.3(b).

Non-Continuous Production Options means the Option Units in respect of which TfNSW issued Option Notices after the end of the Option Continuous Production Period but prior to the Option Final Date.

Non-Mandatory Changes in Standards has the meaning given in clause 39.10(a)(ii).

Non-Sensitive Modification means a Modification that could not reasonably be expected to materially increase the risk to Project Co of incurring Abatements or causing a Major Default or Default Termination Event.

Notice of Urgent Rectification Works means a notice of Urgent Rectification Works provided by Project Co to TfNSW in accordance with clause 29.4(b).

Notifiable Incident means any incident requiring notification to an Authority or regulator under a WHS Act or the Rail Safety National Law.

NSW Code has the meaning given in clause 15.2(a).

NSW Government means the Crown in right of the State of New South Wales and its agencies.

NSW Government Aboriginal Participation in Construction Policy has the meaning given in clause 10.11(a)(i).

NSW Guidelines has the meaning given in clause 15.1.

NSW Metropolitan Rail Network means the railway network centred on Sydney, currently bounded by:

(a) Berowra in the north;
(b) Emu Plains in the west;
(c) Waterfall in the south-east;
(d) Macarthur in the south-west; and
(e) Bondi Junction in the east.

NSW Rail Entity means RailCorp, TAHE, Sydney Trains, the Operator, Australian Rail Track Corporation and any other Authority in New South Wales that owns or operates railway infrastructure or Rolling Stock.

NSW Trains means the body corporate of that name constituted under the Transport Administration (General) Regulation 2005 (NSW).

NSW Trains Rail Services Contract means the rail services contract dated 21 June 2013 between TfNSW, NSW Trains and RailCorp.

**NSW WHS Regulation** means the *Work Health and Safety Regulation 2011* (NSW).

**O&M Manuals** means each of the operation and maintenance manuals to be prepared and updated by Project Co in accordance with clause 16.3 which must comply with section 21 of the Management Requirements.

**Obsolescence** occurs if:

(a) a Project Co Item is no longer manufactured by its original manufacturer or is no longer generally available and the lack of availability of the relevant Project Co Item cannot be managed through holding additional Spares, Consumables, component parts or subsystems for the remaining design life of the relevant Maintained Rail Asset; or

(b) any Software required to use, operate or Maintain a Maintained Rail Asset is no longer supported by its supplier,

and **Obsolete** has an equivalent meaning.

**Obsolete Item** has the meaning given in clause 32.6(b).

**Omitted Project Activities** has the meaning given in clause 39.6(a)(i).

**ONRSR** means the Authority or other person having jurisdiction in Queensland, New South Wales and Victoria (or any as the context requires) from time to time for the purposes of regulation of rail safety and, at the date of this Deed, is the Office of the National Rail Safety Regulator.

**Open Book Basis** has the meaning given in the Change Compensation Principles.

**Operating Year** means:

(a) for the first Operating Year, the period commencing on the earlier of:

(i) the Date of Provisional Acceptance (Unit) of the first Unit to achieve Provisional Acceptance (Unit); and

(ii) the Date of Provisional Acceptance (Maintenance Facility),

and ending on the next 30 June;

(b) subject to paragraph (c), each subsequent 12 Month period commencing on 1 July and ending on 30 June; and

(c) for the final Operating Year, the period from the end of the last full Operating Year (as defined in paragraph (b)) to the Expiry Date.

**Operational Damage** means damage to a Unit or Simulator to the extent that such damage is caused by:

(a) a collision between a Unit or Simulator (as applicable) and another rail or road vehicle or any other object outside the Unit or Simulator (as applicable);

(b) a derailment;

(c) a fire; or

(d) a flood.
Operational Environmental Management Plan or OEMP means the Management Plan of that name.

Operational Readiness Plan means the Management Plan of that name.

Operations Functions means the functions and responsibilities of RailCorp, TfNSW and each Operator as passenger transport operators on the Network and elsewhere or as the owners or managers of Rail Infrastructure or Rolling Stock.

Operator means NSW Trains and any other entity or entities from time to time established, constituted, or appointed by the State, TfNSW or another Associate of the State to operate all or any of the New Fleet.

Operator Interface Agreement has the meaning given in clause 12.8(c).

Option Capital Cost means the amount calculated in accordance with section 2.3(a) of the Payment Schedule.

Option Continuous Production Period means, for each Option Unit, the period from Financial Close up to and including the date identified as the end of the Option Continuous Production Period in section 1 of Schedule 44 in respect of that Option Unit.

Option Effective Date means:

(a) in respect of any Option Notice relating to Additional Option Items, the date that is ten Business Days after the date of such Option Notice;

(b) in respect of any Option Notice relating to any Option Unit in respect of which section 2.2(a)(iii) of the Payment Schedule applies, the date that is ten Business Days after the election under section 2.2(a)(iii) or 2.2(d)(i) of the Payment Schedule, as the case may be; or

(c) in respect of any Option Notice relating to an Option Unit in respect of which TfNSW has made an election under section 2.2(d)(ii) or (iii) of the Payment Schedule, the date of Option Financial Close.

Option Final Date means, for each Option Unit, the applicable date identified as the Option Final Date in section 1 of Schedule 44.

Option Financial Close has the meaning given in section 2.2(e) of the Payment Schedule.

Option FX Base Date means 25 May 2018.

Option Notice means a notice issued under clauses 39.14(a) or 39.14A(a).

Option Unit means each of those Units identified in section 1 of Schedule 44 as Option Units.

Original Date for Acceptance means:

(a) the Original Date for Provisional Acceptance; and

(b) the Original Date for Final Acceptance,

or the relevant one of these as the case may be.

Original Date for Final Acceptance means the relevant Date for Final Acceptance as at the date of this Deed.
Original Date for Final Acceptance (CDPD) means the relevant Date for Final Acceptance (CDPDU) as at the date of this Deed.

Original Date for Provisional Acceptance means the relevant Date for Provisional Acceptance as at the date of this Deed.

Other AM Services means any AM Services required to be performed by Project Co to rectify TfNSW Defects in accordance with clause 44.2A that are not Generally Approved AM Services.

Other Costs has the meaning given in section 11.3(d) of the Payment Schedule.

Outstanding Matters Report has the meaning given in clause 36.5(b).

Out of Service has the meaning given in section 10.4(b) of the Payment Schedule.

Overdue Rate means [ ] per annum above the Bank Bill Rate.

Ownership Schedule means Schedule 19.

Parent Guarantee means the guarantee:

(a) not used;

(b) given by the Parent Guarantor of the Maintenance Subcontractor to Project Co in connection with the obligations of the Maintenance Subcontractor to Project Co under the Maintenance Subcontract;

(c) not used; and

(d) not used.

Parent Guarantor means each person giving a Parent Guarantee which, as at the date of this Deed, means the parties listed as Parent Guarantors in item 20 of the Contract Particulars.

Passenger Information System or PIS means an electronic system which provides real-time audible and visual passenger information on board the New Fleet.

Passenger Saloon means the area within a Car containing the Passenger environment as defined in section 4 of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements.

Passengers see the definition of Customers above.

Payment Claim means a payment claim submitted by Project Co in accordance with clause 35.2(a) in the form reasonably required by TfNSW.

Payment Directions Deed means the Payment Directions Deed dated on or about the date of this Deed between TfNSW, Finance Co, Project Co and the Facility Agent.

Payment Period means each of the following periods:

(a) the period from the Date of Provisional Acceptance (Unit) in respect of the first Unit to achieve Provisional Acceptance up to and including the last day of the Month in which that Date of Provisional Acceptance (Unit) occurs;

(b) each whole Month thereafter up to and including the last whole Month before the calendar month in which the Expiry Date occurs; and
the period from the first day of the Month in which the Expiry Date occurs up to and including the Expiry Date.

Payment Schedule means Schedule 16.

Payment Statement has the meaning given in clause 35.2(b).

Performance Bond means a bond or bank guarantee which:

(e) is unconditional, irrevocable and payable on demand;

(b) is issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority and has the Required Rating;

(c) specifies a location in Sydney (or any other place that TfNSW approves) where demand is to be given and payment made, without further confirmation from the issuer, on any Business Day;

(d) is governed by and to be construed according to the Laws applying in New South Wales;

(e) is, where required, duly stamped; and

(f) is otherwise on terms and in a form acceptable to TfNSW, acting reasonably.

Performance Data has the meaning given in section 1.3(a)(i) of the Performance Regime.

Performance Management System means a system developed by Project Co to enable Project Co to self-monitor, record and calculate the operational performance of the New Fleet and the Simulators.

Performance Measures means the standards against which Project Co's performance of the Services is assessed as set out in the Performance Regime, including Required Availability and Required Reliability.

Performance Monitoring System means the system forming part of the New Fleet and the Asset Information System for the collection, transmission, storage, processing and reporting of information in respect of the service performance of the Units in support of the Performance Regime.

Performance Regime means the regime set out in Schedule 17.

Performance Review Meeting has the meaning given in section 1.6(a) of the Performance Regime.

Permitted Change in Control has the meaning given in Schedule 19.
in the case of any Key Subcontract or Significant Subcontract where TfNSW elects to novate that Key Subcontract or Significant Subcontract to itself or its nominee pursuant to the Deed of Novation or relevant Side Deed, zero.

Permitted Security Interest has the meaning given in the TfNSW Security.

Persistent Breach means a breach of the same obligation by Project Co under a TfNSW Project Document that occurs or more times in any rolling Month period, regardless of whether the breach constitutes a Major Default, but not where such breach is:

(a) a Major Default that:
   (i) is the subject of a program provided by Project Co under clause 48.3(a) and Confirmed by the TfNSW Representative in accordance with the Review Procedures; and
   (ii) Project Co is diligently pursuing the remedy of;

(b) a breach that results in an adjustment to the Monthly Service Payment by application of the Performance Regime and the Payment Schedule; or

(c) a failure to achieve Acceptance by the relevant Date for Acceptance.

Persistent Breach Notice has the meaning given in clause 48.6(a).

Personal Information means personal information, within the meaning given in the Privacy Act 1988 (Cth), that is collected, used, disclosed or otherwise handled by Project Co or its
Associates in the course of, or for the purposes of, performing Project Co's obligations under the Project Documents or otherwise in connection with the Project.

**Planning Approval** means:

(a) each consent or approval granted or required to be granted under the EP&A Act by the authority with jurisdiction to assess or determine the Planning Approval Application in accordance with the EP&A Act in respect of the Maintenance Facility and Returned Asset; and

(b) not used.

**Planning Approval Application** means the application for the Planning Approval set out in Annexure D.

**Planning Approval Documents** means the Planning Approval and any documents comprising any Planning Approval Application, including the draft Planning Approval Application and the detailed plans, specifications and any environmental impact statement relating to the Planning Approval Application.

**Platform** refers to a timetabled station stop for Passengers in the course of a trip.

**Pollution** has the same meaning as in the *Protection of the Environment Operations Act 1997* (NSW).

**Pollution Incident** has the meaning given in the EP&A Act.

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

**Pre-Agreed Acceptance Compression Principles** means the principles set out in section 11 of the Change Compensation Principles.

**Pre-Existing Contamination** means any Contamination of a Site which is in existence prior to the date of this Deed and is not Unidentified Pre-Existing Contamination.

**Pre-Existing Operational Environmental Management Plan** means the Operational Environmental Management Plan for the Legacy Maintenance Centre Site prepared by RailCorp dated 8 November 2011.

**Preliminary Acceptance** means, for each Unit forming part of the New Fleet, when all the Preliminary Acceptance Criteria in respect of that Unit have been met to the satisfaction of TfNSW (or waived by TfNSW).

**Preliminary Acceptance Criteria** means the criteria set out in section 1 of the Acceptance Schedule in respect of each Unit forming part of the New Fleet.

**Preliminary Acceptance Outstanding Item** means any act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, undertaken, provided or completed by Project Co as at Preliminary Acceptance for a Unit which has not been so performed, achieved, undertaken, provided or completed by Project Co as at Preliminary Acceptance for the relevant Unit, unless:

(a) Project Co has failed to comply with the Preliminary Acceptance Criteria in row 6 (Train Completion Works) of the table in section 1 of the Acceptance Schedule; or

(b) TfNSW has determined such act, matter, state of affairs or thing (or the cumulative impact of multiple acts, matters, state of affairs or things):
(i) is likely to cause any legal impediment (including any non-compliance with an Accreditation) to the use or occupation of any part of the Assets by TfNSW or any NSW Rail Entities; or

(ii) is not reasonably capable of being performed, achieved, undertaken, provided or completed by Project Co at the Maintenance Facility.

Preliminary Acceptance Report means each report in respect of Preliminary Acceptance required to be submitted by Project Co in accordance with clause 22A.5 containing the information required by section 19.5 of the Management Requirements, as amended and updated in accordance with this Deed.

Preliminary Design Review or PDR means the review conducted in accordance with section 25.2 of the Management Requirements and the Review Procedures.

Presentation Standards means the minimum presentation standards for the Trains that must be achieved prior to each Train leaving the Stabling Yards, Legacy Maintenance Centre or the Maintenance Facility, set out in Part C3 (Presentation Standards) of the Project Scope and Requirements and as updated from time to time in accordance with clause 16.1B.

Presentation Time means the time at which Train Preparation occurs which shall be:

(a) where the Operator will perform the Train Preparation at the Maintenance Facility, at least ,

(b) where the Operator will perform the Train Preparation at any other Entry Point, at least , and

(c) where Project Co will perform the Train Preparation, at least  and not more than , prior to the Entry Time.

Privacy Legislation means the Privacy Act 1988 (Cth) as amended by the Privacy Amendment (Private Sector) Act 2000 (Cth), the Privacy and Personal Information Protection Act 1998 (NSW) and any other applicable Commonwealth or NSW Government Legislation or guidelines relating to privacy.

Probity Event includes any event or thing which occurs before or after the date of this Deed which:

(a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of a Group Member, a Consortium Member or a Relevant Person;

(b) relates to a Group Member, a Consortium Member or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the Project; or

(c) involves a material failure of a Group Member, Relevant Person, Consortium Member or any Subcontractor (who is not a Consortium Member) to achieve or maintain:

(i) reasonable standards of ethical behaviour;

(ii) the avoidance of conflicts of interest which will have, or are likely to have, a material adverse effect on the ability of the Group Member, Relevant Person or Consortium Member or Subcontractor (as applicable) to carry out and observe its obligations in connection with the Project; or
other standards of conduct that would otherwise be expected of a party involved in a TfNSW or NSW Government project.

Probity Investigation means any probity, criminal or security investigations to report on or check the character, integrity, experience or honesty of a person or Entity, including:

(a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and

(b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

Proceed at Risk has the meaning given in the Review Procedures.

Programming Requirements means the requirements set out in Schedule 4.

Project means:

(a) the performance of the Project Activities including:
   (i) financing the Project Activities;
   (ii) carrying out the Delivery Phase Activities; and
   (iii) performing the Services;

(b) the handover of the Assets to TfNSW and RailCorp;

(c) the Returned Asset Handback of the Returned Asset; and

(d) the performance of all other obligations,

in accordance with, or as contemplated by, any Project Document, or incidental to any Project Document.

Project Activities means all works, things and tasks that Project Co is, or may be, required to do to comply with its obligations in connection with the TfNSW Project Documents, including:

(a) the Delivery Phase Activities; and

(b) the Services.

Project Co Act or Omission means:

(a) a breach of this Deed by Project Co; or

(b) any other act or omission of Project Co or its Associates other than an act or omission undertaken in accordance with the Project Documents and not undertaken fraudulently, recklessly, unlawfully, negligently or maliciously.

Project Co AEO Authorised Representatives means:

(a) the Project Co AEO Authorised Representative - Trains; and

(b) the Project Co AEO Authorised Representative - Maintenance Facility,

(or either as the context requires).
Project Co AEO Authorised Representative - Maintenance Facility means the person identified in item 15 of the Contract Particulars subject to replacement, termination or delegation in accordance with clause 10.6.

Project Co AEO Authorised Representative - Trains means the person identified in item 15 of the Contract Particulars subject to replacement, termination or delegation in accordance with clause 10.6.

Project Co Background IP means all Intellectual Property Rights, trade secrets and know-how comprised in or related to:

(a) all or any part of the Assets;
(b) all or any part of the Project Activities including all or any items, software tools or materials or documents used by Project Co in carrying out the Project Activities; or
(c) all or any part of the Project Co Material,

but excludes Developed IP and TfNSW Background IP and Third Party Software.

Project Co Daily Performance Record has the meaning given in section 1.3(a)(ii) of the Performance Regime.

Project Co Defect means all Defects excluding TfNSW Defects.

Project Co Entity means Project Co and Finance Co.

Project Co Item has the meaning given in clause 32.6(a).

Project Co Material means:

(a) the Technical Documents;
(b) the Management Plans and Project Reports;
(c) the O&M Manuals;
(d) Engineering Change Notices;
(e) the Baseline Delivery Program; and
(f) all other Material which Project Co or any of its Associates prepares, uses or provides to RailCorp, TfNSW or any of their Associates in connection with the Project whether before or after the date of this Deed.

Project Co Payment Period Performance Record has the meaning given in section 1.4 of the Performance Regime.

Project Co Representative means the person identified in item 21 of the Contract Particulars subject to replacement, termination or delegation in accordance with clauses 10.3 and 10.6.

Project Control Group means the group referred to in clause 10.7(a).

Project Director means the person identified as such in item 13 of the Contract Particulars, subject to replacement, termination or delegation in accordance with clause 10.6.

Project Debt has the meaning given in the Change Compensation Principles.

Project Documents means:
(a) this Deed;
(b) each Licence;
(c) the Financiers' Tripartite Deed;
(d) each TfNSW Security;
(e) the Delivery Subcontract;
(f) the Delivery Side Deed;
(g) the Maintenance Subcontract;
(h) the Maintenance Side Deed;
(i) the Depot Subcontract;
(j) the Depot Subcontract Side Deed;
(k) each other Key Subcontract;
(l) the Design Consultant Engagement;
(m) the Design Consultant Side Deed;
(n) each other Side Deed;
(o) each Consent Deed;
(p) each Parent Guarantee;
(q) each Significant Subcontract;
(r) the Independent Certifier Deed;
(s) the Interface Deed;
(t) the GSF Act Deed Poll of Guarantee;
(u) the Equity Documents;
(v) the Finance Documents;
(w) each Operator Interface Agreement entered into pursuant to clause 12.8(c);
(x) each Escrow Agreement entered into pursuant to clause 62.5;
(y) the Receivables Purchase Deed;
(z) the Payment Directions Deed;
(aa) any Deed of Novation;
(bb) the Sub-Independent Certifier Deed; and
(cc) any other document TfNSW and Project Co agree is a Project Document.
Project Hazard Log means the document of that name described in section 8.3 of the Management Requirements.

Project Information means:

(a) the Site Information Reports; and

(b) all other Material provided or made available by or on behalf of TINSW or its Associates to Project Co or its Associates in connection with the Project (which is not incorporated into this Deed).

Project Management Plan means the Management Plan of that name.

Project Objectives means the objectives of the Project included in item 22 of the Contract Particulars.

Project Report means each of the reports described in the Project Scope and Requirements.

Project Risk Register means the document of that name described in section 8.2 of the Management Requirements.

Project Scope and Requirements or PSR means Schedule 3 (Project Scope and Requirements).

Project Site means:

(a) the Returned Asset Site;

(b) the Maintenance Facility Site; and

(c) on and from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre Site,

(or the relevant one of these as the context requires).

Project-Specific Change in Law means a Change in Law which, by express reference, applies to:

(a) the Project;

(b) Project Co; or

(c) a Site,

and not to other projects, Entities or sites.

Project Trust means the trust known as the Momentum Trains Trust constituted pursuant to the Project Trust Deed.

Project Trust Deed means the trust deed entitled 'Trust Deed - Momentum Trains Trust' made by Project Co as trustee dated 18 December 2018, as amended by a supplemental deed on 29 January 2019.

Prolongation Costs has the meaning given in the Change Compensation Principles.

Proposal means the proposal submitted by Project Co in response to the Request for Proposal.
Proposed Early Acceptance Date means the date (if any) nominated and updated (where applicable) by Project Co in its Baseline Delivery Program, by which Project Co proposes to achieve Acceptance of the Maintenance Facility, any Units or any Simulators being a date that is prior to the relevant Date for Acceptance.

Provisional Acceptance means:

(a) Provisional Acceptance (Maintenance Facility);
(b) Provisional Acceptance (Base Fleet and Continuous Production Options);
(c) Provisional Acceptance (Simulator) for each Simulator;
(d) Provisional Acceptance (Unit) for each Unit forming part of the New Fleet; and
(e) Provisional Acceptance (Upgrade Services),

or the relevant one of these as the case may be.

Provisional Acceptance (Base Fleet and Continuous Production Options) means when the Independent Certifier has issued a Certificate of Provisional Acceptance in respect of each Unit forming part of the Base Fleet and the Continuous Production Options.

Provisional Acceptance Criteria means the criteria set out in the following sections of the Acceptance Schedule:

(a) section 2.1 in respect of the Maintenance Facility;
(b) section 2.2 in respect of each Simulator;
(c) section 2.3 in respect of each Unit forming part of the New Fleet; and
(d) section 2.4 in respect of the Upgrade Services,

or the relevant one of these as the case may be.

Provisional Acceptance (Maintenance Facility) means when all the Provisional Acceptance Criteria in respect of the Maintenance Facility have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

Provisional Acceptance Outstanding Item means:

(a) any act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, undertaken, provided or completed by Project Co as at Provisional Acceptance for a Unit, a Simulator, the Maintenance Facility or the Upgrade Services (as applicable) which has not been so performed, achieved, undertaken, provided or completed by Project Co as at Provisional Acceptance for the relevant Unit, Simulator, Maintenance Facility or Upgrade Services, unless TfNSW has (acting reasonably) determined such act, matter, state of affairs or thing (or the cumulative impact of multiple acts, matters, state of affairs or things) is likely to:

(i) prevent the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable) from complying with the FFP Warranty, the Standards or the Minimum Operating Standards;

(ii) prevent Project Co from delivering the Services in accordance with the Services Requirements;
(iii) adversely affect TfNSW or any NSW Rail Entities; or
(iv) cause any legal impediment (including non-compliance with an Accreditation) to the use or occupation of any part of the Assets by TfNSW or any NSW Rail Entities; and

(b) any Preliminary Acceptance Outstanding Items in respect of a Unit that are deemed, agreed or determined to be Provisional Acceptance Outstanding Items in accordance with clause 22A.8(e) or clause 22A.8(f).

Provisional Acceptance Report means each report in respect of Provisional Acceptance required to be submitted by Project Co in accordance with clause 23.7 containing the information required by section 19.7 of the Management Requirements, as amended and updated in accordance with this Deed.

Provisional Acceptance (Simulator) means, for each Simulator, when all the Provisional Acceptance Criteria in respect of that Simulator have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

Provisional Acceptance (Upgrade Services) means when all the Provisional Acceptance Criteria in respect of the Upgrade Services have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

Provisional Acceptance (Unit) means, for each Unit forming part of the New Fleet, when all the Provisional Acceptance Criteria in respect of that Unit have been met to the satisfaction of the Independent Certifier (or waived by TfNSW).

Quality Assurance Representative means the person nominated in the Quality Management Plan for each of Project Co and the Key Subcontractors.

Quality Assurance System means a quality assurance system that covers:

(a) the carrying out of the Delivery Phase Activities;

(b) performance of the Services; and

(c) personnel and human resources during the Delivery Phase and the Maintenance Phase, including recruitment, training, and occupational health and safety management of Project Co and its Associates.

Quality Management Plan means the Management Plan of that name.

Quarter means each 3 Month period commencing on a Quarterly Date, save that:

(a) the first Quarter of the Delivery Phase will be the period from Financial Close until the day before the first Quarterly Date during the Delivery Phase;

(b) the last Quarter of the Delivery Phase will be the period from the last Quarterly Date during the Delivery Phase to (and including) the Date of Final Acceptance (Project);

(c) the first Quarter of the Maintenance Phase will be the period from the first day of the Maintenance Phase until the day before the first Quarterly Date during the Maintenance Phase; and

(d) the last Quarter of the Maintenance Phase will be the period from the last Quarterly Date during the Maintenance Phase to the Expiry Date.

Quarterly Date means every 1 January, 1 April, 1 July and 1 October.
Queensland Rail means the statutory authority known as the Queensland Rail Transit Authority which was established under the Queensland Rail Transit Authority Act 2013 (Qld) and its wholly-owned subsidiary Queensland Rail Limited ABN 47 564 947 264.

Queensland Rail Access Agreement means the access agreement entitled 'Standard Gauge Passenger 2014 to 2019 NSW Trains Agreement Ref No. CW40692' dated on or about 30 June 2014 between Queensland Rail Limited and NSW Trains.

Queensland Rail Entity means Queensland Rail, ARTC and any other Authority in Queensland that owns or operates railway infrastructure or Rolling Stock.

Queensland Rail Network means that part of the Network managed by Queensland Rail from time to time.

Rail Entities means each of:

(a) NSW Rail Entity;
(b) Network Maintenance Contractor;
(c) Victorian Rail Entity; and
(d) Queensland Rail Entity,

or the relevant one of these as the case may be.

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

Rail Infrastructure Condition means the physical condition and characteristics of the Rail Infrastructure forming part of or otherwise relating to the Network which may affect Project Co’s ability to carry out its obligations in accordance with this Deed or the cost of doing so.

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

Rail Infrastructure Manager’s Maintenance Standard means in relation to:

(a) TfNSW track, TMC203 (Track Inspection) and subordinate documents;
(b) John Holland CRN track, CRN CM 203 (Track Inspection) and subordinate documents;
(c) ARTC track, ARTC Track Geometry Section 5, and subordinate documents;
(d) Queensland Rail track, Appendix 1.1 of MD-10-194 and subordinate documents; and
(e) V/Line track, NIST – 2706 (Inspection and Assessment: Track Geometry) and subordinate documents.

Rail Profile means in relation to:

(a) TfNSW track, the finished profile ground into the head of rails (including ‘Modified Tangent’, ‘RPH2000’, ‘RMH2000’) as described in Table 11 and Appendix B of ASA standard ESC220;
(b) John Holland CRN track, as described in Section 6.1.2 of CRN CS 220;
(c) ARTC track, as described in the ARTC standard "Rail Section 1"; and
(d) V/Line track, as described in NIST-2621 ("Rail and Wheel Profiles").

**Rail Safety National Law** means:

(a) the *Rail Safety National Law* (NSW) No 82a;
(b) *the Rail Safety National Law* (Vic); and
(c) *the Rail Safety National Law 2017* (Qld).

**Ramp Up Period** means the period on and from the Date of Provisional Acceptance (Unit) of the first Unit to achieve Provisional Acceptance until the Date of Provisional Acceptance (Unit) of the last Unit to achieve Provisional Acceptance.

**RAM** means reliability, availability and maintainability.

**RAMS** or **Reliability, Availability, Maintainability and Safety** has the meaning given in section 17 of the Part B1 (Management Requirements) of the Project Scope and Requirements.

**Rates** means all municipal rates, water rates, sewerage rates, drainage rates and other rates payable to any Authority in connection with a Site or the Assets.

**Rating Point** means each point received as part of the ISCA Rating.

**RCTI** has the meaning given in clause 35.8(f).

**Receivables Instalment Payment** has the meaning given to it in the Receivables Purchase Deed.

**Receivables Instalment Payment Date** has the meaning given to it in the Receivables Purchase Deed.

**Receivables Purchase Deed** means the Receivables Purchase Deed between TfNSW, Finance Co and Project Co dated on or about the date of this Deed under which TfNSW agrees to assign to Finance Co each Licence Payment payable under the Maintenance Phase Licences.

**Receivables Purchase Price** has the meaning given to it in the Receivables Purchase Deed.

**Receivables Refund Payment** has the meaning given to it in the Termination Payments Schedule.

**Recipient** has the meaning given in clause 35.8(c)(ii).

**Recipient Supply** has the meaning given in clause 35.8(e)(i).

**Records** means comprehensive detailed records and business systems recorded in writing in books or filed in Project Co's or its Associates' computer system:

(a) in respect of the Project Activities; and
(b) in the form and encompassing all information required by TfNSW from time to time.

**Recovery** means the recovery of a Unit (whether or not that Unit is anAccepted Unit) because that Unit is unable to move under its own power 'or any reason or is for any other reason not permitted or able to continue operation on the Network or any part thereof.

**Recovery Services Cost** means the amount in dollars set out in section 7.1(a) of the Performance Regime.
Recovery Services Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 7.1 of the Performance Regime.

Recovery Services Event means an event requiring Recovery which is caused or contributed to by a Project Co Defect.
Recurrent Defect means a Project Co Defect in a Unit or a Spare or a sub-system of a Unit that:

(a) has the same cause and has manifested in [Redacted] of the Units, Spares or relevant sub-systems;

(b) TfNSW reasonably believes will, or is reasonably likely to, fulfil the criteria described in paragraph (a) with the effluxion of time; or

(c) has the same cause and which, in any rolling [Redacted] Month period, occurs [Redacted] times in the same Unit, Spare or sub-system of a Unit.

Recurrent Defect Rectification Plan has the meaning given in clause 29.3(d).

Reference Documents means the reference documents, standards and guidelines set out in Part A2 (Reference Documents, Standards and Guidelines) of the Project Scope and Requirements.

Reference Energy Consumption means the amount in litres set out in section 10.2 of the Performance Regime.

Refinancing means:

(a) any amendment to, novation or restatement or replacement of, any Finance Document;

(b) the exercise of any right (including the giving of any waiver or consent) under any Finance Document; or

(c) any other step, arrangement or new contractual or financing arrangement that has a substantially similar effect to that described in paragraph (a) or (b),

that will or is likely to change the type, amount, pricing, tenor, terms for payment or repayment or hedging of the financial accommodation in connection with the Project, but does not include:
(d) the syndication or subscription of any debt under the Finance Documents that is contemplated at the date of Financial Close or, following a Refinancing, that is contemplated at the date of that Refinancing;

(e) the change in control or sell down of any bonds in an arm's length transaction at market value;

(f) disposals of investments or commitments of debt or equity in an arm's length transaction at market value;

(g) any amendment to, novation, or restatement or replacement of, or waiver or consent under, any Finance Document which is a direct result of an amendment, novation, restatement, replacement, waiver or consent to cure any actual or potential event of default or review event under any Finance Document; or

(h) entering into derivative transactions contemplated by the Finance Documents to be entered into on or before Financial Close or, following a Refinancing, contemplated to be entered into in connection with that Refinancing.

Refinancing Gain has the meaning given in clause 40.5.

Refinancing Loss has the meaning given in clause 40.5.

Refinancing Review Period has the meaning given in clause 40.3(a).

Refurbishment Works means the periodic Maintenance, refurbishment or replacement of all elements comprising the Delivered Rail Assets in accordance with the Asset Management Plan, including so that the Delivered Rail Assets meet the FFP Warranty.

Regional Fleet means the new Trains to be designed, manufactured, supplied, tested, commissioned and Maintained by Project Co in accordance with this Deed and which will be used by the Operator to operate Regional Train Services in place of the XPT and Xplorer fleets.

Regional Train means a Long Unit or a Short Unit (Regional) or a Train formed from a combination of multiple Units that is in each case part of the Regional Fleet.

Regional Train Services means the train services provided by the Operator on the Regional Trains Network between Sydney and destinations in New South Wales, Queensland and Victoria, including:

(a) Brisbane, Casino, Grafton, Moree and Armidale in the north;

(b) Broken Hill and Dubbo in the west; and

(c) Melbourne, Griffith and Canberra in the south.

Regional Trains Network means the rail network comprising the NSW Metropolitan Rail Network, the Regional Trains Network in NSW and ACT, the Australian Rail Track Corporation Network, the VicTrack Network and the Queensland Rail Network to a distance of up to approximately 1100 km from Sydney, currently bounded by:

(a) Brisbane in the north;

(b) Broken Hill in the west;

(c) Melbourne in the south; and

(d) Sydney (Central) in the east,
amended from time to time as indicatively depicted on the map entitled ‘NSW TrainLink Regional Trains and Coaches Network Map’ set out in Schedule 33.

Regional Trains Network in NSW and ACT means the rail network in NSW and ACT, currently bounded by:

(a) Canberra and Albury in the south;
(b) Casino in the north;
(c) Broken Hill in the west; and
(d) Sydney in the east,

amended from time to time and as indicatively depicted on the map entitled ‘NSW TrainLink Regional Trains and Coaches Network Map’ set out in Schedule 33.

Related Body Corporate has the meaning given in the Corporations Act.

Related Dispute has the meaning given in clause 54.3.

Related Trust Entity means with respect to an entity which is a trustee, manager or Responsible Entity of a trust or a managed investment scheme:

(a) any Related Body Corporate of the trustee, manager or Responsible Entity;
(b) any other trustee, manager or Responsible Entity of the trust or managed investment scheme (or Related Body Corporate) of such entity; or
(c) any Controlling Unit Holder of the trust or managed investment scheme (or Related Body Corporate) of such an entity.

Relevant Period means in relation to the calculation of the Aggregate Approved Commercial Opportunities Profit, each period as is specified by TfNSW as a condition of the giving of its approval under clause 43.1(a) or as otherwise may be agreed by TfNSW and Project Co in writing.

Relevant Person means:

(a) a director or secretary of a Consortium Member;
(b) a director or secretary of a Group Member;
(c) Key People and Required People; or
(d) an officer, agent, employee or consultant of a Consortium Member or Subcontractor who:
   (i) has the ability to exercise influence or control over the decisions or actions of the Consortium Member or Subcontractor in relation to the Project other than solely through the exercise of voting rights at a meeting of shareholders or directors of the Consortium Member or Subcontractor; or
   (ii) has access to Confidential Design Information or Personal Information and any other Confidential Information the disclosure of which (other than to the extent such disclosure is permitted by this Deed) may prejudice the interests of RailCorp, TfNSW, the NSW Government or any other Authority.
Relevant Source Code and Escrow Information means all Source Code and Escrow Information for any computer program, Software or computer included in or required for any Asset or Deliverable including any "off-train" Software (including but not limited to the train Passenger Information System, CCTV and train data recording downloads) which may reasonably be required to operate, maintain, modify and reconfigure or otherwise receive the full benefit of the Assets (and all fixes, maintenance releases and new versions thereof) including the lists of instructions stored in permanent or semi-permanent form, used to:

(a) define the functions of microprocessors and similar devices installed on any Assets or any part thereof or in equipment to be used in conjunction with or for the maintenance of any Assets or any part thereof; or

(b) run programmes, spreadsheets and databases (or any as the context requires) in connection with the Assets,

in each case except for Third Party Software which has not been modified in order to perform any of the tasks set out in (a) or (b) above.

Reliability Adjustment means, in relation to a Payment Period, the amount calculated in accordance with section 6 of the Performance Regime.

Reliability Measurement Period means any rolling 12 Month Period.

Reliability Rate has the meaning given in section 6.2(c) of the Performance Regime.

Relief Event means any Extension Event, Intervening Event, Change Compensation Event or other event (including a TfNSW Defect) which entitles Project Co to:

(a) relief or suspension from performance of its obligations, or to an extension of time, under a TfNSW Project Document;

(b) compensation from TfNSW; or

(c) bring any other Claim against TfNSW,

in connection with the Project.

Remediate or Remediation means to remove, disperse, abate, destroy, dispose of, neutralise, remediate, treat, cap, contain or otherwise test, monitor or assess (as applicable).

Replacement Unit has the meaning given in section 14.1 of the Performance Regime.

Reputable Insurer means an insurance company having the Required Rating.

Request for Proposal means the Request for Proposal for the Project issued by TfNSW on 15 December 2017.

Required Availability in respect of an Availability Period is the minimum number of Units to be made Available for that Availability Period as specified in section 10.2 the Payment Schedule.

Required Configuration means:

(a) in respect of a Long Unit, the configuration specified in section 2.2(a) of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements;

(b) in respect of a Short Unit (Regional), the configuration specified in section 2.2(b) of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements; and
in respect of a Short Unit (Intercity), the configuration specified in section 2.2(c) of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements.

Required People means the people so named in item 22A of the Contract Particulars as replaced (if at all) in accordance with clause 10.6(b)(ii).

Required Rating means a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc. (or such other credit rating as TfNSW may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc., an equivalent rating with another reputable rating agency (as TfNSW may approve in writing).

Required Reliability has the meaning given in section 6.2(b) of the Performance Regime.

Residual Life means, in respect of a Design Life Item, the period of years during which the item must be capable of remaining Fit For Purpose, measured from the Expiry Date and being the longer of:

(a) the period specified for that Design Life Item in column 3 of Table 1 of the Residual Life and Design Life Schedule; and

(b) the period from the Expiry Date to the end of the Design Life.

Residual Life and Design Life Schedule means Schedule 18.

Responsible Entity has the meaning given in the Corporations Act.

Resubmitted Document has the meaning given to it in section 6.3(b)(ii) of the Review Procedures.

Retention means an amount retained by TfNSW from a Monthly Service Payment under clause 36.1A(e).

Returned Asset means the Returned Works to be completed and handed back to the Returned Asset Owner in accordance with this Deed.

Returned Asset Criteria means the criteria set out in section 4 of the Acceptance Schedule.

Returned Asset Defects Liability Period means a period referred to in clause 29.2A.

Returned Asset Handback means where Project Co has done everything that this Deed requires to enable Project Co to hand back the Returned Asset to the Returned Asset Owner in accordance with clause 24.

Returned Asset Owner means Dubbo Regional Council.

Returned Asset Site means the site on which the Returned Asset is to be constructed, as Project Co may nominate, subject to TfNSW's approval in accordance with clause 24(aa).

Returned Works the design and construction of a new storm water detention basin on the Returned Asset Site specified in section 3 of Part C5 (Maintenance Facility Specification) of the Project Scope and Requirements, including any Modifications to the Returned Works.

Returned Works Outstanding Item means any act, matter, state of affairs or thing that is required in accordance with this Deed to have been performed, achieved, undertaken, provided or completed by Project Co prior to Returned Asset Handback which has not been so performed, achieved, undertaken, provided or completed by Project Co, unless the Independent Certifier has determined such act, matter, state of affairs or thing (or the cumulative impact of multiple acts, matters, state of affairs or things) is likely to:
(a) cause any legal impediment to the use or occupation of any part of the Returned Assets by TfNSW or any Returned Asset Owner;

(b) adversely affect the Returned Asset Owner; or

(c) prevent the Returned Works from complying with the FFP Warranty or the Standards.

Review Period has the meaning given in the Review Procedures.


Reviewing Party has the meaning given in the Review Procedures.

Rolling Stock has the meaning given in the Rail Safety National Law.

Rolling Stock Solution means Annexure A.

Safety Accreditation Strategy means the strategy of that name described in the Authorisation and Accreditation Management Plan and that meets the requirements of section 20.1(b) of the Management Requirements.

Safety Duties has the meaning given in the Rail Safety National Law.

Safety Interface Agreement has the meaning given to it in the Rail Safety National Law.

Safety Issue means any safety issue or incident and includes a near miss and a Notifiable Incident.

Safety Management System has the meaning given in the Rail Safety National Law.

Savings has the meaning given in the Change Compensation Principles.

Schedule of Forms and Certificates means Schedule 41.

Schedule of Rates has the meaning given in the Change Compensation Principles.

Secured Party has the meaning given in clause 66.1.

Securities means shares, units, interests in a partnership, and any other interests, which would constitute 'securities' as defined under the Corporations Act.

Second Indexation Factor has the meaning given in the Indexes Schedule.

Security Interest means any mortgage, pledge, lien, encumbrance, assignment, charge, hypothecation or any security or preferential interest or arrangement of any kind and includes:

- a 'security interest' as defined in section 12 of the Personal Property Securities Act 2009 (Cth);

- anything which gives a creditor priority to other creditors with respect to any asset or the proceeds of any asset; and

- retention of title (other than in the ordinary course of day-to-day trading) and a deposit of money by way of security.

Securitised Licence Structure means the securitisation structure relating to the Licence Payments, as described in clause 33, the Receivables Purchase Deed and the Payment Directions Deed.
**Securitised Licence Structure Changes** means the changes to the various draft versions of the Project Documents that were requested by Project Co and the Equity Investors and which were included in the final executed versions of the Project Documents, in each case to the extent that those changes relate solely to the Securitised Licence Structure.


**Security Trust Deed** means the document entitled ‘Security Trust Deed - Regional Rail Project’ between the Facility Agent, Security Trustee and others dated on or about the date of this Deed.

**Security Trustee** means, as at the date of this Deed, the party named as such in item 23 of the Contract Particulars as replaced in accordance with the Security Trust Deed and who is from time to time party to the Financiers’ Tripartite Deed in that capacity.

**Senior Control Group** means the body described in clause 10.8A(a).

**Services** means:

(a) the services (excluding the Works referred to in the Services Requirements to be undertaken by Project Co during the Maintenance Phase; and

(b) all other things (excluding the Works) that Project Co is required to provide or undertake during the Maintenance Phase as set out in the Services Requirements or TfNSW Project Documents,

in each case as modified in accordance with this Deed.

**Services Requirements** means the requirements for the provision of the Services as set out in:

(a) the Project Scope and Requirements;

(b) the Asset Management Solution; and

(c) the remainder of this Deed.

**Services Specification** means Part C7 (Services Specification) of the Project Scope and Requirements.

**Short Unit (Intercity)** means the short Units that will form the Intercity Non-Electric Fleet, as described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements, including, subject to section 1.1(c) of Schedule 44, the Extended Short Units (Intercity).

**Short Unit (Regional)** means the short Units that will form part of the Regional Fleet, as described in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements, including, subject to section 1.1(c) of Schedule 44, the Extended Short Units (Regional).

**Side Deed** means each of:

(a) the Delivery Side Deed;

(b) the Maintenance Side Deed;

(c) the Depot Subcontract Side Deed;

(d) the Design Consultant Side Deed; and
(e) where the context permits, any other Subcontract Side Deed executed in accordance with clause 12.2(c).

**Significant Subcontract** means:

(a) the Depot Subcontract;
(b) the Design Consultant Engagement;
(c) the contracts listed as such in item 24 of the Contract Particulars; and
(d) any other Subcontract under which a Subcontractor supplies, Maintains or operates any of the systems or works listed in item 24 of the Contract Particulars.

**Significant Subcontract Information** means all unredacted Subcontracts referred to in clause 12.1(e)(v).

**Significant Subcontractor** means a party (other than Project Co or a Key Subcontractor) to a Significant Subcontract.

**Simulator** means each Crew Cab simulator with a control station as further described in Part C4 (Simulator Specification) of the Project Scope and Requirements.

**Simulator Adjustment** means, in respect of a Payment Period, the amount calculated in accordance with section 5.1 of the Performance Regime.

**Simulator Failure** occurs in each instance where a Simulator is not in the Minimum Simulator Operating Condition for the full duration of the Minimum Simulator Available Hours.

**Site** means:

(a) the Returned Asset Site;
(b) the Maintenance Facility Site; and
(c) the Maintenance Phase Sites (as the case may be),

(as the context requires) and includes any part of such area or land.

**Site Access and Interface Protocols** means the Management Plan of that name.

**Site Auditor** means a person accredited as a site auditor under Part 4 of the CLM Act.

**Site Conditions** means any physical conditions on, under, or over the surface, or in the vicinity of a Site, including:

(a) *(water and gas)*: ground gases, ground water, ground water hydrology, surface water, water quality, salinity, the existence of any wells and the effects of any de-watering;

(b) *(physical structures)*: physical and structural conditions above, upon and below the ground including any infrastructure, partially completed structures, Artefacts or in ground works;

(c) *(vegetation)*: pastures, grasses or other vegetation on the Site;

(d) *(topography)*: topography, ground surface and sub-surface conditions and geology including rock or other materials;
(e) (climate): climatic and weather conditions, rain, surface water run-off and drainage, water seepage, wind, wind-blown dust and sand seasons, mud and other effects of climatic and weather conditions;

(f) (Contamination): any Contamination;

(g) (Pollution): any Pollution;

(h) (physical conditions): all other physical conditions and characteristics of, or in the vicinity of the Site, on or below the surface which may affect Project Co’s ability to carry out its obligations in accordance with this Deed; and

(i) (Adverse Rights): all Adverse Rights over or in connection with the Site.

Site Information Reports means each of the reports identified in item 25 of the Contract Particulars.

Site Plans means each of the site plans for the Returned Asset Site, the Maintenance Facility Site and the Legacy Maintenance Centre Site (as applicable) which are set out in Schedule 6.

Software means a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all Firmware and operating systems required by a system or subsystem to perform in a specified manner.

Solvent has the meaning given in the Corporations Act.

Source Code and Escrow Information means, in respect of a computer program or Software:

(a) the human readable code of that computer program or Software, and includes associated Software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code); and

(b) all logic, logic diagrams, flow charts, orthographic representations, algorithms, routines, sub-routines, utilities, models, file structures, coding sheets, coding, source codes, listings, functional specifications and program specifications and all other materials and documents,

each as necessary to operate, maintain, amend, enhance and modify the executable code copy of that computer program or Software without reference to any person or document, and whether in eye or machine readable form.

Southern Cross Station Access Agreement means the station access agreement dated February 2017 between Southern Cross Station Pty Limited and NSW Trains.

Southern Cross Station Passenger Yard Access Agreement means the station passenger yard access agreement (undated) between V/Line and RailCorp, as amended by a deed of variation dated 30 May 2012.

Spares means any spare parts or rotatable items which are required to Maintain, repair or overhaul any Asset, including for the replacement of any part fitted to any Asset, either on a scheduled basis, related to time or distance travelled, or as a result of actual or suspected failure, Defect or damage and includes any rotatable items, but excludes Consumables.

Spares, Consumables and Equipment List means the Initial Spares, Consumables and Equipment List as updated in accordance with clause 18.
Spares and Consumables Strategy means the strategy described in the Asset Management Plan and which meets the requirements of section 22.3(h) of the Management Requirements.

Special Tools means any tools or equipment that have been modified, constructed or acquired by or on behalf of Project Co to undertake a specific task in respect of the Maintained Rail Assets.


Stabbing Yards means those stabbing yards listed in the Train Plan Parameters, or any substitute stabbing yard notified by TfNSW to Project Co under clause 29A.3(d), including, prior to the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre.

Staff means Crew, maintainers, presentation staff or any other staff employed in train operations. It does not include Passengers or members of the public.

Stakeholder means:

(a) TfNSW's Associates;
(b) Customers;
(c) NSW Rail Entities;
(d) the Maintenance Subcontractor;
(e) Utility Infrastructure owners and operators; and
(f) any other persons or bodies nominated or identified as a stakeholder by:
   (i) the TfNSW Representative in the course of the Design Development Process; or
   (ii) Project Co in its Communications, Community and Stakeholder Management Plan.

Stakeholder Group means a group of Stakeholders or a body representing Stakeholders.

Standards means all standards, codes, specifications, guidelines, policies and requirements to be complied with in accordance with, and subject to, the terms of this Deed including:

(a) the standards, codes, specifications, guidelines, policies and requirements set out in, or otherwise expressly referred to in, the Project Scope and Requirements;
(b) all Approvals (including any conditions or requirements under them);
(c) all standards, codes, specifications, policies and requirements of Authorities, including:
   (i) TfNSW, the Rail Entities or the Asset Standards Authority; and
   (ii) any Access Provider;
(d) any other policy, guideline, standard, procedure or requirement, which applies in connection with the Project:
   (i) which is notified to Project Co;
(ii) which is publicly available or otherwise available to Project Co; or

(iii) with which Project Co is expressly required by the terms of this Deed, by Law or by direction of TfNSW to comply,

unless TfNSW gives written notice to Project Co that any Approval, standard, code, specification, policy, guideline, procedure or requirement does not constitute a Standard for the purposes of this Deed.

State means the State of New South Wales.

Station Weighting means the station weighting for a Monitored Platform specified in Appendix A of the Performance Regime.

Status Delivery Program means the most recent Baseline Delivery Program as further updated to reflect the current status and progress of Project Activities, but which is not required to be submitted to the TfNSW Representative for review in accordance with the Review Procedures.

Step-In Event has the meaning given in clause 41.3.

Step-In Liability means any liability suffered or incurred by TfNSW or any of its Associates in connection with the exercise by TfNSW of its step-in rights.

Structural Condition Report means the reports on the condition of the Structural Elements of the Legacy Maintenance Centre prepared by Aurecon Australasia Pty Ltd dated 04 June 2018 and 22 October 2018 (reference 253754), as provided to Project Co prior to the date of this Deed.

Structural Defect means a Defect that affects or impacts the integrity of any load bearing Structural Elements, but excluding such a Defect to the extent it requires only cosmetic repair of minor cracking.

Structural Element means the internal or external load bearing sub-structures or super-structures essential to the stability or strength of the buildings or other infrastructure at the Legacy Maintenance Centre Site (which buildings and infrastructure exist at the Legacy Maintenance Centre Site at the Date of Handover (Legacy Maintenance Centre)), including foundations, pilings, footings, beams, load bearing walls, structural columns, structural floors, structural shafts, structural stairs, structural walls, and roof structures.

Sub-Independent Certifier Deed has the meaning given to that term in the Independent Certifier Deed.

Subcontract means an agreement which:

(a) Project Co enters into with a Subcontractor; or

(b) a Subcontractor enters into with another Subcontractor,

in connection with the Project Activities.

Subcontract Changes has the meaning given in clause 12.2(b).

Subcontract Side Deed means a direct deed substantially in the form set out in Schedule 29.

Subcontractor means:

(a) any person who enters into a contract in connection with the Project Activities with Project Co or any Key Subcontractor; or
Submitted Document has the meaning given in the Review Procedures.

Sunset Date means:

(a) in the context of an event listed in paragraph (a) of the definition of Major Default, the date that is 18 Months after the relevant Date for Final Acceptance; and

(b) in the context of an event listed in paragraph (b) to (v) (inclusive) of the definition of Major Default which:

(i) is in respect of the Delivery Phase Activities, the last day of the period referred to in clause 48.3(d)(i);

(ii) is in respect of the Services, the last day of the period referred to in clause 48.3(d)(ii);

(iii) is not in respect of the Delivery Phase Activities or the Services but occurs during the Delivery Phase, the last day of the period referred to in clause 48.3(d)(iii); and

(iv) is not in respect of the Delivery Phase Activities or the Services but occurs during the Maintenance Phase, the last day of the period referred to in clause 48.3(d)(iv).

Supplier has the meaning given in clause 35.8(c).

Sustainability Management Plan means the Management Plan of that name.

Sustainability Manager means the person of that title, as identified as one of the Required People specified in item 22A of the Contract Particulars, who must meet the minimum requirements set out in section 3(m) of Part B4 (Sustainability Requirements) of the Project Scope and Requirements.

Sydney Trains means the body corporate known by that name which was constituted as a body corporate under the Transport Administration (General) Regulation 2005 (NSW).

System Definition means the system definition presented at the System Definition Review.

System Definition Review or SDR means the review conducted in accordance with section 25.1 of the Management Requirements and the Review Procedures.

System Verification Review or SVR means the review conducted in accordance with section 25.5 of the Management Requirements and the Review Procedures.


TAHE means Transport Asset Holding Entity of New South Wales, a statutory corporation constituted (under the corporate name of Rail Corporation New South Wales) under Part 2 of the Transport Administration Act 1988 (NSW), as amended by the Transport Administration Amendment (Transport Entities) Act 2017 (NSW) which is to rename such corporation.
Tax or Taxes means any present or future tax, levy, impost, Duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by an Authority, TfNSW, the NSW Government or the Commonwealth, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing, but excluding any Rates.

Tax Invoice has the meaning given in the GST Law.

Tax Proceedings has the meaning given in clause 35.7(i)(i).

Taxable Supply has the meaning given in the GST Law, excluding section 84-5 of the GST Act.

Technical Documents means all deliverables in respect of the technical documents (including all draft, updated and final technical specifications, procedures, reports, work instructions, drawings, calculations, models, samples, manuals and training materials) associated with the design, development, construction, manufacture, verification, operation, Maintenance or disposal of an Asset or Deliverable, which Project Co or any of its Associates requires, or is required to create, as part of, or for the purpose of, performing the Project Activities.

Technical Maintenance Plan or TMP means each technical maintenance plan developed in accordance with the Asset Management Plan.

Technical Packages means each technical package described in the Systems Engineering Management Plan, and to be submitted in accordance with section 26 of the Management Requirements.

Technical Solution means the Rolling Stock Solution and the Asset Management Solution.

Temporary Equipment means all plant, machinery and equipment and other items used solely for the purpose of enabling or facilitating delivery of the Works or Upgrade Services which:

(a) does not and will not become part of the Maintenance Facility or Legacy Maintenance Centre;

(b) will not be used for performing the Services (other than the Upgrade Services); and

(c) is not listed in the Spares, Consumables and Equipment List.

Temporary Licensed Area has the meaning given in Schedule 7B.

Temporary Licensed Area Term means the term of the licence in respect of the Temporary Licensed Area, as set out in paragraph (b) of Item 2 in Schedule 7B.

Temporary Rectification Works means Rectification Works falling within paragraph (b) of the definition of Rectification Works.

Term means the term of this Deed:

(a) commencing in accordance with clause 4.1; and

(b) ending on the Expiry Date.

Terminating Destination means the scheduled point of termination on the Network for the relevant Train’s current Journey.

Terminating Platform for a Train means the last scheduled Platform stop for its current Journey.
**Termination Payment** means a termination payment calculated in accordance with the Termination Payments Schedule but does not include any Expiry Refund Payment.

**Termination Payment Date** means 20 Business Days after the later of:

(a) the Expiry Date;

(b) the date on which the amount of the relevant Termination Payment is agreed by TfNSW and Project Co or, failing agreement, is determined by an independent expert in accordance with the Termination Payments Schedule or clause 52; and

(c) in the case of a Default Termination Payment, the Compensation Date,

or such other date as may be specified in the Termination Payments Schedule for payment of a Termination Payment.

**Termination Payments Schedule** means Schedule 24.

**Test Readiness Review or TRR** means the review conducted in accordance with section 25.4 of the Management Requirements and the Review Procedures.

**TfNSW Access Agreement** means the access agreement dated 14 November 2014 between TfNSW and NSW Trains.

**TfNSW Background IP** means all Intellectual Property Rights, trade secrets and know-how comprised in:

(a) any and all Material other than Developed IP, which is developed outside of the Project by or on behalf of TfNSW or any of its Associates and brought to the Project by TfNSW or any of its Associates;

(b) the Data; and

(c) the Trade Marks.

**TfNSW Cure Notice** has the meaning given in the Delivery Side Deed, Maintenance Side Deed, Depot Subcontract Side Deed or Delivery Side Deed (as applicable).

**TfNSW Defect Notice** means:

(a) in relation to a TfNSW Defect other than a Network Condition Defect, a notice given by Project Co to TfNSW in accordance with clause 44.2A(a)(ii)A; and

(b) in relation to a Network Condition Defect, a notice given by Project Co to TfNSW in accordance with clause 44.2A(aa).

**TfNSW Defects** means:

(a) Operational Damage;

(b) Vandalism;

(c) Major Graffiti to a Unit or Simulator; or

except to the extent such loss or damage:
(d) **(Project Co contribution)**: is caused or contributed to by a Project Co Act or Omission; or

(e) **(Outside operation)**: occurs in respect of a Unit or a Simulator:

(i) on or before the Date of Provisional Acceptance (Unit) of that Unit or the Date of Provisional Acceptance (Simulator) of that Simulator;

(ii) at the Maintenance Facility Site; or

(iii) on or after the Date of Handover (Legacy Maintenance Centre) at the Legacy Maintenance Centre Site; or

(f) **(Minor damage or damage caused by TfNSW breach)**: is loss or damage to which clause 44.3(e) or clause 44.5 applies.

**TfNSW Insurance** means any policy of insurance that TfNSW or any of its Associates maintain from time to time in respect of any of the Assets.

**TfNSW Project Documents** means those Project Documents to which TfNSW is a party.

**TfNSW Refinancing Share** has the meaning given in clause 40.6(a).

**TfNSW Representative** means the person identified as such in item 26 of the Contract Particulars, subject to replacement or delegation in accordance with clause 10.2.

**TfNSW Response** has the meaning given in clause 44.2A(d).

**TfNSW Security** means:

(a) the document entitled 'TfNSW Security' between TfNSW, RailCorp and Project Co; and

(b) the document entitled 'TfNSW Security' between TfNSW, RailCorp and Finance Co.

**TfNSW Unexpected Heritage Finds Guideline** means the guideline of that name or any replacement to that guideline provided by TfNSW to Project Co from time to time.

**Third Indexation Factor** has the meaning given to it in the Indexes Schedule.

**Third Party Licences** means all licences, maintenance and similar contracts for the Third Party Software.

**Third Party Software** means COTS Software and COTS Firmware owned by any entity other than RailCorp, TfNSW, Project Co, or a Subcontractor that is:

(a) comprised in all or any part of the Assets or Project Co Material;

(b) otherwise used or to be used by, or on behalf of, Project Co or Project Co's Associates in performing the Project Activities; or

(c) Software tools necessary for RailCorp, TfNSW, or that a person in RailCorp's or TfNSW's position would otherwise require, to modify, maintain, test, further develop or regenerate the bespoke Software contained in the Assets or Project Co Material.

**Third Party Supplier** means a third party supplier of fuel, catering, or other goods to, or services at, the Legacy Maintenance Centre under an agreement between TfNSW or any other NSW Rail Entity, as notified by TfNSW to Project Co from time to time.

**Threshold Amount** has the meaning given in clause 36.8(a)(i).
Through Life Support or TLS means the provision, by or on behalf of the Delivery Subcontractor, of through life support activities after expiry or termination of the Project Deed until the end of the Design Life of the Units, including:

(a) obsolescence management (including provision of notices of obsolescence issues and provision of solutions to obsolescence issues);

(b) spare parts management (including provision of fixed prices for spare parts, procurement and delivery of spare parts, warranting spare parts and maintaining a spare parts catalogue); and

(c) engineering support (including provision of fixed prices for engineering support, such as feasibility studies, repairs or modification programs).

Through Life Support Deed or TLS Deed means the deed for the provision of Through Life Support services to be entered into by TfNSW, RailCorp or a nominee of either of them and the Delivery Subcontractor under clause 36.3(a)(viii) in the form set out in Schedule 43.

Time to Complete means, as the context requires:

(a) the time to complete the relevant AM Services or Modification Services as set out in section 11.2 of the Payment Schedule;

(b) the time to complete rectification of the relevant Defect as set out in section 4 of the Minimum Operating Standards;

(c) if there is no time to complete specified in section 11.2 of the Payment Schedule or section 4 of the Minimum Operating Standards and clause 44.2A(c)(i) or 44.2A(e)(i) applies, the time proposed by Project Co in the TfNSW Defect Notice and agreed by TfNSW or, if no such time is agreed, the time directed by TfNSW (acting reasonably);

(d) if TfNSW issues (or is deemed to have issued) a Modification Request under clause 44.2A(e)(ii)B, 44.2A(f)(i)A or 44.2A(f)(ii), the time agreed, determined or directed in accordance with clause 39; or

(e) if clause 44.2A(f)(i)B applies, the time agreed by TfNSW and Project Co.

Timetable means the general timetable for Intercity Non-Electric Services and Regional Train Services as published or updated by TfNSW or the Operator from time to time.

Trade Marks means the trade marks notified by TfNSW to Project Co from time to time.

Train means a single Unit or multiple Units coupled for operation.

Train Completion Works means, in respect of each Unit other than the first Unit, the:

(a) final fit out of components in accordance with the requirements specified in the Project Scope and Requirements;

(b) routine testing of the completed Unit; and

(c) commissioning.

Train Completion Works Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 16.1 of the Performance Regime.

Train Completion Works Points has the meaning given to the term TCWP in section 16.1(c) of the Performance Regime.
Train Completion Works Score has the meaning given in section 16.1 of the Performance Regime.

Train Condition Monitoring System or TCMS means an automated system for monitoring the condition of the New Fleet at one or more strategic locations on the Network by scanning, collating, processing and transmitting data to the AIS.

Train Controller means the person who authorises and may issue occupancies and proceed authorities, and who manages Train Paths and mechanical control to ensure the safe and efficient transit of rail traffic on the Network.

Train Crew or Crew means a Train Driver or any other person with the skills, training and authorisation to operate, or support the operation of, the Train.

Train Driver or Driver means a person with the skills, training and authorisation to operate the Train.

Train Management System means an electronic system that is capable of generating and receiving information such as the Train status and location, providing fault diagnosis information, identifying rectification action required and storage of vehicle data.

Train Manufacturer’s Facility means the Delivery Subcontractor's manufacturing facilities in Beasain and Zaragoza, Spain.

Train Path means a series of track segments over a particular time interval through which a Train can travel and may include stopping points and other set down or changeover points.

Train Plan means the train plan to be produced from time to time by TfNSW or the Operator for the operation of the Timetable in accordance with clause 29A.3 and the Train Plan Parameters.

Train Plan Parameters means the parameters set out in Schedule 35, as amended from time to time in accordance with clauses 29A.3(c), 29A.3(d) or 39.14(b) or section 1.1(d) of Schedule 44.

Train Preparation means the process followed by the Operator or Project Co for testing the Availability of a Train for service.

Train Run means a trip by a Unit on a Train Path for the purpose of Verification Activities.

Train Run Entitlement means the right to use the Network for the purpose of conducting a Train Run.

Train Working means the description of each railway service to be operated by the Operator as set out in the Train Plan.

Training Needs Analysis means the document included in part C of Attachment 4.

Transition-in Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 13 of the Performance Regime.

Transition Out means the stage when Project Co has done everything that this Deed requires to enable Project Co to hand over the Assets and Sites in the Transition Out Condition.

Transition Out Bond means a Performance Bond provided by Project Co in favour of TfNSW and RailCorp in accordance with clause 36.8(b)(i).
Transition Out Condition means, if Transition Out of the Assets and Sites is to occur:

(a) in respect of an Asset, prior to the Date of Provisional Acceptance of the relevant Asset, the condition that the Asset would be in if Project Co had complied with all of its obligations in connection with the Asset, the Project Activities under this Deed having regard to the time and circumstances of the termination;

(b) in respect of a Site, at any time, the condition the Site would be in if Project Co had complied with all of its obligations in connection with the Site and the Project Activities under this Deed having regard to the time and circumstances of the termination; and

(c) any time after the Date of Provisional Acceptance of the relevant Asset, or if the Asset is not subject to Acceptance, the condition the relevant Asset would be in:

(i) had all the scheduled and unscheduled Maintenance of the relevant Asset been completed in accordance with this Deed; and

(ii) such that when Maintained in accordance with comparable requirements to those in this Deed:

A. the relevant components of the relevant Asset as specified in the Residual Life and Design Life Schedule can reasonably be expected to be Fit For Purpose by reference to the purposes, function, uses and requirements which are current and apply as at the relevant FFP Warranty Commencement Date (without any Maintenance or refurbishment works being required other than the Maintenance or refurbishment works that Project Co would have had to carry out under this Deed) for the relevant Residual Life specified in the Residual Life and Design Life Schedule; and

B. components of the relevant Asset for which no Residual Life is specified in the Residual Life and Design Life Schedule can reasonably be expected to continue to meet the Services Requirements for 5 years after the Expiry Date without any Maintenance or refurbishment works, other than the Maintenance or refurbishment works that Project Co would have had to carry out under this Deed if the expiry of this Deed was in fact 5 years later than the Expiry Date; and

(iii) had Project Co complied with the requirements of Part A of Schedule 40.

Transition Out Escrow Account means a bank account opened by TfNSW in the name of TfNSW and RailCorp.

Transition Out Package has the meaning given in clause 36.1A.

Transition Out Plan means the Management Plan of that name.

Transition Out Reviewer means a person with suitable expertise and experience appointed as the independent certifier for Transition Out in accordance with clause 36.4.

Trustee means Project Co in its capacity as trustee of the Project Trust,

Trustee's Indemnity means, in relation to the Trustee and the Project Trust, the present and future rights and interest of the Trustee in respect of:

(a) the administration of the Project Trust;
(b) the Trustee's right of indemnity from the Trust Property of the Project Trust or from any beneficiary of the Project Trust; and

(c) any equitable lien or other Security Interest held by or granted to the Trustee securing the Trustee's Indemnity or any other present or future interest of it as Trustee in respect of the Trust Property, the Project Trust or any beneficiary of the Project Trust,

and all moneys paid or payable under or in respect of any such right or interest.

**Trust Property** means all present and future undertakings, assets, property and rights comprising the trust fund of the Project Trust.

**Type 1 Failure** means an incidence when a Unit:

(a) becomes unfit to remain in Service and is withdrawn from service before reaching its Terminating Destination substantially because of a Material Defect affecting that Unit; or

(b) is unable to access the Maintenance Facility Site or, from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre due to the inability of Project Co to provide access, and as a consequence the Unit (in full or in part) remains outside the Maintenance Facility Site or, from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre.

**Type 2 Failure** means an incidence when a Unit becomes unfit to remain in Service and the Unit is withdrawn from service on or after reaching its Terminating Destination substantially because of a Material Defect affecting that Unit.

**Unavailable** means not Available and **Unavailability** shall be construed accordingly.

**Unavailable but Used** means an incidence when a Unit is otherwise Unavailable, but TfNSW elects to treat the Unit as Available for use in its absolute discretion and permits it to enter service.

**Unidentified Pre-Existing Contamination** means any Contamination of the Maintenance Facility Site or the Returned Asset Site which is in existence prior to the date of this Deed and which is not identified, contemplated by or reasonably ascertainable from:

(a) any Planning Approval Document;

(b) any Site Information Report; or

(c) any investigations carried out by or on behalf of Project Co on the Maintenance Facility Site or the Returned Asset Site prior to the date of this Deed.

**Uninsurable Risk** means a risk that is required to be insured in accordance with this Deed and is insurable at the date of this Deed, but during the Term:

(a) insurance becomes unavailable in the recognised international insurance market in connection with that risk by Reputable Insurers; or

(b) the insurance premium payable for insuring that risk with a Reputable Insurer or the terms and conditions of the relevant insurance are such that the risk is no longer generally being insured against by private sector organisations bearing risks and responsibilities similar to those of Project Co or performing activities similar to the Project Activities in Australia or in the United Kingdom,
provided that the uninsurability referred to in paragraphs (a) and (b) is not caused by a Project Co Act or Omission.

**Unit** means Cars (including two Driving Motor Cars) semi-permanently coupled.

**Unit Capital Cost** means the Long Unit Capital Cost, Short Unit Regional Capital Cost and Short Unit (Intercity) Capital Cost as specified in section 8.1(a) of the Performance Regime.

**Unit Change** has the meaning given in clause 39.17.

**Upgrade Services** means the works, services and physical things to be undertaken or procured and the deliverables to be provided by Project Co at the Legacy Maintenance Centre Site as specified in Part C6 (Legacy Maintenance Centre Upgrade Services and Rectification Works Specification) of the Project Scope and Requirements.

**Urgent Rectification Works** means urgent Rectification Works which, if not addressed immediately will give rise to an imminent:

(a) Emergency; or

(b) inability to meet the Required Availability.

**USB** means a universal serial bus interface.

**Use** means, in relation to any Material, the accessing, possessing, using, storing, reproducing, communicating to the public, copying, translating, adapting, modifying, customising, and enhancing of that Material, and includes the incorporation of that Material with other Material and the creation of new versions of or derivations from that Material.

**Utility** means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications and data services (including telephone, facsimile and internet access).

**Utility Infrastructure** means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility provider, including poles, pipes, pipeline, cables, wires, conduits, tunnels, aqueduct, electrical installation, telecommunications plant, water channel, and railway and electronic communications systems, but not including any part of the Assets.

**Vandalism** means deliberate, reckless or malicious physical damage to a Unit or a Simulator (excluding Graffiti).

**Verification** has the meaning given to in Part A3 (Definitions) of the Project Scope and Requirements.

**Verification Activity** means each Verification:

(a) required by the Project Scope and Requirements;

(b) identified in either or both of the Verification Plan and the Verification Matrix;

(c) directed by TfNSW or the Independent Certifier in accordance with clause 21.4; or

(d) which is otherwise reasonably required for Project Co to perform its obligations under this Deed, including any additional Verification of Works or Upgrade Services:

(i) that have previously failed a Verification Activity; or

(ii) after the Maintenance or repair of those Works or Upgrade Services.
Verification and Acceptance Reviewing Party has the meaning given in the Review Procedures.

Verification Matrix means the Management Plan of that name which meets the requirements in section 19.4 of the Management Requirements.

Verification Plan means the Management Plan of that name which meets the requirements in section 19.1 of the Management Requirements.

Verification Procedure means the Management Plan used to carry out the Verification Activities which meets the requirements in section 19.2 of the Management Requirements.

Verification Report means a report (including supporting documentation) on the conduct of a Verification Activity which is provided in accordance with clause 21.6 and which meets the requirements of section 19.3 of the Management Requirements, as amended and updated in accordance with this Deed.

Victorian Rail Entity means VicTrack and any other Authority in Victoria that owns or operates railway infrastructure or Rolling Stock.

VicTrack means Victorian Rail Track, a statutory corporation established under section 8 of the Rail Management Act 1996 (Vic) and continued under section 116 of the Transport Integration Act 2010 (Vic).

VicTrack Network means that part of the Network managed by VicTrack from time to time.

VicTrack Rail Network Access Agreement means the access agreement dated 12 August 2014 between VicTrack and NSW Trains.

V/Line means V/Line Pty Limited, ABN 29 087 425 269 of Level 23, 570 Bourke Street, Melbourne VIC 3000.

Volume Adjustment means, in respect of a Payment Period, the amount calculated in accordance with section 5 of the Payment Schedule.

Voluntary Termination means the termination of this Deed pursuant to clause 49.2.

Voluntary Termination Payment means the payment calculated in accordance with section 4 of the Termination Payments Schedule.

WHS Acts means the:

(a) NSW WHS Act;

(b) Work Health and Safety Act 2011 (Qld); and

(c) Occupational Health and Safety Act 2004 (Vic),

or the relevant one of these as the case may be.

WHS Legislation means Legislation relating to health and safety at work including:

(a) the WHS Acts; and

(b) the WHS Regulations,

and includes industry codes of practice, safety standards, handbooks and guidelines about work health safety and rehabilitation in place from time to time.
WHS Management Plan means the Management Plan of that name.

WHS Management System means a documented work health and safety management system which, at a minimum, complies with Australian Standard 4801 (as amended or replaced from time to time).

WHS Regulations means the:

(a) NSW WHS Regulation;
(b) Work Health and Safety Regulation 2011 (Qld); and
(c) Occupational Health and Safety Regulations 2017 (Vic),

or the relevant one of these as the case may be.

Withheld means, in respect of a Unit, an incidence when a Unit is Unavailable but Project Co has given TfNSW written notice of more than 12 hours prior to the Entry Time that the Unit will be Unavailable for an Availability Period.

Work on Track Authority means an Approval to perform work on or in the vicinity of the Network.

Work Order means a work order generated in the Operator's electronic maintenance system for managing the rectification of TfNSW Defects, which must include the following details:

(a) labour hours;
(b) the period of time which a Unit or Simulator (as applicable) will be required by Project Co to rectify the TfNSW Defect; and
(c) the materials required.

Workforce Profile and Gap Plan means the plan included in part A of Attachment 4.

Workplace Relations Management Plan or WRMP means the Management Plan of that name.

Works means the physical things and works (including the Delivered Rail Assets (other than the Upgrade Services) and the Returned Works) that Project Co must design, manufacture, supply, construct, install, produce, test, commission and complete in accordance with this Deed (including until the end of the Delivery Phase the carrying out of Modifications to, and achievement of Final Acceptance in respect of, such things and works).

WWR means the wheel wear rate when managed and measured in accordance with TfNSW's Engineering Standard Rolling Stock (ESR) 0330 (Wheel Defect Manual) and Engineering Standard Rolling Stock (ESR) 0331 (Wheels and Axles Reference Manual) and expressed as a rate of millimetres of wear in any wheel per month.

WWRL means in respect of the Long Units, Short Units (Regional) or Short Units (InterCity), as applicable:

(a) for the first 6 months after the Date of Provisional Acceptance (Unit) of the first Unit of that type, a wheel wear rate up to 4 millimetres of wear per month across all Units of that type; and
(b) after the first 6 months after:
the Date of Provisional Acceptance (Unit) for the first Long Unit, the average actual WWR over the preceding 6 months measured in millimetres of wear per month for all Long Units that have achieved Provisional Acceptance (Unit);

(ii) the Date of Provisional Acceptance (Unit) for the first Short Unit (Regional), the average actual WWR over the preceding 6 months measured in millimetres of wear per month for all Short Units (Regional) that have achieved Provisional Acceptance (Unit); or

(iii) the Date of Provisional Acceptance (Unit) for the first Short Unit (InterCity), the average actual WWR over the preceding 6 months measured in millimetres of wear per month for all Short Units (InterCity) that have achieved Provisional Acceptance (Unit), as applicable.

Xplorer means the diesel fleet comprising Cars numbered EA 2501-2508, EB 2511-2517 and EC 2521-2528 (in each case inclusive), used as at the date of this Deed by the Operator to provide Regional Train Services on the Regional Trains Network.

XPT means the diesel fleet comprising Cars numbered XP2000-18, XFH2104-10, XFH2112-13, XBR2150-58, XAM 2175-82, XF2200-24 and XL2228-36 (in each case inclusive), used as at the date of this Deed by the Operator to provide Regional Train Services on the Regional Trains Network.

2. General rules of interpretation

2.1 Interpretation

In this Deed:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

(b) (Project Co Act or Omission): while TfNSW or its Associates may be able to assist Project Co by taking steps to address or mitigate the effects of a Project Co Defect or other Project Co Act or Omission which has caused or is causing a delay or other adverse effects, they will not be under any obligation to do so and:

(i) a delay or failure by TfNSW or its Associates in taking steps to seek to address or mitigate the effects of a Project Co Defect or other Project Co Act or Omission; or

(ii) the taking of steps by TfNSW or its Associates to seek to address or mitigate the effects of a Project Co Defect or other Project Co Act or Omission which:

A. fail to address or mitigate the effects of the Project Co Defect or other Project Co Act or Omission; or

B. exacerbate the effects of the Project Co Defect or other Project Co Act or Omission,

will not count as causing or contributing to the delay or other adverse effect, even if it has the effect of extending the delay period or exacerbating the adverse effect,

and unless the context otherwise requires:
(c) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(d) (Deed and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

(ii) a section is a reference to a section of a Schedule;

(e) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(f) (party or person): a reference to a party or person includes:

(i) that party's or person's (as applicable) trustees, executors, administrators, successors and permitted substitutes and assigns, including any parties or persons taking part by way of novation; and

(ii) an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

(h) (Standards): a reference to a Standard includes that Standard as amended or updated from time to time;

(i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase 'without limitation';

(k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ('$'): a reference to '$', AUD or dollar is to Australian currency;

(n) (Business Day): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(o) (day): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;

(p) (time): a reference to time is a reference to time in Sydney, Australia;
(q) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(r) (function): a function includes a power, authority or duty;

(s) (obligations and liabilities): if a party to this Deed comprises more than one person, a reference to an obligation or a Liability assumed by, or a right conferred on, that party binds or benefits the persons comprising that party jointly and severally;

(t) ('may'): except to the extent that TfNSW or RailCorp is expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by TfNSW or RailCorp, means that TfNSW or RailCorp (as applicable) can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to any Project Co Entity) and TfNSW or RailCorp (as applicable) has no obligation to do so;

(u) (construction): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or

(ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(v) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including Intellectual Property Rights) and any right, interest, revenue or benefit in, under or derived from the property or asset; and

(w) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2.2 Composition of this Deed and order of precedence

(a) (Deed composition): This Deed comprises:

(i) clauses 1 to 66;

(ii) Schedule 1 to Schedule 44A; and

(iii) Annexure A to Annexure E,

(the Deed).

(b) (Attachments): The Attachments do not form part of this Deed.

(c) (Annexures): Project Co agrees that to the extent that an Annexure seeks to impose any obligation on TfNSW, Project Co will not be entitled to make any Claim against TfNSW in respect of that obligation (unless that same obligation is expressly imposed on TfNSW in a clause or Schedule).

(d) (Notification of ambiguity): If TfNSW or Project Co identifies an inconsistency, ambiguity or discrepancy within this Deed, then TfNSW or Project Co (as applicable) must notify the other party of the inconsistency, ambiguity or
discrepancy as soon as possible and, in any case, not later than 5 Business Days after becoming aware of the inconsistency, ambiguity or discrepancy.

(e) \((\text{Resolution of ambiguity})\): Within 15 Business Days of a notice under clause 2.2(d), TfNSW will direct Project Co as to how to resolve the inconsistency, ambiguity or discrepancy which is the subject of the notice given under clause 2.2(d) as follows:

(i) \((\text{Order of precedence})\): if the relevant inconsistency, ambiguity or discrepancy is between documents forming part of this Deed or is within a document forming part of this Deed, and there is a process for resolving such inconsistencies, ambiguities and discrepancies contained in the relevant document, then in accordance with that process; or

(ii) \((\text{Higher standard})\): if the relevant inconsistency, ambiguity or discrepancy is between documents forming part of this Deed or is within a document forming part of this Deed and clause 2.2(e)(i) does not apply to resolve the inconsistency, ambiguity or discrepancy, then TfNSW will direct Project Co to adopt the option TfNSW requires Project Co to proceed with (which may be the greater (more onerous to Project Co) or higher requirement, standard, quality, level of service, staffing level, quantum or scope as determined by TfNSW) and Project Co must comply with such direction.

(f) \((\text{Inconsistency between Standards})\): Without limiting the remainder of this clause 2.2, to the extent there is any inconsistency, ambiguity or discrepancy between the Standards which Project Co is required to comply with pursuant to this Deed, the standards, codes, guidelines, specifications, policies and requirements set out in paragraphs (a), (b) and (c) of the definition of Standards will prevail over the standards, codes, guidelines, specifications, policies and requirements referred to in paragraph (d) of that definition.

(g) \((\text{Inconsistency between TfNSW Project Documents})\): If there is an ambiguity, discrepancy or inconsistency between this Deed and any other TfNSW Project Document, then the following order of precedence will apply:

(i) Financiers' Tripartite Deed;

(ii) this Deed; and

(iii) the remaining TfNSW Project Documents.

2.3 Plans, Reports and Procedures

A reference to any Management Plan or Project Report is a reference to that Management Plan or Project Report as amended or updated from time to time under this Deed.

2.4 Version of documents with which Project Co must comply

Without limiting Project Co's right to proceed at risk in accordance with clause 19.3, where Project Co is required to comply with a document, and that document or any update of that document is required to be submitted for review in accordance with the Review Procedures, Project Co must comply with the most recent version of the document that has been submitted, reviewed, amended (if applicable) and Confirmed in accordance with the Review Procedures, provided that Project Co will not be in breach of this clause 2.4 solely by reason of exercising its right to proceed at risk in accordance with clause 19.3.
2.5 **Approvals, directions and notices in writing**

Unless otherwise expressly provided in this Deed or agreed between the parties, all approvals, consents, directions, requirements, requests, claims, notices, agreements and demands must be given in writing and must be in English.

2.6 **Prior approval or consent**

Where Project Co is required by this Deed to obtain RailCorp's, TfNSW's or TfNSW Representative's consent or approval to an action, document or thing, unless otherwise expressly stated, that consent or approval must be obtained prior to the action, document or thing occurring or coming into effect.

2.7 **Action without delay**

Unless there is a provision in this Deed which specifies a period of time in which the parties must do something, all things must be done without undue delay.

2.8 **Provisions limiting or excluding Liability, rights or obligations**

(a) **(Other rights not excluded):** A right or obligation of a party under this Deed will not limit or exclude any other right or obligation of that party under this Deed or at Law unless expressly stated.

(b) **(Liability only excluded to the extent permitted by Law):** Any provision of this Deed which seeks, either expressly or by implication, to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.

2.9 **Relationship of the parties**

(a) **(No additional relationship or good faith):** Nothing in this Deed or any other Project Document:

(i) creates a partnership, joint venture or fiduciary, employment or agency relationship between any of the parties or between TfNSW and RailCorp (on the one hand) and Project Co and any of Project Co's Associates (on the other hand); or

(ii) imposes any duty of good faith on TfNSW or RailCorp (unless otherwise expressly provided).

(b) **(RailCorp as party to this Deed):** Without prejudice to clause 45.12 and except as otherwise expressly provided in clauses 35.8(f), 58.3(a), 62.4(a)(viii) and 63, nothing in this Deed or any other Project Document imposes any obligations or Liabilities, or will be construed to impose any obligations or Liabilities, on RailCorp and the parties acknowledge and agree that RailCorp enters into this Deed solely for the purpose of assuming certain rights and benefits in accordance with, and as specified in, this Deed.

2.10 **TfNSW's and RailCorp's executive rights, duties and functions**

(a) **(TfNSW's own interests):** Unless otherwise expressly provided in the TfNSW Project Documents, nothing in the TfNSW Project Documents gives rise to any duty on the part of TfNSW to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the TfNSW Project Documents.

(ai) **(RailCorp's own interests):** Nothing in this Deed gives rise to any duty on the part of RailCorp to consider interests other than its own interests when exercising any of
its rights in accordance with this Deed or any other TfNSW Project Document to
which it is party.

(b) **(TfNSW’s and RailCorp’s rights):** Notwithstanding anything expressly provided or
implied in the TfNSW Project Documents to the contrary, the parties acknowledge
and agree that:

(i) TfNSW, RailCorp and their respective Associates are not obliged to
exercise any executive or statutory right or duty, or to influence, over-
ride, interfere with or direct any other Authority in the proper exercise
and performance of any of its executive or statutory rights or duties; and

(ii) nothing expressly provided or implied in the TfNSW Project Documents
has the effect of constraining, or placing any fetter on, TfNSW’s,
RailCorp’s or any of their respective Associates’ discretion to exercise or
not to exercise any of their executive or statutory rights or duties.

(c) **(No Claim):** Subject to clause 2.10(d), Project Co will not be entitled to (and must
ensure that Finance Co does not) make any Claim against TfNSW or RailCorp for
any Liability relating to any exercise or failure to exercise any executive or statutory
rights or duties by TfNSW, RailCorp or any other Authority or relating to any act or
omission of TfNSW or RailCorp in their capacity as an Access Provider.

(d) **(Liability for breach):** Clauses 2.10(a) to 2.10(c) (inclusive) do not limit any
Liability which TfNSW would have had to Project Co under any TfNSW Project
Document as a result of a breach by TfNSW of a term of any TfNSW Project
Document but for those clauses.

### 2.10A Transfer or delegation of functions

Project Co:

(a) acknowledges that, without limitation to clause 58.3, TfNSW or RailCorp may be
reconstituted, renamed, dissolved, replaced or restructured and that some or all of
the powers, functions, assets, liabilities or responsibilities of either of them may be
transferred to or vested in another entity;

(b) without limiting clauses 2.10A(a), 10.2, 56 or 65.7, acknowledges that TfNSW or
RailCorp may, from time to time, delegate some or all of the powers, functions,
assets, liabilities or responsibilities of either of them to any Operator or any other
person, and may terminate or vary that delegation, in each case, by notice in writing
to Project Co detailing the identity of each delegate and the powers, functions,
assets, liabilities or responsibilities that are delegated, terminated or varied (as
applicable), including any conditions applying to such delegation, termination or
variation;

(c) agrees to do anything (including execute any document), and must procure that its
Associates do anything (including execute any document), required to give full
effect to any of the matters contemplated in clause 2.10A(a) and clause 2.10A(b);
and

(d) will not be entitled to make any Claim against TfNSW, RailCorp or their respective
Associates for any Liability relating to the matters referred to in clause 2.10A(a)
unless the actions taken under that clause are in breach of clause 58.3.

### 2.11 Reasonable endeavours and obligations to act in good faith

Any statement in a TfNSW Project Document providing that TfNSW, RailCorp (or any officer or
agent of TfNSW or RailCorp) will use or exercise ‘reasonable endeavours’, ‘act reasonably’ or
'act in good faith' in relation to an outcome means that TfNSW, RailCorp (or any officer or agent of TfNSW or RailCorp) as applicable:

(a) **(Relevant steps):** will take steps to bring about the relevant outcome so far as it is reasonably able to do so, having regard to its resources and other responsibilities;

(b) **(No guarantee):** does not guarantee the relevant outcome will be brought about; and

(c) **(No obligation):** is not required to:

(i) exercise a right of any Authority, or to influence, over-ride, interfere with or direct any other Authority in the proper exercise and performance of its legal, statutory or executive duties and functions;

(ii) exercise a power or discretion or otherwise act in a manner that TfNSW, RailCorp (or the officer or agent of TfNSW or RailCorp) regards as not in the public interest;

(iii) develop or implement any new standard or a change in standard;

(iv) develop or implement new policy or a change in policy;

(v) procure any new Legislation or a change in Legislation; or

(vi) act in any way that TfNSW, RailCorp (or any officer or agent of TfNSW or RailCorp) regards as not in the public interest.

TfNSW agrees that clause 2.11(a) does not apply to any statement in a TfNSW Project Document providing that TfNSW will 'act in good faith' in relation to an outcome.

2.12 **No TfNSW or RailCorp liability for review**

(a) **(No obligation):** TfNSW and RailCorp do not owe any duty of care to Project Co to (or any duty of care to Project Co to procure that any of their respective Associates or the Independent Certifier or Transition Out Reviewer will):

(i) review Project Co Material or Subcontracts submitted by Project Co (including where submitted in accordance with the Review Procedures); or

(ii) inspect or review the Project Activities or any Asset, for Defects, other errors or omissions or for compliance with the TfNSW Project Documents or any Laws or Standards.

(b) **(No relief):** No:

(i) review of, comments upon, acceptance, approval or certification of any Project Co Material or any Subcontract by TfNSW or its Associates, RailCorp or its Associates or the Independent Certifier or Transition Out Reviewer;

(ii) inspection or review of the Project Activities or any Asset by TfNSW or its Associates, RailCorp or its Associates or the Independent Certifier or Transition Out Reviewer; or

(iii) failure by (or on behalf of) TfNSW or its Associates, RailCorp or its Associates or the Independent Certifier or Transition Out Reviewer to
detect any non-compliance by any Project Co Entity with its obligations in accordance with the TfNSW Project Documents or any Laws or Standards,

will:

(iv) relieve any Project Co Entity from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the TfNSW Project Documents or otherwise according to Law;

(v) evidence or constitute the grant of an extension of time, or a request or direction to accelerate, disrupt, prolong or vary any or all of the Project Activities;

(vi) prejudice TfNSW's or RailCorp's respective rights against any Project Co Entity whether under the TfNSW Project Documents or otherwise according to Law; or

(vii) constitute an approval by TfNSW, RailCorp or the Independent Certifier or Transition Out Reviewer of any Project Co Entity's performance of its obligations in accordance with the TfNSW Project Documents.

2.13 Indexation

(a) (Indexed amounts): All amounts required to be adjusted under this Deed by an Index will be Indexed in accordance with the Indexes Schedule.

(b) (Changes to indexes): Any changes to Indexes will be calculated in accordance with the Indexes Schedule.

2.14 Cost of carrying out obligations

TfNSW and Project Co must each carry out its obligations under this Deed at its own cost, unless expressly provided otherwise.

2.15 Exclusion of Civil Liability Act 2002 (NSW)

(a) (Excluded operation of Civil Liability Act): To the extent permitted by Law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any and all rights, obligations and Liabilities arising under or in relation to this Deed, howsoever those rights, obligations or Liabilities are sought to be enforced.

(b) (Subcontracts must exclude operation of Civil Liability Act): Project Co must procure that each Subcontract includes provisions that, to the extent permitted by Law, effectively exclude the operation of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all rights, obligations or Liabilities arising under or in relation to that Subcontract howsoever such rights, obligations or Liabilities are sought to be enforced.

2.16 Final and binding

Where a determination, decision, opinion or direction is said in this Deed on any basis to be 'final and binding', then (except to the extent otherwise expressly stated in this Deed) no party is entitled to challenge that decision, opinion or direction.

2.17 Governing Law

This Deed is governed by, and must be construed according to, the Laws of New South Wales, Australia.
2.18 **Entire Agreement**

To the extent permitted by Law and in relation to their subject matter, this Deed and the other TfNSW Project Documents:

(a) *(Entire understanding)*: embody the entire understanding of the parties and constitute the entire terms agreed by the parties; and

(b) *(Prior agreements)*: supersede any prior agreement of the parties.

2.19 **Further acts and documents**

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

2.20 **Project Co and its Associates**

Any obligation of Project Co under a TfNSW Project Document is deemed to include an obligation on Project Co to ensure that each of its Associates assume and comply with the corresponding obligation to the extent that the obligation is applicable to that Associate of Project Co under any Law or a Project Document or Subcontract to which that Associate is a party.

2.21 **Survival of certain provisions**

(a) *(Surviving clauses)*: All provisions of this Deed which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of this Deed will survive the rescission, termination or expiration of this Deed, including any provision in connection with:

(i) RailCorp’s or TfNSW’s rights to set-off and recover money;

(ii) confidentiality or privacy;

(iii) Intellectual Property Rights;

(iv) any obligation to make any Accounts and Records available to TfNSW;

(v) any indemnity or financial security given in accordance with this Deed;

(vi) the Performance Regime;

(vii) any limitation or exclusion of Liability; and

(viii) any right or obligation arising on termination of this Deed.

(b) *(Interpretation)*: No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.

(c) *(Survival of rights and obligations)*: No right or obligation of any party will merge on completion of any transaction under this Deed. All rights and obligations under this Deed survive the execution and delivery of any transfer or other document, which implements any transaction under this Deed.
2.22 Waiver

(a) (Writing): A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) (No waiver): A failure to, a delay in, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

(c) (No waiver of another breach): No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

2.23 Severance

If, at any time, a provision of this Deed or any other TfNSW Project Document is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Deed or any other relevant TfNSW Project Document; or

(b) that provision under the Law of any other jurisdiction.

2.24 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

2.25 Moratorium legislation

A provision of any Law which comes into effect after the date of this Deed and operates to:

(a) increase or improve any of Project Co’s rights, powers or remedies under this Deed or otherwise; or

(b) prejudicially affect the exercise by TfNSW or RailCorp of any right, power or remedy under this Deed or otherwise,

(each matter referred to in (a) and (b) a “Specified Effect”) is, to the extent only that the Law has the Specified Effect, expressly waived by Project Co to the extent it is legally able to do so. If a waiver is ineffective, TfNSW and Project Co will consult in good faith to determine how the parties can be restored to their original position under this Deed.

2.26 Capacity of Project Co

(a) Insofar as Project Co enters into this Deed in its capacity as trustee of the Project Trust, it must remain trustee of the Project Trust, subject to clause 55.4(e) until the expiry or satisfaction of all of Project Co’s obligations under this Deed.

(b) A liability of Project Co arising under or in connection with this Deed (whether that liability arises under a specific provision of this Deed, for breach of contract or otherwise), is a liability that can be enforced against Project Co both in its own right and in its capacity as trustee of the Project Trust, unless the liability relates only to an asset which Project Co holds in its personal capacity and not as trustee, in which case the liability can only be enforced against Project Co in its personal capacity.
Part B - Project commencement

3. Conditions Precedent

3.1 Commencement

(a) This Deed will only come into force and effect (but will do so automatically on the date) when the last of the Conditions Precedent to be satisfied has been satisfied (or waived in accordance with clause 3.3) except for the provisions contained in:

(i) clause 1 (Definitions);
(ii) clause 2 (General Rules of Interpretation);
(iii) this clause 3 (Conditions Precedent);
(iv) clause 4 (Term);
(v) clause 5.3 (All Risks);
(vi) clause 7 (Project Information);
(vii) clause 8.1 (Project Co to inform itself);
(viii) clause 8.2 (No representations from TfNSW or RailCorp);
(ix) clauses 9(a) (No representations) and 9(b) (Project Co assumes risk);
(x) clauses 10.2 (TfNSW Representative and delegation) and 10.3 (Project Co Representative);
(xi) clause 10.8D (Monthly Contract Review Meetings and reporting);
(xiA) clause 12.1 (Subcontracting);
(xii) clause 14.1 (Independent Certifier);
(xiii) clause 42 (Relief Events);
(xiv) clause 45 (Indemnities and Consequential or Indirect Loss);
(xv) clause 46 (insurance);
(xvi) clauses 50 to 54 (Dispute resolution);
(xvii) clause 55 (Representations and warranties);
(xviii) clause 56 (Rights and benefits held on trust for its Associates);
(xix) clause 57 (Project Co general undertakings);
(xx) clause 58 (Assignment and amendments);
(xxi) clause 59 (Change in Control);
(xxii) clause 60.1 (Updating the Base Case Financial Model at Financial Close);
(xxiii) clause 62 (Intellectual Property Rights);
(xxiv) clause 63 (Confidential Information and disclosure);
(xxv) clause 64 (Probity Events and Probity Investigations);
(xxvi) clause 65 (Notices and bar to Claims);
(xxvii) clause 66 (PPSA);
(xxviii) schedule 1 (Contract Particulars);
(xxix) schedule 2 (Conditions Precedent Schedule);
(xxx) schedule 22 (Insurance Schedule); and
(xxxi) schedule 23 (Commercially Sensitive Information Schedule),
which will commence on the date of this Deed.

3.2 Satisfaction of Conditions Precedent

(a) (Conditions Precedent Schedule): The Conditions Precedent Schedule sets out which party is to satisfy each Condition Precedent.

(b) (TfNSW to use reasonable endeavours): TfNSW must use reasonable endeavours to satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline and must notify Project Co as each Condition Precedent is satisfied.

(c) (Project Co to satisfy): Project Co must satisfy each Condition Precedent it is obliged to satisfy in accordance with the Conditions Precedent Schedule (or procure its waiver in accordance with clause 3.3) by the Condition Precedent Deadline and must notify TfNSW as each Condition Precedent is satisfied.

(d) (Notice at Financial Close): When the last Condition Precedent to be satisfied has been satisfied or waived, TfNSW must confirm by notice to Project Co that every Condition Precedent has been satisfied or waived, and the date upon which the last of the Conditions Precedent was satisfied or waived.

3.3 Waiver of Conditions Precedent

(a) (Conditions Precedent Schedule): The Conditions Precedent Schedule sets out which party benefits from the satisfaction of each Condition Precedent.

(b) (Waiver): A Condition Precedent is only waived if:

(i) where the Condition Precedent is included for the benefit of TfNSW or Project Co as set out in the Conditions Precedent Schedule, that party gives notice of the waiver of the Condition Precedent to the other; and

(ii) where the Condition Precedent is included for the benefit of both TfNSW and RailCorp as set out in the Conditions Precedent Schedule, both of those parties agree to waive the Condition Precedent.
3.4 Failure to satisfy by the Condition Precedent Deadline

If any Condition Precedent is not satisfied (or waived in accordance with clause 3.3(b)) by the Condition Precedent Deadline, then:

(a) **(Option to terminate):** the party that is the beneficiary of the relevant Condition Precedent (or, where both TfNSW and Project Co are the beneficiary of the relevant Condition Precedent, either of them) may terminate this Deed upon giving not less than 5 Business Days' notice to the other party;

(b) **(TfNSW Project Documents terminated):** if a party terminates this Deed in accordance with clause 3.4(a), each of the TfNSW Project Documents will be taken to have been terminated at the time this Deed is terminated and will be of no further force or effect; and

(c) **(No claim):** no party will have any Claim against any other party arising out of or in connection with the Project or the Project Documents, including due to the failure to satisfy (or procure the waiver of) a Condition Precedent, except in respect of antecedent breaches of the clauses listed in clause 3.1(a).

3.5 Model Output Schedule

(a) **(Model Output Schedule):** TfNSW and Project Co acknowledge that the Financial Close Financial Model will contain the Model Output Schedule.

(b) **(Conformed copies):** As soon as practicable after Financial Close, TfNSW and Project Co will prepare conformed copies of the Project Documents incorporating relevant data derived from the Model Output Schedule.
Part C - General Obligations

5. Overarching obligations

5.1 Project Co's primary obligations

(a) (Deliver the Project): Project Co must:

(i) carry out the Project Activities in accordance with:
   A. the Project Documents;
   B. all applicable Laws and Standards;
   C. the Management Plans; and
   D. Best Industry Practices;

(ii) ensure that neither it nor any of its Associates cause RailCorp, TfNSW or any of their respective Associates to breach any Law; and

(iii) ensure that it manages all risks associated with the Project Activities in accordance with Best Industry Practices.

(b) (Comply with directions): Project Co must comply with:

(i) all directions given by TfNSW or the TfNSW Representative to comply with the terms of the TfNSW Project Documents;

(ii) all agreements made by the parties in accordance with this Deed;

(iii) all Modification Orders and Change Responses issued by TfNSW in accordance with this Deed; and

(iv) all directions or determinations given by TfNSW, the TfNSW Representative or the Independent Certifier in accordance with the TfNSW Project Documents, whether or not Project Co disputes that such direction is a direction or asserts that the direction is or determination is a Modification under this clause, except as required by Law.

(c) (Project Co not to act): Except as otherwise required by Law, Project Co must not accept or act upon directions in connection with the Project Activities from an employee or agent of TfNSW other than the TfNSW Representative or a TfNSW delegate appointed in accordance with clause 10.2.

5.2 Disputed Directions

(a) (Comply with direction): Subject to clause 39, where Project Co disputes that any direction given or determination made has been given or made in accordance with clause 5.1(b) or clause 5.1(c) Project Co must, save where the direction would cause Project Co or its Associates to breach any Legislation or its respective Accreditation referred to in clause 6A.5(b), or would result in Project Co or its Associates causing any Accredited Person to breach its respective Accreditation, comply with the direction or determination, but at the same time may refer the Dispute for determination in accordance with clause 50.
(Determination of Dispute): An expert or any arbitrator or court with power to determine a dispute under this Deed will have the power to open up and review the direction purported to be given or determination purported to be made under this Deed.

5.3 All Risks

(a) (All risks and no claim): Except as otherwise expressly provided in the TfNSW Project Documents, as between the parties:

(i) Project Co accepts all risks (and the cost of such risks) in connection with the Project, the Sites, the Site Conditions, the Assets or the Project Documents; and

(ii) Project Co is not entitled to make (and must procure that Finance Co does not make) any Claim against RailCorp, TfNSW or any of their respective Associates in connection with the Sites, the Site Conditions, the Assets, the Project or the Project Documents, including any Claim for breach of contract, misrepresentation or negligence (other than a Claim against TfNSW for breach of contract where TfNSW fails to make or procure payment of any payment properly due to Project Co under this Deed).

(b) (Liability exceptions): Clause 5.3(a) does not:

(i) limit any Project Co Entity’s right to raise any defence in relation to a Claim made by TfNSW or RailCorp against any Project Co Entity;

(ii) without prejudice to clauses 2.9(b) and 45.12, exclude or limit any Liability RailCorp, TfNSW or any of their respective Associates may have to any Project Co Entity or any of their respective Associates under this Deed or otherwise at Law in respect of Project Co’s liability to a third party in respect of death, personal injury or damage to property to the extent that the Liability of Project Co or its Associates is a consequence of:

A. a breach by TfNSW of a TfNSW Project Document; or

B. fraud, a malicious act or a malicious omission of RailCorp, TfNSW or their respective Associates; or

(iii) subject to and without limiting clause 5.3(c), exclude or limit any Liability TfNSW may have to any Project Co Entity under the TfNSW Project Documents or at Law in respect of Liability incurred by any Project Co Entity as a result of a breach by TfNSW of any TfNSW Project Document.

(c) (Project Co acknowledgement): Project Co acknowledges and agrees that, without prejudice to clauses 2.9(b) and 45.12, its sole financial entitlement and TfNSW’s and RailCorp’s sole financial Liability:

(i) for delay, disruption or disturbance to the progress of any part of the Works, including by reason of an Extension Event, including a Compensable Extension Event, a Change in Mandatory Requirements, a Contamination Compensation Event or a Modification, is limited to the amount payable by TfNSW to Project Co in accordance with clauses 8.6, 37.7, 37.13(b), 37.14(d), 39, 41.2(c), 44.3 and 47.3 (as applicable) and the Change Compensation Principles; and
for prevention, delay, hindrance or disruption to the performance of the Services arising out of or in connection with an Intervening Event, including any Compensable Intervening Event, is limited to the amount payable by TfNSW to Project Co in accordance with clauses 29.4, 38.7, 38.8, 38.9 and 38.10 (as applicable) and the Change Compensation Principles.

provided that nothing in this Deed will make RailCorp liable for any amount which TfNSW is liable to pay.

### 5.4 Fit For Purpose Warranty

(a) **(Delivered Rail Asset):** Project Co warrants for the benefit of each of TfNSW and RailCorp that at all times on and from the FFP Warranty Commencement Date until the end of the Term each Deliverable will:

(i) **(Fit for Purpose):** be Fit For Purpose, by reference to the purposes, function, uses and requirements which are current and apply as at the FFP Warranty Commencement Date;

(ii) **(Transition Out Condition):** meet the relevant Transition Out Condition; and

(iii) **(Compliance):** comply with:

   A. all applicable Laws; and
   
   B. all applicable Standards.

(b) **(Returned Asset):** Project Co warrants for the benefit of each of TfNSW and RailCorp that, on the Date of Returned Asset Handback, the Returned Asset will:

(i) **(Fit for Purpose):** be Fit For Purpose, by reference to the purposes, function, uses and requirements which are current and apply as at the Date of Returned Asset Handback;

(ii) **(Compliance):** comply with:

   A. all applicable Laws; and
   
   B. all applicable Standards; and

(iii) **(Capable of remaining):** be capable of remaining Fit For Purpose until the end of the Term, provided that the Returned Asset is operated and maintained in accordance with Best Services Practices following the relevant Date of Returned Asset Handback.

(c) **(Legacy Maintenance Centre):** Subject to clause 29.4, Project Co warrants for the benefit of each of TfNSW and RailCorp that, at all times on and from the FFP Warranty Commencement Date until the end of the Term:

(i) the Upgrade Services will:

   A. **(Fit for Purpose):** be fit for the purpose of enabling Project Co to comply with its obligations under this Deed;
   
   B. **(Transition Out Condition):** meet the relevant Transition Out Condition; and
C. (Compliance): comply with:
   1) all applicable Laws; and
   2) all applicable Standards; and

(ii) the Legacy Maintenance Centre will, subject to clause 38, be fit to enable Project Co to perform the Services at the Legacy Maintenance Centre.

5.5 Minimum requirements not sufficient

Project Co acknowledges and agrees that to the extent that the Design Requirements or Services Requirements specify or prescribe a minimum requirement, the delivery of the Assets or the performance of Services (as applicable) in compliance with those minimum requirements may not of itself be sufficient for Project Co to discharge its obligations pursuant to this Deed.

6. Approvals and consents

6.1 Key Planning Approval

(a) ( TfNSW has obtained): TfNSW has obtained the Key Planning Approval.

(b) (Compliance with the Key Planning Approval): Project Co must:

(i) comply with; and
(ii) ensure that the Assets comply with,

the Key Planning Approval, including all conditions and requirements of the Key Planning Approval, and its obligations in Schedule 15 (Key Planning Approval Conditions), except to the extent that Annexure A of Schedule 15 allocates responsibility for compliance with a condition of the Key Planning Approval to TfNSW.

(c) (Project Co to obtain secondary consent): If any aspect of the Key Planning Approval requires a secondary consent, verification or other supplementary action or information (whether as a condition of the Key Planning Approval taking effect or otherwise), those further matters will be the responsibility of Project Co.

(d) Not used.

(e) (Events impacting Key Planning Approval): If there is a Change in Standards as contemplated under paragraph (d) or (e) of the definition or legal action is taken in connection with the Key Planning Approval:

(i) Project Co must continue to carry out its obligations under this Deed, except to the extent Project Co is otherwise prevented from carrying out its obligations as a result of such events, including to the extent Project Co is required to suspend, cease or alter the carrying out of its obligations in accordance with:

A. a direction of TfNSW;
B. applicable Law; or
C. an order of a court or tribunal of competent jurisdiction;
subject to clause 6.1(e)(iii), at the request of TfNSW, Project Co must provide all reasonable assistance in connection with dealing with such events;

(iii) as between TfNSW and Project Co, TfNSW may deal with such events as it sees fit (including, where appropriate, conducting any legal challenge in the name of Project Co); and

(iv) Project Co's sole and exclusive entitlement to make a Claim (including any claim for relief from its obligations under this Deed) in respect of such events will be as set out in clause 39.10.

6.2 Other Approvals

(a) (General): Without limiting clause 6.1(b) or 6.1(c), Project Co must:

(i) obtain (other than the Key Planning Approval), maintain and comply with;

and

(ii) ensure that the Assets satisfy and comply with,

all Approvals (including any modifications to any Approvals) necessary for the Project, including all conditions and requirements of those Approvals.

(b) (Copies and evidence of compliance): Project Co must promptly provide to TfNSW:

(i) copies of all Approvals when they are obtained, amended or renewed;

(ii) upon request, evidence that the conditions or requirements of all Approvals have been complied with; and

(iii) copies of all notices given or received by Project Co or its Associates in respect of any Approvals.

6.3 Conditional Approvals

Where any Approval is issued with conditions which would or could have a material adverse effect on the ability of Project Co to carry out the Project Activities under this Deed, or otherwise affects Project Co's ability to meet its obligations under this Deed, Project Co must:

(a) (notification): notify TfNSW that those conditions would or could have such an effect; and

(b) (TfNSW Representative's right to review): provide to the TfNSW Representative for review in accordance with the Review Procedures a copy of the relevant Approvals issued with conditions, together with Project Co's detailed proposal for satisfying those Approvals in a manner that would not have a material adverse effect.

6.4 Project Co to assist TfNSW

Project Co must provide TfNSW, RailCorp, the Operator and all other relevant NSW Rail Entities with all reasonable assistance including provision of all information to enable each of them to:

(a) comply with all applicable Mandatory Requirements; and

(b) obtain or satisfy or fulfill the conditions and requirements in respect of any:
6A. Rail Safety

6A.1. Acknowledgement by Project Co

Project Co acknowledges that:

(a) (Variation required): the Accredited Persons may need to obtain variations to existing Accreditations (if any) in accordance with the requirements of the Rail Safety National Law in order to facilitate delivery of the Project including the operation and Maintenance of the New Fleet (Accreditation Variations);
(b) (Necessity of obtaining): a failure to obtain, or delay in obtaining, the Accreditation Variations will have a significant adverse impact on the ability of the Accredited Persons to fulfil their respective functions and responsibilities as owners, managers or operators of Rail Infrastructure or Rolling Stock;

(c) (Process): the process for obtaining the Accreditation Variations will be an iterative one, and will require Project Co to cooperate with the Accredited Persons;

(d) (Requirements): ONRSR requires the Safety Management Systems of the Accredited Persons to:

(i) cover all relevant aspects of the Project Activities; and

(ii) include measures to address safety risks arising from the Project Activities and their interfaces with related activities of the Accredited Persons including appropriate measures regarding competency, communication, risk management and continuous improvement; and

(e) (Mutual interest): it is in the interests of the Accredited Persons, Project Co and ONRSR for the Accreditation Variation Applications to be coordinated effectively.

6A.2. Coordination of Accreditation Variation Applications

Having regard to the acknowledgements by Project Co in clause 6A.1, Project Co must:

(a) (TfNSW as point of contact): deal with TfNSW as the single point of contact for Project Co in connection with Project Co’s input into the Accreditation Variation Applications;

(b) (Good faith cooperation): subject to clause 6A.2(a), cooperate in good faith with, and do all things reasonably necessary to enable and assist, the Accredited Persons to obtain all relevant Accreditation Variations, including by:

(i) preparing and submitting to TfNSW in a form reasonably required by TfNSW:

A. all Accreditation Variation Documents;

B. all supporting documentation and certificates referred to in clause 6A.3(b); and

C. any other information and documentation that TfNSW or any Accredited Person may reasonably require in connection with the Accreditation Variation,

within the time specified in the Review Procedures or, if no time is specified, then in a timely manner and as otherwise reasonably required by TfNSW; and

(ii) responding to queries or requests by TfNSW in a timely manner and within the time reasonably required by TfNSW, and if no time is specified, then in a timely manner; and

(c) (Avoidance of delay): not do, or omit to do, anything that may hinder or delay an Accredited Person from obtaining an Accreditation Variation.
6A.3. **Project Co to prepare documents**

(a) *(Documentation):* Project Co must develop and submit to the TfNSW Representative for review in accordance with the Review Procedures draft and final Accreditation Variation Documents that are in accordance with:

(i) Project Co's Safety Accreditation Strategy;

(ii) the Rail Safety National Law;

(iii) the Safety Management Systems of the relevant Accredited Persons;

(iv) any requirements of ONRSR for the Accreditation Variation Document; and

(v) the other requirements of any Project Document.

(b) *(Accompanying documents):* Each Accreditation Variation Document submitted by Project Co to the TfNSW Representative for review in accordance with the Review Procedures must be accompanied by:

(i) supporting documentation in such form as TfNSW may reasonably require to demonstrate that the Accreditation Variation Document complies with the requirements of clause 6A.3(a); and

(ii) a certificate from an appropriately qualified person issued on behalf of Project Co stating that the Accreditation Variation Document complies with the requirements of clause 6A.3(a).

(c) *(Amendment):* If ONRSR rejects or requires changes to, or further information in respect of, an Accreditation Variation Application, then Project Co must, if requested by TfNSW, promptly make the necessary changes to the Accreditation Variation Documents or provide the further information (or both, as required by ONRSR).

6A.4. **Continuing obligation**

Project Co must, and must procure that its Associates:

(a) *(Cooperation with Accredited Persons):* cooperate with each Accredited Person and do everything reasonably necessary to enable each Accredited Person to:

(i) maintain any Accreditation; and

(ii) comply with their other obligations under the Rail Safety National Law and in relation to rail safety,

to the extent that the Accredited Person's Accreditation or rail safety obligations are affected by the Project Activities;

(b) *(No breach of Accreditation):* not do, or omit to do, anything that may cause:

(i) an Accredited Person to breach any term of its Accreditation; or

(ii) the Accreditation of an Accredited Person to be suspended or cancelled; and
(c) **ONRSR access**: give ONRSR access to such premises and information as ONRSR lawfully requests to fulfil its functions with respect to the Project and the Project Activities, within the time requested by ONRSR.

### 6A.5. Project Co's rail safety obligations

(a) In this clause 6A.5 the terms 'railway operations' and 'rail transport operator' have the meaning given to them in the Rail Safety National Law.

(b) Subject to clause 6A.5(c), Project Co must:

(i) **(Accreditation compliance)**: hold and comply with the conditions of, or must procure that a Key Subcontractor holds and complies with the conditions of, any necessary Accreditation to carry out any railway operations that are comprised in, or form part of, the Project Activities;

(ii) **(Rail transport operator)**: act, or must procure that a Key Subcontractor acts, as a rail transport operator and comply with all obligations of a rail transport operator under the Rail Safety National Law; and

(iii) **(Accreditation of Subcontractors)**: to the extent that any Subcontractor is engaged in connection with any of the Project Activities in circumstances where section 62(1)(b) of the Rail Safety National Law applies, ensure that it is able to comply with its obligations under this clause 6A.5.

(c) The parties acknowledge and agree that any testing and commissioning activities in respect of the Units on the Network which are conducted outside the Maintenance Facility will be performed under the Operator's Accreditation.

### 6A.6. Project Co's Personnel

Project Co must ensure that each employee of Project Co and each Subcontractor:

(a) **(Competence)**: is competent to carry out the work for which they are engaged for the purposes of the Rail Safety National Law; and

(b) **(Compliance)**: complies with their obligations under the Rail Safety National Law.

### 6A.7. TfNSW to cooperate

If requested by Project Co, TfNSW must:

(a) **(supply information)**: make available information in its possession and control; or

(b) **(request Accredited Person)**: request an Accredited Person to make available to Project Co information in the Accredited Person's possession,

but only to the extent that such information is not readily available to Project Co or its Key Subcontractors from another source and is reasonably required by:

(c) Project Co in connection with its obligations under clause 6A.2 or clause 6A.3; or

(d) Project Co or a Key Subcontractor to obtain any Accreditation, or a variation to its Accreditation, or to fulfil its obligations under the Rail Safety National Law, in connection with the Project Activities.
6A.8. Cooperation with Investigative Authorities

Project Co must, and must procure that its Associates:

(a) (access to premises): give all Investigative Authorities such access to premises and information as the Investigative Authority lawfully requests, within the time requested;

(b) (cooperation with Investigative Authority): cooperate with and respond to any other lawful requests made by any Investigative Authority, within the time requested; and

(c) (no delay to Investigative Authority): not hinder or delay any Investigative Authority in carrying out its duties.

6A.9. Safety Interface Agreements

Project Co must, and must procure that any of its Subcontractors who are rail transport operators for the purposes of the Rail Safety National Law:

(a) (enter into agreement): enter into a Safety Interface Agreement where required by the Rail Safety National Law; and

(b) (provide draft for review): prior to execution of any Safety Interface Agreement, submit a draft of the Safety Interface Agreement to the TfNSW Representative for review in accordance with the Review Procedures.

6B. Network Access

Project Co acknowledges and agrees that:

(a) (copies of Access Agreements): it has been provided with a copy of the Existing Access Agreements and has read and familiarised itself with the terms of the Existing Access Agreements;

(b) (variation of Access Agreements): the Existing Access Agreements may be varied or replaced from time to time with New Access Agreements;

(c) (Modification): clause 39.9 will apply to the extent that a New Access Agreement constitutes a Modification;

(d) (breach of Access Agreement): breach of its obligations under this Deed may result in TfNSW or a NSW Rail Entity being in breach of an Access Agreement;

(e) (TfNSW directions and determinations): TfNSW may make directions or determinations in relation to compliance with the terms of an Access Agreement and Project Co must comply with any such direction or determinations;

(f) (Project Co obligations in connection with Access Agreements): it must:

   (i) not:

       A. do anything; or

       B. fail to do anything, so as to cause TfNSW or a NSW Rail Entity to be in breach of its obligations under an Access Agreement; and
provide such cooperation and assistance as reasonably required to enable TfNSW or a NSW Rail Entity to comply with its obligations under an Access Agreement, including in relation to:

A. the reporting, management or investigation of incidents (howsoever defined) occurring on or in respect of the Network;
B. the exercise of any audit, inspection or monitoring rights by the Access Provider;
C. the preparation, updating of and compliance with environmental, safety and risk management reports, systems and plans; and
D. the provision of any information or document required under or in relation to an Access Agreement, including in relation to compliance issues and performance reporting;

(g) (no Claim): except for a Modification as contemplated under paragraph (c)(ii) of the definition of Modification and subject to clause 44.2A, Project Co is not entitled to make any Claim (including for an extension of time or other form of relief) arising out of or in any way in connection with Project Co's compliance with clause 6B(f);

(h) (Project Co Liability): subject to clause 45.10(b) and without prejudice to or limiting any of TfNSW's rights under clauses 48 and 49, neither Project Co nor any of its Associates has any Liability to TfNSW, RailCorp or any of their respective Associates for any Liabilities incurred by TfNSW or a Rail Entity under an Access Agreement:

(i) as a result of any act or omission of Project Co or any of its Associates; or
(ii) due to any breach of a TfNSW Project Document by Project Co or any of its Associates; and

6C. Authorised Engineering Organisation

(a) (Obligation to obtain and maintain): Project Co must, or must ensure that its relevant Subcontractors engaged in engineering services that require AEO authorisation from the Asset Standards Authority in accordance with sections 20(b) and (c) of the Management Requirements will:

(i) prior to commencing such services, obtain; and
(ii) at all times while performing such services, maintain,

AEO authorisation from the Asset Standards Authority.

(b) (Acknowledgement): Project Co acknowledges that the Asset Standards Authority will assess, and is the body empowered to grant, AEO status to Project Co and its Subcontractors to carry out the Project Activities, including on the basis of the
procedures of, and undertakings given by, Project Co and its Associates as set out in the Management Plan.

6D. Independent Safety Assessor

(a) (Appointment): TfNSW will appoint and engage the Independent Safety Assessor to act as the Independent Safety Assessor:

(i) in accordance with the terms of this Deed and the Independent Safety Assessor Appointment; and

(ii) independently and not as agent of TfNSW, RailCorp or Project Co.

(b) (Costs): The costs and expenses of the Independent Safety Assessor will be paid by TfNSW to the Independent Safety Assessor.

(c) (Role): The role and functions of the Independent Safety Assessor are set out in the Independent Safety Assessor Appointment, the TfNSW standard entitled System Safety Standard for New or Altered Assets T MU MD 20001 ST and associated standards T MU MD 00004 TI and T MU MD 00003 GU.

(d) (No ability to act for Financiers or Project Co): Project Co must not, and must ensure that any Financier does not, appoint the Independent Safety Assessor to act in any role in connection with the Project or the Project Documents, without the prior consent of TfNSW and on such terms approved by TfNSW.

(e) (Independent Safety Assessor Comments): TfNSW will request the Independent Safety Assessor to provide Project Co with a copy of any formal written comments at or around the same time that the Independent Safety Assessor issues such comments to TfNSW.

6E. Third Party Agreements

Project Co acknowledges and agrees that:

(a) (TfNSW directions): TfNSW may make directions in relation to compliance with the terms of a New Third Party Agreement and Project Co must comply with any such directions;

(b) (Modification): clause 39.9 will apply to the extent that a direction under clause 6E(a) constitutes a Modification;

(c) (breach of New Third Party Agreement): breach of its obligations under this Deed may result in TfNSW or a NSW Rail Entity being in breach of a New Third Party Agreement; and

(d) (no Claim): except for a Modification as contemplated under paragraph (c)(iii) of the definition of Modification and subject to clause 44.2A, Project Co is not entitled to make any Claim (including for an extension of time or other form of relief) arising out of or in any way in connection with Project Co’s compliance with clause 6E(a).

7. Project Information

7.1 No representations from TfNSW

Without prejudice to clause 8.2, Project Co acknowledges and agrees that RailCorp, TfNSW, their respective Associates and the author of any report provided in the Project Information
have not made and make no representations (express or implied), and give no warranties or guarantees (express or implied), and owe no duty of care (express or implied), in respect of:

(a)  (Project information): the accuracy, suitability, adequacy, completeness of, or any omissions from, the Project Information; or

(b)  (Proposal): the feasibility or fitness for purpose of the Proposal (or any part of it).

7.1A Baseline Environmental Site Assessment Warranty

TfNSW will:

(a)  (Appointment): prior to appointing the author of the Baseline Environmental Site Assessment, consult with Project Co as to the identity of that person and the scope and terms of its appointment; and

(b)  (Collateral Warranty): procure that the author of the Baseline Environmental Site Assessment provides Project Co with a collateral warranty in respect of the Baseline Environmental Site Assessment on or about the date of the Baseline Environmental Site Assessment in substantially the form set out in Schedule 38 (Deed of Warranty).

7.2 Project Information under this Deed

Nothing in this clause 7 limits or excludes TfNSW's liability to Project Co under any TfNSW Project Document or for breach of any TfNSW Project Document for any failure of TfNSW to give any notice or direction that TfNSW is required to give to Project Co or its Associates, in accordance with that TfNSW Project Document.

7.3 Project Information representations and warranties by Project Co

Without limiting clauses 7.1, 8.1 or 8.2, Project Co acknowledges and agrees that:

(a)  (Entry into Deed): it enters into this Deed based on its own investigations, interpretations, deductions, information and determination;

(b)  (Opportunity to investigate): it was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:

(i)  relating to the subject matter of any Project Information; and

(ii)  of the Sites and their surroundings;

(c)  (Project Information): the Project Information does not form part of this Deed and was provided by TfNSW, its Associates and the author of the Site Information Reports for the information only of Project Co;

(d)  (Adequacy of Project Scope and Requirements etc): it has:

(i)  checked and carefully considered and understands the Project Scope and Requirements;

(ii)  satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the Project Scope and Requirements;

(iii)  satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the documents comprising the Project Scope and Requirements; and
(iv) satisfied itself that there is nothing in the Design Requirements or the Services Requirements which would prevent:

A. the Deliverables from being Fit For Purpose; or
B. the Services being carried out in accordance with this Deed;

(e) (Fitness for purpose of Project Scope and Requirements): the Project Scope and Requirements is proper, adequate and fit for its intended purpose of enabling Project Co to carry out the Project Activities in accordance with, and to ensure that the Deliverables comply with, this Deed;

(f) (No reliance): it did not rely upon any Project Information or the accuracy, adequacy, suitability or completeness of the Project Information for the purposes of entering into this Deed or delivering the Project;

(g) (TfNSW and RailCorp entry into Deed): TfNSW and RailCorp have entered into this Deed relying upon the warranties, acknowledgements, representations and agreements of Project Co as set out in this Deed; and

(h) (Intellectual Property Rights): all Intellectual Property Rights in the Project Information remain the property of TfNSW, any of its Associates or the author of the Site Information Report (as the case may be).

8. The Sites

8.1 Project Co to inform itself

Without limiting clause 7, this clause 8 or clause 29.4, Project Co warrants for the benefit of each of TfNSW and RailCorp that it has, and will be deemed to have, done everything (including all assessments, tests or studies of each Site and its surroundings and enquiries of Authorities) that would be expected of a prudent, competent and experienced contractor in the position of Project Co exercising Best Industry Practices:

(a) in assessing the risks regarding Site Conditions;

(b) in ensuring that this Deed contains allowances to protect it against any of these risks eventuating; and

(c) in order to determine the suitability of each Site and its surroundings for the Project.

8.2 No representations from TfNSW or RailCorp

(a) Project Co acknowledges and agrees that, except as expressly provided by this Deed, RailCorp, TfNSW, their respective Associates and the author of the Site Information Reports have not made and make no representation, and give no warranty or guarantee and owe no duty of care or other responsibility in respect of:

(i) (Site): the Site Conditions, title to each Site or adequacy of or access to each Site and its surroundings for the Project;

(ii) (Utility Infrastructure and External Infrastructure): the existence, location, condition or availability of any Utility Infrastructure, roads, footpaths, transport facilities or other infrastructure at or external to a Site; or

(iii) (Adverse Rights etc): any Adverse Rights or rights of way.
8.3 Environmental issues

Project Co must:

(a) (Obligation): not and must procure that its Associates do not:

(i) do any of the following:

A. cause or contribute to; or

B. exacerbate,

any Contamination;

(ii) except where it is authorised pursuant to any Approval, cause any Pollution on, in, under or emanating from a Site;

(iii) abandon or dump any Hazardous Substance at a Site;

(iv) except as authorised by Law or an Approval, handle, disturb, discharge or release any Hazardous Substance at a Site or cause any Hazardous Substance to migrate from a Site in a manner which is likely to cause or contribute to an Environmental Hazard; or

(v) damage, remove or restrict access to existing groundwater monitoring wells at the Legacy Maintenance Centre Site.

(b) (Environmental responsibility): (and must procure that its Associates at all times will) carry out the Project Activities in accordance with the Environmental Requirements, in an environmentally responsible manner and in accordance with the Construction Environmental Management Plan, the Operational Environmental Management Plan, the Sustainability Management Plan and Best Industry Practices and so as to protect the Environment;

(c) (Notification): immediately notify TfNSW of any non-compliance or alleged or potential non-compliance with the conditions or requirements of any Environmental Requirements, the Construction Environmental Management Plan or the Sustainability Management Plan;

(d) (Manage waste disposal): manage, remove and dispose of all waste, rubbish, debris, redundant materials, spoil and Hazardous Substances produced by the Project Activities in accordance with Best Industry Practices, any Environmental Requirements and this Deed;

(e) (Assist TfNSW and RailCorp): assist TfNSW and RailCorp to comply with their obligations under all Environmental Requirements, the Construction Environmental Management Plan, the Operational Environmental Management Plan and the requirements of any Authority in relation to matters relating to the Environment at a Site or in connection with the Project;

(f) (Legacy Maintenance Centre measures): develop and, on and from the Date of Handover (Legacy Maintenance Centre), implement as part of the Operational Environmental Management Plan operational measures for the Legacy Maintenance Centre Site to achieve a standard of environmental protection equivalent to or greater than that intended by the Pre-Existing Operational
Environmental Management Plan and report to TfNSW on the implementation of such measures to TfNSW in every third Monthly Performance Report; and

(g) **Access for Groundwater Monitoring Program**: provide access to TfNSW and its nominees to the Legacy Maintenance Site at all reasonable times on and from the Date of Handover (Legacy Maintenance Centre) for the purpose of undertaking environmental inspections and audits and for the Groundwater Monitoring Program.

### 8.3A Baseline Environmental Site Assessment

(a) **(TfNSW to procure)**: TfNSW must procure and provide to Project Co a Baseline Environmental Site Assessment for the Legacy Maintenance Centre Site, no later than 1 Month prior to the Date for Handover (Legacy Maintenance Centre).

(b) **(Requirements for Baseline Environmental Site Assessment)**: The Baseline Environmental Site Assessment must:

(i) be prepared in accordance with the Environmental Guidelines;

(ii) be prepared by a Certified Environmental Consultant;

(iii) be reviewed and endorsed by a Site Auditor;

(iv) set out the condition of the Legacy Maintenance Centre Site, including thorough documentation of ground surfaces;

(v) identify and document past and present sources of potential Contamination and areas of known Contamination based on historical date;

(vi) define the nature and extent of groundwater Contamination across the Legacy Maintenance Centre Site to establish a Contamination baseline;

(vii) assess the suitability of the Legacy Maintenance Centre Site for industrial land use; and

(viii) confirm the condition and suitability of the existing network of groundwater monitoring wells for the Groundwater Monitoring Program, targeting up-gradient, operational and down gradient issues.

(c) **(Acknowledgement of condition)**: TfNSW and Project Co acknowledge and agree that the Legacy Maintenance Centre Site will, as at the Date of Handover (Legacy Maintenance Centre), be in the condition as set out in the relevant Baseline Environmental Site Assessment.

(d) **(Project Co accepts condition)**: Project Co accepts the Legacy Maintenance Centre Site at the Date of Handover (Legacy Maintenance Centre), in its condition (including any Baseline Pre Existing Contamination) and as set out in the relevant Baseline Environmental Site Assessment.

(e) **(Groundwater Monitoring Program)**: Project Co acknowledges and agrees that TfNSW or its nominee may, at the sole discretion of TfNSW, perform a Groundwater Monitoring Program and that the results of the Groundwater Monitoring Program will contribute to determining the requirements for Remediation or other action required under clause 8.4(f).
8.4 Contamination

(aa) Other than in respect of Contamination caused, contributed to or exacerbated by Project Co or its Associates and without limiting clauses 8.3(a) and 29, the references in this clause 8.4 to "Project Site" will not include the Returned Asset Site after the Date of Returned Asset Handback.

(a) **(Prevent or minimise Contamination):** Without limiting clause 8.3(a), Project Co must prevent or minimise any Contamination occurring on, or emanating from, each Project Site, in accordance with Best Industry Practices and any Environmental Requirements.

(b) **(Monitoring and testing):** Project Co must conduct any monitoring, testing or investigations of any Contamination in, on, over or under a Project Site, or which has emanated or is emanating from a Project Site, in accordance with:

(i) the Environmental Requirements;
(ii) the Construction Environmental Management Plan;
(iii) the Operational Environmental Management Plan;
(iv) the Sustainability Management Plan; and
(v) Best Industry Practices.

(c) **(Contamination Remediation Notice):** Project Co and TfNSW must promptly provide the other with a copy of any Contamination Remediation Notice served on it, and of all related correspondence which precedes or follows the issue of the Contamination Remediation Notice.

(d) **(Notification):** If Project Co discovers any Contamination in, on, over, under or emanating from a Project Site (whether or not Project Co has caused or contributed to that Contamination), it must:

(i) notify TfNSW as soon as practicable, and in any event within 5 Business Days after it discovers the Contamination; and
(ii) where Project Co and either TfNSW or any other person are each compelled by Law to give notice of the Contamination to a relevant Authority, use all reasonable endeavours to agree with TfNSW the wording and timing of that notice.

(e) **(Notification Requirements):** Project Co's notice under clause 8.4(d) must contain all relevant details in relation to the Contamination, including:

(i) the type of Contamination;
(ii) the location of the Contamination;
(iii) the nature and extent of the Contamination; and
(iv) whether it considers the Remediation of the Contamination will give rise to a Contamination Compensation Event,

to the extent such details are known at the time the notice is provided.

(f) **(Remediation):** Project Co must:
(i) Remediate:

A. any Contamination in, on, over or under a Project Site; or

B. any Contamination that is emanating, or has emanated, from a Project Site, or that is migrating, or has migrated, onto a Project Site,

where such Remediation is necessary to:

C. comply with any Environmental Requirements or any Contamination Remediation Notice, regardless of whether:

   1) the Contamination Remediation Notice is addressed to TfNSW, Project Co or any other person; or

   2) the Contamination occurred before or after Project Co or any other person was given access to the relevant Project Site;

D. ensure that there is no unacceptable risk of harm to human health or the Environment as a consequence of the Contamination, having regard to Best Industry Practices;

E. render a Project Site suitable for the Project, having regard to its use, or intended use, as an operating railway maintenance site; or

F. prevent the migration of Contamination from a Project Site to Adjoining Properties or other sites; and

(ii) comply with all requirements of any Authority in connection with any Contamination referred to in clause 8.4(f)(i) or the Remediation of that Contamination.

(g) (Disputing a Contamination Remediation Notice): Nothing in this clause 8.4 prevents Project Co from disputing the issue of a Contamination Remediation Notice with any Authority or taking an action against a third party with respect to the Contamination.

8.4A Environmental Management Representative

(a) (Appointment): TfNSW and Project Co will, if required by the Key Planning Approval, jointly appoint and engage the Independent Certifier to act as the Environmental Management Representative:

   (i) in accordance with the terms of this Deed, the Key Planning Approval and the Independent Certifier Deed; and

   (ii) independently and not as agent of TfNSW, RailCorp or Project Co.

(b) (Costs): The costs and expenses of the Environmental Management Representative will be paid to the Environmental Management Representative on an equal basis by TfNSW and Project Co.

(c) (Role): The role and functions of the Environmental Management Representative will be set out in the Independent Certifier Deed, and must include:
discharging certain functions as identified in the Key Planning Approval;

(ii) overseeing the implementation of the Construction Environmental Management Plan and all other Management Plans relating to the environment;

(iii) monitoring programs required under the Key Planning Approval and advising TfNSW upon achievement of the outcomes contemplated in the Key Planning Approval; and

(iv) advising TfNSW and the TfNSW Representative on Project Co's compliance with the Key Planning Approval.

(d) **(Cooperate):** Project Co must cooperate with the Environmental Management Representative and must:

(i) provide the Environmental Management Representative with all information and documents (including licences and Approvals relating to the Environment, environmental performance and environmental impacts); and

(ii) allow the Environmental Management Representative:

A. to attend such meetings; and

B. access such premises,

(iii) as may be:

A. necessary or reasonably required by the Environmental Management Representative or the TfNSW Representative to allow the Environmental Management Representative to perform its functions in connection with this Deed, the Key Planning Approval or the Independent Certifier Deed; or

B. otherwise reasonably requested by the Environmental Management Representative or directed by the TfNSW Representative.

(e) **(Compliance):** Project Co must:

(i) comply with the requirements of the Environmental Management Representative, including so as to allow the Environmental Management Representative to discharge any functions of the Environmental Management Representative provided for in the Key Planning Approval or the Independent Certifier Deed; and

(ii) not interfere with or improperly influence the Environmental Management Representative in the performance of any of its functions in connection with this Deed or the Independent Certifier Deed.

(f) **(No claim):** Nothing that the Environmental Management Representative does or fails to do pursuant to the purported exercise of its functions in connection with this Deed will entitle Project Co to make any Claim against TfNSW or RailCorp.

8.5 Contamination Remediation Action Plan

(a) **(Discovery of Contamination):** Promptly on discovering, or becoming aware of, any Contamination in, on, over, under or emanating from a Project Site which
Project Co is required to Remediate in accordance with clause 8.4(f), Project Co must submit to the TfNSW Representative a plan for the Remediation of that Contamination (Contamination Remediation Action Plan), prepared in accordance with the Environmental Guidelines, for review in accordance with the Review Procedures.

(b) (Contamination Remediation Action Plan details): A Contamination Remediation Action Plan submitted in accordance with clause 8.5(a) must include details of:

(i) all investigations carried out, or to be carried out, in relation to the Contamination;

(ii) to the extent that any details were not known at the time of the notice given under clause 8.4(d), the details required under clause 8.4(e);

(iii) any proposed works to effect the Remediation;

(iv) the proposed timeframe for executing the proposed Remediation works; and

(v) the estimated cost of executing the Contamination Remediation Action Plan.

(c) (Remediate any Contamination): Project Co must Remediate any Contamination it is required to Remediate under clause 8.4 in accordance with the relevant Contamination Remediation Action Plan that has been reviewed by the TfNSW Representative in accordance with the Review Procedures and the Environmental Requirements.

8.6 Project Co's entitlement to compensation for Remediation

(a) (Contamination Compensation Event): If the requirement to Remediate Contamination under clause 8.4 is a Contamination Compensation Event then to claim an extension of time, relief from performance or compensation Project Co must issue a Change Notice within 20 Business Days after discovering, or becoming aware of, the Contamination and, subject to clause 8.6(b), the Change Compensation Principles will apply.

(b) (Change Notice): If Project Co considers it is entitled to:

(i) an extension to a Date for Acceptance or other relief from performance of the Delivery Phase Activities as a result of a Contamination Compensation Event, Project Co must include in its Change Notice its claim for an extension of time, and clause 37 will apply in respect of the relief or extension of time claim (unless TfNSW and Project Co can agree on an extension of time within 20 Business Days after TfNSW receives the relevant Change Notice, in which case the agreed extension of time will apply); or

(ii) relief from performance of the Services as a result of a Contamination Compensation Event, Project Co must include in its Change Notice its claim for relief and clause 38 will apply in respect of the relief from performance of the Services claim.

(c) (Change Responses): The parties acknowledge and agree that TfNSW may issue separate Change Responses for the non-time related aspects of the relevant Contamination Compensation Event.
8.7 Native Title Claims, Heritage Claims and Artefacts

(a) (Native Title Claims): As between TfNSW and Project Co, TfNSW is responsible for:

(i) dealing with any Native Title Claim in connection with any part of a Site; and

(ii) the payment of any compensation or other moneys required to be paid to the native title holders of any part of a Site as a consequence of a successful Native Title Claim.

(b) (Artefacts): If an Artefact is discovered on or under the surface of a Site:

(i) as between TfNSW and Project Co, it will be the absolute property of TfNSW; and

(ii) Project Co must:

A. immediately notify TfNSW of the discovery;

B. permit TfNSW to watch or examine any excavation on the relevant Site;

C. take every reasonable precaution in carrying out the Project Activities so as to prevent Artefacts being damaged, removed, disturbed or destroyed until appropriate arrangements for dealing with, or removing, the Artefacts have been made; and

D. comply with the TfNSW Unexpected Heritage Finds Guideline, if applicable.

(c) (Project Co must continue to perform): If there is a:

(i) Native Title Claim or Heritage Claim in connection with; or

(ii) discovery of Artefacts on, under or over, any part of a Site, Project Co must:

(iii) continue to carry out its obligations under this Deed, except to the extent otherwise:

A. directed by TfNSW;

B. ordered by an Authority; or

C. required by Law; and

(iv) provide all reasonable assistance to TfNSW in connection with dealing with the Native Title Claim, Heritage Claim or Artefact.

(d) (Modification): If Project Co is required to cease or suspend any part of the Delivery Phase Activities or the Services (or to materially change the way the Delivery Phase Activities or the Services are carried out) because of:

(i) a Commonwealth, TfNSW or NSW Government direction;

(ii) an order of a court or tribunal of competent jurisdiction; or
(iii) a requirement of Law,

in connection with a Heritage Claim or a Native Title Claim (as the case may be) that is in connection with any part of a Site, to the extent that the cumulative cessation or suspension (or the impact of a material change in the way the Delivery Phase Activities or Services are carried out) exceeds 10 Business Days, TfNSW must direct a Modification in accordance with clause 39 in respect of the cessation, suspension or impact (as applicable).

8.8 General Site undertakings

(a) (Make good): Except to the extent expressly provided otherwise in this Deed but without limiting this clause 8, Project Co must make good, if applicable, in accordance with this Deed, any disturbance or damage caused to any part of:

(i) a Site;

(ii) the Maintenance Facility; or

(iii) the Legacy Maintenance Centre,

in connection with Project Co's or its Associates' entry, occupation or use of the Site, Maintenance Facility or Legacy Maintenance Centre.

(b) (Other undertakings): Except to the extent expressly provided otherwise in this Deed but without limiting this clause 8, Project Co:

(i) must take all measures necessary to protect and ensure the safety of people and property at each Site or in connection with the Project in accordance with Best Industry Practices;

(ii) except to the extent required for public health or safety purposes, must avoid or minimise:

A. unreasonable interference with the passage of people and vehicles;

B. obstruction to any property; and

C. the operations or activities carried out on, or adjacent to, each Site;

(iii) must prevent nuisance including any nuisance caused by unreasonable Pollution, noise, dust, light emission, vibration or disturbance, air pollution, odour on or adjacent to a Site or Adjoining Property above the levels specified in the Project Management Plan, the Construction Environmental Management Plan, the Operational Environmental Management Plan, the Sustainability Management Plan or such lower levels as may be stipulated by TfNSW (acting reasonably) from time to time;

(iv) must ensure the safety of people and property in accordance with Best Industry Practices;

(v) must promptly deliver to TfNSW a copy of every notice received by Project Co or any of its Associates which affects a Site or any Adjoining Property;

(vi) is solely responsible for any person who enters:
A. a Site;
B. the Maintenance Facility; and
C. on and from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre;

(vii) must not do or permit to be done on any part of a Site anything which may:

A. interfere with RailCorp's, TfNSW's or any of their respective Associates' access to a Site; or
B. cause TfNSW or RailCorp to breach any of its obligations in connection with any Adverse Rights to which the Delivery Phase Licence or a Maintenance Phase Licence is subject;

(viii) must not, without the prior written consent of TfNSW, exhibit on any part of the exterior of any part of a Site, the Maintenance Facility or the Legacy Maintenance Centre any notice, sign, signboard or advertisement;

(ix) must not enter into or grant or agree to enter into or grant any rights or other arrangements with any person or persons relating to all or any part of a Site, the Maintenance Facility or the Legacy Maintenance Centre except as permitted by this Deed; and

(x) must as soon as reasonably practicable remove all temporary protection or other structures or equipment erected in connection with the Delivery Phase Activities at the Maintenance Facility Site or at the Returned Asset Site or the Upgrade Services at the Legacy Maintenance Centre, as the case may be, in accordance with Best Delivery Practices:

A. in the case of the Maintenance Facility Site, following the Date of Provisional Acceptance (Maintenance Facility);
B. in the case of the Returned Asset Site, following Returned Asset Handback; and
C. in the case of the Legacy Maintenance Centre Site, following the Date of Provisional Acceptance (Upgrade Services).

(Recovery of nuisance and interference): If, in the reasonable opinion of TfNSW or the Independent Certifier, Project Co has failed to meet its obligations under clause 8.8(b)(i), 8.8(b)(ii), 8.8(b)(iii) or 8.8(b)(iv), Project Co must comply with any reasonable direction of TfNSW or the Independent Certifier to:

(i) stop or change the manner of carrying out the Project Activities; and
(ii) amend any applicable Management Plan to remedy the nuisance, interference or other non-compliance and submit to the TfNSW Representative for review in accordance with the Review Procedures.

8.9 Additional Land

(a) (Project Co responsible): Project Co acknowledges and agrees that:

(i) it is responsible for procuring such rights of access, use and occupation as it requires in relation to any Additional Land; and
neither TfNSW nor RailCorp will be liable upon any Claim by Project Co (including for an extension of time or other form of relief) arising out of or in any way in connection with identifying, or obtaining access to or the right to use, any Additional Land.

(b) (Obligations extend to Additional Land): Project Co's obligations under clauses 8.3, 8.4, 8.5 and 8.8 apply to any Additional Land.

(c) (Rehabilitation and release from Claims): As a condition precedent to achieving Final Acceptance (Project), Project Co must:

(i) rehabilitate any Additional Land in accordance with the requirements of all relevant Authorities and the owner or occupier of such land, to the extent that Project Co's access, use or occupation of the Additional Land has caused or contributed to its requirement for such rehabilitation; and

(ii) in respect of each part of the Additional Land with a different owner or occupier, provide to TfNSW a release from all Claims arising out of Project Co's access, use or occupation of such Additional Land:

A. executed by the owner or occupier of the Additional Land; and

B. on terms satisfactory to TfNSW.

8.10 NGER Legislation

If TfNSW, RailCorp or the Operator incurs liability under or in connection with the NGER Legislation as a result of or in connection with the Project, then Project Co must:

(a) (Comply with NGER Legislation): assist TfNSW, RailCorp and the Operator to comply with the NGER Legislation in relation to the Project; and

(b) (Provide Emissions and Energy Data): provide Emissions and Energy Data to TfNSW, RailCorp or the Operator within 10 Business Days of receiving a written request for such data from TfNSW, RailCorp or the Operator.

9. Utility Infrastructure

(a) (No representations): Project Co is not entitled to make any Claim, and TfNSW and RailCorp make no warranty or representation, and give no advice as to the availability, adequacy, location or completeness of any existing Utility Infrastructure above or below the surface of a Site.

(b) (Project Co assumes risk): Project Co assumes the risk of the existence, location, condition and availability of Utility Infrastructure and the continuous supply of Utilities in connection with the Project Activities.

(c) (Project Co obligations): Project Co must:

(i) (Enquiries): make enquiries as to the location of existing Utility Infrastructure at the:

A. Maintenance Facility Site;

B. Returned Asset Site, until the Date of Returned Asset Handback; and

C. Legacy Maintenance Centre Site,
and liaise with the owner of that Utility Infrastructure and the relevant Utility provider as to the need for any potential relocation, protection or decommissioning of the Utility Infrastructure (as applicable);

(ii) (External Infrastructure): ensure that all External Infrastructure is provided to the boundary of the:

A. Maintenance Facility Site;
B. Returned Asset Site, until the Date of Returned Asset Handback; and
C. Legacy Maintenance Centre Site,

and is designed and constructed in accordance with Best Delivery Practices and in a condition which ensures that:

D. Provisional Acceptance (Maintenance Facility) and Returned Asset Handback will occur by the Date for Provisional Acceptance (Maintenance Facility);
E. Final Acceptance (Maintenance Facility) will occur by the Date for Final Acceptance (Maintenance Facility);
F. the Maintenance Facility meets the FFP Warranty;
G. not used;
H. not used; and
I. the Legacy Maintenance Centre and Upgrade Services meet the requirements of clause 5.4(c);

(iii) (Utility works): undertake, or procure that a Utility provider undertakes, all work in connection with Utility Infrastructure within the:

A. Maintenance Facility Site;
B. Returned Asset Site, until the Date of Returned Asset Handback; and
C. Legacy Maintenance Centre Site,

which is required to deliver the Works and Upgrade Services and ensure a continuous supply of Utilities to the:

D. Maintenance Facility;
E. Returned Asset Site, until the Date of Returned Asset Handback; and
F. Legacy Maintenance Centre Site;

(iv) (Decommissioning): decommission, in consultation with the relevant Utilities provider, any Utility Infrastructure located above or below the surface of the:

A. Maintenance Facility Site;
B. Returned Asset Site, until the Date of Returned Asset Handback; and

C. Legacy Maintenance Site,

which is redundant or will be redundant at Final Acceptance (Maintenance Facility), Returned Asset Handback or Final Acceptance (Upgrade Services) (as the case may be), or is otherwise required to be decommissioned in accordance with this Deed;

(v) (Notice): notify TfNSW at least 10 Business Days before any planned connection, disconnection or interference with existing Utility Infrastructure and liaise with TfNSW as to how best to manage the disconnection or interference taking into account the nature and requirements of the Maintenance Facility Site, the Returned Asset Site and the Legacy Maintenance Centre Site;

(vi) (Supply): ensure the continuous supply of Utilities to the Maintenance Facility Site and, on and from the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre Site;

(vii) (Agreements): enter into all agreements for the supply of Utilities to:

A. the Maintenance Facility and the Maintenance Facility Site throughout the Term;

B. the Returned Asset Site on and from Financial Close until the Date of Returned Asset Handback; and

C. the Legacy Maintenance Centre and Legacy Maintenance Centre Site on and from the Date of Handover (Legacy Maintenance Centre) and throughout the remainder of the Term;

(viii) (Access): give all Utility providers reasonable access to any part of a Site to undertake any work or provide any service in respect of the Utilities;

(ix) (No damage): not damage or destroy Utility Infrastructure;

(x) (No disruption): not unreasonably disrupt or interfere with any Utility Infrastructure or the supply of Utilities;

(xi) (Payment): arrange and pay for all Utilities consumed or used at:

A. the Maintenance Facility and the Maintenance Facility Site throughout the Term;

B. the Returned Asset Site on and from Financial Close until the Date of Returned Asset Handback; and

C. the Legacy Maintenance Centre and Legacy Maintenance Centre Site on and from the Date of Handover (Legacy Maintenance Centre) and throughout the remainder of the Term,

in accordance with the agreements entered into with the Utility providers; and
(xii) **(Efficiency):** use the Utilities provided to each Site, the Legacy Maintenance Centre or the Maintenance Facility:

A. efficiently; and

B. solely for the provision of the Project Activities.

## 10. Parties, personnel and community

### 10.1 Authorities

Project Co acknowledges and agrees that:

(a) **(Jurisdiction):** there are Authorities with jurisdiction over aspects of the Project Activities and the Sites;

(b) **(Authorities):** those Authorities may, from time to time and at any time, exercise their statutory functions and powers in a way which disrupts, interferes with or otherwise affects the Project Activities; and

(c) **(Co-operation):** it will co-operate with and co-ordinate its Project Activities with those Authorities as is required by them.

### 10.2 TfNSW Representative and delegation

(a) **(Natural person):** TfNSW will ensure that at all times throughout the Term there is a natural person appointed by it as the TfNSW Representative for the Project.

(b) **(Identity):** As at the date of this Deed, the TfNSW Representative is the party nominated as such in item 26 of the Contract Particulars.

(c) **(Agent of TfNSW):** The TfNSW Representative will administer this Deed on behalf of TfNSW and will exercise all rights, powers, authority and functions of TfNSW under this Deed as TfNSW’s agent.

(d) **(Oral directions):** The TfNSW Representative may give a direction orally but will as soon as practicable confirm that direction in writing.

(e) **(Replacement):** TfNSW may at any time replace the TfNSW Representative, in which event TfNSW will appoint another person as the TfNSW Representative and notify Project Co of that appointment.

(f) **(Delegation):** TfNSW may at any time delegate the exercise of any power or authority of the TfNSW Representative to a person other than the then appointed TfNSW Representative and may terminate or vary that delegation.

(g) **(Notification of delegation):** TfNSW will promptly notify Project Co of the identity of each delegate, the powers and authority delegated (including any conditions applying to the delegated power).

(h) **(Vary or terminate delegation):** TfNSW may vary or terminate any delegated power or authority of the TfNSW Representative but must promptly notify Project Co of any such variation or termination.
10.3 **Project Co Representative**

(a) **(Natural person):** Project Co must ensure that at all times throughout the Term there is a natural person appointed by it as Project Co Representative in respect of the Project.

(b) **(Identity):** As at the date of this Deed, the Project Co Representative is the party nominated as such in item 21 of the Contract Particulars.

(c) **(Employee):** The Project Co Representative must be an officer or employee of Project Co or a Related Body Corporate of Project Co and must be employed full time on the Project.

(d) **(Replacement):** The Project Co Representative is one of the Key People and can accordingly only be replaced in accordance with clause 10.6.

(e) **(Contact):** The Project Co Representative must act as the principal point of contact between Project Co and TfNSW in respect of the administration of this Deed, and be available to TfNSW as and when required.

(f) **(Directions):** A direction is given to Project Co if it is given to the Project Co Representative.

(g) **(Authority and skills):** Project Co must ensure that at all times during the appointment of the Project Co Representative, the Project Co Representative has:

(i) the authority to perform its role and duties and discharge its obligations under this Deed; and

(ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of Project Co Representative.

(h) **(Duties during the Term):** The Project Co Representative must perform the duties of the Project Co Representative under this Deed, including to:

(i) **(spokesperson):** act as the spokesperson for Project Co;

(ii) **(partnership):** ensure the ongoing implementation of a partnership with TfNSW;

(iii) **(liaison):** liaise and generally deal with stakeholders;

(iv) **(manage):** represent the views of Project Co and manage and co-ordinate issues with any Project Co Associate prior to presentation to TfNSW;

(v) **(presence):** ensure a strong presence and consistent project management role for Project Co in the implementation of the Project; and

(vi) **(appoint temporary replacement):** appoint a person with the equivalent qualification, experience, ability and expertise to temporarily act as Project Co Representative before taking any annual or other leave.
10.4 Project Director

(a) (Natural person): Project Co must ensure that from Financial Close until at least 12 Months after the Date of Final Acceptance (Project), there is a natural person appointed by it as the Project Director in respect of the Project.

(b) (Employee): The Project Director must be an officer or employee of Project Co and must be employed only as the Project Director, and not in any other role in respect of the Project.

(c) (Replacement): The Project Director is one of the Key People and can accordingly only be replaced in accordance with clause 10.6.

(d) (Contact): The Project Director must be available to TfNSW as and when required.

(e) (Presence): Project Co must ensure that the Project Director is present at each Site at such times as are necessary to ensure that Project Co is complying with its obligations under this Deed and upon reasonable request by TfNSW.

(f) (Reporting): The Project Director must report directly to the Project Co Representative.

(g) (Authority and skills): Project Co must ensure that at all times during the appointment of the Project Director, the Project Director has:

(i) the authority to perform its role and duties and discharge its obligations in accordance with clause 10.4(h) and elsewhere in this Deed; and

(ii) a detailed knowledge of the Project and sufficient experience and skills to undertake the role of Project Director.

(h) (Role of Project Director): The role of the Project Director includes overseeing the proper undertaking of the following functions:

(i) (Manage design process): manage and be heavily engaged in the Design Development Process in accordance with the Design Development Schedule;

(ii) (Co-ordinate Subcontractors): co-ordinate, manage and liaise with the Subcontractors and oversee the performance by the Delivery Subcontractor, Depot Subcontractor and other Subcontractors of their Subcontracts during the term of the Project Director's appointment;

(iii) (Co-ordinate Technical Documents): co-ordinate all Technical Documents and all information within them, and all communications with TfNSW in connection with the Technical Documents;

(iv) (Co-ordinate Project Co AEO Authorised Representatives): co-ordinate, manage and liaise with each Project Co AEO Authorised Representative and oversee and ensure the performance of:

A. each Project Co AEO Authorised Representative's respective core accountabilities (as described in item 15 of the Contract Particulars, under 'Position Description Attributes'); and

B. the following functions:

1) (Quality): examining the Technical Documents prior to submission to the TfNSW Representative.
or Verification and Acceptance Reviewing Party (as applicable) in accordance with the Review Procedures, for errors, omissions, inconsistencies and discrepancies and take all steps to ensure they are rectified; and

2) (Certification):

a) certifying, in respect of all Technical Documents prior to submission to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable), that each respective Project Co AEO Authorised Representative has complied with their respective obligations referred to in clause 10.4(h)(iv)B.1) and are not aware of any non-compliance with the relevant requirements of this Deed including the Design Requirements; and

b) certifying in respect of all relevant Management Plans prior to submission to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable), that it is not aware of any non-compliance with the relevant requirements in the Project Scope and Requirements;

(v) (Operational requirements): ensure that the operational requirements are appropriately considered in the design, manufacture, construction, supply, testing and commissioning of the Maintenance Facility and other Assets;

(vi) (Liaison): attend on and liaise with the persons performing the testing (including Verification Activities) and commissioning of the Works and Upgrade Services;

(vii) (Co-ordinate Works): co-ordinate the execution of the Works and Upgrade Services to facilitate achievement of Acceptance of each Asset by the relevant Date for Acceptance;

(viii) (Manage transition process):

A. manage and be heavily engaged in the process of preparing for each Asset to become operational and for commencement of the Services;

B. co-ordinate the execution of the Operational Readiness Plan in order to facilitate achievement of Acceptance in respect of each Asset by the relevant Date for Acceptance and delivery of the Services; and

C. convene and attend regular co-ordination meetings with TfNSW in relation to the transition from the Delivery Phase to the Maintenance Phase; and
(ix) (appoint temporary replacement): appoint a person with the
equivalent qualification, experience, ability and expertise to temporarily
act as Project Director before taking any annual or other leave.

10.5 Not used

10.6 Key People and Required People

(a) (Key People): Project Co must:

(i) (Requirement to employ or engage): ensure that the Key People are
employed or engaged in the roles specified in item 15 of the Contract
Particulars;

(ii) (Restrictions on replacement): subject to clause 10.6(a)(i), not
replace the Key People or delegate the functions of the Key People
without TfNSW's prior written approval (which will not be unreasonably
withheld); and

(iii) (Replacement in certain circumstances): if any of the Key People die,
become seriously ill or resign from the employment of Project Co or any
of its Associates or receive a promotion, replace the relevant Key People
with persons:

A. approved by TfNSW (such approval not to be unreasonably
withheld); and

B. who possess at least equivalent qualification, experience,
ability and expertise required in relation to the relevant job, as
specified in item 13, 15 or 21 (as applicable) of the Contract
Particulars, under 'Position Description Attributes'; and

(iv) (Reporting): ensure that each Project Co AEO Authorised
Representative reports to the Project Co Representative.

(b) (Required People): Project Co must:

(i) (Requirement to employ or engage): ensure that the Required People
are employed or engaged in the roles specified in item 22A of the
Contract Particulars;

(ii) (Minimum requirements): ensure that at all times, the persons
appointed as the Required People meet at least the minimum
requirements for the relevant role, as specified in item 22A of the
Contract Particulars;

(iii) (Restrictions on replacement): without prejudice to clause 10.6(b)(ii),
only replace the Required People with, or delegate the functions of the
Required People to, persons who possess at least equivalent
qualifications, experience, ability and expertise required in relation to the
relevant job, as specified in item 22A of the Contract Particulars under
'Position Description Attributes';

(iv) (Provide CV): on or before replacing any of the Required People or
delegating any of the functions of the Required People pursuant to
clause 10.6(b)(iii), provide the TfNSW Representative with a copy of the
CV of the replacement person or the person to whom such functions are
to be delegated (as applicable); and
(v) **(Handover period):** except where any of the Required People are no longer available due to:

A. death;

B. illness; or

C. having been terminated under that employee's employment contract for:
   1) breach of any of Project Co or Project Co's Associates' corporate policies; or
   2) the employee's wrongful act or omission,

ensure that any Required People employed in the following roles:

D. Jobs and Skills Manager, Aboriginal Participation Manager or Industry Participation Manager who are to be replaced, continue for a minimum 1 Month handover period, and to the extent reasonably possible, continue for total 3 Month handover period; or

E. all other Required People who are to be replaced, continue for a 1 Month handover period,

with the appointed replacement person, if requested by the TfNSW Representative.

10.7 **Project Control Group**

(a) **(Establishment):** Project Co and TfNSW will establish a group consisting of the following members (together the Project Control Group):

(i) the TfNSW Representative;

(ii) the Project Co Representative;

(iii) until the date that is 12 Months after the Date of Final Acceptance (Project), the Project Director;

(iv) 2 other representatives that TfNSW nominates from time to time; and

(v) 2 other representatives that Project Co nominates from time to time.

(b) **(Chairperson):** The TfNSW Representative will be the chairperson of the Project Control Group.

(c) **(Functions):** The functions of the Project Control Group will be to:

(i) monitor the overall progress of the Project Activities and compliance with this Deed;

(ii) assist in the resolution of any matters referred to the Project Control Group by a party including Disputes in accordance with clause 50;

(iii) review all reports and plans provided by Project Co, its Subcontractors and the Independent Certifier during the Term;
(iv) discuss stakeholder and community engagement; and
(v) discuss and address such other matters as the members of the Project Control Group may agree from time to time in connection with the Project.

(d) (Meetings): The Project Control Group must:

(i) meet:

A. during the Delivery Phase, at least once every 3 Months (not later than 15 Business Days after the end of each 3 Month period);

B. from the end of the Delivery Phase until the end of the Maintenance Phase, at least once every 6 Months (not later than 15 Business Days after the end of each 6 Month period); and

C. when otherwise called to meet on 10 Business Days' notice by TfNSW or Project Co. Without limiting this clause 10.7(d)(i)C, Project Co acknowledges and agrees that TfNSW may call a meeting if TfNSW is dissatisfied with Project Co's performance,

unless agreed otherwise by TfNSW and Project Co; and

(ii) conduct its meetings in the manner agreed from time to time between TfNSW and Project Co.

(e) (Reports): Project Co must, no later than 10 Business Days before each meeting of the Project Control Group convened in accordance with clause 10.7(d), give each member of the Project Control Group and the Independent Certifier (for the duration only of the Independent Certifier's term in accordance with the Independent Certifier Deed):

(i) during the Delivery Phase, the Monthly Works Report for the previous Month and the latest Status Delivery Program; and

(ii) during the Maintenance Phase, the Monthly Performance Report.

(f) (Independent Certifier): TfNSW or Project Co may require the Independent Certifier attend any meeting of the Project Control Group.

(g) (Subcontractors and other attendees): TfNSW may direct Project Co to procure the attendance of senior representatives of any of the Subcontractors (not forming part of the Project Control Group), Financiers or any of their respective Associates at any meeting of the Project Control Group.

10.8 General requirements for the Project Control Group and meetings

(a) (Meeting agendas): TfNSW will determine the agenda for each meeting of the Project Control Group, and in determining each agenda:

(i) will seek input from Project Co; and

(ii) must include any items notified to it by any other member received no later than 5 Business Days prior to the date of the meeting.
(b) **(Minutes):** TfNSW will take minutes of each Project Control Group meeting and distribute such minutes prior to the next relevant meeting.

(c) **(Continuity of membership):** TfNSW and Project Co acknowledge the importance of the Project Control Group having a continuity of membership in order to successfully carry out its functions.

(d) **(Changes to membership):** The people who are required to attend the Project Control Group meetings under this Deed may, where strictly necessary, be changed by the party they are representing, from time to time on notice to the other parties, together with details of the reason for the change.

10.8A **Senior Control Group**

(a) **(Establishment):** TfNSW and Project Co must establish a group consisting of the following members (together the **Senior Control Group**):

(i) up to 3 persons from TfNSW, being:

   A. from the date of Financial Close until the Date of Final Acceptance (Project), the Executive Director, Program Delivery (or its equivalent) of TfNSW;

   B. at all times during the Term, the Executive Director, Service Delivery and Performance (or its equivalent) of TfNSW; and

   C. from the date that is 6 Months prior to the commencement of the Maintenance Phase for the remainder of the Term, a direct report to the Executive Director, Service Delivery and Performance (or its equivalent) of TfNSW,

   or any alternative attendees which TfNSW may, in its absolute discretion, elect;

(ii) from the date of Financial Close until the Date of Final Acceptance (Project), a senior representative of the Delivery Subcontractor (who must be a director of the Delivery Subcontractor) as notified by Project Co to TfNSW from time to time (and at the date of this Deed being as specified in item 27 of the Contract Particulars);

(iii) from the date of Financial Close until the Date of Final Acceptance (Maintenance Facility), a senior representative of the Depot Subcontractor (who must be a director of the Depot Subcontractor) as notified by Project Co to TfNSW from time to time (and at the date of this Deed being as specified in item 28 of the Contract Particulars);

(iv) from the date that is 6 Months prior to the commencement of the Maintenance Phase for the remainder of the Term, a senior representative of the Maintenance Subcontractor (who must be a director of the Maintenance Subcontractor) as notified by Project Co to TfNSW from time to time (and at the date of this Deed being as specified in item 29 of the Contract Particulars); and

(v) at all times during the Term:

   A. a director of Project Co;

   B. the Chief Executive Officer of the Operator or any alternative attendee which TfNSW may, in its absolute discretion, elect;
C. a senior representative of the Equity Investors (who must be a director of one of the Equity Investors);

D. the TfNSW Representative; and

E. any other person considered reasonably appropriate by TfNSW.

(b) (Functions): The functions of the Senior Control Group will be to:

(i) consider any matters which the TfNSW Representative refers to the Senior Control Group including matters relating to Annual Performance Reviews under clause 10.8C;

(ii) generally consider any unresolved matters under any Project Document to assist resolution;

(iii) prior to the commencement of, and during, the Maintenance Phase, consider and strategically plan for the Maintenance of the Maintained Rail Assets in the following year; and

(iv) review and consider such other matters relating to the Project as are agreed between TfNSW and Project Co from time to time.

(c) (Meetings): TfNSW and Project Co must procure that the Senior Control Group will:

(i) meet:

A. during the Delivery Phase, every 6 Months;

B. from the end of the Delivery Phase until the end of the Maintenance Phase, every 12 Months;

C. when otherwise convened by the TfNSW Representative, provided that the TfNSW Representative provides at least 10 Business Days prior written notice to the members of the Senior Control Group. Any notice given under this clause 10.8(c)(i)C must state the reasons why the TfNSW Representative wishes to convene the required meeting; and

D. at other times which any member of the Senior Control Group requires, where that member provides at least 10 Business Days' prior written notice to the other members of the Senior Control Group. Any notice under this clause 10.8(c)(i)D must state the reasons why the member of the Senior Control Group wishes to convene the required meeting; and

(ii) during the first meeting, agree, in writing, and document the procedures relating to meetings of the Senior Control Group, including the requirements for and timing of distribution of agendas and minutes.

(d) (Chairperson): TfNSW will appoint the chairperson of the Senior Control Group:

(i) from Financial Close until the Date of Provisional Acceptance (Unit) of the last Unit to achieve Provisional Acceptance, the Executive Director, Program Delivery (or its equivalent) of TfNSW or any alternative chairperson which TfNSW may, in its absolute discretion, elect; and
(ii) from the Date of Provisional Acceptance (Unit) of the last Unit to achieve Provisional Acceptance for the remainder of the Term, the Executive Director, Service Delivery and Performance (or its equivalent) of TfNSW or any alternative chairperson which TfNSW may, in its absolute discretion, elect.

(e) (Significant Subcontractors): TfNSW may direct Project Co to procure the attendance of representatives of any Significant Subcontractor at meetings of the Senior Control Group as observers and, if so directed, Project Co must procure such attendance.

(f) (Other attendees): TfNSW may have representatives of TfNSW, RailCorp or any Authority attend meetings of the Senior Control Group as observers.

10.8B No liability for Project Control Group and Senior Control Group

(a) (Liability): The Project Control Group and Senior Control Group:

(i) are consultative and advisory only and their decisions or recommendations are not binding on the parties; and

(ii) do not have any legal responsibilities, Liability or right to require any of the parties to act or refrain from acting in any way.

(b) (No limitation): The parties' involvement in the Project Control Group or Senior Control Group does not affect their respective rights and obligations under this Deed.

(c) (Further information): TfNSW may require Project Co to provide information on matters discussed at any Project Control Group or Senior Control Group meeting and Project Co must provide that information in a timely manner.

(d) (No reliance or Claim): The parties will not be entitled to:

(i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of or any member of the Project Control Group or Senior Control Group (in its capacity as a member); or

(ii) make any Claim against any such group or committee or any member of the Project Control Group or Senior Control Group (in its capacity as a member),

arising in connection with anything which any such member does or fails to do in its capacity as a member of the Project Control Group or Senior Control Group.

(e) (Conduct at meetings): TfNSW and Project Co must, to the greatest extent possible, freely and openly discuss the Project Activities at all meetings (including the meetings of the Project Control Group and Senior Control Group), and Project Co must procure that its Associates fully respond to any questions which TfNSW may ask Project Co at any meetings conducted under this Deed within 5 Business Days.

10.8C Annual Performance Review

(a) (TfNSW performance review): After the end of each Financial Year, in respect of that Financial Year, TfNSW may conduct a review (Annual Performance Review) of the overall standard of Project Co's performance of the Project Activities, including by reference to:
(i) Project Co's performance against the Performance Measures;

(ii) the overall amount of the adjustments to the Monthly Service Payment in that Financial Year;

(iii) the overall health and quality of the working relationship between the parties; and

(iv) after the first Date of Provisional Acceptance, Project Co's compliance with the relevant Maintenance Works Program relating to that Financial Year and whether Project Co's performance of the Services is likely to have a material adverse effect on the ability of the Assets and Sites to achieve the Transition Out Condition in accordance with this Deed.

(b) (Annual performance review): The outcome of the Annual Performance Review will be a reasonable determination by TfNSW, either that:

(i) Project Co's performance and the relationship between the parties has been satisfactory; or

(ii) Project Co's performance or the relationship between the parties has not been satisfactory, in which case clause 10.8C(g) will apply.

(c) (Annual Performance Review Report): To assist TfNSW to undertake its assessment, Project Co must prepare a report (Annual Performance Review Report) in respect of the relevant Financial Year in compliance with section 31 of the Management Requirements and provide that report to TfNSW within 10 Business Days after the end of that Financial Year.

(d) (Project Co to provide information): Project Co must also promptly provide any information reasonably requested by TfNSW for the Annual Performance Review.

(e) (Reasonable endeavours): TfNSW must use reasonable endeavours to complete the Annual Performance Review within 30 Business Days after receipt of Project Co's Annual Performance Review Report and any other information requested by TfNSW.

(f) (Performance review outcome): The TfNSW Representative will confirm the outcome of the Annual Performance Review to the Project Co Representative as soon as reasonably practicable on completion of TfNSW's assessment.

(g) (Unsatisfactory performance): If TfNSW determines that Project Co's performance has not been satisfactory or that the relationship between the parties has not been satisfactory:

(i) the TfNSW Representative may direct Project Co to prepare a rectification strategy setting out steps to be taken by Project Co to improve its performance and to improve the working relationship between the parties;

(ii) within 20 Business Days of that direction, Project Co must submit details of its proposed strategy to the TfNSW Representative for review in accordance with the Review Procedures; and

(iii) Project Co must implement that strategy as Confirmed under the Review Procedures.

(h) (TfNSW direction): A direction given by the TfNSW Representative under clause 10.8C(g) may:
(i) give strategic direction to Project Co for its performance of the Project Activities in the future; or

(ii) identify measures that, without obligation, TfNSW is willing to implement to assist Project Co to:

A. improve its performance against the Performance Measures;

B. reduce or avoid adjustments to the Monthly Service Payment;

or

C. improve the working relationship between the parties.

10.8D Monthly Contract Review Meetings and reporting

(a) Monthly Contract Review Meetings: From the date of this Deed until the Expiry Date, the Project Co Representative must participate in regular Contract Review Meetings to be convened by the TfNSW Representative within 10 Business Days of the end of each Month.

(b) Purpose: The purpose of each Contract Review Meeting will be to:

(i) discuss issues relating to the progress and standard of performance of Project Co in performing the Project Activities;

(ii) discuss any other matters of importance in relation to the Project including Safety Issues and environmental issues; and

(iii) seek to agree, in writing, an action plan for the progress and resolution of all matters raised in this manner, which includes allocation of responsibility for each action and a date by which the action will be completed.

(c) Reporting: To facilitate the efficient conduct of each Contract Review Meeting, Project Co must provide the TfNSW Representative with:

(i) the reports described in section 28 of the Management Requirements by the times prescribed in section 28 of the Management Requirements; and

(ii) any additional performance or other reports required by TfNSW from time to time.

(d) Reports required under clause 10.8D(c)(ii) must be provided by Project Co within 5 Business Days of a request from the TfNSW Representative or within an alternative time period agreed between TfNSW and Project Co in writing having regard to the nature of the report.

(e) Not less than 3 Business Days prior to each Contract Review Meeting, the TfNSW Representative will provide an agenda for the meeting.

(f) If Project Co wishes to raise any matters at a Contract Review Meeting that are not contemplated in the agenda provided by the TfNSW Representative, Project Co must provide the TfNSW Representative with detailed written particulars of those matters not less than 2 Business Days before the meeting.

(g) The TfNSW Representative will prepare minutes of the proceedings of each Contract Review Meeting.
10.9 Communications, Community and Stakeholder Engagement

(a) Project Co:

(i) (Acknowledgement): acknowledges that the areas where the Project Activities are being carried out are of great importance to many people, including local residents and businesses; and

(ii) (Participation): must manage and participate in all community relations programs, involvement programs and activities as:

A. required by the Design Requirements and the Services Requirements; and

B. reasonably requested by TfNSW from time to time; and

(iii) (Public communication): subject to clause 10.9(c), must not, and must procure that its Associates do not, communicate with the media or communicate any information (including any media, marketing or promotional material) publicly (including to any elected government representative) with regard to the Project without the prior written consent of the TfNSW Representative.

(b) (Project Co Associates' obligations): Without limiting the remainder of this Deed, Project Co must ensure that its Associates are informed of their obligations pursuant to this Deed (as relevant).

(c) (Consent not required) Project Co is not required to obtain the prior written consent of the TfNSW Representative for the purposes of clause 10.9(a)(iii) to the extent any communication referred to in that clause 10.9(a)(iii) is:

(i) required by Law, provided that Project Co:

A. other than when not permitted by Law, notifies TfNSW of the requirement to make that communication prior to making it; and

B. takes all reasonable steps to minimise the extent of the communication; or

(ii) required by a relevant recognised stock exchange, subject to:

A. such communication, to the extent possible, not referring to TfNSW's, RailCorp's or any of their respective Associates' involvement in the Project; and

B. Project Co having used all reasonable endeavours to obtain TfNSW's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

10.10 Conflicts of Interest

Project Co must:

(a) (Avoid conflict): avoid any conflicts of interest that might arise in relation to the exercise or performance by Project Co or any of its Associates of any power, duty or function conferred or imposed by or under this Deed or by or under any Law; and
(b) (Notify TfNSW): notify TfNSW immediately of any conflict of interest which does arise, and act in accordance with any direction given by TfNSW to the extent that it is able to do so in accordance with Law and this Deed.

10.11 Aboriginal participation (construction)

(a) Project Co must:

(i) (NSW Government Aboriginal Participation in Construction Policy): comply with the NSW Government Aboriginal Participation in Construction Policy as amended from time to time and being, as at the date of this Deed, the edition dated June 2018 and effective from 1 July 2018 (NSW Government Aboriginal Participation in Construction Policy); and

(ii) (Submission of Aboriginal Participation Plan (Construction)): within 30 days after the date of this Deed, prepare and submit to the TfNSW Representative and the NSW Procurement Board its Aboriginal Participation Plan (Construction) which complies with the NSW Government Aboriginal Participation in Construction Policy, showing how Project Co intends to direct the target project spend to appropriate Aboriginal education and employment opportunities.

(b) (Management of Aboriginal Participation Plan (Construction)): Project Co must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan (Construction) in accordance with the NSW Government Aboriginal Participation in Construction Policy.

(c) Project Co must:

(i) (Final Aboriginal Participation Report (Construction)): at:

A. the Date of Provisional Acceptance (Maintenance Facility), provide to the TfNSW Representative its final Aboriginal Participation Report (Construction) which includes the details of actual expenses incurred in the Works in respect of the Maintenance Facility from the date of this Deed up to the Date of Provisional Acceptance (Maintenance Facility); and

B. include details in each of the above final Aboriginal Participation Report (Construction) explaining how the Aboriginal Participation Plan (Construction) has been implemented within the specified period and identify if Aboriginal participation requirements have been met.

(d) (Format of plan and report): The Aboriginal Participation Plan (Construction) and the Aboriginal Participation Report (Construction) must be prepared in accordance with the NSW Government Aboriginal Participation in Construction Policy and in the format prescribed by the NSW Procurement Board (https://www.procurepoint.nsw.gov.au/system/files/documents/apic_participation_plan_template.pdf).

(e) (Compliance): Project Co must:

(i) demonstrate to TfNSW, whenever requested, that it has met and is meeting at all times its obligations under clauses 10.11(a) to 10.11(d); and
11. Quality Assurance

11.1 General Obligations

(a) Quality Assurance System: During the Term, Project Co must, and must procure that its Key Subcontractors do, develop, implement, maintain and comply with a Quality Assurance System.

(b) Minimum standard: Project Co's, and the Key Subcontractors', Quality Assurance System must:

(i) be at least to the standard set out in Australian/New Zealand Standards AS/NZS ISO 9001 'Quality systems - model for quality assurance in design, development, production, installation and servicing' or an accepted international equivalent; and

(ii) have been certified by a JASANZ accredited certifying body, as complying with the requirements of AS/NZS ISO 9001 and Project Co's certification must remain current throughout the Term.

Subcontractors to have Quality Assurance Representative): Project Co must have and must ensure that the Key Subcontractors have a suitably qualified Quality Assurance Representative to ensure that its Quality Assurance System is developed, implemented and maintained in accordance with this Deed.

(c) Details of authority: Details of the Quality Assurance Representative's authority to oversee and resolve quality related issues (including in respect of Subcontracts) must be included in Project Co's Quality Assurance System.

11.2 Audits and Rectification of non-conformance

(a) Audit of performance: TfNSW may, as part of the audits it conducts under this Deed, audit the performance of the relevant Project Activities against the relevant Quality Management Plans and Quality Assurance Systems, including those of the Key Subcontractors.

(b) Rectification of non-conformance: Project Co must, and must ensure that each Key Subcontractor will, immediately rectify any non-conformance with its Quality Management Plan or Quality Assurance System as soon as it is notified or otherwise becomes aware of any such non-conformance.

11.3 Audits for compliance with this Deed

(a) TfNSW may procure Associate: TfNSW may undertake, or procure an Associate to undertake, at any time up to 6 Months after the last day of the Term audits of the Project Activities or the Assets to verify Project Co's compliance with the TfNSW Project Documents, including the WHS Management Plan (as applicable).

(b) Notice of audit: Where it is reasonably able to do so, TfNSW will provide Project Co with no less than 10 Business Days' notice of any audit under this clause 11.
(c) **(Minimisation of disruption):** Where TfNSW carries out or procures the carrying out of an audit under this clause 11, TfNSW will use reasonable endeavours to minimise any disruption caused to the Project Activities.

(d) **(Audit obligations):** Without limiting clause 28.2, Project Co must:

   (i) provide all Project Co Material and other information requested by TfNSW or any Associates of TfNSW undertaking the audit that is relevant to the conduct of the audit; and

   (ii) arrange for those undertaking the audit on behalf of TfNSW to meet with any of Project Co’s Associates and have access to users of the Assets (to the extent that Project Co itself is entitled to such access).

(e) **(Audit scope):** An audit may include examination of:

   (i) any part of the Assets (including any tests in respect of their performance);

   (ii) the carrying out of any Project Activities;

   (iii) the Accounts and Records;

   (iv) Project Co Material; and

   (v) Project Co’s and its Associates’ processes and methodologies.

(f) **(TfNSW may provide report and request meeting):** TfNSW may provide a copy of any report prepared as a consequence of the audit to Project Co and its Associates and may require Project Co and its Associates to attend a meeting to discuss the audit report.

(g) **(Discussion of audit):** The Project Control Group must discuss the contents of any audit when required by TfNSW and seek to agree:

   (i) any action Project Co must undertake to ensure that it addresses any failure by any Project Co Entity to comply with the requirements of the TfNSW Project Documents; and

   (ii) the time in which any such action must be undertaken.

(h) **(Implementation of actions):** To the extent that:

   (i) the Project Control Group reaches agreement in accordance with clause 11.3(g), Project Co must, at its own cost, implement the actions so agreed; or

   (ii) the Project Control Group is unable to reach an agreement in accordance with clause 11.3(g), TfNSW may (acting reasonably but without limiting TfNSW’s rights under this Deed) direct Project Co as to:

     A. any action Project Co must (or which Project Co must procure Finance Co to) undertake to meet the requirements referred to in clause 11.3(g)(i); and

     B. the time in which any such action must be undertaken by any Project Co Entity,
and Project Co must (and must procure Finance Co), at its own cost, implement such actions.

(i) **(Liability for cost of audit):** Project Co will not be liable for any costs incurred by TfNSW performing audits under this clause 11.3, unless an audit establishes that any Project Co Entity is in material breach of a TfNSW Project Document, or has acted negligently or fraudulently in the performance of any of the Project Activities, in which case TfNSW's reasonable costs of performing the audit are to be paid by Project Co as a debt due and payable by Project Co to TfNSW.

(j) **(Audit during Delivery Phase):** If TfNSW conducts an audit in accordance with this clause 11.3 during the Delivery Phase, TfNSW will, and will procure that its Associates conducting such audit, comply with the Site Access and Interface Protocols and do not otherwise unreasonably delay Project Co in achieving Acceptance.

(k) **(Expert determination of Dispute):** Any Dispute by Project Co as to the accuracy of any audit report may be referred by either Project Co or TfNSW for expert determination in accordance with clause 52.

(l) **(Auditor-General not limited):** Without limiting this clause 11.3, the parties acknowledge and agree that, notwithstanding any provision of this Deed to the contrary:

(i) the powers and responsibilities of the Auditor-General for the State of New South Wales under the Public Finance and Audit Act 1983 (NSW) (or any substituted legislation) are not limited or affected by the terms of this Deed and each party submits to those powers and responsibilities;

(ii) any of TfNSW, RailCorp and any Project Co Entity may be the subject of an audit by the Auditor-General pursuant to the Public Finance and Audit Act 1983 (NSW); and

(iii) without limiting clause 11.3(l)(i), Project Co undertakes that it will (and will procure Finance Co), at its own cost, cooperate and fully comply with the directions of the Auditor-General and TfNSW in relation to any audit referred to in clause 11.3(l)(ii).

12. **Subcontracting and third party arrangements**

12.1 **Subcontracting**

Project Co:

(a) **(Notification):** must notify TfNSW of all Subcontractors it intends to engage to undertake the Project Activities;

(b) **(Project Activities):** must not subcontract the performance of the Project Activities or any part of them except in accordance with this clause 12;

(c) **(TfNSW Project Documents):** is not relieved from any or all of its obligations or Liabilities under the TfNSW Project Documents as a result of subcontracting any of those obligations or Liabilities or, without limiting clause 2.12, the TfNSW Representative reviewing and commenting on Key Subcontracts or Significant Subcontracts in accordance with the Review Procedures;

(d) **(Responsible for subcontractors):** will be responsible for the acts and omissions of any Subcontractor and their respective Associates in carrying out the Project Activities as if such acts or omissions were Project Co acts or omissions; and
12.2 Key Subcontracts and Significant Subcontracts

(a) (Employment): Project Co must employ the Key Subcontractors and Significant Subcontractors as specified in items 17 and 24 of the Contract Particulars in the relevant roles specified in items 17 and 24 of the Contract Particulars.

(b) (Restrictions): Project Co must not, and must ensure none of its Associates:

(i) amend or agree to amend, grant an indulgence, waive or accept any waiver, release or adjustment of any rights to or under any Key Subcontract, any Significant Subcontract or the Interface Deed in a way that would:

A. have a material adverse effect on the ability of Project Co to perform and observe its obligations under any Project Document;

B. have a material adverse effect on the rights, or increase the Liabilities or obligations, of TfNSW or RailCorp under any Project Document or the ability or capacity of TfNSW or RailCorp to exercise its rights or perform its obligations under a TfNSW Project Document; or

C. have a material adverse effect on the operation or Maintenance of the Network; or

(ii) terminate, rescind, novate or assign, or agree to any termination, rescission, novation or assignment of any of the Key Subcontracts, any Significant Subcontract or the Interface Deed; or

(iii) replace a Key Subcontractor or Significant Subcontractor,

(Subcontract Changes) without the prior consent of TfNSW (which will not be unreasonably withheld), provided that TfNSW may withhold its consent where:
(iv) the Subcontract Changes would result in the Key Subcontract or Significant Subcontract not complying with clauses 12.2(d), 12.3(a)(iii) or 12.3(a)(iv);

(v) Project Co has not provided sufficient information to TfNSW in order to allow TfNSW to assess the Subcontract Changes (including copies of Subcontracts in accordance with clause 12.1(e));

(vi) in respect of a replacement Key Subcontractor or Significant Subcontractor, the proposed replacement Subcontractor:

A. is not of at least the same or similar standing and of at least the same or similar level of experience as the Subcontractor it is replacing or otherwise does not comply with clause 12.3(a)(ii);

B. has not provided sufficient guarantees in respect of the proposed replacement Subcontractor's obligations, in a form reasonably satisfactory to TfNSW; or

C. if required by clause 12.2(c), the proposed replacement Subcontractor has not provided a Side Deed; or

(vii) the Subcontract Change involves the Key Subcontracts or clauses 2.1, 4.4 or 12 or the definition of Recurrent Defect in the Interface Deed and such Subcontract Change would have an adverse impact on TfNSW's rights, Liabilities or obligations in connection with the Deed of Novation, the Maintenance Subcontract, the Parent Guarantee given by the Parent Guarantor of the Maintenance Subcontractor or the Maintenance Phase Licences.

(c) **(Side Deed):** Project Co must:

(i) procure from:

A. each Key Subcontractor;

B. each Design Consultant;

C. each Depot Subcontractor; and

D. any other Significant Subcontractor (if required by TfNSW) to the extent identified as providing a Side Deed in table 5 in the Contract Particulars; and

(ii) use its best endeavours to procure from any other Significant Subcontractor not identified as providing a Side Deed in table 5 in the Contract Particulars, if required by TfNSW,

an executed deed substantially in the form of the Side Deed applicable to that Subcontractor or, if none is applicable, in accordance with the form of the Subcontract Side Deed.

(d) **(Prescribed terms):** Project Co must ensure that each Key Subcontract and Significant Subcontract includes a clause which provides that, if this Deed is terminated in accordance with clause 49:

(i) in respect of each Key Subcontract:
subject to the terms of the relevant Side Deed, any party to the Key Subcontract may terminate the Key Subcontract; and

B. in the case of termination of this Deed other than for a Default Termination Event in accordance with clause 49.4, Project Co will pay to the Key Subcontractor, an early termination amount which is no greater than the aggregate of:

1) the contract value of the work or services properly executed in accordance with the Key Subcontract up to the date of termination;

2) reasonable costs and expenses properly incurred up to the date of termination in expectation of completing the work or services under the Key Subcontract;

3) Liabilities to third parties (excluding any Related Body Corporate of the Key Subcontractor, other than a Related Body Corporate that is a subcontractor of the Key Subcontractor under a subcontract that was entered into on an arm's length basis and is on commercial terms) arising directly as a consequence of the termination of the Key Subcontract; and

4) in addition to the amounts referred to in clauses 12.2(d)(i)(B.1) to 12.2(d)(i)(B.3), where the termination of this Deed occurs pursuant to clause 49.2 only:

a) an amount in respect of loss of profit which must not exceed the relevant Permitted Loss of Profit Amount;

b) 

c) 

which amounts are due and payable under the relevant Key Subcontract but remain unpaid at the date of termination of the Key Subcontract; and

in respect of each Significant Subcontract, subject to the terms of the relevant Side Deed, if the Significant Subcontract is terminated, Project Co or the relevant Key Subcontractor (as the case may be) must ensure
that the Liability of TfNSW, RailCorp or any of their respective Associates in respect of any Termination Payment or under the Project Documents or otherwise at Law in connection with any early termination amount payable to the Significant Subcontractor is no greater than the aggregate of:

A. the contract value of the work or services properly executed in accordance with the Significant Subcontract up to the date of termination;

B. reasonable costs and expenses properly incurred up to the date of termination in expectation of completing the work or services under the Significant Subcontract;

C. Liabilities to third parties (excluding any Related Body Corporate of the Significant Subcontractor, other than a Related Body Corporate that is a subcontractor of a Significant Subcontractor under a subcontract that was entered into on an arm's length basis and is on commercial terms) arising directly as a consequence of the termination of the Significant Subcontract; and

D. in addition to the amounts referred to in clauses 12.2(d)(ii)A to 12.2(d)(ii)C, where the termination of this Deed occurs pursuant to clause 49.2 only an amount in respect of loss of profit which must not exceed the relevant Permitted Loss of Profit Amount,

which amounts are due and payable under the relevant Significant Subcontract but remain unpaid at the date of termination of the Significant Subcontract.

12.3 Requirements for subcontracting

(a) (Engagement of subcontractors): Without limiting clause 12.2, Project Co must not engage any Subcontractor, or allow any Subcontractor to be engaged, in connection with the Project, unless:

(i) if TfNSW requires Probity Investigations to be carried out in respect of that Subcontractor, TfNSW's probity requirements as described in clause 64 are satisfied;

(ii) the proposed Subcontractor has the financial capacity, applicable registrations and certifications, experience and capability to perform the subcontracted obligations to at least the standards required by this Deed;

(iii) in respect of a Key Subcontract, the Key Subcontract contains further provisions expressly recognising and permitting the exercise by TfNSW of its rights under and contains all relevant provisions prescribed by (if applicable) clauses 2.15(b), 6A.5, 6A.8, 10.4(h), 10.7(g), 10.8(e), 11.1, 11.2, 12.1, 12.2, 12.4, 12.7(b), 13.1, 13.2, 13.3(a) to 13.3(c), 13.3(d)(ii), 15.2(c), 17.2, 20.1, 28.2, 36.1(a)(vii), 41, 46, 48, 49, 54, 58, 59, 62, 63 and 64;
(iv) in respect of a Significant Subcontract, the Significant Subcontract (other than to the extent a Significant Subcontract is identified as not including a provision set out below in table 5 in the Contract Particulars) contains further provisions expressly recognising and permitting the exercise by TfNSW of its rights under and contains all relevant provisions prescribed by (if applicable) clauses 12.4, 13.1, 20.1, 28.2, 36.1(a)(vii), 41, 54, 62, 63 and 64; and

(v) in respect of a Key Subcontractor or Significant Subcontractor:

A. Project Co has submitted that draft Key Subcontract or Significant Subcontract to the TfNSW Representative for review in accordance with the Review Procedures; and

B. Project Co is entitled to proceed to enter into that Subcontract in accordance with section 7.1 of the Review Procedures.

(b) (Occurrence of Probity Event): If, following a Probity Investigation in respect of a proposed Subcontractor, TfNSW:

(i) determines that a Probity Event has occurred in respect of a Subcontractor or a Relevant Person engaged by that Subcontractor; and

(ii) is of the opinion that it is consequently not desirable for that Relevant Person to take part in the management or performance of the Subcontract, or for the Subcontractor to be engaged in connection with the Project,

TfNSW may (as the case may be):

(iii) direct Project Co that the Subcontractor must not be engaged in connection with the Project; or

(iv) approve the Subcontract:

A. on condition that the Relevant Person not take part in the management or performance of the Subcontract;

B. on such other conditions as TfNSW considers necessary to quarantine that Relevant Person from the Project; or

C. on condition that the Relevant Person not be given Confidential Design Information or Personal Information, or such other conditions as the TfNSW Representative considers necessary to quarantine that Relevant Person from the Project and on conditions that the Subcontractor provides its written undertaking to the TfNSW Representative to comply with such conditions.

(c) (Compliance with Subcontractor obligations): Project Co must, and must procure that all Key Subcontractors and Significant Subcontractors, comply with their respective obligations under each Subcontract they enter into.

12.4 Payment of amounts owed to Subcontractors

(a) (Copies of notices under Security of Payment Act): Project Co must ensure that, within:
(i) 2 Business Days after any notice or document under the Security of
Payment Act (excluding any ‘payment claim’ or ‘payment schedule’ as
those terms are defined under the Security of Payment Act) is given to,
or received by, Project Co or any Subcontractor; or

(ii) 1 Business Days after notice of a Subcontractor's intention to suspend
work under a Subcontract in accordance with the Security of Payment
Act is given to, or received by, Project Co or any Subcontractor,

a copy of that notice is given to TfNSW.

(b) (Suspension under Security of Payment Act): If a Subcontractor has become
entitled to suspend work under a Subcontract in accordance with the Security of
Payment Act because of a failure by Project Co or any Subcontractor to pay
moneys due and payable to that Subcontractor, TfNSW may pay or procure
payment to the Subcontractor the amount owing to the Subcontractor in connection
with that work, and any amount so paid will be a debt due and payable by Project
Co to TfNSW. Where practicable, TfNSW will provide prior written notice to Project
Co prior to paying the relevant Subcontractor.

(c) (TfNSW may pay Subcontractors): Notwithstanding clause 12.4(b), if any amount
is:

(i) certified as payable; or

(ii) otherwise due and payable,

to a Subcontractor under a Subcontract, and Project Co or the relevant
Subcontractor does not pay such amount to that Subcontractor in accordance with
that Subcontract, then, without limiting any provision of the Financiers' Tripartite
Deed, TfNSW may pay or procure payment of such amount to that Subcontractor
provided it has given Project Co 4 Business Days' notice of its intention to do so,
and any amount so paid to that Subcontractor will be a debt due and payable by
Project Co to TfNSW.

(d) (Payment withholding): If TfNSW receives a payment withholding request from a
Subcontractor under section 26A of the Security of Payment Act, TfNSW will be
entitled to withhold the amount in the request from any payment due to Project Co
without any obligation on TfNSW to consider whether the notice is valid and
whether section 26B(2) of the Security of Payment Act applies.

12.5 Obligations as to Claims made on pass-through basis

Project Co must, in circumstances where it makes any Claim against TfNSW as a
consequence of a Claim that has been made by a Subcontractor against Project Co, take
reasonable steps to ensure that any such Claim made by the Subcontractor is bona fide, prior
to making any related Claim against TfNSW, and must notify TfNSW of the steps it has taken
prior to, or at the same time as, it makes the Claim against TfNSW.

12.6 Industrial issues

Project Co:

(a) (Solely responsible): has sole responsibility for, and must manage, all aspects of
industrial relations in connection with the Project; and

(b) (To inform TfNSW): must keep TfNSW fully and immediately informed of industrial
relations issues or action which affect or are likely to affect the carrying out of the
Project Activities and what action or measures (including settlements) Project Co
has taken or proposes to take to overcome the effects of such industrial relations
issues or action.

12.7 Competence

(a) (Project Co to ensure competence): Project Co must ensure that all persons
employed or engaged on the Project Activities hold appropriate qualifications and
have received appropriate training for their intended duties, and provide evidence of
such qualifications and training to TfNSW as reasonably requested.

(b) (Incompetence): If TfNSW notifies Project Co of any person employed or engaged
to carry out the Project Activities who, in TfNSW's reasonable opinion, is
incompetent, does not meet the standard required by clause 12.7(a), or is negligent,
dishonest or guilty of misconduct, then Project Co must promptly:

(i) remove the person or ensure that such person is promptly removed from
carrying out the Project Activities;

(ii) replace the person or ensure that such person is promptly replaced; and

(iii) ensure that the person is not again employed or engaged to carry out the
Project Activities.

12.8 General interface requirements

(a) (Coordination): Project Co acknowledges that TfNSW, RailCorp and either of their
respective Associates and any other person authorised by TfNSW or RailCorp
(together, the Interface Parties) may carry out:

(i) Operations Functions; or

(ii) work, services, activities and functions:

A. in connection with the Assets, the Stabling Yards and the
Legacy Maintenance Centre;

B. otherwise in connection with the Project Activities; or

C. adjacent to or in the vicinity of the Works, the Upgrade
Services, the Assets, the Sites or the Network,
simultaneously with Project Co's performance of the Project Activities.

(b) (Co-operation): Except to the extent Project Co is expressly entitled to relief as a
Compensable Intervening Event or Compensable Extension Event, Project Co
bears all risk in respect of the Interface Parties and must:

(i) permit the Interface Parties to undertake their work, services, activities
and functions;

(ii) fully co-operate with the Interface Parties;

(iii) carefully co-ordinate and interface the Project Activities with the work,
services, activities and functions carried out or to be carried out by the
Interface Parties;

(iv) carry out the Project Activities so as to minimise interference, disruption
or delay to the work, services, activities and functions of the Interface
Parties; and
(v) notify TfNSW of any problems which the undertaking or intended undertaking of any works, services, activities or functions of the Interface Parties may have on the carrying out of the Project Activities as soon as possible after becoming aware of such problems.

(c) **[Operator Interface Agreement]**: Project Co must, and must procure that its Key Subcontractors:

(i) use reasonable endeavours to negotiate and enter into interface agreements with the Operator in respect of any matter as directed by TfNSW from time to time (Operator Interface Agreement);

(ii) prior to execution of any Operator Interface Agreement, submit a draft of the Operator Interface Agreement to the TfNSW Representative for review in accordance with the Review Procedures;

(iii) comply with their obligations under any executed Operator Interface Agreement; and

(iv) not amend or agree to amend, grant an indulgence, waive or accept any waiver, release or adjustment of any rights to or under any Operator Interface Agreement without TfNSW's prior written approval.

(d) **[No Claims]**: Project Co acknowledges and agrees that:

(i) TfNSW or RailCorp may, but are not obliged to, be party to an Operator Interface Agreement; and

(ii) except to the extent specified in an Operator Interface Agreement to which TfNSW or RailCorp is party, Project Co is not entitled to make any Claim against TfNSW, RailCorp or any of their respective Associates in connection with an Operator Interface Agreement, including any Claim in respect of the negotiation, execution, performance or non-performance by any party to an Operator Interface Agreement.

### 12.9 Transport Planning

(a) **[No restriction on changes to transport network or other transport initiatives]**: Nothing in the TfNSW Project Documents will restrict, or require the exercise of, any right of TfNSW, RailCorp, or any Rail Entities, directly or through any Authority, to:

(i) develop, manage or charge the transport network in New South Wales, Queensland or Victoria;

(ii) make policy decisions in relation to the development and implementation of transport planning in New South Wales, Queensland or Victoria;

(iii) develop or implement any transport related policies or initiatives in New South Wales, Queensland or Victoria.

(b) **[Right to change transport network]**: Without limiting clause 12.9(a), TfNSW, RailCorp, the Rail Entities and all Authorities may on their own account exercise or not exercise (and may authorise others to exercise or not exercise) any right they have to develop, manage or change the transport network in New South Wales, Queensland and Victoria including to:

(i) construct or install new rail infrastructure, including on or connecting to the Network;
extend, alter or upgrade existing transport infrastructure;
introduce or construct new public transport routes or services;
extend, alter or upgrade existing public transport routes or services;
otherwise implement government transport policies; or
otherwise do anything which, subject to this Deed, they are empowered to do by Law.

(c) **No Claim:** Except to the extent expressly provided in this Deed, Project Co will have no entitlement to make any Claim against TfNSW, RailCorp or any of their respective Associates with respect to any consequence of TfNSW, RailCorp, the Rail Entities or any Authority exercising, or not exercising, any right of a type referred to in this clause 12.9.

(d) **Participation:** Project Co must, and must procure that its Key Subcontractors, participate as reasonably required by TfNSW, RailCorp or the Rail Entities in the development and implementation of transport planning. This participation may involve:

- attending meetings, consultation forums and other similar events;
- reviewing and contributing to the development of proposals and strategies put forward by TfNSW, RailCorp, the Rail Entities or other transport operators and stakeholders;
- providing comments on the impact of proposals and strategies on the Project; and
- cooperating in good faith in the implementation of TfNSW's, RailCorp's or other Rail Entities' public transport policy objectives, as notified to Project Co.

## 13. Workforce

### 13.1 Employee requirements

(a) **Qualifications and training:** Project Co must:

(i) ensure that each employee of Project Co and each Subcontractor engaged to provide any Project Activities holds appropriate qualifications and has received appropriate training for the Project Activities assigned to that person; and

(ii) if requested by TfNSW, provide records and other relevant evidence required to demonstrate compliance with clause 13.1(a).

(b) **Random sample testing:** TfNSW may require any employee of Project Co or a Subcontractor engaged to provide any Project Activities within Australia to be subjected to selective or random sample testing in relation to alcohol or drugs. Project Co must have, and must procure each Subcontractor has, in place procedures to facilitate this requirement.

(c) **Results of testing:** If the results of any testing conducted in accordance with clause 13.1(b) shows that an employee exceeds any of the limits set out in TfNSW's alcohol and drug policy current at that time, then that person must...
immediately be removed from the performance of the Project Activities and may only return in accordance with TfNSW’s alcohol and drug policy current at that time.

(d) **(Denial of employment):** Without prejudice to clause 64.2(d), TfNSW may require Project Co to deny or procure that the Subcontractors deny employment to a prospective employee and refuse to engage any person or discontinue the employment or engagement of any person if:

(i) the Probity Investigation reveals information indicating that that person does not comply with the requirements of this Deed; or

(ii) TfNSW considers that that person is unsuitable or unqualified to provide the Project Activities assigned to that person.

13.2 **Principal contractor**

(a) **(Definitions):** In this clause 13.2 and clause 13.3, the terms ‘construction project’, ‘construction work’, ‘principal contractor’, ‘workplace’ and ‘WHS management plan’ have the same meanings given to those terms under the NSW WHS Act and NSW WHS Regulations. For the purposes of the NSW WHS Act and NSW WHS Regulations and this Deed, the work under this Deed and the work under any Subcontract are taken to be part of the same ‘construction project’.

(b) **(Side Deeds):** TfNSW and Project Co acknowledge and agree that under the Side Deeds TfNSW:

(i) engages each Appointed Principal Contractor as the principal contractor for any construction project forming that part of the Project Activities for which the relevant Appointed Principal Contractor will be engaged; and

(ii) authorises each Appointed Principal Contractor to have management or control of that part of the workplace to which any construction project for which they are engaged relates and to discharge the duties of a principal contractor under the NSW WHS Regulation in relation to the construction project forming that part of the Project Activities for which they are engaged.

(c) **(Depot Subcontractor’s engagement and appointment in respect of the Maintenance Facility Site):** The Depot Subcontractor’s engagement and appointment as principal contractor by TfNSW in respect of any construction project in relation to the Maintenance Facility Site will continue until the earlier of:

(i) the Date of Provisional Acceptance (Maintenance Facility);

(ii) the termination of the Depot Subcontract Side Deed in relation to that Depot Subcontractor; and

(iii) the termination of this Deed.

(cc) **(Depot Subcontractor’s engagement and appointment in respect of the Returned Asset Site):** The Depot Subcontractor’s engagement and appointment as principal contractor by TfNSW in respect of any construction project in relation to the Returned Asset Site will continue until the earlier of:

(i) Returned Asset Handback;

(ii) the termination of the Depot Subcontract Side Deed in relation to that Depot Subcontractor; and
(iii) the termination of this Deed.

(d) (Maintenance Subcontractor’s engagement and appointment): The Maintenance Subcontractor's engagement and appointment as principal contractor by TfNSW in respect of any construction project in relation to the Project Activities will continue until the earlier of:

(i) that relevant construction project being complete;

(ii) the termination of the Maintenance Side Deed in relation to that Maintenance Subcontractor;

(iii) the termination of this Deed; and

(iv) the Expiry Date.

(e) (Appointed Principal Contractor): Project Co:

(i) must procure and ensure that each Appointed Principal Contractor accepts the engagement in clause 13.2(b) and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation, the Side Deeds and the TfNSW Project Documents (as applicable) and the Appointed Principal Contractor's WHS management plan for the construction project;

(ii) must not do anything which would result in either Appointed Principal Contractor being in breach of its obligations as principal contractor under the NSW WHS Regulation; and

(iii) agrees to comply, and to ensure that its personnel comply, with all lawful directions relating to health and safety given by each Appointed Principal Contractor and if it believes that it is unable to do so, agree to notify and provide details to the Appointed Principal Contractor immediately.

Ineffective or no appointment of Appointed Principal Contractor: If TfNSW's appointment of the Appointed Principal Contractor as principal contractor is not effective for any reason, or, for any period, TfNSW has not appointed a principal contractor for any Project Activities:

(i) Project Co agrees that Project Co is appointed by TfNSW as principal contractor in respect of the Project Activities for which the Appointed Principal Contractor was engaged to perform as principal contractor (albeit that the appointment as principal contractor is not effective) or for which TfNSW has not appointed a principal contractor;

(ii) TfNSW authorises Project Co to have management or control of that part of the workplace to which the construction project for which the Appointed Principal Contractor was engaged as principal contractor (albeit, ineffectively) relates or for which TfNSW has not appointed a principal contractor and to discharge the duties of a principal contractor under the NSW WHS Regulation in relation to the construction project forming the whole or part of the applicable Project Activities; and

(iii) without limiting clauses 13.2(f)(i) and 13.2(f)(ii), if Project Co is being appointed principal contractor under this clause 13.2(f) because the appointment of the Appointed Principal Contractor by TfNSW has been ineffective, Project Co agrees that it will ensure that the Appointed Principal Contractor exercises and fulfils the functions and obligations of the principal contractor under the NSW WHS Regulation, the Appointed Principal Contractor's WHS management plan for the construction...
project, this Deed, the Side Deeds and the TfNSW Project Documents (as applicable) as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor for the construction project under the NSW WHS Regulation.

(g) (Failure to comply): If an Appointed Principal Contractor or Project Co (if appointed principal contractor) fails to comply with any of its obligations as principal contractor under the NSW WHS Regulation, this Deed, the Side Deed, any TfNSW Project Document (as applicable) or the Appointed Principal Contractor’s WHS management plan for the construction project, TfNSW may:

(i) direct Project Co (if the Appointed Principal Contractor is the principal contractor) to carry out the obligations of principal contractor and the cost incurred in carrying out these obligations will be the responsibility of Project Co; or

(ii) if Project Co is appointed the principal contractor for the construction project, carry out the obligations of principal contractor itself or have them carried out by a third party, and the cost incurred by TfNSW in having those obligations carried out will be a debt due and payable by Project Co to TfNSW.

(h) (Documents to be provided): Without limiting Project Co’s reporting or other obligations elsewhere under this Deed, Project Co must procure that each Appointed Principal Contractor will:

(i) as soon as reasonably practicable, provide Project Co with access to any registers, records and documents relating to work health safety and rehabilitation, including its WHS management plan, subcontractors’ safe work method statements, records of persons carrying out construction work, and any register of hazardous substances that the Appointed Principal Contractor is required to prepare and maintain in connection with its obligations as principal contractor; and

(ii) at all reasonable times and at the request of Project Co, provide Project Co with access to such documents or records as may be necessary to establish the compliance by the Appointed Principal Contractor with its obligations under the Side Deed and TfNSW Project Documents (as applicable), the WHS Legislation and its WHS management plan, and allow Project Co to make copies of such documents or records.

Where Project Co is appointed the principal contractor under clause 13.2(f), the obligations of the principal contractor in this clause 13.2(h) will apply to Project Co and information will be provided to TfNSW or such other third party nominated by TfNSW.

13.3 Work Health and Safety

(a) (Performance of Services and Project Activities): Project Co must perform the Services and carry out the other Project Activities:

(i) safely and in a manner that, so far as it is reasonably practicable, does not put at risk the health and safety of persons; and

(ii) in a manner that protects property.

(b) Project Co must:
(Compliance with WHS obligations): in carrying out the Project Activities,

A. ensure that it complies with all Laws and other requirements of this Deed, the Side Deeds and the TfNSW Project Documents (as applicable) and the WHS Management Plan, in respect of work health, safety and rehabilitation management; and

B. require all Subcontractors to comply with their obligations referred to in this Deed, the Side Deeds and the TfNSW Project Documents (as applicable), the WHS Legislation and the WHS Management Plan applicable to the Project Activities they are undertaking;

(WHS Management System and Plan): have in place, and comply with a WHS Management System and WHS Management Plan. Project Co must prepare and submit to the TfNSW Representative for review in accordance with the Review Procedures, a WHS Management Plan to TfNSW:

A. in relation to the Delivery Phase, before commencement of the Works;

B. in relation to the Maintenance Phase, prior to the earlier to occur of the:

1) Date of Provisional Acceptance (Simulator);
2) Date of Provisional Acceptance (Unit) of the first Unit to achieve Provisional Acceptance (Unit);
3) Date of Provisional Acceptance (Maintenance Facility); and
4) Date of Provisional Acceptance (Upgrade Services); and

C. in relation to the Upgrade Services, before commencement of the Upgrade Services,

Project Co must ensure the WHS Management Plan is Fit For Purpose, including that the content of the WHS Management Plan is accurate, appropriate and up to date (taking into account changes in the Project Activities) at all times;

(Notifications of matters and incidents): notify TfNSW immediately (and in any event within 12 hours of such matter arising) of:

A. all work health, safety and rehabilitation matters in connection with the performance of the Project Activities that are required to be notified to an Authority under the WHS Legislation (whether required to be notified by a Subcontractor or other party performing the Project Activities); and

B. all major injury incidents sustained at a Site;

(Notices issued by Authorities): notify TfNSW within 1 Business Day of receipt, of any safety related prohibition notice, improvement notice, correspondence or other notice issued by an Authority or other person in...
connection with the Project Activities (whether issued to a Subcontractor or other party performing the Project Activities);

(v) **Written assurances from Subcontractors:** institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with WHS Legislation, their obligations under the Side Deeds and TfNSW Project Documents (as applicable) in relation to work health safety and rehabilitation matters, and the WHS management plan applicable to the Project Activities they are undertaking;

(vi) **Provision of written assurances to TfNSW:** provide the written assurances referred to in clause 13.3(b)(v), together with written assurances from Project Co about Project Co’s ongoing compliance with the WHS Legislation, their obligations under this Deed, the Side Deeds and the TfNSW Project Documents (as applicable) in relation to work health safety and rehabilitation matters, and its WHS Management Plan to TfNSW. Project Co’s assurance must be based on auditing and monitoring conducted under clause 13.3(c);

(vii) **Directions:** comply with any direction about work health, safety and rehabilitation matters from an Authority or TfNSW (which may include a direction to issue a direction to a Subcontractor);

(viii) **Not to breach WHS Legislation:** ensure that it does not do anything or fail to do anything that would cause TfNSW, RailCorp, the Operator or any of their respective Associates to be in breach of the WHS Legislation;

(ix) **Cooperate in discharge of obligations:** cooperate with TfNSW, RailCorp and the Operator in respect of the discharge of any work health and safety obligations of TfNSW, RailCorp or the Operator (as applicable) in connection with the Project under the WHS Acts and WHS Regulations and:

A. comply with all reasonable requests of TfNSW, RailCorp and the Operator to assist it to discharge its obligations; and

B. refrain from doing anything that may impede TfNSW, RailCorp or the Operator in discharging its obligations;

(x) **Equivalent Subcontract clause:** procure that each Subcontract includes provisions equivalent to clause 13.3(a) to clause 13.3(c); and

(xi) **Project Activities outside the Commonwealth of Australia:** ensure that all Project Activities carried out outside of the Commonwealth of Australia are carried out in accordance with all laws and legal requirements of the jurisdiction in which the Project Activities are being carried out.

(c) **Auditing and monitoring:** Project Co must:

(i) regularly audit and monitor its compliance with the WHS Legislation, the WHS Management Plan and its obligations under this Deed, the Side Deeds and the TfNSW Project Documents (as applicable) in relation to work health safety and rehabilitation matters;

(ii) immediately undertake any corrective work or action identified in the audit as a departure from the WHS Legislation, the WHS Management Plan and its obligations under this Deed, the Side Deeds and the TfNSW
Project Documents (as applicable) in relation to work health safety and rehabilitation matters, at its expense; and

(iii) report to TfNSW about the outcome of any auditing and monitoring under this clause 13.3(c), as required by TfNSW.

Project Co must, at TfNSW’s direction, conduct auditing or monitoring as provided for in this sub-clause. Any such auditing or monitoring must be conducted within the time specified by TfNSW.

(d) (Project Co Responsible): Except in relation to the obligations of any principal contractor under the WHS Legislation appointed in accordance with this clause 13, Project Co accepts that it is:

(i) (Health and Safety): responsible for all aspects of health and safety relating to:

A. the Assets;
B. the Project Activities; and
C. the Maintenance Facility Site,

from Financial Close until the Expiry Date; and

D. the Legacy Maintenance Centre from the Date of Handover (Legacy Maintenance Centre) until Expiry Date; and

E. the Returned Asset Site from Financial Close until the Date of Returned Asset Handback,

and it cannot delegate or assign this responsibility to a third party without the prior approval of TfNSW; and

(ii) (Employment and conditions): entirely responsible for the employment and conditions of service of Project Co’s employees and must procure that each Subcontractor is likewise responsible for its employees, and that each Subcontractor complies with the same obligations and requirements as required of Project Co under this clause 13.

13.4 TfNSW may act if Project Co fails to comply

To the extent that Project Co fails to comply with any obligation under this clause 13, TfNSW may, in addition to any other remedies under this Deed or at Law, on reasonable prior notice to Project Co, do all things, or engage a third party to do all things, necessary to rectify the failure and the reasonable costs of doing so will be a debt due and payable by Project Co to TfNSW.

13.5 Long service leave levy

Before commencing construction of the Works or, to the extent applicable, the Upgrade Services or Rectification Works, Project Co must:

(a) (Payment of long service levy): pay (or procure payment) to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building or construction work under the Building and Construction Industry Long Service Payments Act 1986 (NSW) (Levy); and
14. Independent Certifier

14.1 Appointment of Independent Certifier

(a) (Appointment): TfNSW will appoint, and TfNSW and Project Co must jointly engage, the Independent Certifier to act as Independent Certifier:

(i) in accordance with the terms of this Deed and the Independent Certifier Deed; and

(ii) independently and not as agent of TfNSW, RailCorp or Project Co.

(b) (Costs):

(i) Subject to clause 14.1(b)(iv), TfNSW will pay or procure payment of the costs and expenses of the Independent Certifier (including the Independent Certifier's professional fees and costs incurred in exercising or purporting to perform its obligations under the Independent Certifier Deed but not including any payment due to the Independent Certifier in respect of any functions not associated with this Deed) to the Independent Certifier.

(ii) Subject to clauses 14.1(b)(iii) and 14.1(b)(iv), Project Co must pay to TfNSW, on demand, from time to time of the costs and expenses of the Independent Certifier paid by or on behalf of TfNSW under clause 14.1(b)(i).

(iii) To the extent that the Independent Certifier considers that the parties (as a result of their respective conduct) have a proportionate responsibility for the costs and expenses of the Independent Certifier paid by TfNSW under clause 14.1(b)(i), Project Co must pay to TfNSW, on demand, the relevant proportion of the costs and expenses of the Independent Certifier paid by TfNSW under clause 14.1(b)(i) as stated in a notice from the Independent Certifier to TfNSW and Project Co.

(iv) Where TfNSW accepts a Change Notice issued pursuant to clause 26(e) to compress the schedule for Provisional Acceptance (Unit), all amounts payable to the Independent Certifier under the Independent Certifier Deed arising out of or in connection with compressing the schedule for Provisional Acceptance (Unit) will be paid directly by Project Co to the Independent Certifier.

(c) (Role): The role, functions, rights and liabilities of the Independent Certifier and the parties' rights and obligations in connection with the Independent Certifier are set out in the Independent Certifier Deed.

14.2 Other Project roles of Independent Certifier

(a) (No ability to act for Financiers): Project Co must ensure that no Financier, nor the Financiers together, appoints the Independent Certifier to act in any role in connection with the Finance Documents or Subcontracts (as applicable), without the prior consent of TfNSW and on such terms approved by TfNSW.

(b) (Independent certifier role): TfNSW consents to the Independent Certifier acting as the sub independent certifier under the Delivery Subcontract, subject to Project Co notifying TfNSW of this and ensuring that any agreement pursuant to which
Project Co and the Delivery Subcontractor engage the Independent Certifier as independent certifier for the purposes of the Delivery Subcontract:

(i) includes an acknowledgment and agreement by the parties to such agreements as to the paramountcy of the role of the Independent Certifier under this Deed; and

(ii) does not contain terms which otherwise prejudice or compromise the paramountcy of the Independent Certifier role under this Deed.

(c) **(Copy to be provided):** Project Co must promptly provide TfNSW with a copy of any agreement which appoints the Independent Certifier as the independent certifier under the Delivery Subcontract in relation to the Project.

(d) **(No cross-subsidisation):** Project Co must at all times ensure that the amounts being paid by TfNSW to the Independent Certifier under the Independent Certifier Deed are not cross-subsidising any other services which the Independent Certifier is performing in relation to the Project and must provide evidence to that effect to the TfNSW Representative.

(e) **(Separation of roles):** Subject to clause 14.2(b), if the Independent Certifier is appointed to act as the sub independent certifier under the Delivery Subcontract, Project Co must put in place and ensure the Independent Certifier puts in place appropriate arrangements to provide for the separation of the Independent Certifier's roles under this Deed and the Delivery Subcontract.

(f) **(No compromise):** Project Co must not, and must ensure that its Associates do not, do anything which would prejudice or compromise the paramountcy of the Independent Certifier's role under this Deed.

(g) **(No other roles):** Save as expressly stated in this Deed, no party may engage the Independent Certifier in respect of any other role in connection with the Project without the prior consent of the other parties.

14.3 **Determinations of Independent Certifier**

Determinations of the Independent Certifier will be final and binding except:

(a) **(Manifest error or fraud):** in the case of manifest error or fraud;

(b) **(Express provision):** if there is any other express provision in this Deed to the contrary; or

(c) **(Expert determination):** where the parties appoint the Independent Certifier to act in the capacity of an expert under clause 52 (not in the capacity of the Independent Certifier), in which case the parties' rights in respect of the determination of the Independent Certifier acting as an expert under clause 52 will be as set out in that clause.

14.4 **Replacement of Independent Certifier**

(a) **(Replacement):** If:

(i) the Independent Certifier Deed is terminated in accordance with its terms; or

(ii) the Independent Certifier is, for any reason, not appointed or ceases to act as the Independent Certifier in accordance with the TfNSW Project Documents,
TfNSW will appoint and TfNSW and Project Co will jointly engage another person to act as Independent Certifier on substantially the same terms as the Independent Certifier Deed, provided that the Independent Certifier to be engaged must:

(iii) be reasonably acceptable to TfNSW and Project Co;
(iv) have appropriate qualifications and experience; and
(v) have no interest or duty which conflicts or may conflict with its functions as the Independent Certifier.

(b) (New Independent Certifier bound): The new Independent Certifier appointed in accordance with clause 14.4(a) is bound by the exercise of any functions exercised or decisions made by TfNSW and Project Co where such functions were exercised or decisions were made under this Deed or the Independent Certifier Deed.

15. NSW Code and Guidelines

15.1 Reference

In addition to terms defined in this Deed, terms used in this clause 15 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury in July 2013 and as amended or updated from time to time). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

15.2 Primary obligation

(a) (NSW Code): In carrying out the Project Activities, Project Co must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for Procurement (NSW Code) and the NSW Guidelines.

(b) (Notification of Construction Compliance Unit): Project Co must notify the Construction Compliance Unit (CCU) and TfNSW of any possible non-compliance with the NSW Code and the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

(c) (Subcontractors bound by NSW Code): Where Project Co engages a Subcontractor or consultant, Project Co must ensure that Subcontract or consultancy contract imposes on the Subcontractor or consultant equivalent obligations to those in this clause 15 (under the heading 'NSW Code and Guidelines'), including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

(d) (Engagement of other parties): Project Co must not appoint or engage another party in relation to the Project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or the NSW Guidelines.

15.3 Access and information

(a) (Maintenance of records): Project Co must maintain adequate records of compliance with the NSW Code and the NSW Guidelines by it, its subcontractors, consultants and related entities.

(b) (Facilitation of authorised personnel): Project Co must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
enter and have access to sites and premises (or part thereof) controlled by Project Co, including but not limited to the Sites and the Maintenance Facility;

(ii) inspect any work, material, machinery, appliance, article or facility;

(iii) access information and documents;

(iv) inspect and copy any record relevant to the Project;

(v) have access to personnel; and

(vi) interview any person,
as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and the NSW Guidelines by Project Co, its subcontractors, consultants and related entities.

(c) (Production of documents): Project Co, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

15.4 Sanctions

(a) (Project Co not subject to a sanction): Project Co warrants for the benefit of each of TfNSW and RailCorp that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and the NSW Guidelines apply.

(b) (Sanctions may be imposed): If Project Co does not comply with, or fails to meet any obligation imposed by, the NSW Code or the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or the NSW Guidelines.

(c) (Disclosure of sanctions): Where a sanction is imposed on Project Co or its Associates:

(i) it is without prejudice to any rights that would otherwise accrue to the parties; and

(ii) the NSW Government (through its agencies, ministers and the CCU) is entitled to:

A. record and disclose details of non-compliance with the NSW Code or the NSW Guidelines and the sanction; and

B. take them into account in the evaluation of future procurement processes and responses that may be submitted by Project Co, or its related entities, in respect of work to which the NSW Code and the NSW Guidelines apply.

15.5 Compliance

(a) (Cost of compliance): Project Co bears the cost of ensuring its compliance with the NSW Code and the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and the NSW Guidelines.
Guidelines. Project Co is not entitled to make any Claim against TfNSW, RailCorp or the NSW Government for such costs.

(b) **(Responsibility to perform)**: Compliance with the NSW Code and the NSW Guidelines does not relieve Project Co from responsibility to perform the Project Activities and any other obligation under this Deed, or from Liability for any Defect in the Assets or from any other legal liability, whether or not arising from its compliance with the NSW Code and the NSW Guidelines.

(c) **(Proposed Modification)**: Where a Modification is proposed, and that Modification may, or may be likely to, affect compliance with the NSW Code or the NSW Guidelines, Project Co must immediately notify TfNSW of:

(i) the extent to which compliance with the NSW Code or the NSW Guidelines will be, or is likely to be, affected by the Modification; and

(ii) what steps Project Co proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the WHS Management Plan),

and TfNSW will direct Project Co as to the course it must adopt within 10 Business Days of receiving notice.
Part D - Delivery Phase obligations

16. Management Plans, Project Reports, Baseline Delivery Program and O&M Manuals

16.1 Management Plans and Project Reports

(a) (Initial Management Plans):

(i) The parties acknowledge that certain Initial Management Plans are included as Attachment 2.

(ii) Project Co must submit initial versions of the remaining Management Plans to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Review Procedures at the times required by the Project Scope and Requirements.

(b) (Preparation and Update): Project Co must prepare and develop (where there are no relevant Initial Management Plans) and otherwise update each Management Plan:

(i) in accordance with, and at the frequency required by, the Project Scope and Requirements and the other requirements of this Deed relevant to that Management Plan;

(ii) to ensure each Management Plan:

A. contains complete and accurate information in respect of the relevant aspects of the Project;

B. adequately addresses the matters it is intended to address; and

C. allows performance to be accurately measured under the Payment Schedule and Performance Regime;

(iii) ensuring that no update to any Management Plan is made in a manner which makes:

A. TfNSW's obligations under any TfNSW Project Document more onerous;

B. TfNSW's or a NSW Rail Entity's obligations under an Access Agreement more onerous;

C. increases any liability or potential liability of TfNSW, RailCorp or their respective Associates in connection with the Project; or

D. increases any liability or potential liability of TfNSW or a NSW Rail Entity under an Access Agreement;

(iv) to ensure that any updated Management Plan:

A. imposes standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
B. provide an equal or greater level of detail than,

the previous versions of that Management Plan; and

(v) to, if necessary, take account of events or circumstances which will, or may, affect the Project Activities relevant to the Management Plan, including:

A. the implementation of a Modification;
B. the occurrence of any change in Law;
C. any breach or potential breach of the warranty in clause 16.1(i);
D. any changes to the nature, understanding or status of the Services;
E. the occurrence of any change in Mandatory Requirements with which Project Co must comply;
F. the occurrence of any relevant change in Best Industry Practices;
G. any additional Approvals obtained or existing Approvals varied;
H. a significant change in the Site Conditions to those contemplated at Contract Close;
I. relevant changes in technology and work methods, particularly processes which affect the safety and the efficiency of the Delivered Rail Assets;
J. continuous improvement in the carrying out of the Project Activities; and
K. the introduction of a New Access Agreement; and

(vi) if TfNSW requests in accordance with clause 16.1(j).

(c) **(Application of Performance Measures to updates of Management Plans):** If Project Co fails to update any Management Plan at the frequency required by the Project Scope and Requirements or otherwise in this Deed, such that it is capable of being Confirmed, then TfNSW will be entitled to make a KPI Adjustment to the extent and in the manner described in section 15.4 of the Performance Regime.

(d) **(Submission):** Project Co must promptly submit each Management Plan (including each update) to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Review Procedures.

(e) **(Delivery and Performance):** Unless otherwise agreed by TfNSW, Project Co must:

(i) carry out the Delivery Phase Activities in accordance with the relevant Management Plans applicable to the Delivery Phase Activities; and
(ii) perform the Services in accordance with the relevant Management Plans applicable to the Services.

(f) **(Authority Approval):** If a Management Plan is required to be approved by an Authority, Project Co must ensure that it has obtained that Approval prior to submitting the relevant Management Plan to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Review Procedures.

(g) **(Project Reports):** Project Co must prepare and submit the Project Reports to TfNSW in accordance with the Project Scope and Requirements.

(h) **(Additional information):** Project Co must promptly provide to TfNSW any additional information in connection with the Management Plans and the Project Reports as requested by TfNSW.

(i) **(Warranty):** Project Co warrants for the benefit of each of TfNSW and RailCorp that:

(i) each Management Plan and each Project Report is complete and correct, and not false or misleading in any material respect, at the time it is provided to TfNSW; and

(ii) each Management Plan and each Project Report will, at all times, be Fit For Purpose.

(j) **(TfNSW requested update):** If at any time, Project Co has not updated any Management Plan in accordance with this clause 16.1 or any Management Plan does not comply with the requirements of this Deed, TfNSW may, by notice, request that the relevant Management Plan is amended or updated specifying:

(i) the reason(s) why an update to the Management Plan is required or why the Management Plan does not comply with this Deed; and

(ii) the time within which the update to the Management Plan must occur, and Project Co must, upon receipt of such notice, update such Management Plan as requested and clause 16.1(c) shall apply.

(k) **(Retirement of Management Plans):** If all obligations and requirements in a Management Plan have been complied with and carried out, and TfNSW and Project Co agree (in writing) that the intended purpose of that Management Plan has been fulfilled and is no longer required for the Project Activities, TfNSW and Project Co may agree that such plan will cease to be a Management Plan for the purpose of this Deed.

16.1A **Minimum Operating Standards**

(a) **(Updates and revisions):** The parties acknowledge that the Minimum Operating Standards as at Contract Close are contained in Part C2 (Minimum Operating Standards) of the Project Scope and Requirements. Project Co must update and revise such Minimum Operating Standards in accordance with this clause 16.1A.

(b) **(Minimum Operating Standards Requirements):** Project Co must update the Minimum Operating Standards:

(i) to reflect the design of the Train at Preliminary Design Review and Detailed Design Review to the extent that Project Co is entitled to proceed with the Project Activities in accordance with the design of the
Train at Preliminary Design Review and at Detailed Design Review in accordance with section 7 of the Review Procedures; and

(ii) to reflect the design or operation of the Train following any Modification, in each case which may impact the Minimum Operating Standards, provided that, in all cases, any update does not result in a downgrading of the performance criteria set out in the Minimum Operating Standards as at Contract Close.

(c) (Submission): Project Co must promptly submit the updated Minimum Operating Standards to the TfNSW Representative for review in accordance with the Review Procedures.

(d) (Change to Minimum Operating Standards not a Modification): The parties acknowledge and agree that any changes to the Minimum Operating Standards made in accordance with this clause 16.1A will not give rise to a Modification unless any such change is due to a Modification to the Project Scope and Requirements.

16.1B Presentation Standards

(a) (Updates and revisions): The parties acknowledge that the Presentation Standards as at Contract Close are contained in Part C3 (Presentation Standards) of the Project Scope and Requirements. Project Co must update and revise such Presentation Standards in accordance with this clause 16.1B.

(b) (Presentation Standards Requirements): Project Co must update the Presentation Standards to reflect the design of the Train at Preliminary Design Review and at Detailed Design Review to the extent that Project Co is entitled to proceed with the Project Activities in accordance with the design of the Train at Preliminary Design Review and at Detailed Design Review in accordance with section 7 of the Review Procedures, provided that, in all cases, any update does not result in a downgrading of the performance criteria set out in the Presentation Standards as at Contract Close.

(c) (Submission): Project Co must promptly submit the updated Presentation Standards to the TfNSW Representative for review in accordance with the Review Procedures.

(d) (Change to Presentation Standards not a Modification): The parties acknowledge and agree that any changes to the Presentation Standards made in accordance with this clause 16.1B will not give rise to a Modification unless any such change is due to a Modification to the Project Scope and Requirements.

16.2 Baseline Delivery Program

(a) (Initial Delivery Program): The Initial Delivery Program is included in Attachment 3 and does not form part of this Deed.

(b) (Update of Baseline Delivery Program): Project Co must update the Baseline Delivery Program and submit it to the TfNSW Representative for review in accordance with the Review Procedures:

(i) within 20 Business Days after Financial Close to reflect the date of Financial Close, each Date for Provisional Acceptance (as at Financial Close), each Date for Final Acceptance (as at Financial Close) and the Date for Handover (Legacy Maintenance Centre);

(ii) within 10 Business Days of Project Co being:
A. granted an extension to any Date for Acceptance;
B. instructed to accelerate the Delivery Phase Activities; or
C. permitted to compress the schedule for Provisional Acceptance (Unit) in accordance with clause 26,
in accordance with this Deed; and.

otherwise, within 10 Business Days of:

A. deciding to depart in a material way from the then current Baseline Delivery Program (without prejudice to clause 16.2(d)); or
B. any request by TfNSW or the Independent Certifier at any time,

and the updates must comply with the Programming Requirements and must not adjust any Date for Acceptance (unless an extension of time has been granted in accordance with this Deed or the update is undertaken under clause 16.2(b)(ii)).

(c) (Update of Status Delivery Program): Project Co must:

(i) maintain an up-to-date current Status Delivery Program for the purpose of inclusion in the Monthly Works Report in accordance with clause 10.7(e); and

(ii) at a minimum, update the Status Delivery Program at least Monthly (and no later than 10 Business Days prior to each meeting of the Project Control Group) to accurately reflect:

A. the actual status and progress of the Delivery Phase Activities; and
B. any other changes to the activities, times, durations or other information contained in the Baseline Delivery Program.

(d) (Departure): Project Co:

(i) acknowledges and agrees that the Baseline Delivery Program does not form part of this Deed;

(ii) must not depart from the Baseline Delivery Program without reasonable cause and must give notice to TfNSW and the Independent Certifier promptly upon becoming aware of any proposed or likely departure from the critical path in the Baseline Delivery Program, together with the reasons why it is necessary to do so to comply with this Deed; and

(iii) acknowledges and agrees that any such departure does not relieve Project Co from its obligations under this Deed, including under clause 19.2(e) or to achieve Acceptance by the relevant Date for Acceptance in respect of each Delivered Rail Asset.

(e) (Assessing Claims): Neither:

(i) TfNSW;

(ii) the TfNSW Representative;
(iii) RailCorp; nor
(iv) without limiting the Independent Certifier's obligation pursuant to clause 5.1 of the Independent Certifier Deed, the Independent Certifier,
is required to use the Baseline Delivery Program for any purpose, including for the purpose of assessing:
(v) the impact of any delay event or any extension of time; or
(vi) any Claim made by Project Co,
but may do so in their sole and absolute discretion.

(f) (No submission for review): Nothing in clause 16.2(b) or 16.2(c) affects Project Co's obligation to provide an updated Status Delivery Program as part of each Monthly Works Report in accordance with section 29 of the Management Requirements, which update is not required to be submitted to the TfNSW Representative for review in accordance with the Review Procedures.

16.3 O&M Manuals

(a) (Preparation): Project Co must prepare the O&M Manuals in accordance with:
(i) the Management Requirements; and
(ii) this clause 16.3.

(b) (Updates): The O&M Manuals must be updated by Project Co at a frequency no less than the frequency specified in the Management Requirements.

(c) (Submission): Project Co must promptly submit each O&M Manual (including each update) to the TfNSW Representative for review in accordance with the Review Procedures and the Baseline Delivery Program.

(d) (Performance): Unless otherwise agreed by TfNSW, Project Co must perform the Services in accordance with the O&M Manuals.

(e) (Additional information): Project Co must promptly provide to TfNSW any additional information in connection with the O&M Manuals as requested by TfNSW.

17. Design

17.1 Design warranties

In addition to its obligations under clause 5, Project Co must design the Works and Upgrade Services and develop the Technical Documents in accordance with the Design Requirements and so that the Delivered Rail Assets, when manufactured or constructed in accordance with the Confirmed Documents, will:

(a) satisfy the FFP Warranty; and

(b) otherwise comply with clause 32.5.

17.2 Purpose of Design Development Process

(a) (Design Development Process): Project Co agrees that:
it must comply with the Design Development Process in developing the Technical Documents;

(ii) the purpose of the Design Development Process is to develop, refine and finalise the Technical Documents through to Confirmed Technical Documents in accordance with the Design Development Schedule and this Deed so as to meet the requirements of this Deed; and

(iii) the Design Development Process itself does not constitute a Modification or otherwise entitle Project Co to make any Claim against TfNSW, RailCorp or any of their respective Associates for any Liabilities incurred by Project Co in connection with the Design Development Process.

Design Development Process: Project Co must conduct and manage, and must provide all resources required for the conduct of, all aspects of the Design Development Process in accordance with clause 5.1(a), the Design Development Schedule and as otherwise required under this Deed.

Submission: Project Co must submit the Technical Documents to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Design Development Schedule and the Review Procedures.

18. Spares, Consumables and Equipment

18.1 Initial Spares, Consumables and Equipment List

TfNSW and Project Co acknowledge and agree that:

(a) Initial Spares, Consumables and Equipment List prepared in advance: the Initial Spares, Consumables and Equipment List, has been prepared prior to the completion of the design of the Delivered Rail Assets and significantly in advance of when Project Co is required to select and procure Spares, Consumables and Equipment in accordance with this clause 18;

(b) Initial Spares, Consumables and Equipment List indicative: given clause 18.1(a), the Initial Spares, Consumables and Equipment List is indicative only and must be updated by Project Co to meet the requirements of this clause 18; and

(c) Change to Initial Spares, Consumables and Equipment List not a Modification: the update to the Initial Spares, Consumables and Equipment List described in clause 18(b) and any subsequent change to it to meet the requirements of this clause 18 will not give rise to a Modification or entitle Project Co or its Associates to make any Claim against TfNSW or RailCorp.

18.2 Spares, Consumables and Equipment selection

During the Term:

(a) Selection and purchase: Project Co must select Spares, Consumables and Equipment which:

(i) are necessary to ensure the Deliverables meet the FFP Warranty;

(ii) are necessary for the performance of the Services in accordance with Services Requirements;

(iii) are referred to or required by the Project Scope and Requirements; and
where none of (i), (ii) or (iii) above apply, are in such quantities and of such standard, quality and functionality to meet Best Industry Practices; and

(b) \textbf{(Spares, Consumables and Equipment List): Project Co must:}

(i) update the Initial Spares, Consumables and Equipment List to reflect the Spares, Consumables and Equipment selected by Project Co in accordance with clause 18.2(a) and that have a value in excess of \underline{[Redacted]} (provided that Project Co may not remove an item from the Initial Spares, Consumables and Equipment List without TfNSW's prior consent) and submit such updated list to the TfNSW Representative for review in accordance with the Review Procedures as part of the Detailed Design Review; and

(ii) regularly update the Spares, Consumables and Equipment List during the Term to reflect:

A. the Spares, Consumables and Equipment selected by Project Co during the Term in accordance with clause 18.2(a) and 18.2(b)(i);

B. any Spares, Consumables and Equipment disposed, destroyed or lost; and

C. any replacement of Spares, Consumables and Equipment that is listed on the then current Spares, Consumables and Equipment List,

and submit it to the TfNSW Representative to review in accordance with the Review Procedures.

18.3 \textbf{Equipment procurement and installation}

Project Co must procure, connect, install or locate (as applicable depending on whether the item of Equipment is loose or fixed) and commission all items of Equipment:

(a) in the locations designated in the Confirmed Documents or, if not designated in the Confirmed Documents, as otherwise required so as to ensure that the Deliverables meet the FFP Warranty; and

(b) as otherwise required under this Deed.

19. \textbf{Manufacture and construction}

19.1 \textbf{Delivery Phase Licence}

(a) \textbf{(Delivery Phase Licence): TfNSW will procure the grant to Project Co of a non-exclusive licence to allow Project Co and its Associates to enter upon and occupy:}

(i) the Maintenance Facility Site to the extent necessary to carry out the Project Activities;

(ii) the Returned Asset Site to the extent necessary to carry out the Returned Works.

(b) \textbf{(Terms of Delivery Phase Licence): The Delivery Phase Licence procured in accordance with clause 19.1(a) will be:}
(i) for a term which will:

A. commence on Financial Close; and

B. terminate:

1) in the case of the Maintenance Facility Site immediately before the grant of the Maintenance Facility Site Maintenance Phase Licence, or on earlier termination of this Deed; and

2) in the case of the Returned Asset Site on Returned Asset Handback, or on earlier termination of this Deed; and

(ii) on the terms of the form of licence for the relevant Site set out in Schedule 7.

(c) **(Other access):** Except as set out in clause 19.1(a), Project Co is solely responsible for obtaining access to and from the Maintenance Facility Site and the Returned Asset Site, and to and from any land outside the Maintenance Facility Site or the Returned Asset Site to which access is required to carry out the Project Activities.

(d) **(Coordination):** Project Co bears the risk of coordinating its access to the Maintenance Facility Site and the Returned Asset Site with any other person that uses the access ways to the Maintenance Facility Site or the Returned Asset Site.

### 19.2 Manufacture and construction

In addition to the obligations set out in clause 5, Project Co must:

(a) **(Delivery Phase Activities):** perform the Delivery Phase Activities:

(i) in accordance with the Design Requirements; and

(ii) so that the Deliverables satisfy the FFP Warranty;

(b) **(Confirmed Documents):** manufacture and construct the Works in accordance with the Confirmed Documents;

(c) **(Maintenance Facility Site):** meet the obligations set out in clause 8.8 in respect of the Maintenance Facility Site and the Returned Asset Site and otherwise keep the Maintenance Facility Site and the Returned Asset Site:

(i) safe, clean and tidy at all times; and

(ii) secure and free from all unauthorised access;

(d) **(Use of Delivery Phase Activities):** not use the Maintenance Facility Site or the Returned Asset Site for any purpose other than the Project Activities or, in the case of the Maintenance Facility Site, Approved Commercial Opportunities;

(e) **(Progress of Delivery Phase Activities):** regularly, expeditiously and diligently carry out and progress the Delivery Phase Activities to achieve Acceptance by the relevant Date for Acceptance; and

(f) **(Train Completion Works):** perform the Train Completion Works at the Maintenance Facility, other than:
Train Completion Works in respect of the Non-Continuous Production Options; and

Train Completion Works in respect of the first:

A. Short Unit (Regional);
B. Long Unit (Regional) and
C. Short Unit (InterCity).

19.3 Proceed at risk

(a) **(Right to proceed):** Project Co is only entitled to proceed:

(i) from one Design Stage (First Design Stage) to the next Design Stage without the Technical Documents for the First Design Stage having been Confirmed by the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with the Design Development Schedule and the Review Procedures; or

(ii) with the manufacture or construction of any part of the Works prior to the review of the Submitted Document for that part of the Works in accordance with the Design Development Schedule and the Review Procedures,

where it is expressly entitled to do so in accordance with the Review Procedures.

(b) **(Risk):** If Project Co proceeds with the design, manufacture or construction of the Works in accordance with clause 19.3(a):

(i) this will not:

A. prejudice TfNSW's or RailCorp's rights against Project Co whether under the TfNSW Project Documents or otherwise according to Law; or

B. relieve Project Co from, or alter or affect, its Liabilities, obligations or responsibilities whether in accordance with the TfNSW Project Documents or otherwise according to Law;

(ii) Project Co will not be entitled to make any Claim against TfNSW or RailCorp arising out of or in connection with such design, manufacture or construction; and

(iii) TfNSW may, in addition to its rights under clause 17, the Design Development Schedule and the Review Procedures, direct Project Co to amend, rectify, change or modify any Technical Documents or partially constructed Works to resolve any issues identified by the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) as part of its review under clause 17 and the Review Procedures.

19.4 Corrective Action Plan

(a) **(Review by Independent Certifier):** Project Co acknowledges and agrees that the Independent Certifier will (including where directed to by TfNSW) continually review the progress of the Delivery Phase Activities to ensure that Project Co is complying with its obligations in clauses 19.2(e), 23.1, 24(a) and 25.1.
(b) **Notice of non-compliance**: If the Independent Certifier forms the view that Project Co is not complying with its obligation in clause 19.2(c) the Independent Certifier must give notice to TfNSW and Project Co of its opinion, together with its reasons for forming that opinion.

(c) **Corrective action plan**: If the Independent Certifier issues a notice pursuant to clause 19.4(b), Project Co must, promptly, and in any event within 20 Business Days, issue a corrective action plan to TfNSW and the Independent Certifier which complies with the requirements of clauses 19.4(d) to 19.4(g).

(d) **Requirements for corrective action plan**: Each corrective action plan which Project Co provides pursuant to clause 19.4(c) must show how Project Co proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligation under clause 19.2(e) and contain a proposed updated Status Delivery Program.

(e) **Comments**: The Independent Certifier may, within 20 Business Days of receipt of a corrective action plan, give Project Co any comments on the corrective action plan (which may include comments provided to the Independent Certifier by TfNSW) provided that such comments are consistent with the requirements of clause 19.4(d).

(f) **Response**: If the Independent Certifier gives Project Co any comments under clause 19.4(e), Project Co must amend and, within 10 Business Days of receipt of the Independent Certifier’s comments, resubmit the corrective action plan to the Independent Certifier to address the Independent Certifier’s comments, after which clause 19.4(e) and this clause 19.4(f) will re-apply until the Independent Certifier does not issue any further comments.

(g) **Compliance**: Project Co must comply with a corrective action plan for which the Independent Certifier does not issue any comments under clause 19.4(e).

(h) **Liability**: Project Co will not be relieved of any Liability or responsibility under this Deed or otherwise at Law arising out of or in connection with:

   (i) any comments given by the Independent Certifier under clause 19.4(e); or

   (ii) the implementation of any corrective action plan in respect of which the Independent Certifier has or has not given comments under clause 19.4(e).

(i) **Deemed Major Default**: Subject to clause 19.4(j), if at any time after receipt of a corrective action plan by the Independent Certifier under clause 19.4(c) the Independent Certifier notifies TfNSW and Project Co that, in its opinion, Project Co:

   (i) is not complying with a corrective action plan in accordance with clause 19.4(g); or

   (ii) will not be able to achieve Provisional Acceptance of:

   A. the first Long Unit to achieve Provisional Acceptance by the date that is 12 Months after the relevant Date for Provisional Acceptance (Unit); or

   B. the last Long Unit to achieve Provisional Acceptance by the date that is 12 Months after the relevant Date for Provisional Acceptance (Unit);
C. the first Short Unit (Regional) to achieve Provisional Acceptance by the date that is 12 Months after the relevant Date for Provisional Acceptance (Unit);

D. the last Short Unit (Regional) forming part of the Base Fleet or which is a Continuous Production Option (whichever is last) to achieve Provisional Acceptance by the date that is 12 Months after the relevant Date for Provisional Acceptance (Unit);

E. the first Short Unit (Intercity) to achieve Provisional Acceptance by the date that is 12 Months after the relevant Date for Provisional Acceptance (Unit); or

F. the last Short Unit (Intercity) forming part of the Base Fleet or which is a Continuous Production Option (whichever is last) to achieve Provisional Acceptance by the date that is 12 Months after the relevant Date for Provisional Acceptance (Unit),

then a Major Default will be deemed to have occurred.

(j) (Limitations on deemed Major Default): A notice given by the Independent Certifier under clause 19.4(i) will not be deemed to be a Major Default if the notice:

(i) is given within 6 Months after Financial Close; or

(ii) has been given within 3 Months after the last notice given under clause 19.4(i).

(k) (No claim): Project Co will not be entitled to make any Claim against TfNSW, RailCorp or the Independent Certifier arising out of or in connection with any comments by TfNSW or the Independent Certifier under clause 19.4(e), any failure by TfNSW or the Independent Certifier to provide any comments under clause 19.4(e) or any losses, costs or expenses suffered or incurred by Project Co in preparing, or complying with, a corrective action plan.

(l) (Binding notification by Independent Certifier): A notification made by the Independent Certifier pursuant to clause 19.4(i) in respect of non-compliance with a corrective action plan or a delay to achieving Provisional Acceptance is binding unless and until a Dispute is referred by TfNSW or Project Co for resolution in accordance with clause 19.4(m).

(m) (Expert determination of Dispute): Any Dispute in respect of the notification made by the Independent Certifier pursuant to clause 19.4(i) in respect of non-compliance with a corrective action plan or a delay to achieving Provisional Acceptance may be referred by either Project Co or TfNSW for expert determination in accordance with clause 52.

20. TfNSW and RailCorp access during the Delivery Phase

20.1 TfNSW’s and RailCorp’s right to enter, inspect and test

TfNSW, RailCorp, any of their respective Associates and any other person authorised by TfNSW or RailCorp (including the Independent Certifier) may, during the Delivery Phase:

(a) (Site Access): access the Maintenance Facility Site and the Returned Asset Site, and any other site where the Delivery Phase Activities or the Upgrade Services are being carried out, in accordance with the Site Access and Interface Protocols to exercise their rights, powers and functions and to perform their obligations under
any TfNSW Project Document and to discharge their statutory duties, powers, rights
and obligations;

(b) (Inspection of Works): inspect, observe or test any part of the Works or the
Delivery Phase Activities or the Upgrade Services (whether or not such inspections,
observations or tests are otherwise required under any TfNSW Project Document);
or

(c) (Examine and copy): examine and make copies of, and retain copies of any,
Project Co Material.

20.2 Site Access and Interface Protocols

(a) (Access to sites): Project Co must allow TfNSW, RailCorp, any of their respective
Associates and any other person authorised by TfNSW or RailCorp (including the
Independent Certifier) access to the Maintenance Facility Site and the Returned
Asset Site, any other site where the Delivery Phase Activities or the Upgrade
Services are being carried out, and any Project Co Material in accordance with
clause 20.1.

(b) (Compliance with protocols): TfNSW will, and will procure that its Associates and
those other persons accessing the Maintenance Facility Site and Returned Asset
Site in accordance with clause 20.2(a), comply with the Site Access and Interface
Protocols during the Delivery Phase when accessing the Maintenance Facility Site
and the Returned Asset Site or any other site where the Delivery Phase Activities or
the Upgrade Services are being carried out.

20.3 Project Co to assist

If requested by TfNSW, Project Co must assist TfNSW in connection with any inspection or
testing in accordance with clause 20.1, including by:

(a) (Access to Works): providing access to any part of the Works or Upgrade
Services and Project Co Materials that TfNSW requires;

(b) (Preparation of samples): preparing samples of materials used in connection with
the Works or Upgrade Services as required by TfNSW;

(c) (Forwarding samples): forwarding the samples prepared in accordance with
clause 20.3(b) to TfNSW or such other place or person notified by TfNSW;

(d) (Carrying out tests): if requested by TfNSW, carrying out any analysis, inspection,
demonstration or tests (including any analysis, inspection, demonstration or tests
not otherwise required by this Deed and any Additional Verification Activities) and
providing the results of those activities to TfNSW; and

(e) (Cover up): if requested by TfNSW, not covering up or making inaccessible any
part of an Asset without TfNSW’s prior written consent.

20.4 Costs of analysis, inspection, demonstration or testing

TfNSW will bear the reasonable costs incurred by Project Co of carrying out any inspection or
test conducted at TfNSW’s direction in accordance with this clause 20, unless:

(a) (Defect): the inspection or test reveals any Project Co Defect or failure to comply
with this Deed, save where the Project Co Defect or failure is minor in nature and
will not prevent:
the Asset from being lawfully used in accordance with its intended purpose or from otherwise meeting the FFP Warranty; or

(ii) Project Co from delivering the Services in accordance with the Services Requirements;

(b) (Inaccessible): the inspection or test is in connection with Works or Upgrade Services covered up or made inaccessible without TfNSW's prior approval where that approval was required; or

(c) (Required tests): the inspection or test was otherwise required under any TfNSW Project Document to be carried out by Project Co, or should have been carried out by Project Co in accordance with Best Industry Practices,

in which case Project Co must pay its own costs, and all reasonable costs incurred by TfNSW will be a debt due and payable by Project Co to TfNSW.

## 21. Verification Activities

### 21.1 Verification Activities

During the Delivery Phase, and to the extent applicable, the Maintenance Phase:

(a) **(Notice):** without limiting the advance notice required to be provided under section 2 of the Network Access Regime Schedule in respect of Network Access Rights but subject to clause 21.3(d), Project Co must give TfNSW and (other than in respect of Verification Activities required to achieve Preliminary Acceptance) the Independent Certifier not less than 20 Business Days' prior written notice of the date, time and place for the conduct of every Verification Activity to be undertaken by Project Co;

(b) **(Postponement of Verification Activity):** Project Co may, by giving not less than 5 Business Days' prior notice to TfNSW and, if applicable, the Independent Certifier, postpone a Verification Activity in respect of which it has given TfNSW and the Independent Certifier notice in accordance with clause 21.1(a);

(c) **(Rescheduled date):** if Project Co postpones a Verification Activity in accordance with clause 21.1(b), Project Co must give TfNSW and, if applicable, the Independent Certifier at least 5 Business Days' notice of the rescheduled date, time and place for the conduct of that Verification Activity;

(d) **(Baseline Delivery Program extracts):** Project Co must give TfNSW and (other than in respect of Verification Activities required to achieve Preliminary Acceptance) the Independent Certifier:

(i) an extract from the Baseline Delivery Program that specifies the date, time and place for the conduct of each Verification Activity to be conducted for the following 25 Business Day period; and

(ii) an updated extract from the Baseline Delivery Program each week during the period that Project Co is carrying out Verification Activities;

(e) **(Deemed failure):** unless otherwise agreed by TfNSW, Project Co will be deemed to have failed a Verification Activity if it fails to provide notice in accordance with clauses 21.1(a) and, if applicable, 21.1(c);

(f) **(Attendance):** TfNSW (and its nominees) and (other than in respect of Verification Activities required to achieve Preliminary Acceptance) the Independent Certifier may, but are not obliged to, attend and witness the conduct of all Verification Activities; and
21.2 Right to comment

(a) **(Right to give comments):** Based on the information provided to TfNSW in accordance with this Deed or any inspection carried out in accordance with clause 20.1 or any other provision of this Deed, TfNSW may give the Independent Certifier written comments regarding the Works or Upgrade Services, provided that such comments are limited to matters impacting upon the compliance of the Works or Upgrade Services with the requirements of this Deed.

(b) **(Meeting):** If TfNSW gives the Independent Certifier written comments pursuant to clause 21.2(a), TfNSW, the Independent Certifier and Project Co must meet within 10 Business Days to discuss and establish the rectifications or changes required to the Works or Upgrade Services.

(c) **(Disputes):** If TfNSW, the Independent Certifier and Project Co are unable to agree to appropriate rectifications or changes pursuant to clause 21.2(b), such Dispute will be dealt with in accordance with clause 50.

21.3 Verification Plan, Verification Procedures and Verification Matrix

(a) **(Submission of Verification Plan and Verification Matrix):** Project Co must submit the Verification Plan and Verification Matrix to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Project Scope and Requirements and the Review Procedures.

(b) **(Actual Energy Consumption and Actual Mass):** The Verification Plan and Verification Matrix must provide for all Verification Activities, including those Verification Activities to verify and demonstrate to the Independent Certifier's reasonable satisfaction the Actual Energy Consumption for the first Long Unit, Short Unit (Intercity) and Short Unit (Regional) to achieve Provisional Acceptance.

(c) **(Verification Procedure):** For each Verification Activity, Project Co must submit a Verification Procedure to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with Project Scope and Requirements and the Review Procedures.

(d) **(No Verification Activities prior to review):** Project Co must not provide notice of a Verification Activity in accordance with clause 21.1(a) or 21.1(c) or conduct a Verification Activity unless the Verification Plan, the Verification Matrix and the specific Verification Procedure for that Verification Activity have been submitted to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with clauses 21.3(a) and 21.3(c) and the Review Procedures and Project Co is entitled to implement that Verification Plan, Verification Matrix and the specific Verification Procedure in accordance with section 7.1 of the Review Procedures.

(e) **(Units and Cars):** For each Verification Activity, Project Co must specify in the Verification Plan, the Verification Matrix and the Verification Procedure whether the Verification Activity will be carried out on a Unit as a whole or separately on each Car forming part of a Unit.
21.4 Additional Verification Activities

(a) (Notification): At any time up to the date that is 10 Business Days before the anticipated date of carrying out a Verification Activity, the Independent Certifier (other than in respect of Verification Activities required to achieve Preliminary Acceptance) or TfNSW may notify Project Co of additional tests and activities that are necessary (Additional Verification Activities).

(b) (Completion of Verification Activities): The Independent Certifier or TfNSW (as applicable) must direct whether the Additional Verification Activities are required to be completed:

(i) prior to Preliminary Acceptance;
(ii) prior to Provisional Acceptance; or
(iii) prior to Final Acceptance,

for the relevant part of the Works or Upgrade Services.

(c) (Review): Project Co must update the Verification Plan, the Verification Matrix and the relevant Verification Procedure to include the Additional Verification Activities and submit these to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Review Procedures.

(d) (Costs): TfNSW will bear the reasonable costs incurred by Project Co of carrying out any Additional Verification Activities conducted at TfNSW's direction in accordance with this clause 21.4, unless the Additional Verification Activity:

(i) is not passed by reference to the criteria set out in the Project Scope and Requirements and the Verification Matrix;
(ii) reveals any Material Defect or failure to comply with this Deed;
(iii) is undertaken to correct a Material Defect;
(iv) is in the nature of an analysis, inspection, demonstration or test otherwise required by this Deed to be carried out by Project Co, or which should have been carried out by Project Co in accordance with Best Industry Practices; or
(v) is:

A. in respect of a matter where Project Co has failed a Verification Activity; or

B. required as a result of a Verification Activity not carried out in accordance with Best Industry Practices, the Project Scope and Requirements, the Verification Procedure, the Verification Matrix, the Verification Plan or any other applicable provision of this Deed,

in which case Project Co must pay its own costs and all reasonable costs incurred by TfNSW, as a debt due and payable by Project Co to TfNSW.

21.5 Verification Activities

(a) (Verification Activity requirements): Project Co must:
(i) carry out all Verification Activities in accordance with the Verification Plan, the Verification Matrix, the Acceptance Schedule and the relevant Verification Procedure; and

(ii) comply with the Verification Activities requirements set out in section 19 of the Management Requirements.

(b) (Verification Activity location): Project Co must conduct Verification Activities at the locations specified in the Verification Plan.

(c) (Amendment of Verification Procedure): The Independent Certifier (other than in respect of Verification Activities required to achieve Preliminary Acceptance) and TfNSW may approve amendments to a Verification Procedure proposed by Project Co during the conduct of the relevant Verification Activity to account for any circumstances that arise during the Verification Activity, in which case Project Co must conduct the Verification Activity in accordance with the approved amended Verification Procedure.

(d) (FRACAS): Project Co must:

(i) develop, utilise and maintain a failure reporting and corrective action system (FRACAS) for the systematic recording, investigation and correction of Defects or deficiencies observed in the Assets (including during the Verification Activities); and

(ii) ensure that the FRACAS includes at least the following features:

A. a means of identifying and recording Defects;

B. a process for investigating and determining the primary cause of a Defect;

C. a process for determining appropriate corrective action to ensure that the Asset complies with the requirements of this Deed; and

D. a process for updating all relevant Technical Documents (including the Asset Management Plan) to reduce the likelihood of a recurrence of the relevant Defect.

(e) (Obligations): Project Co must:

(i) allow the Independent Certifier (other than in respect of Verification Activities required to achieve Preliminary Acceptance) and TfNSW to attend, take samples, make measurements and otherwise carry out whatever tests, checks and investigations they may reasonably require in order to ensure that any Verification Activity has been successfully carried out;

(ii) conduct the Verification Activities to the satisfaction of, in respect of Preliminary Acceptance, TfNSW and, in respect of Provisional Acceptance and Final Acceptance, the Independent Certifier; and

(iii) comply with all reasonable directions of the Independent Certifier (other than in respect of Verification Activities required to achieve Preliminary Acceptance) and TfNSW in relation to the conduct of any Verification Activities.
Verification Activity failure): If a Verification Activity fails to pass by reference to the criteria set out in the Project Scope and Requirements and the Verification Matrix, without limiting clauses 21.6 and 21.7, Project Co must:

(i) immediately inform the Independent Certifier (other than in respect of Verification Activities required to achieve Preliminary Acceptance) and the TfNSW Representative;

(ii) submit a FRACAS report in respect of that Verification Activity within 5 Business Days; and

(iii) continue to expeditiously and diligently progress the Delivery Phase Activities or the Upgrade Services to pass the applicable Verification Activity.

(Network Access): TfNSW and Project Co must comply with their respective obligations in the Network Access Regime Schedule in respect of access to the Network required for Verification Activities.

21.6 Verification Report

(a) (Draft report): Project Co must submit to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Review Procedures a Verification Report as soon as reasonably practicable after completion of a Verification Activity, and in any event not later than 5 Business Days after completion of a Verification Activity.

(b) (Compliance): Each Verification Report must comply with section 19.3 of the Management Requirements.

21.7 Acceptance of Units

The parties acknowledge and agree that TfNSW must not certify that a Unit has achieved Preliminary Acceptance and the Independent Certifier must not certify that a Unit has achieved Provisional Acceptance or Final Acceptance until the Unit and all Cars forming part of the Unit have met the relevant Acceptance Criteria (other than Preliminary Acceptance Outstanding Items or Provisional Acceptance Outstanding Items as applicable), unless waived by TfNSW.

21.8 Authorisation of Units for operation on the Network

(a) (TfNSW to procure authorisation): Subject to Project Co having complied with its obligations under clause 21.8(e), TfNSW is responsible for procuring authorisation from an Access Provider for the operation of a Unit on an Access Provider’s Network.

(b) (No representations from TfNSW): Project Co acknowledges and agrees that TfNSW, RailCorp and their respective Associates have not made and make no representations (express or implied), and give no warranties or guarantees (express or implied), and owe no duty of care (express or implied), in respect of any requirement for a Unit that relates to its ability to be operated on the Network in Part C1 (Rolling Stock Specification) of the Project Scope and Requirements (Indicative Access Requirements), including in respect of the accuracy, suitability, adequacy, completeness of, or any omissions from, the Indicative Access Requirements.

(c) (Project Co to inform itself): Project Co acknowledges and agrees that it must:

(i) satisfy itself as to the accuracy, suitability, adequacy, completeness of, or any omissions from, the Indicative Access Requirements; and
otherwise inform itself as to all requirements for authorising the operation of a Unit on an Access Provider's Network, including any requirements prescribed by an Access Provider, or under or in relation to an Accreditation, and whether or not contained in the Indicative Access Requirements (Access Requirements);

(d) (Entry into Deed): Without limiting causes 21.8(b) or 21.8(c), Project Co acknowledges and agrees that:

(i) it enters into this Deed based on its own investigations, interpretations, deductions, information and determination;

(ii) it was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the subject matter of the Access Requirements;

(iii) it did not rely upon any of the Indicative Access Requirements or the accuracy, adequacy, suitability or completeness of the Indicative Access Requirements for the purposes of entering into this Deed or delivering the Project; and

(iv) TfNSW and RailCorp have entered into this Deed relying upon the warranties, acknowledgements, representations and agreements of Project Co as set out in this 21.8.

(e) (Unit to be capable of being authorised for use): Project Co must:

(i) perform the Delivery Phase Activities in accordance with:

A. this Deed, including the Project Scope and Requirements; and

B. the Access Requirements,

so that a Unit is authorised by an Access Provider for operation on the Access Provider's Network; and

(ii) provide all assistance as TfNSW may reasonably request to enable TfNSW and the Operator to obtain approval from an Access Provider for the operation of a Unit on the Access Provider's Network, including providing:

A. any information or documentation required by the Access Provider;

B. input into the preparation, amendment or update of any document or plan; and

C. input in relation to any assessment or evaluation process.

22. Quality Assurance during the Delivery Phase

(a) (Certification of Subcontractor): In addition to the obligations in clause 11.1, Project Co must ensure that the Delivery Subcontractor and Depot Subcontractor are certified to:

(i) AS/NZS ISO 9001;

(ii) AS/NZS ISO 14001; and
(iii) AS/NZS 4801, OHSAS 18001 or an equivalent standard,
at all times during the Delivery Phase in respect of the Delivery Subcontractor and
up to the Date of Final Acceptance (Maintenance Facility) in respect of the Depot
Subcontractor.

(b) (Quality Management Plans): Project Co must provide TfNSW with the Quality
Management Plans for the Delivery Phase in accordance with the Project Scope
and Requirements.

(c) (Proof of accreditations): At the same time it submits its Quality Management
Plans under clause 22(b), Project Co must submit proof of the Delivery
Subcontractor’s and Depot Subcontractor’s quality assurance accreditations
required by this Deed.

22A Preliminary Acceptance of Units

22A.1 Requirement

Project Co must achieve Preliminary Acceptance of each Unit forming part of the New Fleet,
other than the Non-Continuous Production Options.

22A.2 Notice before Preliminary Acceptance

(a) (Notice timeline): Project Co must give TfNSW separate notices 20 Business
Days’ prior to the date upon which it reasonably expects to present the relevant Unit
in accordance with clause 22A.3(a).

(b) (Notice of revised date): If, after Project Co gives TfNSW a notice in accordance
with clause 22A.2(a), it wishes to postpone the date of presentation in accordance
with clause 22A.2(a), Project Co must notify TfNSW promptly of the revised date
provided that the revised date must not be less than 5 Business Days after the date
of such notice.

22A.3 Preliminary Acceptance activities

(a) (Location): Subject to clause 26, in respect of assessing whether Preliminary
Acceptance has been achieved for the Units, Project Co must present each Unit for
Preliminary Acceptance at the Train Manufacturer’s Facility or a different location as
agreed in writing between Project Co and TfNSW from time to time.

(b) Not used

(c) (Obligations): Project Co must:

(i) allow TfNSW to attend, take samples, make measurements and
otherwise carry out whatever tests, checks and investigations it may
reasonably require in order to ensure that any Preliminary Acceptance
Criteria have been achieved;

(ii) demonstrate to the satisfaction of TfNSW that the Preliminary
Acceptance Criteria have been achieved; and

(iii) comply with all reasonable directions of TfNSW in relation to
demonstrating that the Preliminary Acceptance Criteria have been
achieved.
22A.4 **Restriction on transport**

Project Co must not transport a Unit (other than Non-Continuous Production Options) from, or permit it to leave, the Train Manufacturer's Facility prior to TfNSW issuing a Certificate of Preliminary Acceptance in respect of that Unit.

22A.5 **Preliminary Acceptance Report**

- *(Draft report):* Project Co must submit to the TfNSW Representative for review in accordance with the Review Procedures a draft Preliminary Acceptance Report for each Unit, not earlier than 30 Business Days, and not later than 20 Business Days, prior to the date on which Project Co expects to achieve Preliminary Acceptance of the Unit, which draft Preliminary Acceptance Report must contain all information necessary to demonstrate that Project Co has met the applicable Preliminary Acceptance Criteria.

- *(Further draft report):* Project Co must submit to the TfNSW Representative for review in accordance with the Review Procedures, a further draft Preliminary Acceptance Report for each Unit not later than 10 Business Days prior to the date on which Project Co expects to achieve Preliminary Acceptance of the Unit. The further draft Preliminary Acceptance Report must reflect all applicable Preliminary Acceptance Criteria that have been achieved to the date of that further draft report.

- *(Compliance with directions):* Project Co must take into account and comply with any directions given by TfNSW (acting reasonably) in connection with preparing for Preliminary Acceptance.

22A.6 **Notice of Preliminary Acceptance**

- *(Notice by Project Co):* When Project Co is of the reasonable opinion that it has achieved all those things necessary for Preliminary Acceptance of a Unit, Project Co must provide to TfNSW:
  - notice of its opinion;
  - a detailed list of the work (including minor Defect correction) remaining to be undertaken in its opinion to achieve Provisional Acceptance of the Unit; and
  - the final Preliminary Acceptance Report for the Unit.

- *(Notice by TfNSW):* Notwithstanding that Project Co may not have issued a notice under clause 22A.6(a), when TfNSW considers that Project Co has achieved Preliminary Acceptance of a Unit, TfNSW may:
  - notify Project Co of its opinion; and
  - make a determination under clause 22A.7.

22A.7 **Determination of Preliminary Acceptance**

- *(Issuing of certificate):* Preliminary Acceptance of the Unit the subject of a notice issued in clause 22A.6 has been achieved, TfNSW must issue a Certificate of Preliminary Acceptance for the Unit to Project Co within 5 Business Days after receipt of the notice under clause 22A.6, which certificate must:
A. state the Date of Preliminary Acceptance;

B. list any Preliminary Acceptance Outstanding Items; and

C. set out details of TfNSW's opinion of the work remaining to be undertaken to achieve Provisional Acceptance, of the Unit; or

(ii) (Issuing of notice): Preliminary Acceptance of the Unit the subject of a notice issued in clause 22A.6 has not been achieved, TfNSW must, by not later than 5 Business Days after receipt of the notice issued in accordance with clause 22A.6, issue to Project Co a notice in the form set out in section 2 of the Schedule of Forms and Certificates either:

A. containing details of the outstanding Preliminary Acceptance Criteria that must be satisfied by Project Co as a condition precedent to achieving Preliminary Acceptance of the Unit; or

B. stating that Preliminary Acceptance is so far from being achieved that it is not practicable to provide details of the type referred to in clause 22A.7(a)(ii)A, after which Project Co must continue to expeditiously and diligently progress the Delivery Phase Activities to achieve Preliminary Acceptance of the Unit.

(b) (Consequence of issuing notice): If TfNSW issues a notice under clause 22A.7(a)(ii), the process in clauses 22A.2 to 22A.7(a) will commence again in respect of those outstanding Preliminary Acceptance Criteria set out in TfNSW's notice.

(c) (No restriction on TfNSW): TfNSW, in making its determination as to whether Preliminary Acceptance has been achieved:

(i) will not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 22A.7(a)(ii); and

(ii) is entitled to raise any other items of work as a ground for determining that Preliminary Acceptance has not been achieved.

(d) (Consequence of issuing certificate): The issue of a Certificate of Preliminary Acceptance in accordance with this clause 22A.7 does not constitute:

(i) evidence that Project Co has satisfied the FFP Warranty;

(ii) an approval by TfNSW or RailCorp of the completion or acceptance of any part of the Works under this Deed; or

(iii) evidence that all or any other obligations under this Deed have been satisfied.

(e) (Binding determination by TfNSW): A determination made by TfNSW as to whether or not a Unit has reached Preliminary Acceptance is binding unless and until a Dispute is referred by Project Co for resolution in accordance with clause 22A.7(f).

(f) (Expert determination of Dispute): Any Dispute in respect of a determination made by TfNSW as to whether or not a Unit has reached Preliminary Acceptance
may be referred by Project Co for expert determination in accordance with clause 52.

22A.8 Preliminary Acceptance Outstanding Items

(a) (Outstanding items): TfNSW may issue a Certificate of Preliminary Acceptance with:

(i) an attached list of Preliminary Acceptance Outstanding Items; and

(ii) a timeframe within which each Preliminary Acceptance Outstanding Item must be rectified,

as determined by TfNSW, provided that all Preliminary Acceptance Outstanding Items must be rectified prior to Provisional Acceptance (Unit) unless agreed otherwise by TfNSW (acting reasonably and in consultation with the Independent Certifier).

(b) (Program): Within 5 Business Days after the issue of a Certificate of Preliminary Acceptance, Project Co must submit to the TfNSW Representative for review in accordance with the Review Procedures a program for the completion of the Preliminary Acceptance Outstanding Items that complies with the timeframe determined in accordance with clause 22A.8(a).

(c) (Outstanding items to be completed): Project Co must complete or remedy any Preliminary Acceptance Outstanding Items within the timeframe determined in accordance with clause 22A.8(a) to the satisfaction of TfNSW.

(d) (Provisional Acceptance Report): Project Co must ensure that the Preliminary Acceptance Outstanding Items and details of their rectification form part of the applicable Provisional Acceptance Report.

(e) (Provisional Acceptance Outstanding Item): If TfNSW agrees that a Preliminary Acceptance Outstanding Item is not required to be completed prior to Provisional Acceptance for a Unit and such Preliminary Acceptance Outstanding Item is not completed prior to Provisional Acceptance, it will be deemed to be a Provisional Acceptance Outstanding Item for the Unit.

(f) (TfNSW may agree): If a Preliminary Acceptance Outstanding Item is not capable of being completed prior to Provisional Acceptance for the Unit, TfNSW (acting reasonably and in consultation with the Independent Certifier) may agree that the Preliminary Acceptance Outstanding Item will be a Provisional Acceptance Outstanding Item for the Unit.

23. Provisional Acceptance

23.1 Requirement

Project Co must:

(a) achieve Provisional Acceptance (Maintenance Facility) by the Date for Provisional Acceptance (Maintenance Facility);

(b) achieve Provisional Acceptance (Simulator) of each Simulator by the relevant Date for Provisional Acceptance (Simulator);

(c) achieve Provisional Acceptance (Unit) of each Unit forming part of the New Fleet by the relevant Date for Provisional Acceptance (Unit);
achieve Provisional Acceptance (Base Fleet and Continuous Production Options) of the Base Fleet and Continuous Production Options by the relevant Date for Provisional Acceptance (Base Fleet and Continuous Production Options); and

(e) perform the Upgrade Services in accordance with Schedule 42 (Upgrade Services).

23.2 Notice before Provisional Acceptance

(a) **(Notice timeline):** Project Co must give TfNSW and the Independent Certifier separate notices 20 Business Days prior to the date upon which it reasonably expects to present a Unit, Simulator, the Maintenance Facility or the Upgrade Services in accordance with clause 23.5(a).

(b) **(Notice of revised date):** If, after Project Co gives TfNSW and the Independent Certifier a notice in accordance with clause 23.2(a), it wishes to postpone the date of presentation in accordance with clause 23.5(a), Project Co must notify TfNSW and the Independent Certifier promptly of the revised date provided that the revised date must not be less than 5 Business Days after the date of such notice.

23.3 Not used

23.4 Not used

23.5 Provisional Acceptance activities

(a) **(Location):** Subject to clause 26, in respect of assessing whether Provisional Acceptance has been achieved for:

(i) the Simulators, Project Co must present the Simulator for Provisional Acceptance (Simulator) at the Maintenance Facility or a different location as agreed in writing between Project Co and TfNSW from time to time;

(ii) the Units, Project Co must present each Unit for Provisional Acceptance (Unit) at the Maintenance Facility or a different location on the Network as agreed in writing between Project Co and TfNSW from time to time;

(iii) the Maintenance Facility, Project Co must allow TfNSW and the Independent Certifier to access the Maintenance Facility in accordance with clause 23.5(c); and

(iv) the Upgrade Services, Project Co must allow TfNSW and the Independent Certifier to access the Legacy Maintenance Centre in accordance with clause 23.5(c).

(b) Not used

(c) **(Obligations):** Project Co must:

(i) allow the Independent Certifier and TfNSW to attend, take samples, make measurements and otherwise carry out whatever tests, checks and investigations they may reasonably require in order to ensure that any Provisional Acceptance Criteria have been achieved;

(ii) demonstrate to the satisfaction of the Independent Certifier that the Provisional Acceptance Criteria have been achieved; and

(iii) comply with all reasonable directions of the Independent Certifier in relation to demonstrating that the Provisional Acceptance Criteria have been achieved.
23.6 Not used

23.7 Provisional Acceptance Report

(a) **(Draft report):** Project Co must submit to the Verification and Acceptance Reviewing Party for review in accordance with the Review Procedures a draft Provisional Acceptance Report for each Unit, each Simulator, the Maintenance Facility and the Upgrade Services, not earlier than 30 Business Days, and not later than 20 Business Days, prior to the date on which Project Co expects to achieve Provisional Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable), which draft Provisional Acceptance Report must contain all information necessary to demonstrate that Project Co has met the applicable Provisional Acceptance Criteria.

(b) **(Further draft report):** Project Co must submit to the Verification and Acceptance Reviewing Party for review in accordance with the Review Procedures a further draft Provisional Acceptance Report for each Unit, each Simulator, the Maintenance Facility and the Upgrade Services not later than 10 Business Days prior to the date on which Project Co expects to achieve Provisional Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable). The further draft Provisional Acceptance Report must reflect all applicable Provisional Acceptance Criteria that have been achieved to the date of that further draft report.

(c) **(Compliance with directions):** Project Co must take into account and comply with any directions given by the Independent Certifier (acting reasonably) in connection with preparing for Provisional Acceptance.

23.8 Notice of Provisional Acceptance

(a) **(Notice by Project Co):** When Project Co is of the reasonable opinion that it has achieved all those things necessary for Provisional Acceptance of a Unit, a Simulator, the Maintenance Facility or the Upgrade Services, Project Co must provide to TfNSW and the Independent Certifier:

(i) notice of its opinion;

(ii) a detailed list of the work (including minor Defect correction) remaining to be undertaken in its opinion to achieve Final Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable); and

(iii) the final Provisional Acceptance Report for the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable).

(b) **(Notice by TfNSW):** Notwithstanding that Project Co may not have issued a notice under clause 23.8(a), when TfNSW considers that Project Co has achieved Provisional Acceptance of a Unit, a Simulator, the Maintenance Facility or the Upgrade Services, TfNSW may:

(i) notify Project Co and the Independent Certifier of its opinion; and

(ii) request the Independent Certifier to determine whether Provisional Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable) has been achieved.

23.9 Determination of Provisional Acceptance

(a) If, in the opinion of the Independent Certifier:
(Issuing of certificate): Provisional Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable) the subject of a notice issued under clause 23.8 has been achieved, the Independent Certifier must issue a Certificate of Provisional Acceptance for the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable) to TfNSW and Project Co within 5 Business Days after receipt of the notice under clause 23.8, which certificate must:

A. state the Date of Provisional Acceptance;
B. list any Provisional Acceptance Outstanding Items; and
C. set out details of the Independent Certifier's opinion of the work remaining to be undertaken to achieve Final Acceptance, of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable); or

(i) (Issuing of notice): Provisional Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable) the subject of a notice issued under clause 23.8 has not been achieved, the Independent Certifier must, by not later than 5 Business Days after receipt of the notice issued in accordance with clause 23.8, issue to Project Co and TfNSW a notice in the form set out in section 4 of the Schedule of Forms and Certificates either:

A. containing details of the outstanding Provisional Acceptance Criteria that must be satisfied by Project Co as a condition precedent to achieving Provisional Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable); or
B. stating that Provisional Acceptance is so far from being achieved that it is not practicable to provide details of the type referred to in clause 23.9(a)(ii)A, after which Project Co must continue to expeditiously and diligently progress the Delivery Phase Activities or Upgrade Services to achieve Provisional Acceptance of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable).

(Consequence of issuing notice): If the Independent Certifier issues a notice under clause 23.9(a)(ii), the process in clauses 23.2 to 23.9(a) will commence again in respect of those outstanding Provisional Acceptance Criteria set out in the Independent Certifier's notice.

(No restriction on Independent Certifier): The Independent Certifier, in making its determination as to whether Provisional Acceptance has been achieved:

(i) will not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 23.9(a)(ii); and
(ii) is entitled to raise any other items of work as a ground for determining that Provisional Acceptance has not been achieved.

(Consequence of issuing certificate): The issue of a Certificate of Provisional Acceptance in accordance with this clause 23.9 does not constitute:

(i) evidence that Project Co has satisfied the FFP Warranty;
(ii) an approval by TfNSW or RailCorp of the completion or acceptance of any part of the Works or Upgrade Services under this Deed; or

(iii) evidence that all or any other obligations under this Deed have been satisfied.

(e) **Consequence of using the Works**: Use of a Unit, a Simulator, the Maintenance Facility or the Upgrade Services by TfNSW or its Associates, Project Co or its Associates, any Authority or the public prior to the relevant Date of Provisional Acceptance will not constitute Provisional Acceptance or a deemed ‘taking over’ of the Unit, Simulator, Maintenance Facility or Upgrade Services (as applicable) and will not (except to the extent expressly set out in the TfNSW Project Documents) relieve Project Co from:

(i) any obligation to complete or make good any Project Co Defect pursuant to clause 29 or the Performance Regime; or

(ii) full responsibility and Liability for the performance of the Delivery Phase Activities or the Upgrade Services and achievement of each Date of Provisional Acceptance, and all other obligations on the part of Project Co pursuant to this Deed.

(f) **Binding determination by Independent Certifier**: A determination made by the Independent Certifier as to whether or not a Unit, a Simulator, the Maintenance Facility or the Upgrade Services has reached Provisional Acceptance is binding unless and until a Dispute is referred by TfNSW for resolution in accordance with clause 23.9(g).

(g) **Expert determination of Dispute**: Any Dispute in respect of the Independent Certifier’s determination as to whether or not a Unit, a Simulator, the Maintenance Facility or the Upgrade Services has reached Provisional Acceptance may be referred by TfNSW for expert determination in accordance with clause 52.

23.10 **Provisional Acceptance Outstanding Items**

(a) **Outstanding items**: The Independent Certifier may issue a Certificate of Provisional Acceptance with:

(i) an attached list of Provisional Acceptance Outstanding Items, as determined by TfNSW (acting reasonably); and

(ii) a timeframe within which each Provisional Acceptance Outstanding Item must be rectified, as determined by the Independent Certifier.

(b) **Program**: Within 5 Business Days after the issue of a Certificate of Provisional Acceptance, Project Co must submit to the Verification and Acceptance Reviewing Party for review in accordance with the Review Procedures a program for the completion of the Provisional Acceptance Outstanding Items that complies with the timeframe determined in accordance with clause 23.10(a).

(c) **Outstanding items to be completed**: Project Co must complete or remedy any Provisional Acceptance Outstanding Items within the timeframe determined in accordance with clause 23.10(a) to the satisfaction of the Independent Certifier.

(d) **Final Acceptance Report**: Project Co must ensure that the Provisional Acceptance Outstanding Items and details of their rectification form part of the applicable Final Acceptance Report.
24. Returned Works

(aa) (Approval required for Returned Asset Site): Project Co must:

(i) as soon as reasonably practicable nominate to TfNSW an area acceptable to TfNSW within the Maintenance Facility Site to be the Returned Asset Site; and

(ii) not commence the Returned Works except to the extent that TfNSW has provided its prior written approval to the area nominated by Project Co to be the Returned Asset Site (such approval to be given or withheld in TfNSW’s absolute discretion).

(a) (General obligations): Project Co must complete the Returned Works to achieve Returned Asset Handback of the Returned Asset to the Returned Asset Owner, so as to ensure that:

(i) any loss of amenity and inconvenience to the Returned Asset Owner is minimised;

(ii) the completion of the Returned Works occurs in a manner which is consistent with the Baseline Delivery Program; and

(iii) completion of the Returned Works is achieved prior to the Date for Provisional Acceptance (Maintenance Facility).

(b) (Returned Asset Handback): Returned Asset Handback to the Returned Asset Owner will not be achieved until:

(i) the Returned Asset has been completed in accordance with the TfNSW Project Documents, including the Returned Asset Criteria (other than Returned Works Outstanding Items);

(ii) Project Co has issued a notice to TfNSW, the Independent Certifier and the Returned Asset Owner which states that it considers that the Returned Asset has been completed in accordance with the TfNSW Project Documents (other than Returned Works Outstanding Items);

(iii) Project Co, the Independent Certifier and the Returned Asset Owner have had the opportunity to jointly inspect the Returned Asset at a time agreed (or in the absence of agreement, determined by the Independent Certifier) which will be no more than 5 Business Days after receipt of Project Co’s notice under clause 24(b)(ii); and

(iv) the Independent Certifier has issued a notice under clause 24(d)(i).

(c) (Independent Certifier to consider comments of Returned Asset Owner): In determining whether or not to issue a notice under clause 24(d)(i), the Independent Certifier will consider any reasonable comments of the Returned Asset Owner provided within 5 Business Days after the time of the inspection under clause 24(b)(iii).

(d) (Independent Certifier to make determination): As soon as reasonably practicable following the inspection under clause 24(b)(iii), the Independent Certifier is required to determine whether the Returned Asset has been completed in accordance with the TfNSW Project Documents and has met the Returned Asset Criteria and issue to TfNSW and Project Co either:
(i) a notice confirming that the Returned Asset has been completed (other than Returned Works Outstanding Items); or

(ii) a notice either:

A. listing the work remaining to be undertaken in order to complete the Returned Asset in accordance with the TfNSW Project Documents; or

B. stating that the Returned Asset is so far from being completed in accordance with the TfNSW Project Documents that it is not practicable to provide a list of the type referred to in clause 24(d)(ii)A,

after which Project Co must continue to expeditiously and diligently progress the Delivery Phase Activities or Upgrade Services to complete the Returned Asset in accordance with the TfNSW Project Documents.

(e) **(Copy to Returned Asset Owner):** The Independent Certifier must provide a copy of:

(i) any notice under clause 24(d)(i) to the Returned Asset Owner; and

(ii) any notice under clause 24(d)(ii), to the Returned Asset Owner where requested by the Returned Asset Owner.

(f) **(Further notice by Project Co):** Project Co must give notice to TfNSW, the Returned Asset Owner and the Independent Certifier when the work listed in a notice issued by the Independent Certifier under clause 24(d)(ii) has been completed.

(g) **(Resubmission):** Clauses 24(b) to 24(f) will apply in connection with Project Co’s notice under clause 24(f) in the same way as if it were the original notice given under clause 24(b)(ii).

(h) **(No restriction on Independent Certifier):** The Independent Certifier, in making its determination as to whether the Returned Asset has been completed in accordance with TfNSW Project Documents:

(i) will not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 24(d)(ii); and

(ii) is entitled to raise any other items of work (other than Returned Works Outstanding Items) as a ground for determining that the Returned Asset has not been completed in accordance with the TfNSW Project Documents.

(i) **(Project Co’s handback obligations):** Upon receipt of a notice from the Independent Certifier under clause 24(d)(i), Project Co must:

(i) notify the Returned Asset Owner of the date upon which Returned Asset Handback will occur (which date must not be fewer than 5 Business Days from the notice under this clause 24(i)(i));

(ii) continue to maintain and repair the Returned Asset until Returned Asset Handback is achieved; and
(iii) provide TfNSW and the Returned Asset Owner with all such assistance as may be reasonably required in relation to achieving Returned Asset Handback.

(j) (Correction of Returned Works Outstanding Items): Without limiting Project Co's other obligations under this Deed, Project Co must immediately upon receipt of the Independent Certifier's notice under clause 24(d)(i), expeditiously and diligently correct all of the Returned Works Outstanding Items specified in the Independent Certifier's notice.

(k) (Assistance in securing continuity): Project Co must do all things reasonably required by TfNSW to ensure smooth and orderly Returned Asset Handback to the Returned Asset Owner.

25. Final Acceptance

25.1 Requirement

Project Co must:

(a) achieve Final Acceptance (Maintenance Facility) by the Date for Final Acceptance (Maintenance Facility);

(b) achieve Final Acceptance (Simulator) of each Simulator by the relevant Date for Final Acceptance (Simulator);

(c) achieve Final Acceptance (Unit) of each Unit forming part of the New Fleet by the relevant Date for Final Acceptance (Unit);

(d) achieve Final Acceptance (Base Fleet and Continuous Production Options) of the Base Fleet and Continuous Production Options by the Date for Final Acceptance (Base Fleet and Continuous Production Options);

(e) achieve Final Acceptance (CDPD) by the Date for Final Acceptance (CDPD);

(f) achieve Final Acceptance (Project) by the Date for Final Acceptance (Project); and

(g) perform the Upgrade Services in accordance with Schedule 42 (Upgrade Services).

25.2 Notice before Final Acceptance

(a) (Notice timeline): Project Co must give TfNSW and the Independent Certifier separate notices 20 Business Days prior to the dates upon which it reasonably expects to present each Unit, each Simulator, the Maintenance Facility, the Base Fleet and Continuous Production Options and the Upgrade Services in accordance with clause 25.5(a).

(b) (Notice of revised date): If, after Project Co gives TfNSW and the Independent Certifier a notice in accordance with clause 25.2(a), it wishes to postpone the date of presentation in accordance with clause 25.2(a), Project Co must notify TfNSW and the Independent Certifier promptly of the revised date provided that that the revised date must not be less than 5 Business Days after the date of such notice.
25.3 Not used

25.4 Not used

25.5 Final Acceptance activities

(a) (Location): Subject to clause 26, in respect of assessing whether Final Acceptance has been achieved for:

(i) the Simulators, Project Co must present the Simulator for Final Acceptance (Simulator) at the Maintenance Facility or a different location as agreed in writing between Project Co and TfNSW from time to time;

(ii) the Units, Project Co must present each Unit for Final Acceptance (Unit) at the Maintenance Facility or a different location on the Network as agreed in writing between Project Co and TfNSW from time to time;

(iii) the Maintenance Facility, Project Co must allow TfNSW and the Independent Certifier to access the Maintenance Facility in accordance with clause 25.5(c);

(iv) the Base Fleet and Continuous Production Options, if required by TfNSW or the Independent Certifier, Project Co must present each Unit for Final Acceptance (Unit) at the Maintenance Facility or a different location on the Network as agreed in writing between Project Co and TfNSW from time to time; and

(v) the Upgrade Services, Project Co must allow TfNSW and the Independent Certifier to access the Legacy Maintenance Centre in accordance with clause 25.5(c).

(b) Not used.

(c) (Obligations): Project Co must:

(i) allow the Independent Certifier and TfNSW to attend, take samples, make measurements and otherwise carry out whatever tests, checks and investigations they may reasonably require in order to ensure that any Final Acceptance Criteria have been achieved;

(ii) demonstrate to the satisfaction of the Independent Certifier that the Final Acceptance Criteria have been achieved; and

(iii) comply with all reasonable directions of the Independent Certifier in relation to demonstrating that the Final Acceptance Criteria have been achieved.

25.6 Not used

25.7 Final Acceptance Report

(a) (Draft report): Project Co must submit to the Verification and Acceptance Reviewing Party for review in accordance with the Review Procedures a draft Final Acceptance Report for each Unit, each Simulator, the Maintenance Facility, the Base Fleet and Continuous Production Options and the Upgrade Services not earlier than 30 Business Days, and not later than 20 Business Days, prior to the date on which Project Co expects to achieve Final Acceptance of the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable), which draft Final Acceptance Report must
contain all information necessary to demonstrate that Project Co has met the applicable Final Acceptance Criteria.

(b) (Further draft report): Project Co must submit to the Verification and Acceptance Reviewing Party for review in accordance with the Review Procedures a further draft Final Acceptance Report for each Unit, each Simulator, the Maintenance Facility, the Base Fleet and Continuous Production Options and the Upgrade Services not later than 10 Business Days prior to the date on which Project Co expects to achieve Final Acceptance of the Unit, Simulator, Maintenance Facility, the Base Fleet and Continuous Production Options or the Upgrade Services (as applicable). The further draft Final Acceptance Report must reflect all applicable Final Acceptance Criteria that have been achieved to the date of that further draft report.

(c) (Compliance with directions): Project Co must take into account and comply with any directions reasonably given by the Independent Certifier (acting reasonably) in connection with preparing for Final Acceptance.

25.8 Notice of Final Acceptance

(a) (Notice by Project Co): When Project Co is of the reasonable opinion that it has achieved all those things necessary for Final Acceptance of a Unit, a Simulator, the Maintenance Facility, the Base Fleet and Continuous Production Options or the Upgrade Services, Project Co must provide to TfNSW and the Independent Certifier:

(i) notice of its opinion; and

(ii) the Final Acceptance Report for the Unit, Simulator, Maintenance Facility, the Base Fleet and Continuous Production Options or the Upgrade Services (as applicable).

(b) (Notice by TfNSW): Notwithstanding that Project Co may not have issued a notice under clause 25.8(a), when TfNSW considers that Project Co has achieved Final Acceptance of a Unit, a Simulator, the Maintenance Facility, the Base Fleet and Continuous Production Options or the Upgrade Services, TfNSW may:

(i) notify Project Co and the Independent Certifier of its opinion; and

(ii) request the Independent Certifier to determine whether Final Acceptance of the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable) has been achieved.

25.9 Determination of Final Acceptance

(a) If, in the opinion of the Independent Certifier:

(i) (Issue Certificate): Final Acceptance of the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable) the subject of a notice issued under clause 25.8 has been achieved, the Independent Certifier must issue a Certificate of Final Acceptance for the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable) to Project Co and TfNSW within 5 Business Days after receipt of the notice under clause 25.8, which certificate must state the Date of Final Acceptance of the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable); or
(ii) **Issue notice**: Final Acceptance of the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable) the subject of a notice issued under clause 25.8 has not been achieved, the Independent Certifier must, by not later than 5 Business Days after receipt of the notice issued in accordance with clause 25.8, issue to Project Co and TfNSW a notice in the form set out in section 6 of the Schedule of Forms and Certificates either:

A. containing details of the outstanding Final Acceptance Criteria that must be satisfied by Project Co as a condition precedent to achieving Final Acceptance of the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable); or

B. stating that Final Acceptance is so far from being achieved that it is not practicable to provide details of the type referred to in clause 25.9(a)(ii),

after which Project Co must continue to expeditiously and diligently progress the Delivery Phase Activities or Upgrade Services to achieve Final Acceptance of the Unit, Simulator, Maintenance Facility, Base Fleet and Continuous Production Options or Upgrade Services (as applicable).

(b) **(Consequence of notice)**: If the Independent Certifier issues a notice under clause 25.9(a)(ii), the process in clauses 25.2 to 25.9(a) will commence again in respect of those outstanding Final Acceptance Criteria set out in the Independent Certifier's notice.

(c) **(No restriction on Independent Certifier)**: The Independent Certifier, in making its determination as to whether Final Acceptance has been achieved:

(i) will not be restricted by any notice, list or opinion which it previously provided to Project Co under clause 25.9(a)(ii); and

(ii) is entitled to raise any other items of work as a ground for determining that Final Acceptance has not been achieved.

(d) **(Consequence of certificate)**: The issue of a Certificate of Final Acceptance in accordance with this clause 25.9 does not constitute:

(i) evidence that Project Co has satisfied the FFP Warranty;

(ii) an approval by TfNSW or RailCorp of the completion or acceptance of any part of the Works or Upgrade Services under this Deed; or

(iii) evidence that all or any other obligations under this Deed have been satisfied.

25.10 Not used

25.11 Not used

25.12 Release after Acceptance

On and from the date which is 6 Months after the:

(a) Date of Final Acceptance (Project), Project Co releases TfNSW and RailCorp from all Claims in connection with any fact, matter or thing arising out of, or in connection...
with the carrying out of the Delivery Phase Activities which existed or occurred prior to the Date of Final Acceptance (Project); or

(b) Date of Final Acceptance (Upgrade Services), Project Co releases TfNSW and RailCorp from all Claims in connection with any fact, matter or thing arising out of, or in connection with the carrying out of the Upgrade Services which existed or occurred prior to the Date of Final Acceptance (Upgrade Services), except for any Claim notified to TfNSW in accordance with this Deed prior to that date.

26. Early Acceptance & compression

(a) (Proposed Early Acceptance Date): Project Co must, as part of its Status Delivery Program, identify as soon as reasonably practicable any Proposed Early Acceptance Date.

(b) (Notification and consent in respect of Maintenance Facility): Project Co must not achieve Acceptance earlier than the Date for Acceptance in respect of the Maintenance Facility unless Project Co has complied with clause 26(a) and has provided TfNSW with at least 1 Month's prior written notice (or another period as agreed by TfNSW and Project Co) that Project Co anticipates it will achieve Acceptance on the Proposed Early Acceptance Date.

(c) (Early presentation of Units or Simulators): Subject to clauses 26(ca) and 26(d), Project Co may present a Unit or Simulator for Preliminary Acceptance, Provisional Acceptance or Final Acceptance in accordance with clauses 22A.3(a), 23.5(a) or 25.5(a) (as applicable) earlier than the relevant date specified in the Baseline Delivery Program or Verification Plan.

(ca) (TfNSW and the Independent Certifier not obliged): Subject to clauses 26(e) and 26(f), neither TfNSW nor, if applicable, the Independent Certifier is obliged to undertake activities required to determine whether the Acceptance Criteria in respect of the Unit have been met, to test, inspect or witness any Verification Activity or to issue a Certificate of Preliminary Acceptance, Certificate of Provisional Acceptance or Certificate of Final Acceptance:

(i) in respect of a Unit:
   A. subject to clauses 21.1(a) to 21.1(c), 22A.2, 23.2 and 25.2, other than on the relevant date specified in the Verification Plan or Baseline Delivery Program for the relevant activity; or
   B. less than 5 Business Days after the Date of Preliminary Acceptance, the Date of Provisional Acceptance or the Date of Final Acceptance (as applicable) of the Unit that most recently achieved Acceptance; or

(ii) in respect of a Simulator, subject to clauses 21.1(a) to 21.1(c), 22A.2, 23.2 and 25.2, other than on the relevant date specified in the Verification Plan or Baseline Delivery Program for the relevant activity,

unless otherwise agreed in writing by the TfNSW Representative.

(d) (TfNSW not obliged assist): TfNSW may assist Project Co, but will not be obliged to take any action to assist or enable Project Co, to achieve early Acceptance.

(e) (Pre-Agreed Acceptance Compression Principles): If Project Co has not achieved Provisional Acceptance (Unit) of a Unit by the relevant Date for Provisional Acceptance (Unit), Project Co may issue a Change Notice to TfNSW to
request the compression of the schedule for Provisional Acceptance (Unit) as set out in the Baseline Delivery Program and Verification Plan in relation to:

(i) the Unit that has not achieved Provisional Acceptance (Unit) by the relevant Date for Provisional Acceptance (Unit); and

(ii) any Unit that is subsequently impacted by the failure of the Unit referred to in clause 26(e)(i) to achieve Provisional Acceptance (Unit) by the relevant Date for Provisional Acceptance (Unit),

provided that such Change Notice must reflect the Pre-Agreed Acceptance Compression Principles.

(Act reasonably): TfNSW must act reasonably in considering whether to accept a Change Notice issued pursuant to clause 26(e) and, if TfNSW elects to accept the Change Notice, Project Co must comply with the Change Notice and TfNSW must use reasonable endeavours to compress the schedule for Provisional Acceptance (Unit) in accordance with the Change Notice.
Part E - Maintenance Phase obligations

27. Not used

28. Site Access during Maintenance Phase

28.1 Maintenance Phase Licences

(a) (Maintenance Phase Licences):

(i) Subject to Provisional Acceptance (Maintenance Facility) having occurred, TfNSW will procure the grant to Project Co of a non-exclusive licence to enter upon and occupy the Maintenance Facility Site to the extent necessary to carry out the Project Activities on the terms set out in this clause 28.1 (Maintenance Facility Site Maintenance Phase Licence).

(ii) TfNSW will procure the grant to Project Co of a non-exclusive licence to enter upon and occupy the Legacy Maintenance Centre Site to the extent necessary to carry out the Project Activities on the terms set out in this clause 28.1 (Legacy Maintenance Centre Licence).

(b) (Terms of Maintenance Phase Licence): The Maintenance Phase Licences procured under clause 28.1(a) will be:

(i) for a term which will:

A. for the Maintenance Facility Site, commence on the Date of Provisional Acceptance (Maintenance Facility);

B. for the Legacy Maintenance Centre Site, commence on the Date of Handover (Legacy Maintenance Centre) (provided that the term of the licence in respect of the Temporary Licensed Area will commence on the first day of the Temporary Licensed Area Term); and

C. end on the Expiry Date (or, in the case of the licence in respect of the Temporary Licensed Area, the last date of the Temporary Licensed Area Term); and

(ii) on the terms of the form of licence for the relevant Site set out in Schedule 7A and Schedule 7B (as applicable).

(c) (Stabling Yard access): TfNSW will procure that Project Co is granted reasonable access to:

(i) the Stabling Yards (other than the Legacy Maintenance Centre), on reasonable prior notice to the yard master of that Stabling Yard, for Project Co's mobile maintenance technician to undertake corrective Level 1 Maintenance and corrective Level 2 Maintenance; and

(ii) prior to the Date of Handover (Legacy Maintenance Centre), the Legacy Maintenance Centre, to undertake:

A. Level 1 Maintenance and corrective Level 2 Maintenance;

B. inspections, planning and preparation in relation to the Upgrade Services and Rectification Works; and
C. installation of temporary Upgrade Services.

(d) *(Personal Right):* The Maintenance Phase Licences and access rights granted under clauses 28.1(a) and 28.1(c):

(i) are a personal right in contract, do not create any estate or interest in the Maintenance Phase Sites or the Stabling Yards, do not confer exclusive possession on Project Co or its Associates and do not create the relationship of tenant and landlord between any of them and TfNSW; and

(ii) are given subject to the Adverse Rights and the rights of TfNSW, RailCorp, any of their respective Associates and any other person authorised by TfNSW or RailCorp (including the Independent Certifier), to access and occupy the Maintenance Phase Sites or the Stabling Yards in accordance with this Deed and any other TfNSW Project Document.

(e) *(Other access):* Except as set out in clauses 28.1(a) and 28.1(c), Project Co is solely responsible for obtaining access to and from the Maintenance Phase Sites, and to and from any land outside the Maintenance Phase Sites to which access is required to carry out the Project Activities.

(f) *(Delivery of Maintenance Phase Licences):* Project Co must prepare and deliver to the TfNSW Representative for review in accordance with the Review Procedures 3 counterparts of:

(i) the Maintenance Facility Site Maintenance Phase Licence, not later than 60 Business Days prior to the expected Date of Provisional Acceptance (Maintenance Facility);

(ii) the Legacy Maintenance Centre Licence not later than 60 Business Days prior to the expected Date of Handover (Legacy Maintenance Centre);

and each of which:

(iii) must be on the terms of the relevant form of licence set out in Schedule 7A and Schedule 7B (as applicable) and, in respect of the Maintenance Facility Site, include as an annexure the site plans for the Maintenance Facility Site prepared and certified by a licensed surveyor; and

(iv) are:

A. executed by Project Co; and

B. complete, except for those matters that TfNSW is authorised to complete in accordance with clause 28.1(g).

(g) *(TfNSW to complete):* Project Co authorises TfNSW to complete each Maintenance Phase Licence granted under clause 28.1(a) by inserting:

(i) for the Maintenance Facility Site Maintenance Phase Licence, the Date of Provisional Acceptance (Maintenance Facility) as the commencement date of the Maintenance Facility Site Maintenance Phase Licence; and

(ii) for the Legacy Maintenance Centre Licence, the Date of Handover (Legacy Maintenance Centre) as the commencement date of the Legacy Maintenance Centre Licence and any other particulars necessary to complete the Legacy Maintenance Centre Licence.
(h) **(Execution):** Subject to Project Co complying with its obligations under clause 28.1(f), TfNSW must complete the counterparts of each of the Maintenance Phase Licences in accordance with clause 28.1(g), execute each counterpart and return 2 of the completed and executed counterparts to Project Co as soon as reasonably practicable, and in any event prior to the commencement date of the relevant Maintenance Phase Licence.

(i) **(Comply with Maintenance Phase Licence):** TfNSW and Project Co must comply with the terms of each Maintenance Phase Licence from the commencement date of such Maintenance Phase Licence.

(j) **(General obligations):** Project Co must:

(i) meet its obligations in clause 8.8 in respect of the Maintenance Phase Sites; and

(ii) not use the Maintenance Phase Sites for any purpose other than the Project Activities.

(k) **(Project Co acknowledgements):** Project Co acknowledges that:

(i) it must pay the Licence Payments (exclusive of GST) to TfNSW;

(ii) it must pay the GST payable in respect of the Licence Payments to TfNSW; and

(iii) it has not previously received a notice of assignment of all or any part of the Licence Payments.

(l) **(Assignment of Licence Payments):** Project Co acknowledges that TfNSW has offered to assign the Licence Payments (exclusive of GST) due in connection with the Maintenance Phase Licences to Finance Co pursuant to the Receivables Purchase Deed. On receipt of a notice of assignment:

(i) Project Co must pay each Licence Payment and any other amounts (exclusive of GST) to Finance Co in accordance with the notice;

(ii) any such payment will discharge the liability of Project Co to pay the Licence Payments to TfNSW under the Maintenance Phase Licences; and

(iii) Project Co must pay the GST payable in respect of each Licence Payment to TfNSW but it is only obliged to make that payment when it has been provided with a Tax Invoice in respect of the relevant Licence Payment.

### 28.2 TfNSW access to the Maintenance sites and records

(a) **(Access):** At all times during the Maintenance Phase, Project Co must ensure that TfNSW, any of its Associates and any other person authorised by TfNSW has access:

(i) to the Maintenance Facility and Legacy Maintenance Centre:

A. as required in accordance with the TfNSW Project Documents;

B. to review, inspect, observe, test and monitor the provision of any part of the Services (whether or not such review, inspection, observation, test or monitoring is otherwise required under any TfNSW Project Document);
C. to attend any test or investigation that is being carried out at the Maintenance Facility or the Legacy Maintenance Centre;

D. in accordance with the Services Requirements, any Laws or any Standards;

E. to undertake any audits in accordance with clause 11.3;

F. to audit Project Co's compliance with its obligations in clause 30(c)(ii);

G. to allow for the provision of refuelling services; and

H. in connection with any matter which TfNSW deems relevant to the performance of the Services; and

(ii) to all Project Co Material.

(b) (Access for Third Party Suppliers): At all times following the Date of Handover (Legacy Maintenance Centre), Project Co must ensure that each Third Party Supplier has access to the Legacy Maintenance Centre to perform its obligations under its respective agreement with TfNSW or a NSW Rail Entity.

(c) (Right to visit): Project Co must procure that TfNSW, any Associate of TfNSW and any other person authorised by TfNSW has, at all reasonable times during the Maintenance Phase, the right to visit any property, site or workshop outside the Sites:

(i) where Spares, Consumables and Equipment are being manufactured, prepared or stored for use, for the purposes of:

A. general inspection and testing; or

B. auditing Project Co's compliance with its obligations in clause 30(c); or

(ii) used by Project Co for the provision of any Services, including for the purposes of review, inspection, observation, testing or monitoring any part of the Services (whether or not such review, inspection, observation, test or monitoring is otherwise required under any TfNSW Project Document).

(d) (Parties to bear own costs): Each party will bear its own costs in respect of any rights of access exercised under this clause 28.2, except:

(i) where a Material Defect is revealed, Project Co must pay as a debt due and payable by Project Co to TfNSW the costs and expenses of TfNSW, its Associates or such other person authorised by TfNSW in undertaking any inspection, testing or investigation which revealed that Material Defect; or

(ii) in respect of any audit undertaken in accordance with clause 11.3 to which clause 11.3(i) applies.
29. **Obligation to perform the Services**

29.1 **General**

In addition to the obligations set out in clause 5, during the Maintenance Phase, Project Co must perform the Services in accordance with the Services Requirements and in a manner that is Fit For Purpose.

29.2 **Project Co Defects**

(a) **(Defects to be rectified):** Subject to clause 29.4, at all times following:

(i) subject to clauses 29.2(a)(ii) and 29.2(a)(iii), the Date of Provisional Acceptance in respect of an Asset;

(ii) in the case of the Legacy Maintenance Centre, the Date of Handover (Legacy Maintenance Centre); or

(iii) in the case of the Returned Asset, the Date of Returned Asset Handback until the end of the Returned Asset Defects Liability Period,

(respectively the **Defects Term**) Project Co must:

(iv) notify TfNSW of any Project Co Defects identified by Project Co; and

(v) rectify all Project Co Defects in respect of that Asset regardless of whether or not such Project Co Defects are the subject of a notice under this clause 29.2 or clause 29.3.

(b) **(TfNSW may give notice):** If, during the Defects Term, TfNSW is of the opinion that a Project Co Defect exists, then TfNSW may give a notice to Project Co:

(i) specifying the Project Co Defect;

(ii) requiring Project Co to rectify the Project Co Defect; and

(iii) specifying a reasonable time within which this must occur, which period must not be less than any applicable Time to Complete specified in section 4 of the Minimum Operating Standards.

(c) **(Timeframe to rectify):** Project Co must rectify the Project Co Defect:

(i) if a notice is given under clause 29.2(b), within the time specified in TfNSW’s notice; or

(ii) if a notice is not given under clause 29.2(b), within the Time to Complete, provided that, to the extent the Project Co Defect relates to any Returned Asset, the Returned Asset Owner provides Project Co with sufficient access to the relevant Returned Asset as is reasonably practicable to allow Project Co to comply with its obligations under this clause 29.2(c).

(d) **(TfNSW entitled to withhold):** If the Project Co Defect is not rectified by Project Co within the time specified in TfNSW’s notice or the Time to Complete (as applicable), then TfNSW may determine an estimate of the cost necessary to rectify the relevant Project Co Defect, in which case:

(i) TfNSW may withhold from any payment due to Project Co:
A.  the amount determined by TfNSW as the estimated cost necessary to rectify the relevant Project Co Defect; or
B.  such lesser amount as TfNSW may determine,

until the Project Co Defect is rectified; and

(ii)  once the Project Co Defect is rectified, then Project Co will be entitled to payment of the amount withheld under clause 29.2(d)(i) at the same time as the next Monthly Service Payment is to be made.

(e)  (Returned Asset): Subject to clause 29.2A, where the Project Co Defect relates to any Returned Asset, Project Co must rectify the Project Co Defect:

(i)  at times agreed with the Returned Asset Owner and in accordance with the requirements of any other relevant Authority or the Returned Asset Owner; and

(ii)  so as to minimise any adverse effect on the Returned Asset Owner or any Authority.

(f)  (TfNSW reimbursement): If a Project Co Defect in a Returned Asset which is the subject of a notice given in accordance with clauses 29.2(a)(iv) or 29.2(b) was directly caused by an act or omission of the Returned Asset Owner, other than an act or omission undertaken in accordance with the intended use of the Returned Asset, then the direct costs properly and reasonably incurred in rectifying that Project Co Defect (including reimbursement of any Abatement caused by the Project Co Defect or its rectification) will be a debt due and payable from TfNSW to Project Co.

(g)  (Rights at Law): Neither TfNSW's nor RailCorp's rights, nor Project Co's Liability, whether in accordance with this Deed or otherwise at Law in connection with Project Co Defects will be:

(i)  affected or limited by the rights conferred upon TfNSW by this clause 29.2 or any other provision of this Deed; or

(ii)  affected or limited by the failure of TfNSW to exercise any such rights.

(h)  (Rights unaffected): Nothing in this clause 29.2 or clause 29.3, or any other clause of this Deed in connection with Project Co Defects, limits Project Co's obligations in respect of Failures under the Performance Regime, Payment Schedule or the Project Scope and Requirements.

(i)  (Referral of Dispute): Any Dispute as to whether a defect in the Assets constitutes a Project Co Defect for the purposes of this Deed or as to TfNSW's determination of the cost to rectify under clause 29.2(d) must be referred for dispute resolution in accordance with clause 50.

29.2A  Returned Asset Defects Liability Period

(a)  (Returned Asset Defects Liability Period): The Returned Asset has a Returned Asset Defects Liability Period which:

(i)  commences on the Date of Returned Asset Handback; and

(ii)  expires on the later of:

A.  24 months after the Date of Returned Asset Handback; and
B. 12 months after rectification, to the satisfaction of the Independent Certifier, of all Project Co Defects in the Returned Asset:

1) existing at the date referred to in clause 29.2A(a)(ii)A; or

2) notified by Project Co pursuant to clause 29.2(a)(iv) or by TfNSW pursuant to clause 29.2(b) prior to the date referred to in clause 29.2A(a)(ii)A,

provided that the maximum aggregate duration of the Returned Asset Defects Liability Period shall not exceed 36 months from the Date of Returned Asset Handback.

(b) (Project Co's obligation limited): Project Co's obligation to rectify Project Co Defects in the Returned Asset ends at the end of the Returned Asset Defects Liability Period.

29.3 Recurrent defects

(a) (Project Co notification): Project Co must:

(i) monitor and assess the occurrence of any Recurrent Defect; and

(ii) within 5 Business Days after becoming aware of a Recurrent Defect, give notice of the Recurrent Defect to TfNSW.

(b) (TfNSW notification): If TfNSW considers that there is a Recurrent Defect at any time during the Term, then TfNSW may give Project Co notice of such Recurrent Defect.

(c) (Disagreement): If Project Co disagrees with any notice given by TfNSW under clause 29.3(b), then:

(i) within 5 Business Days after receipt by Project Co of a notice given by TfNSW under clause 29.3(b), give notice of such disagreement to TfNSW, including supporting documentation;

(ii) TfNSW and Project Co must use reasonable endeavours to resolve the disagreement; and

(iii) if the disagreement has not been resolved within 10 Business Days after receipt by TfNSW of the notice given by Project Co under clause 29.3(c)(i), then clause 29.3(f) will apply.

(d) (Recurrent Defect Rectification Plan): Within 20 Business Days after:

(i) Project Co gives notice of a Recurrent Defect under clause 29.3(a)(ii);

(ii) receipt of a notice given by TfNSW under clause 29.3(b) which is not the subject of a notice of disagreement by Project Co under clause 29.3(c)(ii); or

(iii) where Project Co has given a notice of disagreement to TfNSW under clause 29.3(c)(ii), the date on which it is agreed by TfNSW and Project Co or determined by the Defects Expert under clause 29.3(f) that a Recurrent Defect does exist,
Project Co must submit a draft plan for complying with its obligations under clauses 29.3(e)(i) and 29.3(e)(ii) (Recurrent Defect Rectification Plan) to the TfNSW Representative for review in accordance with the Review Procedures.

(e) **Obligation to rectify**: Project Co must:

(i) rectify the Recurrent Defect in all Units, Spares or sub-systems in which the Recurrent Defect has manifested in accordance with clause 29.2(a);

(ii) in respect of a Unit, Spare or sub-system in which a Recurrent Defect has not yet manifested itself, undertake:

A. all necessary works to prevent the manifestation of the Recurrent Defect in such Unit, Spare or sub-system; and

B. all other works that are reasonably necessary to enable the Unit to continue in operation in accordance with this Deed pending the carrying out and completion of the rectification and other works; and

(iii) otherwise, implement, and thereafter comply diligently with, the Recurrent Defect Rectification Plan.

(f) **Referral to Defects Expert**: If clause 29.3(c)(iii) applies then either TfNSW or Project Co may, by notice to the other, refer the matter for determination by an independent expert (Defects Expert) in accordance with clause 52, except that:

(i) the Defects Expert must be:

A. an individual chosen by agreement, in writing, between TfNSW and Project Co; or

B. if TfNSW and Project Co do not agree on the person to be appointed within 10 Business Days of the referral to expert determination under this clause 29.3(f), an individual nominated by the President of Engineers Australia on request in writing by TfNSW;

(ii) TfNSW and Project Co must enter into an agreement with the Defects Expert on substantially the same terms as the Expert Determination Agreement or such other reasonable terms as the Defects Expert may require;

(iii) the Defects Expert must make a determination as to the matter and notify the parties of its determination and reasons within 10 Business Days after it is appointed to determine the matter; and

(iv) the determination of the Defects Expert will be final and binding.

29.4 **Rectification Works**
29.5 Rail Infrastructure Condition

(a) (Project Co to inform itself): Without limiting clause 7, Project Co warrants for the benefit of each of TfNSW and RailCorp that it has, and will be deemed to have, done everything (including all assessments, tests, enquiries, investigations and studies of the Rail Infrastructure and the Rail Infrastructure Condition) that would be expected of a prudent, competent and experienced contractor in the position of Project Co exercising Best Industry Practices:

(i) in assessing the risks regarding the Rail Infrastructure Condition and the cost of performing the Services and other Project Activities; and

(ii) in order to determine the suitability and adequacy of the Rail Infrastructure and the Rail Infrastructure Condition for the Project.

(b) (Project Co acknowledgements): Project Co acknowledges and agrees that notwithstanding anything to the contrary contained in this Deed:
(i) TfNSW, RailCorp and their respective Associates have not made and make no representations (express or implied), and give no warranties or guarantees (express or implied), and owe no duty of care (express or implied), in respect of the Rail Infrastructure or the Rail Infrastructure Condition as they are at any time, including in respect of the suitability or adequacy of the Rail Infrastructure;

(ii) it was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations relating to the Rail Infrastructure Condition;

(iii) it accepts the Rail Infrastructure Condition at the date of this Deed and thereafter, [redacted];

(iv) it will not be entitled to make any Claim, and TfNSW, RailCorp and their respective Associates will have no Liability, arising out of or in relation to the Rail Infrastructure Condition from time to time, including any change in the composition or bounds of the Network, provided that nothing in this clause 29.5(b)(iv) disentitles Project Co from claiming payment of any Distance Based Payment calculated in accordance with the Payment Schedule and

(v) TfNSW and RailCorp have entered into this Deed relying upon the warranties, acknowledgements, representations and agreements of Project Co as set out in this clause 29.5.

29.6 Recovery

(a) **Assistance with Recovery**: If a Unit requires Recovery for any reason, including if due to a Project Co Defect or a TfNSW Defect, then:

(i) TfNSW will procure all Recovery works necessary on the Network including de-coupling or coupling, providing Crew and movement of the Unit on the Network;

(ii) Project Co must support the Recovery of the Unit in consultation with TfNSW, including by making available all specialist recovery tools and equipment that might reasonably be required to undertake such Recovery; and

(iii) if requested by TfNSW, Project Co must:

A. promptly make available at the location of the incident suitably qualified and experienced personnel as required by TfNSW to assist with the Recovery; and

B. provide all or any of the following support services in consultation with TfNSW:

1) provision of on call engineers to:
   a) attend the Recovery and provide assistance; and
b) investigate and evaluate causes of the event that resulted in the need for the Recovery; and

2) storage of the Recovered Unit at a Project Site.

(b) (No Claim): Subject to clause 44.2A, Project Co is not entitled to make any Claim (including for an extension of time or other form of relief) arising out of or in any way in connection with Project Co's support of a Recovery in accordance with this clause 29.6.

(c) (Work plan): If required by TfNSW (acting reasonably), Project Co must assist TfNSW to develop a work plan setting out a safe and efficient method of managing any event or circumstance giving rise to a Recovery.

29A Availability

29A.1 Project Co must ensure Simulators meet the Minimum Simulator Operating Condition

Project Co must in respect of each Simulator, on and from the Date of Provisional Acceptance (Simulator) of the Simulator, ensure that the Simulator meets the Minimum Simulator Operating Condition throughout the Minimum Simulator Available Hours.

29A.2 Project Co must make Units Available

(a) (Project Co must make Available): From the Date of Provisional Acceptance (Unit) of the first Unit to achieve Provisional Acceptance, Project Co must, in each Availability Period:

(i) make Available the Units required to meet the Required Availability for that Availability Period; and

(ii) without prejudice to the generality of clauses 5.1 and 29.1, perform the Services so that the Units are capable of being operated in accordance with the Train Plan by TfNSW (or the Operator) at the times and locations and in the condition and quantities required by the Train Plan and the Train Plan Parameters.

(b) (Notification of Units not to be made Available): Project Co must, in respect of each Availability Period, identify in accordance with the Interface Protocols which Accepted Units will not be made Available to provide the Required Availability for that Availability Period.

29A.3 Train Plan and Train Plan Parameters

(a) (Development of Train Plan): TfNSW will consult with Project Co in relation to the development of a Train Plan applicable from time to time.

(b) (New Train Plan or changes to existing Train Plan): Project Co acknowledges and agrees that:

(i) the first Train Plan will be developed by TfNSW and the Operator;

(ii) the first Train Plan and any subsequent Train Plan may be amended at any time by TfNSW or the Operator for any reason including to enable operation of any changes to the Timetable during the Term;
(iii) if the Train Plan developed by TfNSW or the Operator from time to time is within the Train Plan Parameters, then Project Co will have sufficient time to perform the Services in accordance with this Deed; and

(iv) subject to clause 29A.3(c), Project Co is not entitled to make any Claim, seek any change to the Performance Regime, or relief of any other nature in relation to any matter arising in connection with:

A. a change to a Train Plan; or

B. the development of a Train Plan.

(c) (Train Plan Parameters): If the development of a Train Plan or a change, or proposed change, to a Train Plan means that the Train Plan does not comply with the Train Plan Parameters, then TfNSW must direct a Modification in accordance with clause 39.

(d) (Change to Stabling Yards): Project Co acknowledges and agrees that:

(i) TfNSW may from time to time by notice to Project Co substitute a Stabling Yard listed in Table 1 of the Train Plan Parameters with an alternative Stabling Yard; and

(ii) if a Stabling Yard listed in Table 1 of the Train Plan Parameters is substituted with an alternative Stabling Yard, then Project Co is not entitled to make any Claim seek any change to the Performance Regime, or relief of any other nature in connection with such substitution.

30. Equipment and Spares during the Maintenance Phase

Project Co:

(a) (Procurement): must manage the procurement, use, storage, security, overhaul, modification and Maintenance of Spares and Consumables required for the Assets:

(i) in accordance with the Asset Management System and this Deed; and

(ii) so as to ensure that the Assets meet the performance standards and requirements set out in the Project Scope and Requirements and are otherwise in compliance with this Deed;

(b) (Care and custody): is responsible for the care, custody and control of all Spares and Consumables and must provide all necessary:

(i) warehouse and other storage facilities;

(ii) inventory control; and

(iii) management requirements,

in relation to such Spares and Consumables;

(c) (Minimum quantity): must:

(i) include details of the minimum stock of Spares and Consumables required to be held for the performance of the Services in the Spares and Consumables Strategy; and
hold and Maintain the minimum specified stock of Spares and Consumables in accordance with the Spares and Consumables Strategy; and

(Bears risk): must purchase and provide all Spares and Consumables at its own cost and bears all risk in relation to the availability, cost, quality, functionality, delivery, fitness for purpose, obsolescence, Maintenance and storage of those Spares and Consumables.

31. Quality Assurance during the Maintenance Phase

(a) (Certification of Subcontractors): In addition to its obligations in clause 11.1, Project Co must ensure that all Key Subcontractors and Significant Subcontractors engaged to perform any of the Services are certified to AS/NZS ISO 9001 at all times during the Maintenance Phase.

(b) (Additional certification): Project Co must ensure that the relevant Key Subcontractors or Significant Subcontractors engaged to perform the relevant Services are also certified to:

(i) not used;

(ii) AS/NZS 4801, OHSAS 18001 or an equivalent standard for work health & safety management systems; and

(iii) AS/NZS ISO 14001 - Environmental management systems - Requirements with guidance for use.

(c) (Compliance): Project Co must procure that all Key Subcontractors and Significant Subcontractors comply with the requirements of AS/NZS ISO 55000, 55001 and 55002 which relate to asset management systems whether or not those Key Subcontractors or Significant Subcontractors are certified to those standards.

32. Asset Ownership and Condition

32.1 Fixtures

All fixtures affixed to a Site will be owned by the owner of the relevant part of a Site from the time they are affixed.

32.2 Ownership

Except as provided otherwise in clauses 32.1, 33.1(e), 33.2(d) or 62, or in section 7.1(d) of the Design Development Schedule, legal and beneficial ownership of all Delivered Rail Assets, Deliverables and any other chattels forming part of the Project Activities will pass to RailCorp immediately (free from any Security Interest), in each case on the earliest to occur of the following:

(a) in relation to the Maintenance Facility, the Date of Provisional Acceptance (Maintenance Facility);

(b) in relation to each Simulator, the relevant Date of Provisional Acceptance (Simulator);

(c) in relation to each Unit forming part of the New Fleet, the relevant Date of Provisional Acceptance (Unit);
32.3 Refurbishment Works

Project Co must carry out Refurbishment Works using materials, finishes and other items that:

(a) (Quality): have the same or higher levels of quality as that which would be used in accordance with Best Industry Practices; and

(b) (Costs): do not materially increase operating or Maintenance costs to TfNSW or RailCorp, or any other costs payable by TfNSW or RailCorp.

32.5 Residual life and Design Life

(a) (Fit for purpose): Without limiting clause 5.4, Project Co represents and warrants for the benefit of each of TfNSW and RailCorp that each:

(i) Design Life Item will, on the Expiry Date, be Fit for Purpose by reference to the purposes, function, uses and requirements which are current and apply as at the relevant FFP Warranty Commencement Date and capable of remaining Fit for Purpose at all times during the Residual Life specified in the Residual Life and Design Life Schedule, provided it is operated and Maintained in accordance with Best Services Practices; and

(ii) Design Life Item will be designed, manufactured and constructed so as to be Fit for Purpose on the relevant FFP Warranty Commencement Date by reference to the purposes, function, uses and requirements which are current and apply as at the relevant FFP Warranty Commencement Date and remain Fit for Purpose at all times during its Design Life specified in the Residual Life and Design Life Schedule, provided that for the period between the Expiry Date until the end of the relevant Design Life it is operated and Maintained in accordance with Best Services Practices.

(b) (Representations and warranties): The representations and warranties made by Project Co under:

(i) clause 32.5(a)(i) are made, and will be deemed to have been made, on the Expiry Date; and

(ii) clause 32.5(a)(ii) are made, and will be deemed to have been made, on each relevant Date of Provisional Acceptance referred to in clause 32.5(a)(ii).
32.6 Obsolescence

(a) **(Obligation to monitor):** Project Co must monitor the Obsolescence and potential Obsolescence of any:

(i) Spares, Consumables, component parts or subsystems of a Maintained Rail Asset or required to support the operation or Maintenance of a Maintained Rail Asset; or

(ii) Software required to use, operate or Maintain a Maintained Rail Asset, (each a Project Co Item), at all times until the Expiry Date.

(b) **(Obsolescence Notice):** If at any time prior to the Expiry Date Project Co believes any Project Co Item is, or is reasonably likely to become, Obsolete, (Obsolete Item) then Project Co must as soon as possible provide TfNSW with a notice setting out the nature of, and reasons for, the Obsolescence.

(c) **(Obsolescence prior to the Expiry Date):** For Obsolescence which occurs prior to the Expiry Date, Project Co:

(i) accepts all risks arising out of or in connection with an Obsolete Item; and

(ii) must, within a reasonable period after providing a notice to TfNSW under clause 32.6(b) and subject to clause 32.6(d), replace the Obsolete Item with an equivalent item that is not Obsolete and which will enable Project Co to continue to comply with its obligations under this Deed, including under clauses 5.4 and 32.5.

(d) **(Accreditation):** Project Co must not replace an Obsolete Item under clause 32.6(c) with an equivalent item until any changes to the Accreditation of any Accredited Person that are required in connection with the replacement of an Obsolete Item with an equivalent item have been approved by ONRSR.

(e) **(No excuse):** The Obsolescence, or impending Obsolescence, of any Project Co Item does not excuse any failure by Project Co to comply with its obligations under this Deed.

33. Securitised Licence Structure

33.1 Construction Payment

(a) Subject to clause 33.1(b) and clause 35.8(g), in consideration for Project Co progressively undertaking the Works and carrying out the other Delivery Phase Activities, TfNSW agrees to pay the Construction Price to Project Co (or as Project Co directs) by paying each Construction Payment on each Construction Payment Date.

(b) TfNSW has no obligation to pay a Construction Payment unless and to the extent that TfNSW receives the corresponding Receivables Instalment Payment from Finance Co under the Receivables Purchase Deed.

(c) The Construction Price and the Receivables Purchase Price may only be adjusted:

(i) as described in clause 33.2 to reflect a Construction Change Payment;
by way of an adjustment to a Construction Payment as described in clause 33.3, to reflect a reduction in the Monthly Service Payment and a corresponding reduction in the debt finance procured by Finance Co and reflected in the Securitised Licence Structure; or

(iii) by written agreement between the parties,

provided that the Construction Price and the Receivables Purchase Price will be of equal amounts and that no adjustment to the Construction Price or the Receivables Purchase Price will affect the limitation referred to in clause 33.1(b).

(d) Notwithstanding any other clause of any Project Document, TfNSW may not set off any amount due and payable by Project Co or Finance Co to TfNSW under the Project Documents against any Construction Payment.

(e) To the extent it has not already passed, all right, title and interest of Project Co in the Delivered Rail Assets, Deliverables or other chattels forming part of the Project Activities to which a Construction Payment applies passes to RailCorp on payment by TfNSW under clause 33.1(a).

(f) If the Construction Price and the Receivables Purchase Price are adjusted in accordance with clause 33.1(c), TfNSW and Project Co agree to adjust the Licence Payments payable under the Maintenance Phase Licences as appropriate to reflect the adjustment made to the Construction Price and the Receivables Purchase Price in accordance with clause 33.2 or clause 33.3 (as the case may be).

(g) Notwithstanding anything else in the Project Documents, TfNSW acknowledges that if it does not receive a Receivables Instalment Payment in full or at all from Finance Co under the Receivables Purchase Deed, TfNSW's only right or remedy in respect of such non-payment is the relief from payment to or at the direction of Project Co of the corresponding Construction Payment under clause 33.1(b). Notwithstanding the foregoing, any failure by TfNSW to pay a Construction Payment due to Finance Co failing to pay a corresponding Receivables Instalment Payment shall not relieve Project Co of any of its obligations under the Project Documents.

33.2 Construction Change Payment

(a) If a CCA Event occurs and the Monthly Service Payment is increased and there is a corresponding increase in the debt finance procured by Finance Co and reflected in the Securitised Licence Structure, then (without double-counting) subject to clause 33.2(b) and clause 35.8(h)(1.1)(a)(ii), on the next occurring Construction Payment Date:

(i) the Construction Price will be increased by the amount of the Construction Change Payment provided that the Construction Change Payment and the Additional Receivables Purchase Price in relation to the CCA Event will be of equal amounts;

(ii) TfNSW must pay the Construction Change Payment in respect of that CCA Event to Project Co (or as Project Co directs); and

(iii) the Licence Payments payable by Project Co under the Maintenance Phase Licences will be increased as appropriate by the amount of the Construction Change Payment.

(b) TfNSW has no obligation to pay the Construction Change Payment unless and to the extent that it receives the Additional Receivables Purchase Price from Finance Co under the Receivables Purchase Deed in relation to that CCA Event.
(c) Notwithstanding any provision in the Project Documents to the contrary, TfNSW may not set off any amount due and payable by Project Co or Finance Co to TfNSW under the Project Documents against any Construction Change Payment.

(d) To the extent it has not already passed, all right, title and interest of Project Co in the Delivered Rail Assets, Deliverables or other chattels forming part of the Project Activities to which a Construction Change Payment applies passes to RailCorp on payment by TfNSW under clause 33.2(a).

(e) TfNSW acknowledges that, notwithstanding any provision in the Project Documents to the contrary, if the Additional Receivables Purchase Price in relation to a CCA Event is not received in full or at all under the Receivables Purchase Deed, TfNSW's only right or remedy in respect of such non-payment is the relief from payment of the corresponding Construction Change Payment under clause 33.2(a). Notwithstanding the foregoing, any failure by TfNSW to pay a Construction Payment due to Finance Co failing to pay a corresponding Receivables Installment Payment shall not relieve Project Co of any of its obligations under the Project Documents.

33.3 Reduction in Monthly Service Payment

If a CCA Event occurs and the Monthly Service Payment is reduced and there is a corresponding reduction in the debt finance procured by Finance Co and reflected in the Securitised Licence Structure, on the next Construction Payment Date:

(a) the Construction Payment payable by TfNSW on that Construction Payment Date will be reduced by an amount reflecting the reduction to the Monthly Service Payment;

(b) the Receivables Installment Payment payable by Finance Co on that Construction Payment Date under the Receivables Purchase Deed will be reduced by the same amount as calculated at clause 33.3(a); and

(c) the Licence Payment payable by Project Co on that Construction Payment Date under the Maintenance Phase Licences will be reduced by the same amount as calculated at clause 33.3(a).

33.4 No Change in Risk Allocation

(a) (No Increased TfNSW Risk Allocation): The parties acknowledge and agree that the Securitised Licence Structure is not intended to result in an Increased TfNSW Risk Allocation.

(b) (No Claim): Project Co undertakes not to make any Claim inconsistent with the acknowledgement in clause 33.4(a) and to procure that neither Finance Co nor any of Project Co's or Finance Co's Related Bodies Corporate will make any such Claim.

(c) (If Increased TfNSW Risk Allocation): If TfNSW believes (on reasonable grounds supported by external advice) that the Securitised Licence Structure results or is likely to result in an Increased TfNSW Risk Allocation, then it may give Project Co a notice stating that the Securitised Licence Structure is to be amended to the extent necessary to ensure there is no Increased TfNSW Risk Allocation.

(d) (Necessary amendments): Following receipt of a notice given by TfNSW under clause 33.4(c), Project Co agrees to do anything requested by TfNSW in that notice or otherwise reasonably necessary to modify TfNSW Project Documents and the Securitised Licence Structure to ensure that there is no Increased TfNSW Risk Allocation.
(e) **(Damages not adequate):** Project Co acknowledges and agrees that:

(i) damages may not be an adequate remedy for TfNSW for any failure by Project Co to comply with the undertakings in this clause 33.4; and

(ii) if there is a breach or purported breach by Project Co of its obligations in this clause 33.4, TfNSW may seek and is entitled to injunctive or declaratory relief.

### 33.5 Indemnity

Project Co indemnifies TfNSW for:

(a) **(All costs or loss):** all Liability incurred by TfNSW as a result of any Increased TfNSW Risk Allocation to the extent that it is not removed or remedied by changes to the Securitised Licence Structure agreed in accordance with clause 33.4; and

(b) **(Any Claim):** any Claim brought against TfNSW by Project Co or Finance Co or any Related Body Corporate of either Project Co or Finance Co which is inconsistent with the acknowledgement in clause 33.4(a).
Part F - Payment Provisions

34. Conditional Debt Pay Down

34.1 CDPD Conditions

TfNSW’s obligation to pay or procure payment of the CDPD Amount is subject to the following conditions precedent (CDPD Conditions):

(a) (Commencement): the CDPD Period has commenced and not expired;

(b) (Default of termination): there is no subsisting Major Default or Default Termination Event;

(c) (Major Default): no Major Default (other than a Major Default occurring under paragraph (g) or (l) of the definition of Major Default) has occurred in the 6 Month period immediately prior to the CDPD Notice Date;

(d) (Multiple defaults): not more than one Major Default (other than a Major Default occurring under paragraph (g) or (l) of the definition of Major Default) has occurred in the 18 Month period immediately prior to the CDPD Notice Date;

(e) (Default Termination Event): no Default Termination Event has occurred in the 12 Month period immediately prior to the CDPD Notice Date;

(f) (Single cost of rectifying): the costs of rectifying any single subsisting Defect in the Maintenance Facility will not exceed [REDACTED]; and

(g) (Aggregate cost of rectifying all): the aggregate cost of rectifying all subsisting Defects in all Maintained Rail Assets will not exceed [REDACTED].

34.2 CDPD Payment Date

(a) (CDPD Amount): Subject to clause 34.1, TfNSW must pay or procure payment of the CDPD Amount on the CDPD Payment Date to Finance Co.

(b) (Outstanding Debt): Project Co must apply or procure the application of the CDPD Amount in partial repayment of the then outstanding Debt and ensure that the repaid amount is not available to be redrawn at any time under the Finance Documents.

34.3 Satisfaction of CDPD Conditions

(a) (Best endeavours): Project Co must use its best endeavours to procure the satisfaction of the CDPD Conditions prior to expiry of the CDPD Period.

(b) (Single conditions): When Project Co considers that a CDPD Condition has been satisfied, Project Co must promptly and in any event within 5 Business Days give TfNSW:

(i) a written notice stating that it considers that the CDPD Condition has been satisfied; and

(ii) reasonable evidence that the CDPD Condition has been satisfied.

(c) (All conditions): When Project Co considers that all of the CDPD Conditions have been satisfied (or waived by TfNSW), Project Co must:
(i) give TfNSW a written notice stating that it considers that all of the CDPD Conditions have been satisfied (or waived by TfNSW); and

(ii) provide TfNSW with the documents and information required under clause 60 and the CDPD Adjustment Protocol.

(d) **(TfNSW notice):** Within 10 Business Days after receiving a notice under clause 34.3(c)(i), TfNSW will give Project Co:

(i) written notice:
   A. that TfNSW agrees that all of the CDPD Conditions have been satisfied (or waived by TfNSW);
   B. that TfNSW accepts Project Co's calculation of the CDPD Amount; and
   C. confirming the CDPD Payment Date,

(CDPD Satisfaction Notice); or

(ii) written notice:
   A. that TfNSW does not agree that all of the CDPD Conditions have been satisfied (or waived by TfNSW);
   B. that TfNSW does not accept Project Co's calculation of the CDPD Amount; and
   C. the reasons for TfNSW's determination.

(e) **(Outstanding CDPD Conditions):** If TfNSW gives a notice under clause 34.3(d)(ii), Project Co must continue to use its best endeavours to procure the satisfaction of the outstanding CDPD Conditions and this clause 34.3 will re-apply.

(f) **(Breach):** A breach of clause 34.3(a) by Project Co will not, of itself, be a Major Default or a Default Termination Event.

(g) **(Payment):** The payment of the CDPD Amount does not constitute approval by TfNSW or RailCorp of the completion or acceptance of the Delivery Phase Activities or Upgrade Services in accordance with the TfNSW Project Documents, or evidence that the Delivered Rail Assets are Fit for Purpose or constitute evidence that all or any other obligations of Project Co under the TfNSW Project Documents have been satisfied.

### 34.4 Waiver of CDPD Conditions

(a) **(TfNSW may waive):** TfNSW may waive one or more of the CDPD Conditions in its absolute discretion by giving written notice to Project Co, except that TfNSW cannot waive the requirement that the CDPD Period has commenced.

(b) **(Consequence of waiver):** Any waiver by TfNSW of a CDPD Condition does not constitute a waiver by TfNSW of any of its rights, powers or discretions in respect of any subsisting breach of this Deed, a Major Default, a Default Termination Event or Defect (as may be relevant).

(c) **(CDPD Payment Date):** TfNSW may specify the CDPD Payment Date in the notice under clause 34.4(a).
35. Payments Adjustments & Taxes

35.1 TfNSW’s payment obligations

(a) (Payment obligations): In consideration of Project Co providing the Services, TfNSW will pay Project Co or procure payment to Project Co of the Monthly Service Payment:

(i) calculated in accordance with the Payment Schedule; and

(ii) in arrears,

with effect from the end of the Month in which the Date of Provisional Acceptance (Unit) occurs in respect of the first Unit to achieve Provisional Acceptance.

(b) (Other payments): Other than the Monthly Service Payment and the CDPD Amount, TfNSW will pay or procure payment of any payment that is due and payable to Project Co, and Project Co must pay any payment that is due and payable to TfNSW:

(i) at the time specified in this Deed or the relevant TfNSW Project Document for the particular payment; or

(ii) if no time is specified for the payment of the relevant amount, the payment will be made:

A. by or on behalf of TfNSW, in the case of a payment to Project Co:

1) prior to the Date of Provisional Acceptance (Unit) of the first Unit to achieve Provisional Acceptance, 20 Business Days after a written demand is made for payment of the amount; and

2) after the Date of Provisional Acceptance (Unit) of the first Unit to achieve Provisional Acceptance, at the same time as the next Monthly Service Payment is made by or on behalf of TfNSW to Project Co after the relevant amount becomes due and payable and a written demand is made for payment of the amount; and

B. by Project Co in the case of a payment to TfNSW, within 20 Business Days after a written demand being made by TfNSW for payment of the relevant amount.

35.2 Monthly Service Payments

(a) (Payment Claims): Subject to clause 35.2(i), within 5 Business Days after the end of each Payment Period, Project Co must prepare and provide to TfNSW a Payment Claim for:

(i) the Monthly Service Payment for that Payment Period; and

(ii) any other amounts then due and payable by TfNSW to Project Co or by Project Co to TfNSW under this Deed (other than the CDPD Amount).

(b) (Payment Statement): TfNSW will, within 10 Business Days after receipt by TfNSW of a Payment Claim, provide to Project Co a statement (Payment
Statement) stating the amount payable to or by Project Co (which may be more or less than the amount set out in the Payment Claim) and the reasons for any difference to the amount in the Payment Claim.

(c) (No Payment Claim): If Project Co does not issue a Payment Claim or Monthly Performance Report, TfNSW may still issue a Payment Statement setting out the amount payable to or by Project Co.

(d) (Registered): Each of the parties acknowledges that it (or in the case of TfNSW or RailCorp, an entity on behalf of TfNSW or RailCorp) is registered for GST when it enters into this Deed and that each party will notify the others if it (or the relevant entity) ceases to be registered or ceases to comply with any of the requirements of any taxation ruling issued by the Commissioner of Taxation in relation to the creation or issuing of RCTIs.

(e) (Tax Invoice): Without limiting Project Co’s right to dispute the amount for payment stated in the Payment Statement, Project Co or TfNSW (as applicable) will (subject to clause 35.8(f)) provide to the other party a Tax Invoice in connection with any supplies the subject of the Payment Statement for the amount stated in the Payment Statement within 2 Business Days of receipt of the Payment Statement.

(f) (Failure to provide Tax Invoice): Without limiting clause 35.8(f), if Project Co or TfNSW (as applicable) fails to provide a Tax Invoice in the time required, TfNSW or Project Co (as the case may be) may prepare the Tax Invoice on behalf of Project Co or TfNSW (as applicable) and provide that Tax Invoice to Project Co or TfNSW (as applicable).

(g) (Timing of payment): Subject to clauses 35.2(i) and 35.6, payment of the amount stated to be payable to or by Project Co in the Payment Statement will be made by or on behalf of TfNSW to Project Co or by Project Co to TfNSW (as the case may be) within 15 Business Days of receipt of the Payment Claim to which the Payment Statement relates.

(h) (Payment not evidence of proper performance): Neither payment of Monthly Service Payments or any other amount by or on behalf of TfNSW to Project Co nor the issuing of any Payment Statement is:

(i) evidence that the Project Activities have been carried out by Project Co in accordance with the TfNSW Project Documents; or

(ii) an admission of liability,

and is only to be taken as payment on account.

(i) (Statutory declaration): Project Co is not entitled to give TfNSW a Payment Claim under clause 35.2(a) and TfNSW is not obliged to make or procure payment under clause 35.2(g) unless Project Co has provided TfNSW with:

(i) a statutory declaration, in the form set out in section 18 of the Schedule of Forms and Certificates, together with any supporting evidence which may be reasonably required by TfNSW, duly signed by the Project Co Representative, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, employees and Subcontractors):

A. all employees of Project Co have at the date of the Payment Claim been paid all moneys due and payable to them; and
B. all Subcontractors of Project Co have at the date of the Payment Claim been paid all moneys due and payable to them in respect of the Project Activities;

(ii) a statutory declaration from each Key Subcontractor which satisfies the requirements of clause 35.2(i)(i) in relation to the employees and subcontractors of that Key Subcontractor; and

(iii) where:

A. the Payment Claim includes any amount that relates, in part or whole, to Project Activities carried out in New South Wales; or

B. Project Co is required to be registered as an employer under the Payroll Tax Act 2007 (NSW),

the statutory declarations provided under clauses 35.2(i)(i) and 35.2(i)(ii) must include:

C. a written statement covering the period covered by the relevant Payment Claim, 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 Schedule 2 Part 5 of the Payroll Tax Act 2007 (NSW), which is in the form approved by the Chief Commissioner of State Revenue pursuant to Part 5 of Schedule 2 of the Payroll Tax Act 2007 (NSW); and

D. copies of all relevant certificates of currency in respect of workers compensation insurance which Project Co or the relevant Key Subcontractor has in connection with the Project Activities.

35.3 Payment adjustments under the Performance Regime and Payment Schedule

(a) (Performance Regime applies): The Monthly Service Payments will be adjusted to the extent and in the manner described in the Performance Regime and the Payment Schedule to reflect the agreed principle that TfNSW will only pay or procure payment for the quantum and quality of the Services actually provided. Project Co agrees that the potential reductions in the Monthly Service Payments provided for in the Performance Regime and the Payment Schedule reflect a genuine pre-estimate of the diminished value to TfNSW and RailCorp if Project Co does not provide all components of the Services in accordance with this Deed.

(b) (Payments): To the extent that Project Co must pay TfNSW for any Liabilities contemplated by the exclusions in clause 35.3(e) and those Liabilities are in excess of the Monthly Service Payments, then in addition to any other remedies of RailCorp, TfNSW or their respective Associates under any TfNSW Project Document or at Law, the future Monthly Service Payments will be reduced to the extent necessary for TfNSW, RailCorp or their respective Associates (as applicable) to be compensated for those Liabilities in full. To the extent that TfNSW, RailCorp or their respective Associates are unable to recover such compensation by the reduction of future Monthly Service Payments, any shortfall in such compensation will be a debt due and payable by Project Co to TfNSW.

(c) (Project Co acknowledgements): Project Co agrees that if clause 35.3(a) or any adjustment under the Performance Regime or Payment Schedule is held to be void or unenforceable:
(i) Project Co must indemnify the Indemnified Persons from and against any Claim or Liability suffered or incurred by any of them in connection with the relevant event that would otherwise have given rise to such adjustment; and

(ii) clause 35.3(a), the Performance Regime and the Payment Schedule will not limit Project Co's Liability to the Indemnified Persons under this Deed or otherwise at Law for any such Claim or Liability.

(d) (Sole remedy): Subject to clause 35.3(c) and 35.3(e), adjustment of the Monthly Service Payments by application of the Performance Regime or Payment Schedule will be the only monetary consequence for Project Co for any Failure to which the Performance Regime or Payment Schedule applies.

(e) (Exclusions to sole remedy): Clause 35.3(d) and sections 1(e) and (f) of Schedule 42 (Upgrade Services) do not limit or affect:

(i) any other right or remedy under any TfNSW Project Document or at Law (other than, subject to this clause 35.3(e), for monetary compensation for any Failure to which the Performance Regime or Payment Schedule applies);

(ii) TfNSW's or RailCorp's right to recover in respect of loss or damage caused by any Failure under clauses 45 (other than clause 45.1), to the extent that TfNSW or RailCorp has not been fully compensated for that loss or damage;

(iii) TfNSW's or RailCorp's rights under clause 45.4;

(iv) TfNSW's entitlement to recover any costs, expenses or Liabilities incurred by TfNSW as a consequence of exercising its rights under clause 41;

(v) TfNSW's or RailCorp's rights under this Deed or any other TfNSW Project Document in respect of the event that caused or contributed to the Failure (as opposed to the Failure itself), provided that this clause 35.3(e)(v) does not apply to section 1(e) of Schedule 42 (Upgrade Services);

(vi) any payment on termination or expiry of this Deed (including a Termination Payment or Expiry Refund Payment); or

(vii) any Liability of Project Co to TfNSW, RailCorp or their respective Associates suffered or incurred by TfNSW, RailCorp or their respective Associates as a result of any:

A. fraudulent, unlawful or criminal act or omission; or

B. any wilful breach of a Project Document,

by Project Co or any of its Associates where TfNSW or RailCorp (as applicable) has not been completely compensated for that Liability by the adjustment in accordance with clause 35.3(a).

35.4 Refund

If:
(a)  **(Payment):** TfNSW pays Project Co or procures payment to Project Co of, or Project Co pays TfNSW, any amount under clause 35.2(g) or otherwise; and

(b)  **(Entitlement):** it is subsequently agreed or determined for any reason that the recipient was not entitled to that payment under this Deed,

the recipient will immediately refund to the party which made the payment that payment plus interest at the Overdue Rate from the day the payment was paid under clause 35.2(g) or otherwise to (and including) the date of repayment under this clause 35.4.

### 35.5 Interest

(a)  **(Interest):** Subject to clause 35.6, and other than where section 2.2 of the Termination Payments Schedule applies in relation to a Termination Payment or clause 9.2 (Interest on unpaid element of the Expiry Refund Payment) of the Receivable Purchase Deed applies in relation to the Expiry Refund Payment, if a party fails to pay or procure payment of any amount due and payable by that party to another party within the time required under this Deed, then it must pay interest on that amount:

(i)  from the date on which payment was due and payable until the date on which payment is made;

(ii)  calculated on daily balances at the Overdue Rate; and

(iii)  capitalised monthly.

(b)  **(Sole entitlement):** The amount specified in this clause 35.5 will be a party's sole entitlement to interest including damages for loss of, use of, or the cost of borrowing, money.

### 35.6 Set-off

(a)  **(TfNSW’s payments):** Without limiting TfNSW's or RailCorp's rights at Law, TfNSW may deduct from any moneys due and payable to Project Co under the TfNSW Project Documents or otherwise at Law:

(i)  any moneys due and payable by any Group Member to TfNSW or RailCorp;

(ii)  any Liabilities contemplated by the exclusions in clause 35.3(e); and

(iii)  the amount of any Claim that TfNSW or RailCorp may make in good faith against any Group Member.

(b)  **(Details of set-off):** TfNSW must provide Project Co with reasonable details of the basis on which it is setting off any amount pursuant to clause 35.6(a).

(c)  **(Project Co’s payments):** Project Co must make all payments to TfNSW or RailCorp free from any set-off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless Project Co is compelled by Law to make such a deduction or withholding.

(d)  **(Deduction or withholding):** If a party is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:

(i)  remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
provide to the other relevant party all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

35.7 Liability for Taxes

(a) (Project Co to indemnify): Subject to clause 35.8, Project Co must indemnify TfNSW and RailCorp against, and must pay TfNSW and RailCorp on demand the amount of, all Taxes (excluding Rates, land tax and any stamp or like duty (Duty), and any penalty, fine, charge or interest in respect of any Rates, land tax or Duty) incurred in connection with:

(i) the negotiation, preparation, execution and registration of this Deed or any other Project Document;

(ii) the transactions that this Deed or any other Project Document contemplates; and

(iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this Deed or any other Project Document.

(b) Project Co must:

(i) (Timely lodgement): attend to the timely lodgement for stamping of the TfNSW Project Documents and the Finance Documents on or before the due date for lodgement prescribed by Law (Lodgement Due Date);

(ii) (Duty Estimate): at least 20 Business Days prior to the Lodgement Due Date give TfNSW an estimate of the Duty payable (Duty Estimate) and an opportunity to review and comment on all submissions, correspondence and other materials before they are provided to the NSW Office of State Revenue and not refuse to adopt any changes to the contents of those documents or to the Duty Estimate that are reasonably requested by TfNSW provided that any changes are requested within 10 Business Days prior to the Lodgement Due Date; and

(iii) (Correspondence, notices and assessments): give TfNSW a copy of all correspondence, notices and assessments issued by the NSW Office of State Revenue in connection with Duty payable in respect of the TfNSW Project Documents, the Finance Documents or any transaction contemplated by any of them, within 5 Business Days after Project Co receives the relevant correspondence, notices or assessments.

(c) (TfNSW to indemnify): TfNSW will pay or procure payment to and indemnify Project Co and any parties to the Finance Documents against, and reimburse Project Co and any parties to the Finance Documents for, all Duty (including any penalty, fine, charge or interest payable in respect of Duty) in respect of the TfNSW Project Documents, the Finance Documents or any document or transaction expressly contemplated by any of them which is payable to the NSW Government, the Chief Commissioner of State Revenue or the NSW Office of State Revenue, provided that TfNSW will not pay or procure payment to, indemnify or reimburse Project Co under any provision of this clause 35.7 for any Duty, penalty, fine, charge or interest payable in respect of Duty:

(i) which results from any failure or any delay by any Project Co Entity:
A. in lodging a document required to be lodged with the NSW Office of State Revenue by the due date for lodgement prescribed by Law; or

B. in paying an amount to the NSW Office of State Revenue, for which Project Co has been put in immediately available funds by TfNSW, by the due date for payment prescribed by Law; or

(ii) arising from any Refinancing, a change to financiers or any change in the equity interest of Project Co or a Group Member.

(d) (Available funds): Without limiting clause 35.7(c), TfNSW must put Project Co or procure that Project Co is put in immediately available funds to pay the amount of the Duty Estimate to the NSW Office of State Revenue at least 5 Business Days prior to the Lodgement Due Date and Project Co must pay the amount of the Duty Estimate to the NSW Office of State Revenue by the Lodgement Due Date. Project Co must provide evidence of payment having been made (such as a copy of the stamped page of a document or a receipt) to TfNSW within 5 Business Days after receipt of such evidence.

(e) (Reassessment): If the NSW Office of State Revenue issues an assessment or reassessment for an amount greater than the Duty Estimate then, without limiting clause 35.7(c), Project Co must promptly notify TfNSW and TfNSW must put Project Co or procure that Project Co is put in immediately available funds to pay the amount due to the NSW Office of State Revenue within the earlier of 10 Business Days after notification and at least 5 Business Days prior to the due date and Project Co must pay the amount due to the NSW Office of State Revenue by the due date.

(f) (Refund): If the amount of Duty assessed by the NSW Office of State Revenue is less than the Duty Estimate, Project Co must, to the extent permitted by Law, promptly seek a refund of the amount overpaid and pass any refund on to TfNSW within 5 Business Days of receipt.

(g) (Rates and land tax): TfNSW must pay or procure payment to Project Co, and indemnify Project Co against, all Rates and land tax, if any, in respect of the Sites until the end of the Term.

(h) (Prompt notice): Project Co must promptly provide to TfNSW a copy of any notices, assessments or correspondence which it receives in relation to any Rates and land tax to which the indemnity in clause 35.7(g) applies.

(i) (TfNSW dissatisfaction with assessment): In the event that TfNSW is dissatisfied with any assessment, or threatened assessment, or notice in relation to the calculation of, any Duty, Rates or land tax which TfNSW is required to pay or procure payment of under this clause 35.7:

(i) TfNSW may notify Project Co that it wishes to take carriage of negotiations with the relevant Authority in respect of the assessment, threatened assessment or notice (Tax Proceedings);

(ii) TfNSW will be responsible for all costs in relation to the conduct, defence or settlement of the Tax Proceedings (including the reasonable costs of Project Co in providing any co-operation or assistance);

(iii) subject to TfNSW complying with its obligations under this clause 35.7(i), Project Co must provide all reasonable assistance to TfNSW in relation to the conduct, defence or settlement of the Tax Proceedings, including, if requested by TfNSW, to be named as the taxpayer in any objections or appeals;
(iv) TfNSW must act in good faith at all times;
(v) TfNSW must not take any action which it is objectively unreasonable to
take in all the circumstances;
(vi) TfNSW must pay Project Co or procure payment to Project Co of so much of any Tax as is required by the relevant Authority to be paid in relation to the Tax Proceedings;
(vii) TfNSW must provide to Project Co an indemnity in a form agreed to by Project Co (such agreement to not be unreasonably withheld or delayed) against all liability, loss, damage, cost, expense, judgment, charge, diminution in value or deficiency which may result from any action taken at the request of TfNSW by Project Co in connection with the conduct of the Tax Proceedings; and
(viii) TfNSW will liaise with and keep Project Co informed of its negotiations, and provide copies of all relevant correspondence to Project Co on a timely basis.

35.8 GST

(a) (Interpretation):

(i) Except where the context suggests otherwise, terms used in this clause 35.8 have the meanings given to those terms by the GST Act (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 35.8.

(iii) Unless otherwise expressly stated, all consideration to be provided under this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 35.8.

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) (Reimbursements): Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) (Additional amount of GST payable): Subject to clause 35.8(e), if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed:

(i) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 35.8), for that supply is exclusive of GST;

(ii) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay or procure payment of an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to
be first provided for that supply except where Project Co has failed to provide sufficient information required to enable TfNSW or RailCorp (as the case may be) to issue a RCTI in accordance with clause 35.8(f), in which case the GST Amount will be payable once that information is provided; and

(iii) the Supplier must (subject to clause 35.8(f)) provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 35.8(c)(ii).

(d) **Variation of GST:**

(i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 35.8(c) and clause 35.8(e)), varies from the additional amount paid by the Recipient under clause 35.8(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 35.8(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 35.8(c).

(ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) **Exchange of non-monetary consideration:**

(i) To the extent that the consideration provided for the Supplier’s Taxable Supply to which clause 35.8(c) applies is a Taxable Supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by or on behalf of the Recipient to the Supplier in accordance with clause 35.8(c) will be reduced by the amount of GST payable by or on behalf of the Recipient on the Recipient Supply.

(ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay or procure payment of the GST Amount in accordance with clause 35.8(c) (or the time at which such GST Amount would have been payable in accordance with clause 35.8(c) but for the operation of clause 35.8(e)(i)).

(f) **Recipient Created Tax Invoice:** Unless otherwise agreed in writing, the following will apply to the supply of any taxable supplies made by Project Co to TfNSW and RailCorp under or in connection with this Deed:

(i) TfNSW or RailCorp will issue to Project Co a recipient created tax invoice (RCTI) for each taxable supply made by Project Co to TfNSW or RailCorp under this Deed;

(ii) TfNSW or RailCorp (as the case may be) will issue to Project Co an adjustment note for any adjustment event;

(iii) Project Co will not issue a tax invoice in respect of any taxable supply it makes to TfNSW or RailCorp (as the case may be); and

(iv) TfNSW or RailCorp (as the case may be) may at any time notify Project Co that it will no longer issue a RCTI for any taxable supply made by Project Co under this Deed, in which case, from that point in time:
A. TfNSW or RailCorp (as the case may be) will not be required to issue RCTIs in respect of such supply;

B. Project Co will be required to issue tax invoices to TfNSW and RailCorp (as the case may be); and

C. TfNSW or RailCorp (as the case may be) need not make a payment for a taxable supply made by Project Co under or in connection with this deed until Project Co has given TfNSW or RailCorp (as the case may be) a Tax Invoice for the relevant taxable supply.

(g) **(No merger):** This clause 35.8 will not merge on completion or termination of this Deed.

(h) **(Construction Payments):** Notwithstanding any other provision of this clause 35.8:

(i) the parties agree that TfNSW will not bear any net costs (including funding costs arising from timing differences) in respect of GST payable on any Taxable Supply or Input Tax Credit entitlement in respect of any creditable acquisition to which a Construction Payment or a Construction Change Payment relates;

(ii) TfNSW is not required to make a payment to Project Co in respect of GST in respect of a Taxable Supply to which a Construction Payment or a Construction Change Payment relates until it has (acting reasonably) received the benefit of an Input Tax Credit for such GST (which may include, for example, the Input Tax Credit being offset against a GST or other tax liability, the Input Tax Credit forming part of a net amount or assessed net amount for a tax period, credited to TfNSW’s running balance account, being refunded to TfNSW or a combination of the above);

(iii) if TfNSW is denied an Input Tax Credit by the Commissioner of Taxation, a Court or other appropriate Authority for all or part of the GST in respect of a Construction Payment or a Construction Change Payment, Project Co must promptly reimburse TfNSW for any amount in respect of GST it has paid in excess of its Input Tax Credit entitlement and indemnify TfNSW for an amount equal to any penalty or interest as a result of claiming an Input Tax Credit for the whole of the GST on that Construction Payment or Construction Change Payment;

(iv) TfNSW must take all reasonable steps to ensure it (or the TfNSW entity that is treated as making the supplies and acquisitions under the Maintenance Phase Licences for GST purposes) receives the benefit of the Input Tax Credit from the Australian Taxation Office as quickly as possible, including:

A. reporting the acquisition to which the Input Tax Credit relates in the first "Business Activity Statement" in which it can properly be reported;

B. lodging the Business Activity Statement in which the Input Tax Credit is reported no later than the due date for that Business Activity Statement;

C. forwarding any queries or correspondence from the Commissioner of Taxation in respect of that Business Activity Statement (but only to the extent that the queries or
correspondence relates to the relevant Input Tax Credit) to Project Co; and

D. promptly informing Project Co of any delays or other related issues in respect of the Input Tax Credit.

Part G - Expiry and Transition Out obligations

36. Expiry obligations

36.1A Transition Out Package

(a) (Initial Transition Out Package): Project Co must, by the date that is 12 Months after the date of Financial Close, prepare and provide to TfNSW an initial transition out package (Transition Out Package) which must:

(i) contain at a minimum the information set out in part B of Schedule 40 and such other information as reasonably required by TfNSW from time to time; and

(ii) be current and correct at the date that it is provided to TfNSW.

(b) (Updates to Transition Out Package): Project Co must, at all times after it has provided the initial Transition Out Package under clause 36.1A(a), keep the Transition Out Package up to date and provide a copy to TfNSW at least annually on each following anniversary of the date of Financial Close during the Term.

(c) (Provide to TfNSW on request): Project Co must, if requested by TfNSW, provide TfNSW with the current Transition Out Package.

(d) (Right of rejection): If within 10 Business Days of receipt of any Transition Out Package, TfNSW:

(i) rejects any component of the Transition Package, providing reasons for such rejection; or

(ii) notifies Project Co that any information required to be included in the Transition Out Package is missing,

Project Co must, within 40 Business Days of such notice:

(iii) where clause 36.1A(d)(i) applies, replace that component of the Transition Out Package; or

(iv) where clause 36.1A(d)(ii) applies, provide such information to be included in the Transition Out Package,

in each case so that the Transition Out Package complies with the requirements of this Deed.

(e) (Retention): If, at any time after the Date of Provisional Acceptance (Unit) of the first Unit to achieve Provisional Acceptance, Project Co fails to perform any of its obligations under clause 36.1A(d) within the 40 Business Day period referred to in that clause, TfNSW may retain from any subsequent Monthly Service Payment the sum of [Indexed]. In respect of any Financial Year, TfNSW may only make one Retention under clause 36.1A(e) of [Indexed] (Indexed) for that Financial Year. Such Retention (excluding any interest earned on it) will be held in trust for Project Co until the earlier of the following applies to any portion of it:
(f) **(Debt due):** All Liabilities incurred by TfNSW as a result of any failure by Project Co to comply with its obligations under this clause 36 will be a debt due and payable by Project Co to TfNSW and TfNSW may apply any Retentions then held to meet such Liabilities at any time provided that Project Co's liability under this clause 36.1A(f) will be reduced to the extent that such liability is caused or contributed to by:

(i) any breach by TfNSW of any TfNSW Project Documents;

(ii) fraud, a malicious act or a malicious omission of TfNSW; or

(iii) a Relief Event, but only to the extent that the reduction in Project Co's liability is agreed by TfNSW and Project Co in accordance with the Change Compensation Principles (if at all), other than to the extent that Project Co is entitled to recover under any of the Insurances (or would have been entitled to recover but for this clause 36.1A(f) or any breach by Project Co or any of its Associates of this Deed or the relevant insurance policy).

(g) **(Interest):** Any interest earned on a Retention accrues to TfNSW and may be applied as it sees fit. The amount of the Retention will not be Indexed from the date on which it is made.

(h) **(Release):** If a Retention has been made under clause 36.1A(e) and Project Co provides, before the date falling 270 days before the Final Expiry Date, the relevant component or information to which that Retention relates so that the then current Transition Out Package complies with the requirements of this Deed, TfNSW will release the amount of that Retention (to the extent not applied under clause 36.1A(f)) to Project Co on the date on which the next Monthly Service Payment is to be paid by TfNSW.

### 36.1 Assistance in securing continuity

(a) **(Transfer of responsibility):** Subject to clause 36.1(b), Project Co must:

(i) in respect of the obligations set out in clause 36.1(a)(iii), 36.1(a)(iv), 36.1(a)(v) and 36.1(a)(ix), in the period commencing 2 years prior to the Final Expiry Date (or such later date as TfNSW may specify in writing in its absolute discretion if it is considering exercising its extension rights under clause 4.2); and

(ii) without limiting clause 36.1(a)(i), in respect of all of the obligations set out in this clause 36.1(a), in the period which is not less than:

A. 6 Months before the Final Expiry Date; or

B. where Project Co is given less than 6 Months' notice of an Expiry Date, during the relevant notice period,

do all things reasonably required by TfNSW to ensure the smooth and orderly transfer of responsibility for delivering the Project to TfNSW or its nominee including:
meeting with TfNSW and such other persons notified by TfNSW to discuss delivery of the Project on reasonable notice by TfNSW;

(iv) providing access to its operations for managers and supervisors of TfNSW or its nominee for the purpose of familiarisation;

(v) providing sufficient information to TfNSW or its nominee to determine the status and condition of the Project, including the Final Refurbishment Works;

(vi) providing sufficient resources, including personnel, for the time required to facilitate the transfer of the Project to TfNSW or its nominee;

(vii) procuring the novation or, if such novation cannot be procured, the assignment to TfNSW or its nominee of:

A. such Subcontracts as TfNSW may nominate;
B. any leases, subleases and licences requested by TfNSW; and
C. any warranties (provided in respect of the Project that are capable of assignment);

(viii) grant or procure the grant to TfNSW or its nominee of such Intellectual Property Rights, including an assignment or sub-licence of all licences relating to any Software belonging to any third party used in connection with the Services or any other aspect of the Delivered Rail Assets, as will enable TfNSW or its nominee to deliver the Project to the standards specified in, and in accordance with, this Deed;

(ix) assisting in the transfer of any employees of Project Co or any Subcontractor who agree with TfNSW to be employed by TfNSW or its nominee after the Expiry Date;

(x) training personnel nominated by TfNSW in all aspects of the Maintenance and repair of the Assets to a level of competency that will allow those personnel to Maintain and repair the Assets to the standards required of Project Co under this Deed from the Expiry Date;

(xi) commence transfer of the Asset Information System to TfNSW or its nominee; and

(xii) doing all other acts and things:

A. required by the Transition Out Plan; and
B. to enable TfNSW (or its nominee) to be in a position to deliver the Project to the standards specified in this Deed, with minimum disruption.

(b) **(Expiry Date):** Where the Expiry Date is prior to the Final Expiry Date, Project Co must meet the requirements under clause 36.1(a) unless TfNSW, acting reasonably, determines such requirements cannot be met within the required time due to the limited notice period Project Co has received of the Expiry Date, in which case Project Co must meet such requirements as soon as practicable after the Expiry Date.

(c) **(Adjustments and payments):** Where any employees of Project Co or a Subcontractor are to be transferred to TfNSW or its nominee, unless otherwise
agreed, Project Co or the relevant Subcontractor will make adjustments and
payment to TfNSW or its nominee in respect of all actual or contingent liability for
annual leave, accrued rostered days off, sick leave, long service leave and all other
employee entitlements which are not to be paid out to the relevant transferring
employees at the time of transfer of employment.

36.2 Dedicated transition person

Without limiting its obligations under clause 36.1:

(a) **(Expiry of Project):** for not less than 18 Months before the Expiry Date (or such
later date as TfNSW may specify in writing in its absolute discretion if it is
considering exercising its extension rights under clause 4.2); or

(b) **(Notice period):** where the Expiry Date is prior to the Final Expiry Date and Project
Co is given less than 6 Months' notice of the Expiry Date, during the relevant notice
period,

Project Co must provide a dedicated person, with appropriate expertise and experience, to
manage the transition out and handover of the Project. The dedicated transition person is one
of the Key People and can accordingly only be replaced in accordance with clause 10.6.

36.3 Transition Out

(a) By the Expiry Date, Project Co must have:

(i) **(Transition Out of Assets and Site):** handed over the Assets
(including, if requested by TfNSW, any Units that have not achieved
Provisional Acceptance) and the Sites (including all rights, title and
interest in them) to TfNSW or its nominee free from any encumbrances
and in the Transition Out Condition;

(ii) **(Equipment, Spares and Consumables):** transferred to TfNSW or its
nominee, all rights, title and interest, free from any encumbrances, in:

A. all Spares and Consumables incorporated in, or
intended for use or incorporation in, an Asset and
required by TfNSW to allow TfNSW or its nominee to
provide the Services to the standards required by
Project Co under this Deed; and

B. Equipment used by Project Co or its Associates
predominately for the delivery of the Services,
required by TfNSW to allow TfNSW or its nominee to
provide the Services to the standards required by
Project Co under this Deed;

(iii) **(Transition Out Package):** delivered the Transition Out Package to
TfNSW or its nominee;

(iv) **(Transition Management Plan):** performed all obligations and delivered
to TfNSW all items contemplated by the Transition Out Plan (as updated
in accordance with the Project Scope and Requirements and any other
requirements of this Deed);

(v) **(Delivery of information):** delivered to TfNSW or its nominee all Project
Co Material not previously delivered to TfNSW as required by TfNSW or
its nominee;
(vi) (Payment of insurance proceeds): paid to TfNSW or its nominee any insurance proceeds Project Co has received from any Insurances for the reinstatement or replacement of the Assets to the extent not already reinstated or replaced, and assigned to TfNSW any rights available to Project Co under the Insurances in respect of the reinstatement or replacement of the Assets;

(vii) (Transfer of Approvals): done all acts and things necessary to enable TfNSW or its nominee to have transferred to it or to obtain all Approvals necessary to deliver the Project;

(viii) (Through Life Support Deed): if requested by TfNSW, procure that the Delivery Subcontractor executes and delivers the Through Life Support Deed to TfNSW or its nominee; and

(ix) (Remove Project Co equipment): remove all other equipment and unfixed or temporary works which do not form part of the Maintenance Facility or the Assets and are not otherwise required to be handed over to TfNSW or its nominee in accordance with this Deed.

(b) (Expiry Date): Where the Expiry Date is prior to the Final Expiry Date, Project Co must meet the requirements under clause 36.3(a) unless TfNSW, acting reasonably, determines such requirements cannot be met within the required time due to the limited notice period Project Co has received of the Expiry Date, in which case Project Co must meet such requirements as soon as practicable after the Expiry Date.

36.4 Appointment of Transition Out Reviewer

(a) (Transition Out Reviewer): No later than 12 Months before the inspections to be undertaken in accordance with clause 36.5 (or where clause 36.5(a)(ii) applies, within such shorter period as is required by TfNSW), Project Co and TfNSW must meet to determine the identity of a Transition Out Reviewer to be appointed jointly by Project Co and TfNSW to perform the tasks identified in clause 36.5.

(b) (TfNSW Representative to appoint): If Project Co and the TfNSW Representative are unable to agree on the identity of the Transition Out Reviewer within 3 Months before the Condition Review Date, the Transition Out Reviewer will be selected by TfNSW and TfNSW and Project Co must jointly engage the Transition Out Reviewer, provided that the Transition Out Reviewer to be engaged must:

(i) be reasonably acceptable to TfNSW and Project Co;
(ii) have appropriate qualifications and experience; and
(iii) have no interest or duty which conflicts or may conflict with its functions as the Transition Out Reviewer.

(c) (Terms of engagement): The Transition Out Reviewer will be appointed on the same terms as the Independent Certifier Deed, with such changes as are necessary to take into account any changes required to reflect:

(i) the role of the Transition Out Reviewer pursuant to this Deed;
(ii) the effluxion of time since the engagement of the Independent Certifier; and
(iii) any other amendments proposed by TfNSW and approved by Project Co (acting reasonably).
36.5 Transition Out Reviewer Role

(a) (Joint inspection): Project Co, TfNSW and the Transition Out Reviewer appointed under clause 36.4 must carry out joint inspections of the Assets and the Sites:

(i) at least:

A. 3 years before the Final Expiry Date (or such later date as TfNSW may specify in writing in its absolute discretion if it is considering exercising its extension rights under clause 4.2); and

B. every 6 Months after that initial inspection until the Final Expiry Date; or

(ii) where the Expiry Date is earlier than the Final Expiry Date, within any shorter period before the date of termination TfNSW reasonably requires,

(each a Condition Review Date).

(b) (Program to achieve proper Transition Out): Following the first Condition Review Date in accordance with clause 36.5(a), the Transition Out Reviewer must give to TfNSW and Project Co a written report specifying:

(i) the details of the Maintenance and repair work (if any) required to be carried out by Project Co to meet the Transition Out Condition and a program for undertaking those works (Final Refurbishment Works); and

(ii) an estimate of the total costs of carrying out the Final Refurbishment Works,

(the Outstanding Matters Report).

(c) (Update of Outstanding Matters Report): The Transition Out Reviewer must give to TfNSW and Project Co an updated Outstanding Matters Report after each Condition Review Date subsequent to the first one, which includes details of:

(i) the Final Refurbishment Works that have been completed;

(ii) the Final Refurbishment Works still to be completed; and

(iii) the itemised estimate of the total costs of carrying out the remaining Final Refurbishment Works at that point in time.

(d) (Disputing Outstanding Matters Report): If Project Co or TfNSW do not agree with any aspect of the Outstanding Matters Report:

(i) they must give details of such objections to the Project Co Representative or the TfNSW Representative (as the case may be) and the Transition Out Reviewer, within 10 Business Days of receipt of that Outstanding Matters Report; and

(ii) TfNSW and Project Co must confer in good faith with each other and the Transition Out Reviewer with a view to reaching agreement on the scope, program and cost of the Final Refurbishment Works,
and if TfNSW and Project Co cannot reach agreement on the relevant aspect of the Outstanding Matters Report within a further 10 Business Days of the date on which the details of the objections are provided under clause 36.5(d)(i), the Dispute may be referred by either of them to expert determination in accordance with clause 52.

36.6 TfNSW election

(a) (TfNSW discretion): Notwithstanding the terms of this clause 36, TfNSW may, by giving notice to Project Co:

(i) adjust any Condition Review Date to an alternative date, provided that the first Condition Review Date may not be earlier than 3 years before the Final Expiry Date;

(ii) relieve Project Co from any obligation to undertake any of the Final Refurbishment Works in any Operating Year; or

(iii) acting reasonably, increase the number of times and frequency with which the Transition Out Reviewer must inspect and assess the condition of the Assets, assess any Final Refurbishment Works or prepare or update the Outstanding Matters Report.

(b) (Variation and cost): If TfNSW exercises its rights under clause 36.6(a)(ii):

(i) the Project Scope and Requirements, the relevant Management Plans and any other relevant parts of this Deed will be varied; and

(ii) any subsequent Monthly Service Payment will be reduced by the cost of the relevant Final Refurbishment Works,

as agreed by TfNSW and Project Co or, where not agreed within 5 Business Days after the date on which TfNSW gives the relevant notice under clause 36.6(a)(ii), as determined by expert determination under clause 52.

36.7 Implementing Final Refurbishment Works

(a) (Management Plans): Project Co must:

(i) within 1 Month after the Transition Out Reviewer has delivered each Outstanding Matters Report:

A. amend the relevant Project Plans to include details of the Final Refurbishment Works that Project Co is required to undertake in accordance with the then current Outstanding Matters Report or as otherwise determined in accordance with clause 36.5; and

B. submit the updated Management Plans to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Review Procedures; and

(ii) undertake the Final Refurbishment Works in accordance with the updated Management Plans.

(b) (Debt due): After the Expiry Date TfNSW may undertake and complete (or engage others to undertake and complete) any Final Refurbishment Works which have not been completed by Project Co to the satisfaction of the Transition Out Reviewer,
and all costs incurred by TfNSW in doing so will be a debt due and payable by Project Co to TfNSW.

36.8 Security for Final Refurbishment Works

(a) (Security threshold): After a Condition Review Date, if the aggregate of the remaining Monthly Service Payments is:

(i) equal to or greater than the sum of of the estimated total cost of the remaining Final Refurbishment Works specified in the then current Outstanding Matters Report (Threshold Amount), then Project Co must make an election under clause 36.8(b); or

(ii) less than the Threshold Amount, then Project Co must provide to TfNSW a Transition Out Bond having a face value equal to the Threshold Amount as security for the performance of Project Co's obligations under this clause 36.

(b) (Project Co election): If so required under clause 36.8(a), Project Co must, within 10 Business Days of the Condition Review Date either elect to:

(i) notify TfNSW that TfNSW may deposit into a Transition Out Escrow Account each subsequent Monthly Service Payment until the balance of the Transition Out Escrow Account equals or exceeds the Threshold Amount (in which case TfNSW must proceed accordingly); or

(ii) provide to TfNSW a Transition Out Bond having a face value equal to the Threshold Amount,

as security for the performance of Project Co's obligations under this clause 36.

(c) (Project Co makes no election): If Project Co fails to make an election in accordance with clause 36.8(b) within 20 Business Days of the Condition Review Date, Project Co will be deemed to have elected that clause 36.8(b)(i) will apply.

(d) (Changes to Outstanding Matters Report): If the scope or estimated cost of the Final Refurbishment Works are amended in accordance with clause 36.5 or clause 36.6, the Threshold Amount will be adjusted accordingly.

36.9 Transition Out Escrow Account

Where TfNSW opens a Transition Out Escrow Account:

(a) (Interest earned): interest earned on money in the Transition Out Escrow Account must be deposited into the Transition Out Escrow Account and Project Co is entitled, on request, to receive copies of the statements for the Transition Out Escrow Account;

(b) (Cost of Final Refurbishment Works): TfNSW must draw upon the Transition Out Escrow Account to pay Project Co or procure payment to Project Co of:

(i) if, following a Condition Review Date, the Transition Out Reviewer determines or it is agreed or determined in accordance with clause 36.5(d) that the relevant Final Refurbishment Works required to be performed by Project Co since the previous Condition Review Date have been satisfactorily performed, the cost of the Final Refurbishment Works completed by Project Co, provided that after drawing such amount the balance of the Transition Out Escrow Account equals or exceeds the then current Threshold Amount; and
(ii) if, as at the Expiry Date, the Transition Out Reviewer determines or it is agreed or determined in accordance with clause 36.5(d) that all of the Final Refurbishment Works referred to in the Outstanding Matters Report have been satisfactorily performed prior to the Expiry Date, the balance of the Transition Out Escrow Account; or

(iii) if any Final Refurbishment Works have not been satisfactorily completed as at the Expiry Date, as determined by the Transition Out Reviewer or as otherwise agreed or determined in accordance with clause 36.5(d), the balance of the Transition Out Escrow Account less the aggregate of the total estimated cost of carrying out the remaining Final Refurbishment Works as set out in the then current Outstanding Matters Report and any interest earned on that amount in the Transition Out Escrow Account; and

(c) (TfNSW benefit): TfNSW or RailCorp may draw upon the Transition Out Escrow Account for their own benefit where there are moneys remaining in the Transition Out Escrow Account after all amounts have been drawn and paid to Project Co in accordance with clause 36.9(b)(iii).

36.10 Transition Out Bond

(a) (Expiry date): Any Transition Out Bond, including any replacement Transition Out Bond provided under clause 36.10(d) or 36.10(e), must have an expiry date no earlier than 1 year after the end of the Term.

(b) TfNSW:

(i) (Return after completion): must return the Transition Out Bond to Project Co 10 Business Days after completion of all Final Refurbishment Works to the satisfaction of the Transition Out Reviewer; or

(ii) (Drawing on bond): may draw on the Transition Out Bond for the full amount of the Transition Out Bond provided that it must pay the proceeds of such draw into the Transition Out Escrow Account and apply those proceeds in accordance with clause 36.9.

(c) (One annual reduction): Project Co may reduce the amount of the Transition Out Bond in the manner stated in clause 36.10(d) no more than once an Operating Year and then at the Expiry Date to account for Final Refurbishment Works completed to the satisfaction of the Transition Out Reviewer, provided that the amount of the Transition Out Bond is no less than the then current Threshold Amount.

(d) (Replacement Transition Out Bond): Where the amount of the Transition Out Bond is reduced pursuant to clause 36.10(c), subject to any right of TfNSW to have recourse to the existing Transition Out Bond, TfNSW must return that Transition Out Bond to Project Co in exchange for the delivery to TfNSW by Project Co of a replacement Transition Out Bond that complies in all respects with this Deed and is for an amount which is not less than the then current Threshold Amount.

(e) (Notice and replacement): If:

(i) the issuer of a Transition Out Bond ceases to hold a current licence issued by the Australian Prudential Regulation Authority or have the Required Rating; or

(ii) the specified location within Sydney (or such other place as approved by TfNSW) is no longer available for demand to be given or for payment to be made under a Transition Out Bond,
then Project Co must:

(iii) promptly notify TfNSW of that circumstance; and

(iv) within 10 Business Days after being requested to do so, procure the issue to TfNSW of a replacement Transition Out Bond that complies in all respects with this Deed and is for the same amount.
Part H - Change in Circumstances

37. Delivery Phase - delay

37.1 Delay to Acceptance

(a) **(Early Warning):** If Project Co becomes aware of an Extension Event or any other matter which will, or is likely to:

(i) give rise to a delay in achieving Acceptance; or

(ii) prevent Project Co from performing the Delivery Phase Activities or Upgrade Services,

it must promptly give the TfNSW Representative notice of the matter and the delay or effect it is likely to cause (**Early Warning (Delivery)**).

(b) **(Prevent):** In this clause 37, 'prevent' or 'prevented' does not mean that Project Co is permanently prevented from performing its obligations.

37.2 Entitlement to Claim

If, during the Delivery Phase, Project Co:

(a) has been or will be delayed in achieving Acceptance; or

(b) is otherwise prevented from performing the Delivery Phase Activities,

by an Extension Event, Project Co will be entitled to claim:

(c) an extension of time to the relevant Date for Acceptance for the period of the delay; and

(d) relief from any of its other Delivery Phase Activities,

in accordance with this clause 37.

37.3 Change Notice

(a) **(Claiming relief):** Subject to clauses 37.3(b) and 37.3(c), to claim an extension of time to the relevant Date for Acceptance or relief from its other Delivery Phase Activities, Project Co must submit a Change Notice (with reference to the Early Warning (Delivery), if relevant) which includes the estimated period of time of the delay, within 20 Business Days after the date on which it first became aware of the occurrence of the relevant Extension Event.

(b) **(Extended delay):** Where the delay extends beyond the period set out in the Change Notice submitted in accordance with clause 37.3(a), and Project Co wants to claim an extension of time in respect of the further delay or relief from its other Delivery Phase Activities, Project Co must notify the TfNSW Representative and, once the consequences of the Extension Event have ceased, promptly (and, in any event, within 10 Business Days) submit an updated Change Notice.

(c) **(Contamination or Modifications):** In order to claim:

(i) an extension of time to the relevant Date for Acceptance; or

(ii) relief from its other Delivery Phase Activities,
37.4 Conditions precedent to extension of time or relief

Subject to clause 37.6, it is a condition precedent to Project Co's entitlement to an extension of time or relief from its other Delivery Phase Activities that:

(a) (Change Notices): Project Co submits to the TfNSW Representative Change Notices in accordance with clause 37.3;

(b) (Extension of time): with respect to a claim for an extension of time, Project Co can demonstrate that:
   (i) it has actually been or will be delayed by the relevant Extension Event in a manner which will delay the achievement of Acceptance; and
   (ii) the Extension Event has caused or will cause activities on the critical path contained and shown in the then current Baseline Delivery Program to be delayed;

(c) (Relief): with respect to a claim for relief from its other Delivery Phase Activities, Project Co's performance of all or any part of the Delivery Phase Activities is actually prevented by the relevant Extension Event; and

(d) (Baseline Delivery Program and Status Delivery Program): Project Co is, at the time it submits the relevant Change Notice and any updated Change Notice, complying with its obligations in connection with the Baseline Delivery Program and the Status Delivery Program in accordance with clause 16.2(b) and 16.2(c).

37.5 Extension of time and relief determined by the TfNSW Representative

(a) Not used.

(b) (TfNSW Representative determination): Subject to clauses 37.9 and 39.11, if the conditions precedent in clause 37.4 have been satisfied, the TfNSW Representative will:
   (i) extend the relevant Date for Acceptance by a reasonable period of time; or
   (ii) grant Project Co such other reasonable relief from the Delivery Phase Activities,

taking into account all relevant evidence presented by Project Co and any other evidence the TfNSW Representative considers relevant but subject to clause 16.2(e).

(c) (Notice of determination): The TfNSW Representative must provide notice of its determination under clause 37.5(b) to Project Co within 20 Business Days after the later of:
the date on which Project Co submits its Change Notice pursuant to clause 37.3(a); and

(ii) where any updated Change Notice has been submitted in accordance with clause 37.3(b), the date on which that updated Change Notice is submitted.

(d) **(Interim determinations):** In the circumstances contemplated by clause 37.5(c)(ii), the TfNSW Representative may, in its absolute discretion, give interim determinations of Project Co’s entitlement to an extension of time notwithstanding that the effects of the relevant Extension Event are continuing.

37.6 Unilateral extensions

(a) **(Unilateral extensions):** Whether or not Project Co has made, or is entitled to make, a claim for, or is entitled to, an extension of time under this clause 37, the TfNSW Representative may, in its absolute discretion at any time and from time to time, by notice to Project Co, unilaterally extend any Date for Acceptance following the occurrence of an Extension Event.

(b) **(Acknowledgements):** The parties acknowledge that:

(i) the TfNSW Representative is not required to exercise the TfNSW Representative’s discretion under clause 37.6(a) for the benefit of Project Co; and

(ii) the exercise or failure to exercise the TfNSW Representative’s discretion under this clause 37.6 is not capable of being the subject of a dispute for the purposes of clause 50 or otherwise subject to review.

(c) **(Compensation):** In circumstances where the TfNSW Representative exercises its power under this clause 37.6 as a consequence of a delay to Acceptance caused by a Compensable Extension Event for which Project Co is entitled to an extension of time in accordance with this Deed, TfNSW must pay or procure payment of compensation to Project Co in accordance with clause 37.7.

37.7 Entitlement to Costs

(a) **(Compensable Extension Event):** Subject to clause 37.7(b) and 37.7(c), to the extent that Project Co is granted an extension of time under clause 37.5(b)(i) or 37.6 for a Compensable Extension Event to a Date for Acceptance referred to in section 3.2 of the Change Compensation Principles, TfNSW will pay or procure payment to Project Co of the amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Assets which will be determined under clause 44 provided that Project Co has complied and continues to comply with the requirements under clause 37.4.

(b) **(Relief from obligations):** If the Date for Acceptance is not extended under clause 37.5(b)(i) or 37.6 but Project Co is granted relief from its other Delivery Phase Activities in accordance with clause 37.5, Project Co will not be entitled to any compensation, including any Prolongation Costs or Financing Delay Costs.

(c) **(Agreed Uninsurable Risk):** If the Compensable Extension Event for which Project Co is entitled to compensation under clause 37.7(a) arises from a risk that is an Agreed Uninsurable Risk, then:

(i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Assets; and
37.8 **Sole remedy**

Subject to clause 5.3(b) and 5.3(c):

(a) **(Delay in Delivery Phase Activities)**: Project Co’s sole remedy for a delay or disruption to the Delivery Phase Activities is as set out in this clause 37; and

(b) **(TfNSW Liability)**: Project Co will not be entitled to make, and TfNSW and RailCorp will have no liability for, any Claim made by Project Co (including for damages for breach) for any delay to the Delivery Phase Activities (including any delay to Acceptance) other than:

   (i) a claim for an extension of time;

   (ii) a claim for relief from Project Co’s Delivery Phase Activities; and

   (iii) a claim for Prolongation Costs and Financing Delay Costs payable by TfNSW (and provided always that nothing in this Deed will make RailCorp liable for such Prolongation Costs or Financing Delay Costs),

   each of which is determined in accordance with this clause 37.

37.9 **Concurrent delays**

Project Co is not entitled to an extension of time under clause 37.5 or compensation under clause 37.7 in respect of a delay to Acceptance caused by an Extension Event to the extent that an event which is not an Extension Event causes a delay to Acceptance contemporaneous, concurrent or overlapping with the delay to Acceptance caused by the relevant Extension Event.

37.10 **Acceleration by Project Co**

Without limiting clause 26, if Project Co chooses to compress the Delivery Phase Activities or otherwise accelerate progress other than in accordance with a direction of TfNSW under clause 37.11:

(a) **(No obligation to assist)**: TfNSW is not obliged to take any action to assist or enable Project Co to achieve any particular sequencing or rate of progress of the Project Activities; and

(b) **(TfNSW’s obligations)**: the time for the carrying out of TfNSW’s obligations is not affected by the acceleration or compression.

37.11 **Acceleration Notice**

(a) **(Delivery Phase Activities)**: Whether or not Project Co makes a claim under clause 37.3, if:

   (i) any part or the whole of the Delivery Phase Activities are delayed by an Extension Event; and

   (ii) Project Co would have been entitled to an extension of time to a Date for Acceptance for the cause of delay in accordance with this clause 37,
TfNSW may direct Project Co to submit a Change Notice setting out the estimated time and cost consequences of accelerating any part, or the whole of, the Delivery Phase Activities to overcome or minimise the extent and effect of some or all of the delay including, if required, in order to achieve Acceptance by the relevant Date for Acceptance.

(b) **Submission of Change Notice**: Project Co must submit a Change Notice within 10 Business Days of TfNSW's direction under 37.11(a) and the Change Compensation Principles will apply.

### 37.12 Reasonably achievable

(a) **Change Notice to consider**: In any Change Notice submitted in response to a direction under clause 37.11 Project Co must identify whether and to what extent the acceleration is reasonably achievable in the circumstances.

(b) **TfNSW not to direct unreasonable acceleration**: If some or all of the acceleration is not reasonably achievable in the circumstances then TfNSW must not direct the acceleration to the extent that it is not reasonably achievable.

### 37.13 Acceleration

If TfNSW gives Project Co a Change Response to accelerate in response to a Change Notice submitted by Project Co under clause 37.11:

(a) **Accelerate as directed**: Project Co must accelerate the Delivery Phase Activities as directed;

(b) **Extra actual costs**: if Project Co would, but for the direction, have been entitled to an extension of time to a Date for Acceptance for the cause of the delay, TfNSW must pay Project Co or procure payment to Project Co of the amount calculated in accordance with the Change Compensation Principles in respect of those extra costs properly and reasonably incurred by Project Co and directly attributable to accelerating the Delivery Phase Activities; and

(c) **Delay not subject to TfNSW's direction**: Project Co's rights under clause 37.3 will not be affected for that part of any delay that is not the subject of TfNSW's direction to accelerate.

### 37.14 Force Majeure Event during Delivery Phase

(a) **Project Co's obligations**: If:

(i) an Extension Event is a Force Majeure Event;

(ii) the Force Majeure Event prevents Project Co from performing the Delivery Phase Activities; and

(iii) Project Co has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 37.5,

then the obligations of Project Co under this Deed which are affected by the Force Majeure Event and which are the subject of the relief granted under clause 37.5 will be suspended, but only to the extent that, and for so long as, Project Co has been granted relief from its obligation to perform the relevant Delivery Phase Activities under clause 37.5.

(b) **TfNSW's obligations**: The obligations of TfNSW under this Deed which are affected by the Force Majeure Event will be suspended, but only to the extent that,
and for so long as, the Force Majeure Event prevents TfNSW from meeting its obligations under this Deed.

(c) (Party not in breach): A party's failure to perform its obligations under this Deed which are suspended under clause 37.14(a) or 37.14(b) (as the case may be) will not be a breach of this Deed, a Major Default or a Default Termination Event during that period of suspension.

(d) (Uninsured Force Majeure Event): If:

(i) the suspension of Project Co's obligations in accordance with clause 37.14(a) results in a Date for Acceptance being extended to such an extent that Project Co is not able to fully pay its scheduled repayments of principal and interest in accordance with its Project Debt obligations; and

(ii) the Force Majeure Event is also an Agreed Uninsurable Risk and does not give rise to loss or damage to the Works,

then Project Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles, provided that Project Co is meeting the conditions precedent set out in clause 37.4.

(e) (Exceptions): If the Force Majeure Event for which Project Co is entitled to relief under this clause 37.14 arises from a risk that is an Agreed Uninsurable Risk, then:

(i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Assets; and

(ii) in all other circumstances, this clause 37.14 applies unless TfNSW and Project Co have otherwise agreed the means by which the risk should be managed under clause 47.1, in which case the agreed means will apply.

37.15 Time not at large

None of:

(a) (Breach): a breach of this Deed or any other TfNSW Project Document by TfNSW, RailCorp or any of their respective Associates;

(b) (Modification): a Modification directed, or Modification Order issued, by TfNSW or the TfNSW Representative;

(c) (Act or omission): an act or omission of TfNSW, RailCorp, any of RailCorp's Associates, the Independent Certifier or any of TfNSW's Associates;

(d) (Failure to grant extension): a failure by the TfNSW Representative to grant an extension of time under clause 37.5 or to do so within the time required by that clause;

(e) (TfNSW discretion): a failure by the TfNSW Representative to exercise its discretion pursuant to clause 37.6;

(f) (Time bar): any operation of any time bar, including clause 37.4(a) and 65; or

(g) (Other default): other default, act or omission of TfNSW, RailCorp, any of RailCorp's Associates, the Independent Certifier or any of TfNSW's Associates, sets any Date for Acceptance, or any other time, at large.
37.16 Sole remedy

(a) (Monthly Service Payment): Except if TfNSW elects to terminate this Deed and subject to clause 37.16(b), TfNSW acknowledges and agrees that TfNSW's sole financial remedy, and Project Co's sole financial Liability, for failure to achieve Acceptance by the Date for Acceptance (other than in respect of the Upgrade Services) is limited to the amount of the Monthly Service Payment not required to be paid by TfNSW in those circumstances and the fact that the CDPD Amount will not be payable in accordance with clause 34.

(b) (Acknowledgement): Project Co acknowledges and agrees that nothing in clause 37.16(a) limits:

(i) TfNSW's or RailCorp's rights under this Deed or at Law with respect to an event giving rise to delay or the consequences of such event;

(ii) TfNSW's entitlement to recover any costs, expenses or Liabilities incurred by TfNSW as a consequence of exercising its rights under clause 41; or

(iii) TfNSW's or RailCorp's rights under this Deed or at Law in relation to any non-financial remedy.

38. Maintenance Phase — Intervening Events

38.1 Intervening Events entitling Claim

(a) (Notification): If Project Co becomes aware of an Intervening Event or any other matter which has prevented, or will prevent, it from performing any of the Services in accordance with this Deed, Project Co must promptly notify TfNSW of that Intervening Event, its then current effect, and any likely further effect (Early Warning (Services)).

(b) (Prevent): In this clause 38, 'prevent' or 'prevented' does not mean that Project Co is permanently prevented from performing its obligations.

(c) (Relief): If, during the Maintenance Phase, an Intervening Event prevents Project Co from meeting any of the Services Requirements in accordance with this Deed, Project Co will be entitled to claim relief from performance in accordance with this clause 38.

(d) (Claim for relief): Subject to clause 38.1(e), in order to claim relief from performance under this clause, Project Co must submit an initial Change Notice to TfNSW (with reference to the Early Warning (Services), if relevant):

(i) if the Intervening Event is a Contamination Compensation Event, in accordance with clause 8.6; and

(ii) for all other Intervening Events, within 20 Business Days after the date upon which it became aware of the first occurrence of the Intervening Event.

(e) (Updates): Where:

(i) the period for which Project Co is prevented from performing any of the Services in accordance with this Deed extends beyond the period of time specified in the Change Notice submitted in accordance with clause 38.1(d); and
(ii) Project Co wants to claim relief from performance in respect of that further period,

Project Co must notify TfNSW and, once the consequences of the Intervening Event have ceased, promptly (and, in any event, within 10 Business Days) submit an updated Change Notice.

38.2 Conditions precedent to relief

It is a condition precedent to TfNSW granting any relief or Project Co having any entitlement in connection with an Intervening Event that:

(a) (Change Notice): Project Co submits to TfNSW:

(i) its initial Change Notice in accordance with clause 38.1(d); and

(ii) any updated Change Notice in accordance with clause 38.1(e); and

(b) (Actual prevention): Project Co's performance of all or any part of the Services under this Deed is actually prevented by the relevant Intervening Event.

38.3 Services suspended and no breach

To the extent that:

(a) (Intervening Event): an Intervening Event prevents Project Co from meeting any of the Services Requirements in accordance with this Deed; and

(b) (Conditions precedent): the conditions precedent in clause 38.2 have been satisfied,

then:

(c) (Suspension of relevant obligation): the relevant obligation of Project Co will be suspended; and

(d) (Failure to perform): the failure to perform the affected Services will not be a breach of this Deed by Project Co, a Project Co Act or Omission, a Major Default or a Default Termination Event,

but only until the earlier of:

(e) (Intervening Event ceased): the date the Intervening Event and its consequences cease to prevent performance of the relevant Services; and

(f) (Intervening Event would have ceased): the date on which the Intervening Event and its consequences would have ceased to prevent performance, had Project Co or any of its Associates not failed to do any of the things contemplated by clause 42.1(b).

38.4 TfNSW's obligations suspended and no breach

The obligations of TfNSW under this Deed which are affected by an Intervening Event comprising a Force Majeure Event will be suspended, but only to the extent that, and for so long as, the Force Majeure Event prevents TfNSW from meeting its obligations under this Deed.
38.5 **Continue to provide Services**

If an Intervening Event prevents Project Co from meeting any of the Services Requirements in accordance with this Deed, then Project Co:

(a) **(Perform obligations):** must, subject to clause 38.3 and unless it is actually or practically impossible to do so at the Maintenance Facility or Legacy Maintenance Centre given the nature of the Intervening Event, continue to provide the Services and otherwise perform its obligations under this Deed;

(b) **(Amend its methodology):** must use all reasonable endeavours to amend its methodology for performing the Services as necessary to continue to provide the Services during the Intervening Event; and

(c) **(Best Delivery Practices and Best Services Practices):** must perform the:

(i) Services (other than the Upgrade Services) in accordance with Best Services Practices; and

(ii) Upgrade Services in accordance with Best Delivery Practices.

38.6 **Not used**

38.7 **Intervening Events other than Insured Risks or a Force Majeure Events**

(a) **(Payment of Monthly Service Payment):** Subject to clause 38.7(c), 38.8 and 38.9, notwithstanding that Project Co's obligations to perform the Services affected by any Intervening Event are suspended in accordance with clause 38.3, for the period of the suspension:

(i) TfNSW must continue to pay Project Co or procure payment to Project Co of the Monthly Service Payment in connection with the Services affected by the Intervening Event which are suspended in accordance with clause 38.3 for the period of the suspension;

(ii) the Monthly Service Payment will not be subject to Abatement in accordance with the Performance Regime and the Payment Schedule in connection with the Intervening Event; and

(iii) TfNSW will deduct from the Monthly Service Payment the amounts of any recurrent and other costs which are permanently avoided by Project Co because the obligation to carry out the relevant Services has been suspended,

provided that Project Co has complied and continues to comply with clause 38.2.

(b) **(Compensation for Costs):** If Project Co's obligation to perform the Services is suspended in accordance with clause 38.3 because of a Compensable Intervening Event, to which clause 38.7(a) applies, then TfNSW will, in addition to the amounts referred to in clause 38.7(a), pay Project Co or procure payment to Project Co of an amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Assets which will be determined under clause 44 provided that Project Co has complied and continues to comply with the requirements under clause 38.2.

(c) **(Agreed Uninsurable Risk):** If the Intervening Event for which Project Co is entitled to relief from performance in accordance with clause 38.3 is an Agreed Uninsurable Risk, then:
clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Assets; and

(ii) in all other circumstances, this clause 38.7 applies, unless TfNSW and Project Co have otherwise agreed the means by which the risk should be managed in accordance with clause 47.1, in which case the agreed means will apply.

38.8 Intervening Event which is an Insured Risk

(a) (Abatement of Monthly Service Payment): Subject to clause 38.9, if the Intervening Event in respect of which Project Co is entitled to relief under this clause 38 is an Insured Risk, notwithstanding that Project Co's obligations to perform the Services are suspended in accordance with clause 38.3, for the period of suspension under clause 38.3, the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Deed.

(b) Not used.

(c) (Compensation for Costs): If Project Co's obligation to perform the Services is suspended in accordance with clause 38.3 because of a Compensable Intervening Event, to which clause 38.8(a) applies, then TfNSW will pay or procure payment to Project Co of an amount calculated in accordance with the Change Compensation Principles, other than in connection with any costs of repairing or rebuilding the Assets which will be determined under clause 44, provided that Project Co has complied and continues to comply with the requirements under clause 38.2.

38.9 Intervening Event which is a Force Majeure Event

(a) (Adjustment of Monthly Service Payment): Subject to clause 38.9(d), if the Intervening Event in respect of which Project Co is entitled to relief under this clause 38 is a Force Majeure Event, notwithstanding that Project Co’s obligations to perform the Services are suspended in accordance with clause 38.3, for the period of suspension under clause 38.3, the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Deed.

(b) Not used.

(c) (Minimum Payment): If any adjustment of the Monthly Service Payment in accordance with clause 38.9(a) as a result of a Force Majeure Event that is also an Agreed Uninsurable Risk results in any Project Co Entity:

(i) not being able to fully pay its scheduled repayments of principal and interest in accordance with its Project Debt obligations from the Monthly Services Payment;

(ii) Project Co not receiving the Lifecycle Payment for the relevant Month that otherwise would have been due and payable to Project Co by TfNSW; or

(iii) not receiving the amount of the Monthly Service Payment referable to the Services that any Project Co Entity continues to deliver under this Deed, notwithstanding the Force Majeure Event,

then Project Co will be entitled to payment of an amount calculated in accordance with the Change Compensation Principles, provided that Project Co has complied and continues to comply with the requirements under clause 38.2.
(d) **(Agreed Uninsurable Risk):** If the Intervening Event for which Project Co is entitled to relief from performance in accordance with clause 38.9(a) is an Agreed Uninsurable Risk, then:

(i) clause 47.3 applies to the extent the Agreed Uninsurable Risk gives rise to loss or damage to the Assets; and

(ii) in all other circumstances, clause 38 applies, unless TfNSW and Project Co have otherwise agreed the means by which the risk should be managed in accordance with clause 47.1, in which case the agreed means will apply.

### 38.10 Alternative arrangements

(a) **(Alternative arrangements or method):** Without limiting clause 41, during the period of suspension of any Services as a result of an Intervening Event, TfNSW may:

(i) make alternative arrangements for the performance of those Services at no cost to Project Co, and without TfNSW incurring any Liability to Project Co in respect of those alternative arrangements; or

(ii) direct Project Co to deliver those Services by an alternative method or 'work around' from that contemplated in the then current Management Plans and the Project Scope and Requirements to the extent that it is reasonably possible for Project Co to do so.

(b) **(Payment):** If TfNSW requires Project Co to perform those Services by an alternative method or 'work around' in accordance with clause 38.10(a)(ii), TfNSW must pay Project Co or procure payment to Project Co of an amount calculated in accordance with the Change Compensation Principles in respect of such alternative method or 'work around'.

### 38.11 Cessation of Intervening Event

Project Co must:

(a) **(Notification):** notify TfNSW; and

(b) **(Performance of Services):** recommence performing all Services suspended as a result of the Intervening Event, immediately after it ceases to be prevented from performing those Services as a result of the relevant Intervening Event or its consequences.

### 38.12 Sole Remedy

Subject to clause 5.3(b) and 5.3(c):

(a) **(Intervening Event):** if Project Co is prevented from performing the Services in accordance with this Deed as a consequence of an Intervening Event, Project Co's sole remedy during the Maintenance Phase is as set out in this clause 38; and

(b) **(Relief and compensation):** Project Co will not be entitled to make any Claim, and TfNSW and RailCorp will have no Liability for, any Claim made by Project Co (including for damages for breach) for Project Co being prevented from providing the Services in accordance with this Deed other than for the relief and compensation in accordance with this clause 38, provided always that nothing in this Deed will make RailCorp liable for the payment of such compensation.
39. Modifications

39.1 Modification Request by TfNSW

TfNSW may at any time issue to Project Co a notice entitled 'Modification Request' which must include details of:

(a) **(Proposed Modification):** the proposed Modification which TfNSW is considering;

(b) **(Preferred financing):** TfNSW's preferred financing for the proposed Modification in accordance with the Change Compensation Principles (where the Modification will result in an increase to the cost of the Assets or the Services); and

(c) **(Specific information):** any specific information that TfNSW requires Project Co to include in its Change Notice or that may be relevant to the preparation of the Change Notice, including in respect of jobs, skills and industry participation,

in the form set out in section 10 of the Schedule of Forms and Certificates (**Modification Request**).

39.2 Estimate of cost of Change Notice

If Project Co, any Financier or any Consortium Member needs to engage a third party other than any Consortium Member, any Group Member or any Related Body Corporate of a Consortium Member or a Group Member to provide design, engineering or quantity surveying or other services to assist in the preparation of or due diligence in respect of a Change Notice for a proposed Modification requested under clause 39.1, Project Co must provide TfNSW with a capped price for those costs within 5 Business Days after receiving the Modification Request.

39.3 Modification Proposal

Unless TfNSW withdraws the Modification Request, Project Co must submit a Change Notice entitled 'Modification Proposal' in the form set out in section 10 of the Schedule of Forms and Certificates and in accordance with the Change Compensation Principles:

(a) **(Receipt of Modification Request):** within 20 Business Days after the receipt of the Modification Request; or

(b) **(As agreed by TfNSW):** at such later time as agreed by TfNSW (acting reasonably, taking into account the size and complexity of the proposed Modification and the information to be included in a Modification Proposal).

39.4 Payment for Change Notice prepared by Project Co

If:

(a) **(Project Co Modification Proposal):** Project Co submits a Modification Proposal in accordance with clause 39.3; and

(b) **(TfNSW does not issue Modification Order):** TfNSW does not issue a Modification Order in respect of the proposed Modification,

then TfNSW must reimburse or procure reimbursement of the reasonable third party costs of the type described in clause 39.2 incurred by Project Co, a Financier or a Consortium Member in preparing the Modification Proposal or carrying out due diligence in respect of the Modification Proposal, capped at the price provided by Project Co for the Modification Proposal under clause 39.2.
39.5 Change Response

(a) **(TfNSW to Issue):** TfNSW must issue a Change Response to a Modification Proposal in the form set out in section 10 of the Schedule of Forms and Certificates and in accordance with the Change Compensation Principles and the Change Compensation Principles will apply.

(b) **(Modification Order):** Subject to clauses 39.4 and 39.10(c)(ii), Project Co must not begin any work or incur any cost, and will not have any entitlement to make any Claim in respect of a Modification unless a Change Response entitled 'Modification Order' requiring Project Co to proceed with the Modification has been issued by TfNSW.

(c) **(TfNSW may withdraw):** TfNSW may withdraw a Modification Request at any time prior to issuing a Modification Order, in which case Project Co must not proceed with the Modification.

39.6 Omission by TfNSW

(a) **(Omitted Project Activities):** The parties acknowledge and agree that:

(i) TfNSW may issue a Modification Request that seeks to decrease, omit, delete or remove any part of the Project Activities (Omitted Project Activities); and

(ii) if TfNSW has issued a Change Response entitled 'Modification Order' in accordance with the Change Compensation Principles in respect of such Omitted Project Activities, TfNSW may itself or may engage an Associate of TfNSW to undertake any Omitted Project Activities.

(b) **(Coordination with Project Activities):** Project Co must:

(i) permit TfNSW or any of TfNSW's Associates to carry out any Omitted Project Activities;

(ii) co-operate with TfNSW and any of TfNSW's Associates in carrying out any Omitted Project Activities (as applicable); and

(iii) co-ordinate the Project Activities with the work carried out or to be carried out by TfNSW or any of TfNSW's Associates in connection with any Omitted Project Activities (as applicable).

39.7 Instruction to proceed

(a) **(Instruction):** Whether or not:

(i) TfNSW has issued a Modification Request under clause 39.1; or

(ii) Project Co has issued a Modification Proposal under clause 39.3,

TfNSW may at any time instruct Project Co to implement a Modification by issuing a Change Response entitled 'Modification Order' in accordance with the Change Compensation Principles.

(b) **(Implementation):** If TfNSW issues a Change Response entitled 'Modification Order' under clause 39.7(a), subject to section 8.3(c) of the Change Compensation Principles, Project Co must implement the Modification on the terms set out in that Modification Order.
39.8 **Modifications proposed by Project Co**

(a) *(Project Co may propose a Modification):* Project Co may request TfNSW to direct a Modification by submitting a Change Notice entitled 'Modification Proposal' to TfNSW in the form set out in section 11 of the Schedule of Forms and Certificates and in accordance with the Change Compensation Principles *(Modification Proposal).*

(b) *(TfNSW may approve or reject):* Upon receipt of a Modification Proposal, the Change Compensation Principles will apply save that TfNSW will be under no obligation to issue a Modification Order requiring Project Co to proceed with the Modification proposed by Project Co under clause 39.8(a).

(c) *(Project Co to bear risks and costs):* Unless otherwise agreed in writing by TfNSW, Project Co will:

(i) bear all risks and costs associated with a Modification proposed by Project Co; and

(ii) not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, a Modification proposed by Project Co, including where TfNSW issues a Modification Order requiring Project Co to implement the Modification in accordance with the Modification Proposal.

(d) *(Sharing of Savings):* If TfNSW issues a Modification Order in respect of a Modification proposed by Project Co under clause 39.8(a) and the Modification will give rise to Savings, TfNSW and Project Co will share any Savings between themselves as determined in accordance with the Change Compensation Principles.

39.9 **Directions**

(a) *(TfNSW direction):* If Project Co considers that a direction by TfNSW constitutes or involves a Modification and TfNSW has not given that direction expressly by way of a Modification Request or Modification Order, and Project Co intends to make a Claim that the direction is a Modification, Project Co must:

(i) within 10 Business Days after receiving the direction and before commencing any work the subject matter of the direction, give written notice to TfNSW that it considers the direction constitutes or involves a Modification; and

(ii) within 10 Business Days after giving the notice under clause 39.9(a)(i) and before commencing any work the subject matter of the direction, give TfNSW a Change Notice in respect of the alleged Modification.

(b) *(Confirmation):* Within 20 Business Days of TfNSW receiving a Change Notice under clause 39.9(a)(ii) TfNSW must issue a Change Response:

(i) confirming that the direction is in fact a Modification, in which case TfNSW will issue a Modification Request in respect of the relevant direction in accordance with this clause 39 and the Change Compensation Principles;

(ii) withdrawing the direction, in which case Project Co must not comply with the direction; or
(iii) informing Project Co that, in TfNSW's view, the direction does not constitute or involve a Modification in which case Project Co must, subject to clause 5.2(a), comply with the direction but may refer the matter to dispute resolution in accordance with clause 50.

(c) **(Conditions for Project Co claim):** Project Co is not entitled to make any Claim in respect of a direction that gives rise to a Modification of the type described in clause 39.9(a) unless it has given a notice under clause 39.9(a).

(d) **(Safety Duties):** Notwithstanding any other provision of this clause 39.9, Project Co will not be entitled to make any Claim against TfNSW or RailCorp, and neither TfNSW nor RailCorp will be liable for any Claim, under clause 39 or otherwise, to the extent that the comments on, or rejection of, a Submitted Document by the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) relates to or is in connection with the ability of TfNSW, TfNSW's Associates, RailCorp or RailCorp's Associates to discharge its Safety Duties under the Rail Safety National Law (including compliance with any Accreditation).

(e) **(Accreditation):** Subject to clause 39.10, Project Co will not be entitled to make any Claim against TfNSW in respect of a Modification to the extent the Modification is required to ensure that Project Co or its Associates do not cause an Accredited Person to breach its Accreditation or the Rail Safety National Law.

### 39.10 Change in Mandatory Requirements

(a) **(Change in Mandatory Requirements):** Project Co must provide to TfNSW:

(i) a notice within 5 Business Days after becoming aware of any Change in Mandatory Requirements (other than Non-Mandatory Changes in Standards); and

(ii) within 5 Business Days after each Quarterly Date, a summary of all Changes in Mandatory Requirements which are Changes in Standards as contemplated under paragraphs (a) or (b) of the definition of Change in Standard (Non-Mandatory Changes in Standards) which Project Co has become aware of during the previous Quarter.

(aa) **(Meeting to discuss):** Within 10 Business Days of TfNSW receiving Project Co's summary provided under clause 39.10(a)(ii), TfNSW and Project Co must meet to discuss the Non-Mandatory Changes in Standards.

(ab) **(TfNSW direction):** Within 10 Business Days of the meeting referred to in clause 39.10(aa), TfNSW will in respect of each Non-Mandatory Change in Standards included in Project Co's summary provided under clause 39.10(a)(ii):

(i) direct Project Co to provide an estimate of third party costs and a Change Notice in respect of the Non-Mandatory Change in Standards in accordance with clause 39.10(b); or

(ii) except where a failure to comply with that Non-Mandatory Change in Standards would result in Project Co being in breach of Legislation or any Approval, direct Project Co to not comply with the Non-Mandatory Change in Standards.

(b) **(Project Co action):** If a Change in Mandatory Requirements occurs, Project Co must provide to TfNSW:

(i) within 5 Business Days after:
A. becoming aware of such Change in Mandatory Requirements (other than a Non-Mandatory Change in Standards); or
B. receiving a direction under clause 39.10(ab)(i) in respect of a Non-Mandatory Change in Standards,

where necessary, an estimate of third party costs of the type described in clause 39.2 to be incurred for preparing or conducting due diligence in respect of a Change Notice in response to a Change in Mandatory Requirements; and

(ii) within 20 Business Days after:
A. becoming aware of such Change in Mandatory Requirements (other than a Non-Mandatory Change in Standards); or
B. receiving a direction under clause 39.10(ab)(i) in respect of a Non-Mandatory Change in Standards,

(iii) or at such later time as agreed by TfNSW (acting reasonably) a Change Notice in respect of the relevant Change in Mandatory Requirements in accordance with the Change Compensation Principles.

(c) (TfNSW action): TfNSW must issue a Modification Order in accordance with the Change Compensation Principles in response to a Change Notice provided under clause 39.10(b)(ii) unless the relevant Change in Mandatory Requirements is a Non-Mandatory Change in Standards, in which case TfNSW must:

(i) direct Project Co as to whether or not it requires Project Co to comply with the relevant Change in Mandatory Requirements, provided that TfNSW must direct Project Co to comply with the relevant Change in Mandatory Requirements if a failure to comply with that Change in Mandatory Requirements would result in Project Co being in breach of Legislation or any Approval;

(ii) if TfNSW directs that it requires Project Co to comply with the relevant Change in Mandatory Requirement under clause 39.10(c)(i), issue a Change Response entitled “Modification Order” in accordance with the Change Compensation Principles; and

(iii) if TfNSW directs Project Co not to comply with the relevant Change in Mandatory Requirements under clause 39.10(c)(i), reimburse Project Co the reasonable third party costs of the type described in clause 39.2 incurred by Project Co or a Financier in preparing and conducting due diligence in respect of the Change Notice, capped at the amount of any estimate provided by Project Co for the Change Notice under clause 39.2 (or such higher amount as TfNSW may approve).

(d) (Conditions for Project Co claim): Project Co is not entitled to make any Claim in respect of a Change in Mandatory Requirements unless it has given notices in accordance with clause 39.10(a) and 39.10(b).

39.11 Extension of time

(a) (Claim for extension of time): Where Project Co considers that it has been delayed in achieving Acceptance or has otherwise been prevented in performing the Delivery Phase Activities as a consequence of a Modification or a Change in Mandatory Requirements then Project Co must include in its Change Notice provided under this clause 39 its claim for an extension of time or other relief and clause 37 will apply in respect of the relevant relief or extension of time claim.
(unless TfNSW and Project Co can agree on an extension of time or other form of relief in accordance with clause 39.11(b)).

(b) **(TfNSW may agree):** TfNSW and Project Co may agree:

(i) that Project Co is entitled to an extension of time or other form of relief; and

(ii) the period of any such extension of time or other form of relief,

within 10 Business Days after TfNSW receives Project Co's Change Notice, in which case the agreed extension of time or other form of relief will apply and be included in the Change Response.

(c) **(Failure to agree on extension of time):** Where Project Co has claimed an extension of time in accordance with clause 39.11(a) and TfNSW and Project Co cannot agree that Project Co is entitled to an extension of time or the period for the extension of time:

(i) TfNSW may issue a separate Change Response for the non-time related aspects of the relevant Modification or a Change in Mandatory Requirements (as applicable); and

(ii) the extension of time (if any) will be determined by the TfNSW Representative in accordance with clause 37.5.

### 39.12 Minor Modifications

(a) **(Purposes):** TfNSW and Project Co agree that the purposes of this clause 39.12 are to:

(i) better facilitate and more efficiently give effect to Minor Modifications; and

(ii) ease the administrative burden on Project Co and TfNSW in the implementation of Minor Modifications,

and Project Co must seek to give effect to the purpose stated in clause 39.12(a) in complying with its obligations under this clause 39.12.

(b) **(Minor Modification Proposal):** Without limiting TfNSW's rights under clause 39.7:

(i) TfNSW may direct Project Co to issue a Minor Modification Proposal in respect of a Modification which is a Minor Modification in the form set out in section 12 of the Schedule of Forms and Certificates, in which case Project Co must issue a Minor Modification Proposal within 7 Business Days after receipt of TfNSW's direction; or

(ii) Project Co may propose a Modification which is a Minor Modification by issuing a Minor Modification Proposal in the form set out in section 13 of the Schedule of Forms and Certificates.

(c) **(Accumulation):** Project Co or TfNSW may agree to accumulate Minor Modifications on a monthly basis (or such other period as is agreed by TfNSW and Project Co) by recording the proposed Minor Modifications by agreement on a register, in which case Project Co must submit a Minor Modification Proposal for all Minor Modifications on that register, at the end of each month, and prior to their implementation.
(d) **(Notice):** Within 20 Business Days after receipt of a Minor Modification Proposal from Project Co (or such longer period as TfNSW reasonably requires having regard to the nature, content and quality of the Minor Modification Proposal and whether TfNSW requires an expert to verify any amount calculated by Project Co in the Minor Modification Proposal) (as the case may be) TfNSW must provide Project Co with a notice which:

(i) accepts the Minor Modification Proposal; or

(ii) sets out reasonable amendments to the Minor Modification Proposal.

(e) **(Terms):** TfNSW and Project Co will implement the Minor Modification on the terms:

(i) of the Minor Modification Proposal where a Minor Modification Proposal is accepted under clause 39.12(d)(i); or

(ii) agreed between TfNSW and Project Co, as recorded in an amended Minor Modification Proposal where either TfNSW or Project Co seeks to amend a Minor Modification Proposal under clause 39.12(d)(ii).

(f) **(Failure to agree):** If TfNSW and Project Co fail to agree in accordance with clause 39.12(e)(ii), in respect of the Minor Modification Proposal, TfNSW may:

(i) issue a Modification Order under clause 39.7; or

(ii) issue a Modification Request under clause 39.1,

in order to implement the Minor Modification.

(g) **(Rights as if Minor Modification is Modification):** Nothing in this clause 39.12 will prevent TfNSW or Project Co from exercising their rights under clause 39 as if the Minor Modification was in fact a Modification.

(h) **(TfNSW direction):** If TfNSW considers that the Minor Modification process is not meeting the purposes set out in clause 39.12(a), TfNSW may, at its discretion, direct Project Co to no longer use the Minor Modification process set out in this clause 39.12, in which case, all Minor Modifications will be managed in accordance with the process set out in clause 39 (other than this clause 39.12) and this clause 39.12 will be deemed not to operate.

(i) **(Change Compensation Principles to apply):** Any amounts claimed or payable for a Minor Modification must be calculated in accordance with the Change Compensation Principles, unless TfNSW and Project Co agree otherwise.

(j) **(Directions):** If Project Co considers that any direction given by TfNSW, other than a direction given under clause 39.12(b)(i), constitutes or involves a Minor Modification, Project Co must provide written notice to this effect to TfNSW within 2 Business Days of receipt of the direction and in any event before commencing any work the subject matter of the direction.

(k) **(Agreement in respect of directions):** If TfNSW agrees that the direction constitutes or involves a Minor Modification then TfNSW must to the extent that the direction does so, direct Project Co to submit a Minor Modification Proposal under clause 39.12(b)(i) and the process for performance of the Minor Modification will proceed in accordance with this clause 39.12.

(l) **(Non-Agreement in respect of directions):** If TfNSW does not agree that the direction constitutes a Minor Modification, clause 39.9 will apply.
39.13 Implementation

Subject to clause 39.16, if TfNSW issues a Modification Order in accordance with this clause 39, Project Co must implement the Modification in accordance with the terms of the Modification Order.

39.14 Option Units

(a) (Direction by TfNSW): TfNSW may at any time during the Term prior to the applicable Option Final Date, in its absolute discretion and without being under any obligation to do so, require Project Co to provide any one or more Option Units by giving written notice to Project Co in the form set out in section 14 of the Schedule of Forms and Certificates.

(b) (Deemed amendment): Subject to clause 39.14(d), the parties agree that if TfNSW issues an Option Notice in respect of one or more Option Units prior to the applicable Option Final Date, with effect from the Option Effective Date:

(i) the Option Unit will form part of the New Fleet;

(ii) Project Co must comply with its obligations under this Deed in respect of the Option Unit, including its obligations in section 1 of Schedule 44;

(iii) this Deed will be deemed to be amended in accordance with the relevant amendments set out in section 1 of Schedule 44; and

(iv) Project Co shall be entitled to payment for the Option Unit in accordance with the Payment Schedule, adjusted as provided for therein in relation to the relevant Option Units.

(c) (Effect of Option Notice): If TfNSW issues an Option Notice in accordance with clause 39.14(a), Project Co, in respect of that Option Unit:

(i) must carry out its obligations under this Deed as amended by clause 39.14(b); and

(ii) acknowledges and agrees that:

A. any payment made pursuant to clause 39.14(b) will be full compensation for all Liability and any damage or delay it suffers or incurs arising out of or in connection with the issue of an Option Notice and no further adjustment will be made to the components of the Monthly Service Payment under this Deed in respect of TfNSW’s election to issue an Option Notice; and

B. Project Co is not entitled to make any Claim for:

1) any acceleration to the carrying out of the Project Activities which Project Co must perform at any time in order to meet its obligations under this Deed;

2) any extension of time for any delay to the carrying out of the Project Activities; or
3) any other consequential impact of TfNSW exercising its rights under clause 39.14(a), including any changes required to any other Assets,

in connection with the issue of an Option Notice, the amendment of this Deed pursuant to clause 39.14(b) or the withdrawal of an Option Notice.

(d) **Withdrawal of Option Notice**: TfNSW may withdraw an Option Notice in accordance with section 2.2 of the Payment Schedule, in which case clause 39.14(b) will not apply in respect of that Option Notice.

(e) **After the Option Final Date**: Nothing in this clause 39.14 prevents TfNSW from:
   
   (i) issuing a Modification Request; or
   
   (ii) directing a Modification by issue of a Modification Order,

   that involves the manufacture and, if required by TfNSW, the maintenance of one or more additional Units or Cars after the relevant Option Final Date.

(f) **Change Compensation Principles**: If TfNSW:
   
   (i) issues a Modification Request; or
   
   (ii) directs a Modification by issuing a Modification Order,

   which involves the manufacture and, if required by TfNSW, the maintenance of one or more additional Units or Cars which is issued or directed (as appropriate) after the relevant Option Final Date, TfNSW and Project Co agree that the Change Compensation Principles will apply to that Modification.

(g) **Non-Continuous Production Options**:
   
   (i) At least 60 days prior to issuing any Option Notice in respect of any Non-Continuous Production Options, TfNSW must deliver to Project Co a notice (NCO Notice) of its intention to do so.
   
   (ii) Within 30 days of receipt by it of any NCO Notice, Project Co must provide TfNSW with a program (NCO Delivery Program) setting out in reasonable detail its program for the delivery of the relevant Non-Continuous Production Options that are the subject of the NCO Notice. Such NCO Delivery Program must specify the Date for Provisional Acceptance in respect of each relevant Non-Continuous Production Option determined by Project Co, acting reasonably, to account for any manufacturing capacity constraints that may apply at that time.
   
   (iii) If TfNSW accepts the NCO Delivery Program, it may at any time within 30 days of receipt of the NCO Delivery Program, deliver an Option Notice in respect of the relevant Non-Continuous Production Option(s), in which case the Date for Provisional Acceptance in respect of each Non-Continuous Production Option will be that provided in the NCO Delivery Program.
   
   (iv) If TfNSW does not accept the NCO Delivery Program, TfNSW may require Project Co to negotiate in good faith with TfNSW for a period of 21 days any changes that it considers appropriate. If TfNSW and Project Co agree a revised NCO Delivery Program within the 21 day period, then
such revised NCO Delivery Program shall become the NCO Delivery Program and the Date for Provisional Acceptance in respect of the relevant Non-Continuous Production Option(s) shall be as provided for in such revised NCO Delivery Program, provided that if the parties do not agree a revised NCO Delivery Program, then TfNSW may either accept the original NCO Delivery Program in accordance with clause 39.14(g)(iii) or elect not to proceed with the delivery of the relevant Option Notice.

39.14A Additional Option Items

(a) (Direction by TfNSW): TfNSW may at any time during the Term prior to the applicable Additional Option Item Final Date, in its absolute discretion and without being under any obligation to do so, require Project Co to provide Additional Option Items in relation to:

(i) the Regional Fleet; or
(ii) the Intercity Non-Electric Fleet; or
(iii) both,

by giving written notice to Project Co in the form set out in section 14 of the Schedule of Forms and Certificates.

(b) (Deemed amendment): The parties agree that if TfNSW issues an Option Notice in respect of any Additional Option Items prior to the Additional Option Item Final Date:

(i) Project Co must comply with its obligations under this Deed in respect of the such Additional Option Items, including its obligations in section 1 of Schedule 44A;

(ii) this Deed will be deemed to be amended in accordance with the relevant amendments set out in section 1 of Schedule 44A; and

(iii) Project Co shall be entitled to payments for the relevant Additional Option Items in accordance with the Payment Schedule, adjusted as provided for therein in relation to the relevant Additional Option Items.

(c) (Effect of Option Notice): If TfNSW issues an Option Notice in accordance with clause 39.14A(a), Project Co, in respect of the relevant Additional Option Items:

(i) must carry out its obligations under this Deed as amended by clause 39.14A(b); and

(ii) acknowledges and agrees that:

A. any payment made pursuant to clause 39.14A(b)(iii) will be full compensation for all Liability and any damage or delay it suffers or incurs arising out of or in connection with the issue of an Option Notice in respect of the relevant Additional Option Items and no further adjustment will be made to the components of the Monthly Service Payment under this Deed in respect of TfNSW’s election to issue such Option Notice; and

B. Project Co is not entitled to make any Claim for:
any acceleration to the carrying out of the Project Activities which Project Co must perform at any time in order to meet its obligations under this Deed;

2) any extension of time for any delay to the carrying out of the Project Activities; or

3) any other consequential impact of TfNSW exercising its rights under clause 39.14A(a), including any changes required to any other Assets,

in connection with the issue of an Option Notice in respect of any Additional Option Items or the amendment of this Deed pursuant to clause 39.14A(b).

(d) (After the Option Final Date): Nothing in this clause 39.14A prevents TfNSW from:

(i) issuing a Modification Request; or

(ii) not used,

that involves the manufacture and, if required by TfNSW, the maintenance of any Additional Option Item Final Date.

(e) (Change Compensation Principles): If TfNSW:

(i) issues a Modification Request; or

(ii) not used,

which involves the manufacture and, if required by TfNSW, the maintenance of any Additional Option Item and which is issued or directed (as appropriate) after the Additional Option Item Final Date, TfNSW and Project Co agree that the Change Compensation Principles will apply to that Modification.

39.15 Configurable Item Changes

(a) (Direction by TfNSW): TfNSW may at any time during the Term, in its absolute discretion and without being under any obligation to do so, require Project Co to provide any one or more Configurable Item Changes by giving written notice to Project Co in the form set out in section 8 of the Schedule of Forms and Certificates.

(b) (Time and cost): The parties agree that if a notice is given by TfNSW pursuant to clause 39.15(a) in respect of a Configurable Item Change or to the extent that any part of a Modification Order or a Minor Modification Proposal agreed between TfNSW and Project Co includes Configurable Item Changes:

(i) the Monthly Service Payment in respect of the Payment Period following the date on which Project Co implements the Configurable Item Change will be deemed to be amended to include the price set out in the relevant table in Annexure A of the Change Compensation Principles applicable to the Configurable Item Change; and

(ii) Project Co must implement the Configurable Item Change within the applicable time period set out in the tables in Annexure A of the Change
Compensation Principles, beginning on the date of the notice given by TfNSW pursuant to clause 39.15(a), the date of the Modification Order or the date on which a Minor Modification Proposal is agreed between TfNSW and Project Co.

(c) **(Effect of TfNSW's direction):** If TfNSW directs a Configurable Item Change, Project Co, in respect of that Configurable Item Change:

(i) must carry out its obligations under this Deed as amended by clause 39.15(b); and

(ii) acknowledges and agrees that:

A. any adjustment to the Monthly Service Payment made pursuant to clause 39.15(b) will be full compensation for all Liability and any damage or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the Monthly Service Payment under this Deed in respect of that Configurable Item Change; and

B. Project Co is not entitled to make any Claim for:

1) any acceleration to the carrying out of the Project Activities which Project Co must perform at any time in order to meet its obligations under this Deed;

2) any extension of time for any delay to the carrying out of the Project Activities; or

3) any other consequential impact of TfNSW exercising its rights under clause 39.15(a), including any changes required to any other Assets,

in connection with the amendment of this Deed pursuant to clause 39.15(b), the issue of a notice under clause 39.15(a) or the issue of a Modification Order or Minor Modification Proposal to the extent that it relates to a Configurable Item Change.

(d) **(No Financier consent):** Project Co must ensure that Financiers' consent is not required in respect of any Configurable Item Changes (including any Change Notices issued in respect of Configurable Item Changes).

### 39.16 Engineering Change Process

(a) **(Mandatory process):** Project Co must not begin any work or otherwise implement:

(i) a Minor Technical Change;

(ii) a Modification; or

(iii) a Minor Modification,

to a Maintained Rail Asset after the Date of Provisional Acceptance of the relevant Maintained Rail Assets (or, where a Maintained Rail Asset is not subject to
Provisional Acceptance, at any time during the Maintenance Phase) (Engineering Change) unless, without limiting clause 39.5:

(iv) Project Co has submitted an Engineering Change Notice and the other information required by clause 39.16(b) in respect of the Engineering Change; and

(v) Project Co and TfNSW have followed this Engineering Change Process in respect of the Engineering Change and Project Co is entitled to proceed with the Engineering Change under section 7.1 of the Review Procedures.

(b) (Submitted Documents): Project Co must submit to TfNSW and the TfNSW Representative an Engineering Change Notice which must include:

(i) any proposed amendments to Project Co Material and the Design Requirements (as applicable);

(ii) a detailed explanation as to why Project Co wishes to make the proposed changes; and

(iii) any other information reasonably requested by TfNSW, in respect of the Engineering Change, which documents will be deemed to be Submitted Documents.

(c) (Restriction): Save to the extent otherwise agreed by TfNSW in a Modification Order issued under clause 39.5, Project Co may only propose an Engineering Change where it has first demonstrated to the TfNSW Representative's reasonable satisfaction that the Engineering Change will not result in:

(i) an increase in Lifecycle Payments for the Assets or any increase to the lifecycle Maintenance costs over the life of the Assets;

(ii) the lessening of any standard, level of service or scope or requirement set out in this Deed or otherwise contemplated by any Project Co Material; or

(iii) any reduction in:

A. Design Life;
B. maintainability;
C. capacity;
D. durability (including resistance to Graffiti and Vandalism);
E. aesthetics, cleanliness, performance or condition of visible features;
F. reliability;
G. whole of life performance;
H. environmental performance;
I. sustainability performance;
J. functional performance;
K. safety;
L. security;
M. quality of passenger experience;
N. passenger or crew amenity;
O. passenger or crew benefits; or
P. TfNSW benefits,
in respect of any part of the Works or Assets.

(d) (Amendment to Review Procedures): Project Co, TfNSW and the TfNSW Representative must follow the Review Procedures in respect of the Submitted Documents referred to in clause 39.16(b), except that:

(i) the Reviewing Party's right to provide comments on the Submitted Document will include those grounds set out in section 8.5 of the Review Procedures; and

(ii) section 7.2 of the Review Procedures will not apply and Project Co may not Proceed at Risk in respect of the Submitted Documents.

(e) (Project Co to bear risks and costs of Minor Technical Changes): Without limiting clause 39.8(b) in respect of Modifications proposed by TfNSW and clause 39.8(c) in respect of Modifications proposed by Project Co, unless otherwise agreed in writing by TfNSW, Project Co will:

(i) bear all risks and costs associated with a Minor Technical Change; and

(ii) not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, a Minor Technical Change,

including where Project Co is entitled to proceed with the Minor Technical Change under section 7 of the Review Procedures.

(f) (No Financier consent): Project Co must ensure that Financiers' consent is not required in respect of any Engineering Changes or Minor Technical Changes (including any associated Engineering Change Notices).

39.17 Simulator

If there is a Modification, a Minor Modification or an Engineering Change to any Unit (Unit Change), Project Co must:

(a) include in its:

(i) Modification Proposal in respect of that Modification;

(ii) Minor Modification Proposal; or

(iii) Engineering Change Notice,

any corresponding Modification, Minor Modification or Engineering Change (as applicable) required to the Simulators and any associated Project Co Material.
(including computer based training software for the Simulators) in order to ensure that the Simulators and any associated Project Co Material will accurately reflect the Units and continue to meet the requirements of Part C4 (Simulator Specification) of the Project Scope and Requirements (if any) after the implementation of the Unit Change; and

(b) without limiting the Final Acceptance Criteria in respect of the New Fleet, ensure that any corresponding Modification, Minor Modification or Engineering Change to the Simulators and any associated Project Co Material referred to in clause 39.17(a) has been implemented and completed no later than 3 Months following the date on which the Unit Change has been fully implemented to the first Unit in the New Fleet.

40. Refinancing

40.1 Project Co to provide details of Refinancing

(a) (Provision of details): Project Co must promptly provide TfNSW with full details of any proposed Refinancing, including:

(i) a copy of the last agreed Financial Model, adjusted for the proposed Refinancing:

A. showing all of the material changes to any Project Co Entity's obligations to the Financiers (or their assigns or successors) in a format that allows the calculation of the anticipated Refinancing Gain or Refinancing Loss in accordance with clause 40.5; and

B. with projections for the cash flow of Project Co from the proposed date of the Refinancing to the end of the Term, including projected Distributions after taking the Refinancing into account;

(ii) the basis for assumptions used in the adjusted Financial Model referred to in clause 40.1(a)(i);

(iii) a certificate on terms and in a form acceptable to TfNSW from the auditors of the adjusted Financial Model referred to in clause 40.1(a)(i), as to its operation and effect;

(iv) all information, including terms and conditions, provided by any Project Co Entity to its existing and prospective financiers, or by any Project Co Entity's existing and prospective financiers to any Project Co Entity, in relation to the proposed Refinancing; and

(v) whether any Project Co Entity considers that the consent of TfNSW under clause 40.2 is required for the proposed Refinancing.

(b) (Further information): TfNSW may, within 10 Business Days after receiving details of the proposed Refinancing referred to in clause 40.1(a) (or any revised proposed Refinancing submitted under clause 40.3(c)), request any further information which TfNSW reasonably requires from Project Co regarding the proposed Refinancing. If such further information is available to any Project Co Entity, Project Co must (to the extent that further information is available to it or Finance Co) provide the additional information as soon as reasonably practicable but no later than 5 Business Days after TfNSW's request.
40.2 TfNSW consent to Refinancing

(a) **(Restrictions):** Project Co must not (and must ensure that Finance Co does not) enter into any Refinancing which:

(i) gives rise to a Refinancing Gain;

(ii) gives rise to an increase in the amount of outstanding Debt at or beyond the proposed date of the Refinancing above that forecast at that time in the last agreed Financial Model;

(iii) gives rise to an increase in the amount of outstanding Debt beyond that forecast for any future period in the last agreed Financial Model;

(iv) reduces the tenor of the relevant Refinancing tranche by a period greater than 18 Months from that forecast in the Financial Close Financial Model;

(v) is likely to give rise to an increase or adverse change in the liabilities or the profile of the risks or liabilities of TfNSW (whether actual or contingent) under the Project Documents; or

(vi) incorporates an Exotic Swap,

without the prior consent of TfNSW, which must be provided in accordance with this clause 40.2.

(b) **(TfNSW consent):** TfNSW may only withhold its consent to a Refinancing under clause 40.2(a) if:

(i) TfNSW reasonably believes that the Refinancing will bring about an increase or adverse change in the potential liabilities or the profile of the risks or potential liabilities of any Project Co Entity under any Project Document (other than as consented to by TfNSW and reflected in the Financial Model) without adequate compensation to TfNSW;

(ii) the Refinancing is prior to the Date of Final Acceptance (Base Fleet and Continuous Production Options); or

(iii) the Refinancing incorporates an Exotic Swap.

(c) **(Deemed consent):** TfNSW will not withhold its consent to a Refinancing under clause 40.2(a) (and if TfNSW has not reverted within 21 Business Days of a consent request by Project Co, TfNSW is deemed to have consented) if:

(i) the sole purpose of the Refinancing is to prevent a maturity date under the Finance Documents being reached;

(ii) the circumstances in clause 40.2(b) have not or will not arise; and

(iii) Project Co has:

A. complied with its obligations under clause 40.1; and

B. delivered to TfNSW the information required under clause 40.1(b) no less than 40 Business Days but no more than 90 Business Days before the relevant maturity date under the Finance Documents.
40.3 Review process

(a) **(Refinancing Review Period):** If under clause 40.2(a) TfNSW is required to provide its consent to a Refinancing, TfNSW must provide or withhold its consent within the period commencing on the date Project Co provides all of the details of the proposed Refinancing referred to in clause 40.1(a) and ending 20 Business Days after that date **(Refinancing Review Period)**.

(b) **(TfNSW may comment):** During the Refinancing Review Period, prior to providing or withholding consent, TfNSW may provide comments (and sufficient detail to substantiate those comments) to Project Co in respect of the proposed Refinancing if TfNSW has reasonably formed the view that any of the events in clause 40.2(b) will occur as a result of the proposed Refinancing.

(c) **(Revised proposed Refinancing):** Following receipt of comments from TfNSW under clause 40.3(b), Project Co may vary the proposed Refinancing in order to ensure that none of the events in clause 40.2(b) will occur as a result of the proposed Refinancing and resubmit the revised proposed Refinancing to TfNSW for review during the Refinancing Review Period.

(d) **(Further information):** Upon receipt of the revised proposed Refinancing TfNSW may request further information that is reasonably required from any Project Co Entity regarding the revised proposed Refinancing in accordance with clause 40.1(b).

(e) **(Extension):** If Project Co resubmits the proposed Refinancing to TfNSW in accordance with clause 40.3(c), the Refinancing Review Period will be extended for a further period of 20 Business Days (or such shorter period as requested by Project Co and agreed to by TfNSW) from the date of such resubmission.

(f) **(Dispute resolution):** Any dispute as to whether TfNSW's consent is required for a proposed Refinancing or if TfNSW is entitled to withhold its consent to a proposed Refinancing may be referred by TfNSW or Project Co for resolution in accordance with clause 50.

40.4 Refinancing documents

(a) **(Delivery):** Project Co must deliver a certified true copy of each amended and amending Finance Document to TfNSW within 10 Business Days after execution.

(b) **(Execution):** Project Co must not (and must ensure that Finance Co does not) execute any Refinancing until:

   (i) any new Financiers have executed a deed with TfNSW and RailCorp substantially in the form of the Financiers' Tripartite Deed or become bound by the Financiers' Tripartite Deed; and

   (ii) any retiring Financiers have executed any documents reasonably requested by TfNSW to terminate their rights under the Financiers' Tripartite Deed.
40.5 **Calculation of Refinancing Gain or Refinancing Loss**

(a) **(Impact to be calculated):** For each proposed Refinancing, the impact of the proposed Refinancing on Distributions to Equity Investors in the then current Financial Model must be calculated in order to establish the extent to which gains may arise that may need to be shared with TfNSW in accordance with clause 40.6.

(b) **(Calculation Formula):** The impact of the proposed Refinancing will be calculated in accordance with the following definitions:

Refinancing Gain means any amount greater than zero when calculated in accordance with the below formula, in which case clause 40.6 will apply.

Refinancing Loss means any amount equal to or less than zero when calculated in accordance with the below formula, in which case clause 40.6 will not apply.

**Formula** = \( A - B \)

where:

\( A = \) the net present value of Distributions projected over the remaining period until the Final Expiry Date if the proposed Refinancing is executed, using the Equity IRR and the then current Financial Model as adjusted to reflect the proposed Refinancing, in a manner consistent with clause 40.8, but without taking into account any adjustment for any sharing with TfNSW of any Refinancing Gain arising from the proposed Refinancing; and

\( B = \) the net present value of the Distributions projected over the remaining period until the Final Expiry Date immediately prior to the proposed Refinancing using the Equity IRR and the then current Financial Model prior to any adjustments to reflect the proposed Refinancing.

40.6 **Sharing Refinancing Gains**

(a) **(TfNSW entitlement):** TfNSW will be entitled to of the benefit of any Refinancing Gain that arises from a Refinancing (TfNSW Refinancing Share).

(b) **(Payment):** TfNSW may, taking into account the nature and timing of the Refinancing Gain, elect to receive the TfNSW Refinancing Share as:

(i) a direct payment (to the extent Project Co receives an amount referable to the Refinancing Gain as a direct payment);

(ii) a reduction in the Monthly Service Payments for the period of the Refinancing; or

(iii) a combination of the above.

(c) **(Dispute resolution):** TfNSW and Project Co must act reasonably to agree the manner and timing of payments of the TfNSW Refinancing Share and failing agreement, either TfNSW or Project Co may refer the matter to dispute resolution in accordance with clause 50.

40.7 **Costs relating to a Refinancing**

Project Co must pay to TfNSW the reasonable costs incurred by TfNSW in relation to considering a proposed Refinancing or consenting to a Refinancing.
40.8 Adjustments to Financial Model upon a Refinancing Gain

For the purpose of clause 60, on execution of a Refinancing that results in a Refinancing Gain, the Financial Model will be adjusted as follows:

(a) **Amendment**: Debt, fees and margins for the period of the Refinancing will be updated to reflect the amended or amending Finance Documents;

(b) **Debt balances**: the actual Debt balance after the Refinancing and the forecast amortisation profile of Debt balances for the remainder of the period until the Extension 4 Expiry Date will be updated to reflect the amended or amending Finance Documents;

(c) **Financial covenants**: the impact of financial covenants which result in the forced retention of cash amounts within any Project Co Entity will be updated to reflect the amended or amending Finance Documents;

(d) **Costs incurred**: legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing will replace those equivalent costs previously forecast for the period of the Refinancing including those costs paid to TfNSW in accordance with clause 40.7;

(e) **Monthly Service Payments**: the Monthly Service Payments for the period of the Refinancing will be adjusted and direct payments to TfNSW will be recorded to reflect the TfNSW Refinancing Share in accordance with clause 40.6 as adjusted in accordance with close protocols for the Refinancing to be agreed prior to the financial close of the relevant Refinancing; and

(f) **Further adjustments**: further required adjustments as otherwise reasonably agreed between TfNSW and Project Co.

41. Emergencies and Step-In by TfNSW

41.1 TfNSW may instruct

If an Emergency occurs which cannot be dealt with by the normal performance of the Project Activities, TfNSW, in addition to its rights under clause 41.3, may instruct Project Co to immediately do either or both of:

(a) **Suspend performance**: suspend performance of all or any part of the Project Activities; and

(b) **Additional activities**: undertake additional or alternative services as and when required by TfNSW,

in each case to ensure that the Emergency is dealt with, and normal performance of the Project Activities resumes, as soon as is reasonably practicable.

41.2 Relief and Payment

(a) **Suspension**: Subject to clause 41.2(o), if TfNSW directs Project Co in accordance with clause 41.1(a), the suspension:

(i) to the extent it affects the Delivery Phase Activities, will be a Compensable Extension Event; and

(ii) to the extent it affects the Services, will be an Intervening Event,
unless the Emergency that gives rise to the exercise of TfNSW's rights is a result of a Project Co Act or Omission.

(b) (Force Majeure Event): If TfNSW directs Project Co in accordance with clause 41.1(a) and the Emergency that gives rise to the exercise of TfNSW's rights is a result of a Force Majeure Event:

(i) to the extent it affects the Delivery Phase Activities, clause 37.14 will apply as if the Emergency was an Extension Event caused by a Force Majeure Event; and

(ii) to the extent it affects the Services, clause 38 will apply as if the Emergency was an Intervening Event caused by a Force Majeure Event, unless the Emergency that gives rise to the exercise of TfNSW's rights is a result of a Project Co Act or Omission.

(c) (Change Compensation Event): If TfNSW directs Project Co in accordance with clause 41.1(b) this will be a Change Compensation Event, unless caused or contributed to by a Project Co Act or Omission.

41.3 Right of Step-In

If:

(a) (Major Default): a Major Default occurs;

(b) (Default Termination Event): a Default Termination Event occurs;

(c) (TfNSW Cure Notice): a TfNSW Cure Notice has been issued by the Delivery Subcontractor or the Maintenance Subcontractor in accordance with the Delivery Side Deed or the Maintenance Side Deed (as applicable);

(d) (Intervening Event): an Intervening Event occurs;

(e) (Additional services): an event or circumstance occurs which requires additional or alternate services materially greater than the Services required by the Services Requirements;

(f) (Emergency): an Emergency occurs; or

(g) (Entitled by Law): TfNSW or RailCorp is entitled by Law to act to discharge a statutory power or duty,

(each a Step-In Event), TfNSW may elect to do any or all of the following:

(h) (Management): assume total or partial management and control of the whole or any part of a Site, the Assets or the Project Activities;

(i) (Site access): access those parts of a Site and the Assets to which Project Co has access or is entitled to occupy; and

(j) (Minimise effect): take such other steps as are necessary in the reasonable opinion of TfNSW for it to carry out the Project Activities and minimise the effect of the relevant Step-In Event,

provided that TfNSW must not exercise its rights under this clause 41.3 on the occurrence of a Major Default for so long as Project Co is complying with its obligations under clauses 48.3 and 48.4 in respect of that Major Default.
41.4 Notice

TfNSW must, if it is reasonably practicable to do so, give prior notice of any exercise of its rights under clause 41.3 and in any event must, as soon as practicable, provide notice to Project Co that it is exercising those rights.

41.5 Consequences of TfNSW exercising its rights

(a) (Suspension of TfNSW rights): During the exercise of TfNSW's rights under clause 41.3, Project Co's rights and obligations under this Deed are suspended to the extent necessary to permit TfNSW to exercise its rights.

(b) (No limitation): Except to the extent that Project Co's obligations are suspended under clause 41.5(a), the exercise by TfNSW of its rights under clause 41.3 (or the cessation of such exercise) will not affect any other right of TfNSW under this Deed or any other TfNSW Project Document or at Law.

41.6 Payments

(a) (Step-in caused by Project Co): Where TfNSW has exercised its rights under clause 41.3 as a consequence of any Step-In Event:

(i) contemplated by clauses 41.3(a), 41.3(b) or 41.3(c); or

(ii) contemplated by clauses 41.3(d) to 41.3(g), which was the result of any Project Co Act or Omission;

then:

(iii) where TfNSW exercises its rights prior to the start of the Maintenance Phase, any Step-in Liability will be a debt due and payable by Project Co to TfNSW, other than to the extent the Step-in Liability is incurred as a consequence of any breach of the TfNSW Project Documents by TfNSW or fraud, a malicious act or a malicious omission of TfNSW or its Associates;

(iv) where TfNSW exercises those rights during the Maintenance Phase:

A. the Monthly Service Payment will be adjusted in accordance with the Performance Regime and the Payment Schedule to the extent the Services are not being provided in accordance with this Deed; and

B. any Step-in Liability in excess of the Monthly Service Payment amount (as adjusted in accordance with the Performance Regime and the Payment Schedule under clause 41.6(a)(iv)A) will be a debt due and payable by Project Co to TfNSW, other than to the extent TfNSW's Liability is incurred as a consequence of any breach of the TfNSW Project Documents by TfNSW or fraud, a malicious act or a malicious omission of TfNSW or its Associates.

(b) (Step in not caused by Project Co): Subject to clause 41.6(c), where TfNSW exercises its rights under clause 41.3 as a consequence of any Step-in Event contemplated by clauses 41.3(d) to 41.3(g), and the Step-in Event is not a result of any Project Co Act or Omission, TfNSW's exercise of those rights:

(i) to the extent it affects the Delivery Phase Activities, will be a Compensable Extension Event; and
(ii) to the extent it affects the Services, will be an Intervening Event.

(c) (Payments during Force Majeure Event): Where TfNSW has exercised its rights under clause 41.3 as a consequence of any Step-in Event contemplated by clauses 41.3(d) to 41.3(g) and that Step-in Event is the result of a Force Majeure Event which is not a result of any Project Co Act or Omission:

(i) to the extent it affects the Delivery Phase Activities, clause 37.14 will apply as if that Step-In Event was an Extension Event caused by a Force Majeure Event; and

(ii) to the extent it affects the Services, clause 38 will apply as if that Step-In Event was an Intervening Event caused by a Force Majeure Event.

41.7 Project Co to assist TfNSW

Project Co must:

(a) (Access to be granted): grant such access rights as are necessary, and take all action that is required by TfNSW, to assist TfNSW in exercising its rights under clause 41.3, including:

(i) doing all things to allow TfNSW to exercise its rights under clause 41.3 for or on behalf of Project Co or a Key Subcontractor who is Accredited in respect of any activities to be performed by TfNSW under clause 41.3 for which Accreditation is required by Law; or

(ii) assisting TfNSW (or its nominee) in liaising with ONRSR in relation to Accreditation issues and, if necessary, assisting TfNSW (or its nominee) to obtain any Accreditation required by Law in respect of the activities to be performed by TfNSW under clause 41.3;

(b) (Sufficient resources): provide sufficient resources, including personnel, to enable TfNSW to exercise its rights under clause 41.3; and

(c) (Not to hinder): not do anything to hinder, disrupt or prevent TfNSW in exercising its rights under clause 41.3.

41.8 Undertake Project consistent with this Deed

When exercising its rights under clause 41.3, TfNSW must use its reasonable endeavours to carry out the relevant Project Activities in a manner which is consistent with the TfNSW Project Documents, but taking into account TfNSW's statutory rights and the circumstances that prompted TfNSW to exercise those rights.

41.9 Limits on TfNSW liability during step-in

Project Co acknowledges and agrees that:

(a) (No obligation to remedy): TfNSW is not obliged to:

(i) exercise its rights under clause 41.3; or

(ii) remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which TfNSW exercises its rights under clause 41.3; and
(b) (No claim): Project Co will not be entitled to make any Claim against TfNSW arising in connection with the exercise by TfNSW of its rights under clause 41.3, except:

(i) as expressly provided in this Deed;

(ii) if TfNSW has committed a malicious act or a malicious omission or has acted fraudulently or in bad faith in exercising its rights under clause 41.3; or

(iii) if, in the course of exercising its rights under clause 41.3, TfNSW has acted in breach of its obligations under this Deed.

41.10 Cessation of step-in rights

(a) (TfNSW may cease): TfNSW may, at any time, cease to exercise its rights in accordance with this clause upon giving 5 Business Days' notice to Project Co.

(b) (TfNSW must cease): TfNSW must cease to exercise its rights in accordance with this clause 41 where TfNSW has exercised its rights as a consequence of any of the Step-In Events under:

(i) clauses 41.3(a) or 41.3(b), and the Major Default or Default Termination Event (as the case may be) has been cured or its consequences have been remedied or overcome;

(ii) clause 41.3(c), and the Delivery Subcontractor or the Maintenance Subcontractor (as applicable) notifies TfNSW that the default under the relevant Subcontract has been cured or its consequences have been remedied or overcome; or

(iii) clauses 41.3(d) to 41.3(g), and the relevant event has ceased and its consequences have been remedied or overcome.

(c) (Project Co to recommence): If TfNSW ceases to exercise its rights under clause 41.3 in accordance with this clause 41.10:

(i) Project Co must immediately recommence carrying out any obligations suspended due to the exercise by TfNSW of those rights; and

(ii) TfNSW must give reasonable assistance to Project Co to ensure that this process of transition is effected as smoothly as possible.

42. Relief Events

42.1 Reduction in TfNSW liability for Relief Events

Notwithstanding anything to the contrary in this Deed, TfNSW's Liability and Project Co's entitlements in connection with any Relief Event will be reduced:

(a) (Caused by Project Co): to the extent that the Relief Event or any circumstance giving rise to the Relief Event is:

(i) within the reasonable control of Project Co and its Associates;

(ii) caused or contributed to by any breach of another Project Document by Project Co or any of its Associates who is a counterparty to the Project Document; or
(iii) caused or contributed to by a Project Co Act or Omission;

(b) **Failure to mitigate:** to the extent Project Co, or any of its Associates, fails to:

(i) use all reasonable endeavours to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event (including by putting in place temporary measures reasonably required by TfNSW); or

(ii) take all reasonable steps which a prudent, competent and experienced contractor in the circumstances of Project Co or the relevant Associate of Project Co would have taken to mitigate, minimise or avoid the effects, consequences or duration of the Relief Event;

(c) **Insurance proceeds:** by any insurance proceeds:

(i) payable to Project Co, or any of its Associates, in respect of any Insurances; or

(ii) which would have been payable to Project Co or any of its Associates in accordance with any Insurances but for a failure by Project Co to comply with this Deed or a failure by Project Co or any of its Associates to comply with any Project Documents, or with the terms of those Insurances; and

(d) **Knowledge:** in respect of an extension of time claim pursuant to clause 37 or claim for relief under clause 38, to the extent Project Co ought reasonably to have become aware of the occurrence of the Extension Event or Intervening Event prior to the date on which it first became aware of the occurrence of the Extension Event or the occurrence of the Intervening Event.

42.2 Meetings and other information

If requested by TfNSW (acting reasonably), TfNSW and Project Co will, from time to time within 5 Business Days of a request from TfNSW (in writing) meet to discuss the consequences of a Relief Event, including:

(a) **Questions or issues:** any questions or issues TfNSW may wish to raise concerning any information contained within a notice in respect of a Relief Event;

(b) **Further steps:** what further steps (if any) Project Co may reasonably take in order to avoid or mitigate the effects of the Relief Event (including any steps Project Co has taken or is proposing to take to make a claim under the Insurances);

(c) **Mitigation:** the extent to Project Co or its Associates can mitigate the effects of a Relief Event, including any insurance which may mitigate the effects of the Relief Event; and

(d) **Other matters:** any other matters that TfNSW may wish to raise in connection with the Relief Event.

43. Commercial Opportunities and advertising

43.1 Commercial opportunities

(a) **Approval required:** Project Co must not (and must ensure that its Associates do not) provide any revenue generating services or undertake any other commercial opportunities using or in connection with any of the Assets except to the extent TfNSW has provided its prior written approval to the same (such approval to be given or withheld in TfNSW’s absolute discretion).
(b) **Aggregate Approved Commercial Opportunities Profit**: If Project Co is entitled to provide or undertake any Approved Commercial Opportunities, then Project Co must:

(i) provide TfNSW with the calculation of the Aggregate Approved Commercial Opportunities Profit (including a detailed break down and supporting documentation); and

(ii) provided that the Aggregate Approved Commercial Opportunities Profit is a positive number, pay  of the Aggregate Approved Commercial Opportunities Profit to TfNSW,

in each case at such times as are required by TfNSW as a condition of the giving of its approval under clause 43.1(a) or as otherwise may be agreed by TfNSW and Project Co in writing.

(c) **Information**: Project Co must promptly provide such information and evidence as TfNSW reasonably requires to verify the information provided by Project Co pursuant to clause 43.1(b).

(d) **Project Co acknowledgements**: Project Co acknowledges and agrees that:

(i) it will bear all risks, costs and losses associated with the Approved Commercial Opportunities;

(ii) to the extent that the Aggregate Approved Commercial Opportunities Profit is at any time a negative amount, TfNSW will not bear any share of the Aggregate Approved Commercial Opportunities Profit and Project Co will not be entitled to any compensation or additional payment for any losses incurred by it in connection with the Approved Commercial Opportunities; and

(iii) the approval by TfNSW of any Approved Commercial Opportunities pursuant to clause 43.1(a) or the carrying out of any Approved Commercial Opportunities will not:

   A. constitute or give rise to a Modification or a Minor Modification; or

   B. entitle Project Co to any additional payment, compensation or relief from its obligations under this Deed or any other Project Document.

43.2 **Advertising**

(a) **TfNSW’s right to advertise**: Project Co acknowledges and agrees that TfNSW may from time to time install, modify, remove or replace advertising material on the New Fleet.

(b) **Access**: Project Co must (and must procure that its Associates will) allow TfNSW or its nominee access to the Sites and the relevant Units for the purposes of installing, modifying, removing or replacing advertising material on the New Fleet at such times as are reasonably required by TfNSW.

(c) **Advertising revenue**: Project Co acknowledges and agrees that any advertising revenue generated from advertising material installed on the New Fleet will, as between Project Co and TfNSW, belong to TfNSW.
(d) **(TfNSW may require Project Co):** Without prejudice to any other obligations of Project Co under this Deed, TfNSW may require Project Co to install, modify, remove or replace advertising material on the New Fleet on behalf of TfNSW, in which case:

(i) Project Co must comply with TfNSW's reasonable instructions in connection therewith and, subject to TfNSW providing Project Co with any new advertising material which is to be installed, must install, modify, remove or replace (as applicable) the relevant advertising material on those Units specified by TfNSW within the time period specified by TfNSW (acting reasonably); and

(ii) subject to Project Co performing its obligations under this clause 43.2(d), TfNSW will pay Project Co or procure payment to Project Co of the cost of doing so calculated in accordance with the Change Compensation Principles.

(e) **(No other advertising permitted):** Except as contemplated by this clause 43.2, Project Co must not permit any other advertising material to be installed on any Asset.
Part I - Risk, Indemnity and Insurance

44. Loss or Damage

44.1 Risk of loss or damage

Subject to this clause 44, Project Co bears the risk of loss or damage to:

(a) the Assets (other than the Returned Asset) during the Term; and
(b) the Returned Asset until, without limiting clause 29, the Date of Returned Asset Handback.

44.2 Notification of Loss and Damage

Without limiting clause 44.2A:

(a) (Notification): Project Co must promptly notify TfNSW of:

(i) any loss or damage to the Units; and
(ii) any material loss or damage to any other Assets,

including in each case details of the nature and extent of such loss or damage.

(b) (Repair or rebuild): Where a Unit, the Maintenance Facility or the Legacy Maintenance Centre has been:

(i) wholly destroyed or substantially damaged; or
(ii) damaged by an Agreed Uninsurable Risk,

TfNSW must notify Project Co whether or not it requires Project Co to repair or rebuild the Assets for which Project Co retains the risk of loss or damage within 60 Business Days of receipt of notification under clause 44.2(a).

(c) (Outcome of TfNSW's election): If TfNSW notifies Project Co under clause 44.2(b):

(i) not to repair or rebuild the relevant Assets, clause 44.6 shall apply; or
(ii) to repair or rebuild the relevant Assets, clause 44.2A (in the case of a TfNSW Defect) and 44.3 shall apply and if the loss or damage the subject of TfNSW's notice under clause 44.2(b) is in respect of the Legacy Maintenance Centre or the Maintenance Facility being wholly destroyed or substantially damaged (Facility Damage):

A. TfNSW and Project Co must consult in good faith and use their reasonable endeavours to agree on a mutually acceptable temporary solution to address the consequences of the Facility Damage during the period in which Project Co is complying with its obligations in this clause 44 to repair or rebuild the Facility Damage; and

B. if TfNSW and Project Co fail to reach agreement in accordance with clause 44.2(c)(ii)A within 5 Business Days of TfNSW's notification under clause 44.2(b), TfNSW will direct a Modification in accordance with clause 39 but only to the
extent required to address the consequences of the Facility Damage during the period in which Project Co is complying with its obligations in this clause 44 to repair or rebuild Assets the subject of the Facility Damage.

44.2A TfNSW Defects

(a) (Notification of TfNSW Defects): To the extent any loss or damage to a Unit or a Simulator comprises a TfNSW Defect, Project Co must:

(i) if clause 44.2(c)(ii) applies, within 2 Business Days of receiving TfNSW's notice under clause 44.2(b); or

(ii) otherwise, as soon as reasonably practicable on becoming aware of a TfNSW Defect and no later than:

A. 5 Business Days after it became aware or ought reasonably to have become aware of a TfNSW Defect; or

B. 5 Business Days after it became aware of a TfNSW Defect,

submit a notice to TfNSW that sets out:

(iii) all relevant details of the TfNSW Defect, including how it arose, the identity or location of the affected Unit or a Simulator and any actual or anticipated adverse effects on the performance of the Project Activities, including meeting the Required Availability and the Minimum Simulator Operating Condition during the Minimum Simulator Available Hours;

(iv) whether the works or services required to rectify the TfNSW Defect are:

A. Generally Approved AM Services;
B. Other AM Services; or
C. Modification Services;

(v) in relation to a TfNSW Defect that is not a TfNSW Defect, Project Co's proposal for carrying out works to rectify the TfNSW Defect, including:

A. a detailed description of the relevant works;
B. if the works are Generally Approved AM Services, the elements of the work that have already been commenced or completed;
C. the time anticipated to complete works not yet commenced or completed;
D. any parts to be replaced or refurbished;
E. any effects on the Spares which are held, or which it will be necessary or desirable to hold, following the completion of the relevant works;
F. any operational restrictions or limitations which may apply to the affected Unit or Simulator until those works are undertaken;

G. any Verification Activities that will be required as part of the works; and

H. whether works are being, or will be, carried out at the Maintenance Facility or the Legacy Maintenance Centre; and

(vi) in relation to a TfNSW Defect that is not a Network Condition Defect, Project Co's estimate of the cost of reinstatement prepared in accordance with section 7 of the Payment Schedule.

(aa) (Further Details for Network Condition Defect): In relation to a TfNSW Defect that is a Network Condition Defect, Project Co must, no later than 10 Business Days after giving a notice under clause 44.2A(a)(ii)B, submit a notice to TfNSW that sets out the matters set out in clauses 44.2A(a)(v) and 44.2A(a)(vi) in relation to the Network Condition Defect.

(b) (Access): If requested by the TfNSW Representative, Project Co must as soon as reasonably practicable permit the TfNSW Representative or its nominee to inspect such Unit or Simulator if located within the Legacy Maintenance Centre or the Maintenance Facility in order to assess the extent of such TfNSW Defect.

(c) (Categories of works): If the works or services required to rectify the TfNSW Defect are:

(i) Generally Approved AM Services, Project Co must rectify the TfNSW Defect in accordance with the Time to Complete, the proposal set out in its TfNSW Defect Notice and clause 44.3;

(ii) Other AM Services, clauses 44.2A(d) and 44.2A(e) shall apply; or

(iii) Modification Services, clauses 44.2A(d) and 44.2A(f) shall apply.

(d) (TfNSW’s Response): Other than where the works or services required to rectify the TfNSW Defect are Generally Approved AM Services, TfNSW must consider the relevant TfNSW Defect Notice and the TfNSW Representative must notify Project Co within 5 Business Days of receipt of a TfNSW Defect Notice whether or not it requires Project Co to undertake the repair and rectification works proposed (TfNSW Response).

(e) (Other AM Services - outcome of TfNSW Response): If a TfNSW Defect Notice identifies that Other AM Services are required to rectify a TfNSW Defect and:

(i) the TfNSW Response requires Project Co to undertake the works proposed in the TfNSW Defect Notice, or if the TfNSW Representative fails to provide a TfNSW Response within 5 Business Days of receipt of the TfNSW Defect Notice, Project Co must undertake such works in accordance with the Time to Complete, the proposal set out in its TfNSW Defect Notice and clause 44.3; or

(ii) the TfNSW Response does not require Project Co to undertake the works proposed in the TfNSW Defect Notice, TfNSW may:

A. require Project Co to submit an alternative proposal under clause 44.2A(a) in which case clauses 44.2A(c) to 44.2A(e) will reapply; or
B. issue a Modification Request to either:

1) require the TfNSW Defect to be repaired as a Modification; or

2) otherwise vary this Deed in order to deal with the consequences of the TfNSW Defect.

(f) **Modification Services - outcome of TfNSW Response**: If a TfNSW Defect Notice identifies that Modification Services are required to rectify a TfNSW Defect:

(i) the TfNSW Representative must include in the TfNSW Response:

A. a Modification Request to rectify or otherwise address the consequences of the TfNSW Defect; or

B. a direction for the TfNSW Defect and its consequences to be addressed in another way to be agreed in writing between TfNSW and Project Co, in which case TfNSW and Project Co must consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the TfNSW Defect; and

(ii) if TfNSW fails to provide a TfNSW Response in accordance with clause 44.2A(d) and (f)(i) or TfNSW and Project Co fail to reach agreement in accordance with clause 44.2A(f)(i)B. within 5 Business Days of the TfNSW Response, TfNSW will be deemed to have given a Modification Request to Project Co in relation to the relevant TfNSW Defect.

(g) **Work Order**: Without limiting any other requirement in this clause 44.2A, before undertaking any AM Services, Project Co must submit to TfNSW a Work Order relating to those AM Services.

**44.2B Project Co's entitlement in respect of TfNSW Defects**

(a) **Payment for AM Services**: Subject to clause 44.2B(c), Project Co is entitled to be paid the Additional Maintenance Service Payment for rectification of TfNSW Defects in accordance with section 7 of the Payment Schedule.

(b) **Sole remedy**: Except to the extent TfNSW directs a Modification in respect of a TfNSW Defect and subject to clause 44.2B(c), Project Co's sole entitlement in respect of a TfNSW Defect (including any delay, disruption or prevention to carrying out the Project Activities) is payment of the Additional Maintenance Service Payment in accordance with section 7 of the Payment Schedule and Deemed Availability in accordance with section 10.6 of the Payment Schedule.

(c) **Time to Complete**: Notwithstanding anything to the contrary in this Deed, if Project Co is required to rectify a TfNSW Defect other than a **[Redacted]** in accordance with clause 44.2A and fails to rectify that TfNSW Defect or otherwise complete AM Services within the applicable Time to Complete, Project Co will not be entitled to payment of the Additional Maintenance Service Payment in accordance with section 7 of the Payment Schedule or to claim Deemed Availability in accordance with section 10.6 of the Payment Schedule in respect of that TfNSW Defect and the Operational Damage, Vandalism or Major Graffiti giving rise to the TfNSW Defect will be deemed to be a Project Co Defect for the purposes of this Deed.
44.3 Repairing and rebuilding

(a) (Project Co to repair or rebuild): If any loss or damage occurs to the Assets, Project Co must, after notifying TfNSW in accordance with:

(i) clause 44.2(a) and, if clause 44.2(b) applies, subject to TfNSW notifying Project Co that it requires Project Co to repair or rebuild the Assets; and

(ii) if applicable, clause 44.2A(a) and (other than in respect of Generally Approved AM Services) subject to TfNSW notifying Project Co that it requires Project Co to rectify a TfNSW Defect in accordance with clause 44.2A(d) or 44.2A(e) or otherwise directing a Modification to rectify in accordance with clause 44.2A(e)(ii)B1) or 44.2A(f),

Project Co must:

(iii) subject to allowing reasonable time for inspection by insurers, take immediate steps to clear any debris and begin initial repair work;

(iv) promptly consult with TfNSW, and unless directed by TfNSW to repair or rebuild the Assets to a different specification:

A. promptly repair or rebuild the Assets in accordance with the requirements of this Deed; and

B. ensure that the repaired or rebuilt Assets comply with the requirements of this Deed;

(v) consult with TfNSW as to the programming of the repair or rebuilding works, and the Site access required to effect the relevant repair, rebuilding or reinstatement;

(vi) ensure:

A. there is minimal disruption to the Assets, the Operator, the Sites, the Network and the Project Activities; and

B. to the greatest extent possible, continue to comply with its obligations under the Project Documents;
(vii) keep TfNSW fully informed of the progress of the repair or rebuilding of the Assets;

(viii) subject to clauses 44.2A, 44.2B, 44.3(b) to 44.3(e) and 47.3, pay for the cost of repairing or rebuilding the Assets; and

(ix) rectify TfNSW Defects in accordance with the Time to Complete.

(b) **(Insurance proceeds):** Project Co must apply any amounts deposited in the Insurance Proceeds Account for the purpose of repairing or rebuilding the Assets.

(c) **(Cost impact on Assets):** If:

(i) TfNSW directs Project Co that the Assets are to be repaired or rebuilt to different specifications than the Design Requirements; and

(ii) the total cost of repairing or rebuilding according to the different specifications exceeds the total cost of repairing or rebuilding the Assets in accordance with the Design Requirements,

TfNSW must direct a Modification in accordance with clause 39 in respect of the repair or rebuild works which are different to the Design Requirements.

(d) **(Cost impact on Project Activities):** If the repairing or rebuilding of the Assets to different specifications to the Design Requirements will increase or decrease the cost of performing the Services over the remainder of the Term, TfNSW must direct a Modification in accordance with clause 39 but only in respect of such increase or decrease.

(e) **(Damage caused by TfNSW breach):** If the loss or damage to the Assets was caused by:

(i) a breach by TfNSW of any TfNSW Project Document; or

(ii) fraud, a malicious act or a malicious omission of TfNSW or any of its Associates (excluding the NSW Rail Entities) when acting in respect of the Project,

then the cost of repairing or rebuilding the Assets by Project Co which is over and above the insurance proceeds received by Project Co in respect of the repair or rebuilding (or which would have been received by Project Co but for any breach by Project Co or any of its Associates of this Deed or the relevant insurance policy), plus the cost in respect of a deductible or excess under any Insurance, will be a Change Compensation Event.

44.4 **Uninsurable Risk or Day 1 Uninsurable Risk**

If the event which gave rise to the loss of, or damage to, the Assets is an Agreed Uninsurable Risk, then the parties' rights and obligations will be as set out in clause 47.3.

44.5 **Minor damage**

If any loss of, or damage to, the Assets for which TfNSW would, but for this clause 44.5, be liable is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by Project Co:

(a) **(Additional costs):** without incurring additional costs;
44.6 Consequences of TfNSW election not to repair or rebuild

If TfNSW notifies Project Co not to repair or rebuild the Assets in accordance with clause 44.2(b), then:

(a) (Unit): if a Unit has been wholly destroyed or substantially damaged, TfNSW must omit the relevant Unit from the Project by directing a Modification in accordance with clause 39;

(b) (Legacy Maintenance Centre): if the Legacy Maintenance Centre has been wholly destroyed or substantially damaged, TfNSW must direct a Modification in accordance with clause 39 to address the consequences of the damage or destruction to the Legacy Maintenance Centre; or

(c) (Maintenance Facility): if the Maintenance Facility has been wholly destroyed or substantially damaged, and the loss or damage was caused by:

(i) any Project Co Act or Omission, this will be deemed to be a Default Termination Event and TfNSW must issue a notice to terminate this Deed for default in accordance with clause 49.4;

(ii) any act or omission of TfNSW, TfNSW must issue a notice to voluntarily terminate this Deed in accordance with clause 49.2; or

(iii) any other event, including a Force Majeure Event or an Agreed Uninsurable Risk, this will be deemed to be a Force Majeure Termination Event and TfNSW must issue a notice to terminate this Deed for Force Majeure in accordance with clause 49.3.

44.7 TfNSW may repair or reinstate

Without limiting any other provision of this Deed, if Project Co does not repair or rebuild the Assets where required to do so in accordance with clauses 44.2A or 44.3:

(a) (Notification): TfNSW may notify Project Co that TfNSW intends to repair or remedy any destruction, loss or damage, or replace or reinstate the Assets (or procure a third party to do so); and

(b) (Failure to comply): if Project Co does not comply with its obligations under clause 44.2A or 44.3, TfNSW may, without further notice, elect to remedy or repair any destruction, loss or damage, or replace or reinstate the Assets (or procure a third party to do so) in which case, the costs and expenses incurred in doing that work will be a debt due and payable by Project Co to TfNSW.

44.8 Damage to third party property

(a) (Project Co interference): Other than in accordance with its obligations under this Deed, Project Co must not interfere with, obstruct, damage or destroy any property on, under, over, in, or in the vicinity of, a Site (including the Stabling Yards).
45. Indemnities and Consequential or Indirect Loss

45.1 Indemnity for Project Co breach

Subject to clauses 35.3(d) and 37.16, Project Co indemnifies TfNSW, RailCorp, the NSW Rail Entities and their respective employees and officers and NSW Government (each an Indemnified Person) from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

(a) (Breach of Deed): any breach by Project Co of this Deed; or
(b) (Breach TfNSW Project Document): any breach by Project Co or any of its Associates of any TfNSW Project Document.

45.2 General indemnity

Project Co indemnifies the Indemnified Persons from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with:

(a) (Loss or damage): any loss of, or damage or destruction to, property (other than the cost of repairing or rebuilding the Assets addressed in clauses 44.3 to 44.7);
(b) (Injury or death): any injury to, illness or death of, any person; or
(c) (Third parties): to the extent not covered under clause 45.2(a) or 45.2(b), any third party actions brought against the Indemnified Persons,

the extent caused or contributed to by Project Co or any of its Associates in connection with the Project or the Project Activities.

45.3 Project Information

Project Co:

(a) (Indemnity): indemnifies TfNSW, RailCorp and their respective Associates against any Claim or Liability suffered or incurred by TfNSW, RailCorp and their respective Associates, and releases and must procure that its Associates or any other person to whom the Project Information is disclosed by Project Co, an Associate of Project Co or any person on Project Co's or its Associate's behalf, release TfNSW, RailCorp and their respective Associates from any Claim arising in connection with the provision of, or the purported reliance upon, or use of, the Project Information by Project Co, an Associate of Project Co or any other person to whom the Project Information is disclosed by Project Co, an Associate of Project Co or any person on Project Co's or its Associate's behalf to the extent only that a Claim is made against TfNSW, RailCorp or their respective Associates by Project Co, an Associate of Project Co or any other person to whom the Project Information is disclosed by
Project Co, an Associate of Project Co or any person on Project Co's or its Associate's behalf; and

(b) (Release): releases and must procure that its Associates release TfNSW, RailCorp and their respective Associates from any Claim in respect of any failure by TfNSW or RailCorp to make available to Project Co or its Associates any information, data or material relating to the Project.

45.4 Intellectual Property and Moral Rights Indemnity

(a) (Intellectual Property Rights, Moral Rights or other rights): Project Co indemnifies and releases TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates and their respective sub-licensees (each an Indemnified IP Party) against any Claim made against, or Liability suffered or incurred by, any Indemnified IP Party arising out of or in connection with any infringement, violation, alleged infringement or alleged violation by any Indemnified IP Party of any Intellectual Property Rights, Moral Rights or other rights of any person in connection with:

(i) delivery of the Project;

(ii) any Use of Developed IP by an Indemnified IP Party or any person nominated or authorised by an Indemnified IP Party;

(iii) any Use of Developed IP by or on behalf of Project Co as referred to in clause 62.3(c);

(iv) any Use of other Project Co Material, Project Co Background IP or the Assets as delivered by or on behalf of Project Co to TfNSW or RailCorp or as modified by Project Co;

(v) any other Use of other Project Co Material, Project Co Background IP or the Assets by an Indemnified IP Party or any person nominated or authorised by an Indemnified IP Party as permitted or contemplated by this Deed; or

(vi) a breach of the warranties set out in clause 62.1.

(b) (Project Co obligations to replace, modify or obtain new licence): If a Claim referred to in clause 45.4(a) substantially interferes with any Indemnified IP Party's Use of any Developed IP or other Project Co Material, Project Co Background IP or the Assets, Project Co will (at TfNSW's option, and without limiting any of TfNSW's or RailCorp's other rights under any TfNSW Project Document or at Law):

(i) without additional charge to TfNSW or RailCorp, replace the Developed IP or other Project Co Material, Project Co Background IP or the Assets with a non-infringing product or service of at least equivalent functionality and performance, and which otherwise meets all relevant requirements for that Project Co Material, Project Co Background IP or the Assets in accordance with the Project Documents;

(ii) without additional charge to TfNSW or RailCorp, modify the Developed IP, other Project Co Material, Project Co Background IP or the Assets to overcome the infringement without materially impeding functionality or performance or rendering it non-compliant with any relevant requirements for that Material, Project Co Background IP or the Assets in accordance with the Project Documents; or
obtain a licence for the relevant Indemnified IP Party to continue to use and enjoy the Developed IP, other Project Co Material, Project Co Background IP or the Assets (as applicable) and pay any additional fee required for that licence.

(c) (No limitation): Neither TfNSW's rights, RailCorp's rights nor Project Co's Liabilities or obligations, whether under this Deed or otherwise according to Law, in connection with Intellectual Property Rights, are limited by the terms of this clause 45.4.

45.5 Privacy indemnity

Project Co must release, indemnify and must keep indemnified on demand TfNSW, RailCorp and their respective Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) which TfNSW, RailCorp or their respective Associates suffer or incur resulting from any act done or practice engaged in by Project Co or any Associate of Project Co in connection with the Project, which would, had that act or practice been done or engaged in by TfNSW, RailCorp or their respective Associates (as applicable), have contravened any of the Privacy Legislation.

45.6 Release

Project Co releases, and must procure that each of its Associates releases, each of the Indemnified Persons and Indemnified IP Parties from any Claim or Liability for damage, destruction, loss, death, illness or injury to the extent caused by Project Co or any of its Associates in connection with the Project or the Project Activities.

45.7 Limits on Project Co liability to indemnify and release

Project Co's Liability to indemnify and release the Indemnified Persons or the Indemnified IP Parties in accordance with this Deed will be reduced to the extent that any such Claim or Liability is caused or contributed to by:

(a) (Breach): any breach by TfNSW of any TfNSW Project Documents;

(b) (Fraud): fraud, a malicious act or a malicious omission of the Indemnified Persons or the Indemnified IP Parties (as applicable);

(c) (Relief Event): a Relief Event, but only to the extent that the reduction in Project Co's Liability to indemnify or release is agreed by TfNSW and Project Co in accordance with the Change Compensation Principles (if at all),

other than to the extent that Project Co is entitled to recover under any of the Insurances (or would have been entitled to recover but for this clause 45.7 or any breach by Project Co or any of its Associates of this Deed or the relevant insurance policy).

45.8 Third party claim under indemnity

(a) (Management of Claims): Subject to clause 45.8(b) and 45.8(c), if a Claim is made against an Indemnified Person or an Indemnified IP Party, in respect of which Project Co is required to indemnify the relevant Indemnified Person or Indemnified IP Party in accordance with this Deed, to the extent that TfNSW's insurers in connection with such a Claim agree, TfNSW must:

(i) as soon as is reasonably practicable after it becomes aware of the Claim:

A. notify Project Co of the alleged Claim;
B. give Project Co the option to defend the Claim; and
C. provide Project Co (at Project Co’s expense) with reasonable assistance in negotiating, defending or otherwise taking action or proceedings in respect of that Claim; and

(ii) not settle or compromise the Claim without the prior written consent of Project Co (which cannot be unreasonably withheld or delayed), and Project Co will be deemed to be acting reasonably if Project Co refuses to provide its consent as a result of restrictions or obligations under any Insurance policy to which that Claim relates.

(b) **(Urgent proceedings):** If interlocutory proceedings are commenced against TfNSW on an urgent basis, TfNSW may initially defend such proceedings, but as soon as practicable after commencement of the proceedings, TfNSW must give Project Co the option to conduct the defence of such proceedings.

(c) **(Other matters):** Clauses 45.8(a)(i)B and 45.8(a)(i)C do not apply to any Claim which:

(i) TfNSW (acting reasonably) considers should be conducted by TfNSW for public policy reasons; or

(ii) would prevent the continued development or operation of the Project or continued conduct of the Project Activities,

and TfNSW, to the extent reasonably practicable, must consult in good faith with Project Co with respect to such Claim.

(d) **(Management of Claims by TfNSW):** If TfNSW is managing a Claim for which Project Co is required to indemnify an Indemnified Person or an Indemnified IP Party, TfNSW must:

(i) give Project Co prior notice before agreeing to any compromise or settlement of that Claim; and

(ii) use reasonable endeavours to consult in good faith with Project Co prior to agreeing to any such compromise or settlement.

(e) **(Management of Claims by Project Co):** If Project Co is managing a Claim in accordance with clause 45.8(a)(i)B, Project Co must:

(i) give TfNSW prior notice before agreeing to any compromise or settlement of that Claim; and

(ii) use reasonable endeavours to consult in good faith with TfNSW prior to agreeing to any such compromise or settlement.

45.9 Continuing obligation

(a) **(Indemnities):** Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties.

(b) **(Enforcement):** It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity under this Deed.

(c) **(Payment):** A party must pay on demand or procure payment on demand of any amount it must pay under an indemnity in this Deed.
45.10 Exclusion of Consequential or Indirect Loss – Project Co

(a) (No liability of Project Co): Subject to clause 45.10(b), neither Project Co nor any of its Associates has any Liability to TfNSW, RailCorp or any of their respective Associates for any Consequential or Indirect Loss incurred or sustained by TfNSW, RailCorp or any of their respective Associates:

(i) as a result of any act or omission of Project Co or any of its Associates; or

(ii) due to any breach of a TfNSW Project Document by Project Co or any of its Associates.

(b) (Exceptions to no Project Co liability): The exclusions of Liability of Project Co and its Associates under clause 6B(h) and clause 45.10(a) do not apply to Liability:

(i) for which Project Co or its Associates are insured under any Insurances that have been effected and maintained as required by this Deed or Liability for which Project Co or its Associates would have been insured under such Insurances if:

A. this clause 45.10 did not exist; and

B. Project Co and its Associates had:

1) effected and maintained the relevant Insurances as required by this Deed;

2) complied with the relevant Insurances;

3) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and

4) taken reasonable steps to pursue the claim;

(ii) for which Project Co recovers pursuant to an indemnity under any Project Documents;

(iii) arising from any criminal act or fraud on the part of Project Co or any of its Associates;

(iv) arising from any wilful misconduct on the part of Project Co or any of its Associates;

(v) arising from any loss of or damage to property (including that owned or managed by an Access Provider) or injury to, or illness or death of, any person;

(vi) in respect of any additional cost or expense payable under any Insurance with respect to, connected with, caused by or arising out of any breach of this Deed or the relevant Insurance by Project Co or any of its Associates or a deductible or excess under any Insurance;

(vi) in respect of any reduction of any Monthly Service Payment as a consequence of the application of the Performance Regime or the Payment Schedule in accordance with this Deed;
(viii) expressly imposed on Project Co or any of its Associates under any of the Project Documents to pay TfNSW or RailCorp (as applicable) any of the following amounts:

A. any TfNSW Refinancing Share of Refinancing Gain under clause 40.6;
B. any interest under clause 35.5;
C. any amounts payable under clauses 11.3(i), 35.4, 35.7(f), 40.7, 43.1(b)(ii), 46.11(d)(ii), 59.9 or 64.3(a);
D. any amounts expressly stated to be payable as a debt due and payable under the TfNSW Project Documents;
E. any amounts payable by Project Co to an Indemnified IP Party under clause 45.4;
F. without limiting clause 45.10(b)(v), any amounts payable by Project Co to TfNSW, RailCorp or any other Indemnified Person under clause 45.2(c), provided that this clause 45.10(b)(viii)F will not apply in relation to the exclusion of Liability under clause 6B(h);
G. any amounts payable under and calculated in accordance with the Performance Regime or the Payment Schedule;
H. any amounts payable under and calculated in accordance with the Change Compensation Principles;
I. [redacted];
J. any of the following:
   1) the costs payable under section 4(b)(iii) of the Network Access Regime Schedule in respect of Additional Network Access Rights; and
   2) any amounts payable by Project Co to an Indemnified Person under the Network Access Regime Schedule;

(ix) imposed on Project Co under clause 39.8(d) (Sharing of Savings) to pay or allow to TfNSW any share of Savings;

(x) in respect of any statutory fine or civil penalty arising from any breach of Law or Approval by Project Co or any of its Associates;

(xi) arising from abandonment of the whole or a substantial part of the Delivery Phase Activities or the Services by Project Co or any of its Associates;
45.11 Exclusion of Consequential or Indirect Loss – TfNSW and RailCorp

(a) (No liability of TfNSW): Subject to clause 45.11(b) and without prejudice to clauses 2.9(b) and 45.12, none of TfNSW, RailCorp or any of their respective Associates has any Liability to Project Co or any of its Associates or any Group Member (whether in contract, tort or otherwise) in respect of Consequential or Indirect Loss incurred or sustained by Project Co, its Associates or any Group Member:

(i) as a result of any act or omission of TfNSW, RailCorp or any of their respective Associates; or

(ii) due to any breach of a TfNSW Project Document by TfNSW, RailCorp or any of their respective Associates.

(b) (Exceptions to no TfNSW liability): Without prejudice to clauses 2.9(b) and 45.12, the exclusion of Liability of TfNSW, RailCorp and their respective Associates in clause 45.11(a) does not apply to:

(i) Liability arising from any criminal act or fraud on the part of TfNSW, RailCorp or their respective Associates;

(ii) Liability arising from any wilful misconduct under any TfNSW Project Document on the part of TfNSW or its Associates;

(iii) Liability arising from any loss of or damage to property or injury to, illness or death of any person caused or contributed to by TfNSW, RailCorp or their respective Associates;

(iv) Liability expressly imposed on TfNSW under any of the TfNSW Project Documents to pay Project Co or procure payment to Project Co of any of the following amounts:

A. any Monthly Service Payment and CDPD Amount;

B. reasonable costs payable by TfNSW of carrying out any inspection, analysis, demonstration or test under clause 20.4 and clause 21.4(d);
C. any refund under clause 35.4;
D. any interest under clause 35.5;
E. any Duty Estimate under clause 35.7(d);
F. any costs of Tax Proceedings under clause 35.7(i)(ii);
G. any Tax under clause 35.7(i)(vi);
H. any payment from the Transition Out Escrow Account under clause 36.9(b);
i. any reasonable third party costs of the type described in clause 39.2 for preparing a Modification Proposal under clause 39.4 or a Change Notice under clause 39.10;
J. not used;
K. any costs of insurance premiums under clause 47.4(b)(iii);
L. any amounts payable under and calculated in accordance with the Change Compensation Principles (including any Financing Delay Costs or Prolongation Costs); or
M. any amounts payable in accordance with the Termination Payments Schedule;

(v) Liability imposed on TfNSW under clause 39.8(d) to pay or allow Project Co any share of Savings;
(vi) payment of any excess or deductible payable by TfNSW under clause 46.10(b); or
(vii) liability for which TfNSW, Railcorp or their respective Associates are insured under any Insurances that have been effected and maintained as required by this Deed or Liability for which TfNSW, Railcorp or their Associates would have been insured under such Insurances if:

A. this clause 45.11 did not exist;
B. TfNSW had:
   1) complied with the relevant Insurances;
   2) submitted a claim under the relevant Insurances where there was legitimate entitlement to do so; and
   3) taken reasonable steps to pursue the claim; and

none of TfNSW, RailCorp or any of their respective Associates has any Liability to Project Co or any of its Associates (whether in contract, tort or otherwise) in respect of Consequential or Indirect Loss incurred or sustained by Project Co or its Associates for which Project Co or its Associates are insured under any Insurances that have been effected and maintained as required by this Deed or Liability for which Project Co or its Associates would have been insured under such Insurances if Project Co and its Associates had:
(vii) effected and maintained the relevant Insurances as required by this Deed;
(ix) complied with the relevant Insurances;
(x) submitted a claim under the relevant Insurances where there was a legitimate entitlement to do so; and
(xi) taken reasonable steps to pursue the claim.

45.12 **No liability of RailCorp**

To the maximum extent permitted by Law, RailCorp has no Liability to Project Co or any of its Associates or any Group Member under or in connection with this Deed, the Project Documents or the Project (whether in contract, tort or otherwise) and Project Co hereby releases RailCorp from such Liability, except to the extent such Liability is caused or contributed to by:

(a) any criminal act or fraud on the part of RailCorp or its Associates;
(b) any wilful misconduct under this Deed on the part of RailCorp or its Associates;
(c) any loss of or damage to property or injury to, illness or death of any person caused or contributed to by RailCorp or its Associates;
(d) a breach by RailCorp of its obligations under clauses 35.8(f), 58.3(a), 62.4(a)(viii) or 63.

46. **Insurance**

46.1 **Delivery Phase and Maintenance Phase Insurances**

Project Co must effect and maintain, or cause to be effected and maintained:

(a) **(Insurance Schedule):** the Insurances at the times, in the manner and on the terms specified in this clause 46 and the Insurance Schedule; and

(b) **(Additional insurance):** any additional insurance required by Law or which a prudent person bearing the risks and responsibilities of Project Co would maintain when carrying out activities of a similar nature to the Project Activities.

46.1A **TfNSW Insurances**

*(Increased premiums):* If the amount of a premium payable for any TfNSW Insurance is greater than the premium which was paid for that Insurance in the previous period of insurance and, in TfNSW’s opinion, acting reasonably, the increase in the premium is wholly or partially attributable to an act or omission of Project Co or its Associates:

(a) TfNSW may advise Project Co of its opinion, following which Project Co and TfNSW must within 10 Business Days, meet to attempt to resolve the matter; and

(b) without limiting Project Co’s rights under clause 50, if the matter is not resolved within 15 Business Days of TfNSW advising Project Co of its opinion under clause 46.1A(a):

(i) TfNSW will make a reasonable assessment of the amount of the premium increase which is attributable to an act or omission of Project
46.2 General insurance requirements

Project Co must or where relevant, must procure that its Subcontractors:

(a) (Reputable Insurers): effect all Insurances with Reputable Insurers;

(b) (Premiums): punctually pay all premiums and other amounts payable in connection with the Insurances, and give TfNSW copies of receipts for payment of premiums if and when requested by TfNSW;

(c) (No alteration): not alter, extend, discontinue or cancel any Insurance, or allow any Insurance to lapse, where this would result in the relevant Insurance not meeting the requirements of this Deed, without the prior approval of TfNSW;

(d) (Not prejudice): not do or permit, or omit to do, anything which prejudices any Insurance;

(e) (Rectify): promptly rectify anything which might, if not rectified, prejudice any Insurance;

(f) (Fully disclose): fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurances;

(g) (Comply): comply at all times with the terms of each Insurance;

(h) (TfNSW recovery): do everything reasonably required by TfNSW or any other Insured to enable that Insured to claim, and to collect or recover, money due under that Insurance; and

(i) (Notice of cancellation): notify TfNSW of any amendment or cancellation of an Insurance, within 5 Business Days of Project Co becoming aware of the amendment or cancellation.

46.3 Terms of Insurances

Project Co must ensure that each of the Insurances:

(a) (Terms): contains terms that, if not specified in the Deed are:

(i) acceptable to TfNSW, acting reasonably; and

(ii) to the effect that the relevant insurer:

A. does not require TfNSW or any other Insured to exhaust indemnities given by Project Co, its Associates, any Group Member or any other person to TfNSW or any other Insured under any TfNSW Project Document or any other document, before the insurer pays proceeds in respect of any claim under the Insurance;

B. will not impute to any Insured any knowledge or intention or a state of mind possessed or allegedly possessed by any other Insured;
C. in the case of Insurances under which TfNSW or its Associates are also Insureds, agrees that the interests of the Insured include the entire assets of the Project and waives any rights of subrogation or contribution which it may have against any Insured;

D. in the case of liability insurances, agrees to treat each Insured as a separate Insured as though a separate contract of insurance had been entered into with each of the Insureds, without increasing the deductibles or reducing the overall limit of indemnity, including agreeing that any breach of a term of a policy or any other fraud, act, omission or default by one Insured does not affect any other Insured's right to claim under the policy provided that such fraud, acts, omissions or defaults were not made with the connivance of that other Insured;

E. agrees that no reduction in limits or coverage affecting the Project or the Assets will be made during the period of insurance, except under the circumstances and to the extent permitted by the Insurance Contracts Act 1984 (Cth) and with not less than 20 Business Days' prior notice to TfNSW and Project Co; and

F. in the case of those Insurances under which TfNSW or its Associates are also Insureds, agrees except to the extent prohibited by Law that:

1) whenever the insurer gives to or serves upon Project Co or the relevant Subcontractor (as applicable) a notice of cancellation or other material notice concerning the policy, at the same time to give a copy of such notice to TfNSW; and

2) whenever Project Co or the relevant Subcontractor (as applicable) fails to renew the policy or to pay a premium or Project Co or the relevant Subcontractor (as applicable) requests that the insurer cancel the policy, to give notice of that failure or request to TfNSW within 5 Business Days of receipt thereof; and

(b) (Objectives of Project): is appropriate given the nature and objectives of the Project and the responsibilities and entitlements of the various Insureds in connection with this Deed.

46.4 Insurances primary

(a) (Enforceability of rights under indemnities): Neither TfNSW nor RailCorp is obliged to make a claim or institute proceedings against any insurer under the Insurances before enforcing any of its rights or remedies under the indemnities referred to in this Deed or generally.

(b) (Project Co's obligations not affected): Other than as expressly stated in this Deed, Project Co is not relieved from, and remains fully responsible for, its obligations under this Deed, regardless of whether the Insurances respond or fail to respond to any claim and regardless of the reason why any Insurance responds or fails to respond.
46.5 Notification and making of claims

Project Co must:

(a) (Claims Handling Protocol): within 10 Business Days of Financial Close submit to TfNSW a draft claims handling protocol setting out the process for the notification and handling of claims under the Insurances as between Project Co, TfNSW and the insurers. Project Co and TfNSW must as soon as reasonably practicable after such submission meet and use reasonable endeavours in good faith to agree the terms of that draft protocol with the insurers; and

(b) in accordance with the Claims Handling Protocol:

(i) (Notification): promptly notify TfNSW of any occurrence that may give rise to a claim in connection with the Project under:

A. any Insurance with a deductible level greater than [Redacted] (Indexed) where the value of the claim exceeds or is likely to exceed [Redacted] (Indexed); and

B. any other Insurance regardless of the value of the claim, except where an Insured's right of indemnity under the relevant Insurances would be prejudiced by giving such notice;

(ii) (Subsequent developments): keep TfNSW informed of subsequent developments concerning the occurrence under clause 46.5(b)(i);

(iii) (Pursue claims): subject to clause 46.5(b)(iv), diligently pursue any claim which it has under any Insurance which has arisen in connection with the Project;

(iv) (TfNSW consent): not compromise, waive, settle, prosecute or enforce any claim of the type referred to under clause 46.5(b)(i) under any Insurance without the prior consent of TfNSW (which must not be unreasonably withheld); and

(v) (Reasonable assistance): do everything reasonably required by TfNSW or any other Insured to enable TfNSW or that other Insured to claim and to recover money due to it under or in respect of an Insurance.

46.6 Maintenance Phase Insurances

(a) (Required information): No less than 60 Business Days prior to each Date for Provisional Acceptance and prior to the date on which any Insurance is due to be effected or renewed during the Maintenance Phase (as detailed in the Insurance Schedule) Project Co must provide TfNSW and the TfNSW Representative with copies of the proposed Maintenance Phase Insurances for the TfNSW Representative to review in accordance with the Review Procedures.

(b) (Terms and evidence): If Project Co is unable to provide copies of the Insurances to TfNSW and the TfNSW Representative in accordance with clause 46.6(a), it must:

(i) make the terms of such Insurances available to TfNSW’s insurance broker to review confidentially on its behalf; and

(ii) provide the evidence in respect of that Insurance required under clause 46.7(b) to 46.7(d).
(Acknowledgement): TfNSW and Project Co acknowledge and agree that:

(i) the terms and requirements specified in the Insurance Schedule for the Maintenance Phase Insurances are a reflection of the insurance market at Financial Close;

(ii) if either TfNSW or Project Co considers (acting reasonably) that the terms relating to a Maintenance Phase Insurance set out in the Insurance Schedule are no longer a reflection of the terms of the insurance that a prudent person bearing the risks and responsibilities of Project Co and the Operator and exercising Best Industry Practices would procure and maintain, then TfNSW or Project Co (as applicable) may send a written notice to the other party advising it of the same and TfNSW and Project Co must promptly confer in good faith and acting reasonably with a view to reaching agreement on the replacement terms or requirements (as applicable); and

(iii) if TfNSW and Project Co do not reach agreement on any replacement terms or requirements in accordance with clause 46.6(c)(ii) within 5 Business Days after the date on which a written notice was first given under that clause, either of them may refer the matter to dispute resolution in accordance with clause 50.

46.7 Evidence of Insurances

Whenever reasonably requested by TfNSW, Project Co must give TfNSW evidence satisfactory to TfNSW that the Insurances required to have been effected and maintained by it have been effected and continue to be maintained in accordance with this Deed, including:

(a) (Policies): certified copies of each insurance policy, or if Project Co is unable to provide certified copies of an insurance policy due to restrictions contained in the policy terms, Project Co must make the terms of such Insurances available to TfNSW’s insurance broker to review confidentially on its behalf;

(b) (Certificate): signed certificates of currency;

(c) (All requirements): confirmation that all the requirements of the Insurances specified in the Insurance Schedule are included in the Insurances; and

(d) (Deductibles): details of deductibles, terms of coverage, erosion and reinstatement of limits that TfNSW reasonably requires.

46.8 TfNSW may effect Insurances

(a) (TfNSW may effect insurance): TfNSW may procure or effect and maintain the relevant Insurances and pay the relevant premiums in connection with those Insurances:

(i) if Project Co fails to provide evidence satisfactory to TfNSW within 5 Business Days of a request under clause 46.7; or

(ii) in the event of any default by Project Co or its Associates in obtaining or maintaining Insurances in accordance with this clause 46.

(b) (Costs to be recoverable from Project Co): Without limiting any other remedies of TfNSW under this Deed or at Law, the costs reasonably incurred by TfNSW in connection with taking action in accordance with clause 46.8(a) will be a debt due and payable by Project Co to TfNSW.
46.9 **Proportionate liability**

Project Co must ensure that all Insurances which are effected do not reduce or exclude the insurance cover in connection with liabilities governed by Part 4 of the *Civil Liability Act 2002* (NSW) or any corresponding legislation of another Australian jurisdiction, by reason of the manner in which that legislation operates or does not operate, as the case may be, in light of any of the provisions of this Deed and the obligations undertaken by Project Co in connection with it.

46.10 **Deductibles**

(a) *(Payment of claims)*: Subject to clause 46.10(b), Project Co must pay or bear all amounts by way of deductibles or excesses which apply to a claim made under any Insurances.

(b) *(Loss or damage)*: Where the event that is insured under any Insurances is loss or damage referred to in clause 44.3(e) or is caused by a Compensable Extension Event or a Compensable Intervening Event for which Project Co is entitled to relief in accordance with this Deed, TfNSW will pay or procure payment of the related deductible or excess.

46.11 **Insurance Proceeds Account**

(a) *(Account)*: Project Co must:

(i) establish and maintain an insurance proceeds account (Insurance Proceeds Account) with a financial institution having the Required Rating nominated by Project Co and approved by TfNSW (such approval not to be unreasonably withheld); and

(ii) appoint representatives of TfNSW (nominated by TfNSW) as authorised signatories of the Insurance Proceeds Account (each a TfNSW Signatory) as joint authorised signatories with the authorised signatories of Project Co, the Facility Agent and the Security Trustee.

(b) *(Financial institution)*: Project Co must, prior to the establishment of the Insurance Proceeds Account, procure the agreement of the financial institution referred to in clause 46.11(a):

(i) that the financial institution in its capacity as account bank does not hold and will not obtain, take or accept any Security Interest in favour of the financial institution in respect of the Insurance Proceeds Account;

(ii) not to:

A. make a deduction or withdrawal from the Insurance Proceeds Account or apply any part of the balance of the Insurance Proceeds Account towards satisfaction of any obligation owing to the financial institution;

B. assert, claim or exercise any Security Interest, right of set off, combination of accounts or counterclaim in relation to the Insurance Proceeds Account; or

C. assert, claim or exercise any other right with respect to the Insurance Proceeds Account which is inconsistent with the rights and interests of the parties under this Deed or the Finance Documents which may diminish, impair or terminate the Insurance Proceeds Account; or
(iii) not to permit any withdrawals or transfers to be made from the Insurance Proceeds Account unless authorised by a TfNSW Signatory.

(c) **(Insurance Proceeds Account):** Any amounts paid by TfNSW in respect of an Uninsurable Risk pursuant to clause 47.3(a)(i) in respect of the reinstatement or replacement of Assets or the Change Compensation Principles and all proceeds of the following Insurances:

(i) Construction Risks - Material Damage specified in Part A of the Insurance Schedule; and

(ii) Industrial Special Risks - Material Damage specified in Part B of the Insurance Schedule,

which may be received by TfNSW or Project Co from the insurers, are to be deposited into the Insurance Proceeds Account and applied toward the reinstatement of the relevant Assets or the Change Compensation Principles and all proceeds of the following Insurances:

(d) **(Other Insurance proceeds):** All proceeds of any other Insurance (except business interruption policies) must be applied:

(i) (Liability): to discharge the relevant Liability or Claim, or make good the relevant Liability; or

(ii) (To TfNSW): to TfNSW or to such account as TfNSW may reasonably direct.

(e) **(Records):** Project Co must:

(i) keep, and make available to TfNSW upon request, a full accounting of the disbursement of any monies from the Insurance Proceeds Account; and

(ii) provide TfNSW with records of expenditure from the Insurance Proceeds Account within 30 Business Days of such expenditure.

(f) **(Surplus funds):** Any surplus funds remaining in the Insurance Proceeds Account, following application in accordance with clause 46.11(c), will be payable to TfNSW and Project Co must permit TfNSW to withdraw such funds from the Insurance Proceeds Account.

46.12 **Benchmarking of Insurance Component of Monthly Service Payment**

(a) **(Quotes):** 3 Months prior to each Insurance Review Date, Project Co must obtain separate quotes from 3 Reputable Insurers for annual premium costs of obtaining each Benchmarked Insurance (with the insurance broker's fee component identified separately in each quote).

(b) **(Selection of quote):** TfNSW will select one quote for each Benchmarked Insurance, and that quote will form the basis for benchmarking the Insurance Component relating to that Benchmarked Insurance.

(c) **(Adjustment):** On each Insurance Review Date, if the annual premium costs for each Benchmarked Insurance (as specified in the quote selected by TfNSW in accordance with clause 46.12(b)) are greater or less than the insurance premiums (Indexed) for that Benchmarked Insurance at the then most recent of:

(i) the Date of Final Acceptance (Project); or
(ii) the last Insurance Review Date on which an adjustment to the relevant Insurance Component occurred under this clause 46.12,

(as applicable), the Insurance Component relating to that Benchmarked Insurance will be adjusted by the amount by which the selected insurance premium costs for that Benchmarked Insurance:

(iii) exceed the insurance premium costs relating to that Benchmarked Insurance forming part of the Insurance Component at the relevant date under clause 46.12(c)(i) or 46.12(c)(ii) above; or

(iv) are less than the insurance premium costs relating to that Benchmarked Insurance forming part of the Insurance Component at the relevant date under clause 46.12(c)(i) or 46.12(c)(ii) above,

provided that any increase or decrease in the cost of obtaining the Benchmarked Insurance which is directly attributable to Project Co's or its Associates' performance of the Services will be disregarded.

(d) (Mitigation): Project Co must, and must procure that its Subcontractors, use all reasonable endeavours to:

(i) mitigate cost increases; and

(ii) maximise cost savings,

in respect of the Benchmarked Insurances.

46.13 Geographical coverage

(a) (Warranty): Project Co warrants for the benefit of each Indemnified Person that at no time will any Delivery Phase Activities or Services be undertaken or performed by Project Co or any of its Associates within the United States of America or Canada.

(b) (Indemnity): Without limiting any other rights or remedies which any of the Indemnified Persons may have, Project Co indemnifies each of the Indemnified Persons from and against any Claim or Liability suffered or incurred by that Indemnified Person in connection with either of:

(i) a breach by Project Co of the warranty in clause 46.13(a); or

(ii) a failure by Project Co to have insurance cover or any insufficiency in insurance proceeds, in each case in respect of any Delivery Phase Activities or Services undertaken or performed within the United States of America or Canada.

47. Uninsurable Risks

47.1 Risks become Uninsurable

(a) (Uninsurable Risk): If Project Co considers that a risk has, or is likely during the Term to, become an Uninsurable Risk:

(i) Project Co must notify TfNSW within 5 Business Days of when Project Co becomes aware, or ought reasonably to have become aware, that the risk has, or is likely during the Term to, become an Uninsurable Risk;
(ii) TfNSW and Project Co must meet in good faith within 20 Business Days after Project Co’s notification under clause 47.1(a)(i) to agree whether the risk is an Uninsurable Risk; and

(iii) If TfNSW and Project Co are unable to agree within the period referred to in clause 47.1(a)(ii), either of them may refer the matter for expert determination in accordance with clause 52.

(b) (Parties to meet): If it is agreed by TfNSW and Project Co or determined by an expert in accordance with clause 52 that a risk is an Uninsurable Risk, then TfNSW and Project Co must meet within 5 Business Days thereafter to discuss the means by which the Uninsurable Risk should be managed (including considering the possibility of self-insurance by either of them).

47.2 No obligation to insure

If TfNSW and Project Co agree, or an expert determines in accordance with clause 52, that a risk is or has become an Uninsurable Risk, then:

(a) (No requirement to insure): for so long as the risk remains an Uninsurable Risk, Project Co is not required under this Deed to effect and maintain insurance against that risk; and

(b) (Reduction payable to TfNSW): any reduction in insurance premium as a consequence of that risk being an Uninsurable Risk will be a debt due and payable by Project Co to TfNSW.

47.3 Agreed Uninsurable Risks resulting in loss or damage

(a) (Loss or damage): If an Agreed Uninsurable Risk gives rise to loss or damage to the Assets:

(i) if clause 44.3 applies, then subject to clause 47.3(b), this will be a Change Compensation Event; or

(ii) where the whole or a substantial part of the Maintenance Facility is damaged or destroyed and TfNSW elects not to repair or rebuild the Maintenance Facility, subject to clauses 44.6(c)(i) and 44.6(c)(ii):

A. this will be deemed to be a Force Majeure Termination Event; and

B. TfNSW must issue a Force Majeure Termination Notice in accordance with clause 49.3.

(b) (Amount payable): Subject to clause 47.3(c), the maximum amount which TfNSW must pay Project Co or procure payment of to Project Co if clause 47.3(a)(i) applies is an amount that is equal to:

(i) for a Day 1 Uninsurable Risk, an amount that is equal to the insurance proceeds that would have been payable under any of the Insurances had the event been insurable under those Insurances; and

(ii) for an Uninsurable Risk, an amount equal to the insurance proceeds that would have been payable had the relevant Insurance continued to be available on the previous terms of that Insurance,

less any component of the insurance proceeds that would have been payable which is attributable to the loss of equity return or loss of profit component.
(c) **(Exclusion):** If clause 47.3(a)(i) applies, and TfNSW directs Project Co in accordance with clause 44.3(c), the amount payable by TfNSW in accordance with clause 44.3(c) is excluded from the maximum amount referred to in clause 47.3(b).

### 47.4 Review of insurance markets

(a) **(Project Co to review market):** Project Co must review and test the insurance market vigilantly and no less than once every 12 Months to ascertain whether an Agreed Uninsurable Risk has become insurable, and determine whether, and if so what, insurance terms as to premium, deductible and coverage are available in connection with that risk, from Reputable Insurers.

(b) **(Procurement of insurance):** If upon such review it is found that an Agreed Uninsurable Risk is no longer uninsurable, then:

(i) Project Co must promptly notify TfNSW as to the insurance terms (including premium, deductible and coverage) available in connection with that risk from Reputable Insurers;

(ii) if required to do so by TfNSW, Project Co will promptly procure the insurance in connection with that risk in accordance with the other provisions of clause 46 and that risk will no longer be an Agreed Uninsurable Risk; and

(iii) if pursuant to clause 47.4(b)(ii), TfNSW requires Project Co to procure insurance in connection with a risk that was a Day 1 Uninsurable Risk, TfNSW must pay Project Co or procure payment to Project Co of the amount of the relevant premium within 30 days following receipt of a valid invoice therefor.
Part J - Default, Termination and Disputes

48. Major Default

48.1 Meaning of remedy or cure

(a) (Meaning of remedy or cure): Where the word 'remedy' or 'cure' or any other grammatical form of those words is used in this clause 48, it means to cure or redress the relevant breach or Major Default, or overcome its consequences so that:

(i) there ceases to be any continuing detrimental effect of that breach or Major Default;

(ii) any prior detrimental effect is rectified; and

(iii) TfNSW, RailCorp and their respective Associates are in the position they would have been in had the relevant breach or Major Default not taken place.

(b) (Major Default deemed to be capable of remedy or cure): TfNSW and Project Co acknowledge and agree that the events identified in each of the following paragraphs of the definition of Major Default will, for the purposes of this clause 48, be deemed to be capable of cure, notwithstanding that the relevant Major Default may not, as a matter of fact, be capable of cure:

(i) paragraph (a) (late Final Acceptance), (the cure for which will be the achievement of Final Acceptance of the relevant Asset as soon as reasonably practicable and in any event before the Sunset Date), if Project Co submits a program under clause 48.3(a) demonstrating that Final Acceptance of the relevant Asset will be achieved before the Sunset Date; and

(ii) paragraph (q)(ii) (corrective action plan) in respect of a delay in achieving Provisional Acceptance of a Unit, (the cure for which will be to demonstrate that Provisional Acceptance of the relevant Unit will be achieved before the date that is 12 Months after the relevant Date for Provisional Acceptance), if Project Co submits a program under clause 48.3(a) demonstrating that Provisional Acceptance of the relevant Unit will be achieved before the date that is 12 Months after the relevant Date for Provisional Acceptance.

48.2 Notice of Major Default

(a) (Project Co's obligations): Project Co must:

(i) promptly notify TfNSW upon the occurrence of a Major Default; and

(ii) immediately take steps to mitigate, minimise or avoid the effects, consequences or duration of the Major Default.

(b) (Major Default Notice): If:

(i) Project Co notifies TfNSW of a Major Default under clause 48.2(a); or

(ii) TfNSW considers that a Major Default has occurred,

TfNSW may give Project Co a notice in writing (Major Default Notice):
(iii) stating that a Major Default has occurred;

(iv) identifying and providing details of the Major Default; and

(v) if the Major Default:

A. is capable of remedy, stating a date by which Project Co must remedy the Major Default (which, subject to clause 48.3(d), must allow for a reasonable period of time to remedy the Major Default in the circumstances);

B. is not capable of remedy, stating any reasonable requirements of TfNSW in connection with that Major Default and a date by which Project Co must comply with those requirements (which, subject to clause 48.3(d), must allow for a reasonable period of time to comply with TfNSW's requirements in the circumstances); or

C. is not capable of remedy and TfNSW has formed the view (acting reasonably) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate TfNSW and RailCorp for, the Major Default, a statement to that effect along with its reasons for forming that view.

(ba) (Unacceptable Availability and unacceptable reliability): The parties acknowledge and agree that:

(i) if a Major Default under paragraph (m) occurs, TfNSW may issue one Major Default Notice in respect of that Major Default per Payment Period;

(ii) if a Major Default under paragraph (n) occurs, TfNSW may issue one Major Default Notice in respect of that Major Default per Payment Period; and

(iii) the establishment of or compliance with a program provided under clause 48.3(a) in the form approved by the TfNSW Representative in accordance with the Review Procedures in relation to a Major Default referred to in clauses 48.2(ba)(i) or (ii) shall not restrict TfNSW from giving Project Co a subsequent Major Default Notice in another Payment Period.

(c) (Unreasonable requirements): If Project Co (acting in good faith) does not agree with a Major Default Notice, or any part of it, it must:

(i) promptly notify TfNSW, including the reasons why; and

(ii) if Project Co does not agree with the period of time stated in the Major Default Notice, specify the period of time which it believes is reasonable.

(d) (TfNSW to act in good faith): TfNSW must in good faith consider Project Co's notice under clause 48.2(c) and (acting reasonably):

(i) make any changes to the Major Default Notice that it considers reasonable as a consequence of Project Co's notice; and

(ii) notify Project Co of those changes (if any).
(e) (Major Default not capable of remedy or cure): If after considering Project Co’s notice under clause 48.2(c), TfNSW maintains the view (acting reasonably) that there are no reasonable requirements that can be met by Project Co to overcome the consequences of, or compensate TfNSW and RailCorp for, the Major Default, TfNSW must notify Project Co of this determination and the Major Default will be deemed to be a Default Termination Event.

(f) (Project Co not satisfied): If Project Co is not satisfied with:

(i) the changes (if any) made by TfNSW under clause 48.2(d); or

(ii) TfNSW’s determination under clause 48.2(e),

then:

(iii) Project Co may refer the matter to expert determination in accordance with clause 52; and

(iv) if clause 48.2(e) applies, the Major Default will not be deemed to be a Default Termination Event unless and until determined by expert determination in accordance with clause 52,

and Project Co must act in accordance with the Major Default Notice while the matter is being determined in accordance with clause 52.

48.3 Project Co to provide remedy program and comply with Major Default Notice

(a) (Remedy program): If TfNSW gives a Major Default Notice to Project Co, then notwithstanding its rights under clause 48.2(c) to 48.2(f), Project Co must within 10 Business Days:

(i) where the Major Default is capable of remedy, unless the relevant Major Default is a failure to pay money which must be remedied immediately, give TfNSW a program to remedy the Major Default in accordance with the terms of the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default); and

(ii) where the Major Default is not capable of remedy, give TfNSW a program to prevent the Major Default from recurring and complying with any reasonable requirements of TfNSW set out in the Major Default Notice (which may include a plan to replace the Subcontractor causing the Major Default),

for review by the TfNSW Representative in accordance with the Review Procedures.

(b) (Content of remedy program): Any program provided to TfNSW under clause 48.3(a) must include:

(i) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied:

A. in respect of clause 48.3(a)(i), to remedy the Major Default; or

B. in respect of 48.3(a)(ii), to prevent the Major Default from recurring; and
any temporary measures that will be undertaken while the Major Default is being cured in order to ameliorate the impact of the Major Default.

(c) **Compliance**: Notwithstanding the fact that it may have exercised its rights under clause 48.2(c) to 48.2(f), Project Co must comply with any program provided under clause 48.3(a) in the form approved by the TfNSW Representative in accordance with the Review Procedures.

(d) **Maximum remedy period**: Subject to the Financiers' Tripartite Deed and clause 48.4(a), the maximum period of time (including any extension under clause 48.4(b)) which Project Co may be given to remedy a Major Default will be:

(i) where the applicable Major Default is in respect of the Delivery Phase Activities, 12 Months in the aggregate from the date of the applicable Major Default Notice;

(ii) where the applicable Major Default is in respect of the Services, 6 Months in the aggregate from the date of the applicable Major Default Notice;

(iii) where the applicable Major Default is not in respect of the Delivery Phase Activities or the Services but occurs during the Delivery Phase, 12 Months in the aggregate from the date of the applicable Major Default Notice; and

(iv) where the applicable Major Default is not in respect of the Delivery Phase Activities or the Services but occurs during the Maintenance Phase, 6 Months in the aggregate from the date of the applicable Major Default Notice.

(e) **Maximum remedy period where overlap**: If a Major Default occurs that:

(i) is not in respect of the Delivery Phase Activities or the Services; and

(ii) occurs during the period in which the Delivery Phase and Maintenance Phase overlap,

then the Major Default will be deemed to have occurred during the Maintenance Phase.

### 48.4 Extension of remedy program

(a) **Impact of Relief Event**: If Project Co is prevented from carrying out its obligations in accordance with clause 48.3(c) as a direct result of a Relief Event for which Project Co is entitled to an extension of time or relief (as applicable) in accordance with this Deed, then the program to remedy or comply (including the time to remedy the Major Default or comply with TfNSW's requirements), the periods identified in clause 48.3(d), and the time set out in the Major Default Notice, must be extended:

(i) to reflect the period Project Co is prevented from carrying out its obligations in accordance with the remedy program by that Relief Event;

(ii) without limiting clause 44, in respect of loss or damage caused by that Relief Event, for the period from the commencement of that loss or damage until the earlier of the date that the necessary repairs or rebuilding have been completed, or ought reasonably to have been completed had Project Co complied with its obligations under this Deed,
provided that:

(iii) the period of extension granted under this clause 48.4(a) must not exceed:
   A. if the Relief Event is an Extension Event, the period of extension of time granted under clause 37.5 or 37.6; or
   B. if the Relief Event is an Intervening Event, the period of relief granted under the Change Compensation Principles,

(iv) Project Co demonstrates to TfNSW's satisfaction (acting reasonably) that Project Co has diligently pursued and, to the extent reasonably possible, continues to diligently pursue the program agreed or determined under clause 48.3.

(b) (Extension of Major Default Notice): Subject to clauses 48.3(d) and 48.4(d), if Project Co:

(i) is not able to, where the Major Default is capable of remedy, remedy the Major Default or, where the Major Default is not capable of remedy, comply with the reasonable requirements of TfNSW in respect of the Major Default within the timeframe stated in the Major Default Notice; and

(ii) Project Co has been diligently pursuing the remedy of that Major Default or compliance with any reasonable requirements of TfNSW (as the case may be),

Project Co may request that TfNSW extend the time stated in the Major Default Notice and TfNSW will grant an extension for such period as TfNSW determines is required (acting reasonably) to either enable Project Co to remedy the Major Default or comply with any reasonable requirements of TfNSW.

(c) (Request for further information): TfNSW may request, and Project Co must provide, any further information reasonably required by TfNSW to enable TfNSW to determine an extension under clause 48.4(b).

(d) (Limitation): Project Co is only entitled to one extension in accordance with clause 48.4(b) in connection with the same Major Default.

48.5 Effect of curing

If a Major Default occurs and is cured by any person, any rights in respect of that Major Default which have not been exercised prior to it being cured may not thereafter be exercised.

48.6 Persistent Breach

(a) (First Notice): If Project Co has committed a Persistent Breach, then TfNSW may issue a notice to Project Co:

(i) stating that it is a Persistent Breach Notice; and

(ii) identifying the Persistent Breach,

(Persistent Breach Notice).
(b) **(Final Notice):** If a breach identified in a Persistent Breach Notice has:

(i) continued beyond 30 Business Days after the date of issue of the Persistent Breach Notice; or

(ii) recurred at any time during the period commencing 30 Business Days after the date of issue of the Persistent Breach Notice and ending 12 Months after such date,

then TfNSW may issue a further notice to Project Co (**Final Persistent Breach Notice**):

(iii) stating that it is a Final Persistent Breach Notice; and

(iv) identifying the breach and the earlier Persistent Breach.

48.7 **Frequent Breaches**

(a) **(First Notice):** If Project Co has committed Frequent Breaches, then TfNSW may issue a notice to Project Co:

(i) stating that it is a Frequent Breaches Notice; and

(ii) identifying the Frequent Breaches,

**(Frequent Breaches Notice).**

(b) **(Final Notice):** If, following the issue of a Frequent Breaches Notice, Frequent Breaches continue to occur at any time during the 12 Month period commencing 30 Business Days after the issue of a Frequent Breaches Notice, then TfNSW may issue a further notice to Project Co (**Final Frequent Breaches Notice**):

(i) stating that it is a Final Frequent Breaches Notice; and

(ii) identifying Frequent Breaches.

49. **Termination**

49.1 **Sole basis**

(a) **(Sole basis):** Clause 3.4 and this clause 49 set out the sole basis at Law or otherwise upon which any party is entitled to terminate, rescind or accept a repudiation of this Deed.

(b) **(No limitation):** Subject only to clauses 35.3(d) and 49.1(a):

(i) nothing in clause 3.4 or this clause 49 in any way prejudices or limits any other rights or remedies of TfNSW or RailCorp, whether under this Deed or any other TfNSW Project Document or otherwise at Law, and whether against Project Co or otherwise, in relation to any Default Termination Event, Major Default or breach of any TfNSW Project Document; and

(ii) the termination of this Deed on any basis, and any payment of the relevant Termination Payment, will not in any way prejudice or limit any party’s Liability to any other party in respect of the events giving rise to the termination.

(c) **(No right to terminate):** Subject to clauses 3.4 and 49.3 but notwithstanding any other provision of this Deed or any rights Project Co has at Law or otherwise but for
this clause 49.1(c), Project Co acknowledges and agrees that it has no right under this Deed, at Law, or otherwise, to terminate this Deed.

49.2 Voluntary Termination

(a) (Voluntary termination notice): TfNSW may:

(i) at any time and in its sole and absolute discretion, terminate this Deed by giving Project Co not less than 60 Business Days' notice; and

(ii) thereafter, at its absolute discretion, complete any uncompleted part of the Project either itself or by engaging others to do so.

(b) (Date of termination): Termination of this Deed under clause 49.2(a) will take effect upon the date specified in the notice given under clause 49.2(a).

49.3 Termination for Force Majeure

(a) (Force Majeure Termination Event notice): Subject to clause 49.3(c), if a Force Majeure Termination Event occurs (or is deemed to occur), then either TfNSW and Project Co may terminate this Deed by giving notice to the other.

(b) (Date of termination): Termination of this Deed for a Force Majeure Termination Event will take effect upon the date specified in the notice given under clause 49.3(a).

(c) (Restrictions on termination): Project Co is not entitled to terminate this Deed under clause 49.3(a) during the period Project Co is able to recover (or, but for any breach by Project Co or any of its Associates of a TfNSW Project Document or the relevant Insurances, would have been able to recover) under the advance loss of profits Insurance or the consequential loss cover section of the industrial special risks Insurance or other business interruption Insurance for the relevant Force Majeure Termination Event.

49.4 Default Termination Event

(a) (Rights): If any Default Termination Event occurs, TfNSW may, without limiting any rights or remedies it has under this Deed or at Law (other than rights of termination), elect to:

(i) subject to the Financiers' Tripartite Deed, terminate this Deed by giving written notice to Project Co; or

(ii) exercise its rights under clause 41.3 to cure or attempt to cure the Default Termination Event.

(b) (Date of termination): Termination of this Deed for a Default Termination Event will take effect upon the date specified in the notice given under clause 49.4(a)(i).

49.5 Not used

49.6 Assistance

Project Co will use its best endeavours to assist TfNSW in the exercise of TfNSW's rights in accordance with this clause 49.
49.7 Payment on termination

(a) (Payment): Subject to clause 49.7(c), if TfNSW or Project Co has terminated this Deed in accordance with this clause 48, no later than the Termination Payment Date:

(i) where the Termination Payment is a positive amount, TfNSW must pay to Project Co or procure payment to Project Co of; and

(ii) where the Termination Payment is a negative amount, Project Co must pay to TfNSW,

as a debt due and payable, the absolute value of the relevant Termination Payment, being:

(iii) for Voluntary Termination, the Voluntary Termination Payment;

(iv) for a termination for a Force Majeure Termination Event, the Force Majeure Termination Payment; or

(v) for termination for a Default Termination Event, the Default Termination Payment,

in accordance with the Termination Payments Schedule.

(b) (Project Co obligations): TfNSW's obligation to pay or procure payment to Project Co of a Termination Payment under clause 49.7(a) is subject to Project Co having complied with its obligations under clause 36.3 and this clause 49.7.

(c) (TfNSW's rights): If TfNSW is not satisfied that Project Co has satisfied its obligations in clause 49.7(b), Project Co will be Liable to TfNSW for the amount that is reasonably necessary to cover the expected costs of performing those obligations (including reasonable contingencies) in addition to any Termination Payment payable by Project Co in accordance with this clause 49.7 and the Termination Payments Schedule.

(d) (Payment obligations cease): Upon termination under this clause 49, TfNSW's future obligations under TfNSW Project Documents to pay or procure payment to Project Co of the Monthly Service Payment, any CDPD Amount and any Expiry Refund Payment will cease.

49.8 Novation of liabilities to TfNSW

(a) (TfNSW's election): Where this Deed is terminated and, prior to the payment of any Termination Payment in accordance with clause 49.7 and the Termination Payments Schedule, any Project Co Entity has any Debt outstanding, TfNSW may elect to assume (or have its nominee assume) all of the Liability for that Debt that would otherwise have been payable by any Project Co Entity, and to the extent TfNSW so elects by notice to Project Co:

(i) Project Co must ensure that Liability, and all of any Project Co Entity's rights in respect of the Finance Documents relating to such Debt (including all of each Project Co Entity's rights and obligations under any related hedging arrangements under the Finance Documents) is novated to TfNSW (or its nominee); and

(ii) the amount of the Termination Payment which TfNSW would otherwise be obliged to pay or procure payment of will be reduced by:
A. the amount of the Liability; and

B. the amount of any costs of terminating the Finance Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation.

(b) (Finance Documents): Project Co must ensure that it is permitted, in accordance with the terms of the Finance Documents, to procure the novation of its rights and debt obligations in accordance with this clause 49.8.

49.9 Waiver

If this Deed is terminated in accordance with this Deed, then:

(a) (Liability): subject to clause 49.9(b):

(i) Project Co waives (and must ensure that Finance Co waives) any right it might otherwise have to make any Claim against TfNSW, RailCorp or any of their respective Associates; and

(ii) TfNSW, RailCorp and each of their respective Associates will have no further Liability to Project Co or any of its Associates, by reason, or as a result, of the termination or the circumstances relating to the termination, or otherwise arising out of or in connection with the Project Documents, the Sites, the Project Activities or the Project more generally;

(b) (Exclusive entitlement): Project Co's sole and exclusive entitlement to make a Claim against TfNSW or RailCorp following termination of this Deed will be in connection with its rights against TfNSW to a Termination Payment (provided always that nothing in this Deed will make RailCorp liable to pay any Termination Payment in whole or in part); and

(c) (Wrongful termination): if TfNSW terminates this Deed for a Default Termination Event and it is subsequently determined that such termination was wrongful (including if TfNSW has terminated this Deed for a deemed Default Termination Event under clause 48.2(e) and it is subsequently determined that TfNSW had no right to terminate this Deed on that basis), then, unless TfNSW and Project Co agree otherwise, such exercise shall be deemed to have been a voluntary termination in accordance with clause 49.2 and Project Co's sole rights in such circumstances will be those set out in this clause 49.

49.10 Additional rights and obligations on Termination

The additional rights and obligations of the parties on a termination of this Deed are set out in clause 36.

50. Dispute Resolution procedure

50.1 Procedure

(a) (Resolution procedure): Unless a TfNSW Project Document provides otherwise, any dispute between any of the parties arising in connection with:

(i) any TfNSW Project Document or the Project Activities (including questions concerning this Deed's existence, meaning, validity or termination);
any decision of the Independent Certifier which this Deed expressly provides may be referred for resolution under clauses 50 to 53 (including any express right in this Deed to refer a Dispute in relation to any decision of the Independent Certifier for expert determination in accordance with clause 52); or

(iii) any report of the Transition Out Reviewer which is not stated in this Deed to be final and binding,

(each a Dispute) must be resolved in accordance with this clause 50 and clauses 51 to 53.

(b) (Procedure): Subject to clause 50.2, the procedure that is to be followed to resolve a Dispute is as follows:

(i) first, the Dispute must be the subject of negotiation as required by clause 51;

(ii) secondly, if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 51(c)(i), within 10 Business Days (or such longer period as the Executive Representatives have agreed in writing) after the expiration of that period:

A. TfNSW and Project Co may agree that the Dispute will be referred to an expert for determination under clause 52;

B. where the Dispute is expressed in this Deed to be a Dispute which may be referred to an expert under clause 52, either TfNSW or Project Co may refer the Dispute to an expert for determination under clause 52; or

C. where clause 50.1(b)(ii)A does not apply and subject to clause 50.2(b), either TfNSW or Project Co may refer the Dispute to arbitration under clause 53; and

(iii) thirdly, if:

A. the Dispute has been referred to expert determination in accordance with clause 52 and a determination is not made by the expert within 30 Business Days after the expert's acceptance of appointment (or such longer period as TfNSW and Project Co and the expert may agree in the relevant Expert Determination Agreement); or

B. the Dispute is referred to expert determination and a notice of dissatisfaction is given under clause 52.4(a),

then the Dispute must be referred to arbitration under clause 53.

(c) Without limiting clause 56.2, TfNSW holds and will administer the rights and benefits under clauses 50 to 54 for its benefit and for the benefit of RailCorp.

50.2 Selection of resolution process

Where this Deed provides that either TfNSW or Project Co 'may' refer a Dispute to expert determination in accordance with clause 52:
(a) **Negotiations**: TfNSW and Project Co must first follow the process set out in clause 51 before either of them refers the matter for expert determination in accordance with clause 52;

(b) **Expert Determination**: the use of the term 'may' means that if TfNSW and Project Co have failed to resolve the Dispute in accordance with clause 51 or determined the way in which the Dispute will be resolved and TfNSW or Project Co elects to further pursue the resolution of the Dispute, it must do so in accordance with clause 52; and

(c) **Arbitration**: subject to clause 52.4, if TfNSW or Project Co has referred a Dispute for expert determination in accordance with clause 52, neither TfNSW nor Project Co may refer the Dispute to arbitration (other than in accordance with clause 52.4), or take any steps to enjoin or otherwise restrain the referral of the Dispute to an expert.

### 50.3 Urgent relief

Nothing in clauses 50 to 53 or otherwise in this Deed prevents a party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in the party’s reasonable opinion, that action is necessary to protect that party’s rights.

### 51. Senior Negotiations

(a) **Notification**: If a Dispute arises then TfNSW or Project Co may give notice to the other requesting that the Dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of TfNSW and Project Co (Executive Representatives).

(b) **Contents of Notice**: A notice under clause 51(a) must:

(i) state that it is a notice under this clause 51; and

(ii) include or be accompanied by particulars of the matters the subject of the Dispute.

(c) **Attempt to resolve Dispute**: If a Dispute is referred for resolution by negotiation under clause 51(a), then:

(i) the Executive Representatives must meet and attempt in good faith to resolve the Dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 51(a) is received (or such later date as TfNSW and Project Co may agree); and

(ii) any agreement reached between the Executive Representatives will be reduced to writing, signed by or on behalf of each of TfNSW and Project Co and will be contractually binding on them.

### 52. Expert determination

### 52.1 Expert determination

If:

(a) **Dispute unresolved by Executive Representatives**: a Dispute which has been referred to the Executive Representatives for negotiation in accordance with clause 51(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 51(c)(i); and
(b) (Referral to expert): within 10 Business Days after the expiration of the period for negotiation referred to in clause 51(c)(i) either:

(i) TfNSW and Project Co agree that the Dispute be referred to an expert for determination in accordance with this clause 52; or

(ii) where the Dispute is expressed in this Deed to be a Dispute which may be referred to an expert under clause 52, either TfNSW or Project Co refers the Dispute to an expert for determination under clause 52,

then those parts of the Dispute which remain unresolved will be referred to an expert for determination under this clause 52.

52.2 Selection of expert

(a) (Exchange of lists of 3 preferred experts): Within 10 Business Days after the date on which a Dispute is referred to an expert for determination under clause 52.1, if TfNSW and Project Co are unable to agree on an expert to determine the Dispute, TfNSW and Project Co must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 52.2(d), from whom the expert is to be chosen.

(b) (Appointment of person who appears on both lists): Any person that appears on both lists under clause 52.2(a) will be appointed as the expert to determine a Dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 51(a) will be appointed.

(c) (Appointment if no person appears on both lists): If no person appears on both lists, the party which gave the notice under clause 51(a) must procure the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by TfNSW and Project Co under clause 52.2(a) within 10 Business Days of the exchange of lists under clause 52.2(a).

(d) (Appropriate skills): It is the intention of TfNSW and Project Co that the expert appointed to determine a Dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.

(e) (No entitlement to challenge appointment): Neither TfNSW nor Project Co will be entitled to challenge the appointment of an expert under this clause 52.2 on the basis that the expert does not satisfy the requirements of clause 52.2(d).

(f) (Not an arbitration agreement): Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the Commercial Arbitration Act 2010 (NSW).

(g) (Agreement): Within 10 Business Days of the expert being agreed, deemed or nominated, TfNSW and Project Co must enter into an agreement with the expert on substantially the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

52.3 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, in accordance with the terms of the Expert Determination Agreement.
52.4 Expert finding

(a) **(Notification):** Subject to clause 52.4(c), the determination of the expert must be in writing and will be final and binding on TfNSW and Project Co unless:

(i) the expert determination includes:

   A. payment of compensation and the amount claimed, or subsequently determined by the expert, to be payable is equal to or greater than [Redacted] (Indexed); or

   B. an extension of a Date for Acceptance or rejection of an extension to a Date for Acceptance and the period of the extension that was claimed in the notice under clause 51(a) is more than 5 Business Days; and

(ii) within 5 Business Days of receipt of the determination, TfNSW or Project Co gives notice to the other party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 53.

(b) **(Amendment to determination):** Upon submission by TfNSW or Project Co, the expert may amend the determination to correct:

(i) a clerical mistake;

(ii) an error from an accidental slip or omission;

(iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or

(iv) a defect in form.

(c) **(Section 4, Termination Payments Schedule):** A determination of the expert in respect of the Fair Value of the Equity under section 4 of the Termination Payments Schedule will be final and binding on TfNSW and Project Co and cannot be referred to arbitration.

52.5 Liability of expert

(a) **(Liability of expert):** TfNSW and Project Co agree:

(i) that the expert will have no liability in connection with the expert determination, except in the case of fraud on the part of the expert; and

(ii) to indemnify the expert against any Claim or Liability in connection with the determination, except in the case of fraud on the part of the expert in which case a Claim may be made against the expert by any party to the Dispute.

(b) **(Engagement):** TfNSW and Project Co will jointly engage the expert services in connection with the expert determination proceedings and each of TfNSW and Project Co will seek a separate Tax Invoice equal to its share of the costs of the expert.

52.6 Costs

TfNSW and Project Co must:
(a) **(Proceedings):** bear their own costs in connection with the expert determination proceedings; and

(b) **(Cost apportionment):** pay or procure payment of an equal portion of the costs of the expert.

### 52.7 Proportional Liability

To the extent permitted by Law, the expert 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 clause 52.7, have applied to any Dispute referred to expert determination in accordance with this clause 52.

### 53. Arbitration

#### 53.1 Reference to Arbitration

(a) **(Dispute):** If:

(i) a Dispute:

A. which has been referred to the Executive Representatives for negotiation in accordance with clause 51 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 51(c)(i); and

B. is not a Dispute which TfNSW and Project Co have agreed to refer to or must be referred to an expert for determination in accordance with clause 52; or

(ii) in the case of a Dispute which is or must be referred to an expert for determination in accordance with clause 52:

A. a determination is not made within 30 Business Days after the expert’s acceptance of the appointment; or

B. a notice of dissatisfaction is given in accordance with clause 52.4(a)(ii),

then, subject to clause 52.4(c), TfNSW or Project Co may notify the other that it requires the Dispute to be referred to arbitration.

(b) **(Referral):** Upon receipt by TfNSW or Project Co of a notice under clause 53.1(a), the Dispute will be referred to arbitration.

#### 53.2 Arbitration

(a) **(ACICA Rules):** Arbitration in accordance with this clause 53 will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Rules) subject to this clause 53.

(b) **(Seat):** The seat of the arbitration will be Sydney, New South Wales.

(c) **(Language):** The language of the arbitration will be English.
53.3 Appointment of arbitrator

TfNSW and Project Co will endeavour to agree on the person to be appointed as arbitrator, but if no such agreement is reached within 10 Business Days of the Dispute being referred to arbitration in accordance with clause 53.1(b), the arbitrator will be appointed by the Australian Centre for International Commercial Arbitration.

53.4 General Principles for conduct of arbitration

(a) (Conduct of arbitration): TfNSW and Project Co agree that:

(i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

(ii) any arbitration conducted in accordance with this clause 53 will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator;

(iii) the arbitrator will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings; and

(iv) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 53.4(a)(i), 53.4(a)(ii) and 53.4(a)(iii).

(b) (Evidence in writing): All evidence in chief must be in writing unless otherwise ordered by the arbitrator.

(c) (Evidence and discovery): The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.

(d) (Oral hearing): The oral hearing must be conducted as follows:

(i) any oral hearing must take place in Sydney, New South Wales and all outstanding issues must be addressed at the oral hearing;

(ii) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 53.4(a) 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) the oral hearing must be conducted on a stop clock basis with the effect that the time available to TfNSW and Project Co must be split equally between TfNSW and Project Co so that each of them has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the them;

(v) not less than 15 Business Days prior to the date fixed for oral hearing TfNSW and Project Co must each give notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross examination;
(vi) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set pursuant to clause 53.4(d)(ii);

(vii) a party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross-examination; and

(viii) TfNSW and Project Co are each expected to put its case on significant issues in cross examination of a relevant witness called by the opposing party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the opposing party may know the nature of and basis for the challenge to the written evidence of a witness.

(e) (Experts): Unless otherwise ordered by the arbitrator, TfNSW and Project Co may each only rely upon one expert witness in connection with any recognised area of specialisation.

(f) (Arbitrator's powers): TfNSW and Project Co agree that, subject to clause 53.5, the arbitrator has the power to grant all legal, equitable and statutory remedies, except punitive damages.

(g) (Consolidations): TfNSW and Project Co agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations.

53.5 Civil Liability Act 2002 (NSW)

(a) (Part 4): The powers conferred, and restrictions imposed, on a court by Part 4 of the Civil Liability Act 2002 (NSW) are not conferred on an arbitrator appointed in accordance with this clause 53.

(b) (Determination): The arbitrator has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the Civil Liability Act 2002 (NSW) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitrator.

53.6 Proportional liability

To the extent permitted by Law, the arbitrator 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 clause 53.6, have applied to any Dispute referred to arbitration in accordance with this clause 53.

53.7 Continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations in accordance with the TfNSW Project Documents.

53.8 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of New South Wales, Australia.
53.9 Not used

53.10 Jurisdiction of courts

Without limiting clauses 50 to 53, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed.

53.11 Final and binding

Any arbitration award will be final and binding upon the parties.

54. Related disputes or differences

54.1 Acknowledgement in relation to Key Subcontracts

The parties acknowledge and agree that a dispute or difference arising under a Key Subcontract may concern or impact upon the respective rights and obligations of TfNSW, RailCorp and Project Co under this Deed.

54.2 Procedure in the event of a dispute or difference arising under a Key Subcontract

If a formal dispute or difference arises under any Key Subcontract:

(a) (Project Co to inform the TfNSW Representative): Project Co must inform the TfNSW Representative immediately of the formal dispute or difference and the consequences (if any) on the operation of this Deed; and

(b) (Key Subcontractor may attend, observe and be joined): if TfNSW consents (in its absolute discretion), Project Co may permit the Key Subcontractor to:

(i) attend and observe; or

(ii) be joined as a party to,

the dispute resolution procedure under this Deed.

54.3 Other related disputes

Where any Dispute is to be referred for expert determination pursuant to clause 52 or to arbitration pursuant to clause 53 and that Dispute involves issues that are substantially the same as, or connected with, issues raised in a related dispute or difference between TfNSW or its Associates (on the one hand) and any Access Provider, the Operator or any other person involved in the Project (on the other hand) (Related Dispute), then where such Related Dispute is to be resolved by way of expert determination or arbitration proceedings TfNSW may, in its absolute discretion:

(a) join the Dispute to any existing dispute resolution proceedings in respect of the Related Dispute by giving notice to all parties concerned and to the relevant expert or arbitrator (as applicable) and the expert or arbitrator in such proceedings will have the power to make such directions as are necessary to join the parties and the cause of action to enable the expert or the arbitrator (as applicable) to make a determination or award (as applicable) in respect of the Dispute and the Related Dispute (whether by way of single determination or award or separate determinations or awards); or
(b) join the Related Dispute to the dispute resolution proceedings under this Deed in respect of the Dispute by giving notice to all parties concerned and to the relevant expert or arbitrator (as applicable), in which event:

(i) the parties to the Related Dispute will be considered parties to the expert determination proceedings or arbitration proceedings (as applicable) under this Deed;

(ii) the expert or arbitrator in such proceedings will have the power to make such directions as are necessary to join the parties and the cause of action to enable the expert or the arbitrator (as applicable) to make a determination or award (as applicable) in respect of the Dispute and the Related Dispute (whether by way of single determination or award or separate determinations or awards); and

(iii) the terms of the Expert Determination Agreement (in the case of a Dispute which is to be resolved by way of expert determination) and the ACICA Rules (in the case of a Dispute which is to be resolved by way of arbitration) will, to the extent possible, be modified to accommodate this.
Part K - Corporate obligations

55. Representations and warranties

55.1 TfNSW’s representations and warranties

TfNSW represents and warrants for the benefit of Project Co that:

(a) **(Status):** it is a statutory body validly constituted and existing under section 3C of the Transport Administration Act 1988 (NSW);

(b) **(Power to execute):** it has the power to execute, deliver and carry out its obligations under the TfNSW Project Documents and all necessary action has been taken to authorise that execution, delivery and performance;

(c) **(Validity):** each TfNSW Project Document constitutes a valid and legally binding obligation on it in accordance with its terms;

(d) **(Legality):** the execution, delivery and performance of each TfNSW Project Document does not violate any Law to which TfNSW is subject;

(e) **(Site):** subject to the Adverse Rights, TfNSW has full and proper rights to use and licence the Sites and the Assets for the purposes of the Project in accordance with this Deed and grant each Licence; and

(f) **(Amendment):** it does not require the consent of any of its Associates to amend or waive any provision of any TfNSW Project Document.

55.2 Project Co’s representations and warranties

Project Co represents and warrants for the benefit of each of TfNSW and RailCorp that:

(a) **(Incorporation):** each Project Co Entity is duly incorporated in Australia and is existing under Australian Law;

(b) **(Power to execute):** each Project Co Entity has the capacity and power to execute, deliver and perform its obligations under the Project Documents and all necessary corporate and other action has been taken to authorise that execution, delivery and performance and with respect to Project Co only, in doing so is acting properly under the terms of the Project Trust Deed;

(c) **(Legality):** the execution, delivery and performance of each Project Document to which it or Finance Co is a party does not violate any Law, document or agreement to which it or Finance Co is a party or which is binding on it or Finance Co or any of its assets;

(d) **(Validity):** each of the Project Documents to which it or Finance Co is a party constitutes a valid and legally binding obligation on it or Finance Co, enforceable in accordance with its terms;

(e) **(No trust relationship):** except as stated in this Deed, neither Project Co Entity is the trustee or Responsible Entity of any trust nor does any Project Co Entity hold any property subject to or impressed, by any trust;

(f) **(No subsidiaries):** neither Project Co Entity has any subsidiaries;

(g) **(No tax consolidation):** neither Project Co Entity is part of any tax consolidation arrangement contemplated by the Income Tax Assessment Act 1997 (Cth) or GST
grouping arrangement contemplated by the GST Law, except with the consent of TfNSW;

(h) (No trading): neither Project Co Entity has traded since its incorporation, other than for the purposes of entering into the Project Documents and has no liabilities other than those that have arisen in connection with the Project Documents;

(i) (Residency): it is a resident in Australia and has not transferred any of its business outside of Australia;

(j) (No liability): it does not hold any property and has not incurred any liability other than for the purposes of the Project;

(k) (Information true and correct): all information that has been provided to TfNSW in connection with the Project or the Project Documents is true, accurate and correct in all material respects and Project Co is not aware of any material facts or circumstances that have not been disclosed to TfNSW and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Deed with Project Co;

(l) (No other security interests): none of its assets are subject to any Security Interest other than a Permitted Security Interest;

(m) (No immunity): it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);

(n) (No default): it is not in default of its material obligations under any Project Document to which it is expressed to be a party;

(o) (No knowledge of other proposals): prior to the date of this Deed, it had no knowledge of any part of the proposal by any other proponent for the Project and has not directly or indirectly communicated any part of its proposal for the Project to any other proponent;

(p) (No arrangement): it has not entered into any contract or arrangement or arrived at any understanding with any other proponent in relation to the Project to the effect that it will pay money to or confer any benefit upon any other proponent as a result of entering into this Deed or providing its proposal for the Project;

(q) (No litigation): there are no litigation, arbitration, administration, adjudication or mediation proceedings taking place, pending or, so far as it is aware, threatened or likely against or affecting it or any Key Subcontractor which may adversely affect the Project or Project Co’s or a Key Subcontractor’s ability to perform its obligations under the Project Documents;

(r) (Accounts): its most recent consolidated and unconsolidated audited (if the requirement for auditing is applicable) accounts give a true and fair view of Project Co’s and its subsidiaries’ state of affairs as at the date to which they relate and there has been no material change in Project Co’s or its subsidiaries’ state of affairs since that date;

(s) (No default):

(i) it is not in default under any document or agreement binding on it or its assets which relates to financial indebtedness or which could otherwise have a material adverse effect on the Project or Project Co’s ability to perform its obligations under the Project Documents; and
nothing has occurred which would, with the giving of notice or lapse of time, constitute an event of default, cancellation, prepayment event or similar event (whatever called) under any such document or agreement;

(Sole trustee): Project Co, in its personal capacity, is the only trustee of the Project Trust; and

(Project Trust Deed): the Project Trust Deed constituting the Project Trust constitutes valid, binding and enforceable obligations of the parties to it and complies with all applicable Law.

55.3 Repetition of representation and warranties

Each representation and warranty given by Project Co under this Deed:

(a) (Date of Deed): other than those set out in clause 32.5(b), is made on the date of this Deed; and

(b) (Repetition): other than those set out in clauses 55.2(o) and 55.2(p), will be deemed to be repeated each day during the period from the date on which it is first made to:

(i) the last day of the relevant Residual Life specified in the Residual Life and Design Life Schedule in the case of clause 32.5(b)(i); or

(ii) the Expiry Date in all other cases,

with reference to the facts and circumstances then subsisting.

55.4 Project Trust undertakings

Project Co must:

(a) comply:

(i) fully with all of its obligations as trustee of the Project Trust imposed under the Project Trust Deed; and

(ii) in all material respects with all of its obligations as trustee of the Project Trust imposed at law;

(b) ensure that no material waiver or revocation of the Project Trust Deed is made, whether formally or by conduct;

(c) not amend, or agree to amend, or permit or allow to be amended, the Project Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error, details of which are notified to TfNSW);

(d) ensure that no other person is appointed trustee of the Project Trust without the prior written consent of TfNSW;

(e) not do anything which would cause or enable its removal, nor retire, as trustee of the Project Trust except in favour of a new trustee approved by TfNSW;

(f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Project Trust Deed or allow the early determination of the Project Trust;
not exercise in its own favour its Trustee's Indemnity under the Project Trust against any beneficiary of the Project Trust or against any Trust Property (other than in respect of any expenses which it properly incurs in the day to day performance of its obligations as trustee of the Project Trust);

not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:

(i) the termination of the Project Trust or the termination, rescission or revocation of the Project Trust Deed;

(ii) the resettlement of any Trust Property; or

(iii) the resignation, retirement, removal or replacement of it as trustee of the Project Trust or the appointment of an additional trustee of the Trust;

not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Documents and the Finance Documents;

other than as set out in this Deed, ensure that:

(i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Project Trust Deed);

(ii) the rights of any beneficiaries relating to, and their interests in, the property of the Project Trust are subject to the prior rights and interests of:

A. TfNSW under the TfNSW Security; and

B. Project Co in the property of the Project Trust pursuant to its Trustee's Indemnity;

not do anything, or omit to do anything, where the doing or the omission to do may have the effect of releasing, waiving or impairing any Security Interest granted by or created under a Project Document;

unless otherwise permitted under the Project Documents, not permit any of the beneficiaries of the Project Trust to use, occupy, or enjoy or possess any of the Trust Property or title documents in respect of the Trust Property or relinquish management powers which might entitle any beneficiary of the Project Trust to possession;

not blend or mix the Trust Property with any other property in respect of which it has been appointed trustee;

not acquire any Trust Property other than in the name of the Trustee as trustee of the Project Trust;

not allow any redemption, cancellation or repurchase of any units in the Project Trust other than as permitted by the Project Documents;

not take any step to release a unit holder of the Project Trust from the obligation to pay up units;

not do anything, agree or attempt to take any step to do anything which would restrict or impair its ability to comply with its obligations under this Deed; and
56. Rights and benefits held on trust for its Associates

56.1 Benefits held on trusts for its Associates

(a) **(Benefit of indemnities):** TfNSW holds on trust for:

(i) each Indemnified Person and each Indemnified IP Party each indemnity and release given by Project Co under this Deed in favour of the Indemnified Person or Indemnified IP Party (as the case may be); and

(ii) each of its Associates and the NSW Government and its Associates, each right in this Deed to the extent that such right is expressly stated to be for the benefit of those TfNSW Associates, the NSW Government or those NSW Government Associates.

(b) **(Project Co acknowledgement):** Project Co acknowledges the existence of such trusts, and consents to:

(i) TfNSW exercising rights in relation to, or otherwise enforcing such indemnities, releases and rights on behalf of, the relevant parties; and

(ii) the relevant parties exercising rights in relation to, or otherwise enforcing, the indemnities, releases and those rights as if they were a party to this Deed.

(c) **(No consent required):** The parties agree that notwithstanding the foregoing provisions of this clause 56, TfNSW does not require the consent of the NSW Government or any Indemnified Person, Indemnified IP Party, TfNSW Associate, or NSW Government Associate to amend or waive any provision of this Deed or any other TfNSW Project Document.

56.2 Rights and benefits of TfNSW

The rights and benefits of TfNSW provided for under this Deed and the other TfNSW Project Documents are intended to be for, and are held by TfNSW for, the benefit of TfNSW in its own right to support the discharge of its duties in relation to, and liabilities arising from, the performance of the Operations Functions, and also for the benefit of:

(a) RailCorp as the owner of the Assets; and

(b) the Operator and all of the NSW Rail Entities to support the discharge of their respective duties in relation to, and liabilities arising from, the performance of the Operations Functions.
57. Project Co general undertakings

(a) Project Co must:

(i) (Dispute proceedings): (and must ensure that Finance Co)
immediately:

A. upon becoming aware that any litigation, arbitration,
administration, adjudication or mediation proceedings which
may adversely affect the Project or any Project Co Entity or a
Key Subcontractor's ability to perform its obligations under the
Project Documents have been commenced or threatened, give
TfNSW written notice of such litigation, arbitration,
administrative, adjudication or mediation proceedings; and

B. upon receipt by Project Co or the relevant Key Subcontractor
of a notice in respect of any claim or dispute in connection
with a Key Subcontract (excluding claims or disputes with a
subcontractor to a Key Subcontractor that are not also
disputes with Project Co or the other Key Subcontractor) or
the Interface Deed in respect of which the amount claimed
exceeds or is likely to exceed (Indexed) (excluding
actual or potential Abatements and Hold Costs (as defined in
the Interface Deed)), provide a copy of that notice to TfNSW;
and

(ii) (Restrictions): not (and must ensure that Finance Co does not):

A. change or cease its business or start any other business other
than that to be carried on by it or Finance Co (as applicable)
under the Project Documents, each Intercompany Loan
Agreement, the Equalisation Swap, the Equity Documents, the
Lead Sponsor and Technical Services Agreement and the
Sponsor and Technical Agreement;

B. cease to be resident in Australia or transfer in whole or in part
its undertaking, business or trade outside Australia;

C. acquire or hold any property or incur any liability other than for
the purposes of the Project;

D. other than each Intercompany Loan Agreement, the
Equalisation Swap, the Equity Documents, the Lead Sponsor
and Technical Services Agreement and the Sponsor and
Technical Agreement, enter into contracts with, or assume or
permit to subsist any liability in favour of, other Consortium
Members, the Equity Investors or any of their respective
Associates; or

E. engage in any tax consolidation arrangement contemplated by
the *Income Tax Assessment Act 1997* (Cth) or GST grouping
arrangement contemplated by the GST Law,

without TfNSW's prior consent.

(b) (TfNSW consent): TfNSW must not unreasonably withhold its consent under
clause 57(a)(ii) if the relevant transaction is on arm's length commercial terms.
58. Assignment and amendments

58.1 Assignment, amendments and other dealings by Project Co Entities

(a) (Restrictions on Project Co): Except as expressly permitted by this Deed, the Financiers' Tripartite Deed or the TfNSW Security, Project Co must not (and must ensure that Finance Co does not):

(i) enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of carrying out the Project) other than the Finance Documents;

(ii) assign, novate, mortgage, charge, create or allow to exist any security interest over or make or permit any material amendment to or waive, terminate, surrender, rescind or accept repudiation of any Project Document or enter into any agreement or arrangement which affects the operation or interpretation of any Project Document; or

(iii) lease, license, transfer, sell, dispose of, part with possession of, mortgage, charge, create or allow to exist any Security Interest over or otherwise deal with the whole or any part of a Site or an Asset, without TfNSW's prior consent (each an Amendment for the purposes of this clause 58).

(b) (Exceptions): Clause 58.1(a) does not apply in respect of:

(i) a Refinancing which is implemented in accordance with clause 40;

(ii) an event or circumstance described in paragraphs (d) to (h) of the definition of 'Refinancing';

(iii) a Change in Control, which is to be dealt with in accordance with clauses 59.2 to 59.8; or

(iv) any amendment, indulgence, waiver, release, adjustment, termination, rescission, novation or assignment in respect of a Key Subcontract or Significant Subcontract, which is to be dealt with in accordance with clause 12.2(b).

(c) (Notice of intended Amendment): If any Project Co Entity requires an Amendment, it must submit to TfNSW a written request seeking its consent. Such a request must set out:

(i) the proposed Amendment and the reasons for it;

(ii) the response or anticipated response of any other party to the Project Documents regarding the proposed Amendment;

(iii) the response or anticipated response of any assignee or incoming party of the Project Documents to the proposed Amendment; and

(iv) copies of any documents relevant to Project Co's request.

(d) (TfNSW to advise): Subject to clause 58.1(f), TfNSW must advise Project Co, within:
(i) 15 Business Days of receiving its request under clause 58.1(c) if it requires further information from Project Co regarding the proposed Amendment, in which case Project Co must provide the additional information sought by TfNSW within a further period of 10 Business Days after receiving TfNSW's request for further information; and

(ii) 15 Business Days of receiving its request under clause 58.1(c) (where additional information has not been requested under clause 58.1(d)(i)), or 15 Business Days of receiving the additional information requested by TfNSW under clause 58.1(d)(i) (where additional information has been requested under clause 58.1(d)(i)), whether:

A. it consents to the proposed Amendment; or

B. the proposed Amendment is unacceptable to it and the reasons why the proposed Amendment is unacceptable.

(e) **(Failure to respond)**: If TfNSW fails to respond for any reason within the relevant period specified under clause 58.1(d) in relation to a proposed Amendment in respect of a Project Document, which is not a TfNSW Project Document, Project Co:

(i) may send a reminder notice; and

(ii) if TfNSW fails to respond to the reminder notice within 10 Business Days, TfNSW will be deemed to have not consented to the requested Amendment.

(f) **(TfNSW consent)**: TfNSW will not withhold its consent to a requested Amendment where the requested Amendment will not have a material adverse effect on any of the following:

(i) the Project;

(ii) the ability of any Project Co Entity to perform and observe its respective obligations under any Project Document to which it is a party; or

(iii) the rights, obligations or Liability of TfNSW, any TfNSW Associate, RailCorp, any RailCorp Associate, any Indemnified Person, any Indemnified IP Party, the NSW Government or any NSW Government Associates under any Project Document or Access Agreements, or the ability or capacity of TfNSW to exercise its rights or perform its obligations under a TfNSW Project Document.

58.2 Amendment of TfNSW Project Document

Except as otherwise expressly provided in the TfNSW Project Documents, no amendment to any TfNSW Project Document is valid or binding on a party unless made in writing and executed by TfNSW and all other parties to the relevant TfNSW Project Document.

58.3 Assignment by TfNSW or RailCorp

(a) **(Project Co consent required)**: Subject to clause 58.3(b), each of TfNSW and RailCorp may not sell, transfer or assign or otherwise dispose of all or any part of their respective interest in the TfNSW Project Documents without the prior consent of Project Co.
(b) (No consent required): TfNSW and RailCorp may sell, transfer or assign or otherwise dispose of all or any part of their respective interest in the TfNSW Project Documents without Project Co’s consent, if the proposed transferee is:

(i) the State of New South Wales (including the Crown in right of the State of New South Wales) or a Minister on behalf of the Crown in right of the State of New South Wales; or

(ii) an entity described in paragraph (a) of the definition of ‘Authority’:

A. which is a GSF Agency; and

B. the obligations of which are supported by a guarantee from the NSW Government on terms no less favourable than those contained in the GSF Act Deed Poll of Guarantee.

(c) (TfNSW or RailCorp sale, transfer, assignment or disposal): If TfNSW or RailCorp elects to sell, transfer or assign or otherwise dispose of all or any part of its interest in the TfNSW Project Documents in a manner permitted under clause 58.3(a) or 58.3(b):

(i) Project Co consents (and must procure Finance Co to consent) to that sale, transfer, assignment or disposal;

(ii) Project Co must (and must procure Finance Co to) promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to TfNSW, RailCorp and the Nominee) to give effect to that sale, transfer, assignment or disposal; and

(iii) from the date of such sale, transfer, assignment or disposal, all references to ‘TfNSW’ or ‘RailCorp’ (as applicable) in this Deed will be deemed to be references to the Nominee (or other permitted transferee) in place of TfNSW or RailCorp (as applicable).

58.4 Copies of Finance Documents

Subject to clause 40.4, Project Co must deliver to TfNSW a certified complete copy of each Finance Document entered into by any Project Co Entity and each amendment to, or waiver, variation or change of any provision of, the Finance Documents, in each case within 3 Business Days after its execution.

58.5 Financiers’ securities

Each Project Co Entity may mortgage or charge its interest under the Project Documents to secure its obligations to any Financier (or the trustee or agent for any Financier) under the Finance Documents, if, and for so long only as, the Financier (or the trustee or agent for the Financier) is a party to the Financiers’ Tripartite Deed.

59. Change in Control

59.1 Initial status of ownership

Project Co represents and warrants for the benefit of each of TfNSW and RailCorp that, as at the date of this Deed and at Financial Close, the Group Members will be indirectly and beneficially owned and Controlled as set out in the Ownership Schedule.
59.2 **Designated Investor**

Notwithstanding this clause 59, until the second anniversary of the Date of Final Acceptance (Project), Project Co must ensure that each Designated Investor continues to directly hold at least the percentage specified for that Designated Investor in item 14 of the Contract Particulars of the total issued securities in the Holding Entity (through its holding of issued securities in the Holding Entity).

59.3 **Restrictions on Changes in Control**

Subject to clause 59.7, Project Co must not and must ensure that there is not at any time any Change in Control of a Consortium Member without TfNSW's prior consent which must be requested by notice from Project Co to TfNSW (unless such Change in Control is a Permitted Change in Control).

59.4 **Notice to TfNSW**

Any notice under clause 59.3 seeking the consent of TfNSW to a Change in Control must include:

(a) **(Nature of proposed change):** the extent and nature of the proposed Change in Control, including the identity and address of each person proposed to acquire Control; and

(b) **(Necessary information):** all other information necessary for TfNSW to determine:
   (i) whether to consent to the Change in Control; and
   (ii) the probity or other investigations (if any) TfNSW wants to undertake in respect of the persons to whom clause 59.4(a) refers.

59.5 **TfNSW's right to withhold consent**

Subject to clauses 59.2 and 59.8, TfNSW may only refuse to consent to a proposed Change in Control that is not a Permitted Change in Control if TfNSW is of the opinion (acting reasonably) that:

(a) **(Grounds for TfNSW refusal):** the proposed Change in Control:
   (i) is against the public interest;
   (ii) would adversely affect the ability or capability of any Consortium Member to carry out its obligations in accordance with any Project Document;
   (iii) would or is likely to result in a Probity Event;
   (iv) would or is likely to result in a Consortium Member being Controlled by an Entity that:
      A. is not a reputable Entity or person to properly carry out the obligations of the relevant Consortium Member under the relevant Project Documents;
      B. is an unsuitable Entity or person, having regard to the activities or business of that Entity or person, and their compatibility with the obligations of the relevant Consortium Member under the Project Documents;
59.5 Change in Control

C. has an interest or duty which conflicts or may conflict in a material way with the interests of TfNSW, RailCorp, the Project or the NSW Government; or

D. does not have a sufficient level of financial, managerial or technical expertise or capacity to deliver the obligations of the relevant Consortium Member in respect of the Project;

(v) would have a material adverse effect on the Project;

(vi) without limiting clause 59.5(a)(iv), would result in a Key Subcontractor no longer:

A. having sufficient expertise and ability; or

B. being of sufficiently high financial and commercial standing,

to properly carry out the obligations of the relevant Key Subcontractor under the relevant Project Documents;

(vii) would increase the Liability of, or risks accepted by, TfNSW or RailCorp under the TfNSW Project Documents or in any other way in connection with the Project; or

(viii) would result in a new Controlling Entity that is not Solvent and reputable;

(b) (Trust): in respect of a change in the manager, trustee or Responsible Entity of any Consortium Member that is a trust, the proposed Change in Control is such that the proposed manager, trustee or Responsible Entity or the relevant Consortium Member no longer:

(i) has sufficient expertise or ability; or

(ii) is of sufficiently high financial and commercial standing,

to properly carry out the obligations of the relevant manager, trustee or Responsible Entity or Consortium Member under the relevant Project Documents; or

(c) (Lack of information):

(i) the proposed Controlling Entity has failed to permit TfNSW to conduct a Probity Investigation; or

(ii) Project Co has failed to provide sufficient information as required by TfNSW to enable TfNSW to make an informed decision as to the matters set out in this clause 59.5.

59.6 Consent to a Change in Control

TfNSW must advise Project Co, within 20 Business Days (or such longer period as TfNSW reasonably requests given the nature of the proposed Change in Control) of receiving Project Co's request for consent in accordance with clause 59.3 or clause 59.8, whether:

(a) (Consent): it consents to the Change in Control;

(b) (Unacceptable): it does not consent to the Change in Control in which case it must provide reasons for doing so in accordance with clause 59.5; or
(Further information): it requires further information from Project Co regarding the Change in Control, in which case Project Co must provide the additional information sought by TfNSW within a further period of 15 Business Days, after which TfNSW must respond in terms of clause 59.5 or clause 59.6 within 15 Business Days after TfNSW receives that additional information.

59.7 Permitted Changes in Control

Project Co may effect, permit, suffer or allow a Permitted Change in Control in relation to Project Co or a Consortium Member at any time without TfNSW's prior consent, provided that Project Co provides notice to TfNSW of the proposed Permitted Change in Control:

(a) (Notice): subject to clause 59.7(b), as soon as reasonably practicable and, in any event, not less than 5 Business Days prior to the Permitted Change in Control; or

(b) (Shares): in relation to a Permitted Change in Control as a result of a change in the beneficial or legal ownership of any equity interest (including shares or units) which is listed, or as a result of a listing, on a recognised stock exchange, as soon as reasonably practicable.

59.8 On-market acquisitions

If:

(a) (Change in Control): a Change in Control occurs due to the transfers of shares or other interests which are listed on a recognised stock exchange; and

(b) (Prior consent not possible): the consent of TfNSW is required under this Deed but could not have been obtained prior to the Change in Control,

that consent must be sought immediately after the Change in Control, and Project Co must procure that the Controlling Entity ceases to have the Control which resulted in the Change in Control within 60 Business Days after receiving any notice under clause 59.6 that TfNSW withholds its consent to the Change in Control.

59.9 Costs relating to a Change in Control

Project Co must pay TfNSW its costs (including legal and financial advisers' fees) reasonably incurred in relation to considering or consenting to a proposed Change in Control.

60. Financial Model

60.1 Updating the Base Case Financial Model at Financial Close

(a) (Base Case Financial Model): The parties acknowledge that the Base Case Financial Model is attached as Attachment 1.

(b) (Financial Close Adjustment Protocol): The parties agree that the Base Case Financial Model has been prepared on an indicative basis prior to the date of this Deed, and must be updated at Financial Close in accordance with the Financial Close Adjustment Protocol.

(c) (Financial Close Financial Model): The Base Case Financial Model will be:

(i) updated by TfNSW in accordance with the Financial Close Adjustment Protocol; and

(ii) initialled by TfNSW and Project Co,
60.2 Status of the Financial Model

The parties acknowledge and agree that:

(a)  (Not actual performance): the Financial Model:
   (i) may not reflect the actual financial performance or the projected
       performance or budgets of the Project or any Project Co Entity; and
   (ii) is purely a model to be used in order to determine Project Debt and
        process Model Variation Events, Termination Payments and the Expiry
        Refund Payment; and

(b)  (Errors or omissions): TfNSW must not be adversely affected by any ambiguities,
    discrepancies, inconsistencies, conflicts, errors or omissions in the Financial Model
    and any such ambiguities, discrepancies, inconsistencies, conflicts, errors or
    omissions will, wherever possible, be interpreted and construed in favour of TfNSW.

60.3 Varying the Financial Model

(a) Subject to clause 60.3(b), TfNSW and Project Co must vary the Financial Model in
    accordance with this clause 60 upon the occurrence of any of the following events
    (each a Model Variation Event):

   (ia)  (Option Notice): on issue of an Option Notice in accordance with clause
         39.14(a);

   (i)  (CDPD Amount): prior to the payment of the CDPD Amount in
        accordance with clause 34 and the CDPD Adjustment Protocol;

   (ii)  (Refinancing): a Refinancing;

   (iii)  (Change Compensation Event): a Change Compensation Event which
          results in a permanent adjustment to the Monthly Service Payment in
          accordance with this Deed (a CCE Model Variation Event);

   (iv)  (Prior to Provisional Acceptance of the first Unit): the date that is
         one Month prior to the date that Project Co reasonably expects to
         achieve Provisional Acceptance (Unit) of the first Unit to achieve
         Provisional Acceptance (Unit); and

   (v)  (Agreed Events): any other event which Project Co and TfNSW agree
        to be a Model Variation Event.

(b) The Financial Model does not need to be varied for a CCE Model Variation Event
    that occurs prior to the Date of Provisional Acceptance (Unit) of the first Unit to
    achieve Provisional Acceptance (Unit) (a Delivery Phase CCE Model Variation
    Event) in accordance with clause 60.3(a)(ii) unless and until:

   (i) the aggregate value of all Delivery Phase CCE Model Variation Events
       (as set out in the Change Response provided in connection with each
       relevant Delivery Phase CCE Model Variation Event) that have occurred
       since the Financial Model was last varied in accordance with clause
       60.3(a)(ii), exceeds [REDACTED] (Indexed);

   (ii) the value of any one Delivery Phase CCE Model Variation Event (as set
        out in the Change Response provided in connection with the relevant
Delivery Phase CCE Model Variation Event) exceeds [REDACTED]; or

(iii) the Financial Model is otherwise varied under clause 60.3(a), in which case the effect of all earlier CCE Model Variation Events must be taken into account in such variation.

60.4 Principles for variations to the Financial Model

When a Model Variation Event occurs, TfNSW and Project Co must vary the Financial Model, as necessary, by taking into account only the amounts:

(a) (Deed): determined in accordance with this Deed;
(b) (Agreement): agreed between TfNSW and Project Co; or
(c) (Dispute resolution): determined in accordance with clauses 50 to 53.

50.5 Procedures for variations to the Financial Model

Any variations to the Financial Model to take account of a Model Variation Event must be made as follows:

(a) (Project Co proposal): Project Co must propose the variation by notice to TfNSW within 10 Business Days of the Model Variation Event occurring, giving:

(i) a varied Financial Model incorporating all adjustments relevant to the Model Variation Event and full details of the assumptions and calculations used;

(ii) an instruction manual outlining how to use the varied Financial Model, which is acceptable to TfNSW, acting reasonably;

(iii) a proposed financial close protocol (if applicable) outlining the interest rate setting procedures and model solving procedures for adjusting the varied Financial Model to incorporate updated interest rates;

(iv) a revised Model Output Schedule; and

(v) a certificate from an auditor acceptable to TfNSW confirming that an independent audit of the varied Financial Model has been completed and that:

A. the calculations in the varied Financial Model have been checked and are in all material respects internally consistent and mathematically correct;

B. formulae applied across time periods in the varied Financial Model are consistent;

C. the varied Financial Model allows changes to assumptions and input data to correctly flow through to the results and outputs;

D. any macros in the varied Financial Model that govern the calculation of the varied Financial Model operate appropriately;
the assumptions and input data used in the varied Financial Model are consistent with all current supporting Project Documents;

the calculations of any relevant ratios and financial covenants in the varied Financial Model have been checked and correctly reflect the definitions contained in the Finance Documents;

the varied Financial Model correctly incorporates the relevant structural features in the Finance Documents such as reserve accounts, lock up provisions, default provisions, cash flow waterfall and amortisation;

the accounting assumptions, calculations and outputs (including financial statements) from the varied Financial Model are in accordance with Australian Accounting Standards Board (AASB) standards; and

the income taxation assumptions, calculations and outputs from the varied Financial Model are in accordance with Australian taxation laws;

(b) (Review): the review of the varied Financial Model and the proposed financial close protocol (if applicable) must be undertaken in accordance with the Review Procedures;

(c) (Amendment): once the variations to the Financial Model and the proposed financial close protocol, as applicable, are agreed or are determined in accordance with clauses 50 to 53, Project Co must promptly amend the varied Financial Model and the proposed financial close protocol (if applicable) accordingly and resubmit this to TfNSW. Project Co must also submit a certificate from an auditor acceptable to TfNSW in accordance with clause 60.5(a)(v) in respect of the updated varied Financial Model if requested to do so by TfNSW;

(d) (Varied Financial Model): once agreed, the varied Financial Model (as adjusted in accordance with the proposed financial close protocol, if applicable) will be the Financial Model for the purposes of this Deed;

(e) (Audit Certificate): if the varied Financial Model is adjusted under 60.5(d) in accordance with the proposed financial close protocol, Project Co must submit to TfNSW a certificate from an auditor acceptable to TfNSW confirming that an independent audit of the Financial Model has been completed in accordance with clause 60.5(a)(v); and

(f) (Updated Model Output Schedule): whenever the Financial Model is updated, the Model Output Schedule must be updated to reflect the updated Financial Model.

60.6 Access to information

Without limiting clause 60.5(a), Project Co must provide TfNSW and any other authorised representatives of TfNSW with:

(a) (Electronic copies): full access to electronic copies of the varied Financial Model, updated Model Output Schedule and proposed financial close protocol (if applicable);

(b) (Log of changes): a log of all changes that have been made to the Financial Model and Model Output Schedule;
(c) (Calculations): all supporting calculations; and

(d) (Other information): any other information reasonably requested by TfNSW,

for a Model Variation Event, including reasonable access to any financial modeller (including Project Co's and Finance Co's financial modeller) with ability to access that information, and relevant passwords or other access information.

60.7 Not used

60.8 Custody of Financial Model

The Financial Model must be held from Financial Close for the Term by TfNSW on the basis that it must be released to Project Co for the purposes of:

(a) varying the Financial Model and Model Output Schedule on the occurrence of Model Variation Events;
(b) the calculation of the Expiry Refund Payment;
(c) the calculation of Termination Payments Payment (as applicable); and
(d) the determination of any Dispute in accordance with clauses 50 to 53.

61. Records and Accounts

61.1 Accounting records

(a) (Proper books of account): Project Co must keep proper books of account, records and documents, financial and all other accounts and records it has relating to the Project (Accounts and Records) at its offices, and must ensure that each other Group Member, the Delivery Subcontractor (during the Delivery Phase) and the Maintenance Subcontractor (during the Maintenance Phase) does likewise.

(b) (Annual audit): Project Co must have its accounts audited annually on both an unconsolidated basis and on a consolidated basis (to the extent that Project Co is part of a consolidated entity, within the meaning of the Corporations Act) and must ensure that each other Group Member and the Delivery Subcontractor (up to the CDPD Payment Date) and the Maintenance Subcontractor and the Parent Guarantor in respect of the Maintenance Subcontractor does likewise.

(c) (Accounting principles): Project Co must ensure that its Accounts and Records are prepared in accordance with the Corporations Act and generally accepted Australian accounting principles and practices consistently applied, and fairly represent its operations and financial condition or consolidated financial position (as the case may be).

(d) (Availability of accounting records): Project Co must ensure that its Accounts and Records are available to TfNSW and any person authorised by TfNSW at any time during Business Hours (subject to receiving 2 Business Days' notice from TfNSW) during the Term for examination, audit, inspection, transcription and copying, and must ensure that each other Group Member, the Delivery Subcontractor (during the Delivery Phase) and the Maintenance Subcontractor (during the Maintenance Phase) does likewise.

(e) (Availability of accounting records if Deed is terminated): Without limiting its obligations in accordance with clause 36, if this Deed is terminated, Project Co must give to TfNSW and its Associates access to all of its Accounts and Records which are necessary for the carrying out of the Project Activities, and must ensure that
each other Group Member, the Delivery Subcontractor (during the Delivery Phase) and the Maintenance Subcontractor (during the Maintenance Phase) does likewise for the purpose of inspection, copying or auditing.

(f) **Access to group members' accounting records**: TfNSW must give Project Co access to any Accounts and Records given to it by a Group Member for a period of 7 years after the date they are given.

### 61.2 Cost to complete information

Project Co must give to TfNSW the same information required to be given to any Financier in accordance with the Finance Documents in relation to the costs to complete construction, manufacture, supply and delivery of the Deliverables, at such times as are required in accordance with the Finance Documents, and must ensure that each other Group Member does likewise.

### 61.3 Financial statements

(a) **(Audited financial statements)**: As soon as practicable (and in any event not later than 120 days) after the close of each Financial Year, Project Co must give to TfNSW certified copies of the consolidated (if applicable) and unconsolidated audited financial statements for the previous Financial Year for Project Co and each Group Member and, if requested by TfNSW, for the Delivery Subcontractor (during the Delivery Phase) and the Maintenance Subcontractor (during the Maintenance Phase).

(b) **(Cashflow and profit and loss statements)**: Not later than 30 days after the end of each Quarter, Project Co must give to TfNSW certified copies of cashflow and profit and loss statements for that Quarter, and, if requested by TfNSW, must ensure that each Group Member does likewise.

### 61.4 Records

(a) **(General)**: Project Co must keep and maintain Records including but not limited to information in respect of the Project Scope and Requirements as required by TfNSW.

(b) **(Compliance)**: To demonstrate compliance with the Project Scope and Requirements, Records must:

(i) incorporate the detail; and

(ii) meet the standards, required by TfNSW.

(c) **(Availability of Records)**: Project Co must promptly make all Records available to TfNSW for inspection, audit, copying or any other purpose following a request by TfNSW.
61.5 Other information

Project Co must give to TfNSW the following information:

(a) **Copies**: copies of all documents or information given or received by any Group Member to or from the Australian Securities & Investments Commission or Australian Stock Exchange Limited, promptly after the information is first given or received;

(b) **Counterparty changes**: details of any changes to the Counterparty Details within 5 Business Days after the change;

(c) **Material changes**: details of any material change in the financial condition of any Project Co Entity (since its incorporation) or any other Group Member, the Equity Investors, or a Key Subcontractor (since the date of their last audited accounts) which would or is reasonably likely to prejudice the ability of Project Co to perform its obligations under the Project Documents, in each case within 5 Business Days of any Project Co Entity becoming aware of the change; and

(d) **Other information**: such other information relating to the Project as TfNSW may reasonably require from time to time, including any information reasonably requested by TfNSW to enable TfNSW to comply with applicable Legislation (including the State Records Act 1998 (NSW) in relation to Records).

61.6 Project Co Material

Project Co must maintain a document management system for all Project Co Material and Project Information that:

(a) **Requirements**: is in accordance with any requirements set out in the Design Requirements or Services Requirements;

(b) **Safe and secure**: is safe and secure and compatible with TfNSW’s document management systems as advised by TfNSW;

(c) **Access**: enables TfNSW and its Associates (including any nominee) to quickly and easily retrieve, review and utilise Project Co Material; and

(d) **Distribution**: tracks the distribution of all Project Co Material.

62. Intellectual Property Rights

62.1 Warranties

Project Co warrants and represents for the benefit of each of TfNSW and RailCorp that:

(a) **No infringement of rights**: no Intellectual Property Rights or Moral Rights or other rights of any person will be infringed or breached:

(i) in undertaking the Project Activities; or

(ii) by:

A. the Use of any Developed IP;

B. the Use of any other Project Co Material or Project Co Background IP as permitted or contemplated by this Deed; or
C. the use of any of the Deliverables as permitted or contemplated by this Deed or otherwise as may reasonably be anticipated,

by TfNSW, TfNSW's Associates, RailCorp, RailCorp’s Associates, the Operator, the Operator's Associates, the Returned Asset Owner, the Returned Asset Owner's Associates or any person nominated or authorised by TfNSW, RailCorp, the Operator, the Returned Asset Owner or any of their respective Associates;

(b) (Ownership of rights): it owns all Intellectual Property Rights in the Project Co Material or, to the extent that it does not, it has the authority to grant the assignments and licences in this clause 62 and none of:

(i) the Use of any Developed IP;

(ii) the Use of any other Project Co Material or Project Co Background IP as permitted or contemplated by this Deed;

(iii) the possession of any of that Project Co Material; or

(iv) the use of any of the Deliverables as permitted or contemplated by this Deed or otherwise as may reasonably be anticipated,

by TfNSW, TfNSW's Associates, RailCorp, RailCorp’s Associates, the Operator, the Operator's Associates, the Returned Asset Owner, the Returned Asset Owner's Associates or any person nominated or authorised by TfNSW, RailCorp, the Operator, the Returned Asset Owner or any of their respective Associates will give rise to any Liability on the part of TfNSW, TfNSW’s Associates, RailCorp, RailCorp’s Associates, the Operator, the Operator’s Associates, the Returned Asset Owner, the Returned Asset Owner’s Associates or any person nominated or authorised by TfNSW, RailCorp, the Operator, the Returned Asset Owner or any of their respective Associates, including to pay any compensation (including any royalty) to any person, or give rise to a right entitling any person to make a Claim against TfNSW, TfNSW’s Associates, RailCorp, RailCorp’s Associates, the Operator, the Operator’s Associates, the Returned Asset Owner, the Returned Asset Owner’s Associates or any person nominated or authorised by TfNSW, RailCorp, the Operator, the Returned Asset Owner or any of their respective Associates for any attribution or acknowledgment or rectification in relation to the Developed IP, Project Co Background IP or other Project Co Material;

(c) (Required Intellectual Property Rights): the Developed IP, the Third Party Software, the Project Co Background IP and the TfNSW Background IP are all the Intellectual Property Rights that are required for Project Co to carry out its obligations under this Deed;

(d) (Third party rights or interests): no third party rights or interests will affect the enjoyment of the benefit of the licences granted by it or prevent the exercise of the rights of TfNSW, TfNSW’s Associates, RailCorp, RailCorp’s Associates, the Operator, the Operator’s Associates, the Returned Asset Owner, the Returned Asset Owner’s Associates or any person nominated or authorised by them under this clause 62;

(e) (No Security Interest): other than a Permitted Security Interest, there are no Security Interests, and it will not allow any Security Interests to be created, over its rights to any Intellectual Property Rights that are used by it for the purposes of its obligations under this Deed;

(f) (Allegations or notices): it is not aware of any allegations of infringement or notices of misappropriation issued by any person or any Claims that the Assets or
their use or enjoyment in accordance with or as contemplated by this Deed will infringe any rights, including Intellectual Property Rights or Moral Rights, of any third party;

(g) *(Harmful Code):* any Software forming part of any Asset or Deliverable will be free from any back door, time bomb, drop dead device or any other code designed to disable the Software and when delivered to TfNSW will be free from any Harmful Code; and

(h) *(Executable Code):* in respect of each computer program forming part of a Deliverable or Asset, the Source Code will compile into the executable code.

### 62.2 Background IP

(a) Project Co acknowledges and agrees that:

(i) *(Ownership):* TfNSW, its Associates or their respective head licensors (as the case may be) are and remain the owner of all TfNSW Background IP; and

(ii) *(Rights):* neither Project Co nor any of its Associates has (under this Deed or otherwise) any title, entitlement to, or rights in relation to, any TfNSW Background IP or the Intellectual Property Rights in any TfNSW Background IP,

except to the extent provided in this clause 62.

(b) TfNSW and RailCorp each acknowledge and agree that:

(i) *(Ownership):* Project Co, its Associates or their respective head licensors (as the case may be) are and remain the owner of all Project Co Background IP; and

(ii) *(Rights):* TfNSW, RailCorp and their respective Associates do not have (under this Deed or otherwise) any title, entitlement to, or rights in relation to, any Project Co Background IP or the Intellectual Property Rights in any Project Co Background IP,

except to the extent provided in this clause 62.

### 62.3 Developed IP

(a) *(Developed IP):* All rights (including Intellectual Property Rights) in the Developed IP vest in TfNSW at the time of creation, and at each and every stage of its development as Developed IP, and Project Co irrevocably assigns to TfNSW all right, title and interest (including Intellectual Property Rights) in all Developed IP with effect from the time of creation, development or production of that Developed IP.

(b) *(Assigned to TfNSW):* Project Co must:

(i) ensure, where necessary, that it secures the right to vest the Developed IP in accordance with clause 62.3(a); and

(ii) do all such things and sign such documents (and cause its Associates to also do so if and when required),
to ensure that all Developed IP is assigned to TfNSW, including as TfNSW may require from time to time in order to perfect or record the assignments under clause 62.3(a).

(c) (Worldwide licence): TfNSW grants to Project Co a non-exclusive, royalty-free, non-transferable, worldwide licence to Use the Developed IP:

(i) for the purposes of carrying out the Project Activities; and

(ii) for any other purpose provided that:

A. no Confidential Design Information is disclosed;

B. no Personal Information is disclosed; and

C. TfNSW has given its prior written consent, which consent must not be unreasonably withheld where the Developed IP does not disclose the identity of the Project, subject always to Project Co's obligations of confidence in clause 63, unless otherwise agreed by TfNSW in writing.

(d) (Sub-licence): The licence granted to Project Co under clause 62.3(c) includes the right on the part of Project Co to grant a sub-licence to each of its Associates engaged in the performance of the Project Activities.

(e) (Patent): Project Co may procure the registration or patent of any registrable or patentable Developed IP, but in doing so, must not conflict with or derogate from the vesting of the Developed IP in accordance with clause 62.3(a).

62.4 Project Co licence for Project Co Background IP

(a) (Use of Project Co Background IP): Project Co:

(i) hereby grants to TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates;

(ii) without limiting Project Co's obligations under clause 62.8, must procure that each of its Associates legally entitled to do so grants to TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates (with effect from the date the relevant Material comes into existence); and

(iii) must do all things necessary to give effect to the grant to TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates of,

a world-wide, perpetual, irrevocable, non-exclusive, transferable, royalty-free licence (including the right to sub-license) to Use the Project Co Background IP for the purposes of any of the following:

(iv) the Project (including, where this Deed is terminated, to complete any Project Activities which have not been carried out, or carried out in accordance with the applicable TfNSW Project Documents, as at the date of termination);
(v) the exercise of the rights of TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates in accordance with the TfNSW Project Documents (including its step-in rights in accordance with clause 41);

(vi) the operation, Maintenance, repair and alteration of the Assets (other than the Returned Asset) or and from the Expiry Date and the Returned Asset on and from Returnec Asset Handback, whether by TfNSW, TfNSW's Associates, RailCorp or RailCorp's Associates, Operator or Operator's Associates, the Returned Asset Owner or the Returned Asset Owner's Associates or any entity nominated by any of them including any of the following:

A. completing the design, development, construction, manufacture, testing, commissioning, supply and delivery of;

B. upgrading;

C. modifying;

D. converting;

E. rebuilding;

F. performing life extension works to;

G. testing and monitoring the performance of;

H. performing alterations to;

I. maintaining;

J. using and operating;

K. repairing;

L. refurbishing;

M. replacing; and

N. overhauling;

(vii) the Assets and the Returned Assets including for the purpose of conducting a tender to engage, and engaging, a third party to do any of the things listed in this paragraph, but not including the manufacture of entire Cars, Units or Simulators;

(viii) to disclose the Project Co Background IP on a confidential basis to third parties solely for the purposes of a tender process for the procurement of the integration of the Units or any other aspect of the Project with any other project which TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner or the Returned Asset Owner's Associates may implement that interfaces with the Project, provided that TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner or the Returned Asset Owner's Associates (as applicable) may only
disclose Project Co Background IP to the extent consisting of the interface information required for the integration of the Units or any other aspect of the Project for this purpose;

(ix) to deliver, use and integrate any other project which TfNSW, TfNSW’s Associates, RailCorp, RailCorp’s Associates, Operator, Operator’s Associates, the Returned Asset Owner or the Returned Asset Owner’s Associates may implement as a result of, or based upon, or which interfaces with, the Project but not including the manufacture of entire Cars, Units, Simulators or the Asset Information System; and

(x) for any purpose arising out of or in connection with the Sites or the Returned Asset Site (as applicable).

(b) (Use of Look and Feel): Without limiting clause 62.4(a), Project Co:

(i) hereby grants to TfNSW, TfNSW’s Associates, RailCorp, RailCorp’s Associates, Operator or Operator’s Associates;

(ii) without limiting Project Co’s obligations under clause 62.8, must procure that each of its Associates legally entitled to do so grants to TfNSW, TfNSW’s Associates, RailCorp, RailCorp’s Associates, Operator, Operator’s Associates and any entity nominated by any of them (with effect from the date the relevant Material comes into existence); and

(iii) must do all things necessary to give effect to the grant to TfNSW, TfNSW’s Associates, RailCorp, RailCorp’s Associates, Operator and Operator’s Associates of,

a non-exclusive, perpetual, irrevocable, transferable, royalty free licence, without additional cost to exercise all Intellectual Property Rights in the Project Co Background IP (whether owned by Project Co or not) in or used in:

(iv) the physical surface layout, dimensions and surface appearance of the Driver’s cab, the guard’s cab and the detrainment device, and to the extent necessary for the purposes set out in clause 62.4(b)(vii), the surface appearance of the Units (not including "behind the scenes" functionality or other elements not evident to an operator or passenger);

(v) without limiting clause 62.4(b)(iv), the appearance, method of use and functionality of the Train Management System screens (including the logic trees that determine the progression between different screens), passenger information displays and interfaces, (not including "behind the scenes" functionality or other elements not evident to an operator or passenger);

(vi) any Software developed by Project Co or its Associates for use on a computer outside the Units to emulate the operation of the Train Management System; and

(vii) any item which TfNSW or RailCorp or any entity nominated by TfNSW or RailCorp (including the Operator) reasonably wishes to use to the extent necessary to ensure that:

A. so far as reasonably possible the information provided to, and the experience of, a passenger or a Crew member is substantially the same whether the passenger or Crew member is in a Unit or in any other existing or future train within the Operator’s fleet;
B. a person who is able to operate a Train is able to also operate any other existing or future train within the Operator's fleet in generally the same way as he or she operates a Train; or

C. so far as reasonably possible the operation and functionality of the systems on any other existing or future train within the Operator's fleet used in connection with:

1) surveillance of passengers and Crew members;
2) train safety; or
3) emergency situations,

have the same "look and feel" as in the Trains, being similar in appearance and operator use to those features on the Trains,

provided that:

(viii) insofar as clause 62.4(b) applies to Software, nothing in this clause will entitle TfNSW to reproduce any Source Code or object code which is used to create an electronic interface; and

(ix) nothing in this clause will entitle TfNSW to substantially replicate the appearance of the exterior of a Train when taken as a whole.

(c) The licenses granted in clauses 62.4(a) and 62.4(b):

(i) may be sub-licensed; and

(ii) will survive expiry of this Deed or termination of this Deed on any basis.

62.5 Third Party Software

(a) (Obligation): Notwithstanding this clause 62, to the extent that any item of Project Co Material is Third Party Software, the obligation of Project Co is to (at TfNSW's option):

(i) use reasonable endeavours to sublicense the Third Party Licence to TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates, if Project Co is legally able to do so, and on the terms of the licence granted to Project Co or its Associates by the third party licensor (and Project Co must use all reasonable endeavours to procure the consent of that licensor to grant that sublicense to TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates); or

(ii) use reasonable endeavours to procure (at TfNSW's cost) a direct licence of the rights under a Third Party Licence from the third party licensor to TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner and the Returned Asset Owner's Associates on terms acceptable to TfNSW (acting reasonably).

(b) (Inability to licence): If, despite using all reasonable endeavours to do so, Project Co is unable to sublicense (or, if applicable, procure a direct licence of) any Third Party Licence, as required under clause 62.5(a), Project Co must:
(i) consult with TfNSW; and
(ii) do all things reasonably necessary to obtain for TfNSW’s benefit such rights or arrangements as TfNSW requires for any purpose under, or contemplated by any TfNSW Project Document or for the Assets and Returned Assets and their use or the Project more generally.

62.6 Project Co Material and Assets

(a) (Further documentation and assistance): Without limiting Project Co’s other obligations under this Deed with respect to the delivery of any Project Co Material, Project Co Background IP or the Assets, Project Co will provide all documentation, information and assistance and materials as TfNSW may from time to time reasonably require in connection with the Use of any of Project Co Material, Project Co Background IP and the Assets.

(b) (Intellectual Property Register): Project Co must develop and maintain a register (Intellectual Property Register) which identifies:
   (i) Project Co Background IP;
   (ii) ownership of the Intellectual Property Rights in the Project Co Background IP;
   (iii) any arrangements relating to the Project Co Background IP;
   (iv) the entity which is to develop each item of Relevant Source Code and Escrow Information;
   (v) any Relevant Source Code and Escrow Information held with an Escrow Agent, and details of the relevant deposit packages including date of last deposit; and
   (vi) any other information reasonably required by TfNSW for the effective documentation and management of the Project Co Background IP.

(c) (Establishment of Intellectual Property Register): Within 10 Business Days of the commencement of this Deed, Project Co must develop a proposal for the form of the Intellectual Property Register and provide that proposal to the TfNSW Representative for review in accordance with the Review Procedures. Project Co must establish the Intellectual Property Register within 10 Business Days of receiving approval from the TfNSW Representative in accordance with the Review Procedures and must update the Intellectual Property Register at least annually on the anniversary of the commencement of this Deed during the Term.

62.7 Use of TfNSW Background IP

(a) (Licence): TfNSW grants to Project Co and its Associates a non-transferable, non-exclusive, royalty-free licence to Use the TfNSW Background IP, but only to the extent necessary to carry out the Project Activities, which licence will terminate automatically on termination or expiry of this Deed.

(b) (No sub-licence): The licence granted by TfNSW under clause 62.7(a) is not sub-licensable to any third party, except where that third party is an Associate of Project Co and is undertaking Project Activities, in which case the sub-license is only for those Project Activities.

(c) (TfNSW request): At the request of TfNSW, Project Co must immediately deliver the original and all copies of TfNSW Background IP to TfNSW.
62.8 Moral rights

Project Co must, unless otherwise agreed in writing with TfNSW in relation to a particular case, procure from every person who is an author for the purposes of Part IX of the Copyright Act 1968 (Cth) of Material forming part of the Project Co Material, a written consent in the form of the Moral Rights Consent which is valid and effective under the Copyright Act 1968 (Cth) and signed by that person by which that person irrevocably and unconditionally consents to TfNSW, TfNSW's Associates, RailCorp, RailCorp's Associates, Operator, Operator's Associates, the Returned Asset Owner, the Returned Asset Owner's Associates and any person nominated or authorised by TfNSW or RailCorp or Operator (including sub-licensees), Project Co and its Associates (Beneficiaries):

(a) **(Exercise of rights):** using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to the Material anywhere in the world in whatever form any of the Beneficiaries thinks fit, including the making of any distortions, additions or alterations to the Material or any adaptation thereof, or to any part of the Material in a manner which, but for the consent, infringes or may infringe that person's Moral Rights in the Material; and

(b) **(No identification):** taking any action referred to in clause 62.8(a) without making any identification of the author of the Material.

62.9 Source Code

(a) **(Escrow Agreement):** As a Condition Precedent to this Deed, Project Co must enter into an Escrow Agreement with TfNSW and the Escrow Agent to set out the terms on which all Significant Subcontract Information, Relevant Source Code and Escrow Information will be held in escrow by the Escrow Agent.

(b) **(Deposit of Significant Subcontract Information, Relevant Source Code and Escrow Information):** Within 60 Business Days after Financial Close, Project Co must deposit a copy of all Significant Subcontract Information, Relevant Source Code and Escrow Information existing at that date with the Escrow Agent on the terms of the Escrow Agreement.

(c) **(Updating of Significant Subcontract Information, Relevant Source Code and Escrow Information):** Project Co must thereafter, during the Term, update the Significant Subcontract Information, Relevant Source Code and Escrow Information deposited with the Escrow Agent by depositing with the Escrow Agent:

(i) a copy of all Significant Subcontract Information, Relevant Source Code and Escrow Information which has been created or newly incorporated into any Deliverable; and

(ii) an updated copy of any Significant Subcontract Information, Relevant Source Code and Escrow Information to which modifications have been made,

and must do so:

(iii) within 20 Business Days of the development, incorporation or modification of that Significant Subcontract Information, Relevant Source Code and Escrow Information (as applicable);

(iv) without limiting clause 62.9(c)(iii), within 20 Business Days of any production release of any new release, upgrade, refresh or enhancement to any Significant Subcontract Information, Relevant Source Code and Escrow Information;
(v) without limiting clause 62.9(c)(iii), so as to meet the Acceptance Criteria in Schedule 12; and

(vi) without limiting clause 62.9(c)(iii), so as to ensure that the Significant Subcontract Information, Relevant Source Code and Escrow Information is up to date on the Expiry Date.

(d) **(Deposit of Associate Significant Subcontract Information, Relevant Source Code and Escrow Information):** Project Co must secure rights from each of its Associates to enable Project Co to comply with its obligations under clauses 62.9(a), 62.9(b) and 62.9(c) in respect of all Significant Subcontract Information, Relevant Source Code and Escrow Information for each Deliverable developed or delivered by that Project Co's Associate (Associate Significant Subcontract Information, Relevant Source Code and Escrow Information).

(e) **(Direct Escrow Agreement):** Project Co must procure that each Key Subcontractor and, if required by TfNSW, each Significant Subcontractor and any other Project Co Associate:

(i) enters into an Escrow Agreement with TfNSW, RailCorp and the Escrow Agent substantially in the form, and on substantially the same terms, as is set out in Schedule 39, with all required amendments made to bind Project Co's Associate directly; and

(ii) complies with the obligations in clauses 62.9(b) and 62.9(c) in respect of the Associate Significant Subcontract Information, Relevant Source Code and Escrow Information as if it were Project Co.

### 62.10 Trade Mark Licence

(a) **(Licence):** TfNSW grants to Project Co a non-exclusive licence to use the Trade Marks during the Term for the purposes of performing the Project Activities.

(b) **(Restrictions):** Project Co must not:

(i) use the Trade Marks for any purposes other than for the purposes of the Project Activities, without TfNSW's prior written consent; or

(ii) use the Trade Marks for any unlawful purpose.

(c) **(Directions):** Project Co agrees to observe all directions notified to it by TfNSW regarding such matters as:

(i) the nature, standards, characteristics and quality of the Trade Mark Materials, or any goods upon which, or services in respect of which, the Trade Marks are to be used; and

(ii) the manner in which Project Co uses any of the Trade Marks, including in the Trade Mark Materials.

(d) **(TfNSW's rights in respect of Trade Marks):** Project Co agrees that it must not:

(i) use the Trade Marks in any way which is likely to harm or prejudice TfNSW's or any NSW Rail Entities' rights in the Trade Marks;

(ii) apply to register in any territory any trade mark, or apply to register any business name, company name or internet domain name that comprises or contains the Trade Marks (or any of them) or any words or images
that are substantially identical with, or deceptively similar to, the Trade
Marks (or any of them), without the prior written consent of TfNSW; or

(iii) challenge or in any way impugn:

A. TfNSW's or the relevant NSW Rail Entity's complete
ownership of, or rights to use, the Trade Marks; or

B. the validity of, or TfNSW's or any NSW Rail Entity's title to, any
applications for registration made by TfNSW or any NSW Rail
Entity, or any registrations obtained by TfNSW or any NSW
Rail Entity in respect of the Trade Marks.

(e) (Goodwill in Trade Marks): All use of the Trade Marks as between TfNSW and
Project Co shall enure for the benefit of TfNSW or the relevant NSW Rail Entity, and
any goodwill arising in respect of any of the Trade Marks is exclusively the property
of TfNSW or the relevant NSW Rail Entity.

(f) (Limitations on rights granted): TfNSW and Project Co agree that the licence
granted to Project Co under clause 62.10(a) above excludes:

(i) the right to commence an action for trade mark infringement under
section 26(1)(b) of the Trade Marks Act 1995 (Cth), which TfNSW
expressly reserves to itself (for itself and on behalf of the NSW Rail
Entities) in all instances; and

(ii) the rights of an 'authorised user' of a trade mark referred to in sections
26(1) (c), (d), (e) and (f) of the Trade Marks Act 1995 (Cth).

62.11 Ownership of Data

Project Co acknowledges and agrees that TfNSW owns the Data including all Intellectual
Property Rights in the Data. These ownership rights vest in TfNSW upon creation of the Data.
To the extent necessary to give effect to this, Project Co assigns to TfNSW all of its rights, title
and interest in the Data.

63. Confidential Information and disclosure

63.1 Confidential Information and disclosure by TfNSW and RailCorp

(a) (Disclosure): Subject to clause 63.1(b), TfNSW, RailCorp and any Authority may
disclose any information in connection with the Project, including Project
Information.

(b) (Requirements): TfNSW and RailCorp may only disclose the Commercially
Sensitive Information:

(i) in accordance with Laws or for the enforcement of any criminal law;

(ii) in accordance with clause 63.5;

(iii) where disclosure is in the course of the official duties of a minister, the
Treasurer, the Premier or the Attorney General;

(iv) to satisfy the disclosure requirements of the NSW Auditor-General in
accordance with the Public Finance and Audit Act 1983 (NSW);

(v) to satisfy the requirements of Parliamentary accountability;
63.2 Confidential Information and disclosure by Project Co

(a) (Confidentiality obligation): Subject to clauses 63.2(b), 63.2(d) and 63.4, Project Co must (and must procure Finance Co to) treat as secret and confidential all Confidential Information and must not, and must procure that its Associates do not, without the prior written consent of TfNSW make public or disclose to any person any Confidential Information.

(b) (Disclosure of Confidential Information): Without limiting Project Co's obligation under clause 63.2(a) and subject to clause 63.2(c), Project Co may disclose Confidential Information:

(i) to its Associates to the extent necessary for the purpose of undertaking the Project;

(ii) to any prospective financier or equity investor of the Project, subject to TfNSW having been provided necessary information in respect of the proposed parties and having carried out any Probity Investigation that TfNSW considers necessary; or

(iii) in accordance with clause 63.4.

(c) (Confidentiality deed): Before disclosing any Confidential Information, Project Co must ensure that the person to whom the information is disclosed enters into a confidentiality deed in favour of TfNSW or RailCorp which requires that person to keep the Confidential Information confidential in accordance with this clause 63.

(d) (Permitted disclosure): Project Co may disclose Confidential Information and will not be required to seek TfNSW's consent to a disclosure, announcement or statement under clause 63.2(a) or 63.3(a) where the disclosure announcement or statement is:

(i) required by Law, provided that it:

A. other than when not permitted by Law, notifies TfNSW of the requirement to make that disclosure prior to making it; and
B. takes all reasonable steps to minimise the extent of the disclosure and to ensure the information is disclosed on a basis that the recipient agrees to maintain the confidentiality of the information;

(ii) required to obtain legal or other advice from its advisers, provided that the relevant adviser is under a duty of confidentiality;

(iii) to an expert or an arbitrator appointed to resolve a Dispute in accordance with clauses 50 to 54 or otherwise to the extent that such disclosure is required to be made to a court in the course of proceedings to which Project Co is a party; or

(iv) required by a relevant recognised stock exchange, subject to:

A. the disclosure, announcement or statement not referring to TfNSW's, RailCorp's or any of their respective Associates' involvement in the Project; and

B. Project Co having used all reasonable endeavours to obtain TfNSW's consent within a timeframe sufficient to allow it to meet the timeframe imposed by the relevant recognised stock exchange.

(e) (Use of Confidential Information): Without limiting Project Co's obligations under clause 63.2(a) and clause 63.3 and subject to clause 63.2(c), Project Co may not use Confidential Information other than to the extent necessary for the purpose of undertaking the Project.

(f) (Notification of disclosure): Project Co must immediately notify TfNSW of any potential, suspected or actual disclosure or use of Confidential Information, other than as permitted by this Deed.

63.3 Public announcements by Project Co

Subject to clause 63.2(d), Project Co must:

(a) (TfNSW's prior consent): not (and must ensure that Finance Co does not) make any public disclosures, announcements or statements in relation to the Project or TfNSW's, RailCorp's or any of their respective Associates' involvement in the Project, without TfNSW's prior consent;

(b) (Terms and conditions): comply (and ensure that Finance Co complies) with any terms and conditions TfNSW imposes and must use all reasonable endeavours to agree with TfNSW the wording and timing of all public disclosures, announcements or statements by it or any of its Associates relating to the Project or TfNSW's, RailCorp's or any of their respective Associates' involvement in the Project before the relevant disclosure, announcement or statement is made; and

(c) (Copies to be provided): as soon as practicable, give (and must ensure that Finance Co gives) to TfNSW a copy of any public disclosure, announcement or statement agreed to or approved by TfNSW in accordance with this clause 63.3 or for which TfNSW's consent or approval was not required in accordance with clause 63.4.

63.4 Information public or known

Notwithstanding anything in this clause 63, a party may disclose information in connection with the Project (including any Confidential Information) if:

SENSITIVE: NSW GOVERNMENT
63.5 Disclosure under GIPA Act

(a) Notwithstanding the other provisions of this clause 63, the parties acknowledge that:

(i) (Documents to be published): the Project Documents and information concerning the Project Documents will be published on either or both of TfNSW's and RailCorp's contracts register in accordance with Division 5 of Part 3 of the GIPA Act; and

(ii) (Availability of Project Documents): TfNSW and RailCorp may make the Project Documents (other than the Key Subcontracts) or any of them available to any person.

(b) The parties acknowledge that:

(i) (Notification): TfNSW will notify Project Co of any proposed disclosure of Commercially Sensitive Information by TfNSW or RailCorp under the GIPA Act no later than 10 Business Days before the proposed date of disclosure;

(ii) (Consultation): following notification by TfNSW in accordance with clause 63.5(b)(i), TfNSW will take reasonable steps to consult with Project Co before TfNSW or RailCorp disclose Commercially Sensitive Information, including under the GIPA Act;

(iii) (Objection): if, following:

A. notification by TfNSW in accordance with clause 63.5(b)(i); or

B. consultation between TfNSW and Project Co in accordance with clause 63.5(b)(ii),

Project Co objects to disclosure of some or all of the Commercially Sensitive Information, Project Co must provide details of any such objection within 5 Business Days after the date Project Co received notification from TfNSW or the date on which the consultation process concluded (as relevant);

(iv) (Disclosure): TfNSW may take into account any objection received from Project Co pursuant to clause 63.5(b)(iii) in determining whether the Commercially Sensitive Information identified by Project Co should be disclosed; and

(v) (TfNSW's obligations): nothing in this clause 63.5 will limit or otherwise affect the discharge of TfNSW's or RailCorp's obligations under the GIPA Act.

63.6 Personal Information

(a) Project Co must:
(i) **Collection**: not (and must ensure that Finance Co does not) collect any Personal Information except in accordance with this Deed, all Laws and Standards;

(ii) **Disclosure**: not (and must ensure that Finance Co does not) disclose any Personal Information to any person other than as is necessary to perform its obligations under this Deed or to comply with Laws, and then only in accordance with this Deed, all Laws and Standards; and

(iii) **Retention**: keep, and make available to TfNSW on request, records detailing the recipient of any Personal Information that any Project Co Entity has disclosed, the date of disclosure and the Personal Information that has been disclosed.

If Project Co discloses any Personal Information to TfNSW, Project Co must take reasonable steps to ensure that the individual about whom the Personal Information relates is aware of the following information:

(i) the fact that their Personal Information is being disclosed to TfNSW and why;

(ii) the fact that they may seek to access or correct their Personal Information held by TfNSW;

(iii) TfNSW's address, being the address specified for the TfNSW Representative in item 26 of the Contract Particulars; and

(iv) any other information as reasonably directed by TfNSW.

63.7 **Not used**

63.8 **Privacy**

Without limiting any obligations in respect of privacy set out elsewhere in this Deed, Project Co agrees to (and will procure Finance Co to), and will ensure that any Subcontract contains terms which require the Subcontractor to, be bound by the Privacy Legislation with respect to any act done, or practice engaged in, by it in connection with this Deed or with the Subcontract (as the case may be), in the same way as TfNSW would be bound by the Privacy Legislation, in connection with that act or practice had it been directly done or engaged in by TfNSW.

64. **Probity Events and Probity Investigations**

64.1 **Probity Event**

(a) **Notice**: Project Co must give notice to TfNSW immediately upon becoming aware that a Probity Event has occurred or is likely to occur.

(b) **Contents of notice**: The notice under clause 64.1(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.

(c) **Meeting**: Promptly, and in any case no later than 5 Business Days after TfNSW:

(i) receives a notice under clause 64.1(a); or

(ii) becomes aware of a Probity Event.
TiNSW and Project Co must meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.

(d) **(Compliance):** Project Co must comply with any agreement made in accordance with clause 64.1(c) in the agreed timeframe.

(e) **(Failure to agree):** If TiNSW and Project Co fail to agree to a course of action in accordance with clause 64.1(c) (including where Project Co fails to meet with TiNSW in accordance with clause 64.1(c)), Project Co must, at its cost, take any action required by TiNSW to remedy the Probity Event in accordance with any timeframe determined by TiNSW.

### 64.2 Probity Investigation

(a) **(Requirement for Probity Investigation):** Project Co agrees that TiNSW may, or may require Project Co at any time to, conduct a Probity Investigation in respect of a Relevant Person, a Consortium Member, a Group Member or any person who is proposed to become a Relevant Person, a Consortium Member or a Group Member.

(b) **(Promptly):** Where TiNSW requires Project Co to conduct a Probity Investigation in accordance with clause 64.2(a), Project Co must promptly:

(i) conduct the Probity Investigation; and

(ii) communicate the findings of that Probity Investigation to TiNSW in the form required by TiNSW.

(c) **(Consents required for Probity Investigation):** Project Co must procure all consents necessary to enable Project Co or TiNSW (or any person nominated by TiNSW) to conduct any Probity Investigation.

(d) **(No appointment without consent):** Project Co must not appoint a person to the position of Relevant Person unless TiNSW has given approval following any Probity Investigation that it elects to conduct or any other investigation TiNSW reasonably requires.

### 64.3 TiNSW costs of Probity Events and Probity Investigation

(a) **(TiNSW Costs):** Subject to clause 64.3(b), Project Co must bear all costs incurred by TiNSW in connection with a Probity Event or Probity Investigation that led to a Probity Event.

(b) **(Project Co not liable):** Project Co will not be liable for TiNSW's costs of any further Probity Investigation required by TiNSW in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

### 65. Notices and bar to Claims

#### 65.1 Notices

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

(a) **(In writing):** must be in writing;

(b) **(Addressed):** must be addressed as specified in the Contract Particulars (as the case may be), or as otherwise notified by that party to each other party from time to time;
(c) not used;

(d) (Form of delivery): must:

(i) prior to the Document Management System Commencement Date, be delivered by hand or posted by prepaid post to the postal address or emailed (in the form agreed by TfNSW and Project Co) to the email address of the addressee under clause 65.1(b); and

(ii) on or after the Document Management System Commencement Date, be sent through the Document Management System (unless the Document Management System is temporarily disabled or otherwise not operational for any reason, in which case delivery must be made by hand, prepaid post or email, in each case to the postal address or email address (as applicable) of the addressee under clause 65.1(b));

(e) (Taken to be received): are taken to be received by the addressee:

(i) in the case of a communication sent through the Document Management System, at the time recorded on the Document Management System as being the time at which that communication was sent, unless the result is that the communication would be taken to be received at a time which is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(iii) subject to clause 65.1(f), in the case of prepaid post to the addressee's address:

A. on the fourth Business Day after the date of posting to an address within Australia and from an address in Australia;

B. on the seventh Business Day after the date of posting by airmail to an address outside Australia and from an address in Australia; or

C. on the fourteenth Business Day after the date of posting by airmail to an address in Australia from an address outside Australia;

(iv) in the case of email, on the first to occur of:

A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of that addressee;

B. the time that the communication enters an information system which is under the control of the addressee; and

C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours, in which case that
communication is taken to be received at 9.00 am on the next Business Day; and

(f) **(Notices sent by post):** if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

### 65.1A Provisions relating to the Document Management System

(a) **(Document Management System commencement):** At any time the TfNSW Representative may notify Project Co in writing that the Document Management System is to be utilised for the purposes of giving all communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed. The TfNSW Representative's notice will set out:

(i) the commencement date *(Document Management System Commencement Date)* for use of the Document Management System;

(ii) any password, login details or similar information required for Project Co to use the Document Management System; and

(iii) any other information reasonably required to enable Project Co to use the Document Management System for the purposes of giving and receiving communications.

(b) **(Project Co's obligations):** Project Co must:

(i) at all times after the Document Management System Commencement Date, ensure that:

A. it has internet access which is sufficient to facilitate use of the full functionality of the Document Management System;

B. relevant personnel log on and use the Document Management System and check whether any communications have been received on each Business Day; and

C. ensure that it has access to sufficient personnel trained in the use of the Document Management System so as to be able to view, receive and submit communications using the Document Management System;

(ii) ensure all relevant personnel attend all necessary training required by the TfNSW Representative in respect of the Document Management System; and

(iii) advise the TfNSW Representative from time to time which of Project Co's personnel require access to the Document Management System.

(c) **(Notices sent through Document Management System):** In relation to any communication sent through the Document Management System:

(i) such communication must be submitted by the party making the communication or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
(ii) only the text in any such communication, or subject to clause 65.1A(c)(iii), any attachments to such communication which are referred to in the communication, will form part of the communication. Any text in the subject line will not form part of the communication; and

(iii) an attachment to a communication will only form part of the communication if it is uploaded to the Document Management System in:
   A. .pdf format;
   B. a format compatible with Microsoft Office; or
   C. such other format as may be agreed by TfNSW and Project Co in writing from time to time.

(d) (No liability): Neither TfNSW nor RailCorp has any Liability for any losses, costs or expenses that Project Co or its Associates may suffer or incur arising out of or in connection with its access to or use of the Document Management System or any failure of the Document Management System, and Project Co and its Associates will not be entitled to make, and TfNSW and RailCorp will not be liable upon, any Claim against TfNSW or RailCorp arising out of or in connection with Project Co's access to or use of the Document Management System or any failure of the Document Management System.

(e) (Maintenance Subcontractor): Any requirement under clauses 29.4(b)(i), 29.4(c)(ii) or 29.4(d) for a notice to be given by or copied to the Maintenance Subcontractor will be satisfied if that notice is given by or copied to the Maintenance Subcontractor using the Document Management System.

65.2 Notices of Claims

(a) (Liability): Subject to clause 65.2(b):

(i) TfNSW, TfNSW's Associates, RailCorp and RailCorp's Associates will not be liable upon any Claim that Project Co is entitled to make against TfNSW, TfNSW's Associates, RailCorp or RailCorp's Associates; and

(ii) Project Co is absolutely barred from making any Claim against TfNSW, TfNSW's Associates, RailCorp and RailCorp's Associates, under any TfNSW Project Document or otherwise arising in connection with the TfNSW Project Documents, the Assets or the Project unless Project Co gives TfNSW the notices required by clause 65.3 and, if applicable, clause 65.4.

(b) (Notice requirements): Where any provision of this Deed contains specific notice requirements (including a requirement to submit or update a Change Notice):

(i) TfNSW, TfNSW's Associates, RailCorp and RailCorp's Associates will not be liable upon any Claim that Project Co is entitled to make against TfNSW, TfNSW's Associates, RailCorp or RailCorp's Associates; and

(ii) Project Co is absolutely barred from making any Claim against TfNSW, TfNSW's Associates, RailCorp and RailCorp's Associates, arising out of, or in connection with, the event or circumstance to which the relevant provisions of this Deed, or any other Project Document, entitling Project Co to make a Claim against TfNSW, TfNSW's Associates, RailCorp or RailCorp's Associates apply, unless Project Co has complied with the specific notice requirements.
65.3 Prescribed notices

The required notices referred to in clause 65.2(a) are:

(a) (Intention to submit claim): a written notice from Project Co in which Project Co:
    (i) states that it intends to submit a Claim; and
    (ii) identifies the event on which the Claim will be based,

which notice must be given to TfNSW within 15 Business Days of the earlier of:
    (iii) the date on which Project Co first became aware; and
    (iv) the date on which Project Co ought reasonably to have become aware,

of the event on which the Claim is based; and

(b) (Claim): a formal written notice from Project Co to TfNSW setting out the Claim, including:
    (i) detailed particulars concerning the event on which the Claim is based;
    (ii) the legal basis for the Claim, whether based on a term of the TfNSW Project Documents or otherwise, and if based on a term of the TfNSW Project Documents, 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,

which notice must be given to TfNSW within 10 Business Days of giving the notice under clause 65.3(a).

65.4 Continuing events

If the event upon which the Claim is based, or the consequences of that event, are continuing, Project Co must continue to give the information required by clause 65.3(b) every 20 Business Days after the notice under clause 65.3(b) was submitted, until after the event or consequences of the event have ceased.

65.5 Notice to Financiers

Project Co acknowledges and agrees that TfNSW may provide to the Financiers a copy of any notice from:

(a) Project Co to TfNSW; or

(b) TfNSW to Project Co,

in connection with the TfNSW Project Documents or the Project.

65.6 Power of attorney

Project Co irrevocably:
(a) **(Appointment):** appoints TfNSW, and TfNSW’s nominees from time to time, jointly and severally, as its attorneys with full power and authority:

(i) with effect from the end of the Maintenance Phase, to execute any assignment or novation contemplated by clauses 36.1(a)(vii) or clause 49.8;

(ii) to exercise TfNSW’s rights in accordance with clauses 4.4 and 41; and

(iii) to undertake Project Co’s obligations in accordance with clause 49.8; and

(b) **(Ratification of action):** agrees to immediately ratify and confirm whatever action is taken by the attorney appointed by Project Co under clause 65.6(a).

65.7 **Communications to and from RailCorp**

(a) Any communications in connection with this Deed which Project Co wishes to give to RailCorp must be addressed to the TfNSW Representative at the address specified in item 26 of the Contract Particulars and must otherwise be delivered in accordance with this clause 65.

(b) As between Project Co (on the one hand) and TfNSW and RailCorp (on the other hand), the TfNSW Representative is authorised to give and receive communications on behalf of RailCorp and, where relevant, Project Co will be entitled to treat any communication given by the TfNSW Representative as being given by both RailCorp and TfNSW.

65.8 **Communications to and from Authorities**

Except to the extent directed otherwise by the TfNSW Representative, Project Co must give the TfNSW Representative copies of all documents and other communications (including notices, orders, Approvals or directions) relating to the Project Activities that are:

(a) received by Project Co or the Subcontractors from an Authority as soon as possible after they are received by Project Co or the Subcontractor; or

(b) given by Project Co or a Subcontractor to an Authority at the time that those documents are given to the Authority.

66. **PPSA**

66.1 **PPSA undertakings**

If, and to the extent that RailCorp, TfNSW or any other NSW Rail Entity at any time form a belief on reasonable grounds that, the interests of RailCorp, TfNSW or any other NSW Rail Entity (a **Secured Party**) under this Deed, any other Project Document or any transactions contemplated by them constitute, or will constitute, one or more Security Interests in favour of that Secured Party:

(a) **(assistance):** Project Co agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information or procuring that a Subcontractor and Financier does the same) which that Secured Party may require for the purposes of:

(i) ensuring that any Security Interest of that Secured Party is enforceable, perfected, protected and otherwise effective;
(ii) ensuring that any Security Interest of that Secured Party is continuously perfected, perfected by control and perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any personal property the subject of the Security Interest, to the extent possible under the PPSA;

(iii) enabling that Secured Party to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by that Secured Party; or

(iv) enabling that Secured Party to exercise any right or power in connection with the Security Interest;

(b) (costs and expenses): Project Co agrees that it will bear all costs and expenses:

(i) that it incurs in complying with clause 66.1(a); and

(ii) incurred by a Secured Party for the purposes set out in clause 66.1(a);

(c) (excluded PPSA sections): to the extent permitted by law, and in respect of any Security Interest created by this Deed, any other Project Document or any transactions contemplated by them:

(i) the parties contract out of sections 95, 117, 118, 120, 121(4), 125, 129, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);

(ii) the application of Part 4.3 of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and

(iii) Project Co irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice cannot be excluded;

(d) (no disclosure): the parties agree to the full extent permitted by law not to disclose the contents of this Deed, the amount or performance obligation secured by a Secured Party's Security Interest and the other information of the kind mentioned in section 275(1) of the PPSA;

(e) (authorised disclosure): Project Co agrees that it will only authorise the disclosure of information under section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if the relevant Secured Party approves;

(f) (application to proceeds): a Secured Party's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly, from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this Deed or the relevant Project Document (as the case may be);

(g) (other Security Interests): except where contemplated in clause 66.2(a), Project Co will not, without the relevant Secured Party's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the collateral the subject of the Secured Party's Security Interest; and

(h) (Project Co not to assert rights): for the avoidance of doubt, pursuant to section 80 of the PPSA, each Project Co Entry covenants not to assert any rights it would
otherwise have under section 80(1) of the PPSA and it is intended specifically that any person to whom a Secured Party assigns some or all of its rights and obligations under a Project Document should have the benefit of this covenant.

66.2 PPSA procedures

(a) **Procedures for perfection**: Without limiting clause 66.1(g), if Project Co holds any Security Interests in the Assets for the purposes of the PPSA by reason of entering into any supply or other arrangements with a Subcontractor, then Project Co agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. These procedures must include procedures designed to ensure that Project Co takes all steps to identify Security Interests arising in its favour and under the PPSA to perfect continuously any such Security Interest including all steps necessary:

(i) for Project Co to obtain the highest ranking priority possible in respect of the Security Interest (such as perfecting a purchase money security interest (as defined in the PPSA) or perfecting a Security Interest by control); and

(ii) to reduce as far as possible the risk of a third party acquiring an interest free of the Security Interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

(b) **Audit of PPSA procedures**: If a Secured Party asks, Project Co agrees to arrange at its expense an audit of the above PPSA procedures. A Secured Party may ask Project Co to do this if it reasonably suspects that Project Co is not complying with the requirements of this clause 66.2.
Executive as a deed.

Signed sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

<table>
<thead>
<tr>
<th>Signature of witness</th>
<th>Signature of authorised delegate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full name of witness (print)</td>
<td>Full name of authorised delegate (print)</td>
</tr>
<tr>
<td>Position held</td>
<td>Position held</td>
</tr>
</tbody>
</table>

Signed sealed and delivered for and on behalf of Rail Corporation New South Wales (ABN 59 325 778 353) by its authorised delegate in the presence of:

<table>
<thead>
<tr>
<th>Signature of witness</th>
<th>Signature of authorised delegate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full name of witness (print)</td>
<td>Full name of authorised delegate (print)</td>
</tr>
<tr>
<td>Position held</td>
<td>Position held</td>
</tr>
</tbody>
</table>
Signed sealed and delivered for and on behalf of Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Momentum Trains Trust (ABN 40 340 691 016) by its attorneys:

Attorney

In the presence of:

Witness

Name of Attorney (print)

Name of witness (print)

Attorney

In the presence of:

Witness

Name of Attorney (print)

Name of witness (print)
# Schedule 1 — Contract Particulars

<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Clause 1 - Definitions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Change in Law (Paragraph (f) of the definition of 'Change in Law')</td>
<td>1. Any new Law or change in existing Law relating to Part 4 of the Civil Liability Act 2002 (NSW) (or any equivalent statutory provision in any other state or territory) or its application which limits or eliminates the impact of that Part or any legal risk allocation under clause 2.15, whether or not it has any application.</td>
</tr>
</tbody>
</table>
| 2. | Change in Standards (Paragraph (i) of the definition of 'Change in Standards') | 1. 'Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction' (July 2013).  
2. The changes contemplated by clauses 16.1A(d), 16.1B(d) or 18.1(c). |
| 3. | Not used | Not used |
| 4. | Condition Precedent Deadline (Definition of 'Condition Precedent Deadline') | 28 February 2019 |
| 5. | Date for Provisional Acceptance (Maintenance Facility) (Definition of 'Date for Provisional Acceptance (Maintenance Facility)') | | |
| 5A. | Date for Provisional Acceptance (Base Fleet and Continuous Production Options) (Definition of 'Date for Provisional Acceptance (Base Fleet and Continuous Production Options)') | | |
| 6. | Date for Provisional Acceptance (Simulator) (Definition of 'Date for Provisional Acceptance (Simulator)') | (a) In respect of the first Simulator to achieve Provisional Acceptance (Simulator); and  
(b) in respect of the second Simulator. |
<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>Date for Provisional Acceptance (Unit)</td>
<td>In respect of a Unit, the relevant date specified in the column headed &quot;Date for Provisional Acceptance (Unit)&quot; in:</td>
</tr>
<tr>
<td></td>
<td>(Definition of 'Date for Provisional Acceptance (Unit)')</td>
<td>1. Table 1 below in respect of the Base Fleet;</td>
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<td></td>
<td></td>
<td>2. Table 2 below in respect of the Continuous Production Options; or</td>
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<td></td>
<td></td>
<td>3. Table 3 below in respect of the Non-Continuous Production Options.</td>
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<tr>
<td>8.</td>
<td>Date for Final Acceptance (Maintenance Facility)</td>
<td>The date which is after the Date of Provisional Acceptance (Maintenance Facility).</td>
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<tr>
<td></td>
<td>(Definition of 'Date for Final Acceptance (Maintenance Facility)')</td>
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<tr>
<td>9.</td>
<td>Date for Final Acceptance (Base Fleet and Continuous Production Options)</td>
<td>The date which is after the Date of Provisional Acceptance (Base Fleet and Continuous Production Options).</td>
</tr>
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<td></td>
<td>(Definition of 'Date for Final Acceptance (Base Fleet and Continuous Production Options)')</td>
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<tr>
<td>10.</td>
<td>Date for Final Acceptance (Simulator)</td>
<td>The date which is after the Date of Provisional Acceptance (Simulator) of the relevant Simulator.</td>
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<td></td>
<td>(Definition of 'Date for Final Acceptance (Simulator)')</td>
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<td>11.</td>
<td>Date for Final Acceptance (Unit)</td>
<td>In respect of a Unit forming part of the Base Fleet or Continuous Production Options, the relevant date specified in the column headed &quot;Date for Final Acceptance (Unit)&quot; in Table 4 below.</td>
</tr>
<tr>
<td></td>
<td>(Definition of 'Date for Final Acceptance (Unit)')</td>
<td>In respect of a Unit forming part of the Non-Continuous Production Options.</td>
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<td>12.</td>
<td>Date for Handover (Legacy Maintenance Centre)</td>
<td>The date which is after the Date of Provisional Acceptance of the last Long Unit to achieve Provisional Acceptance.</td>
</tr>
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<td></td>
<td>(Definition of 'Date for Handover (Legacy Maintenance Centre)')</td>
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<tr>
<td>Item</td>
<td>Subject</td>
<td>Particulars</td>
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<tr>
<td>12A.</td>
<td>Date for Provisional Acceptance (Upgrade Services) <em>(Definition of 'Date for Provisional Acceptance (Upgrade Services)'</em>)</td>
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<tr>
<td>12B.</td>
<td>Date for Final Acceptance (Upgrade Services) <em>(Definition of Date for Final Acceptance (Upgrade Services)</em>)</td>
<td></td>
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<tr>
<td>13.</td>
<td>Project Director <em>(Definitions of 'Project Director' and 'Key People')</em></td>
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<td></td>
<td>Name: [Redacted]</td>
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<td>Address: [Redacted]</td>
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<td>Phone: [Redacted]</td>
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<td>Email: [Redacted]</td>
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<td></td>
<td><strong>Position Description Attributes:</strong></td>
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<tr>
<td></td>
<td>(a) Core Accountabilities: management of Project Co participants and Subcontractors; compliance of Delivery Phase Activities and Upgrade Services with this Deed.</td>
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<td></td>
<td>(b) Qualifications and Experience: practical and theoretical knowledge of project management principles and a minimum of 15 years project management experience in the rail industry.</td>
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<tr>
<td>13A.</td>
<td>Design Consultant <em>(Definition of 'Design Consultant'</em>)</td>
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<tr>
<td></td>
<td>Name: WSP Australia Pty Limited (ABN 80 078 004 798)</td>
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<td>Address: [Redacted]</td>
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<td>Phone: [Redacted]</td>
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<td>Designated Investor <em>(Definition of 'Designated Investor'</em>)</td>
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<td>Name: Pacific Partnerships Investments Pty Ltd (ACN 601 387 839) as trustee for Pacific Partnerships Investments Trust</td>
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## Key People (Definition of 'Key People')

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**Percentage equity:**

### CAF Investment Projects S.A. (NIF A78581550)
- **Name:** CAF Investment Projects S.A. (NIF A78581550)
- **Address:** [Redacted]
- **Phone:** [Redacted]
- **Percentage equity:** [Redacted]

### DIF Momentum Pty (ACN 630 329 056) as trustee for DIF Momentum Trust
- **Name:** DIF Momentum Pty (ACN 630 329 056) as trustee for DIF Momentum Trust
- **Address:** [Redacted]
- **Phone:** [Redacted]
- **Percentage equity:** [Redacted]

**Role:** Project Co Representative

See item 21 below.

**Role:** Project Director

See item 13 above.

**Role:** Project Co AEO Authorised Representative - Trains

- **Name:** [Redacted]
- **Address:** [Redacted]
- **Phone:** [Redacted]
- **Email:** [Redacted]

**Position Description Attributes:**

1. **Core Accountabilities:**
   - independent review of New Fleet and Simulator design and Verification Activities;
   - compliance of New Fleet and Simulator with the Deed.

2. **Qualifications and Experience:**
   - practical and theoretical knowledge of Rolling Stock design and design compliance and a minimum of 15 years' experience in the rail industry.

**Role:** Project Co AEO Authorised Representative -
## Item 16. Key Planning Approval

**Definition of 'Key Planning Approval'**

The Planning Approval.

## Item 17. Key Subcontracts and Key Subcontractors (Definitions of 'Key Subcontract' and 'Key Subcontractors')

**Role:** Delivery Subcontractor

- **Name:** Construcciones y Auxiliar de Ferrocarriles S.A (NIF A20001020)

**Role:** Maintenance Subcontractor

- **Name:** UGL Rail Services Pty Ltd (ABN 58 000 003 136)

## Item 18. Depot Subcontractor

**Definition of 'Depot Subcontractor'**

- **Name:** CPB Contractors Pty Ltd (ABN 98 000 893 667)

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**Position Description Attributes:**

(a) **Core Accountabilities:** independent review of the Maintenance Facility design and Verification Activities; compliance of the Maintenance Facility with the Deed.

(b) **Qualifications and Experience:** practical and theoretical knowledge of rail infrastructure design and design compliance and a minimum of 15 years' experience in the rail industry.
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</table>
| 19.  | Not used | Phone: [redacted]  
|      |         | Email: [redacted] |
| 20.  | Parent Guarantors  
*(Definition of ‘Parent Guarantor’)* | **Delivery Subcontractor**  
Not applicable. |
|      |         | **Maintenance Subcontractor**  
Name: CIMIC Group Limited (ABN 57 004 482 982)  
Address: [redacted]  
Phone: [redacted]  
Email: [redacted] |
|      |         | **Depot Subcontractor**  
Not applicable. |
| 21.  | Project Co Representative  
*(Definitions of ‘Project Co Representative’ and ‘Key People’)* | **Design Consultant**  
Not applicable. |
|      |         | Name: [redacted]  
Address: [redacted]  
Phone: [redacted]  
Email: [redacted] |
|      |         | **Position Description Attributes:**  
(a) Core Accountabilities: management of information transactions between Project Co and TfNSW and compliance with communication and reporting requirements of this Deed.  
(b) Qualifications and Experience: practical and theoretical knowledge of project management principles and a minimum of 15 years project management experience |
| 22.  | Project Objectives  
*(Definition of ‘Project’)* | 1. Enhance customer experience and satisfaction in using Regional Train Services and Intercity Non-Electric... |
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<td>Objectives’</td>
<td>Services and increase patronage through improved safety, service reliability, and customer amenity; 2. Maximise value for money, improve whole of life outcomes and provide lower ongoing operational and financial risk to TfNSW; 3. Stimulate regional economies through regional jobs and skills development; 4. Ensure on-going provision of a Regional Fleet and Intercity Non-Electric Fleet that best meets current and future requirements for service delivery, and balances the need for reliability, availability, innovation, energy efficiency, carbon management and affordability; 5. Construct a Maintenance Facility; and 6. Provide maintenance services for the Assets.</td>
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| 22A  | Required People (Definition of ‘Required People’) | Role: Environmental Manager  
Name: [Redacted]  
Address: [Redacted]  
Phone: [Redacted]  
Email: [Redacted]  
Position Description Attributes:  
(a) Core Accountabilities: compliance with all Approvals from an Authority, requirements of Legislation and Project Co's Environment and Sustainability Management System.  
(b) Qualifications and Experience: demonstrated practical and relevant experience in leading the environmental management of construction projects.  
Minimum Requirements:  
Refer to section 3(e) of Part B5 (Planning and Environmental Requirements) of the Project Scope and Requirements.  
Role: Sustainability Manager  
Name: [Redacted]  
Address: [Redacted]  
Phone: [Redacted]  
Email: [Redacted] |
Position Description Attributes:

(a) Core Accountabilities: development and delivery of a Sustainability Management Plan, establish, monitor and implement strategies and activities relating to sustainability, compliance with sustainability requirements of this Deed.

(b) Qualifications and Experience: recognised qualification in an environmental, social or economic field, five years' experience in the design and construction of sustainable infrastructure or buildings, and recent relevant experience in sustainability management on projects similar to the Project.

Minimum Requirements:
Refer to section 3(i) of Part B4 (Sustainability Requirements) of the Project Scope and Requirements.

Role: Independent Sustainability Professional
Name: [Redacted]
Address: [Redacted]
Phone: [Redacted]
Email: [Redacted]

Position Description Attributes:

(a) Core Accountabilities: conduct independent review of the Project/Asset sustainability performance, consult with the team and key stakeholders (including the Stakeholders), make findings and provide recommendations to improve sustainability performance.

(b) Qualifications and Experience: 10 years' experience in an environmental, social or economic field, five years' experience providing sustainability advice, and have no vested interest in the Project.

Minimum Requirements:
Refer to section 3(i) of Part B4 (Sustainability Requirements) of the Project Scope and Requirements.

Role: Jobs and Skills Manager
Name: [Redacted]
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**Position Description Attributes:**

(a) Core Accountabilities: establish, monitor and implement strategies and activities relating to Aboriginal participation and engagement; compliance with Aboriginal jobs, skills and industry participation requirements of this Deed.

(b) Qualifications and Experience: certificate IV or equivalent in training and assessment or other relevant discipline; experience in management, leadership and a capacity to mentor.

**Minimum Requirements:**

Refer to sections 3(a)(ii), 3(e)(iv) and 3(e)(v) of Part B3 (Jobs, Skills and Industry Participation) of the Project Scope and Requirements.
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<td>(a)</td>
<td>Core Accountabilities: establish, monitor and implement strategies and activities relating to industry participation; compliance with industry participation requirements of this Deed.</td>
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<td>(b)</td>
<td>Qualifications and Experience: tertiary qualifications in business, economics, procurement, supply chain management or equivalent knowledge and experience; minimum of 8 years' experience in leading procurement strategies and supplier management activities in rail, civil infrastructure and/or rail maintenance.</td>
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<td>Minimum Requirements:</td>
<td>Refer to sections 3(a)(ii), 3(e)(vi) and 3(e)(vii) of Part B3 (Jobs, Skills and Industry Participation) of the Project Scope and Requirements.</td>
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<td>Role:</td>
<td>Community Engagement and Communications Professional</td>
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<td>Position Description Attributes:</td>
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<td>(a)</td>
<td>Core Accountabilities: informing Stakeholders and the community about the Project, responding to complaints/enquiries and identifying risks/issues; providing stakeholder and community engagement services to support TfNSW as required.</td>
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| (b) | Qualifications and Experience: tertiary qualification in media, communications, public relations or relevant.
Item | Subject | Particulars
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 |  | discipline or equivalent experience. Extensive experience in developing communications plans involving community consultation and engagement. **Minimum Requirements:** Refer to section 4(cc) and 4(dd) of the Management Requirements.
 | | **Security Trustee (Definition of 'Security Trustee')**
 | 23 | Name: MUFG Bank Ltd (ABN 75 103 418 882)
 |  | Address: [redacted]
 |  | Phone: [redacted]
 |  | Email: [redacted]
 | **Significant Subcontracts (Paragraphs (c) and (d) of the definition of 'Significant Subcontract')**
 | 24 | **System or works**
 |  | **Name:**
 |  | **Address:**
 |  | **Phone:** [redacted]
 |  | **Email:** [redacted]
 |  | **Car body — design, manufacture and supply**
 |  | **Name:**
 |  | **Address:**
 |  | **Phone:** [redacted]
 |  | **Email:** [redacted]
 |  | **Engine — design, manufacture, supply, integration support and maintenance (Headquarters)**
 |  | **Name:**
 |  | **Address:** [redacted]
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|      | Traction power system and electrical auxiliary power system – design, manufacture, supply, integration support and maintenance support | Name: [Redacted]
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<td><strong>Wheel lathe – design, manufacture, supply, integration support and maintenance</strong></td>
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<td>Name: [Redacted]</td>
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<td>Phone: [Redacted]</td>
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<td>Email: [Redacted]</td>
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</tbody>
</table>
| 25.  | Site Information Reports  
(Definition of 'Site Information Reports') | In respect of the Legacy Maintenance Centre:  
(a) Baseline Environment Site Assessment.  
(b) Structural Condition Report.  
In respect of the Maintenance Facility:  
(a) Geotechnical site investigation report.  
(b) Contamination site investigation report.  
(c) Hydrology assessment report.  
(d) White St, Dubbo - Phase 1 site assessment.  
(e) Stormwater detention system drawing.  
(f) Sewerage lines drawing.  
(g) GIS council files.  
(h) Preliminary construction & operational noise & vibration impact assessment. |
| 26.  | TfNSW Representative  
(Definition of 'TfNSW Representative') | Name: [Redacted] |
<p>|      |         | Address: [Redacted] |
|      |         | Phone: [Redacted] |
|      |         | Email: [Redacted] |</p>
<table>
<thead>
<tr>
<th>Item</th>
<th>Subject</th>
<th>Particulars</th>
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</thead>
<tbody>
<tr>
<td><strong>Clause 10.8A - Senior Control Group</strong></td>
<td></td>
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<tr>
<td><strong>27.</strong></td>
<td>Senior representative of the Delivery Subcontractor to be on the Senior Control Group (<em>clause 10.8A(a)(iii)</em>)</td>
<td>Name:</td>
</tr>
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<tr>
<td><strong>28.</strong></td>
<td>Senior representative of the Depot Subcontractor to be on the Senior Control Group (<em>clause 10.8A(a)(iii)</em>)</td>
<td>Name:</td>
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<td>Address:</td>
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<tr>
<td><strong>29.</strong></td>
<td>Senior representative of the Maintenance Subcontractor to be on the Senior Control Group (<em>clause 10.8A(a)(iv)</em>)</td>
<td>Name:</td>
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</table>

| **Clause 65.1 - Notices** | | |
| **30.** | Addresses: | Must be addressed to the TfNSW Representative or the Project Co Representative (as the case may be at the addresses set out respectively in items 26 and 21). Any notices or other communication to be served on RailCorp must be addressed to TfNSW's Representative at the address set out in item 26. | |
Table 1: Date for Provisional Acceptance (Unit) in respect of the Base Fleet

<table>
<thead>
<tr>
<th>Date</th>
<th>Unit in respect of the Base Fleet</th>
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</thead>
<tbody>
<tr>
<td>6218377</td>
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</tbody>
</table>
Table 2: Date for Provisional Acceptance (Unit) in respect of the Continuous Production Options

<table>
<thead>
<tr>
<th>Option</th>
<th>Date for Provisional Acceptance (Unit)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1</td>
<td>2023-01-01</td>
</tr>
<tr>
<td>Option 2</td>
<td>2023-02-01</td>
</tr>
<tr>
<td>Option 3</td>
<td>2023-03-01</td>
</tr>
</tbody>
</table>

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**Momentum Trains**

**TfNSW**
Table 3: Date for Provisional Acceptance (Unit) in respect of the Non-Continuous Production Options

<table>
<thead>
<tr>
<th>Unit</th>
<th>Date for Provisional Acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2023-01-01</td>
</tr>
<tr>
<td>2</td>
<td>2023-02-01</td>
</tr>
<tr>
<td>3</td>
<td>2023-03-01</td>
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<tr>
<td>4</td>
<td>2023-04-01</td>
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<tr>
<td>5</td>
<td>2023-05-01</td>
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<tr>
<td>6</td>
<td>2023-06-01</td>
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</tbody>
</table>

TfNSW
Table 4: Date for Final Acceptance (Unit) in respect of the Base Fleet

<table>
<thead>
<tr>
<th>Unit</th>
<th>Date for Final Acceptance</th>
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<tbody>
<tr>
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</tbody>
</table>

Note: The table content is not visible due to redaction.
Table 5: Significant Subcontractors Obligations Matrix

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Momentum Trains</td>
<td>ISD-17-6185</td>
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SENSITIVE: NSW GOVERNMENT
# Schedule 2 — Conditions Precedent Schedule

<table>
<thead>
<tr>
<th>Condition Precedent</th>
<th>Benefiting Party</th>
<th>Party to satisfy</th>
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</thead>
<tbody>
<tr>
<td>1. TfNSW Project Documents</td>
<td>TfNSW</td>
<td>Project Co</td>
</tr>
<tr>
<td>Each of the TfNSW Project Documents, each in form and substance satisfactory to TfNSW (in its absolute discretion), has been validly executed and delivered by all parties to them (other than TfNSW and RailCorp) and at least one original counterpart of each of those documents has been provided to TfNSW.</td>
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<tr>
<td>2. Other Project Documents</td>
<td>TfNSW</td>
<td>Project Co</td>
</tr>
<tr>
<td>The valid execution, delivery and provision to TfNSW of a certified copy of each other Project Document, each in form and substance satisfactory to TfNSW (in its absolute discretion), together with evidence that all conditions precedent to such Project Documents have been satisfied or waived (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this Deed).</td>
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<tr>
<td>3. Counterparty Details</td>
<td>TfNSW</td>
<td>Project Co</td>
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<tr>
<td>TfNSW receiving the Counterparty Details.</td>
<td></td>
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<tr>
<td>4. Legal Opinions</td>
<td>TfNSW</td>
<td>Project Co</td>
</tr>
<tr>
<td>TfNSW receiving legal opinions given for the benefit of TfNSW and RailCorp, each in form and substance satisfactory to TfNSW, from solicitors reasonably acceptable to TfNSW acting for each Consortium Member and Group Member as to:</td>
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<tr>
<td>(a) the legal capacity and corporate power of that Consortium Member or Group Member to enter into and perform its obligations under the Project Documents to which it is a party;</td>
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<tr>
<td>(b) the enforceability against the relevant Consortium Member or Group Member of the Project Documents to which it is a party; and</td>
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<tr>
<td>(c) due execution by the Consortium Member or Group Member of the Project Documents to which it is a party.</td>
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<tr>
<td>5. Corporate structure</td>
<td>TfNSW</td>
<td>Project Co</td>
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<tr>
<td>TfNSW receiving evidence that the corporate structure...</td>
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<td>Condition Precedent</td>
<td>Benefiting Party</td>
<td>Party to satisfy</td>
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<td>in respect of the Group and the equity and/or subordinated debt arrangements (as applicable) between the Group Members and their respective shareholders are in accordance with the Ownership Schedule and the information provided to TfNSW prior to the execution of this Deed, including certifications regarding shareholdings.</td>
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</table>
| 6. **Authorised Officers**  
TfNSW receiving names and specimen signatures of the authorised officers of Project Co, including the Project Co Representative and any other person authorised to take action or give notices for or on behalf of Project Co under the TfNSW Project Documents. | TfNSW            | Project Co       |
| 7. **Pre-Rate Set Satisfaction Notice**  
TfNSW receiving an original pre-rate set satisfaction notice, in form and substance satisfactory to TfNSW, signed by the agent for the Financiers confirming that all initial conditions precedent to funding and drawdown of the facilities for the Project (including the satisfaction of conditions precedent under any other Project Documents) have been satisfied or waived in accordance with the terms of the Finance Documents, save for those specified in the notice which will be satisfied upon the occurrence of the agreed actions listed in the notice. | TfNSW            | Project Co       |
| 8. **Finance Letter**  
TfNSW receiving an original letter from the Financiers signed by an authorised representative of the Financiers confirming that:  
(a) all financing is in place and ready for drawdown;  
(b) all derivatives (if applicable) are in place; and  
(c) all conditions precedent to funding and drawdown of the facilities for the Project have been satisfied or waived in accordance with the terms of the Finance Documents other than any condition precedent that:  
(i) requires the satisfaction or waiver of the conditions precedent to this Deed; or  
(ii) will be satisfied contemporaneously with Financial Close. | TfNSW            | Project Co       |
<table>
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<th>Condition Precedent</th>
<th>Benefiting Party</th>
<th>Party to satisfy</th>
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<tr>
<td><strong>9. Financial Close Financial Model</strong></td>
<td>TfNSW</td>
<td>Project Co</td>
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<tr>
<td>TfNSW receiving:</td>
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<td>(a) an electronic copy of the Financial Close Financial Model and the Model Output Schedule, in form and substance satisfactory to TfNSW;</td>
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<td>(b) a letter, in form and substance satisfactory to TfNSW, confirming that the Financial Close Financial Model is identical to the Base Case Financial Model except as updated in accordance with the Financial Close Adjustment Protocol or as otherwise set out in the letter; and</td>
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<tr>
<td>(c) an audit report on the Financial Close Financial Model, in form and substance satisfactory to TfNSW, from an auditor acceptable to TfNSW.</td>
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<tr>
<td><strong>10. Delivery Phase Insurances</strong></td>
<td>TfNSW</td>
<td>Project Co</td>
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<tr>
<td>In respect of those Insurances which Project Co is required under clause 46 (<em>Insurance</em>) and Schedule 22 (<em>Insurance Schedule</em>) to take out with effect from or prior to Financial Close, Project Co delivering to TfNSW:</td>
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<td>(a) certified copies of the fully subscribed and executed policies relating to such Insurances in form and substance satisfactory to TfNSW; and</td>
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<tr>
<td>(b) certificates from an insurance broker as to the currency of all such Insurances and confirming that RailCorp, TfNSW and their respective Associates are insureds under the policy (to the extent this is required under this Deed), or such other evidence as is required by TfNSW.</td>
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<tr>
<td><strong>11. FIRB Approval</strong></td>
<td>TfNSW and Project Co</td>
<td>Project Co</td>
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<tr>
<td>A certified copy of the unconditional approval from the Treasurer of the Commonwealth of Australia advising that there is no objection under the <em>Foreign Acquisitions and Takeover Act 1975</em> (Cth) to the ownership of Project Co or its interests in the Project Activities (if applicable).</td>
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<tr>
<td><strong>12. GSF Act approval</strong></td>
<td>TfNSW and Project Co</td>
<td>TfNSW</td>
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<tr>
<td>The recommendation of the responsible Minister for the purpose of the Treasurer's approval under section 6.23 of the GSF Act in respect of the Project and the</td>
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</tr>
<tr>
<td>Condition Precedent</td>
<td>Benefiting Party</td>
<td>Party to satisfy</td>
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</tr>
<tr>
<td>Honourable Dominic Perrottet, Treasurer, for and on behalf of the Crown in right of the State of New South Wales executing the GSF Act Deed Poll of Guarantee.</td>
<td>TNSW</td>
<td>Project Co</td>
</tr>
</tbody>
</table>
| **13. AEO Status**  
TfNSW receiving evidence in form and substance satisfactory to TfNSW confirming that Project Co has (or all relevant Subcontractors have) been granted AEO status by the Asset Standards Authority as required by clause 6C (Authorised Engineering Organisation). | TNSW | Project Co |
| **14. The Goods and Services Tax - Subdivision 153-B Deed**  
The above deed in relation to the Project between TfNSW and RailCorp has been validly executed in a form satisfactory to TfNSW in its absolute discretion. | TNSW | TfNSW |
| **15. Other requirements**  
Project Co delivering to TfNSW any other opinion, certificate or other document that TfNSW reasonably requests. | TNSW | Project Co |
Schedule 4 — Programming Requirements

1. Interpretation of this Schedule

The following capitalised terms used in this Schedule have the meanings given to them in the proprietary computer software known as "Primavera P6" or higher Primavera project management software, produced by Primavera Systems, Inc:

(a) Activity;
(b) Activity ID;
(c) Actual Dates;
(d) Calendar;
(e) Constraint;
(f) Critical;
(g) Critical Path;
(h) Critical Path Network;
(i) Early;
(j) Float;
(k) Free;
(l) Lag;
(m) Late;
(n) Lead;
(o) Logic;
(p) Logic Link;
(q) Milestone;
(r) Network;
(s) Percent Complete;
(t) Planning Unit;
(u) Predecessor;
(v) Remaining Duration;
(w) Successor; and
(x) Total Float.
2. Baseline Delivery Program

2.1 Form of the Baseline Delivery Program

Project Co must prepare, implement and maintain a Baseline Delivery Program. The Baseline Delivery Program must be prepared in accordance with the detailed requirements set out in this Deed, including this Schedule, and otherwise in accordance with any other requirements reasonably requested by TfNSW.

2.2 Content of the Baseline Delivery Program

The Baseline Delivery Program must:

(a) schedule all Delivery Phase Activities and Upgrade Services and identify and be a single point of reference for all Delivery Phase Activities and Upgrade Services;

(b) comply with the requirements of document 5TP-FT-425 Sections 2.7 and 2.8 (as specified in Part A2 (Reference Documents, Standards and Guidelines) of the Project Scope and Requirements);

(c) contain the information specified in and otherwise satisfy the requirements of this Schedule;

(d) identify all Project Activities from the date of this Deed to the Date of Final Acceptance (Project) and all Delivery Phase Activity and Upgrade Services milestones, including:

(i) (Approvals): any Approvals which must be obtained in relation to the Delivery Phase Activities and Upgrade Services;

(ii) (Delivery Phase Sites): all site establishment activities for the Sites;

(iii) (remediation works): all remediation works that are the responsibility of Project Co;

(iv) (procurement): design, documentation, tendering and awarding of all subcontract packages, including the award of all Significant Subcontracts;

(v) (Project Co and Key Subcontractors): the work to be undertaken by Project Co and Key Subcontractors;

(vi) (mobilisation): mobilisation activities;

(vii) (adjacent projects and adjacent sites): works that interface with adjacent projects and sites;

(viii) (design): all Milestones, Activities and other key dates in the conduct of the Design Development Process, including all Design Development Presentations, the review (including Technical Reviews (as such term is defined in Part A3 (Definitions) of the Project Scope and Requirements)) of Technical Packages in accordance with the Review Procedures and the completion of all Design Stages;

(ix) (Management Plans): all Milestones and Activities associated with all Management Plans;
(x) (New Fleet): all Milestones, Activities and other key dates associated with:
A. the manufacture, supply, delivery, testing and commissioning (including any inputs required from the Operator such as the provision of Drivers for testing) of each Unit forming part of the New Fleet;
B. Preliminary Acceptance (other than for the Non-Continuous Production Options), Provisional Acceptance (Unit) and Final Acceptance (Unit) in respect of each Unit forming part of the New Fleet; and
C. Provisional Acceptance (Base Fleet and Continuous Production Options) and Final Acceptance (Base Fleet and Continuous Production Options);

(xi) (Maintenance Facility): all Milestones, Activities and other key dates relating to the construction, commissioning and operational readiness of the Maintenance Facility, including Provisional Acceptance (Maintenance Facility) and Final Acceptance (Maintenance Facility);

(xii) (Simulators): all Milestones, Activities and other key dates relating to the design, manufacture and delivery of each Simulator, including Provisional Acceptance (Simulator) and Final Acceptance (Simulator) for each Simulator;

(xiii) (Mock-ups): all Milestones, Activities and other key dates relating to the design, manufacture and delivery of each Mock-up;

(xiv) (Equipment, Spares, Consumables and Special Tools): all Equipment, Spares, Consumables and Special Tools related activities, including selection, procurement, manufacture, installation, commissioning and testing;

(xv) (Upgrade Services): all Milestones, Activities and other key dates relating to any Upgrade Services including any enabling works;

(xvi) (financing): all activities in respect of the financing of the Project and all other material commercial arrangements, including the achievement of any conditions precedent or conditions subsequent, the provision of all performance securities including bank guarantees, performance guarantees, parent company guarantees, timing of various tranches of financing, dates for Insurance renewals and the dates for expiry of swaps;

(xvii) (Network Access Rights): all scheduled dates of Agreed Network Access Rights and Indicative Network Access Rights, in each case including their duration and Operator support requirements including notice periods for on track Verification Activities and Unit reliability demonstration running;

(xviii) (Deliverables): the supply of all other Deliverables, including those in Part B2 (Schedule of Deliverables) of the Project Scope and Requirements;

(xix) (engagements): all external engagements, including Stakeholder Groups and community liaison;

(xx) (points): all hold points and witness points;

(xxi) (ASA standards): all activities described in ASA standards T MU MD 20001 ST and all activities required to support TfNSW to progress through the configuration management gates defined in ASA standard T MU AM 04001 PL;

(xxii) not used;
(xxiii) (TfNSW, Independent Certifier or Operate dates): all activities that involve the input or involvement of TfNSW, the Independent Certifier or the Operator, including the dates for:

A. any submission of documents, samples, prototypes or other items to TfNSW or the Independent Certifier by Project Co (including any revisions or resubmissions); and

B. any review, comment, outcomes, involvement or actions required to be performed by TfNSW, the TfNSW Representative, Project Co, the Independent Certifier or the Operator,

all of which must be consistent with the terms of the Project Documents;

(e) meet the Baseline Delivery Program reporting requirements of this Deed; and

(f) include any other information reasonably requested by TfNSW.

3. General requirements for the preparation of the Baseline Delivery Program

3.1 Software system

(a) Project Co must prepare the Baseline Delivery Program by using a recognised specialist proprietary programming computer software system which has been approved in advance by TfNSW.

(b) Any references to the provision of an electronic copy of a document produced by computer software means an electronic copy of that document in the format of the software in which the document was originally created, configured so as to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as could the original creator(s) of that document.

(c) Without limiting the general nature of this section 3, TfNSW approves the use of the proprietary computer software known as "Primavera P6" Professional Release 8.1 or higher project management software, produced by Primavera Systems, Inc.

3.2 Not used

3.3 Form of Baseline Delivery Program generally

The Baseline Delivery Program must:

(a) (structure): be structured such that the following can be distributed as stand-alone separate outputs:

(i) the Baseline Delivery Program in respect of the Base Fleet;

(ii) the Baseline Delivery Program in respect of the Simulators;

(iii) the Baseline Delivery Program in respect of the Maintenance Facility; and

(iv) the Baseline Delivery Program in respect of financing;

(b) (actual progress): at all times reflect the actual progress and scheduled planned progress of each activity associated with the Delivery Phase Activities and Upgrade Services being undertaken;
(c) **Works activities**: identify activities and the planned timing of the staging of the Works and Upgrade Services, including a logical breakdown structure and milestones for all Delivery Phase Activities and Upgrade Services into durations which will be appropriate for determining the progress of the Delivery Phase Activities and Upgrade Services;

(d) **Site meetings**: identify the dates on which site meetings and subsequent site inspections will be held throughout the construction and manufacturing period;

(e) **Clear and sufficient detail**: be clear and sufficiently detailed for TfNSW to easily identify:

   (i) the Critical Path for the execution of the Delivery Phase Activities and Upgrade Services;

   (ii) the duration of and number of Activities;

   (iii) the party responsible for each Activity and Milestone in connection with the Delivery Phase Activities or the Services;

   (iv) all Project Activities that involve TfNSW, including the dates for any submission of documents, samples, prototypes or other items to TfNSW or Independent Certifier by Project Co (including any revisions or resubmissions);

   (v) any review, comment, outcomes or actions required to be performed by TfNSW, the TfNSW Representative, Project Co or the Independent Certifier (all of which must be consistent with the other terms of this Deed);

   (vi) all Activities or Milestones that are dependent on external third party events, including the obtaining of Approvals (Precursor Events); and

   (vii) the nature of, time for completion of, and the identity of any third party responsible for completing, each Precursor Event;

(f) **Milestone**: contain a single overall start Milestone and a single overall finish Milestone;

(g) **Critical Path Network**: be in the form of a Critical Path Network that enables the Critical Path to be calculated automatically by the computer software;

(h) **Days as Planning Unit**: use days as its Planning Unit (or such other period of time approved in writing by TfNSW);

(i) **Calendars**: contain Calendars which enable planned working and non-working periods in the future to be identified, including all applicable public holidays, weekends, rostered days off or other non-working days;

(j) **Activities Logically Linked**: demonstrate that all Activities, apart from the start and finish Milestones, are Logically Linked;

(k) **Labour Resource Histogram**: include a labour resource histogram consistent with the work depicted in the Baseline Delivery Program. The labour resource histogram must be able to categorise the various trade resources and Project Co's own resources;

(l) **Activities**: clearly identify:

   (i) Activities (that are precise and clearly traceable to work elements), their order, duration, sequencing and logical interdependencies and interrelationship;

   (ii) the durations and Total Float of all Activities;
(iii) all phases and sub-phases of the Delivery Phase;
(iv) the contingency allowed within the Baseline Delivery Program for potential delays; and
(v) any other matters which may have a material effect on the time required to complete the Works or Upgrade Services;

(m) **staging and/or construction methodology**: show the proposed staging and/or construction methodology of the Delivery Phase Activities and Upgrade Services;

(n) **algorithm**: identify the scheduling algorithm used in the analysis;

(o) **risk analysis and re-baselining**: be subject to schedule risk analysis and the Review Procedures before re-baselining;

(p) **other information**: contain all other information reasonably requested by TfNSW; and

(q) **prior TfNSW approval**: not contain, without prior approval by TfNSW:
   (i) any Constraints that fix the Early or Late start or finish dates of Activities or override the dates that would otherwise be automatically calculated in accordance with Critical Path Network Logic (except for the overall start Milestone, which may be fixed manually);
   (ii) any Lags that hide detail and cannot be updated;
   (iii) any Free Float Constraints or Total Float Constraints;
   (iv) any other programming Activities or methodologies which have the effect of creating false Criticality or constraining the program from reacting dynamically to changes;
   (v) any Logic Links containing negative Lags (except where a negative Lag is used to indicate the time for an action by TfNSW);
   (vi) Activities without finish Successors (except for the overall finish Milestone); or
   (vii) Activities without start Predecessors (except for the overall start Milestone).

4. Updating the Baseline Delivery Program

4.1 Updates to the Baseline Delivery Program

Project Co must update and submit to the TfNSW Representative for review in accordance with the Review Procedures updates of the Baseline Delivery Program and all sub-programs to accurately reflect the progress of the Delivery Phase Activities and Upgrade Services at the intervals specified in clause 16.2(b).

4.2 Content and format of updated Baseline Delivery Program

(a) Project Co must submit to the TfNSW Representative in accordance with the Review Procedures the updated Baseline Delivery Program in the following forms:
   (i) not used;
(ii) 1 electronic version in .pdf format (which must be time scaled across the sheet so as to be legible and to detail the sequence, duration and interaction of design, procurement, construction, manufacturing, assembly and commissioning); and

(iii) 1 electronic version in original, executable Primavera P6 XER file format or other agreed software

(b) The updated Baseline Delivery Program must:

(i) clearly identify the Percent Complete and the Remaining Duration of each Activity;

(ii) clearly identify the Activities that started and the Activities that finished during the reporting period and the dates on which those Activities started and finished;

(iii) be updated to the end of the previous reporting period using the software to record Actual Dates and the Percent Complete of Activities;

(iv) identify whether Project Co will not achieve Provisional Acceptance until after the relevant Date for Provisional Acceptance or Final Acceptance until after the relevant Date for Final Acceptance;

(v) incorporate and display the version of the Status Delivery Program produced at the end of the previous reporting period as a baseline reflecting the actual status and progress of the Delivery Phase Activities and Upgrade Services;

(vi) be archived within TfNSW's Primavera planning environmental database; and

(vii) not specify a date for System Definition Review, Preliminary Design Review or Detailed Design Review which is later than the date specified in the Initial Delivery Program except in accordance with clause 16.2(b)(ii) to the extent necessary as a result of:

A. the circumstances giving rise to the grant of an extension to any Date for Acceptance;

B. being instructed to accelerate the Delivery Phase Activities; or

C. being permitted to compress the schedule for Provisional Acceptance (Unit) in accordance with clause 26.

(c) TfNSW will provide Project Co with TfNSW's Primavera planning environmental database free-of-charge for up to five users.

4.3 Submission of report with any updated Baseline Delivery Program

(a) With each update of any Baseline Delivery Program, Project Co must submit to TfNSW a written report reconciling the updated Baseline Delivery Program with the version of the Status Delivery Program produced for the previous reporting period.

(b) The report referred to in section 4.3(a) must as a minimum:

(i) summarise the changes made to the Baseline Delivery Program and any impacts those changes may have on key Activities and Milestones;

(ii) identify and explain, for Activities that are on the Critical Path, the reason for any changes to:

A. the duration of Activities since the previous reporting period;
B. the presence or absence of Logic Links or their Leads or Lags;
C. the presence or absence of program Activities or their Activity IDs; and
D. the timing of Activities;

(iii) summarise the material changes to any Activities;
(iv) identify the estimated timing for the achievement of key Project stages including the completion of each of the design, construction, manufacturing and assembly stages and any Date for Provisional Acceptance and Date for Final Acceptance;
(v) summarise the impact, as at the date of the report, and if known, the estimated potential continuing impact of any delaying events or circumstances, and
(vi) contain any other information reasonably requested by TfNSW.
Schedule 5 — Change Compensation Principles

1. Definitions

In this Schedule:

**Agreed Margin** means the Delivery Margin, the Maintenance Margin and the Project Co Margin.

**Base Costs** means the Delivery Costs, Maintenance Costs and Project Co Costs in each case that are directly attributable to the relevant Change Compensation Event, but excluding all:

(a) Prolongation Costs;
(b) Financing Delay Costs; and
(c) Agreed Margin.

**Change Compensation Event** means each event described in Table 1 in section 2.1.

**Change Notice** means the notice referred to in section 8, including any updated Change Notice issued under section 8.1(c).

**Change Notice Event** has the meaning given to it in section 8.1(b).

**Change Notice Recipient** has the meaning given to it in section 8.1(b).

**Change Notice Request** has the meaning given to it in section 8.2(a).

**Change Response** has the meaning given to it in section 9.1(a)(i).

**Costs** means:

(a) all actual direct capital costs, preliminaries, operation and Maintenance costs or external third party advisory costs properly and reasonably incurred, or which will be properly and reasonably incurred and in each case to the extent that they exceed the relevant amounts (if any) assumed in the then current Financial Model; or

(b) in respect of any "Saving", all direct costs saved or which will be saved or ought reasonably to have been saved, calculated:

(c) to the extent applicable, in accordance with the Schedule of Rates;

(d) in respect of the costs referred to in clause 39.2 of Project Co or a Financier engaging a third party, in accordance with these Change Compensation Principles but capped at the price provided by Project Co for the Modification Proposal under clause 39.2.

**Delivery Costs** means the net incremental Costs of:

(a) during the Delivery Phase, the Delivery Subcontractor or the Maintenance Subcontractor (to the extent it is performing Delivery Phase Activities); or

(b) during the Maintenance Phase, the Subcontractor engaged by Project Co to carry out capital works the subject of a Change Compensation Event,
that are directly attributable to the relevant Change Compensation Event including scaffolding and craneage, but excluding all Agreed Margin, Prolongation Costs, Financing Delay Costs, Maintenance Costs and Project Co Costs.

**Delivery Margin** means:

(a) during the Delivery Phase, the percentage that the Delivery Subcontractor and the Maintenance Subcontractor (to the extent it is performing Delivery Phase Activities) may charge in accordance with Table 2 in section 3.1(b) as Margin; or

(b) during the Maintenance Phase:

(i) if the Maintenance Subcontractor is engaged by Project Co to carry out capital works the subject of a Change Compensation Event, the percentage that the Maintenance Subcontractor may charge in accordance with Table 2 in section 3.1(b) as Margin; and

(ii) otherwise, the percentage that a Subcontractor engaged by Project Co to carry out capital works the subject of a Change Compensation Event (other than the Maintenance Subcontractor) may charge, as Margin, as determined through a competitive tender process in accordance with section 4.

**Financing Delay Costs** means the incremental financing delay costs actually incurred, or which will be actually incurred, by any Project Co Entity under the Finance Documents that are directly attributable to a delay to the achievement of:

(a) Provisional Acceptance (Unit) in respect of any Unit; or

(b) Final Acceptance (CDPD),

caused by:

(c) a Compensable Extension Event;

(d) a Modification the subject of a Modification Order (excluding any Minor Modification and any Modification proposed by Project Co);

(e) a Change in Mandatory Requirements within paragraph (a) of the definition which is the subject of a Modification Order;

(f) TfNSW requiring Project Co to repair or rebuild the Assets under clause 44.3(e) or 47.3(a)(i); or

(g) a Force Majeure Event referred to in clause 37.14(d),

but excluding all financing delay costs that are attributable to delay caused by any other event (including any other Extension Event).

**Maintenance Costs** means the net incremental Costs of the Maintenance Subcontractor that are directly attributable to implementing the recurrent elements of the relevant Change Compensation Event during the Maintenance Phase, including warranty costs and lifecycle costs, but excluding all Agreed Margin, Prolongation Costs, Financing Delay Costs, Delivery Costs and Project Co Costs.

**Maintenance Margin** means the percentage that the Maintenance Subcontractor may charge in accordance with Table 3 in section 3.1(c) on its Maintenance Costs, as Margin.
Margin means an amount on account of:
(a) off-site overheads and administrative, corporate and other like costs and profit; and

Notification Period means:
(a) within the time specified in this Deed; or
(b) if no time is specified in this Deed, within 20 Business Days,
or such longer period as is agreed to by TfNSW, in writing, having regard to the extent and nature
of the relevant event or circumstance and its effects and the information required to be included in
the Change Notice.

Open Book Basis has the meaning given in section 5(f).

Project Co Costs means the net incremental Costs incurred by Project Co that are directly
attributable to implementing the relevant Change Compensation Event, but excluding all Agreed
Margin, Prolongation Costs, Financing Delay Costs, costs of project management services
provided by Project Co, Delivery Costs and Maintenance Costs.

Project Co Margin means the percentage that Project Co may charge in accordance with Table 2
or Table 3 in section 3.1 (as applicable), as Margin.

Project Debt means the lesser of.
(a) outstanding:
   (i) principal repayments; and
   (ii) interest,
on the actual Debt; and
(b) scheduled outstanding:
   (i) principal repayments; and
   (ii) interest,
on Debt as set out in the Financial Model.
Savings means the amount of any Costs of any Project Co Entity or a Subcontractor, together with the relevant Agreed Margin and Margin, avoided or otherwise reduced in accordance with this Schedule arising in connection with a Change Compensation Event.

Schedule of Rates means:

(a) the rates and other amounts set out in Annexure A to this Schedule 5 and sections 11.2, 11.3(b), 11.3(c) and 11.4 of the Payment Schedule; and

(b) otherwise, the rates and other amounts set out in Annexure A to this Schedule 5 and sections 11.2, 11.3(b), 11.3(c) and 11.4 of the Payment Schedule.

2. Change Compensation Events

2.1 Change Compensation Events

Table 1 sets out:

(a) the Change Compensation Events for which TfNSW or Project Co may be entitled to compensation in accordance with this Schedule; and

(b) the relevant sections of this Schedule that are to be used in calculating that compensation.
3. Methodology for calculating compensation

3.1 Compensation for Change Compensation Events

(a) Subject to the specific requirements and restrictions otherwise set out in this Deed, the entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

\[ P = C - D - I \]

where:

- \( P \) = the amount payable to Project Co, where this is a positive amount, or the amount payable to TfNSW, where this is a negative amount;
- \( C \) = the amount of any Base Costs plus applicable Agreed Margin payable to Project Co in accordance with this Schedule;
- \( D \) = the amount of any Savings; and
- \( I \) = proceeds from any Insurances which respond to the Change Compensation Event or any other insurance proceeds or compensation received by, or that would have been received by, Project Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Project Co or any of its Associates to effect and maintain any Insurances in accordance with clause 46 (Insurance) and Schedule 22 (Insurance Schedule) of this Deed, or to make or pursue a claim under any Insurances or to comply with any Project Documents or insurance policy.

(b) (Delivery Phase Activities and capital works): To the extent that Change Compensation Events involve Delivery Phase Activities or capital works during the Maintenance Phase, the amount of item "C" in the formula in section 3.1(a) will be calculated as follows:

\[ C = A + B + D + E \]

where:

- \( C \) = the amount of any Base Costs plus applicable Agreed Margin payable;
- \( A \) = the Delivery Costs;
B = subject to section 5(h), the Agreed Margin for the respective Key Subcontractor (as applicable), in each case multiplied by its respective Delivery Costs (excluding any Delivery Costs that are calculated using the Schedule of Rates);

D = Project Co Costs; and

E = the applicable Project Co Margin multiplied by “A” (excluding any Delivery Costs that are calculated using the Schedule of Rates).

Table 2: Agreed Margins for Delivery Phase Activities and capital works

<table>
<thead>
<tr>
<th>Component</th>
<th>Agreed Margin</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Delivery Cost)</td>
</tr>
<tr>
<td>Project Co Margin (during the Delivery Phase)</td>
<td></td>
</tr>
<tr>
<td>Project Co Margin (during the Maintenance Phase)</td>
<td></td>
</tr>
<tr>
<td>Delivery Margin (Delivery Subcontractor)</td>
<td></td>
</tr>
<tr>
<td>Delivery Margin (Maintenance Subcontractor)</td>
<td></td>
</tr>
</tbody>
</table>

(1) The above dollar thresholds will be indexed in accordance with the CPI Index in the Indexes Schedule, annually on the first day of each Financial Year from 1 July 2019.

(c) (Recurrent works or services): To the extent that Change Compensation Events involve recurrent works or services, the amount of item "C" in the formula in section 3.1(a) will be calculated as follows:

\[ C = A + B + D + E \]

where:

C = the amount of any Base Costs plus applicable Agreed Margin payable;

A = the Maintenance Costs;

B = subject to section 5(h), the applicable Maintenance Margin multiplied by “A” (excluding any Maintenance Costs that are calculated using the Schedule of Rates);

D = Project Co Costs; and

E = the applicable Project Co Margin multiplied by “A” (excluding any Maintenance Costs that are calculated using the Schedule of Rates).
### 3.2 Compensation for Financing Delay Costs and Prolongation Costs

Subject to the specific requirements and restrictions otherwise set out in this Deed, each Project Co Entity's entitlement:

(a) to Prolongation Costs on the occurrence of those Change Compensation Events listed in Table 1 in section 2.1 as entitling Project Co to compensation under this section 3.2 and for which Project Co is granted an extension of time to the:

(i) Date for Provisional Acceptance (Maintenance Facility);

(ii) Date for Provisional Acceptance (Base Fleet and Continuous Production Options);

(iii) Date for Final Acceptance (Maintenance Facility); or

(iv) Date for Final Acceptance (Base Fleet and Continuous Production Options); and

(b) to Financing Delay Costs on the occurrence of those Change Compensation Events listed in Table 1 in section 2.1 as entitling Project Co to compensation under this section 3.2 and for which Project Co is granted an extension of time to:

(i) any Date for Provisional Acceptance (Unit); or

(ii) the Date for Final Acceptance (CDPD),

will be calculated as follows:

\[ P = A + B - I \]

where:

\( P \) = the amount payable to Project Co;

\( A \) = Prolongation Costs for each day for which Project Co is granted an extension of time to the:

(i) Date for Provisional Acceptance (Maintenance Facility);
(ii) Date for Provisional Acceptance (Base Fleet and Continuous Production Options);

(iii) Date for Final Acceptance (Maintenance Facility); or

(iv) Date for Final Acceptance (Base Fleet and Continuous Production Options),

for the relevant Change Compensation Event in accordance with this Deed, until whichever is the earlier of:

(v) the revised relevant Date for Acceptance resulting from that extension of time;

(vi) the relevant Date of Acceptance; or

(vii) the date of termination of this Deed for any reason; and

\[ B = \text{Financing Delay Costs for each day for which Project Co is granted an extension of time to:} \]

(i) any Date for Provisional Acceptance (Unit); or

(ii) the Date for Final Acceptance (CDPD),

for the relevant Change Compensation Event in accordance with this Deed, but not for any day that is earlier than the Original Date for Acceptance or later than whichever is the earlier of:

(i) the revised relevant Date for Acceptance resulting from that extension of time;

(ii) the relevant Date of Acceptance; or

(iii) the date of termination of this Deed for any reason; and

\[ I = \text{any proceeds from any Insurances which responds to the relevant Change Compensation Event or any other insurance proceeds, damages or compensation received by, or that would have been received by, Project Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Project Co or any of its Associates to effect and maintain any Insurances in accordance with clause 46 (Insurance) and Schedule 22 (Insurance Schedule) of this Deed, or to make or pursue a claim under any Insurances or to comply with any Project Documents or insurance policy.} \]

If "P" is a negative number it is deemed to be "0".

3.3 Compensation for Force Majeure Event

Where clause 37.14(d) (Uninsured Force Majeure Event) or clause 38.9(c) (Minimum Payment) of this Deed applies, subject to the specific requirements and restrictions otherwise set out in this Deed, Project Co's entitlement to compensation in respect of a Change Compensation Event will be calculated as follows:

\[ P = F + S + LP - I \]

where:

P = the amount payable to Project Co;

F = where clause 37.14(d) applies, the Financing Delay Costs for each day for which Project Co is granted an extension of time to a Date for Provisional Acceptance (Unit) or the Date for Final Acceptance (CDPD) for the relevant Change Compensation Event in accordance
with this Deed, but not for any day that is earlier than the Original Date for Acceptance or later than whichever is the earlier of:

(i) the revised Date for Acceptance resulting from that extension of time;

(ii) the Date of Acceptance; or

(iii) the date of termination of this Deed for any reason, or

where clause 38.9(f) applies, the minimum amount necessary to enable Finance Co to pay the Project Debt;

\[
S = \begin{cases} 
\text{for a Force Majeure Event which is an Intervening Event, the component of the Monthly Service Payment which is referable to those Services that Project Co continues to carry out under this Deed notwithstanding the Force Majeure Event, and in all other circumstances, } S \text{ is } 0; \\
\text{LP = for a Force Majeure Event which is an Intervening Event, the amount of the Lifecycle Payment that otherwise would have been due and payable to Project Co by TfNSW but for the suspension (to the extent the relevant Cumulative Unit Kilometres Trigger has occurred and the relevant work been completed in accordance with this Deed) and in all other circumstances, } LP \text{ is } 0; \\
I = \text{any proceeds from any Insurance policies which responds to the relevant Change Compensation Event, or any other insurance proceeds, damages or compensation received by, or that would have been received by, Project Co or any of its Associates in respect of the relevant Change Compensation Event but for any failure by Project Co or any of its Associates to: } \\
(i) \text{effect and maintain any Insurances in accordance with clause 46 (Insurance) and Schedule 22 (Insurance Schedule) of this Deed; } \\
(ii) \text{make or pursue a claim under any Insurances; or } \\
(iii) \text{comply with any Project Documents or insurance policy. }
\end{cases}
\]

### 3.4 Minor Modifications

(a) TfNSW and Project Co acknowledge that:

(i) the process for a Minor Modification is intended to be streamlined and easy to administer for both TfNSW and Project Co;

(ii) the parties must use the forms of Change Notices set out in sections 12 and 13 of the Schedule of Forms and Certificates in respect of Minor Modifications; and

(iii) they may if the parties agree, but are not obliged to, use for Minor Modifications the full Change Notice and Change Response procedure applying to Modifications set out in this Schedule.

(b) Save where clause 39.12(f) (Failure to agree) applies and except to the extent specified in the Change Notices referred to in section 3.4(a)(ii), the remainder of these Change Compensation Principles will not apply to a Minor Modification unless otherwise agreed by TfNSW and Project Co.
3.5 Savings

For the purposes of section 3.1, the amount of any Saving payable to TfNSW in respect of:

(a) not used; or

(b) a Modification pursuant to clause 39.8(d) (Sharing of Savings) of this Deed,

will be as agreed between the TfNSW and Project Co at the time, or if TfNSW and Project Co are unable to agree within 20 Business Days of:

(c) not used; or

(d) Project Co issuing the relevant Modification Proposal pursuant to clause 39.8(d) (Sharing of Savings) of this Deed,

(as the case may be), the amount of Savings payable to TfNSW will be

3.6 Not used

3.7 Not used

3.8 Compression of schedule for Provisional Acceptance (Unit)

Where TfNSW accepts a Change Notice issued in accordance with clause 26(e) to compress the schedule for Provisional Acceptance (Unit), Project Co must reimburse TfNSW and RailCorp for all Liability suffered or incurred by the TfNSW, RailCorp and their respective Associates (including all costs and expenses of the Operator) arising out of or in connection with compressing the schedule for Provisional Acceptance (Unit) of the affected Units.

4. Tender process during Maintenance Phase

(a) TfNSW may require Project Co to carry out, or procure that the relevant Key Subcontractor carries out, a tender process in respect of a Change Compensation Event in accordance with this section 4 if, during the Maintenance Phase:

(i) the relevant Change Compensation Event involves a capital cost component and the Delivery Costs are likely to exceed $\text{Indexed}$; or

(ii) TfNSW notifies Project Co that it does not accept or rejects a Change Notice issued by Project Co and that it requires Project Co to carry out a tender process in respect of the relevant Change Compensation Event.

(b) If a tender process is required to be carried out in accordance with section 4(a):

(i) (Tender Process): Project Co must obtain, or if applicable must procure that the relevant Key Subcontractor obtains, a minimum of three separate quotes from experienced, independent and capable contractors reasonably acceptable to TfNSW to carry out any work or services in respect of the Change Compensation Event;

(ii) (Tender Process Material): Project Co must permit, and if applicable must procure that the relevant Key Subcontractor permits, TfNSW to review all materials that are issued and submitted in the tender process and provide any other information that TfNSW reasonably requires including such written consents as are required (including by Law) to carry out any Proximity Investigations;
(ii) **Selection Criteria**: Project Co must:

A. ensure; and

B. if requested by TfNSW, demonstrate to the reasonable satisfaction of TfNSW, that the Subcontractor:

C. Project Co; or

D. the relevant Key Subcontractor,

(as the case may be), intends to select and engage is the best choice having regard to the:

E. price quoted;

F. experience and capability of that Subcontractor; and

G. ability of the Subcontractor to carry out the work or the services in the manner required by this Deed;

(iv) **Subcontracting requirements**: the Subcontractor must meet the requirements in respect of Subcontractors set out in this Deed; and

(v) **TfNSW not satisfied**: if, following the conduct of the tender process, TfNSW is not reasonably satisfied with the tenders, it may:

A. direct Project Co:

   (I) not to accept; or

   (II) if applicable, to procure that the relevant Key Subcontractor does not accept,

   any tender offer;

B. except where expressly stated otherwise in this Deed, direct Project Co not to proceed with the relevant Change Compensation Event; or

C. instruct Project Co to proceed with the work or the services, but on another basis under this Schedule.

5. **General principles for calculating compensation**

The extent (if any) to which compensation will be payable by TfNSW for a Change Compensation Event, will be determined as follows (but without affecting any express limitations on or exclusions from the calculation of such compensation as set out in this Deed):

(a) **Overriding considerations**: the overriding considerations will be that:

(i) TfNSW and RailCorp are receiving value for money; and

(ii) the compensation amount is fair and reasonable and is calculated in a manner that is transparent and reflects commercial arm’s length arrangements;
(b) **Incremental cost**: changes in Base Costs are to be determined on an incremental basis

where:

(i) in the case of an increase in Base Costs, only costs that would not be incurred but for the Change Compensation Event are to be taken into account;

(ii) in the case of a reduction in Base Costs, only savings that would not have accrued but for the Change Compensation Event are to be taken into account; and

(iii) Base Costs will be calculated net of any insurance proceeds, damages or compensation which Project Co or any Key Subcontractor receives or is entitled to receive as a result of the Change Compensation Event;

(c) **Mitigation**: calculation of Costs will:

(i) exclude any incremental Costs which would not have been incurred; and

(ii) include any Savings which would have been derived,

to the extent Project Co and its Associates fail to use all reasonable endeavours to mitigate the effects of any Change Compensation Event (including by putting in place temporary measures reasonably acceptable to the TfNSW Representative);

(d) **Time value of money**: appropriate regard must be given to the time value of money and timing of cash flows by discounting or inflating them to reflect when they occur (if applicable);

(e) **Open Book Basis**: Project Co must and must procure that its Associates:

(i) provide all information referred to in this Schedule on an Open Book Basis (as defined below);

(ii) make available the appropriate personnel to explain the basis on which a particular calculation has been made; and

(iii) allow TfNSW to review and undertake audits,

in order to enable TfNSW to verify compliance with this Deed and make an accurate assessment of Costs and Savings;

(f) **Open Book Basis**: the open book basis referred to in section 5(e) will include each Project Co Entity and Key Subcontractors providing a breakdown of the calculation of all relevant preliminaries, labour, equipment, materials, subcontract, finance and other Costs and Margins (if applicable) of Project Co and its Associates (including all Costs referred to in the Schedule of Rates) in a clear and transparent manner and other information reasonably requested by TfNSW including reasonably available source documents required to verify such calculation (Open Book Basis);

(g) **No double counting**: no amounts will be double counted and no costs will be payable more than once, including in respect of any Change Compensation Event which occurs during a period which falls within both the Delivery Phase and the Maintenance Phase (for example, the calculation of Base Costs on an incremental basis will not cause cost savings to be double counted both in calculating incremental Base Costs and as a Saving);

(h) **Margins**: except where Project Co is expressly entitled to be paid an Agreed Margin as set out Table 1 of section 2.1, TfNSW will not pay or procure payment or otherwise compensate Project Co (or any Key Subcontractor) for any Margin (or loss of Margin) in respect of a Change Compensation Event;
6. Form and timing of compensation

(a) Change Compensation Event: If a Change Compensation Event:

(i) results in an amount owing from Project Co to TfNSW, TfNSW will deduct such amount from the Monthly Service Payments payable to Project Co after the relevant Change Compensation Event, or if there are insufficient subsequent Monthly Service Payments payable to Project Co to cover the amount of the Change Compensation Event or if the Change Compensation Event occurs during the Delivery Phase, such amount will be a debt due and payable by Project Co to TfNSW;

(ii) results in an amount owing from TfNSW to Project Co that is not financed by any Project Co Entity in accordance with section 6(b), TfNSW will pay or procure payment of such amount to Project Co:

A. subject to sections 6(a)(ii)B, and 6(a)(ii)C, in accordance with the payment arrangements set out in the approved Change Notice which could include a lump sum payment, monthly in arrears, a series of milestone payments or an adjustment to the Monthly Service Payment (or a combination of these methods); or

B. in respect of Financing Delay Costs, monthly in arrears on the date which TfNSW would have paid the Monthly Service Payment relating to those days of delay had Acceptance not been delayed by the relevant Change Compensation Event; or

C. in respect of a Configurable Item Change, an adjustment to the Monthly Service Payment;

(iii) results in an amount owing from TfNSW to Project Co that is financed by any Project Co Entity in accordance with section 6(b), TfNSW will pay such amount to Project Co by way of an increase in the Monthly Service Payment.
b) **Reasonable endeavours to obtain funding**: Where TfNSW requests Project Co to obtain funding for a Change Compensation Event, Project Co must (and must procure Finance Co to) use all reasonable endeavours to obtain such funding, including by:

1. using any Savings resulting from other Change Compensation Events which have resulted in amounts being available under the Finance Documents;
2. using any standby facility that may be available to any Project Co Entity;
3. arranging for additional funding under the Finance Documents and from other sources (if permitted under the Finance Documents); and
4. arranging other funding obtained on commercial terms for any Project Co Entity by TfNSW (without any obligation on TfNSW to make any such arrangements).

(c) **Unable to obtain funds**: Where Project Co, having used all reasonable endeavours, is unable to obtain funding or funding that is on terms which are satisfactory to TfNSW, TfNSW will pay the relevant amounts in accordance with section 6(a)(ii).

(d) **Adjustment to Securitised Licence Structure**:

1. If a CCA Event occurs and the Monthly Service Payment is reduced and there is a corresponding reduction in the debt finance procured by Finance Co and reflected in the Securitised Licence Structure, then Project Co must also calculate the decrease (which only represents the reduction in the debt finance procured by Finance Co under the Finance Documents as a result of that CCA Event) to:
   - A. the Construction Price and Construction Payments required to be paid by TfNSW to Project Co; and
   - B. the Licence payable by Project Co under the Maintenance Phase Licences,

   such that the amount payable by Finance Co for the Initial Receivables under the Receivables Purchase Deed as a result of that CCA Event is reduced by an amount which is equal to the decrease in the Construction Price and Construction Payment in respect of that CCA Event.

2. If a CCA Event occurs and the Monthly Service Payment is increased and there is a corresponding increase in the debt finance procured by Finance Co and reflected in the Securitised Licence Structure, then Project Co must also calculate the increase (which only represents the amount payable to Project Co under section 3.1 of this Schedule plus the amounts payable by Project Co or Finance Co (as applicable) to the Financiers) in respect of the relevant financing of:
   - A. the Construction Change Payment required to be paid by TfNSW to Project Co; and
   - B. the increase to the Licence Fees payable by Project Co under the Maintenance Phase Licences,

   such that the Receivables Purchase Payments for Additional Receivables payable by Finance Co in respect of that CCA Event under the Receivables Purchase Deed will equal the Construction Change Payment in respect of that CCA Event.

7. **Annual review of ongoing compensation**

(a) **Annual review**: If compensation for a Change Compensation Event has been made by an increase in the Monthly Service Payment, the amount of the compensation (other than
any Project Co Entity’s costs of financing the Change Compensation Event) will be subject to annual review at the end of each Operating Year in accordance with this section 7 to reflect actual Base Costs incurred for the relevant Change Compensation Event for that Operating Year.

(b) (Adjustment to Monthly Service Payment): To the extent that the ongoing net Costs or net Savings arising as a consequence of any Change Compensation Event differs from the then existing compensation made through the Monthly Service Payment, the Monthly Service Payment will be adjusted accordingly over the balance of the Term.

(c) (Time of review): Within one month prior to the end of each Operating Year, Project Co must undertake and provide to TfNSW a review of the amount of ongoing net Costs or net Savings arising as a consequence of the Change Compensation Event incurred, paid or accrued for which compensation has been made through the Monthly Service Payment over the Term.

(d) (TfNSW review and Disputes): TfNSW must, within 20 Business Days of receipt of a review undertaken in accordance with section 7(c), notify Project Co of any matter within that review with which TfNSW does not agree, and any Dispute on the extent of any adjustment of compensation may be referred by either party for resolution in accordance with clause 50 (Dispute Resolution procedure) of this Deed.

8. Change Notice

8.1 Change Notice and TfNSW Response

(a) Each Change Notice must be prepared in accordance with and comply with this Schedule.

(b) If:

(i) an event or circumstance is expressed in this Deed to be a Change Compensation Event;

(ii) Project Co is entitled or required to submit a Change Notice to TfNSW in accordance with this Deed in respect of an event or circumstance; or

(iii) an amount is to be calculated in accordance with this Schedule,

(each a Change Notice Event), then, as a condition precedent to making a Claim in respect of such an event or circumstance, Project Co must prepare and submit to the TfNSW Representative or the Independent Certifier (as applicable) (each a Change Notice Recipient), a Change Notice which complies with section 10 within the initial Notification Period.

(c) Where the Change Notice Event continues beyond the issue of the initial Change Notice, Project Co must prepare and submit to the Change Notice Recipient an updated Change Notice within each further Notification Period following the initial Change Notice to the extent expressly set out in this Deed.

(d) Any Change Notice or updated Change Notice submitted by Project Co to TfNSW must at the same time be submitted by Project Co to the Independent Certifier, to the extent only that Project Co is required to submit a Change Notice to the Independent Certifier pursuant to this Deed.
8.2 TfNSW may request a Change Notice

(a) Where:

(i) TfNSW believes that a Change Compensation Event or any other event or circumstance for which Project Co is entitled or required to submit a Change Notice has occurred; and

(ii) Project Co has not submitted a Change Notice,

TfNSW may in a notice entitled "Change Notice Request", request that Project Co prepare and submit a Change Notice in respect of the particular event (a Change Notice Request).

(b) Project Co must prepare and submit a Change Notice within the Notification Period following receipt of the Change Notice Request.

8.3 Instruction to Proceed

(a) If TfNSW issues a Modification Order under clause 39.7(a) of this Deed:

(i) TfNSW will:

A. determine (acting reasonably) all matters required to enable the Modification to be implemented including:

   (I) the cost effect of the Modification;

   (II) if the Modification is to be carried out during the Delivery Phase, the effect which the proposed Modification will have on the Baseline Delivery Program (including any extension of time required to the Date for Acceptance); and

   (III) any relief which is required from Project Co's obligations under this Deed; and

B. assume that funding for the Modification will be provided by TfNSW unless TfNSW and Project Co otherwise agree; and

(ii) subject to section 8.3(c), Project Co must proceed with the Modification in accordance with the Modification Order.

(b) Any Dispute in relation to a Modification Order issued by TfNSW under clause 39.7(a) may be referred by Project Co to expert determination in accordance with clause 52 of this Deed.

(c) Project Co will not be required to comply with a Modification Order to the extent that the Modification Order would cause Project Co or its Associates to breach any Legislation or its respective Accreditation referred to in clause 6A.5(b), or result in Project Co or its Associates causing any Accredited Person to breach its respective Accreditation.

9. Change Response

9.1 TfNSW to issue a Change Response

(a) Unless otherwise expressly stated in this Deed, within 20 Business Days after receipt of a Change Notice (or such longer period as TfNSW, or any other person to whom the Change Notice is required to be given under this Deed, reasonably requires having regard
to the nature of the Change Notice Event, the information required to be included in the Change Response, the content and quality of the Change Notice and whether TfNSW requires an expert to verify any amount calculated by Project Co in the Change Notice, the Change Notice Recipient:

(i) may request from Project Co any further information that the Change Notice Recipient reasonably requires in order to assess the Change Notice in accordance with this Schedule, in which case the relevant Change Notice Recipient will not be required to issue a Change Response until 20 Business Days after receipt from Project Co of all such further information reasonably requested; and

(ii) must advise Project Co, in a notice entitled 'Change Response', that the Change Notice Recipient:

- accepts the Change Notice (and in the case of a Modification the subject of a Modification Proposal submitted under clauses 37.3(c) (Contamination or Modifications), 39.8 (Modifications proposed by Project Co) or 39.9 (Directions) of this Deed, the Change Response must be entitled 'Modification Order'), in which case Project Co will be liable for amounts owing from Project Co to TfNSW on the terms set out in the relevant Change Notice or will, subject to Project Co complying with the other requirements of this Deed (including this Schedule), be entitled to:

  (I) compensation (if any) to the extent provided under and in accordance with sections 3 and 5;
  (II) relief (if any); and
  (III) an extension of time (if any) to the extent provided in accordance with clauses 8.6 (Project Co's entitlement to compensation for Remediation), 37 (Delivery Phase — delay), 39.10 (Change in Mandatory Requirements) or 39.11 (Extension of time) (as applicable) of this Deed,

  on the terms set out in the relevant Change Notice (except in respect of a Modification initiated by Project Co, in which case Project Co will only be entitled to compensation, relief or an extension of time if agreed to in writing by TfNSW);

- subject to clause 39.11 (Extension of time), does not accept or rejects the Change Notice or a part of the Change Notice (and the reasons for this) and advise its determination of Project Co's entitlement to any extension of time, relief and/or compensation in accordance with this Schedule or take any other action in accordance with section 9.2;

- in the case of a Change Notice in response to a Modification Request, does not wish to proceed with the proposed Modification (or in respect of a Non-Mandatory Change in Standards, does not wish Project Co to implement the Change in Mandatory Requirements) and confirms that the Modification Request, if issued by TfNSW under clause 39.1, is withdrawn or, the Modification Proposal, if issued by Project Co under clause 39.8, is deemed to have been withdrawn by Project Co; or

- in the case of a Change Notice submitted pursuant to clause 26(e) of this Deed, does not agree to Project Co's request to compress the schedule for Provisional Acceptance (Unit),

(each a Change Response).
(b) A Change Response provided by TfNSW has the effect of varying this Deed to the extent the Change Notice is accepted in the relevant Change Response, with effect from the date of receipt by Project Co of that Change Response, or such other date specified in that Change Response.

(c) Whether or not Project Co has issued a Change Notice in respect of a Change Notice Event, TfNSW may at any time in its absolute discretion, issue a Change Response in accordance with this Schedule in respect of a Change Notice Event.

(d) Nothing in this Deed requires a Change Notice Recipient to review a Change Notice in accordance with the Review Procedures.

(e) No failure of a Change Notice Recipient (including within any time period specified in this Deed) will entitle Project Co to the relief and/or compensation set out in the Change Notice or put any time at large or deprive the Change Notice Recipient to grant the relief and/or compensation sought or such other relief as appropriate (including the power to extend time).

9.2 TfNSW’s options

Where TfNSW does not accept the Change Notice, or a part of it, TfNSW may:

(a) require Project Co to:

(i) have any amount that is not an Agreed Margin determined by expert determination in accordance with clause 52 (Expert determination) of this Deed and section 9.4;

(ii) during the Maintenance Phase, procure that the Maintenance Subcontractor conduct a tender process for any part of the work the subject of the Change Compensation Event that will not be carried out by Project Co and the Maintenance Subcontractor, in accordance with section 4; or

(iii) submit an updated Change Notice to TfNSW, responding to the Change Response;

(b) amend any aspect of the Change Notice in the Change Response to reflect Project Co’s actual entitlement; or

(c) reject the Change Notice on the basis that the event which is the subject of the Change Notice is not an event for which Project Co is entitled to submit a Change Notice under the Project Documents.

9.3 Project Co’s options where the Change Notice is not accepted or is rejected

If the Change Notice Recipient does not accept or rejects a Change Notice or a part of it:

(a) Project Co must proceed with the Project Activities in accordance with this Deed and the Change Response; and

(b) Project Co must as a condition precedent to pursuing its Claim in respect of the Change Compensation Event (or the relevant part of it, as applicable):

(i) if required by the Change Notice Recipient, submit an updated Change Notice to TfNSW, responding to the Change Response; or

(ii) refer any Dispute in relation to all or any part of the Change Response to expert determination in accordance with clause 52 (Expert determination) of this Deed,
within 20 Business Days (or such other period as agreed with the relevant Change Notice Recipient) after Project Co's receipt of the Change Response.

9.4 Dispute resolution

If TfNSW does not accept or rejects an amount as calculated by Project Co in any Change Notice (such amount not being a fixed or specified amount under this Schedule), TfNSW may have the amounts determined by an expert appointed in accordance with clause 52 (Expert determination) of this Deed, in which case:

(a) the Base Costs calculated in item "C" in the formula in section 3.1(a) will be the lower of:
   (i) the amount claimed by Project Co in accordance with this Schedule; and
   (ii) the amount determined by the expert; and

(b) the Savings calculated in item "D" in the formula in section 3.1(a) will be the higher of:
   (i) the amount claimed by Project Co in accordance with this Schedule; and
   (ii) the amount determined by the expert,

and TfNSW will update any Change Response provided under section 9.1 promptly following the expert's determination.

10. Contents of Change Notice

10.1 General

Each Change Notice must:

(a) contain:
   (i) the information required by this Schedule;
   (ii) any additional information required under this Deed in respect of a particular Change Notice Event or required by the Change Notice Recipient; and
   (iii) copies of the equivalent Change Notices issued under the Key Subcontracts which should be in substantially the same form as the Change Notice submitted under this Deed and be signed by the Key Subcontractors' representatives;

(b) be signed by:
   (i) the Project Co Representative; and
   (ii) subject to clauses 39.12(m), 39.15(d) and 39.16(f), the Financier to acknowledge the Financier's consent to the contents of the Change Notice;

(c) attach copies of any required changes to the Site Plans, the Baseline Delivery Program, the Delivery Phase Reports or the Maintenance Phase Reports (as applicable);

(d) set out detailed particulars of the nature, occurrence and impact of the relevant Change Notice Event;

(e) comply with sections 10.2 to 10.4;
if the Change Compensation Event occurs prior to the first Payment Period and results in an amount owing from Project Co to TfNSW, details of the form and timing of compensation Project Co proposes, including:

(i) a debt due and payable by Project Co to TfNSW; or
(ii) by a reduced or resculpted Monthly Service Payment profile, with such reduction or resculpting being at least equivalent in value to the corresponding amount if the form and timing of the relevant compensation was a debt due and payable by Project Co to TfNSW;

(g) in respect of a Relief Event, describe the reduction pursuant to clause 45.7(c) in Project Co's liability to indemnify or release the Indemnified Persons or the Indemnified IP Parties in accordance with this Deed;

(h) be prepared on the basis of the prices and lead times in the spares list set out in the Schedule of Rates, if applicable; and

(i) be based on the following form:

(i) in respect of Change Notices for Change Compensation Events other than Modifications or Minor Modifications, section 9 of the Schedule of Forms and Certificates;
(ii) in respect of Change Notices for Modifications initiated by TfNSW (other than Minor Modifications), section 10 of the Schedule of Forms and Certificates;
(iii) in respect of Change Notices for Modifications initiated by Project Co (other than Minor Modifications), section 11 of the Schedule of Forms and Certificates;
(iv) in respect of Change Notices for Minor Modifications initiated by TfNSW, section 12 of the Schedule of Forms and Certificates; and
(v) in respect of Change Notices for Minor Modifications initiated by Project Co, section 13 of the Schedule of Forms and Certificates.

10.2 Mitigating factors

In each Change Notice, Project Co must describe the actions Project Co and its Associates have taken (and any further action Project Co proposes to take in the future) to:

(a) mitigate, minimise or avoid the adverse effects, costs, consequences or duration of the Change Notice Event (including by putting in place temporary measures reasonably required by TfNSW); and

(b) take advantage of any positive or beneficial effects of the Change Notice Event and maximise any reduction in Costs arising from the Change Notice Event.

10.3 Effects

In each Change Notice, Project Co must provide details, where applicable, and to the extent known or able to be predicted, of:

(a) the effects of the Change Notice Event on:

(i) the workmanship, capacity, functional integrity, functional performance, whole of life performance, quality, appearance or durability of any part of the Assets;

(ii) the aesthetics of visible features of the Units;

(iii) the aesthetics of visible features of the Units;
(iii) the Maintenance Facility or the Legacy Maintenance Centre;

(iv) the Simulators;

(v) the use of the Cars by the Operator and its Passengers or Crew (including any change to Passenger or Crew benefits or amenity);

(vi) the benefits to the Operator;

(vii) the safety of the Assets;

(viii) the security of the Assets;

(ix) any training requirements;

(x) the design, manufacture, construction, supply, installation or commissioning of the Works or Upgrade Services;

(xi) the management and Maintenance of the Assets;

(xii) the carrying out of the Project Activities and Project Co's ability to carry out the Services in accordance with the Services Requirements;

(xiii) the Deliverables meeting the FFP Warranty;

(xiv) the warranties given by Project Co in this Deed or by a Key Subcontractor in its Key Subcontract;

(xv) any other relevant part of this Deed (including Schedules and Attachments) or any other TfNSW Project Document, including any amendments required; and

(xvi) any existing Approvals (including the Accreditation of each Accredited Person) or the requirement for any new Approvals;

(b) any damage caused by the Change Notice Event;

(c) the time consequences of a Change Notice Event, including:

(i) an estimate of the time (if any) during which Project Co will be prevented from carrying out or delayed in carrying out the Project Activities due to the Change Notice Event, any impact on any Date for Acceptance or any likely Date of Acceptance and any impact on activities on the critical path contained in the then current Baseline Delivery Program;

(ii) in the case of a Change Notice Event which is a Modification, the time for completion of the Modification (including whether the Modification is required to be completed prior to any Date for Acceptance) and the latest date by which TfNSW could accept the Change Notice with no impact upon the Date for Acceptance; and

(iii) any revised Date for Final Acceptance and any impact on activities on the critical path contained in the then current Baseline Delivery Program;

(d) where Project Co claims as a consequence of a Change Notice Event:

(i) an extension of time to a Date for Acceptance, the number of days extension claimed together with:

A. the basis of calculating the total number of days claimed; and
B. any information reasonably required by the TfNSW Representative to demonstrate that Project Co has satisfied the conditions relevant to its extension of time claim as referred to in clause 37 (Delivery Phase – delay) of this Deed; or

(ii) relief from any other of its other obligations under this Deed, the basis on which Project Co has formed the opinion that such relief is required together:

A. with all necessary supporting evidence; and

B. any information reasonably required by the Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its relief claim as referred to in clause 38 (Maintenance Phase – Intervening Events) of this Deed; and

(e) the cost consequences of, and the compensation claimed in respect of, the Change Notice Event, together with any information reasonably required by the Change Notice Recipient to demonstrate that Project Co has satisfied the conditions relevant to its compensation claim as referred to in clauses 37.7(a), 38.7(b), 38.8(c) or 38.9(c) of this Deed.

10.4 Warranty by Project Co

All Change Notices must:

(a) where the Change Notice is in respect of a Modification the subject of a Modification Order, contain a warranty by Project Co in respect of the Change Compensation Event that:

(i) the relevant Change Notice has been prepared so as to avoid or minimise:

A. any delay in achieving Acceptance; and

B. any adverse safety impacts of the Change Compensation Event on people and the Assets;

(ii) the Modification when implemented will:

A. enable the Assets to meet the FFP Warranty (to the extent applicable) and otherwise meet the requirements of this Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

B. enable Project Co at all times during the Maintenance Phase to carry out the Project Activities in accordance with the Services Requirements and to comply with the terms of this Deed, except to the extent that it is agreed or determined that the proposed Modification will have an adverse effect on the matters referred to in section 10.3,

in each case, without limiting the warranties given by Project Co in other clauses of this Deed, except to the extent that it is agreed between TfNSW and Project Co or determined in accordance with this Deed that the proposed Modification will have an adverse effect on the matters referred to in section 10.3; and

(b) contain a warranty by Project Co that it is satisfied that the Claim the subject of the Change Notice is bona fide, true and correct to the best of its knowledge and the relief sought is an accurate reflection of Project Co’s entitlement under this Deed to the extent it is able to be known at the time.
11. Pre-Agreed Acceptance Compression Principles

A Change Notice prepared by Project Co pursuant to clause 26(e) of this Deed must, in addition to meeting the other requirements for Change Notices set out in this Schedule 5:

(a) (Proposed program): provide details of the proposed compression of the schedule for Provisional Acceptance (Unit) of the affected Units, provided that the proposal must:

(i) not provide for any Unit to be delivered before the Date for Provisional Acceptance (Unit) for that Unit; and

(ii) allow at least 5 Business Days during the compressed period between the presentation for Provisional Acceptance (Unit) of each Unit and the Date of Provisional Acceptance (Unit) of the last Unit to achieve Provisional Acceptance (Unit); and

(b) (Compensation): provide details of the proposed form and timing for Project Co to reimburse TfNSW and RailCorp for all Liability suffered or incurred by TfNSW, RailCorp and their respective Associates (including all costs and expenses of the Operator) arising out of or in connection with compressing the schedule for Provisional Acceptance (Unit) of the affected Units.
Annexure A - Schedule of Rates

1. General principles

TfNSW and Project Co acknowledge and agree that all rates and costs in this Annexure A are fully inclusive and no Agreed Margin or other Margin will be applied to any of them.

2. Configurable Items

The total time and price to configure the Configurable Items and perform retrieval tasks are listed in Tables 1 and 2.

In respect of the time to implement the Configurable Item Change, the time period will begin when the TfNSW issues a direction under clause 39.15(a) or, if a Configurable Item Change forms part of a Modification or Minor Modification, when TfNSW issues a Modification Order or the parties agree the terms of a Minor Modification Proposal in accordance with clause 39.12(e) (as applicable). Implementation of a Configurable Item Change includes all engineering, procurement, implementation, Verification and documentation updates required in respect of the Configurable Item Change.

In respect of the price to implement the Configurable Item Change, without limiting clause 39.15(c)(ii), this price will cover all costs of Project Co and its Associates incurred in implementing the Configurable Item Change, including management, administration, engineering, procurement, implementation, Verification and documentation updates required.

The below dollar amounts will be indexed in accordance with the Third Indexation Factor under section 1.2 of the Indexes Schedule annually on the first day of each Financial Year from 1 July 2019.

2.1 Design configuration updates

Table 1: Design Configuration Updates

<table>
<thead>
<tr>
<th>Configurable Item / Parameter</th>
<th>Default value</th>
<th>Minimum value</th>
<th>Maximum value</th>
<th>Adjustment resolution</th>
<th>Time to implement across the New Fleet</th>
<th>Price to implement across the New Fleet</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Maximum line speed limit (km/h) (only for overspeed testing, not for operation; maximum operating speed 160 km/h)</td>
<td>160</td>
<td>5</td>
<td>178</td>
<td>0.5</td>
<td></td>
<td></td>
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<tr>
<td>Configurable Item / Parameter</td>
<td>Default value</td>
<td>Minimum value</td>
<td>Maximum value</td>
<td>Adjustment resolution</td>
<td>Time to implement across the New Fleet</td>
<td>Price to implement across the New Fleet</td>
</tr>
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</tr>
<tr>
<td>2. Shunt mode speed (km/h) (for depot manoeuvring only)</td>
<td>8</td>
<td>5</td>
<td>10</td>
<td>0.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Wash mode speed (km/h)</td>
<td>3.5</td>
<td>2</td>
<td>5</td>
<td>0.5</td>
<td></td>
<td></td>
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<tr>
<td>4. Degraded mode max speed limit (km/h) (maximum value to be defined in Delivery Phase)</td>
<td>100</td>
<td>60</td>
<td>tbc during Delivery Phase</td>
<td>0.5</td>
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<tr>
<td>5. Traction acceleration longitudinal jerk limit (ms$^{-3}$)</td>
<td>0.7</td>
<td>0.5</td>
<td>1.5</td>
<td>0.05</td>
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<td>6. Service brake longitudinal jerk limit (ms$^{-3}$)</td>
<td>0.7</td>
<td>0.5</td>
<td>1.2</td>
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<td>7. Emergency brake reset delay (seconds)</td>
<td>3</td>
<td>1</td>
<td>30</td>
<td>1</td>
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<td>8. Passenger body side door automatic close time - Intercity Non-Electric Trains (seconds)</td>
<td>240</td>
<td>0</td>
<td>3600</td>
<td>0.1</td>
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<tr>
<td>9. Passenger body side door automatic close time - Regional Trains (seconds)</td>
<td>600</td>
<td>0</td>
<td>3600</td>
<td>0.1</td>
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<td>10. Intercar door automatic close time (seconds)</td>
<td>15</td>
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<td>600</td>
<td>0.1</td>
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<td>11. Saloon vestibule door automatic close time (seconds)</td>
<td>15</td>
<td>0</td>
<td>600</td>
<td>0.1</td>
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<td></td>
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<tr>
<td>Configurable Item / Parameter</td>
<td>Default value</td>
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<td>Maximum value</td>
<td>Adjustment resolution</td>
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<td>12. Emergency egress Crew inhibit time (seconds)</td>
<td>1800</td>
<td>0</td>
<td>3600</td>
<td>0.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Emergency egress initial inhibition time (seconds)</td>
<td>20</td>
<td>0</td>
<td>60</td>
<td>0.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Emergency egress remote visual and audible alarm (seconds)</td>
<td>3</td>
<td>0</td>
<td>10</td>
<td>0.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Passenger bodyside door opening/closing speed (mm/s)</td>
<td>225</td>
<td>100</td>
<td>300</td>
<td>5</td>
<td></td>
<td></td>
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<tr>
<td>16. Passenger bodyside door closing alarm (seconds)</td>
<td>4</td>
<td>0</td>
<td>10</td>
<td>0.1</td>
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<td></td>
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<tr>
<td>17. Passenger bodyside door enabled alarm (seconds)</td>
<td>4</td>
<td>0</td>
<td>10</td>
<td>0.1</td>
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<tr>
<td>18. Door close obstruction retry (attempts)</td>
<td>3</td>
<td>1</td>
<td>9</td>
<td>1</td>
<td></td>
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<tr>
<td>19. Door open obstruction retry (attempts)</td>
<td>3</td>
<td>1</td>
<td>9</td>
<td>1</td>
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<tr>
<td>20. Passenger intercom escalation delay timer (seconds)</td>
<td>120</td>
<td>0</td>
<td>600</td>
<td>1</td>
<td></td>
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<tr>
<td>21. Fire detection Crew alarm (seconds)</td>
<td>5</td>
<td>2</td>
<td>10</td>
<td>1</td>
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<tr>
<td>22. Cab door automatic close speed (km/h)</td>
<td>40</td>
<td>0</td>
<td>160</td>
<td>1</td>
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### 2.2 Physical Retrieval

#### Table 2 – Physical Retrieval

<table>
<thead>
<tr>
<th>Configurable Item / Parameter</th>
<th>Pricing / Time Measure</th>
<th>Time to complete</th>
<th>Price to retrieve</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Physically retrieve CCTV system memory unit(s)</td>
<td>per Unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Physically retrieve Event Recorder memory unit(s)</td>
<td>per Unit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(assumes: [Graph or Table])
<table>
<thead>
<tr>
<th>Configurable Item / Parameter</th>
<th>Pricing / Time Measure</th>
<th>Time to complete</th>
<th>Price to retrieve</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physically retrieve the ETCS Juridical Recorder Unit(s) memory unit.</td>
<td>per Unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physically retrieve TMS data</td>
<td>per Unit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Schedule 6 — Site Plans

1. Maintenance Facility Site

The Maintenance Facility Site comprises the land title lots 4, 9, 10 and 11 identified in DP1243994.
2. Legacy Maintenance Centre Site

The Legacy Maintenance Centre Site comprises the areas identified in red shading as the "Legacy Maintenance Centre Site" and in green shading as the "Legacy Maintenance Centre Site (Effluent Treatment Site)" on sheets 1 to 3 below of drawing number PR140769-001C.
Schedule 7 — Form of Delivery Phase Licence

Delivery Phase Licence

Transport for NSW (TfNSW)
ABN 18 804 239 602
Licensor

and

Momentum Trains Pty Ltd (Project Co)
ACN 630 634 507
Licensee
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Schedule 1 — Licensed Area: Maintenance Facility Site

Schedule 2 — Form of Deed of Novation
This Delivery Phase Licence is made on __________________________ 2019

Parties

(1) Transport for NSW (ABN 18 804 239 602), a corporation constituted under section 3C of the Transport Administration Act 1988 (NSW) (TfNSW) (Licensor); and

(2) Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Project Trust (Project Co) (Licensee)

Background

A. The Licensor is entitled to grant a licence in respect of the Licensed Area.

B. The Licensor, together with RailCorp and the Licensee, intend to enter into, or have entered into, the Project Deed.

C. The Licensor agrees to grant a non-exclusive licence to the Licensee for the Permitted Use on the terms of this agreement.

D. The Licensee agrees to accept the licence, on the terms of this agreement.
## Reference Schedule

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Date of agreement</td>
</tr>
<tr>
<td>2</td>
<td>Term</td>
</tr>
<tr>
<td>3</td>
<td>Licensed Area</td>
</tr>
<tr>
<td>4</td>
<td>Land</td>
</tr>
<tr>
<td>5</td>
<td>Commencing Date</td>
</tr>
<tr>
<td>6</td>
<td>Licence Fee</td>
</tr>
<tr>
<td>7</td>
<td>Permitted Use</td>
</tr>
<tr>
<td>8</td>
<td>Not used</td>
</tr>
<tr>
<td>9</td>
<td>Normal Operating Hours</td>
</tr>
</tbody>
</table>

**Item 1: Date of agreement**

In relation to the Maintenance Facility Site, from the Commencing Date to immediately before the grant of the Maintenance Facility Site Maintenance Phase Licence. In relation to the Returned Asset Site, from the Commencing Date to Returned Asset Handback.

**Item 3: Licensed Area**

The Maintenance Facility Site having a combined area of approximately 190,472 square metres comprising the land title lots 4, 9 and 10 identified in DP1243994 on the plan attached at Schedule 1.

The Returned Asset Site having a combined area of approximately 29,300 square metres, and as at the date of the Project Deed comprising the land title lot 11 identified in DP1243994 on the plan attached at Schedule 1, the exact area being as nominated by Project Co and acceptable to TfNSW as the Returned Asset Site in accordance with clause 24(aa) of the Project Deed.

**Item 4: Land**

In relation to the Maintenance Facility Site, the land comprised in folio identifiers 4/1243994, 9/1243994 and 10/1243994.

In relation to the Returned Asset Site, the land comprised in folio identifiers 11/1243994.

**Item 5: Commencing Date**

Financial Close

**Item 7: Permitted Use**

In relation to the Maintenance Facility Site, the undertaking of the design and construction of the Maintenance Facility in accordance with the terms of the Project Deed and each other Project Document.

In relation to the Returned Asset Site, the undertaking of the Returned Works in accordance with the terms of the Project Deed and each other Project Document.

**Item 9: Normal Operating Hours**

The hours specified in condition 16 of the Key Planning Approval Conditions.
Agreed Terms

1. Definitions

1.1 Definitions

In this agreement, unless the contrary intention appears:

Commencing Date means the date referred to in Item 5.

Deed of Novation means a deed in the form of the deed annexed at Schedule 2.

GST Amount has the meaning given in clause 16.2(a).

Land means the relevant land described at Item 4.

Licence means the licence to occupy the relevant Licensed Area granted by the Licensor to the Licensee under this agreement.

Licence Fee means the fee referred to in Item 6 which applies on the Commencing Date, or as otherwise reviewed under this agreement.

Licensed Area means the relevant area referred to in Item 3.

Licensee's Associate means any of Project Co's Associates.

Licensee's Property means the Licensee's plant, equipment, fixtures, fittings, furnishings and other property of the Licensee on or in the Licensed Area.

Licensor's Associate means any Associate of TfNSW or RailCorp.

Licensor's Property means the Licensor's plant, equipment, fixtures, fittings, furnishings and other property of the Licensor or any Licensor Associate on or in the Railway Premises.

Normal Operating Hours means the hours specified at Item 9, as (without limitation to the terms of the Project Deed) amended from time to time, and notified to the Licensee by the Licensor.

Permitted Use means the use referred to in Item 7.

Project Deed means the deed entitled 'Regional Rail - Project Deed' (including its schedules and annexures) dated on or about 13 February 2019 entered into between TfNSW, RailCorp and the Licensee.

Rail Infrastructure Facilities has the same meaning as in the Transport Administration Act 1988 (NSW) and includes "rail infrastructure" as that term is defined in the Rail Safety Law.

Rail Safety Law means the:

(a) Rail Safety National Law as applied (with modifications) as a law of New South Wales by the Rail Safety (Adoption of National Law) Act 2012 (NSW);

(b) Rail Safety National Law National Regulations 2012 (NSW); and

(c) Rail Safety (Adoption of National Law) Regulation 2012 (NSW),

as amended, replaced or updated from time to time.
RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353), a NSW government agency constituted under section 4 of the Transport Administration Act 1988 (NSW).

Railway Legislation means the Transport Administration Act 1988 (NSW), the Rail Safety Law and any other legislation or regulation governing the Licensor's or the Licensor Associates' operations, including but not limited to the operation of railway passenger or freight services.

Railway Premises means all or any part of the Land together with all improvements from time to time on or near the Land owned or used by the Licensor, a Licensor Associate or a NSW Rail Entity for Railway Purposes or for any other purpose and includes but is not limited to any:

(a) Rail Infrastructure Facilities;
(b) underground and overhead passages which join improvements on the Land to any other land; and
(c) plant, machinery, fittings, equipment, conveniences and amenities owned, leased or controlled by the Licensor, a Licensor Associate or a NSW Rail Entity, including but not limited to all railway track, railway stations, tunnels, civil works, associated track structures, over track structures, signalling systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased or used by the Licensor, a Licensor Associate or a NSW Rail Entity.

Railway Purposes means any action or activity undertaken or required to be undertaken by the Licensor, a Licensor Associate or a NSW Rail Entity, in their absolute discretion for the use, control, safe operation, management, maintenance or repair of any railway infrastructure, facility or service, the Licensor's Property and Rail Infrastructure Facility, including under the Railway Legislation.

Reference Schedule means the reference schedule appearing at the front of this agreement and marked "Reference Schedule".

Term means the term of this agreement, as set out in Item 2.

1.2 Project Deed definitions

Capitalised expressions not defined in this agreement have the same meaning as in the Project Deed.

1.3 Project Deed overrides

The parties:

(a) acknowledge that they must, in the exercise of any rights or the performance of any obligations under this agreement, comply with the terms of the Project Deed; and
(b) agree that, in the event of any inconsistency between the terms of this agreement and the terms of the Project Deed, the terms of the Project Deed prevail.

1.4 Capacity of Licensee

(a) Insofar as the Licensee enters into this agreement in its capacity as trustee of the Project Trust, it must remain trustee of the Project Trust, subject to clause 12.7(e) until the expiry or satisfaction of all of the Licensee's obligations under this agreement.

(b) A liability of the Licensee arising under or in connection with this agreement (whether that liability arises under a specific provision of this agreement, for breach of contract or otherwise), is a liability that can be enforced against the Licensee both in its own right and
2. Grant of Licence

2.1 Licence

The Licensor grants to the Licensee a non-exclusive licence to use each Licensed Area for the purposes only of carrying out the relevant Permitted Use during the Term, subject to the conditions (if any) set out in Item 8 and otherwise as set out in this agreement.

2.2 Nature of licence

(a) The Licensee has a personal right of occupation on the terms specified in this agreement and has no interest in any of the Land. The legal right to possession and control over each Licensed Area remains vested in the Licensor throughout the term of the agreement.

(b) Nothing in this agreement:

(i) confers on the Licensee any rights as a tenant of the Licensed Area, or any part thereof;

(ii) creates the relationship of landlord and tenant between the parties; or

(iii) entitles the Licensee to register any caveat, interest, right, affectation, encumbrance, Easement, covenant or restriction over the Land.

(c) During the Term, and subject to the terms of the Project Deed, the Licensor must ensure that it does not:

(i) undertake or procure the undertaking of any activities within the relevant Licensed Area; or

(ii) grant any rights to third parties, that interferes with the undertaking by the Licensee of the relevant Permitted Use.

3. Licensor's rights and reservations

3.1 Licensor's right to enter the Licensed Area

(a) Subject to paragraphs (b) and (c), and in addition to any rights the Licensor may have under the Project Deed or any other Project Document, the Licensor or its agents may enter the Licensed Area, or any part thereof, together with all necessary workmen and equipment at all reasonable times, if it gives the Licensee reasonable notice, to:

(i) determine the condition of the Licensed Area or whether the Licensee is complying with this agreement;

(ii) undertake any repairs or maintenance to the Licensed Area to the extent permitted by the Project Deed;

(iii) carry out any work to the Railway Premises, or any adjacent property, including but not limited to for Railway Purposes or for any other reason.
(iv) exercise its rights under any provision of this agreement or any other Project Document;
(v) enable it to comply with any law or any notice from any Authority affecting the Railway Premises;
(vi) show the Licensed Area to prospective purchasers or mortgagees at any time or to prospective tenants;
(vii) ensure that the Licensed Area is locked and secure; and
(viii) do anything for Railway Purposes or to avoid or rectify an emergency.

(b) When exercising its rights under paragraph (a), the Licensor:
(i) must take reasonable steps to minimise any disruption to the Licensee;
(ii) must comply with the Site Access and Interface Protocols where Delivery Phase Activities are being carried out on the Licensed Area; and
(iii) is not required to give reasonable notice or enter at a reasonable time in the case of an emergency.

(c) Where the Licensor exercises its rights under paragraphs (a)(ii), (a)(iii) or (a)(v) and, in the Licensor's opinion, access is urgently required, the Licensee acknowledges and agrees that:
(i) the Licensor is not required to give the Licensee notice if, in the Licensor's opinion, giving such notice is not practicable;
(ii) the Licensee must give the Licensor prompt access to the Licensed Area; and
(iii) the Licensee will undertake (in accordance with clause 10) such temporary repairs as are necessary in order to make safe the relevant property until such time as the Licensor is able to undertake the proposed repairs and/or maintenance.

(d) This clause 3.1 does not limit the operation of clause 41 of the Project Deed.

3.2 Restricted access to Railway Premises

The Licensor may exclude any person (including the Licensee) from the Railway Premises:
(a) if required by law or for safety or security reasons; or
(b) subject to the terms of the Project Deed:
   (i) outside the Normal Operating Hours; or
   (ii) during public holidays.

3.3 Subdivide and grant easements

The Licensor may subdivide the Land or grant an easement or other right over it or the Licensed Area unless this would have a substantial adverse effect on the Licensee's ability to perform its obligations under the Project Deed or any other TfNSW Project Document. The Licensee must do
anything the Licensor reasonably requires concerning the subdivision or grant of easement. The Licensor must reimburse any reasonable costs incurred by the Licensee in so far as is necessary to document the subdivision or grant of easement.

3.4 Benefit of Licensee’s obligations

Without limitation to clause 2.10A of the Project Deed, if someone else becomes entitled to receive the Licence Fee in accordance with clause 58.3 of the Project Deed:

(a) that person may exercise all of the Licensor’s rights under this agreement; and

(b) the Licensee must enter into any deed reasonably required by the Licensor and the Licensor must reimburse any reasonable legal costs incurred by the Licensee in connection with the entering into of such deed.

3.5 Licensor may perform Licensee’s obligations

(a) The Licensor may, at the Licensee’s cost, do anything which the Licensee should have done under this agreement if the Licensee does not promptly do so or if, in the Licensor’s opinion, the Licensee does not do so properly.

(b) The Licensee must reimburse the Licensor on demand for any costs and expenses incurred by the Licensor under paragraph (a).

3.6 Appoint agents and managers

The Licensor may appoint or authorise an agent or others to do anything it may or must do under this agreement or conduct the day to day running of the Railway Premises.

3.7 Rights in relation to Railway Premises

The Licensor may at any time:

(a) change the direction or flow of pedestrian or vehicular traffic in and around the Railway Premises; and

(b) issue a direction to the Licensee requiring the Licensee to assist in the management or rectification of any Emergency which takes place in the Railway Premises, including but not limited to any direction requiring the Licensee to cease or suspend the Permitted Use for a specified period of time in accordance with clause 41 of the Project Deed. The Licensee must immediately comply with any such direction of the Licensor.

4. Licence Fee

The Licensor acknowledges receipt of the Licence Fee.

5. Liability for expenses

The Licensee must indemnify the Licensor against, and must pay to the Licensor on demand the amount of, all costs and expenses incurred in connection with:

(a) any amendment to this agreement (other than an amendment expressly directed by the Licensor); and

(b) any request for the consent or approval of the Licensor,

including legal expenses on a full indemnity basis, administration costs of the Licensor and expenses incurred in engaging consultants.
6. Licensee's charges

(a) The Licensee must pay directly to the relevant Authority or service provider all amounts charged to the Licensed Area by any Authority or service provider and any Utilities metered and consumed in the Licensed Area.

(b) The Licensee must, within 7 days of a request by the Licensor, provide the Licensor with evidence of payment of the amounts referred to in this clause.

7. Licensee's obligations

7.1 Approvals

The Licensee must take out, maintain and renew all Approvals, other than the Key Planning Approval, required for the occupation, use and operation of, and carrying out of the work under the Project Deed and each other Project Document in the Licensed Area.

7.2 General obligations

The Licensee must and must ensure that the Licensee's Associates:

(a) (comply with directions) subject and without limitation to clause 39.9 of the Project Deed, immediately comply at all times with the directions and requirements of the Licensor while on the Licensed Area;

(b) (Mandatory Requirements) at its own cost, comply with all Mandatory Requirements in respect of:

(i) the Licensed Area or anything in it;

(ii) the use and occupation of the Licensed Area; or

(iii) the effect or likely effect of the use of the Licensed Area on the Environment,

whether or not any such requirements are required to be effected by the Licensee, the Licensor or any other person, and

(c) (use) use the Licensed Area only for the Permitted Use.

7.3 Prohibitions on Licensee

The Licensee must not:

(a) (no rubbish) keep any rubbish in or around the Licensed Area;

(b) (no nuisance) use the Licensed Area for any illegal purpose or do anything which does or could cause a nuisance, annoy or offend the Licensor, a Licensor Associate, a NSW Rail Entity or the occupants of any nearby property above the levels specified in the Project Management Plan, the Construction Environmental Management Plan, the Operational Environmental Management Plan, the Sustainability Management Plan or such lower levels as may be stipulated by the Licensor (acting reasonably) from time to time;

(c) (no interference) except to the extent required for public health or safety purposes, do anything or allow anything to be done which would cause an unreasonable interference or obstruction to the operations being carried on by the Licensor, a Licensor Associate or a NSW Rail Entity in and around the Licensed Area;
(d) **(no residential use)** not use the Licensed Area for any residential purpose whether temporary or permanent;

(e) **(no activity to cause signal failure)** carry out or allow the carrying out of any activity which may give rise to or cause a failure of any railway signalling instruments or which may cause any other railway equipment to fail to operate or to malfunction for any period of time;

(f) **(access to railway tracks)** enter, access or place any item on or near any railway tracks outside the Licensed Area;

(g) **(fire risk)** except to the extent required to undertake the Project Activities, store anything in the Licensed Area which is dangerous, explosive or could increase the risk of fire on the Licensed Area;

(h) **(signage)** except for any signage required by any Mandatory Requirement or the requirement of an Authority, erect any signage on or about the Licensed Area except with the consent in writing of the Licensor;

(i) **(no advertising)** carry out any form of advertising on the Licensed Area;

(j) **(alienation)** part with possession of the Licensed Area or any part of it; or

(k) **(Licensor's Property)** alter the Licensor's Property or use the Licensor's Property for anything other than its intended use.

8. **Assignment of rights, sublicensing**

The Licensee must not, and must not purport to, assign or sublicense any of its rights under this agreement except:

(a) for the grant of a sub-licence to a Subcontractor for the purpose of undertaking the Project Activities subcontracted to them; or

(b) in conjunction with an authorised dealing with the Licensee's rights under the Project Deed.

9. **Vesting, assignment or transfer of Land**

(a) The parties acknowledge and agree that:

(i) ownership of the Land and the improvements thereon may not be vested in the Licensor;

(ii) ownership of the Land and the improvements thereon may be transferred from time to time, without notice to, or the consent of, the Licensee;

(iii) as at the Commencing Date the Licensor has procured and will from time to time procure from the current owner or owners of the Land, such rights as may be necessary to enable the Licensee to enjoy the benefit of the licence granted under clause 2.1 until the earlier of:

   A. the termination of this agreement in accordance with its terms; and

   B. the expiry of the Term; and

(iv) the Licensor may not assign or novate any of its rights under this agreement, except to a transferee pursuant to clause 58.3 of the Project Deed.
(b) If the Licensor sells, transfers, assigns or otherwise disposes of all of its interest in the TfNSW Project Documents in accordance with clause 58.3 of the Project Deed:

(i) subject to clause 9(b)(ii), the Licensor must procure the novation of this agreement to the transferee pursuant to clause 58.3 of the Project Deed; and

(ii) the Licensee must enter into a Deed of Novation novating this agreement to the transferee, within 10 Business Days of receipt of a notice from the Licensor requesting that the Licensee execute the Deed of Novation.

(c) Where the Licensee does not enter into the Deed of Novation within 10 Business Days of receipt of a notice under clause 9(b)(ii), the Licensee irrevocably appoints the Licensor and such persons as are from time to time nominated by the Licensor, jointly and severally, as its attorney with full power and authority to execute and deliver the Deed of Novation contemplated in clause 9(b)(ii) and any documents, agreement of novation contemplated by or ancillary to that Deed of Novation.

10. Work health and safety

10.1 Compliance with WHS Act and WHS Regulation

Despite any other provision in this agreement, the Licensee must at all times comply with the WHS Act and WHS Regulation and must provide to the Licensor upon request evidence that the Licensee is complying with the WHS Act and WHS Regulation.

10.2 Project Deed and other Project Documents

Without limiting the application of the WHS Act and WHS Regulation to the Licensee, during the Term, the Licensee is responsible for all aspects of WHS in connection with its business or undertaking carried out in the Licensed Area in accordance with the terms of the Project Deed and each other Project Document.

11. Environmental issues

11.1 No representation

The Licensor does not warrant or represent:

(a) that the Licensed Area is suitable for any use, or for any particular use, including the Permitted Use;

(b) the accuracy of information about the past use of the Licensed Area; or

(c) that the Licensed Area is free of Contamination, or the nature or extent of any Contamination.

11.2 Environmental obligations

The Licensee acknowledges its obligations under clause 8 of the Project Deed.

12. Risk and liability

12.1 Risk

Without limiting its rights under the Project Deed and this agreement:
(a) the Licensee occupies the Licensed Area at its own risk and carries out any building work at its own risk; and

(b) if the Licensee is obliged to do anything under this agreement, it does so at its own risk.

12.2 No restriction on Licensor

Nothing in this agreement restricts the Licensor's right to carry out works in or around the Licensed Area at any time and for any purpose.

12.3 Insurance

The parties acknowledge their respective insurance obligations under the Project Deed and their application to the rights and obligations of the parties under this agreement.

12.4 Release of Licensor

(a) Without limiting any of the Licensee's obligations under the Project Deed, to the extent permitted by law, and subject to any express entitlements the Licensee may be entitled to under the Project Deed, the Licensee unconditionally and irrevocably releases the Licensor from:

(i) all costs and Claims caused by any reason and in connection with any damage, loss, injury or death to or of any person or property on or near the Licensed Area or the Railway Premises, including but not limited to by reason of the fact that the Licensed Area may be near any land used for Railway Purposes; and

(ii) any liability for damage to the Licensee's Property or for any other loss (however that loss was caused or arose), including but not limited to:

A. Consequential or Indirect Loss;

B. loss resulting from:

   (I) any Utility Infrastructure not working properly, being unavailable or being interrupted, or the misuse of any Utility Infrastructure;

   (II) the movement of any vehicle in the Licensed Area;

   (III) the death of, or injury to any person who is a passenger in or driver of a vehicle on, over or through the Licensed Area, or any person who is in or around the Licensed Area;

   (IV) damage caused to any vehicle whilst in the Licensed Area;

   (V) the liability of another person;

   (VI) the Licensor carrying out any maintenance, refurbishment, alteration, upgrade or other works or other activity in and around the Railway Premises for Railway Purposes (including but not limited to works required under the Disability Discrimination Act 1992 (Cth)) provided that the Licensor gives the Licensee at least 2 months' notice in writing of the proposed works (or in the case of an emergency, a period of notice that is reasonably practicable in the circumstances);

   (VII) the frequency of trains passing through the Railway Premises and changes to train timetables which may be made in the absolute discretion of the Licensor;
(VIII) any incidents or accidents occurring in or around the Railway Premises which require temporary closure or shutdown of the Railway Premises;

(IX) any delay in rectifying a breakdown or failure of any fixtures, fittings, plant and equipment in the Railway Premises and under the control of the Licensor;

(X) any industrial dispute associated with employees or contractors responsible for operating the railway;

(XI) noise, vibration or stray electrical currents emanating from the railway;

(XII) any act beyond the control of the Licensor including (without limitation) any fire, flood, storm, tempest or washaway, war (whether declared or undeclared), revolution, riot or civil commotion; and

(XIII) the Licensor's termination of this agreement under clause 13.

(b) In addition to the matters set out in clause 12.4(a), nothing the Licensor, a Licensor Associate or a NSW Rail Entity does in relation to carrying out the Railway Purposes or operating and maintaining the Rail Infrastructure Facilities constitutes a nuisance under or in relation to this agreement and the Licensee must not, and is not entitled to, take any action or make any claim against the Licensor by reason of the fact that the Licensed Area may be in or in the vicinity of:

(i) a railway being operated by the Licensor, a Licensor Associate or a NSW Rail Entity for Railway Purposes or otherwise; and/or

(ii) Rail Infrastructure Facilities.

12.5 Indemnity

(a) The Licensee unconditionally and irrevocably indemnifies the Licensor against any costs and Claims which the Licensor incurs or is liable for in connection with the use or occupation of the Licensed Area by the Licensee or the Licensee's Associates.

(b) The Licensee's liability to the Licensor under the indemnity in clause 12.5(a) will be reduced to the extent that Project Co would not otherwise have been liable to TfNSW for the same Liability under the TfNSW Project Documents.

12.6 Continuing indemnity

Each indemnity of the Licensee contained in this agreement is a:

(a) continuing obligation of the Licensee and remains in full force and effect after the termination of this agreement; and

(b) separate and independent obligation of the Licensee.

12.7 Project Trust undertakings

The Licensee must:

(a) comply fully with all of its obligations as trustee of the Project Trust, whether imposed under the Project Trust Deed or, in all material aspects, at law;

(b) ensure that no waiver or revocation of the Project Trust Deed is made, whether formally or by conduct;
not amend, or agree to amend, or permit or allow to be amended, the Project Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error, details of which are notified to the Licensor;

(d) ensure that no other person is appointed trustee of the Project Trust without the prior written consent of the Licensor;

(e) not do anything which would cause or enable its removal, nor retire, as trustee of the Project Trust except in favour of a new trustee approved by the Licensor;

(f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Project Trust Deed or allow the early determination of the Project Trust;

(g) not exercise in its own favour its Trustee's Indemnity under the Project Trust against any beneficiary of the Project Trust or against any Trust Property (other than in respect of any expenses which it properly incurs in the day to day performance of its obligations as trustee of the Project Trust);

(h) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:

(i) the termination of the Project Trust or the termination, rescission or revocation of the Project Trust Deed;

(ii) the resettlement of any Trust Property; or

(iii) the resignation, retirement, removal or replacement of it as trustee of the Project Trust or the appointment of an additional trustee of the Trust;

(i) not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Documents and the Finance Documents;

(j) ensure that:

(i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Project Trust Deed);

(ii) the rights of any beneficiaries relating to, and their interests in, the property of the Project Trust are subject to the prior rights and interests of:

(A) the Licensor under the TfNSW Security; and

(B) the Licensee in the property of the Project Trust pursuant to its Trustee's Indemnity;

(k) not do anything, or omit to do anything, where the doing or the omission to do may have the effect of releasing, waiving or impairing any Security Interest granted by or created under a Project Document;

(l) unless otherwise permitted under the Project Documents, not permit any of the beneficiaries of the Project Trust to use, occupy, or enjoy or possess any of the Trust Property or title documents in respect of the Trust Property or relinquish management powers which might entitle any beneficiary of the Project Trust to possession;

(m) not blend or mix the Trust Property with any other property in respect of which it has been appointed trustee;

(n) not acquire any Trust Property other than in the name of the Trustee as trustee of the Project Trust;
13. Default and termination

13.1 Default

The Licensee is in default if:

(a) it does not pay the Licence Fee or any other money payable under this agreement within 10 Business Days of the due date;

(b) it does not perform any obligations under this agreement;

(c) an Insolvency Event occurs in respect of the Licensee;

(d) it repudiates its obligations under this agreement.

13.2 Licensor's rights

If the Licensee is in default of any of its obligations under this agreement such default will, to the extent that it constitutes a Major Default or a Default Termination Event, be dealt with as a Major Default or a Default Termination Event (as the case may be) under the Project Deed.

13.3 Termination of the Project Deed

Despite any other provision of this agreement, this agreement will terminate automatically upon termination of the Project Deed, but without prejudice to any accrued rights and obligations under this agreement, including those arising out of termination of this agreement.

This clause 13.3 sets out the sole basis at Law or otherwise upon which any party is entitled to terminate, rescind or accept a repudiation of this agreement.

13.4 Make good

Howsoever this agreement is terminated, the Licensee must, at its cost and to the satisfaction of the Licensor:

(a) remove all rubbish and the Licensee's Property from the Licensed Area, unless the Licensor agrees or directs otherwise, and make good any damage caused by the removal;

(b) promptly leave the Licensed Area in a condition consistent with the Licensee's performance of its obligations under the Project Deed;
13.5 Storage of Licensee’s Property

(a) If the Licensee does not remove the Licensee’s Property or remedy any damage under clause 13.4, the Licensor may do so and store the Licensee’s Property at the Licensee’s cost.

(b) If the Licensee does not remove all of the Licensee’s Property from the Licensed Area or from the place where it is stored by the Licensor within 5 Business Days of being asked to do so by the Licensor, that Licensee’s Property which has not been removed by the Licensee becomes the property of the Licensor if the Licensor so elects.

14. Rail legislation and related matters

14.1 Acknowledgment

The Licensee acknowledges the effect of the Railway Legislation in relation to this agreement, including but not limited to any obligations imposed under that legislation on the Licensee.

14.2 Importation of statutory provisions

If any law, including but not limited to the Railway Legislation, requires that this agreement includes any provision or any provision is deemed to be included in this agreement, then this agreement contains that provision in the form prescribed by the law.

14.3 Rights in relation to Licensed Area

(a) The Licensee acknowledges and agrees that the Licensor and the Operator have full and unfettered access to the Railway Premises at all times and may not be excluded from entering the Railway Premises by any action of the Licensee. For the avoidance of doubt, Railway Premises includes the Licensed Area.

(b) Despite any other provision in this agreement, the Licensee acknowledges that this agreement does not permit the Licensee to access any part of the Railway Premises not comprising the Licensed Area.

(c) Despite any other provision in this agreement, the Licensee must not do anything which interferes with the normal operation of the railway or the Railway Premises.

15. Notices

A notice, consent or other communication under this agreement is only effective if it is served in the manner set out in clause 65 of the Project Deed.

16. GST

16.1 Definitions

GST means the same as in the GST Law.

GST Law means the same as “GST law” means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
16.2 Payment of GST

(a) A recipient of a taxable supply made under this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (GST Amount) without deductions or set off of any other amount.

(b) The recipient must pay the GST Amount to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply, provided that the supplier has issued a tax invoice to the recipient for that supply; or

(ii) if there is no due date, within 5 Business Days of receiving a written request or a tax invoice from the supplier.

16.3 Reimbursements

A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

16.4 Formula use GST exclusive amounts

If a payment made under this agreement is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

16.5 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

(c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

17. General clauses and interpretation

17.1 Governing law

(a) This agreement is governed by and must be construed according to the laws applying in New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

17.2 Giving effect to this agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this agreement.
17.3 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

17.4 Operation of this agreement

(a) This agreement contains the entire agreement between the parties about its subject matter.

(b) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

17.5 Consents

(a) Where this agreement contemplates that the Licensor may agree or consent to something (however it is described):

(i) the Licensor may:
   A. agree or consent, or not agree or consent, in its absolute discretion; and
   B. agree or consent subject to conditions; and

(ii) the agreement or consent must be in writing,

unless this agreement expressly contemplates otherwise.

(b) In making a discretionary determination, the Licensor will take into consideration any current government policy. The Licensor may withdraw a consent if it is inconsistent with government policy and the Licensee must, without delay, cease the relevant activity and comply with the directions of the Licensor.

17.6 No merger

The provisions of this agreement do not merge on termination.

17.7 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Licensee, or the exercise by the Licensor of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

17.8 Expiry or termination

expiry or termination of this agreement does not affect any rights arising from a breach of this agreement before then.
17.9 Payments under this agreement

(a) The Licensee must make payments under this agreement:

(i) to the Licensor (or to a person nominated by the Licensor in a notice to the Licensee) by the method the Licensor reasonably requires;

(ii) when due and payable whether or not demanded by the Licensor; and

(iii) without withholding any part of any payment by way of deduction, set off or counterclaim.

(b) If no date for payment is specified the Licensee must make payments under this agreement within 7 days of being asked by the Licensor.

(c) Where any money the Licensor charges the Licensee is calculated using a time period and this agreement starts or ends during that time period, the Licensor must make proportional adjustments.

(d) If either the Licensor or the Licensee prove an error in any money charged the Licensor must correct it and make any necessary adjustment, in a notice to the Licensee. On the next day on which the Licence Fee is due, the Licensee must pay the Licensor or the Licensor must credit the Licensee with the difference between what the Licensee has paid and what the Licensee should have paid.

17.10 Counterparts

This agreement may be executed in counterparts.

17.11 Interpretation

In this agreement:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (agreement and Schedule references): a reference to:

   (i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this agreement; and

   (ii) a section is a reference to a section of a Schedule;

(d) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;
(f) (person): a reference to a person includes an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

(h) (Standards): a reference to a Standard includes that Standard as amended or updated from time to time;

(i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';

(k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ('$'): a reference to '$', AUD or dollar is to Australian currency;

(n) (day): except as otherwise provided in this agreement or where a reference is made to 'Business Days', day means a calendar day;

(o) (time): a reference to time is a reference to time in Sydney, Australia;

(p) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(q) (function): a function includes a power, authority or duty;

(r) (obligations and liabilities): except in relation to TINSW and RailCorp, a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(s) ('may'): except to the extent that TINSW or RailCorp are expressly required under this agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by TINSW or RailCorp, means that TINSW or RailCorp can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co) and TINSW or RailCorp has no obligation to do so;

(t) (construction): where there is a reference to an Authority, institute or association or other body referred to in this agreement which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this agreement is deemed to refer to that other entity; or

(ii) ceases to exist, this agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;
(u) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and

(v) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

17.12 Business Days

If the day on or by which a person must do something under this agreement is not a Business Day:

(a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

(b) in any other case, the person must do it on or by the previous Business Day.

17.13 Multiple parties

If the Licensee is made up of more than one person, or a term is used in this agreement to refer to more than one party:

(a) an obligation of those persons comprising the Licensee is joint and several;

(b) a right of those persons is held by each of them severally; and

(c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):

   (i) a representation, warranty or undertaking is given by each of them separately; and

   (ii) a reference to that party or that term is a reference to each of those persons separately.

17.14 Disputes

Any disputes in relation to the subject matter of this agreement must be determined under the Project Deed on the basis the dispute constitutes a dispute under the Project Deed.

17.15 No Waiver

No failure to exercise and no delay in exercising, on the part of the Licensors, any right or remedy under this Licence or any sub-licence will operate as a waiver of that right or remedy, nor will any single or partial exercise of any right or remedy preclude any other or further exercise of that, or any other, right or remedy.
Executed as a deed

Signed sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

______________________________________________________________
Signature of witness

______________________________________________________________
Signature of authorised delegate

______________________________________________________________
Full name of witness (print)

______________________________________________________________
Full name of authorised delegate (print)

______________________________________________________________
Position held

______________________________________________________________
Position held
Signed sealed and delivered for and on behalf of Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Momentum Trains Trust (ABN 40 340 691 061) by its attorneys:

In the presence of:

Name of Attorney (print)  Name of witness (print)

In the presence of:

Name of Attorney (print)  Name of witness (print)

SENSITIVE: NSW GOVERNMENT
Regional Rail Project Deed
Schedule 7 - Form of Delivery Phase Licence
Contract Number: ISD-17-6185
Momentum Trains
Schedule 1 – Licensed Area: Maintenance Facility Site
Schedule 2 – Form of Deed of Novation

Deed of Novation

Delivery Phase Licence - Regional Rail Project

[Insert]
Retiring Party

and

[Insert]
Continuing Party

and

[Insert]
Substitute Party
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This Deed of Novation for the Delivery Phase Licence - Regional Rail Project is made on

Parties

(1) [Insert] (Retiring Party);
(2) [Insert] (Continuing Party); and
(3) [Insert] (Substitute Party).

Background

A. The Retiring Party and the Continuing Party are parties to the Licence.

B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Licence on the terms and conditions of this deed.

C. The Continuing Party has agreed to the novation of the Licence on the terms and conditions of this deed.
Agreed Terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the contrary intention appears:

Effective Date means [insert].

Licence means the document titled 'Delivery Phase Licence — Regional Rail Project' between the Retiring Party and the Continuing Party dated [insert].

Project Deed means the deed entitled 'Regional Rail - Project Deed' dated on or about 13 February 2019 entered into between TfNSW, RailCorp and the Licensee.

1.2 Licence and Project Deed definitions

Capitalised expressions not defined in this deed have the same meaning as in the Licence (in the first instance) or if not defined in the Licence, then as defined in the Project Deed.

1.3 Interpretation

In this deed:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (Deed and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

(ii) a section is a reference to a section of a Schedule;

(d) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (person): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
h) (Standards): a reference to a Standard includes that Standard as amended or updated from time to time;

i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase 'without limitation';

k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

l) (Information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

m) ('$'): a reference to '$', AUD or dollar is to Australian currency;

n) (Business Day): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

o) (day): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;

p) (time): a reference to time is a reference to time in Sydney, Australia;

q) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

r) (function): a function includes a power, authority or duty;

s) (obligations and liabilities): except in relation to TfNSW and RailCorp, a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

t) ('may'): except to the extent that TfNSW or RailCorp are expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by TfNSW or RailCorp, means that TfNSW or RailCorp can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co) and TfNSW or RailCorp has no obligation to do so;

u) (construction): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or

(ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

v) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
2. Condition Precedent to Novation

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

3. Novation

3.1 Novation

(a) The parties novate the Licence so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Licence.

(b) Any reference in the Licence to the Retiring Party will be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

(a) The Substitute Party:

(i) will be bound by and must comply with the terms of the Licence and will enjoy the rights and benefits conferred on the Retiring Party under the Licence; and

(ii) will assume the obligations and Liability of the Retiring Party under the Licence, in all respects as if the Substitute Party had originally been named in the Licence as a party instead of the Retiring Party.

(b) The Continuing Party will comply with the terms of the Licence on the basis that the Substitute Party has replaced the Retiring Party under the Licence in accordance with this deed.

3.3 Release by Continuing Party

(a) The Continuing Party releases the Retiring Party from:

(i) any obligation or Liability under or in respect of the Licence; and

(ii) any action, claim and demand it has against the Retiring Party under or in respect of the Licence.

(b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Licence.

3.4 Insurance

As from the Effective Date:

(a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Licence; and

(b) the Continuing Party will take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under of the terms of the Licence, the Substitute Party is named in place of the Retiring Party as required by the Licence.
4. Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Licence relating to any requirement for consent to assignment of the Licence so far as any such provisions would apply with respect to the novation of the Licence to the Substitute Party.

5. Representations and warranties

5.1 Authority

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

5.2 Authorisations

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

5.3 Binding obligations

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

6. Duties, costs and expenses

6.1 Stamp duty

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

6.2 Costs

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

7. GST

7.1 Definitions

GST means the same as in the GST Law.

GST Law means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

7.2 Payment of GST

(a) A recipient of a taxable supply made under this deed must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (GST Amount) without deductions or set off of any other amount.

(b) The recipient must pay the GST Amount to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply, provided that the supplier has issued a tax invoice to the recipient for that supply; or
7.3 Reimbursements

A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

7.4 Formula use GST exclusive amounts

If a payment made under this deed is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

7.5 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

(c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

8. General

8.1 Governing law

(a) This deed is governed by the law in force in New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

8.2 Amendments

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

8.3 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

(b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.
8.4 Counterparts

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

8.5 Severance

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

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

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

8.6 Further acts and documents

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

8.7 Assignment

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

9. Disputes

Any disputes in relation to the subject matter of this deed must be determined under the Project Deed on the basis the dispute constitutes a dispute under the Project Deed.
Signing page

Executed as a deed

Executed by [insert Retiring Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

_________________________  ____________________________
Director                  Director/Secretary

_________________________
Name of Director (print)               Name of Director/Secretary (print)

Executed by [insert Continuing Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

_________________________  ____________________________
Director                  Director/Secretary

_________________________
Name of Director (print)               Name of Director/Secretary (print)

Executed by [insert Substitute Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

_________________________  ____________________________
Director                  Director/Secretary

_________________________
Name of Director (print)               Name of Director/Secretary (print)
Maintenance Facility Site Maintenance Phase Licence

Transport for NSW (TfNSW)
ABN 18 804 239 602
Licensor

and

Momentum Trains Pty Ltd in its personal capacity and as trustee for the Momentum Trains Trust (Project Co)
ACN 630 634 507
Licensee
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Parties

(1) Transport for NSW (ABN 18 804 239 602), a corporation constituted under section 3C of the Transport Administration Act 1988 (NSW) (TfNSW) (Licensor); and

(2) Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Project Trust (ABN 40 340 691 016) (Project Co) (Licensee)

Background

A. The Licensor is entitled to grant a licence in respect of the Licensed Area.

B. The Licensor, together with RailCorp and the Licensee, intend to enter into, or have entered into, the Project Deed.

C. The Licensor agrees to grant a non-exclusive licence to the Licensee for the Permitted Use on the terms of this agreement.

D. The Licensee agrees to accept the licence, on the terms of this agreement.
Reference Schedule

Item 1: Date of agreement

Item 2: Term

From the Commencing Date to the Expiry Date.

Item 3: Licensed Area

The Maintenance Facility Site having a combined area of approximately 190,472 square metres comprising the land title lots 4, 9 and 10 identified in DP1243994 on the plan attached at Schedule 1.

Item 4: Land

The land comprised in folio identifiers 4/1243994, 9/1243994 and 10/1243994.

Item 5: Commencing Date

The Date of Provisional Acceptance (Maintenance Facility).

Item 6: Licence Fee and Licence Fee Payment Date

<table>
<thead>
<tr>
<th>Licence Fee</th>
<th>Licence Fee Payment Date</th>
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Item 7: Permitted Use

The undertaking of the Train Completion Works, the Services and the Approved Commercial Opportunities in accordance with the terms of the Project Deed and each other Project Document.

Item 8: Not used

Item 9: Normal Operating Hours

24 hours, 7 days a week.

Item 10: Not used
Agreed Terms

1. Definitions

1.1 Definitions

In this agreement, unless the contrary intention appears:

Commencing Date means the date referred to in Item 5.

Common Areas means the part of the Railway Premises which the Licensor intends for common use, including but not limited to those areas such as the public toilet and kitchen facilities within the Maintenance Facility building.

Deed of Novation means a deed in the form of the deed annexed at Schedule 2.

GST Amount has the meaning given in clause 17.2(a).

Land means the land described at Item 4.

Licence means the licence to occupy the Licensed Area granted by the Licensor to the Licensee under this agreement.

Licence Fee means the fee referred to in Item 6 payable on the relevant Licence Fee Payment Date.

Licence Fee Payment Date means each date for payment of a Licence Fee as set out in Item 6 in the Reference Schedule.

Licensed Area means the area referred to in Item 3.

Licensee’s Associate means any of Project Co’s Associates.

Licensee’s Property means the Licensee’s plant, equipment, fixtures, fittings, furnishings and other property of the Licensee on or in the Licensed Area.

Licensor’s Associate means any Associate of TfNSW or RailCorp.

Licensor’s Property means the Licensor’s plant, equipment, fixtures, fittings, furnishings and other property of the Licensor on or in the Railway Premises.

Normal Operating Hours means the hours specified at Item 9, as (without limitation to the terms of the Project Deed) amended from time to time, and notified to the Licensee by the Licensor.

Outgoings means any amounts paid or payable by the Licensor in connection with the Licensed Area (plus GST on those amounts to the extent that the Licensor does not receive an input tax credit for that GST) including the following:

(a) (cleaning) the cost of cleaning and disposal of refuse;

(b) (security) the cost of security and fire protection services;
(c) (maintenance) the cost of repairs, renovation, replacements and maintenance of the Licensed Area, excluding the cost of any structural improvement which has the effect of upgrading the Maintenance Facility Site to a better or more extensive condition than at the Commencing Date;

(d) (signs) the cost of supplying, operating and maintaining any signs;

(e) (washrooms) the cost of supplying paper towels, soap and other toilet requisites in the washrooms in the Maintenance Facility Site building;

(f) (gardening) the cost of planting, buying, hiring and maintaining any indoor or outdoor gardens; and

(g) (pests) the cost of pest and vermin control,

but specifically excluding:

(h) (rates and levies) rates, rents, levies and other charges payable to any Authority; and

(i) (taxes) imposts, duties, fees, deductions, compulsory loans or withholdings and taxes (excluding income tax and capital gains tax) payable to any Authority, including land tax on the basis assessed to the Licensor.

Permitted Use means the use referred to in Item 7.

Project Deed means the deed entitled 'Regional Rail - Project Deed (including its schedules and annexures) dated on [e] February 2019 entered into between TfNSW, RailCorp and the Licensee.

Rail Infrastructure Facilities has the same meaning as in the Transport Administration Act 1988 (NSW) and includes “rail infrastructure” as that term is defined in the Rail Safety Law.

Rail Safety Law means the:

(a) Rail Safety National Law as applied (with modifications) as a law of New South Wales by the Rail Safety (Adoption of National Law) Act 2012 (NSW);

(b) Rail Safety National Law National Regulations 2012 (NSW); and

(c) Rail Safety (Adoption of National Law) Regulation 2012 (NSW),

as amended, replaced or updated from time to time.

RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353), a NSW government agency constituted under section 4 of the Transport Administration Act 1988 (NSW).

Railway Legislation means the Transport Administration Act 1988 (NSW), the Rail Safety Law and any other legislation or regulation governing the Licensor’s operations or Licensor Associates’, including but not limited to the operation of railway passenger or freight services.

Railway Premises means all or any part of the Land together with all improvements from time to time on or near the Land owned or used by the Licensor, a Licensor Associate or a NSW Rail Entity for Railway Purposes or for any other purpose and includes but is not limited to any:

(a) Rail Infrastructure Facilities;

(b) underground and overhead passages which join improvements on the Land to any other land; and
1.2 Project Deed definitions

Capitalised expressions not defined in this agreement have the same meaning as in the Project Deed.

1.3 Project Deed overrides

The parties:

(a) acknowledge that they must, in the exercise of any rights or the performance of any obligations under this agreement, comply with the terms of the Project Deed; and

(b) agree that, in the event of any inconsistency between the terms of this agreement and the terms of the Project Deed, the terms of the Project Deed prevail.

1.4 Capacity of Licensee

(a) Insofar as the Licensee enters into this agreement in its capacity as trustee of the Project Trust, it must remain trustee of the Project Trust, subject to clause 13.7(e) until the expiry or satisfaction of all of the Licensee's obligations under this agreement.

(b) A liability of the Licensee arising under or in connection with this agreement (whether that liability arises under a specific provision of this agreement, for breach of contract or otherwise), is a liability that can be enforced against the Licensee both in its own right and in its capacity as trustee of the Project Trust, unless the liability relates only to an asset which the Licensee holds in its personal capacity and not as trustee, in which case the liability can only be enforced against the Licensee in its personal capacity.

2. Grant of Licence

2.1 Licence

The Licensor grants to the Licensee a non-exclusive licence to use the Licensed Area for the purposes only of carrying out the Permitted Use during the Term, subject to the conditions (if any) set out in Item 8 and otherwise as set out in this agreement.
2.2 Nature of licence

(a) The Licensee has a personal right of occupation on the terms specified in this agreement and has no interest in the Land. The legal right to possession and control over the Licensed Area remains vested in the Licensor throughout the term of the agreement.

(b) Nothing in this agreement:
   (i) confers on the Licensee any rights as a tenant of the Licensed Area;
   (ii) creates the relationship of landlord and tenant between the parties; or
   (iii) entitles the Licensee to register any caveat, interest, right, affectation, encumbrance, Easement, covenant or restriction over the Land.

(c) During the Term, and subject to the terms of the Project Deed, the Licensor must ensure that it does not:
   (i) undertake or procure the undertaking of any activities within the Licensed Area; or
   (ii) grant any rights to third parties,

that interferes with the undertaking by the Licensee of the Permitted Use.

3. Licensor's rights and reservations

3.1 Licensor's right to enter the Licensed Area

(a) Subject to paragraphs (b) and (c), and in addition to any rights the Licensor may have under the Project Deed or any other Project Document, the Licensor or its agents may enter the Licensed Area together with all necessary workmen and equipment at all reasonable times, if it gives the Licensee reasonable notice, to:

   (i) determine the condition of the Licensed Area or whether the Licensee is complying with this agreement;
   (ii) undertake any repairs or maintenance to the Licensed Area or the Maintenance Facility Site building to the extent permitted by the Project Deed;
   (iii) carry out any work to the Railway Premises, any Utility Infrastructure or any adjacent property, including but not limited to for the purpose of installing any new Utility Infrastructure for Railway Purposes or for any other reason,
   (iv) exercise its rights under any provision of this agreement or any other Project Document;
   (v) enable it to comply with any law or any notice from any Authority affecting the Railway Premises;
   (vi) show the Licensed Area to prospective purchasers or mortgagees at any time or to prospective tenants;
   (vii) ensure that the Licensed Area is locked and secure; and
(viii) do anything for Railway Purposes or to avoid or rectify an emergency.

(b) When exercising its rights under paragraph (a), the Licensor:

(i) must take reasonable steps to minimise any disruption to the Licensee;

(ii) must comply with the Site Access and Interface Protocols where Delivery Phase Activities are being carried out on the Licensed Area; and

(iii) is not required to give reasonable notice or enter at a reasonable time in the case of an emergency.

(c) Where the Licensor exercises its rights under paragraphs (a)(ii), (a)(iii) or (a)(v) and, in the Licensor's opinion, access is urgently required, the Licensee acknowledges and agrees that:

(i) the Licensor is not required to give the Licensee notice if, in the Licensor's opinion, giving such notice is not practicable;

(ii) the Licensee must give the Licensor prompt access to the Licensed Area; and

(iii) the Licensee will undertake (in accordance with clause 11) such temporary repairs as are necessary in order to make safe the relevant property or Utility Infrastructure until such time as the Licensor is able to undertake the proposed repairs and/or maintenance.

(d) The Licensee acknowledges and agrees that it must otherwise provide the Licensor with access to and the use of resources at, the Licensed Area, as provided for and in accordance with the Project Deed.

(e) This clause 3.1 does not limit the operation of clause 41 of the Project Deed.

3.2 Restricted access to Railway Premises

The Licensor may exclude any person (including the Licensee) from the Railway Premises:

(a) if required by law or for safety or security reasons; or

(b) subject to the terms of the Project Deed:

(i) outside the Normal Operating Hours; or

(ii) during public holidays.

3.3 Convert title

(a) The Licensor may convert the title to any part of the Railway Premises to strata (or similar) title unless this would have a substantial adverse effect on the Licensee's ability to perform its obligations under the Project Deed or any other TfNSW Project Document.

(b) The Licensee must do anything the Licensor reasonably requires concerning the conversion including, but not limited to, promptly providing its unconditional consent, in writing, to the subdivision or grant of easement.

3.4 Subdivide and grant easements

The Licensor may subdivide the Land or grant an easement or other right over it or the Licensed Area unless this would have a substantial adverse effect on the Licensee's ability to perform its
obligations under the Project Deed or any other TfNSW Project Document. The Licensee must do anything the Licensor reasonably requires concerning the subdivision or grant of easement. The Licensor must reimburse any reasonable costs incurred by the Licensee in so far as is necessary to document the subdivision or grant of easement.

3.5 **Benefit of Licensee’s obligations**

Without limitation to clause 2.10A of the Project Deed, if someone else becomes entitled to receive the Licence Fee in accordance with clause 58.3 of the Project Deed:

(a) that person may exercise all of the Licensor’s rights under this agreement; and

(b) the Licensee must enter into any deed reasonably required by the Licensor and the Licensor must reimburse any reasonable legal costs incurred by the Licensee in connection with the entering into of such deed.

3.6 **Superior interests**

The Licensee acknowledges and agrees that the Licensor and each Licensor Associate has an interest in theLicensed Area which is concurrent with or superior to the Licensor’s interest. Accordingly the Licensee agrees that it must allow the Licensor and each Licensor Associate to:

(a) exercise its right, or the Licensor’s right, to enter the Licensed Area;

(b) carry out repairs, maintenance and other work in the Licensed Area; and

(c) exercise its rights and obligations in respect of the Licensed Area in accordance with the Project Deed.

3.7 **Licensor may perform Licensee’s obligations**

(a) The Licensor may, at the Licensee’s cost, do anything which the Licensee should have done under this agreement if the Licensee does not promptly do so or if, in the Licensor’s opinion, the Licensee does not do so properly.

(b) The Licensee must reimburse the Licensor on demand for any costs and expenses incurred by the Licensor under paragraph (a).

3.8 **Appoint agents and managers**

The Licensor may appoint or authorise an agent or others to do anything it may or must do under this agreement or conduct the day to day running of the Railway Premises.

3.9 **Keys**

If the Licensor gives the Licensee any key, access card or other opening device to access the Railway Premises or the Licensed Area:

(a) the Licensee must not copy it without the Licensor’s prior consent;

(b) the Licensee must reimburse the Licensor for any cost it incurs as a result of the Licensee losing any opening device;

(c) the Licensee must give the opening device only to current employees of the Licensee or a Key Subcontractor, and must keep a list of those employees and give the list to the Licensor on request;
(d) the Licensee must comply with the Licensor’s protocols and procedures in relation to the use and distribution of key, access card or other opening devices, as notified to the Licensee from time to time; and

(e) the Licensee must return all opening devices to the Licensor on the expiration or termination of this agreement.

3.10 Rights in relation to Railway Premises

The Licensor may at any time:

(a) change the direction or flow of pedestrian or vehicular traffic in and around the Railway Premises; and

(b) issue a direction to the Licensee requiring the Licensee to assist in the management or rectification of any Emergency which takes place in the Railway Premises, including but not limited to any direction requiring the Licensee to cease or suspend the Permitted Use for a specified period of time in accordance with clause 41 of the Project Deed. The Licensee must immediately comply with any such direction of the Licensor.

4. Licence Fee

(a) (Licence Fee): In consideration of the rights to enter on, occupy and access (as applicable) the Premises pursuant to this agreement, the Licensee agrees to pay to the Licensor the Licence Fee on each Licence Fee Payment Date until the date that this agreement is terminated under clause 14.3 without any abatement, deduction or right of set off.

(b) (Adjustments): The parties will adjust the Licence Fee in accordance with clause 33.2(a) of the Project Deed to reflect the Additional Receivables Purchase Price.

(c) (Construction Change Payment): If the Licensor agrees to pay a Construction Change Payment, the Licence Fees will be increased in order to ensure that the Additional Receivables Purchase Price is equal to that Construction Change Payment.

(d) (Termination): If this Licence is terminated the Licensee will not be obliged to pay any Licence Payment after the date that this Licence is terminated.

5. Liability for expenses

The Licensee must indemnify the Licensor against, and must pay to the Licensor on demand the amount of, all costs and expenses incurred in connection with:

(a) any amendment to this agreement (other than an amendment expressly directed by the Licensor); and

(b) any request for the consent or approval of the Licensor,

including legal expenses on a full indemnity basis, administration costs of the Licensor and expenses incurred in engaging consultants.

6. Licensee’s charges

(a) The Licensee must pay directly to the relevant Authority or service provider all amounts charged to the Licensed Area by any Authority or service provider and any Utilities metered and consumed in the Licensed Area.
7. Outgoings

7.1 Payment by Licensee

The Licensee must pay, or reimburse the Licensor if the Licensor has paid, each Outgoing:

(a) to the Licensor or as otherwise directed by the Licensor; and

(b) within 14 days of service of a notice under clause 7.2(a).

7.2 Notice from Licensor

(a) The Licensor must notify the Licensee of the amount of each Outgoing payable.

(b) The notice referred to in paragraph (a) is conclusive evidence of its contents unless the Licensor or the Licensee notify the other of any manifest error within 14 days of service of the notice.

8. Licensee’s obligations

8.1 Approvals

The Licensee must take out, maintain and renew all Approvals, other than the Key Planning Approval, required for the occupation, use and operation of, and carrying out of the work under the Project Deed and each other Project Document in the Licensed Area.

8.2 General obligations

The Licensee must and must ensure that the Licensee’s Associates:

(a) (comply with directions) subject and without limitation to clause 39.9 of the Project Deed, immediately comply at all times with the directions and requirements of the Licensor while on the Licensed Area;

(b) (Mandatory Requirements) at its own cost, comply with all Mandatory Requirements in respect of:

(i) the Licensed Area or anything in it;

(ii) the use and occupation of the Licensed Area; or

(iii) the effect or likely effect of the use of the Licensed Area on the Environment, whether or not any such requirements are required to be effected by the Licensee, the Licensor or any other person, and

(c) (use) use the Licensed Area only for the Permitted Use.

8.3 Maintenance of Licensed Area

(a) The Licensee must, at its own cost and without limiting the Licensee’s obligations under the Project Deed:
(i) (good and substantial repair) keep the Licensed Area in good and substantial repair and working condition, including as required under the Project Deed and any other Project Document, but excluding:

A. fair, wear and tear;
B. to the extent permitted in respect of a Force Majeure Event pursuant to the Project Deed;

(ii) (remove graffiti) remove any graffiti or other disfigurement on the Licensed Area or the Licensee's Property within 5 Business Days of it occurring;

(iii) (Licensee's Property) keep the Licensee's Property within the Licensed Area in good and substantial repair and working condition;

(iv) (remove waste):

A. remove all waste produced by the Licensee's occupation of the Licensed Area from the Licensed Area regularly, in accordance with Best Industry Practices, any Environmental Requirements and the Project Deed;
B. comply with the Licensor's directions regarding refuse disposal; and
C. not put any refuse in bins provided for common use;

(v) (damage) repair any damage to or defect in the Licensed Area caused by the Licensee or the Licensee's Associates in accordance with the Project Deed;

(vi) (repairs and maintenance) carry out repairs and maintenance promptly using high quality materials and workmanship and in keeping with the standard, quality and appearance of the Licensed Area and the Licensee's Property;

(vii) (induction) if the Licensor or a Licensor Associate requires, attend from time to time, any induction course or training session in relation to the safe operation of the railway which is in the vicinity of the Licensed Area;

(viii) (cleaning) having regard to the nature of the Licensed Area, keep the Licensed Area clean and clear of debris and rubbish;

(ix) (fuel) reclaim and recycle oil and fuel used in the work under the Project Deed;

(x) (landscaped areas) if relevant, keep in good condition any part of the Licensed Area that is landscaped, keep that part of the Licensed Area free of weeds and, if required by the Licensor, engage a gardener approved by the Licensor to do so; and

(xi) (Licensor's Property) keep in good condition the Licensor's Property located in the Licensed Area including any air conditioning, plant and fire equipment.

(b) Without limiting its rights under the Project Deed, the Licensee accepts the Licensed Area in its state of repair, order and condition as at the Commencing Date.

8.4 Prohibitions on Licensee

The Licensee must not:

(a) (no alteration) make any change or structural alteration or addition to the Licensed Area other than in accordance with the Project Deed;
(b) (no damage) damage the Licensed Area, or anything on the Licensed Area (whether or not it is the property of the Licensor), or injure any person in or around the Licensed Area;

(c) (no rubbish) keep any rubbish in or around the Licensed Area;

(d) (no nuisance) use the Licensed Area for any illegal purpose or do anything which does or could cause a nuisance, annoy or offend the Licensor, a Licensor Associate, a NSW Rail Entity or the occupants of any nearby property above the levels specified in the Project Management Plan, the Construction Environmental Management Plan, the Operational Environmental Management Plan, the Sustainability Management Plan or such lower levels as may be stipulated by the Licensor (acting reasonably) from time to time;

(e) (no interference) except to the extent required for public health or safety purposes, do anything or allow anything to be done which would cause an unreasonable interference or obstruction to the operations being carried on by the Licensor, a Licensor Associate or a NSW Rail Entity in and around the Licensed Area;

(f) (no residential use) not use the Licensed Area for any residential purpose whether temporary or permanent;

(g) (no activity to cause signal failure) carry out or allow the carrying out of any activity which may give rise to or cause a failure of any railway signalling instruments or which may cause any other railway equipment to fail to operate or to malfunction for any period of time;

(h) (access to railway tracks) enter, access or place any item on or near any railway tracks outside the Licensed Area;

(i) (fire risk) except to the extent required to undertake the Project Activities, store anything in the Licensed Area which is dangerous, explosive or could increase the risk of fire on the Licensed Area;

(j) (signage) except for any signage required by any Mandatory Requirement or the requirement of an Authority, erect any signage on or about the Licensed Area except with the consent in writing of the Licensor;

(k) (no advertising) carry out any form of advertising on the Licensed Area;

(l) (alienation) part with possession of the Licensed Area or any part of it; or

(m) (Licensor's Property) alter the Licensor’s Property or use the Licensor’s Property for anything other than its intended use.

8.5 Conduct of works

If the Licensee seeks to carry out any structural, building or installation works on the Licensed Area during the Term, the Licensee must at its own cost:

(a) comply with the relevant provisions of the Project Deed;

(b) comply with all relevant requirements of the WHS Regulations with respect to the preparation of safe work method statements;

(c) not commence the works until the works have been approved under the Project Deed;

(d) ensure that the works are carried out:

(i) promptly and within the period of time required by the Licensor;
(ii) in accordance with good building practice and in keeping with the amenity and operation of the Licensed Area;

(iii) in accordance with plans and specifications agreed by the Licensor in writing;

(iv) using new and good quality materials;

(v) to the satisfaction of the Licensor; and

(vi) by contractors with appropriate insurance cover as required by the Licensor;

(e) protect any structures or items on the Licensed Area from damage and, if any damage is caused directly or indirectly as a result of the works, at the Licensor's election, either:

(i) promptly repair and make good the damage to the Licensor's satisfaction; or

(ii) pay or reimburse the Licensor on demand for any costs and expenses incurred by the Licensor relating to the make good of the damage;

(iii) accept full responsibility for the conduct and safety of the Licensee's Associates;

(iv) comply on time with any laws, including any laws in relation to work health and safety;

(v) remove from the Licensed Area on a regular basis all rubbish, debris and residual materials resulting from the works;

(vi) pay or reimburse the Licensor on demand by the Licensor for any costs or expenses incurred by the Licensor as a result of the works being carried out;

(vii) otherwise comply with the Licensor's requirements and directions from time to time relating to access to the Licensed Area and the carrying out of the works, including but not limited to immediately ceasing the works if requested by the Licensor; and

(viii) after the works are completed, provide the Licensor with a written report acknowledging that the works are complete and including any information as required by the Licensor (acting reasonably).

8.6 Annual fire statements

(a) The Licensee will at its cost comply with the requirements set out in Division 5, Clauses 175 - 178 of the Environmental Planning & Assessment Regulations 2000 (NSW) (EPA Regulations).

(b) The Licensee must at its cost cause to be prepared by a properly qualified person an Annual Fire Safety Statement in accordance with the EPA Regulations.

(c) The Licensee must at its cost comply with any notice it receives from either, the Licensor, Council or the Fire Commissioner arising out of or in connection with fire safety and the EPA Regulations.

8.7 Essential condition

(a) The Licensee's obligations under this clause 8 are an essential obligation of this agreement.

(b) The terms in clause 8.6 have the same meaning as given to those terms in the Environmental Planning & Assessment Regulations 2000 (NSW).
9. Assignment of rights, sublicensing

The Licensee must not, and must not purport to, assign or sublicence any of its rights under this agreement except:

(a) for the grant of a sub-licence to a Subcontractor for the purpose of undertaking the Project Activities subcontracted to them; or

(b) in conjunction with an authorised dealing with the Licensee’s rights under the Project Deed.

10. Vesting, assignment or transfer of Land

(a) The parties acknowledge and agree that:

(i) ownership of the Land and the improvements thereon may not be vested in the Licensor;

(ii) ownership of the Land and the improvements thereon may be transferred from time to time, without notice to, or the consent of, the Licensee;

(iii) as at the Commencing Date the Licensor has procured and will from time to time procure from the current owner or owners of the Land, such rights as may be necessary to enable the Licensee to enjoy the benefit of the licence granted under clause 2.1 until the earlier of:

A. the termination of this agreement in accordance with its terms; and

B. the expiry of the Term; and

(iv) the Licensor may not assign or novate any of its rights under this agreement, except to a transferee pursuant to clause 58.3 of the Project Deed.

(b) If the Licensor sells, transfers, assigns or otherwise disposes of all of its interest in the TfNSW Project Documents in accordance with clause 58.3 of the Project Deed:

(i) subject to clause 10(b)(ii), the Licensor must procure the novation of this agreement to the transferee pursuant to clause 58.3 of the Project Deed; and

(ii) the Licensee must enter into a Deed of Novation novating this agreement to the transferee, within 10 Business Days of receipt of a notice from the Licensor requesting that the Licensee execute the Deed of Novation.

(c) Where the Licensee does not enter into the Deed of Novation within 10 Business Days of receipt of a notice under clause 10(b)(ii), the Licensee irrevocably appoints the Licensor and such persons as are from time to time nominated by the Licensor, jointly and severally, as its attorney with full power and authority to execute and deliver the Deed of Novation contemplated in clause 10(b)(ii) and any documents, agreement of novation contemplated by or ancillary to that Deed of Novation.

11. Work health and safety

11.1 Compliance with WHS Act and WHS Regulation

Despite any other provision in this agreement, the Licensee must at all times comply with the WHS Act and WHS Regulation and must provide to the Licensor upon request evidence that the Licensee is complying with the WHS Act and WHS Regulation.
11.2 Project Deed and other Project Documents

Without limiting the application of the WHS Act and WHS Regulation to the Licensee, during the Term, the Licensee is responsible for all aspects of WHS in connection with its business or undertaking carried out in the Licensed Area in accordance with the terms of the Project Deed and each other Project Document.

12. Environmental issues

12.1 No representation

The Licensor does not warrant or represent:

(a) that the Licensed Area is suitable for any use, or for any particular use, including the Permitted Use;

(b) the accuracy of information about the past use of the Licensed Area; or

(c) that the Licensed Area is free of Contamination, or the nature or extent of any Contamination.

12.2 Environmental obligations

The Licensee acknowledges its obligations under clause 8 of the Project Deed.

13. Risk and liability

13.1 Risk

Without limiting its rights under the Project Deed and this agreement:

(a) the Licensee occupies the Licensed Area, and uses the Common Areas at its own risk and carries out any building work at its own risk; and

(b) if the Licensee is obliged to do anything under this agreement, it does so at its own risk.

13.2 No restriction on Licensor

Nothing in this agreement restricts the Licensor’s right to carry out works in or around the Licensed Area at any time and for any purpose.

13.3 Insurance

The parties acknowledge their respective insurance obligations under the Project Deed and their application to the rights and obligations of the parties under this agreement.

13.4 Release of Licensor

(a) Without limiting any of the Licensee’s obligations under the Project Deed, to the extent permitted by law, and subject to any express entitlements the Licensee may be entitled to under the Project Deed, the Licensee unconditionally and irrevocably releases the Licensor from:

(i) all costs and Claims caused by any reason and in connection with any damage, loss, injury or death to or of any person or property on or near the Licensed Area or the Railway Premises, including but not limited to by reason of the fact that the Licensed Area may be near any land used for Railway Purposes; and
any liability for damage to the Licensee's Property or for any other loss (however that loss was caused or arose), including but not limited to:

A. Consequential or Indirect Loss;

B. loss resulting from:

(i) any Utility Infrastructure not working properly, being unavailable or being interrupted, or the misuse of any Utility Infrastructure;

(ii) the movement of any vehicle in the Licensed Area;

(iii) the death of, or injury to any person who is a passenger in or driver of a vehicle on, over or through the Licensed Area, or any person who is in or around the Licensed Area;

(iv) damage caused to any vehicle whilst in the Licensed Area;

(v) the liability of another person;

(vi) the Licensor granting any other lease, licence or other right to operate a business in or around the Railway Premises which may be a use which competes with the Permitted Use or has an adverse effect on the ability of the Licensee to carry out the Permitted Use;

(vii) the vacancy of any other tenancy or area in the Railway Premises from time to time (for whatever reason);

(viii) any change in the flow of members of the public in and around the Licensed Area for any reason;

(ix) the failure of any tenant, occupant or other person in the Railway Premises to keep their leased premises or other area clean and tidy;

(x) any product promotion which is carried out by any person within the Railway Premises (whether the promotion is carried out with the consent of the Licensor or otherwise);

(xi) the Licensor carrying out any maintenance, refurbishment, alteration, upgrade or other works or other activity in and around the Railway Premises for Railway Purposes (including but not limited to works required under the Disability Discrimination Act 1992 (Cth)) provided that the Licensor gives the Licensee at least 2 months' notice in writing of the proposed works (or in the case of an emergency, a period of notice that is reasonably practicable in the circumstances);

(xii) any special events in the area of the Railway Premises and crowd control and other measures taken by the Licensor in relation to those events, including but not limited to closing the Railway Premises, changing the location of entrances and exits and changing the flow of people through the Railway Premises;

(xiii) the frequency of trains passing through the Railway Premises and changes to train timetables which may be made in the absolute discretion of the Licensor;

(xiv) any incidents or accidents occurring in or around the Railway Premises which require temporary closure or shutdown of the Railway Premises;
(XV) any delay in rectifying a breakdown or failure of any fixtures, fittings, plant and equipment in the Railway Premises and under the control of the Licensor;

(XVI) any industrial dispute associated with employees or contractors responsible for operating the railway;

(XVII) noise, vibration or stray electrical currents emanating from the railway;

(XVIII) any act beyond the control of the Licensor including (without limitation) any fire, flood, storm, tempest or washaway, war (whether declared or undeclared), revolution, riot or civil commotion; and

(XIX) the Licensor’s termination of this agreement under clause 14.

(b) In addition to the matters set out in clause 13.4(a), nothing the Licensor, a Licensor Associate or a NSW Rail Entity does in relation to carrying out the Railway Purposes or operating and maintaining the Rail Infrastructure Facilities constitutes a nuisance under or in relation to this agreement and the Licensee must not, and is not entitled to, take any action or make any claim against the Licensor by reason of the fact that the Licensed Area may be in or in the vicinity of:

(i) a railway being operated by the Licensor, a Licensor Associate or a NSW Rail Entity for Railway Purposes or otherwise; and/or

(ii) Rail Infrastructure Facilities.

13.5 Indemnity

(a) The Licensee unconditionally and irrevocably indemnifies the Licensor against any costs and Claims which the Licensor incurs or is liable for in connection with the use or occupation of the Licensed Area by the Licensee or the Licensee’s Associates.

(b) The Licensee’s liability to the Licensor under the indemnity in clause 13.5(a) will be reduced to the extent that Project Co would not otherwise have been liable to TfNSW for the same Liability under the TfNSW Project Documents.

13.6 Continuing indemnity

Each indemnity of the Licensee contained in this agreement is a:

(a) continuing obligation of the Licensee and remains in full force and effect after the termination of this agreement; and

(b) separate and independent obligation of the Licensee.

13.7 Project Trust undertakings

The Licensee must:

(a) comply fully with all of its obligations as trustee of the Project Trust, whether imposed under the Project Trust Deed or, in all material aspects, at law;

(b) ensure that no waiver or revocation of the Project Trust Deed is made, whether formally or by conduct;
(c) not amend, or agree to amend, or permit or allow to be amended, the Project Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error, details of which are notified to the Licensor;

(d) ensure that no other person is appointed trustee of the Project Trust without the prior written consent of the Licensor;

(e) not do anything which would cause or enable its removal, nor retire, as trustee of the Project Trust except in favour of a new trustee approved by the Licensor;

(f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Project Trust Deed or allow the early determination of the Project Trust;

(g) not exercise in its own favour its Trustee's Indemnity under the Project Trust against any beneficiary of the Project Trust or against any Trust Property (other than in respect of any expenses which it properly incurs in the day to day performance of its obligations as trustee of the Project Trust);

(h) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:

(i) the termination of the Project Trust or the termination, rescission or revocation of the Project Trust Deed;

(ii) the resettlement of any Trust Property; or

(iii) the resignation, retirement, removal or replacement of it as trustee of the Project Trust or the appointment of an additional trustee of the Trust;

(i) not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Documents and the Finance Documents;

(j) ensure that:

(i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Project Trust Deed);

(ii) the rights of any beneficiaries relating to, and their interests in, the property of the Project Trust are subject to the prior rights and interests of:

(A) the Licensor under the TfNSW Security; and

(B) the Licensee in the property of the Project Trust pursuant to its Trustee's Indemnity;

(k) not do anything, or omit to do anything, where the doing or the omission to do may have the effect of releasing, waiving or impairing any Security Interest granted by or created under a Project Document;

(l) unless otherwise permitted under the Project Documents, not permit any of the beneficiaries of the Project Trust to use, occupy, or enjoy or possess any of the Trust Property or title documents in respect of the Trust Property or relinquish management powers which might entitle any beneficiary of the Project Trust to possession;

(m) not blend or mix the Trust Property with any other property in respect of which it has been appointed trustee;
(n) not acquire any Trust Property other than in the name of the Trustee as trustee of the Project Trust;
(o) not allow any redemption, cancellation or repurchase of any units in the Project Trust other than as permitted by the Project Documents;
(p) not take any step to release a unit holder of the Project Trust from the obligation to pay up units;
(q) not do anything, agree or attempt to take any step to do anything which would restrict or impair its ability to comply with its obligations under this Agreement; and
(r) not do anything (or permit anything to be done) which:
   (i) results or may result in registration of the Project Trust as a managed investment scheme under Part 5C.1 of the Corporations Act; or
   (ii) restricts or limits or may restrict or limit the Licensor’s rights of subrogation to the Trustee’s Indemnity.

14. Default and termination

14.1 Default

The Licensee is in default if:

(a) it does not pay the Licence Fee or any other money payable under this agreement within 10 Business Days of the due date;
(b) it does not perform any express obligations under this agreement;
(c) an Insolvency Event occurs in respect of the Licensee;
(d) it repudiates its obligations under this agreement.

14.2 Licensor’s rights

If the Licensee is in default of any of its obligations under this agreement such default will, to the extent that it constitutes a Major Default or a Default Termination Event, be dealt with as a Major Default or a Default Termination Event (as the case may be) under the Project Deed.

14.3 Termination of the Project Deed

Despite any other provision of this agreement, this agreement will terminate automatically upon termination of the Project Deed, but without prejudice to any accrued rights and obligations under this agreement, including those arising out of termination of this agreement.

This clause 14.3 sets out the sole basis at Law or otherwise upon which any party is entitled to terminate, rescind or accept a repudiation of this agreement.

14.4 Make good

Howsoever this agreement is terminated, the Licensee must, at its cost and to the satisfaction of the Licensor:

(a) remove all rubbish and the Licensee’s Property from the Licensed Area, unless the Licensor agrees or directs otherwise, and make good any damage caused by the removal;
(b) promptly leave the Licensed Area in a condition consistent with the Licensee’s performance of its obligations under the Project Deed;

(c) remove any structures erected by it on the Licensed Area other than in accordance with the Project Deed (unless the Licensor agrees or directs not to remove such structures);

(d) hand over all keys provided by the Licensor in relation to the Licensed Area, including security access devices; and

(e) repair any damage caused to the Licensed Area in the course of complying with this clause in accordance with the Project Deed and in all cases leave the Licensed Area in the condition required under the Project Deed.

14.5 Storage of Licensee’s Property

(a) If the Licensee does not remove the Licensee’s Property or remedy any damage under clause 14.4, the Licensor may do so and store the Licensee’s Property at the Licensee’s cost.

(b) If the Licensee does not remove all of the Licensee’s Property from the Licensed Area or from the place where it is stored by the Licensor within 5 Business Days of being asked to do so by the Licensor, that Licensee’s Property which has not been removed by the Licensee becomes the property of the Licensor if the Licensor so elects.

15. Rail legislation and related matters

15.1 Acknowledgment

The Licensee acknowledges the effect of the Railway Legislation in relation to this agreement, including but not limited to any obligations imposed under that legislation on the Licensee.

15.2 Importation of statutory provisions

If any law, including but not limited to the Railway Legislation, requires that this agreement includes any provision or any provision is deemed to be included in this agreement, then this agreement contains that provision in the form prescribed by the law.

15.3 Rights in relation to Licensed Area

(a) The Licensee acknowledges and agrees that the Licensor and each Licensor Associate have full and unfettered access to the Railway Premises at all times and may not be excluded from entering the Railway Premises by any action of the Licensee. For the avoidance of doubt, Railway Premises includes the Licensed Area.

(b) Despite any other provision in this agreement, the Licensee acknowledges that this agreement does not permit the Licensee to access any part of the Railway Premises not comprising the Licensed Area.

(c) Despite any other provision in this agreement, the Licensee must not do anything which interferes with the normal operation of the railway or the Railway Premises.

16. Notices

A notice, consent or other communication under this agreement is only effective if it is served in the manner set out in clause 65 of the Project Deed.
17. GST

17.1 Definitions

GST means the same as in the GST Law.

GST Law means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

17.2 Payment of GST

(a) A recipient of a taxable supply made under this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (GST Amount) without deductions or set off of any other amount.

(b) The recipient must pay the GST Amount to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply, provided that the supplier has issued a tax invoice to the recipient for that supply; or

(ii) if there is no due date, within 5 Business Days of receiving a written request or a tax invoice from the supplier.

17.3 Reimbursements

A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

17.4 Formula use GST exclusive amounts

If a payment made under this agreement is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

17.5 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

(c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

18. General clauses and interpretation

18.1 Governing law

(a) This agreement is governed by and must be construed according to the laws applying in New South Wales.
(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

18.2 Giving effect to this agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this agreement.

18.3 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

18.4 Operation of this agreement

(a) This agreement contains the entire agreement between the parties about its subject matter.

(b) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

18.5 Consents

(a) Where this agreement contemplates that the Licensor may agree or consent to something (however it is described):

(i) the Licensor may:

A. agree or consent, or not agree or consent, in its absolute discretion; and

B. agree or consent subject to conditions; and

(ii) the agreement or consent must be in writing,

unless this agreement expressly contemplates otherwise.

(b) In making a discretionary determination, the Licensor will take into consideration any current government policy. The Licensor may withdraw a consent if it is inconsistent with government policy and the Licensee must, without delay, cease the relevant activity and comply with the directions of the Licensor.

18.6 No merger

The provisions of this agreement do not merge on termination.
18.7 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Licensee, or the exercise by the Licensor of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

18.8 Expiry or termination

Expiry or termination of this agreement does not affect any rights arising from a breach of this agreement before then.

18.9 Payments under this agreement

(a) The Licensee must make payments under this agreement:

(i) to the Licensor (or to a person nominated by the Licensor in a notice to the Licensee) by the method the Licensor reasonably requires;

(ii) when due and payable whether or not demanded by the Licensor; and

(iii) without withholding any part of any payment by way of deduction, set off or counterclaim.

(b) If no date for payment is specified the Licensee must make payments under this agreement within 7 days of being asked by the Licensor.

(c) Where any money the Licensor charges the Licensee is calculated using a time period and this agreement starts or ends during that time period, the Licensor must make proportional adjustments.

(d) If either the Licensor or the Licensee prove an error in any money charged the Licensor must correct it and make any necessary adjustment, in a notice to the Licensee. On the next day on which the Licence Fee is due, the Licensee must pay the Licensor or the Licensor must credit the Licensee with the difference between what the Licensee has paid and what the Licensee should have paid.

18.10 Counterparts

This agreement may be executed in counterparts.

18.11 Interpretation

In this agreement:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (agreement and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this agreement; and
(ii) a section is a reference to a section of a Schedule;

(d) [document as amended]: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) [party]: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) [person]: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) [legislation]: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

(h) [Standards]: a reference to a Standard includes that Standard as amended or updated from time to time;

(i) [definitions]: if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ['includes']: 'includes' and 'including' will be read as if followed by the phrase '((without limitation))';

(k) ['or']: the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) [information]: a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ['$']: a reference to '$', AUD or dollar is to Australian currency;

(n) [day]: except as otherwise provided in this agreement or where a reference is made to 'Business Days', day means a calendar day;

(o) [time]: a reference to time is a reference to time in Sydney, Australia;

(p) [rights]: a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(q) [function]: a function includes a power, authority or duty;

(r) [obligations and liabilities]: except in relation to TfNSW and RailCorp, a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(s) ['may']: except to the extent that TfNSW or RailCorp are expressly required under this agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by TfNSW or RailCorp, means that TfNSW or RailCorp can exercise that power, right or remedy in its absolute and
unfettered discretion (and without regard to Project Co) and TfNSW or RailCorp has no obligation to do so;

(t) (construction): where there is a reference to an Authority, institute or association or other body referred to in this agreement which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this agreement is deemed to refer to that other entity; or

(ii) ceases to exist, this agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(u) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and

(v) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

18.12 Business Days

If the day on or by which a person must do something under this agreement is not a Business Day:

(a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

(b) in any other case, the person must do it on or by the previous Business Day.

18.13 Multiple parties

If the Licensee is made up of more than one person, or a term is used in this agreement to refer to more than one party:

(a) an obligation of those persons comprising the Licensee is joint and several;

(b) a right of those persons is held by each of them severally; and

(c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):

(i) a representation, warranty or undertaking is given by each of them separately; and

(ii) a reference to that party or that term is a reference to each of those persons separately.

18.14 Disputes

Any disputes in relation to the subject matter of this agreement must be determined under the Project Deed on the basis the dispute constitutes a dispute under the Project Deed.

18.15 No Waiver

No failure to exercise and no delay in exercising, on the part of the Licensors, any right or remedy under this Licence or any sub-licence will operate as a waiver of that right or remedy, nor will any
single or partial exercise of any right or remedy preclude any other or further exercise of that, or any other, right or remedy.
Executed as a deed

Signed sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

__________________________
Signature of witness

__________________________
Signature of authorised delegate

__________________________
Full name of witness (print)

__________________________
Full name of authorised delegate (print)

__________________________
Position held

__________________________
Position held

Signed sealed and delivered for and on behalf of Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Momentum Trains Trust (ABN 40 340 691 016) by its attorneys:

__________________________
Attorney

__________________________
Witness

__________________________
Attorney (print)

__________________________
Name of witness (print)

__________________________
Attorney

__________________________
Witness

__________________________
Attorney (print)

__________________________
Name of witness (print)
Schedule 1 – Licensed Area
Schedule 2 – Form of Deed of Novation

Deed of Novation

Maintenance Facility Site Maintenance Phase Licence - Regional Rail Project

[Insert]
Retiring Party

and

[Insert]
Continuing Party

and

[Insert]
Substitute Party
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This Deed of Novation for the Maintenance Facility Site Maintenance Phase Licence - Regional Rail Project is made on ____________

Parties

(1) [Insert] (Retiring Party);

(2) [Insert] (Continuing Party); and

(3) [Insert] (Substitute Party).

Background

A. The Retiring Party and the Continuing Party are parties to the Licence.

B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Licence on the terms and conditions of this deed.

C. The Continuing Party has agreed to the novation of the Licence on the terms and conditions of this deed.
Agreed Terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the contrary intention appears:

Effective Date means [insert].

Licence means the document titled 'Maintenance Facility Site Maintenance Phase Licence — Regional Rail Project' between the Retiring Party and the Continuing Party dated [insert].

Project Deed means the deed entitled 'Regional Rail - Project Deed' dated on or about 12 February 2019 entered into between TfNSW, RailCorp and the Licensee.

1.2 Licence and Project Deed definitions

Capitalised expressions not defined in this deed have the same meaning as in the Licence (in the first instance) or if not defined in the Licence, then as defined in the Project Deed.

1.3 Interpretation

In this deed:

(a) headings: headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) count and gender: a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) Deed and Schedule references: a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

(ii) a section is a reference to a section of a Schedule;

(d) document as amended: a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) party: a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) person: a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) legislation: a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
(h) (Standards): a reference to a Standard includes that Standard as amended or updated from time to time;

(i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';

(k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ('$'): a reference to '$', AUD or dollar is to Australian currency;

(n) (Business Day): if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(o) (day): except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;

(p) (time): a reference to time is a reference to time in Sydney, Australia;

(q) (rights): a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(r) (function): a function includes a power, authority or duty;

(s) (obligations and liabilities): except in relation to TfNSW and RailCorp, a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) ('may'): except to the extent that TfNSW or RailCorp are expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by TfNSW or RailCorp, means that TfNSW or RailCorp can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co) and TfNSW or RailCorp has no obligation to do so;

(u) (construction): where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or

(ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(v) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
(w) **contra proferentem rule not to apply**: each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

2. **Condition Precedent to Novation**

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

3. **Novation**

3.1 **Novation**

(a) The parties novate the Licence so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Licence.

(b) Any reference in the Licence to the Retiring Party will be read as a reference to the Substitute Party.

3.2 **Assumptions of rights and obligations**

(a) The Substitute Party:

   (i) will be bound by and must comply with the terms of the Licence and will enjoy the rights and benefits conferred on the Retiring Party under the Licence; and

   (ii) will assume the obligations and Liability of the Retiring Party under the Licence, in all respects as if the Substitute Party had originally been named in the Licence as a party instead of the Retiring Party.

(b) The Continuing Party will comply with the terms of the Licence on the basis that the Substitute Party has replaced the Retiring Party under the Licence in accordance with this deed.

3.3 **Release by Continuing Party**

(a) The Continuing Party releases the Retiring Party from:

   (i) any obligation or Liability under or in respect of the Licence; and

   (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Licence.

(b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Licence.

3.4 **Insurance**

As from the Effective Date:

(a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Licence; and

(b) the Continuing Party will take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Licence, the Substitute Party is named in place of the Retiring Party as required by the Licence.
4. **Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Licence relating to any requirement for consent to assignment of the Licence so far as any such provisions would apply with respect to the novation of the Licence to the Substitute Party.

5. **Representations and warranties**

5.1 **Authority**

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

5.2 **Authorisations**

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

5.3 **Binding obligations**

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

6. **Duties, costs and expenses**

6.1 **Stamp duty**

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

6.2 **Costs**

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

7. **GST**

7.1 **Definitions**

GST means the same as in the GST Law.

GST Law means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

7.2 **Payment of GST**

(a) A recipient of a taxable supply made under this deed must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (GST Amount) without deductions or set off of any other amount.

(b) The recipient must pay the GST Amount to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply, provided that the supplier has issued a tax invoice to the recipient for that supply, or
(ii) if there is no due date, within 5 Business Days of receiving a written request or a tax invoice from the supplier.

7.3 Reimbursements

A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

7.4 Formula use GST exclusive amounts

If a payment made under this deed is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

7.5 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

(c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

8. General

8.1 Governing law

(a) This deed is governed by the law in force in New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

8.2 Amendments

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

8.3 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

(b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.
8.4 Counterparts

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

8.5 Severance

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

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed;

or

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

8.6 Further acts and documents

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

8.7 Assignment

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

9. Disputes

Any disputes in relation to the subject matter of this deed must be determined under the Project Deed on the basis the dispute constitutes a dispute under the Project Deed.
Signing page

Executed as a deed

Executed by [insert Retiring Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

__________________________  ________________________
Director                    Director/Secretary

__________________________
Name of Director (print)    Name of Director/Secretary (print)

Executed by [insert Continuing Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

__________________________  ________________________
Director                    Director/Secretary

__________________________
Name of Director (print)    Name of Director/Secretary (print)

Executed by [insert Substitute Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

__________________________  ________________________
Director                    Director/Secretary

__________________________
Name of Director (print)    Name of Director/Secretary (print)
Schedule 7B — Form of Legacy Maintenance Centre Licence

Legacy Maintenance Centre Licence

Transport for NSW (TfNSW)
ABN 18 804 239 602
Licensor

and

Momentum Trains Pty Ltd in its personal capacity and as trustee for the Momentum Trains Trust
ACN 630 634 507
Licensee
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This **Legacy Maintenance Centre Licence** is made on ________________________________

**Parties**

(1) Transport for NSW (ABN 18 804 239 602), a corporation constituted under section 3C of the *Transport Administration Act 1988* (NSW) (TfNSW) (Licensor); and

(2) Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Project Trust (ABN 40 340 691 016) (Project Co) (Licensee).

**Background**

A. The Licensor is entitled to grant a licence in respect of the Licensed Area.

B. The Licensor, together with RailCorp and the Licensee, intend to enter into, or have entered into, the Project Deed.

C. The Licensor agrees to grant a non-exclusive licence to the Licensee for the Permitted Use on the terms of this agreement.

D. The Licensee agrees to accept the licence, on the terms of this agreement.
Reference Schedule

Item 1: Date of agreement

Item 2: Term

In the case of:

(a) the Principal Licensed Area, from the Commencing Date to the Expiry Date; and

(b) the Temporary Licensed Area, from 28 January 2022 until the earlier of the Expiry Date and 07 December 2023.

Item 3: Licensed Area

The Principal Licensed Area and the Temporary Licensed Area.

Item 3A: Principal Licensed Area

The Legacy Maintenance Centre shown hatched on the plan attached at Part 1 of Schedule 1.

Item 3B Temporary Licensed Area

The area adjacent to the Legacy Maintenance Centre security gatehouse shown hatched in yellow on the plan attached at Part 2 of Schedule 1.

Item 4: Land

The land comprised in folio identifiers 1/1012673, 2/805700, 1/1001459 and 1/921280.

Item 5: Commencing Date

The Legacy Maintenance Centre will be handed over to Project Co after the date of the retirement of the last existing XPT.

Item 6: Licence Fee and Licence Fee Payment Date

<table>
<thead>
<tr>
<th>Licence Fee</th>
<th>Licence Fee Payment Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>[To be completed]</td>
<td>[To be completed]</td>
</tr>
<tr>
<td>[.]</td>
<td>[.]</td>
</tr>
</tbody>
</table>

Item 7: Permitted Use

In the case of:

(a) the Principal Licensed Area, the undertaking of the Services and the Approved Commercial Opportunities in accordance with the terms of the Project Deed and each other Project Document; and

(b) the Temporary Licensed Area, the siting and use of temporary office and storage facilities and associated amenities for the purposes of enabling the undertaking of the Services and the Approved Commercial Opportunities in accordance with the terms of the Project Deed and each other Project Document.

Item 8: Not used

Item 9: Normal Operating Hours

[Insert]

Item 10: Not used
Agreed Terms

1. Definitions

1.1 Definitions

In this agreement, unless the contrary intention appears:

Commencing Date means the date referred to in Item 5.

Common Areas means the part of the Railway Premises which the Licensor intends for common use, including but not limited to those areas such as the public toilet and kitchen facilities within the Maintenance Facility building.

Deed of Novation means a deed in the form of the deed annexed at Schedule 2.

GST Amount has the meaning given in clause 17.2(a).

Land means the land described at Item 4.

Licence means the licence to occupy the Licensed Area granted by the Licensor to the Licensee under this agreement.

Licence Fee means the fee referred to in Item 5 payable on the relevant Licence Fee Payment Date.

Licence Fee Payment Date means each date for payment of a Licence Fee as set out in Item 5 in the Reference Schedule.

[Note: the initial licence fee payable by Project Co will be as set out in the Base Case Financial Model worksheet “Licence Schedule”, as updated in accordance with the Project Documents and the revised Financial Model issued prior to Provisional Acceptance of the first Unit in accordance with clause 60.3(a)(iv) of the Project Deed. Prior to entry into this agreement, the Licence Fee and Licence Fee Payment Dates will be included in the Reference Schedule.]

Licensed Area means the area(s) referred to in Item 3.

Licensee’s Associate means any of Project Co’s Associates.

Licensee’s Property means the Licensee’s plant, equipment, fixtures, fittings, furnishings and other property of the Licensee on or in the Licensed Area.

Licensor’s Associate means any Associate of TfNSW or RailCorp.

Licensor’s Property means the Licensor’s plant, equipment, fixtures, fittings, furnishings and other property of the Licensor or any Licensor Associate on or in the Railway Premises.

Normal Operating Hours means the hours specified at Item 9, as amended from time to time, and notified to the Licensee by the Licensor.

Outgoings means any amounts paid or payable by the Licensor in connection with the Licensed Area (plus GST on those amounts to the extent that the Licensor does not receive an input tax credit for that GST) in respect of any period falling within the relevant Term, including the following:

(a) (cleaning) the cost of cleaning and disposal of refuse;

(b) (security) the cost of security and fire protection services;
(c) (maintenance) the cost of repairs, renovation, replacements and maintenance of the Licensed Area, excluding the cost of any structural improvement which has the effect of upgrading the Legacy Maintenance Centre to a better or more extensive condition than at the Commencing Date;

(d) (signs) the cost of supplying, operating and maintaining any signs;

(e) (washrooms) the cost of supplying paper towels, soap and other toilet requisites in the washrooms in the Legacy Maintenance Centre building;

(f) (gardening) the cost of planting, buying, hiring and maintaining any indoor or outdoor gardens; and

(g) (pests) the cost of pest and vermin control,

but specifically excluding:

(h) (rates and levies) rates, rents, levies and other charges payable to any Authority; and

(i) (taxes) imposts, duties, fees, deductions, compulsory loans or withholdings and taxes (excluding income tax and capital gains tax) payable to any Authority, including land tax on the basis assessed to theLicensor.

**Permitted Use** means the use referred to in Item 7.

**Project Deed** means the deed entitled 'Regional Rail - Project Deed (including its schedules and annexures) dated on [•] February 2019 entered into between TfNSW, RailCorp and the Licensee.

**Rail Infrastructure Facilities** has the same meaning as in the Transport Administration Act 1988 (NSW) and includes "rail infrastructure" as that term is defined in the Rail Safety Law.

**Rail Safety Law** means the:

(a) Rail Safety National Law as applied (with modifications) as a law of New South Wales by the Rail Safety (Adoption of National Law) Act 2012 (NSW);

(b) Rail Safety National Law National Regulations 2012 (NSW); and

(c) Rail Safety (Adoption of National Law) Regulation 2012 (NSW),

as amended, replaced or updated from time to time.

**RailCorp** means Rail Corporation New South Wales (ABN 59 325 778 353), a NSW government agency constituted under section 4 of the Transport Administration Act 1988 (NSW).

**Railway Legislation** means the Transport Administration Act 1988 (NSW), the Rail Safety Law and any other legislation or regulation governing the Licensor's or Licensor Associates' operations, including but not limited to the operation of railway passenger or freight services.

**Railway Premises** means all or any part of the Land together with all improvements from time to time on or near the Land owned or used by the Licensor, a Licensor Associate or a NSW Rail Entity for Railway Purposes or for any other purpose and includes but is not limited to any:

(a) Rail Infrastructure Facilities;

(b) underground and overhead passages which join improvements on the Land to any other land; and
(c) plant, machinery, fittings, equipment, conveniences and amenities owned, leased or controlled by the Licensor, a Licensor Associate or a NSW Rail Entity, including but not limited to all railway track, railway stations, tunnels, civil works, associated track structures, over track structures, signalling systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased or used by the Licensor, a Licensor Associate or a NSW Rail Entity.

Railway Purposes means any action or activity undertaken or required to be undertaken by the Licensor, a Licensor Associate or a NSW Rail Entity, in their absolute discretion, for the use, control, safe operation, management, maintenance or repair of any railway infrastructure, facility or service, the Licensor's Property and Rail Infrastructure Facility, including under the Railway Legislation.

Reference Schedule means the reference schedule appearing at the front of this agreement and marked "Reference Schedule".

Term means the relevant term in respect of the relevant Licensed Area, as set out in Item 2.

1.2 Project Deed definitions

Capitalised expressions not defined in this agreement have the same meaning as in the Project Deed.

1.3 Project Deed overrides

The parties:

(a) acknowledge that they must, in the exercise of any rights or the performance of any obligations under this agreement, comply with the terms of the Project Deed; and

(b) agree that, in the event of any inconsistency between the terms of this agreement and the terms of the Project Deed (including clause 29.4) prevail.

1.4 Capacity of Licensee

(a) Insofar as the Licensee enters into this agreement in its capacity as trustee of the Project Trust, it must remain trustee of the Project Trust, subject to clause 13.7(e) until the expiry or satisfaction of all of the Licensee's obligations under this agreement.

(b) A liability of the Licensee arising under or in connection with this agreement (whether that liability arises under a specific provision of this agreement, for breach of contract or otherwise), is a liability that can be enforced against the Licensee both in its own right and in its capacity as trustee of the Project Trust, unless the liability relates only to an asset which the Licensee holds in its personal capacity and not as trustee, in which case the liability can only be enforced against the Licensee in its personal capacity.

2. Grant of Licence

2.1 Licence

The Licensor grants to the Licensee a non-exclusive licence to use the Licensed Area for the purposes only of carrying out the applicable Permitted Use during the relevant Term, subject to the conditions (if any) set out in Item 8 and otherwise as set out in this agreement.
2.2 Nature of licence

(a) The Licensee has a personal right of occupation on the terms specified in this agreement and has no interest in the Land. The legal right to possession and control over the Licensed Area remains vested in the Licensor throughout the relevant Term.

(b) Nothing in this agreement:
(i) confers on the Licensee any rights as a tenant of the Licensed Area;
(ii) creates the relationship of landlord and tenant between the parties; or
(iii) entitles the Licensee to register any caveat, interest, right, affectation, encumbrance, Easement, covenant or restriction over the Land.

(c) During the relevant Term, and subject to clause 41 and TfNSW's other remedial rights under the Project Deed and without limiting Project Co's obligations under the Project Deed, the Licensor must ensure that it does not:
(i) undertake or procure the undertaking of any activities within the Licensed Area; or
(ii) grant any rights to third parties, that interferes with the undertaking by the Licensee of the Permitted Use.

3. Licensor's rights and reservations

3.1 Licensor's right to enter the Licensed Area

(a) Subject to paragraphs (b) and (c), and in addition to any rights the Licensor may have under the Project Deed or any other Project Document, the Licensor or its agents may enter the Licensed Area together with all necessary workmen and equipment at all reasonable times, if it gives the Licensee reasonable notice, to:
(i) determine the condition of the Licensed Area or whether the Licensee is complying with this agreement;
(ii) undertake any repairs or maintenance to the Licensed Area or the Legacy Maintenance Centre building;
(iii) carry out any work to the Railway Premises, any Utility Infrastructure or any adjacent property, including but not limited to for the purpose of installing any new Utility Infrastructure for Railway Purposes or for any other reason;
(iv) exercise its rights under any provision of this agreement or any other Project Document;
(v) enable it to comply with any law or any notice from any Authority affecting the Railway Premises;
(vi) show the Licensed Area to prospective purchasers or mortgagees at any time or to prospective tenants;
(vii) ensure that the Licensed Area is locked and secure; and
(viii) do anything for Railway Purposes or to avoid or rectify an emergency.

(b) When exercising its rights under paragraph (a), the Licensor:
must take reasonable steps to minimise any disruption to the Licensee;

(ii) must comply with the Site Access and Interface Protocols where Delivery Phase Activities or the Upgrade Services are being carried out on the Licensed Area; and

(iii) is not required to give reasonable notice or enter at a reasonable time in the case of an emergency.

(c) Where the Licensor exercises its rights under paragraphs (a)(ii), (a)(iii) or (a)(v) and, in the Licensor's opinion, access is urgently required, the Licensee acknowledges and agrees that:

(i) the Licensor is not required to give the Licensee notice if, in the Licensor's opinion, giving such notice is not practicable;

(ii) the Licensee must give the Licensor prompt access to the Licensed Area; and

(iii) the Licensee will undertake (in accordance with clause 11) such temporary repairs as are necessary in order to make safe the relevant property or Utility Infrastructure until such time as the Licensor is able to undertake the proposed repairs and/or maintenance.

(d) The Licensee acknowledges and agrees that it must otherwise provide the Licensor with access to and the use of resources at, the Licensed Area, as provided for and in accordance with the Project Deed.

(e) This clause 3.1 does not limit the operation of clause 41 of the Project Deed.

3.2 Restricted access to Railway Premises

The Licensor may exclude any person (including the Licensee) from the Railway Premises:

(a) if required by law or for safety or security reasons; or

(b) subject to the terms of the Project Deed:

(i) without limiting clause 2.2(c), outside the Normal Operating Hours; or

(ii) during public holidays.

3.3 Convert title

(a) The Licensor may convert the title to any part of the Railway Premises to strata (or similar) title unless this would have a substantial adverse effect on the Licensee's ability to perform its obligations under the Project Deed or any other TfNSW Project Document.

(b) The Licensee must do anything the Licensor reasonably requires concerning the conversion including, but not limited to, promptly providing its unconditional consent, in writing, to the subdivision or grant of easement.

3.4 Subdivide and grant easements

The Licensor may subdivide the Land or grant an easement or other right over it or the Licensed Area unless this would have a substantial adverse effect on the Licensee's ability to perform its obligations under the Project Deed or any other TfNSW Project Document. The Licensee must do anything the Licensor reasonably requires concerning the subdivision or grant of easement. The Licensee must reimburse any reasonable costs incurred by the Licensee in so far as is necessary to document the subdivision or grant of easement.
3.5 Benefit of Licensee’s obligations

Without limitation to clause 2.10A of the Project Deed, if someone else becomes entitled to receive the Licence Fee in accordance with clause 58.3 of the Project Deed:

(a) that person may exercise all of the Licensor’s rights under this agreement; and

(b) the Licensee must enter into any deed reasonably required by the Licensor and the Licensor must reimburse any reasonable legal costs incurred by the Licensee in connection with the entering into of such deed.

3.6 Superior interests

The Licensee acknowledges and agrees that the Licensor and each Licensor Associate has an interest in the Licensed Area which is concurrent with or superior to the Licensor’s interest. Accordingly the Licensee agrees that it must allow the Licensor and each Licensor Associate to:

(a) exercise its right, or the Licensor’s right, to enter the Licensed Area;

(b) carry out repairs, maintenance and other work in the Licensed Area; and

(c) exercise its rights and obligations in respect of the Licensed Area.

3.7 Licensor may perform Licensee’s obligations

(a) The Licensor may, at the Licensee’s cost, do anything which the Licensee should have done under this agreement if the Licensee does not promptly do so or if, in the Licensor’s opinion, the Licensee does not do so properly.

(b) The Licensee must reimburse the Licensor on demand for any costs and expenses incurred by the Licensor under paragraph (a).

3.8 Appoint agents and managers

The Licensor may appoint or authorise an agent or others to do anything it may or must do under this agreement or conduct the day to day running of the Railway Premises.

3.9 Keys

If the Licensor gives the Licensee any key, access card or other opening device to access the Railway Premises or the Licensed Area:

(a) the Licensee must not copy it without the Licensor’s prior consent;

(b) the Licensee must reimburse the Licensor for any cost it incurs as a result of the Licensee losing any opening device;

(c) the Licensee must give the opening device only to current employees of the Licensee or a Key Subcontractor, and must keep a list of those employees and give the list to the Licensor on request;

(d) the Licensee must comply with the Licensor’s protocols and procedures in relation to the use and distribution of key, access card or other opening devices, as notified to the Licensee from time to time; and

(e) the Licensee must return all opening devices to the Licensor on the expiration or termination of this agreement (or, in the case of the Temporary Licensed Area, on the earlier of: (a) the date of expiration or termination of this agreement; and (b) the last day of the Term in respect of the Temporary Licensed Area as set out in paragraph (b) of Item 2).
3.10 Rights in relation to Railway Premises

The Licensor may at any time:

(a) change the direction or flow of pedestrian or vehicular traffic in and around the Railway Premises; and

(b) issue a direction to the Licensee requiring the Licensee to assist in the management or rectification of any Emergency which takes place in the Railway Premises, including but not limited to any direction requiring the Licensee to cease or suspend the Permitted Use for a specified period of time in accordance with clause 41 of the Project Deed. The Licensee must immediately comply with any such direction of the Licensor.

4. Licence Fee

(a) (Licence Fee): In consideration of the rights to enter on, occupy and access (as applicable) the Premises pursuant to this agreement, the Licensee agrees to pay to the Licensor each Licence Fee on each Licence Fee Payment Date until the date that this agreement is terminated under clause 14.3 without any abatement, deduction or right of set off.

(b) (Adjustments): The parties will adjust the Licence Fee in accordance with clause 33.2(a) of the Project Deed to reflect the Additional Receivables Purchase Price.

(c) (Construction Change Payment): If the Licensor agrees to pay a Construction Change Payment, the Licence Fees will be increased in order to ensure that the Additional Receivables Purchase Price is equal to that Construction Change Payment.

(d) (Termination): If this Licence is terminated the Licensee will not be obliged to pay any Licence Payment after the date that this Licence is terminated.

5. Liability for expenses

The Licensee must indemnify the Licensor against, and must pay to the Licensor on demand the amount of, all costs and expenses incurred in connection with:

(a) any amendment to this agreement (other than an amendment expressly directed by the Licensor); and

(b) any request for the consent or approval of the Licensor,

including legal expenses on a full indemnity basis, administration costs of the Licensor and expenses incurred in engaging consultants.

6. Licensee’s charges

(a) The Licensee must pay directly to the relevant Authority or service provider all amounts charged to the Licensed Area by any Authority or service provider and any Utilities metered and consumed in the Licensed Area in respect of any period falling within the relevant Term. The Licensee must, within 7 days of a request by the Licensor, provide the Licensor with evidence of payment of the amounts referred to in this clause 6(a).

(b) The Licensee may, at its own cost, arrange for any Utilities consumed in the Licensed Area by the Licensor and its Associates to be separately metered from all other Utilities at the Licensed Area. If the Licensee elects to arrange such separate metering then:
7. Outgoings

7.1 Payment by Licensee

The Licensee must pay, or reimburse the Licensor if the Licensor has paid, each Outgoing:

(a) to the Licensor or as otherwise directed by the Licensor; and

(b) within 14 days of service of a notice under clause 7.2(a).

7.2 Notice from Licensor

(a) The Licensor must notify the Licensee of the amount of each Outgoing payable.

(b) The notice referred to in paragraph (a) is conclusive evidence of its contents unless the Licensor or the Licensee notify the other of any manifest error within 14 days of service of the notice.

8. Licensee's obligations

8.1 Approvals

The Licensee must take out, maintain and renew all Approvals, other than the Key Planning Approval, required for the occupation, use and operation of, and carrying out of the work under the Project Deed and each other Project Document in the Licensed Area.

8.2 General obligations

The Licensee must and must ensure that the Licensee's Associates:

(a) (comply with directions) subject and without limitation to clause 39.9 of the Project Deed, immediately comply at all times with the directions and requirements of the Licensor while on the Licensed Area;

(b) (Mandatory Requirements) at its own cost, comply with all Mandatory Requirements in respect of:

(i) the Licensed Area or anything in it;

(ii) the use and occupation of the Licensed Area; or

(iii) the effect or likely effect of the use of the Licensed Area on the Environment,

whether or not any such requirements are required to be effected by the Licensee, the Licensor or any other person, and

(c) (use) use the Licensed Area only for the relevant Permitted Use.
8.3 Maintenance of Licensed Area

(a) The Licensee must, without limiting the Licensee's rights and obligations under the Project Deed, at its own cost:

(i) (good and substantial repair) keep the Licensed Area in good and substantial repair and working condition, including as required under the Project Deed and any other Project Document, but excluding:
   A. fair, wear and tear;
   B. to the extent permitted in respect of a Force Majeure Event pursuant to the Project Deed;

(ii) (remove graffiti) remove any graffiti or other disfigurement on the Licensed Area or the Licensee's Property within 5 Business Days of it occurring;

(iii) (Licensee's Property) keep the Licensee's Property within the Licensed Area in good and substantial repair and working condition;

(iv) (remove waste):
   A. remove all waste produced by the Licensee's occupation of the Licensed Area from the Licensed Area regularly, in accordance with Best Industry Practices, any Environmental Requirements and the Project Deed;
   B. comply with the Licensor's directions regarding refuse disposal; and
   C. not put any refuse in bins provided for common use;

(v) (damage) repair any damage to or defect in the Licensed Area caused by the Licensee or the Licensee's Associates in accordance with the Project Deed;

(vi) (repairs and maintenance) carry out repairs and maintenance promptly using high quality materials and workmanship and in keeping with the standard, quality and appearance of the Licensed Area and the Licensee's Property;

(vii) (induction) if the Licensor or a Licensor Associate requires, attend from time to time, any induction course or training session in relation to the safe operation of the railway which is in the vicinity of the Licensed Area;

(viii) (cleaning) having regard to the nature of the Licensed Area, keep the Licensed Area clean and clear of debris and rubbish;

(ix) (fuel) reclaim and recycle oil and fuel used in the work under the Project Deed;

(x) (landscaped areas) if relevant, keep in good condition any part of the Licensed Area that is landscaped, keep that part of the Licensed Area free of weeds and, if required by the Licensor, engage a gardener approved by the Licensor to do so; and

(xi) (Licensor's Property) keep in good condition the Licensor's Property located in the Licensed Area including any air conditioning, plant and fire equipment.

(b) Without limiting its rights under the Project Deed, the Licensee accepts the Licensed Area in its state of repair, order and condition as at:

(i) in the case of the Principal Licensed Area, the Commencing Date; and
in the case of the Temporary Licensed Area, the first day of the Term in respect of the Temporary Licensed Area, as identified in paragraph (b) of Item 2.

8.4 Prohibitions on Licensee

The Licensee must not:

(a) (no alteration) make any change or structural alteration or addition to the Licensed Area other than in accordance with the Project Deed;

(b) (no damage) damage the Licensed Area, or any thing on the Licensed Area (whether or not it is the property of the Licensor), or injure any person in or around the Licensed Area;

(c) (no rubbish) keep any rubbish in or around the Licensed Area;

(d) (no nuisance) use the Licensed Area for any illegal purpose or do anything which does or could cause a nuisance, annoy or offend the Licensor, a Licensor Associate, a NSW Rail Entity or the occupants of any nearby property above the levels specified in the Project Management Plan, the Construction Environmental Management Plan, the Operational Environmental Management Plan, the Sustainability Management Plan or such lower levels as may be stipulated by the Licensor (acting reasonably) from time to time;

(e) (no interference) except to the extent required for public health or safety purposes, do anything or allow anything to be done which would cause an unreasonable interference or obstruction to the operations being carried on by the Licensor, a Licensor Associate or a NSW Rail Entity in and around the Licensed Area;

(f) (no residential use) not use the Licensed Area for any residential purpose whether temporary or permanent;

(g) (no activity to cause signal failure) carry out or allow the carrying out of any activity which may give rise to or cause a failure of any railway signalling instruments or which may cause any other railway equipment to fail to operate or to malfunction for any period of time;

(h) (access to railway tracks) enter, access or place any item on or near any railway tracks outside the Licensed Area;

(i) (fire risk) except to the extent required to undertake the Project Activities, store any thing in the Licensed Area which is dangerous, explosive or could increase the risk of fire on the Licensed Area;

(j) (signage) except for any signage required by any Mandatory Requirement or the requirement of an Authority, erect any signage on or about the Licensed Area except with the consent in writing of the Licensor;

(k) (no advertising) carry out any form of advertising on the Licensed Area;

(l) (alienation) part with possession of the Licensed Area or any part of it; or

(m) (Licensor’s Property) alter the Licensor’s Property or use the Licensor’s Property for anything other than its intended use.

8.5 Conduct of works

If the Licensee seeks to carry out any structural, building or installation works on the Licensed Area during the relevant Term, the Licensee must at its own cost:

(a) comply with the relevant provisions of the Project Deed;
(b) comply with all relevant requirements of the WHS Regulations with respect to the preparation of safe work method statements;

(c) not commence the works until the works have been approved under the Project Deed;

(d) ensure that the works are carried out:
   (i) promptly and within the period of time required by the Licensor;
   (ii) in accordance with good building practice and in keeping with the amenity and operation of the Licensed Area;
   (iii) in accordance with plans and specifications agreed by the Licensor in writing;
   (iv) using new and good quality materials;
   (v) to the satisfaction of the Licensor; and
   (vi) by contractors with appropriate insurance cover as required by the Licensor;

(e) protect any structures or items on the Licensed Area from damage and, if any damage is caused directly or indirectly as a result of the works, at the Licensor's election, either:
   (i) promptly repair and make good the damage to the Licensor's satisfaction; or
   (ii) pay or reimburse the Licensor on demand for any costs and expenses incurred by the Licensor relating to the make good of the damage;

(f) accept full responsibility for the conduct and safety of the Licensee's Associates;

(g) comply on time with any laws, including any laws in relation to work health and safety;

(h) remove from theLicensed Area on a regular basis all rubbish, debris and residual materials resulting from the works;

(i) pay or reimburse the Licensor on demand by the Licensor for any costs or expenses incurred by the Licensor as a result of the works being carried out;

(j) otherwise comply with the Licensor's requirements and directions from time to time relating to access to the Licensed Area and the carrying out of the works, including but not limited to immediately ceasing the works if requested by the Licensor; and

(k) after the works are completed, provide the Licensor with a written report acknowledging that the works are complete and including any information as required by the Licensor (acting reasonably).

8.6 Annual fire statements

(a) The Licensee will at its cost comply with the requirements set out in Division 5, Clauses 175 - 178 of the Environmental Planning & Assessment Regulations 2000 (NSW) (EPA Regulations).

(b) The Licensee must at its cost cause to be prepared by a properly qualified person an Annual Fire Safety Statement in accordance with the EPA Regulations.

(c) The Licensee must at its cost comply with any notice it receives from either, the Licensor, Council or the Fire Commissioner arising out of or in connection with fire safety and the EPA Regulations.
8.7 Essential condition

(a) The Licensee’s obligations under this clause 8 are an essential obligation of this agreement.

(b) The terms in clause 8.6 have the same meaning as given to those terms in the Environmental Planning & Assessment Regulations 2000 (NSW).

9. Assignment of rights, sublicensing

The Licensee must not, and must not purport to, assign or sublicense any of its rights under this agreement except:

(a) for the grant of a sub-licence to a Subcontractor for the purpose of undertaking the Project Activities subcontracted to them; or

(b) in conjunction with an authorised dealing with the Licensee’s rights under the Project Deed.

10. Vesting, assignment or transfer of Land

(a) The parties acknowledge and agree that:

(i) ownership of the Land and the improvements thereon may not be vested in the Licensor;

(ii) ownership of the Land and the improvements thereon may be transferred from time to time, without notice to, or the consent of, the Licensee;

(iii) as at the Commencing Date the Licensor has procured and will from time to time procure from the current owner or owners of the Land, such rights as may be necessary to enable the Licensee to enjoy the benefit of the licence granted under clause 2.1 in respect of the Principal Licensed Area until the earlier of:

A. the termination of this agreement in accordance with its terms; and

B. the expiry of the Term in respect of the Principal Licensed Area;

(iv) the Licensor has procured and will from time to time procure from the current owner or owners of the Land, such rights as may be necessary to enable the Licensee to enjoy the benefit of the licence granted under clause 2.1 in respect of the Temporary Licensed Area until the earlier of:

A. the termination of this agreement in accordance with its terms; and

B. the expiry of the Term in respect of the Temporary Licensed Area; and

(v) the Licensor may not assign or novate any of its rights under this agreement, except to a transferee pursuant to clause 58.3 of the Project Deed.

(b) If the Licensor sells, transfers, assigns or otherwise disposes of all of its interest in the TfNSW Project Documents in accordance with clause 58.3 of the Project Deed:

(i) subject to clause 10(b)(ii), the Licensor must procure the novation of this agreement to the transferee pursuant to clause 58.3 of the Project Deed; and
(ii) the Licensee must enter into a Deed of Novation novating this agreement to the transferee, within 10 Business Days of receipt of a notice from the Licensor requesting that the Licensee execute the Deed of Novation.

(c) Where the Licensee does not enter into the Deed of Novation within 10 Business Days of receipt of a notice under clause 10(b)(ii), the Licensee irrevocably appoints the Licensor and such persons as are from time to time nominated by the Licensor, jointly and severally, as its attorney with full power and authority to execute and deliver the Deed of Novation contemplated in clause 10(b)(ii) and any documents, agreement of novation contemplated by or ancillary to that Deed of Novation.

11. Work health and safety

11.1 Compliance with WHS Act and WHS Regulation

Despite any other provision in this agreement, the Licensee must at all times comply with the WHS Act and WHS Regulation and must provide to the Licensor upon request evidence that the Licensee is complying with the WHS Act and WHS Regulation.

11.2 Project Deed and other Project Documents

Without limiting the application of the WHS Act and WHS Regulation to the Licensee, during the relevant Term, the Licensee is responsible for all aspects of WHS in connection with its business or undertaking carried out in the Licensed Area in accordance with the terms of the Project Deed and each other Project Document.

12. Environmental issues

12.1 No representation

The Licensor does not warrant or represent:

(a) that the Licensed Area is suitable for any use, or for any particular use, including the relevant Permitted Use;

(b) the accuracy of information about the past use of the Licensed Area; or

(c) that the Licensed Area is free of Contamination, or the nature or extent of any Contamination.

12.2 Environmental obligations

The Licensee acknowledges its obligations under clause 8 of the Project Deed.

13. Risk and liability

13.1 Risk

Without limiting its rights under the Project Deed and this agreement:

(a) the Licensee occupies the Licensed Area, and uses the Common Areas at its own risk and carries out any building work at its own risk; and

(b) if the Licensee is obliged to do anything under this agreement, it does so at its own risk.
13.2 No restriction on Licensor

Nothing in this agreement restricts the Licensor's right to carry out works in or around the Licensed Area at any time and for any purpose.

13.3 Insurance

The parties acknowledge their respective insurance obligations under the Project Deed and their application to the rights and obligations of the parties under this agreement.

13.4 Release of Licensor

(a) Without limiting any of the Licensee's obligations under the Project Deed, to the extent permitted by law, and subject to any express entitlements the Licensee may be entitled to under the Project Deed, the Licensee unconditionally and irrevocably releases the Licensor from:

(i) all costs and Claims caused by any reason and in connection with any damage, loss, injury or death to or of any person or property on or near the Licensed Area or the Railway Premises, including but not limited to by reason of the fact that the Licensed Area may be near any land used for Railway Purposes; and

(ii) any liability for damage to the Licensee's Property or for any other loss (however that loss was caused or arose), including but not limited to:

A. Consequential or Indirect Loss;

B. loss resulting from:

   (I) any Utility Infrastructure not working properly, being unavailable or being interrupted, or the misuse of any Utility Infrastructure;

   (II) the movement of any vehicle in the Licensed Area;

   (III) the death of, or injury to any person who is a passenger in or driver of a vehicle on, over or through the Licensed Area, or any person who is in or around the Licensed Area;

   (IV) damage caused to any vehicle whilst in the Licensed Area;

   (V) the liability of another person;

   (VI) the Licensor granting any other lease, licence or other right to operate a business in or around the Railway Premises which may be a use which competes with the Permitted Use or has an adverse effect on the ability of the Licensee to carry out the Permitted Use;

   (VII) the vacancy of any other tenancy or area in the Railway Premises from time to time (for whatever reason);

   (VIII) any change in the flow of members of the public in and around the Licensed Area for any reason;

   (IX) the failure of any tenant, occupant or other person in the Railway Premises to keep their leased premises or other area clean and tidy;

   (X) any product promotion which is carried out by any person within the Railway Premises (whether the promotion is carried out with the consent of the Licensor or otherwise);
(XI) the Licensor carrying out any maintenance, refurbishment, alteration, upgrade or other works or other activity in and around the Railway Premises for Railway Purposes (including but not limited to works required under the Disability Discrimination Act 1992 (Cth)) provided that the Licensor gives the Licensee at least 2 months' notice in writing of the proposed works (or in the case of an emergency, a period of notice that is reasonably practicable in the circumstances);

(XII) any special events in the area of the Railway Premises and crowd control and other measures taken by the Licensor in relation to those events, including but not limited to closing the Railway Premises, changing the location of entrances and exits and changing the flow of people through the Railway Premises;

(XIII) the frequency of trains passing through the Railway Premises and changes to train timetables which may be made in the absolute discretion of the Licensor;

(XIV) any incidents or accidents occurring in or around the Railway Premises which require temporary closure or shutdown of the Railway Premises;

(XV) any delay in rectifying a breakdown or failure of any fixtures, fittings, plant and equipment in the Railway Premises and under the control of the Licensor;

(XVI) any industrial dispute associated with employees or contractors responsible for operating the railway;

(XVII) noise, vibration or stray electrical currents emanating from the railway;

(XVIII) any act beyond the control of the Licensor including (without limitation) any fire, flood, storm, tempest or washaway, war (whether declared or undeclared), revolution, riot or civil commotion; and

(XIX) the Licensor's termination of this agreement under clause 14.

(b) In addition to the matters set out in clause 13.4(a), nothing the Licensor, a Licensor Associate or a NSW Rail Entity does in relation to carrying out the Railway Purposes or operating and maintaining the Rail Infrastructure Facilities constitutes a nuisance under or in relation to this agreement and the Licensee must not, and is not entitled to, take any action or make any claim against the Licensor by reason of the fact that the Licensed Area may be in or in the vicinity of:

(i) a railway being operated by the Licensor, a Licensor Associate or a NSW Rail Entity for Railway Purposes or otherwise; and/or

(ii) Rail Infrastructure Facilities.

13.5 Indemnity

(a) The Licensee unconditionally and irrevocably indemnifies the Licensor against any costs and Claims which the Licensor incurs or is liable for in connection with the use or occupation of the Licensed Area by the Licensee or the Licensee's Associates.

(b) The Licensee's liability to the Licensor under the indemnity in clause 13.5(a) will be reduced to the extent that Project Co would not otherwise have been liable to TfNSW for the same Liability under the TfNSW Project Documents.
13.6 Continuing indemnity

Each indemnity of the Licensee contained in this agreement is a:

(a) continuing obligation of the Licensee and remains in full force and effect after the termination of this agreement; and

(b) separate and independent obligation of the Licensee.

13.7 Project Trust undertakings

The Licensee must:

(a) comply fully with all of its obligations as trustee of the Project Trust, whether imposed under the Project Trust Deed or, in all material aspects, at law;

(b) ensure that no waiver or revocation of the Project Trust Deed is made, whether formally or by conduct;

(c) not amend, or agree to amend, or permit or allow to be amended, the Project Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error, details of which are notified to the Licensor;

(d) ensure that no other person is appointed trustee of the Project Trust without the prior written consent of the Licensor;

(e) not do anything which would cause or enable its removal, nor retire, as trustee of the Project Trust except in favour of a new trustee approved by the Licensor;

(f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Project Trust Deed or allow the early determination of the Project Trust;

(g) not exercise in its own favour its Trustee's Indemnity under the Project Trust against any beneficiary of the Project Trust or against any Trust Property (other than in respect of any expenses which it properly incurs in the day to day performance of its obligations as trustee of the Project Trust);

(h) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:

(i) the termination of the Project Trust or the termination, rescission or revocation of the Project Trust Deed;

(ii) the resettlement of any Trust Property; or

(iii) the resignation, retirement, removal or replacement of it as trustee of the Project Trust or the appointment of an additional trustee of the Trust;

(i) not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Documents and the Finance Documents;

(j) ensure that:

(i) there is no restriction or limitation or, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Project Trust Deed);

(ii) the rights of any beneficiaries relating to, and their interests in, the property of the Project Trust are subject to the prior rights and interests of:
14. Default and termination

14.1 Default

The Licensee is in default if:

(a) it does not pay the Licence Fee or any other money payable under this agreement within 10 Business Days of the due date;

(b) it does not perform any express obligations under this agreement;

(c) an Insolvency Event occurs in respect of the Licensee;

(d) it repudiates its obligations under this agreement.

14.2 Licensor’s rights

If the Licensee is in default of any of its obligations under this agreement such default will, to the extent that it constitutes a Major Default or a Default Termination Event, be dealt with as a Major Default or a Default Termination Event (as the case may be) under the Project Deed.
14.3 Termination of the Project Deed

Despite any other provision of this agreement, this agreement will terminate automatically upon termination of the Project Deed, but without prejudice to any accrued rights and obligations under this agreement, including those arising out of termination of this agreement.

This clause 14.3 sets out the sole basis at Law or otherwise upon which any party is entitled to terminate, rescind or accept a repudiation of this agreement.

14.4 Make good

Howsoever this agreement is terminated or if the relevant Term expires by effluxion of time, the Licensee must, at its cost and to the satisfaction of the Licensor:

(a) remove all rubbish and the Licensee's Property from the Licensed Area, unless the Licensor agrees or directs otherwise, and make good any damage caused by the removal;
(b) promptly leave the Licensed Area in a condition consistent with the Licensee's performance of its obligations under the Project Deed;
(c) remove any structures erected by it on the Licensed Area other than in accordance with the Project Deed (unless the Licensor agrees or directs not to remove such structures);
(d) hand over all keys provided by the Licensor in relation to the Licensed Area, including security access devices; and
(e) repair any damage caused to the Licensed Area in the course of complying with this clause in accordance with the Project Deed and in all cases leave the Licensed Area in the condition required under the Project Deed.

14.5 Storage of Licensee's Property

(a) If the Licensee does not remove the Licensee's Property or remedy any damage under clause 14.4, the Licensor may do so and store the Licensee's Property at the Licensee's cost.
(b) If the Licensee does not remove all of the Licensee's Property from the Licensed Area or from the place where it is stored by the Licensor within 5 Business Days of being asked to do so by the Licensor, that Licensee's Property which has not been removed by the Licensee becomes the property of the Licensor if the Licensor so elects.

15. Rail legislation and related matters

15.1 Acknowledgment

The Licensee acknowledges the effect of the Railway Legislation in relation to this agreement, including but not limited to any obligations imposed under that legislation on the Licensee.

15.2 Importation of statutory provisions

If any law, including but not limited to the Railway Legislation, requires that this agreement includes any provision or any provision is deemed to be included in this agreement, then this agreement contains that provision in the form prescribed by the law.

15.3 Rights in relation to Licensed Area

(a) The Licensee acknowledges and agrees that the Licensor and each Licensor Associate have full and unfettered access to the Railway Premises at all times and may not be
excluded from entering the Railway Premises by any action of the Licensee. For the avoidance of doubt, Railway Premises includes the Licensed Area.

(b) Despite any other provision in this agreement, the Licensee acknowledges that this agreement does not permit the Licensee to access any part of the Railway Premises not comprising the Licensed Area.

(c) Despite any other provision in this agreement, the Licensee must not do anything which interferes with the normal operation of the railway or the Railway Premises.

16. Notices

A notice, consent or other communication under this agreement is only effective if it is served in the manner set out in clause 65 of the Project Deed.

17. GST

17.1 Definitions

GST means the same as in the GST Law.

GST Law means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

17.2 Payment of GST

(a) A recipient of a taxable supply made under this agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (GST Amount) without deductions or set off of any other amount.

(b) The recipient must pay the GST Amount to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply, provided that the supplier has issued a tax invoice to the recipient for that supply; or

(ii) if there is no due date, within 5 Business Days of receiving a written request or a tax invoice from the supplier.

17.3 Reimbursements

A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

17.4 Formula use GST exclusive amounts

If a payment made under this agreement is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

17.5 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

18. General clauses and interpretation

18.1 Governing law

(a) This agreement is governed by and must be construed according to the laws applying in New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

18.2 Giving effect to this agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this agreement.

18.3 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

18.4 Operation of this agreement

(a) This agreement contains the entire agreement between the parties about its subject matter.

(b) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

18.5 Consents

(a) Where this agreement contemplates that the Licensor may agree or consent to something (however it is described):

(i) the Licensor may:

A. agree or consent, or not agree or consent, in its absolute discretion; and

B. agree or consent subject to conditions; and
(ii) the agreement or consent must be in writing,

unless this agreement expressly contemplates otherwise.

(b) In making a discretionary determination, the Licensor will take into consideration any current government policy. The Licensor may withdraw a consent if it is inconsistent with government policy and the Licensee must, without delay, cease the relevant activity and comply with the directions of the Licensor.

18.6 No merger

The provisions of this agreement do not merge on termination.

18.7 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Licensee, or the exercise by the Licensor of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

18.8 Expiry or termination

Expiry or termination of this agreement (in whole or in part) does not affect any rights arising from a breach of this agreement before then.

18.9 Payments under this agreement

(a) The Licensee must make payments under this agreement:

(i) to the Licensor (or to a person nominated by the Licensor in a notice to the Licensee) by the method the Licensor reasonably requires;

(ii) when due and payable whether or not demanded by the Licensor; and

(iii) without withholding any part of any payment by way of deduction, set off or counterclaim.

(b) If no date for payment is specified the Licensee must make payments under this agreement within 7 days of being asked by the Licensor.

(c) Where any money the Licensor charges the Licensee is calculated using a time period and this agreement starts or ends during that time period, the Licensor must make proportional adjustments.

(d) If either the Licensor or the Licensee prove an error in any money charged the Licensor must correct it and make any necessary adjustment, in a notice to the Licensee. On the next day on which the Licence Fee is due, the Licensee must pay the Licensor or the Licensor must credit the Licensee with the difference between what the Licensee has paid and what the Licensee should have paid.

18.10 Counterparts

This agreement may be executed in counterparts.

18.11 Interpretation

In this agreement:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;
and unless the context otherwise requires:

(b) **(count and gender):** a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

c) **(agreement and Schedule references):** a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this agreement; and

(ii) a section is a reference to a section of a Schedule;

d) **(document as amended):** a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

e) **(party):** a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

f) **(person):** a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

g) **(legislation):** a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

h) **(Standards):** a reference to a Standard includes that Standard as amended or updated from time to time;

i) **(definitions):** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

j) **('includes'):** 'includes' and 'including' will be read as if followed by the phrase '(without limitation)';

k) **('or'):** the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

l) **(information):** a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

m) **('$'):** a reference to '$', AUD or dollar is to Australian currency;

n) **(day):** except as otherwise provided in this agreement or where a reference is made to 'Business Days', day means a calendar day;

o) **(time):** a reference to time is a reference to time in Sydney, Australia;

p) **(rights):** a reference to a right includes any benefit, remedy, function, discretion, authority or power;

q) **(function):** a function includes a power, authority or duty;
(i) (obligations and liabilities): except in relation to TfNSW and RailCorp, a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(s) ('may'): except to the extent that TfNSW or RailCorp are expressly required under this agreement to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by TfNSW or RailCorp, means that TfNSW or RailCorp can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co) and TfNSW or RailCorp has no obligation to do so;

(t) (construction): where there is a reference to an Authority, institute or association or other body referred to in this agreement which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this agreement is deemed to refer to that other entity; or

(ii) ceases to exist, this agreement is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(u) (asset): references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and

(v) (contra proferentem rule not to apply): each provision will be interpreted without disadvantage to the party who (or whose representative) drafted or proffered that provision.

18.12 Business Days

If the day on or by which a person must do something under this agreement is not a Business Day:

(a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

(b) in any other case, the person must do it on or by the previous Business Day.

18.13 Multiple parties

If the Licensee is made up of more than one person, or a term is used in this agreement to refer to more than one party:

(a) an obligation of those persons comprising the Licensee is joint and several;

(b) a right of those persons is held by each of them severally; and

(c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):

(i) a representation, warranty or undertaking is given by each of them separately; and

(ii) a reference to that party or that term is a reference to each of those persons separately.
18.14 Disputes

Any disputes in relation to the subject matter of this agreement must be determined under the Project Deed on the basis the dispute constitutes a dispute under the Project Deed.

18.15 No Waiver

No failure to exercise and no delay in exercising, on the part of the Licensors, any right or remedy under this Licence or any sub-licence will operate as a waiver of that right or remedy, nor will any single or partial exercise of any right or remedy preclude any other or further exercise of that, or any other, right or remedy.
Executed as a deed

Signed sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

__________________________  ____________________________
Signature of witness        Signature of authorised delegate

__________________________  ____________________________
Full name of witness (print) Full name of authorised delegate (print)

__________________________  ____________________________
Position held               Position held

Signed sealed and delivered for and on behalf of Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Momentum Trains Trust (ABN 40 340 691 016) by its attorneys:

__________________________  ____________________________
Attorney Witness

__________________________  ____________________________
Attorney (print) Name of witness (print)

__________________________  ____________________________
Attorney Witness

__________________________  ____________________________
Attorney (print) Name of witness (print)
Schedule 1 – Licensed Area

Part 1: Principal Licensed Area
Part 2: Temporary Licensed Area
Schedule 2 – Form of Deed of Novation

Deed of Novation

Legacy Maintenance Centre Licence - Regional Rail Project

[Insert]
Retiring Party

and

[Insert]
Continuing Party

and

[Insert]
Substitute Party
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This Deed of Novation for the Legacy Maintenance Centre Licence - Regional Rail Project is made on

Parties

(1) [Insert] (Retiring Party);

(2) [Insert] (Continuing Party); and

(3) [Insert] (Substitute Party).

Background

A. The Retiring Party and the Continuing Party are parties to the Licence.

B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Licence on the terms and conditions of this deed.

C. The Continuing Party has agreed to the novation of the Licence on the terms and conditions of this deed.
Agreed Terms

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the contrary intention appears:

Effective Date means [insert].

Licence means the document titled 'Legacy Maintenance Centre Licence — Regional Rail Project' between the Retiring Party and the Continuing Party dated [insert].

Project Deed means the deed entitled 'Regional Rail - Project Deed' dated on or about 12 February 2019 entered into between TfNSW and RailCorp and the Licensee.

1.2 Licence and Project Deed definitions

Capitalised expressions not defined in this deed have the same meaning as in the Licence (in the first instance) or if not defined in the Licence, then as defined in the Project Deed.

1.3 Interpretation

In this deed:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (Deed and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Deed; and

(ii) a section is a reference to a section of a Schedule;

(d) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (person): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;
(h) **(Standards):** a reference to a Standard includes that Standard as amended or updated from time to time;

(i) **(definitions):** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) **('includes'):** 'includes' and 'including' will be read as if followed by the phrase 'without limitation';

(k) **('or'):** the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) **(information):** a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) **('$'):** a reference to '$', AUD or dollar is to Australian currency;

(n) **(Business Day):** if the day on or by which anything is to be done under this Deed is not a Business Day, that thing must be done no later than the next Business Day;

(o) **(day):** except as otherwise provided in this Deed or where a reference is made to 'Business Days', day means a calendar day;

(p) **(time):** a reference to time is a reference to time in Sydney, Australia;

(q) **(rights):** a reference to a right includes any benefit, remedy, function, discretion, authority or power;

(r) **(function):** a function includes a power, authority or duty;

(s) **(obligations and liabilities):** except in relation to TfNSW and RailCorp, a reference to an obligation or a Liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(t) **('may'):** except to the extent that TfNSW or RailCorp are expressly required under this Deed to act reasonably in exercising a power, right or remedy, the term 'may', when used in the context of a power, right or remedy exercisable by TfNSW or RailCorp, means that TfNSW or RailCorp can exercise that power, right or remedy in its absolute and unfettered discretion (and without regard to Project Co) and TfNSW or RailCorp has no obligation to do so;

(u) **(construction):** where there is a reference to an Authority, institute or association or other body referred to in this Deed which:

(i) is reconstituted, renamed or replaced or if its powers or functions are transferred to, or assumed by, another entity, this Deed is deemed to refer to that other entity; or

(ii) ceases to exist, this Deed is deemed to refer to that new entity which serves substantially the same purpose or object as the former entity;

(v) **(asset):** references to an asset include any real or personal, present or future, tangible or intangible, property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived, from the property or asset; and
(w) (contra proferentem rule not to apply): each provision will be interpreted without
disadvantage to the party who (or whose representative) drafted or proffered that
provision.

2. Condition Precedent to Novation

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

3. Novation

3.1 Novation

(a) The parties novate the Licence so that the Substitute Party and the Continuing Party are
parties to a new agreement on the same terms as the Licence.

(b) Any reference in the Licence to the Retiring Party will be read as a reference to the
Substitute Party.

3.2 Assumptions of rights and obligations

(a) The Substitute Party:

(i) will be bound by and must comply with the terms of the Licence and will enjoy the
rights and benefits conferred on the Retiring Party under the Licence; and

(ii) will assume the obligations and Liability of the Retiring Party under the Licence,
in all respects as if the Substitute Party had originally been named in the Licence as a
party instead of the Retiring Party.

(b) The Continuing Party will comply with the terms of the Licence on the basis that the
Substitute Party has replaced the Retiring Party under the Licence in accordance with this
deed.

3.3 Release by Continuing Party

(a) The Continuing Party releases the Retiring Party from:

(i) any obligation or Liability under or in respect of the Licence; and

(ii) any action, claim and demand it has against the Retiring Party under or in respect
of the Licence.

(b) This release does not affect any rights the Continuing Party may have against the
Substitute Party as a result of the assumption by the Substitute Party under the terms of
this deed of the obligations and Liability of the Retiring Party under the Licence.

3.4 Insurance

As from the Effective Date:

(a) the Substitute Party must replace any insurances effected and maintained by the Retiring
Party under the terms of the Licence; and

(b) the Continuing Party will take the necessary steps to ensure that, for all insurances
required to be effected by the Continuing Party under of the terms of the Licence, the
Substitute Party is named in place of the Retiring Party as required by the Licence.
4. **Overriding effect**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Licence relating to any requirement for consent to assignment of the Licence so far as any such provisions would apply with respect to the novation of the Licence to the Substitute Party.

5. **Representations and warranties**

5.1 **Authority**

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

5.2 **Authorisations**

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

5.3 **Binding obligations**

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

6. **Duties, costs and expenses**

6.1 **Stamp duty**

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

6.2 **Costs**

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

7. **GST**

7.1 **Definitions**

GST means the same as in the GST Law.

GST Law means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

7.2 **Payment of GST**

(a) A recipient of a taxable supply made under this deed must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (GST Amount) without deductions or set off of any other amount.

(b) The recipient must pay the GST Amount to the supplier:

(i) on the same day as the due date for the consideration in respect of the relevant taxable supply, provided that the supplier has issued a tax invoice to the recipient for that supply; or
(ii) if there is no due date, within 5 Business Days of receiving a written request or a tax invoice from the supplier.

7.3 Reimbursements

A party's obligation to reimburse another party for an amount paid or payable to a third party (e.g. a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

7.4 Formula use GST exclusive amounts

If a payment made under this deed is calculated by reference to or as a percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a percentage of that other amount or revenue stream net of any GST component.

7.5 Indemnities

(a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.

(b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

(c) A party may recover a payment under an indemnity before it makes the payment in respect of which the indemnity is given.

8. General

8.1 Governing law

(a) This deed is governed by the law in force in New South Wales.

(b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

8.2 Amendments

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

8.3 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.

(b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.
8.4 Counterparts

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

8.5 Severance

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

(a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed;

or

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

8.6 Further acts and documents

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

8.7 Assignment

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

9. Disputes

Any disputes in relation to the subject matter of this deed must be determined under the Project Deed on the basis the dispute constitutes a dispute under the Project Deed.
Signing page

Executed as a deed.

Executed by [insert Retiring Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

________________________________________
Director

________________________________________
Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Executed by [insert Continuing Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

________________________________________
Director

________________________________________
Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)

Executed by [insert Substitute Party] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

________________________________________
Director

________________________________________
Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)
Schedule 8 — Design Development Schedule

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1.1 General

(a) (Technical Solution):

(i) Project Co acknowledges that prior to the date of this Deed, it prepared the Technical Solution. Project Co agrees that it bears absolutely all risks howsoever they may arise as a result of the use by Project Co of, or the reliance by Project Co upon, the Technical Solution in performing the Delivery Phase Activities and that the use and reliance on the Technical Solution will not limit any of its obligations under this Deed.

(ii) Without limiting Project Co’s express entitlements under the Project Deed, Project Co is responsible for, and assumes the risk of, any Liabilities it suffers or incurs arising out of or in connection with:

A. the design, manufacture, construction, supply and performance of the Delivered Rail Assets and each Deliverable in accordance with the Technical Solution costing more than or taking longer than anticipated; and

B. any differences between the Technical Solution and the Delivered Rail Assets or other Deliverables that are actually required to satisfy the requirements of this Deed (ignoring for this purpose any differences which are the subject of a Modification Order) and irrespective of any assumptions, projections, estimates, contingencies or otherwise that Project Co may have made in relation to the Technical Solution.

(iii) Project Co warrants that:

A. Project Co has prepared the Technical Solution;

B. if the Deliverables are designed, manufactured and constructed in accordance with the Technical Solution, the Deliverables will satisfy the requirements of this Deed (but nothing in this section 1.1(a)(iii)B affects or limits sections 1.1(a)(i) or 1.1(a)(ii), which will prevail to the extent of any inconsistency);

C. it will carry out and complete the Project Activities in accordance with the Technical Solution (but nothing in this section 1.1(a)(iii)C affects or limits section 1.1(a)(i) or 1.1(a)(ii), which will prevail to the extent of any inconsistency); and

D. the Detailed Design of the Delivered Rail Assets, as developed in accordance with this Deed, will, subject to section 1.1(a)(iv), be consistent with the design of the Delivered Rail Assets set out in the Technical Solution.

(iv) Project Co:

A. must not depart from the Technical Solution in the development of the Detailed Design of the Delivered Rail Assets without the prior written consent of the TfNSW Representative;

B. acknowledges and agrees that the TfNSW Representative may refuse to provide the consent referred to in section 1.1(a)(iv)A if, in the TfNSW Representative’s reasonable opinion, a departure proposed by Project Co to the design of the Delivered Rail Assets set out in the Technical Solution
is not consistent with the Technical Solution, including if the departure may:

1) increase Lifecycle Payments for the Delivered Rail Assets or any increase to the lifecycle Maintenance costs over the life of the Delivered Rail Assets; or

2) reduce the performance of the Delivered Rail Assets including:
   a) capacity;
   b) quality of the Customer experience and amenity;
   c) quality of the Crew amenity;
   d) safety;
   e) aesthetics, cleanliness, performance or condition of visible features;
   f) Design Life;
   g) maintainability;
   h) durability (including resistance to Graffiti and Vandalism);
   i) reliability;
   j) whole of life performance;
   k) environmental performance;
   l) sustainability performance;
   m) functional performance; or
   n) security.

(b) **(Design Development Process):** The Design Development Process is the process by which Project Co must:

(i) optimise the design of the Works, the Maintenance Facility Site, the Asset Information System, the Performance Management System and the Asset Management System; and

(ii) manage and progressively develop, refine and finalise all the Technical Documents through to Confirmed Technical Document status and otherwise undertake all other tasks identified in this Schedule and this Deed as forming part of the Design Development Process.

(c) Project Co acknowledges and agrees that:

(i) due to the nature of the Project Activities, the Design Development Process will be a consultative and progressive process, and will involve, amongst other things, appropriate consultation between Stakeholder Groups, Project Co and TfNSW; and

(ii) TfNSW and RailCorp are relying on the skill, expertise and judgement of Project Co in the development of the Technical Documents.
(d) **Systems Engineering Management Plan**): Project Co must develop, document and comply with a Systems Engineering Management Plan for the conduct of the Design Development Process in accordance with clause 16 of this Deed, this Schedule and the Project Scope and Requirements.

(e) **Mock-up**): Project Co must design, manufacture and provide each Mock-up as contemplated in section 7.

(f) **Technical Packages**): To facilitate the conduct of the Design Development Process, the design of the Works must be divided into Technical Packages. Project Co must agree the division of the Technical Packages with TfNSW on or around the date of this Deed, and any change to the division of such Technical Packages (once agreed) will only be permitted with the TfNSW Representative’s prior written approval.

(g) **Technical Documents**): Project Co must, for each Technical Package, without limiting section 1.7(b), develop and submit the complete set of Technical Documents for review to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with sections 1.5(b), 5 and the Review Procedures.

(h) **Design Stages**): The purpose of the Design Stages is to provide a staged framework for the development of the Technical Documents:

(i) in a way that enables the TfNSW Representative, the Verification and Acceptance Reviewing Party (if applicable), the Stakeholder Groups and other stakeholders to review and comment on relevant aspects of the design as it develops; and

(ii) recognising Project Co’s obligations to progress the Delivery Phase Activities or Upgrade Services in a timely manner,

whilst ensuring sufficient time is also available for the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) to review the Technical Documents in accordance with the Review Procedures.

(i) Project Co must, except as set out in the Verification Plan or as agreed by the TfNSW Representative in writing and subject to section 1.1(j):

(i) for each Design Stage, as relevant:

A. develop, consult on, submit for review, respond to the TfNSW Representative’s or the Verification and Acceptance Reviewing Party’s (as applicable) comments on, and refine the Technical Documents all in accordance with section 1.5 and the Review Procedures; and

B. facilitate and participate in the Design Development Presentations contemplated in section 4 and the Stakeholder Group interactions contemplated in section 8; and

(ii) develop each Technical Document progressively through each of the Design Stages until it is a Confirmed Technical Document.

1.2 **Design development coordinator obligations**

Project Co must ensure that its design development coordinator:

(a) convenes and manages meetings with TfNSW in respect of the design of the Works;
(b) convenes and manages all Design Development Presentations;

(c) manages the submission of the Technical Documents to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with the Review Procedures and the Management Requirements;

(d) reviews all of the Technical Documents in each Technical Package prior to submission to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) and ensures that the Technical Documents are complete, co-ordinated and are of a high quality capable of review by the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with the Review Procedures;

(e) manages engagements with Stakeholders in accordance with section 8; and

(f) otherwise consults with the TfNSW Representative throughout the Design Development Process,

in accordance the Systems Engineering Management Plan, the Baseline Delivery Program and this Schedule.

1.3 Not used

1.4 Not used

1.5 Preparation, submission, sequence, concurrency and overlap of Technical Packages

(a) Project Co acknowledges that the outcome of one Technical Package may impact on another Technical Package.

(b) Project Co must prepare, complete and submit to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) the Technical Documents in respect of a Technical Package for review in accordance with the Review Procedures which:

(i) fully evidence that:

A. contract requirements (including Modifications) and all Project Co derived system requirements:

1) are satisfied by the design of the Deliverables;

2) will be and have been implemented by the manufacture and construction of the Deliverables; and

3) in each case, have been verified;

B. Defects have been investigated and rectified;

C. hazards and risks in relation to, or in connection with, the Project Activities have been mitigated so far as is reasonably practicable;

D. configuration changes have been fully implemented;

E. the objectives for reviews of Technical Documents identified in the Management Requirements have been achieved; and

F. all Management Plan commitments have been undertaken;
(ii) are listed as Technical Documents for submission in the Systems Engineering Management Plan;

(iii) not used;

(iv) are required to operate the Assets;

(v) are updated or amended having previously achieved a Confirmed Technical Document status; or

(vi) are otherwise required by this Deed to be submitted to the TfNSW Representative for review in accordance with the Review Procedures.

(c) Project Co must not submit to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) Technical Documents in respect of a Technical Package for review in accordance with the Review Procedures unless:

(i) without limiting section 1.7(b), Project Co has prepared all the Technical Documents in respect of that Technical Package and Design Stage in accordance with this Deed and to the level described in the Systems Engineering Management Plan; and

(ii) subject to section 1.1(j), for Design Stages other than the System Definition Review:
   A. Project Co has submitted all the Technical Documents relating to the relevant Technical Package for the previous Design Stage to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with the Review Procedures;
   B. the Review Period has expired for the previous Design Stage; and
   C. if the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) has provided comments on the Technical Documents in accordance with the Review Procedures for a previous Design Stage, Project Co has documented how those previous comments made by the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) on the relevant Technical Documents have been considered, incorporated or otherwise closed out, and Project Co has complied with its obligations in accordance with the Review Procedures in connection with such comments (including if necessary, to address particular comments or to re-submit Technical Documents).

1.6 Comments on any Technical Documents

Project Co acknowledges and agrees that the incorporation of the TfNSW Representative's or the Verification and Acceptance Reviewing Party's (as applicable) comments into any Technical Documents shall not:

(a) constitute a Modification Request or Modification;

(b) constitute an Extension Event, Intervening Event or Change Compensation Event or entitle Project Co to an extension of time or otherwise entitle Project Co to make any other Claim under this Deed; or

(c) in any way affect the Monthly Service Payment or otherwise entitle Project Co to be reimbursed for any costs and expenses incurred or otherwise compensated in any form or manner.
1.7 **Timing for submission of Technical Documents**

Without limiting its obligations as set out in the Review Procedures, Project Co:

(a) subject to this Schedule, must submit to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) Technical Documents in respect of a Technical Package in accordance with the Systems Engineering Management Plan and the Review Procedures;

(b) must submit the Technical Documents in respect of each Technical Package for each Design Stage to which they relate as one complete Technical Package and not as individual Technical Documents, except where:

(i) Project Co is required to revise one or more Technical Documents to address the TfNSW Representative's or the Verification and Acceptance Reviewing Party's (as applicable) comments in accordance with the Review Procedures, in which case Project Co may submit such documents individually; or

(ii) the TfNSW Representative directs otherwise in respect of a Technical Package, in which case Project Co must submit such documents as directed;

(c) acknowledges and agrees that the Review Period commences upon receipt by the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) of all of the Technical Documents in respect of a Technical Package for the relevant Design Stage which comply with the requirements of this Deed;

(d) must not, unless otherwise approved in writing by the TfNSW Representative, have more than:

(i) five Technical Packages for the Rolling Stock and the Simulators;

(ii) four Technical Packages for the Maintenance Facility and the Services (other than Upgrade Services);

(iii) five Resubmitted Documents relating to any Technical Package; and

(iv) one Technical Package for the Upgrade Services,

at any Design Stage submitted to the TfNSW Representative for review concurrently in accordance with the Review Procedures; and

(e) must submit other additional information reasonably requested by the TfNSW Representative to it for review in accordance with the Review Procedures.

1.8 **Form of Technical Documents**

(a) Project Co must ensure that the Technical Documents comply with the requirements set out in the Systems Engineering Management Plan and Configuration Management Plan and otherwise organise and manage the preparation of the Technical Documents so that the Technical Documents are consistent and coordinated across different design and engineering disciplines.

(b) Project Co must ensure that each of the items of Technical Documents contain or identify the information required by the Configuration Management Plan (unless otherwise agreed by the TfNSW Representative).

(c) Project Co must highlight all amendments to the Technical Documents and in doing so show all changes to the Technical Documents from those submitted for the previous
Design Stage in respect of that Technical Package, or in respect of the System Definition Review of that Technical Package, from the Technical Solution.

1.9 Failure to co-ordinate the submission of Technical Documents

If Project Co does not properly co-ordinate the submission of Technical Documents (whether due to the level of development, content, or timing of submission or otherwise not being in accordance with the Systems Engineering Management Plan or this Deed):

(a) the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) may require Project Co to re-submit nominated Technical Documents or Technical Packages in a compliant and co-ordinated way within a time period determined by the TfNSW Representative; and

(b) Project Co will not be entitled to make any Claim against TfNSW or RailCorp in respect of any resulting delay.

1.10 Warranties in respect of Technical Documents

(a) Project Co warrants that the Technical Documents will:

(i) satisfy the requirements of the Project Scope and Requirements and the other requirements of this Deed; and

(ii) be Fit For Purpose in accordance with clauses 5.4 and 32.5 of this Deed.

(b) Project Co must submit with each Technical Package a statement from Project Co, in the form set out in section 7 of the Schedule of Forms and Certificates, warranting that the Technical Package:

(i) has been prepared, checked and verified so that when complete and constructed or manufactured in accordance with the Technical Package, the relevant aspect of the Delivered Rail Asset or other Deliverable will be Fit for Purpose; and

(ii) complies with the Design Requirements.

2. Initial Design Meeting

As soon as possible and no later than 20 Business Days after Financial Close, Project Co must coordinate and attend one or more initial collaborative design meetings with the TfNSW Representative to:

(a) commence planning of the Design Development Process;

(b) assist Project Co to finalise the Systems Engineering Management Plan; and

(c) discuss and develop:

(i) appropriate protocols and processes for Project Co to submit Technical Packages to the TfNSW Representative for review in accordance with the Review Procedures electronically (in accordance with the Information and document management requirements in section 3.2 of the Management Requirements) and in hard copy format;

(ii) a nominal schedule for Design Development Presentations and Stakeholder Group meetings; and

3.1 Further updates to Systems Engineering Management Plan

(a) Project Co must:

(i) submit an updated Systems Engineering Management Plan or a discrete component of the Systems Engineering Management Plan (as applicable):

A. in accordance with the Project Scope and Requirements and clause 16 of this Deed;

B. if reasonably requested by the TfNSW Representative to do so; and

C. otherwise as it considers necessary to reflect any changes to the nature or the status of the Works; and

(ii) submit any revisions, modifications or updated versions of the Systems Engineering Management Plan to the TfNSW Representative for review in accordance with the Review Procedures.

(b) In so far as there is any inconsistency between the Systems Engineering Management Plan and this Deed, the requirements of this Deed will prevail.

3.2 Changes to Systems Engineering Management Plan

(a) Project Co must make changes to the Systems Engineering Management Plan that are reasonably directed by the TfNSW Representative.

(b) Without limiting section 3.2(a), Project Co must make changes to the Systems Engineering Management Plan that are directed by the TfNSW Representative if it reasonably forms the view that the approved Systems Engineering Management Plan does not:

(i) adequately reflect or take into account the scope of the Design Development Process;

(ii) effectively or reliably result in the production of Technical Documents that comply with the requirements of this Deed; or

(iii) allow the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) sufficient time in which to receive and review the Technical Documents in accordance with the Review Procedures.

(c) Without prejudice to any other requirements of this Deed in relation to the Systems Engineering Management Plan, if Project Co is required to, or wishes to, vary the Systems Engineering Management Plan it must:

(i) demonstrate to the TfNSW Representative's satisfaction that its alternative proposal will not prejudice the effectiveness of the TfNSW Representative's or the Verification and Acceptance Reviewing Party's (as applicable) overall review of the Technical Documents in accordance with the Review Procedures and within any relevant Review Period; and
4. Design Development Presentations

4.1 Purpose of Design Development Presentations

The purpose of the Design Development Presentations is for Project Co to:

(a) (design of the Delivered Rail Assets): visually demonstrate the design of the Delivered Rail Assets, including the progressive development of the design of the Delivered Rail Assets by:

(i) presenting the content and intent of a relevant Technical Package to TfNSW after TfNSW has first had reasonable opportunity to familiarise itself with the Technical Package;

(ii) giving TfNSW the opportunity to provide input into the development of the Technical Package by participating in a consultative process between Project Co, any nominated Associate of Project Co, TfNSW, the Operator and TfNSW's Associates; and

(iii) enabling TfNSW to obtain a better understanding of, and to query, Project Co's proposed approach to each Technical Package before completion of the TfNSW Representative's review in accordance with the Review Procedures.

(b) (present and explain Mock-ups): if requested by the TfNSW Representative, present and explain the Mock-ups;

(c) (key elevations and sections): in relation to the Maintenance Facility, identify key elevations and sections;

(d) (consistent with the purposes of the Project): demonstrate how the design of the Delivered Rail Assets complements and is otherwise consistent with the purposes of the Project;

(e) (animations): provide updated animations of the New Fleet;

(f) (sample boards): provide updated equipment or material sample boards;

(g) (consistent with Design Requirements): demonstrate that the design is such that each Delivered Rail Asset is consistent with the Design Requirements and will satisfy the FFP Warranty; and

(h) (issues identified by the TfNSW Representative): address specific issues otherwise identified by the TfNSW Representative.

4.2 Frequency, notice and attendance at Design Development Presentations

(a) Project Co must, in collaboration with TfNSW, organise, manage and undertake the Design Development Presentations:

(i) as soon as reasonably practicable and no later than 15 Business Days after the submission of each Technical Package; and

(ii) otherwise at the request of the TfNSW Representative (acting reasonably),
and in either case, at convenient times to facilitate attendance by the Stakeholders and other relevant stakeholders.

(b) Project Co must give the TfNSW Representative and other proposed attendees approved by the TfNSW Representative, 10 Business Days’ notice of the conduct of a Design Development Presentation.

(c) Project Co must ensure that as a minimum the Delivery Subcontractor, the Design Consultant and other lead designers attend each Design Development Presentations to provide explanations concerning the design and any other relevant supporting information.

(d) Project Co must also provide any additional Design Development Presentations requested by the TfNSW Representative (acting reasonably).

5. Baseline Delivery Program

Project Co must submit the Technical Documents to the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with the Review Procedures and the timings set out in the Baseline Delivery Program.

6. Confirmed Documents

(a) Subject to section 6(b) below and sections 7.1 and 7.2 of the Review Procedures, Project Co must only use Confirmed Documents for the purposes of performing the Works.

(b) Project Co may amend Confirmed Documents and proceed to manufacture and construct the Delivered Rail Assets in accordance with the Confirmed Documents (as amended), without the TfNSW Representative having first reviewed those amendments, provided that:

(i) the amendments would be reasonably considered as being:

A. for documentation and design coordination purposes;

B. minor drafting amendments; or

C. in the nature of amendments typical to or reasonably required as part of the design, development, documentation, manufacture and construction process in projects similar to the Project; and

(ii) Project Co has submitted the amended Confirmed Documents to the TfNSW Representative for review.

(c) Nothing in this section 6 will relieve Project Co from, or alter, affect or reduce, the obligations and Liabilities of Project Co in accordance with the TfNSW Project Documents or at Law.

7. Mock-ups

7.1 Provision of Mock-ups

(a) (Provide and develop): Project Co must provide and develop the Mock-ups:

(i) required as part of the Design Development Process for review to the TfNSW Representative in accordance with the Review Procedures;
(ii) in accordance with and at the frequency required by, the Systems Engineering Management Plan, the Management Requirements, section 6 of Part C1 (Rolling Stock Specification) of the Project Scope and Requirements and the Baseline Delivery Program; and

(iii) such that the key features of the Mock-up (Passenger Saloon) are transportable.

(b) **Updated Mock-up at Detailed Design**: Project Co must provide to TfNSW an update of each Mock-up not later than the end of the Detailed Design Review. The design of the Crew Cab, Passenger Saloon, Crew Office and the Crew Compartment as depicted in each respective Mock-up shall be developed by Project Co to be representative of the Detailed Design.

(c) **Access and availability**: Project Co must:

(i) ensure that reasonable access to each Mock-up is provided to TfNSW; and

(ii) make available each Mock-up to TfNSW at such location(s) as specified and instructed by TfNSW,

until such time as TfNSW notifies Project Co:

(iii) to remove a Mock-up from a particular location and transfer it to safe storage; or

(iv) that it no longer requires a Mock-up to be available to it and that it may dispose of that Mock-up.

(d) **Ownership**: TfNSW acknowledges and agrees that Project Co remains the owner of the Mock-ups.

### 7.2 Purpose of Mock-ups

Project Co acknowledges and agrees that the purpose of the Mock-ups is:

(a) to support the iterative design process and confirm whether the final design is consistent with the requirements of this Deed such that the Delivered Rail Assets and other Deliverables will, from the FFP Warranty Commencement Date, be Fit for Purpose;

(b) to identify and define key outstanding design development issues including the proposed process for their resolution;

(c) to illustrate how the design and layout of the Delivered Rail Assets is likely to impact on, or is otherwise consistent with, the:

(i) performance of the Operations Functions; and

(ii) performance of the Project Activities by Project Co; and

(d) for the benefit of TfNSW, to illustrate, in physical or virtual form:

(i) materials, finishes (including colour), fittings and any other matter where the Project Scope and Requirements entitle TfNSW to make a selection or requires TfNSW's approval in relation to the relevant materials, finishes, fittings or other matter; and

(ii) the status of the design development, how the design incorporates the outcomes agreed or otherwise required by TfNSW and the Stakeholder Groups and otherwise meets Project Co's obligations in relation to design under this Deed.
8. Involvement of Stakeholder Groups in the Design Development Process

8.1 Stakeholder Groups

TfNSW and Project Co will engage in design consultation processes with relevant Stakeholder Groups as set out in the Communications, Community and Stakeholder Management Plan and the Systems Engineering Management Plan to provide input into the Technical Documents and assist the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in reviewing the Technical Documents submitted for review in accordance with the Review Procedures.

8.2 Stakeholder Group Meetings

(a) In consultation with TfNSW, and in accordance with the requirements of the Systems Engineering Management Plan and the Communications, Community and Stakeholder Management Plan, Project Co must organise and schedule appropriate meetings with the Stakeholder Groups during each Design Stage. Project Co must notify TfNSW at least 10 Business Days' prior to any proposed meeting with a Stakeholder Group. Without prejudice to Project Co’s obligations set out in section 4 of Part B1 (Management Requirements) of the Project Scope and Requirements, Project Co will not be responsible for Stakeholder Groups failing to attend such meetings.

(b) Project Co must support any scheduled meetings with Stakeholder Groups by providing relevant materials for presentation and distribution at such meetings. Project Co must ensure that suitable persons are available to and do attend all such meetings, including scheduled ‘after-hours’ meetings.

(c) The purpose of the meetings is to:

   (i) ensure the Stakeholder Groups have appropriate opportunity to provide input into the Technical Documents; and

   (ii) provide TfNSW with the opportunity to understand the views of Stakeholder Groups about relevant aspects of the Technical Documents in a timely manner to ensure the logical and orderly progression of the Design Development Process and efficient review of Technical Documents by the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with the Review Procedures.

(d) Project Co must not directly contact Stakeholder Group members outside of scheduled meetings, except to the extent otherwise agreed in writing by TfNSW’s Representative.

8.3 Management of the Stakeholder Groups

(a) Project Co must manage the Stakeholder Groups’ engagement in accordance with the Communications, Community and Stakeholder Management Plan, including by:

   (i) liaising with TfNSW with respect to coordinating Stakeholder Group meetings so they may be conducted on days and at times that typically enable the Stakeholder Group members to attend the meetings;

   (ii) prior to each Stakeholder Group meeting, preparing and distributing an agenda and all relevant Technical Documents and notes to all invitees;
(iii) after each Stakeholder Group meeting, preparing minutes which at a minimum include details of:

A. the date and time of the meeting;
B. attendees and absentees from the Stakeholder Group members;
C. items discussed at the meeting (including details of any drawing numbers discussed); and
D. the proposed outcomes of the meetings;

(iv) providing copies of the proposed minutes of the Stakeholder Group meetings to the invitees and TfNSW (as applicable) within 3 Business Days;

(v) incorporating any changes or amendments to the proposed minutes of the Stakeholder Group meetings (including with respect to the proposed outcome of the meetings) reasonably requested by TfNSW; and

(vi) creating and storing electronic files for the Stakeholder Group (including agendas, Technical Documents, minutes and any marked up or annotated drawings) so as to facilitate easy access to such information.

8.4 Project Co acknowledgement

(a) Project Co acknowledges and agrees that it is not entitled to make any Claim against TfNSW or RailCorp for Liabilities incurred by Project Co arising out of or in connection with the conduct of the Stakeholder Group meetings including the time taken to arrange each of the Stakeholder Group meetings and the number and duration of each of the Stakeholder Group meetings.

(b) Subject to section 8.4(c), Project Co acknowledges and agrees that the Stakeholder Group meetings and the process of their conduct cannot constitute a Modification or be deemed to constitute a Modification Request.

(c) Any direction by TfNSW to incorporate input of the Stakeholder Groups, which is not in accordance with this Design Development Schedule and the Review Procedures will be dealt with in accordance with clause 39.9 of this Deed.

8.5 Outcomes from meetings

In developing Technical Documents for review by the TfNSW Representative or the Verification and Acceptance Reviewing Party (as applicable) in accordance with the Review Procedures, Project Co must, without limiting section 8.4, ensure that the input of TfNSW and other Stakeholders arising from Stakeholder Group meetings is addressed in accordance with the Management Requirements.
Schedule 9 — Review Procedures

1. Definitions

In this Schedule:

terms which are capitalised in this Schedule, but which are not defined in this section 1 of this
Schedule, shall have the meaning given to them in clause 1 of this Deed.

**Proceed at Risk** has the meaning given to it in section 7.2(a) of this Schedule.

**Proceed at Risk Notification** has the meaning given to it in section 7.2(b)(ii) of this Schedule.

**Review Period** means the period specified in section 2.2(b) of this Schedule.

**Reviewing Party** means the TfNSW Representative, unless otherwise specified in the Deed.

**Submitted Document** has the meaning given to it in section 2.1(a) of this Schedule.

**Verification and Acceptance Reviewing Party** means the Reviewing Party and the
Independent Certifier.

1A. Facilitated Design Review
2. Submission and review

2.1 Submission

(a) Project Co must submit all Project Co Material (other than the Status Delivery Program), the Mock-ups, Significant Subcontracts and Key Subcontracts for review in accordance with these Review Procedures where required in accordance with the TfNSW Project Documents (Submitted Document).

(b) The Submitted Documents must be submitted to the Reviewing Party for review in accordance with this Schedule.

(c) Where the Submitted Document is a:

(i) program for completion of Provisional Acceptance Outstanding Items under clause 23.10(b);
(ii) Verification Plan (other than a Verification Plan relating to Preliminary Acceptance);
(iii) Verification Procedure (other than a Verification Procedure relating to Preliminary Acceptance);
(iv) Verification Matrix (other than a Verification Matrix relating to Preliminary Acceptance);
(v) Verification Report (other than a Verification Report relating to Preliminary Acceptance);
(vi) Provisional Acceptance Report;
(vii) Final Acceptance Report; or
(viii) document which provides evidence of compliance with:

(A) environmental;
(B) sustainability;
(C) jobs, skills and industry participation;
(D) technical (prior to the Test Readiness Review); or
(E) maintenance,

then, notwithstanding section 2.1(b), those Submitted Documents only must be submitted to the Verification and Acceptance Reviewing Party for review in accordance with this Schedule.

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SENSITIVE: NSW GOVERNMENT
Regional Rail Project Deed
Schedule 9 - Review Procedures
Contract Number: ISD-17-6185
With each Submitted Document, Project Co must provide:

(i) details of the Submitted Document, its nature and the relevant clause or Schedule of the TfNSW Project Document in accordance with which it is submitted for review in accordance with this Schedule; and

(ii) any other information required in accordance with the TfNSW Project Document or otherwise reasonably required by the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) for the review of the Submitted Document in accordance with this Schedule.

2.2 Review

(a) The Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) must review the Submitted Document submitted in accordance with section 2 and provide any comments in writing to Project Co in accordance with this Schedule within the Review Period. If the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) provides comments on the Submitted Documents, section 2.2(c) will apply.

(b) **Review Period** means, subject to section 3(b), 20 Business Days, except where the Review Period is expressly specified in a TfNSW Project Document (in which case that expressly stated review period shall apply).

(c) Subject to section 2.2(a), if a Reviewing Party, Verification and Acceptance Reviewing Party or Project Co request, the relevant parties must meet within 5 Business Days after such request to discuss and confer on the Reviewing Party's or the Verification and Acceptance Reviewing Party's (as applicable) 'comments' in response to a Submitted Document.

3. Further information

(a) Project Co must as soon as possible upon a request in the form set out in section 15 of the Schedule of Forms and Certificates by the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable):

(i) submit any further information, data or documents;

(ii) make available appropriately qualified personnel; and

(iii) provide access to all Project Co Material, the Mock-ups, Significant Subcontracts and Key Subcontracts,

that the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) reasonably requires in order for the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) to review the Submitted Document and respond in accordance with this Schedule.

(b) If at any time during the Review Period the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) makes a request in accordance with section 3(a) and the information, data, documents, personnel or access requested are available or able to be made available if Project Co uses reasonable endeavours to do so, then the Review Period will not include the time that Project Co takes to provide the information, data, documents, personnel or access after the request is made under section 3(a).
4. Document management

4.1 Copies of Submitted Documents

(a) Unless otherwise stated in the TfNSW Project Documents, Project Co must provide:
   (i) not used;
   (ii) one electronic version in .pdf format; and
   (iii) a version in each format as described in section 3.2(f) of the Management Requirements,
        of each Submitted Document to the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) for review in accordance with this Schedule and the Project Scope and Requirements via the Document Management System.

(b) Not used.

(c) An electronic version in native format of a Submitted Document must be an electronic copy of that document in the format of the software in which the document was originally created which has been configured to allow the person to whom the electronic copy is provided to access and amend the information contained therein in the same manner as the original creator of that document.

4.2 Register of Submitted Documents

Project Co must compile and maintain a register or such document management system provided by TfNSW as TfNSW may specify from time to time, which must contain the date of submission and content of each Submitted Document submitted, and Project Co must regularly update that register or document management system (as applicable) to record:

(a) each Submitted Document to which it receives a response from the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) (either during the Review Period or after expiry of the Review Period in accordance with section 6.6), including a copy of that response or comment; and

(b) each Submitted Document to which it receives no response in the Review Period or in respect of which it is deemed not to have received any response in accordance with sections 6.1 or 6.2.

5. Review in stages

Subject to section 2.1(ca):

(a) if Submitted Documents are to be reviewed in stages then, unless the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) otherwise agree, each stage must be submitted for review and the review completed in accordance with this Schedule before any subsequent stage may be submitted for review; and

(b) if, for any reason, any stage is reviewed out of sequence as a consequence of any Project Co Act or Omission, the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) will be entitled to further review or to complete a new review of those stages of the Submitted Documents that have already been reviewed (to the extent they were reviewed out of sequence) in accordance with this Schedule.
6. Comments on Submitted Document

6.1 Response to Submitted Document

(a) The Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) may provide:

(i) 'comments' in the form set out in section 17 of the Schedule of Forms and Certificates; or

(ii) 'no comments' in the form set out in section 16 of the Schedule of Forms and Certificates,

in respect of a Submitted Document.

(b) The Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) may decide it does not intend to review or respond in respect of a Submitted Document, provided that the Independent Certifier in its role as the Verification and Acceptance Reviewing Party shall not be entitled to decide not to review or respond in respect of a Submitted Document which is to be reviewed by the Verification and Acceptance Reviewing Party.

(c) If the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) provides 'no comments' in the form set out in section 16 of the Schedule of Forms and Certificates in respect of a Submitted Document or is deemed to provide 'no comments' in respect of a Submitted Document in accordance with section 6.1A or 6.2, Project Co may proceed in accordance with the Submitted Document.

(d) Subject to section 7.2, if the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) provides 'comments' in the form set out in section 17 of the Schedule of Forms and Certificates in respect of the Submitted Document in accordance with section 8, Project Co may not proceed with the Submitted Document unless it has addressed the 'comments' in accordance with section 6.3.

(e) If the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) decides it does not intend to review or respond in respect of the Submitted Document in accordance with section 6.1(b) Project Co may proceed in accordance with the Submitted Document.

6.1A No intention to comment

If the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) decides that it does not intend to review or respond to any Submitted Document submitted in accordance with this Schedule then the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) must use reasonable endeavours to advise Project Co as soon as possible after making that decision, and if it does so, the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) will be deemed to have returned the Submitted Document to Project Co with 'no comments'.

6.2 No comments on Submitted Document

(a) If the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) has no comments on a Submitted Document, the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) may respond with a statement 'no comments' in the form set out in section 16 of the Schedule of Forms and Certificates.
6.3 Comments on Submitted Document

(a) If the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) has comments on a Submitted Document, it must indicate that its response is in the form of 'comments' in the form set out in section 17 of the Schedule of Forms and Certificates.

(b) Subject to sections 9 and 7.2, if the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) 'comments' on a Submitted Document in accordance with section 8, Project Co must prior to proceeding with any relevant part of the Project Activities (or anything else the subject of the Submitted Document):

(i) amend the Submitted Document in accordance with the comments of the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) to the extent necessary to ensure that:

(A) the Submitted Document meets the requirements of the TfNSW Project Documents; and
(B) the issues identified in accordance with section 8 are addressed; and

(ii) resubmit the revised Submitted Document to the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) (Resubmitted Document), and the provisions of sections 2 to 7 (inclusive) will reapply to the amended Submitted Document until such time as:

(A) the Submitted Document is returned to Project Co without any comment; or
(B) the Submitted Document is deemed to have been returned with 'no comments'.

6.4 Not used

6.5 Substantiate comments

If the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) provides Project Co with comments in connection with the Submitted Document in accordance with section 8, the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) must provide sufficient detail in the form set out in section 17 of the Schedule of Forms and Certificates to Project Co to substantiate those comments.

6.6 Late comments on Submitted Document
7. **Right to Proceed**

7.1 **Submitted Document with ‘no comments’**

Without limiting section 6.3(b) or 7.2, Project Co may not proceed with the Project Activities the subject of a Submitted Document unless the Submitted Document is returned with ‘no comments’ in the form set out in section 16 of the Schedule of Forms and Certificates or is deemed to be returned with ‘no comments’.

7.2 **Proceed at Risk to implement a Technical Package**

(a) Subject to section 7.2(b), Project Co may proceed with the development, procurement, engineering, manufacture, construction, testing, commissioning or supply of a Technical Package after the System Definition Review, Preliminary Design Review and Detailed Design Review Design Stages of such Technical Package have been conducted at its own risk notwithstanding that:

   (i) a Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) has not reviewed one or more Technical Documents related to that Technical Package in accordance with the Review Procedures; or

   (ii) a Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) has issued comments on one or more Technical Documents related to that Technical Package in accordance with section 8 and Project Co has not completed the process required to be completed under section 6.3(b),

   **(Proceed at Risk).**

(b) Project Co will only be permitted to Proceed at Risk, if Project Co has:

   (i) complied with its obligations under the Review Procedures (other than completion of the process required to be completed under section 6.3(b)); and

   (ii) submitted to the TfNSW Representative, at least 10 Business Days prior to its intention to Proceed at Risk, a notice in relation to the relevant Technical Package to which it intends to Proceed at Risk, which must, as a minimum, append a detailed plan setting out the steps that Project Co:

      (A) must take to manage and mitigate any risks that may arise by proceeding under the Proceed at Risk process;

      (B) must take to continue to expeditiously and diligently progress the Delivery Phase Activities, including the steps Project Co must take in order to re-align the relevant Technical Package to the Design Development Process, Baseline Delivery Program and the relevant Design Stage; and
(C)  must take to address any comments issued by a Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) on one or more Technical Documents related to that Technical Package at the next Design Stage in respect of that Technical Package.

(Proceed at Risk Notification); and

(iii) addressed and provided any further detail (in addition to that contained in the Proceed at Risk Notification), as requested by TfNSW or the TfNSW Representative.

(c) If Project Co Proceeds at Risk in accordance with section 7.2:

(i) the relevant Technical Document related to that Technical Package will be considered to have achieved Confirmed Technical Document status; and

(ii) Project Co must deliver the Project in accordance with the Submitted Document, save for minor amendments to the Confirmed Technical Documents which are made in accordance with section 6 of Schedule 8 (Design Development Schedule), unless it is necessary to depart from the Submitted Document, in which case Project Co must update the Submitted Document accordingly and the provisions of sections 2 to 6 shall apply to such re-submission.

8. Grounds on which the Reviewing Party or the Verification and Acceptance Reviewing Party may comment on a Submitted Document

8.1 General

The Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) may provide comments on a Submitted Document if:

(a) the Submitted Document:

(i) is incomplete, inaccurate, of poor quality, ambiguous, unclear or otherwise is not in a condition to allow the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable), in its reasonable opinion, to adequately review it;

(ii) does not comply with the relevant Laws, Approvals or Standards; or

(iii) is otherwise not in accordance with, or is not submitted in accordance with, the requirements of the TfNSW Project Documents (including the Project Scope and Requirements); or

(b) the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) is of the view, acting reasonably, that implementing or proceeding on the basis of the Submitted Document would:

(i) adversely affect any of Tfnsw's or RailCorps's rights under a TfNSW Project Document or Tfnsw's or RailCorps's ability to enforce any such rights, any of Tfnsw's or RailCorps's statutory functions or Tfnsw's ability to perform its obligations under a Tfnsw Project Document;
(ii) adversely affect or not enable Project Co to perform or comply with its obligations under the Project Documents to which it is a party (including the FFP Warranty or the Project Scope and Requirements);

(iii) likely result in an increase to TfNSW's or RailCorp's Liabilities; or

(iv) adversely affect the ability of TfNSW, RailCorp, the Operator or a NSW Rail Entity to undertake the Operations Functions as contemplated by this Deed.

8.2 Baseline Delivery Program

If the Submitted Document is the Baseline Delivery Program then, in addition to the Reviewing Party's rights in accordance with section 8.1, the Reviewing Party may provide comments in respect of the Baseline Delivery Program and Project Co must amend the Baseline Delivery Program accordingly if:

(a) the Baseline Delivery Program is inconsistent with, or is otherwise not in accordance with, the Programming Requirements;

(b) compliance with the Baseline Delivery Program would mean that Acceptance would not be achieved by the relevant Date for Acceptance;

(c) the Baseline Delivery Program would adversely affect the safety of any person;

(d) the Baseline Delivery Program would increase the likelihood of disruption to the conduct of the Operations Functions by TfNSW, RailCorp, the Operator or another NSW Rail Entity; or

(e) the period for carrying out programmed works exceeds or falls short of the period reasonably required for that work.

8.3 Technical Documents

If the Submitted Document is a Technical Document, in addition to its rights under section 8.1, the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) may also provide comments in respect of the Submitted Document and Project Co must address those comments on the Technical Document accordingly where the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) considers that the relevant Technical Document:

(a) is inconsistent with or not in accordance with the Design Requirements or any previously Confirmed Technical Document;

(b) is not submitted in accordance with the Design Development Process;

(c) fails to mitigate safety risk so far as is reasonably practicable;

(d) is not consistent with the physical configuration of the Assets; or

(e) fails to consider or address feedback from Stakeholder Groups and other stakeholders.
8.4 Management Plans

If the Submitted Document is a Management Plan, in addition to its rights under section 8.1, the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) may provide comments in respect of the Submitted Document and Project Co must address those comments where:

(a) the Management Plan is inconsistent with or not in accordance with the Design Requirements or the Services Requirements (as appropriate);

(b) the Management Plan does not accurately set out (or set out in sufficient detail) how Project Co will deliver the Works or the Services so as to meet the Design Requirements or the Services Requirements (as appropriate);

(c) the Management Plan does not adequately take into account the comments of a Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) in accordance with this Deed;

(d) in relation to the Operational Readiness Plan, the Reviewing Party (acting reasonably) considers that Project Co will not be ready to deliver the Services from commencement of the Maintenance Phase despite compliance with the terms of the Operational Readiness Plan;

(e) carrying out the relevant Project Activities in the periods or at the times suggested is reasonably likely to interfere with the carrying out of the Operations Functions other than to the extent such interference is an unavoidable consequence of the performance of the Project Activities in compliance with this Deed;

(f) the period for carrying out work under the Management Plan is inconsistent with, or is otherwise not in accordance with, the Programming Requirements;

(g) there is a risk that the safety of any person would be adversely affected;

(h) not used;

(i) the Lifecycle Payment of the Assets will be increased; or

(j) the lifecycle Maintenance costs over the life of the Assets will be increased.

8.5 Engineering Change Notice

If the Submitted Document is an Engineering Change Notice or any other document that is submitted by Project Co pursuant to clause 39.16, in addition to its rights under the foregoing provisions of this section 8, a Reviewing Party may provide comments on that Submitted Document:

(a) where the proposed departure will result in one or more of the circumstances referred to in clause 39.16(c) occurring; or

(b) as they consider fit in their absolute discretion, except to the extent that the Engineering Change is required by Project Co in order to achieve Final Acceptance, in which case (without prejudice to sections 8.1 to 8.4 or section 8.5(a)), this section 8.5(b) will not apply.

8.6 Significant Subcontract and Key Subcontract

If the Submitted Document is a Significant Subcontract or Key Subcontract, in addition to its rights under section 8.1, the Reviewing Party may provide comments in respect of the
Submitted Document and Project Co must address those comments where the technical provisions, documents or specifications contained in that Submitted Document do not align with any document submitted for review in accordance with the Review Procedures which has achieved Confirmed Document status.

9. Dispute resolution
   (a) If Project Co does not agree with any comments of the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) in respect of a Submitted Document, Project Co and the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) must meet to try to resolve the difference of opinion in good faith.
   (b) If, following good faith negotiations, Project Co still disputes that any amendments are required to the Submitted Document, Project Co or TfNSW may refer the matter to expert determination in accordance with clause 52 of this Deed.

10. No limitation on obligations
   (a) The Reviewing Party and the Verification and Acceptance Reviewing Party do not owe any duty of care to Project Co to review at all, or in reviewing, commenting or failing to comment on, accepting, approving, endorsing, or rejecting a Submitted Document, to detect defects, errors, omissions or non-compliances with the TfNSW Project Documents, any Law, any Approval or any Standard.
   (b) Notwithstanding this Schedule, where in this Deed the words 'review', 'comment', 'accept', 'endorse', 'approve', 'consent' or 'reject' (or similar) or other grammatical forms of any of those words are used in relation to documents of any kind, including Submitted Documents, or where such words are used by the Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable), then those words, their use and the acts or omissions associated with them (including pursuant to this Schedule) do not in any way:
      (i) relieve Project Co from, or alter, affect or reduce, the obligations and Liabilities of Project Co in accordance with the TfNSW Project Documents or otherwise at Law;
      (ii) constitute any representation that any Submitted Document complies with the TfNSW Project Documents;
      (iii) prejudice TfNSW's or RailCorp's rights against Project Co, whether under the TfNSW Project Documents or otherwise at Law; or
      (iv) affect the time for performance of TfNSW's obligations in accordance with the TfNSW Project Documents.
   (c) The review, acceptance, endorsement or approval of, comment or failure to comment on or consent to, any Submitted Document will not be evidence that any Works or Services have been or will be undertaken or performed in accordance with the TfNSW Project Documents.
   (d) Project Co agrees that:
      (i) Project Co will not be entitled to make any Claim against any Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable), whether under this Deed or at Law, for any Liabilities incurred by Project Co in connection with:
(A) any review, comment or failure to comment on, or acceptance, approval, endorsement or rejection of, a Submitted Document; or

(B) the exercise by Project Co of its right to Proceed at Risk in accordance with section 7.2; and

(ii) without limiting section 10(d)(i), Project Co will not be entitled to make any Claim against any Reviewing Party or the Verification and Acceptance Reviewing Party (as applicable) in connection with any delay in the review of a Submitted Document.
MORAL RIGHTS CONSENT

THIS DEED POLL is made on the day of

BY: [Insert name of individual] of [insert address], [insert occupation] (Author)

IN FAVOUR OF

Transport for NSW (ABN 18 804 236 602), a corporation constituted under section 3C of the Transport Administration Act 1988 (NSW) (TfNSW)

Rail Corporation New South Wales (ABN 59 325 778 353), a NSW government agency constituted under section 4 of the Transport Administration Act 1988 (NSW) (RailCorp)

and

[Insert Project Co's name] (ABN/ACN [Insert]) of [insert address] (Project Co)

WHEREAS:

A TfNSW has contracted out, or proposes to contract out, the Project (as that term is defined in the Project Deed) (Project).

B Project Co is responsible for the Project under the deed entitled 'Regional Rail — Project Deed' between TfNSW, RailCorp and Project Co dated on or about 13 February 2019 (Project Deed).

C The Author may create or has created material in which copyright subsists for the purposes of the Copyright Act 1968 (Cth) (as amended from time to time) for the purposes of, or otherwise for use in connection with, the Project (Copyright Material).

THE AUTHOR COVENANTS as follows:

The Author in consideration of TfNSW, RailCorp or Project Co paying the Author [Insert amount] (inclusive of GST) (receipt of which is hereby acknowledged):

1. agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any, or any alleged, breach, infringement or other wrongdoing, howsoever or whatsoever occurring, including without limitation for the breach or alleged breach of any of the Author's 'moral rights' under the Copyright Act 1968 (Cth) (as amended from time to time) whether before or after the date of this deed poll by:

   a TfNSW, RailCorp, Operator, Returned Asset Owner or Project Co;

   b a TfNSW Associate, RailCorp Associate, Operator's Associate, Returned Asset Owner's Associate or Project Co Associate (as those terms are defined in the Project Deed);

   c any contractor which TfNSW, a TfNSW Associate, RailCorp, a RailCorp Associate, Project Co or a Project Co Associate engages;

   d any third party to whom TfNSW, a TfNSW Associate, RailCorp, a RailCorp Associate, an Operator, an Operator's Associate, the Returned Asset Owner, a Returned Asset Owner's Associate, Project Co or a Project Co Associate sub-licences (whether express or implied) or grants any other right to use, possess, modify, vary or amend any of the Copyright Material; or

   e any third party to whom TfNSW, a TfNSW Associate, RailCorp, a RailCorp Associate, an Operator, an Operator's Associate, the Returned Asset Owner, a Returned Asset Owner's
Associate, Project Co or a Project Co Associate assigns rights it has in, or in relation to, any of the Copyright Material,

(together, the Beneficiaries) in relation to any of the Copyright Material;

2. without limiting clause 1 above, consents to any of the Beneficiaries:

(a) failing to acknowledge or attribute the Author's authorship of any of the Copyright Material;

(b) falsely attributing authorship of any of the Copyright Material; and

(c) making any modification, variation or amendment of any nature whatsoever to any of the Copyright Material, whether or not it:

(i) results in a material distortion, destruction or mutilation of any of the Copyright Material; or

(ii) is prejudicial to the honour or reputation of the Author; and

3. without limiting clauses 1 or 2, consents to any of the Beneficiaries:

(a) using any of the Copyright Material for any purpose for which it was intended at the time the Copyright Material was created;

(b) disclosing, reproducing, transmitting, exhibiting, communicating, publishing or otherwise exercising its rights in relation to the Copyright Material anywhere in the world in whatever form any of the Beneficiaries thinks fit;

(c) altering any of the Copyright Material by adding to, removing elements from, or rearranging elements of, the Copyright Material, including without limitation by combining elements of any of the Copyright Material with any other material; and

(d) changing, relocating, demolishing or destroying any building which incorporates, is based on, or is constructed in accordance with, any of the Copyright Material.

Nothing in this document amounts to an obligation on TfNSW, RailCorp or Project Co to comply, or a warranty by TfNSW, RailCorp or Project Co that it will comply, with the Competition and Consumer Act 2010 (Cth) or any equivalent provision of a statute of any state or territory in the Commonwealth of Australia.

Executed as a deed poll.

[Note to Author: Execution clause to be confirmed prior to execution]

Signed by the Author in the presence of:

Signature of witness  Signature of the Author

Name of witness (print)
## Schedule 12 — Acceptance Schedule

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<td>Timetable</td>
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<td>Improved contact options for queries and complaints</td>
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**Schedule 12 - Acceptance Schedule**

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Schedule 14 - Indexes Schedule

1. Indexation

1.1 Definitions

CPI means the ‘Weighted Average of Eight Capital Cities: All Groups Consumer Price Index’ (ABS Catalogue No. 6401.0 Table 3) as maintained and published quarterly by the Australia Bureau of Statistics. If the ‘Weighted Average of Eight Capital Cities: All Groups Consumer Price Index’ ceases to be published quarterly or its method of calculation substantially alters, then the ‘Weighted Average of Eight Capital Cities: All Groups Consumer Price Index’ is to be replaced in accordance with section 1.3 and any necessary consequential amendments are to be made.

Labour Index means ‘Average Weekly Earnings, New South Wales Index’ (Persons; Full Time; Adult; Ordinary time earnings; New South Wales; ABS Catalogue No. 6302.0 Table 13A) as maintained and published semi-annually by the Australia Bureau of Statistics. If the ‘Average Weekly Earnings, New South Wales Index’ ceases to be published semi-annually or its method of calculation substantially alters, then the ‘Average Weekly Earnings, New South Wales Index’ is to be replaced in accordance with section 1.3 and any necessary consequential amendments are to be made.

1.2 Indexation

(a) Unless otherwise expressly provided, a reference to “Indexed” after a monetary amount means that the amount will be indexed for movements in the CPI annually on the first day of each Financial Year, from 1 July 2019, in accordance with the following formula:

\[ A \text{ (Indexed)} = A \times \left( \frac{\text{CPI}_n}{\text{CPI}_0} \right) \]

where:

- \( A \) means the monetary amount originally specified or 1 if the reference is to the CPI;
- \( \text{CPI}_n \) means the value of the CPI published for the quarter ending in March of the previous Financial Year; and
- \( \text{CPI}_0 \) means the value of the CPI published for the quarter ending March 2018.

(b) Amounts to be indexed by the First Indexation Factor, the Second Indexation Factor or the Third Indexation Factor, respectively will be adjusted annually on the first day of each Financial Year, from 1 July 2019, and in accordance with the following indexation calculations:

The First Indexation Factor, \( I_1 \), is:

\[ I_1 = (\text{CPI}_n / \text{CPI}_0) \times a + (1 - a) \]

The Second Indexation Factor, \( I_2 \), is:

\[ I_2 = (\text{CPI}_n / \text{CPI}_0) \times b + \left( \frac{\text{LPI}_n}{\text{LPI}_0} \right) \times c \]

and;
The Third Indexation Factor, I₃, is:

\[ I₃ = \frac{CPIₙ}{CPI₀} \]

Where:
- \( I₁ \) means the First Indexation Factor applied in any relevant calculation;
- \( I₂ \) means the Second Indexation Factor applied in any relevant calculation;
- \( I₃ \) means the Third Indexation Factor applied in any relevant calculation;
- \( CPIₙ \) means the value of the CPI published for the quarter ending in March of the previous Financial Year;
- \( CPI₀ \) means the value of the CPI published for the quarter ending March 2018;
- \( LPIₙ \) means the value of the Labour Index in November of the previous Financial Year;
- \( LPI₀ \) means the value of the Labour Index in November 2017;
- \( a \) means \( b \) means \( c \) means \( d \);

### 1.3 Changes to Indexes

The following rules apply to all terms identified in this Deed as being referable to an index published by the Australian Bureau of Statistics or another statistical service (Statistical Service):

(a) if the index is published and there is a change in its coverage, TfNSW and Project Co must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to determine:

(i) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and

(ii) if it is not, what other index should be used as a substitute index for the purpose of this Deed,

and that determination is final and binds the parties;

(b) if there is a change in the reference base of the index from that applying at the date of this Deed and the relevant Statistical Service provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purposes of this Deed;

(c) if there is a change in the reference base of the index from that applying at the date of this Deed and the relevant Statistical Service does not provide a conversion factor, TfNSW and Project Co must request the President of the Institute of Actuaries of Australia (or the President’s nominee) to calculate a revised index for the purposes of this Deed, and that calculation is final and binds the parties;
(d) if the index ceases to be published and the relevant Statistical Service publishes another index which is a replacement of that index then the replacement index must be used for the purposes of this Deed but re-calculated to the same reference base as the original index;

(e) if the index ceases to be published and the relevant Statistical Service does not publish another index which is linked to the index, TfNSW and Project Co must request the President of the Institute of Actuaries of Australia (or the President's nominee) to calculate a revised index for the purposes of this Deed, and that calculation is final and binds the parties; or

(f) if the index ceases to be published and the relevant Statistical Service does not publish another index in place of the index, TfNSW and Project Co must request the President of the Institute of Actuaries of Australia (or the President's nominee) to determine an appropriate index to serve as a replacement for the index, and that determination is final and binds the parties.
Schedule 15 — Key Planning Approval Conditions

1. Background

The Maintenance Facility has been determined under Division 5.1 (via a Review of Environmental Factors process) of the EP&A Act.

TfNSW is both the proponent and a determining authority for projects requiring assessment under Division 5.1 of the EP&A Act. Assessment under Division 5.1 of the EP&A Act included the preparation of a REF, with a determination by TfNSW.

Terms in this Schedule have the meanings given in the clause 1 of the Project Deed, unless otherwise defined herein.

2. Purpose of this document

2.1 Division 5.1 Project - Conditions of Approval

In determining the Division 5.1 project, TfNSW (in its capacity as proponent and a determining authority under the EP&A Act) has imposed Conditions of Approval as set out in section 3 of this Schedule.

The allocations of responsibility for fulfilling the requirements of each of the Conditions of Approval is identified in Annexure A.

3. Conditions of Approval

3.1 Abbreviations

- **ADEIA**: Associate Director Environmental Impact Assessment (or nominated delegate)
- **ADEM**: Associate Director Environment Management, TfNSW (or nominated delegate)
- **ADSPD**: TfNSW Associate Director Sustainability, Planning and Development (or nominated delegate)
- **AS**: Australian Standard
- **CCSMP**: Communication, Community and Stakeholder Management Plan
- **CECR**: Construction Environmental Compliance Report
- **CEMP**: Construction Environmental Management Plan
- **CIR**: Contamination Investigation Report
- **CMP**: Contamination Management Plan
- **dBA**: Decibels (A-weighted scale)
ECM  Environmental Controls Map
EIA  Environmental impact assessment
EMR  Environmental management representative
EMS  Environmental management system
EPA  NSW Environment Protection Authority
EP&A Act  Environmental Planning and Assessment Act 1979
EPL  Environment protection licence issued by the EPA under the Protection of the Environment Operations Act 1997
ICNG  Interim Construction Noise Guidelines (Department of Environment and Climate Change, 2009)
IS  Infrastructure Sustainability
ISO  International Standards Organisation
OEH  NSW Office of Environment and Heritage
ONVMP  Operational Noise and Vibration Management Plan
OOHWP  Out of Hours Works Protocol
PECM  Pre-Construction Environmental Compliance Matrix
POCR  Pre-operation compliance report
RAP  Remedial Action Plan
RBL  Rating background level
REF  Review of environmental factors
RING  Rail Infrastructure Noise Guideline (EPA, 2013)
RNP  NSW Road Noise Policy (Department of Environmental, Climate Change and Water, 2011)
Roads and Maritime  NSW Roads and Maritime Service (formerly Roads and Traffic Authority)
SMP  Sustainability Management Plan
TfNSW  Transport for NSW
3.2 Definitions

**Construction**
Includes all work in respect of the Project, other than survey, acquisitions, fencing, investigative drilling or excavation, building/road dilapidation surveys, or other activities determined by the EMR to have minimal environmental impact such as minor access roads, minor adjustments to services/utilities, establishing temporary construction compounds (in accordance with this approval), or minor clearing (except where threatened species, populations or ecological communities would be affected).

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

**Designated works**
Includes tunnelling, blasting, piling, excavation or bulk fill or any vibratory impact works including jack hammering and compaction, for Construction.

**Emergency work**
Includes works to avoid loss of life, damage to external property, utilities and infrastructure, prevent immediate harm to the environment, contamination of land or damage to a heritage (indigenous or non-indigenous) item.

**Environmental Impact Assessment (EIA)**
The documents listed in Condition 1 of this approval.

**Environmental Management Representative (EMR)**
An independent environmental representative appointed to the Project or a delegate nominated by TfNSW.

**Feasible**
A work practice or abatement measure is feasible if it is capable of being put into practice or of being engineered and is practical to build given Proposal constraints such as safety and maintenance requirements.

**Noise sensitive receiver**
In addition to residential dwellings, noise sensitive receivers include, but are not limited to, hotels, entertainment venues, pre-schools and day care facilities, educational institutions (e.g. schools, TAFE colleges), health care facilities (e.g. nursing homes, hospitals), recording studios, places of worship/religious facilities (e.g. churches), and other noise sensitive receivers identified in the environmental impact assessment.

**Project**
The construction and operation of the Dubbo Maintenance Facility as
described in the Environmental Impact Assessment.

**Proponent**
A person or body proposing to carry out an activity under Division 5.1 of the EP&A Act — in the case of the Proposal, TfNSW.

**reasonable and feasible**
Consideration of best practice taking into account the benefit of proposed measures and their technological and associated operational application in the NSW and Australian context. Feasible relates to engineering considerations and what is practical to build. Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and nature and extent of potential improvements.

**Review of Environmental Factors**
A review of environmental factors is a document used by determining authorities for the assessment of environmental impacts under Part 5 of the EP&A Act.

### 3.3 Conditions of Approval

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| 1. | **Terms of approval**  
The Project shall be carried out generally in accordance with the Environmental Impact Assessment (EIA) for this Project, which comprises the following documents:  
a) *Dubbo Maintenance Facility – Review of Environmental Factors* (Jacobs, August 2018)  
| In the event of an inconsistency between these conditions and the EIA, these conditions will prevail to the extent of the inconsistency. | |
| 2. | **Project modifications**  
Any modification to the Project as approved in the EIA would be subject to further assessment. This assessment would need to demonstrate that any environmental impacts resulting from the modifications have been minimised. The assessment shall be subject to approval under delegated authority by TfNSW. The Proponent shall comply with any additional requirements from the assessment of the Project modification. | |
| 3. | **Statutory requirements**  
These conditions do not relieve the Proponent of the obligation to obtain all other licences, permits, approvals and land owner consents from all relevant authorities and land owners as required under any other legislation for the Project. The Proponent shall comply with the terms and conditions of such licences, permits, approvals and permissions. | |
| 4. | **Pre-construction Environmental Compliance Matrix**  
A Pre-construction Environmental Compliance Matrix (PECM) for the Project (or such stages |
of the Project as agreed to by the Associate Director Environmental Management (ADEM) shall be prepared detailing compliance with all relevant conditions and mitigation measures prior to commencement of construction. The PECM shall also include details of approvals, licences and permits required to be obtained under any other legislation for the Project.

A copy of the PECM shall be submitted to the Environmental Management Representative (EMR) for review. The EMR are to be given a minimum period of six days to review and provide any comments to the Proponent in relation to the PECM. Upon completion of the EMR review period, a copy of the PECM shall be submitted to the ADEM (or nominated delegate) for approval, at least 14 days prior to commencement of construction of the Project (or within such time as otherwise agreed to by the ADEM).

5. Construction Environmental Compliance Report

A Construction Environment Compliance Report (CECR) for the Project shall be prepared which addresses the following matters:

(a) compliance with the Construction Environmental Management Plan (CEMP) and these conditions

(b) compliance with any approvals or licences issued by relevant authorities for construction of the Project

(c) implementation and effectiveness of environmental controls (the assessment of effectiveness should be based on a comparison of actual impacts against performance criteria identified in the CEMP)

(d) environmental monitoring results, presented as a results summary and analysis

(e) details of the percentage of waste diverted from landfill and the percentage of spoil beneficially reused

(f) number and details of any complaints, including summary of main areas of complaint, actions taken, responses given and intended strategies to reduce recurring complaints (subject to privacy protection)

(g) details of any review and amendments to the CEMP resulting from construction during the reporting period

(h) any other matter as requested by the ADEM.

A copy of the CECR shall be submitted to the EMR for review. The EMR is to be given a minimum period of six days to review and provide any comments to the Proponent in relation to the CECR. A copy of the CECR to the ADEM (or nominated delegate) for approval upon completion of the EMR review period.

The first CECR shall report on the first six months of construction and be submitted within 20 days of expiry of that period (or at any other time interval agreed to by the ADEM). CECRs shall be submitted no later than six months after the date of submission of the preceding CECR (or at other such periods as requested by the ADEM) for the duration of construction.

6. Pre-operation Compliance Report

A pre-operation Compliance Report (POCR) for the Project shall be prepared, prior to commencement of operation of the Project. The POCR shall detail compliance with all conditions of approval, licences and permits required to be obtained under any legislation for
the Project.

A copy of the POCR shall be submitted to the EMR for review. The EMR is to be given a minimum period of six days to review and provide any comments to the Proponent in relation to the POCR. Upon completion of the EMR review period, a copy of the POCR shall be submitted to the ADEM (or nominated delegate) for approval at least one month prior to the scheduled operation of the Project (or such time as otherwise agreed to by the ADEM).

### Communications

#### 7. Communication, Community and Stakeholder Management Plan

A Communication, Community and Stakeholder Management Plan (CCSMP) shall be prepared and implemented. The purpose of the CCSMP is to engage with government agencies, relevant councils, landowners, community members and other relevant stakeholders (such as utility and service providers, bus companies and businesses). The CCSMP shall comply with the obligations of these conditions and should include, but not necessarily be limited to:

(a) details of the protocols and procedures for disseminating information and liaising with the community and other key stakeholders about construction activities (including timing and staging) and any associated impacts during the construction period

(b) stakeholder and issues identification and analysis

(c) procedures for dealing with complaints or disputes and response requirements, including advertising the 24 hour construction response line number

(d) details (including a program) of training for all employees, contractors and sub-contractors on the requirements of the CCSMP.

The CCSMP shall be prepared to the satisfaction of the Director Community Engagement (or nominated delegate) prior to the commencement of construction and implemented, reviewed and revised as appropriate during construction of the Project.

#### 8. Community notification and liaison

The local community shall be advised of any activities related to the Project with the potential to impact upon them.

Prior to any site activities commencing and throughout the Project duration, the community is to be notified of works to be undertaken, the estimated hours of construction and details of how further information can be obtained (i.e. contact telephone number/email, website, newsletters etc.) including the 24 hour construction response line number.

Construction-specific impacts including information on traffic changes, access changes, detours, services disruptions, public transport charges, high noise generating work activities and work required outside the nominated working hours shall be advised to the local community at least seven (7) days prior to such works being undertaken or other period as agreed to by the Director Community Engagement (or nominated delegate) or as required by the Environment Protection Authority EPA (where an environment protection licence (EPL) is in effect).

#### 9. Website

The Proponent shall provide electronic information (or details of where hard copies of this
10. Complaints management

The Proponent shall set up a 24 hour construction response line number. Details of all complaints received during construction are to be recorded on a complaints register. A verbal response to phone enquiries on what action is proposed to be undertaken is to be provided to the complainant within two (2) hours during all times construction is being undertaken and within 24 hours during non-construction times (unless the complainant agrees otherwise). A verbal response to written complaints (email/letter) should be provided within 48 hours of receipt of the communication. A detailed written response is to be provided to the complainant within seven (7) calendar days for verbal and/or written complaints.

Information on all complaints received during the previous 24 hours shall be forwarded to the TfNSW Community Engagement Manager, Environmental Management Representative (EMR) and the TfNSW Environment and Planning Manager each working day.

Environmental management

11. Construction Environmental Management Plan

A Construction Environmental Management Plan (CEMP) shall be prepared prior to commencement of construction which addresses the following matters, as a minimum:

(a) traffic and pedestrian management (in consultation with the relevant roads authority)
(b) noise and vibration management
(c) water and soil management (including flooding management)
(d) air quality management (including dust suppression)
(e) indigenous and non-indigenous heritage management
(f) flora and fauna management
(g) storage and use of hazardous materials
(h) contaminated land management (including acid sulphate soils)
(i) weed management
(j) waste management
(k) environmental incident reporting and management procedures
(l) non-compliance and corrective/preventative action procedures

The CEMP shall:

i. comply with the Conditions of Approval, conditions of any licences, permits or
No | Condition
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 | other approvals issued by government authorities for the Project, all relevant legislation and regulations, and accepted best practice management
 | comply with the relevant requirements of Guideline for Preparation of Environmental Management Plans (Department Infrastructure, Planning and Natural Resources, 2004)
 | include an Environmental Policy.

The Proponent shall:

1. consult with government agencies and relevant service/utility providers as part of the preparation of the CEMP
2. submit a copy of the CEMP to the EMR for review
3. submit a copy of the CEMP to the ADEM (or nominated delegate) for approval
4. review and update the CEMP at regular intervals, and in response to any actions identified as part of the EMR’s audit of the document
5. ensure updates to the CEMP are made within six days of the completion of the review or receipt of actions identified by any audit of the document, and be submitted to the ADEM for approval.

The CEMP must be approved by the ADEM (or nominated delegate) at least 14 days prior to the commencement of construction work associated with the Project.

12. Environment personnel

Suitably qualified and experienced environmental management personnel shall be available and be responsible for implementing the environmental objectives for the Project, including undertaking regular site inspections, preparation of environmental documentation and ensuring the Project meets the requirements of the Environmental Management System (EMS).

Details of the environmental personnel, including relevant experience, defined responsibilities and resource allocation throughout the project (including time to be spent on-site/off-site) are to be submitted for the approval of the ADEM (or nominated delegate), at least 20 days prior to commencement of construction of the Project (or within such time as otherwise agreed to by the ADEM).

Any adjustments to environmental resource allocations (on-site or off-site) are to be approved by the ADEM.

13. Environmental management representative

Prior to the commencement of construction, the ADEM shall appoint an Environmental Management Representative (EMR) for the duration of the construction period for the Project.

The EMR shall provide advice to the ADEM in relation to the environmental compliance and performance of the Project. The EMR shall have responsibility for:

(a) considering and advising the Proponent on matters specified in these conditions and compliance with such
(b) reviewing and where required by the ADEM, providing advice on the Project’s
No | Condition
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1 | induction and training program for all persons involved in the construction activities and monitoring implementation
2 | (c) periodically auditing the Project's environmental activities to evaluate the implementation, effectiveness and level of compliance of on-site construction activities with authority approvals and licences, the CEMP and associated plans and procedures, including carrying out site inspections weekly, or as required by the ADEM
3 | (d) reporting weekly to the Proponent, or as required by the ADEM
4 | (e) issuing a recommendation to the Proponent for work to stop immediately, if in the view of the EMR circumstances so require. The stop work recommendation may be limited to specific activities if the EMR can easily identify those activities
5 | (f) requiring reasonable steps to be taken to avoid or minimise unintended or adverse environmental impacts
6 | (g) reviewing corrective and preventative actions to ensure the implementation of recommendations made from the audits and site inspections
7 | (h) providing reports to the Proponent on matters relevant to the carrying out of the EMR role as necessary
8 | (i) where required by the ADEM, providing advice on the content and implementation of the CEMP and environmental controls map (ECM) in accordance with the conditions
9 | (j) reviewing and approving updates to the CEMP.
10 | The EMR shall be available during construction activities to inspect the site(s) and be present on-site as required.

14. Environmental Controls Map

An Environmental Controls Map (ECM) shall be prepared in accordance with TfNSW’s Guide to Environmental Controls Map (3TP-SD-015) prior to the commencement of construction for implementation for the duration of construction, and may be prepared in stages as set out in the CEMP.

The ECM shall be prepared as a map – suitably enlarged (e.g. A3 size or larger) for mounting on the wall of a site office and included in site inductions, supported by relevant written information.

A copy of the ECM shall be submitted to the EMR for review and endorsement. The EMR is to be given a minimum period of six days to review and endorse the ECM.

Updates to the ECM shall be made within six days of the completion of the review or receipt of actions identified by any audit of the document, and be submitted to the ADEM (or nominated delegate) for approval.

Following receipt of the EMR’s endorsement, the ECM shall be submitted to the ADEM (or nominated delegate) for approval, at least 14 days prior to commencement of construction (or such time as is otherwise agreed to by the ADEM).

15. Operational Environmental Management Plan

An Operational Environmental Management Plan (CEMP) shall be prepared prior to commencement of operation which addresses the following matters, as a minimum:
## No. 16.
### Condition
- Traffic and pedestrian management (in consultation with the relevant roads authority)
- Noise and vibration management
- Water and soil management (including flood management)
- Air quality management (including dust suppression)
- Indigenous and non-indigenous heritage management
- Flora and fauna management
- Storage and use of hazardous materials
- Contaminated land management (including acid sulphate soils)
- Weed management
- Waste management
- Sustainability
- Environmental incident reporting and management procedures
- Non-compliance and corrective/preventative action procedures

The OEMP shall:
1. Comply with the Conditions of Approval, conditions of any licences, permits or other approvals issued by government authorities for the Project, all relevant legislation and regulations, and accepted best practice management.
2. Comply with the relevant requirements of *Guideline for Preparation of Environmental Management Plans* (Department Infrastructure, Planning and Natural Resources, 2004).
3. Include an Environmental Policy.
4. Include a noise and vibration sub-plan which is to consider the environmental management measures listed in the Regional Rail Maintenance Facility Noise and Vibration Impact Assessment.

The Proponent shall:
1. Consult with NSW Train Link, government agencies and relevant service/utility providers as part of the preparation of the OEMP.
2. Submit a copy of the OEMP to the EMR for review.
3. Submit a copy of the OEMP to the ADEM (or nominated delegate) at least one month prior to the commencement of operation, for approval.

The OEMP must be approved by the ADEM (or nominated delegate) prior to the commencement of operation of the Project.

### Hours of work

16. **Standard construction hours**

Construction activities shall be restricted to the hours of 7:00 am to 6:00 pm (Monday to Friday); 8:00 am to 1:00 pm (Saturday) and at no time on Sundays and public holidays except for the following works which are permitted outside these standard hours:

(a) any works which do not cause noise emissions to be more than 5dBA higher than the rating background level (RBL) at any nearby residential property and/or other noise sensitive receivers.
### High noise generating activities

Rock breaking or hammering, jack hammering, pile driving, vibratory rolling, cutting of pavement, concrete or steel and any other activities which result in impulsive or tonal noise generation shall not be undertaken for more than three hours, without a minimum 1 hour respite period unless otherwise agreed to by the ADEM (or nominated delegate), or as approved by EPA (where relevant to the issuing of an EPL).

### Construction noise and vibration

Construction noise and vibration mitigation measures shall be implemented through the CEMP, in accordance with TfNSW's *Construction Noise and Vibration Strategy* (7TP-ST-157) and the EPA's *Interim Construction Noise Guideline* (Department of Environment and Climate Change, 2009). The mitigation measures shall include, but not necessarily be limited to:

- **(a)** details of construction activities and an indicative schedule for construction works
- **(b)** identification of construction activities that have the potential to generate noise and/or vibration impacts on surrounding land uses, particularly sensitive noise receivers
- **(c)** detail what reasonable and feasible actions and measures shall be implemented to minimise noise impacts (including those identified in the EIA)
- **(d)** procedures for notifying sensitive receivers of construction activities that are likely to affect their noise and vibration amenity, as well as procedures for dealing with and responding to noise complaints
- **(e)** an Out Of Hours Work Protocol (OOHWP) for the assessment, management and approval of works outside the standard construction hours identified in Condition 16 of this approval, including a risk assessment process which deems the out of hours activities to be of low, medium or high environmental risk, is to be developed. All out of hours works are subject to approval by the ADEM (or nominated delegate), or as approved by EPA (where relevant to the issuing of an EPL). The OOHWP should be consistent with the TfNSW *Construction Noise and Vibration Strategy* (7TP-ST-157)
- **(f)** a description of how the effectiveness of actions and measures shall be monitored during the proposed works, identification of the frequency of monitoring, the locations at which monitoring shall take place, recording and reporting of monitoring results
19. Vibration criteria

Vibration (other than from blasting) resulting from construction and received at any structure outside of the Project shall be limited to:

(a) for structural damage vibration - British Standard BS 7385-2:1993 Guide to Evaluation of Human Exposure to Vibration in Buildings (1 Hz to 80 Hz)

(b) if a heritage building or structure is found to be structurally unsound (following inspection) a more conservative cosmetic damage objectives of 2.5 mm/s peak component particle velocity (from German Standard DIN 4150: Part 3 – 1999: Structural Vibration in Buildings: Effects on Structures) would be considered


These limits apply unless otherwise approved by the ADEM (or nominated delegate) through the CEMP.

20. Noise impact on educational facilities

Potentially affected pre-schools, schools, universities and any other affected permanent educational institutions shall be consulted in relation to noise mitigation measures to identify any noise sensitive periods (e.g. exam periods). As much as reasonably practicable noise intensive construction works in the vicinity of affected educational buildings are to be minimised.

21. Piling

Wherever practical, piling activities shall be completed using non-percussive piles. If percussive piles are proposed to be used, approval of the ADEM shall be obtained prior to commencement of piling activities.

22. Non-tonal reversing beepers

Non-tonal reversing beepers (or an equivalent mechanism) shall be fitted and used on all construction vehicles and mobile plant regularly used on site (i.e. greater than one day) and for any out of hours work.

23. Operational noise and vibration

Prior to commencement of laying of rail track or the construction of physical noise mitigation structures, an Operational Noise and Vibration Management Plan (ONVMP) shall be prepared to confirm the final mitigation measures for operational noise and vibration that must be implemented.

The ONVMP shall be prepared in consultation with NSW Trains and other relevant stakeholders. The ONVMP shall:

(a) consider any changes to the predicted noise and vibration levels identification in the EIA as a result of the detailed design process and any changes to the proposed
Conditions:

<table>
<thead>
<tr>
<th>No</th>
<th>Condition</th>
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<tbody>
<tr>
<td></td>
<td>maintenance facility operations plan</td>
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<td>(b) examine all reasonable and feasible noise and vibration mitigation measures consistent with Rail Infrastructure Noise Guideline (EPA, 2013) and the Noise Policy for Industry (EPA, 2017)</td>
</tr>
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<td>(c) identify specific physical and other mitigation measures for controlling noise and vibration at the source and at the receiver (if relevant) including location, type and timing of implementation of the proposed operational noise and vibration mitigation measures</td>
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<td>(d) seek feedback from directly affected receivers on the final mitigation measures proposed in the review.</td>
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</table>

The Proponent shall submit a copy of the ONVMP to the EMR for review and endorsement. The EMR is to be given a minimum period of six days to review and endorse the ONVMP. Following receipt of the EMR’s endorsement, the ONVMP shall be submitted to the ADEM (or nominated delegate) for approval, at least one month prior to commencement of laying of rail track or the construction of physical noise mitigation structures (or such time as is otherwise agreed to by the ADEM).

The approved physical mitigation measures are to be installed prior to the commencement of operations, unless otherwise agreed by the ADEM (or nominated delegate).

24. **Operational noise compliance monitoring**

In order to validate the predicted noise levels identified in the ONVMP, monitoring shall be undertaken within three months of commencement of operation. The noise and vibration monitoring shall be undertaken to confirm compliance with the predicted noise and vibration levels.

Should the results of monitoring identify exceedances of the predicted noise and vibration levels, additional reasonable and feasible mitigation measures must be implemented in consultation with the affected property owners.

25. **Operational noise and vibration levels**

Operational noise levels (LAeq (15 minute)) from the facility are to comply with the requirements of the Noise Policy for Industry (EPA, 2017) at surrounding residential receivers of the maintenance facility for daytime, evening and night-time periods.

Operational noise levels (LA1 (60 second)) from horn testing, brake testing and the train movement warning system are not to exceed the Rating Background Level by more than 15 dBA (LA1 (60 second) ≤ RBL + 15 dBA) at surrounding residential receivers of the maintenance facility for evening (6pm-10pm) and night-time (10pm-7am) periods.

26. **Warning sounds**

Warning sounds associated with the movements of rolling stock shall only occur in emergency traffic or pedestrian safety situations but not as part of normal operations of the project. Any use of warning sounds within the maintenance facility is to comply with the requirements of Condition 26.

27. **Maintenance building materials**

The Maintenance Building is to be designed and constructed to achieve a sound insulation...
### Contamination and hazardous materials

#### 28. Unidentified contamination (other than asbestos)

If previously unidentified contamination (excluding asbestos) is discovered during construction, work in the affected area must cease immediately, and an investigation must be undertaken and report prepared to determine the nature, extent and degree of any contamination. The level of reporting must be appropriate for the identified contamination in accordance with relevant EPA guidelines, including the *Guidelines for Consultants Reporting on Contaminated Sites* (OEH, 2011).

A copy of any contamination report shall be submitted to the EMR for review. The EMR is to be given a minimum period of six days to review and provide any comments to the Proponent in relation to the report.

A copy of any contamination report must be submitted to the ADEM (or nominated delegate) for consideration upon completion of the EMR review period. The ADEM shall determine whether consultation with the relevant council and/or EPA is required prior to continuation of construction works within the affected area.

**Note:** In circumstances where both previously unidentified asbestos contamination and other contamination are discovered within a common area, nothing in these conditions shall prevent the preparation of a single investigation report to satisfy the requirements of both Condition 28 and Condition 29.

#### 29. Asbestos management

If previously unidentified asbestos contamination is discovered during construction, work in the affected area must cease immediately, and an investigation must be undertaken and report prepared to determine the nature, extent and degree of the asbestos contamination. The level of reporting must be appropriate for the identified contamination in accordance with relevant EPA and WorkCover guidelines and include the proposed methodology for the remediation of the asbestos contamination. Remediation activities must not take place until receipt of the investigation report.

Works may only recommence upon receipt of a validation report from a suitably qualified contamination specialist that the remediation activities have been undertaken in accordance with the investigation report and remediation methodology.

**Note:** In circumstances where both previously unidentified asbestos contamination and other contamination are discovered within a common area, nothing in these conditions shall prevent the preparation of a single investigation report to satisfy the requirements of both Condition 28 and Condition 29.

#### 30. Storage and use of hazardous materials

Construction hazard and risk issues associated with the use and storage of hazardous materials shall be addressed through risk management measures, which shall be developed by the construction contractor prior to construction as part of the overall CEMP, in accordance with relevant EPA guidelines, TfNSW's *Chemical Storage and Spill Response Guidelines*.
No Condition
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SD-066) and Australian and ISO standards. These measures shall include:
- the storage of hazardous materials, and refuelling/maintenance of construction plant
  and equipment to be undertaken in clearly marked designated areas that are
designed to contain spills and leaks
- spill kits, appropriate for the type and volume of hazardous materials stored or in
  use, to be readily available and accessible to construction workers. Kits to be kept at
  hazardous materials storage locations, in site compounds and on specific
  construction vehicles. Where a spill to a watercourse is identified as a risk, spill kits
  to be kept in close proximity to potential discharge points in support of preventative
  controls
- all hazardous materials spills and leaks to be reported to site managers and actions
  to be immediately taken to remedy spills and leaks
- training in the use of spill kits to be given to all personnel involved in the storage,
distribution or use of hazardous materials.

31. Hazardous materials survey
A hazardous materials survey in accordance with AS2601 (2001) Demolition of Structures
must be undertaken by an appropriately qualified environmental scientist prior to the
demolition of any relevant building, works, or other infrastructure.
Subsequent removal of any hazardous material is to be undertaken in accordance with
applicable EPA and WorkCover guidelines.

32. Contamination investigation
If recommended by the Stage 1 Preliminary Site Investigation Report, a stage 2 detailed site
investigation shall be undertaken prior to construction commencing. The assessment shall
generally be undertaken in accordance with:
- The National Environment Protection (Assessment of Site Contamination)
  Amendment Measure (NEPM) 2013;
- Contaminated Sites - Sampling Design Guidelines (EPA, 1995); and
- AS4482 (2005) Guide to investigation and sampling of site with potentially
  contaminated soil (2005).
The report shall be prepared in accordance with the DECCW’s Guidelines for Consultants
Reporting on Contaminated Sites (OEH, 2011). The report shall include a preliminary waste
classification in accordance with the NSW EPA Waste Classification Guidelines (EPA, 2014).
Specific requirements for further investigation, remediation or management of any
contamination within the identified areas recommended in the stage 2 detailed site
investigation shall be included in the CEMP as appropriate.
If contamination is identified within the Site, the Proponent is to determine whether there is a
duty to report under section 60 of the Contaminated Land Management Act 1997 (NSW) and
the OEH guidelines.

33. Contamination management plan
Specific requirements for further investigation, remediation and management of any potential
contamination within the identified areas recommended in the Phase 2 contamination...
### Schedule 15 - Key Planning Approval Conditions

**Contract Number:** ISD-17-6185

**Momentum Trains**

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| 34. | Erosion and sediment control  
Soil and water management measures shall be prepared as part of the CEMP for the mitigation of water quality impacts during construction of the Project. The management measures shall be prepared in accordance with *Managing Urban Stormwater; Soils and Construction 4th Edition* (Landcom, 2004). |
| 35. | Indigenous and non-indigenous heritage  
If previously unidentified Indigenous or non-Indigenous heritage/archaeological items are uncovered during construction works, the procedures contained in the TfNSW *Unexpected Heritage Finds Guideline* (STP-SD-115) shall be followed and all works in the vicinity of the find shall cease. The TfNSW Environment and Planning Manager shall be immediately notified to co-ordinate a response, which may include seeking appropriate advice from a suitably qualified and experienced heritage consultant (in consultation with the Heritage Division, OEH where appropriate). Works in the vicinity of the find shall not re-commence until clearance has been received from TfNSW and/or the heritage consultant. |
| 36. | Operational Air Quality Management Plan  
As part of the detailed design process, the Proponent shall undertake a review of operational air quality management for the Project and prepare an Operational Air Quality Management Plan. The plan shall include:  
(a) air flow modelling to confirm proposed air quality goals, and compliance with applicable air quality parameters; and  
(b) identification of reasonable and feasible mitigation measures to ensure compliance with applicable air quality parameters.  
The plan is to be submitted to the ADEM (or nominated delegate) for approval, at least 14 days prior to commencement of permanent built works (or such time as otherwise agreed to by the ADEM). |
| 37. | Operational air quality monitoring  
Monitoring of predicted air quality levels shall be undertaken within 12 months of commencement of operation of the Project. The air quality monitoring shall assess compliance with the air quality goals identified in the Operational Air Quality Management Plan.  
Where exceedance of the predicted operational air quality levels are identified, the Proponent shall investigate additional measures to mitigate the exceedance to comply with the operational air quality goals and implement these measures where reasonable and feasible to the satisfaction of the ADEM (or nominated delegate). |
### Flora and fauna

#### 38. Removal of trees or vegetation
Separate approval, in accordance with TINSW's *Application for Removal or Trimming of Vegetation*, is required for the trimming, cutting, pruning or removal of trees or vegetation where the impact has not already been identified in the EIA for the Project. The trimming, cutting, pruning or removal of trees or vegetation shall be undertaken in accordance with the conditions of that approval.

#### 39. Replanting program
All cleared vegetation shall be offset in accordance with TINSW's *Vegetation Offset Guide (9TP-ST-149)*. All vegetation planted on-site is to consist of locally endemic native species, unless otherwise agreed by the ADEM (or nominated delegate), following consultation with the relevant council, where relevant, and/or the owner of the land upon which the vegetation is to be planted.

### Lighting

#### 40. Lighting scheme
All permanent lighting for the Project is to be developed by a suitably qualified lighting designer and prepared in accordance with the *Dark Sky Planning Guideline* (Department of Planning and Environment 2016), AS 1158 "Road Lighting" and AS 4282 "Control of the Obtrusive Effect of Outdoor Lighting". In the event of an inconsistency between the guideline and Australian Standards, the *Dark Sky Planning Guideline* (Department of Planning and Environment 2016) will prevail to the extent of the inconsistency.

The lighting scheme shall address the following as relevant:

- (a) consideration of lighting demands of different areas
- (b) strategic placement of lighting fixtures to maximise ground coverage
- (c) use of LED lighting
- (d) minimising light spill by directing lighting down and into the rail corridor
- (e) control systems for lighting that dim or switch-off lights settings according to the amount of daylight the zone is receiving
- (f) motion sensors to control low traffic areas
- (g) allowing the lighting system to use low light or switch off light settings while meeting relevant lighting Standards requirements; and
- (h) ensuring security and warning lighting is not directed at neighbouring properties.

The proposed lighting scheme is to be submitted prior to the first design submission (System Definition Review) and accepted by TINSW's – Precincts and Urban Design Team.

### Property

#### 41. Property condition surveys
Subject to landowner agreement, property condition surveys shall be completed prior to piling,
No | Condition
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 | excavation or bulk fill or any vibratory impact works including jack hammering and compaction (designated works) in the vicinity of the following buildings/structures:
(a) | all buildings/structures/roads within a plan distance of 20 metres from the edge of the Designated Works; and
(b) | all heritage listed buildings and other sensitive structures within 50 metres from the edge of the Designated Works.

Property condition surveys need not be undertaken if a risk assessment indicates that selected buildings/structures/roads identified in (a) and (b) will not be affected as determined by a qualified geotechnical and construction engineering expert with appropriate registration on the National Professional Engineers Register prior to commencement of Designated Works.

Selected potentially sensitive buildings and/or structures shall first be surveyed prior to the commencement of the Designated Works and again immediately upon completion of the Designated Works.

All owners of assets to be surveyed, as defined above, are to be advised (at least 14 days prior to the first survey) of the scope and methodology of the survey, and the process for making a claim regarding property damage.

A copy of the survey(s) shall be given to each affected owner. A register of all properties surveyed shall be maintained.

Any damage to buildings, structures, lawns, trees, sheds, gardens, etc. as a result of construction activity direct and indirect (i.e. including vibration and groundwater changes) shall be rectified at no cost to the owner(s).

### Sustainability

#### 42. Infrastructure Sustainability Council of Australia Ratings

The Project is to enter into a ratings agreement with the Infrastructure Sustainability Council of Australia (ISCA) to obtain an Infrastructure Sustainability (IS) "Design" and "As Built" rating using the IS Rating Tool v1.2 for the Maintenance Facility.

A copy of the ISCA ratings agreement shall be submitted to the Associate Director Sustainability, Planning and Development (ADSPD) for review at least four (4) weeks prior to the commencement of construction.

#### 43. Sustainability Manager

A suitably qualified and experienced Sustainability Manager shall be appointed, who is responsible for implementing sustainability objectives for the Project.

Details of the Sustainability Manager, including defined responsibilities, duration and resource allocation throughout the appointment, are to be submitted to the ADSPD for approval, prior to preparation of the Sustainability Management Plan (SMP) (or within such time otherwise agreed to by the ADSPD). Any adjustments to sustainability resource allocations are to be approved by the ADSPD.

#### 44. Sustainability Management Plan

Prior to commencement of construction, a Sustainability Management Plan (SMP) shall be
No | Condition |
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|  | prepared to the satisfaction of the ADSPD. The SMP shall include a statement outlining the Project sustainability obligations, goals, targets, tools and strategies. The SMP shall also include an IS Scorecard which indicates the credits and levels which will be targeted for achievement for the “Design” and “As Built” IS Rating Scheme rating. The Proponent shall submit a copy of the SMP to the ADSPD for approval, at least four (4) weeks prior to the commencement of construction (or within such time as otherwise agreed to by the ADSPD). |

45. **Solar photovoltaic and battery storage system**

Should a solar photovoltaic and battery storage system be implemented for the project, the system would be required to be tested and commissioned to the satisfaction of ADSPD.

**Traffic and access**

46. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (TMP) shall be prepared as part of the CEMP which addresses, as a minimum, the following:

(a) ensuring adequate road signage at construction work sites to inform motorists and pedestrians of the work site ahead to ensure that the risk of road accidents and disruption to surrounding land uses is minimised

(b) maximising safety and accessibility for pedestrians and cyclists

(c) ensuring adequate sight lines to allow for safe entry and exit from the site

(d) ensuring access to railway stations, businesses, entertainment premises and residential properties (unless affected property owners have been consulted and appropriate alternative arrangements made)

(e) managing impacts and changes to on and off street parking and requirements for any temporary replacement parking

(f) parking locations for construction workers away from stations and busy residential areas and details of how this will be monitored for compliance

(g) routes to be used by heavy construction-related vehicles to minimise impacts on sensitive land uses and businesses;

(h) details for relocating kiss and ride, taxi ranks bus stops (and rail replacement bus stops if required), including appropriate signage to direct customers, in consultation with the relevant taxi/bus operator. Particular provisions should also be considered for the accessibility impaired

(i) measures to manage traffic flows around the area affected by the Project, including as required regulatory and direction signposting, line marking and variable message signs and all other traffic control devices necessary for the implementation of the construction TMP

(j) all construction traffic movements (both light and heavy vehicles) from White Street onto Cobbora Road (Golden Highway) are to be via a left turn only. Right turn movements from White Street onto Cobbora Road (Golden Highway) by construction vehicles are not permitted.

The Proponent shall consult with the relevant roads authority during preparation of the TMP.
as required and obtain any approvals as required under the Roads Act 1993. The performance of all Project traffic arrangements must be monitored at regular intervals (no less than annually) during construction.

47. Road condition reports
Prior to construction commencement, the Proponent shall prepare road condition surveys and reports on the condition of roads and footpaths affected by construction. Any damage resulting from the construction of the Project, aside from that resulting from normal wear and tear, shall be repaired at the Proponent's expense.

48. Road safety audit
A Road Safety Audit must be undertaken as part of the detailed design process and on completion of construction. The Road Safety Audit would include specific assessment of:
(a) sight distances for vehicles and mitigation measures proposed
(b) assessment of the relevant intersections and mitigation measures proposed.

The Road Safety Audit would include an assessment of all relevant intersections as determined by a suitably qualified traffic management professional, and is to include those intersections that have been identified in the EIA as likely to perform at a Level of Service F as a result of the project.

The road safety audit is to be submitted to and accepted by TfNSW.

Additional conditions

49. Graffiti and advertising
Hoardings, site sheds, fencing, acoustic walls around the perimeter of the site, and any structures built as part of the Project are to be maintained free of graffiti and advertising not authorised by the Proponent during the construction period. Graffiti and unauthorised advertising will be removed or covered within the following timeframes:
(a) offensive graffiti will be removed or concealed within 24 hours
(b) highly visible (yet inoffensive) graffiti will be removed or concealed within a week
(c) graffiti that is neither offensive or highly visible will be removed or concealed within a month
(d) any unauthorised advertising material will be removed or concealed within 24 hours.

50. Flood Impact Assessment
The detailed design process shall ensure that the Project will not increase flood levels on surrounding private properties for events up to and including the 1 in 100 year ARI (+ for climate change) during construction or operation.

As part of this process, and prior to the finalisation of detailed design, a detailed Flood Impact Assessment is to be developed in accordance with the NSW Government's Floodplain Development Manual (Department of Infrastructure, Planning and Natural Resources, 2005), to confirm the potential impacts of the Project on the regional flood and local drainage processes as a result of the detailed design process. The detailed Flood Impact Assessment shall identify management and mitigation measures to be implemented to ensure that flooding...
No | Condition
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| | impacts are appropriately managed.
| | The Flood Impact Assessment is to be prepared in consultation with Dubbo Regional Council.
| | A copy of the detailed Flood Impact Assessment shall be submitted to the ADEM (or nominated delegate) for approval, prior to completion of the detailed design (or such time as is otherwise agreed to by the ADEM).

51. **Groundwater Assessment**

A detailed Groundwater Assessment is to be developed as part of, but prior to the finalisation of the detailed design process undertaken to confirm the potential impacts of the Project on local and regional groundwater conditions. The Groundwater Assessment shall identify management and mitigation measures to be implemented to ensure that groundwater impacts are appropriately managed.

The Groundwater Assessment shall be prepared in consultation with the NSW Office of Water, and Dubbo Regional Council.

A copy of the detailed Groundwater Assessment shall be submitted to the ADEM (or nominated delegate) for approval, prior to completion of the detailed design (or such time as is otherwise agreed to by the ADEM).

52. **Urban Design and Landscaping Plan**

The Proponent shall prepare an Urban Design and Landscaping Plan (UDLP). The UDLP will include a Final Design Report, prepared and submitted during the detailed design phase.

The UDLP will explain how each of the urban design principles outlined in *Around the Tracks* is addressed in the Project's urban, architectural and landscape design to achieve design excellence. The essential urban design requirements of the Project will be evident in the following matters:

(a) the appropriateness of the proposed design with respect to the existing surrounding landscape, built form, behaviours and use-patterns

(b) the location and design of proposed areas of major earthworks such as noise bunds and on-site detention

(c) materials, finishes, colour schemes and maintenance procedures including graffiti control for new walls, barriers and fences

(d) location and design of pedestrian pathways, fencing and lighting equipment

(e) landscape treatments and street tree planting to integrate with surrounding landscapes

(f) design detail that is sympathetic to the amenity and character of heritage items located within or adjacent to the Project site

(g) total water management principles to be integrated into the design where considered appropriate
### Regional Rail Project Deed
#### Schedule 15 - Key Planning Approval Conditions

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**Momentum Trains**

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<td>any other matters which the conditions require the UDLP to address.</td>
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The UDLP shall be delivered:

i. prior to the finalisation of the Project's detailed design

ii. prepared in consultation with councils and relevant stakeholders

iii. prepared by a registered architect and/or landscape architect; and

iv. accepted by TfNSW's Urban Design Team.
Annexure A - TfNSW’s responsibilities under the Planning Approval

Project Co must comply with all conditions of the Planning Approval, except to the extent responsibility is allocated to TfNSW under this Annexure A.

The allocations of responsibility have been provided for the TfNSW Conditions of Approval, as these are mandatorily applied across all projects determined under Division 5.1 of the EP&A Act.

Table 1 – TfNSW Conditions of Approval

<table>
<thead>
<tr>
<th>Condition number</th>
<th>Extent of TfNSW’s responsibility for the Planning Approval condition specified</th>
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<tbody>
<tr>
<td>9</td>
<td>TfNSW will fulfil the requirements of Condition 9. Project Co must provide all information and documentation as required by the TfNSW Representative to enable TfNSW to fulfill this condition.</td>
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<tr>
<td>10</td>
<td>TfNSW will fulfil the requirements of Condition 10, except that Project Co must develop and implement appropriate procedures for the resolution of complaints. Project Co is to provide all information requested by the TfNSW Representative to assist in the handling and management of complaints.</td>
</tr>
<tr>
<td>13</td>
<td>TfNSW will fulfil the requirements of Condition 13, except that Project Co must comply with all directions provided by the EMR, consistent with the responsibilities of the EMR identified in Condition 13. Project Co will be required to liaise with the EMR and provide access to the project.</td>
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Schedule 16 — Payment Schedule

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* Note: All project details are subject to change and confidentiality agreements.
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# Schedule 16 - Payment Schedule

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**Schedule 16 - Payment Schedule**

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- Item 6: Further information needed.
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**Notes:**
- Lot A is under construction.
- Lot B is delaying due to weather.
- Lot C has been completed successfully.

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**Contract Number:** ISD-17-9185

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## Schedule 17 - Performance Schedule

### Contract Number: ISD-17-6185

Momentum Trains

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The table above outlines the key performance indicators for the Regional Rail Project Deed. Each item corresponds to a specific performance metric, and the details column provides a brief description of what each metric represents.

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<tr>
<td>Value Z</td>
<td>Value [</td>
</tr>
</tbody>
</table>
Schedule 18 — Residual Life and Design Life Schedule

(Design Life): Project Co must ensure that the items identified in the table below have the minimum Design Life as set out in Column 2.

(Replacement of a Design Life Item): When a Design Life Item is replaced, the replacement Design Life Item must have a Design Life that is no less than the Design Life specified for the Design Life Item that is replaced as set out in Column 2.

(Multiple Design Life classifications): If a Design Life Item can be classified in more than one Design Life Item description in Table 1 below, then the higher Design Life and Residual Life for the respective Design Life Item will apply.

(Residual Life): In addition to Project Co's Transition Out obligations under this Deed, Project Co must ensure that the items identified in the table below have the Residual Life as set out in Column 3.

Table 1

<table>
<thead>
<tr>
<th>Item</th>
<th>Design Life (Years)</th>
<th>Residual Life (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Car body shell</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bogie frame</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gear box</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HVAC system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Traction system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brake system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lighting system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auxiliary power system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Auxiliary battery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Doors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Couplers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passenger information system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communication system</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SENSITIVE: NSW GOVERNMENT
TfNSW
<table>
<thead>
<tr>
<th>Item</th>
<th>Design Life (Years)</th>
<th>Residual Life (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gangways</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interior finishes</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Simulator</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simulator</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Maintenance Facility</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance Facility structure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance Facility cladding</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electrical equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cabling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mechanical works</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Painting and floor finishes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roads - asphalt pavements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Roads - concrete pavements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bored piles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crossing work</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civil works structures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Track works</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Earthworks and drainage</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Others</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wheel lathe</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Train wash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Design Life (Years)</td>
<td>Residual Life (Years)</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>---------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Fuelling system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decanting system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upgrade Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New track works</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Each new civil works structure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Each upgraded works structure</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Schedule 20 — Equity Documents Schedule
Schedule 22 — Insurance Schedule

Introduction
There are two parts to this Schedule:
Part A — Delivery Phase Insurances; and
Part B — Maintenance Phase Insurances
Part C — Upgrade Services Insurances
Part A – Delivery Phase Insurances

Project Co must effect and maintain or cause to be effected and maintained, each of the Insurances specified in this Part A on the terms set out in this Part A. Where any sub-limits are not expressly specified in respect of any such Insurance, the policy limit specified for that Insurance applies and there must be no sub-limits.

Summary of cover required:

(a) Construction Risks (Material Damage);
(b) Construction Risks (Public and Products Liability);
(c) Contractors' Pollution Liability;
(d) Construction Risks (Delay in Start Up / Advance Loss of Profits);
(e) Marine Transit (Material Damage);
(f) Marine Transit (Delay in Start Up / Advance Loss of Profits);
(g) Professional Indemnity Insurance;
(h) Contractors' Plant and Equipment
(i) Workers' Compensation Insurance; and
(j) Motor Vehicle Insurance.

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Insureds</strong></td>
<td>Each of: Project Co and its Associates; TfNSW and its Associates; the Security Trustee; and Subcontractors engaged in respect of the Delivery Phase Activities; and Subcontractors engaged in respect of the Upgrade Services and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Delivery Phase Activities and/or the Upgrade Services.</td>
</tr>
<tr>
<td><strong>Sum insured</strong></td>
<td>The full cost of reinstatement or replacement of the Works and the Upgrade Services.</td>
</tr>
<tr>
<td><strong>Scope of cover</strong></td>
<td>Physical loss, destruction or damage to the Works or in respect of the Delivery Phase Activities and/or the Upgrade Services, including construction and reinstatement of the Works. Insurance to include, at a minimum, the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. materials, plant and equipment on the Site;</td>
</tr>
<tr>
<td></td>
<td>ii. principal owned materials;</td>
</tr>
<tr>
<td></td>
<td>iii. continuation of cover for any part of the Works handed over and put into use at any time prior to the whole of the Works achieving Final Acceptance, other than in respect of any parts of the Works that are required to be insured under the Maintenance Phase Industrial Special Risks / Consequential Loss insurance policy</td>
</tr>
<tr>
<td>Insurance element</td>
<td>Minimum Requirement</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>iv. tunnelling (if part of the Delivery Phase Activities and/or the Upgrade Services), trenching and dewatering;</td>
<td></td>
</tr>
<tr>
<td>v. off-site fabrication;</td>
<td></td>
</tr>
<tr>
<td>vi. professional fees with a sub-limit of at least [REDACTED] for any one occurrence;</td>
<td></td>
</tr>
<tr>
<td>vii. removal of debris with a sub-limit of at least [REDACTED] for any one occurrence;</td>
<td></td>
</tr>
<tr>
<td>viii. expediting expenses with sub-limit of at least [REDACTED] for any one occurrence</td>
<td></td>
</tr>
<tr>
<td>ix. contract price escalation and variation;</td>
<td></td>
</tr>
<tr>
<td>x. inland transit, off-site storage with a sub-limit of at least [REDACTED] for any one occurrence in respect of inland transit and [REDACTED] for any one occurrence in respect of off-site storage;</td>
<td></td>
</tr>
<tr>
<td>xi. subsidence/earth movement;</td>
<td></td>
</tr>
<tr>
<td>xii. civil works/excavation works;</td>
<td></td>
</tr>
<tr>
<td>xiii. riots, strikes, industrial action;</td>
<td></td>
</tr>
<tr>
<td>xiv. commissioning and testing of the Works with a sub-limit of at least [REDACTED] for any one occurrence;</td>
<td></td>
</tr>
<tr>
<td>xv. LEG 3/06;</td>
<td></td>
</tr>
<tr>
<td>xvi. guarantee maintenance;</td>
<td></td>
</tr>
<tr>
<td>xvii. terrorism coverage to the extent provided under the Terrorism Insurance Act 2003 (Cth);</td>
<td></td>
</tr>
<tr>
<td>xviii. Government costs with a sub-limit of at least [REDACTED] for any one occurrence;</td>
<td></td>
</tr>
<tr>
<td>xix. claims preparation costs with a sub-limit of at least [REDACTED] for any one occurrence;</td>
<td></td>
</tr>
<tr>
<td>xx. Temporary Equipment and works, scaffolding and formwork;</td>
<td></td>
</tr>
<tr>
<td>xxii. temporary protection and/or loss mitigation expenses, with a sub-limit of at least [REDACTED] for any one occurrence; and</td>
<td></td>
</tr>
<tr>
<td>xxii. cover for loss of or damage to and the cost to rectify, replace or repair property which is free of defective materials, workmanship, design, plan, or specification but is damaged in consequence of other property which has defective materials, workmanship, design, plan, or specification At the Site.</td>
<td></td>
</tr>
</tbody>
</table>

Situation of risk

At the Site.

Anywhere in the Commonwealth of Australia, including whilst in transit (other than ocean marine transit) between any places in the Commonwealth of Australia.

Any overseas situations where Delivery Phase Activities and/or Upgrade Services are being carried out or storage for the Delivery Phase Activities and/or Upgrade Services is undertaken, including:

[REDACTED]
Insurance element | Minimum Requirement
---|---
| or as subsequently endorsed on the policy.

**Deductibles** | Maximum deductible of *** for any one claim

**Additional requirements**

i. To be procured and maintained on a project specific basis; Insurance to include the following cover and specific clauses:

ii. Cross-liability – applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;

iii. Waiver of subrogation;

iv. Severability and non-imputation;

v. Cash settlement option for any claim at the election of the Insureds;

vi. Alterations in material fact/error or omission;

vii. Be subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales; and

viii. Cover to insureds for hold harmless agreements

**Period of cover** | From Financial Close to the later of the Date of Final Acceptance (Project) or the expiration of the last defects liability period in the Delivery Subcontract.

---

### (b) Construction Risks (Public and Products Liability)

**Insurance element** | Minimum Requirement
---|---

**Insureds**

Each of:

- Project Co and its Associates;
- TfNSW and its Associates;
- the Security Trustee;
- Subcontractors engaged in respect of the Delivery Phase Activities; and
- Subcontractors engaged in respect of the Upgrade Services

and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Delivery Phase Activities and/or the Upgrade Services.

**Sum insured**

for any one occurrence or series of occurrences arising out of the same original cause and unlimited in the aggregate except for a claim with respect to products and completed operations liability which will be limited to *** for any one occurrence or series of occurrences and in the aggregate.

**Scope of cover**

Legal liability (including to counterparties) for personal injury and/or property damage caused by an occurrence during the period of cover, where such
<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>occurrence:</strong></td>
<td></td>
</tr>
<tr>
<td>i. arises out of the Delivery Phase Activities and/or the Upgrade Services;</td>
<td></td>
</tr>
<tr>
<td>ii. arises out of the occupation by any Insured of any part of the Site handed over and put into use at any time prior to Final Acceptance (Project); or</td>
<td></td>
</tr>
<tr>
<td>iii. occurs during the defects liability period or equivalent liability period related to the Works under a Key Subcontract, and is caused by any Insured whilst remediing any defects in the Works in accordance with its contractual rights or obligations.</td>
<td></td>
</tr>
<tr>
<td><strong>Situation of risk</strong></td>
<td>Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada.</td>
</tr>
<tr>
<td><strong>Deductibles</strong></td>
<td>Maximum deductible of [redacted] for any one claim except for claims in respect of injury to contractors, sub-contractors, worker to worker on site, in respect of which the maximum deductible is [redacted] for each and every claim (costs inclusive).</td>
</tr>
<tr>
<td><strong>Additional requirements</strong></td>
<td>To be procured and maintained on a project specific basis; Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td>i. Cross liability – applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;</td>
<td></td>
</tr>
<tr>
<td>ii. Waiver of subrogation;</td>
<td></td>
</tr>
<tr>
<td>iii. Severability and non-imputation;</td>
<td></td>
</tr>
<tr>
<td>iv. Terrorism liability to the extent provided under the Terrorism Insurance Act 2003 (Cth);</td>
<td></td>
</tr>
<tr>
<td>v. Worker to worker liability - to ensure that each Insured is covered for each claim by any worker, not being their respective employees, injured during the Delivery Phase Activities and/or the Upgrade Services;</td>
<td></td>
</tr>
<tr>
<td>vi. Expenses incurred by any Insured for first aid to others for bodily injury at the time of an occurrence;</td>
<td></td>
</tr>
<tr>
<td>vii. Pollution liability but only if caused by a sudden, accidental, unexpected and unintended occurrence;</td>
<td></td>
</tr>
<tr>
<td>viii. On hook liability;</td>
<td></td>
</tr>
<tr>
<td>ix. Bodily injury and/or property damage arising from an error or omission in design or specification or breach of professional duty;</td>
<td></td>
</tr>
<tr>
<td>x. Cover for mobile plant and equipment not required to be registered/used as a tool of trade (unless separate insurance procured for this exposure under another Insurance);</td>
<td></td>
</tr>
<tr>
<td>xi. Cover for existing or other property (including any existing buildings) in the Insured's care, custody or control; and</td>
<td></td>
</tr>
<tr>
<td>xii. Be subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.</td>
<td></td>
</tr>
</tbody>
</table>
### Schedule 22 - Insurance Schedule

**Contract Number:** ISD-17-6185

**Momentum Trains**

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period of cover</td>
<td>From Financial Close to the later of the Date of Final Acceptance (Project) or the expiration of the last defects liability period under the Delivery Subcontract</td>
</tr>
</tbody>
</table>

#### (c) Contractors' Pollution Liability

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each of:</td>
</tr>
<tr>
<td></td>
<td>- Project Co and its Associates;</td>
</tr>
<tr>
<td></td>
<td>- TfNSW and its Associates;</td>
</tr>
<tr>
<td></td>
<td>- the Security Trustee;</td>
</tr>
<tr>
<td></td>
<td>- Subcontractors engaged in respect of the Delivery Phase Activities; and</td>
</tr>
<tr>
<td></td>
<td>- Subcontractors engaged in respect of the Upgrade Services</td>
</tr>
<tr>
<td></td>
<td>and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Delivery Phase Activities and/or the Upgrade Services.</td>
</tr>
<tr>
<td>Sum insured</td>
<td>Maximum of [redacted] per pollution condition; and [redacted] in the aggregate.</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>For legal liability (including to counterparties) for death, personal injury, loss of or damage to third party property and clean-up costs as a result of pollution conditions caused by the Delivery Phase Activities and/or the Upgrade Services.</td>
</tr>
<tr>
<td>Situation of risk</td>
<td>Anywhere in the Commonwealth of Australia and/or elsewhere in the world where Delivery Phase Activities and/or the Upgrade Services are being carried out or storage</td>
</tr>
<tr>
<td>Deductibles</td>
<td>Maximum of [redacted] for any one claim</td>
</tr>
<tr>
<td>Additional requirements</td>
<td>Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. Occurrence wording;</td>
</tr>
<tr>
<td></td>
<td>ii. Completed operations extension (for a minimum of 7 years) to cover liability to pay compensation for personal injury or property damage which occurs at any time arising out or in connection with the Delivery Phase Activities and/or the Upgrade Services;</td>
</tr>
<tr>
<td></td>
<td>iii. Contractor controlled;</td>
</tr>
<tr>
<td></td>
<td>iv. Third party property damage for the assets of TfNSW and its Associates;</td>
</tr>
<tr>
<td></td>
<td>v. The policy must be procured and maintained on a project specific basis;</td>
</tr>
<tr>
<td></td>
<td>vi. The policy must specifically cover:</td>
</tr>
<tr>
<td></td>
<td>(a) sudden, accidental and gradual pollution;</td>
</tr>
<tr>
<td></td>
<td>(b) remediation costs;</td>
</tr>
</tbody>
</table>
**Insurance element** | **Minimum Requirement**
--- | ---
(c) | liability connected with asbestos
(d) | liability for soil and groundwater pollution;
(d) | legal defence costs;
(e) | biodiversity and natural resource damages; and
(f) | Pollution and clean-up costs including as a result of the provision of professional services by or under the direction of the Insured.

vii. Cross liability such that:
   a. | claims by Insured, in respect of property in which they have a proprietary, leasehold or licence interest, are treated as third party claims for liability purposes; and
   a. | it applies for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;

viii. | Waiver of subrogation
ix. | Severability and non-imputation; and
x. | Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.

Period of cover | From Financial Close to the Date of Final Acceptance (Project) plus completed operations extension.

---

**d) Construction Risks (Delay in Start Up / Advance Loss of Profits)**

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each of:</td>
</tr>
</tbody>
</table>
| | • Project Co and its Associates; and
<p>| | • the Security Trustee. |
| Level of cover | Monthly Service Payments (unabated). |
| Debt holding costs | Indemnity Period 24 Months |
| Scope of cover | <strong>Delay in Start-Up</strong> |
| | The amount of loss resulting from a delay calculated in accordance with the basis of settlement. |
| | <strong>Monthly Service Payment (MSP)</strong> |
| | Covering reduction in MSP and increase in cost of working during the indemnity period. |
| | <strong>Debt Holding Costs</strong> |
| | Covering additional debt interest and other holding costs incurred by Project Co and its Associates in respect of the delayed receipt of the MSP during the indemnity period. |
| | <strong>Additional Increase Cost of Working</strong> |</p>
<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>i.</td>
<td>Covering the increase in cost of working;</td>
</tr>
<tr>
<td>ii.</td>
<td>Additional debt interest and refinancing charges; and</td>
</tr>
<tr>
<td>iii.</td>
<td>Non-recurring establishment and/or development costs and expenses</td>
</tr>
</tbody>
</table>

**Claims Preparation Costs**

Covering the Insured for reasonable professional fees and expenses (not otherwise recoverable) incurred by the Insured for preparation of claims with a sub-limit of at least __________ per claim.

<table>
<thead>
<tr>
<th>Situation of risk</th>
<th>Anywhere in the Commonwealth of Australia and/or elsewhere in the world where the Delivery Phase Activities are being carried out or storage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deductibles</td>
<td>Maximum deductibles of __________</td>
</tr>
</tbody>
</table>

**Additional requirements**

The policy must be procured and maintained on a project specific basis.

Policy to include the following cover and specific clauses:

i. Cross liability — applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;

ii. Severability and non-imputation;

iii. Waiver of subrogation including against the Key Subcontractors;

iv. Terrorism coverage to the extent provided under the Terrorism Insurance Act 2003 (Cth);

v. Nominated suppliers’ premises extension with a sub-limit of at least:
   a) Manufacturers premises: __________ for any one occurrence; and
   b) Elsewhere: __________ for any one occurrence;

vi. Unnamed Suppliers’ premises with a sub-limit of at least __________ for any one occurrence;

vii. Public utilities extension with a sub-limit of at least __________ for any one occurrence;

viii. Prevention of access with a sub-limit of at least __________ for any one occurrence;

ix. Cover for additional costs of working and increased additional costs of working with a sub-limit of at least __________ for any one occurrence; and

x. Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.

| Period of cover | From Financial Close to the Date of Final Acceptance (Project). |

**(e) Marine Transit (Material Damage)**

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each of: __________</td>
</tr>
<tr>
<td>Insurance element</td>
<td>Minimum Requirement</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>• Project Co and its Associates;</td>
<td></td>
</tr>
<tr>
<td>• TfNSW and its Associates;</td>
<td></td>
</tr>
<tr>
<td>• the Security Trustee;</td>
<td></td>
</tr>
<tr>
<td>• Subcontractors engaged in respect of the Delivery Phase Activities;</td>
<td></td>
</tr>
<tr>
<td>• Subcontractors engaged in respect of the Upgrade Services</td>
<td></td>
</tr>
<tr>
<td>and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Delivery Phase Activities and/or the Upgrade Services.</td>
<td></td>
</tr>
</tbody>
</table>

**Level of cover**

Sum insured is a limit of indemnity equivalent to not less than the maximum total value of the property to be transferred in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.

**Scope of cover**

Loss or damage to all goods intended to be incorporated or used in connection with the Delivery Phase Activities and/or Upgrade Services.

**Situation of risk**

Worldwide

**Maximum deductibles**

\[
\text{of the maximum limit for any one shipment or } \, , \text{ whichever is less.}
\]

**Additional requirements**

Insurance to include the following cover and specific clauses:

i. Marine Transit Vessel / Conveyance / Location Limit with a sub-limit of at least

ii. Transportation by rail (including Cars or Units not operating under their own power) with a sub-limit of at least

iii. All conveyances;

iv. Removal of debris with a sub-limit of at least

v. Strike diversion expenses with a sub-limit of at least

vi. Fumigation expenses with a sub-limit of at least

vii. Expediting expenses with a sub-limit of at least

viii. Institute clauses, (Cargo, Strikes, War, Theft, Pilferage, Non-delivery, Replacement, Classification, Container);

ix. Loading and unloading;

x. Shut out;

xi. Waiver;

xii. Delay;

xiii. General average;

xiv. Insufficiency or unsuitability of packing; and

xv. Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.

**Period of cover**

From the time of leaving the manufacturer or other place of original order in the country of origin until arrival at the Site or other final destination.
### (f) Marine Transit (Delay in Start Up / Advance Loss of Profits)

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each of:</td>
</tr>
<tr>
<td></td>
<td>- Project Co and its Associates; and</td>
</tr>
<tr>
<td></td>
<td>- the Security Trustee.</td>
</tr>
<tr>
<td>Level of cover</td>
<td>Monthly Service Payments (unabated).</td>
</tr>
<tr>
<td></td>
<td>Debt holding costs</td>
</tr>
<tr>
<td></td>
<td>Indemnity Period</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>Delay in Start Up</td>
</tr>
<tr>
<td></td>
<td>Loss of anticipated revenue including holding costs and debt service</td>
</tr>
<tr>
<td></td>
<td>Claims Preparation Costs</td>
</tr>
<tr>
<td></td>
<td>Covering the Insured for reasonable professional fees and expenses (not otherwise recoverable) incurred by the Insured for preparation of claims with a sub-limit of at least [REDACTED].</td>
</tr>
<tr>
<td>Situation of risk</td>
<td>Worldwide</td>
</tr>
<tr>
<td>Deductibles</td>
<td>Maximum deductibles as applicable under the policy.</td>
</tr>
<tr>
<td>Additional Requirements</td>
<td>Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales</td>
</tr>
<tr>
<td>Period of cover</td>
<td>From the time of leaving the manufacturer or other place of original order in the country of origin until arrival at the Site or other final destination.</td>
</tr>
</tbody>
</table>
(g) Professional Indemnity Insurance

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Party responsible for procuring the insurance</td>
<td>Project Co</td>
</tr>
<tr>
<td>Insureds</td>
<td>Each of:</td>
</tr>
<tr>
<td></td>
<td>- Project Co and its Associates; and</td>
</tr>
<tr>
<td></td>
<td>- the Key Subcontractors engaged in respect of the Delivery Phase Activities and/or the Upgrade Services</td>
</tr>
<tr>
<td>Sum insured</td>
<td>Minimum coverage of [redacted] for any one claim and in the aggregate, however, at Financial Close TfNSW will accept a minimum of [redacted] for any one claim and in the aggregate provided that Project Co uses best endeavours to seek to secure a policy with a sum insured of [redacted] (or for any increase to the sum insured in place at Financial Close up to [redacted]) for any one claim and in the aggregate. The obligation above is met by Project Co testing the market on a quarterly basis for a policy with a sum insured of [redacted] (or for any increase to the sum insured in place at Financial Close up to [redacted]) for any one claim and in the aggregate. If terms are available, such terms will be presented to TfNSW for consideration. TfNSW, at its sole discretion, may direct that the terms be procured and TfNSW will pay any additional premium related directly to the increase in the sum insured.</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>Project-specific policy covering legal liability arising from an act, error or omission of the Insured in relation to the performance of each Insured's professional activities and duties in connection with the Delivery Phase Activities and/or the Upgrade Services</td>
</tr>
<tr>
<td>Situation of risk</td>
<td>Worldwide</td>
</tr>
<tr>
<td>Retroactive date</td>
<td>No later than the earlier of:</td>
</tr>
<tr>
<td></td>
<td>i. the commencement of preparation of Project Co's Proposal; and</td>
</tr>
<tr>
<td></td>
<td>ii. the release of the Request for Proposal by TfNSW.</td>
</tr>
<tr>
<td>Deductibles</td>
<td>Maximum deductible of [redacted] for any one claim.</td>
</tr>
<tr>
<td>Additional Requirements</td>
<td>Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. Cover for Project Co as principal for its vicarious liability arising out of acts, errors and omissions of the Subcontractors (including consultants);</td>
</tr>
<tr>
<td></td>
<td>ii. Cover for the Key Subcontractors for their vicarious liability arising out of acts, errors and omissions of their subcontractors and consultants;</td>
</tr>
<tr>
<td></td>
<td>iii. Cover for construction defects as a result of error in design or specification;</td>
</tr>
<tr>
<td></td>
<td>iv. Continuous cover;</td>
</tr>
<tr>
<td></td>
<td>v. Cover if parties have contracted out of proportionate liability;</td>
</tr>
<tr>
<td></td>
<td>vi. Contractual liability extension;</td>
</tr>
</tbody>
</table>
### Contractors’ Plant and Equipment

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each Key Subcontractor carrying out Delivery Phase Activities and/or the Upgrade Services will procure and maintain their own Plant and Equipment insurance in accordance with the requirements below.</td>
</tr>
<tr>
<td>Level of Cover</td>
<td>Indemnity value of the respective plant or equipment used in connection with the Works</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>Damage or destruction for the indemnity value of the respective plant and equipment whether owned or hired by the Key Subcontractors carrying out the Delivery Phase Activities and/or the Upgrade Services.</td>
</tr>
<tr>
<td>Situation of risk</td>
<td>Anywhere in the Commonwealth of Australia and/or elsewhere in the world where works are being carried out and/or storage</td>
</tr>
<tr>
<td>Deductibles</td>
<td>Maximum deductible [redacted] for any one claim.</td>
</tr>
<tr>
<td>Additional Requirements</td>
<td>Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. Interested Parties: Project Co and the Security Trustee, interest to be noted under the Policy; and</td>
</tr>
<tr>
<td></td>
<td>ii. Subject to Australian law and the non-exclusive jurisdiction of any court of competent jurisdiction within Australia.</td>
</tr>
<tr>
<td>Period of cover</td>
<td>From Financial Close to the later of the Date of Final Acceptance (Project) and the expiration of the last defects liability period under the Delivery Subcontract or for a period of 12 months commencing on Financial Close to be renewed annually until the later of the Date of Final Acceptance (Project) and the expiration of the last defects liability period under the Delivery Subcontract.</td>
</tr>
</tbody>
</table>

### Workers’ Compensation Insurance

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Project Co and each of its Associates is required to procure its own Workers’ Compensation and Employer’s Liability policy, in respect of its statutory obligations and otherwise as required by Law and commercial prudence.</td>
</tr>
<tr>
<td>Level of cover</td>
<td>As required by Law.</td>
</tr>
</tbody>
</table>
### Insurance element | Minimum Requirement
--- | ---
Risks covered | As required by Law.
Deductibles | As required by Law.
Annual Premium | N/A.
Waiting Period | No waiting period.
Period of cover | From Financial Close to the later of the Date of Final Acceptance (Project) and the expiration of the last defects liability period under the Delivery Subcontract.

(j) Motor Vehicle Insurance

| Insurance element | Minimum Requirement |
--- | ---
Insureds | Project Co and each of its Associates is required to procure and maintain its own insurance for vehicles to be used in connection with the Delivery Phase Activities and/or the Upgrade Services. |
Level of cover | Own Damage – not less than the market value. Third Party Property - Minimum coverage of [redacted] per occurrence and unlimited in the aggregate. |
Risks covered | Own damage and third party property damage in respect of all vehicles used in connection with the Delivery Phase Activities and/or the Upgrade Services. |
Deductibles | Maximum Deductible of [redacted] for any one claim. |
Additional requirements | i. All motor vehicles must have current registration for compulsory third party insurance as required by Law, if for use on public roads;  
ii. Policy must cover unregistered vehicles or vehicles used as a tool of trade unless covered under the Construction Risks (Public & Products Liability) or Contractors’ Plant and Equipment Policy;  
iii. For vehicles used within Australia, the policy must be subject to Australian law and the non-exclusive jurisdiction of any court of competent jurisdiction within Australia; and  
iv. For vehicles registered overseas and used solely overseas, the policy may be subject to the relevant overseas law where the vehicle is registered. |
Period of cover | From Financial Close to the later of the Date of Final Acceptance (Project) and the expiration of the last defects liability period under the Delivery Subcontract or for a period of 12 months commencing on Financial Close to be renewed annually until the later of the Date of Final Acceptance (Project) and the expiration of the last defects liability period under the Delivery Subcontract. |
Part B – Maintenance Phase Insurances

Project Co must effect and maintain or cause to be effected and maintained each of the Insurances specified in this Part B for the applicable period of cover upon the minimum terms specified in this Part B. Where any sub-limits are not expressly specified in respect of any such Insurance, the policy limit specified for that Insurance applies and there must be no sub-limits.

All amounts specified below in relation to Industrial Special Risks/Consequential Loss Insurance, Public and Products Liability Insurance, Professional Indemnity Insurance, Plant and Equipment Insurance and Motor Vehicle Insurance will be Indexed.

Summary of Maintenance Phase Insurances required:
(a) Industrial Special Risks/Consequential Loss Insurance;
(b) Public and Products Liability Insurance;
(c) Professional Indemnity;
(d) Plant and Equipment
(e) Workers’ Compensation Insurance; and
(f) Motor Vehicle Insurance.

(a) Industrial Special Risks / Consequential Loss Insurance

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each of:</td>
</tr>
<tr>
<td></td>
<td>• Project Co and its Associates;</td>
</tr>
<tr>
<td></td>
<td>• the Security Trustee;</td>
</tr>
<tr>
<td></td>
<td>• TfNSW and its Associates;</td>
</tr>
<tr>
<td></td>
<td>all Key Subcontractors carrying out the Services, and any other person which has an insurable interest or is required to be insured under any Project Document in relation to the Maintenance Phase Sites.</td>
</tr>
<tr>
<td>Premises</td>
<td>The Maintenance Phase Sites, excluding the Stabling Yards.</td>
</tr>
<tr>
<td>Sum insured</td>
<td>i. At least the following Limit(s) of Liability in respect of any one loss or series of losses arising out of the one event at any one situation: in relation to the Maintenance Facility Site, its full reinstatement or replacement value;</td>
</tr>
<tr>
<td></td>
<td>ii. in relation to the Legacy Maintenance Centre Site, its full reinstatement or replacement value;</td>
</tr>
<tr>
<td></td>
<td>iii. in relation to the New Fleet, its full reinstatement or replacement value;</td>
</tr>
<tr>
<td></td>
<td>iv. in relation to consequential loss (business interruption), an amount equivalent to 24 Monthly Service Payments (unabated) plus such other additional amounts as specified by this Schedule; and</td>
</tr>
<tr>
<td></td>
<td>v. an amount sufficient to replace the Insureds’ contents at the Site.</td>
</tr>
<tr>
<td>Scope and Level of Cover</td>
<td>Section 1 Material Loss or Damage</td>
</tr>
<tr>
<td></td>
<td>Any physical loss, destruction of or damage happening at the premises insured including all tangible property, plant and equipment forming a fixture of such premises including all tangible property from any cause not otherwise excluded from an industry standard Mark IV ISR wording.</td>
</tr>
<tr>
<td>Insurance element</td>
<td>Minimum Requirement</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td></td>
<td>Some indicative sub-limits are set out below. Actual sub-limits are to be as determined in accordance with clause 46.6 of this Deed.</td>
</tr>
<tr>
<td><strong>All Tangible Property covered, but not limited to:</strong></td>
<td></td>
</tr>
<tr>
<td>i.</td>
<td>Buildings and roads</td>
</tr>
<tr>
<td>ii.</td>
<td>Plant, machinery, boilers</td>
</tr>
<tr>
<td>iii.</td>
<td>Contents</td>
</tr>
<tr>
<td>iv.</td>
<td>Raw stock and materials</td>
</tr>
<tr>
<td>v.</td>
<td>Unregistered plant and Equipment (mobile plant/forklifts)</td>
</tr>
<tr>
<td>vi.</td>
<td>Tunnels and links</td>
</tr>
<tr>
<td>vii.</td>
<td>Rolling Stock</td>
</tr>
<tr>
<td>viii.</td>
<td>Glass</td>
</tr>
<tr>
<td><strong>Perils covered to include at a minimum:</strong></td>
<td></td>
</tr>
<tr>
<td>i.</td>
<td>Earthquake</td>
</tr>
<tr>
<td>ii.</td>
<td>Flood</td>
</tr>
<tr>
<td>iii.</td>
<td>Action of the sea/tidal wave/tsunami</td>
</tr>
<tr>
<td>iv.</td>
<td>Storm/tempest/cyclone</td>
</tr>
<tr>
<td>v.</td>
<td>Hail/lightning strike</td>
</tr>
<tr>
<td>vi.</td>
<td>Landslip/earth movement</td>
</tr>
<tr>
<td>vii.</td>
<td>Fire/explosion</td>
</tr>
<tr>
<td>viii.</td>
<td>Impact</td>
</tr>
<tr>
<td>ix.</td>
<td>Burglary/theft</td>
</tr>
<tr>
<td>x.</td>
<td>Malicious damage</td>
</tr>
<tr>
<td>xi.</td>
<td>Riots/strikes/civil commotion</td>
</tr>
<tr>
<td>xii.</td>
<td>Accidental damage</td>
</tr>
<tr>
<td><strong>Sub limits:</strong></td>
<td>The following sublimits are applicable to any one event at any one situation:</td>
</tr>
<tr>
<td>i.</td>
<td>Removal of Debris and cost of demolition</td>
</tr>
<tr>
<td>ii.</td>
<td>Accidental Damage</td>
</tr>
<tr>
<td>iii.</td>
<td>Expediting Expenses</td>
</tr>
<tr>
<td>iv.</td>
<td>Property in Transit (within Australia) excluding money and Rolling Stock</td>
</tr>
<tr>
<td>v.</td>
<td>Rolling Stock</td>
</tr>
<tr>
<td>vi.</td>
<td>Extra Cost of Reinstatement</td>
</tr>
<tr>
<td>vii.</td>
<td>Additional Extra Cost of Reinstatement</td>
</tr>
</tbody>
</table>
### Section 2 Consequential Loss

In the event of any building or any other property or any part thereof used by the Insured at the insured premises for the Services being physically lost, destroyed or damaged and the Services carried on by the Insured being in consequence thereof interrupted or interfered with, the amount of loss resulting from such interruption or interference in accordance with the applicable basis of settlement.

**Sublimits:**

The following sublimits are applicable to any one event at any one situation:

1. Increased costs of working
2. Additional increased cost of working
3. Utilities memorandum
4. Prevention of access
5. Suppliers / Customers - worldwide
6. Human infectious disease
7. Professional fees/ claims preparation costs
8. Accounts receivables

**Indemnity Period:** 24 months

**Situation of risk:** Anywhere in the Commonwealth of Australia and whilst in transit in the Commonwealth of Australia.

**Deductibles:** A maximum deductible of [redacted] for any one claim.

**Additional requirements:** The policy must be procured on a project specific basis.

Insurance to include the following cover and specific clauses:

Section 1 to cover physical loss, destruction or damage to all tangible property:

- belonging to any Insured;
- for which any Insured is responsible or has assumed responsibility to insure prior to damage occurring; and
- in which an Insured acquires an insurable interest during the period of cover.

Cover for sue and labour expenses.

An appropriate amendment to the basis of settlement clause to clarify that the policy will cover the reductions in the Monthly Service Payment in accordance with the Payment Schedule and Performance Schedule as a...
result of an insured peril.

An appropriate amendment to the policy will be required to clarify that (subject to overall limits, and policy terms and conditions) TfNSW and any Associate of TfNSW are entitled to be covered under this policy to the extent that the Monthly Service Payment is not reduced in accordance with the Payment Schedule or Performance Schedule as a result of an event, act, omission, fact, matter or occurrence (in whole or part) but TfNSW or any Associate of TfNSW incurs Liabilities that would otherwise be claimable under the policy, such as increased costs of working or additional increased costs of working.

Co-insurance provisions not to apply to Section 1 & Section 2.

Cross liability – applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;

Waiver of subrogation;

Severability and non-imputation;

Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales

Period of cover

For a period of 12 months commencing on the beginning of the Maintenance Phase, to be renewed annually until the Expiry Date.

For each sum insured in respect of an asset or site, coverage is required to commence from the date on which that asset or site achieves Provisional Acceptance, or in respect of the Legacy Maintenance Centre Site, the Date of Handover.

(b) Public and Products Liability Insurance

Insurance element | Minimum Requirement
--- | ---
Insureds | Each of:
  - Project Co and its Associates;
  - Security Trustee;
  - TfNSW and its Associates; and
  - all Key Subcontractors carrying out the Services and each other person which has an insurable interest or is required to be insured under any Project Documents in relation to the Maintenance

For the avoidance of doubt, TfNSW and its Associates must be included as an Insured under this policy for all acts or omissions committed during the implementation of the Services (whether or not the liability is vicarious or caused by the act or omission of TfNSW or its relevant Associate).

Sum insured | for any one occurrence with regards to Public Liability and unlimited in the aggregate; and
unlimited for any one occurrence and in annual aggregate for Products Liability.

Scope of cover: | To cover legal liability for claims in respect of:
<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>i.</td>
<td>physical loss, destruction or damage to real or personal property, including property in the care, custody and control of the Insured, for which the Insured is responsible and which is not otherwise already insured for the Insured's benefit, and including consequential economic loss; and</td>
</tr>
<tr>
<td>ii.</td>
<td>personal injury (including libel and slander), disease or death of any person including resultant economic loss, arising out of or in connection with the Insured's products, the provision of the Services, or this Deed during the Maintenance Phase.</td>
</tr>
</tbody>
</table>

**Situation of risk**
Worldwide but excluding any operations of the Insureds domiciled in the United States of America or Canada.

**Deductibles**
A maximum deductible of [redacted] for any one claim.

**Additional requirements**
The policy must be procured and maintained on a project specific basis.

Insurance to include the following cover and specific clauses:

i. Care custody and control;

ii. Cover for car park vehicles in care, custody or control

iii. Worker to worker liability;

iv. Liability arising out of personal injury to contract labour hire persons;

v. Cover liability arising from construction operations on site;

vi. Cover for mobile plant and equipment not required to be registered/used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure);

vii. Expenses incurred by any Insured for first aid to others for bodily injury at the time of an occurrence;

viii. Bodily injury and/or property damage arising from an error or omission in design or specification or breach of professional duty not for a fee;

ix. Voluntary Worker/work experience;

ix. Cross liability — applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;

x. Waiver of subrogation;

xi. Severability and non-imputation;

xii. Pollution (sudden, accidental, unexpected and unintended) including as a result of the provision of professional services by or under the direction of the Insured; and

xii. Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales

To the extent any existing policy does not include cover for bodily injury and/or property damage arising from an error or omission in design or specification or breach of professional duty where a fee is charged, best endeavours must be used to procure and maintain insurance on a project...
### (c) Maintenance Phase - Professional Indemnity Insurance

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Project Co and its Associates. Each Key Subcontractor carrying out the Services.</td>
</tr>
<tr>
<td>Sum insured</td>
<td>[redacted] for any claim and in the aggregate, during the period of cover.</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>Covering legal liability arising from an act, error or omission of the insured in relation to the performance of each Insured's professional activities and duties in connection with the Services.</td>
</tr>
<tr>
<td>Situation of risk</td>
<td>Worldwide.</td>
</tr>
<tr>
<td>Retroactive date</td>
<td>From commencement of the professional services in connection with the Services.</td>
</tr>
<tr>
<td>Deductibles</td>
<td>Maximum deductible of [redacted] per claim.</td>
</tr>
<tr>
<td>Additional Requirements</td>
<td>Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. Continuous cover;</td>
</tr>
<tr>
<td></td>
<td>ii. Policy to respond to legal liability (breach of professional duty) following a medical malpractice related issue;</td>
</tr>
<tr>
<td></td>
<td>iii. Cover if parties have contracted out of proportionate liability;</td>
</tr>
<tr>
<td></td>
<td>iv. Injury and/or damage to third parties, arising from an act, error, or omission from the provision of professional services by the Insured; and</td>
</tr>
<tr>
<td></td>
<td>v. Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.</td>
</tr>
<tr>
<td>Period of cover</td>
<td>At all times during the Maintenance Phase plus an additional 7 years after completion of the relevant professional services in connection with the Services or for a period of 12 months commencing on Financial Close to be renewed annually until 7 years after completion of the relevant professional services in connection with the Services.</td>
</tr>
</tbody>
</table>

### (d) Maintenance Phase – Plant and Equipment

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance element</td>
<td>Minimum Requirement</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Insureds</td>
<td>Project Co and its Associates will procure and maintain their own Plant and Equipment insurance in accordance with these requirements. Each Key Subcontractor carrying out the Services will procure and maintain their own Plant and Equipment insurance in accordance with these requirements.</td>
</tr>
<tr>
<td>Level of Cover</td>
<td>Indemnity value of the respective plant or equipment used in connection with the Services excluding fixed equipment in the Maintenance Phase Sites.</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>Damage or destruction for an indemnity value of the respective plant and equipment whether owned or hired by the Key Subcontractors carrying out the Services used for the purposes of undertaking the Services.</td>
</tr>
<tr>
<td>Situation of risk</td>
<td>Anywhere in the Commonwealth of Australia.</td>
</tr>
<tr>
<td>Retroactive date</td>
<td>N/A.</td>
</tr>
<tr>
<td>Deductibles</td>
<td>Maximum deductible of [redacted] for any one claim.</td>
</tr>
</tbody>
</table>
| Additional Requirements | Insurance to include the following cover and specific clauses:  
   i. Interested Parties: Project Co and the Security Trustee, interest to be noted under the Policy; and  
   ii. Subject to Australian law and the non-exclusive jurisdiction of any court of competent jurisdiction within Australia. |
| Period of cover   | At all times during the Maintenance Phase or commencing at the beginning of the Maintenance Phase and renewed annually until the end of the Maintenance Phase. |
(e) **Workers' Compensation Insurance**

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Project Co and each of its Associates carrying out the Services is required to procure its own Workers' Compensation and Employer's Liability policy in respect of its statutory obligations and otherwise as required by Law and commercial prudence.</td>
</tr>
<tr>
<td>Level of cover</td>
<td>As required by Law</td>
</tr>
<tr>
<td>Risks covered</td>
<td>As required by Law</td>
</tr>
<tr>
<td>Retroactive date</td>
<td>N/A</td>
</tr>
<tr>
<td>Deductibles</td>
<td>As required by Law</td>
</tr>
<tr>
<td>Excess</td>
<td>N/A</td>
</tr>
<tr>
<td>Waiting period</td>
<td>No waiting period</td>
</tr>
<tr>
<td>Additional requirements</td>
<td>N/A</td>
</tr>
<tr>
<td>Period of cover</td>
<td>At all times during the Maintenance Phase</td>
</tr>
</tbody>
</table>

(f) **Motor Vehicle Insurance**

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insured</td>
<td>Project Co and each of its Associates to procure its own insurance for vehicles to be used in connection with the Services.</td>
</tr>
<tr>
<td>Level of cover</td>
<td>Own Damage – not less than the market value Third Party Property - Minimum coverage of ___ per occurrence and unlimited in the aggregate.</td>
</tr>
<tr>
<td>Risks covered</td>
<td>Own Damage and Third party property damage in respect of all vehicles used in connection with the Services.</td>
</tr>
<tr>
<td>Deductibles</td>
<td>Maximum deductible of ___ for any one claim.</td>
</tr>
<tr>
<td>Additional requirements</td>
<td>Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. All motor vehicles must be registered currently for compulsory third party insurance as required by Law, if for use on public roads.</td>
</tr>
<tr>
<td></td>
<td>ii. Cover for mobile plant and equipment not required to be registered or used as a tool of trade or registered plant whilst used as a tool of trade (unless separate insurance procured for this exposure or covered under the Public and Products Liability Insurance); and</td>
</tr>
<tr>
<td></td>
<td>iii. Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales</td>
</tr>
<tr>
<td>Period of cover</td>
<td>For the duration of the Maintenance Phase or commencing at the beginning of the Maintenance Phase and renewed annually until the end of the Maintenance Phase.</td>
</tr>
</tbody>
</table>
Part C – Upgrade Services Insurances

For the duration of the Period of Cover specified for each Insurance specified under Part A of this Schedule 22, the requirements specified therein shall be sufficient to meet the insurance coverage requirements for the Upgrade Services. To the extent that the Period of Cover as Specified for each Insurance specific in this Part C exceeds the Period of Cover for the equivalent class of Insurance under Part A of this Schedule 22, Project Co must effect and maintain or cause to be effected and maintained, each of the Insurances specified in this Part C on the terms set out in this Part C in respect of the Upgrade Services.

Sub-limits for the scope of cover required must be consistent with Best Delivery Practices.

Summary of cover required:
(a) Construction Risks (Material Damage);
(b) Construction Risks (Public and Products Liability);
(c) Contractors' Pollution Liability;
(d) Marine Transit

(a) Construction Risks (Material Damage)

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each of:</td>
</tr>
<tr>
<td></td>
<td>Project Co and its Associates;</td>
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<tr>
<td></td>
<td>TfNSW and its Associates;</td>
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<tr>
<td></td>
<td>the Security Trustee; and</td>
</tr>
<tr>
<td></td>
<td>Subcontractors engaged in respect of the Upgrade Services</td>
</tr>
<tr>
<td></td>
<td>and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Upgrade Services.</td>
</tr>
<tr>
<td>Sum insured</td>
<td>The full cost of reinstatement or replacement of the Upgrade Services.</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>Physical loss, destruction or damage to the Works or in respect of the Upgrade Services, including construction and reinstatement of the Upgrade Services.</td>
</tr>
<tr>
<td></td>
<td>Insurance to include, at a minimum, the following cover and specific clauses:</td>
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<tr>
<td></td>
<td>i. materials, plant and equipment on the Site;</td>
</tr>
<tr>
<td></td>
<td>ii. principal owned materials;</td>
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<td></td>
<td>iii. continuation of cover for any part of the Works handed over and put into use at any time prior to the whole of the Works achieving Final Acceptance;</td>
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<td></td>
<td>iv. tunnelling (if part of the Upgrade Services), trenching and dewatering;</td>
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<td>v. off-site fabrication;</td>
</tr>
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<td></td>
<td>vi. professional fees;</td>
</tr>
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<td></td>
<td>vii. removal of debris;</td>
</tr>
</tbody>
</table>
## Schedule 22 - Insurance Schedule

**Contract Number:** ISD-17-6185  
**Momentum Trains**

### Insurance element | Minimum Requirement
--- | ---
viii. | expediting expenses
ix. | contract price escalation and variation;
x. | inland transit, off-site storage
xi. | subsidence/earth movement;
 xii. | civil works/excavation works;
xiii. | riots, strikes, industrial action;
xiv. | commissioning and testing of the Works with a sub-limit of at least [redacted] for any one occurrence;
xv. | LEG 3/06;
xvi. | guarantee maintenance;
xvii. | terrorism coverage to the extent provided under the Terrorism Insurance Act 2003 (Cth);
xviii. | Government costs
ix. | claims preparation costs
xx. | Temporary Equipment and works, scaffolding and formwork;
xxi. | temporary protection and/or loss mitigation expenses; and
xxii. | cover for loss of or damage to and the cost to rectify, replace or repair property which is free of defective materials, workmanship, design, plan, or specification but is damaged in consequence of other property which has defective materials, workmanship, design, plan, or specification

### Situation of risk

At the Site.

Anywhere in the Commonwealth of Australia, including whilst in transit (other than ocean marine transit) between any places in the Commonwealth of Australia.

Any overseas situations where Upgrade Services are being carried out or storage for the Upgrade Services is undertaken, or as subsequently endorsed on the policy.

### Deductibles

**Maximum deductible of [redacted] for any one claim**

### Additional requirements

i. To be procured and maintained on a project specific basis;
ii. Insurance to include the following cover and specific clauses:
iii. Cross-liability – applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;
iv. Waiver of subrogation;
v. Severability and non-imputation;
vi. Cash settlement option for any claim at the election of the Insureds;
vii. Alterations in material fact/error or omission;
viii. Be subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.
### Insurance Schedule

#### Construction Risks (Public and Products Liability)

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
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</thead>
<tbody>
<tr>
<td><strong>Insureds</strong></td>
<td>Each of:</td>
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<tr>
<td></td>
<td>Project Co and its Associates;</td>
</tr>
<tr>
<td></td>
<td>TfNSW and its Associates;</td>
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<td></td>
<td>the Security Trustee; and</td>
</tr>
<tr>
<td></td>
<td>Subcontractors engaged in respect of the Upgrade Services</td>
</tr>
<tr>
<td></td>
<td>and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Upgrade Services.</td>
</tr>
<tr>
<td><strong>Sum insured</strong></td>
<td>$xxx for any one occurrence or series of occurrences arising out of the same original cause and unlimited in the aggregate except for a claim with respect to products and completed operations liability which will be limited to $xxx for any one occurrence or series of occurrences and in the aggregate.</td>
</tr>
<tr>
<td><strong>Scope of cover</strong></td>
<td>Legal liability (including to counterparties) for personal injury and/or property damage caused by an occurrence during the period of cover, where such occurrence:</td>
</tr>
<tr>
<td></td>
<td>i. arises out of the Upgrade Services;</td>
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<td></td>
<td>ii. arises out of the occupation by any Insured of any part of the Site handed over and put into use at any time prior to Final Acceptance (Project); or</td>
</tr>
<tr>
<td></td>
<td>iii. occurs during the defects liability period or equivalent liability period related to the Works under a Key Subcontract, and is caused by any Insured whilst remedying any defects in the Works in accordance with its contractual rights or obligations.</td>
</tr>
<tr>
<td><strong>Situation of risk</strong></td>
<td>Anywhere in the world but excluding any operations of the Insureds domiciled in the United States of America or Canada.</td>
</tr>
<tr>
<td><strong>Deductibles</strong></td>
<td>Maximum deductible of $xxx for any one claim except for claims in respect of injury to contractors, sub-contractors, worker to worker on site, in respect of which the maximum deductible is $xxx for each and every claim (costs inclusive).</td>
</tr>
<tr>
<td><strong>Additional requirements</strong></td>
<td>To be procured and maintained on a project specific basis;</td>
</tr>
<tr>
<td></td>
<td>Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. Cross liability – applying for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;</td>
</tr>
<tr>
<td></td>
<td>ii. Waiver of subrogation;</td>
</tr>
</tbody>
</table>
### Insurance element | Minimum Requirement
--- | ---
iii. | Severability and non-imputation;
iv. | Terrorism liability to the extent provided under the Terrorism Insurance Act 2003 (Cth);
v. | Worker to worker liability - to ensure that each Insured is covered for each claim by any worker, not being their respective employees, injured during the Upgrade Services;
vi. | Expenses incurred by any Insured for first aid to others for bodily injury at the time of an occurrence;
vii. | Pollution liability but only if caused by a sudden, accidental, unexpected and unintended occurrence;
viii. | On hook liability;
ix. | Bodily injury and/or property damage arising from an error or omission in design or specification or breach of professional duty;
x. | Cover for mobile plant and equipment not required to be registered/used as a tool of trade (unless separate insurance procured for this exposure under another Insurance);
xii. | Pollution liability but only if caused by a sudden, accidental, unexpected and unintended occurrence;

Period of cover: From Financial Close to the Date of Final Acceptance (Upgrade Services).

### (c) Contractors' Pollution Liability

| Insurance element | Minimum Requirement |
--- | --- |
Insureds | Each of:
Project Co and its Associates;
TfNSW and its Associates;
the Security Trustee; and
Subcontractors engaged in respect of the Upgrade Services and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Upgrade Services. |
Sum insured | $[redacted] per pollution condition; and $[redacted] in the aggregate. |
Scope of cover | For legal liability (including to counterparties) for death, personal injury, loss of or damage to third party property and clean-up costs as a result of pollution conditions caused by the Upgrade Services. |
Situation of risk | Anywhere in the Commonwealth of Australia and/or elsewhere in the world where Upgrade Services are being carried out or storage |
Deductibles | Maximum of $[redacted] for any one claim |
Additional requirements | Insurance to include the following cover and specific clauses:
### Regional Rail Project Deed

**Schedule 22 - Insurance Schedule**

**Contract Number: ISD-17-6185**

**Momentum Trains**

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>i.</td>
<td>Occurrence wording;</td>
</tr>
<tr>
<td>ii.</td>
<td>Completed operations extension (for a minimum of 7 years) to cover liability to pay compensation for personal injury or property damage which occurs at any time arising out or in connection with the Upgrade Services;</td>
</tr>
<tr>
<td>iii.</td>
<td>Contractor controlled;</td>
</tr>
<tr>
<td>iv.</td>
<td>Third party property damage for the assets of TfNSW and its Associates;</td>
</tr>
<tr>
<td>v.</td>
<td>The policy must be procured and maintained on a project specific basis;</td>
</tr>
<tr>
<td>vi.</td>
<td>The policy must specifically cover:</td>
</tr>
<tr>
<td>vii.</td>
<td>(a) sudden, accidental and gradual pollution;</td>
</tr>
<tr>
<td>viii.</td>
<td>(b) remediation costs;</td>
</tr>
<tr>
<td>ix.</td>
<td>(c) liability connected with asbestos</td>
</tr>
<tr>
<td>x.</td>
<td>(d) liability for soil and groundwater pollution;</td>
</tr>
<tr>
<td>xi.</td>
<td>(d) legal defence costs;</td>
</tr>
<tr>
<td>xii.</td>
<td>(e) biodiversity and natural resource damages; and</td>
</tr>
<tr>
<td>xiii.</td>
<td>(f) Pollution and clean-up costs including as a result of the provision of professional services by or under the direction of the Insured.</td>
</tr>
<tr>
<td>xiv.</td>
<td>Cross liability such that:</td>
</tr>
<tr>
<td>a.</td>
<td>Claims by Insured, in respect of property in which they have a proprietary, leasehold or licence interest, are treated as third party claims for liability purposes; and</td>
</tr>
<tr>
<td>b.</td>
<td>it applies for the benefit of each Insured to ensure that each of the Insureds is deemed a separate insured for the purpose of indemnity under the policy;</td>
</tr>
<tr>
<td>xv.</td>
<td>Waiver of subrogation</td>
</tr>
<tr>
<td>xvi.</td>
<td>Severability and non-imputation; and</td>
</tr>
<tr>
<td>xvii.</td>
<td>Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.</td>
</tr>
</tbody>
</table>

**Period of cover**

From Financial Close to the later of the Date of Final Acceptance (Upgrade Services) plus completed operations extension.

### (d) Marine Transit (Material Damage)

<table>
<thead>
<tr>
<th>Insurance element</th>
<th>Minimum Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insureds</td>
<td>Each of:</td>
</tr>
<tr>
<td></td>
<td>• Project Co and its Associates;</td>
</tr>
<tr>
<td></td>
<td>• TfNSW and its Associates;</td>
</tr>
<tr>
<td></td>
<td>• the Security Trustee;</td>
</tr>
<tr>
<td></td>
<td>• Subcontractors engaged in respect of the Upgrade Services</td>
</tr>
<tr>
<td>Insurance element</td>
<td>Minimum Requirement</td>
</tr>
<tr>
<td>-------------------</td>
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</tr>
<tr>
<td></td>
<td>and each other party which has an insurable interest or is required to be insured under any Project Document relating to the Upgrade Services.</td>
</tr>
<tr>
<td>Level of cover</td>
<td>Sum insured is a limit of indemnity equivalent to not less than the maximum total value of the property to be transferred in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.</td>
</tr>
<tr>
<td>Scope of cover</td>
<td>Loss or damage to all goods intended to be incorporated or used in connection with the Upgrade Services.</td>
</tr>
<tr>
<td>Situation of risk</td>
<td>Worldwide</td>
</tr>
<tr>
<td>Maximum deductibles</td>
<td>____ of the maximum limit for any one shipment or _____ whichever is less.</td>
</tr>
<tr>
<td>Additional requirements</td>
<td>Insurance to include the following cover and specific clauses:</td>
</tr>
<tr>
<td></td>
<td>i. All conveyances;</td>
</tr>
<tr>
<td></td>
<td>ii. Removal of debris with a sub-limit of an amount consistent with Best Delivery Practices;</td>
</tr>
<tr>
<td></td>
<td>iii. Strike diversion expenses with a sub-limit of an amount consistent with Best Delivery Practices;</td>
</tr>
<tr>
<td></td>
<td>iv. Fumigation expenses with a sub-limit of an amount consistent with Best Delivery Practices;</td>
</tr>
<tr>
<td></td>
<td>v. Expediting expenses with a sub-limit of an amount consistent with Best Delivery Practices;</td>
</tr>
<tr>
<td></td>
<td>vi. Institute clauses, (Cargo, Strikes, War, Theft, Pilferage, Non-delivery, Replacement, Classification, Container);</td>
</tr>
<tr>
<td></td>
<td>vii. Loading and unloading;</td>
</tr>
<tr>
<td></td>
<td>viii. Shut out;</td>
</tr>
<tr>
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<td>ix. Waiver;</td>
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<td>x. Delay;</td>
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<td>xi. General average;</td>
</tr>
<tr>
<td></td>
<td>xii. Insufficiency or unsuitability of packing; and</td>
</tr>
<tr>
<td></td>
<td>xiii. Subject to New South Wales law and the non-exclusive jurisdiction of any court of competent jurisdiction in New South Wales.</td>
</tr>
<tr>
<td>Period of cover</td>
<td>From Financial Close to the Date of Final Acceptance (Upgrade Services).</td>
</tr>
</tbody>
</table>

(e) Construction Risks (Delay in Start Up / Advance Loss of Profits)

Not required.

(f) Marine Transit (Delay in Start Up / Advance Loss of Profits)
Not required.

(g) **Professional Indemnity Insurance**

Note: PI Policy under the Delivery Phase insurances remains sufficient to cover this exposure and/or the Maintenance Phase Policy as the Upgrade Services are part of the Services.

(h) **Contractors' Plant and Equipment**

Note: should be covered already by Maintenance Phase Policy as the Upgrade Services are part of the Services.

(h) **Workers' Compensation Insurance**

Note: should be covered already by Maintenance Phase Policy as the Upgrade Services are part of the Services.

(j) **Motor Vehicle Insurance**

Note: should be covered already by Maintenance Phase Policy as Upgrade Services are part of the Services.
<table>
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<tr>
<th>Column 1</th>
<th>Column 2</th>
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<tbody>
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**Notes:**
- This table contains commercially sensitive information.
- Specific details have been redacted for confidentiality.
- For further details, please refer to the original document.

**Contract Number:** ISD-17-6185

**Momentum Trains**
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1. Definitions

For the purposes of this Schedule, the following definitions shall apply:

"Actual Proceeds" has the meaning given to it in section 2.3(b) of this Schedule.

"Additional Amount" has the meaning given to it in section 2.3(b) of this Schedule.

"Base Case Project Return" means the percentage set out in cell H12 of the Model Output Schedule in the Financial Model.

"Capital Sum" means the capital sum offered by each Compliant Tenderer under the Tender Process or the capital sum which the New Project Co is to pay to TfNSW, in each case in consideration for TfNSW entering into the New Contract, as the context permits or requires.

"Compensation Date" means either:

(a) if section 3.2(c) of this Schedule applies, the earlier of:
   (i) the date that the New Contract is entered into; and
   (ii) the date on which the Termination Payment payable to Project Co has been agreed or determined in accordance with section 3.6 (Termination for Default Termination Event) of this Schedule; or

(b) if section 3.3 (Expert determination) of this Schedule applies, the date on which the Estimated Fair Value has been agreed or determined.

"Compliant Tender" means a tender which meets all of the Qualification Criteria.

"Compliant Tenderer" means a tenderer who submits a Compliant Tender.

"Cost of Debt" means the value shown in cell H13 of the Model Output Schedule in the Financial Model.

"Debt Interest Rate" means the total non-default interest rate payable on Debt as provided in the Financial Model.

"Deemed New Contract" means a contract on the same terms and conditions as this Deed as at the Termination Date, but with the following amendments:

(a) if this Deed is terminated during the Delivery Phase, then the relevant Dates for Acceptance shall be extended by such period as would have been granted to allow a New Project Co (had one been appointed) to achieve the relevant stages of Acceptance not yet achieved;

(b) any Major Default Notices shall be cancelled; and

(c) the term of such contract shall be equal to the period from the Compensation Date to and including the Final Expiry Date.
Estimated Fair Value or EFV means the amount determined in accordance with section 3.3 (Expert determination) and section 3.4 (Estimated Fair Value) of this Schedule which a third party would pay to TfNSW as the Fair Value of the Deemed New Contract.

Excluded Account means each account established in the name of a Project Co Entity that is an equity reserve or distribution account (howsoever named).

Fair Value means the amount at which an asset, equity or liability could be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale.

Force Majeure Subcontractor Breakage Costs means the amounts reasonably and properly payable by Project Co to the Key Subcontractors under the Key Subcontracts on termination of this Deed pursuant to clauses 44.6(c)(iii) (Consequences of TfNSW election not to repair or rebuild), 47.3(a)(ii) (Agreed Uninsurable Risks resulting in loss or damage) or 49.3 (Termination for Force Majeure), provided:

(a) such amounts are incurred under arrangements and/or agreements on arms-length commercial terms entered into:

   (i) prior to the relevant Force Majeure Event or Uninsurable Risk (as applicable) occurring; or

   (ii) if after that date, then with the consent of the TfNSW Representative prior to the Termination Date;

(b) both Project Co and the relevant Key Subcontractor have used reasonable efforts to mitigate such amounts;

(c) such amounts do not exceed the relevant amounts permitted under clauses 12.2(d)(i) and 12.2(d)(ii); and

(d) without prejudice to paragraph (c), such amounts do not include any amount in respect of loss of profit payable to the Key Subcontractor, any Significant Subcontractor or any other person.

Instalment Amount has the meaning given to it in section 2.1(d) of this Schedule.

Instalment Date means the date on which any Project Co Entity would have been required to pay debt service payments or repayments to the Financiers under the Finance Documents had this Deed not been terminated by TfNSW and there was no default under the Finance Documents.

Liquid Market means that there are at least two parties (in addition to any party controlled by the Financiers, each of whom is capable of being a suitable substitute contractor) in the prevailing market for public private partnership contracts or similar contracts for the provision of services (in each case the same as or similar to this Deed), such that the result of that tender process would provide a reasonably likely indicator of Fair Value.

New Contract means a contract on the same terms and conditions as this Deed as at the Termination Date, but with the following amendments:

(a) if this Deed is terminated during the Delivery Phase, then the relevant Dates for Acceptance shall be extended by a period to allow a New Project Co to achieve the relevant stages of Acceptance not yet achieved;
any Major Default Notices shall be cancelled;

the term of such contract shall be equal to the period from the Compensation Date to and including the Final Expiry Date;

the New Project Co will pay a Capital Sum to TfNSW on entering into the New Contract; and

any other amendments which do not materially reduce the Capital Sum which a tenderer would be prepared to pay in consideration for TfNSW entering into the New Contract.

New Project Co means the person who has entered or who will enter into a New Contract with TfNSW.

Post Termination Service Payment means for the whole or any part of a Month or Months during the period from the Termination Date to the Compensation Date, an amount equal to the Monthly Service Payment which would have been payable for the relevant Month or Months under this Deed had this Deed not been terminated, less an amount equal to the aggregate of (without double counting):

all cost components of the Monthly Service Payment relating to the performance of the Project Activities and the insurance; and

any Rectification Costs incurred by TfNSW or RailCorp during (or which will be incurred by TfNSW or RailCorp in respect of) the Month (or part thereof) to which the Post Termination Service Payment relates.

For the avoidance of doubt, the Post Termination Service Payment can be an amount that is less than zero.

Project Co Additional Amount has the meaning given to it in section 2.3(c)(i) of this Schedule.

Provisional Proceeds has the meaning given to it in section 2.3(a) of this Schedule.

Qualification Criteria means the criteria which TfNSW requires tenderers to meet as part of the Tender Process, which shall be:

criteria having substantially the same effect as the criteria applied by TfNSW when selecting those to be invited to submit detailed proposals and any other final offers under the procurement process used in the selection of Project Co to deliver the Project;

the financial ability of the tenderers to pay the Capital Sum;

the technical ability of the tenderers to deliver the Project Activities;

the independence of the tenderer from Project Co and TfNSW; and

any other relevant tender criteria selected by TfNSW acting reasonably.
Receivables Refund Payment has the meaning given in the Receivables Purchase Deed.

Rectification Costs means an amount equal to the aggregate of the reasonable and proper costs incurred by TfNSW and RailCorp in:

(a) curing, rectifying or remedying Project Co’s defaults; and

(b) procuring alternative performance of the Project but only to the extent such costs exceed the cost components of the Monthly Service Payment relating to the performance of the Project Activities and the insurance, deducted as part of the Post Termination Service Payment.

Senior Debt means the lower of:

(a) the aggregate of the following amounts of Debt to the extent such amounts are outstanding as at the Expiry Date:

(i) the principal amounts properly drawn down by Project Co Entities under the Finance Documents to finance the Project Activities;

(ii) accrued interest payable in respect of the principal amounts referred to in paragraph (i); and

(iii) accrued fees payable in respect of committed amounts of principal not yet drawn under the Finance Documents; and

(b) the aggregate of all amounts described in paragraph (a) to the extent that they would have been outstanding at the Expiry Date had:

(i) Project Co received the Monthly Service Payments forecast in the Financial Model;

(ii) Finance Co received the Licence Payments as forecast in the Financial Model; and

(iii) each Project Co Entity complied with all of its obligations in respect to Debt under the Finance Documents.

Subcontractor Breakage Costs means the sum of the amounts reasonably and properly payable by Project Co to the Key Subcontractors under the Key Subcontracts on termination of this Deed under clause 49.2 (Voluntary Termination), provided:

(a) such amounts are incurred under arrangements and/or agreements entered into on arms-length commercial terms prior to the Termination Date;

(b) both Project Co and the relevant Key Subcontractor have used reasonable efforts to mitigate such amounts;

(c) such amounts do not exceed the relevant amounts permitted under clauses 12.2(d)(i) and 12.2(d)(ii); and

(d) without prejudice to paragraph (c), such amounts only include an amount in respect of loss of profit payable to a Key Subcontractor or a Significant Subcontractor (as applicable) which does not exceed the relevant Permitted Loss of Profit Amount.
Tender Costs means the internal and external costs reasonably incurred or reasonably expected to be incurred by TfNSW in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value (including the cost of the independent expert appointed pursuant to section 3.3(e) of this Schedule).

Tender Documentation means the documentation issued by TfNSW to request tenders from any parties interested in entering into a New Contract in accordance with section 3.2(c) of this Schedule.

Tender Process means the process by which TfNSW requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and negotiates to enter into a New Contract with a New Project Co, in accordance with section 3.2(c) of this Schedule.

Termination Date means the date of termination of this Deed in accordance with clause 49 (Termination) of this Deed.

Termination Debt means an amount equal to the sum of:

(a) the Senior Debt as at the Termination Date; and

(b) where TfNSW elects to pay for the Termination Payment via lump sum, all amounts, including costs of early termination of hedging arrangements under Finance Documents and other breakage costs, payable by any Project Co Entity to the Financiers as a result of prepayment under the Finance Documents, subject to Project Co and the Financiers mitigating all such costs to the extent reasonably possible,

less:

(c) all credit balances on any bank accounts other than in any Excluded Account held by the Financiers or any of them, or held by any other financial institution, in each case for or on behalf of any Project Co Entity on the Termination Date (plus any cash that would have been on deposit in an account of any Project Co Entity other than the Excluded Account but for the fact that such cash has either (i) been replaced with a letter of credit or similar instrument as contemplated by the terms of the Finance Documents or (ii) been invested in permitted investments as contemplated by the terms of the Finance Documents), but excluding any such credit balances that have already been deducted when determining the amount of Senior Debt (including as part of the definition of Debt); and

(d) where TfNSW elects to pay for the Termination Payment via lump sum, all amounts, including benefits of early termination of hedging arrangements and other breakage benefits, payable by the Financiers to any Project Co Entity as a result of prepayments of amounts outstanding under the Finance Documents.

Voluntary Termination Equity Value has the meaning given to it in section 4 (Voluntary Termination by TfNSW) of this Schedule.

2. Payment of Termination Payment

2.1 Timing of payment and instalment option

(a) If this Deed is terminated under clause 49 (Termination) of this Deed, TfNSW must pay to Project Co the Termination Payment on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 49.4 (Default
Termination Event of this Deed, 30 days after the Compensation Date if this is later) unless it elects, in its absolute discretion, to pay in instalments in accordance with section 2.1(b) of this Schedule.

(b) If Project Co is entitled to a Termination Payment in accordance with clause 49.7 (Payment on termination) of this Deed and this Schedule:

(i) subject to section 2.1(b)(ii) of this Schedule, TfNSW may, at its sole discretion, elect to pay by:

A. lump sum; or

B. where TfNSW has not elected to assume (or have its nominee assume) the Liability of the Project Co Entities for all outstanding Debt and related hedging arrangements pursuant to clause 49.8(a) of this Deed, instalments (in amounts determined in accordance with section 2.1(c) of this Schedule) on the Instalment Dates; and

(ii) where TfNSW determines to retender for the Project and receives a lump sum payment, it will in turn pay Project Co by way of a lump sum (but not until it is in receipt of the lump sum payment from the retender for the Project).

(c) If TfNSW elects to pay the Termination Payment by instalments it must pay the Instalment Amount applicable to that Instalment Date on each of the Instalment Dates.

(d) The instalment amounts (Instalment Amount) means the amount calculated in accordance with the following formula:

(i) if the sum of the Termination Payment and the Receivables Refund Payment is less than or equal to the Termination Debt at the Termination Date, amounts equivalent to the repayments or payments (as applicable) that are payable under the Finance Documents including under the related hedging arrangements (but deducting any amounts paid or payable to Project Co under the hedging arrangements) must be paid at the times when payment is due under the Finance Documents until the sum of the amounts paid is equal to the Termination Payment plus interest accrued on the Termination Payment under section 2.2 (Payment of Interest) of this Schedule plus the Receivables Refund Payment plus interest accrued on the Receivables Refund Payment under clause 8.2 (Interest on unpaid element of the Securitisation Refund Payment) of the Receivables Purchase Deed, plus (or minus) the net payments by (or to) the Project Co Entities under the hedging arrangements over the relevant period; or

(ii) if the sum of the Termination Payment and the Receivables Refund Payment is greater than the Termination Debt at the Termination Date:

A. amounts equivalent to the repayments or payments (as applicable) that are payable under the Finance Documents including under the related hedging arrangements (but deducting any amounts paid or payable to Project Co under the hedging arrangements) must be paid at the times when the payment is due under the Finance Documents until the sum of the Termination Debt and any interest accrued on the Receivables Refund Payment under clause 8.2 (Interest on unpaid element of the Receivables Refund Payment) of the Receivables Purchase Deed and interest accrued on the Termination Payment under section 2.2 (Payment of Interest) of this Schedule has been fully paid, plus (or
minus) the net payments by (or to) the Project Co Entities under the hedging arrangements over the relevant period; and

B. the difference between the Termination Debt at the Termination Date and the sum of the Termination Payment and the Receivables Refund Payment will be paid as a lump sum on or before the date which is 90 days after the Termination Date (or where termination is pursuant to clause 49.4 (Default Termination Event) of this Deed, 30 days after the Compensation Date if this is later).

(e) If TfNSW has elected to pay the Termination Payment by instalments, it may (within 30 days of written notice to Project Co) pay any outstanding element of the:

(i) the Termination Payment (plus any additional costs incurred and less any amounts received by any Project Co Entity under the Finance Documents as a result of the breaking of any hedging arrangements provided that Project Co Entity and the Financiers mitigate all such costs to the extent reasonably possible); and

(ii) the Receivables Refund Payment under the Receivables Purchase Deed, on the next Instalment Date.

(f) If TfNSW fails to make a payment to Project Co in accordance with section 2.1(e) of this Schedule within the time period specified in section 2.1(e) of this Schedule, Project Co may issue a notice to TfNSW setting out (including calculations) the amount of the Termination Payment outstanding to be paid by TfNSW and TfNSW must pay that amount within 20 Business Days of receipt of such notice.

2.2 Payment of interest

In respect of Termination Payments calculated under this Schedule only, interest shall accrue on any unpaid element of the Termination Payment:

(a) in respect of a Termination Payment calculated under section 3 (Termination for Default Termination Event) of this Schedule, from the 31st day after the Compensation Date to (and excluding) the date on which the Termination Payment is paid in full. Interest shall accrue on that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid; and

(b) in respect of any Termination Payment calculated under sections 4 (Voluntary Termination by TfNSW) or 5 (Force Majeure and Uninsurable Risks) of this Schedule, from and including the Termination Date to (and excluding) the date on which the Termination Payment is paid in full. Interest on the Termination Debt portion of that Termination Payment shall accrue at the Debt Interest Rate from and including the day after the Termination Date to and including the 90th day after the Termination Date and thereafter on the whole of that Termination Payment at the default rate provided in the relevant Finance Document. Interest is payable on the date on which the Termination Payment is paid.

2.3 Treatment of insurance proceeds

(a) Notwithstanding any other term of this Deed, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by any Project Co Entity, then receipt (or non-receipt) of the
insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, shall not delay the calculation or payment of the Termination Payment and instead the parties shall calculate the Termination Payment on the basis of the maximum amount of proceeds that those Project Co Entities are reasonably likely to recover assuming that Project Co has complied with its insurance obligations under clause 46 (Insurance) of this Deed (Provisional Proceeds) taking into account all information that is then available to the parties.

(b) If, following the calculation of the Termination Payment, the insurance proceeds that any Project Co Entity actually recovers (Actual Proceeds) are less than the Provisional Proceeds, TfNSW shall, immediately on notification of the Actual Proceeds by Project Co, pay to Project Co an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (Additional Amount). For the avoidance of doubt, TfNSW will not be required to pay any interest on this Additional Amount.

(c) If, following the calculation of the Termination Payment, the Actual Proceeds are more than the Provisional Proceeds, then TfNSW may, in its sole discretion:

(i) direct Project Co to immediately on receipt of the Actual Proceeds by any Project Co Entity, pay to TfNSW an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (Project Co Additional Amount); or

(ii) if TfNSW has not paid the Termination Payment in full at that time, reduce the outstanding Termination Payment by the Project Co Additional Amount,

and no Project Co Entity will be required to pay any interest on any Project Co Additional Amount.

(d) TfNSW shall not be required to make any payment under section 2.1(b)Schedule 12.1(b) of this Schedule to the extent that the Actual Proceeds are less than the Provisional Proceeds as a result of a breach by Project Co of its obligations under this Deed.

(e) References to insurance proceeds in sections 2.3(b) to 2.3(d) (inclusive) of this Schedule are to insurance proceeds that any Project Co Entity is entitled to retain and that it has not applied and it is not obliged to apply in respect of its reinstatement obligations.

2.4 General obligations

(a) Project Co must (and must procure Finance Co to) use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.

(b) Any amount including any Termination Payment payable to Project Co must be calculated in accordance with this Schedule without any double counting.

(c) If this Deed is terminated after TfNSW has given Project Co a CDPD Satisfaction Notice and prior to payment of the CDPD Amount by TfNSW, TfNSW will not be obliged to pay or procure payment of the CDPD Amount pursuant to clause 34 and the calculation of any amounts in respect of this Schedule shall be determined on the basis that the CDPD Satisfaction Notice was not given.
3. Termination for Default Termination Event

3.1 Default Termination Event

If TfNSW terminates this Deed following a Default Termination Event in accordance with clause 49.4 (Default Termination Event) of this Deed (regardless of whether TfNSW otherwise has the right to terminate for any other reason), TfNSW shall, at its sole discretion, elect to:

(a) re-tender the provision of the Project Activities in accordance with section 3.2 (Re-tendering process) of this Schedule; or

(b) require an expert determination in accordance with section 3.3 (Expert determination) of this Schedule.

3.2 Re-tendering process

(a) TfNSW shall be entitled to elect to re-tender the provision of the Project Activities in accordance with section 3.1(a) of this Schedule if:

(i) TfNSW notifies Project Co on or before the date falling 20 Business Days after the Termination Date;

(ii) there is a Liquid Market, and either:

A. the Financiers have not exercised their rights to step-in under clause 5.5 of the Financiers Tripartite Deed; or

B. the Financiers have exercised their rights to step-in under clause 5.5 of the Financiers Tripartite Deed and the Financiers have not procured the transfer of Project Co's rights and liabilities under this Deed to a suitable substitute contractor and have failed to use all reasonable efforts to do so,

in which case the amount of compensation payable by TfNSW shall be agreed or determined in accordance with sections 3.2(c) and 3.6 (Termination for Default Termination Event) of this Schedule.

(b) Any Dispute in relation to whether a Liquid Market exists may be referred by either TfNSW or Project Co for dispute resolution in accordance with clause 50 (Dispute Resolution procedure) of this Deed.

(c) If TfNSW elects to re-tender the provision of the Project Activities in accordance with section 3.2(a) of this Schedule, the following provisions shall apply:

(i) the objective of the Tender Process shall be to identify a new project company and the highest Capital Sum offered by a Compliant Tenderer;

(ii) the TfNSW Representative shall use its reasonable endeavours to complete the Tender Process as soon as practicable having regard to the assistance given by Project Co in connection with the Tender Process;

(iii) the TfNSW Representative shall notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and shall act reasonably in setting such requirements and terms;
(iv) for each Month during the period from the Termination Date until the Compensation Date (and any part of a Month prior to the Compensation Date), TfNSW shall pay to Project Co the Post Termination Service Payment. Each Post Termination Service Payment shall be payable monthly in arrears on or before the date falling 20 Business Days after the end of each Month or after the Compensation Date (as the case may be). If any Post Termination Service Payment is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Payments. If any such Post Termination Service Payment has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Termination Payment;

(v) as soon as practicable after tenders have been received, the TfNSW Representative shall determine the Compliant Tenders and shall notify Project Co of:

A. the highest Capital Sum offered by a Compliant Tenderer; and
B. the Tender Costs;

(vi) if TfNSW receives less than two tenders (or less than two Compliant Tenders) in response to the Tender Process, the provisions of section 3.3 (Expert determination) of this Schedule shall apply;

(vii) TfNSW may elect at any time prior to the receipt of two Compliant Tenders to follow the no re-tendering procedure under section 3.1(b) of this Schedule by notifying Project Co that this election has been made and upon the making of such an election, the provisions of section 3.3 (Expert determination) of this Schedule shall apply; and

(viii) in the event that the Tender Process is not completed within 12 Months from the date of issue of the Tender Documentation, the provisions of section 3.3 (Expert determination) of this Schedule shall apply.

3.3 Expert determination

If:

(a) TfNSW elects to require expert determination pursuant to sections 3.1 (Default Termination Event) or 3.2(c)(vii) of this Schedule;

(b) the provisions of sections 3.2(c)(vi), 3.2(c)(vii) or 3.2(c)(viii) of this Schedule apply; or

(c) the conditions set out in section 3.2(a) of this Schedule are not satisfied,

the following provisions apply:

(d) for each Month during the period from the Termination Date until the Compensation Date (and any part of a Month prior to the Compensation Date), TfNSW shall pay to Project Co the Post Termination Service Payment, in accordance with section 3.2(c)(iv) of this Schedule;

(e) TfNSW and Project Co will procure the services of an independent expert to determine the Estimated Fair Value based on the formula set out in section 3.4 (Estimated Fair Value) of this Schedule and agree that the Estimated Fair Value as determined by the independent expert will be final and binding; and
all forecast amounts of revenues and costs must be calculated by the independent expert on a nominal basis as at the Termination Date, whereby future amounts are indexed at the indexation rates in the Financial Model.

3.4 Estimated Fair Value

The Estimated Fair Value shall be determined by the independent expert, based on the following formula:

\[
EFV = A - B
\]

where:

\( EFV \) = Estimated Fair Value;
\( A \) = the total of:

(a) all payments of the Monthly Service Payments forecast to be made over the term of the Deemed New Contract calculated and discounted to the Termination Date by the Base Case Project Return; and

(b) the Expiry Refund Payment forecast to be payable on the Final Expiry Date calculated and discounted to the Termination Date by Cost of Debt;

\( B \) = the total of all costs reasonably forecast to be incurred by TfNSW and RailCorp as a direct result of termination of this Deed, calculated and discounted to the Termination Date at the Base Case Project Return, such costs to include:

(a) the costs (if any) reasonably forecast to be incurred by TfNSW and RailCorp to complete all Works and the Upgrade Services and achieve Final Acceptance of all Delivered Rail Assets;

(b) the costs reasonably forecast to be incurred by TfNSW and RailCorp over the term of the Deemed New Contract in connection with providing the Project Activities to the standard required by the Deemed New Contract (including any costs to reinstate the Assets);

(c) a reasonable risk assessment of any cost overruns that will arise whether or not forecast in the Financial Model; and

(d) any rectification costs required to deliver works and services under the Deemed New Contract to the standard required in the Deemed New Contract and any additional operating costs required to restore maintenance service standards.
3.5 Not Used

3.6 Termination for Default Termination Event

If this Deed is terminated pursuant to clause 49.4 (Default Termination Event) of this Deed, the Termination Payment shall be calculated as follows:

**Termination Payment or TP means:**

\[
TP = A - B - C - D - E - F + G - H - I - R
\]

where:

- **A** = the highest Capital Sum offered by a Compliant Tenderer if section 3.2 (Re-tendering process) of this Schedule applies, or the highest Estimated Fair value if section 3.3 (Expert determination) of this Schedule applies;
- **B** = the Tender Costs;
- **C** = amounts that TfNSW is entitled to set off or deduct under this Deed including, for the avoidance of doubt, any Post Termination Service Payment which is less than zero and which has not been set off on or before the Compensation Date in accordance with section 3.2(c)(iv) of this Schedule, the costs of carrying out any works to ensure that the Assets are in accordance with the requirements of this Deed and all other reasonable costs incurred by TfNSW and RailCorp in connection with the relevant Default Termination Event and as a direct result of terminating this Deed;
- **D** = any amounts owing by Project Co to TfNSW or RailCorp under the TfNSW Project Documents as at the Termination Date;
- **E** = any gains which have accrued or will accrue to any Project Co Entity as a result of the termination of this Deed and any other Project Documents;
- **F** = the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) Project Co is entitled to retain, or would be entitled to retain had Project Co complied with the requirements of clause 46 (Insurance) of this Deed and the relevant insurance policy, under any insurance policy;
- **G** = any amounts due and payable by TfNSW to any Project Co Entity in accordance with the terms of the TfNSW Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;
- **H** = the total of all cash on deposit or otherwise held to the benefit of any Project Co Entity other than in any Excluded Account (plus any cash that would have been on deposit in an account of any Project Co Entity other than an Excluded Account but for the fact that such cash has either (i) been replaced with a letter of credit or similar instrument as contemplated by the terms of the Finance Documents or (ii) been invested in permitted investments as contemplated by the terms of the Finance Documents) and any other amounts owing to Project Co as at the Termination Date; and
I = any amounts paid to Project Co by TfNSW (including as a component of the Monthly Service Payment) for maintenance, refurbishment or capital replacement where that maintenance, refurbishment or capital replacement has not been carried out by Project Co.

R = the Receivables Refund Payment.

### 4. Voluntary Termination by TfNSW

If this Deed is terminated pursuant to clause 49.2 (Voluntary Termination) of this Deed, the Termination Payment shall be calculated as follows, unless the sum of such Termination Payment and the Receivables Refund Payment is calculated to be less than the Termination Debt, in which case the Termination Payment will be taken to be the amount necessary in order to ensure that the sum of such Termination Payment and the Receivables Refund Payment is equal to the Termination Debt:

Termination Payment or TP means:

\[
TP = A + B + C - D - E - F + G - H + I - J - R
\]

where:

A = an amount equal to the Termination Debt;

B = an amount equal to the Subcontractor Breakage Costs;

C = an amount equal to the Subcontractor Breakage Costs;
any amounts owing by any Project Co Entity to TfNSW or RailCorp under the TfNSW Project Documents as at the Termination Date;

any gains which have accrued or will accrue to any Project Co Entity as a result of the termination of this Deed and any other Project Documents, not included in the definition of Termination Debt;

the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) any Project Co Entity is entitled to retain, or would be entitled to retain had any Project Co Entity complied with the requirements of clause 46 (Insurance) of this Deed and the relevant insurance policy, under any insurance policy;

any amounts due and payable by TfNSW to any Project Co Entity in accordance with the terms of the TfNSW Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;

(unless already deducted in the definition of Termination Debt) the total of all cash on deposit or otherwise held to the benefit of any Project Co Entity other than in any Excluded Account (plus any cash that would have been on deposit in an account of any Project Co Entity other than an Excluded Account but for the fact that such cash has either (i) been replaced with a letter of credit or similar instrument as contemplated by the terms of the Finance Documents or (ii) been invested in permitted investments as contemplated by the terms of the Finance Documents) as at the Termination Date and any other amounts owing to Project Co as at the Termination Date;

the total of all redundancy payments for employees of Project Co which have been or will be reasonably and properly incurred and arise as a direct result of the termination of this Deed; and

the costs (if any) which are required to be incurred to ensure that the Assets and the Sites meet the Transition Out Condition as at the Expiry Date.

The Receivables Refund Payment

5. Force Majeure and Uninsurable Risks

If this Deed is terminated pursuant to clauses 44.6(c)(iii) (Consequences of TfNSW election not to repair or rebuild), 47.3(a)(ii) (Agreed Uninsurable Risks resulting in loss or damage) or 49.3 (Termination for Force Majeure) of this Deed, the Termination Payment shall be calculated as follows:

\[ TP = A - B - C - D + E + F - G + H - I - R \]

where:

\[ A = \text{an amount equal to the Termination Debt}; \]
any gains which have or will accrue to any Project Co Entity as a result of the termination of this Deed and any other Project Documents, not included in the definition of Termination Debt;

any amounts owing by any Project Co Entity to TfNSW or RailCorp under the TfNSW Project Documents as at the Termination Date;

the net amount (which, for the avoidance of doubt, shall be net of any amount deductible under the relevant insurance policy) any Project Co Entity is entitled to retain, or would be entitled to retain had each Project Co Entity complied with the requirements of clause 46 (Insurance) of this Deed and the relevant insurance policy, under any insurance policy;

E = \frac{1}{2} of the Voluntary Termination Equity Value;

F = any amounts due and payable by TfNSW to any Project Co Entity in accordance with the terms of the TfNSW Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date;

G = (unless already deducted in the definition of Termination Debt) the total of all cash on deposit or otherwise held to the benefit of any Project Co Entity other than in any Excluded Account (plus any cash that would have been on deposit in an account of any Project Co Entity other than an Excluded Account but for the fact that such cash has either (i) been replaced with a letter of credit or similar instrument as contemplated by the terms of the Finance Documents or (ii) been invested in permitted investments as contemplated by the terms of the Finance Documents) as at the Termination Date and any other amounts owing to Project Co as at the Termination Date;

H = an amount equal to the Force Majeure Subcontractor Breakage Costs; and

I = the costs (if any) which are required to be incurred to ensure that the Assets and the Sites meet the Transition Out Condition as at the Expiry Date.

R = the Receivables Refund Payment.

6. Negative Termination Payment

(a) Subject to section 6(b), if the Termination Payment calculated under this Schedule is a negative amount, TfNSW will be entitled to deduct the absolute value of that negative amount from the Receivables Refund Payment payable by TfNSW to Finance Co under the Receivables Purchase Deed.

(b) TfNSW will not be entitled to deduct the absolute value of a negative Termination Payment calculated under section 4 from the Receivables Refund Payment payable TfNSW to Finance Co under the Receivables Purchase Deed to the extent that as a result of that deduction the amount of the Receivables Refund Payment will be less than the Termination Debt.
The parties acknowledge and agree that if after deducting the amounts identified under section 6(a), the Receivables Refund Payment is a negative amount, such Receivables Refund Payment will be deemed to be zero.

If the Termination Payment calculated under this Schedule is a negative amount, for all purposes other than set out in section 6(a), such Termination Payment will be deemed to be zero and, without limiting any obligation of TfNSW to pay the Receivables Refund Payment to Finance Co under the Receivables Purchase Deed, TfNSW shall have no obligation to make any payment of that amount to Project Co and TfNSW shall, without limiting Project Co's rights under clause 49.9(c) of this Deed, be released from all Liability to Project Co for breaches and/or termination of this Deed and any other TfNSW Project Documents.
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Schedule 29 — Subcontract Side Deed

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...
Schedule 30 — Expert Determination Agreement

Expert Determination Agreement

Between

Transport for NSW (TfNSW)
ABN 18 804 239 602
and

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

Momentum Trains Pty Ltd (Project Co)
ACN 630 634 507
and

[Insert name of Expert] (Expert)
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This Expert Determination Agreement is made on ____________________________

Parties
Transport for NSW (ABN 18 804 239 602), a corporation constituted under section 3C of the Transport Administration Act 1988 (NSW) (TfNSW);
Rail Corporation New South Wales (ABN 59 325 778 353), a NSW government agency constituted under section 4 of the Transport Administration Act 1988 (NSW) (RailCorp);
Momentum Trains Pty Ltd (ACN 630 634 57) in its personal capacity and as trustee for the Project Trust (Project Co); and

[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 29.3(f) (Referral to Defects Expert) or clause 52.2 (Selection of expert) of the Project Deed] (Expert)

Recitals
A. The background to the Project is set out in the Project Deed.
B. On [insert date of referral] the Parties agreed that the matter described in Schedule 1 be determined by an Expert appointed under clause 29.3(f) (Referral to Defects Expert) or clause 52.2 (Selection of expert), as the case may be, of the Project Deed.
C. In accordance with clause 29.3(f) (Referral to Defects Expert) or clause 52.2 (Selection of expert), as the case may be, of the Project Deed, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement and the Relevant Agreement.

Operative provisions

1. Definitions

1.1 Project Deed definitions incorporated
Unless otherwise expressly defined, expressions used in this Agreement have the meanings given to them in the Project Deed.

1.2 Definitions

Agreement means this agreement and includes all schedules, exhibits, attachments and annexures to it.

Code of Conduct means the code of conduct set out in section 2 of Schedule 2.

Matter means a dispute under, arising out of, or in connection with the Relevant Agreement and referred to expert determination under clause 29.3(f) (Referral to Defects Expert) or clause 52.1 (Expert determination), as the case may be, of the Project Deed.

Parties means the parties to this agreement, excluding the Expert.

Project Deed means the document entitled 'Regional Rail – Project Deed' between TfNSW, Rail Corp and Project Co dated on or about 13 February 2019.

Relevant Agreement means the relevant Project Document under which the Matter arose.


Schedule of Fees and Disbursements is contained in Schedule 3.
1.3 Interpretation

In this Agreement:

(a) (headings): headings (including any heading at the beginning of any subclause) are for convenience only and do not affect interpretation;

and unless the context otherwise requires:

(b) (count and gender): a word importing the singular includes the plural and vice versa, and a word indicating a gender includes every other gender;

(c) (Agreement and Schedule references): a reference to:

(i) a party, clause, Schedule, Exhibit, Attachment or Annexure is a reference to a party, clause, Schedule, Exhibit, Attachment or Annexure of or to this Agreement; and

(ii) a section is a reference to a section of a Schedule;

(d) (document as amended): a reference to a document, deed, agreement or instrument, or a provision of any such document, deed, agreement or instrument, includes a reference to that document, deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;

(e) (party): a reference to a party includes that party's legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any persons taking part by way of novation;

(f) (person): a reference to a person includes an individual, the estate of an individual, a body politic, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(g) (legislation): a reference to legislation includes its delegated legislation, and a reference to that legislation or delegated legislation, or a provision of either, includes consolidations, amendments, re-enactments and replacements, and all ordinances, by-laws, regulations and other statutory instruments (however described) issued under it;

(h) (Standards): a reference to a Standard includes that Standard as amended or updated from time to time;

(i) (definitions): if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) ('includes'): 'includes' and 'including' will be read as if followed by the phrase 'without limitation';

(k) ('or'): the meaning of 'or' will be that of the inclusive, being one, some or all of a number of possibilities;

(l) (information): a reference to information includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(m) ('$'): a reference to '$', AUD or dollar is to Australian currency;
1.4 Capacity of Project Co

(a) Insofar as Project Co enters into this Agreement in its capacity as trustee of the Project Trust, it must remain trustee of the Project Trust, subject to clause 10(e) until the expiry or satisfaction of all of Project Co’s obligations under this Agreement.

(b) A liability of Project Co arising under or in connection with this Agreement (whether that liability arises under a specific provision of this Agreement, for breach of contract or otherwise), is a liability that can be enforced against Project Co both in its own right and in its capacity as trustee of the Project Trust, unless the liability relates only to an asset which Project Co holds in its personal capacity and not as trustee, in which case the liability can only be enforced against Project Co in its personal capacity.
2. Appointment of Expert

(a) **(Parties to appoint Expert):** The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.

(b) **(Agreement of Conditions):** The Parties agree that:

(i) the Expert will act as an expert and not as an arbitrator;

(ii) neither the determination of the Matter, nor the process required by this Agreement, is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;

(iii) the rules of evidence do not apply to the determination; and

(iv) the Expert must conduct the determination of the Matter in accordance with the Rules including the Code of Conduct.

(c) **(Independence and bias):** If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

3. Confidentiality

(a) Subject to clause 3(b), all proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential.

(b) No such proceedings, submissions or documents referred to in clause 3(a), nor any other information relating to or arising out of the determination, may be divulged to any person except:

(i) with the prior written consent of both Parties;

(ii) as may be required by Law;

(iii) for the purpose of subsequent arbitration; or

(iv) to the extent necessary to enforce the Expert's determination.

4. Costs and fees

(a) **(Parties joint and severally liable):** As between the Parties and the Expert, TfNSW and Project Co are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements, herein.

(b) **(Calculation of costs and fees):** The Parties agree, unless otherwise provided in the Relevant Agreement, as between themselves that:

(i) TfNSW and Project Co will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements; and
(ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in any determination.

5. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all Claims or Liability in connection with any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

6. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

7. GST

(a) (Interpretation):

(i) Except where the context suggests otherwise, terms used in this clause 7 have the meanings given to those terms by the GST Act (as amended from time to time).

(ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 7.

(iii) Unless otherwise expressly stated, all consideration to be provided under this Agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 7.

(iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) (Reimbursements): Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

(c) (Additional amount of GST payable): Subject to clause 7(e), if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Agreement:

(i) any amount payable or consideration to be provided under any provision of this Agreement (other than this clause 7), for that supply is exclusive of GST;

(ii) any party (Recipient) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount), at the same time as any other consideration is to be first provided for that supply; and

(iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 7(c)(ii).
(d) (Variation of GST):

(i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 7(c) and clause 7(e)), varies from the additional amount paid by the Recipient under clause 7(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 7(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 7(c).

(ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

(e) (Exchange of non-monetary consideration):

(i) To the extent that the consideration provided for the Supplier’s Taxable Supply to which clause 7(c) applies is a Taxable Supply made by the Recipient (the Recipient Supply), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 7(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

(ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 7(c) (or the time at which such GST Amount would have been payable in accordance with clause 7(c) but for the operation of clause 7(e)(i)).

(f) (No merger): This clause 7 will not merge on completion or termination of this Agreement.

(g) (Project Deed): If clause 35 (Payments Adjustments & Taxes) of the Project Deed would apply in connection with a Taxable Supply to which this clause 7 also applies then clause 35 (Payments Adjustments & Taxes) of the Project Deed will apply in connection with that supply and the provisions of this clause 7 (but for this paragraph) will not apply.

8. Proportionate liability

To the extent permitted by Law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Agreement, howsoever those rights, obligations or liabilities are sought to be enforced.

9. Governing Law and jurisdiction

(a) (Governing Law): This Agreement is governed by, and must be construed according to, the Laws of New South Wales, Australia.

(b) (Jurisdiction): Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Agreement.

10. Project Trust undertakings

Project Co must:

(a) comply fully with all of its obligations as trustee of the Project Trust, whether imposed under the Project Trust Deed or, in all material aspects, at law;
(b) ensure that no waiver or revocation of the Project Trust Deed is made, whether formally or by conduct;

(c) not amend, or agree to amend, or permit or allow to be amended, the Project Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error, details of which are notified to TfNSW);

(d) ensure that no other person is appointed trustee of the Project Trust without the prior written consent of TfNSW;

(e) not do anything which would cause or enable its removal, nor retire, as trustee of the Project Trust except in favour of a new trustee approved by TfNSW;

(f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Project Trust Deed or allow the early determination of the Project Trust;

(g) not exercise in its own favour its Trustee's Indemnity under the Project Trust against any beneficiary of the Project Trust or against any Trust Property (other than in respect of any expenses which it properly incurs in the day to day performance of its obligations as trustee of the Project Trust);

(h) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:

   (i) the termination of the Project Trust or the termination, rescission or revocation of the Project Trust Deed;

   (ii) the resettlement of any Trust Property; or

   (iii) the resignation, retirement, removal or replacement of it as trustee of the Project Trust or the appointment of an additional trustee of the Trust;

(i) not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Documents and the Finance Documents;

(j) ensure that:

   (i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Project Trust Deed);

   (ii) the rights of any beneficiaries relating to, and their interests in, the property of the Project Trust are subject to the prior rights and interests of:

      A. TfNSW under the TfNSW Security; and

      B. Project Co in the property of the Project Trust pursuant to its Trustee's Indemnity;

(k) not do anything, or omit to do anything, where the doing or the omission to do may have the effect of releasing, waiving or impairing any Security Interest granted by or created under a Project Document;

(l) unless otherwise permitted under the Project Documents, not permit any of the beneficiaries of the Project Trust to use, occupy, or enjoy or possess any of the Trust Property or title documents in respect of the Trust Property or relinquish management powers which might entitle any beneficiary of the Project Trust to possession;
(m) not blend or mix the Trust Property with any other property in respect of which it has been appointed trustee;

(n) not acquire any Trust Property other than in the name of the Trustee as trustee of the Project Trust;

(o) not allow any redemption, cancellation or repurchase of any units in the Project Trust other than as permitted by the Project Documents;

(p) not take any step to release a unit holder of the Project Trust from the obligation to pay up units;

(q) not do anything, agree or attempt to take any step to do anything which would restrict or impair its ability to comply with its obligations under this Agreement; and

(r) not do anything (or permit anything to be done) which:

(i) results or may result in registration of the Project Trust as a managed investment scheme under Part 5C.1 of the Corporations Act; or

(ii) restricts or limits or may restrict or limit TfNSW’s rights of subrogation to the Trustee’s Indemnity.
Schedule 1 — The Matter

[Description of matter to be inserted]
Schedule 2 — Rules for Expert Determination Process

1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules including the Code of Conduct.

2. Code of Conduct

(a) The function of the Expert is to make a determination of the Matter in accordance with the Relevant Agreement, the Project Deed and this Agreement, including these Rules and the Code of Conduct.

(b) The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in these Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.

(c) The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.

(d) The Expert must disclose to both Parties all information and documents received.

(e) If a Party fails to make a written submission or attend a conference, the Expert may continue with the process.

(f) Subject to section 4 of these Rules, meetings and discussions with the Expert must only take place in the presence of both Parties.

3. Written Submissions

(a) Within 5 Business Days after the date that this expert determination process begins, the Party who gave notice under clause 29.3(f) (Referral to Defects Expert) or clause 52.1 (Expert determination), as the case may be, of the Project Deed (Party A) must give the other Party (Party B) and the Expert:

(i) a written statement describing the Matter referred for expert determination;

(ii) any agreed statement of facts; and

(iii) a written submission on the Matter in support of Party A’s contentions.

(b) Within 5 Business Days after the statement in section 3(a) is served, Party B must give Party A and the Expert a written response to Party A’s submissions.

(c) If the Expert considers it appropriate, Party A may reply in writing to the other Party’s response in section 3(b) within the time allowed by the Expert.

(d) If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

4. Conference

(a) The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney, Australia.
(b) At least 5 Business Days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

(c) The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 4(b), the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the expert determination process.

(d) The Parties:
   (i) may be accompanied at a conference by legal or other advisers; and
   (ii) subject to the terms of this Agreement and the Relevant Agreement, will be bound by any procedural directions given by the Expert in relation to the expert determination process.

(e) The conference must be held in private.

(f) If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

5. General

(a) In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Relevant Agreement, this Agreement and these Rules.

(b) Subject to section 4(c), meetings and discussions with the Expert must only take place in the presence of both Parties.

(c) Without limiting section 2, the Expert must:
   (i) inform the Parties of:
       A. any relationship or interest the Expert has with the Parties or their respective Associates;
       B. any interest the Expert has in the matters in dispute; and
       C. any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, immediately upon becoming aware of any such circumstance; and
   (ii) upon making any disclosure under this section 5(c), unless and until the Parties agree otherwise, terminate the proceedings.

6. The Determination

(a) As soon as possible after receipt of the submissions or after any conference and, in any event not later than 30 days after the Expert's acceptance of appointment, the Expert must:
   (i) determine the Matter between the Parties; and
   (ii) notify the Parties of that determination.

(b) The determination of the Expert must:
(i) be in writing stating the Expert's determination and giving reasons;

(ii) be made on the basis of the submissions (if any) of the Parties, the conference (if any) and the Expert’s own expertise; and

(iii) meet the requirements of the Relevant Agreement.

(c) To the extent permitted by Law, the Expert’s determination will be final and binding on the Parties unless:

(i) the Expert’s determination includes:

A. payment of compensation and the amount claimed, or subsequently determined by the Expert, to be payable is equal to or greater than [Indexed]; or

B. an extension of a Date for Acceptance or rejection of an extension to a Date for Acceptance and the period of the extension that was claimed in the notice under clause 51(a) (Senior Negotiations) of the Project Deed is more than 5 Business Days; and

(ii) a Party gives notice to the other Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 52.4(a)(ii) (Expert finding) of the Project Deed.

7. Costs

Security for the Expert's fees and disbursements must be deposited by TfNSW and Project Co at the commencement of the expert determination process in accordance with any direction of the Expert.

8. Modification

These Rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.
Schedule 3 — Schedule of Fees and Disbursements

[Expert's fees and disbursements to be inserted]
Signed as an agreement.

Signed sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:


Signature of witness

Signature of authorised delegate

Full name of witness (print)

Full name of authorised delegate (print)

Position held

Position held

Signed sealed and delivered for and on behalf of Rail Corporation New South Wales (ABN 59 325 778 353) by its authorised delegate in the presence of:


Signature of witness

Signature of authorised delegate

Full name of witness (print)

Full name of authorised delegate (print)

Position held

Position held
Signed sealed and delivered for and on behalf of Momentum Trains Pty Ltd in its personal capacity and as trustee for the Momentum Trains Trust by its attorney:

Attorney

Witness

Name of Attorney (print)

Name of Witness (print)

Executed by [insert Expert] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

Director

Director/Secretary

Name of Director (print)

Name of Director/Secretary (print)
Schedule 31 — GSF Act Deed Poll of Guarantee
SENSITIVE: NSW GOVERNMENT
Regional Rail Project Deed
Schedule 31 - GSF Act Deed Poll of Guarantee
Contract Number: ISD-17-6185
Momentum Trains
Schedule 34 — Commercial Opportunities Schedule

None.
Schedule 35 — Train Plan Parameters

1. Overview

1.1 Purpose of Train Plan Parameters

The Train Plan Parameters in this Schedule are the agreed parameters for development of Train Plans for the purposes of clause 29A.3.

1.2 Ramp up

(a) During the Ramp Up Period, the parameters described in section 2 apply.

(b) On and from the Date of Provisional Acceptance of the last Unit to achieve Provisional Acceptance, the parameters described in section 3 apply.

1.3 Access Schedule for Stabling Yards

TfNSW will grant, or procure the grant, of access to the Stabling Yards under clause 28.1(c) listed in Table 1 of Appendix 1.

1.4 Operation of Trains

Project Co shall only be required to operate Trains within the Maintenance Facility and the Legacy Maintenance Centre.

2. Ramp Up Period

During the Ramp Up Period TfNSW will produce a Train Plan that provides for each Unit to be cycled through the Maintenance Facility at least once every [number] for at least [number].

3. Steady State

TfNSW will produce a Train Plan that on and from the Date of Provisional Acceptance (Unit) of the last Unit to achieve Provisional Acceptance provides for each Unit to be cycled through the Maintenance Facility at least once every [number] for at least [number].

4. Special Event Periods

(a) For Additional Special Event Periods and Annual Special Event Periods, TfNSW will give Project Co eight weeks' advance notice of the number of Accepted Units for which Project Co will not be provided access to perform the Services and the time periods when the access will not be given.

(b) If TfNSW gives the advance notice required in section 4(a) then, for the duration of the Additional Special Event Period or Annual Special Event Period, Project Co's access to the Accepted Units the subject of the notice will be restricted for such time, and to such extent, as is provided in the notice.
Appendix 1 - Stabling Yards

(a) Table 1 below sets out the arrangements for the following steady state after the Ramp Up Period:

(i) maximum number of Stabling Yards to which Project Co will be granted access; and
(ii) the nominal distribution of Units at each Stabling Yard as at the date of this Deed.

(b) TfNSW and Project Co acknowledge and agree that TfNSW will determine the order in which the Stabling Yards are made available to Project Co.
<table>
<thead>
<tr>
<th>Site No.</th>
<th>Location</th>
<th>Nominal Fleet Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Short Unit (Intercity)</td>
</tr>
<tr>
<td>1</td>
<td>Armidale</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Broken Hill</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Canberra</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Dubbo</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>Grafton</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Griffith</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Moree</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Moss Vale</td>
<td>5</td>
</tr>
<tr>
<td>9</td>
<td>Sydenham</td>
<td>2</td>
</tr>
<tr>
<td>10</td>
<td>Eveleigh</td>
<td>2</td>
</tr>
<tr>
<td>11</td>
<td>Wollongong</td>
<td>1</td>
</tr>
<tr>
<td>Total Stabled</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>Total Operational (including operational spares)</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Total Maintenance spares</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total Fleet Size</td>
<td>10</td>
<td>9</td>
</tr>
</tbody>
</table>
1. Definitions

In this Schedule:

Agreed Network Access Rights has the meaning given in section 2(a)(i).

Annual Access Forward Lookahead has the meaning given in section 2(b)(i).

Cessation of a Network Access Right means the earlier of the time at which:

(a) the period for the exercise of the Agreed Network Access Rights (or equivalent under section 3(c)(ii)) or Additional Network Access Rights expires or terminates; or

(b) the cancellation of Agreed Network Access Rights (or equivalent under section 3(c)(ii)) or Additional Network Access Rights by TfNSW becomes effective.

Danger Zone means the danger zone as defined by the Network Rules.

Indicative Network Access Rights means, in respect of each Network Access Year, the Network Access Rights specified for that period in the Verification Plan.

Infrastructure Possession Manual means any manual or policy relating to infrastructure possession as published by an Access Provider from time to time.

Network Access Information means, in respect of a Network Access Right:

(a) the activities Project Co proposes to carry out during that Network Access Right (including whether persons or equipment will intrude into the Danger Zone and, where applicable, the side of the Unit on which the activities will be carried out);

(b) the location at, or route over, the Network which the Network Access Right is proposed to be exercised, including any alternative routes or locations where the Network Access Right may be exercised;

(c) the duration (start and end times) of the Network Access Right;

(d) the periods within which Project Co wishes to utilise the Network Access Right;

(e) details of the number and nature of the Train Drivers required to be provided by the Operator to operate the Units during the period within which the Network Access Rights are to be exercised; and

(f) such other details as TfNSW, the Operator or an Accredited Person may reasonably require from time to time.

Network Access Year means:

(a) the 12 month period starting on the date when Project Co first requires a Network Access Right; and

(b) each subsequent 12 Month period thereafter, up to and including the 12 Month period in which the Date of Final Acceptance (Unit) of the last Unit forming part of the New Fleet to achieve Final Acceptance (Unit) occurs.
Network Rules means the rules and procedures issued by an Accredited Person from time to time to mandate the requirements for the safe operation of the Network or the safe conduct of work on the Network.

Specific Access Request has the meaning given in section 2(b)(ii).

Train Operating Conditions Manual means any manual that prescribes the minimum operating requirements for trains and track vehicles on a Network.

Train Operating Conditions Waiver means a notice of changes or exceptions to the requirements specified in a Train Operating Conditions Manual.

Train Order means an instruction issued by the Train Controller in Train Order Territory to direct the movement of a Unit.

Train Order Territory means the portions of rail line where the Train Order system of safe working is used.

2. Process for determining Network Access Rights

(a) Subject to sections 2 to 6, TfNSW must, for the purposes of the Verification Activities during the Delivery Phase:

(i) procure the configurations of Network Access Rights agreed or determined by TfNSW in accordance with sections 2(b) to 2(d) (Agreed Network Access Rights); and

(ii) provide or procure Train Drivers to operate a Unit during the periods within which the Agreed Network Access Rights (or equivalent rights under section 3(c)(ii)) are to be utilised.

(b) Project Co must issue to TfNSW:

(i) not less than 14 weeks before the start of each Network Access Year, a written request containing indicative Network Access Information in relation to the Network Access Rights that Project Co wishes to utilise during that Network Access Year (Annual Access Forward Lookahead); and

(ii) not less than 14 weeks before the date on which Project Co wishes to utilise any specific Network Access Right, a written request containing detailed confirmation of the Network Access Information in relation to the Network Access Rights which Project Co wishes to utilise on that date (Specific Access Request).

(c) Within 25 Business Days after TfNSW receives a Specific Access Request, TfNSW will, in collaboration with the Operator, determine possible Network Access Rights for Project Co to utilise, having regard to:

(i) the Indicative Network Access Rights for the relevant period;

(ii) in the case of a Specific Access Request, whether it is consistent with the relevant Annual Access Forward Lookahead previously submitted under this section;

(iii) the availability of Network Access Rights under the relevant Access Agreements, including during the relevant period;
(iv) the matters detailed in Project Co's request;

(v) the availability of Train Drivers; and

(vi) any other factors TfNSW or the Operator (acting reasonably) considers relevant,

and will notify Project Co of possible configurations for the Network Access Rights that are the subject of the relevant request.

(d) Within 5 Business Days after TfNSW issuing a notice under section 2(c) (or such other time as agreed in writing by Project Co and TfNSW), TfNSW, the Operator and Project Co must meet and endeavour to agree, in writing, suitable configurations for the Network Access Rights. If the parties cannot agree suitable configurations for the Network Access Rights, the configurations will be determined by TfNSW.

(e) Where Project Co has complied with the requirements of sections 2(b) to 2(d), the configurations for the Network Access Rights determined by TfNSW must be at least as suitable for the activities which Project Co proposes to carry out during the Network Access Rights as the Indicative Network Access Rights for the relevant period.

### 3. TfNSW may cancel or change rights

(a) TfNSW may cancel or change an Agreed Network Access Right at any time.

(b) If TfNSW does cancel or change an Agreed Network Access Right:

(i) TfNSW must notify Project Co of the cancellation or change; and

(ii) subject to section 3(c), if the Agreed Network Access Right was the subject of a Specific Access Request agreed or determined under section 2(d), the cancellation of, or a material change to, such Agreed Network Access Right will be a Compensable Extension Event or Compensable Intervening Event (as applicable).

(c) Project Co will not be entitled to make any Claim against TfNSW arising out of or in connection with the cancellation of, or a change to, a Network Access Right:

(i) other than as provided in section 3(b)(ii); and

(ii) to the extent that TfNSW procures equivalent Network Access Rights (having regard to the matters referred to in section 2(c)) and Project Co is reasonably able to utilise those Network Access Rights.

### 4. Additional Network Access Rights

(a) Project Co must minimise the need for Network Access Rights that are at different times than, on different dates from, or in addition to, the Agreed Network Access Rights (or those equivalent Network Access Rights procured in accordance with section 3(c)(ii)) (Additional Network Access Rights).

(b) If Project Co requires any Additional Network Access Rights:

(i) as soon as reasonably practicable, Project Co must issue a written request to TfNSW setting out the Network Access Information for each Additional Network Access Right requested;
(ii) TfNSW will endeavour to procure any Additional Network Access Rights requested by Project Co, but will not be under any obligation to do so; and

(iii) Project Co will be liable for costs incurred in obtaining any Additional Network Access Rights, including under any Access Agreement.

(c) TfNSW may cancel or change an Additional Network Access Right at any time.

(ca) If TfNSW does cancel or change an Additional Network Access Right, TfNSW must notify Project Co of the cancellation or change.

(d) Project Co releases and indemnifies each Indemnified Person from and against all Claims by Project Co and its Associates in connection with:

(i) TfNSW's delay, refusal or inability to grant or procure an Additional Network Access Right; or

(ii) the cancellation of, or a change to, any Additional Network Access Right.

5. End of occupation

Project Co must:

(a) cease to occupy the relevant part of the Network at the Cessation of a Network Access Right or in the event of an Emergency;

(b) immediately notify TfNSW if Project Co considers it may be late in vacating the Network; and

(c) indemnify each Indemnified Person from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with Project Co continuing to occupy the Network following the Cessation of a Network Access Right or the occurrence of an Emergency.

6. Project Co unable to utilise

(a) Project Co must promptly notify TfNSW if Project Co does not intend to, or expects it will not be able to, utilise a Network Access Right which has been allocated to it.

(b) If Project Co fails to utilise any Network Access Right (whether wholly or partially) for any reason other than due to an act or omission of TfNSW or its Associates, Project Co must indemnify each Indemnified Person from and against any Claim or Liability suffered or incurred by any Indemnified Person in connection with the failure to utilise the Network Access Right, except where Project Co requests the cancellation of the Network Access Right in writing at least 6 weeks before the date on which the Network Access Right was to commence or within another period agreed (in writing) by TfNSW from time to time in TfNSW's absolute discretion.

7. Train Run preconditions

(a) The following preconditions must be satisfied before Project Co can utilise a Train Run Entitlement:

(i) Project Co's Incident and Security Management Plan has been Confirmed by the TfNSW Representative in accordance with the Review Procedures;
(ii) Project Co has demonstrated to the reasonable satisfaction of TfNSW that it is capable of implementing its Incident and Security Management Plan;

(iii) the relevant Unit has passed all Verification Activities in the Verification Plan that must be passed before utilising a Train Run Entitlement; and

(iv) Project Co holds all Insurances required under this Deed in relation to conduct of the proposed Verification Activity.

(b) Project Co must, when utilising a Train Run Entitlement:

(i) ensure that the relevant Unit complies with the Train Operating Conditions Manual as varied in accordance with any Train Operating Conditions Waiver;

(ii) where the Train is not included in the Train Operating Conditions Manual, obtain a valid Train Operating Conditions Waiver relevant for the activities to be undertaken;

(iii) comply with, and ensure that its Associates comply with, all Train Orders, all relevant Train Operating Conditions Waivers and all relevant safety notices;

(iv) prevent the relevant Unit from being driven on any part of the Network that is outside the scope of the Train Run Entitlement; and

(v) notify the Train Controller:

(A) as soon as Project Co becomes aware of any changes in, or delays to, the Train Run or anything else which may affect Train Control; and

(B) immediately if Project Co or its Associates do not comply with a Train Order, or expect that they will not comply with a Train Order.

(c) Project Co acknowledges and agrees that:

(i) TfNSW cannot, and will not, guarantee any configuration for a Network Access Right (including an Agreed Network Access Right) as fixed;

(ii) TfNSW may be required to cancel or change a Network Access Right at short notice;

(iii) third parties may perform works during certain Network Access Rights;

(iv) the Access Provider may be required to provide third parties with access to the Network at the same time as Project Co has access to the Network, including for the performance of works on the Network;

(v) to the extent it is within Project Co’s control, Project Co must co-ordinate its activities with any third parties sharing the Network Access Right; and

(vi) during and in relation to all Network Access Rights Project Co must comply with:

(A) all Mandatory Requirements;

(B) all Commonwealth, state or NSW Government directions;

(C) all orders of a court or tribunal of competent jurisdiction,
(D) all Train Orders;

(E) all relevant Safety Interface Agreements;

(F) relevant directions from, and requirements of, an Access Provider under an Access Agreement; and

(G) the Network Rules and the Infrastructure Possession Manuals.
## Schedule 37 — Spares, Consumables and Equipment List

### Part A - Spares and Consumables

<table>
<thead>
<tr>
<th>Spares item number</th>
<th>Description</th>
<th>Rotable / Consumable</th>
<th>Quantity (First Unit)</th>
<th>Quantity (Base Fleet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Inter-car gangway</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Automatic coupler</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Semi-permanent coupler assembly</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Emergency transition coupler</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Windscreen wiper</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Front body end</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Front anti-climber and shock absorbers</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Front skirts</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Side skirts (1 set per Unit type)</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Driver desk (not equipped)</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Fuel tank</td>
<td>Rotable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Fixed department window - large</td>
<td>Consumable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>Windscreen</td>
<td>Consumable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Cab lateral window</td>
<td>Consumable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>Emergency window</td>
<td>Consumable</td>
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### Short Unit (Intercity) bogie

<table>
<thead>
<tr>
<th>Spares item number</th>
<th>Description</th>
<th>Rotable / Consumable</th>
<th>Quantity (First Unit)</th>
<th>Quantity (Base Fleet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>Motor bogie (including motor and gearbox)</td>
<td>Rotable</td>
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</tr>
<tr>
<td>17.</td>
<td>Trailer bogie</td>
<td>Rotable</td>
<td></td>
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<tr>
<td>18.</td>
<td>Motor wheelset</td>
<td>Rotable</td>
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<td>19.</td>
<td>Trailer wheelset</td>
<td>Rotable</td>
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</tr>
<tr>
<td>Spares item number</td>
<td>Description</td>
<td>Rotable / Consumable</td>
<td>Quantity (First Unit)</td>
<td>Quantity (Base Fleet)</td>
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<tr>
<td>20.</td>
<td>Primary suspension kit (set of springs and dampers per 1 bogie)</td>
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<tr>
<td>21.</td>
<td>Secondary suspension kit (set of springs and dampers per 1 bogie)</td>
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<td></td>
<td><strong>Short Unit (Regional) bogie</strong></td>
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<td>22.</td>
<td>Motor bogie (including motor and gearbox)</td>
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<td>Trailer bogie</td>
<td>Rotable</td>
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<td>24.</td>
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<td>Rotable</td>
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<td>25.</td>
<td>Trailer wheelset</td>
<td>Rotable</td>
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<td>26.</td>
<td>Primary suspension kit (set of springs and dampers per 1 bogie)</td>
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<td>27.</td>
<td>Secondary suspension kit (set of springs and dampers per 1 bogie)</td>
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<td><strong>Long Unit bogie</strong></td>
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<td>28.</td>
<td>Motor bogie (including motor and gearbox)</td>
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<tr>
<td>29.</td>
<td>Trailer bogie</td>
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<td>30.</td>
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<td>31.</td>
<td>Trailer wheelset</td>
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<td>32.</td>
<td>Primary suspension kit (set of springs and dampers per 1 bogie)</td>
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<td>33.</td>
<td>Secondary suspension kit (set of springs and dampers per 1 bogie)</td>
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<td><strong>Propulsion system</strong></td>
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<td>34.</td>
<td>Traction converter-inverter</td>
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<tr>
<td>35.</td>
<td>Auxiliary converter + battery charger</td>
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<tr>
<td>36.</td>
<td>Traction motor</td>
<td>Rotable</td>
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<td>37.</td>
<td>Power pack</td>
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<td>38.</td>
<td>Alternator</td>
<td>Rotable</td>
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<td>Spares item number</td>
<td>Description</td>
<td>Rotable / Consumable</td>
<td>Quantity (First Unit)</td>
<td>Quantity (Base Fleet)</td>
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<td>39.</td>
<td>Hydraulic pumps + motors (complete set)</td>
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<td>40.</td>
<td>Intercooler radiator</td>
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<td>Coolant radiator</td>
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<td>42.</td>
<td>Master controller</td>
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<td>43.</td>
<td>Brake resistors</td>
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<td><strong>Battery</strong></td>
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<td>Battery</td>
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<td>HVAC saloon</td>
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<td>46.</td>
<td>HVAC cabin</td>
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<td><strong>Doors</strong></td>
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<td>47.</td>
<td>Passenger access single doors (leaf + mechanism)</td>
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<tr>
<td>48.</td>
<td>Door between cars double (leaf + mechanism)</td>
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<td>49.</td>
<td>Door between cars single (leaf + mechanism)</td>
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<tr>
<td>50.</td>
<td>Cab access exterior door (leaf + mechanism)</td>
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<tr>
<td>51.</td>
<td>Cab access interior door (leaf + mechanism)</td>
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<tr>
<td><strong>Seats</strong></td>
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<tr>
<td>52.</td>
<td>Driver's seat</td>
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<tr>
<td>53.</td>
<td>Driver's assistant seat</td>
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<td>54.</td>
<td>Department seats type 1-double</td>
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<td>55.</td>
<td>Department seats type 2-premium</td>
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<td>56.</td>
<td>Department seats type 2-STD</td>
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<td>57.</td>
<td>Tip-up seat</td>
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<tr>
<td>Spares item number</td>
<td>Description</td>
<td>Rotable / Consumable</td>
<td>Quantity (First Unit)</td>
<td>Quantity (Base Fleet)</td>
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<td>58.</td>
<td>Air production unit</td>
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<td>59.</td>
<td>Brake calliper with parking brake</td>
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<td>60.</td>
<td>Brake calliper without parking brake</td>
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<td>61.</td>
<td>Pneumatic panels (1 set per Unit type)</td>
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<tr>
<td>62.</td>
<td>HPU (1 set per Unit type)</td>
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<tr>
<td>63.</td>
<td>Brake discs</td>
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<tr>
<td>64.</td>
<td>WC module - bowl system</td>
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<tr>
<td>65.</td>
<td>WC module - control unit</td>
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<tr>
<td>66.</td>
<td>WC module door (including mechanism)</td>
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<tr>
<td>67.</td>
<td>Set of water tanks</td>
<td>Rotable</td>
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<tr>
<td>68.</td>
<td>WC module (PMR) - bowl system</td>
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<tr>
<td>69.</td>
<td>WC module (PMR) - control unit</td>
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<td>70.</td>
<td>WC module door</td>
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<tr>
<td>71.</td>
<td>Set of water tanks (PMR)</td>
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<tr>
<td>72.</td>
<td>Train control and monitoring system (1 set per Unit type)</td>
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<tr>
<td>73.</td>
<td>Communication router</td>
<td>Rotable</td>
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<tr>
<td>74.</td>
<td>Passenger wifi and internet access</td>
<td>Rotable</td>
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<tr>
<td>75.</td>
<td>Event recorder</td>
<td>Rotable</td>
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<td></td>
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<tr>
<td>76.</td>
<td>CCTV control unit + recorder</td>
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<td></td>
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<tr>
<td>77.</td>
<td>CCTV HMI</td>
<td>Rotable</td>
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<tr>
<td>78.</td>
<td>Rear view exterior cameras/DOO cameras</td>
<td>Rotable</td>
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</table>
## Schedule 37 - Spares, Consumables and Equipment List

**Contract Number:** ISD-17-6185  
**Momentum Trains**

<table>
<thead>
<tr>
<th>Spares item number</th>
<th>Description</th>
<th>Rotable / Consumable</th>
<th>Quantity (First Unit)</th>
<th>Quantity (Base Fleet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>79.</td>
<td>Front view cameras</td>
<td>Rotable</td>
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<tr>
<td>80.</td>
<td>Interior cameras</td>
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<tr>
<td>81.</td>
<td>Driver camera</td>
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<tr>
<td>82.</td>
<td>Exterior lateral destination display</td>
<td>Rotable</td>
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<tr>
<td>83.</td>
<td>Exterior lateral car number display</td>
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<tr>
<td>84.</td>
<td>Exterior front destination display</td>
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<tr>
<td>85.</td>
<td>Inter-communicators</td>
<td>Rotable</td>
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</tr>
<tr>
<td>86.</td>
<td>TFT screen</td>
<td>Rotable</td>
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<tr>
<td>87.</td>
<td>PIS control unit</td>
<td>Rotable</td>
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<td>88.</td>
<td>Train radio station</td>
<td>Rotable</td>
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**General**

<table>
<thead>
<tr>
<th>Equipment item number</th>
<th>Description of Equipment item</th>
<th>Quantity (Maintenance Facility)</th>
<th>Quantity (Legacy Maintenance Centre)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Wheel profile measuring tool</td>
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<tr>
<td>2.</td>
<td>Wheel diameter measuring tool</td>
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<tr>
<td>3.</td>
<td>Special Tools for the assembly and disassembly of gearboxes</td>
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</tr>
<tr>
<td>4.</td>
<td>H shape lifting beam for bogies</td>
<td></td>
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</tr>
<tr>
<td>5.</td>
<td>Specific wheelset tools for the wheelset press</td>
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</tr>
<tr>
<td>6.</td>
<td>Coupling calibration and measurement gauges</td>
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<tr>
<td>7.</td>
<td>Pneumatic braking system &amp; air production diagnostic &amp; maintenance software</td>
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<tr>
<td>Equipment item number</td>
<td>Description of Equipment item</td>
<td>Quantity (Maintenance Facility)</td>
<td>Quantity (Legacy Maintenance Centre)</td>
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<tr>
<td>8.</td>
<td>HVAC diagnostic &amp; maintenance Software</td>
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<td>9.</td>
<td>Refrigerant recycling station + associated Special Tools</td>
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<tr>
<td>10.</td>
<td>Doors diagnostic &amp; maintenance software</td>
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<td>11.</td>
<td>Power pack diagnostic &amp; maintenance software</td>
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<td>12.</td>
<td>Tools for dismount and fit the power pack</td>
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<td>13.</td>
<td>Traction package diagnostic &amp; maintenance software</td>
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<td>14.</td>
<td>Test equipment for traction converter</td>
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<td>15.</td>
<td>Auxiliary converter &amp; battery charger diagnostic &amp; maintenance software</td>
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<tr>
<td>16.</td>
<td>Battery charging device</td>
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<td>17.</td>
<td>Traction motor diagnostic &amp; maintenance software</td>
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<td>18.</td>
<td>Special test equipment for traction motor</td>
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<td>19.</td>
<td>Generic test equipment for traction motor</td>
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<td>Control &amp; monitoring system diagnostic &amp; maintenance software</td>
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<td>Multifunction vehicle bus checker</td>
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<td>22.</td>
<td>Line break adapter</td>
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<td>23.</td>
<td>Event recorder diagnostic &amp; maintenance software</td>
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<tr>
<td>24.</td>
<td>Passenger Information System diagnostic &amp; maintenance software</td>
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<tr>
<td>25.</td>
<td>CCTV diagnostic &amp; maintenance software</td>
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<td>26.</td>
<td>Signalling equipment diagnostic &amp;</td>
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<tr>
<td>Equipment item number</td>
<td>Description of Equipment item</td>
<td>Quantity (Maintenance Facility)</td>
<td>Quantity (Legacy Maintenance Centre)</td>
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<tr>
<td>27.</td>
<td>WC diagnostic &amp; maintenance software</td>
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<td>28.</td>
<td>Intercommunication gangway repair kit</td>
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<td>29.</td>
<td>H shape lifting beam for roof mounted equipment</td>
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<td>Air operated grease gun</td>
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<td>Verner caliper</td>
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<td>Ruler</td>
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<td>37.</td>
<td>Infra-red camera</td>
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<tr>
<td>38.</td>
<td>Adaptor coupler for to lift coupler using forklift</td>
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<td>39.</td>
<td>Multi-meters</td>
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<td>40.</td>
<td>Tools for windscreen Removal/Installation with vacuum lift</td>
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<td>41.</td>
<td>Tool trolley</td>
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<td>42.</td>
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<td>43.</td>
<td>Oil dispenser</td>
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<td>44.</td>
<td>Pedestra grinder</td>
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<td>45.</td>
<td>Vertical drill</td>
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<td>46.</td>
<td>Manual auxiliary press (50 tons)</td>
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<td>TIG welding machines</td>
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<td>Heavy-duty shelf</td>
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<td>Equipment item number</td>
<td>Description of Equipment item</td>
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<td>Tool organizer shelf</td>
<td></td>
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<tr>
<td>55.</td>
<td>Stands (to support the bogies when these are under maintenance)</td>
<td></td>
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<tr>
<td>56.</td>
<td>Scissor lift for power pack</td>
<td></td>
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<tr>
<td>57.</td>
<td>Bogie pusher (small electric truck)</td>
<td></td>
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<tr>
<td>58.</td>
<td>Lifting frame (scissor lift) for compressor</td>
<td></td>
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<tr>
<td>59.</td>
<td>Lift road (floor level) platforms</td>
<td></td>
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<tr>
<td>60.</td>
<td>Lift road (roof level) platforms</td>
<td></td>
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<tr>
<td>61.</td>
<td>Lift road front access platforms (glass replacement)</td>
<td></td>
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<tr>
<td>62.</td>
<td>Service road floor level platforms</td>
<td></td>
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<tr>
<td>63.</td>
<td>Service road front of train access platforms</td>
<td></td>
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<tr>
<td>64.</td>
<td>Shunter</td>
<td></td>
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<tr>
<td>65.</td>
<td>Exterior washing facility with water treatment equipment</td>
<td></td>
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<tr>
<td>66.</td>
<td>CET (Controlled Emission Toilet)</td>
<td></td>
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<tr>
<td>67.</td>
<td>Equipment and tools for cleaning external graffiti and bio-wash</td>
<td></td>
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<tr>
<td>68.</td>
<td>Vacuum equipment (for Internal cleans)</td>
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<tr>
<td>69.</td>
<td>Underfloor wheel lathe</td>
<td></td>
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<td>70.</td>
<td>Mobile lifting jacks (24+2)x15 tons</td>
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<tr>
<td>71.</td>
<td>Bogie drop table 10T</td>
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<tr>
<td>72.</td>
<td>Electrically operated bogie turntables</td>
<td></td>
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<tr>
<td>Equipment item number</td>
<td>Description of Equipment item</td>
<td>Quantity (Maintenance Facility)</td>
<td>Quantity (Legacy Maintenance Centre)</td>
</tr>
<tr>
<td>------------------------</td>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>73.</td>
<td>Weighbridge</td>
<td></td>
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<tr>
<td>74.</td>
<td>Sky trotter (mobile painting cabin)</td>
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<tr>
<td>75.</td>
<td>Condition monitoring equipment</td>
<td></td>
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<tr>
<td>76.</td>
<td>Stationary equipment to pump oil and waste oil</td>
<td></td>
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<tr>
<td>77.</td>
<td>Stationary equipment to pump coolant and waste coolant</td>
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<tr>
<td>78.</td>
<td>Break down truck/heavy duty utility vehicle</td>
<td></td>
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<td>79.</td>
<td>Utility vehicle with boxes for tools and spares</td>
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<tr>
<td>80.</td>
<td>Glass storage frames for windscreens</td>
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<tr>
<td>81.</td>
<td>Glass storage frames for windows</td>
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<tr>
<td>82.</td>
<td>Light load shelf</td>
<td></td>
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<tr>
<td>83.</td>
<td>Bins storage system</td>
<td></td>
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<tr>
<td>84.</td>
<td>Liquids and oil shelf</td>
<td></td>
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<tr>
<td>85.</td>
<td>Shelf with trays to store drums</td>
<td></td>
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<tr>
<td>86.</td>
<td>Complete pallet shelf unit</td>
<td></td>
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<tr>
<td>87.</td>
<td>Staff lockers</td>
<td></td>
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<tr>
<td>88.</td>
<td>Scrap container</td>
<td></td>
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<td>89.</td>
<td>Paper recycling bin</td>
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<tr>
<td>90.</td>
<td>Plastic recycling bin</td>
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<td>91.</td>
<td>Glass recycling bin</td>
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<td>92.</td>
<td>Waste recycling bin</td>
<td></td>
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<td>93.</td>
<td>Mobile waste oil disposal tank</td>
<td></td>
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<tr>
<td>94.</td>
<td>Shelf to store windows and doors</td>
<td></td>
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<td>95.</td>
<td>Forklift 5 tons</td>
<td></td>
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<tr>
<td>96.</td>
<td>Forklift 2 tons</td>
<td></td>
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<tr>
<td>Equipment item number</td>
<td>Description of Equipment item</td>
<td>Quantity (Maintenance Facility)</td>
<td>Quantity (Legacy Maintenance Centre)</td>
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<tr>
<td>97.</td>
<td>Versatile stacker</td>
<td></td>
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<td>98.</td>
<td>Hand Pallet truck</td>
<td></td>
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<tr>
<td>99.</td>
<td>Monorail crane with a load capacity of 2 tons placed on roads 1 and 2</td>
<td></td>
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<tr>
<td>100.</td>
<td>OTC of 2 tons for UFWL area/ span 12 m/ travel 18 m</td>
<td></td>
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<tr>
<td>101.</td>
<td>OTC of 15 tons for track 3 (heavy maintenance track)/ span 7 m/ travel 200 m with Operator platform fixed to crane</td>
<td></td>
<td></td>
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<tr>
<td>102.</td>
<td>OTC of 15 tons for bogie overhaul area (Bogie Heavy maintenance area)/ span 14 m/ travel 200 m</td>
<td></td>
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<tr>
<td>103.</td>
<td>OTC of 15 tons for bogie overhaul area (warehouse)/ span 16m/ travel 200 m</td>
<td></td>
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<tr>
<td>104.</td>
<td>Pony bogies</td>
<td></td>
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<td>105.</td>
<td>Air bag lifting equipment</td>
<td></td>
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<tr>
<td>106.</td>
<td>Re-railers</td>
<td></td>
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<tr>
<td>107.</td>
<td>Wood blocks</td>
<td></td>
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<tr>
<td>108.</td>
<td>Chain blocks (winches)</td>
<td></td>
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<tr>
<td>109.</td>
<td>Rescue coupler (heavy duty) for connection to locomotive</td>
<td></td>
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</tbody>
</table>
Schedule 38 — Deed of Warranty

Deed of Warranty

Between

Transport for NSW (TfNSW)
ABN 18 804 239 602
and

[Insert name of Consultant] (Consultant)
[insert ABN/ACN]
and

Momentum Trains Pty Ltd (Beneficiary)
ACN 630 634 507
Contents

Schedule 38 — Deed of Warranty 1

1. Definitions and interpretation 3
2. Consultant's warranty 4
3. Insurances 5
4. Beneficiary's Obligations 5
5. Assignment 6
6. Liability of the Consultant 6
7. Notices 6
8. Governing law and jurisdiction 8
9. Miscellaneous 8
This Deed of Warranty is made on ____________________

Between:

[Insert name of party] ABN [Insert ABN] of [Insert address] (Consultant);

Momentum Trains Pty Ltd (ACN 630 634 507), in its personal capacity and as trustee for the Project of Pacific Partnerships, Level 19, 177 Pacific Highway, North Sydney NSW 2060 (Beneficiary); and

Transport for NSW (ABN 18 804 239 602), a corporation constituted under section 3C of the Transport Administration Act 1988 (NSW) (TfNSW).

Recitals:

A TfNSW, RailCorp and the Beneficiary have entered, or will enter, into an agreement for the provision of the Project (Project Deed).

B By an agreement in writing dated [ ] (Consultancy Agreement), TfNSW appointed the Consultant to carry out the Consultancy Services.

C The Consultant has agreed to enter into this Deed with the Beneficiary and agrees to give the warranties in this Deed.

The parties agree as follows:

1. Definitions and interpretation

1.1 Project Deed definitions incorporated

Unless otherwise expressly defined in this Deed, expressions used in this Deed have the meanings given to them in the Project Deed.

1.1 Definitions

In this Deed:

Consultancy Agreement has the meaning given in recital B.

Consultancy Services means provision of a Baseline Environmental Site Assessment report for the purpose of determining the nature and extent of Contamination existing on, in or under the Legacy Maintenance Centre Site.

Deed means this deed and includes all schedules, exhibits, attachments and annexures to it.

Project Deed has the meaning given in recital A.

RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353), a NSW government agency constituted under section 4 of the Transport Administration Act 1988 (NSW).
1.2 Interpretation

Unless expressed to the contrary, in this Deed, the rules of interpretation set out in Clause 2 (General rules of interpretation) of the Project Deed apply, except that references in that clause to "this Deed" shall be taken to be references to this Deed.

1.3 Inconsistencies

To the extent of any inconsistency between the terms of this Deed and the Consultancy Agreement, this Deed will prevail over the Consultancy Agreement.

1.4 Capacity of the Beneficiary

(a) Insofar as the Beneficiary enters into this Deed in its capacity as trustee of the Project Trust, it must remain trustee of the Project Trust, subject to clause 10(e) until the expiry or satisfaction of all of the Beneficiary's obligations under this Deed.

(b) A liability of the Beneficiary arising under or in connection with this Deed (whether that liability arises under a specific provision of this Deed, for breach of contract or otherwise), is a liability that can be enforced against the Beneficiary both in its own right and in its capacity as trustee of the Project Trust, unless the liability relates only to an asset which the Beneficiary holds in its personal capacity and not as trustee, in which case the liability can only be enforced against the Beneficiary in its personal capacity.

2. Consultant's warranty

2.1 Consultant's warranty

(a) The Consultant warrants and undertakes to the Beneficiary that:

(i) it has carried out and will continue to carry out its duties and obligations under the Consultancy Agreement subject to and in accordance with the Consultancy Agreement;

(ii) in addition to and without derogation from clause 2.1(a)(i), the Consultant warrants to the Beneficiary that, it has exercised and will continue to exercise, in carrying out the Consultancy Services, the degree of professional skill, care and diligence to be expected from an appropriately and properly qualified and competent professional consultant experienced in providing services of a similar size and scope to the Consultancy Services;

(iii) it has carried out and will carry out and complete the Consultancy Services in accordance with the Consultancy Agreement and duly observe and perform all its duties and obligations thereunder; and

(iv) the Baseline Environmental Site Assessment:
   A. is suitable for its intended purposes;
   B. complies with Laws and Standards;
   C. does not infringe any Intellectual Property Rights or Moral Rights; and
   D. otherwise complies with all requirements of this Deed,
or will satisfy the conditions of clauses 2.1(a)(iv)A to 2.1(a)(iv)D upon completion of the Consultancy Services).

(b) The Consultant hereby acknowledges and agrees that at all times it was in the Consultant's contemplation that the Beneficiary may rely on the Consultancy Services to be provided by the Consultant pursuant and subject to the Consultancy Agreement.

3. Insurances

(a) The Consultant undertakes that:

(i) it has maintained and will maintain during the performance of its obligations under the Consultancy Agreement each of the required insurances in accordance with the requirements of clause [ ] and schedule [ ] of the Consultancy Agreement;

[Drafting note: TfNSW will use reasonable endeavours to procure that the Consultancy Agreement requires professional indemnity insurance cover for a minimum [ ] in aggregate with a maximum deductible [ ] per claim]

(ii) cover under the professional indemnity insurance is extended to include the Consultant's liabilities under this Deed;

(iii) this Deed has been disclosed to the Consultant's current professional indemnity insurers or brokers (as the case may be) and will be disclosed to any future professional indemnity insurers or brokers providing the insurance required by this Deed; and

(iv) the Consultant will abide by the terms and conditions of insurance and not do or omit to do anything that might prejudice the cover or its right to make a claim.

(b) As and when required by the Beneficiary, the Consultant will produce for inspection documentary evidence that such insurance is being properly maintained.

(c) The Consultant must not make any material alteration to the terms of the required insurances without the Beneficiary's prior approval which approval must not be unreasonably withheld. If the insurer makes or attempts to make any material alteration or purports to withdraw cover, or if the Consultant is unable to obtain professional indemnity insurance, the Consultant must promptly give notice of this to the Beneficiary.

4. Beneficiary's Obligations

4.1 The Beneficiary has no liability whatsoever to the Consultant in respect of amounts payable to the Consultant under the Consultancy Agreement.

4.2 The Beneficiary has no authority to issue any direction or instruction to the Consultant.
5. **Assignment**

5.1 The Consultant must not assign, novate or otherwise transfer the whole or any part of this Deed without the prior written agreement of the Beneficiary.

5.2 The Beneficiary may assign its interest in this Deed without the Consultant’s consent if the proposed transferee is a Key Subcontractor, provided it provides notice of such assignment to the Consultant.

6. **Liability of the Consultant**

6.1 The responsibility of the Consultant under this Deed is not to be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person notwithstanding that such enquiry or inspection may give rise to a claim by the Beneficiary against a third party.

6.2 Subject to clause 6.4, the rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies that the Beneficiary may have against the Consultant.

6.3 In the event of any claim by the Beneficiary under this Deed, the Consultant may rely upon any defence, right, limitation or exclusion under the Consultancy Agreement as though the Beneficiary were named as TfNSW under it, except that:

(a) any variation of the Consultancy Agreement after the date of this Deed which would adversely affect the obligations owed by the Consultant and any waiver, compromise or withdrawal of any claim against the Consultant made by TfNSW will not affect the Beneficiary under this clause 6.3; and

(b) the Consultant is not entitled to exercise any right of set-off, retention or withholding against the Beneficiary to which the Consultant may be entitled as against TfNSW.

6.4 Notwithstanding any other provision of this Deed, the liability of the Consultant under this Deed when aggregated with its liability under the Consultancy Agreement and any other warranties which the Consultant is required by TfNSW to provide pursuant to clause [ ] of the Consultancy Agreement, will not exceed the limitation on the Consultant’s liability set out in clause [ ] of the Consultancy Agreement. [Drafting note: TfNSW will use reasonable endeavours to procure that the Consultancy Agreement provides for the liability of the Consultant under this Deed when aggregated with its liability under the Consultancy Agreement and any other warranties which the Consultant is required by TfNSW to provide pursuant to the relevant clause of the Consultancy Agreement, to be subject to an aggregate cap of at least the lower of:]

(a) [ ]

(b) [ ] of the total fees payable to the Consultant under the Consultancy Agreement, excluding amounts recovered by the Consultant under insurances required under the Consultancy Agreement.

6.5 Nothing in this clause 6 will operate to exclude or limit the Consultant’s liability for fraud, death or personal injury.

7. **Notices**

All communications (including approvals, consents, directions, requirements, requests, claims, notices, agreements and demands) in connection with this Deed:

(a) (in writing): must be in writing:
(b) (addressed): must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

**TfNSW**

Name: 

Address: 

Email: [Insert]

For the attention of: Project Director, Regional Rail

**Beneficiary**

Name: Momentum Trains Pty Ltd in its personal capacity and as trustee for the Project Trust

Address: 

Email: [Insert]

For the attention of: Chief Executive Officer

**Consultant**

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

(c) (form of delivery): must be delivered by hand or posted by prepaid post to the address or emailed (in the form agreed by both parties) to the email address of the addressee set out in clause 7(b); and

(d) (taken to be received): are taken to be received by the addressee at the address set out in clause 7(b):

(i) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is outside Business Hours, in which case that communication is taken to be received at 9.00 am on the next Business Day;

(ii) subject to clause 7(e), in the case of prepaid post

A. on the fourth Business Day after the date of posting to an address within Australia and from an address in Australia;

B. on the seventh Business Day after the date of posting by airmail to an address outside Australia and from an address in Australia;

C. on the fourteenth Business Day after the date of posting by airmail to an address in Australia from an address outside Australia;
in the case of email, the first to occur of:

A. receipt by the sender of any email acknowledgement from the addressee's information system showing that the communication has been delivered to the email address of the addressee;

B. the time that the communication enters an information system which is under the control of the addressee; or

C. the time that the communication is first opened or read by the addressee,

unless the result is that the communication would be taken to be given or made at a time which is outside Business Hours at the local time in the place of receipt of the email, in which case that communication is taken to be received at 9.00 am on the next Business Day; and

(e) (notices sent by post): if sent by post from within Australia, must be sent using the 'priority' postal service offered by Australia Post (or any other postal service provider that assumes any or all of the functions of Australia Post) or other such similar service.

8. Governing law and jurisdiction

8.1 Governing law

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

8.2 Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those aforementioned courts, with respect to any proceedings which may be brought in connection with this Deed; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought within an inconvenient forum, if that venue falls within clause 8.2(a).

9. Miscellaneous

9.1 Entire agreement

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

(a) (entire understanding): embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties; and

(b) (prior agreements): supersedes any prior agreement of the parties.

9.2 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the parties) required by Law or reasonably requested by another party to give effect to this Deed.
9.3 Waiver

(a) **Writing**: A waiver given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.

(b) **No waiver**: A failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of, a right provided by Law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or under this Deed.

(c) **No waiver of another breach**: No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

9.4 Amendments

Except as otherwise expressly provided in this Deed, this Deed may only be varied by a deed executed by or on behalf of each party.

9.5 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

9.6 Severance

If, at any time, a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability of:

(a) any other provision of this Deed; or

(b) that provision under the Law of any other jurisdiction.

9.7 No representation or reliance

(a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed.

(b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this Deed.

9.8 Counterparts

This Deed may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed.

10. Project Trust undertakings

The Beneficiary must:

(a) comply fully with all of its obligations as trustee of the Project Trust, whether imposed under the Project Trust Deed or, in all material aspects, at law;
(b) ensure that no waiver or revocation of the Project Trust Deed is made, whether formally or by conduct;

(c) not amend, or agree to amend, or permit or allow to be amended, the Project Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error, details of which are notified to TfNSW);

(d) ensure that no other person is appointed trustee of the Project Trust without the prior written consent of TfNSW;

(e) not do anything which would cause or enable its removal, nor retire, as trustee of the Project Trust except in favour of a new trustee approved by TfNSW;

(f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Project Trust Deed or allow the early determination of the Project Trust;

(g) not exercise in its own favour its Trustee's Indemnity under the Project Trust against any beneficiary of the Project Trust or against any Trust Property (other than in respect of any expenses which it properly incurs in the day to day performance of its obligations as trustee of the Project Trust);

(h) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:

(i) the termination of the Project Trust or the termination, rescission or revocation of the Project Trust Deed;

(ii) the resettlement of any Trust Property; or

(iii) the resignation, retirement, removal or replacement of it as trustee of the Project Trust or the appointment of an additional trustee of the Trust;

(i) not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Documents and the Finance Documents;

(j) ensure that:

(i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under the Project Trust Deed);

(ii) the rights of any beneficiaries relating to, and their interests in, the property of the Project Trust are subject to the prior rights and interests of:

A. TfNSW under the TfNSW Security; and

B. the Beneficiary in the property of the Project Trust pursuant to its Trustee's Indemnity;

(k) not do anything, or omit to do anything where the doing or the omission to do may have the effect of releasing, waiving or impairing any Security Interest granted by or created under a Project Document;

(l) unless otherwise permitted under the Project Documents, not permit any of the beneficiaries of the Project Trust to use, occupy, or enjoy or possess any of the Trust Property or title documents in respect of the Trust Property or relinquish management powers which might entitle any beneficiary of the Project Trust to possession;
(m) not blend or mix the Trust Property with any other property in respect of which it has been appointed trustee;

(n) not acquire any Trust Property other than in the name of the Trustee as trustee of the Project Trust;

(o) not allow any redemption, cancellation or repurchase of any units in the Project Trust other than as permitted by the Project Documents;

(p) not take any step to release a unit holder of the Project Trust from the obligation to pay up units;

(q) not do anything, agree or attempt to take any step to do anything which would restrict or impair its ability to comply with its obligations under this Agreement; and

(r) not do anything (or permit anything to be done) which:
   (i) results or may result in registration of the Project Trust as a managed investment scheme under Part 5C.1 of the Corporations Act; or
   (ii) restricts or limits or may restrict or limit TfNSW's rights of subrogation to the Trustee's Indemnity.
Executed as a deed.

Signed sealed and delivered for and on behalf of Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:

<table>
<thead>
<tr>
<th>Signature of witness</th>
<th>Signature of authorised delegate</th>
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<thead>
<tr>
<th>Full name of witness (print)</th>
<th>Full name of authorised delegate (print)</th>
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<th>Position held</th>
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Executed by [insert Consultant] [insert ABN/ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

<table>
<thead>
<tr>
<th>Director</th>
<th>Director/Secretary</th>
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<thead>
<tr>
<th>Name of Director (print)</th>
<th>Name of Director/Secretary (print)</th>
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Signed sealed and delivered for and on behalf of Momentum Trains Pty Ltd (ACN 630 634 507) in its personal capacity and as trustee for the Momentum Trains Trust (ABN 40 340 691 016) by its attorneys:

________________________________________  __________________________________________
Attorney                                                                                     Attorney

________________________________________  __________________________________________
Name of Attorney (print)                                                                     Name of Attorney (print)

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Witness                                                                                      Witness

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Schedule 40 — Transition Out Schedule

Introduction
There are two parts to this Schedule:

- Part A – Transition Out Condition requirements; and
- Part B – Transition Out Package.
Part A – Transition Out Condition requirements

1. Transition Out Condition

1.1 For the purposes of limb (c)(iii) of the definition of Transition Out Condition, Project Co must have:

(a) completed all Maintenance and works set out in the Maintenance Works Program due to be completed before the Expiry Date;

(b) completed all Maintenance and works set out in the Technical Maintenance Plan due to be completed before the Expiry Date; and

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<tr>
<th>Item</th>
<th>Maintenance Item</th>
<th>Status at Initial Expiry Date</th>
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<tbody>
<tr>
<td>1.</td>
<td>Each power pack on each Long Unit</td>
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<td>2.</td>
<td>Each bogie on each Long Unit</td>
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<td>3.</td>
<td>Each gangway on each Long Unit</td>
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<td>4.</td>
<td>Each power pack on each Short Unit (Regional) and each Short Unit (InterCity)</td>
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<td>Each brake cylinder on each Short Unit (Regional) and each Short Unit (InterCity)</td>
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<td>Each battery charger on each Short Unit (Regional) and each Short Unit (InterCity)</td>
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<td>Each auxiliary converter on each Short Unit (Regional) and each Short Unit (InterCity)</td>
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<td>Each traction converter on each Short Unit (Regional) and each Short Unit (InterCity)</td>
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<td>Each toilet on each Short Unit (Regional) and each Short Unit (InterCity)</td>
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<td>Each autocoupler on each Short Unit (Regional) and each Short Unit (InterCity)</td>
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<td>Each semi-permanent coupler on each Short Unit (Regional) and each Short Unit (Intercity)</td>
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<td>Each Crew Cab HVAC unit on each Short Unit (Regional) and each Short Unit (Intercity)</td>
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<td>Each autocoupler on each Short Unit (Regional) and each Short Unit (Intercity)</td>
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<td>17.</td>
<td>Each bogie on each Short Unit (Regional) and each Short Unit (Intercity)</td>
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**Part B – Transition Out Package**

1. **Requirements for Transition Out Package**

   The Transition Out Package must contain the following items and information.

1.1 Premises

   (a) A list of the premises owned, leased, licensed or operated (to the extent applicable) by Project Co or any Key Subcontractor for the purposes of providing the Project Activities, showing the location, address, telephone number, facsimile number, responsible manager and use of each and the contact name, address, telephone number and facsimile number for the organisation which provides security services for those premises.

   (b) A list of any temporary accommodation (such as portable cabins) Project Co has installed on any licensed or leased premises.

1.2 Contracts, documents and suppliers

   (a) A list of all Approvals which are material to the provision of the Project Activities.

   (b) Subject to clause 12.1(e), a list of all subcontracts of any tier or other agreements which are material to the provision of the Project Activities showing (as appropriate) for each such subcontract or agreement the name and contact details of the counterparties, the subject matter of the subcontract or agreement, the contract price and the term.
Subject to clause 12.1(e), a copy of each of those documents referred to in sections 1.2(a) and 1.2(b).

To the extent not included in the list referred to in paragraph 1.2(b), a list of all material current suppliers of plant, equipment, materials and technical support used in the provision of the Project Activities.

Copies of the Technical Maintenance Plans.

1.3 Systems

A list of systems (computer and otherwise) used in the provision of the Services, together with a description of the systems and master passwords where applicable.

A list of software and licenses for specific programs (e.g. CCTV and OEM items) to the extent not covered by the Intellectual Property Register in section 1.9.

1.4 Assets

One electronic copy of all data contained within or related to the Asset Information System and the FRACAS.

One electronic copy of all manuals, records, logs, drawings, datasheets, specifications, calculations and other documents relating to the provision of the Project Activities and the Assets (including maintenance history logs relating to the Assets and details of any modifications made by or on behalf of Project Co to any Asset).

A list of all plant and equipment at the Maintenance Facility with an individual value over $100,000.

1.5 Insurances

The names and addresses of all insurers providing the insurances which are required to be effected and maintained by Project Co under the Project Deed, along with the applicable policy numbers.

1.6 Organisational Structure

A detailed diagrammatical representation of the organisational structure of Project Co and the Maintenance Subcontractor and its Related Body Corporates to front-line management level.

1.7 Employees

To the extent permitted by Law, and reasonably requested by TfNSW, information regarding persons employed in provision of the Services.

A list of key personnel whose work is critical to the ongoing provision of the Project Activities.

The current staff roster in respect of the Services.
1.8 Safety

(a) Names and locations of all safety manuals and procedures used for the provision of the Project Activities undertaken in Australia.

(b) Where available, electronic copies of safety manuals and procedures used for the provision of the Project Activities undertaken in Australia.

(c) A copy of the most recent safety audit.

(d) A copy of the Project Risk Register, Project Hazard Log and Safety Management System documentation including evidence of corrective action taken and evidence that outstanding risk and safety issues have been closed.

1.9 Intellectual Property Rights

A copy of the Intellectual Property Register.

1.10 Cleaning services

To the extent relevant to the Services, any contract to which Project Co or a Project Co Associate is party covering the provision of cleaning services, the employment agreements applying to the cleaning staff employed by Project Co and Project Co Associates to carry out cleaning, the number of cleaning staff so employed, their fortnightly wages and fortnightly hours.
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- The table contains sensitive information.
- The details are blacked out for confidentiality.
- The table is part of a larger document related to the Regional Rail Project Deed.
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**SENSITIVE: NSW GOVERNMENT**

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**Schedule 41 - Schedule of Forms and Certificates**

**Contract Number:** ISD-17-6185

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Regional Rail - Through Life Support Deed

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Schedule 43 - Through Life Support Deed
Contract Number: ISD-17-6185
SENSITIVE: NSW GOVERNMENT
Schedule 43 - Through Life Support Deed
Contract Number: ISD-17-6185

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SENSITIVE: NSW GOVERNMENT
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**Schedule 43 - Through Life Support Deed**

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Schedule 44A — Additional Option Items
Attachment 4 — Workforce Profile and Gap Plan, Jobs, Skills and Industry Participation Output Delivery Profile and Training Needs Analysis
Annexure D — Planning Approval Application